

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**CUSTOMS Appeal No. 12496 of 2019**

[Arising out of Order-in-Original/Appeal No OIA-MUN-CUSTOM-000-APP-80-81-19-20 dated 19/08/2019 passed by Commissioner (Appeal) of Central Excise & Customs, Ahmedabad]

**Swarna Oil Services**

Plot No. 183, GIDC Estate, Nandesari Industrial Area,  
Vadodara, Gujarat

**.... Appellant**

*VERSUS*

**Commissioner of Customs, Mundra**

Office of the Principle Commissionerate of Customs,  
Port User Buld. Custom House Mundra, Mundra  
Kutch, Gujarat - 370421

**.... Respondent**

**WITH**

**CUSTOMS Appeal No. 12499 of 2019**

[Arising out of Order-in-Original/Appeal No OIA-MUN-CUSTOM-000-APP-80-81-19-20 dated 19/08/2019 passed by Commissioner (Appeal) of Central Excise & Customs, Ahmedabad]

**Swarna Oil Services**

Plot No. 183, GIDC Estate, Nandesari Industrial Area,  
Vadodara, Gujarat

**.... Appellant**

*VERSUS*

**Commissioner of Customs, Mundra**

Office of the Principle Commissionerate of Customs,  
Port User Buld. Custom House Mundra, Mundra  
Kutch, Gujarat - 370421

**.... Respondent**

**AND**

**CUSTOMS Appeal No. 12557 of 2019**

[Arising out of Order-in-Original/Appeal No OIA-MUN-CUSTOM-000-APP-82-19-20 dated 19.08.2019 passed by Commissioner (Appeal) of Central Excise & Customs, Ahmedabad]

**SM Trading Company**

KHASRA NO.20/17/2/2(2-4), KHETWAT 947,  
KHATAUNI NO. 1450, 145/37, VILLAGE BUGHIPURA,  
TEHSIL, MOGA  
MOGA  
PUNJAB

**.... Appellant**

*VERSUS*

**Commissioner of Customs, Mundra**

Office of the Principle Commissionerate of Customs,  
Port User Buld. Custom House Mundra, Mundra  
Kutch, Gujarat - 370421

**.... Respondent**

**APPEARANCE :**

Shri V.K. Jain, Shri Akshit Malhotra & Ms. Dimple Gohil, Advocates for the Appellant  
Shri Sanjiv Kinker, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/11026-11028 / 2020**

DATE OF HEARING : 18.12.2019

DATE OF DECISION : 01.06.2020

**RAMESH NAIR :**

The brief facts of the case are that the importers in all the three appeals have imported a product described as Petroleum Hydrocarbon Solvent and have classified the same under Chapter Tariff Heading (CTH) 27101990, while the lower authorities have upheld the classification of the same under CTH 27101910 as Superior Kerosene Oil (SKO), import of which is restricted under ITC (HS) and can be made by State Trading Enterprises. The lower authorities have allowed redemption of the imported goods on payment of fine and penalty, subject to the condition that the said goods are re-exported.

2. The facts in these cases are similar. We are accordingly for the sake of our discussions referring to facts in Appeal No. C/12499/2019-DB.

3. The Appellant in this appeal have imported 276.70 MTs of a product described by them as Petroleum Hydrocarbon Solvent from M/s Om Energy DMCC U.A.E. On import, the Appellant filed Bill of Entry No.8355059 dated 6.10.2018 and classified the imported product under CTH 27101990.

4. The Customs authorities took a sample from the import consignment on first check basis and sent the same for testing to CRCL, Kandla, which in its test report dated 11.10.2018 opined as under:

“The sample is in the form of clear colourless liquid. It is composed of mixture of mineral hydrocarbon having following constant, IBP= 148°C, FBP= 236°C, Density at 15°C= 0.7979 g/ml, Distill at 210°C= 84 %, Flash Point= 43°C, Smoke Point= 21mm.

With respect to the parameters flash point, distillation range, it matches Petroleum Hydrocarbon solvent as IS 1745: 1978. However, the smoke point, flash point obtained for the sample u/r matching kerosene as per IS 1459: 2016. Sealed remnant sample returned.”

5. Since, the Appellant were of the view that the goods imported by them met with the specification for Petroleum Hydrocarbon Solvent, as laid down in IS 1745:1978, which factum was not disputed in the report dated 11.10.2018 by CRCL Kandla, which stated that the imported goods met with

parameters regarding flash point, distillation range as per IS 1745:1978 and also with respect to smoke point and flash point as per IS 1459:2016 as applicable to Superior Kerosene Oil (SKO), it requested for re-test of imported goods under cover of its letter dated 08.12.2018 on all the parameters specified in IS 1745:1978, as applicable to Petroleum Hydrocarbon solvent.

6. The CRCL New Delhi under cover of its report dated 08.02.2019 opined as under:

“Each of the two samples is in the form of colorless and pale yellow color liquid respectively. Each is composed of Mineral Hydrocarbon Oil (More than 70% by weight) possessing the following parameters:

| Sl. No. | Characteristics                                    | Requirement of Kerosene as per IS: 1459-2019 | Test Results pertaining to Lab No. 62 dated 22.01.2019 B/E No. 8258736 dated 29.09.2018 | Test Results pertaining to Lab No. 63 dated 22.01.2019 B/E No. 8355059 dated 06.10.2018 |
|---------|----------------------------------------------------|----------------------------------------------|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1       | Acidity, Inorganic                                 | Nil                                          | Nil                                                                                     | Nil                                                                                     |
| 2       | Density at 15°C, Kg/m3                             | Not limited but to be reported               | 782.3                                                                                   | 782.0                                                                                   |
| 3       | Distillation:                                      |                                              |                                                                                         |                                                                                         |
|         | a) Initial Boiling Point, °C                       | --                                           | 154                                                                                     | 156                                                                                     |
|         | b) % recovered below 200°C, percentage (v/v') Min. | 20                                           | 68                                                                                      | 68                                                                                      |
| =====   | c) Final Boiling Point, °C, Max.                   | 300                                          | 250                                                                                     | 250                                                                                     |
|         | d) Dry Point, °C                                   | --                                           | 246                                                                                     | 247                                                                                     |
| o       | 4 Flash Point (Abel), °C, Min.                     | 35                                           | 44                                                                                      | 44                                                                                      |
| n       | 5 Smoke Point, mm, Min.                            | 18                                           | 23                                                                                      | 24                                                                                      |
|         | 6 Aromatic Content, % by Volume                    | --                                           | 15                                                                                      | 18                                                                                      |
| t<br>h  | 7 Copper strip corrosion for 3h at 50° C           | Not worse than No.1                          | Not worse than No.1                                                                     | Not worse than No.1                                                                     |

On basis of above parameters, the samples under reference conforms to the specification of Kerosene as per IS 1459: 2018. Each do not meet the requirements of Petroleum Hydrocarbon Solvents as per IS 1745- 1978 in respect of Final Boiling Point. An officer may be deputed to collect the sealed remnant samples from CRCL, New Delhi.”

7. As there was wide variations in some of the parameters between the report of CRCL Kandla and CRCL Delhi, specifically with respect to that of final boiling point, the Appellant under cover of its letter dated 11.3.2019 requested for the sample to tested with by Indian Institute of Petroleum, Dehradun. It appears that this request has not been acceded to. The Appellant was issued Show Cause Notice dated 14.2.2019 calling upon it to show cause as to why the goods imported by them under Bill of Entry No.8355059 dated 6.10.2018 should not be classified under 27101910 as Superior Kerosene Oil and not under CTH 27101990 as claimed by the Appellant so as to why the imported goods should not be confiscated under Section 111(d), (m) and (o) of the Custom Act and why penalty should not be imposed under Section 110 of the Customs Act, 1962.

8. The Appellant filed their response to the Notice denying the allegations in the notice that what had been imported was SKO. Their contentions were rejected by the adjudicating authority vide order dated 3.5.2019, who ordered re-classification of the imported goods under CTH 27101910 as Superior Kerosene Oil. The adjudicating authority also ordered confiscation of the imported goods with an option to redeem the same on payment of Rs.26,000,000/- and imposed a penalty of Rs.5,00,000 under Section 112

(a)(i). The appeal preferred by the appellant was also rejected by the Commissioner Appeal and hence this appeal.

9. Heard both the sides and carefully considered the submissions made. The limited issue that arises for our consideration is whether the Revenue was correct in re-classifying the imported goods under chapter heading 27101910 as Superior Kerosene Oil.

10. It is not in dispute that for a product to be classified under 27101910 as SKO, it has to meet with the specifications in supplementary Note 'C' to Chapter 27 which reads as under:

“Superior kerosene Oil (SKO) means any hydrocarbon oil conforming to Indian Standards Specifications of Bureau of Indian Standards IS 1459:1974 (reaffirmed in the year 1996)”

11. It can be seen from the said BIS that for a product to be classified as Kerosene, it has to meet the following specifications1459:1974

“2.1 The material shall consist of refined petroleum distillates. It shall be free from visible water, sediment and suspended matter.

2.2 The material shall also comply with the requirement given in Table I, when tested according to the appropriate methods prescribed under 'P' series of IS: 1448\*, reference to which is given in column 4 of the table.”

TABLE 1 REQUIREMENT FOR KEROSENE

| Sr.No. | CHARACTERISTIC                                                       | REQUIREMENT | METHOD OF TEST, REF To 'P' OF IS: 1448* |
|--------|----------------------------------------------------------------------|-------------|-----------------------------------------|
| (1)    | (2)                                                                  | (3)         | (4)                                     |
| i)     | Acidity, inorganic                                                   | Nil         | P:2                                     |
| ii)    | Burning quality:<br>a) Char value, mg/kg of oil consumed, <i>Max</i> | 20          |                                         |

|       |                                                                                                          |                      |             |
|-------|----------------------------------------------------------------------------------------------------------|----------------------|-------------|
|       | b) Bloom on glass chimney                                                                                | Not darker than grey |             |
| iii)  | Colour (Saybolt) +, <i>Min</i>                                                                           | +10                  | <b>P:14</b> |
| iv)   | Copper strip corrosion for 3 h at 500 C                                                                  | Not worse than No.1  | <b>P:15</b> |
| v)    | Distillation :<br>a) Percent recovered below 200o C <i>Min</i><br>b) Final boiling point, OC, <i>Min</i> | 20<br>300            | <b>P:18</b> |
| vi)   | Flash point (Abel), OC, <i>Min</i>                                                                       | 35                   | <b>P:20</b> |
| vii)  | Smoke Point, mm, <i>Min</i>                                                                              | 18                   | <b>P:31</b> |
| viii) | Total, sulphur, percent by mass, <i>Max</i>                                                              | 0.25                 | <b>P:34</b> |

\* Methods of test for petroleum and its products.

+ Where Saybolt chromometer is not available. Lovibond colour of the sample kept in an 18-in cell may be measured according to IS:1448 [P:13]-1960 ‘Methods of test for petroleum and its products, P:13 Colour by Lovibond tintometer’ in which case, the colour shall not be deeper than Standard White (IP 4.0).

For supplies to Defence, the smoke point of the product shall be 21 mm, *Min* and for Railways it shall be 20 mm, *Min*.

For supplies to Defence, total sulphur content, percent by mass, of the product shall be 0.20, *Max*

From a perusal of the test reports of CRCL Delhi and CRCL Kandla, assuming the same to be correct, notwithstanding the difference in the test results between the two qua the parameter regarding final boiling point. It is seen that out of the 8 parameters on which the sample has to be tested for determining whether or not the same meets with the specifications of Kerosene, it is seen from both the test results that test have not been undertaken with respect to the following 3 parameters.:

- (i) Burning quality
  - (a) Char value, mg/kg of oil consumed, *Max*
  - (b) Bloom on glass chimney
- (ii) Colour (Saybolt)
- (iii) Total, sulphur, percent by mass, *Max*

It is also not the Revenue's case that the said three parameters can be established by any inferential process or otherwise. Insofar as sulphur is concerned, though no test have been undertaken, we will for the sake of our discussion assume that the said parameters have been met, as the same forms a part of the suppliers test reports and is within the parameters specified in IS 1459:1974 (reaffirmed in 1996). However in respect of the other two parameters regarding burning quality and colour there is absolutely no evidence that the revenue has produced to establish that the said two parameters are met with. The revenue has neither through test results nor otherwise lead any evidence to show that the said two parameters were also met with.

13. The law on the question that the burden of classification is on the Revenue is well settled by the Apex Court in the case of HPL Chemicals vs CCE reported in 2006 (197) ELT 324. The relevant observations of the Honble Apex Court are reproduced for better appreciation:

**“29.** This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is quiet clear that the goods are classifiable as “Denatured Salt” falling under Chapter Heading No. 25.01. The Department has not shown that the subject product is not bought or sold or is not known or is dealt with in the market as Denatured Salt. Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride.”

Dealing with the similar fact, the ratio laid down by the Apex Court in its judgment in the case of *Hindustan Ferodo vs. CCE 1997 (89) ELT 16*. The relevant observations of the Apex Court read as under:

“It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.”

14. In our view, in the absence of evidence that the imported goods meet with all the specifications laid down in supplementary note (c) to chapter 27, for a product to be classified as Kerosene, the case made out by the revenue cannot be sustained. Accordingly the impugned orders are set aside and appeals are allowed with consequential reliefs, if any arise, in accordance with law.

*(Pronounced in the open court on 01.06.2020))*

**(Ramesh Nair)**  
**Member (Judicial)**

**(Raju)**  
**Member (Technical)**

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