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

REGIONAL BENCH-COURT NO.3

Customs Appeal No. 10790 of 2020-DB

(Arising out of OIA-KDL-CUSTM-000-APP-07to14-20-21 dated 23.07.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad)

Commissioner of Customs-Kandla ....**Appellant**
Custom House,
Near Balaji Temple,
Kandla, Gujarat

VERSUS

JAI MATA CHINTPURNI IMPEX ....**Respondent**
11/1 2nd Floor, Punjabi Bagh Extension,
New Delhi

With

- **(i)** **Customs Appeal No. 10791 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI VIRBHADRA RAO ILLA).**
- **(ii)** **Customs Appeal No. 10792 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI ANKIT TANDON).**
- **(iii)** **Customs Appeal No. 10793 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI IQBAL RAHMAN SHAIKH).**
- **(iv)** **Customs Appeal No. 10794 of 2020 [C/Cross/10230/2021] (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI R P MEENA).**
- **(v)** **Customs Appeal No. 10795 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. MILLENNIUM LUBRICANT FZE).**
- **(vi)** **Customs Appeal No. 10796 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. MRITUNJAY DASGUPTA).**
- **(vii)** **Customs Appeal No. 10797 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI MRITUNJAY DASGUPTA).**
- **(viii)** **Customs Appeal No. 10798 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI VIRBHADRA RAO ILLA).**
- **(ix)** **Customs Appeal No. 10799 of 2020 [C/Cross/10231/2021] (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI R P MEENA).**
- **(x)** **Customs Appeal No. 10800 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI IQBAL RAHMAN SHAIKH).**
- **(xi)** **Customs Appeal No. 10801 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI IQBAL RAHMAN SHAIKH).**
- **(xii)** **Customs Appeal No. 10802 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI VIRBHADRA RAO ILLA).**
- **(xiii)** **Customs Appeal No. 10803 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI MRITUNJAY DASGUPTA).**
- **(xiv)** **Customs Appeal No. 10804 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHAGUN ENTERPRISE).**
- **(xv)** **Customs Appeal No. 10805 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI IQBAL RAHMAN SHAIKH).**
- **(xvi)** **Customs Appeal No. 10806 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. JAN PRIYA ENERGY).**

- **(xvii) Customs Appeal No. 10807 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI MRITUNJAY DASGUPTA).**
- **(xviii) Customs Appeal No. 10808 of 2020 [C/Cross/10232/2021] (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI R P MEENA).**
- **(xix) Customs Appeal No. 10809 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI VIRBHADRA RAO ILLA).**
- **(xx) Customs Appeal No. 10810 of 2020 [C/Cross/10233/2021] (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI R P MEENA).**
- **(xxi) Customs Appeal No. 10811 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI ANKIT TONDON).**
- **(xxii) Customs Appeal No. 10812 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI HETRAM GOYAL).**
- **(xxiii) Customs Appeal No. 10813 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI IQBAL RAHMAN SHAIKH).**
- **(xxiv) Customs Appeal No. 10814 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI MRITUNJAY DASGUPTA).**
- **(xxv) Customs Appeal No. 10815 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI VIRBHADRA RAO ILLA).**
- **(xxvi) Customs Appeal No. 10816 of 2020 (COMMISSIONER OF CUSTOMS, KANDLA VS. MILLENNIUM LUBRICANT FZE).**
- **(xxvii) Customs Appeal No. 10172 of 2021 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI MRITUNJAY DASGUPTA).**
- **(xxviii) Customs Appeal No. 10173 of 2021[C/Cross/ 10177/2021] (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI R P MEENA).**
- **(xxix) Customs Appeal No. 10174 of 2021 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI IQBAL RAHMAN SHAIKH).**
- **(xxx) Customs Appeal No. 10175 of 2021 (COMMISSIONER OF CUSTOMS, KANDLA VS. G R PAHWA ENTERPRISE).**
- **(xxxi) Customs Appeal No. 10176 of 2021 (COMMISSIONER OF CUSTOMS, KANDLA VS. SHRI VIRBHADRA RAO ILLA).**

[(Arising out of OIA-KDL-CUSTM-000-APP-23to27-20-21 dated 24.07.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad),

(Arising out of OIA-KDL-CUSTM-000-APP-34to37-20-21 dated 24.07.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad),

(Arising out of OIA-KDL-CUSTM-000-APP-28to33-20-21 dated 24.07.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad),

