

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75286 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/44/2017 dated 23.10.2017 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s.Berger Paints India Limited : Appellant
Berger House, 129, Park Street,
Kolkata – 700 017

VERSUS

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

WITH

Customs Appeal No. 75287 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/44/2017 dated 23.10.2017 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Kunjal Synergies Private Limited : Appellant
15D, Everest House, 46 C, J.L. Nehru Road,
Kolkata – 700 071

VERSUS

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

WITH

Customs Appeal No. 75288 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/44/2017 dated 23.10.2017 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Nishith Parekh, Director, : Appellant
M/s. Krest Organics Private Limited &
M/s. Kunjal Synergies Private Limited
15D, Everest House, 46 C, J.L. Nehru Road,
Kolkata – 700 071

VERSUS

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

Appeal No(s).: C/75286 to 75290/2018-DB

WITH

Customs Appeal No. 75289 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/44/2017 dated 23.10.2017 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Krest Organics Private Limited

: Appellant

15D, Everest House, 46 C, J.L. Nehru Road,
Kolkata – 700 071

VERSUS

Commissioner of Customs (Port)

: Respondent

Custom House, 15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 75290 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/44/2017 dated 23.10.2017 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Nishith Parekh, Director,

: Appellant

M/s. Krest Organics Private Limited &

M/s. Kunjal Synergies Private Limited

15D, Everest House, 46 C, J.L. Nehru Road,
Kolkata – 700 071

VERSUS

Commissioner of Customs (Port)

: Respondent

Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Sudhir Mehta, Senior Advocate
Shri Anurag Bagaria, Advocate
for the Appellant(s)

Shri Subrata Debnath, Authorized Representative
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NOs. 75215-75219 / 2025

DATE OF HEARING / DECISION: 30.01.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Berger Paints India Limited (hereinafter referred to as the "appellant") is an actual user of various chemicals including hydrocarbons and several organic chemicals which they use in their paint manufacturing. During the period between 2011 and 2014, the appellant cleared organic chemicals named Mixed Xylene Isomers, by filing Ex Bond Bills of Entry in respect of the goods imported by M/s. Kunjal Synergies (also appellant herein) where they had filed bills of entry for Warehousing which were assessed under CTH 29024400. The invoices, chemical analysis report and certificate of analysis along with the bills of entry for warehousing were filed by Kunjal Synergies which were assessed by the Custom Authorities by accepting the classification of the goods declared under the CTH 29024400. Thereafter, the appellants M/s Berger Paints India Ltd and M/s Krest Organics Pvt Ltd (Appellant herein) has purchased part of the goods imported by M/s. Kunjal Synergies and filed Ex bond bills of entry, classifying the goods under the same CTH 29024400 and cleared the goods from the warehouse. The Appellant M/s Kunjal Synergies Pvt Ltd also cleared part of the warehoused goods by filing Ex-bond Bills of Entry under the classification of CTH 29024400.

2. The Custom Authorities disputed the classification made in the Bills of Entry for warehousing done by all the appellants under the Custom Tariff Heading no. 29024400 alleging that the hydrocarbon solvent imported by the appellants and cleared by filing the Ex Bond Bills of Entry cannot be treated as 'Mixed Xylene Isomers' as mentioned in the CTH 29024400. The officers cited the Explanatory Notes of the Harmonized Commodity Description and Coding

System published by World Custom Organization which prescribes that CTH 29024400 would be applicable to Mixed Xylene Isomers taken together if these are 95% or more by weight of Xylene Isomers. It was alleged that 'Ethylene Benzene' which formed part of the solvent as per analysis report filed by the importer is not an Isomer of Xylene. Accordingly, it was alleged that the classification CTH 29024400 adopted by the appellants for the imported goods is not proper, as the weight of Xylene Isomers was below 95%.

3. A Show Cause Notice dated 04.03.2016 was issued to all the appellants proposing reclassification of the impugned goods under the CTH 27073000, by invoking extended period of limitation under Section 28 (4) of the Customs Act, 1962 alleging deliberate wrong classification.

3.1. On adjudication, the Ld. Commissioner has confirmed the following demands of differential customs duty, interest and penalties on the appellants:

(a) M/s. Kunjal Synergies Pvt Ltd.

(i) Differential Customs duty of Rs.1,10,91,245/- along with interest.

(ii) Equal amount of duty as penalty under Section 114A of the Customs Act, 1962.

(iii) Penalty of Rs.10,00,000/- under Section 114AA of the Customs Act, 1962.

(b) Berger Paints India Ltd

(i) Differential Customs duty of Rs.1,17,03,934/- along with interest.

(ii) Equal amount of duty as penalty under Section 114A of the Customs Act, 1962.

(iii) Penalty of Rs.10,00,000/- under Section 114AA of the Customs Act, 1962.

(iv) Rs.74,44,937/- already paid towards differential duty was appropriated.

(c) M/s. Krest Organics Pvt. Ltd.

(i) Differential Customs duty of 18,06,794/- along with interest.

(ii) Equal amount of duty as penalty under Section 114A of the Customs Act, 1962.

(iii) Penalty of Rs.10,00,000/- under Section 114AA of the Customs Act, 1962.

(d) Penalty of Rs.10,00,000/- on Shri. Nishit Parekh, Director, M/s. Kunjal Synergies Pvt. Ltd, under Section 114AA of the Customs Act, 1962.

(e)) Penalty of Rs.10,00,000/- on Shri. Nishit Parekh, Director, Krest Organics Pvt. Ltd., under Section 114AA of the Customs Act, 1962.

3.2. Aggrieved against the confirmation of the above said demands of differential customs duty along with interest and penalties, all the appellants mentioned supra have filed these appeals.

4. The appellants submit that the classification adopted by them under the CTH 29024400 is correct and it cannot be disputed on the ground that 'Ethyl Benzene' is not an isomer of Xylene. The appellants also submit that the officers cited the Explanatory Notes of the Harmonized Commodity Description and Coding System published by World Custom

Organization which prescribes that CTH 29024400 would be applicable to Mixed Xylene Isomers taken together if these are 95% or more by weight of Xylene Isomers. It is contended that the test report submitted by them clearly indicates that mixed Xylene Isomers including 'Ethyl Benzene' has more than 95% by weight of Xylene Isomers; However, in the impugned order it has been alleged that 'Ethyl Benzene' which formed part of the solvent as per analysis report filed by the importer is not an Isomer of Xylene.

4.1. The Appellants submits that the word "Isomer" has a distinct meaning in chemistry. The isomer is defined in the chemical dictionary of Howley as follows:

isomer. (1) One of two or more molecules having the same number and kind of atoms and hence the same molecular weight, but differing in respect to the arrangement or configuration of the atoms. The molecular formula of Ethyl Benzene is C_8H_{10} . It can be safely called isomer of Xylene inasmuch as, it has only two atoms C and H common to Xylene and molecular formula is same i.e. C_8H_{10} . Structure and compound of Ethyl Benzene is different from other Isomers of Xylene such as **o-Xylene, m-xylene and p-xylene**. Thus, the appellants submits that molecular formula C_8H_{10} of Ethyl Benzene is same as other Isomers of Xylene such as of **o-Xylene, m-xylene and p-xylene**. Thus, the appellants submits that 'Ethyl Benzene' is an Isomer of Xylene as the goods imported by them satisfy the requirement of the HSN Explanatory Notes to classify the goods imported under the CTH 29024400. Accordingly, the appellants submit that the reclassification of the imported goods under the CTH 27073000 in the impugned order is legally not sustainable.

4.2. The appellants further submit that domestically M/s. Reliance Industries manufacture the same solvents and classify the same under the Tariff Heading 29024400 only, which has been accepted by the Central Excise/GST authorities. In support of this claim, the appellants submitted the Invoices raised by M/s. Reliance Industries wherein the same goods (solvents) have been classified under the Tariff Heading 29024400. Thus, the appellants have contended that the reclassification of the imported goods by the Id. adjudicating authority under the CTH 27073000 is not sustainable.

4.3. The appellants further submitted that the extended period cannot be invoked in the subject case when classification is a matter of claim of right and a point of law and a wrong claim of classification cannot be treated as a wrong declaration because classification is not a declaration but it is a pointer to applicable law/Customs Tariff Heading. It is stated that they have been importing the same goods since 2011 and cleared organic chemicals by declaring the same as Mixed Xylene Isomers under the CTH 29024400 and no questions have been raised. In the present case also, no classification issue was raised when the importer M/s. Kunjal Synergies have filed the warehousing Bills of Entry and warehoused the goods. Thus, the appellants submit that they have not suppressed any information from the Department; Hence, the Show cause Notice issued on 04.04.2016, demanding differential customs duty for the clearances effected from 2011 onwards, by invoking extended period of limitation as provided under Section 28(4) of the Customs Act, 1962, is not sustainable.

5. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. He cited the Explanatory Notes of the Harmonized Commodity Description and Coding System published by World Custom Organization and submitted that the Explanatory Notes prescribes that CTH 29024400 would be applicable to Mixed Xylene Isomers taken together if these are 95% or more by weight of Xylene Isomers. Since 'ethyl benzene' which formed part of the solvent as per analysis report filed by the importer is not an Isomer of Xylene, the classification CTH 29024400 adopted by the appellants for the imported goods is not proper. In support of his contention, he cited the decision of the Tribunal, Delhi in the case of *Collector of C.Ex., Bombay Vs Oswal Petrochemeicals Ltd*, reported in 2000 (126) ELT 1232 (Trib). The Ld. A.R also cited the decision in the case of *Addisons Paint and Chemicals Limited Vs. Commissioner of Central Excise, Ahmedabad* reported in 2006 (196) ELT-31, Tribunal at Chennai , which is followed by the Tribunal in *Jay Polychem India Ltd Vs. Commissioner of Customs, Kandla* reported in 2017 (5) TMI-1127 , wherein the mixture of three methyl isomers with Ethyl benzene has been held to be classifiable under CTH 2707 where the percentage of mixture of three Xylene isomers was less than 95%. In view of the above decisions, the Ld. Departmental Representative submitted that the impugned order has rightly confirmed the demands of customs duty be re-classifying the imported goods.

6. Heard both sides and perused the appeal documents.

7. We observe that the issue involved in the present appeal is classification of the goods imported by the appellants. The Appellants classified the goods under the CTH 29024400. In the impugned order, the Ld. adjudicating authority has reclassified the goods under the CTH 27073000. For the sake of ready reference the competing entries in the Customs tariff are reproduced below.

7.1. Customs Tariff Heading CTH-2707 under the Chapter 27 (Mineral Fuels, Mineral Oils and products of their distillation; Bituminous substances; mineral waxes) under CTH-2707 claimed by the department in the impugned order is as follows:

2707	Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents.		
2707 10 00	Benzol (benzene)	Kg.	2.5%
2707 20 00	Toluol (toluene)	Kg.	2.5%
2707 30 00	Xylol (xylenes)	Kg.	2.5%
2707 40 00	Naphthalene	Kg.	2.5%
2707 50 00	Other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distils at 250°C by the ISO 3405 method (equivalent to the ASTM D 86 method) Other :	Kg.	2.5%
2707 91 00	Creosote oils	Kg.	2.5%
2707 99 00	Other	Kg.	2.5%

7.2. The contesting entry under Chapter 29 covering Organic Chemicals under Customs Tariff Heading 2902 claimed by the appellant is reproduced below:

2902	Cyclic Hydrocarbons Cyclanes, cyclenes and cycloterpenes :		
	Xylenes :		
2902 41 00	o-Xylene	Kg.	Free
2902 42 00	m-Xylene	Kg.	2.5%
2902 43 00	p-Xylene	Kg.	Free
2902 44 00	Mixed xylene isomers	Kg.	2.5%
2902 50 00	Styrene	Kg.	2%
2902 60 00	Ethylbenzene	Kg.	2.5%
2902 70 00	Cumene	Kg.	2.5%
2902 90	Other :	Kg.	2.5%

7.3. The Explanatory Notes of the Harmonized Commodity Description and Coding System published by World Custom Organization, which has been relied upon by the adjudicating authority to re-classify the imported goods under the CTH 27073000 is reproduced below:

- (1) Hydrocarbons with only one benzene ring.
These include benzene and its homologues.
- (a)-----
- (b)-----
- (c) Xylene (dimethylbenzene)
(C₆H₄(CH₃)₂)*

7.4. We observe that **three isomers namely o-xylene, m-xylene and p-xylene.** have been classified under the CTH 29024100, 29204200 and 29024300 respectively. Thus, it is clear that the Isomers of Xylene are specifically classified under the CTH 2902 only. 29024400 covers mixture of Xylene Isomers. Thus, we observe that in order to classify the goods under the CTH 29024400, it must be established that the goods imported by the appellants are a mixture of Xylene Isomers. As per the HSN Explanatory Notes, **to fall in the heading 29024400, the said goods must contain 95% or more by weight of xylene isomers, all isomers being taken together.** (emphasis supplied)

7.5. From the test report submitted by the appellants we observe that the test report clearly indicates that the solvent imported by the appellants contains isomers of Xylene as well as 'Ethyl Benzene'. The Ld. adjudicating authority has not considered 'Ethyl Benzene' as an Isomer of Xylene and excluded its weight for the purpose of weight of Isomers in the solvent imported. Accordingly, he has concluded in the impugned order that the impugned goods contained less than 95% by weight of Isomers of Xylene. In view of the HSN Explanatory Notes reproduced supra, the Ld. adjudicating authority accordingly concluded that the imported goods are not classifiable as Mixture of Xylene Isomers under the CTH 29024400.

7.6. We observe that the word "Isomer" has a distinct meaning in chemistry. The isomer is defined in the chemical dictionary of Howley as follows:

isomer. (1) *One of two or more molecules having the same number and kind of atoms and hence the same molecular weight, but differing in respect to the arrangement or configuration of the atoms.*

7.7. We find that the molecular formula of Ethyl Benzene is C_8H_{10} . It has the only two atoms C and H common to Xylene and molecular formula is same as that of Xylene i.e. C_8H_{10} . We find that the molecular formula of all other Isomers of Xylene classified under the CTH2902 are C_8H_{10} . The molecular formula of 'Ethyl benzene is also C_8H_{10} . We also find that the structure of **o-Xylene, m-xylene and p-xylene and Ethyl Benzene** are all different from each other. Thus, as per the definition of 'Isomers' mentioned above, we observe that **o-Xylene, m-xylene and p-xylene and Ethyl Benzene all are Isomers of Xylene.** From the test report submitted by the appellants, we observe that the imported goods is a mixture of Xylene Isomers, and has more than 95% of weight of all Isomers of Xylene. Hence, we observe that as per the HSN Explanatory Notes the goods imported are appropriately classifiable under the CTH 29024400. Thus, we hold that the reclassification of the imported goods under the CTH 27073000 in the impugned order is legally not sustainable. Accordingly, we hold that the differential customs duty along with interest confirmed in the impugned order is not sustainable and hence we set aside the same.

7.8. We observe that the Id. adjudicating authority has relied upon the decision of the Tribunal, Delhi in the case of *Collector of C.Ex., Bombay Vs Oswal Petrochemicals Ltd, reported in 2000(126) ELT 1232 (Trib)*. However, we find that the facts and circumstances of the case cited is different from the facts of the case on hand. In the present case the goods imported by the appellant are classifiable under the CTH 29024400 as it satisfies the conditions prescribed in the HSN Explanatory Notes to Chapter Heading 2902. Accordingly, we hold that the decision cited is not applicable to the present appeals.

7.9. We have considered the decision in the case of ***Addisons Paint and Chemicals Limited Vs. Commissioner of Central Excise, Ahmedabad*** reported in ***2006 (196) ELT-31, Tribunal at Chennai*** and followed Tribunal in ***Jay Polychem India Ltd Vs. Commissioner of Customs, Kandla*** reported in ***2017 (5) TMI-1127*** cited by the Id. Authorized Representative of the Revenue. We find that in the decision cited, the mixture of three methyl isomers with Ethyl benzene has been held to be classifiable under CTH 2707 where the percentage of mixture of three Xylene isomers was less than 95%. We observe that both the decisions proceeded on the basis of the argument made by the importer wherein they claimed ethyl benzene as the same compound as of xylene. However, the Tribunal did not agree. But, in the present case on hand, the contention of the appellants is that ethyl benzene and xylene are different compounds with different CAS number but since their molecular weight is same that is C₈H₁₀ as of xylene, it is to be treated as isomer of xylene under the CTH 29024400, as CTH 29024400 deals with not same compound as of xylene but isomers of xylene

and ethyl benzene is a isomer of xylene not xylene. Hence, both the cases are distinguishable on facts of the case presented before us.

7.10. We observe that M/s. Reliance Industries are manufacturing the same solvents and classifying the same under the Tariff Heading 29024400. For ready reference, the Invoices raised by M/s. Reliance Industries wherein the same goods (solvents) have been classified under the Tariff Heading 29024400, is extracted below:



Reliance Industries Limited

DUPLICATE FOR TRANSPORTER

Reliance Industries Limited
Hazira Manufacturing Division, Surat
Hazira Road, Village Mora, Post Bhatha
Surat, Gujarat (24), 394510

QR Code

IRN: 7203913a06993152f7e777a0e22b1047a1e4f68680829f401dec8bc6200dd667
Supplier-GSTIN: 24AAACR5055K1MD
Supplier-PAN: AAACR5055K

Tax Invoice No: 24183000134658
Tax Invoice Date: 17.10.2024

Recipient (Billed to - Place of Supply): 4000018630
BERGER PAINTS INDIA LTD.
443 GIDC VITRAL UDYO NAGAR
GUJARAT
ANAND, GUJARAT (24), 388121
GSTIN/Unique ID: 24AABCR0976E121
PAN: AABCR0976E

Consignee (Shipped to, address of Delivery): 3000022952
BERGER PAINTS INDIA LTD.
C/O REEPER COATING PRIVATE LIMITED
PLOT NO. 443, G.I.D.C ESTATE,
VITRAL, UDYO NAGAR, ANAND-388121
ANAND, GUJARAT (24), 388121
GSTIN/Unique ID: 24AABCR0976E121

HSN: 2902 44 00 MIX XYLENE

S.N.	Description of Goods	Batch/Package	Quantity	UOM	Rate (Rs./UOM)	Total (Rs.)
1	MIX XYLENE SOLVENT GRADE	F3927 Bulk	27.900	MT	69000.00	1925100.00
					Total Taxable Value	1925100.00
					Central Tax	9.00 % 173259.00
					State Tax	9.00 % 173259.00
					Total Invoice Value	2271618.00

Total Invoice Value Rs. (in words):
INR Twenty Two Lakh Seventy One Thousand Six Hundred Eighteen only
The buyer has confirmed Applicability & Deduction of TDS u/s 1940. The Buyer to apply normal rate of @0.10%, as we are not falling under the category of specified persons u/s 206AB.
TCS u/s 206C(1H) shall not be collected on payment of this invoice, basis buyer declaration.
Gross WT (MT): 41.730 ,Tare WT (MT): 13.830 ,Net WT (MT): 27.900
Seal No: F725178*08+F725351*01
SAMPLE BOTTLE GIVEN (QTY. INCLUDED IN GROSS WEIGHT)
PO NO:- 349101DATE:- 17.10.2024
PO NO:- 349101DATE:- 17.10.2024
E-Way Bill No.: 631799732410
An Electronic document issued in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).



Mode of Transport: Road
Truck Operator: M S
Consignment Note/Lr.No./Date: 5117 /17.10.2024
Vehicle No: MH41RD2056

Customer PO No. and date: 349101, 17.10.2024
Order No: 0105869699
Agent Name: KUNJAL SYNERGIES PRIVATE LIMITED
Check Digit No./Date: 0627751509/17.10.2024

Receiver Signature

FOR Reliance Industries Limited
Signature valid
Digitally signed by DS RELIANCE INDUSTRIES ABHID2
Date: 2024.10.17 20:20:33 +05'30'

Authorized Signatory

Principal Place of Business (Supplier): PO Motikhavdi, Meghpur Padana Gajva,
Jamnagar 361140, Gujarat, India.
Regd. Office: 3rd Floor, Maker Chambers IV, 222, Nariman Point, Mumbai, 400021, Maharashtra, India.
Website: www.ril.com, CIN: L17110MH1997PLC014786, Tel. No: 9261-4135799
Declaration: I) Certified that all the particulars given above are true and correct. The amounts indicated represents the price actually charged and there is no flow of additional consideration directly or indirectly from the Buyer/Recipient
II) The normal terms governing the above supply are printed overleaf. ENDF

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7.11. From the Invoice extracted above, we find that the same goods are domestically classified under the CTH 29024400, which has been accepted by the Central Excise/GST authorities. Accordingly, we hold that the goods imported by the appellant are appropriately classifiable under the CTH 2902400. Thus, we hold that the differential custom duty along with interest confirmed in the impugned order by re-classifying the imported goods under the CTH 27073000 is not sustainable and accordingly, we set aside the same.

7.12. We observe that the appellants have also contested the demands confirmed in the impugned order on the ground of limitation. It is seen that the appellant M/s. Kunjal Synergies have been importing the same goods since 2011 and cleared said goods by declaring the same as Mixed Xylene Isomers under the CTH 29024400 and no questions have been raised. In the present case also, we observe that no classification issue was raised when the importer M/s. Kunjal Synergies have filed the warehousing Bills of Entry and warehoused the goods. Thus, we find that the appellants have not suppressed any information from the Department. Hence, we hold that the Show cause Notice issued on 04.04.2016, demanding differential customs duty for the clearances effected from 2011 onwards, by invoking extended period of limitation as provided under Section 28(4) of the Customs Act, 1962, is not sustainable. Thus, the demands confirmed in the impugned order by invoking extended period of limitation is liable to be set aside on the ground of limitation also.

7.13. Regarding the penalties imposed on the appellants, we observe that the allegation of mis-declaration raised against the appellants is not sustained. We also find that suppression of facts with intention to evade the payment of customs duty has not been established in this case. Accordingly, we hold that the penalties imposed on the appellant companies as well as its Directors under section 114A and 114AA of the Customs Act, 1962 are not sustainable and accordingly, we set aside all the penalties imposed on the appellants in the impugned order.

8. In view of the above discussions, we set aside the impugned order and allow the appeals filed by the appellants, with consequential relief, if any, as per law.

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

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd