Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 12014 of 2015- DB

(Arising out of OIA-JMN-CUSTM-000-APP-074-075-15-16 dated 08/09/2015 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

NAYARA ENERGY LTD ....**Appellant**
Po-Khambhalia,
Jamnagar, Jamnagar, Gujarat

VERSUS

C.C.-JAMNAGAR(PREV) ......**Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar
Gujarat

WITH

(i) Customs Appeal No. 12026 of 2015 - DB (C.C.-JAMNAGAR(PREV))
(ii) Customs Appeal No. 12027 of 2015 - DB (C.C.-Jamnagar(prev))
(iii) Customs Appeal No. 10358 of 2016 – DB (C.C.-Jamnagar(prev))

APPEARANCE:
Shri Vishal Agarwal & Ms. Dimple Gohil, Advocate for the Appellant-Assessee
Shri P K Rameshwaram, Additional Commission(AR) for the Respondent- Revenue

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 12709-12712/2023

DATE OF HEARING: 23.06.2023
DATE OF DECISION: 04.12.2023

RAMESH NAIR

The assessee as well as the Revenue are in appeal against the impugned order-in-appeal No. JMN-CUSTM-000-APP-074 to 075-15-16 dated 08.09.2015 passed by the Commissioner (Appeals), Ahmedabad.

1.1 The facts of the case are that the assessee are having a Petroleum Oil Refinery at Vadinar, Jamnagar. Assessee had filed Bill of Entry No. F-42/2009-10 dtd. 19.08.2009 for import of two grades of Crude Petroleum Oil viz. (1) Deodorized Field Condensate Crude Oil and (2) Murban Crude Oil by classifying the same under Custom Tariff heading No. 27090000 and availing the benefit under Notification No. 21/2002-Cus dated 01.03.2002 (Sr. No. 487) as amended. The said Bill of Entry was assessed provisionally on

20.08.2009 for want of test result by granting exemption under Notification No. 21/2002-Cus. dated 01.03.2002, as amended. The test report of the Chemical Examiner, Customs Revenue Chemical Laboratory, Kandla revealed the product to be "Other than Petroleum Crude Oil". Thus it appeared that assessee had mis-declared the imported goods with an intention to evade Customs duty. Therefore, a show cause notice dated 18.08.2010 was issued to the assessee. In adjudication, the lower adjudicating authority decided the matter vide Order-In-Original dated 31.12.2014 wherein the classification made by the assessee under Bill of entry No. F-42 dated 19.08.2009 under CTH 2709000 for the product declared as "Deodorized Field Condensate Crude Oil" and "Murban Crude Oil" was rejected and the Lower adjudicating authority classified the same under CTH 27101990 rejecting the benefit of Notification No. 21/2002 –Cus dated 01.03.2002; confiscated 128280.721 Mts. Of "Processed Petroleum Product" (declared as "Deodorized Field Condensate Crude Oil and Murban Crude Oil") under Section 111(d) and (m) of Customs Act, 1962 imposing redemption fine under Section 125 of the Customs Act 1962; confirmed the demand of differential customs duty of Rs. 88,07,06,342/- under proviso to Section 28(1) of Customs Act, 1962 alongwith interest under Section 28AB of the Customs Act 1962; imposing penalty of Rs. 88,07,06,342/- under Section 114A of the Customs Act, 1962 ; and imposing penalty of Rs. 8 Lakh on Shri Nishant Chauhan under Section 112(a) of the Customs Act, 1962. The said order was challenged by the assessee and revenue before the lower appellate authority. The department filed the appeal before Commissioner (Appeals) on the ground that the adjudicating authority ought to have imposed penalty under Section 114A "equal to duty and interest". The Ld. Commissioner (Appeals) vide impugned order–in-appeal dated 08.09.2015 upheld the classification of products "Deodorized Field Condensate Crude Oil" under CTH 27101990 and denied benefit under Notification No. 21/2002-Cus read with Notification No. 74/2008-Cus.; confirmed the demand of differential customs duty of Rs. 46,05,54,755/- alongwith interest; set aside the order of lower authority regarding classification of products "Murban Crude Oil" under CTH 27101990 and reclassified the same under CTH 27090000 with benefit of Notification No. 21/2002-Cus read with Notification No. 74/2008-Cus.; dropped the proceedings of confiscation of entire goods under Section 111(d) and (m) of the Customs Act, 1962; dropped the redemption fine imposed under Section 125 of the Customs Act, 1962; dropped the penalty imposed on Shri Nishant Chauhan under Section 112(a) of the Customs Act, 1962. Aggrieved from the impugned order-in-appeal both are in appeal before us.

2. Shri Vishal Agrawal learned counsel with Ms. Dimple Gohil, Learned Advocate appearing on behalf of the appellant-assessee submits that it is not disputing the order of the Commissioner (Appeals) is so far as it relates to setting aside the order of the lower authority regarding classification of its second products 'Murban Crude Oil' under CTH 27101990 and reclassifying the same under CTH 27090000 with benefit of Notification No. 21/2002-Cus. dated 01.03.2022 read with Notification No. 74/2002-Cus. dated 04.06.2008 and dropping the proceedings of confiscation of entire goods under Section 111(d) and (m) of the Customs Act ,1962 and consequently dropping the redemption fine as well as dropping penalty. The Appeal No. C/12014/2015 of appellant-assessee only to that part of the order which upholds the order of the lower authority regarding classification of its other products 'Deodorized Field Condensate Petroleum Crude Oil' under chapter heading 27101990 and denying the benefit of Notification No. 21/2002-Cus dated 01.03.2002 read with Notification No. 74/2008 –Cus. dated 04.06.2008.

2.1 He submits that the burden of classification is on the revenue. It was for the revenue to have established that the classification claimed by the appellant was incorrect. In the instant case the classification claimed by the appellant was based on the 3rd party evidences such as certificate of Origin, Load Port documents, Supplier's Certificate etc. The Lower authorities overlooked the facts that the 3rd party documents relied upon by the appellant were from organizations of International repute such as those issued by the organization owned by the government of Qatar, Certificates issued by the reputed organization such as SGS. Further, the deodorized field condensate is a recognized condensate and finds mention in the International Publication such as RIM, PLAT etc. The Lower Authorities have not disputed the correctness of these evidence and despite this have drawn adverse inference without producing contrary evidence.

2.2 He further submits that Ld. Commissioner (Appeals) has committed a grave error in upholding the order of the adjudicating authority regarding classification of product 'Deodorized Field Condensate Petroleum Crude Oil' under CTH 27101990 and consequently denying the benefit of Notification No. 21/2002-Cus dated 01.03.2002 by completely ignoring appellant's plea that the issue was no logner res integra as classification of Deodorized Field

Condensate Petroleum Crude Oil has already been decided by the Tribunal vide its Order No. A/123/12312/2014 dated 18.12.2014 in assessee’s favour in respect of import under another B/E arising out of common investigations under taken by the DRI both in respect of the present B/E under dispute and the B/Es involved in the case before the Hon’ble Tribunal. The said decision was binding on Commissioner (Appeals) and ought to have followed the same. The impugned order is , therefore, liable to be set aside on this ground alone.

2.3 Without prejudice, he further submits that the Lower authorities have failed to appreciate that the Chemical Examiner had, in the course of the proceedings undertaken by the DRI submitted his opinion under cover of letter dated 05.08.2010 wherein he had categorically stated that no amount of testing could determine conclusively whether the product was petroleum condensate as claimed by the appellant or was a refined petroleum condensate as claimed by the revenue. The physio-chemical property was overlapping with the physio-chemical characteristic of the refined petroleum properties and therefore, it could not be conclusively affirmed whether the imported product was petroleum condensate or refined petroleum condensate. The Chemical Examiner has, in his opinion relied upon the Minutes of the Meeting of the World Customs Organization Harmonised System Committee wherein the sub-committee, after due deliberation by experts from different countries came to a conclusion that the Chemical composition and physical properties were similar and overlapping and that there was no practical way of differentiating between the two groups of products. This opinion of the Chemical Examiner clearly shows that merely based on testing the product, it could not be said whether same was petroleum condensate or refined petroleum condensate and the other documents such as supplier’s certificate, etc. were to be relied upon for deciding the true characteristics of the products. The impugned order passed by the Lower authorities has overlooked this aspect of the matter and thus deserves to be set aside on this ground alone.

2.4 He also argued that learned Commissioner (Appeals) has committed a grave error by placing its reliance on the chemical examiner’s report is respect of the products Deodorized Field Condensate Petroleum Crude Oil for classifying the same under the chapter heading 27101990 and consequently denying the benefit of Notification 21/2002-Cus dated 01.03.2002 especially when the chemical examiner has in his own admission admitted that he has given the report on the basis of only 3 parameters i.e density of 15 0C, distillation range and flash point which were not sufficient parameters for determining whether the product in question is condensate or other petroleum product as has been stated by him in reply to question No.2 of his statement recorded on 29.06.2010. Further in the test memo relating to this report, the full description of appellant's products was not given and the product was described as only Crude Petroleum Oil and not as 'Deodorized Field Condensate Petroleum Crude' and therefore, there was no occasion for the Chemical Examiner to opine as to whether appellant's product was condensate or not.

2.5 He also submits that classification of Deodarized Field Condensate Petroleum Crude Oil has been the subject matter of deliberation by the World Customs Organization and in fact the matter was examined by its Review Sub-Committee at its 18th session which thereafter referred the matter to the Scientific Sub-Committee for advice inter alia on the following points: -

(a) Appropriate definition or description of "Natural Gas Condensate" and
(b) How the product could be distinguished from similar synthetic product of heading 2710.

The matter was thereafter examined by the said sub-committee but it also could not reach to any definite conclusion looking into the complexities of the issue involved and the overlapping nature of its various characteristics and ultimately concluded that there was almost no practical way of distinguishing between the two groups of products. The matter was ultimately submitted to Harmonized Systems Committee which was entrusted with the Job of providing as suitable definition of gas condensate as is evident from the Harmonised System Committee, Brussels 24th Session report dated 08.10.1999 also referred to with approval, extracted and relied upon by the Tribunal in its order dated 18.12.2014. After due deliberations and recommendations, the Explanatory Notes of HSN were amended in the year 2002 wherein in chapter hearing 27.09 following addition was made:

> *" The heading also covers gas condensate i.e crude oil obtained during the stabilization of natural gas immediately upon its extraction -----"*

Once it has been held by an International Organization like World Customs Organization that physio-Chemical parameters of Crude Petroleum Oil, Petroleum Condensate and Petroleum Product of Chapter 27.10. are difficult to differentiate due to overlapping nature and that there is almost no practical way of distinguishing between the two groups of products and once Deputy Chief Chemist in its correspondence with DRI has also opined that supplier certificate is an important documents in such cases, the parameters of which are to be matched with that of the Lab result in order to confirm the goods, no credence can be placed on the Chemical Examiner's Report given without calling for any literature or quality report or inspection agency report and such a report is to be straightway eschewed and impugned order which has upheld classification of condensate under CTH 27101990 solely on the basis of the Chemical Examiner's report is liable to be set aside.

2.6 Without prejudice, he further submits that the Lower authorities have erred in relying upon the report of the Deputy Chief Chemist to classify the product as a refined petroleum product. The said report does not state that the goods tested were refined petroleum product. The impugned order misinterpreted the report of the CRCL and thus liable to be quashed. The Report of the Chemical Examiner only concluded that what has been imported is other than petroleum crude oil without appreciating that the contention of the appellant was that what has been imported was petroleum condensate and not crude petroleum oil.

2.7. He also submits that the lower authorities were clearly not justified in rejecting the request for cross-examination of the Chemical Examiner as also the Deputy Chief Chemist, without appreciating the fact that the entire case made out by the revenue was based only on the test results, which did not specify any reason or basis for arriving at the conclusion that the goods imported by the appellant were other than crude petroleum oil.

2.8 He also argued that entire demand was time barred. The assessments in the present case were finalized on 04.02.2010 and SCN was issued on 19.08.2010. In such a case, extended period could not have been invoked specially when the Commissioner(Appeals) himself has absolved the appellant from the charges of any mis-declaration on its part and has in his findings set aside the penalty. Extended period can be invoked only in a case where there in any mis-representation, mis-declaration or suppression of any fact with intent to evade duty.

3. As regards the revenue's appeal, he reiterates the findings of the impugned order.

3.1 Shri P.K. Rameshwaram , ld. Additional Commissioner (AR) appearing on behalf of the Revenue, as regard the assesee's appeal are concerned he reiterates the findings of the impugned order. He further submits that ld. Commissioner (Appeals) has rightly upheld the classification of product "Deodorized Field Condensate Crude Oil" under CTH 27101990 and denied benefit under Notification No. 21/2002-Cus read with Notification No. 74/2008 –Cus. He placed reliance on the following judgments:

- Visal Lubetech Corpn Vs. CC., Coimbatore -2016(342)ELT 201 (Mad,)
- Kalpana Chemicals Pvt. Ltd. Vs. CCE- 2001(127) ELT A165(SC)
- Steer Overseas P. Ltd. Vs. CCE, Vijayawada -2022 (380)ELT 340 (Tri. Hyd.)
- Polyglass Acrylic MFG. Co. Ltd. Vs. Commr of Custom Vishakhaprnam - 2003(153)ELT 276 (SC)
- CCE, Ahmedabad Vs. Cellulose Products of India -2000(124)ELT 1133 (Tri.)
- Kalpana Chemicals Pvt. Ltd. Vs. Collector -2001(127)ELT A165 (SC)
- Reliance Cellulose Products Ltd. Vs. CCE, Hyderabad -1997(93)ELT 646(SC)
- Shree Tirumala Udyog Vs. CC, Bangalore -2003(162)ELT 908 (Tri. Chennai)
- Quinn India Ltd. Vs. CCE, Hyderabad -2006(198)ELT 326 (SC)

3.2 As regard the Revenue's appeal he submits that ld. Commissioner (Appeals) has erred in passing the impugned order to the extent of setting aside (i) confiscation of 62,657.721MT of Deodorized Field Condensate Crude Oil under Section 111(d) and (m) of the Customs Act, 1962; (ii) imposition of redemption fine; (iii) imposition of penalty.

3.3 He submits that despite a specific findings of the appellate authority that the goods "Deodorized Field Condensate Crude Oil" imported by the importer under CTH 27090000 merit classification under CTH 27101990 as "Other" and as such the benefit of Notification No. 21/2002-Cus dtd.

