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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75312 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/KS/155/2023 dated 01.03.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Iris Products **: Appellant**
60/1, Chowringhee Road,
Alexandra Court, 1st Floor, Flat No.3,
Kolkata – 700 020

VERSUS

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

APPEARANCE:

Shri Arijit Chakraborty, 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 NO. 77520 / 2024

DATE OF HEARING: 04.11.2024

DATE OF DECISION: 19.11.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Iris Products, 60/1, Chowringhee Road, Alexandra Court, Kolkata – 700 020 [hereinafter referred to as "appellant"] have filed a Bill-of-Entry bearing No. 9822085 dated 04.12.2020, for clearance of 38,400 kgs. of imported goods with the description 'Low Aromatic White Spirit' classifying the same under the Customs Tariff Item No. 2710 1990. The declared assessable value of the goods was Rs.16,36,497/-.

2. The goods imported by the appellant were examined by the Customs Officers and after examination, samples were drawn and sent for testing to Central Revenues Control Laboratory (CRCL), Kolkata. As per the Test Report received from CRCL, Kolkata, the Department was of the view that the impugned goods imported by the appellant satisfied the characteristics of 'Kerosene' as per IS 1459:2018 and accordingly, the same are 'Kerosene' classifiable under CTH 2710 1910. Kerosene, classifiable under CTH 2710 1910, could be imported only by State Trading Enterprises (STEs) or the agencies approved by DGFT, in terms of the Import Policy Condition (5) of Chapter 27 of ITC (HS), 2017 Schedule 1 and Para 2.20 of the Foreign Trade Policy, 2015-20. It also appeared to the Revenue that the goods imported by the appellant fall under the Petroleum Class B Products, Petroleum and Explosives Safety Organization (PESO), in terms of Section 3 of the Petroleum Act, 1934 read with Rules 4 and 6 of the Petroleum Rules, 2002 and that the appellant has not complied with the requirements.

3. Accordingly, a Show Cause Notice was issued to the appellant proposing to reclassify the goods, as 'Kerosene' falls under CTH 2710 1910. It was also proposed to confiscate the goods on account of violation of the provisions of the Foreign Trade Policy, 2015-20 and the provisions of the Petroleum Act, 1934 and Petroleum Rules, 2002.

3.1. The Show Cause Notice was adjudicated vide the Order-in-Original dated 30.11.2021 wherein the ld. adjudicating authority has reclassified the goods imported by the appellant as "Kerosene" under the Tariff Item No. 2710 1910. The goods were confiscated under Section 111 (m) and Section 111(d) of the Customs Act, 1962 for mis-declaration and violation of the provisions of Para 2.20 of the Foreign Trade Policy read with the rules made under the Petroleum Act, 1934 read with the Petroleum Rules, 2002 and the Customs Tariff Act, 1975. However, the goods were allowed to be re-exported on payment of redemption fine or Rs.1,50,000/- under Section 125 of the Act; a penalty of Rs.1,00,000/- was also imposed under Section 112(a)(i) of the Customs Act, 1962.

3.2. On appeal, the Ld. Commissioner (Appeals) vide the impugned Order-in-Appeal No. KOL/CUS(Port)/KS/155/2023 dated 01.03.2023 upheld the Order-in-Original dated 30.11.2021 passed by the Ld. Additional Commissioner of Customs, Kolkata and rejected the appeal filed by the appellant.

4. Aggrieved by the rejection of their appeal, the appellant has filed this appeal before this Tribunal.

5. The appellant submits that the Test Report of CRCL, Kolkata is not conclusive about the classification of the product; in the said Test Report, the Laboratory has not confirmed that the subject goods were Kerosene, but only expressed a view that the goods could be classifiable as Kerosene as per IS 1459:2018. In this regard, the appellant submits that as per IS 1459: 2018, there are ten parameters which are required to be tested, namely:

i. Acidity

ii. Sediment

iii. Water

iv. Ash

v. Flash Point

vi. Density

vii. Initial Boiling Point (IBP)

viii. Final Boiling Point (FBP)

ix. Smoke Point

x. Sulphur content

However, in the said Test Report, only some parameters have been tested and the other parameters have not been tested; without testing all the parameters as required under IS 1459:2018, the said Laboratory has arrived at a conclusion that the sample is having the characteristics of 'Kerosene'. Kerosene, which is classifiable under CTH 2710 1910, could be imported only by State Trading Enterprises (STEs) or the agencies approved by DGFT, in terms of the Import Export Policy. The Department thus has tested the goods imported only for 'Kerosene'. It is also contended that the Department has not conducted the test to find out whether the goods imported fulfil the requirements for 'Low Aromatic White Spirit' as claimed by the appellant. Thus, the appellant's contention is that such an inconclusive report cannot form the basis for changing the classification of the goods.

5.1. In support of their claim, the appellant has produced the Order passed by this Tribunal in the case of *Commissioner of Customs (Port), Kolkata v. M/s. Maxtone Petrochemicals [Final Order No. 75542 of 2023 dated 06.06.2023 in Customs Appeal No. 75125 of 2022 – CESTAT, Kolkata]* wherein similar goods imported were held as classifiable under the CTH 2710 1990.

5.2. In view of the above, the appellant prays for setting aside the impugned order and allowing their appeal.

6. The Ld. Authorised Representative of the Revenue submits that the Test Report received from CRCL, Kolkata is very categorical that the goods imported by the appellant satisfy the conditions as required for 'Kerosene' under IS 1459:2018. He points out that 'Kerosene', classifiable under CTH 2710 1910, could be imported only by State Trading Enterprises (STEs) or the agencies approved by DGFT, in terms of the Import Policy 2015-20; as the appellant did not possess any valid license for importation of the said goods, he supports the impugned order upholding the classification of the goods under Tariff Item No. 2710 1910 and confiscation of the said goods.

7. Heard both sides and perused the appeal records.

8. We observe that the appellant has imported 38,400 kgs. of goods with the description 'Low Aromatic White Spirit' and filed a Bill of Entry No. 9822085 dated 04.12.2020, classifying the same under the Customs Tariff Item No. 2710 1990. Upon examination, samples were drawn and sent for examination/testing to CRCL, Kolkata. The Test Report received from CRCL, Kolkata is reproduced below: -

"The sample is in the form of clear colourless liquid. It is composed of mineral hydrocarbon oil (more than 70% by wt) having following parameters.

Acidity = NIL

Sediment = NIL

Water = NIL

Ash = NIL

Flash Point (Abel)= 44°C

Density at 15 °C = 0.7877gm/cc

Initial Boiling Point (IBP) = 148°C

Final Boiling Point (FBP) = 224°C

Smoke Point = 21 mm

Sulphur content (m / m) =Less than 0.1%

The sample u/r satisfy the characteristics of Kerosene as per IS 1459:2018."

8.1. We observe that IS 1459:2018 requires some standard parameters to be tested to arrive at the conclusion whether the goods imported are 'Kerosene' or not. A comparative chart of the standard parameters required for kerosene under IS 1459:2018 and the results received as per the Test Report of CRCL, is reproduced below:

Characteristic (Method of Test)	CRCL (NS)	IS: 1459 (IS: 1448)
(1) Acidity, Inorganic	ND	Nil
(2) Burning Quality (a) Char Value, (mg/kg) (b) Bloom on glass	 ND ND	 20 (Max.) Not darker than grey
(3) Colour (Saybolt)	ND	10 (Min.)
(4) Copper Strip Corrosion For 3 hrs. at 60°C	ND	Not worse than '1'
(5) Distillation Test 1. Initial Boiling Point (°C) 2. Recovery below 200°C (Vol%) 3. 90% Recovery Temp (°C) 4. Final Boiling Point	 144 ND ND 222	 NS 20 (Min.) NS 300 (Max.)
(6) Flash Point (Abel) °C	42	35 (Min.)
(7) Smoke Point (mm)	21	18 (Min.)
(8) Total Sulfur (mass%) Mercaptan sulfur mass%	(1000ppm) ND	0.25 (Max.) NS
(9) Density at 15°C (g/cc)	0.7882	NS
(10) Aromatic Content (Vol%)	ND	NS
(11) Water content (mass%)	ND	NS

ND-Not Done, NS-Not Specified

8.2. A perusal of the comparative chart shown above reveals the following:

(3) Colour (Saybolt)-

IS: 1459 Requirement- 10 (Min)

This indicates that dark pale colour is acceptable for Kerosene, while lighter to water white colours are required for LAWS. However, this parameter was not tested by CRCL, Kolkata.

(4) Copper Strip Corrosion Test-

IS: 1459 requirement- Not worse than '1'.

This is to make sure that equipment and system is safe against corrosion. This is critical requirement for application and should have been tested. However, CRCL, Kolkata has not tested this parameter.

(5) Distillation Test- Recovery below 200°C

IS: 1459 requirement -20% (Min.)

This was not done by CRCL. It is a critical characteristic which determines the vaporisation and flame characteristics. Kerosene will have poor performance in stove due to inadequate fuel supply.

8.3. The comparison chart shown above reveals that the sample has failed to meet the specification required for Kerosene as per IS:1459, in respect of 'Colour', 'Copper Strip Corrosion Test' and 'Distillation Test'. It is seen that even in respect of the other parameters tested, there is a wide variation between the Test Report and the standards required as per the IS 1459:2018 Standards. Thus, we observe that the Test Results as given by CRCL, Kolkata are not adequate to conclude that the subject material is Kerosene as per IS: 1459-2018.

9. We also observe that the appellant has declared the goods as 'Low Aromatic White Spirit' and classified the goods under CTH 2710 1990. In support of their claim, the appellant produced a Test Report received by them from a private laboratory. We are not taking into account that report as we do not have the

evidence that the sample of that report was drawn from the consignment imported and in the presence of the officers or not.

9.1. The appellant has also submitted that they had imported the same goods earlier and cleared the same as 'Low Aromatic White Spirit' (LAWS) classifiable under Customs Tariff Item No. 2710 1990 and no objection was raised by the Department. It has been further submitted before us that the same product has been imported by M/s. Maxtone Petrochemicals *[ref. Final Order No. 75542 of 2023 dated 06.06.2023 (supra)]* classifying the said goods as "light oils and preparations" and cleared the same under the heading 2710 1990. Thus, the appellant submits that the product imported by them is similar to "light oils and preparations" imported by M/s. Maxtone Petrochemicals and for the purpose of determining the classification of the impugned goods, it is required to examine Chapter sub-heading Note 4, which reads as under: -

> *"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 ISO 3405 method (equivalent to the ASTM D 86 method."*

10. We observe that no test has been conducted to find out whether the goods imported by the appellant meets the requirement of 'Low Aromatic White Spirit' as claimed by the appellant. The claim of the appellant cannot be rejected without testing whether the goods imported by the appellant satisfy the requirements for 'Low Aromatic White Spirit', which is similar to "light oils and preparations".

11. From the literature submitted by the appellant, we observe that Low Aromatic white Spirits (LAWS) is a specific high value segment of non-fuel petroleum products. These are manufactured by refractionation of wide boiling refinery products like, gasoline fraction. This is further subjected to 'Dearomatization' process to make aromatic free to specified aromatic content, products. Products of different aromatic content as required by application could be made by blending aromatic free products to base fraction or partially dearomatized stocks

11.1. With regard to Nomenclature and classification, we find that these products widely vary in boiling range, hydrocarbon group composition, depending upon the end use, storage, safety, environmental and health considerations. Petroleum products are complex mixtures of hydrocarbons and the products are designed based on application requirements. Therefore overlapping of boiling range, compositions and physical characteristics amongst various products is common. ASTM: D 235-02 (2012) gives a wide classification; Mineral Spirits (LAWS). These are in four types and three grades.

Type 1 - Full Range

Type II- High Flash Point

Type III- Oderless

Type IV- Low Dry Point

These are further classified based on aromatic content.

Class A-8 to 22 Vol% aromatics.

Class B-2 to 8 Vol% aromatics.

Class C- Less than 2 Vol% aromatics.

These are for Low Aromatic White Solvents (LAWS). High aromatic grades have more than 40% aromatics

These are further placed in two groups: -

1. Low Flash Point -Those with Flash Point less than 24°C (Ambient temperature).

2. High Flash Point - Those with Flash Point higher than 24°C. This shows wide variety of such products in all types and grades including High flash, Low Aromatic Spirits; common in Indian and international markets.

11.2. We also find that for the purpose of international trade and movement, the World Customs Organization (WTO) has classified goods under the Harmonized System Nomenclature (HSC). Each material is assigned a unique eight digit code number, reflecting some basic characteristics. For instance number '27' refers to 'Chapter', '10' to 'Petroleum Oils'. The next two digits '12' refers to hazardous nature. Flash point lower than ambient temperature API Class 'A' material. 19 refers to fire safe API Class 'B' and 'C' materials. The next two digits refer to specific products like '10' for 'kerosene' '20' for 'ATF' and '90' for minor products like LAWS. HSN Code for the Low Aromatic White Solvent (LAWS) is 27101990.

12. We observe that **high flash solvents, both low aromatic or high aromatic, come under HSN classification 2710 1990, technically as well as in industry practice.** In view of the above discussions and based on the technical literature produced by the appellant, we hold that the Low Aromatic White Spirit imported by the appellant having the same characteristics as required under the

standard IS 1459:2018, are rightly classifiable under the CTH No. 2710 1990.

13. The appellant has also placed their reliance on the decision in the case of *Customs (Port), Kolkata v. M/s. Maxtone Petrochemicals [Final Order No. 75542 of 2023 dated 06.06.2023 in Customs Appeal No. 75125 of 2022 – CESTAT, Kolkata]* wherein it has been held that the goods imported merit classification under CTH 2710 1990. We observe that the goods imported by the appellant are similar to the goods imported in the case-law cited by the appellant (*supra*). On perusal of the Order referred to *supra*, we observe that the "light oils and preparations" imported by the M/s. Maxtone Petrochemicals in the said case, having characteristics similar to the impugned goods, have been classified under the Customs Tariff Item No. 2710 1990.

14. In view of the above, we hold that the goods imported by the appellant are 'Low Aromatic White Spirit', as claimed by the appellant and the same are appropriately classifiable under the Customs Tariff Item No. 2710 1990.

15. We observe that the ld. adjudicating authority has reclassified the goods imported by the appellant as "Kerosene" under the Tariff Item No. 2710 1910. Kerosene, classifiable under CTH 2710 1910, could be imported only by State Trading Enterprises (STEs) or the agencies approved by DGFT, in terms of the Foreign Trade Policy, 2015-20. As the goods imported by the appellant are 'Low Aromatic White Spirit' and classified under the CTH 2710 1990, there is no violation of the Foreign Policy 2015-20. Accordingly, we hold that the goods are not liable for confiscation

under Section 111 (m) and Section 111(d) of the Customs Act, 1962 for mis-declaration and violation of the provisions of Para 2.20 of the Foreign Trade Policy read with the rules made under the Petroleum Act, 1934 read with the Petroleum Rules, 2002 and the Customs Tariff Act, 1975. Thus, the question of allowing re-export of the goods on payment of redemption fine under Section 125 of the Act does not arise.

15.1. As the allegation of mis declaration is not sustained, the penalty imposed under Section 112(a)(i) of the Customs Act, 1962 is also not sustainable and accordingly, we set aside the same.

16. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the appellant.

(Order pronounced in the open court on **19.11.2024**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd