

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO.1

Customs Appeal No. 51289 Of 2023

[Arising out of Order-in-Appeal No. CC(A)CUS/D-11/ICD-TKD IMP/963 to 965/2022-23 dated 07.09.2022 passed by the Commissioner (Appeals) of Customs, New Delhi]

Mangli Enterprises

: Appellant

4-Safeway House, D-Block, Central
Market, Prashant Vihar, New Delhi-110085

Versus

Commissioner of Customs, New Delhi

: Respondent

New Customs House, Near I.G.I. Airport,
New Delhi-110037

With

Customs Appeal No. 52566 Of 2023

[Arising out of Order-in-Appeal No. CC(A)CUS/D-11/ICD-TKD IMP/963 to 965/2022-23 dated 07.09.2022 passed by the Commissioner (Appeals) of Customs, New Delhi]

Sorabh Goyel

: Appellant

A-26, 1st Floor, Saraswati Vihar,
Pitampura, Delhi-110

Versus

Commissioner of Customs, New Delhi

: Respondent

New Customs House, Near I.G.I. Airport,
New Delhi-110037

APPEARANCE:

Ms. Vidushi Shubham, Advocate for the Appellant

Shri Mukesh Kumar Shukla, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No.51298-51299/2025

Date of Hearing:26.08.2025
 Date of Decision:26.08.2025

JUSTICE DILIP GUPTA

Customs Appeal No. 51289 of 2023 has been filed by M/s Mangli Enterprises¹ to assail that portion of the order dated 05.09.2022 passed by the Commissioner of Customs (Appeals)² that imposes penalties upon the appellant under sections 112(a)(i) and section 114AA of the Customs Act.

2. **Customs Appeal No. 52566 of 2023** has been filed by Sorabh Goyel against that part of the aforesaid order dated 05.09.2022 passed by the Commissioner (Appeals) that imposes penalties upon him under sections 112 (a) (i) and section 114 AA of the Customs Act, 1962³.

3. The appellant claims to have imported 177.38 metric tons of Base Oil from a foreign supplier and filed a Bill of Entry dated 17.02.2021 classifying the product under Customs Tariff Item⁴ 2710 19 71. The appellant's also claim that along with the Bills of Entry, it had also filed previous reports of the Central Revenue Control Laboratory⁵ regarding the product.

4. The Directorate of Revenue Intelligence, on the basis of intelligence that certain importers were mis-declaring the goods, put

1 **The appellant**
 2 **The Commissioner (Appeals)**
 3 **The Customs Act**
 4 **CTI**
 5 **CRCL**

on hold the 10 containers of the appellant for examination and test. Statements of various persons were also recorded. During the examination, representative samples were drawn from each of the 10 containers, but as the goods in all the containers were found to be identical, sample from one container was forwarded to CRCL for testing by a letter dated 01.03.2023. Another sample from the same container was also sent to the Society for Petroleum Laboratory⁶ for testing by a letter dated 22.03.2021.

5. The test report dated 26.03.2021 was submitted by CRCL. It tested 7 characteristic out of 10 and it mentions that the sample meets the requirements of Kerosene as per IS: 1459: 2018 and the product is other than Base Oil.

6. SFPL also sent an email dated 26.04.2021 enclosing the test report. The mail mentions that the test parameters of the sample conforms to IS: 1459 (Kerosene) standards. The test report mentions that 8 out of 10 characteristic was tested.

7. It further transpires that one more sample was sent to SFPL for testing and the SFPL by a letter dated 29.07.2021 informed the Directorate of Revenue Intelligence that the test parameters of samples confirm to IS: 1459 (Kerosene) standards. This test report is also with respect to 8 parameters out of 10. The letter is reproduced below:-

" With reference to your letter no. F. No. DRI/DZU/23/Enq-11/2021 dated 13.04.2021 regarding testing of samples as specified under the Test Memo Number : 66/2021 and Test Memo Number : 67/2021 at Fuel Testing Laboratory (Noida),

the test reports of 2 (Two only) number of sample are enclosed for your information and records.

The test parameters of both the samples submitted conform to IS : 1459 (Kerosene) standards.

Please acknowledge the receipt of the Test Reports.
Thanking you,"

8. On the basis of the aforesaid reports, the goods were seized as they were liable to confiscation by a seizure memo dated 25.06.2021. The statements of Dharampal Goyal, Director of the appellant and Sorabh Goyal, who was looking after the business were also recorded under section 108 of the Customs Act.

9. Thereafter, a show cause notice dated 16.08.2021 was issued to the appellant as also to Sorabh Goyal and Dharampal Goyal proposing re-classification of the goods from CTI 2710 19 71 to CTI 2710 19 32. The Show Cause notice also proposed rejection of the declared assessable value under rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007⁷ and re-determination under rules 4 and 5 of the 2007 Valuation Rules. The show cause notice also proposed confiscation of the goods and imposition of penalty upon the appellant and Sorabh Goyal and Dharampal Goyal under sections 112, 114 A and 114AA of the Customs Act.

10. The Joint Commissioner of Customs, by order dated 16.03.2022, re-classified the goods as Kerosene instead of Base Oil and rejected the transaction value and re-determined it. Penalty of Rs. 25 lakhs was also imposed upon the appellant under section 112 (a) (i) of

7 2007 Valuation Rules and

the Customs Act. A penalty of Rs. 20 lakhs was also imposed on the appellant under section 114AA of the Customs Act. Penalty to the extent of Rs. 15 lakhs was imposed upon Dharampal Goyal under section 112 (a) (i) of the Customs Act and penalty of Rs. 10 lakhs under section 114 AA of the Customs Act. Penalty of Rs. 15 lakhs was imposed upon Sorabh Goyal under section 112 (a) (i) and Rs. 10 lakhs under section 114 AA of the Customs Act, 1962.

11. Feeling aggrieved, the appellant also Sorabh Goyal and Dharampal Goyal filed appeals before the Commissioner (Appeals). The Commissioner (Appeals), by the order dated 05.09.2022, allowed the appeal filed by the Dharampal Goyal. The order passed by the Joint Commissioner imposing penalty upon Sorabh Goyal and the appellant was modified by reducing the amount of penalty. The rest of the order passed by the Joint Commissioner was upheld.

12. The relevant portion of the order passed by the Commissioner (Appeals) are reproduced below:-

"I also note that both the laboratories are independent government laboratories, which are well equipped and have highly skilled & trained staff to conduct such test. There is no reason to doubt the authenticity of the said Test Reports. Therefore, on the basis of test reports of CRCL and SFPL I hold that the impugned goods were Kerosene and not Base Oil as declared by the Appellants.

5.3.1 The Appellants have challenged the Test Reports on the ground that the samples have not been tested on all 10 parameters specified in IS: 1459:2018 (BIS) standard for Kerosene). They have referred to cases of Swarna Oil Services and Rajkamal Industries (Supra) in this regard. First of all I note that the Hon'ble Tribunal's order cited by the Appellants in the case of Rajkamal Industries has been set aside by the Hon'ble High Court in order dated 20.01.2022 [2022 (2) TMI 264 Gujarat High Court)]. While the Hon'ble Tribunal decided in favour of the importer on the ground that all 21

parameters were not tested, the Hon'ble High Court ruled that even testing on limited parameters (14 in that case) by three laboratories independently established that the goods were nothing but HSD as per IS 1460:2005. The Hon'ble High Court held:-

"40 Thus, what is discernible from the above referred case laws is that it would be too much to ask the department to prove its case with mathematical accuracy. So long as the department has been able to establish its case with such a degree of preponderance, the existence of a fact could be said to have been proved. The only ground on which the Tribunal interfered with the findings recorded by the adjudicating authority is that the laboratories were not in a position to conduct all the 21 tests. The Tribunal has ignored the fact that all the 14 tests carried out in three different laboratories revealed only one thing that the sample showed the characteristics of the High Speed Diesel. If the department is able to lead evidence to this extent, the onus would thereafter shift upon the assesseees to establish that these 14 tests cannot be said to be conclusive of the fact that the subject goods is High Speed Diesel. No such attempts have been made by the assesseees."

5.3.2 In the present case also, two independent government laboratories have categorically stated in their reports that the goods were kerosene meeting IS 1459. Minor differences pointed out by the Appellants in the two reports cannot alter the final conclusion arrived by both independent laboratories.

5.3.3 Thus, I note that the impugned goods were mis-declared as 'Base Oil' and classified under CTH 2710 1971 but actually the goods were 'Kerosene, and Kerosene is specifically covered under CTH 2710 1932. Therefore, I hold that the Adjudicating Authority has correctly classified the impugned goods under CTH 2710 1932 instead of CTH 2710 1971"

(emphasis supplied)

13. Accordingly, the appellant and Sorabh Goyel have filed appeals before the Tribunal.

14. Ms. Vidushi Shubham, learned counsel for the appellant submitted that the Commissioner (Appeals) placed reliance upon the decision of the Gujarat High Court in **Commissioner of Customs,**

Kandla vs. Rajkamal Industrial Private Limited⁸ to hold that even if 21 parameters were satisfied, the report submitted by the Government Agencies should be accepted, but this decision of the Gujarat High Court has now been set-aside by the Supreme Court in **Gastrade International vs. Commissioner of Customs, Kandla**⁹ and it has been held that all the parameters have to be satisfied. Learned counsel for the appellant, therefore, submitted that the three reports on which reliance has been placed cannot be accepted as only 7/8 parameters out of 10 were tested. Learned counsel, therefore, submitted that if the test reports are not to be accepted, the contention of the appellant that the appellant had imported Base Oil should be accepted and the confiscation of the goods and imposition of penalties should be set-aside.

15. Shri Mukesh Kumar Shukla, learned authorized representative appearing for the department, however, supported the impugned order and submitted that the decision of the Supreme Court in **Gastrade International** is on different facts and would not come to the aid of the appellant.

16. The submissions advanced by the learned counsel and the learned authorized representative appearing for the department have been considered.

17. It is not in dispute between the parties that the standards prescribed by the Bureau of Indian Standards for specification of Kerosene would apply and that they refer to 10 characteristics to be

8 2022 (2) TMI 264-GUJARAT HIGH COURT
9 2025 (392) E.L.T. 529 (S.C.)

satisfied. In the present case, it is noticed that the two test reports submitted by CRCL refer to only 7 characteristics out of 10, and the reports submitted by the SFPL refer to only 8 characteristics out of 10.

18. The issue, therefore, that arises for consideration is whether testing the sample for 7 or 8 characteristics out of 10 that have been specified by the Bureau of India Standards would be sufficient to hold that the product imported by the appellant is not Base oil but Kerosene.

19. The Commissioner (Appeals) has placed reliance on the decision on the Gujarat High Court in **Rajkamal Industries** to hold that testing of 7/8 parameters out of 10 is sufficient. As noticed above, the decision of the Gujarat High Court in **Rajkamal Industries** has been set-aside by the Supreme Court in **Castrade International** and it has held that all the characteristics have to be satisfied.

20. The relevant portion of the order of Supreme Court in **Gastrade International**, which was also a party before the Gujarat High Court in the batch of appeals, is reproduced below:-

"45. A careful perusal of the first report furnished by the Central Excise and Custom Laboratory at Vadodara on 11-05-2018 would show that the samples were tested in respect of only 8 parameters out of 21.

xxxx xxxx xxxx

47. Therefore, in our opinion, the first test based on examination of 8 parameters against 21/22 prescribed cannot be considered to be a definitive opinion to take the view that the sample is indeed that of HSD. It would be speculative or assumptive to say on the basis of the aforesaid opinion that the sample is that of HSD.

xxxx xxxx xxxx

54. One noticeable aspect in the present case is that the Adjudicating Authority/Tribunal/High Court had been called upon to decide this issue, when there are clearly laid down scientific criteria to determine whether the oil in issue is HSD or not. The fact to be proved herein is not an incident, situation, phenomenon or happening that may require a bundle of evidence to prove its existence based on the standard of preponderance of probability. **The issue involved is about the proper classification of an existing material/article based on certain specified specifications. For this one only needs to refer to the specifications mentioned under IS 1460:2005 and once the sample conforms to the specifications, it would be accordingly identified/classified as HSD which would not require any analysis or appreciation of evidence. The rules do not provide that any substance that partly complies with the aforesaid parameters will be considered or deemed to be that specified substance. If tests had been done in respect of all the 21 parameters as per IS 1460:2005, and if the results conform to all these parameters, there will be no difficulty in concluding that the samples are indeed that of HSD. The problem has arisen because the tests were done only with respect of a few parameters and not all, leaving it to the discretion of the Adjudicating Authorities/Tribunal/High Court to determine whether it has been proved based on these tests that the samples are indeed that of the HSD. Thus, this exercise has introduced an element of subjective appraisal and evaluation of the pieces of evidence.**

XXXX XXXX XXXX

80. (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.”

(emphasis supplied)

21. The contention of the learned authorized representative appearing for the department that the judgement of the Supreme Court **Gastrade International** would not apply to the facts of the present case, cannot be accepted. As noticed above, the

Commissioner (Appeals) placed reliance upon the judgement of the Gujarat High Court in **Rajkamal Industries** and it is this judgement that was reversed by the Supreme Court in **Gastrade International**.

22. In as much as only 7/8 out of 10 parameters were tested in the reports, on which reliance placed by the department, it cannot be said that the product imported by the appellant was Kerosene and not Base Oil.

23. In this view of the matter, the goods could not have been confiscated, nor the penalties could have been imposed under sections 112(a)(i) and 114AA of the Customs Act.

24. The order dated 05.09.2022 impugned in these two appeals , in so far as it concerns the appellant and Sorabh Goyel deserves to be set-aside and is set-aside. The two appeals are, accordingly, allowed.

(Order dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.