

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60825 of 2017

[Arising out of Order-in-Original No. 09/YDB/Commr/LDH/CUST/M/2016 dated 11.04.2016 passed by the Commissioner of customs, ICD, Ludhiana]

M/s S K Petroleum

A-20, Milap Nagar, Uttam Nagar,
New Delhi

.....Appellant

VERSUS

Commissioner of Customs,

Central Excise House, F-Block,
Rishi Nagar, Ludhiana,
Punjab-141001

.....Respondent

WITH

2. Customs Appeal No. 60828 of 2017 (Jeevan Jain)

[Arising out of Order-in-Original No. 09/YDB/Commr/LDH/CUST/M/2016 dated 11.04.2016 passed by the Commissioner of customs, ICD, Ludhiana]

3. Customs Appeal No. 61054 of 2019 (CC vs. Om Udyog)

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2614-15-2019-20 dated 03.07.2019 passed by the Commissioner (Appeals), Central Goods and Service Tax and Customs, Ludhiana]

4. Customs Appeal No. 61055 of 2019 (CC vs. Om Udyog)

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2614-15-2019-20 dated 03.07.2019 passed by the Commissioner (Appeals), Central Goods and Service Tax and Customs, Ludhiana]

APPEARANCE:

Shri Saurabh Kapoor, Ms. Muskaan Gupta, Ms. Tanya Kumar and Ms.

Muskan Chauhan, Advocates for the Appellant/Assessee

Shri Anurag Kumar, Authorized Representative for the Respondent/Revenue

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

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

FINAL ORDER NO. 60219-60222/2026

DATE OF HEARING: 13.02.2026

DATE OF DECISION: 09.03 .2026

P. ANJANI KUMAR :

M/s S.K. Petrochem (Appeal No. C/60825/2017); Shri Jeevan Jain (Appeal No. C/60828/2017) assails Order-in-Original dated 11.04.2016 passed by Commissioner of Customs, Ludhiana. Revenue assails the order in appeal, dated 03.07.2019, passed by Commissioner (Appeals), who allowed the appeals, filed by M/s Om Udyog, dropping the proceedings initiated against them i.e. M/s Om Udyog. Revenue appeals are No. 61054/2019 & 61055/2019.

2. Brief facts of the cases are that M/s S.K. Petrochem imported consignments of "Pressed Distillate Oil" from M/s Om Udyog, on high seas basis and filed four Bills of Entry Nos. 8323294 dated 26.10.2012, 9074605, 9074611 and 9074608 dated 19.01.2013 for clearance of the same, declaring classification of goods under CTH 27101990; as there was an alert department has drawn samples and sent them for testing to CRCL New Delhi, who vide Test Memo, in respect of BE No. 8323294 dated 26.10.2012, reported that the sample had characteristics of base oil; the goods imported were seized under Section 110 of the Customs Act, 1962 and were ordered to be released provisionally subject to the conditions as fixed; statement of Shri Jeevan Jain, Proprietor and various other persons were recorded; Shri Jeevan Jain retracted his statement later; on conclusion of investigation, a Show Cause Notice, dated 29.01.2014, was issued proposing to reject the declared classification of goods i.e.

“Pressed Distillate Oil” and to re classify the same as “Lubricating Oil” as well as “Base Oil” and proposing to impose penalties and fines. The Show Cause Notice was adjudicated confirming the proposals as below.

Bills of Entry No./Date	Re-determined assessable value	Duty	RF	Penalty
8323294/ 26.10.2012	2,32,07,198/-	77,12,050	1,00,000	57,37,637/- under Section 114 A on S.K. Petrochem through Shri Mukesh Kumar Gupta and actual owner Shri Jeevan Jain
9074604/ 19.01.2023			40,00,000	Rs. 1,00,000 under Section 112 on Shri Paramjeet Kumar and Penalty of Rs. 5,00,000 on Shri Ghanshyam Sharma
9074608/ 19.01.2023				
9074611/ 19.01.2023	88,87,122/-			

Shri Jeevan Jain, Proprietor, M/s S.K. Petrochem filed appeal No. C/60828/2017 against imposition of penalty of Rs 57,37,637, under Section 114 A of the Customs Act, 1962.

2.1. The Brief facts of the case, in the Revenue appeals, are that M/s Om Udyog imported consignments of “Pressed Distillate Oil” and filed two Bills of Entry, No. 9987781 dated 29.04.2013 and 9658861 dated 23.03.2023, for clearance of the same, declaring classification of goods under CTH 27101990; on the basis of report by CRCL who opined that the samples had characteristics of ‘Base Oil’, Revenue seized the consignments and issued Show Cause Notices seeking to

confiscate the impugned goods; to re-determine the value; recover duty on the basis of such value and to impose penalties. The original authority confirmed the proposals of the Show Cause Notices and the Commissioner (Appeals) set aside the same as shown below.

Appeal No.	Bills of Entry No./Date	OIO date Redetermined Value Duty RF Penalty	OIA
61054/ 2019	9987781/ 29.04.2013	14.06.2017 Value- 50,01,152/- Duty- 12,55,421/- RF- 1,00,000/- Penalty- 12,55,421/-	03.07.2019 Dropped proceedings and allowed the appeal.
61055/ 2019	9658861/ 23.03.2023	06.06.2017 Duty- 10,97,282/- RF- 5,00,000/- Penalty- 10,97,282/-	-Do-

3. Shri Saurabh Kapoor, Learned Counsel, assisted by Ms. Muskaan Gupta, Ms. Tanya Kumar and Ms. Muskan Chauhan appearing for the appellants M/s S.K. Petrochem (Appeal No. C/60825/2017) and Shri Jeevan Jain (Appeal No. C/60828/2017) and respondents M/s Om Udyog in Appeals No. 61054/2019 and 61055/2019 submits that the appellants filed Interim Replies to the Show cause Notice and requested for supply of relied upon documents and for cross examination of the Chemical examiner; the adjudicating Authority rejected the request for cross examination and passed the impugned order. He submits that CESTAT Chandigarh has already decided the issue, of similar imports, in the case similar case of M/s Golden Enterprises 2016 (341) ELT 293 (Tri-Chd.), in favour of the appellants on the grounds that the chemical examiner has not categorically given his finding or answer to the memo; he has only indicated that the goods have the characteristics of 'base oil' without giving his

opinion whether the goods were in fact 'base oil' or were PDO; Cross-Examination of the chemical examiner by the appellant before the Adjudicating Authority would have enabled them to seek categorical answers; denial of cross-examination is a serious miscarriage of the principles of natural justice has happened; the said Order was assailed before the Hon'ble High Court as well as Supreme Court, the Appeals of the Department were dismissed; the said judgment is binding upon the Department. He further relies on the decision of Kolkata Bench of the Tribunal in the case of JRR Associates (2023) 12 Centax 269 (Tri-Cal) and submits that Hon'ble CESTAT has held that *the suggestion of CRCL, in the said test reports provides that the samples 'may be' of base oil, which means it 'may not be' of base oil. Such test reports cannot be basis of conclusion that the goods imported were mis-declared and hence, such change of classification is seriously bad in law and liable to be quashed*; the aforesaid order has been affirmed by the Hon'ble Supreme Court (2023) 12 CENTAX 270 (SC); He requests that in view of the above the order in original needs to be set aside with consequential relief.

4. Shri Anurag Kumar, Learned Authorized Representative, reiterates the findings of the impugned order in respect of appeals filed by M/s S.K. Petrochem (C/60825/2017) and Shri Jeevan Jain (Appeal No. C/60828/2017). He reiterates the grounds of Appeal in Revenue appeals against respondents M/s Om Udyog (Appeals No. 61054/2019 and 61055/2019). He strongly defends the case of the department.

5. Heard both sides and perused the records of the case. Brief issue involved in the case is as to whether the goods imported by the appellants and declared as 'Press Distillate Oil' as can be termed as 'Base Oil' on the basis of the report of CRCL. We find that the CRCL reported that the sample has characteristics of Base Oil. CRCL reported, in respect of BE No. 8323294 dated 26.10.2012,

"The sample is in the form of pale yellow coloured free flowing viscose liquid. It is composed of mineral hydrocarbon oil content (%by mass) more than 70% having following constants: -

Parameter	Result
Ash Content (% by Mass)	NIL
Sediment (% by Mass)	NIL
Water Content (% by Mass)	NIL
Flash Point	93.4 c
Density (gm/ml)	0.8945
Kinematic Viscosity at 40 Deg	138cst
Kinematic Viscosity at 100 Deg	13.4 cst
Viscosity Index	90
Total Acid Number (mg koh/gm)	NIL
Total case Number	Nil

It has characteristics of Base Oil NIL.

6. The question now arises is as to whether the report is complete and sufficient enough to conclude that the goods are 'base oil' and not 'press distillate oil'. CRCL merely indicates that the sample has characteristics of Base Oil. It does not say categorically that the impugned goods are 'base Oil'. Such a report cannot be relied upon to substantiate a charge of misdeclaration. Moreover, we find that in the

instant case, the adjudicating authority neither examined the Chemical Examiner himself nor acceded to the request of the appellants to Cross-examine the Chemical Examiner. Examination/ Cross-examination of the Chemical Examiner would have thrown some more light and would have given clarity to the issue. Revenue has missed such an opportunity. Under the circumstances, benefit of doubt needs to be given to the importer, as Revenue could not conclusively establish that the impugned goods are base oil.

7. We find that this Bench had an occasion to decide a case of identical import in the case of M/s Golden Enterprises²⁰¹⁶ (341) ELT 293 (Tri-Chd). We find that the Bench observed as follows.

"7. On careful consideration of all the materials before us, we find that the chemical examiner's test reports are crucial in this case. In the reports (Para 4 supra), we find that the chemical examiner has indicated that the samples have the characteristic of 'base oil'. From the note appended at the bottom of the reports, it appears to us that the chemical examiner were not in possession of any technical literature about the product PDO. The memo sent by the DRI to the chemical examiner requested him to confirm whether the goods were PDO or not. From a perusal of the test reports we get impression that the chemical examiner has not categorically given his finding or answer to the memo. He has only indicated that the goods have the characteristics of 'base oil' without giving his opinion whether the goods were in fact 'base oil' or were PDO. Cross-Examination of the chemical examiner by the appellant before the Adjudicating Authority would have enabled them to seek categorical answers. Inasmuch as this opportunity was denied to the appellant, we are of the view that serious miscarriage of the principles of natural justice has happened.

8. The appellant has produced Technical Literature before the Adjudicating Authority which indicates that the PDO is a product known in the petroleum refinery industry. PDO is said to be an intermediate product arising in the manufacture of 'base oil' which is subject to further process for making lubricating base oil. To this effect, the appellant has produced relevant pages of the book of "Petroleum Refinery Engineering" by W.L. Nelson. They have also enclosed technical opinion of (i) Shri S.K. Chhibber, Consultant, (Scientist F. Retired), Indian Institute of Petroleum, Dehradun; and (ii) Shri F.R. Khan, Principal, Govt. Polytechnic, Ghaziabad. The above technical literature is useful to us only to the limited extent to understand that PDO is a product known in the lubricating oil industry and that it is an intermediate product arising in the manufacture of 'base oil'.

9. Now we turn to technical literature advanced by the Revenue in the form of American Petroleum Institute classification for 'base oil' (Para 5 supra). The API classification for 'base oil' divides it into five groups based on three parameters.

(i) Sulphur %

(ii) Saturates %

(iii) Viscosity Index.

10. From the examiner's test reports, we find that the viscosity index of the two samples (93 and 92.58) fall within the characteristic of 'base oil', as per API classification system. However, the chemical examiner has not indicated the first two characteristics, viz., 'sulphur %' and 'saturates' in his report. The imported goods have been held to be base oil in the impugned order on the basis of the API classification. However, reference has been made only to one of the three parameters mentioned in API. We are of the view that this limited approach to decide the misdeclaration is flawed. At the most, the viscosity index may raise doubt in our minds that the imported goods may be base oil. However, to conclude that the imported goods

were not PDO but 'base oil' and allege mis-declaration on the part of the importer only on the basis of the chemical examiner's report on one out of three characteristics will not be correct. In the absence of conclusive evidence of misdeclarations, the Customs Authorities should have gone with the declaration and finalized the assessments. 11. Next we turn to the valuation of the imported goods. The Commissioner in the impugned order has rejected the declared value under Rule 12(1) of Customs Valuation Rules, 2007, read with Section 14(1) of Customs Act. This has been done considering that the goods have been misdeclared to be PDO. Consequently, the Adjudicating Authority has proceeded to redetermine the value on the basis of the price of 'base oil' imported contemporaneously. We have concluded that the misdeclaration in the imported goods have not been established. Consequently, we find that there is no basis to disregard the declared value."

8. We find that the facts of the case, in as much as the declarations by the importers, the chemical examiners reports and the findings of the adjudicating authority are identical. Therefore, we are of the considered opinion that in this case too, the chemical examiner has not given a definitive report so as to confirm the impugned goods to be 'Base Oil'. Under the circumstances, we find that we need to follow the ratio of the above decision by this Bench. Moreover, it has been brought to our Notice that the above case was carried to Hon'ble High Court and Hon'ble Supreme Court by the Revenue. Hon'ble Supreme Court affirmed the decision of this Bench (2023) 12 CENTAX 270 (SC) have maintained the decision of the Tribunal. We find further that coordinate bench, while deciding a similar issue in the case of JRR Associates Vs Commissioner of Customs (Port) (2023) 12 Centax 269

(Tri-Cal), followed this Bench decision in Golden Enterprises (Supra).

Co-ordinate Bench held that

"5. That the Test Reports from CRCL, Kolkata and CRCL, New Delhi with respect to the samples from the imported consignment of the Appellant clearly states that it was not possible for the experts to classify the imported goods as 'base oil'. The Customs Authority tried to classify the imported goods as 'base oil' upon the purported observation of CSIR, IIR, Dehradun with respect to some other case, which is absurd and not maintainable in law. In other words, the change of classification of imported goods in the present case by the respondent Customs Authority is not supported or corroborated by the test report from CRCL, Kolkata and/or CRCL, New Delhi. The suggestion of CRCL, in the said test reports provides that the samples 'may be' of base oil, which means it 'may not be' of base oil. Such test reports cannot be basis of conclusion that the goods imported were mis-declared and hence, such change of classification is seriously bad in law and liable to be quashed. That in the present case, as stated supra, there is nothing on record to show that the transaction value of imports were not actual value of transaction. The basis of re-valuation by the department is re-classification of goods and when the re classification is itself not proper, question of re-valuation of imported goods and/or demand of any differential duty on the same, cannot arise. When the Test Reports of examiner cannot classify the goods specifically as 'base oil', rejection of classification and/or re-valuation of imported goods, is not permissible in law. Re-classification cannot even be reason of re-valuation of imported consignment. Moreover, the attempt of the authority to classify the imported goods as 'base oil' is bereft of any evidence and hence, not maintainable....

9. In view of the discussion as above, we are of the considered opinion that the incomplete, non-categorical report by CRCL cannot be relied upon to allege that the parties involved have imported 'Base Oil' mis declaring the same to be 'Pre-Distillate Oil'. Revenue could not produce any other evidence to establish the same. Accordingly, we find that the impugned Order-in-Original dated 11.04.2016, passed by Commissioner of Customs, Ludhiana, is liable to be set aside. The impugned order in appeal, dated 03.07.2019, passed by Commissioner of Customs (Appeals), Ludhiana needs no interference and requires to be upheld.

10. In the result,

(i). We allow the appeals filed by M/s S.K. Petrochem (Appeal No. C/60825/2017) and Shri Jeevan Jain (Appeal No. C/60828/2017), with consequential relief, if any, as per law.

(ii). We dismiss the appeals No. 61054/2019 & 61055/2019 filed by Revenue.

(Order pronounced in the open court on 09.03.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)