

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Customs Miscellaneous Application No.75052 of 2022 (Stay)

(On behalf of Appellant)

And

Customs Appeal No.75125 of 2022

(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AKR/847/2021 dated 13.12.2021 passed by Commissioner of Customs (Appeals), Kolkata.)

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Custom House, Kolkata-700001.)

...Appellant

VERSUS

M/s. Maxtone Petrochemicals

.....Respondent

(IA, Merlin Basera, 13B, Ramesh Mitra Road, Kolkata, West Bengal-700025.)

APPEARANCE

Shri S.Chakraborty, Authorized Representative for the Revenue
Shri Arijit Chakraborty, Advocate for the Respondent

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

MISCELLANEOUS ORDER NO.75196/2023

FINAL ORDER NO. 75542/2023

DATE OF HEARING : 10 April 2023

DATE OF DECISION : 06 June 2023

Per : K. ANPAZHAKAN:

DRI, New Delhi has issued an Alert Circular No.02/2020-CI vide F.No.DRI/HQ-CI/C-CELL/29/XI/16/2019/2051 dated 23.03.2020 regarding "Violations of Petroleum Act, 1934 and Petroleum Rules, 2002 in import of "Low Aromatic White Spirit/Hydro Carbon Solvent and other Petroleum Class A,B and C grades". The Circular indicated that some importers are importing Low Aromatic White Spirit (LAWS) classifiable under sub-heading 27101920, but misdeclaring the same under the sub heading 27101990, thereby violating provisions of Import Policy.

2. Accordingly, the Special Investigation Branch (SIB), Port, Custom House, Kolkata has initiated an investigation against the goods declared as 'Low Aromatic White Spirit' (LAWS) imported by the Respondent (Importer) under Bill of Entry NO.9391372 dated 31.10.2020. The quantity of the imported goods is 97,280 KG (Net Weight), in 608 drums i.e. 1,19,611Litres (w.r.t. the density as 0.8133 gm/cc or KG/Litre (at 15 degree C) . The impugned goods were detained by the SIB officers on 17.02.2021 under section 110(1) of the Customs Act, 1962.

3. Upon scrutiny of the ICES system, it was noticed that the Respondent has imported the same item in the past, which has been already cleared from Customs. The details of such consignments is tabulated as below:-

Table-1

Sl. No.	BE No.	BE Dt.	Item Desc.	Ass. Value (INR)	Item Duty (INR)	GTY (KGS)	Unit Price (USD)
1.	6956777	20-02-2020	LOW AROMATIC WHITE SPIRIT (LAWS) IN FLEXI BAG.	3830519.24	938094.20	85785.000	0.600
2.	8597573	26-08-2020	LOW AROMATIC WHITE SPIRIT (LAWS)	2701736.40	661655.20	64000.000	0.550
TOTAL				6532255.64	1599749.40	149785.00	

4. Representative samples were drawn from each container of the Bill of Entry no.9391372 dated 31.10.2020 and sent to CRCL, Kolkata vide Test Memo No.1077140 dated 20.11.2020. CRCL Test Report lab No.2139-2142/27-191-194 dt.20.11.2020 communicated their report on 26.11.2020, as follows:-

"The sample is in the form of colorless liquid. It is composed of 'Mineral Hydrocarbon Oil (more than 70% by Wt)' having following parameters:

Table-B

Sl. No.	Density at 15 degree C in gm/cc	Flash point (Albel) Degree celcius	Sediment	Acidity	IBP	FBP	Ash Content
1.	0.8133	41	Nil	Nil	148 degree C.	218 degree C.	Nil
2.	0.8133	42	Nil	Nil	146 degree C.	218 degree C.	Nil
3.	0.8133	41	Nil	Nil	146 degree C.	220 degree C.	Nil
4.	0.8133	42	Nil	Nil	146 degree C.	220 degree C.	Nil

On the basis of above analytical findings:-

- i) The sample u/r meet the criteria of "Light Oil & its preparations" as per Sub Heading Note 4 of Chapter 27*
- ii) The sample u/r does not meet the criteria of Kerosene Oil as per IS 1459:2018."*

5. CRCL, Kolkata vide letter dated 27.11.2020, further clarified that "regarding sub heading Note 4 of Chapter 27, it is herewith mentioned that all the four samples referred distills 90% at 210 degree C.

6. The Test Report was communicated to the importer (Respondent herein) vide letter dated 04.12.2020 and as requested by them, a re-test was conducted at IOCL, Haldia Lab. In its report, IOCL, Haldia indicated that the product has got the characteristics of Mineral Turpentine Oil.

7. On further reference from SIB, CRCL, Kolkata vide letter dated 19.02.21 opined that the sample under reference may be considered as Solvent 125/240 as per IS 1745:2018 for Petroleum Hydrocarbon Solvents. CRCL further clarified that there is no available standard/literature/specifications for the description 'Low Aromatic White Spirit'.

8. Another reference was made vide letter dated 20.04.2021 to CRCL, New Delhi , who vide report dated 05.05.2021 opined that the sample under reference meets the requirements of 'Light Oils and Preparations' as mentioned in sub heading Note 4 of Chapter 27. The sample also meets the requirement of solvent 125/240 mentioned in IS 1745:2018.

9. Therefore, a Show Cause Notice dated 28.05.2021 was issued to the Respondent proposing to reject the classification of 27101990 claimed by them and reclassify the same under 27101920, in respect of the impugned goods imported vide Bill of Entry No.9391372 dated 31.10.2020 as well as the two past imports tabulated in para 3 above.

10. The Notice was adjudicated vide Order-in-Original dated 27.07.2021, wherein the adjudicating authority confiscated the goods imported vide Bill of Entry No 9391372 dated 31.10.2020, but allowed re-export of the goods on payment of redemption fine of Rs 2,00,000 and imposed penalty of Rs 3,00,000 in the event of failure to re-export the same within 120 days. In respect of the past two Bills of Entry Nos 6956777 dated 20.02.2020 and 8597573 dated 26.08.2020, he imposed Redemption fine of Rs 2,00,000 and penalty of Rs.5,00,000.

11. Aggrieved against the order dated 27.07.2021, the importer filed appeal before Learned Commissioner (Appeals) who vide Order-in-Appeal dated 13.12.2021 modified the Order-in-Original dated 27.07.2021, as under;

(i) Set aside the confiscation of the goods imported under the Bills of Entry dated 6956777 dated 20.02.2020 and 8597573 dated 26.08.2020, as the goods have already been cleared from customs. He also set aside the redemption fine and penalties imposed against these Bills of Entries.

(ii) Upheld the confiscation of the goods imported under Bill of Entry No 9391372 dated 31.10.2020. But, allowed the goods to be redeemed on payment of redemption fine of Rs 2,00,000 for home consumption instead of re-export.

(iii) Upheld the penalty of Rs 3,00,000 imposed under section 112a(i) against the Bill of Entry No 9391372 dated 31.10.2020

Aggrieved against the impugned order, the Department has filed the present appeal.

12. In their grounds of Appeal the Appellant (Department) has raised the following grounds for consideration:

(i) On the basis of CRCL,Kolkata, Test Report, the adjudicating authority has rightly classified the goods under the sub heading 27101920 and rightly confiscated the impugned goods under section 111(d) of Custom Act, 1962.

(ii) The Appellate authority as erred in holding that the impugned goods are not prohibited goods and releasing the goods for home consumption on payment of redemption fine. In support of this contention they referred to the judgment of Hon'ble Supreme Court in the case of Raj Grow Impex LLP & ORS.

(iii) The goods imported are solvent 125/240, low aromatic as per IS 1745:2018, which can be imported only by State Enterprises. Their unrestricted release in the market will cause distortion in the market. It can result in adulteration of fuels like petrol and diesel. The restriction imposed is meant for ensuring safety and checking adulteration. Hence, release of the goods for home consumption on payment of redemption fine is not in consonance with the policy of the government.

13. In their submissions, the Respondent importer has made the following submissions:

(i) In respect of Bills of Entry Nos.6956777 dated 20.02.2020 and 8597573 dated 26.08.2020, the assessments made under section 17 of the Customs Act, 1962 has attained finality with respect to the declared classification vis-à-vis the declared description of the goods.

(ii) The Hon'ble Supreme Court in case of Escorts Limited v. Union of India and Others reported in 1998 (97) ELT 2011 (SC), held that a conjoint reading of section 47 and section 17 of the Customs Act, 1962 reveals that the classification of the imported goods and payment of duty thereon based on the assessment made by the Proper Officer amounts to passing of an assessment order. Hence, it cannot be altered without any appeal.

(iii) In the case of ITC Limited v. Commissioner, reported in 2019(368)ELT 2016(SC), it has been held by the Hon'ble Supreme Court that unless the order of assessment or self-assessment is modified in accordance with law, the said order will be deemed to have

attained finality. Hence action initiated against past clearances of goods is not maintainable.

(iv) Regarding the goods imported under Bill of Entry No 9391372 dated 31.10.2020, the Respondent stated that the CRCL test report dated 26.11.2020 has certified that the sample is in form of colourless liquid and composed of Mineral Hydrocarbon Oil (more than 70% by wt.) and meets the criteria of "Light Oil and Preparations". It has the other parameters of flash point 41/42 degree Celsius and IBP 146/148 degree Celsius and FBP 218/220 degree Celsius. However, on their request when the sample was sent for test in IOCL, the IOCL test report dated 12.02.2021, clearly indicated that the impugned goods have the characteristics of Mineral Turpentine Oil . This test report vindicates their contention that the impugned goods declared as Low Aromatic White Spirit are nothing but Mineral Turpentine Oil meriting classification under tariff item 271019990 of the Customs Tariff Act, 1975.

(iii) The department has ignored the IOCL test report and again sought clarification from CRCL, Kolkata. Without any further test, CRCL, Kolkata has clarified in its report dated 19.02.2021 that the goods in question may be considered as Solvent 125/240 as per IS 1745:2018 for Petroleum Hydrocarbon Solvents. Again reference was made by the department to CRCL, New Delhi which vide report dated 05.05.2021 opined on the basis of parameters tested by IOCL and CRCL, Kolkata that the sample met the requirement of "Light Oil and Preparations" as mentioned in subheading note 4 of Chapter 27 of the Customs Tariff Act, 1975 as well as the sample met the requirement of Solvent 125/240 as per IS 1745:2018.

14. The Respondent also stated that the impugned goods declared as Low Aromatic White Spirit are nothing but Mineral Turpentine Oil meriting classification under Tariff item 27101990 of the Customs Tariff Act, 1975 which has been vindicated by the IOCL test report. Mineral Turpentine Oil are manufactured by M/s. IOCL, M/s. NRL, M/s.BPCL (all reputed PSUs) which has got application in industrial paints, thinners,

varnish, resin coatings etc. and in their ex-factory clearance, have all along been classified under heading 27101990 which has never been disputed. The impugned goods imported by them are nothing but Mineral Turpentine oil meriting classification under tariff item 27101990 of the Customs Tariff Act, 1975 and are freely importable. The report of CRCL, Kolkata dated 19.02.2021 which is after the IOCL report contradicts their own report dated 26.11.2020 and the report of CRCL New Delhi suffers from inherent contradictions. Accordingly, the Respondents argued that the department has ignored the IOCL Test report and interpreted the CRCL test report according to their convenience, even though the test report has not categorically indicated that the samples tested were Solvent 125/240.

15. The Respondent cited the decision of the Tribunal in the case of Krishna Technochem Pvt Ltd, which has been upheld by the Hon'ble Supreme Court wherein it has been observed that the word used in Note 4 of chapter 27 is 'at' and not 'upto'. This would mean that the minimum IBP and maximum FBP should be exactly 125 and 240 for classification of the said goods as solvent 125/240 under 27101920. In the present case the IFP of 148 and FBP of 218 are nowhere closer to the IS 1735 standards. Accordingly, they argued that the impugned goods cannot be classified under CTH 27101920.

16. Regarding the violation against PESO Licence, the Respondents contended that the impugned goods having flash point 41/42 degree Celsius falls under Class B of the Petroleum Product. The PESO License No.P/HQ/WB/15/2530(p-206171) dated 22.11.2019 available with them is valid up to 31.12.2024 allows importation of 84,000 litres of Class B of the Petroleum Product. The impugned import constitutes of 97,280 Kgs (1,19,611 Litres) Class B of the Petroleum Product, which therefore attracts violation of FTP for invocation of section 111(d) of the Customs Act, 1962. They submitted that they have applied for enhancement of the quantity which has since been approved. Therefore, section 111(d) of the Customs Act, 1962 is not applicable as far as the impugned goods are concerned.

17. Heard bothsides and perused the appeal records.

18. The issue to be decided here is the classification of the goods 'low aromatic white spirit' imported by the Respondent. The Respondent has classified the goods under CTH 27101990 and filed the Bill of Entry No 9391372 dated 31.10.2020. Revenue has reclassified the said goods under CTH 27101920 on the basis of Test Report of CRCL, Kolkata. The contention of Revenue is that the impugned goods are rightly classifiable as 'Solvent 125/240' as per IS 1745:2018.

19. We observe that the Revenue has reclassified the goods mainly on the basis of the Test Report received from CRCL, Kolkata. Hence, it is necessary to analyze the contents of the report and examine whether the Test report findings indicate that the impugned goods meets the specifications required for categorizing it as 'solvent 125/240, as per IS 1745:2018.

20. It is to be examined whether the impugned goods can be classified as 'Solvent 125/240' under CTH 27101920, based on the available test reports. The Revenue has relied upon the CRCL, Kolkata test report dated 26.11.2020 to reclassify the goods under the chapter heading 27101920. A Comparative Chart of the Test Report dated 26.11.2020 along with requirements for Petroleum Hydrocarbon Solvent 125/240 as per IS 1745/2018 is furnished below:

	Density at 15 C in gm/cc	Flash Point (COC)	Acidity	Ash Conte nt	IBP	FBP
As per the test report issued by CRLC., Kolkata	0.8133	41	Nil	Nil	148 C	218 C
Requireme nt s for Solvent 145/205 As per the IS 1745/2018		30			125 C	240 C

21. As per the Test Report details furnished above, the IBP of the impugned goods is 148 degree Celsius and FBP is 218 degree Celsius, whereas as per the IS standard 1745 the minimum IFB should be 125 degree Celsius (IBP) and maximum FBP should be 240 degree Celsius respectively. The Respondent stated that the IFB 148 of the impugned goods is much higher than the minimum IFB requirement of 125 as per the IS 1745 standard. Also the FBP 218 of the impugned goods as per the Test Report is much lower than the maximum FBP requirement of 240, as per IS 1735 standards. The Respondent also stated that the flash point 41 for the impugned goods as per the Test Report is much higher than the requirement of 30 flash point as per IS 1745 standards. Thus, they argued that none of the above parameters in the Test Report are matching with the requirements as per IS 1745 standards for classifying the goods as 'Light Oils and preparations' under CTH 2710.

22. The Respondent cited the decision of the Tribunal, in the case of Krishna Technochem Pvt Ltd Vs CCE, Haldia, vide Final Order No 77087-77089 dt.25.09.2019 (Excise Appeal No.238 of 2010 & Excise Appeal No.76038 of 2014), wherein the applicability of Note 4 to Chapter 27 has been examined. The relevant portion of the order is reproduced below:

"8. Further, in the instant case, sole reliance has been placed by the Ld. Commissioner on the Chemical Examiner's report. As rightly pointed out by the Ld. Advocate that, in the testing report it has been stated that the sample drawn from the appellant's premises is liquid containing mixture of hydrocarbons having distillation range from 35 degree to 58 degree Celsius and flash point below 25 degree Celsius. The classification adopted by the Ld. Commissioner is not in consonance with the Note no. 4 to Chapter 27 of the Tariff which states that "Light Oil and Preparations" are those of which 90% or more by volume (incl. losses) distilled at 210 degree Celsius, whereas the Chemical Examiner has stated that the range of distillation of product is 35 degree to 58 degree Celsius which is much below 210 degree Celsius. Hence the classification under chapter 271011 cannot

be adopted. Similar observations have been made by the Tribunal in the aforesaid decision.

9. In view of the aforesaid, the classification adopted by the Ld. Commissioner cannot be approved and hence, the entire duty demand, interest and penalty are set aside and the appeals are allowed with consequential relief. The personal penalty imposed on Sri Bindhyachal Singh, Accountant, is also set aside."

The aforesaid decision of the Tribunal was upheld by Hon'ble Supreme Court with the following observations:

"2. *We have heard Mr. Balbir Singh, Learned ASG appearing on behalf of the appellant. We have gone through the impugned judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, (for short "the Tribunal") more particularly, the reasoning given in para 8. We have also considered the sub-heading notes and as per the said sub-heading notes, for the purposes of sub-heading 2710-12, "Light Oils and Preparations" are those of which 90% or more by volume (including losses) distilled at 210 degree Celsius.*

3.*In the present case, even as per the Chemical Examiner's Report, the range of distillation of the product in question was between 35 degree to 58 degree Celsius which is much below 210 degree Celsius and the word used in sub-heading notes referred to herein above is "at" and not "up to". Therefore, we see no reason to interfere with the impugned order(s) passed by the Tribunal.*

4.*The present appeals are, accordingly, dismissed."*

23. In view of the above decision, the Respondent stated that when the Test Reports differs from the standards prescribed, the goods cannot be held to satisfy the requirements under IS 1745 standards meant for CTH 2710. Hence the impugned goods cannot be categorized as 'Light Oils and Preparations' as per the CRCL Test report. We find merit in the argument of the Respondent. None of the

above said parameters are matching with the minimum or maximum standards fixed as per IS 1745 standards. There is a vast difference between the minimum IFB and maximum FBP fixed as per IS standard 1745 and the result received for the impugned goods. Hence, the impugned goods cannot be classified under chapter sub heading 27101920, on the basis of the parameters available in the CRCL, Test Report dated 26.11.2020.

24. We find that Revenue has relied upon the Note 4 to Chapter 27 for classifying the impugned goods under the CTH 27101920. For the sake of ready reference the said Note 4 is reproduced below:

“Note 4. For the purposes of sub-heading 2710 12, “light oils and preparations” are those of which 90% or more by volume (including losses) distil at 210 C according to the ISO 3405 method (equivalent to the ASTM D 86 method)”

25. We find that above condition as prescribed in Note 4 has not been verified in the CRCL report. It is the primary condition required to be tested for classifying any goods under CTH 27101920. From the said Note, it is evident that for the purpose of sub heading 27101920, the “light oils and preparations” are those of which 90% or more by volume (including losses) distil at 210 degree Celsius, but the test report is silent about it. As per the Test Report, the FBP is 218, which means 100% of the goods will evaporate at 218 degree Celsius itself whereas for classification of the goods as ‘solvent 125/240’ under CTH 27101920, the requirement as per Note 4 is that only a maximum of 90% should evaporate at 240 degree celsius. Since the entire 100% of the goods evaporate at 218 degree celsius itself, the goods are not meeting the requirements as specified under Chapter Note 4 of Chapter 27, accordingly we hold that the impugned goods cannot be classified under CTH 27101920 as claimed by the Revenue.

26. The Respondent cited the decision of the Tribunal in the case of Krishna Technochem Pvt Ltd, which has been upheld by Hon’ble Supreme Court wherein it has been observed that the word used in

Note 4 of chapter 27 is 'at' and not 'upto'. This would mean that the minimum IBP and maximum FBP should be exactly 125 and 240 for classification of the said goods as solvent 1255/240 under 27101920. Even if it is not exactly the same, it should be closer to the parameters of minimum IFB of 125 and maximum FBP of 240. In the present case the IFP of 148 and FBP of 218 are nowhere closer to the IS 1735 standards. Hence, we hold that the impugned goods cannot be classified under CTH 27101920 as per the comparison between the Test reports received from CRCL and its comparison with the IS Standard 1745 parameters required.

27. Regarding the violation against PESO Licence, alleged in the impugned order, we observe that the PESO License No.P/HQ/WB/15/2530(p-206171) dated 22.11.2019 available with the Respondent valid up to 31.12.2024, allows them to import 84,000 litres of Class B of the Petroleum Product. The impugned import constitutes of 97,280 Kgs (1,19,611Litres , when worked out based on the density of 0.8133) . However, the Respondents submitted that they have applied for enhancement of the quantity which has since been approved. Therefore, section 111(d) of the Customs Act, 1962 is not applicable as far as the impugned goods are concerned and confiscation is not warranted on this count.

28. In view of the above discussion, we uphold the impugned order and reject the appeal filed by the Department (Appellant). Stay application also gets disposed of.

(Order pronounced in the open Court on 06 June 2023.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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