

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 61077 of 2019

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2536-19-20 dated 14.06.2019 passed by the Commissioner of Customs, (Appeals), Ludhiana]

M/s S K Petrochem

A-20, Milap Nagar Uttam Nagar
New Delhi 110059

.....Appellant

VERSUS

Commissioner of Customs, Ludhiana

ICD GRFL, G.T. Road, Sahnewal

.....Respondent

APPEARANCE:

Shri Naveen Bindal and Shri Aman Garg, Advocates for the Appellant

Shri Anurag Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61767/2025

DATE OF HEARING: 11.11.2025

DATE OF DECISION: 17.12.2025

S.S.GARG:

The present appeal is directed against the impugned order dated 14.06.2019 passed by the Commissioner (Appeals) CGST, Ludhiana, whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original dated 30.03.2015 regarding the absolute confiscation of the goods and also imposed penalty.

2. Briefly the facts of the present case are that the appellant is a trader of petroleum products and in the course of business imported Rubber Process Oil (RPO) and filed Bill of Entry No. 9074606 dated 19.01.2013 for clearance of 150 MT of Rubber Process Oil. The imported goods were purchased on high seas sales basis from M/s Om Udyog of Ludhiana who had purchased these goods against invoice No. RPO-3021 dated 02.01.2013 issued by M/s Richmond Petrochem Trading. Sharjah, U.A.E. at unit price of USD 450. The import shed staff did not allow the goods to be cleared under RMS but were examined as per appraisement instructions; in the meantime, the bill of entry was assessed provisionally. The Appraising Officers directed that the goods should be examined in the presence of Anti-Smuggling officers, Ludhiana as per the alert and to draw representative sample for testing from Central Revenue Control Laboratory, New Delhi to know the description of the goods, composition, flash point, aromatic content, point and degree of distillation, whether it is hazardous or not, whether the oil is waste oil or used oil. It was also directed by the appraising officer to conduct live test from Punjab Test House, Ludhiana to determine whether the oil was hazardous or non-hazardous; whether it was waste oil or used oil or not and whether the oil was rubber process oil or any other oil. Thereafter, on 27.02.2013, the DRI, Ludhiana/Delhi officers examined the goods and took the samples for the purpose of testing to ascertain the description of the goods and the goods were detained by the officers of DRI under Panchnama dated 27.02.2013 and the said sample were sent to

CRCL under test memo 27.02.2013; therefore, the chemical examiner, vide test report no. 35 dated 07.05.2013 concluded that the sample does not meet the requirement of petroleum based process oil for rubber industry as per IS:15078:2001, therefore it merits to be classified under category of hazardous waste as provided under Schedule III, Part A and Schedule II class A of Hazardous Waste Management, Handling & Transboundary Movement Rules, 2008.

2. On the basis of the test report, the appellant was issued show cause notice dated 12.07.2013 with a proposal for confiscation under section 111(d) & (m) of the Customs Act, 1962 and for re-export of goods in terms of Rule 17 of the Rules. Further proposal to impose penalty under Section 112 of the Act and other provision were raised. Thereafter, the appellant requested for the supply of the documents relied upon in the notice, but his request was not accepted and even his prayer for cross-examination was also not accepted by the authorities, thereafter, by following the due process, the adjudicating authority vide order dated 30.03.2015. order of absolute confiscation of the goods and also imposed penalty under Section 112 of the Customs Act on the appellant. Aggrieved by the said order, the appellant filed the appeal before the Commissioner (Appeals) who vide the impugned order dated 14.06.2019 dismissed the appeal of the appellant. Hence, the present appeal.

3. Heard both the parties and perused the material on record. Both parties have filed the written submissions along with case laws which are taken on record.

4. The learned counsel for the appellant submits that the impugned order to the extent of absolute confiscation of the goods is not sustainable in law as the same has been passed contrary to the proposal for re-export given in the show cause notice dated 12.07.2013. He further submits that the report of CRCL whereby it has observed that the product does not meet the requirement of petroleum-based process oil because BIS specification does not give any specifications of the aromatic content. He further submits that when the BIS specification does not provide for aromatic content, then the product is not according to BIS standards. He further submits that when the sample did not confirm to the requirements of BIS specification, then it should have been forwarded for a hazardous waste analysis to the laboratory of Custom House, Mumbai or any other place which was equipped by the Board for such analysis. The CRCL was lacking research facility as evident from the letter dated 01.04.2013 written by Additional Commissioner to CRCL on the subject matter of testing of samples of Rubber process oil. He further submits that report of the CRCL in the present case cannot be relied upon for determining the hazardous nature of rubber process oil because the CRCL does not hold recognized accreditation for hazardous waste characterization. He further submits that the findings of CRCL cannot be relied to hold that the nature of RPO is hazardous; he also submits that the said

report of the CRCL was not supplied to the appellant; learned counsel further submits that the Department in this case should have allowed re-export of the goods under Rule 17 of the Hazardous Waste Rules, 2008 within a period of 90 days from the date of seizure. He further submits that the show cause notice sent by the Department itself specifically proposed to confiscate and re-export the goods; he further submits that the goods are not released for home consumption being hazardous then the department have given the option of re-export the goods to the appellant instead of absolute confiscation.

4.2 He further submits that it is a settled law that authorities are bound by what they put in the show cause notice, and they cannot introduce a new decision later without following due process. He also submits that in customs law, timelines like the 90-day period are sometimes relaxed if fairness requires it, particularly when the person did not purposely delay or when the case took time because of ongoing proceedings. He further submits that the appellant has always been willing to re-export the goods and is acting on the basis of what the department itself proposed and therefore he has prayed that the respondent be directed to permit the re-export of the goods, even though 90 days period has lapsed. As regards the redemption fine and penalty, the learned counsel submits that the appellant is a regular importer of RPO and the goods were not found hazardous and it is only the disputed test reports on which whole case is based upon and there was no malafide on the part of the appellant and therefore prayed that the redemption fine and penalty

should be dropped. For his submissions, he relied upon the following decisions:

- ***Sah Petroleaums Ltd. Vs. Commr. Of Cus. Import JNCH, Nhava Shra reported in 2017 (358) ELT 483 (Tri. Mumbai.)***
- ***Principal Commissioner Vs. Gandhar Oil Refinery (i) Ltd. reported in 2018 (360) ELT A177 (S.C.)***
- ***Shree Ganesh International Vs. Commissioner of Cenntal Jaipur, vide final order No. 1097-1098 of 2004 dated 11.10.2004.***
- ***Shree Salasar Tools (An HUF) Vs. Commissioner of Customs, Chennai reported in 2023 (5) Centax 128 (Tri.-Mad)]***
- ***M.K.A Chinnasamy Nadar & Sons Vs. Commissioner of Customs, Tuticorin reported in 2021 (378) ELT 511 (Tri.-Chennai).***

5. On the other hand, learned AR reiterated the findings of the impugned order and submitted that the impugned goods were found to be in violation of the Hazardous Wastes (Management, Handling and Transboundary Movement) Rule, 2008 and therefore, the appellant can only import the same by getting special permission which is not there in this case. He further submits that the appellant has mis-declared the goods and the goods being provided cannot be allowed to re-export and the absolute confiscation and disposal in

course with hazardous waste management Rule is justified. He also relied upon the decision the case of ***Indian counsel for Enviro-Legal Action ETC. Vs. Union of India Ors. Etc. reported in 1996 AIR 1446.*** He justified the decision of the adjudicating authority for absolute confiscation and disposal at the import's cost.

6. We have considered the submissions of both the parties and perused the material on record, now the only issue in the present case is whether the impugned order for absolute confiscating the goods and disposal in accordance with the Hazardous Waste Management Act is justified or whether the goods in the present case should be allowed re-export as proposed in the show cause notice as prayed by the appellant. Further, we find that the alleged goods were sent to CRCL, Delhi by the DRI officials and on the basis of the report of CRCL the impugned show cause notice was issued to the appellant as per the report of the CRCL the impugned goods were found to be hazardous in nature. We also find that the Additional Commissioner vide his letter dated 01.04.2013 has written to the CRCL that they are not having research facility on the subject matter of testing of samples of RPO; in view of the letters of the Commissioner (Appeals), it was incumbent upon the customs department that the impugned goods should have been got tested from the recognized laboratory because the report of CRCL cannot be relied upon for determining the hazardous nature of the RPO as CRCL does not hold recognized accreditation for hazardous waste characterization.

7. Further, we find that the once the department in the show cause notice has given a specific proposal for re-export of the goods under Rule 17 of the Hazardous Waste Rules, 2008 but finally confiscated the goods without giving the option to the importer of the same. Further, we find that as per the provisions of Customs Act, the re-export should be allowed within the period of 90 days but in the present case this time limit has not been adhered to by the department. We further find that the once the customs has given an option in the show cause notice for re-export of the goods and when the appellant is willing to export the goods than there was no justification for absolute confiscation and therefore, we set aside the order of the absolute confiscation passed by the impugned order and direct the respondent to allow re-export of the goods after obtaining and undertaking from the appellant that the same goods will not be re-imported.

8. Consequently, the imposition of redemption fine and penalty is also set aside and the appeal is allowed on the above terms.

(Order pronounced in the open court on 17.12.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)