(Arising out of OIA-KDL-CUSTM-000-APP-15to22-20-21 dated 23.07.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad),

(Arising out of OIA-KDL-CUSTM-000-APP-38to42-20-21 dated 21.09.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad)]

APPEARANCE:

Shri Sanjay Kumar, Superintendent (AR) appeared for the Appellant
Shri Vikas Mehta, Consultant appeared for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

FINAL ORDER NO. 10353-10384/2025

DATE OF HEARING: 15.04.2025
DATE OF DECISION: 15.05.2025

SOMESH ARORA

The brief facts of the case are that an intelligence was received which indicated that some importers were importing Superior Kerosene Oil (SKO) in the guise of "Industrial Composite Mixture Plus" ("ICMP") or "Low Aromatic White Spirit" ("LAWS") under CTH 27101990, in violation of the Policy provisions, an inquiry was initiated by the Revenue and it's officers visited office premises of M/s. Shree Sanari Shipping, Gandhidham and MAT Shipping. Gandhidham and retrieved copies of the documents/emails, printouts of WhatsApp chat of Shri Virbhadra Rao with Shri Mritunjay Dasgupta under panchanama date 29.08.2018. From the above searches, it came to the notice that some importers were engaged in importing ICMP/ LAWS, declared as 'Industrial Composite Mixture Plus. The department forwarded representative samples to CRCL, Delhi to ascertain correct description of the goods. which after testing all samples drawn, opined that these samples meet the requirements of SKO (Kerosene) as per IS: 1459:1974. The test reports confirmed that the goods imported by Various importers is SKO, classifiable under CTH No. 27101910, as against description "ICMP" with classification under CTH 27101990, declared by the Importers.

1.1 As per Schedule-1 of the ITC (HS), classification of Import Items 2015-2020, Section-V, Chapter 27, Import Policy for the SKO, as covered under Customs Tariff Heading 27101910 is "State Trading Enterprises" with remarks that "Import subject to Para 2.11 of the Foreign Trade Policy and condition at Policy condition (2) below. The SKO in the total quantity in possession exceeding the specified quantity falls in the category of "Petroleum Class B. The import, storage and handling of the products falling under "Petroleum

Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). The Licence issued under the Petroleum Rules, 1976, is mandatory for import of goods falling under "Petroleum Class B". Only such importers who are already in possession of Licence issued under the Petroleum Rules, 1976 can import Petroleum. For storage of such "Petroleum Class B products", statutory provisions have been made, which require different manner of compliance, if such goods to be stored in Drums and to be stored in tanks. As per Notification No. 105-Cus dated 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated as deemed violation of the provisions of Section 11 of the Customs Act, 1962.

1.2 During the investigation, it appeared that the importers had imported SKO falling under CTH No. 27101910 in the guise of "Industrial Composite Mixture Plus" under CTH No. 27101990. The policy conditions stipulate that "import of SKO is subject to Para 2.20 of the Foreign Trade Policy and shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL and IBP for all purposes with STC being nominated as a State Trading Enterprise (STE) for supplies to Advance Licence holders. Advance Licence holders shall however, have the option to import SKO from the above mentioned STEs including STC". Further, the SKO stands classified as "Petroleum Class B". Thus, the goods became liable for confiscation under Section 111 (d), (m) and (p) of the Customs Act, 1962. Accordingly, SCNs were issued to various importers and Co-Noticees proposing reclassification of the imported goods & their confiscation for contravention of the provisions and imposition of fine and penalty, which are confirmed by the Adjudicating Authority as detailed below: -

1. SCN No. DRI/AZU/GRU/SKO-JMCI/INT-09/20/2018 dated 28.03.2019
OIO No. KDL/ADC/AK/15/2019-20 dated 19.09.2019
OIA No. KDL-CUSTM-000-APP-07 to 14-20-21 dtd. 23.07.2020

Value of the Goods – Rs. 3,29,50,412/-

Main Noticee	**Fine**	**Penalty under Section 112**	**Penalty under Section 114AA**	**Penalty under Section 117**
M/s. Jai Mata Chintpurni Impex	30,00,000	8,00,000	4,00,000	75,000
Co-Noticees				
Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping		8,00,000	4,00,000	
Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping		4,00,000	2,00,000	
Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping		8,00,000	4,00,000	
Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Laboratory Kandla		8,00,000	4,00,000	
Shri Ankit Tandon of M/s. Millennium Lubricant FZE, UAE		8,00,000	4,00,000	
M/s. Millennium Lubricant FZE, UAE		8,00,000	4,00,000	

2. SCN No. DRI/AZU/GRU/Sanari Petro/INT-06/20/2018 dated 28.03.2019
OIO No. KDL/ADC/AK/14/2019-20 dated 18.09.2019
OIA No. KDL-CUSTM-000-APP-23 to 27-20-21 dtd. 24.07.2020
Value of the Goods – Rs. 1,73,36,987/-

Main Noticee	**Fine**	**Penalty under 112**	**Penalty under 114AA**	**Penalty under 117**
Shree Sanari Shipping	15,00,000			
Co-Noticee				
Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping		4,00,000	2,00,000	

Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping		2,00,000	1,00,000	
Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping		4,00,000	2,00,000	
Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Laboratory Kandla		4,00,000	2,00,000	
Shri Manish of Sunrise Petroleum FZC, Sharjah		4,00,000	2,00,000	
Shri Vivek Goel of Sunrise Petroleum FZC, Sharjah		4,00,000	2,00,000	
Sunrise Petroleum FZC, Sharjah		4,00,000	2,00,000	

3. SCN No. DRI/AZU/GRU/SKO-Shagun/(INT-10/2018)/2019 dated 28.03.2019
OIO No. KDL/ADC/GCJ/24/2019-20 dated 07.02.2020
OIA No. KDL-CUSTM-000-APP-34 to 37-20-21 dtd. 24.07.2020
Value of the Goods – Rs. 88,51,018/-

Main Noticee	**Fine**	**Penalty under 112**	**Penalty under 114AA**	**Penalty under 117**
M/s. Shagun Enterprises		6,30,000	3,15,000	1,00,000
Co-Noticee				
Shri Virbhadra Rao Illa, Shipping Proprietor of M/s. Shree Sanari		6,30,000	3,15,000	
Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping		6,30,000	3,15,000	
Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping		6,30,000	3,15,000	
Shri Arif Bhai of M/s. Green Petrochem		6,30,000	3,15,000	

Industry FZC, Sharjah				
M/s. Green Petrochem Industry FZC, Sharjah		6,30,000	3,15,000	

4. SCN No. DRI/AZU/GRU-3/SKO-Janpriya/(INT-12/2018)/2019 dated 26.02.2019
OIO No. KDL/ADC/AK/16/2019-20 dated 20.09.2019
OIA No. KDL-CUSTM-000-APP-28 to 33-20-21 dtd. 24.07.2020
Value of the Goods – Rs. 1,66,95,237/-

Main Noticee	**Fine**	**Penalty under 112**	**Penalty under 114AA**	**Penalty under 117**
M/s. Jan Priya Energy	15,00,000	4,00,000	2,00,000	50,000
Co-Noticee				
Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping		4,00,000	2,00,000	
Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping		2,00,000	1,00,000	
Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping		4,00,000	2,00,000	
Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Laboratory Kandla		4,00,000	2,00,000	
M/s. Sunrise Petroleum FZC, Sharjah		4,00,000	2,00,000	
M/s. Yes Corporation		4,00,000	2,00,000	

5. SCN No. DRI/AZU/GRU-3/SKO-V.V Ent/INT-09/2018 dated 26.03.2019
OIO No. KDL/ADC/AK/17/2019-20 dated 26.09.2019
OIA No. KDL-CUSTM-000-APP-15 to 22-20-21 dtd. 23.07.2020
Value of the Goods Rs. 2,82,29,064/-

Main Noticee	**Fine**	**Penalty under 112**	**Penalty under 114AA**	**Penalty under 117**
M/s. V.V. Enterprises	25,00,000	6,00,000	3,00,000	75,000
Co-Noticee				

Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping		6,00,000	3,00,000	
Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping		3,00,000	1,50,000	
Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping		6,00,000	3,00,000	
Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Laboratory Kandla		6,00,000	3,00,000	
Shri Ankit Tandon of M/s. Millennium Lubricant FZE, United Arab Emirates		6,00,000	3,00,000	
M/s. Millennium Lubricant FZE, United Arab Emirates		6,00,000	3,00,000	
Shri Prakash of M/s. Kite International FZE, Sharjah		6,00,000	3,00,000	
M/s. Kite International FZE, Sharjah		6,00,000	3,00,000	

6. SCN No. DRI/AZU/GRU/SKO-G.R. Pahwa /(Int-11/2018)/2019 dated 28.03.2019
OIO No. KDL/ADC/AK/23/2019-20 dated 03.02.2020
OIA No. KDL-CUSTM-000-APP-38 to 42-20-21 dtd. 21.09.2020
Value of the Goods – Rs. 1,11,28,519/-

Main Noticee	**Fine**	**Penalty under 112**	**Penalty under 114AA**	**Penalty under 117**
Shri Gurneet Pal Singh, Prop. Of M/s. G.R. Pahwa Enterprises		8,55,000	4,27,500	1,00,000
Co-Noticee				
Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping		8,55,000	4,27,500	
Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping		8,55,000	4,27,500	
Shri Mritunjay Dasgupta (Customs		8,55,000	4,27,500	

Broker), Proprietor of M/s. MAT Shipping				
Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Laboratory Kandla		8,55,000	4,27,500	
Shri Basheer of M/s. Kan Trading FZE, United Arab Emirates		8,55,000	4,27,500	
M/s. Kan Trading FZE, United Arab Emirates		8,55,000	4,27,500	

1.3 The adjudicating authority observed that as per the provisions of section 46(4) ibid and 46(A) of the Customs Act, 1962, the importer while presenting a B/E shall make and subscribe to a declaration as to the truth of the contents and shall in support of such declaration, produce the invoice, if any or any other documents relating to the imported goods; the importer, shall ensure accuracy and completeness of the information given, the authenticity and validity of any document supporting it and compliance with the restriction or prohibition. He held that the importers failed to provide accurate and complete information about the goods and have imported SKO in the guise of ICMP with wrong classification thereof under CTH 27101990. Therefore, he confiscated the said imported goods under section 111(d), 111(m) and 111(p) ibid and imposed Redemption fine in lieu of confiscation. The adjudicating Authority also imposed penalty on the Noticees for their respective roles.

1.4 The appellants filed appeals against the OIOs before the Commissioner (Appeals), Ahmedabad. The department also filed appeals before the said Authority against imposition of imposing low penalties. The Commissioner of Customs (Appeals), Ahmedabad by way of passing impugned OIAs disposed of the appeals by setting aside the OIO dated 19.09.2019 with consequential relief to the appellants. The department's appeals were also dismissed. The Commissioner of Customs (Appeals), Ahmedabad placed heavy reliance on the CESTAT Order No. A/11026-11028/2020, dtd.01.06.2020 in the case of M/s. Swarna Oil Services (2020-TIOL-970-CESTAT-AHM], considering the fact of the said case as identical to the present case. He took the ground that CRCL has though confirmed the goods as SKO, but the same is without conducting the tests in respect of following three parameters:

(i) Burning quality

(a) Char value, mg/kg of oil consumed, Max.

(b) Bloom on glass chimney

(ii) Colour (Saybolt), and

(iii) Total Sulphur, percent by mass, Max.

2. Aggrieved by the impugned orders, the department filed the present appeals. The main grounds taken by Revenue are: -

- All the testing parameters of Bureau of Indian Standards IS 1459:1974 (reaffirmed in the year 1996) were not required to be followed, before arriving at the conclusion to confirm description of the goods, as SKO.
- The goods imported by the party was hydrocarbon Oil only and majority of the parameters as prescribed in IS 1459:1974 for the SKO were duly tested, and tests for only 3 parameters out of 8, were missing.
- The case is distinguishable from M/s Swarna Oil Services, as in the instant case, other evidences such as statements of the Customs brokers and Handling agents were also available which were not appreciated by the Commissioner of Customs (Appeals) while passing the impugned order.

3. Learned Advocate on the other side, in rebuttal states that in the matter of M/s Swarna Oil Services (cited supra), the party was confronted with the same parameters of IS 1459:1947 (reaffirmed in the year 1996). This Hon’ble

Tribunal while setting aside the question of meeting 5 parameters out of 8 parameters, decided as follows: -

> *"From a perusal of the test reports of CRCL Delhi and CRCL Kandla, assuming the same to be correct, notwithstanding the difference in the test results between the two qua the parameter regarding final boiling point. It is seen that out of 8 parameters on which the sample has to be tested for determining whether or not the same meets with the specifications of Kerosene, it is seen from both the test results that test have not been undertaken with respect to the following 3 parameters.:*
>
> *(i) Burning quality*
> *(a) Char value, mg/kg of oil consumed, Max*
> *(b)Bloom on glass chimney*
>
> *(ii) Colour (Saybolt)*
>
> *(ii) Total, sulphur, percent by mass, Max*
>
> *It is also not the Revenue's case that the said three parameters can be established by any inferential process or otherwise. Insofar as sulphur is concerned, though no test have been undertaken, we will for the sake of our discussion assume that the said parameters have been met, as the same forms a part of the suppliers test reports and is within the parameters specified in IS 1459:1974 (reaffirmed in 1996). However in respect of the other two parameters regarding burning quality and colour there is absolutely no evidence that the revenue has produced to establish that the said two parameters are met with. The revenue has neither through test results nor otherwise lead any evidence to show that the said two parameters were also met with."*

3.1. It was therefore the submission of the Respondent/Assessee that in the matter of products which have a scientific nature, test report is the ultimate evidence and if it is not tested, on BIS parameters totally, the same cannot be said to be conclusive as was held by this Tribunal in the case of M/s Swarna Oil Services (cited supra). He also submits that in the recent judgment, Hon'ble Supreme Court has underlined the importance of testing on all parameters of scientific products while reversing the decision of Hon'ble High Court of Gujarat in the matter of Gastrade International Vs. Commissioner of

Customs Kandla as reported in 2025 (4) TMI 23 (SC). He seeks to place reliance on paras 79 to 86 of the said decision of the Supreme Court.

3.2 He emphasises that in scientific products, it is not the rule of probability but conclusivity that decides the nature of product which is subjected to chemical examination. It was therefore his request that the order of the Commissioner (Appeals) be upheld and the appeals of the department be rejected.

4. We have gone through the rival submissions and materials that were placed on record as well as synopsis filed during the course of hearing. We find that as per IS standard 1459:1974, the following 8 standards are required to be tested, along with methods prescribed. Same are reproduced below: -

IS : 1459 - 1974

2.2 The material shall also comply with the requirements given in Table 1, when tested according to the appropriate methods prescribed under 'P' series of IS : 1448*, reference to which is given in col 4 of the table.

TABLE 1 REQUIREMENTS FOR KEROSINE

Sl. No.	Characteristic	Requirement	Method of Test, Ref to 'P' of IS : 1448*
(1)	(2)	(3)	(4)
i)	Acidity, inorganic	Nil	P : 2
ii)	Burning quality:		P : 5
	a) Char value, mg/kg of oil consumed, *Max*	20	
	b) Bloom on glass chimney	Not darker than grey	
iii)	Colour (Saybolt)†, *Min*	†10	P : 14
iv)	Copper strip corrosion for 3 h at 50°C	Not worse than No. 1	P : 15
v)	Distillation:		P : 18
	a) Percent recovered below 200°C, *Min*	20	
	b) Final boiling point, °C, *Max*	300	
vi)	Flash point (Abel), °C, *Min*	35	P : 20
vii)	Smoke point, mm, *Min*	18‡	P : 31
viii)	Total, sulphur, percent by mass, *Max*	0·25§	P : 34

*Methods of test for petroleum and its products.

†Where Saybolt chromometer is not available, Lovibond colour of the sample kept in an 18-in cell may be measured according to IS : 1448 [P : 13]-1960 'Methods of test for petroleum and its products, P : 13 Colour by Lovibond tintometer' in which case, the colour shall not be deeper than Standard White (IP 4·0).

‡For supplies to Defence, the smoke point of the product shall be 21 mm, *Min* and for Railways it shall be 20 mm, *Min*.

§For supplies to Defence, total sulphur content, percent by mass, of the product shall be 0·20, *Max*.

*Methods of test for petroleum and its products.

4

However, we find that out of 8 standards prescribed for testing, only 5 standards in the instant case were tested, barring the burning quality, colour and total Sulphur percentage which were neither tested nor did the question of following the testing procedure arise.

4.1 We also find that prescribed BIS standards as well as the testing procedure have been adopted by Customs Tariff Act, 1975. The Customs House Laboratory, Kandla instead tested additionally the density and aromatic content which are not there in the IS specification nor is any method prescribed for testing the same. In this back ground, we decide whether the test report is acceptable or not and whether the learned Commissioner (Appeals) in the order impugned arrived at the correct conclusion in rejecting the appeals filed by the department? We find that in similar situation, the Hon'ble Supreme Court in the matter of Gastrade International Vs. Commissioner of Customs, Kandla -2025 (4) TMI 23 (SC) decided as follows: -

> *"**39**. There cannot be any dispute to the proposition of law as noted by the High Court that the burden of proof as regards the classification of any goods of importation is upon the Revenue/Customs authority and the standard of proof in proceedings under the Tariff Act is not "beyond reasonable doubt". However, whether "preponderance of probability" can be the appropriate test for classification under the Customs Act would be required to be examined in the light of the "General Rules for the interpretation of this Schedule" as provided in the First Schedule – Import Tariff in Part 2 of the Tariff Act (hereinafter referred to as the "Rules")*
>
> ***40**. The aforesaid Rules provide the principles on the basis of which the goods in the First Schedule to the Tariff Act are to be classified, which had escaped the attention of all the three forums below and each forum had adopted its own methodology to determine the proper classification of the goods/substance in issue as discussed above dehors the aforesaid rules for interpretation.*
>
> ***41**. Rule 1 of the aforesaid Rules lays down that the classification shall be determined on the basis of the terms of the headings and relative Section or Chapter Notes.*

Rule 2 is to be invoked when it relates to an incomplete or unfinished article or a mixture of substances, with which we are not concerned.

Rule 3 is attracted when for certain reasons, the goods are prima facie classifiable under two or more headings. This situation also does not arise in the present case.

Rule 4 further provides that goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are "most akin".

4.2 From the above, it is clear that the Apex Court had clearly noted that the first preference has to be given in determining classification, to the headings and relevant section & chapter notes. The principle "most akin" comes into consideration only when the application of headings, Sections or chapter notes, leads to no conclusion. We find that for the heading sought by the appellants, the supplementary note (c) defines "Superior Kerosene Oil" to mean any hydro carbon oil confirming to the Indian standards specification of Bureau of Indian Standards IS 1459:1974 (as mentioned in the year 1996). We find that the supplementary notes of the tariff including the present one are nation specific in case of HSN and require conformity to the Indian Standards specifications i.e. IS 1459:1974. We shall now examine as to whether the impugned product is in conformity with the IS standards 1459: 1974 or not? This IS standard which is statutorily adopted by the Customs Tariff Act through the supplementary Note to Chapter 27 provides for conformity to be determined through Eight standards. Therefore, by virtue of borrowing of IS 1459:1974, these Eight parameters are now built in the statue without any exception.

4.3 We also find that the methods of test have been prescribed which are applicable to petroleum and its products. As against this, the test conducted to derive its conclusion by the Chemical Examiner through Customs Laboratory are done only on Five parameters out of prescribed Eight parameters and it is also not mentioned as to whether the Five parameters tested by them were done as per the prescribed testing procedure or not? We find such report is therefore clearly rejectable as it falls short of the statutory requirements of number of parameters prescribed under the Customs Tariff Act, 1975 through adoption of specified ISI standards.

4.4 We also find that there is a complete silence in the report about the testing procedure adopted and whether they were in conformity of the ISI standards including the tests prescribed or not? In this regard, we take support from the decision of TATA Chemical Ltd Vs. Commissioner of Customs (Preventive), Jamnagar as reported in 2015 (320) ELT 45 (SC), which specifically dealt with sampling in testing procedure prescribed under ISI norms. We reproduce the relevant portion of para 16 and same reads as under: -

> ***"16.*** *The admitted position on record is that the samples drawn were not drawn in accordance with law and were drawn with no regard whatsoever to IS 436. That IS 436 would apply to the facts of the present case is made clear by our judgment reported in Bombay Oil Industries (P) Ltd. v. Union of India, 1995 (77) E.L.T. 32 (S.C.), where this Court held following Union of India v. Delhi Cloth & General Mills Co. Ltd., 1963 Suppl. (1) SCR 586 = 1977 (1) E.L.T. (J 199) (S.C.), that if the method of testing of any item of Central Excise tariff is not mentioned, then the Indian Standard Institution's method should be applied. That this would apply to the Customs Act as well. IS 436 lays down :-*
>
> *"5. SAMPLING FROM SHIPS DURING LOADING OR UNLOADING*
>
> *5.1 Sub-lots - For the purpose of sampling, the entire quantity of coal in a ship shall be divided into a suitable number of sub-lots of approximately equal weight as specified in Table 1.*
>
> *5.1.1 A gross sample shall be drawn from each of the sub-lots and shall be kept separately so that there will be as many gross samples as the number of sub-lots into which the lot has been divided.*
>
> *5.2. Sampling of coal from ships shall be carried out, as far as practicable, when coal is in motion. If it is taken on a conveyer, the gross sample shall be collected as per the procedure laid down in Table 3. If not, the gross samples may be drawn during loading or unloading of the ship. For this purpose, the number of increments to be taken shall be governed by the weight of the gross*

sample and the weight of increment as specified in Table 3 for various size groups of coal."

TABLE 1 NUMBER OF SUB-LOTS/GROSS SAMPLES

(Clauses 0.3.4.1 and 3.1)

Weight of the Lot (Metric Tonnes)	***No. of sub-Lots/Gross Samples***
Upto 500	*2*
501 to 1000	*3*
1001 to 2000	*4*
2001 to 3000	*5*
Over 3000	*6."*

Then the IS 436 goes on to describe the procedure to reduce a gross sample into a sample for a lab test etc. in great detail, and speaks about the minimum weight of a gross sample being 75 Kg so far as "Coal, small" is concerned."

Therefore, the statutory or adopted prescription in the statute cannot be ignored by testing agencies.

4.5 On this count alone, we have no hesitation to say that incomplete report on various parameters as well as not indicating testing methodologies, being in accordance with ISI, cannot be accepted specially when supplementary note itself through adoption process statutorily prescribes, the test to be conducted conforming to the IS specification IS 1459:1974. The Customs laboratory cannot choose in the face of such legal and statutory prescription to test the product only on certain parameters while ignoring the others. We find that the supplementary chapter note itself has laid down the 'conformity criteria' which the report fails to adhere to.

4.6 We also find that the Learned Commissioner (Appeals) while giving his findings in para 6 to 8 has given the following ruling: -

***"Para 6**. I have carefully gone through the appeal memorandum and the submissions made as well have requested for records of the case in respect of the appeals. The appellant's condonation of delay of about 17 days, which being with in allowable limits, is allowed. I find that the appellants had imported goods describing it as "Industrial Composite Mixture Plus", and classified them under CTH 27101990. The CRCL New Delhi in its Test Report No. C.No.35/Cus/2018-2019/CL-123 DRI dated 18/09/2018, reported as follows:*

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

Sl. No.	*Characteristics*	*Requirement of Kerosene as per IS 1459-1974*	*Test result*
1.	*Acidity, Inorganic*	*Nil*	*Nil*
2.	*Distillation:*		
	A) Initial boiling point, degree C	*-*	*152*
	B) Percentage recovered below 200 degree C, Min.	*20*	*84*
	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*	*26*
5.	*Density at 15degree C gm/cc*	*-*	*0.7926*
6.	*Aromatic Content, % by volume*	*-*	*16.0*

On the basis of above parmeters the sample u/r meets the requirements of SKO (Kerosene) as per IS: 1459-1974,"

On perusal of the above test report, I find that Joint Director, CRCL, New Delhi, in his test report has reported that the sample conforms to the specification of Kerosene as per IS: 1459-1974. In this regard, I find that the appellants have relied upon an identical case of M/s Swarna Oil Services, where Hon'ble CESTAT vide its Final Order No. A/11-26-11028/2020 dated 18.12.2019 set aside the OIA No.MUN-CUSTM-000-APP-80-81-19-20 dated 19.08.2019 and allowed the appeal. In the Final Order No. A/11-26-11028/2020 dated 18.12.2019 issued by Hon'ble CESTAT in the case of M/s Swarna Oil Services, the test report issued by CRCL, New Delhi has been reproduced in paragraph 6 thereof, which is as follows:

"6 The CRCL New Delhi under cover of its report dated 08.02.2019 opined as under:

"Each of the two samples is in the form of colorless and pale yellow color liquid respectively. Each is composed of Mineral Hydrocarbon Oil (More than 70% by weight) possessing the following parameters:

Sl. No.	Characteristics	Requirement of Kerosene as per IS: 1459-2019	Test Results pertaining to Lab No. 62 dated 22.01.2019 B/E No. 8258736 dated 29.09.2018	Test Results pertaining to Lab No. 63 dated 22.01.2019 B/E No. 8355059 dated 06.10.2018
1	Acidity, Inorganic	Nil	Nil	Nil
2	Density at 15°C, Kg/m3	Not limited but to be reported	782.3	782.0
3	Distillation:			
	a) Initial Boiling Point, °C	--	154	156
	b) % recovered below 200°C, percentage (v/v') Min.	20	68	68
====	c) Final Boiling Point, °C, Max.	300	250	250
	d) Dry Point, °C	--	246	247
4	Flash Point (Abel), °C, Min.	35	44	44
5	Smoke Point, mm, Min.	18	23	24
6	Aromatic Content, % by Volume	--	15	18

On the basis of above parameters, the samples under reference conforms to the specification of Kerosene as per IS 1459: 2018. Each do not meet the requirements of Petroleum Hydrocarbon Solvents as per IS 1745-1978 in respect of Final Boiling Point. An officer may be deputed to collect the sealed remnant samples from CRCL, New Delhi."

Hon'ble CESTAT has set aside OIA No.MUN-CUSTM-000-APP-80-81-19-20 dated 19.08.2019 after going through the test reports and have observed as under:

"From a perusal of the test report of CRCL Delhi and CRCL Kandla, assuming the same to be correct, notwithstanding the difference in the test results between the two qua the parameter regarding final boiling point. It

is seen that out of 8 parameters on which the sample has been tested for determining whether or not the same meets with the specifications of Kerosene, it is seen from both the test results that test have not been undertaken with respect to the following 3 parameters:

(i) Burning quality

(a) Char value, mg/kg of oil consumed, Max

(b) Bloom on glass chimney

(ii) Colour (Saybolt)

(iii) Total, Sulphur, percent by mass, Max.

It is also not the Revenue's case that the said three parameters can be established by any inferential process or otherwise. Insofar as Sulphur is concerned, though no test have been undertaken, we will for the sake of our discussion assume that the said parameters have been met, as the same form a part of the suppliers test reports and is within the parameters specified in IS 1459:1974 (reaffirmed in 1996). However ***in respect of the other two parameters regarding burning quality and colour, there is absolutely no evidence that revenue has produced to establish that the said parameters are met with. The revenue has neither through test results nor otherwise lead any evidence to show that the said two parameters were also met with."***

7. Hon'ble Tribunal had, relying upon the case law decided by the Apex Court in the case of HPL Chemicals-2006 (197) ELT.324, held that the burden of classification is on the revenue. In the last paragraph of Final Order No.A/11-26-11028/2020 dated 18.12.2019 in the case of M/s Swarna Oil Services, Hon'ble CESTAT has held as follows:

"14. In our view, in the absence of evidence that the imported goods meet with all the specifications laid down in supplementary note (c) to chapter 27, for a product to be classified as Kerosene, the case made out by the revenue cannot be sustained. Accordingly, the impugned orders are set aside and appeals are allowed with consequential reliefs, if any arise, in accordance with law."

8. I find that the facts and circumstances of the cases covered in the present appeals are similar to the above order of the Hon'ble Tribunal as in the present cases also the tests have not been undertaken with respect to the following 3 parameters:

(i) Burning quality

a) Char value, mg/kg of oil consumed, Max

b) Bloom on glass chimney

(ii) Colour (Saybolt)

(iii) Total, Sulphur, percent by mass, Max.

Therefore, the confiscation of the impugned goods and the imposition of penalties on the appellants in the impugned order, based on the said Test Report are not maintainable in view of the Final Order No.A/11-26-11028/2020 dated 18.12.2019 issued by Hon'ble CESTAT in the matter of M/s Swarna Oil Services."

4.7 From the above reproduced para 6 of the decision, we find that a test is statutorily required to be followed as per mentioned BIS standards by the Customs Tariff Act on given number of parameters and as per test methods prescribed. Non-testing of 3 parameters out of 8 parameters, will negate the test report and will not discharge the burden of proof which is on the Revenue to decide the nature of the goods, as well as its classification, as the product is of scientific nature. This will also cast shadow of doubt on the conclusions if any reached or the opinions if any arrived at by the testing officials. Being inconclusive, the benefit of doubt must go to the party. The burden cannot therefore be considered as discharged by the department. We therefore find no infirmity in the order of the Commissioner (Appeals) and we find the same has been based on well-founded reasons and accept the same as legal and proper. Department has tried to build its edifice on the weak foundation of incomplete testing, without realising that "*debile fundamentum fallit opus (a weak foundation makes the work fail)*" will apply to the situation created. At this stage, after 6.5 years have lapsed and even remnant sample were used for testing, further, testing is neither feasible, nor can be conducted without causing prejudice to the respondents.

4.9 In view of the precedent decision with detailed reasons being available to us in the case of Swarna Oil Services (cited supra), we find that the Appeals of the department lack merit and are rejected accordingly. Cross objections are also disposed of.

5. Appeals are rejected. Cross of the respondents disposed of.

(*Order Pronounced in the open court on 15.05.2025*)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha