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

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10344 of 2023

[Arising out of OIA-MUN-CUSTM-000-APP-755-22-23 dated 25/01/2023 passed by Commissioner of CUSTOMS-MUNDRA]

KUNJAL SYNERGIES PVT LTD **.....Appellant**
206, Madhubn Complex,
2nd Floor Plot No. 128 Sector,
Oslo Road Gandhidham,
Kachchh,
Gujarat-370201

VERSUS

C.C.-MUNDRA **.....Respondent**
Office of the Principle
Commissioner of Customs Port user build
Custom House,
Mundra, Kachchh,
Gujarat-370421

APPEARANCE:
Shri Sudhir Mehta, Advocate for the Appellant
Shri. Himanshu P Shrimali, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO.A/12006/2023

DATE OF HEARING: 10.08.2023
DATE OF DECISION: 13.09.2023

SOMESH ARORA

M/s Kunjal Synergies Pvt Ltd.. 206. Madhuban Complex. II nd Floor, Plot No. 128, Sector-1. Oslo Road. Gandhidham(k) (hereinafter referred to as 'appellant') have filed the present appeal.

2. Briefly stated, the relevant facts of the case are that the appellant filed bills of entry no. 5921646 and 5921650 both dated 20.10.2021 for clearance of 473.590 MTS(Gross Wt.) and 1988/679(Gross wt.) for white spirit which is a petro oil/hydrocarbon solvent, claiming classification under CTH 27101990 and therefore same being freely importable. After examination of the said cargo, samples were drawn against the said bills of entry and sent to CRCL, Kandla vide test memos No.s 1100025 and 1100026 both dated 21.10.2021. CRCL, Kandla vide Lab test report No.5009 dated 27.10.2021 pertaining to bill of entry 5921646 dated 20.10.2021

"The sample as received is in the form of clear colourless liquid. It is composed of mixture of light mineral hydrocarbon oil having oil content more than 70 % by weight having following constants;

Density @ 15 degree C(gm/ml	-	0.7807
Flash Point (Degree C)	-	38
Initial Boiling Point (Degree C)	-	155
05% (V/v) Recorded at (Degree C)	-	160
10% (V/v) Recorded at (Degree C)	-	161
50% (v/v) Recorded at (Degree C)	-	167
90% (v/v) Recorded at (Degree C)	-	180
95% (v/v) Recorded at (Degree C)	-	184
Final Boiling Point (degree C)	-	196
Aniline point (degree)	-	84

"The above tested parameters are in agrees,(sic) with Petroleum Hydrocarbon solvents (145/205) as per IS:1745. The actual end use of the sample may be ascertained at your end. Sealed remnant sample returned herewith."

2.1 CRCL, Kandla vide Lab test report No.4863 dated 22.10.2021 pertaining to bill of entry 5921650 dated 20.10.2021 gave following test report;

"The sample as received is in the form of clear colourless liquid. It is composed of mixture of light mineral hydrocarbon oil having oil content more than 70% by weight having following constants;

Density @ 15 degree C(gm/ml	-	0.7785
Flash Point (Degree C)	-	38
Initial Boiling Point (Degree C)	-	156
05% (V/v) Recorded at (Degree C)	-	160
10% (V/v) Recorded at (Degree C)	-	161
50% (v/v) Recorded at (Degree C)	-	168
90% (v/v) Recorded at (Degree C)	-	181
95% (v/v) Recorded at (Degree C)	-	186
Final Boiling Point (degree C)	-	198
Aniline point (degree)	-	84

"The above tested parameters are in agrees (sic) with Petroleum Hydrocarbon solvents (145/205) as per IS:1745. The actual end use of the sample may be ascertained at your end. Sealed remnant sample returned herewith."

2.2 Not satisfied with the lab test reports the appellant requested to allow them to re-test of samples from another referral or govt laboratory, which was granted to the appellant and accordingly 02 duplicate samples were forwarded to the CRCL, New Delhi. The CRCL, New Delhi gave its test report vide CLR No. 157 & 158 dated 21.01.2022 as under:

No	Characteristics	Requirements for Petroleum Hydrocarbon Solvents(145/205) as per IS: 1745:2018	Test Results CLR-157 BE NO. 5921646 dated 20.10.2021	Test Results CLR-158 BE No. 5921650 dated 20.10.2021
	Acidity	-	Nil	Nil
	Ash (% by wt.)	-	Nil	Nil
	Colour (Soybolt)	+20	+31	+31
	Density at 15 % C (Kg/M)	To be reported	780.5	780.2
	Flash point (abel) in degree C	35/38	39/38	39/38

	Aromatic content,% by vol, Max	40	7.55	7.60
	Copper strip corrosion for 3h at 50 degree C	Not worse than no. 1	1a	1a
	Water content	-	Nil	Nil
	Distillation			
	Initial boiling point degree C	145	156.9	156.9
	50% by vol recovered at, in degree C	To be reported	16738/ 177	167.8
	95% by vol recovered at, in degree C	To be reported	184.5	184.3
	Final Boiling Point, Max	205/210 C	202.4	196.2

The sample is petroleum Hydrogen Solvents (145/205) as per IS:1745:2018

2.3 On the basis of the test reports of the CRCL, Kandla and New Delhi. the department came to the conclusion that the imported goods are petroleum Hydrocarbon Solvents(145/205) and are classifiable under chapter heading 27101239 of the custom tariff. Further as the goods falling under tariff heading 27101239 are restricted and allowed to be imported through state trading enterprises only as per Policy condition 5 of the Chapter -27of ITC(HS). Schedule-L. and since the appellant in this case is neither an STE nor has submitted any documents showing grant of such rights by the DGFT to import or export any of the goods notified for exclusive trading through STES, the appellant have violated the provisions of FTP and Customs Act, 1962.

2.4 The adjudicating authority accordingly passed the impugned order wherein he

- ordered to reject the declared classification of imported goods under CTH 27101990 and reclassified the imported goods under 27101239

- confiscated the goods valued at Rs. 15,85.68,306.47 covered under bills of entry no.s 5921646 and 5921650 both dated 20.10.2021 under section 111 (d) and 111(m) of the Customs Act, 1962 with an option to redeem the confiscated goods on payment of redemption fine of Rs. 1,60,00,000/- for re-export purpose only.

- imposed penalty of Rs. 80,00,000/- on the appellant under Section112(a)(i) of the customs Act, 1962

- Permitted to re-export the goods on payment of redemption fine and penalty and other charges as applicable.

2.5 Being aggrieved with the adjudication order, the appellant filed appeal before Commissioner (Appeals). The Commissioner (Appeals) confirmed the order of lower authority and therefore aggrieved by the same, appellant has filed the present appeal.

3. Learned Advocate for the appellant while making various submissions, sated as follows:

> " *For the purpose of sub heading 271012 light oil and preparation' are those of which 90% or more by volume including losses) distill at 210 degree celcious according to ISO 3405 method (equivalent to ASTM D 86 method). Distill means a cycle of liquid turning into gas/vapor and condenses back to liquid. By virtue of Tariff Note unless solvent 60/80, 50/120, 145/205 meet test of 90% distill by volume at 210 degree celeious to qualify as "Light Oil and Preparations"*
>
> *6. In the test report for the purpose of ITC classification 271012 relevant markers of solvent 60/80, solvent 50/120 and solvent 145/205 such as (i) colour, (ii) residue, (iii) whether 90% or more by volume including losses distilled at 210 degree celcious according IS 3045 method were not satisfied.*
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> *7. Distillation test is used for determining the full range of volatility characteristics of a hydrocarbon liquid by progressively boiling off (evaporating) a sample under*

controlled heating. Initial boiling point (IBP) is the fluid temperature at which the first drop falls into a graduated cylinder after being condensed in a condenser connected to a distillation flask. Mid-boiling point (MBP) is the temperature at which 50% of the fluid has collected in the cylinder. Dry point is the temperature at which the last drop of fluid disappears from the bottom of the distillation flask. Final boiling point (FBP) is the highest temperature observed Front-end volatility and tail-end volatility are the amounts of test sample that evaporate, respectively, at the low and high temperature ranges. If the boiling range is small, the fluid is said to be narrow cut, that is, having components with similar volatilities, if the boiling range is wide, the fluid is termed wide cut. Distillation may be carried out by several ASTM test methods, including ASTM D 86, D 850, D 1078, and D 1160. The appellant has prepared a chart to present in a tabuler from have different carbon pictures would emerge whom ranges are narrow and wide and when presented in the form of 60/80, 50/120, 145/205, 50/120, 90|130, 120/240, 150/300, 156.9/202.4 (the appellant's goods found as tested.)

8. Under IS 1745 colour (Saybolt) should be minimum + 20 for solvent 145/205 by the method mentioned in IS 1448, a copy of which is annexed hereto and marked as Annexure "B" (Pages 26 to 34 of Compilation). The colour of solvent is a flag marker as colour intensity is directly proportional to concentration compound called optical density. If the colour of the solvent is + 25 it would fall under 90/135, if the solvent has the colour in excess of +25 it would be ousted from the petroleum hydro carbon solvent under IS 1745. The colour connotes purity which is required to be determined in accordance with the test as laid down in IS 1448. This test was not done to challenge the classification CTH 27101990.

9. The test whether 90% or more by volume (including losses) distill at 210 degree celcious in accordance with ISO 3405 failed which is a overriding criteria by virtue of the Appended note 4 of the Chapter 27.

10. Residue on evaporation test required under IS 1745 for solvent 145/205 is maximum 5 Ml which was required to be done under IS Standard 329 by Jet evaporation method. The residue on evaporation test is done to find carbon content of light and middle distillate oil and it was adopted by the Bureau of Indian Standard on the recommendation of Committee on methods of measurement and test for petroleum, petroleum product and Lubricant National Committee Report. The method of test is being provided *under IS specification 1448 a copy of which is annexed here to and marked Annexure "C" (Pages 35 to 60 of Compilation), Residue test decide evaporation rate, impurities and class and quality of the hydro carbon solvent. It decides aviation and non-aviation fuel. The IS standard prescribes that 100 ml capacity beaker is to be taken and it is to be heated for specified time and after the specified time the residue should not remain more than 5 ml. The quantum of residue becomes a relevant marker as it is the only marker which decide the rate of evaporation which in turn decide quality / impurities and uses. This relevant marker were not tested on the goods in spite of the requisitions of the test report. The CTH 271012 can not be proposed in absence of this data. In the assessment the purity of solvent specific test are used to determine the contents of selected component. The residue after evaporation is defined as the percentage by weight of material remaining after evaporation of a volatile and heating of the disk and residue at 105 degree for 30 minutes as per ASTM standard which is being adopted under the IS standard. No case of residue test is done to show that the solvent could fall under CTH 271012. The evaluation of sample from the test of the liquid pure organic solvent and their mixture are very important and their importance is such which is one of the important marker for evaluation of a evaporating solvent. A report from Food Science and Applied Biotechnology (E-ISS 2603-3380 (Journal 2020, 3 (1) 7-84) is enclosed in this regard and marked "D" (Pages 61 to 68 of Compilation).*

11. The distillation range required is 145/ 205 which is to be reckoned on the basis of IS 1448 a copy of which is annexed here to and marked Annexure "E" (Pages 69 to 87 of Compilation). It provides that initial boiling point (first vapour recovered) should reach at 145 and thereafter every five minutes/ 10 minutes (as per IS) recovery should be found at the temperature provided in Annexure "A" (clause 9.8) of IS Standard and it would proceed by recovery of recording of 10%, 20%, 30%, 40%, 50%, 70%, 90%, 95% of solvent following final boiling point and residue recovery. Initial boiling point would reach at 145 where is in the subject case it starts at 167.8 and FBP comes at 196/202.4 where as it should come at 205 and duration of IBP and FBP is to be read with intervals of time where specified evaporation should be noted. There is no such presentation. The data 167 /202.4 show very late IBP and quick evaporation and drying point at 194 which would mean a specific chain of hydrocarbon which is narrow cut whereas 145/205 is a wide cut range and a different item having a different CAS number. Higher quantum of gas and lesser quantum of carbon will culminate into quick evaporation and *early IBP and FBP. Proportionately higher carbon will make a long chain to begin with. More carbon means longer chain. The Report does not dispute lawfully our ITC classification, on the contrary, it shows that there is no challenge to our classification 27101990. Selective tests common to freely importable hydrocarbon as well as of the given three are mentioned in the report which is misleading and contrary to IS Standard and it no where says that solvent could fall under CTH 271012.*

12. The flash point of minimum 35 degree is common to 150/300, 125/240 which are freely importable. Application of minimum of 35 degree celcious to all hydrocarbon solvents such as grease, kerosene, diesel, lubricating oil, thinners, would be higher to 35 degree celcious. Flash point of diesel is >52, jet fuel >38, kerosene 72 225 for mineral oil, 380 for motor oil. Application of minimum flash point is taken contrary to IS Standard. In our case flash point is 39 which is higher than kerosene also. Application of minimum flash point is to be read as higher limit permissible. Certain factors such as IBP/ FBP/ are applied with below / higher which would be apparent from the IS Standard Table (Clauses 1.2, 2.1). On test flash point were found to be 39 which can also fall under solvent 150/300 which is freely importable. 1 All these 3 solvents such as 90/135, 125/240, 150/300 which are freely importable would also be covered by the flash point criteria. Flash point of dry wood is 250-300, to say that it qualifies flash point criteria of jet fuel would be apparently wrong. The application of test results are not done in the manner indicated in the IS Standard.

13. The aromatic content of 20 would also fall within 125/ 240, 150/300 where is Specification says maximum 40 for 145/ 240. P: 23 and P: 48 prescribes procedure of application of aromatic content which has not been followed.

14. The basic relevant markers such as colour, evaporation rate, residue are not bright forward and result of 95% recovery at 210. Few common results applicable to all hydrocarbon substances are put forward which are not sufficient to challenge the classification declared and self assessed by us. No case has been put for claiming the tariff entry 271012.

15. The law in this regard is being settled by the judgement of the Hon'ble Supreme Court in India in HPL Chemicals LTD. - Vs Commissioner reported in 197 ELT page 324 (SC) and Hindustan Ferodo -Vs- Collector reported in 89 ELT page 16 wherein the Hon'ble Supreme Court has held that classification of goods is the matter relating to chargeability *and the burden of proof squarely upon the residue. If the department intends to classify the goods under a particular heading or sub-heading different from that claimed by the importer, department has to proper evidence to discharge the burden of proof. Copies of the judgments are annexed marked "F" (Pages 88 to 96 of Compilation) and "G" (Pages 97 to 101 of Compilation).*

16. Since the department has not been able to prove by any relevant marker that goods could fall under 271012 or it could not fall under Customs Tariff Heading 271019990. The Custom entry given by the appellant under Customs Tariff Heading 27101990 should have been accepted as rightly assessed.

17. The Hon'ble Supreme Court in the case of Krishna Techno Com, confirming the judgement of this Tribunal held that light oil and preparation are those of which 90% or more by volume distilled at 210 degree celcious not below. The result obtained below 210 degree celcious was discarded in view of the specific condition of the statute which demands distillation at 210 degree or not below 210 degree. Judgement of the Hon'ble Supreme Court in the case of Krishna Techno Com Pvt. Ltd. and the judgment delivered by the Hon'ble Supreme Court is annexed hereto and marked as Annexure "H" (Pages 102 to 109 of Compilation) & "I" (Pages of 110 to 111 Compilation).

18. There is no evidence on record to show that that the impugned goods are suitable for use or it quality is near 145/ 205 therefore the challenge of the department of classification fails. The appellant relies upon the judgement in the case of Jagdamba Petroleum Pvt. Ltd. -Vs- Commissioner of Central of Excise, Noida reported in 163 ELT Page 88, (Pages 99-102 of Compilation) Kunchal Chemicals Ltd. -Vs- Commissioner of Central Excise, Lucknow reported in 288 ELT page 585 (Pages 103 106 of Compilation), Anmol Solvent Pvt. Ltd. -Vs- Commissioner of Central Excise, Rahatak (Pages 107 110 of Compilation). The appellant relies upon the recent judgement by this Tribunal in the case of Sikkim Organics -Vs- Commissioner of Central Excise, Siliguri (Pages 112 to 115, 116 to 119, 120 to 123, 124 to 146 of Compilation), Copies of which is annexed hereto and marked as Annexures "J", "K", "L" and "M" in which the final boiling point has been dealt with and the appellant relies upon paragraph 22, 24, 25 of the said judgement.

19. The Tribunal at Ahmedabad in the Swarna Oil Services -Vs- Commissioner of Customs, Mundra in Customs Appeal No.

12496 of 2019 (Pages 147 to 154 of Compilation) has held that if the IS standard is not met in that case the claim of the classification of the department will not be tenable. A copy of the judgement of Swarna Oil Services is annexed hereto and marked as Annexure "N". The judgement is delivered by Hon'ble Mr. Ramesh Nair as Member Judicial and Hon'ble Mr. Raju as Member Technical.

So, In own case for important at Kolkata Port, the Principal (Kolkata) held that all critical including one in wrote would be reported to be met for containing the goods and light oil and preparation.

20. Inasmuch as in the subject case the department has failed to bring any cogent material to challenge the classification claimed by the appellant and only those general characteristics of solvent are tested which do not determine the grade of a solvent."

4. They thus relied upon decision in their own matter delivered as Final order No. 75776 dated 22/06/2023, by the Calcutta Bench also on the decision on the matter of M/s. Krishna Technochem Pvt Ltd reported in 2022 (379) ELT 273 (S.C), which has even being confirmed by the Apex Court reiterated the findings of the Commissioner (Appeals).

5. Learned AR placed reliance on the findings of the authorities below and on the test reports to support departmental classification. We find that in the instant case, the subject matter are goods i.e. White Spirit, which are claimed for classification under Tariff Heading 27101990, by the party. The department on examination through CRCL found the goods to be mixture of light mineral hydrocarbon oil having oil content more than 70%. On the basis of the another test report found the same to be mixture of light minerals hydrocarbon oil having oil content of more than 70% by weight, and therefore confirming to petroleum oil/hydrocarbon solvent as per IS 1745-2018. The

report did not indicate the usage of the product. Appellant sought retest through CRCL report, which indicated the sample to be petroleum hydrocarbon solvents (145/205 as per IS 1745. We find that while department has sought to classify the item under Chapter Heading 27101239, which is a restricted item and is allowed to be imported through State Trading Enterprises only, as per policy condition 5 of Chapter 27 of ITC HS, the appellants are allowed the same if product is classifiable under CTH 27101990, as per various values mentioned by both sides as per test reports.

5.1 Learned AR in response has also sought to rely upon the decision of the lower authorities and he has additionally brought on record the decision as reported in 2019 (366) ELT 176 (Tri.-Ahmd), in the matter of Venus Petrochemicals (Bombay) P Ltd, in which the issue was whether on change of classification and mis-declaration, when the classificaiton of freely importable goods change to restricted goods, *bonafide or malafide,* intention was of any consequence in confiscation/penalty/redemption fine. Incidentally, the matter involved what was declared was White Sprit in case of Venus Petro Chemicals too. He also seeks to place reliance on the matter of M/s. Sunil Taneja Associates- vide Final order Nos. 71929-71931/2019 dated 26.11.2019, of Allahabad Bench, which again allowed goods to be released on payment of RF and Customs Duty, consequent upon same becoming liable for confiscation on change of classification and other decision relied upon by the Learned AR was of M/s. Selvam Industries Ltd as reported in 2021 (377) ELT 458 (Tri.-Chennai).

6. Considered the rival submissions. We have gone through various case law produced by the Learned AR, in which there was no serious challenge to the classification made by the department. All the decisions indicated by the AR as above deal with other aspects and confirm confiscation consequent upon

such change as per ITC policy, which will be surely the outcome, but only if department succeeds on its classification.

6.1 As against this, we find that appellant has seriously challenged the report of CRCL, and not only has it backed up its proposition of goods being as per its classification with various technical literature, only which are a part of paper book, but has done so on the basis of various material mentioned in the findings of the CRCL to indicate that impugned products are devoid of getting fitted into the requirement of statutory notes, under Tariff Heading 271012. We find in particular, it has relied upon the decision of the coordinate Bench of Calcutta High Court in their own matter i.e M/s. Kunjal Synergies Pvt Ltd (Kolkata) decided vide Final Order No. 75776-75777/2023 and pronounced on 22 June, 2023. The coordinate Bench while dealing with similar imports of item which were claimed to be Low White Spirit has thoroughly analysed various parameters, the statutory notes as well as findings of the CRCL on various parameters, and more particularly Chapter Note 4 of Chapter 27, which indicates that to be included in Sub Heading 271012, as low white oil in the matter, atleast 90% or more by volume should distil at 210° according to ISO. This aspect during the course of its finding, the coordinate Bench has gone into at length, to indicate based on earlier decision of M/s. Krishna Technochem Pvt Ltd., delivered vide final order no. 77087-770892019 dated 25.09.2019, and which was confirmed by the Supreme Court as reported in 2002 (379) ELT 273 (S.C), in which Hon'ble Supreme Court upheld the decision of Bench of Tribunal at (Kol) with the finding that the expression "at" in chapter Note 4 of Chapter 27 cannot be construed as "upto" and therefore 90% or more by volume (including losses must get distil "at" 210 degree Celsius and not earlier or later to quality the product as such.

6.2 In the instant case also, we find that as per the reports available 95% of volume is recovered at approximately 184°, and final boiling point is maximum was 202.4 in one case and 196.2 in another case which was not as per the requirement approved of by the Apex Court of 90% distilled taking place at 210 degree Celsius as per statutory note and as per the decision of Krishna Technochem Pvt Ltd (supra). The relevant findings which we consider are with equal force applicable in the instant matter are reproduced below:

"11. Heard both sides and perused the appeal records.

12. The issue to be decided here is the classification of the goods „low aromatic white spirit" imported by the Appellant. The Appellant has classified the goods under CTH 27101990 and filed the Bills of Entry Nos 2202769 dated 01/01/2021 and 2203997 dated 02/01/2021. Revenue has reclassified the said goods under CTH 27101239 on the basis of Test Report of CRCL, Kolkata, wherein it is stated that the product under reference meets the requirements of „light oils and preparations" and hence the impugned goods are rightly classifiable as „ Solvent 145/205" as per IS 1745:2018.

13. In order to decide whether the goods can be classified as „solvent 145/205 as per IS standard 1745/2018, it is required to compare the results of the Test Report for the impugned goods with that of the standard requirements for the solvent 145/205 as per IS 1745/2018. A Comparative Chart of the Test Report dated 13.01.2021 alongwith requirements for Petroleum Hydrocarbon Solvent 145/205 as per IS 1745/2018 is furnished below:

	Lab No./Markg	*Density 15 C gm/cc*	Flash Point (COC)	*Acidy*	*Ash Content*	*Water Content*	*Aniline point*	*IBP*	*FBP*	*Aromatic content by vol.*
As per the test repo issued by CRCl Kolkata	*3829/A*	*0.7838*	48	*Nil*	*Nil*	*Nil*	*58C*	*162C*	*194C*	*21*
	3830/B	*0.7838*	48	*Nil*	*Nil*	*Nil*	*58C*	*162C*	*194C*	*21*
Requirements f solvent 145/205 per the IS 1745/20			35					*145C*	*205C*	*45*

14. From the above comparative chart, it is to be examined whether the impugned goods can be classified as „Solvent 145/205" under CTH 27101239. As per the Test Report details furnished above, the IBP of the impugned goods is 162 degree Celsius and FBP is 194 degree Celsius, whereas as per the IS standard 1745 the minimum IFB should be 145 degree Celsius (IBP) and maximum FBP should be 205 degree Celsius respectively. The Appellant stated that the IFB 162 of the *impugned goods is much higher than the minimum IFB requirement of 145 as per the IS 1745 standard. Also the FBP 194 of the impugned goods as per the Test Report is much lower than than the maximum FBP requirement of 205, as per IS 1735 standards. The Appellant also stated that the flash point 48 for the impugned goods as per the Test Report is much higher than the requirement of 35 flash point as per IS 1745 standards. The Aromatic content % by volume as per the Test Report found for the impugned goods was 21 whereas the requirement as per IS standard 1745 is 45. Thus, they argued that none of the above parameters in the Test Report are matching with the requirements as per IS 1745 standards for classifying the goods as „Light Oils and preparations" under CTH 2712.*

15. The Appellant cited the decision of the Tribunal Kolkata in the case of Krishna Technochem Pvt Ltd Vs CCE, Haldia, vide Final Order No 77087-77089, dt. 25.09.2019 wherein the applicability of Note 4 to Chapter 27 has been examined. The relevant portion of the order is reproduced below:

> *"8. Further, in the instant case, sole reliance has been placed by the Ld. Commissioner on the Chemical Examiner's report. As rightly pointed out by the Ld. Advocate that, in the testing report it has been stated that the sample drawn from the appellant's premises is liquid containing mixture of hydrocarbons having distillation range from 35 degree to 58 degree Celsius and flash point below 25 degree Celsius. The classification adopted by the Ld. Commissioner is not in consonance with the Note no. 4 to Chapter 27 of the Tariff which states that "Light Oil and Preparations" are those of which 90% or more by volume (incl. losses) distilled at 210 degree Celsius, whereas the Chemical Examiner has stated that the range of distillation of product is 35 degree to 58 degree Celsius which is much below 210 degree Celsius. Hence the classification under Chapter 271011 cannot be adopted. Similar observations have been made by the Tribunal in the aforesaid decision.*
>
> *9. In view of the aforesaid, the classification adopted by the Ld. Commissioner cannot be approved and hence, the entire duty demand, interest and penalty are set aside and the appeals are allowed with consequential relief. The personal penalty imposed on Shri Bindhyachal Singh, Accountant, is also set aside."*

The above said decision of the Tribunal Kolkata was upheld by the Hon"ble Supreme Court 2022(379) ELT 273 (S.C.) with the following observations:

(emphasis supplied)

> *"2. We have heard Mr. Balbir Singh, Learned ASG appearing on behalf of the appellant. We have gone through the impugned judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, (for short "the Tribunal") more particularly, the reasoning given in para 8. We have also considered the sub-heading notes and as per the said sub-heading notes, for the purposes of subheading 2710-12, "Light Oils and Preparations" are those of which 90% or more by valume (including losses) distilled at 210 degree Celsius. 3. In the present case, even as per the Chemical Examiner's Report, the range of distillation of the product in question was between 35 degree to 58 degree Celsius which is much below 210 degree Celsius and the word used in sub-heading notes referred to herein above is "at" and not "up to". Therefore, we see no reason to interfere with the impugned order(s) passed by the Tribunal. 4. The present appeals are, accordingly, dismissed."*

16. In view of the above decision, the Appellant stated that when the Test Reports differs from the standards prescribed, the goods cannot be held to satisfy the requirements under IS 1745 standards meant for CTH 2710. Hence the impugned goods cannot be categorized as „Light Oils and Preparations" as per the CRCL Test report. We find merit in the argument of the Appellant. None of the above said parameters are matching with the minimum or maximum standards fixed as per IS 1745 standards. There is a vast difference between the minimum IFB and maximum FBP fixed as per IS standard 1745 and the result received for the impugned goods. Hence, we hold that the impugned goods cannot be classified under CTH 27101239 as per the comparison between the Test reports received from CRCL and its comparison with the IS Standard 1745 parameters required.

17. We find that Revenue has relied upon Note 4 to Chapter 27 for classifying the impugned goods under the CTH 27101239. For the sake of ready reference the said Note 4 is reproduced below:

> *"Note 4. For the purposes of sub-heading 2710 12, "light oils and preparations" are those of which 90% or more by volume (including losses) distil at 210 C according to the ISO 3405 method (equivalent to the ASTM D 86 method)"*

18. We find that the above condition as prescribed in the Note 4 has not been verified in the CRCL report. It is the primary condition required to be tested for classifying any goods under CTH 2712. From the said Note, it is evident that for purpose of sub heading 2710.12, the "light oils and preparations" are those *of which 90% or more by volume (including losses) distil at 210 degree Celsius, but the test report is silent about it. AS per the Test Report, the FBP is 194, which means 100% of the goods evaporate at 194 degree Celsius itself whereas for classification of the goods as „solvent 145/205" under CTH 27101239, the requirement as per Note 4 is that only a maximum of 90% should evaporate at 205 degree celsius. Since the entire 100% of the goods evaporate at 194 degree celsius itself, the goods are not meeting the requirements as specified under Chapter Note 4 of Chapter 27, accordingly we hold that the impugned goods cannot be classified under CTH 27101239 as claimed by the Revenue.*

19. The Appellant stated that they have imported ten consignments of white spirit in the past which were assessed and cleared under CTH 27101990. No dispute was raised on compliance of Petroleum Act 1934, in respect of those ten consignments. In respect of six Bills of Entry where the goods were detained, the Appellate Authority remanded the matter after holding that the goods were not classifiable under CTH 27101239. The Appellant stated that after rejecting the classification under CTH 27101239, the Commissioner (Appeals) should have classified the said goods under CTH 27101990, which is the only residuary entry available for classification of the said goods. Further they contended that remanding the matter for assessment in respect of the said six Bills of Entry by the Commissioner (Appeals) is bad in law. Regarding the remaining four Bills of Entry where goods were assessed and Ex-Bond Bills of Entry were filed, the Appellant contended that the goods should not have been seized/ confiscated since out of charge orders have been issued in respect of these goods.

20. We find merit in the arguments of the Appellant. In the impugned order, the Commissioner (Appeals) has rejected the Classification of the goods under CTH 27101239. When the goods do not satisfy the criteria fixed under Note 4 of Chapter 27, the goods cannot be classified under CTH 27101239. The remaining option available in the Tariff is to classify the same under CTH 27101990 which is the only residuary entry available for classification. Regarding the remaining 4 Bills of Entry, as discussed above the Test Reports of CRCL Kolkata does not provide any material evidence for classification of the said goods under CTH 27101239. Since the said goods are rightly classifiable under the CTH 27101990, the classification adopted by the Appellant is in order and hence the goods are not liable for confiscation."

7. In view of the foregoing discussion, we find no merits in the impugned order. In the light of interpretation having been done by the Apex Court as well as coordinate Bench of the relevant chapter note, as above. We therefore uphold the classification of the party.

8. Accordingly, we allow the present appeals with consequential relief.

(Pronounced in the open Court on 13.09.2023)

(RAJU)
MEMBER (TECHNICAL)

SOMESH ARORA
MEMBER (JUDICIAL)

PALAK