		OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62
A. File No.	:	VIII/48-15/ADJ/Pr.Commr/MCH/2016-17
B. Order-in- Original No.	:	MUN-CUSTM-000-COM-12-17-18
C. Passed by	:	Shri Sanjay Kumar Agarwal Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order Date of issue	:	24.01.2018 24.01.2018
E. SCN No. & Date	:	F. No. DRI/AZU/GRU/INT-35/2015/APOLLO dated 24.06.2016
F. Noticee(s)/Party/ Importer	:	M/s. Apollo Tyres Ltd., 6th Floor, Cherupusam Building, Shanmugham Road, Kochi- 682031.

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1) के अंतर्गत प्रपत्र सीए- 3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवा कर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ,

2nd फ्लोर, बहुमाली भवन, मंजुश्रीमिल कंपाउंड, गिरधरनगर ब्रिज के पास, गिरधरनगर पोस्ट ऑफिस, अहमदाबाद 380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,

2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge,

Girdhanagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ 1000/-रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो, 5000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो, 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5 % of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Sub: SCN F. No. DRI/AZU/GRU/INT-35/2015/APOLLO dated 24.06.2016 issued to M/s. Apollo Tyres Ltd., 6th Floor, Cherupusam Building, Shanmugham Road, Kochi- 682031.

BRIEF FACTS OF THE CASE :-

M/s. Apollo Tyres Ltd., 6th Floor, Cherupuspam Building, Shanmugham Road, Kochi- 682031 having IEC No.1088000720 (hereinafter referred to as 'importer') is engaged in manufacturing of tyres. For manufacturing tyres, the said importer is importing Shell Flavex Oil 595 B, Natural Rubber, Synthetic Rubber, Carbon Black, Rubber Chemicals etc. The said importer purchased consignments of Shell Flavex Oil 595 B on High Sea Sale basis from M/s. Shell India Markets Pvt. Ltd.

2. Intelligence was gathered by the Directorate of Revenue Intelligence (hereinafter referred to as DRI for the sake of brevity) indicated mis-declaration of Shell Flavex Oil 595 B / Shell Flavex Oil 595 H as Plasticizer and Mis-classification of the said products under CTI 38122090 instead of CTI 27079900 of the Customs Tariff Act, 1975 to evade the payment of Customs Duty. The "Shell Flavex Oil 595 B/ Shell Flavex Oil 595 H" is Rubber Process Oil having more aromatic constituents as compared to non-aromatic constituents and merit classification under Customs Tariff Item 27079900. The importer was importing "Shell Flavex Oil 595 B" on high sea sale basis through M/s. Shell India Markets Pvt. Ltd. from M/s. Shell Eastern Trading PTE Ltd., Singapore and clearing it for home consumption. M/s. Shell India Markets Pvt. Ltd. was selling Shell Flavex Oil 595 B / Shell Flavex Oil 595 H on high sea sale basis to various other importers also. Therefore, a watch was kept on import of subject goods and it was observed that an importer, namely, M/s Balkrishna Industries Ltd., through Customs Broker M/s. Om Freight Forwarders Pvt. Ltd., Gandhidham, filed total 7 Bills of Entry for clearance of 180.12 MTs of Shell Flavex Oil 595 by classifying the same under CTI 38122090 at Custom House, Mundra. The Shell Flavex Oil 595 was purchased from M/s. Shell India Marketing Pvt. Ltd. on high sea sale basis. The goods covered under these Bills of Entry were examined and samples were drawn by the DRI officers under Panchnama dated 25.07.2015.

3. Samples were sent to Custom House Laboratory, Kandla vide Test Memo No. 55/2015-16 dated 27.07.2015 for testing certain parameters. The Joint Director, Custom House Laboratory, Kandla vide Test Report No. 06 dated 27.07.2015 submitted his report wherein only Aniline Point, Density, Flash Point were reported with Note that "The Kinematic viscosity is not in agreement with IS:15078:2001. Petroleum based Process oil for Rubber Industry." But, vide letter dated 30.10.2015 the Joint Director, Custom House Laboratory, Kandla reported in respect of "Shell Flavex Oil 595" as under:-

"It is stated that the analytical parameters such as

1. Viscosity Gravity Constant (VGC) -0.916

2. Composition By Gel- clay analysis

Polar Compound = 25%

Saturated Hydrocarbon = 20% Aromatic Content = 55%

Given in Technical datasheet for Shell Flavex oil 595 is in agreement with value mentioned in the standard specification of DIN 51378 for VGC and composition by gel-clay is agreement with ASTM D2226-93 "classification and characterization of oils for Rubber Compound" Type 101 used in extending, processing of styrene Butadiene rubber i.e. Rubber Process oil".

4. Vide the above stated test report, the Customs House Laboratory, Kandla confirmed the goods declared as Shell Flavex Oil 595 to be Rubber Process Oil. The said consignment was purchased by M/s Balkrishna Industries Ltd. from M/s Shell India Marketing Pvt. Ltd. on high sea sale basis. Further, the consignments of Shell Flavex Oil 595 B imported and cleared by M/s Apollo Tyres Ltd. at Chennai and Nhava-Sheva were having similar chemicals and physical properties as that of the Shell Flavex Oil **595 imported by M/s Balkrishna Industries Ltd.** Therefore, the above mentioned test report is squarely applicable to the **Shell Flavex Oil 595 B imported and cleared by M/s Apollo Tyres Ltd.**

5. Technical Data Sheet of Shell Flavex Oil 595 shows Typical Physical Characteristics of Shell Flavex Oil 595. It is available at page <http://www.meadekingrobinson.co.uk/wp-content/uploads/2014/01/Flavex-595.pdf> and is produced herein below. The importer has also admitted that this Technical Data Sheet was never produced before the Customs authorities during clearance of their instant product.

Shell Flavex Oil 595

Goods solvency paraffinic process oil

Shell Flavex Oils are manufactured from a paraffinic crude oil and exhibit a higher aromatic content than standard paraffinic process oils. Shell Flavex Oil 595 is a labeling free high viscosity aromatic process oil made from a residual oil fraction. This oil type is also known as RAE (residual aromatic extract). It is a potential substitute for distillate aromatic extracts (DAE) used as extender oils in rubber. It meets the requirements of EU Directive 2005/69/EC.

Typical Physical Characteristics

Colour (ASTM)	ISO 2049	D 8.0
Density at 15 C kg/m ³	ISO 12185	980
Refractive Index at 20 °C	ASTM D 1218	1.5500
Flash point COC	ISO 2592	300
Pour Point	ISO 3016	15
Kinematic Viscosity At 20 °C mm ² /s At 100 C mm ² /s	ISO 3104	60.0
Sulphur (X-Ray) %m/m	ISO 1496	4
Carbon Type Distribution C/A (S-corr) % C/N (S-corr) % C/P (S-corr.) %	DIN 51378/ ASTM D 2140 Mod.	29 15 56
Refractive Intercept (RI)	DIN 51378	1.060
Viscosity Gravity Constant (VGC)	DIN 51378	0.916
Aniline Point C	ISO 2977	66
Clay Gel Analysis Polar components % m/m Aromatic components % m/m Saturated components	ASTM D 2007	20 70 10
Evaporation loss (22h/170 °C) %m/m	ASTM D 972	< 0.1
Noack Volatility (1h/250 °C) %m/m	ASTM D 5800	0.5
Carbon Type Distribution C/A (non S-corr.) C/N (non S-corr) C/P (non S-corr.)	DIN 51378/ASTM D 2140 Mod.	34 28 38
Benzo(a)pyrene content mg/kg		< 1
Sum of 8 PAH contents mg/kg		< 10

6. Various reports, Study materials available on relevant websites, as detailed below, also shows that Shell Flavex Oil 595 is Rubber Process Oil having high aromatic content.

6.1. At para0071 to 0077 of the United States Patent application US20100012248A1, Pub No. US 2010/0012248A Pub. dated Jan 21,2010, the manufacturing process of Shell Flavex Oil 595 has been described in short, the process step by step mentioned in the said patent documents is as under:

- [0071] *N* subjecting the crude oil to a vacuum distillation to obtain a vacuum distillation residuum.
 [0072] (ii) subject to said vacuum distillation residuum to a deasphalting treatment to obtain a desphaltd crude oil residuum and an asphaltic residuum;
 [0073] (iii) separating the deasphalting residuum and the asphaltic residuum;
 [0074] (iv) subjecting the deasphalting residuum to a solvent extraction; [0075] (v) removing the solvents to obtain the RAE-oil.
 [0076] (vi) Specific example of deasphalting agents which may be advantageously used in step (ii) are: propane, n-butane, iso-butane, pentane, or mixture thereof.
 [0077] Specific example of solvent which may be advantageously used in step (iv) are, furfural, N-methyl-2-pyrrolidone, phenol, or mixture thereof, optionally admixed with water.

Thus, it appears that Shell Flavex Oil 595 is Residual Aromatic Extract Oil obtained from crude oil.

6.2. Chapter 18 (petroleum oils for rubber) of Significance of Tests for Petroleum Products, 8th Edition by Salvatore J. Rand, Editor, ASTM Stock Number MNL.1-8TH provides (at page No. 225-226) classification Of Rubber Oils. In view of chapter 18, it appears that Table 1 (Classification of Oil Types by ASTM D 2226) does not list aromatic content; however, an indirect measure of aromaticity is given in the saturates limits. Aromatics content can be determined by the difference as described in ASTM D2007 which is as under:-

Aromatics, mass % = 100 — (E+F) where:

E = mass % saturates, and

F = mass % polar compounds.

Accordingly aromatic content of various Rubber Process Oils are as under:

Type	Asphaltenes, max, %	Polar Compounds, max %	Saturated Hydrocarbons, %	Aromatic Content determined by the difference as described in ASTM D2007
101	0.75	25	20 max	55 min, %
102	0.5	12	20.1 TO 35	53% max
103	0.3	6	35.1 to 65	30%, max
104A	0.1	1	65 min	34%,max

The Shell Flavex Oil 595 having polar components 20% m/m, aromatic components 70% m/m, saturated components 10 % m/m, initial boiling point more than 280°C (as per MSDS) and VGC of 0.916 when compared with the above table, then it is revealed that it is Rubber Process Oil type 101. It is used for extending and processing styrene-butadiene rubbers (SBR). The other examples of ASTM type 101 rubber processing oil are *POWEROIL FLEXOIL A SUPER, Servo Process Oil Primo, Valero Aromatic Extract Oil.*

6.3. Paper (ID: 20100992) published in Petrotech 2010 (31 October-3 November-2010) had discussed various types of Rubber Process Oil (RPO-1 to RPO-5). The paper also described that RPO-4 is based on specially refined aromatic extracts and found suitable for rubber processing application. This oil contains high amount of aromatics which are suitable for providing adequate solubility of rubber ingredients during tyre manufacturing. The properties and application of Shell Flavex Oil 595 is appropriately covered under RPO 4 as discussed in the Paper. Thus, Shell Flavex Oil 595 is Rubber Process Oil having high aromatic content.

6.4. The Test Plan 201-14900 A of "Aromatic Extract Category" submitted to the US EPA by the Petroleum HPV Testing Group during the High Production Volume (HPV) Chemical Challenge Program shows that Residual Aromatic Extract Oil contains always more than 50% aromatic content. Therefore, in the Shell Flavex Oil 595 being RAE oil, aromatic content exceeds non-aromatic content.

6.5. Technical Data Sheet of Shell Flavex Oil 595 also shows that Shell Flavex Oils are manufactured from a paraffinic crude oil and exhibit a higher aromatic content than standard paraffinic process oils. It has 70% aromatic components.

7.1. Chapter 27 of Section V of the Customs Tariff Act is related to Mineral Fuels, Mineral Oils and Products of their distillation; Bituminous Substances; Mineral Waxes. Chapter Sub-heading 2707 covers "Oils and other products of distillation of high temperature coal tar; Similar products in which the weight of aromatic constituents exceeds that of the non-aromatic constituents". Further, the HSN explanatory General Note to Chapter 27 clarifies that the expression "aromatic constituents" as used in Note 2 of this Chapter and heading 2707 should be taken to refer to entire molecules with an aromatic part irrespective of the number and length of side-chains and not to the aromatic portions of such molecules only. Further, HSN explanatory notes to Chapter heading 3812 exclude Petroleum oils, petroleum jelly, paraffin waxes and asphalts of Chapter 27 from its scope. Therefore, Shell Flavex Oil 595 being Rubber process Oil with high aromatic content i.e. 70% is classifiable neither under CTH 3812 or nor under CTH 2710.

7.2. Circular No.11/89, dated 13.02.1989 issued by the CBEC, New Delhi the issue of classification of Rubber Process Oil under Heading 2710 or 27.13 or 27.07 is discussed. It reads as under:

"The Processed oils (Speciality oils) in question, are manufactured products obtained by blending the said extracts. These are tailor-made products to meet the specific requirements for a particular use viz. rubber processing oils and are individually identifiable as rubber processing oils and thus would cease to be furfural extracts and, for these reasons, the processed oils in question do not remain qualified for classification under sub-heading No. 2713.39/2713.30 as 'other petroleum residues'. In view of the provisions of Chapter Note 2 of Chapter

27, the possibility of classification of such goods under Heading No. 27.10 of CET is also ruled out since aromatic constituents in this case predominate over non-aromatic constituents. The Deputy Chief Chemist, CRCL, has opined that the more appropriate sub-heading for the goods in question would be 2707.90 as 'similar products in which the weight of aromatic constituents exceeds that of the non-aromatic constituents. The Board agrees with the views of the Deputy Chief Chemist in the matter.'

In view of above it appears that appropriate classification of Shell Flavex Oil 595 should be under CTH 2707.

8.1. Shri Paresh Parikh, Group Manager-Excise of M/s Apollo Tyres Ltd., Kochi in his statement dated 29.09.2015 inter alia stated that they are engaged in manufacture of automobile tyres-off road and on road; that they import Natural Rubber, Synthetic Rubber, Carbon Black, Nylon Tyre Cord Fabrics, Plasticizers, Rubber Chemicals, Steel Tyre Cord and Bead wires; that they were importing Shell Flavex Oil 595 B as a Plasticizer since 2012-13; that they were importing "Shell Flavex Oil 595 B" on high sea sale basis through M/s. Shell India Markets Pvt. Ltd. from overseas supplier M/s. Shell Eastern Trading PTE Ltd., Singapore; that they were classifying Shell Flavex Oil 595 B under CTI 38122090. Further, after going through Technical Data Sheet of "Shell Flavex Oil 595" he stated that under the head Clay Gel Analysis, Polar components % m/m is shown as 20, Aromatic components % m/m is shown as 70 and saturated component % m/m is shown as 10; that no such technical data sheet was supplied to them either by overseas supplier or high sea seller and hence it was not produced to the Customs; that Shell Flavex Oil 595 B is basically Plasticizer for rubber, therefore it was classified under CTI 38122090 in Bills of Entry; that they have not received any bulk delivery notes from M/s. Shell India Markets Pvt. Ltd.; that as per Board's Circular No. 11/89 dated 13.02.1989, more appropriate sub heading for Shell Flavex Oil 595 B would be 2707; that as per exclusion note of HSN of CTH 3812, more appropriate sub heading for Shell Flavex Oil 595 B would be 2707. He was shown case law in respect of Indian Oil Corporation Ltd. Vs Commissioner of Central Excise, Chennai (2007 (210) ELT 382 (Tri. Chennai). After going through the said case law he stated that more appropriate sub heading for Shell Flavex Oil 595 B would be 2707.

8.2. Shri Bikash Pillaniwala, Divisional Head, Indirect Tax in M/s Apollo Tyres Ltd., Kochi in his statement dated 06.10.2015 inter alia stated that they were classifying Shell Flavex Oil 595 B under CTI 38122090 considering its usage as plasticizer for rubber. After going through Technical Data Sheet of Shell Flavex Oil 595, he stated that under the head Clay Gel Analysis, Polar components % m/m is shown as 20, Aromatic components % m/m is shown as 70 and saturated component % m/m is shown as 10; that Shell Flavex Oil 595 is Oil based product; that as per Board's Circular No. 11/89 dated 13.02.1989, more appropriate sub heading for Shell Flavex Oil 595 B would be 270790; that as per exclusion note of HSN of CTH 3812, more appropriate sub heading for Shell Flavex Oil 595 B would be 2707. After going through the said case law Indian Oil Corporation Ltd. Vs Commissioner of Central Excise, Chennai (2007 (210) ELT

382 (Tri. Chennai they stated that more appropriate sub heading for Shell Flavex Oil 595 B would be 2707; that differential duty along with interest arise due to mis declaration and mis classification of Shell Flavex Oil 595 imported by them will be paid by them within one month.

8.3. Shri Ramakrishnan S., Head-Raw Materials and Compound Developments in M/s Apollo Tyres Ltd., Kochi in his statement dated 06.10.2015 inter alia stated that they were importing Shell Flavex Oil 595 B from Singapore (BUKOAM). After going through Technical Data Sheet of Shell Flavex Oil 595, he stated that as per Clay Gel Analysis, aromatic components are 70%, Polar components are 20% and saturated component are 10%; that in the Technical Data Sheet of Shell Flavex Oil 595 submitted by him, Clay Gel Analysis does not mention aromatic components, Polar components and saturated component; that Shell Flavex Oil 595 B is Oil based product derived from Crude Oil; that Shell Flavex Oil 595 B is Oil made from Crude Oil to residual oil to RAE. Further, to the questions relating to classification of Shell Flavex Oil 595 B, he stated that he does not know anything about tariff classification, hence these questions does not pertain to him.

8.4. Shri K. Nagarajan, Manager Import & authorized person of Customs Broker firm M/s Chakiat Agencies, Chennai in his statement dated 08.10.2015 inter alia stated that they have added word PLASTICIZER in the Bills of Entry and classified the "Shell Flavex Oil 595" under CTI 38122090 on the advice of the importer; they have not received any Technical Data Sheet of "Shell Flavex Oil 595 B" from the overseas supplier or importer and hence not produced the same before the customs authority; after seeing the relevant literatures/reports, Circular and HSN note, correct classification of "Shell Flavex Oil 595 B" would be 2707; that Shell Flavex Oil 595 B is aromatic process oil. That no samples were drawn by the customs at the time of clearance of Shell Flavex Oil 595 B; that importer had mis-declared and mis-classified the product under CTI 38122090.

9. M/s. Apollo Tyres Ltd., Kochi had imported Shell Flavex Oil 595 B i.e. Rubber Process Oil for manufacturing of tyres. The said importer was well aware about the usage and exact impact of the subject goods in tyre manufacturing activities. The importer was importing the subject goods i.e. Shell Flavex Oil 595 B on high sea sale basis through M/s. Shell India Markets Pvt. Ltd. from M/s. Shell Eastern Trading PTE Ltd., Singapore and clearing it for home consumption. The Shell Flavex Oil 595 B is manufactured by the well-known company known as "Shell" which is engaged in the business of petroleum refinery and their allied chemicals. In spite of knowing that the subject imported goods were rubber process oil having high aromatic content and were manufactured from the crude oil (mineral), the importer with clear intent to evade the payment of duty had mis-declared the description of the goods and mis-classified the subject goods under CTI 38122090 as a Plasticizer. Vide Circular No. 11/89, dated 13-2-1989, as referred above, the CBEC clarified that the 'Specialty Oils' (Processed

Oils) in question would be appropriately classifiable under sub-heading No. 2707.90. The said importer had imported the Shell Flavex Oil 595 B at Chennai Port and Nhava-Sheva Port by mis-declaring the description and mis-classifying under CTI 38122090 by suppressing the facts necessary for correct classification and assessment. The said importer and their appointed Customs Broker have admitted that they have never disclosed before the Customs Authorities that the Shell Flavex Oil 595 B is Rubber Process Oil having more aromatic contents as compared to non-aromatic contents. They never produced the 'Technical Data Sheet' showing the aromatic contents. Shri Ramakrishnan S. Head- Raw Materials and Compound Developments in M/s Apollo Tyres Ltd., Kochi in his statement stated that Shell Flavex Oil 595 B is a Residual Aromatic Extract. It is basically highly Aromatic Content oil in which Non-Aromatic Oil contents will be very less. This oil is basically used in tyre industry for rubber processing. Thus, it appears that the importer had intentionally suppressed these facts and willfully mis-declared and mis-classified the "Shell Flavex Oil 595 B" under CTI 38122090 to evade the Customs Duty. Further, it appears that to misguide the customs authorities, the said importer added the word "Plasticizer" in the description of the goods in Bills of Entry whereas the fact is that no such word "Plasticizer" is mentioned/described in the supplier's invoice. In the light of these facts, it appears that the said importer mis-declared the description of the goods and mis-classified "Shell Flavex Oil 595 B" under CTI 38122090 instead of correct classification under CTI 27079900 to evade payment of appropriate duty.

10. It is responsibility of the importer under self-assessment system, to declare the correct facts with regard to the imported goods and to classify them under the appropriate customs tariff item. However, the above discussed evidences show that with intent to evade the customs duty, the said importer had suppressed the material facts and mis-declared description of the imported goods and mis-classified the same under CTI 38122090 instead of correct classification under CTI 27079900. These facts clearly show willful mis-declaration on their part. Hence, provisions of Section 28(4) of Customs Act, 1962 for extended period of demand of evaded duty is clearly attracted in this case. The above discussed facts and evidences show that the importer resorted to willful mis-declaration and mis-classification with an ulterior motive of evading payment of the applicable duty on "Shell Flavex Oil 595 B", in the consignments cleared for home consumption vide the Bills of Entry listed in Annexure- A and Annexure - B. The details of duty actually paid, required to be paid and the evaded differential duty (Column No. 18) is detailed separately in Annexure- A (Chennai Port) and Annexure - B (Nhava Sheva Port) (Duty Calculation Sheets) attached to this Notice.

11.1. The said importer had got clearance of "Shell Flavex Oil 595 B" from respective ports. The said importer has filed total 93 Bills of Entry as detailed in Annexure-A appended to this Show Cause Notice at Chennai which were assessed finally. In these 93 finally assessed Bills of Entry as mentioned in Annexure-A appended to this SCN, total 18,76,689 KGs of "Shell Flavex Oil 595 B" having assessable value of

Rs.12,56,93,335/- was cleared. Total differential duty in respect to these finally assessed Bills of Entry comes to Rs.64,32,989/-. Thus, the differential duties of Customs aggregating to Rs. 64,32,989/- in respect of 18,76,689 KGs of imported "Shell Flavex Oil 595 B" cleared under Bills of Entry listed in Annexure- A, is liable to be demanded and recovered from them under Section 28 (4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962.

11.2. Further, the said importer has filed total 5 Bills of Entry as detailed in Annexure-B appended to this Show Cause. Notice at Nhava Sheva port which was assessed finally. In these 5 finally assessed Bills of Entry as mentioned in Annexure-B appended to this SCN, total 1,19,550 KGs of "Shell Flavex Oil 595B" having assessable value of Rs. 82,35,298/-was cleared from Nhava Sheva. Total differential duty in respect to these finally assessed Bills of Entry comes to Rs. 4,41,083/-. Thus, the differential duties of Customs aggregating to Rs. 4,41,0831/- in respect of 1,19,550 KGs of imported "Shell Flavex Oil 595 B" cleared under Bills of Entry listed in Annexure- B, is liable to be demanded and recovered from them under Section 28 (4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962.

12. The above discussed evidences show that the importer was well aware that the "Shell Flavex Oil 595 B" is Rubber Process Oil and is having more aromatic components, however they had suppressed this fact from the customs authority and mis-classified and mis-declared the goods with intent to evade the customs duty which is liable to be recovered from them with interest. The willful mis-declaration of description of imported goods and mis-classification thereof in the Bills of Entry listed in Annexure-A and Annexure -B to this Notice, has rendered 19,96,239 KGs (total Chennai and Nhava-Sheva) of "Shell Flavex Oil 595 B", covered therein, having declared aggregate assessable value of Rs 13,39,28,634/- liable to confiscation under Section 111 (m) of the Customs Act,1962 & M/s Apollo Tyres Ltd liable to penalty under Section 112 (a) of the Customs Act, 1962. Further, since the subject amount of duty was evaded by the importer by way of suppression of material facts, they are also liable to penalty under Section 114A of the Customs Act, 1962.

13.1. During the course of investigation, the said importer had made payment in respect of clearance of "Shell Flavex Oil 595 B" at Chennai, as detailed below:

Date of Payment	Amount Paid (Rs.)	Details of Payment
02/11/2015	28,91,8951/-	Duty with Interest.
02/11/2015	12,61,786/-	Duty with Interest.
02/11/2015	18,56,435/-	Duty with Interest.
02/11/2015	11,62,046/-	Duty with Interest.
02/11/2015	2,23,027/-	Duty with Interest.
TOTAL	73,95,189/-	

13.2. Further, during the course of investigation, the said importer had made payment in respect of clearance of "Shell Flavex Oil 595 B" affected at Nhava Sheva, as detailed below:

Date of Payment	Amount Paid (Rs.)	Details of Payment
02/11/2015	4,29,535/-	Duty.
02/11/2015	2,01,010/-	Interest.
TOTAL	6,30,545/-	

14. M/s. Apollo Tyres Limited has imported "Shell Flavex Oil 595 B" under CTI 38122090 and declared as plasticizer under Bills of Entry as mentioned in Annexure-A & B through Chennai and Nhava Sheva Ports as detailed below:

Sr. No	Bills of Entry No. & Date mentioned in Annexure enclosed	Quantity Kgs	Value of Imported Goods	Duty not paid/evaded	Jurisdictional/Adjudicating Authority of respective Ports/ICDs
1	2	3	4	5	6
	Annexure-A	1876689	12,56,93,335/-	64,32,898/-	Commissioner of Customs, Chennai-II,
	Annexure-B	119550	82,35,298/-	4,41,083/-	Commissioner of Customs (Import), JNCH-Nhava
		1996329	13,39,28,633/-	68,74,072/-	

15. Therefore, Show Cause Notice was issued vide F.No. DRI/AZU/GRU/INT-35/2015/Apollo dated 24.06.2016 by the Additional Director General, DRI, AZU, Ahmedabad to M/s Apollo Tyres Ltd., as to why:-

- The declared classification of the imported "Shell Flavex Oil 595 B" as CTI 38122090 should not be rejected and the subject goods be classified under CTI 27079900 and the Bills of Entry be re-assessed accordingly.
- The differential customs duty amounting to Rs. 68,74,072/- leviable on the "Shell Flavex Oil 595 B" should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- The Payment made by M/s Apollo Tyres Ltd. as detailed in para 13.1 & 13.2 above should not be adjusted and appropriated against their duty and interest liability arising as per sub-Para (b) above.
- The quantities of "Shell Flavex Oil 595 B" imported and declared as plasticizer valued at Rs.13,39,28,633/- should not be held liable to confiscation as per provisions of Section 111(m) of Customs Act, 1962.
- Penalty should not be imposed on them under Section 112 (a) & 114A of the Customs Act, 1962, for the reasons discussed above.

16. The impugned show cause notice are answerable to the (i) Commissioner of Customs, Chennai-II and (ii) Commissioner of Customs (Import), JNCH, Nhava Sheva(v), Raigad. However, CBEC has issued Notification No.1/2016-Customs (N.T./CAA/DRI) dated 22.08.2016 designating the Principal Commissioner of Customs, Mundra as the common adjudicating authority for the purpose of adjudication

of SCNs (i) DRI/AZU/GRU/SFO/ INT-22/2015 dated 20.01.2016 issued to M/s Balkrishna Industries Ltd., Mumbai and (ii)DRI/AZU/GRU/ INT-35/2015 Apollo dated 24.06.2016 issued to M/s Apollo Tyres Ltd., Kochi. As the SCN in respect of M/s Balkrishna Industries Ltd., Mumbai was already adjudicated, I hereby proceed to decide the SCN in respect of M/s Apollo Tyres Limited, Kochi only.

17. DEFENCE:

17.1. On behalf of the importer Shri Abraham Joseph Markos Advocate filed reply dated 20.09.2016 to the SCN, wherein retaliated that the show Cause Notice and the proposals therein are bad in law and on the facts. At the outset, the Show Cause Notice is liable to be dropped as the same is unduly delayed.

17.2. The issue involve in the Show Cause Notice on merits is with respect to the issue of classification of Shell Flavex Oil 595B/Shell Flavex Oil 595 H, there is no dispute that the said item is used in their Factory as a plasticizer based on the functional/user test at the time of import under the relevant Bills of Entry. The goods were classified under Customs Tariff Head 38122090. It is worthwhile to note that during the relevant period covered by the present Show Cause Notice the shipments of the same goods were imported by various importers under Tariff Heading No. 38122090 and also under Tariff Heading No. 27099900. However, based on a further analysis conducted regarding composition and chemical properties of the item in question, the DRI took a view that the item in question is classifiable under Customs Tariff Head 27079990, thereby warranting demand of differential duty. Pursuant thereto and based on discussions internally, they had come to the conclusion that the appropriate classification of the item in question under the Head 27079990 and accordingly, they remitted the differential duty with interest.

17.3. In this regard thereof and as acceded in the show cause notice there is no question of any further differential duty demand.

17.4. They object, particularly when the Show Cause Notice will itself evidence that elaborate investigation and enquiry with respect to chemical composition and ingredients to be conducted so as to warrant a change in classification. The investigation results itself ran into 100 pages which, by itself, will show that the issue at hand is certainly not mis declaration, leave alone. As pointed out above and covered during the relevant period, various shipments were effected it shows the goods Shell Flavex Oil 595 B under Tariff Head 38122090. Therefore, no question can arise of them having resorted to any such mis declaration or mis classification or being aware of the correct classification. The allegation of suppression and allied statements are absolutely unfounded and baseless. As aforementioned, the item in question is used as Plasticizer and was accordingly classified under Tariff Head 38122090. There was absolutely no intention of suppression, mis declaration or misclassification, much less, with intention to evade customs duty. As aforementioned, the issue is one of bonafide dispute in

classification and their bonafides are evident from the fact they have, on reconsideration, accepted the investigation results and paid the differential duty with interest.

17.5. Besides various Courts and Tribunal have decided time and again that the incorrect classification does not amount to mis-declaration. In the regard, reliance placed on the judgements of M/s Saint Goban Glass, 2014 (313) ELT 680 (T), M/s J K Exports, 2003 (16) ELT 443 (T) & 2004 (163) ELT 359 (T), M/s G V Exim, 2003 (160) ELT 900 (T), M/s Alstom Transport, 2007 (220) ELT 312 (T) and M/s S Narendra Kumar, 2003 (154) ELT 242 (T)

17.6. As regards to penalty under Section 112(a) and 114A, they stated that there is absolutely no scope of levy of any such penalty, particularly when there is no irregular import nor any suppression nor any misdeclaration. The ingredients requisite for invoking the provisions the provisions of Section 112(a) and/or Section 114A are clearly absent in the present case. Absence or mens rea is self-evident.

17.7. They also submitted that there is absolutely no scope to effect any confiscation (the goods having been cleared), there is no ground also to even effect any such confiscation. The proposal to levy penalty is totally illegal, unjustified, unreasonable and inequitable and requested for hearing.

18. PERSONAL HEARING:

Personal hearing was fixed on 28.07.2017 where no one appeared for the said hearing. Another hearing was fixed on 15.11.2017 and re-fixed on 29.11.2017 wherein Shri Sunil Kumar, Manager Import of M/s Apollo Tyres Ltd., appeared and reiterated the submission made in the written reply. He further submitted that since duty leviable under CTH 27079900 is now lower than CTH 38122090, the Chennai Custom House has now issued SCN to them demanding differential duty; that department is not sure where to classify the product and according to them, it is correctly classified under CTH 38122090 as classified by foreign supplier M/s Shell, Singapore who supplies not only to them but so many other tyre manufacturing companies and therefore no penalty can be imposed on them U/s 112(a) or 114(A). He also stated that they have already paid differential duty and not interested in claiming the refund of the same even if classification is held under CTH 27079900.

19. Discussion and Findings:-

19.1. I have carefully gone through the Show Cause Notice, submission made by the importer and records of personal hearing held before me.

19.2. I find that the issue involved in the instant case is that the importer i.e. M/s. Apollo Tyres Ltd., Kochi have imported "Shell Flavex Oil 595 B" declared and classified under CTH 38122090 instead of CTH 27079900 and therefore SCN has been

issued to demand duty, confiscation of goods and imposition of penalty under Section 112 (a) & 114A of the Customs Act, 1962.

20. The following sequence of events has been found to be essential to the appropriate classification during the course of investigations.

20.1. Test Reports have been indicative of the fact that the aromatic content of the chemicals have been indicative that the same is Petroleum based Process Oil for Rubber Industry and report that of Joint Director, Customs House Laboratory, Kandla, spells clarity on the fact that the said testing has been carried out under most appropriate testing method i.e. Clay-Gel analysis and through which the Aromatic Content of the same is dominating over the non-Aromatic Content inasmuch incorporating the Technical Data Sheet of the commodity in question which concluded as, "classification and characterization of oils for Rubber Compound" Type 101 used in extending, processing of Styrene Butadiene Rubber i.e. Rubber Process Oil".

20.2. The Technical data Sheet that accompanied goods and which lay before the importers and brought out under investigations is conclusive of the fact that Shell Flavex Oil 595 is a Rubber Process Oil having high aromatic content and suitable for providing adequate solubility of rubber ingredients during the tyre manufacturing. Technical Data Sheet of Shell Flavex Oil 595 also shows that the same are manufactured from a paraffinic crude oil and exhibit a higher aromatic content than paraffinic process oils inasmuch as have 70% aromatic components. Statements of the authorized personnel's of the importer also strengthen the fact that the commodity has escaped its true classification by way of interpretation by them inasmuch as the technical sheet issued by the manufacturer or the exporter in this case was not submitted to the Indian Customs throughout so as to decide on its fair interpretation. This can be easily surmised from the statement of Shri Paresh Parikh, Manager Excise, Shri Bikash Pillaniwalla, Divisional Head, Shri Ramakrishnan S, Head Raw Material & Compound Developments of the said importer and Shri K. Nagarajan, Manager Import and authorised person of Customs Broker to the Showcause Notice, wherein they admitted and stated on the composition part to the extent that that as per Clay Gel Analysis, Polar components % m/m are 20, Aromatic components % m/m are 70 and saturated component % m/m are 10. Further affirmed on the basis of the Technical Data Sheet of Shell Flavex Oil 595 that as per Clay Gel Analysis, aromatic components are 70%, Polar components are 20% and saturated component are 10%. They were also further affirmed on the basis of the Technical Sheet that Shell Flavex Oil 595 is derived from the Crude Oil/Long Residue and not from the treatment of lubricating Oils and that there is 70% aromatic components in Shell Flavex Oil 595 which is predominantly aromatic content as shown in Clay Gel Analysis in Technical Data Sheet of Shell Flavex Oil 595. After seeing the relevant literatures/reports, Circular and HSN note, they accepted that the correct classification of "Shell Flavex Oil 595 B" would be 2707. They further showed their inability of producing the Technical Sheet to the Indian Customs Authorities,

which was instrumental also in denying a fair interpretation and appropriate classification to the commodity in question also.

20.3. An identical submission of Shri Paresh Parikh, Manager Excise, Shri Bikash Pillaniwalla, Divisional Head, Shri Ramakrishnan S, Head Raw Material & Compound Developments of the said importer and Shri K. Nagarajan, Manager Import and authorised person of Customs Broker under their statements relied upon to the Showcause Notice reveals that they had classified the commodity under CTH 38122090 as per its usage but have never pointed out to the Customs Authority that CTH 27139090 was mentioned in the supplier's Invoice, only goes to prove that it was intentional on their part not to disclose the complete facts or deliberate on its true classification before the competent authorities.

20.4. Once it is established that the commodity in question is basically a Rubber Process Oil with definite chemical composition, Circular No. 11/89 dated 13.2.89, issued from F.No.87/2/88-CX.3 issued by CBEC necessarily augments its correct classification.

“The Processed Oils (Speciality Oils) in question are manufactured products obtained by blending the said extracts. These are tailor-made products to meet the specific requirements for a particular use viz., rubber processing oils and are individually identifiable as rubber processing oils and thus would cease to be furfural extracts and, for these reasons, the processed oils in question do not remain qualified for classification under sub-heading No. 2713.39/2713.30 as ‘other petroleum residues’. In view of the provisions of Chapter Note 2 of Chapter 27, the possibility of classification of such goods under Heading No. 27.10 of CET is also ruled out since aromatic constituents in this case predominate over non-aromatic constituents. The Deputy Chief Chemist, CRCL, has opined that the more appropriate sub-heading for the goods in question would be 2707.90 as ‘similar products in which the weight of aromatic constituents exceeds that of the non-aromatic constituents. The Board agrees with the Deputy Chief Chemist in the matter”.