01.03.2002 read with Notification No. 74/2008-Cus dtd. 04.06.2008 cannot be extended to them and custom duty is required to be recovered/ paid on the said products, the appellate authority went on to hold that there was no mis-declaration. The respondent had declared the imported product as Petroleum Crude Oil and availed the benefit of Notification No. 21/2002-Cus. dated 01.03.2002 as amended. The product was found to be processed product of petroleum crude only after testing to the sample from the laboratories of Customs House, Kandla and CRCL, New Delhi. Thus the respondent had mis-declared the description of the goods with an intention to avail wrong benefit of Notifications. There appears to be no doubt that the product "Deodorized filed Condensate Crude Oil" was mis-classified which ipso facto means it was rendered liable for confiscation under Section 111(d) and (m) of the Customs Act, 1962. Section 111 of the Customs Act ,1962 does not grant immunity in case of mis-declaration/mis- classification. Even otherwise, since the importer was operating under self assessment procedure he was under the obligation to correctly declare the classification & having failed to do so, the act of omission on the part of the importer has rendered the impugned goods liable for confiscation under Section 111(d) and (m) ibid. He placed reliance on the decision CCE Mumbai Vs. Multimetal Ltd. – 2002(144)ELT 574 (Tri. Mumbai).

3.4 He also submits that since the product "Deodorized Field Condensate Crude Oil" was assessed provisionally and cleared, and later on found the same to be liable for confiscation under Section 111(d) and (m) of the Customs Act, 1962, the appellate authority should have imposed redemption fine in lieu of confiscation under Section 125 ibid. He placed reliance on the following judgments:

- Weston Components Ltd. -2000(115)ELT 278 (SC)
- M/s Shiv Kripa Ispat Ltd. – 2009(235) ELT 623 (Tri.)
- Raja Impex -2008(229)ELT 185 (P&H)
- Pregna International Ltd. -2010(262)ELT 391
- R.D. Metal and Co. – 2008(232)ELT 464(Tri.)
- Amartexinds Ltd. -2009(240)ELT 152
- Pushpal Exports Pvt. Ltd. – 2013(295)ELT 424

3.5. He also argued that since the goods were rendered liable for confiscation under Section 111 of the Customs Act, 1962, penalty was imposed on the respondent under Section 114A of the Customs Act, 1962 by the adjudicating authority. However, the appellate authority disagreed with the decision of lower authority with regard to imposing of penalty on the ground that there was no mis-declaration by the appellant. In the present matter it is on record that respondent had mis-declared the description of the goods with an intention to avail wrong benefit of Notification No. 21/2002-Cus dtd. 01.03.2002. There are umpteen numbers of case laws which lay down the principle that in order to impose the penalty under Section 112(a) there is no need of mens-rea on the part of the importer and the only ingredient required is an act or omission on their part which rendered the goods liable to confiscation. He placed reliance on the following decisions:

- Comex Co. Vs. Collect of Customs, Madras-I – 1997(96)ELT 526 (Mad.)
- (ii)Bansal Industries -2007(207)ELT 346 (Mad)
- Vardhman Exports -2013(290)ELT 305 (Tri. –Mum)
- Indo Daein Leather – 2011(274)ELT 552 (Tri. Mum)

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the limited issue to be decided in the present matter is whether the goods imported by the appellant-assessee classifiable under CTH 27101990 or under CTH 27090000 and consequently, whether the goods imported are eligible for exemption under Notification No. 21/2002-Cus. dated 01.03.2002 read with Notification No. 74/2008-Cus. dated 04.06.2008

4.1. We find that in the present matter revenue claimed the classification of declared goods as 'Deodorized field Condensate Crude Oil' and 'Murban Crude Oil' under CTH 27101990, whereas the appellant-assessee contends that it is properly classified under CTH 2709 and therefore they have rightly claimed the exemption notification. To decide the dispute, it would be appropriate to refer to the relevant Chapter headings as per the Custom Tariff Act are as follows: -

Tariff Items	***Description of goods***
27090000	*Petroleum oils and oils obtained from bituminous minerals, Crude.*

2710	*Petroleum oils and oils obtained from bituminous minerals, other than crude; ---------------*
27101990	*Other*

Corresponding HSN explanatory notes for CTH 27.09 and 27.10 are as follows : -

27.09	*PETROLEUM AND OILS OBTAINED FROM BITUMINOUS MINERALS CRUDE.*

This heading covers crude petroleum oils and crude oils obtained from bituminous minerals (e.g. from shale, calcareous rock, sand), i.e., natural products, whatever their composition, whether obtained from normal or condensation oil-deposits or by the destructive distillation of bituminous minerals. The crude oils thus obtained remain classified in this heading even when they have been subjected to the following process :

(1) Decantation.

(2) De-salting

(3) Dehydration

(4) Stabilisation in order to normalize the vapour pressure

(5) Elimination of very light fractions with a view to returning them to the oil-deposits in order to improve the drainage and maintain the pressure.

(6) The addition of only those hydrocarbons previously recovered by physical methods during the course of the above-mentioned processes.

(7) Any other minor process, provided it does not change the essential character of the product.

The heading also covers gas condensates, i.e., crude oils obtained during the stabilization of natural gas immediately upon its extraction. This operation consists of obtaining, mainly by cooling and depressurization, the condensable hydrocarbons (C4 to approximately C20) from the wet natural gas.

27.10	*PETROLEUM OILS AND OILS OBTAIFND FROM BITUMINOUS MINERALS, OTHER THAN CRUDE; PREPARATIONS; NOT ELSEWHERE SPECIFIED OR INCLUDED, CONTAINING BY WEIGHT 70% OR MORE OF PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS, THESE OILS BEING THE BASIC CONSTITUENTS OF THE PREPARATIONS; WASTE OILS.*

Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than waste oils;"

4.2 In view of above it is clear that all petroleum Oils and Oils of CTH 27.09 are obtained from Bituminous minerals. On the other hand CTH 27.10 contained petroleum oils and oils obtained from bituminous minerals which are other than crude. In the present matter it is on records that as regard the Product "Murban Crude Oil CTH 2709000" Customs House, Vadinar vide letter No. VIII/48-15/VDR/Sample/2009-10 dtd. 13.05.2010 had sent sample for ascertaining whether the sample is 'Murban Crude Oil' or otherwise. The Chemical Examiner, Kandla vide his report dated 24.05.2010 specified the sample as " It has the characteristics of Petroleum Crude'' and on that basis Ld. Commissioner (Appeals) allowed the classification of import of Murban Crude Oil under CTH 27090000. We find that department not disputed the classification of said goods and accepted the same. However as regard the goods " Deodorized Field Condensate Crude Oil" Ld. Commissioner (Appeals) by relying the Chemical Examiner Report held that product " Deodorized Field Condensate Crude Oil" imported by the appellant –assessee under CTH 27090000 merit classification under CTH 27101990 and as such the benefit of exemption notification cannot be extended to appellant–assessee. Whereas appellant disputed the said Chemical examiner's report in respect of its products Deodorized Field Condensate Petroleum Crude Oil on the ground that the Chemical examiner has given the report on the basis of only 3 parameters and which are not sufficient parameters for determining whether the product in question is condensate or other petroleum products.

4.3. We find that appellant has produced Technical Literature before the Adjudicating Authority which indicates that the physio-chemical parameters of Crude Petroleum Oil, Petroleum Condensate and Petroleum Products of Chapter 27.10 are difficult to differentiate due to overlapping nature and that there is almost no practical way of distinguishing between the two groups of products. In the said event appellant was clearly justified is asking for the cross-examination of the Chemical Examiner which was rejected by the adjudicating authority. In the present proceedings, the report, opinion and statements of the Chemical examiner are the only evidence with the revenue to say that imported goods are required to be classified under CTH 2710. Therefore the adjudicating authority was not right in rejecting the cross-examination of the chemical examiner. We find that when the show cause notice itself relies upon the Chemical Examiner's report, there is no reason for the adjudicating authority to deny the cross-examination of the Chemical Examiner, which would be necessary for ascertaining the method of testing. We are of the view that serious miscarriage of the principles of natural justice has happened.

4.4 We also find that Appellant in support of their classification of goods produced the sale contract dated 15.07.2009 issued by TASWEEQ describing the goods as Deodorized Field Condensate, Bill of Lading, Certificate of quality report issued by the producer i.e RAS GAS Ltd., Certificate of Origin issued by TASWEEQ Oil Marketing Co. wholly owned by the Government of Qatar, Certificate of Quality issued by TASWEEQ Oil Marketing CO., ASSAY report issued by SGS for Deodorized Field Condensate before the adjudicating authority. The above documents available on records prove beyond doubt that appellant–assessee had procured Petroleum Crude Oil classifiable under CTH 2709. There is no logical reason with the revenue not to accept the classification claimed by the appellant on the basis of the above documents.

4.5 We also find that on the identical issue in their own case of Appellant, Tribunal vide final order dated 18.12.2014 decided the classification of imported goods. The Test report of the products involved in the Bill of Entry F-91 dated 28.12.2009 which was the subject matter of dispute before the Tribunal and Bill of Entry F-42 dated 19.08.2010 being the subject matter of the present appeal are also similar. Hence, the findings arrived by the Tribunal in its order dated 18.12.2014 equally applies to the present case also. We reproduce the same as under:-

> *"**6.** Heard both sides and perused the case records. The issue involved is as to what should be the correct classification of the imported goods described as 'Qatar Low Sulphur Condensate' (Qatar LSC) in the Bill of Entry No. F-91, dated 28-12-2009. Main appellant is claiming the classification under CTH 27090000 as a natural gas condensate whereas the Adjudicating authority has held the classification of the goods under CTH 27101990 based on the test reports and written opinions given by the Chemical Examiner, Kandla. If the goods are classifiable under CTH 27090000 then all the goods*

get exempted under Notification No. 21/2002-Cus., dated 1-3-2002 read with Notification No. 74/2008-Cus., dated 4-6-2008.

6.1 *Both the above competing entries as per Custom Tariff Act are as follows : -*

Tariff Items	***Description of goods***
27090000	*Petroleum oils and oils obtained from bituminous minerals, Crude.*
2710	*Petroleum oils and oils obtained from bituminous minerals, other than crude; ------*
27101990	

6.2 *Corresponding HSN explanatory notes for CTH 27.09 and 2710 are as follows : -*

27.09	*PETROLEUM AND OILS OBTAINED FROM BITUMINOUS MINERALS CRUDE.*

This heading covers crude petroleum oils and crude oils obtained from bituminous minerals (e.g. from shale, calcareous rock, sand), i.e., natural products, whatever their composition, whether obtained from normal or condensation oil-deposits or by the destructive distillation of bituminous minerals. The crude oils thus obtained remain classified in this heading even when they have been subjected to the following process :

(1) Decantation.

(2) De-salting

(3) Dehydration

(4) Stabilisation in order to normalize the vapour pressure

(5) Elimination of very light fractions with a view to returning them to the oil-deposits in order to improve the drainage and maintain the pressure.

(6) The addition of only those hydrocarbons previously recovered by physical methods during the course of the above-mentioned processes.

(7) Any other minor process, provided it does not change the essential character of the product.

The heading also covers gas condensates, i.e., crude oils obtained during the stabilization of natural gas immediately upon its extraction. This operation consists of obtaining, mainly by cooling and depressurization, the condensable hydrocarbons (C4 to approximately C20) from the wet natural gas.

27.10	*PETROLEUM OILS AND OILS OBTAIFND FROM BITUMINOUS MINERALS, OTHER THAN CRUDE; PREPARATIONS; NOT ELSEWHERE SPECIFIED OR INCLUDED, CONTAINING BY WEIGHT 70% OR MORE OF*

	PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS, THESE OILS BEING THE BASIC CONSTITUENTS OF THE PREPARATIONS; WASTE OILS.

Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than waste oils;"

6.3 *As per the above HSN explanatory notes., which are followed for interpreting the Customs Tariff also, all petroleum oils and oils of CTH 27.09 are obtained from Bituminous minerals (e.g. Shale, Calcorous rock and sand) and are natural products but also include gas condensates obtained during stabilization of natural gas immediately upon its extraction. However, the processes like De-calcination, De-salting, Dehydration, Stabilisation, Elimination of very light fractions, cooling and de-pressurization etc. for obtaining condensable hydrocarbons (C4 to C20) from the wet natural gas does not take the end gas condensates out of CTH 2709. On the other hand CTH 27.10 contained petroleum oils and oils obtained from bituminous minerals which are other than crude. The logical interpretation of the above HSN explanatory will be whether the goods imported by the main appellant have only undergone the processes specified in HSN explanatory notes under CTH 27.09 or have undergone any other process which is so major that it change the essential charter of the natural product. Learned advocate appearing on behalf of the appellant argued that Qatar LSC is a mixture of natural Hydrocarbons on which no process other than those specified in HSN explanatory notes under CTH 27.09 has been undertaken. That similar composition of products of CTH 2910 could overlap for some mixtures of CTH 2710. That internationally it is not possible to distinguish between the two categories of products of 27.09 and 27101990. It is observed from the report dated 8-10-1996 of Harmonized System Committee of World Customs Organization, Brussels on classification of 'Gas Condensates' that 'Gas Condensate' of CTH 2709 are similar in composition to some of the products of CTH 2710. Para 10 to 13 of their report is relevant and is reproduced below : -*

"How to distinguish "gas condensates" from similar synthetic products of heading 27.10

"10. In this regard there was almost consensus in the Sub-Committee that the chemical composition and physical characteristics of "gas condensates" and similar synthetic products of heading 27.10 were in fact very similar and overlapped in my cases. There was almost no practical way of distinguishing between the two groups of products.

11. After discussion, the Sub-Committee agreed that the information obtained so far was insufficient for reaching a satisfactory conclusion in respect of the definition of "gas Condensates" and distinguishing them from the similar products of heading 27.10.

Nevertheless, the Sub-Committee agreed to submit to the Review Sub-Committee the following text concerning the description of "gas condensates". For the first indent, on which opinions were divided, there are two options, (1) the text drafted by the Secretariat on the basis of information provided by China and the EC and (2) an alternative text drafted on the basis of information provided by the US. Both texts have been placed in square brackets.

"Natural gas condensates

- *(are crude oils obtained from the stabilization, immediately on extraction of natural gas. This operation consists of extracting the condensable hydrocarbons contained in the "wet" natural gas, mainly by cooling and depressurization (through throttling)] or*
- *(are obtained, at well-site gas processing plants, by condensing C4 to approximately C20 hydrocarbons contained in the "wet" natural gas)*
- *normally consist of (C4 to approximately C20) hydrocarbons with no unsaturated hydrocarbons or only trace amounts thereof; the main components are (C6 to C9) hydrocarbons.*
- *are normally clear or transparent liquids, but sometimes are yellowish or coloured.*
- *approximately (80)% by volume distil at about (200)ºC;*
- *(have an octane value not exceeding 30);*
- *(have an API gravity of 55 to 65)."*

12. In view of the Scientific Sub-Committee's indication that a definition of "gas condensates" and how to distinguish them from similar products of heading 27.10 could not be satisfactorily produced, the Review Sub-Committee at its 19th Session agreed that the proposal for a new subheading in heading 27.09 to cover "gas condensates" should not be further examined during the review cycle for the HAS 2002 version.

13. It is also felt that the classification of "gas condensates" should be submitted to the Harmonized System Committee together with the information obtained so far from Chinese EC, the United States and Canada; administrations were invited to provide further information regarding the chemical composition, physical characteristics and definition of the "gas condensates" under consideration."

7. *In the light of above factual matrix, it is apparent that there are overlapping in the nature and properties of Natural Gas Condensates of CTH 2709 and some the synthetic products of CTH 2710. This dispute/confusion has been internationally accepted by the World Customs Organization, Brussels as per report dated 8-10-1996 of Harmonised Systems Committee on classification of 'Gas Condensates'. Chemical Examiner, Kandla in its very first report dated 29-1-2010 certified that the sample tested is pale yellow oily liquid and is comprised of mixture of mineral hydrocarbons. In the same report, he is* *opining that the sample is of 'other than petroleum crude' and in the same breath he further asks for the literature on the claim of the appellant. When the literature is supplied by the Superintendent, Vadinar Chemical Examiner promptly confirm that samples are of crude Petroleum and are classifiable under SH 2709 of HSN. A chemical analyst dealing with physico chemical testing of petroleum products impulsively could not have said in report dated 29-1-2010. that the goods are 'other than Petroleum Oil' and simultaneously asking for the literature/related documents when internationally it is accepted that it is difficult to distinguish 'Gas Condensates' of CTH 27.09 and similar synthetic products of CTH 27.10. The same could be said of all the bills of entry of Crude Oil finalized by Superintendent, Vadinar under Order F. No. VIII/48-4/FIN/2003-Pt III, dated 25-2-2010. It is also observed that after a favourable report dated 15-6-2010 was given by the Chemical Examiner, saying that imported goods are Crude Petroleum Condensate, DRI obtained fresh opinion dated 5-8-2010 from the Chemical Examiner by writing a letter dated 22-7-2010. Para 5 & 6 of this letter read as follows :-*

"5. Your test report, above mentioned letters and statements do not give any conclusive opinion of the subject goods. It also appears that you have refrained yourself from giving specific details of the process which the said goods have undergone and other details which may help in deciding the correct classification. It appears that you have rather given conflicting reports and replies, which do not lead to conclusion of correct nature/nomenclature and classification of the goods. As you are aware, these particular imports have Revenue implication involving crores of rupees.

6. It is therefore advised that the matter may be taken seriously and specific and conclusive and reasoned reports showing nature/nomenclature and classification of the goods on the basis of the test conducted be submitted to this office URGENTLY."

***8.** Two statements dated 6-7-2010 and 29-6-2010 of Dr. Gyan Prakash Sharma, Chemical Examiner Grade-I, Kandla were also recorded by the investigation to clarify the conflicting opinions given by the Chemical Examiner. It is observed from answer to Q. No. 3 in the statement dated 6-7-2010 and answer to Q. No. 1 of statement dated 29-6-2010 that Chemical Examiner was aware of the overlapping and similar nature of Crude Gas Condensate of CTH 2709 and similar synthetic products of CTH 2710. In the event of conflicting opinions appellant was clearly justified in asking for the cross-examination of the Chemical Examiner which was rejected by the adjudicating authority. It is observed from the judgments relied upon by the adjudicating authority to reject the cross-examination, as discussed in Para 33.2 of the OIO, dated 28-2-2013, that none of them says that cross-examination in all cases should be denied. In the relied upon case law of Jagdish Shankar Trivedi v. CCE, Kanpur - 2006 (194) E.L.T. 290 (Tri.-Del.) the person mentioned in Supreme Court's extracted passage, whose cross-examination was asked for, was an informer. In case of anti-smuggling/anti-evasion cases name/identification of* *informer is always protected. In other relied upon case, it was never said by any court that cross-examination should be invariably rejected. Rather most of the judgments relied upon by the adjudicating authority say that request of cross-examination has to be seen with respect to facts of each case. In the present proceedings the report, opinion and statements of the chemical examiner are the only evidences with the Revenue to say that imported goods are required to be classified under CTH 2710. Therefore, adjudicating authority was not right in rejecting the cross-examination of the chemical examiner.*

8.1 *Learned AR relied upon the case law of Reliance Cellulose Products Limited v. CCE, Hyderabad (supra) and Hindalco Industries Limited v. CCE, Allahabad (supra) to argue that chemical report of the departmental chemical examiner cannot be brushed aside. Para 12 of the Apex Court judgment in the case of Reliance Cellulose Products Limited v. CCE, Hyderabad (supra) is reproduced below : -*

"12. These orders are now under challenge before this Court. We were referred to a number of test reports obtained by the appellant from various persons and on the basis of these opinion, the reports of the Departmental Chemical Examiner and also the Chief Chemist were assailed. We are of the view that the Assistant Collector cannot be said to have erred in relying upon the reports given by the Chemical Examiner and the Chief Chemist. It may be that in a given case, the report of the Chief Chemist may be demonstrated to be palpably wrong. In such a case, the Court may direct re-examination of the whole issue. But that is not the case here. It has not been shown that the Chemical Examiner or the Chief Chemist were in error in their analysis in any way. The views expressed by the Chief Examiner and Chief Chemist of the Government cannot be lightly brushed aside on the basis of opinion of some private persons obtained by the appellant."

It is seen from the above that Hon'ble Apex Court has also observed that there could be a situation where report of the Chemical Examiner is palpably wrong. In the present case we observe that chemical examiner has given conflicting opinions, therefore, the same can be questioned. The facts of the case before the Apex Court were thus different than the facts and circumstances of these proceedings. In the case of Hindalco Industries Limited v. CCE, Allahabad (supra), Hon'ble Allahabad High Court only observed that if assessee is not satisfied with the analysis report he can ask for retest. In the present case, appellant is not agitated with the physico. Chemical analysis made by the Chemical Examiner but is aggrieved with the opinions given by him in the classification of the imported goods. It is now a settled proposition of law that a chemical examiner can give opinion on the chemical nature of the goods tested but cannot suggest whether a 'Gas Condensate' imported by the appellant will be classifiable under 2709 or 2710. The international authorities on classification .of 'Crude Gas Condensate' has expressed *concern and confusion over the difficulty in distinguishing these products of CTH 2709 from similar synthetic products of CTH 2710. When products of CTH 2709 and 2710 have similar characteristics/compositions then the only way to entertain a contrary classification adopted by the appellant, was to extend the investigation to the place of origin of the goods. No such enquiry seems to have been made with the supplier which is owned by Govt. of Qatar. It is also not the case of the Revenue that Customs documents provided by the appellant at the time of clearance are fake or forged by deliberately given a wrong description. Appellant has argued that the price at which the 'Gas Condensate' is imported tallies with the crude rates as per the established journals of the imported products. There is no evidence on record to indicate that imported goods were of refined category falling under CTH 2910 which fetched higher value in international oil market. Rather there is no case that the imported goods are undervalued. It is also difficult to comprehend that the present importer will bring refined products for re-refining of the same again. It is not the case of the Revenue that appellant has sold the imported goods as such. Nothing was brought on record that non-aromatic constituent of the imported goods was more than aromatic constituents, by way of a chemical test report, as required under Chapter Note 2 of Chapter 27 of the Customs Tariff Act. There is also nothing on record that the supplier of imported goods has done any major processes on the natural product other than those specified in HSN explanatory notes under HSN Heading No. 27.09*

9. *In view of the above there is no logical reason with the Revenue not to accept the classification claimed by the appellant on the basis of the documents available on record as per their contract dated 11-12-2009 entered with Vitol Asia Pte. Limited, Singapore.*

10. *We are not going into time bar aspect of the demands as on merits we have decided the issue in favour of the appellant.*

11. *In view of the above observations appeals filed by the appellants are allowed. Miscellaneous applications are also disposed of accordingly."*

The above decision in the assessee's own case reinforce their claim in the present case that the imported goods in question is classifiable under CTH 2710.

4.6 As per our above discussion and finding, the impugned orders are not sustainable to the extent of confirming classification of product "Deodorized Field Condensate Crude Oil' under CTH 2710 and denying benefit under Notification No. 21/2002-Cus read with Notification No. 74/2008-Cus. Hence, the same are set aside.

5. When the impugned Order-in-appeals itself is liable to be set aside on merit, the appeal by the department for imposing redemption fine and penalty has no chance of survival. In the result the assessee's Appeals are allowed and the Revenue's Appeals are dismissed.

(Pronounced in the open court on 04.12.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L MAHAR)
MEMBER (TECHNICAL)

Raksha