

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

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40025 of 2021

(Arising out of Order-in-Appeal No. 68/2020-TRY (CUS) dated 19.10.2020 passed by Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

Commissioner of Customs

Tiruchirappalli Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

...Appellant

Versus

M/s. Visal Lubetech Corporation,

No. 87/1, Helaige Village,
Chandapura,
Hosur Main Road,
Bangalore – 560 081.

...Respondent

And

Customs Appeal No. 40026 of 2021

(Arising out of Order-in-Appeal No. 68/2020-TRY (CUS) dated 19.10.2020 passed by Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. Visal Lubetech Corporation,

No. 87/1, Helaige Village,
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Commissioner of Customs

Tiruchirappalli Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

...Respondent

APPEARANCE:

For the Assessee : Mr. Hari Radhakrishnan, Advocate
For the Revenue : Ms. O.M. Reena, Authorised Representative

CORAM:**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)****HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)****FINAL ORDER Nos. 40494-40495 / 2025**

DATE OF HEARING : 05.11.2024

DATE OF DECISION: 02.05.2025

Per Mr. VASA SESHAGIRI RAO

Customs Appeal No. C/40026/2021 has been filed by M/s. Visal Lubetech Corporation (hereinafter referred to as 'Assessee') aggrieved by the Order-in-Appeal No. 68/2020-TRY(Cus) dated 19.10.2020 passed by Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli for upholding the demand of differential duty consequent to re-classification and re-determination of value and imposition of penalty under Section 112(a) of the Customs Act, 1962 (ACT) in *de-novo* proceedings *vide* Order-in-Original No. 14/2019 dated 28.06.2019 passed by the Joint Commissioner of Customs, Trichy.

1.2 Customs Appeal No. C/40025/2021 has been filed by the Revenue assailing the above impugned order dated 19.10.2020 for setting aside the penalty imposed under Section 114AA *ibid* in de-novo proceedings *vide*

Order-in-Original No. 14/2019 passed by Joint Commissioner of Customs, Trichy.

1.3 Both the above said appeals involving the same impugned order dated 19.10.2020 and being connected are taken up together for disposal by this common order.

2.1 The Assessee was reportedly engaged in manufacture of lubricants and also trading of oils had self-assessed imported goods declared as Carbon Black Feed Stock (CBFS) under Customs Tariff Head (CTH) 28030090. The Department drew representative samples to verify the non-hazardous nature of the imported goods which upon testing was initially confirmed as 'base oil' by the Central Revenue Control Laboratory (CRCL) and *vide* report dated 10.06.2014, it was suggested that the samples tested could be termed as CBFS only if it was used for manufacture of carbon Black.

2.2 Meanwhile the importer approached the Chennai High Court claiming demurrage against delay

caused in clearance and the Court *vide* order dated 22.07.2014, directed 100% examination to be conducted by the Department in the presence of the importer and accordingly, fourteen samples were drawn by the department and six were tested by CRCL . While one report confirmed the product as "base Oil", other test reports read as "off -Specifications" products. It appeared to the department that the Assessee had mis-declared the imports as CBFS instead of 'Base Oil', 'Rubber Process Oil' and 'Off-specification Products' and therefore the entire import consignment was seized. The Department proposed to re-assess 311 out of the 980 barrels by re-classifying them as base oil under CTH 27101960 with enhanced value of Rs.41,67,400/- while remaining barrels were re-classified as 'Rubber process oil' under CTH27075000 and value enhanced to Rs.68,34,735/-, based on values reflected on NIDB database. Accordingly, a Show Cause Notice dated 04.12.2014 was issued to the Assessee seeking to re-classify and re-assess the import goods and to demand differential duty in terms of Section 17(4) of the ACT *ibid* /Rule 4 of Customs Valuation Rules, 2007 (CVR), to confiscate the goods under Section 111(d)

ibid and proposing to impose penalty under Section 112/114AA *ibid*.

2.3 The Ld. Adjudicating Authority *vide* impugned Order-in-Original No.05/2016 dated 29.04.2016 confirmed the proposals put forth in the SCN and imposed redemption fine/ penalties under Section 125/112(a)/114AA *ibid* on the Assessee, besides imposing personal penalties under 112(a)/114AA on individuals and department officials for indulging in active connivance relating to substitution of test samples. Aggrieved, the assessee filed writ petitions before the Hon'ble High Court, Chennai seeking to quash the impugned order and the Hon'ble Court *vide* order dated 17.02.2017 issued directions to allow for cross-examination of CRCL official and re-adjudicate the case in accordance with the law.

