

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

REGIONAL BENCH-COURT NO. 3

CUSTOM APPEAL NO. 10738 of 2023- DB

(Arising out of Order in Original AHM-CUSTOM-000-COM-13-23-24 dated 11/08/2023
passed by Commissioner of Customs-Ahmedabad)

RELIANCE INDUSTRIES LTD

10, Village Mora, Bhatha,
PO Surat-Hazira,
Gujarat-394510

.....Appellant

VERSUS

**Commissioner of CUSTOMS -
Customs Ahmedabad**

1st Floor, Customs House,
Opp. Old High Court, Navrangpura,
Ahmedabad-380009, Gujarat

.....Respondent

WITH

- i. CUSTOM APPEAL NO. 10739 of 2023- DB (ASHUTOSH VERMA)**
- ii. CUSTOM APPEAL NO. 10740 of 2023- DB (DHIRENDRA KUMAR SINHA)**
- iii. CUSTOM APPEAL NO. 10741 of 2023- DB (ANIL MAHAJAN)**
- iv. CUSTOM APPEAL NO. 10742 of 2023- DB (SACHIN GUPTA)**

APPEARANCE:

Shri Vipin Jain with Mrs. Dimple Gohil and Shri Akshit Malhotra, Advocates
appeared for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (AR), appeared for the Respondent

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

Final Order No. 12535-12539/2024

DATE OF HEARING: 30.04.2024
DATE OF DECISION: 28.10.2024

RAMESH NAIR

The brief facts of the case are that the Reliance Industries Ltd., the 'Main Appellant' in the instant case, imported Naphtha (A-180 grade) from Saudi Aramco Products Trading Company ('Saudi Aramco'), by classifying it under TI 27101290 of the Customs Tariff Act, 1975 as 'other light oils and preparations', and declaring it as 'Naphtha' under two Bills of Entry No.6489112 dated 25.08.2016 and 7533186 dated 21.11.2016. The Main Appellant also claimed exemption from payment of applicable duties of customs, in terms of Notification Nos.18/2015-Cus and 21/2015-Cus, both dated 01.04.2015 against 19 Advance Authorizations.

1.1 In terms of the Customs established practice, representative samples from the imported goods were drawn and sealed on 26.08.2016 and 17.11.2016 by the Customs for testing the same. Pending receipt of the test results, the imported goods were assessed provisionally under Section 18 of the Customs Act, 1962 and were thereafter allowed to be cleared for home consumption.

1.2 The samples so drawn by the Customs were then tested at the Main Appellant’s In House ISO 9000 accredited Naphtha Cracker Laboratory, in presence of the officers of Central Excise & Customs (‘CECL’), Vadodara. Based on the testing, Analysis Reports dated 14.09.2016 and 30.12.2016 were prepared. The Chemical Examiner, CECL Vadodara, thereafter, on the basis of such Analytical Reports dated 14.09.2016 and 30.12.2016, issued his own Test Reports dated 21.09.2016 and 27.01.2017, which were directly sent by him to Customs. For ease of reference, the details of sampling, Analytical Reports and Test Reports Bill of Entry wise is tabulated herein below:

Bill of Entry	Date of Sampling	Date of Analytical Report issued at Naphtha Cracker Laboratory	Date of Test Reports issued by Chemical Examiner, CECL Vadodara
6489112 dated 25.08.2016	26.08.2016	14.09.2016	21.09.2016
7433186 dated 21.11.2016	17.11.2016	30.12.2016	27.01.2017

1.3 The DRI issued a SCN dated 17.07.2020 *inter alia* alleging that the goods imported by the Main Appellant did not answer the description of ‘Naphtha’ and were also not classifiable under TI 2710 1290 of the Customs Tariff Act, 1975, but were instead classifiable under TI 2710 1220, which covered ‘Natural Gasoline Liquid’ (‘NGL’). In support of this allegation, the main evidence relied upon by the DRI was the opinion of the Joint Director, Customs House Laboratory, Kandla, (‘Joint Director’), given under his letters dated 24.01.2017, 20.07.2017, 07.01.2020, 31.07.2017 and 17.06.2020. The following other evidence, though also relied upon, were in the nature of supportive evidences:

- a) the letters dated 25.04.2017 & 18.05.2017 issued by Saudi Aramco along with product specification sheet dated 15.01.2014;
- b) the Gas Processors Association ('GPA') Specifications 3132 for NGL; and
- c) the email correspondence between Mr. Sachin Gupta, General Manager of the Main Appellant and Mr. Abe San, the representative of Saudi Aramco.

1.4 In addition, the SCN also referred to and relied upon the opinion dated 04.10.2017 of the Chemical Examiner, CECL, Vadodara, ('Chemical Examiner') and an Email dated 01.12.2017 issued by the Chief Scientist, Indian Institute of Petroleum ('IIP'), Dehradun ('Chief Scientist').

1.5 The Main Appellant submitted its' interim reply dated 15.03.2021, *inter alia*, requesting for cross examination of the Joint Director since his opinion (under letters dated 24.01.2017, 20.07.2017, 31.07.2017 and 20.09.2020), was the primary evidence and as such, formed the very basis of the SCN. The cross examination was also sought as the said opinion, besides being completely contrary to the views/ opinions of both, the Chemical Examiner and Chief Scientist, was also completely unreasoned and unsubstantiated. This request was once again made by the Main Appellant during the course of preliminary hearing held on 09.05.2023, as well as in his letter dated 15.05.2023, filed post such preliminary hearing.

1.6 In response, the Respondent granted cross-examination of the Joint Director. The said cross-examination was, thereafter, conducted by the Main Appellant's Legal Counsel on a virtual platform on 13.06.2023, 12.07.2023 and 03.08.2023. During the course of cross examination held on 12.07.2023, as the Joint Director expressed his inability to hear the questions put across to him due to poor internet connectivity at his end, the Respondent suggested the Main Appellant's Counsel to prepare and send a list of questions for the Joint Director to answer, along with relevant literature and data. The Main Appellant's Counsel accepted the said suggestion and accordingly sent a list of questions by his email dated 14.07.2023. The Joint Director, thereafter, sent his reply to the said list of questions, which was conveyed by the office of the Respondent under their email dated 25.07.2023.

1.7 After considering the appellant's reply to show cause notice and also personal hearing attended by the appellant, the impugned adjudication order was passed wherein, the demand of custom duty with interest, fine and penalty as proposed in the show cause notice have been confirmed. Therefore, present appeal is filed.

2. Shri Vipin Jain, Learned Counsel along with Ms. Dimple Gohil and Shri Akshit Malhotra, Advocates appearing on behalf of the appellant made the following submission:-

2.1. The onus cast upon the Revenue to establish that the imported goods were classifiable under TI 2710 1220 of the Customs Tariff Act, 1975 as NGL has not been discharged. The Main Appellant submits that the case set up by the Revenue admittedly (*See para 54.2 and 56.10 of the impugned order*) "hinges" upon the opinion given by the Joint Director under his letters dated 24.01.2017, 20.07.2017, 31.07.2017 and 20.09.2020. It is therefore, axiomatic that if this main evidence is discarded, the entire case of the Revenue falls in view of the settled position of law that the burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Inasmuch as the opinion of the Joint Director, when read in the context of the record of cross examination held on 13.06.2023, 12.07.2023 and 03.08.2023 (including the letters dated 14.07.2023 and 25.07.2023), is totally cryptic, unreasoned and unsubstantiated by any piece of evidence and/or technical literature/ book, the same merely was a bald assertion, carrying no evidentiary value in the eyes of law. As such, the Respondent ought to have discarded the said opinion and thereby dropped all proceedings against the Appellants, since the onus was not discharged by the Revenue in the present case, which, however, he has failed to do, rendering the impugned order totally untenable.

2.2 Without prejudice to the above, the Main Appellant submits that once the opinion of the Joint Director was liable to be discarded, it was incumbent upon the Respondent to have relied upon the other expert opinion on record, i.e., the opinion dated 04.10.2017 given by the Chemical Examiner, wherein he had clearly opined that it was not possible to say that whether the goods in question were extracted from natural gas or otherwise; and thereby ought to have dropped the proceedings initiated by the SCN, since the onus was not discharged by the Customs, which, however, he has failed to do. The impugned order, thus, deserves to be quashed and set aside.

2.3 Without prejudice to the above, the Main Appellant submits that the other evidences relied upon by the Respondent, namely the letters dated 25.04.2017 & 18.05.2017 issued by Saudi Aramco along with the product specification sheet dated 15.01.2014, or the GPA 3132 specifications or the email correspondence exchanged between Mr. Sachin Gupta and Mr. Abe San, were only to support the primary and the main evidence, i.e., the opinion of the Joint Director. Once the main evidence, on which the entire case of the Revenue was admittedly based upon, is discarded, all these supporting evidences were also rendered inconsequential and irrelevant. In view thereof, the impugned order is liable to be quashed and set aside on this ground alone.

2.4. The goods in question were correctly described as Naphtha and thus, were correctly classifiable under TI 2710 1290 of the Customs Tariff Act, 1975

2.5 Without prejudice to the above, the Main Appellant submits that going by the evidence relied upon by the Respondent in the impugned order, it is evident that the goods imported by the Appellant was Naphtha, which were classifiable only under TI 2710 1290 of the Customs Tariff Act, 1975. It is submitted that the Respondent has relied upon an excerpt from a chapter "Refinery Products and By Products" in the book "Introduction to Petroleum Biotechnology, 2018" written by James G Speight & Nour Shafik El Gendy, wherein specification of Naphtha has been explained

2.6 A perusal of the said explanation clearly indicates that for a product to qualify as a Naphtha, minimum 10% of such a product must distil below 175°C and minimum 95% must distil below 240°C. It is on record that 10% of the goods in question distilled at 53°C (in case of Bill of Entry dated 25.08.2016) and 47°C (in case of Bill of Entry dated 21.11.2016). Further, it is also on record that 90% of the goods in question distilled at 130°C with the final boiling point recorded at 172°C (in case of Bill of Entry dated 25.08.2016); and at 96°C with the final boiling point recorded at 140°C (in case of Bill of Entry dated 21.11.2016). On a cumulative appreciation of the aforesaid, it is evident that the goods in question, covered by both the Bills of Entry, satisfied all the ingredients to qualify as Naphtha. As such, going by the Respondent's own evidence, the goods in question were Naphtha and thus, classifiable under TI 2710 1290. The impugned order, thus, deserves to be quashed and set aside.

2.7 Without prejudice to the above, Appellant submits that the Glossary of Petroleum terms under IS 4639: 1968 as well as the Chemical Condensed Dictionary, 6th Edition, also defines Naphtha as a product of which not less than 10% must distil below 175°C and not less than 95% must distil below 240°C. Since both these requirements, as explained above, stands fulfilled by the goods in question, the same were correctly declared as Naphtha and classified under TI 2710 1290 by the Appellant.

2.8 Without prejudice to the above, the Main Appellant submits that the Respondent ought to have appreciated that since Naphtha was not defined under the Customs Tariff Act, 1975, its' meaning ought to have been construed in terms of its' commercial or trade understanding or according to its' popular meaning. The Respondent ought to have appreciated that since Naphtha (A-180 grade) was commercially known, traded and understood as Naphtha, it was correctly declared as Naphtha and classified under TI 2710 1290 in the Bills of Entry dated 25.08.2016 and 21.11.2016.

2.9 Alternatively, assuming without admitting that the goods in question were NGL, still the benefit of exemption under the Advance Authorization Scheme was admissible to the Appellant as 'NGL' is also a type of 'Naphtha'

2.10 Without prejudice to the above, the Main Appellant submits that even if it is assumed that the goods in question were NGL, still the benefit of exemption was available as the Respondent has failed to appreciate that NGL is also a type of Naphtha. In other words, Naphtha is the genus and NGL is the species. Accordingly, if the Advance Authorizations specifically cover and allow import of Naphtha, it is axiomatic that all species including NGL, would be covered under the genus of Naphtha, and will also automatically get covered by the Advance Authorizations.

2.11 The impugned order confirming demand of customs duty under Section 28 of the Customs Act, 1962, prior to finalization of the provisionally assessed Bills of Entry dated 25.08.2016 and 21.11.2016 is without jurisdiction.

2.12 Without prejudice to the above, the Main Appellant submits that as per Section 28 *ibid.*, the time to recover duty would commence from the relevant date, which in case of provisional assessments is the date of final assessment. In view thereof, the impugned order confirming demand of customs duty under Section 28 of the Customs Act, 1962 along with interest under Section 28AA and imposing penalty under Section 114A of the

Customs Act, prior to finalization of the provisionally assessed Bills of Entry dated 25.08.2016 and 21.11.2016 is thus, without jurisdiction and accordingly, null and void.

3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the issue to be decided in the present case is that -

(i) whether, even if the imported goods considered as Natural Gasoline Liquid (NGL) as claimed by the revenue, the same falls under the broad description of Naphtha and consequently the clearance of goods under advance authorization which mentioned the imported goods as 'Naphtha' is correct and legal or otherwise.

(ii) Whether the goods imported by the appellant is 'Naphtha' classifiable under tariff item no. 27101290 of the Custom Tariff Act, 1975 or Natural Gasoline Liquid (NGL) classified under Tariff Item No 27101220 of Custom Tariff Act, 1975.

4.1 We find that the appellant have declared the imported goods in the bills of entry as Naphtha under Tariff Item No. 27101290. The goods were cleared under advance authorization. The sample copy of the advance authorization is scanned below:- page 73-75, 76-77 of common paper book

4.2 From the above import authorization in the list of import item Naphtha is mentioned under ITC 27101290, though we do not agree that imported goods is not Naphtha but NGL, the appellant vehemently argued that even the NGL is also Naphtha therefore, since the Naphtha is allowed to be imported, the imported goods is allowable under the same advance authorization. The appellant have vehemently argued that assuming without admitting the goods in question were NGL still the benefit of exemption under advance authorization was admissible to the appellant and NGL is also a type of Naphtha. Since broad description given in the advance authorization, we are of the view that even though the type of Naphtha is different but the same is clearly covered under the advance authorization and hence irrespective of the department's contention that the goods is NGL but the NGL is also a type of Naphtha, the same is covered

by the advance authorization. Accordingly, the clearance of goods under Advance Authorization cannot be questioned.

4.3 As regard ITC code no. even if the departments contention is that TI 27101290 does not cover NGL for the purpose of advance authorization it does not affect the eligibility to clear the goods under the advance authorization so long the description mentioned in the advance authorization covers the description of imported goods. Therefore, even if it is assumed that the goods imported is NGL, the same is permissible to be cleared under the advance authorization which is issued for imported item namely Naphtha. We find that the Glossary of petroleum terms under IS 4639: 1968 defines Naphtha/petroleum Naphtha as under:-

"A generic term applies to refined, partly refined or unrefined petroleum products and liquid products of natural gas not less than 10% of which distil below 175°C and not less than 95% of which distil below 240°C when subjected to standard method"

4.4 Further IS specification 11794;2022 which provides the requirements and test methods of Naphtha used as a feed stock in petrochemical plant, steam cracking, fuel pump as a gasoline and various other applications in the refineries defines Naphtha as "Petroleum Naphtha is an intermediate of crude distillation. It is either a light distilled petroleum fraction derive out of various processes in the refinery or a light liquid fraction recovered in the production of crude oil and natural gas. The refinery sources of Naphtha are crude distillation unit, crude catalytic cracking unit, Hydrotreaters, Hydrocrackers, Naphtha splitters etc. It is generally known as Naphtha. It is further found that Chemical Condensed Dictionary, 6th Edition also defined Naphtha as "A generic term applies to refined, partly refined or unrefined petroleum products and liquid products of natural gas, not less than 10 % of distills below 347°F (175°C) and not less than 95% of which distil below 474°F (240°C) when subjected to distillation in accordance with the standard method of test for distillation of gasoline , naphtha, kerosene and similar petroleum products (ASTMD86)".

4.5 From the above it is evident that naphtha is a genus and NGL is a species. Accordingly, advance authorization specifically covered and allow import of naphtha. It is clear that all species including NGL , would be covered under the genus of Naphtha, and will also automatically get covered by the Advance Authorizations in the present case. In view of this assuming without admitting that the goods in question imported were NGL the same

shall have no revenue implication as the said import of Naphtha squarely covered by advance authorization in question. As such there was neither any infirmity in the import of the goods in question nor in the exemption claimed by the appellant under the advance authorization scheme read with governing notification 18/2015-CUS dated 01.04.2015 (as amended) therefore, even if the contention of the revenue is that the goods imported is NGL is correct then also the clearance of goods under advance authorization cannot be said to be incorrect or illegal. On this basis itself the entire demand is liable to be set aside.

4.6 Without prejudice to the above, we also find that the NGL is a type of Naphtha which is evident from the legislative changes made under the Finance Act, 2019 with Notification No. 89/2019-Cus (N.T) 10.12.2019 to heading 2710 of the Customs Tariff Act, 1975 whereby the 8 digits tariff items under 6 digits sub heading 271012 which covers light oils and preparations were substituted. As per this substitution, the specific tariff item 27101220 which covered NGL was deleted and three new tariff items 27101221 (Light Naphtha), 27101222 (Heavy Naphtha) and 27101223 (Full Rich Naphtha) were inserted to cover Naphtha . An interpretation of this substitution indicates that the same was brought in effect (a) to end the dispute on classification of Naphtha and NGL (b) to specifically covered all types of Naphtha including NGL. It is for this reason because the specific entry of NGL was deleted as the same goods have rendered the tariff items 27101221, 27101222 and 27101223 otiose. Therefore, we do not find any infirmity in either the import of goods in question or in the exemption claimed by the appellant under advance authorization.

4.7 We find that as discussed above the NGL is also a 'Naphtha' and therefore, allowed to be cleared under Advance Authorisation, The revenue also contended that ITC HS code of Naphtha and NGL is different, hence, Advance Authorisation having different ITC HS code, i.e. 27101290 and NGL being under 27101220 the clearance of goods can not be allowed under the Advance Authorisation. We find that as per above discussion, we expressed our view that NGL is also a type of 'Naphtha'. So long description is correctly mentioned if ITC HS code is under dispute, clearance under such Advance Authorisation is allowable in view of the judgment in the case of Condor Footwear (I) Limited vs. Commr. of Customs, Ahmedabad 2019 (367) E.L.T. 653 (Tri. Ahmd.) which is reproduced below:-

"5. We have gone through the rival submissions. We find that appellants are holder of license issued for availment of benefit under Notification No. 93/2004-Cus. It is not disputed that the description in the SION norms covers the goods imported by the appellant. However, the Revenue is of the view that the goods are classifiable under Chapter Heading 3920 49 00 as against the Heading 5903 10 90 mentioned in the license. Though the license has been amended, the Revenue rejected the amendment on the ground that such amendments did not have retrospective effect. The Revenue has relied on the decision of the Tribunal in the case of Square D. Textiles Exports Limited (*supra*) and the decision of Hon'ble High Court of Punjab & Haryana in the case of Vikrant Overseas (*supra*).

5.1 It is seen that SION norms did not prescribe any heading against the description of the goods. A perusal of the Notification No. 93/2004-Cus. also shows that there is no mention of sub-heading or heading against the goods permitted for import against license. Ld. Counsel has argued that the classification of the goods has no bearing for admissibility of import under the notification. The appellant have also produced the minutes of meeting held on 11-6-2009 wherein their case for amendment of licenses was considered by the licensing authority. In the minutes of the said meeting, the Ministry of Commerce has held as follows :-

Case No. 208	M/s. Condor Footwear (India) Limited Surat
NC.11/10 dated 11-6-2009	F. No. 1/84/162/42/AM10-DES-V
Request for import against Advance Authorisation No. 5210021658, dated 6-6-2007 - under Para 4.7 of HBP (Vol. 1) 2004-2009	

"Decision : The Committee considered the case as per agenda and along with other relevant papers and heard Sh. Rakesh Adnani, Director and Sh. Surendra Gandhi, an authorized representative of the firm, who appeared for personal hearing before NC. They explained the case along with relevant papers and sample of the export item. In this case advance authorization in question was issued on 6-6-2007 to the applicant firm and input output norms were ratified by norms Committee by allowing the inputs as per SION at S. No. A-3541. In this case firm imported Synthetic cloth for Uppers (Non-Woven/Woven/Knitted/Laminated with PVC/PU) HSW-KN06B-LP. The Committee felt that as per SION, A-3541, it is clearly specified that the import item viz., Synthetic cloth for Uppers (Non-Woven/Woven/Knitted/Laminated with PVC/PU) and Synthetic cloth for Insole (Non-Woven/Woven/Knitted/Laminated with PVC/PU) are to be used for Uppers & Insole of the export product Synthetic Slippers/Sandals with PU Sole of all sorts irrespective of ITO (HS) Code, It has been observed that description of import item was classified under ITC (HS) Code 5903 10 90 with effect from the date of issue of the advance authorization. It was observed that in this case, the SION permitted the import item as per Bill of Entry and description covered under ITO (HS) Code 5903 10 90. The sample submitted by the firm has a clear view that item's description allowed under SION at S. No. A-3541 are classified under ITC (HS) Code 3920 49 00 instead of ITC (HS) Code 5903 10 90. Thus, Committee after detailed deliberations in consultation with the representatives of technical authorities present in the meeting felt that in both the heading of ITC (HS) code, the description of item of import and export are the same as per relevant SION, the condition of matching of ITC (HS) Code does not arise here. Hence, in this case, it is clarified that change in the ITC (HS) Code has no bearing on the benefits to be given under advance authorization issued under Para 4.7 of HBP."

From the above, it is apparent that as far as the benefit of Notification No. 93/2004-Cus. is concerned, the classification of goods specified in SION

norms is not relevant unless it is specifically mentioned in the SION norms. The committee at Ministry of Commerce has also clarified that any change in the ITC (HS) Code has no bearing on the benefits to be given under advance authorization issued under Para 4.7 of HBP.

5.2 *The Revenue has relied on the decision of Hon'ble High Court of Punjab & Haryana in the case of Vikram Overseas (supra). It is seen that the facts in the said case are significantly different. In the said case, the amendment was substantial in nature whereas in the present case it is of procedural in nature. The Hon'ble High Court of Bombay in the case of Bhilwara Spinners Limited v. UOI - [2011 \(267\) E.L.T. 49](#) (Bom.) distinguished the decision of Punjab & Haryana High Court in the case of Vikrant Overseas (supra) on the ground that license was amended with a clear intention of having a retrospective effect. In the instant case the committee has clarified that any change in the ITC (HS) Code has no bearing on the benefits to be given under advance authorization issued under Para 4.7 of HBP. In this circumstance, we hold that amendment made to the license will have a retrospective effect and the benefit of the notification cannot be denied on the ground that the classification of the goods did not match the classification specified in the advance license as long as the description of the goods matches with that prescribed in the license.*

6. *In view of the above, appeals are allowed."*

4.8 In view of above decision, even if ITC HS code is different but so long description is correct, the clearance of import is allowed. Accordingly, irrespective of dispute raised by revenue on classification, the appellant is otherwise eligible for clearance of goods under Advance Authorisation, therefore, the impugned order is not sustainable on this ground alone.

4.9 Without prejudice to the above, we find that the revenue's entire case in the present matter is based on the opinion given by the Joint Director under his letters dated 24.01.2017, 20.07.2017, 07.01.2020, 31.07.2017 and 17.06.2020. We find that in as much as opinion of the Joint Director read in the context of cross-examination held on 13.06.2023, 12.07.2023 and 03.08.2023 (including letters dated 14.07.2023 and 25.07.2023) is cryptic, unreasoned and unsubstantiated, carrying no evidentiary value in the eyes of law. Thus, the onus was not discharged by the Revenue in the present case. We find that as per the opinion dated 04.10.2017 given by the Chemical Examiner, wherein he had clearly opined that it was not possible to say that whether the goods in question were extracted from natural gas or otherwise. The actual nature of the goods could not be ascertained. Hence, the onus was not discharged by the Customs. We find force in the submission of the appellant that other evidences relied upon by the respondent namely letters dated 25.04.2017 and 18.05.2017 issued by Saudi Aramco along with the product specification sheet dated 15.01.2014, or the GPA 3132 specifications or the email

correspondence exchanged between Mr. Sachin Gupta and Mr. Abe Sanwere only to support the primary and the main evidence, i.e., the opinion of the Joint Director. Once the main evidence, on which the entire case of the Revenue was admittedly based upon, is discarded, all these supporting evidences were also rendered inconsequential and irrelevant. In view of the above the revenue could not establish that the goods imported is not naphtha.

4.10 We further find that the department has failed to discharge the burden cast upon them to establish that the subject goods were classifiable under tariff item 27101220 of the Customs Act, 1975 as NGL as against Tariff Item No. 27101290 as Naphtha claimed by the appellant. It is a trite law that burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them and it is further the taxing authority to lay evidence in their behalf, this view is supported by Hon'ble Supreme Court Judgment in the of State of Madhya Pradesh vs. Marico Industries Ltd reported in 2016 (338) ELT 335 (SC). We also find that TI 27101220 of the Custom Tariff Act, 1975 covers NGL and as per supplementary note (V) under Chapter 27 of Customs Tariff Act, 1975, NGL is defined as "A low boiling liquid petroleum product extracted from natural gas". Thus, to classify under TI No. 27101220 of the Custom Tariff Act, 1975 as NGL it must satisfy the following conditions:-

- (i) the product must be low boiling liquid petroleum product &
- (ii) the product must be extracted from natural gas.

4.11 This means that unless and until the aforesaid two conditions are cumulatively satisfied by a product it cannot be held to be NGL and as consequence being classified under TI NO 27101220 of Customs Tariff Act, 1975. However, it admittedly could not be established that the goods in question were extracted from natural gas as per the opinion of IIP Dehradun. Therefore, since the vital and the conclusive factor that whether the goods in question was extracted from the natural gas or otherwise, the onus cast on the department had not been discharged. In this regard we refer to the extract of letter dated 04.10.2017 of chemical examiner, CECL Vadodara as below:-

*"On perusal of analytical finding and available literature here
..... it is not possible to say whether the subject product extracted
from natural gas or otherwise. Hence, said matter may be forwarded to*

Indian Institute of Petroleum being a apex and premier organization in the country which carried out research and development for down center of hydrocarbon industry, if required."

4.12 On the above, the DRI under the cover of letter dated 25.10.2017 and also written to Chief Scientist IIP Dehradun with a proposal to send the samples of the goods in question for testing at their end and for seeking their opinion as well on the same set of queries put across the Joint Director and the Chemical Examiner, CECL, Vadodara. The Chief Scientist IIP Dehradun vide its email dated 01.12.2017 informed the DRI that such type of investigative analysis was not available with IIP Dehradun. The relevant content of email dated 01.12.2017 is reproduced herein below:-

"With reference to your letter, reference no DRI/AZU/GRU/RIL-Naphtha/INT-3/2017/3043 dated 25.10.2017. we would like to inform you that such type of investigative analysis is not available at IIP"

4.13 In view of the above we find that conclusion drawn by the Joint Director in his opinion in particular that the goods in question were extracted from natural gas besides being completely unreasoned, uncorroborated and unsubstantiated with any technical literature/books and was also completely contrary to the views/ opinions of other experts i.e. the Chemical Examiner, CECL, Vadodara and Chief Scientist, IIP, Dehradun. Therefore, we find that the Learned Commissioner has even though not disputing the correctness of these two opinions dated 04.10.2017 and 01.12.2017 issued by the Chemical Examiner, CECL, Vadodara and Chief Scientist, IIP, Dehradun respectively, the conclusion was drawn contrary to the said opinion.

4.14 We further observed that the adjudicating authority considering the conflicting opinion given by the various experts on the same set of queries he ought to have discredited the unreasoned and unsubstantiated opinion given by the Joint Director and he ought to have accepted the reasoned opinion from the Chemical Examiner, CECL, Vadodara who had infact tested the samples and issued the analysis report/test reports in preference to the unreasoned and unsubstantiated reason of the Joint Director. Thus, the adjudicating authority ought to have placed no reliance on the opinion of Joint Director. We find that the adjudicating authority shows to solely rely upon the opinion of the Joint Director and in complete ignorance to other experts opinion or record. Thus, erroneously held that the onus cast on the department was discharged in the instant case which is totally untenable.

4.15 We further find force in the submission of the appellant that the adjudicating authority has failed to appreciate that a perusal of record on cross-examination dated 13.06.2023, 12.07.2023 and 03.08.2023 of the Joint Director along with reply dated 24.07.2023 shows that the conclusion drawn by him in his opinion in particular that the goods in question is Natural Gas were nothing but bald assertions or statement having no basis and/or technical literature, book or evidence to support or corroborated the same. Therefore, on a joint perusal of the opinion and record of cross-examination no reliance whatsoever could be placed on the same to arrive at a conclusion that imported goods in dispute were NGL classifiable under tariff item no. 27101220 and not naphtha under tariff item no. 27101290.

4.16 The appellant have also pointed out that it is on record that Joint Director had preferred and relied upon the GPA 3132 specifications to opine that the goods in question were conforming to the requirement of NGL. In this regard the appellant have submitted that the said opinion given by the Joint Director, GPA 3132 specifications totally inconclusive. The GPA 3132 specifications stipulates satisfaction of 7 product characteristics i.e.

(i) Reid Vapour Pressure (RVP)

(ii) Percentage Evaporated @ 140°F ;(iii) Percentage evaporated @275°F;

(iv) end point ;

(v) Corrosion ;

(vi) Colour;

(vii) reactive sulphur,

to define and confirm the product is natural gasoline. The relevant extract of 3231 specification is reproduced herein below: scan from page 20,21 of the appeal.

We agree with the submission of the appellant that unless and until each and every one of the 7 parameters were cumulatively shown to be met by product, which could not be conclusively established that the product was Natural Gasoline/NGL.

4.17 As per the detailed submission of the appellant it is noticed that there is serious inconsistency when the detail of cross-examination of the joint director compared with the analysis report. It is further noticed that when the appellant pointed out the anomalies to the joint director that he

tried to justify the opinion by stating that he did not take up this product's characteristics because according to him they were insignificant in identifying a product. When the appellant further responded during the cross-examination on various issues of analysis. He stated that he would not read/pursued any documents and expressed his inability to answer any of the questions due to passage of time. He also expressed his unwillingness to answer any further question. We find that due to inconsistency in the opinion of joint director on various parameters of analysis, the adjudicating authority ought to have discarded his opinion.

4.18 In view of the detailed discussion made herein above on the undisputed fact, we are of the view that the department has not discharged its burden to conclusively establish beyond any doubt that its claim of classification of goods in question as Natural Gasoline Liquid (NGL) under Tariff item 2710 1220. It is a settled law that if department fails in discharging the burden cast on it to establish their claim for classification of goods, then entire case of department fails. This view is supported by this Tribunal in the case of Sunrise Traders vs. Commissioner of Customs, Mundra 2022 (381) E.L.T. 393 (Tri. Ahmd) which is as under :

"2. *Heard both sides and perused the records. The department to classify the goods as "polyester woven fabric" under CTH 5407 54 90 and to prove that the goods are polyester woven fabric has relied on three textile committee reports reproduced in the impugned order. By perusing the reports dated 28-2-2017 it is clearly mentioned in the column of correct description & Classification of the sample that appropriate HS Code could not be provided due to rupture of yarn in weft while untwisting.*

2.1 *On the other hand in report dated 21-3-2017 in correct description & classification column it is mentioned, sample is classified as polyester woven printed quilt case under HS Code 6302 22 as classified by the appellants. Another reliance of the department is on the report of ATIRA (Ahmedabad Textile Industry Research Association) dated 27-3-2017 states that the actual strength of the warp and weft used in making fabric cannot be ascertained. If we go by all the above reports mentioned except for the report dated 21-3-2017 which classifies the goods as quilt cover all the other reports are inconclusive. If at all any report to be relied upon it is report dated 21-3-2017 which was brushed aside as tampered by the department without giving any details who tampered with the report and what action was taken.*

2.2 *Even if we accept the corrected report and all other reports they are all inconclusive and instead of relying upon them they should have been sent for retesting which the Commissioner categorically denied stating that he does not find any cogent reason to grant resampling and retesting at this stage as samples were tested at two different recognised institutions and expert committee.*

2.3 *The department has relied upon M/s. Rudra Vyaparchem v. Commissioner of Customs, Kolkata - [2019 \(370\) E.L.T. 412](#) (Tri. - Kolkata) as similar goods to Appellant. The above case cannot be relied upon as it is based on the conclusive textile committee reports while in the present case*

undisputedly inconclusive as to the composition of samples, therefore the order of CESTAT in Rudra Vyaparchem case is distinguishable.

2.4 Secondly to decide the correct classification of goods the Commissioner held the sub-headings 5407 51 to 5407 54 cover "other woven fabric, containing 85% or more weight of textured polyester filaments. For that the authority has relied upon report of ATIRA stating the fabric is made entirely of texturised yarn to be covered under the above heading the fabric should contain 85% or more weight of texturised polyester filaments, now as per the report of ATIRA as well as report of Textile committee, that could not be ascertained as the weft ruptured, therefore the basic condition of 85% per cent could not be fulfilled and could not be ascertained whether weft is texturised yarn or not. There is no possible reason to cover the product under this sub-heading when basic criteria not fulfilled and in all the reports relied upon by the department it is clearly mentioned that they could only ascertain the warp which ranges from 34% to 47% of texturised yarn and to be classified as textured yarn the warp and weft should be more than 85% which is not the case in all the test reports. Therefore, the only conclusion that could be drawn from the above facts is department has not discharged their burden of proof and the classification of the department should be rejected as held by Hon'ble Supreme Court and CESTAT in various decisions; In case of UOI v. Garware Nylons Ltd. - [1996 \(87\) E.L.T. 12](#) (S.C.) held :

"The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the authority first adjudicating."

In Hindustan Ferodo Ltd. v. Collector of Central Excise, Bombay [1997 \(89\) E.L.T. 16](#) (S.C.) :

"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."

Also in recent order CESTAT held in the matter of Alpha Foam Pvt. Ltd. v. Commissioner of Central Excise, Pune-I - [2019 \(365\) E.L.T. 636](#) (Tri. - Mumbai) :

"The impugned order clearly recognises that the test report is not final. However, he continues to rely on the said report. He has relied on the fact that the original adjudicating authority has evaluated the product in terms of the technical literature available. We find that the office of the chemical laboratory is not sure of exact classification and has raised some doubts about classification, it is not open to original adjudicating authority to decide the issue suo motu without going back with the said clarification to the office of the Chemical Examiner. The Commissioner (Appeals) has in his order observed that the technical basis of the Dy. Chief Chemist is quite clear whereas the report itself shows that the office of Chemical Examiner is not clear about the classification and needs further clarification before arriving at final decision. It is seen that the onus of establishing the change of classification is on Revenue and from the records it is apparent that Revenue has been unable to produce sufficient evidence to substantiate the claim."

The facts in the above judgment of CESTAT is similar to the Appellant's case as in the above case also there is an inconclusive report which has been relied upon as in the appellant's case and the CESTAT was pleased to allow the Assessee's appeal.

2.5 Without prejudice to above findings, it is a settled legal position that if the goods are not classifiable under the chapter heading proposed by the revenue thereafter even the goods is classified under the chapter heading

claimed by the assessee is correct or not, the case of the department will fail. This gets support from the following judgments :

- *Pepsico Holdings Pvt. Ltd. - [2019 \(25\) G.S.T.L. 271](#) (Tri. - Mum.)*

In the light of the above, we cannot decide "8. on a classification that has not been pleaded before us. Once the classification proposed by Revenue is found to be inappropriate, that claimed, while clearing the goods, will sustain even if it may appear to be inappropriate. We cannot also, in our appellate capacity, direct or accord the latitude for invoking Section 11A of Central Excise Act, 1944 by obliteration of the proceedings leading to the impugned order. The mandate of the law pertaining to recovery of duties not paid or short-paid will have to be followed to the letter."

The above decision of the Tribunal is based on the view taken by the Hon'ble Supreme Court in the case of Warner Hindustan Limited - (1999) 6 SCC 762 = [1999 \(113\) E.L.T. 24](#) (S.C.) wherein the Hon'ble Supreme Court has held as under :

"In our opinion, the Tribunal was quite wrong in these circumstances in allowing the appeal of the Excise Authorities and classifying the mint tablets as items of confectionary under Heading 17.04. The correct course for the Tribunal to have followed was to have dismissed the appeal of the Excise Authorities making it clear that it was open to the Excise Authorities to issue a fresh show cause notice to the appellant on the basis that the tablets were classifiable under Heading 17.04 as items of confectionary. This would have given the appellant the opportunity to place on record such material as was available to it to establish the contrary. It is impermissible for the Tribunal to consider a case that is laid for the first time in appeal because the stage for setting out the factual matrix is before authorities below."

In view of the above settled law, irrespective whether the classification claimed by the appellant is correct or not since the classification proposed by the Revenue is absolutely incorrect, the entire case of the Revenue will not sustain.

3.*Since the revenue has not been able to discharge their burden of proof. Hence the classification of goods declared by the appellants cannot be disturbed.*

4.*As per our above discussions and findings, the impugned orders are not sustainable. Hence, the same are set aside.*

5.*The appeals are allowed with consequential relief, if any, in accordance with law."*

4.19 In view of the above judgment, it is settled law that in case the department does not discharge the onus cast upon it for its claim of classification of goods the entire proceeding is vitiated. As discussed above the facts of this case, the department did not discharge the onus to prove the claim of the classification of goods as NGL under tariff item 2710 1220 as correct. Therefore, the classification of goods as Naphtha under Tariff item 27101290 as declared by the appellant is held to be correct.

5. As per above discussion and finding, the impugned order is not sustainable on multiple counts as discussed above. Accordingly impugned order is not sustainable. Hence, the same is set aside, the appeals are allowed with consequential relief in accordance with the law.

(Pronounced in the open court on 28.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi