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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 10020 of 2021
(Arising out of MUN-CUSTM-000-APP-75-79-20-21 dated 08.09.2020 passed by Commissioner of Customs (Appeals), Ahmedabad)

C.C. – Mundra **...Appellant**
Office of the Principal Commissionerate
Of Customs, Port User Building, Custom
House, Mundra, Kutch, Gujarat-370421

VERSUS

Gastrade International **...Respondent**
201, 2nd Floor, Plot No. 36,
Sector 9, Gandhidham (Kutch)
Gujarat-370201

WITH

(i) Customs Appeal No. 10108/2021 (Commissioner of Customs Mundra);
(ii) Customs Appeal No. 10109/2021 (Commissioner of Customs Mundra);
(iii) Customs Appeal No. 10110/2021 (Commissioner of Customs Mundra);
(iv) Customs Appeal No. 10111/2021 (Commissioner of Customs Mundra);

(Arising out of MUN-CUSTM-000-APP-75-79-20-21 dated 08.09.2020 passed by Commissioner of Customs (Appeals), Ahmedabad)

APPEARANCE:
Shri J.S. Sukhija, (Addl. Commr.)Authorised Representative appeared for the appellant
Shri Vikas Mehta, Consultant (Amicus Curiae) appeared for the Respondent

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

FINAL ORDER NO. 11027-11031 /2025

DATE OF HEARING: 07.10.2025
DATE OF DECISION: 10.11.2025

SOMESH ARORA:

M/s. Gastrade International, 201, 2nd Floor, Plot No. 36, Sector-9, Gandhidham, Kutch-370201 (hereinafter referred to as "the party") had filed Bill of Entry No. 8354953 dated 06.10.2018, for clearance of "Petroleum Hydrocarbon Solvent Grade (125/240)" classifying under CTH 27101990.

1.1 The goods were marked for first check with order to draw samples and forward the same to CRCL, Kandla. Samples were accordingly drawn and sent for testing to CRCL, Kandla. Test Report No.2981 dated 22.10.2018 revealed that the samples confirmed to matching with the requirement of kerosene oil as per IS:1459:2016 and hence, the goods were classified under CTH 27101910.

1.2 As per Policy condition 2 of Chapter 27 of ITC (HS) Schedule-1, goods falling under tariff heading 27101910 are restricted and are allowed to be imported only through State Trading Enterprise (STE). The policy condition reads as under:

> "2.Import of SKO shall be allowed through State Trading Enterprise (STE) i.e. IOC, BPCL, HPCL and IBP for all purpose with STC being nominated as a STE for supplies to Advance Licence holders. STES including STC."

Further Para 2.20 of FTP 2015-20 states that:

2.20 State Trading Enterprises (STES)

(a) State Trading Enterprises (STEs) are governmental and nongovernmental enterprises, including marketing boards, which deal with goods for export and/or import. Any goods, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-21.

(b) Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

(c) DGFT may, however, grant an authorization to any other person to import or export any of the goods notified for exclusive trading through STEs.

1.3 The policy provisions mentioned in Indian Trade Classification (Harmonised System) of Import in the Schedule-1 is binding as per the FTP 2015-20, Chapter and paragraph 2.20.

1.4 Since the goods appeared to the department to be classifiable under 27101910 and importer violated the provisions of FTP and Customs Act, the imported goods appeared liable for confiscation under Section 111(d) and (m) of the Customs Act, 1962 to the department as the appellant is neither an STE nor have submitted any authorization as provided in the Policy condition no.2 of Chapter 27 of ITC(HS), Schedule1. The declared description of the goods was found to be suppressed and mis-declared by the department and hence, the importer (party) was considered liable for penal action under Section 112(a) of the Customs Act, 1962. These Show Cause Notices were issued proposing redetermination of classification of impugned goods, confiscation of seized goods on the ground of misclassification and imposition of penalty under Section 112(a). These SCNs were decided vide Orders-in-original (as mentioned in below table at Column 2) to change the classification to CTH 27101910 and also ordered for confiscation of the imported goods and gave an option to the appellant to redeem the confiscated goods on payment of redemption fine (for re-export only) and also imposed penalty under Section 112(a) (i) of the Customs Act 1962 as detailed under:

Sr. No.	OIO No & Date	BE No. & date	Value (Rs.)	Fine (Rs.)	Penalty (Rs.)
1	MCH/ADC/PSK/59/19-20 dated 04.09.2019	8354903/ 06.10.2018	90,38,326.99	15,00,000	2,00,000
2	MCH/ADC/PSK/60/19-20 dated 06.09.2019	8354903/ 06.10.2018	78,01,254.01	13,00,000	1,75,000
3	MCH/ADC/PSK/61/19-20 dated 06.09.2019	8439105/ 12.10.2018	1,00,87,417.24	17,00,000	2,25,000
4	MCH/ADC/PSK/63/19-20 dated 06.09.2019	8452266/ 15.10.2018	88,25,810.39	15,00,000	2,00,000
5	MCH/ADC/PSK/62/19-20 dated 06.09.2019	8439324/ 12.10.2018	51,12,226.08	8,50,000	1,15,000

1.5 On appeal against these OIOs, the Commissioner (Appeals), Ahmedabad passed appellate order No. MUN-CUSTOM-000-APP-75 TO 79-20-21 dated 08.09.2020. In appeal, the party submitted that CRCL has not examined sulphur level in the product which is one of the important ingredients to ascertain whether the product in dispute is SKO or not. They further submitted that the adjudicating authority ought not to have imposed heavy amount of redemption fine and penalty as the goods have been ordered for re-export. The Commissioner (Appeals) vide O-I-A, held as under:

- The test reports state that "with respect to parameter Flash Point, Distillation Ranges, it matches Petroleum Hydrocarbons Solvent as per IS 1745-1978. However, smoke point, flash point and distillation range obtained for the samples under reference is matching with requirement for kerosene as per 15 1459-2016; that the adjudicating authority has not given any finding about the same in the impugned order in this regard.

- In identical case of M/s Swarna Oil Services, The Tribunal vide its Order No. A/11-26-11028/2020 dated 18.12.2019 had set aside the OIA No.MUN-CUSTM-000-APP-80-81-19-20 dated 19.08.2019 and allowed the appeal. In the said order, after going through the test reports of CRCL Delhi and CRCL Kandla, Tribunal had observed as under:

  "From a perusal of the test report of CRCL. Delhi and CRCL Kandia, 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, for the sake of 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 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 led any evidence to show that the said two parameters were also met with,

- The 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. Accordingly, this

Tribunal set aside the impugned order and allowed the appeals with consequential relief.

- That the facts and circumstances of the cases covered in the present appeals are similar to the above order of this Tribunal as in the present cases also, the tests have not been undertaken with respect to 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.

- That in the absence of the 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 impugned orders cannot be sustained". He accordingly set aside the OIOs and allowed the appeals. Aggrieved by the aforesaid order, the Department has now filed the present appeal.

2. Since in the matter, none was appearing from the respondent side, this court appointed Shri Vikas Mehta, Consultant as an Amicus Curiae. Firstly, this Tribunal directed the department to find out if as per the earlier decision of Hon'ble Supreme Court in the case of Gastrade International reported at 2025 (4) TMI 23 (SC) samples were available for retesting, at this stage? Learned Authorised Representative checked up the position and replied in negative vide letter dated 17.09.2025. Learned Amicus Curiae appearing for the respondents states that in this case also, the expression "can be used" in the reports makes them still inconclusive and therefore, report suffers from the same vice, as was in the matter before the Apex Court, in relation to same appellant. He relied on the decision of the Apex Court in their own case of Gastrade International vs Commissioner of Customs – Kandla (cited supra) and also of this Tribunal in the case of Commissioner of Customs- Kandla Vs Jai Mata Chintpurni Impex and Others as reported in 2025 (5) TMI 2108 to point out that following the decision of Apex Court, this Bench has also decided the principle of "most akin" when application of headings, sections or chapter notes did not lead to any conclusion. Learned Authorised Representative in rejoinder differentiated the earlier decision of Gastrade International on the ground that in that case cross

examination of Chemical Examiner was sought and afforded but in this case, no cross examination has been sought by the party. Therefore, infirmity to that extent does not exist in the instant case.

3. We have considered the adversarial submissions. We find that the benefit of the earlier decision of Gastrade International vs Commissioner of Customs-Kandla was not available to the Learned Appellate Authority while deciding this matter. We find that the extensive guidelines have been laid down by the Hon'ble Supreme Court while dealing with the matter and how the test samples and reports are to be considered vis a vis the Section Notes, Chapter Notes and their statutory provisions. We have also noted that in this case also samples are not available for retesting. We reproduce below from para 80-88 of the order of Hon'ble Supreme Court.

> "**80.** However, this analysis and conclusions arrived at by the High Court are problematic for the following reasons :
>
> (i) There was no expert opinion at all that the samples which were tested were indeed of HSD.
>
> (ii) The opinion as contained in the test results was merely mentioning about conformity of the samples with *certain* specifications of IS 1460:2005 and not about conformity with *all* the specifications.
>
> (iii) Once the rule making authority had clearly delineated the requisite parameters for ascertaining the nature of the goods/substance, compliance/conformity with the stated parameters would be the requirement.
>
> (iv) There are 21 parameters laid down under IS 1460:2005 and none of the tests have shown compliance with all these parameters. The last and third test have reported compliance with 14 parameters, though as discussed above in respect of 2 of the aforesaid 14 parameters, namely, flash point and distillation range, the same are not in conformity. Thus, it cannot be said there is substantial compliance with the parameters of IS 1460:2005.
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> (v) Flash point, though may not be the most important parameter, yet, its importance in determining the nature of the Automotive oil cannot be ignored. Flash point being a very important criteria to classify petroleum products, non-compliance of the samples on this parameter would make the classification doubtful.
>
> (vi) Evasive answers and non-clarification on certain aspects of the flash point of the samples by the expert Dr. Gobind Singh certainly cast a serious doubt on the samples being identified as that of HSD. The expert himself also has not said that the samples are of HSD except for stating that the samples conform to certain specifications of the IS 1460:2005.
>
> (vii) In view of the ambiguity and lack of clarity in the expert opinion/laboratory test results, it would be unsafe to draw the inference that the Department had been able to prove their case even by applying the test of preponderance of probability merely because the samples conform to certain parameters.

(viii) If the Department with all the resources at their command and access to various laboratory facilities could not get the samples tested in respect of all the 21 parameters, expecting the assesses/appellants to get the samples tested to show that these do not conform the specifications and are not HSD does not appear to be reasonable. Thus, shifting of onus to the assesses to prove otherwise appears to be unreasonable and meaningless.

(ix) The burden was not on the assessees to demonstrate that non-conformity with the remaining 8 parameters would vitiate the conclusion that the samples were of HSD.

81. The aforesaid difficulties in our opinion can be overcome, if we apply the test of “most akin” as contemplated under Rule 4 of the General Rules for Interpretation referred to above.

82. The real test for classification, according to us, would be as to whether any goods or substance in question is “most akin” or bears the closest resemblance or similarity to any of the specified goods mentioned under the Headings and relative Section or Chapter Notes under the Tariff Act, and not by applying the test of preponderance of probability.

83. By way of illustration, we may explain the position. If an importer classifies the imported goods as “X”, which is disputed by the Customs authority and classifies the same as “Y”, the test would be whether the goods imported are “most akin” to “X” or “Y” in terms of Rule 4 of the aforesaid Rules. The importer may also claim if he so wishes, that the goods are most akin to “Z”, though it may be akin to “Y” also, if such claim is more beneficial to him. Thus, it has to be shown by the Customs Authority that the imported goods bear the most affinity or resemblance or similarity to be “most akin” to the specified goods and not mere similarity or akinness. In other words, the test will be whether the imported goods bear the closest resemblance or similarity with the specified good so that these can be considered to be “most akin” to the specified good. Certainly, the principle of preponderance of probability may fall short of the more heightened test of “most akin” for proper classification. The imported goods may bear resemblance to more than one specified goods, in which event, unless the high degree in the test of preponderance of probability is applied, there may be difficulties in the proper classification. However, the said difficulty may be overcome if the test of “most akin” is applied. If the attributes of the imported goods show that the goods are “most akin” to the specified goods amongst an array of other specified goods, these imported goods have to be classified as the specified goods with which these goods bear the most resemblance or most akinness. Thus, in our view, application of the principle of preponderance of probability does not provide an accurate test. The more accurate and precise test will be whether the goods in question are “most akin” or most similar to the specified goods, as provided under Rule 4 referred to above.

84. In the present case, as noticed above, the finding of the High Court is based primarily on applying the test of preponderance of probability which may not necessarily fulfil the “most akin” test. The High Court came to the conclusion based on the incomplete test reports and noncommittal opinion of the expert Dr. Gobind Singh who in categorical terms had not stated that the imported goods are HSD. There was no opinion that the imported goods are most similar to HSD to satisfy the test of “most akin”. The definitive opinion and finding that the imported goods are “most akin” to HSD is missing in the reports and opinion for classifying the imported goods as HSD.

85. The oil in question does not fully satisfy the specifications of HSD in terms of IS 1460:2005. Hence, the correct test will be whether the oil/article in issue is most akin to HSD or not for which appropriate scientific evidence in the form of laboratory test reports and opinion of the scientific experts will be of utmost relevance.

86. For the reasons discussed above, as the results of the test are inconclusive, so being the opinion of the expert, we are unable to agree with the conclusion of the High Court. Under the circumstances, the option before this Court is, either to send the imported product again for further tests and obtain the expert opinion atleast to the effect that the imported product is 'most akin' to HSD even if it does not fulfil all the parameters under IS 1460:2005 or give a benefit of doubt to the appellants and close the proceedings against the appellants by quashing the impugned orders, since the Revenue/Customs Authority cannot take action against the appellants based on inconclusive evidence.

87. As far as the first option is concerned, as noted above, though the questioned product was sent for laboratory test in three premier laboratories, these laboratories did not give conclusive finding that the product is indeed HSD and the expert also could not give a definitive opinion. Further after such a long passage of time we are doubtful whether the oil in question would still retain many of the characteristics and properties which were present at the time of import for an effective testing as aforesaid. Hence, we do not consider it appropriate to direct further testing of the imported product/oil at this point of time and such a retest may be rendered a futile exercise. In our opinion, in the facts and circumstances, it would be more appropriate to give the benefit of doubt to the appellants because of the inconclusive evidence, rather than directing for a fresh testing and seeking fresh expert opinion, as a one-time measure.

88. Before parting with these appeals, we deem it necessary to issue certain ancillary directions.

We are of the view that non-examination of any product/article/goods on all the parameters laid down by the customs authority will always lead to uncertainty and doubt, which are required to be removed when dealing with confiscatory proceedings.

The genesis of the prolonged litigation lies in the non-availability of adequate facilities for testing all the parameters provided under Bureau of Indian Standard Specifications. Such a dispute could have been avoided had the testing facilities for all the parameters been available. Since the Authorities themselves had laid down the specific parameters for classification of goods, as in the present case by referring to classification under IS 1460:2005, it is incumbent upon the Authorities to ensure that necessary facilities are made available for testing of any disputed article on all these parameters as otherwise, laying down such parameters would be meaningless.

Hence, to avoid these difficulties, doubts and uncertainties in future, the respondents are directed to ensure that proper facilities are made available in the appropriate laboratories for undertaking tests for all these parameters or at least for those parameters which the Authorities consider are of essential character to satisfy the "most akin" test without which the article in issue cannot be properly classified. Accordingly, we direct the respondents to take necessary steps in this regard within a period of six months for proper testing in all the parameters in future."

3.1 It is clear that Hon'ble Apex Court in the aforesaid decision while dealing with the situation when samples were not available for further testing as is also the position in this case, has decided to lay down the guideline for the test of those parameters which authorities consider are of essential character to satisfy the "Most Akin" test even when all parameters were not available. The same needs to be understood with the help of expert opinion. The Hon'ble Supreme Court has also stated that the expression 'most akin' is different from the expression 'preponderance of probability'. Therefore in the instant cases, where some doubt may persist as to whether the parameters which could not be tested were or were not relevant for testing 'most akinness' to the alleged product, the department will need to look into the same with the assistance of an expert opinion. The matter is therefore remitted back to the Commissioner (Appeals) to decide the matters afresh, with the help of expert opinion as to whether the parameters tested would still establish 'most akinness' as per the above guidelines of the Apex Court or not. Learned Commissioner (Appeals) shall be free to call the expert who has given his opinion but shall be required to afford opportunity to the respondents to cross examine him or lead any other literature etc. establishing that on the basis of test conducted, 'most akinness' could be establish or not? With the above direction, matter is remanded to the Commissioner (Appeals). Appeals are allowed by way of remand.

(Order pronounced in the open court on 10.11.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER(TECHNICAL)

Neha