2.4 As per the Court's directions, the Chemical Examiner was cross-examined on 21.12.2018 with respect to the six test results furnished by him and thereafter in the *de novo* proceedings *vide* Order-in-Original No. 14/2019 dated 28.06.2019, the Adjudicating

Authority, in toto, confirmed the demands and imposed redemption fine/ penalties as in the original order. The Assessee preferred an appeal before the Lower Appellate Authority who upheld the impugned order but set aside the penalties imposed under Section 114AA *ibid* and reduced the redemption fine to Rs.2 Lakhs.

2.5 Aggrieved by the impugned order, the Assessee has filed the present appeal before this Forum.

3.1 The Ld. Counsel Mr. Hari Radhakrishnan appearing for the Assessee reiterated the grounds of appeal and submitted that the impugned order has erred in upholding the re-classification and demand of differential duty when it had overlooked the fact that the *de-novo* proceedings had ignored test reports dated 10.09.2014 which mentioned that the imported goods were off-specification goods, however, if used for manufacture of carbon black it may be termed as CBFS.

3.2 It was averred that the impugned order failed to consider the statements of the Chemical Examiner during his cross-examination, wherein it was mentioned that CBFS can be used for manufacturing of various chemicals and that it is incorrect to say that if it is not used for manufacture of carbon black it cannot be termed as CBFS.

3.3 It was averred that there was no report to say that the oil is RPO and the Chemical Examiner also informed the Authority that since there is no Indian Standard for CBFS it is not possible to test the oil.

3.4 It was submitted that in the event of non-acceptance of the declared value, the Proper Officer was required to fix the value in terms of Customs and Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, the value had to be determined based on contemporaneous imports of identical or similar goods at same commercial level and in substantially the same quality as the goods being valued. It was pointed out that the Order-in-Original had arbitrarily adopted the

highest value available in NIDB database for valuation of base oil when Rule 4 of the Valuation rules, prescribed for adoption of the lowest of such value shall to determine the value of imported goods, if more than one transaction value of identical goods is found. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Sundar N Images vs. CC* reported in 2000 (117) ELT 538 (SC) wherein it was held that

"it is always for the Customs Authorities to establish by methods known to law and in a satisfactory manner that the value of imported goods is not what the importer says it is and what the value actually is. That onus cannot be shifted to the importer."

3.5 It was submitted that the Chennai Bench of the CESTAT in the case of *Xpress Computers Vs. Commissioner of Customs, Chennai [2008 (225) ELT 78 (Tri.-Chennai)]* has held that technical characteristics of goods whose prices are referred to for assessment needs to be disclosed to the importer before applying Rule 5 of the Customs Valuation Rules, 2007 and which was not done in the present case.

3.6 It was submitted that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA of the Customs Act, 1962. The lower adjudicating authority had imposed penalty of Rs. 5,50,10,690/- on the ground that the assessee had allegedly substituted the sample that was sent for testing. It is submitted that when the sample sent to CRCL for testing on 30.12.2013 was returned for want of proper sealing on 08.01.2014, a false case of substitution was made against the Proprietor's (Assessee') son by the Department official who is said to have been present while drawing the sample.

3.7 It is submitted that given the facts and circumstances of the case *vis-à-vis* the legal provisions cited above and going by the intent of the legislature, it was clear that the instant case of import is not covered under Section 114AA of the Customs Act, 1962 and hence, penalty under Section 114AA of the Act, is without jurisdiction.

3.8 It was averred that the imposition of penalty is disproportionate to the alleged offence and applying the principle of proportionality, the adjudicating authority ought not to have imposed a maximum penalty stipulated in Section 114AA of the Customs Act, 1962.

4. Ms. O.M. Reena, the Ld. Authorised Representative for the Department affirmed the findings in the impugned order and submitted that the Assessee had mis-declared their imports with an intent to evade payment of customs duty and hence the demands confirmed were sustainable and penalty imposable on the Assessee under Section 112(a) and Section 114AA *ibid*. Hence it was prayed for dismissal of the appeals filed by the Assessee.

5. We have carefully considered the submissions made by both the sides and also evidences available on records.

6. The issues that arise for determination in these appeals are: -

- i. Whether the Assessee had mis-declared the imported goods as Carbon Black Feed Stock (CBFS) or not?
- ii. Whether the classification adopted by the Assessee for the imported goods is correct or not in terms of the provisions of the Customs Tariff Act?
- iii. Whether the demand of duty confirmed, and penalties imposed are justified or not?

7. We find that the Assessee herein, had declared imported goods as "Carbon Black Feed Stock" and classified these under CTH 2803 0090 under self-assessment. The Department drew the Samples on 30.12.2013 and 23.01.2014 to be tested by CRCL. As there was allegation of substitution of one of the samples the department took fresh samples on 04.02.2014 and sent the same to CRCL for testing. The CRCL stated that Carbon Black Feed Stock (CBFS) has no specification in Indian Standard. The Department sought clarifications from CRCL and the CRCL *vide* letter dated 10.06.2014, replied that if the importer is not manufacturing Carbon

Black, then the sample under reference cannot be termed as Carbon Black Feed Stock. As there was a delay in clearance of the imported consignment, the Assessee approached the Hon'ble High Court *vide* W.P. No. 15920 and 15921 of 2014 for provisional assessment and release of the goods. The Hon'ble Court *vide* its order dated 22.07.2014 directed the Department for complete examination and inventorisation of the goods contained in all the containers. In pursuance of the order passed by the Hon'ble High Court, the Department carried out the examination and inventory process from 30.07.2014 to 02.08.2014 and drew fourteen samples which were sent for testing to CRCL on 12.08.2014. Out of fourteen samples (14) only six samples were tested. The summary of the test reports have been detailed below for ease of reference: -

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Sl.No.	BILL Of ENTRY	CONTAINER No.	OUTCOME OF TEST REPORT
1.	4149734 dt. 21.12.2013	GESU 1355632 (Barrel No. 7)	<u>Test Memo No. 1(1)/2014-15 (CIU)</u> The sample does not confirm to the requirement of kinematic viscosity at 100 Deg C for Petroleum based process oil for rubber industries as per IS 15078:2001. Hence it is off specification product. <u>However, if used for manufacturing of carbon black it may be termed as CBFS, which may be ascertained at your end.</u> No literature/ evidence for grading of RPO/CBFS is available in this Laboratory. It is non-hazardous in nature in reference to H.W.M.R 2008. The sample u/r does not fall under the category of “waste oil/spent oil” or lubricant.
2.	4149734 dt. 21.12.2013	GESU 1355632 (Barrel No. 22)	<u>Test Memo No. 1(2)/2014-15 (CIU)</u> It has got the characteristic of Base Oil. It is other than CBFS/ RPO. No literature/ evidence for grading of Base Oil is available in this Laboratory. It is non-hazardous in nature in reference to H.W.M.R 2008. The sample u/r does not fall under the category of “waste oil/spent oil” or lubricant.
3.	4149734 dt. 21.12.2013	GESU 1355632 (Barrel No. 63)	<u>Test Memo No. 1(3)/2014-15 (CIU)</u> The sample confirm to the requirement of Petroleum based process oil for rubber industries as per IS 15078:2001. <u>However, if used for manufacturing of carbon black it may be termed as CBFS, which may be ascertained at your end.</u> No literature/evidence for grading of RPO/CBFS is available in this Laboratory. It is non-hazardous in nature in reference to H.W.M.R 2008. The sample u/r does not fall under the category of “waste oil/spent oil” or lubricant.

4.	4149734 dt. 21.12.2013	GESU 1355632 (Barrel No. 85)	<u>Test Memo No. 1(4)/2014-15 (CIU)</u> The sample does not confirm to the requirement of kinematic viscosity at 100 Deg C and density at 15 Deg C for Petroleum based process oil for rubber industries as per IS 15078:2001. Hence it is off specification product. <u>However, if used for manufacturing of carbon black it may be termed as CBFS, which may be ascertained at your end.</u> No literature/evidence for grading of RPO/CBFS is available in this Laboratory. It is non-hazardous in nature in reference to H.W.M.R 2008. The sample u/r does not fall under the category of “waste oil/spent oil” or lubricant.
5.	4390488 dt. 20.01.2014	CAIU 2031194 (Barrel No. 16)	<u>Test Memo No. 1(5)/2014-15 (CIU)</u> The sample does not confirm to the requirement of kinematic viscosity at 100 Deg C and density at 15 Deg C for Petroleum based process oil for rubber industries as per IS 15078:2001. Hence it is off specification product. <u>However, if used for manufacturing of carbon black it may be termed as CBFS, which may be ascertained at your end.</u> No literature/evidence for grading of RPO/CBFS is available in this Laboratory. It is non-hazardous in nature in reference to H.W.M.R, 2008. The sample u/r does not fall under the category of “waste oil/spent oil” or lubricant.
6.	4149734 dt. 21.12.2013	IALU 2274492 (Barrel No. 19)	<u>Test Memo No. 1(6)/2014-15 (CIU)</u> The sample does not confirm to the requirement of kinematic viscosity at 100 Deg C and density at 15 Deg C for Petroleum based process oil for rubber industries as per IS 15078:2001. Hence it is off specification product. <u>However, if used for manufacturing of carbon black it may be termed as CBFS, which may be</u>

			ascertained at your end. No literature/ evidence for grading of RPO/CBFS is available in this Laboratory. It is non-hazardous in nature in reference to H.W.M.R, 2008. The sample u/r does not fall under the category of “waste oil/spent oil” or lubricant.
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8. A perusal of all these chemical test reports indicate broadly that all the imported oils are non-hazardous in nature and does not fall under the category of 'waste oil/spent oil or lubricant'. The imported goods answers to Base Oil, RPO and Off-Specification products. Off specification products can be termed as CBFS if these are used for manufacture of Carbon Black.

9. Based on the test reports a Show Cause Notice dated 04.12.2014 was issued to the Assessee alleging intentional misdeclaration as to the description, quantity and value of goods and the abetting substitution of samples and consequently proposed to reclassify the goods contained in 311 barrels as base oil under CTH 2710 1960 and proposed to reclassify the goods in 669 barrels as rubber process oil under CTH 2007 5000 and consequential demand of differential duty and imposition of penalty under Sections 112 and 114AA of the Customs

Act, 1962 was proposed. The Original Adjudicating Authority confirmed the demands and imposed penalties under Sections 112(a) and 114AA *ibid* which was challenged before the Hon'ble High Court which ordered for re-adjudication after allowing the cross examination of CRCL official. The *denovo* proceedings also confirmed the duty demand and imposed penalties. On appeal, the Lower Appellate Authority refused to interfere with the reclassification and value enhancement. However, the Commissioner (Appeals) set aside the penalty imposed under Section 114AA of the Customs Act and also reduced the redemption fine to Rs. 2,00,000/-.

10. On the issue of classification and enhancement of the values, the Original Adjudicating Authority has recorded the following: -

"45. It is pertinent to mention here that the samples were drawn as per the Hon. High Court Direction after taking Inventory of the Cargo in respect of Bills of Entry Nos. 4149734 dated 21.12.2013 and 4390488 dated 20.01.2014 in the presence of the Officers of CIU, Shri R. Parivallal, Proprietor of M/s. Visal Lubetech Corporation, the representative of CHA and the Custodian of the ICD during the period 30.07.2014 to 02.08.2014 and

the goods were categorized based on the colour and viscosity of the chemical noticed and the same were inventoried. Based on the Colour and Viscosity noticed, the samples were categorized and sent for testing. It is not feasible for sampling to be done for each barrel. The importer has accepted for the sampling to be done based on the colour and viscosity. Hence, the Chemical Examiner's report on the product sent is beyond doubt and all precautions were taken by the investigation team to hand over the same with proper seal and with the signature of the importer. The majority of the goods imported under Bill of Entry 4149734 dated 21.12.2013 were noticed with Free Flowing Yellowish Liquid colour which on testing found to be 'Base Oil'. In respect of the other Bill of Entry No. 4390488 dated 20.01.2014 the entire cargo is found to be 'highly viscous Green Oily Liquid'. In this regard, I reference is invited to the Question No.26 raised by the Counsel

"Q26. You have stated that the sample did not confirm to the requirement of kinematic viscosity at 100° for petroleum based process oil for rubber industries. Hence, it is off-specification product is that it is RPO off-specification.

Reply: The question is not specific about the test reports. However, L 2014, 2016, 2017, 2018, 2019 / 10.09.2014 is reported in reference to mentioned IS:15078:2011, which is for petroleum based process oil for rubber industry"

Thus, the Chemical Examiner has reported that those samples did not confirm to the requirement Kinetic Viscosity at 100° C and density at 15°C for petroleum based process oil for Rubber Industries as per IS: 15078-2001. Since, the other parameters were responding to the definition of 'Petroleum based process oil for Rubber Industries, the above product would be rightly classifiable as Off-specification 'Petroleum based process oil for Rubber Industries product' falling under Chapter 27 of Customs Tariff Act, 1975.

46. From the version of the Chemical Examiner, there is no definition exists for Carbon Black Feed Stock either nationally and internationally and the same is based on its end-use especially when it is used in the production of Carbon Black. However, there exists a definition for Base Oil or Petroleum based process oil for Rubber Industries.

47. Section V of Indian Customs Tariff Act 1975, relates to Mineral products consisting of Chapters 25 to 27. While Chapter 25 pertains to salt, sulphur, earths and stones; plastering materials, lime and Cement, Chapter 26 relates to Ores, slug and ash. Chapter 27 is pertaining to Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes.

48. Section VI of Indian Customs Tariff Act, 1975 relates to Products of the Chemical on allied Industries and Chapter 28 deals with Inorganic chemicals; organic or inorganic compounds of precious metals, or rare-earths metals, of

radioactive elements or of radioactive elements or of isotopes.

49. From the above classification of goods, Chapter 28 deals with Inorganic Chemicals and only organic compounds of precious metals. Hence, the importers classification of the organic product under Chapter 28 is wrong. The Tariff / Heading 2803 is reproduced below:

2803	CARBON (CARBON BLACKS AND OTHER FORMS OF CARBON NOT ELSEWHERE SPECIFIED OR INCLUDED)
2803 00	Carbon (carbon blacks and other forms of carbon not elsewhere specified or included)
2803.00 10	Carbon Blacks
2803 00 20	Acetylene black
2803 00 90	Other

50. It is pertinent to observe that there is no mention of Carbon Black Feed Stock in the said classification in 2803 and this heading is only a residual heading.

51. As far as Base oil is concerned, there is a specific classification under Sub-Heading 27101960;

As far as, the oil imported under the Bill of Entry No. 4390488 dated 20.01.2014, the aromatic content in that oil is found to be 81.9% and hence it is rightly classifiable under Heading 2707 and appropriately under 27075000 where the definition given is other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distils at 250° by the ASTM D 86 method."

11. The findings of the Lower Appellate Authority on the issue of classification and valuation are as follows: -

"6.2. Meanwhile, the importer moved Chennai High Court claiming demurrage from the department alleging delay. As per the directions of the Hon'ble Madras High Court, 100% examination of the cargo was done by the officers of CIU in the presence of the importer and their representatives. All the containers were opened, examined and samples were drawn based on colour, physical appearance and viscosity. Six samples representing six visually different varieties of goods found in the containers were drawn and sent for testing at CRCL as it was not possible to draw samples from all 980 barrels and do testing for all 980 barrels. As per the 6 test reports, it was found that 311 barrels out of the total 980 barrels were found to contain "Base Oil". One test report read as "Rubber Process oil" and 4 other test reports read as "Off-specification" and can be termed as CBFS only if used in the manufacture of carbon black. Thereupon, the department had sought to reclassify and enhance the value of the goods as "Base Oil" for 311 barrels under CTH 27101960 and for remaining barrels as "Rubber Process Oil" under CTH 27075000 and also to enhance the value based on NIDB database for contemporaneous imports.

6.3. It is seen that the items imported as per test reports were Base Oil, Rubber Process Oil and off-specification products (CBFS) whereas importer has

claimed the entire quantity imported as 'Carbon black feedstock'. The CRCL has stated there was no Indian standard for CBFS and can be termed as 'CBFS' ONLY if used in the manufacture of Carbon Black. The importer was not able to produce a written purchase order to prove their claim that they had placed order only for CBFS. The importer had stated that they had placed order orally for CBFS. The CRCL in their letter dated 04.04.2014 have mentioned that the CBFS is not a specific product but a terminology used in commerce for those raw materials which are used in the manufacture of Carbon Black and that such feed stocks are mainly composed of aromatic constituents. CBFS does not have any specification in Indian standards. It may be seen that the imported items were assorted items of 'Base Oil' (lubricant), Rubber Process Oil and 'off-specification' CBFS all of which were 'down stream' petroleum based lubricants

6.4. In the two Bills of Entries, the importer had classified the goods under Customs tariff sub-heading as 2803 0090 which is 'Carbon (Carbon black and other forms of carbon not elsewhere specified or included). But, the actual cargo arrived after the tests conducted by the CRCL were Base oil and Rubber Process Oil/off-spec (CBFS) which are entirely different products and are correctly classifiable under sub-heading 2710 1960 and 2707 5000 of the Customs tariff. The appellant asserts the claim that the item imported is CBFS. However as per the test report, 311 out of 980 barrels were "Base Oil" for which the goods were re-classified

under CTH 2710 1960 and the value enhanced to Rs.41,67,400/-. For the rest of the barrels, the Department classified them as Rubber Processing Oil under CTH 2707 5000 and value enhanced to Rs.68.34,738/- based on NIDB database. The importer vehemently contests reclassification as well as value enhancement as 4 out of 6 test reports read as 'off-specification (CBFS)'. According to the appellant advocate, the grade and specification are not available and therefore the declared transaction values have to be accepted. However, the appellant has not come forward to furnish the grade or specification of the imported items and had not furnished the value of such materials."

12. The assessee has imported the above products and declared as Carbon Black Feed Stock. The standard chemical literature indicates that the Carbon Feed Stock is a petroleum-based oil fractions used as a primary raw material for manufacture of Carbon Black. It is essentially a complex mixture of higher hydrocarbons, including polyaromatic compounds like naphthalene and anthracene obtained through high temperature cracking of petroleum fractions. CBFS is a dark coloured viscous liquid consisting primarily of C12 and higher-weight components. It contains various aromatic compounds

including naphthalene, methyl-indenes, anthracene and fluorene. It is produced as a by-product of catalytic cracking process in oil refineries. Whereas Chapter 28 of the Customs Tariff Act deals with inorganic chemicals, organic or inorganic compounds of precious metals, *etc.* The classification of the imported goods adopted by the assessee under CTH 2803 is not correct. CBFS is the raw material for manufacture of Carbon Black and not Carbon Black itself.

13. In the manufacture of Carbon Black, CBFS is used but the classification of CBFS is to be done under Chapter 27 of the Customs Tariff Act as petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included. As such, the classification adopted by the assessee for imported item under CTH 2803 is wrong. From Carbon Black Feed Stock, Carbon Black is manufactured which is classifiable under CTH 2803.

14. Thus, the classification adopted by the Departmental Authorities for the imported oils under CTH

27101960 as Base Oil and under CTH 27075000 as RPO/Off Specification is required to be affirmed in view of many chemical test reports as mentioned *supra*. We have taken note of the chemical test reports indicating that some of the imported Oils can be called as 'Carbon Black Feed Stock, if it is used for manufacturing of Carbon Black. Further, in terms of Rule 3 to General Interpretative Rules for Customs Tariff, goods are to be classified under the Chapter Heading which is more specific and precise. The Heading which provides for more specific description has to be preferred to General description. In case of mixtures, the material which provides the essential character to the goods would be the determining factor for classification. The said Rule is extracted below for ease of reference: -

"3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :

a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those

goods, even if one of them gives a more complete or precise description of the goods.

b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

Applying the above Rule of Interpretative Notes to the Customs Tariff, the imported goods are more appropriately classifiable as Base Oil in respect of 311 Barrels under CTH 27101960 and for other remaining oils as Rubber Process Oil under CTH 27075000. We have taken note of the test reports which have indicated that some of these oils are Off Specification products and also specification for Rubber Process Oil as to kinematic viscosity is not satisfied. All imported goods are required to be classified in terms of Section Notes, Chapter Notes and Chapter Heading applying the Interpretative Notes to Customs Tariff Act taking assistance from Explanatory Notes to HSN wherever required.

As such, we are of the opinion that classification of the imported goods as specified in the impugned Order-in-Appeal No. 68/2020-TRY (CUS) dated 19.10.2020 does not call for any interference. The issue of classification is thus decided against the Assessee and in favour of the Department.

15. On the issue of justification for enhancement of the values, the Show Cause Notice dated 04.12.2014 has clearly indicated the basis adopted in Para 19 & 20. The usage of the imported goods or even its nomenclature whether as RPO or Off Specification or CBFS will not be determining factors either for classification or valuation in the background of the facts obtaining in this case as discussed *supra*. We do not find any merit in the Assessee's contention that the Lower Adjudicating Authority had adopted the higher of the NIDB Data as the basis was intimated to the Assessee on enhancement of the values and it was only one Bill of Entry each for Base Oil and RPO. On the issues of confiscation and penalty, some of the chemical test reports clearly indicate that Off Specification Oils can be treated as CBFS if used for the manufacture of Carbon Black. The Assessee is found to

be a trader and also reportedly involved in the manufacture of lubricants. It was repeatedly submitted that the imported oils were meant for their actual use and not for sale. As such alleging that the importer had intentionally mis-declared the description and classification to evade Customs Duty is not supported. As such, confiscation and penalty imposed are not sustainable.

16. In the Appeal No. C/40025/2021, the Revenue came in appeal against the impugned Order-in-Appeal No. 68/2020-TRY(Cus) dated 19.10.2020 for setting aside the penalty imposed under Section 114AA of the Customs Act by the Original Adjudicating Authority on the grounds that the imported goods by M/s. Visal Lubetech, Bangalore did not correspond to the value, description and quantity as declared by them in the Bills of Entry filed, that the importer has mis-declared the cargo as Carbon Black Feed Stock (CBFS) instead of Base Oil, Rubber Process Oil and Off specification oil that there was a failure on the part of the importer to produce any relevant document covering the imported goods like purchase order to support the stand that the product imported by them is

only Carbon Black Feed Stock and that the importer had resorted to substitution of samples. Further, there was a misdeclaration of the Country of Origin as UAE whereas on verification on some of the drums, it was clearly written as the Country of Origin of the goods was IRAN.

17. The allegation of substitution of the samples of the imported goods could not be proved as the sample was not tested by the CRCL as it was received there not in properly sealed condition. As the entire investigation of the substitution of samples has been taken up as the Assistant Commissioner who was present while drawal of the samples to be sent for testing by CRCL was under the impression that sample drawn was of viscous liquid in black colour, leading him to entertain a suspicion that there was tampering of the drawal of the samples on 30.12.2013. However, this opinion or suspicion or the memory of the Assistant Commissioner was not supported by the facts as when all the imported goods were subjected to detailed examination as per the orders of the jurisdictional High Court, there was no dark colour oil found in the consignments. The untested sample which was returned found to be yellowish viscous liquid.

As per the orders of the Hon'ble High Court when all the imported goods were inventorised and examined, the colour of the samples drawn found to be Green, Yellow and Brownish Green and no dark coloured oil.

18. In view of the above, imposition of penalty under Section 114AA of the Customs Act, 1962 is not justified and we maintain the Order-in-Appeal No. 68/2020-TRY (CUS) dated 19.10.2020 as far as imposition of penalty under Section 114AA of the Customs Act, 1962 is concerned. Further, the order of confiscation and imposition of fine and penalty under Section 112 of the Customs Act, 1962 are ordered to be set aside as we do not find any misdeclaration to the description and the classification of the imported goods is technical and interpretative in nature and any intention to evade, or suppression was not evidenced though the importers classification adopted under Chapter 28 is blatantly wrong.

19. However, we do not find any reason to interfere with the order of the Lower Appellate Authority both on

the issues of classification of the imported products or on the valuation adopted.

20. In the result, the Appeal No. C/40025/2021 filed by the Department is rejected and the Appeal No. C/40026/2021 filed by the Assessee is partly allowed on the above terms.

(Order pronounced in open court on 02.05.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)