

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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10040 of 2020

(Arising out of OIO-KND-CUSTM-000-COM-10-2019-20 dated 10/10/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-KANDLA)

MAT SHIPPING

.....Appellant

Plot No. 45, T.No.-10 Gandhidham
Kutch, Gujarat

VERSUS

C.C.-KANDLA

.....Respondent

Custom House,
Near Balaji Temple, Kandla, Gujarat

APPEARANCE:

Shri Vikas Mehta, Consultant for the Appellant
Shri Vijay G. Iyengar, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12223 /2022

DATE OF HEARING: 18.10.2022
DATE OF DECISION: 21.12.2022

RAJU

This appeal has been filed by M/s. MAT Shipping. The appellant was working as a custom broker for the following importers namely :-

- M/s. Shree Sanari Shipping
- M/s. Jai Mata Chinupurni Impex
- M/s. Sagun Enterprises
- M/s. G.R. Pahwa Enterprises.
- M/s. V.V. Enterprises.
- M/s. Jan Priya Energy

The DRI under suspicion that these importers are importing Superior Kerosene Oil (SKO) in the guise of Industrial Composite Mixture Plus/Low Aromatic White Spirit. The Superior Kerosene Oil is a restricted item for import in India. The DRI suspected that these importers were obtaining fabricated test reports to avoid the detection of the true identity of goods to

bypass the restrictions imposed by Ministry of Commerce. It was suspected that the appellant was manipulating the chemical examiner in Kandla to obtain fabricated reports on payment of certain sums of money. The DRI detained a consignment all such goods imported under Bill of Entry No.7749179 dated 23.08.2018 by M/s. Shree Sanari Shipping. The custom broker in the said case was the appellant. The goods were described as 373.84 MTS of Industrial Composite Mixture Plus. The samples were drawn on 24.08.2018 and forwarded to Customs Laboratory, Kandla for testing vide Test memo No. 1033660 dated 24.08.2018. The specific query made in the said test memo was to ascertain

"Nature, Composition, Description of Goods, Initial Boiling Point, Final Boiling Point, Percentage of Volume (including losses) Distillation at 210c Flash Point, whether goods are ICMP or Light Oil/SBPS/HSD/SKO/ATF/LDO or otherwise."

The customs laboratory, Kandla gave a report No.2395/27.08.2018 by Shri Ram Chandra, the test report was as follows:-

Sr. No.	Bill of Entry No. & Date	Test Memo No. & Date by Custom House Kandla	Test Report by CH Kandla Laboratory & issuing date
1	7749179/23.08.2018	1033660 dtd. 24.08.18	Above reported parameter meets the requirement of Kerosene as per IS 1459-1974 (Re-affirmed in 2001).(30.08.2018)

On the strength of the aforesaid investigation, the appellant's license was suspended on 15.02.2019 and was continued vide order dated 28.02.2019. Subsequently, a show cause notice dated 07.05.2019 was issued by Principal Commissioner, Custom House, Kandla asking appellant to show cause as to why :-

"(i) The Customs Broker Licence No. KDL/ CB/ 52/2014 issued to them should not be revoked under Regulation 14 of Customs Brokers Licensing Regulations, 2018 read with regulation 17 of CBLR, 2018.

(üi) The security furnished by the Customs Broker for issuance of Broker Licence should not be forfeited.

(ii) Penalty should not be imposed on them in terms of Regulation 18. for failure to comply with provisions of Regulation 10(a), 10(d), 10 (e), 10(i), 10(f), 10(m) and 10(n) of CBLR,2018."

The said charges were confirmed and agreed by the said order, the appellant are in appeal before the tribunal.

02. Learned Counsel argued that the appellant had not passed any illegal gratification to the officers of Custom Laboratory, Kandla for issuing any fabricated test reports. It was argued that Principal Commissioner has not cited a single test report in the impugned order to support this conclusion.

2.1 Learned counsel argued that the product imported by them namely Industrial Composite Mixture Plus are used in paint industry and the same is a Petroleum Hydrocarbon Solvent. He argued that since the product imported by them is an Industrial Composite Mixture Plus, it should not have been tested as per IS 1745 and not IS 1459 meant for Kerosene. He argued that sampling and testing should have been done as per IS 1745.

2.2 Learned counsel further argued that as per the clarification issued by BIS, the requirement prescribed in IS 1459 for kerosene only are a) Acidity, in organic; b) Burning quality; and c) Smoke point. He pointed out that as per IS 1459:1974, the criteria for determination of burning quality as followed by Indian Oil is as under:-

- a) Char Value, mg/kg of oil consumed, Max - 20
- b) Bloom on glass chimney - Not darker than grey

He argued that the method of test that is required to be applied is IS : 1448. Learned counsel argued that these test have not been carried out on the samples imported by them. Learned counsel argued that even the department has not decided for the criteria adopted by them for testing SKO. He argued that since the department itself has not carried out the test necessary as prescribed by BIS to establish that the imported goods were SKO, the allegation of prior knowledge of the appellant that goods were misdeclared and restricted in nature cannot be sustained.

2.3 Learned counsel pointed out that there is no violation of Regulation 10(a) of CBLR, 2018 as the appellant had produced authorizations received from all the importers before the concerned officers and none of the importers have denied having appointed the appellant to act as Custom Broker in connection with the clearances.

Regulation 10. Obligations of Customs Broker. — A Customs Broker shall —

(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

2.3.1 He further submits that the allegation regarding violation of Regulation 10(d) of CBLR, 2018 cannot be sustained in view of the fact that department itself has not carried out the tests necessary to establish that the imported goods were SKO.

Regulation 10. Obligations of Customs Broker. — *A Customs Broker shall —*

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

2.3.2 Learned counsel further argued that there is no violation of Regulation 10(e) of CBLR, 2018 as it is not expected of the Custom Broker to determine the nature and description by testing the same. The custom broker is supposed to rely on the declaration made by the importer and not to physically test each and every item being imported.

Regulation 10. Obligations of Customs Broker. — *A Customs Broker shall —*

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

2.3.3 Learned counsel further argued that the appellant has not violated Regulation 10(i) of CBLR, 2018 and there is no evidence to prove that the appellant had any conversation or deal with the chemical examiner. He further pointed out that to substantiate their claim, the report was manipulated in connivance with chemical examiner.

Regulation 10. Obligations of Customs Broker. — *A Customs Broker shall —*

(i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;

2.3.4 Learned counsel further argued that the provision of Regulation 10(f) of CBLR, 2018 are also not violated as it has not been established that the imported goods were SKO. It was argued that only if it was established that the imported goods were SKO and it was in the knowledge of the appellant that the said goods were SKO could Regulation 10(f) of the CBLR, 2018 be invoked for action against the appellant.

Regulation 10. Obligations of Customs Broker. — *A Customs Broker shall —*

(f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;

2.3.5 Learned counsel further argued that the allegation regarding violation of Regulation 10(m) of CBLR, 2018 is without any substance and without any evidence. It has been argued that the said allegation is unsubstantiated with any evidence and therefore should be dismissed as such.

Regulation 10. Obligations of Customs Broker. — *A Customs Broker shall —*

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

2.3.6 Learned counsel further argued that Regulation 10(m) of CBLR, 2018 does not mandate that appellant should physically get in touch with the clients. He argued that none of the importers have found to be bogus or non existence at their given address and all the importers have come forward to participate in the inquiry conducted by the department therefore, the allegation of violation of Regulation 10(n) of CBLR, 2018 is incorrect and unsubstantiated.

Regulation 10. Obligations of Customs Broker. — *A Customs Broker shall —*

(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

03. Learned AR relies on the impugned order.

04. We have gone through the rival submissions, We find that the fundamental charge against the appellant is that the appellant tried to influence the officers of the custom laboratory, Kandla for issuing fabricated test report in order to avoid the material getting classified as SKO (Superior Kerosene Oil) falling under Customs Tariff heading No.27101910 which is of restricted nature. The notice has alleged that though the imported goods were SKO falling under Customs Tariff Heading No. 27101910 but the same were misdeclared as ICMP (Industrial Composite Mixture Plus) falling under Customs Tariff heading 27101910. The statement of Shri Mritunjay Dasgupta, Proprietor of M/s. MAT Shipping was recorded under Section 108 of the Customs Act, 1962 on 29.08.2018 and he inter alia deposed the following:-

- All the work relating to clearance of 'Industrial Composite Mixture Plus' are given to him by M/s. Shree Sanari Shipping, Gandhidham;
- All the documents like Bill of Lading, invoice, Packing list, Certificate of Origin (sometimes provided), are being provided on his official email id (matshippingservices@gmail.com);
- After feeding the data in the format of Bill of Entry, the same were forwarded to email address of Shree Sanari Shipping (sss.kdl@gmail.com) for approval;
- After receiving approval from Shree Sanari on his email, the Bill of Entry were filed online;
- When the container arrives on the port, they approach the Customs officials for examination and sampling;
- After arrival of the Test report from Kandla laboratory, they again approach to Customs for assessment;
- On assessment of Bill of Entry, the duty was being paid by the importer of Shree Sanari Shipping directly online;
- Then they receive Out of Charge from Dock Examination Superintendent of Customs and submit the same to the CWC CFS, Kandla and intimate the same to Shree Sanari Shipping;
- He was providing the customs clearance service to this type of cargo (ICMP, Low Aromatic White Spirit, Mineral Hydrocarbon Oil) since October, 2017;
- He was getting the work related to importers M/s. V.V. Enterprise, M/s. Jay Mata Chintpurni Impex, M/s. Janpriya, M/s. G.R. Pahwa Enterprise and M/s. Shree Sanari Shipping from M/s. Shree Sanari Shipping, Gandhidham;

- He had handled total 390 containers till July, 2018;
- He was raising the bill of the agency charges in the name of M/s. Shree Sanari Shipping and they (Shree Sanari Shipping) were paying him his (MAT) charges in the ICICI bank account of M/s. MAT Shipping, Gandhidham;
- On submission of samples in Kandla Lab, he approached the Kandla laboratory and requested them to issue the report at the earliest and also requested the officer to take care of the final boiling point of the cargo and should be below 240 degree Celsius.
- The instructions regarding the final boiling point were conveyed to him by Shri Virbhadrarao and Shri Iqbal of Shree Sanari Shipping and he was conveying the Lab officers to issue the Lab Test Report accordingly i.e. below 240 degree Celsius;
- This adjustment was made in the Lab Test Report, because if the final boiling of the Material is more than 240 degree Celsius, its CTH will change and the item will fall under the restricted category.
- For adjusting the final boiling point figure in the test report, the amount of Rs.40,000/- to Rs.1,00,000/- was fixed, depending on number of containers per Bill of Entry to the Chemical Examiner of Kandla Laboratory;
- This payment was given to Chemical examiner for mentioning false final boiling point which was other than the factual figure;
- This amount was provided to them by Virbhadrarao of M/s. Shree Sanari Shipping through him in cash;
- During the search at his premises, some documents were retrieved from the WhatsApp chat available in his mobile phones and the print-out of the same were taken and he had gone through the same.
- He voluntarily submitted two mobile phones for further investigation purpose.

The main charge of misconduct against the appellant is that he had tried to influence the officers of Kandla Laboratory and take care that the 'final boiling point' of the cargo should be below 240 Celsius. It has been alleged that this was done in order to ensure that the goods imported by the various importers through the appellant did not qualify as SKO but qualified as ICMP. It is seen that other than alleged manipulation of final boiling point, there is no other manipulation by the appellant from the officers of the chemical laboratory, Kandla. In para 9.3 of the show cause notice, the test report of CRCL, Delhi has been reproduced which reads as follows:-

"The sample is in the form of clear colorless liquid. It is composed mineral hydrocarbon oil (more than 70% by weight) having following constants:

Sl.No.	Characteristics	Requirement of SKO as per IS 1459:1974	Test Results
1.	Acidity, Inorganic	Nil	Nil
2.	Distillation		-
	A) Initial boiling point, degree C	-	146
	B) Percentage recovered below 200 degree C, Min.	20	73
	C) Final boiling point, degree C, Max	300	252
	D) Dry Point, degree C	-	250
3.	Flash Point (Abel), degree C, Min.	35	44
4.	Smoke Point, mm, Min.	18	24
5.	Density at 15 degree C gm/cc	-	0.7885
6.	Aromatic content, % by volume	-	17.0

On the basis of above parameters the sample u/r meets the requirements of SKO (kerosene) as per IS: 1459:1974."

From the above test report, it is seen that the requirement of final boiling point for SKO is 300 Degree Celsius maximum. Thus, if final boiling point of any petro chemical exceeds 300 degree Celsius the same would not qualify as SKO. Now, we examine the alleged manipulation of the final boiling point by the officers of Kandla laboratory at the behest of the appellant. It is seen that the appellant has alleged to have asked the officers of Kandla chemical laboratory to show that the max. boiling point is below 240 degree Celsius. The motive for doing this is supposed to be that the goods should not qualify as SKO. It is not understood as to how by getting report manipulated to show that the final boiling point is below 240 degree Celsius, the appellant could have achieved the objective of getting out of the specifications of SKO as extracted from the test report of CRCL, New Delhi reproduced at para 9.3 of the show cause notice. By putting the final boiling point below 240 degree Celsius, it is obvious that the goods would qualify as SKO and not get out of requirements of being SKO.

4.1 In the aforesaid background, it is not understood as to how the appellant could have helped the importers by manipulating the final boiling point of the samples to below 240 degree Celsius as alleged in the show cause notice. The above objective of taking the goods out of the description of SKO could only have been achieved if the final boiling point was above 300 degree Celsius. This dichotomy has not been clarified in the impugned order. Since all the charges essentially flow from this fundamental charge of manipulating test report therefore, the impugned order in the present stage cannot be sustained unless the above dichotomy is explained.

05. In view of the above, the impugned order is set aside and the matter is remanded to the original adjudicating authority for fresh decision after giving opportunity to the appellant to defend themselves. Appeal is allowed by way of remand.

(Pronounced in the open court on 21.12.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul