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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.	F. No. VIII/48-1236/Misc/MCH/GR-I/18-19
B	Order-in-Original No.	MCH/ADC/PSK/61/2019-20
C	Passed by	Shri Prashant Kaduskar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	06.09.2019
E	Date of Issue	06.09.2019
F	SCN NO. & Date	VIII/48-1236/Misc/MCH/GR-I/18-19 dated 11.06.2019
G	Noticee/Party/Importer / Exporter	M/s. Gastrade International, 201, 2nd Floor Plot No. 36, Sector-9, Gandhidham – Kutch 370201

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS 11 SEP 2019 Custom House, Mundra

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.

2. यदि कोइ व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- 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 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

" सीमा शुल्क आयुक्त (अपील), कांडला
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009."

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए ।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और
A copy of the appeal, and
(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम,1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) 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: Import of "Petroleum Hydrocarbon Solvent Grade (125/240) vide Bill of Entry No. 8439105 dated 12.10.2018 by M/s. Gastrade International, 201, 2nd Floor Plot No. 36, Sector-9, Gandhidham – Kutch 370201 for violation of Customs Act and Rules thereon.

Brief fact of the case:-

M/s. Gastrade International, 201, 2nd Floor Plot No. 36, Sector-9, Gandhidham – Kutch 370201 (*hereinafter referred to as "Importer" for sake of brevity*) had filed B/E No. 8439105 dated 12.10.2018 for clearance of 204880 Kgs Gross weight (10 Containers) of "**Petroleum Hydrocarbon Solvent Grade (125/240)**" through their Customs Broker, M/s Cargo Clearing Agency. The importer classified the goods under CTH 27101990. The declared assessable value of the goods was Rs.**1,00,87,417.24/-**. The goods were given first check with the order to draw sample and forward the same to CRCL, Kandla for testing. The samples were forwarded to the Lab vide TM no. 1036219 dated 15.10.2018.

2. The Test Report bearing No. 3088 dated 21.10.2018 received from CH Lab., Kandla states that

"The sample is in the form of clear colourless liquid. It is composed of mixture of mineral hydrocarbons, having following constants:

i) Initial Boiling Point	*: 169 Degree Celsius*
ii) Final Boiling Point	*: 235 Degree Celsius*
iii) Density at 15 Degree Celsius	*: 0.8020 gm/ml*
iv) Distill at 210 Degree Celsius	*: 78%*
v) Distill at 200 Degree Celsius	*: 59.5%*
v) Flash Point	*: 48 Degree Celsius*
vi) Smoke Point	*: 21 mm*

With respect to parameter Flash Point, Distillation Range it matches Petroleum Hydrocarbons Solvent as per IS 1745-1978. However, Smoke Point, Flash point and distillation range obtained for the sample u/r is matching with requirement for Kerosene as per IS 1459-2016."

3. In this regard, Supplementary Notes of Chapter 27 provides that:-

"(c) "superior kerosine oil (SKO)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS: 1459-1974 (Reaffirmed in the year 1996)"

In the instant case, the Test Report states that the imported goods confirms that the sample meets the requirement of kerosene oil as per IS 1459-2018 especially on the basis of Smoke Point & Final Boiling Point (FBP) among other parameters. The Superior Kerosene Oil is classified under Customs Tariff item 27101910.

It is clear that the said goods can be imported only by the State Trading Enterprises (STEs) relevant excerpt of the ITC (HS), 2017 Schedule 1- Import Policy is reproduced as follows,

27101910	*Superior Kerosene Oil*	*State Trading Enterprises*	*Imports subject to Para 2.20 of Foreign Trade Policy and condition at Policy Condition (2) below*

The goods falling under tariff heading 27101910 are allowed to be imported through State Trading Enterprises (STE) subject to Para 2.20 Foreign Trade Policy and as per Policy condition 2 of the Chapter-27 of ITC (HS), Schedule-1 is reproduced below.

The Para 2.20 of the Foreign Trade Policy is reproduced below:-

> *"2.20 State Trading Enterprises (STEs)*
> *(a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.*
> *(b) Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.*
> *(c) DGFT may, however, grant an authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs."*

The policy condition-2 of the Chapter 27 is reproduced below:-

> *"2. Import of SKO shall be allowed through state trading enterprise (STEs) i.e. IOC, BPCL, HPCL and IBP for all purpose with STC being nominated as a state trading enterprise (STE) for supplies to Advance License holders. Advance License holders shall however, have the option to import SKO from the above mentioned STEs including STC".*

4. As per the test reports imported goods meets the requirement of kerosene oil as per IS 1459-2018, hence the imported Kerosene oil as per policy can be imported only through state trading enterprise (STEs) i.e. IOC, BPCL, HPCL and IBP for all purpose with STC being nominated as a state trading enterprise (STE) for supplies to Advance License holders. Advance License holders shall however, have the option to import SKO from the above mentioned STEs including STC. The imported goods also merits the classification under Custom Tariff Item 27101910 as Superior Kerosene Oil (SKO) and not under Custom Tariff Heading 27101990 under 'Others'.

5. The imported Superior Kerosene Oil (SKO) valued at **Rs.1,00,87,417/-** appear classifiable under Custom Tariff Item 27101910 and have been imported in violation of the provisions of Para 2.20 of Foreign Trade Policy read with the provisions of Section 11 of the Customs Act, 1962 and hence appear liable for confiscation under Section 111 (d) and (m) of the Customs Act, 1962. The importer for such acts of commission / omission also appear liable for penalty under Section 112 (a) (i) of the Customs Act, 1962.

6. Now, therefore, the importer M/s. Gastrade International, 201, 2nd Floor Plot No. 36, Sector-9, Gandhidham – Kutch 370201 is hereby called upon to show cause to the Additional Commissioner of Customs (Import), having his office at, 1ST Floor, Port User Building, Mundra Port, Mundra, Kutch, Gujarat as to why:-

(i) The declared description of 'Petroleum Hydrocarbon Solvent Grade **(125/240)**' should not be rejected and as to why the description of goods imported should not be held as "Superior Kerosene Oil" as correct description.

(ii) The declared classification of imported cargo under Custom tariff Item 27101990 should not be rejected and why the Superior Kerosene Oil (SKO) imported should not be classified under Custom tariff Item 27101910 of the Custom Tariff.

(iii) The imported Superior Kerosene oil weighing **182.56** MTs and misdeclared as 'Petroleum Hydrocarbon Solvent Grade (125/240)' declared assessable value of Rs. 1,00,87,417.24/- should not be confiscated under section 111(m) & 111 (d) of the Custom tariff Act, 1962.

(iv) Penalty should not be imposed on them under Section 112 (a) (i) of the Customs Act, 1962, for the reasons discussed above.

Record of Personal Hearing:-

7. The personal hearing in the matter was held on 24.07.2019 where Shri Rajesh Kumar Jha, Executive of M/s. Gastrade International, 201, 2nd Floor Plot No. 36, Sector-9, Gandhidham – Kutch 370201 appeared and stated that he wants to give written submission and wanted time till 31st July 2019. Accordingly on 31/07/2019 the written submission was given.

Written Submission:-

8. The noticee M/s. Gastrade International has in their written submission dated 30.07.2019 has stated that they are in the business of supply of Mineral Turpentine Oil (MTO) commonly known as White Spirit

since 1980. They have claimed that they have imported the Petroleum Hydrocarbon Solvent (125/240) compliant with specification IS:1745:1978. They have submitted that parameter of Petroleum Hydrocarbon Solvent and SKO are similar and requirement of SKO under IS:1459:1974 is-

(1) Acidity in organic
(2) Burning quality
(3) Smoke point

Whereas the parameter of Petroleum Hydrocarbon Solvent (PHS) is-

(i) Initial Boiling Point;
(ii) Aromatic Content;
(iii) Residue on evaporation

and the CRCL Kandla did not examine the aromatic contents and residue of evaporation. Hence, the report of CRCL Kandla cannot be relied upon.

8.1 They have submitted that IS:1459:1974 provides maximum Final Boiling Point 300°C whereas Test Report is 235°C. Also, minimum Flash Point for Kerosene is 35°C as per IS:1459:1974 where as the Test Report gives the reading as 48°C. Hence, the impugned goods cannot be considered as Kerosene.

8.2 The noticee has referred to and relied upon the letter dated 24.12.2018 from Scientist of BIS who has clarified that requirements specifically prescribed for Petroleum Hydrocarbon Solvent (PHS) is Final Boiling Point, Aromatic content and residue for evaporation and the importer stated that they have not been examined and hence report of CRCL Kandla is not correct.

9. The importer has averred that they have been importing disputed goods for years having same parameters as mentioned in impugned order. The department has not disputed the nature of the goods even on a single occasion. They have pointed out that characteristic of past and present consignment are identical. They have referred same Test Report in Annexure D of the Written submission.

10. They have also argued that they supply the goods to paint industry to use as Turpentine. In past also goods with same criteria as provided under the Test Report issued by CRCL, New Delhi and these goods were sold to paint industries. The copies of commercial invoices and End Use Certificate have been as Annexure-E to the written submission.

11. They have stated that Shri Rajesh Kumar Jha had filed an RTI application on 14.03.2019 and in reply dated 27.03.2019 the Department has stated that parameter of Smoke Point is not required for classification of Petroleum Hydrocarbon Solvent as per IS: 1745:1978. The copy of the application along with the reply is enclosed as Annexure-F to written submission.

11.1 Noticee have argued that proposal to classify the impugned goods as Kerosene on basis of Smoke Point and which satisfy the requirement on IS: 1745:1978 wherever prescribed by BIS is bad in law. It is submitted that they had classified the goods correctly as per requirement of IS: 1745:1978.

12. They have stated that reply dated 27.03.2019 to the RTI application mentioned that the testing parameter for identification of goods as "PHS" done in the Customs Laboratory as per IS: 1745:1978 is

(i)Density at 15^{0}C
(ii) Flash Point (Abel)
(iii)Distillation Range.

The Noticee submit that the parameter mentioned in RTI reply is not as per the IS:1745:1978. Since as per IS:1745:1978 for PHS the requirement is as under:-

(i)initial boiling point
(ii) aromatic content
(iii)residue of evaporation

Hence, according to the noticee the Laboratory is not following the parameter laid down in IS:1745:1978 and hence report of CRCL Kandla cannot be relied upon for classification of impugned goods.

13. It is submitted that PIO in reply dated 08.04.2019 to RTI applicant Shri Hitesh Thakkar had confirmed that parameter Smoke Point was not essential for classification of the product Petroleum Hydrocarbon Solvent(PHS). It is stated that the laboratory did not receive any sample bearing description "Petroleum Hydrocarbon Solvent (Grade 125-240) from April 2018 till date. This shows that the sample for the goods in dispute sent to Kandla Laboratory on 15.10.2018 was not examined in the context whether the product in dispute was Petroleum Hydrocarbon Solvent (Grade 125-240) or not. The Laboratory was questioned whether the goods in dispute was SKO or not? The Petroleum Hydrocarbon Solvent (Grade 125-240) are more or less similar, the laboratory appears to have examined the sample from the point of view of parameters provided by BIS under IS 1459-

2016 by not considering the letter dated 24.12.2018. Copies of the RTI application and reply made by the Public Officer of 08.04.2019 are enclosed and marked as Annexure G.

14. The noticee has submitted that since the Final Boiling Point of the impugned goods is only 235°C as against 300°C(Max) required as per IS: 1459:1974, the product would not be SKO as it does not meet the requirement of IS: 1459:1974 and Final Boiling Point is not within range of 5% to 10% from the specified standard.

15. The noticee has also referred to and relied upon the following case laws which hold that burden lies upon the Revenue to classify the product:-

a) Hindustan Ferodo Ltd. v. CCE 1997 (89) E.L.T. 16 (SC).

b) Madhu Wool Spinning Mills v. UOI 1983 (14) ELT 2200 (Bom).

c) Arya Abhushan Bhandar v. UOI - 2002 (143) ELT 25 (SC);

d) Puma Ayurvedic Herbal Pvt Ltd Vs C.C.Ex 2006 (196) ELT 3 (SC).

16. It has been averred that Show Cause Notice had erred in proposing to classify the goods as SKO by classifying under Custom Tariff Item 27101910 and they are correctly classifiable under Custom Tariff Item 27101990 and no redemption fine and penalties be imposed in this case.

Discussion and Findings:-

17. I have gone through the Show Cause Notice, the written submission, the details of IS specifications for Petroleum Hydrocarbon Solvent, Kerosene, the Test Report by CRCL Kandla, the case laws cited by the noticee in their written submission and I proceed to decide the case on merits.

18. I summarize the findings given by the CRCL Kandla and compare them with the IS specification for Kerosene as well as for Petroleum Hydrocarbon Solvent. Comparison of characteristics under IS:1459:1974 for Kerosene and Petroleum Hydrocarbon Solvent IS:1745:1978 and the Test report by CRCL Kandla:-

S.No.	Characteristic under IS:1459-2016	Requirement under IS:1459-2016	Test Report Reading	Requirement under IS:1745:1978	Characteristic PHS 125/240 IS:1745:1978
1	Acidity Inorganic	Nil	-	-	-
2	Density gm/ml at 15°C	-	0.8020gm/ml	Not limited but to be reported	Density at 15°C g/ml
3	Initial Boiling Point(°C)	-	169°C	125°C	Initial Boiling Point(°C)
4	Final Boiling Point(Max) (°C)	300°C	235°C	240°C	Final Boiling Point (°C)
5	Flash Point °C (Abel), (Min)	35°C	48°C	30°C	Flash Point °C (Min) (Abel)
6	Smoke Point mm(Min)	18 mm	21 mm	-	-
7	Colour (Saybolt) (Min)	10	Clear Colorless Liquid	+21 (Saybolt) (Min)	Colour (Saybolt) (Min)

The CRCL, Kandla has mentioned in their report that the sample is in the form of clear colourless liquid. It is further stated that parameter Flash Point, Distillation Ranges matches with Hydrocarbon Solvent as per IS 1745-1978. However, Smoke Point and Flash point obtained for the sample u/r is matching with requirement for Kerosene as per IS 1459-2016.

19. I find that declared description is Petroleum Hydrocarbon Solvent Grade (125/240) (packed in 10 flexi bags). The assesse has raised the point that in letter dated 24.12.2018 the scientist "D" of BIS in letter to M/s RVS Petrochemical Ltd , Haryana has in para 3 has stated that requirement specifically prescribed in IS 1459 for Kerosene are:-

a) Acidity inorganic.

b) Burning quality.

c) Smoke Point

and in IS 1745 PHS requirements are:-

a) Initial Boiling Point.
b) Aromatic Content.
c) Residue on evaporation.

In para 4 of the said letter it also states that requirement of colour, Copper Strip Corrosion, Density, Flash Point, Final Boiling Point and Sulphur content with different values/limits are also prescribed in both the standards. I find that letter dated 01.11.2018 (copy enclosed with this Order in Original as Annexure A) from Joint Director, Custom House Laboratory, Kandla vide F.N. KCL/Misc-corres/KDL-Mundra/01/08-09/1261 dated 01.11.2018 and addressed to the Assistant Commissioner, Custom House Mundra is very clear. The subject of said letter is Laboratory Report No.-2980/17/10/2018 in case of M/s Gastrade International, Gandhidham and as well as some other sample of M/s Lucky Chemical Corporation. We are concerned with the Laboratory Report No.-2980 dated 17.10.2018 in case of M/s Gastrade International, Gandhidham. The Joint Director, Custom House Laboratory, Kandla has stated that in the Test Memo query has been raised to verify whether SKO or not, then Laboratory is bound to do the Smoke Point test as that is one of the parameter for Kerosene specification, even though the Smoke Point is excluded in the IS specification for PHS. It is further clearly mentioned by the Joint Director that in the IS specification for Kerosene, there is now no lower limit stated for Final Boiling Point(FBP) which has the maximum limit of 300°C. The Joint Director, Custom House Laboratory, Kandla then concluded the letter by stating

".....considering these two the Final Boiling Point and Smoke Point, both the samples u/r can be considered as Kerosene"...

I find that samples of all the Bills of Entry viz. 8354903, 8354953 both dated 06.10.2018, 8439105, 8439324 both dated 12.10.2018 and 8452266 dated 15.10.2018 which were concurrently filed were sent to Custom House Laboratory, Kandla with query whether the sample is SKO or not. Hence, the conclusion given in letter F.N. KCL/Misc-corres/KDL-Mundra/01/08-09/1261 dated 01.11.2018 in respect of Lab Report 2980 dated 17.10.2018 is applicable to all other samples pertaining to said Bill of Entry sent for test to Custom House Laboratory, Kandla. With this candid and clear cut conclusion by the Joint Director, Custom House Laboratory, Kandla. I proceed to discuss the case further.

19.1 I find that Laboratory has tested the Smoke Point and is in conformity with specification given under IS:1459:1974 for Kerosene(Requirement is 18mm and on testing found to be 21 mm). Also the Final Boiling Point is 300°C(Maximum) and on testing found to be 235°C. Even the Flash Point °C(Abel), the requirement under IS:1459:1974 is 35°C(Minimum) whereas it is found to be 48°C on testing, thus this parameter requirement is also

fulfilled. Thus, the Joint Director has given a clear conclusion vide letter dated 01.11.2018 that on basis of Smoke Point and Final Boiling Point(FBP) the sample can be considered as Kerosene. Moreover, even in the Lab report dated 24.10.2018 also it has been very clearly and unambiguously stated that Smoke Point sample is matching with requirement for Kerosene as per IS:1459:2016, though it is stated that with respect to flash point, distillation range the parameter matched PHS as per IS:1745:1978. Nowhere, it is stated that Flash Point etc. is not matching with Kerosene. I find that requirement of Flash Point for Kerosene is 35^{0}C(Minimum). Whereas on testing found to be 48^{0}C. Thus even on flash point parameter, the same matches Kerosene rather than PHS. In view of the above, whether the Acidity inorganic/Burning quality or Aromatic content and residue on evaporation even if not tested does not make a difference as smoke point makes a vital and positive difference which confirms that positively the goods are "Kerosene" only. In this context, I find that if there is a room for doubt that there may be some misdeclaration of description, the department is within its right to carry out the test to ascertain whether the doubt is correct or not. In the subject case, the doubt of the department has been confirmed beyond doubt by virtue of test result of Smoke Point test that goods imported are in reality conform the parameters given under "Kerosene" under IS:1459:2016 rather that Petroleum Hydrocarbon Solvent(PHS). The importer cannot take an objection as to why such parameter which conform the misdeclaration of description was at all tested. The avenues for the department to clear its doubt, to verify the intelligence gathered through tests whether physical, chemical should be kept free so that truth will prevail. If during such tests which are carried out and it emerges that importer has misdeclared the description then importer is bound to bear the legal and financial consequences of his misadventure of misdeclaration of description. This takes care of various point sought to be raised in the para 9 to 12 of the written submission dated 31.07.2019.

20. The noticee has further taken a plea that they have been importing the goods for years having the same parameters and the department has not disputed about the nature of the goods even on a single occasion. I have seen various test report photocopies in Annexure-D to the written submission . The declared description in these cases is Low Aromatic White Sprit, Mineral Turpentine Oil, Petroleum Hydrocarbon Solvent etc. I do not see in any of the test report the Smoke Point being carried out. In the subject case the Assessing Group have specifically raised a query whether sample is SKO or not to the Chemical Laboratory. Hence, as mentioned in the letter of the Joint Director dated 01.11.2018 the parameter Smoke Point was tested. However, in none of the test reports mentioned in Annexure-D to

the written submission appears to have been tested for query whether SKO or not and perhaps the assessing group though there was no need to get these samples test for Kerosene. Hence, merely that similar sampled imported prior to the subject goods were not objected by the Customs does not mean that the Custom Authority cannot test the sample for the requisite test to explore the misdeclaration of description etc. at any time thereafter. In the subject case a probing query was raised by assessing group and it got answer in form of revelation of misdeclaration of description of goods described as Petroleum Hydrocarbon Solvent which have found to be Kerosene on testing.

21. The noticee has also argued that they mainly supply the goods imported to the painting industries to use as Turpentine. The noticee has enclosed the copies of Commercial invoices issued by noticee and the end use certificates. I have gone through the 7 so called end use certificate, no copies of Commercial invoices have been enclosed as Annexure-E as claimed. However, this does not help the cause of the importer as none of the these letters (so called end use certificates) mention any Bill of Entries under which the said goods might have been imported. Hence, these so called end use certificates does not have any evidential value to prove that what was the declared and ascertained description. What these letters merely prove that these local buyers at given point of time had bought Petroleum Hydrocarbon Solvent from M/s Gastrade International, Gandhidham. Whether at all these goods was imported is not proved. Moreover, adjudication is based on facts. In subject case it is a fact that subject consignment covered under Bill of Entry 8439105 dated 12.10.2018 answers the test of Kerosene as concluded by the Joint Director, Custom House Laboratory, Kandla. The Kerosene can be imported only through State Trading Enterprises and hence, the subject consignment has been imported in violation of the para 2.20 of the Foreign Trade Policy and the policy condition No.-2 under Chapter 27 of ITC(HS). Hence, the goods need to be adjudicated. The so called end use certificate enclosed as Annexure-E to the written submission have not evidential value and hence are being rejected as evidence.

22. The noticee has made a farcical arguments quoting the reply dated 27.03.2019 received from a RTI query by Shri Rajesh Kumar Jha, which state that parameter of Smoke Point is not required for classification of Petroleum Hydrocarbon Solvent as per IS:1745:1978. I have seen the reply dated 27.03.2019 by CPIO Kandla Custom which state that parameter Smoke Point is not mentioned in Table 1 of IS:1745:1978. One does not need to file a RTI to know that smoke point is not parameter to be tested to testing the Petroleum Hydrocarbon Solvent under IS:1745:1978. Mere perusal of the

Table 1 of IS:1745:1978 reveal that smoke point is not a requirement under IS:1745:1978 for testing Petroleum Hydrocarbon Solvent. However in the subject case, to clear the room for doubt whether goods are SKO or not the Smoke Point was also tested and it confirmed that goods are Kerosene. The Joint Director vide the letter dated 01.11.2018 addressed to Assistant Commissioner has concluded that considering Final Boiling Point and Smoke Point the sample under reference can be considered as 'Kerosene'. The reference to RTI reply dated 27.03.2019 is unwarranted and infructuous. The objection by the Noticee as to why smoke point was tested when impugned goods satisfy the requirement of IS:1745:1978. The department can probe, investigate and test to his satisfaction to find out exact nature of goods. In that process the smoke point test was carried out, which revealed that goods are infact 'Kerosene' and not "Petroleum Hydrocarbon Solvent" as declared and misdeclaration is established. The noticee should not have any objection to the test carried out by the department to bring out the true nature of goods imported. The argument in the written submission para 19 and 20 that report on which SCN is issued is not following the parameter laid down in IS:1745:1978 cannot be relied upon for classified goods is abinitio incorrect as the test for Kerosene under IS:1479:2016 were also carried out based on query by the group whether the subject goods are Superior Kerosene Oil or not.

23. The Noticee has in Annexure-G to the written submission has given a reply dated 08.04.2019 to RTI query by Shri Hitesh Thakkar of Gandhidham. The queries asked were as follows:-

a) Certified copy of Petroleum Hydrocarbon Solvent Grade (125/240) & SKO as per IS 1745-1978.

b) April 2018 to till date no. of samples of Petroleum Hydrocarbon Solvent Grade (125/240) passed and rejected by customs Lab as per IS 1745-1978 with reason.

c) As per IS 1745-1978 of Petroleum Hydrocarbon Solvent Grade (125/240) and its manual of sampling and testing for all the characteristics given in Table 1 whether it is compulsory to check parameter of smoke point to confirm the Petroleum Hydrocarbon Solvent Grade (125/240).

The corresponding replies given was as follows:-

I. For the first point it was replied that required IS standard are available in public domain.

II. Reply to 2nd point given is no sample description as Petroleum Hydrocarbon Solvent Grade (125/240) received from April 2018 to date.

In this context I find that the reply has been asked to PIO Kandla Custom Lab and reply has been given by CPIO, Kandla, Custom Commissionrate. The CPIO may have included only those samples which pertain to Kandla Customs and not included those sample which have gone from Mundra Commissionrate, since 5 samples pertaining to Bills of entry No:- (i) 8354903 dated 06.10.2018 (ii) 8439324 dated 12.10.2018 (iii) 8354953 dated 06.10.2018 (iv) 8439105 dated 12.10.2018 and (v) 8452266 dated 15.10.2018 bear the description Petroleum Hydrocarbon Solvent Grade (125/240) . The absence of samples of these BEs make it obvious that CPIO Kandla Custom House has limited his reply to samples pertaining to Kandla Custom House and not included samples of Mundra Custom House.

(iii) The reply to third point states as per IS 1745:1978 for Petroleum Hydrocarbon Solvent, it is not compulsory to check parameter of smoke point.

In this context, I have already discussed earlier no RTI is necessary as the perusal of IS:1745:1978 infact makes it clear that Smoke Point is not as requirement as per IS:1745:1978, but at the same time if the Customs Authorities want to get the doubt whether goods are Kerosene or not, it is within their right to get sample tested to ascertain the reality of declared description of Petroleum Hydrocarbon Solvent. In subject case the test for Smoke Point revealed the misdeclaration of description of goods.

24. At the cost of repetition , I find that the department has exercised its right to test the sample to find whether or not the goods are Superior Kerosene Oil (SKO) by testing the sample for requirement under IS:1459:2016. On testing the Joint Director Custom House Lab vide Test Report No. 3088 dated 23.10.2018 has interalia stated that Smoke Point obtained for the sample under reference is matching with the requirement for Kerosene as per IS:1459:2016. The Joint Director Custom House Lab, Kandla vide further letter dated 01.11.2018 has stated that considering Smoke Point and Final Boiling Point(FBP) the sample under reference can be considered as 'Kerosene'. Thus the argument by the importer that IS 1459: 1974 provides that Final Boiling Point should be max. 300°C. The importer has argued that whenever any specify standard is set for any particular product, the acceptable variance would be in the range of 5% to 10% from specified standard. The importer has not given any legal/statutory authority for this limitation of 5% to 10%. Whereas the Joint Director in his letter dated 01.11.2018 states that IS specification for Kerosene there is no lower

limit stated that Final Boiling Point (FBP) which has maximum limit of 300°C. In view of the above, contention of the noticee that imported product is not SKO as it does not meet the requirement of IS:1459:1974 is not correct and need to be rejected.

25. I find that noticee have referred to and relied upon the case laws like

I. Hindustan Ferodo Ltd. v. CCE 1997 (89) E.L.T. 16 (SC).

II. Madhu Wool Spinning Mills v. UOI 1983 (14) ELT 2200 (Bom).

III. Arya Abhushan Bhandar v. UOI - 2002 (143) ELT 25 (SC);

IV. Puma Ayurvedic Herbal Pvt Ltd Vs C.C.Ex 2006 (196) ELT 3 (SC).

I find that noticee has taken a plea that burden lies upon the revenue to classify the product under particular entry. I find that the department has tested the sample and has classified the imported cargo in conformity with the ascertained description. Moreover, the case law of Madhu Wool Spinning Mills and M/s Arya Abhushan Bhandar have been misquoted and are not concerned with burden of classification on revenue.

26. I hold that department has rightly sought to carry out the test for Kerosene. The Custom House , Kandla Laboratory vide their Test Report 3088 dated 23.10.2018 has confirmed that goods are Kerosene. This has been again reiterated vide letter dated 01.11.2018 of Joint Director addressed to AC, Custom House Mundra . I hold that the goods declared as Petroleum Hydrocarbon Solvent Grade (125/240) have been misdeclared for description and on ascertain out found to be Superior Kerosene Oil (SKO). I also hold that consequently the declared classification of goods under Custom tariff Item 27101990 need to be rejected when specify classification of Superior Kerosene Oil (SKO) under Customs Tariff item 27101910 is available. Thus, I hold that impugned goods i.e. SKO need to classified under Customs Tariff Item 27101910 of Custom Tariff. I find that goods covered under Customs Tariff Item 27101910 can be only be imported by State Trading Enterprises (STEs) as per Para 2.20 Foreign Trade Policy and Policy condition 2 of the Chapter-27 of ITC (HS), Schedule-1 and not by private importers like noticee. In view of the above, I hold that Superior Kerosene Oil (SKO) valued at Rs.1,00,87,417.24/- classifiable under Customs Tariff Item 27101910 have been imported in violation of the provisions of Para 2.20 of Foreign Trade Policy read with the provisions of Section 11 of the Customs Act, 1962 is are liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962. I also hold that M/s. Gastrade International Gandhidham is also liable for penalty under section 112(a)(i) of the Customs

Act,1962 for their acts and omissions making the goods liable for confiscation under Section 111 of the Customs Act 1962 .

27. In view of the above, I pass the following order:-

ORDER

27.1 I order that the declared description of Petroleum Hydrocarbon Solvent Grade (125/240) be rejected and ascertained description of "Superior Kerosene Oil" should be taken as correct description.

27.2 I order that declared description of imported cargo under Customs Tariff Item 27101990 should be rejected and classification of Superior Kerosene Oil be done under Customs Tariff Item 27101910 of Customs Tariff.

27.3 I order confiscation of 182.56 MT of "Superior Kerosene Oil" valued at Rs.1,00,87,417.24/- in term of Section 111(d) and 111(m) of the Customs Act, 1962. However, I allow the redemption of the confiscated goods to be redeemed on payment of Fine of Rs. 17,00,000/- (Rupees Seventeen Lakh Only) in terms of section 125 of the Customs Act, 1962. However, the redemption is allowed only for re-export and not for home consumption.

27.4 I also impose penalty of Rs. 2,25,000/- (Rupees Two Lakh Twenty Five Thousand only) on M/s. Gastrade International, 201, 2nd Floor Plot No. 36, Sector-9, Gandhidham – Kutch 370201 in terms of section 112 (a)(i) of the Customs Act, 1962.

28. I have taken lenient view while importation of fine and penalty as goods are being allowed only re-export not home consumption and also the demurrage and detention involved.

The fine and penalty be paid forthwith.

(Prashant Kaduskar) 6/9/2019
Additional Commissioner,
Custom House, Mundra

Encl: Annexure A

F. No. VIII/48-1236/Misc/MCH/GR-I/18-19 Date: 06.09.2019

By Speed Post
To,

M/s. Gastrade International,
201, 2nd Floor Plot No. 36, Sector-9,
Gandhidham – Kutch 370201

COPY TO:-

1) The Principal Commissioner, Customs House, Mundra.
2) The Assistant/Deputy Commissioner (RRA), Custom House, Mundra.
3) The Assistant/Deputy Commissioner (TRC), Customs House, Mundra.
4) M/s Cargo Clearing Agency (CB).
5) Guard File.
6) AC/DC- EDI, Custom House Mundra

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CUSTOM HOUSE LABORATORY
KANDLA-370 210

Telephone No. 02836-271471/270082 Fax. No. 02836-270082/271471

F. No. KCL/Misc-Corrs/KDL-Mundra/01/08-09 Date: - 01/11/2018

To,

The Assistant Commissioner,
Custom House,
Mundra,

Sir,

Subject: -(1) Laboratory report No.-2980, dt-17/10/2018 in case of M/s Gastrade International, Gandhidham.

(2)Laboratory report No-2884, dt-22/10/2018 in case of M/s Lucky Chemicals Corporation, Indore-m/reg.

This is reference to your letter in F. No. VIII/48-1103/MISC/MCH/GR-I/18-19/5627, dated 26/10/2018, in case of M/s Lucky chemicals Corporation, Indore and F. No. VII/458-1089/MISC/MCH/GR-I/18-19/5595, dated 24/10/2018, in case of M/s Gastrade International, Gandhidham.

As query (No. 8) raised in both the Test Memo is to verify whether SKO or not this Laboratory bound to do smoke point, that is one of the Parameter for Kerosene specification, though even the smoke point also excluded in IS specification for Petroleum Hydrocarbon Solvent.

Hence as you stated in your above letters as 'Testing of smoke point to ascertain the identity or Petroleum Hydrocarbon solvent is inappropriate & incorrect" – is conflicting with query raised in the Test Memo to ascertain whether the sample is SKO or not.

Further in the IS specification for Kerosene there is now no lower limit stated for Final Boiling point (FBP) – which has the maximum limit of 300°C.

Considering these two the FBP and Smoke Point, both the samples u/r can be considered as "Kerosene".

Yours Faithfully,

01/11/2018

(R. Dhasarathan)
Joint Director