

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

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 10656 of 2013

[Arising out of Order-in-Original/Appeal No SRP-553-VDR-I-2013 dated 13.03.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Nirma Limited

...Appellant

Village : Alindra

Taluka : Savli

Vadodara,

Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-i

...Respondent

1st Floor...Central Excise Building,

Race Course Circle,

Vadodara,

Gujarat-390007

APPEARANCE:

Shri Sudhanshu Bissa, Advocate for the Appellant

Shri. Ajay Kumar Samota, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), RAJU

FINAL ORDER NO.A / 11258 /2023

DATE OF HEARING: 22.02.2023

DATE OF DECISION:14.06.2023

RAJU

This appeal has been filed by M/s. Nirma Limited against order of Commissioner (Appeals) rejecting appeal filed by appellant.

2. Learned Counsel for the appellant pointed out that the appellants are manufactures of Linear Alkyl Benzene (LAB) and the appellants are also manufacturing "N – Paraffin (NP)", which is a major raw material for the production of (LAB). The appellants are also importing "N – Paraffin" against advance license granted by the Licensing Authority. The appellants have a common storage tank for storing "N – Paraffin (NP)". The imported "N –

Paraffin” as well as the domestically manufactured “N – Paraffin” are both storage in the same storage tank. During the period July, 2006 to August, 2006, the appellant cleared 747.195MT of manufactured “N – Paraffin” to M/s. India Power Corporation Limited (IPCL) on payment of Central Excise under cover of 57 excise invoices. After detailed investigation revenue came to the conclusion that out of 747.195 MT cleared by the appellant for home consumption 335.980 MT was imported “N-Paraffin”. The said conclusion was based on the fact that in respect of 21 invoices out of 57, issued for domestic clearance during which period, did not have the LAB analysis report. The argument of revenue was that the quantity cleared from the domestically manufactured goods always contains a LAB analysis report.

3. Learned AR relies on impugned orders.

4. We have gone through the rival submissions. It was also found that the 21 consignments which contained no test report were allegedly imported consignments to M/s. India Power Corporation Limited (IPCL). The details of 21 consignment cleared are given in table below:

Annexure-A(1)																																						
Invoices on 28.07.06 & 29.07.06 on payment of Central Excise Duty only.																																						
Inward details as per LAR Raw																																						
Material Inward Record (Registers)																																						
GRN NO	DATE	IME No.	NAME OF TRANSPORTER	LR NO.	VEHICLE NO.	CITY	RECEIPT CITY	SHORTAGE (MT)	ENTRY NO.	DATE	LOADING DATE	TIME IN	INVOICE NO.	DATE	TIME OF REMOVAL	VEHICLE NO.	LR NO.	DATE	NAME OF TRANSPORTER	PRODUCT	CETISH	QTY (MT)	ASSESSABLE VALUE	C.E. DUTY	ED CESS	TOTAL DUTY												
90010056GRINRM060700728	28-Jul-06	106556	Panar Transport Co.	28309	GU-12V 8215	8	8	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28												
90010056GRINRM060700728	28-Jul-06	106556	Panar Transport Co.	28309	GU-12V 8215	8	8	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28												
90010056GRINRM060700730	28-Jul-06	106556	Panar Transport Co.	28310	GU-12 V 1045	16,240	16,240	0.000	1884	28.07.06	19.10	1955	HC 1940	28.07.06	21.30	GU12V1045	76553	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.240	893200	142912	2858	145770												
90010056GRINRM060700731	28-Jul-06	106556	Panar Transport Co.	28311	GU-12V 8016	14,080	14,080	0.000	1885	28.07.06	19.25	2030	HC 1943	28.07.06	21.50	GU12V8016	76556	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	14.080	773300	120728	2475	122803												
90010056GRINRM060700732	28-Jul-06	106556	Shah Bulk Carrier	75682	GU-12V 8835	15,960	15,960	0.000	1886	28.07.05	19.25	2030	HC 1942	28.07.06	21.50	GU12U8835	76555	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	15.960	879000	140624	2812	143006												
90010056GRINRM060700733	28-Jul-06	106556	Shah Bulk Carrier	75681	GU-12X 3918	15,450	15,450	0.000	1887	28.07.06	19.25	2030	HC 1941	28.07.06	21.50	GU12X3918	76554	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	15.450	849750	135960	2719	138079												
90010056GRINRM060700734	28-Jul-06	106556	Panar Transport Co.	28309	GU-12V 8667	15,700	15,700	0.000	1881	28.07.06	19.45	2105	HC 1947	28.07.06	22.30	GU12V8667	76559	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	15.700	863500	138150	2763	140823												
90010056GRINRM060700735	28-Jul-06	106556	Panar Transport Co.	28305	GU-12V 9728	18,520	18,520	0.000	1888	28.07.06	19.45	2105	HC 1946	28.07.06	22.30	GU12V9728	76558	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	15.420	908800	145379	2908	148294												
90010056GRINRM060700736	28-Jul-06	106556	Shah Bulk Carrier	75680	GU12V9550	15,790	15,790	0.000	1888	28.07.06	19.45	2105	HC 1944	28.07.06	22.30	GU12V9550	76558	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	15.790	869450	138952	2779	141731												
90010056GRINRM060700737	28-Jul-06	106556	Panar Transport Co.	28308	GU-12V 8186	18,330	18,330	0.000	1890	28.07.06	19.45	2105	HC 1945	28.07.06	22.30	GU12V8186	76590	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.330	881150	143704	2874	146578												
90010056GRINRM060700738	28-Jul-06	106556	Panar Transport Co.	28315	GU-12W 5900	15,910	15,910	0.000	1908	28.07.06	9.20	1135	HC 1976	28.07.06	14.00	GU12W5900	76565	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.330	875650	140008	2800	142908												
90010056GRINRM060700739	29-Jul-06	106556	Panar Transport Co.	28321	GU-12W 7507	17,060	17,060	0.000	1907	28.07.06	9.22	1140	HC 1975	28.07.06	14.00	GU12W7507	76566	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	17.060	930000	150129	3003	153131												
90010056GRINRM060700740	29-Jul-06	106556	Panar Transport Co.	28317	GU-12V 8289	18,430	18,430	0.000	1904	28.07.06	9.14	1120	HC 1978	28.07.06	14.00	GU12V8289	76564	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.430	903950	144564	2992	147478												
90010056GRINRM060700741	29-Jul-06	106556	Shah Bulk Carrier	75684	GU-82 8783	15,170	15,170	0.000	1910	28.07.06	9.55	1125	HC 1977	28.07.06	14.00	GU-828783	76567	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	15.170	834550	133496	2670	136166												
90010056GRINRM060700742	29-Jul-06	103556	Panar Transport Co.	28307	GU-12V 5592	16,070	16,070	0.000	1901	29.07.06	9.10	1625	HC 1982	29.07.06	17.00	GU12V5592	76561	29.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.070	803850	141419	2828	140244												
90010056GRINRM060700743	29-Jul-06	106556	Panar Transport Co.	28312	GU09V2779	16,370	16,370	0.000	1902	29.07.06	9.12	1626	HC 1983	29.07.06	17.00	GU9V2779	76562	29.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.370	900350	144056	2881	146937												
90010056GRINRM060700744	29-Jul-06	106556	Panar Transport Co.	28316	GU12W8779	16,130	16,130	0.000	1903	29.07.06	9.13	1627	HC 1985	29.07.06	17.00	GU12W8779	76563	29.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.130	887150	141844	2839	144783												
90010056GRINRM060700745	29-Jul-06	106556	Panar Transport Co.	28314	GU12V 7901	16,390	16,390	0.000	1905	29.07.06	9.15	1630	HC 1984	29.07.06	17.00	GU12V7901	76568	28.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.390	907450	144032	2863	147117												
90010056GRINRM060700746	29-Jul-06	106556	Panar Transport Co.	28313	GU9V 3325	16,110	16,110	0.000	1908	29.07.06	8.25	1632	HC 1988	29.07.06	18.50	GU9V3325	76569	29.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.110	896050	141768	2835	144823												
90010056GRINRM060700747	29-Jul-06	106556	Panar Transport Co.	28320	GU12V6687	16,100	16,100	0.000	1909	29.07.06	9.27	1835	HC 1996	29.07.06	18.50	GU12V6687	76570	29.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.100	885500	141680	2834	144514												
90010056GRINRM060700748	29-Jul-06	106556	Panar Transport Co.	28318	GU12W 7479	16,160	16,160	0.000	1911	29.07.06	10.45	1638	HC 1997	29.07.06	18.50	GU12W7479	76571	29.07.06	Shah Bulk Carrier	N. PARAFFIN	2710.19.90	16.160	888800	142208	2844	145552												
TOTAL																							338.880	238.880			89132	298824	18478809			338.880						

Clearance details as per Invoices issued under Rule 11 of CER, 2002.

4.1 The said 21 consignments which were imported under advance license were allegedly not unloaded in the factory and were directly cleared to M/s. India Power Corporation Limited (IPCL) in the same vehicle. A perusal of the annexure to the SCN shows that the vehicle mentioned in the GRIN for receipt of the imported material and the vehicle number shown in the excise invoice for clearance of the said invoice is identical. The date on which the said GRN for receipt of goods were issued is identical to the date which the corresponding invoices were issued. The quantity mentioned in the GRN number for receipt of imported goods were identical to the quantity mentioned in the invoice issued for clearance for home consumption to IPCL. arrival time of imported consignment was just a few hours prior to the out ward time of the domestic clearance of same quantity in the same vehicle.

From the above, it is apparent that the goods imported by the appellant were not unloaded in the factory premises, but cleared as such in the same truck, just a little time after arrival, without any testing to M/s. India Power Corporation Limited (IPCL). The defense of the appellant is that the goods were unloaded in the factory and got mixed in the tank is obviously an afterthought.

5. In these circumstances, we do not find any merit in the argument of the appellant, the appeal is dismissed.

(Pronounced in the open Court on 14.06.2023)

(RAJU)
MEMBER (TECHNICAL)