21. Precisely, Shell Flavex Oil 595 is petroleum based product having more aromatic components as compared to non-aromatic components and it is used as Rubber Process Oil which is speciality oil suitable for usage as extender oil in Tyre manufacture and used as Plasticizer and as also opined by the Chemical Examiner. I therefore, agree with the proposed classification under the Showcause Notice(s) *ibid* i.e. CTH 27079900 of the Customs Tariff Act, 1975. Further, the importers have not disputed the proposed classification under the both the Showcause Notices inasmuch as the submissions point out to the anomaly between two set of classifications by the same department under different Showcause Notices [the one(s) adjudicated under this order and the one issued by the Deputy Commissioner of Customs, Group-I, Chennai-II]. However in one of their submissions they have emphatically submitted that they have left the Customs authority to decide the correct classification and thereby did not want to contest the Showcause Notice and accept the classification as CTH 27079900. Since, the above findings are justified by investigations corroborated by the importer themselves for an appropriate classification, I confirm the classification under the Showcause Notice viz., CTH 27079900.

22. From the facts and circumstances of this case it is very clear that the “Technical Literature” that accompanied the goods in question was not made available while filing Bills of Entry as also

emphatically relied upon as Relied upon Document at SI No. 4 to the Showcause Notice(s). It is clearly accepted by the Importer that such a vital document was essential to Appraising and needed to have presented at the time of imports in question. The Technical Characteristics under the literature would have ruled out many of the apprehensions in this regard as the Data sheet clearly states the fact that:

“Shell Flavex Oils are made from a paraffinic crude and exhibit a higher aromatic content than standard paraffinic process Oils. Shell Flavex Oil 595 is a labelling-free high viscosity aromatic process oil made from a residual oil fraction. This oil type is also known as RAE (Residual Aromatic Extract). It is a potential substitute for distillate aromatic extracts (DAE) used as extender oils in rubber. It meets the requirements of EU Directive 2005/69/EC.”

23. Further, the classification of the goods is governed by the General Rules for the Interpretation of Import Tariff. They are a set of 6 rules for classification of goods in the Tariff Schedule. These rules have to be applied sequentially. Rule 1 gives precedence to the Section notes/Chapter notes while classifying a product. Rule 2(a) applies to goods imported in incomplete/finished condition and assembled/unassembled condition. Rule 2(b) is applicable to ‘mixtures’ and ‘composite goods’. Goods which cannot be classified by application of Rule 2(b), will be classified by application of Rule 3 i.e. by application of ‘most specific description’ as per Rule 3 (a) or by ascertaining the ‘essential character’ of the article as per Rule 3 (b) or by taking into consideration the heading that occurs last in the numerical order as per Rule 3 (c). Rule 4 states that goods which cannot be classified by application of the preceding rules may be classified under the heading appropriate to the goods to which they are most akin. Rule 5 applies to packing materials /articles in which the goods are carried. Rule 6 is applied to arrive at the appropriate subheading within a heading and for that purpose the provisions of Rules 1 to 5 apply mutatis mutandis on the understanding that subheadings at the same level are comparable. For the purpose of Rule 6 the relative Section and Chapter Notes also apply unless the context otherwise requires.

24.1. Despite of the clarity offered by the Technical Literature inasmuch as the Invoice stating the CTH of the commodity in question, which accompanied the goods, the importer failed to classify the goods under import. Rule 2(b) of the Rules of Interpretation mentioned in the First Schedule appended to the Customs Tariff Act 1975 gives clarity on its apt classification,

“2(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

24.2. The instant case is covered under the Rule 2 (b) which states that Rule 2(b) is applicable to ‘mixtures’ and ‘composite goods’. Applying this Rule and looking to the Technical details, the subheading 2707 9900 provides the most specific entry to the ‘Shell Flavex 595 which is high viscosity aromatic processing oil (extender Oil) and not a ‘plasticizer’ as broadly classified under CTH 38122090. Besides, the evidences placed on records viz., the supplier’s Invoice accompanying the goods in question have also been indicative of the CTH 27139090 of the commodity in question as could be seen from the statement of Shri K K Johnson, Deputy General Manager of the Importer Company and discussed in the foregoing paras. The word “Plasticizer” was never used by the overseas supplier but had been deliberately incorporated under the Bills of

Entry taking it under the guise of intended use of the commodity in question. Hence, all the acts are done by the importer deliberately in the instant case and establish the fact of wilful mis-declaration on their part (Importer), leading to evasion of duty.

25. The importer has deliberately dilly dallied in providing the required information as stated in the foregoing paras and even after considerable imports had taken place. Section 17 of the Customs mandates upon the importer to give complete information of the products intended to be imported and seek a proper classification in case they are not able to assess the same and the route has been provided through Section 18 of the Customs Act, 1962. The importer misled the department by way of concealing the correct information, which resulted in evasion of duty due to their misclassification of the product. Only because of the investigations undertaken by the department the facts came to light and non-disclosure of the facts clearly amounts to suppression of facts. Consequently the extended period and thereby the demand of differential Customs duties under Section 28(4) of the Customs Act, 1962 is rightly invocable in this case.

26.1. Further, I find from the statement of the noticee that they were aware of the correct classification as the same had been made known to them by the supplier of the goods also leading to the belief that the noticee had suppressed the vital facts leading to such a short payment of duty. Thus, the provisions of Section 28(4) have been correctly invoked. Accordingly, the demand of differential duty of **Rs. 68,74,072/-** (Rs.64,32,898/- for Customs, Chennai-II and Rs.4,41,083/- for JNCH-Nhava) under Section 28(4) of the Customs Act, 1962 stands confirmed alongwith Interest under Section 28AA of the Customs Act, 1962 in case of Bills of Entry as per Annexure A to the Showcause Notice. I find that the importer has accepted the classification under CTH 27079900, have paid up the differential Customs duties alongwith Interest as proposed in the Showcause Notices. The details of payment are as under:

26.2. During the course of investigation and later on as informed vide letter/challan dated 04.01.2018, the said importer had made payment in respect of clearance of "Shell Flavex Oil 595 B" at Chennai, as detailed below:

TR-6 Challan/ Date of Payment	Total Amount Paid (Rs.)	Duty Paid (Rs.)	Interest paid (Rs.)
02/11/2015	28,91,895/-	26,71,465/-	2,20,427/-
02/11/2015	12,61,786/-	10,87,225/-	1,74,561/-
02/11/2015	18,56,435/-	15,38,288/-	3,18,149/-
02/11/2015	11,62,046/-	9,28,396/-	2,33,650/-
02/11/2015	2,23,027/-	1,96,308/-	26,719/-
10/01/2018	20,480/-	11,307/-	9,173/-
TOTAL	74,15,669/-	64,32,989/-	9,82,679/-

26.3. Further, during the course of investigation and later on paid vide challan dated 10.01.2018, the said importer had made payment in respect of clearance of "Shell Flavex Oil 595 B" affected at Nhava Sheva, as detailed below:

TR-6 Challan/ Date of Payment	Total Amount Paid (Rs.)	Duty Paid (Rs.)	Interest paid (Rs.)
02/11/2015	6,30,544/-	4,29,535/-	2,01,009/-
04/01/2018	22,534/-	11,548/-	10,896/-
TOTAL	6,53,078/-	4,41,083/-	2,11,905/-

26.4. I find that the importer have accepted the proposed classification under their statement inasmuch as accepted the incorrect classification declared by them for all their previous imports and accordingly paid entire duty liability of Rs.68,74,072/- alongwith interest Rs. 11,94,584/- leviable thereon as mentioned hereinabove is to be appropriated towards due duty and interest.

27. As regards the proposal for confiscation of the 19,96,329 KGs of imported "Shell Flavex Oil 595 B" valued at Rs.13,39,28,633/- & thereby demand differential Customs duty amounting to Rs.68,74,072/- under Section 28(4) of the Customs Act, 1962, I find that the importer was well aware of the exact nature/usage of the 'Shell Flavex Oil 595' and the "Shell Flavex Oil 595 B" is Rubber Process Oil having more aromatic components; that the responsible and authorised persons of the said importer have accepted the proposed classification under their statement recorded under Section 108 of the Customs Act, 1962 before the competent authority inasmuch as accepted the incorrect classification declared by them for all their previous imports. From this it is clear that the said importer has mis declared the imported goods and had rendered the 'Shell Flavex Oil 595' liable for confiscation and hence, the goods are held liable for confiscation under Section 111(m) of the Customs Act, 1962. However, since the goods are not available for confiscation, as the same have been cleared under Bills of Entry, as detailed under Annexure A to the Showcause Notice, it would not be necessary to impose redemption fine in the instant case as the goods are not physically available at this juncture nor in any other form viz., Bond. Accordingly, I would refrain from imposition of redemption fine, although the goods are held liable for confiscation as they are found violative of the proper classification and have also rendered themselves liable to the penal action under the provisions of Section-114A of the Customs Act, 1962, as this is a clear case of suppression of facts. As I am imposing mandatory penalty under Section 114 A of the Customs Act, 1962 no separate penalty under Section 112(a) of the Customs Act, 1962 need not be imposed on the importer, thereby.


28. In view of the above discussion and findings, I pass the following order:

ORDER

1. I reject the claim for classification of impugned goods viz 'Shell Flavex Oil 595B' under Customs Tariff heading 38122090 of the First Schedule to Customs Tariff Act, 1975, imported under Bills of Entry detailed in Annexures-A & B to the Showcause Notice F.No. DRI/AZU/GRU/INT-35/2015/Apollo dated 24.06.2016 and order to re-classify the same under Customs Tariff heading 27079900 of the First Schedule to the Customs Tariff Act, 1975.
2. I confiscate the seized goods valued (assessable value) at Rs. 13,39,28,634/- smuggled into India with intention to evade customs Duty of Rs. 68,74,072/- under Section 111(m) of the Customs Act, 1962. However, I refrain from imposing redemption fine in lieu of

confiscation, as the goods are physically neither available for confiscation nor released under any bond or legal instruments.

3. I confirm differential Customs Duty of Rs. 68,74,072/- (Rupees Sixty Eight Lakhs Seventy Four Thousand Seventy Two Only) with applicable interest and order to recover from M/s. Apollo Tyres Ltd., 6th Floor, Cherupusam Building, Shanmugham Road, Kochi- 682031 under Section 28(4) of the Customs Act, 1962.
4. I hereby order to appropriate an amount Rs. 68,74,072/- (Rupees Sixty Eight Lakhs Seventy Four Thousand Seventy Two Only) paid towards Customs duty and also order to appropriate Rs.11,94,584/- paid towards interest by the company as per para 26.2 & 26.3 above, against the duty and interest.
5. I impose a penalty of Rs. 68,74,072/- (Rupees Sixty Eight Lakhs Seventy Four Thousand Seventy Two Only) upon M/s. Apollo Tyres Ltd., Kochi under Section 114A of the Customs Act, 1962. However, if the Customs duty, interest including penalty is paid by the importer within 30 days from the date of communication of this order, the amount of penalty stands reduced to 25% in terms of provisions of Section 114A of the Customs Act, 1962.


(Sanjay Kumar Agarwal)
Commissioner,
Custom House Mundra.

F.No. VIII/48-15/Adj./Pr.Commr./MCH/2016-17

Date-24 /01/2018

BY Speed Post A.D
To,
M/s Apollo Tyres Ltd.,
6th Floor, Cherupusam Building,
Shanmugham Road, Kochi- 682031

Copy to:

1. The Chief Commissioner of Customs, Gujarat Zone, Customs House, Ahmedabad.
2. The Additional Director General, DRI, AZU, Ahmedabad
3. The Asstt/Dy. Commissioner, Customs, (RRA), Customs House Mundra
4. The Asstt/Dy. Commissioner Customs, Recovery Cell, Customs House, Mundra
- ✓ 5. The Asstt/Dy. Commissioner Customs, EDI Cell, Customs House, Mundra.
6. Guard File.