

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.40248 of 2021

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 6/2021 dated 19.1.2021 passed by the Commissioner of Customs (Appeals – II), Chennai)

Commissioner of Customs
Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Appellant

Vs.

M/s. Roshan Petrochem
No. 2, Atkinson Palace
II Floor, Jothi Venkatachalam Road
Vepery, Chennai – 600 007.

Respondent

With

Customs Appeal No.40249 of 2021

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 7/2021 dated 19.1.2021 passed by the Commissioner of Customs (Appeals – II), Chennai)

Commissioner of Customs
Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Appellant

Vs.

M/s. Son Products
Near Ilahia College of Arts & Science
Pezhakkappilly PO, Muvattupuzha
Kochi – 686 673.

Respondent

With

Customs Appeal No.40250 of 2021

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 29/2021 dated 29.1.2021 passed by the Commissioner of Customs (Appeals – II), Chennai)

Commissioner of Customs
Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Appellant

Vs.

J. Sayed Saleem
No. 79/3, 2nd Floor
Vaidyanathan Street
Tondiarpet, Chennai – 600 081.

Respondent

And

Customs Appeal No.40251 of 2021

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 38/2021 dated 29.1.2021 passed by the Commissioner of Customs (Appeals – II), Chennai)

Commissioner of Customs

Chennai II Commissionerate
Custom House
60, Rajaji Salai
Chennai – 600 001.

Appellant

Vs.

M/s. Sam G. Martin

No. 32, Valli Nagar, TVS Nagar
Coimbatore North
Coimbatore – 641 025.

Respondent

APPEARANCE:

Shri S. Balakumar, AC (AR) for the Appellants
Shri M. Karthikeyan, Advocate for Respondent No. 1
Shri Sathyakumar, Advocate for Respondent No. 2
Shri Derrick Sam, Advocate for Respondents No. 3 & 4

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Hon'ble Shri P. Anjani Kumar, Member (Technical)

Final Order Nos. **40047-40050 / 2022**

Date of Hearing : 02.02.2022

Date of Pronouncement: 04.02.2022

Per Ms. Sulekha Beevi C.S.

The issue involved in all these appeals being the same, they are heard together and disposed by this common order.

2. The respondents filed bills of entry for clearance of goods declared by them as "Low Aromatic White Spirit" (herein after referred to as LAWS) classifying under CTH 27101990. They also produced certificate of analysis issued by the supplier stating that the goods conform as LAWS. After examination of the goods, samples were drawn and sent for testing to CRCL, New Delhi. The analytical test report stated that the samples would meet the requirement of Kerosene as

per IS : 1459 : 2018. The respondents submitted that the goods were not Kerosene and conform only to the character of LAWS which is usually used for manufacture as thinners etc. in the paint industry. As per the representations given by the respondents, samples were again forwarded for test to Hindustan Petroleum Corporation Ltd. In such report, it was stated that the samples would meet the requirement of 'Kerosene SPES' as per IS : 1459 : 2018. It was also stated that the burning quality could not be tested as the facility is not available with them.

3. The department thus held that the goods are Kerosene and Super Kerosene oil classifiable CTH 27101910 which are restricted for import and allowed to be imported only through State Trading Enterprise.

4. After due process of law, the classification of CTH 27101990 declared by the respondents was rejected by the original authority and the goods were ordered to be classified under CTH 27101910. The adjudicating authority ordered for confiscation of the goods. However, an option was given to redeem the goods for re-export purpose only on payment of fine. Penalties were also imposed. Aggrieved by such order, the respondents filed appeals before Commissioner (Appeals) who vide the order impugned herein held that the classification and description of the goods adopted by the respondents as LAWS under CTH 27101990 is correct and held that the goods are freely importable. The order passed by the adjudicating authority was set aside. Aggrieved by the said decision of the Commissioner (Appeals), the department is now before the Tribunal.

5. The learned AR Shri S. Balakumar reiterated the grounds of appeal. He submitted that the Commissioner (Appeals) has observed that the goods imported are more akin to IS : 1745 : 2018 pertaining

to LAWS than that of IS : 1459 : 2018 pertaining to Kerosene. The goods are actually Kerosene. The Commissioner (Appeals) has erred in holding that all the eight parameters provided in the IS specification has to be met in order to classify the goods as Kerosene. He prayed that the appeals may be allowed.

6. On behalf of the appellants, learned counsel Shri M. Karthikeyan, Shri Sathyakumar and Shri Derrick Sam appeared. They heavily relied upon the order passed by the Commissioner (Appeals). The learned counsel adverted to Table in the impugned order enumerating test parameters as required for LAWS and for Kerosene. After comparing the parameters, it was held by the Commissioner (Appeals) that the goods are more akin to LAWS than that of Kerosene.

7. In the present case, all the eight parameters were not tested by the laboratory. The reports therefore cannot be relied. The very same issue was considered by the Tribunal in the case of Swarna Oil Services, SM Trading Company Vs. Commissioner of Customs, Mundra reported in 2020 (6) TMI 70 - CESTAT Ahmedabad wherein the Tribunal held that all the eight parameters have to be satisfied in order to classify the goods under Kerosene. It is the burden of the department to establish that the goods fall under particular Tariff entry. It is submitted on behalf of the appellants that the goods correctly fall under CTH 27101990. They prayed for dismissing the appeals filed by Revenue.

8. Heard both sides and perused the records.

9. As seen from the facts narrated above, the respondents had imported goods classifying them under CTH 27101990 with the description LAWS. The samples were drawn and sent for testing to CRCL, New Delhi and HPCL. Commissioner (Appeals) in order the dated

19.1.2021 which is impugned in Appeal No. C/40248/2021 has given a Table enumerating the test parameters of LAWS and Kerosene in comparison with the test report of CRCL and HPCL. The said Table would throw light as to the character and nature of the goods imported and also the reason why Commissioner (Appeals) held that the goods are more akin to LAWS, which is reproduced as under:-

S. No.	Characteristic IS 1459 Kerosene	Requirement for Kerosene	CRCL		HPCL		LAWS IS 1745 2018	
i)	Acidity	Nil	Nil	Nil	Nil	Nil		
ii)	Burning quality a. Char value, mg/kg of oil consumed Max. b. Bloom on glass chimney	20 Not darker than grey	No Reports		Testing facility is not available with HPCL		No reports	
iii)	Colour (saybolt)	10	29	27	23	28	25+	25+
iv)	Copper strip corrosion for 3 hrs @ 50° C	Nor worse than No.1	1a	1a	1a	1a	1	1
v)	Distillation a. Percent recovered below 200° C Min. b. Final boiling point °C, Max	20 300° C	50 254° C	62 244° C	68.5 242° C	55.5 249.5° C	200	
vi)	Flash Point (Abel) Min.	35	39° C	41° C	40.5° C	47° C	32° C	32° C
(vii)	Smoke point, mm, Min	18	23	22	23	23	No Reports	
(viii)	Total sulphur, percent by mass, max							

10. From the above, the Commissioner (Appeals) noted that the colour is 10 for Kerosene whereas it is 25 for solvent (LAWS). The same has been tested as 23 – 29 for the goods imported. The final boiling point for Kerosene is 300° C and 200° for LAWS. The test results shows varied boiling point ranging from 242° C to 254° C which is more or less near to the parameters of LAWS. The sulphur content requirement for classification under LAWS is .05 and 0.25 for Kerosene. The test results are between 0.011% to 0.17% which is again near to LAWS specification than Kerosene. From the parameters, it was held by the

Commissioner (Appeals) that the goods are more akin to LAWS than Kerosene.

11. It is also to be stated that the parameters in regard to burning point was not tested and reported. The IS specification requires that all the eight parameters have to be satisfied in the case of Kerosene. When only seven parameters have been tested and reported, the department cannot conclude that the goods conform IS : 1459 : 2018 (kerosene) and not IS : 1745 : 2018 LAWS. When the department does not accept the classification declared by the importer and rejects the classification stated in the suppliers' analysis certificate, the burden lies upon the department to establish the correct classification. In a similar issue, the Tribunal in the case of Swarna Oil Services, SM Trading Company (supra) held that if all the eight parameters are not tested, the evidence adduced in the nature of test reports cannot be relied to conclude the classification of the goods as Kerosene. The Commissioner (Appeals) has followed and applied the said decision.

12. After appreciating the records placed before us and the submissions made by both sides, we find that the impugned order calls for no interference. The impugned orders are upheld. The appeals filed by Revenue are dismissed.

(Pronounced in open court on 04.02.2022)

(SULEKHA BEEVI C.S.)
Member (Judicial)

(P. ANJANI KUMAR)
Member (Technical)