

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76083 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/369/2024 dated 07.06.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Asipiya Chemicals and Solvents Pvt. Ltd. : **Appellant**
P.O.D.S. Lane, Chandmari Bakultala, Howrah Drum,
Howrah, West Bengal – 711 109

VERSUS

Commissioner of Customs (Port) : **Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 76084 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/365/2024 dated 06.06.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Asipiya Chemicals and Solvents Pvt. Ltd. : **Appellant**
P.O.D.S. Lane, Chandmari Bakultala, Howrah Drum,
Howrah, West Bengal – 711 109

VERSUS

Commissioner of Customs (Port) : **Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Sudhir Mehta, Advocate for the Appellant

Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

HON’BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON’BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOS. 77062-77063 / 2024

DATE OF HEARING / DECISION: 13.09.2024

The present appeals have been filed by the importer M/s. Asipiya Chemicals and Solvents Private Limited (hereinafter referred to as 'Appellant') against the Order-in-Appeal No. KOL/CUS/PORT/KS/369/2024 dated 07.06.2024 and Order-in-Appeal No. KOL/CUS/PORT/KS/365/2024 dated 06.06.2024.

2. The facts of the case are that the appellant imported a consignment of Petroleum Hydrocarbon Solvent and classified the same under the CTH 27101990, which is freely importable and filed the Bill of Entry Number 9042292 dated 03.10.2020. The appellant imported another consignment of Mineral Hydrocarbon Oil (other than transformer oil) which is a petroleum oil hydrocarbon solvent and classified it under Customs Tariff No. 27101990 and filed bill of entry no. 47042002 dated 16.07.2021.

2.1. Samples were taken and sent for test to CRCL Custom House Kolkata. The Customs Test laboratory gave a report for Bill of Entry Number 9042292 dated 3rd October 2020 on chemical component of the hydrocarbon oil as under:

"Received five sample bottles in sealed and intact condition. Each of the five samples is in the form of colourless mineral hydrocarbon oil (more than 70% by wt) having following constants:

Lab/ No./Container no.	Density at 15 "C" in gm/cc	Flash Point	Acidity	Smoke Point	Sulphur content in PPM	Aniline Point	IBP (C)	FBP (C)	%of Aromatic content by volume
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4519/ MSKU 1567972	0.7952	43	NIL	21	144.7	65	164	254	10
4520/MSKU 0506397	0.7952	48	NIL	21	148.2	66	166	258	10
4521/MRKU 3498647	0.7952	46	NIL	21	149.3	66	164	256	10
4522/MSKU 9481725	0.7952	48	NIL	21	158.9	65	164	256	10
4523/ TCNU 8126541	0.7952	44	NIL	21	145.3	66	164	258	10

2.2. On the basis of analytical findings stated above, it was observed that: -

- (I) Each of the five samples u/r does not meet the criteria of light oil and its preparation mentioned in the sub-heading note 4 of chapter 27.
- (II) Each of the five samples u/s is Kerosene as per IS 1459-2018.
- (III) Each of the five samples u/r is a Petroleum Class-B as per Petroleum Act, 1934."

3. As per the test report of CRCL, Kolkata, the the department contended that the imported goods were 'kerosene' as per IS1459:2018 Accordingly, the Department sought to classify the goods under CTH 27101932.

4. The appellant submitted that the test results did not dispute the declared classification and on the basis of test done, it cannot be said that the goods imported are 'kerosene', since the test of parameters such as Colour under sl. No. iii) , distillation under sl.No. (v) , acidity under sl. No. (I) of IS 1459:2018 were not done; so it could not be said to be kerosene. Further, IBP and FBP were also not qualifying.

5. The Department again sent the samples to CRCL Delhi, which gave a report as reproduced below:

“The sample is in the form of clear colourless liquid. It is mainly composed of mineral hydrocarbon oil having mineral hydrocarbon content more than 70% by weight having following characteristics:

Sl. No.	Characteristics	Test Result CLR-101	Test Result CLR-102
	Acidity	Nil	
	Flash Point (abel) in °C	30	
	Ash (% by wt.)	Nil	
	Density at 15 C (Kg/M3)	8.31.2	
	API Gravity	38.65	
	Water Content	Nil	
	Total Sulphur Content, mg/kg	167	
	Distillation		
	Initial Boiling Point	127.0	125.0
	Final Boiling Point	238.0	239.0
	@Recovery	99.3	99.3
	Colour (Saybolt)	22.0	25
	% Aromatics	39.0	37.3
	% Olefins	0.96	.097
	& Saturates	60.04	61.74

The Sample u/s are Petroleum Hydrocabon Solvents (125/240)”

6. The CRCL, Delhi gave a Report that the goods are solvent 125/240 which is a restricted item and importable by canalized agency or by DGFT license holders. The Department accepted the Report of CRCL Delhi and proceeded on that basis.

7. Two Show Cause Notices both dated 06.05.2022 were issued to the appellant proposing classification of the goods imported under the CTH 27101920.

8. The appellant submitted that the test result of CRCL, New Delhi was given by performing only few tests, while not performing other tests such as test of residue required under Sl. (ix) of IS 1745 and recovery test under IS 1448. The appellant also pointed out that CRCL, Delhi gave report contrary to the Report of CRCL, Kolkata. Residue on evaporation test is required under IS 1745 for solvents; the residue on evaporation test is done to find carbon content of light and middle distillate oil; the method of test is being provided under IS specification 1448. Residue test decides evaporation rate, impurities and class and quality of the hydro carbon solvent; it decides aviation and non-aviation fuel; the IS standard prescribes that 100 ml capacity beaker is to be taken and it is to be heated for specified time and after the specified time the residue should not remain more than 5 ml; The quantum of residue becomes a relevant marker as it is the only marker which decides the rate of evaporation which in turn decides the quality / impurities and uses; this relevant marker was not tested on the goods. It is submitted by the appellant that since no residue test was done, the solvent imported by the appellant could not be treated to be falling under CTH 27101920.

8.1. It is further submitted that The distillation range 125/ 240 is to be reckoned on the basis of IS 1448; It provides that initial boiling point (first vapour recovered) should reach at 125 and thereafter every five minutes/ 10 minutes (as per IS) recovery should be found at the temperature provided in Annexure "A" (clause 9.8) of IS Standard and it would proceed by recovery of recording of 10%, 20%, 30%,40% ,50%, 70%, 90%, 95% of solvent following final boiling point and residue recovery; the test report of Kolkata CRCL IBP 164 / FBP 254 was totally contrary to Delhi CRCL test report IBP 125/FBP 240.

9. In the second case, the Department sent the samples for test in relation to the goods imported under Bill of Entry no. 47042002 dated 16-07-2021. The appellant submits that samples were taken and sent for test to CRCL, Custom House, Kolkata. CRCL gave a report on chemical component of hydrocarbon oil as set out hereinbelow;

"Received five sample bottles in sealed and intact condition. Each of the five samples is in the form of colourless mineral hydrocarbon oil (more than 70% by wt) having following constants:

Density at 15 "C" in gm/cc	Flash Point	Acidity	Smoke Point	Sulphur content	IBP (C)	FBP (C)	%of Aromatic content by volume
0.7952	50	NIL	21	Less than 0.1%	156	226	10

On the basis of analytical findings stated above, it was observed that the sample U/R meets the requirement of 'Kerosene' as per IS 1459:2018.

9.1. The appellant submits that in the test report of CRCL Kolkata, the goods were stated to be kerosene as per IS1459 :2018 when its specification under IS 1459:2018 were not met. The Department sought to classify the goods under CTH 27101932.

9.2. The appellant submitted that test results did not dispute declared classification and on the basis of test done, it cannot be said to be 'Kerosene', since no test of parameters such as Colour under sl. No. iii) , distillation under sl.v) , acidity under sl. No. I) of IS 1459:2018 were done; so it could not be said to be kerosene; further, IBP and FBP also were also not qualifying. Accordingly, the appellant submits that from the test report of the Customs laboratory, the classification claimed by the appellant could not be negated. It is submitted that since the Department has not been able to prove by any relevant marker that goods would fall under 27101920 or it would not fall under Customs Tariff Heading 27101990, the CTH 27101990 declared by the appellant should have been accepted.

10. The appellant submits that law in this regard is settled by the judgement of the Hon'ble Supreme Court of India in the case of *H.P.L. Chemicals Ltd. v. Commissioner of C.Ex., Chandigarh* [2006 (197) E.L.T. 324 (S.C.)] and *Hindustan Ferodo Ltd. v. Collector of Central Excise, Bombay* [1997 (89) E.L.T. 16 (S.C.)], wherein the Hon'ble Supreme Court has held that classification of goods is the matter relating to chargeability and the burden of proof squarely upon the Revenue; If the Department intends to classify the

goods under a particular heading or sub-heading different from the one claimed by the importer, the Department has to adduce proper evidence to discharge the burden of proof.

10.1. The appellant also relied upon the judgements in the following cases:

- i. *Jagdamba Petroleum Pvt. Ltd. -Vs- Commissioner of Central of Excise, Noida [2004 (163) E.L.T. 88 (Tri. - Del.)]*
- ii. *Kunchal Chemicals Ltd. -Vs- Commissioner of Central Excise, Lucknow [2013 (288) E.L.T. 585 (Tri. - Del.)]*
- iii. *Anmol Solvex Pvt. Ltd. -Vs- Commissioner of Central Excise, Rohtak [2017 (7) G.S.T.L. 90 (Tri. - Chan.)]*

10.2. Reliance was also placed on the decision of the Tribunal at Ahmedabad in the case of *Swarna Oil Services -Vs- Commissioner of Customs, Mundra in Customs Appeal No. 12496 of 2019* wherein it was held that if the IS standard is not met, in that case, the claim of the classification of the Department will not be tenable.

10.3. Though there was no challenge to the classification CTH 27101990, the appellant submitted that during the course of adjudication, they have produced a DGFT license which covered CTH 27101920 as well as CTH 27102932, being under broad heading of CTH 27101920. Hydrocarbon solvent under CTH 27101920 / CTH 27102932 are restricted / importable by a canalizing agency or to a license holder on actual user condition; The appellant was holding license issued by DGFT as actual user to import hydrocarbon solvent falling under CTH 27101920 which covered both the consignments. The appellant submitted that the Id. adjudicating authority

should have assessed and cleared the goods on submission of the license by the appellant, since the goods were and still are pending clearance and import has not been completed and such license is specifically allowed to be produced in the Hand Book of Procedures at the time of clearance of the goods. In this regard, the appellant submits that Para 2.12 of Hand Book of Procedure provides for relaxation of submitting of license if the goods are withheld for want of license; the license specifically permitted importability of the goods covered by CTH 27101920 and it would close the dispute without prejudice to the appellant's contention; Nonetheless the license was not accepted by the Id. adjudicating authority for no reasons when it should have been accepted by the Id. adjudicating authority.

11. It is also contended that the appellant has fulfilled all the requirements of Petroleum Act; the goods were to be stored in the storage tanker of the appellant at its factory after clearance; the shipment of the goods in drums is not the condition of storage of goods. The Id. adjudicating authority held that the appellant has license to store the goods in storage tanker which fact has been admitted in the adjudication order. The appellant therefore contends that the Id. adjudicating authority erred by holding that it has no permission to store the goods in drums which is not required as the appellant stores the goods in storage tanker from where solvent is processed for refining in its refinery; that the appellant has permission to store the goods under Petroleum Act; the appellant has all the licenses with it and the goods landed after approval of the Commissioner only. It is submitted that there was no breach of the Regulations made under the Petroleum Act.

11.1. Therefore, the appellant prayed that both the appeals may be allowed and appropriate direction may be given to release the goods on the basis of the license issued by DGFT and as produced by the appellant at the time of adjudication; the appellant still holds the license and is ready to produce the license for release of the goods and thus the goods may be released on production of the license.

12. The Ld. Authorized Representative of the Revenue submits that the test report received from CRCL, Delhi clearly indicates that the goods imported vide the said two bills of entry are kerosene / solvent 125/240 which are restricted items and importable by a canalized agency or by DGFT license holders; The Department has accepted the Report of CRCL, Delhi and proceeded on that basis. Accordingly, he supported the impugned order.

13. Heard both sides and perused the appeal documents.

14. We observe that the appellant imported two consignments of Petroleum Hydrocarbon Solvents and filed bills of entry classifying the same under CTH 27101990. Petroleum products falling under CTH 27101990 are freely importable. The department drew Samples and sent the same for testing to CRCL, Custom House, Kolkata. As per the test report of CRCL, Kolkata, the goods were stated to be kerosene as per IS1459 :2018. The Department again sent the samples to CRCL, Delhi. The CRCL, Delhi gave a Report that the goods are solvent 125/240 which is a restricted item and importable by a canalized agency or by DGFT license holders. The Department accepted the Report of CRCL Delhi and proceeded on that basis. Thus, we observe that the department has issued the

Notice on the basis of the Test Report received from CRCL, New Delhi.

14.1. We observe that CRCL, Delhi gave a Report which is contrary to the Report of CRCL, Kolkata. There is no reason given for the rejection of the report received from CRCL, Kolkata. We observe that the test result of CRCL, New Delhi was given without performing the tests of all parameter required as per the IS 1745 standards. We observe that IS:1745 requires to conduct tests in areas such as test of residue as per Sl. (ix) of IS:1745 . We observe that the residue on evaporation test is done to find carbon content of light and middle distillate oil. The method of test is being provided under IS specification 1448. Residue test decides evaporation rate, impurities and class and quality of the hydro carbon solvent. It decides aviation and non-aviation fuel. Since, CRCL New Delhi has not conducted the tests on all parameters as required under IS 1745, we hold that the test report of CRCL, New Delhi alone cannot be relied upon to finalize the classification of the goods imported by the appellant.

14.2. We observe that neither CRCL, Kolkata report nor the CRCL, New Delhi report dispute the classification of 27101990 declared by the appellant. We observe that on the basis of the test report received from CRCL, Kolkata or CRCL, New Delhi, the goods imported cannot be said to be kerosene. Since parameters such as Colour under sl. No. iii) , distillation under sl.v) , acidity under sl. I) of IS 1459:2018 were not done, we hold that the goods imported cannot classified as 'Kerosene' as per the IS standards prescribed. Further, we observe that IBP and FBP were also not qualifying for classifying the

goods under the CTH 27101920. Thus, we find that the Department has not been able to prove by any relevant marker that goods would fall under 27101920.

14.3. We observe that both the appellant and the Department agree that the goods imported fall within the description of the six-digit chapter sub-heading 271019. The disagreement is only w.r.t. the eight digit sub-heading i.e., 27101920 or 27101990.

14.4. For the purpose of ready reference, the descriptions under the sub-headings 2710 and 271019 as mentioned in the Tariff, are reproduced below: -

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential
(1)	(2)	(3)	(4)	(5)
2710	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils <i>- Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils</i>			
2710 19	-- Other :			

14.5. From the above, we can see that after concluding that the goods are classifiable under the Tariff Sub-heading 2710.19, to arrive at the specific 8-digit sub-heading, the goods are to be tested for the specific parameters.

14.6. Sub-headings 27101920 and 27101990 read as under: -

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential
(1)	(2)	(3)	(4)	(5)
2710 19 20 . . .	--- Solvent 125/240 (petroleum hydrocarbon solvent) as specified under standard IS 1745	kg.	5%	-
2710 19 90	--- Other	kg.	5%	-

14.7. Thus, unless all the parameters as required under IS 1745 are tested, the goods cannot be classified under the CTH 27101920. It is on record that many parameters such as colour, residue, etc., as required under IS 1745 have not been tested. Without conducting these tests under IS 1745, we hold that the goods cannot be classified under the CTH 27101920.

15. Since the appellant and the Department both agree to the six-digit classification under sub-heading 2710.19 and the test results do not support the classification of the goods under the CTH 27101920, we hold that the goods are classifiable under the residual heading 27101990 only. Accordingly, we hold that the goods imported by the appellant are appropriately classifiable under the CTH 27101990.

16. Without prejudice to their claim of classification of the goods under the CTH 27101990, the appellant submitted that during the course of adjudication, they have produced a DGFT license, which covered CTH 27101920 as well as CTH 27101932 being under the

broad heading of CTH 27101920. Accordingly, the appellant have submitted that the Id. adjudicating authority should have assessed and cleared the goods on submission of the license by the appellant. We observe that the goods are still pending clearance and the import has not been completed. The appellant is holding a valid license issued by DGFT as actual user to import hydrocarbon solvent falling under CTH 27101920 which covered both the consignments.

16.1. We observe that the appellant has obtained the license after importation of the goods. While importing the goods, the appellant was of the view that the goods are classifiable under the CTH 27101990, for which no license is required. However, when the Department has insisted on the license on the ground that the imported goods are classifiable under CTH 27101920, for which a license is required for its importation, the appellant has obtained a license covering the CTH 27101920. We observe that the appellant has a PESO license valid up to 31.12.2026. Since the goods are still pending clearance and import has not been completed and the license specifically permitted importability of the goods covered by CTH 27101920, we hold that the imported goods can be cleared based on the license produced by the appellant now.

17. We observe that the Id. adjudicating authority has confiscated impugned goods on the ground that the appellant has not fulfilled all the requirements of Petroleum Act. The Id. adjudicating authority held that the goods were to be stored in the storage tanker of the appellant at its factory after clearance. We observe that the shipment of the goods in drums is not the condition of storage of goods. The Id.

adjudicating authority held that the appellant has license to store the goods in storage tanker which fact has been admitted in the adjudication order. We observe that the Id. adjudicating authority has erred by holding that it has no permission to store the goods in drums, which is not required as the appellant stores the goods in storage tanker from where solvent is processed for refining in its refinery. Therefore, we observe that the appellant has permission to store the goods under Petroleum Act. The appellant has all the licenses with them. Thus, we hold that there was no breach of the Regulations made under the Petroleum Act. Accordingly, we hold that the confiscation of the goods for the violation of Petroleum Act is not sustainable.

18. Since, the goods are not liable for confiscation, the redemption fine imposed for re-export, is not sustainable. Accordingly, we set aside the same.

18.1. As the goods imported by the appellant are not liable for confiscation, no penalty is imposable on the appellant. Accordingly, we set aside the penalty imposed on the appellant.

19. In view of the above discussions, we pass the following order:

(i) We hold that the goods imported by the appellant are appropriately classifiable under the CTH 27101990.

(ii) We hold that there was no breach of the Regulations made under the Petroleum Act. Accordingly, we hold that the confiscation of the goods for the violation of Petroleum Act is not sustainable. Since, the goods are not liable for

confiscation, the redemption fine imposed for re-export of the goods, is not sustainable.

(iii) We set aside the penalty imposed on the appellant.

20. The appeals filed by the appellant are disposed on the above terms.

(Operative part of the order was pronounced in open court)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd