CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Customs Appeal No. 85096 of 2021

(Arising out of Order–in-Original No. 63/SA (63) ADG (ADJ.)/DRI, Mumbai/2020-21 dated 15.10.2020 passed by Additional Director General (Adjudication, DRI Mumbai)

Reliance Industries Ltd. **...Appellant**
Maker Chamber IV, 3rd Floor,
222, Nariman Point,
Mumbai-4000021

Versus

Additional Director General (Adjudication) **...Respondent**
Directorate of Revenue Intelligence, Mumbai
2nd Floor, Old Building,
New Customs House, Ballard Estate,
Mumbai-400001

APPEARANCE:

Shri Vipin Kumar Jain, Advocate for the Appellant
Shri P.R.V. Ramanan, Special Counsel for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 01.11.2021
Date of Decision: 15.12.2021

FINAL ORDER No. 87303/2021

JUSTICE DILIP GUPTA:

Reliance Industries Ltd.[1] has filed this appeal to assail the order dated 15.10.2020 passed by the Additional Director General (Adjudication) DRI, Mumbai[2], by which the classification of Reformate by the appellant under Chapter Tariff Heading[3] 2707 50 00 of the

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1. **the appellant**
2. **the Adjudicating Authority**
3. **CTH**

Customs Tariff Act 1975[4] imported under three Bills of Entry has been rejected and reclassification under CTH 2710 12 19 has been ordered. The Additional Director has also ordered for confiscation of 41,877.064 mts of imported Reformate under the provisions of section 111(m) of the Customs Act 1962[5] but as the goods were not available, redemption fine has not been determined. Customs duty with penalty has also been demanded under section 28(1) of the Customs Act with applicable interest under section 28AA of the Customs Act.

2. The appellant imported "Reformate" under three Bills of Entry and classified the same under CTH 2707 50 00 as "other aromatic hydrocarbon mixtures". The applicable custom duties was 2.5% BCD + 14% CVD + 3% Cess + 4% SAD and the goods were cleared for home consumption on payment of duty at the rates applicable to CTH 2707 50 00. The appellant claimed that the Reformate so cleared was used at the plants of the appellant, either as a feedstock for manufacture of aromatics such as Xylene, Benzene etc. or as a blend stock for blending with Motor Spirit. The details of the Reformates so imported are as follows:-

S. No.	**Bills of Entry No.**	**Date**	**Item Description**	**CTH**	**Quantity in MTS**	**Assessable Value in Rupees**
1.	7113801	17.10.2016	Reformate-AFS	2707 50 00	9,091.514	33,53,44,076.16
2.	F-251	07.10.2016	Reformate	2707 50 00	35,877.064	97,48,06,563.46
3.	F-35	28.04.2017	Reformate	2707 50 00	6,000	23,84,94,847

3. Reformate is a mixture of predominantly aromatic C5-C11 hydrocarbon compounds which are obtained by a process of catalytic reforming of Heavy Naphtha, which is an intermediate product

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4. the Tariff Act
5. the Customs Act

obtained in the petroleum refinery from the processing of crude petroleum oils. Heavy Naphtha comprises mainly of straight chain hydrocarbons which are predominantly non-aromatic in nature. The process of catalytic reforming is a series of complex chemical reactions which inter-alia convert many non-aromatic hydrocarbon compounds of Heavy Naphtha into aromatic hydrocarbon compounds. Consequently, Reformate becomes an aromatic rich product comprising as much as 82%-92% by weight of aromatic compounds. As against this, the weight of aromatics in heavy Naphtha is about 10%-20%.

4. The Adjudicating Authority did not accept the classification of the product by the appellant under CTH 2707 50 00 and held that it would merit classification under CTH 2710 12 19.

5. It would, therefore, be necessary to reproduce the two competing entries and they are as follows:

Tariff Item	**Description of Goods**	**Unit**	**Rate of duty**	
			Standard	**Preferential Areas**
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	10%	-
2707 20 00	- Toluol (toluene)	Kg	10%	-
2707 30 00	- Xylol (xylenes)	Kg	10%	-
2707 40 00	- Naphthelene	Kg	10%	-
2707 50 00	- Other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distills at 250ºC by the ASTM D 86 method - Other:	Kg	10%	-
2707 91 00	-- Cresote oils	Kg	10%	-
2707 99 00	-- Other	Kg	10%	-

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 - 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 bio-diesel and other than waste oils		
2710 12	-- Light oils and preparations:		
	--- Motor Spirit:		
2710 12 11	---- Special boiling point spirits (other than benzene, toluol) with nominal boiling point range 55-115ºC	Kg	10%
2710 12 12	---- Special boiling point spirits (other than benzene, benzol, toluene and toluol) with nominal boiling point range 63-70ºC	Kg	10%
2710 12 13	---- Other special boiling point spirits (other than benzene, benzol, toluene and toluol)	Kg	10%
2710 12 19	---- Other	Kg	10%
2710 12 20	--- Natural gasoline liquid (NGL)	Kg	10%
2710 12 90	--- Other	Kg	10%
2710 19	-- Other:		
2710 19 10	--- Superior kerosene oil (SKO)	Kg	10%
2710 19 20	--- Aviation turbine fuel (ATF)	Kg	10%
2710 19 30	--- High speed diesel (HSD)	Kg	10%
2710 19 40	--- Light diesel oil (LDO)	Kg	10%
2710 19 50	--- Fuel oil	Kg	10%
2710 19 60	--- Base oil"	Kg	10%
2710 19 70	--- Jute batching oil and textile oil.	Kg	10%
2710 19 80	--- Lubricating oil	Kg	10%
2710 19 90	--- Other	Kg	10%

(emphasis supplied)

6. According to the appellant Reformate is classifiable only under CTH 2707, as the Harmonised System of Nomenclature[6] Explanatory Notes to CTH 2707 clarify that the said Heading covers, in addition to distillates of coal tar or mineral tar, **similar products** obtained by processing of petroleum or by any other process.

6. HSN

7. According to the Adjudicating Authority, CTH 2707 50 00 cannot cover products, 65% of which are distilled by volume at 142.5°C, as this temperature is widely different from the 250°C temperature required under the said heading. The Adjudicating Authority, thereafter proceeded to classify the product under CTH 2707 12 19.

8. Earlier, an investigation was commenced by the Directorate of Revenue Intelligence into the correctness of the imports made by the appellant and a show cause notice dated 16.10.2018 was issued to the appellant inter-alia, alleging that the Reformate imported by the appellant and cleared was appropriately classifiable under CTH 2710 12 19 for the following reasons:

- **(i)** Heading 2707 covers only distillates of coal tar or mineral tar, and since Reformate is not a distillate of coal tar or mineral tar, it is not classifiable under CTH 2707;
- **(ii)** Since, 65% of Reformate distils around 142.5°C, and 100% distills around 205°C-214°C, it does not fulfill the condition of distilling 65% or more at 250°C prescribed under CTH 2707 50 00;
- **(iii)** Classification under CTH 2710 cannot be ruled out by relying upon Chapter Note 2 to Chapter 27 as the condition therein stating that "the weight of the non-aromatic constituents exceeds that of the aromatic constituents" applies only to 'similar oils' (by virtue of the doctrine of last antecedent) and not to petroleum oils and other oils obtained from bituminous minerals. As such, the fact that Reformate is aromatic rich, does not rule out its classification under CTH 2710;

(iv) Reformate is appropriately classifiable under CTH 2710 12 19 for the following reasons:

a) Reformate is a preparation of the kind covered by category (C) of the list of primary products enumerated in the HSN Explanatory Notes to CTH 2710 since for a product to be covered by category (C), the oils covered by category (A) should have been processed further and Reformate is processed from Naphtha;

b) As per the US Cross Review Rulings, Reformate is classifiable under CTH 2710 of the US Customs Tariff;

c) Some of properties of Reformate, namely, the Final Boiling point, Flash point, RON, MON and AKI are "very similar" to those of Motor Spirit. Accordingly, Reformate is usable as a fuel in spark ignition engines just as Motor Spirit; and

d) The Public Sector Undertakings such as IOCL, Numaligarh Refinery Ltd., BPCL and HPCL have classified Reformate under CTH 2710 12 19.

9. The appellant filed a detailed reply to the show cause notice and some of the main submissions are as follows:

(i) The HSN Explanatory Notes to Heading 2707 clarifies that in addition to distillates of coal tar or mineral tar, the said heading covers 'similar products' which are obtained by processing of petroleum. The assumption in the show cause notice that only distillates of coal tar or mineral tar are covered by Heading 2707 is, therefore, based on a mis-reading of the Explanatory Notes to HSN. Accordingly, Reformate is appropriately classifiable under the four-digit Heading 2707, particularly when it is not disputed that the weight of its aromatic constituents exceeds that of the non-aromatic constituents;

(ii) The requirement in CTH 2707 50 00 that the product should distil 65% or more by volume at 250^{o}C, is fully met as Reformate distils 100% by/at that temperature;

(iii) Reformate is not covered under category (C) of the Primary Products, mentioned in Explanatory Notes to CTH 2710, as it is not a 'preparation' of the kind prepared by adding some substance to oils covered by category (A) and (B), which alone are covered by category (C) as per HSN Explanatory Notes;

(iv) Assuming without admitting that Reformate is a 'preparation', still it is not classifiable under CTH 2710 as it is specifically covered under CTH 2707. This is because CTH 2710 specifically excludes preparations which are elsewhere specified or included; and

(v) Reformate cannot be classified under the eight-digit CTH 2710 12 19 as a 'Motor Spirit' as it does not meet the twin criteria prescribed in the Supplementary Note (a) to Chapter 27 which defines 'Motor Spirit'.

10. The Adjudicating Authority accepted some of the contentions urged by the appellant but rejected others. The appellant has challenged the impugned order, but there is no challenge to the

findings given in favour of the appellant by the Revenue. Some of the main reason given in the impugned order are as follows:

(i) The contention of the appellant that the term 'similar products' used in Chapter Heading 2707 also includes products obtained by processing of petroleum is correct. The said Explanatory Note expands the classification of 'similar products' obtained from distillation of coal tar, distillation of mineral tar, stripping of coal gas and including processing of petroleum;

(ii) Classification of Reformate under CTH 2707 50 00 is, however, incorrect and inappropriate as the said CTH envisages that 65% of volume should distil at 250^{o}C, whereas in the instant case, 65% of the volume of Reformate distills at around 142.5^{o}C itself and such a wide range of difference is unreasonable and unacceptable;

(iii) The existence of high aromatics does not debar Reformate from being classified under the four-digit Heading 2710;

(iv) Reformate is very similar to Motor Spirit which is available in the market as its principal parameters, RON, MON, AKI and Final Boiling Point, are approximately same as that of Motor Spirit as specified in BIS IS 2796:2017;

(v) The classification adopted across the world (including US) is important to understand and pass the 'common parlance'/'market parlance' test, but the same has only persuasive value since world over, classification of commodities are uniformly based on HSN.;

(vi) Several Public Sector Undertakings were importing and classifying Reformate under CTH 2710 12 19 and the same cannot be overlooked or ignored; and

(vii) There is no willful mis-statement or mis-declaration and, therefore, neither the extended period is applicable nor is the imposition of mandatory penalty attracted. However, by claiming wrong classification, the appellant has rendered the goods liable to confiscation.

11. Shri Vipin Kumar Jain learned counsel appearing for the appellant made the following submissions:

(i) The product Reformate merits classification only under the four digit CTH 2707 as the HSN Explanatory Notes to CTH 2707 clarifies that the said heading covers, in addition to distillates of coal tar or mineral tar, **"similar products"** obtained by processing of petroleum or by any other process;

(ii) Though the Adjudicating Authority accepted this contention of the appellant, which finding has not been assailed by the Revenue, but the Adjudicating Authority committed a mistake is not accepting the submissions made on behalf of the appellant that Reformate would fall under the 8-digit heading of CTH 2707 50 00;

(iii) Reformate merits classification only under CTH 2707 50 00 and the finding recorded to the contrary by the Adjudication Authority for the reason that 65% distills at around 142.5^{o}C and not at 250^{o}C is incorrect as what has to be seen is that it distills **by** 250^{o}C;

(iv) The Central Government itself classified Reformate under CTH 2707 50 00 as is clear from the Notification dated 11.07.2014 issued by the Central Government which provides for the effective rate of Basic Customs Duty on products classifiable under CTH 2707 50 00 as 2.5% as also the Budget Speech made on 10.07.2014 by the Finance Minister;

(v) The product Reformate does not merit classification under CTH 2710 and the finding to the contrary recorded by the Adjudicating Authority is incorrect. The Adjudicating Authority overlooked the fact that as per the HSN Explanatory Notes to CTH 2710, the preparations of a kind covered by category (C) of the list of primary product enumerated in HSN Explanatory Notes to CTH 2710 are the products which are prepared by adding various substances to oils covered by categories (A) and (B) to render them suitable for a particular use;

(vi) The Adjudicating Authority also overlooked that HSN Explanatory Notes to CTH 2710 describe seven different types of preparations, but none of these seven preparations are obtained by any chemical transformation of oils covered by categories (A) and (B).

(vii) The Adjudicating Authority failed to appreciate that the expression "the product covered by the first part of this Heading 2710" in the Explanatory Notes does not refer to or apply to all the "Primary Products" listed under the categories (A), (B) and (C), but only to the first part of the Heading 2710;

(viii) The doctrine of last antecedent has been completely mis-interpreted by the Adjudicating Authority;

(ix) Reformate is not classifiable under CTH 2710 12 19 as "other motor spirits"; and

(x) The onus to classify a product under a particular heading is on the Revenue and the Revenue has to adduce positive evidence to establish that the classification adopted by the assessee is not correct. In this connection reliance has been placed on the following decisions:

a) **H.P.L. Chemicals Ltd.** vs. **Commissioner of C. Ex. Chandigarh**[7]**;**

b) **Swarna Oil Services, SM Trading Company** vs. **Commissioner of Customs, Mundra**[8]**;** and

c) **Larsen and Toubro Ltd. vs. Commissioner of Customs, Mundra**[9]**.**

12. Shri P.R.V. Ramanan, learned special counsel appearing for the Department, made the following submissions:

(i) The product imported by the appellant is Heavy Reformate which is used as a blend stock and is thus required to be regarded as a preparation under the category of "Light Oils and Preparations" for processing motor spirit. Light Reformate is used as a feedstock for the manufacture of aromatics;

(ii) The international practice of classification of Reformate is under CTH 2710;

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7. 2006 (197) E.L.T. 324 (S.C.)
8. 2020 (6) TMI 70 – CESTAT Ahmedabad
9. Customs Appeal Nos. 10832 and 10833 of 2020 decided on 24.05.2021

(iii) The appellant did not provide details of chemical products to satisfy the parameters of "Research Obtained Number[10], Motor Obtained Number[11] and Anti-Knocks Index[12] for 'motor spirit';

(iv) The appellant has not adduced any evidence to prove that the flash point of Reformate is not below 25°C;

(v) The definition of 'motor spirit' in Customs Tariff does not require the impugned product to satisfy the conditions of BIS 2796;

(vi) Reformate would merit classification under CTH 2710 12 19 as 'other motor spirit';

(vii) Heading 2707 covers products only emerging from distillation of coal tar and does not cover preparations, while the second part of CTH 2710 covers preparations;

(viii) Reformate is obtained by reforming naphtha (a light oil) and is predominantly prepared for specific use as blending stock and hence it is regarded as a preparation under the category 'light oils and preparations' in the HSN based tariffs world over;

(ix) Even if distillates of petroleum oils are covered by Heading 2707, they must also satisfy the requirement of being similar to oils and other products obtained on distillation of high temperature coal tar classifiable under CTH 2707. Since Reformate is obtained from catalytic reforming process, it is not a product 'similar' to the products

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10. RON
11. MON
12. AKI

obtained from distillation of high temperature coal tar and is, therefore, not classifiable under CTH 2707

(x) Since Reformate is a low boiling point product, it will not be classifiable under CTH 2707 because it is not the same class of products covered under CTH 2707;

(xi) Reformate conforms to Sub-Heading Note 4 for 'Light oils and Preparations' as simple average of its final boiling points of 205^{o}C and 215^{o}C is 210^{o}C, which is the prescribed temperature for distillation of 90% or more of its volume; and

(xii) If 65% or more of volume is to distill at 250^{o}C, it cannot have a range between 142.5^{o}C to 250^{o}C, as it is scientifically unacceptable.

13. The submissions advanced by the learned counsel for the appellant and the learned special counsel for the Department have been considered.

14. The **first** issue that arises for consideration in this appeal is as to whether the product **Reformate** merits classification under the four digit CTH 2707. The reason assigned in the show cause notice for not classifying it under aforesaid four digits CTH is that Reformate is not a distillate of coal tar or mineral tar.

15. In this connection, reference needs to be made to the HSN Explanatory Notes to CTH 2707. They clarify that the said Heading covers, in addition to distillates of coal tar or mineral tar, similar products obtained by the processing of petroleum or by any other

process. The relevant portion of Heading 2707 to Explanatory notes to HSN are:

> "**27.07** 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 constituents.
>
> xxxxxxxx
>
> This heading covers:
>
> (1) xxxxxxxx
>
> (2) Similar oils and products with a predominance of aromatic constituents obtained by the distillation of low temperature coal tar or other mineral tar, by the "stripping" of coal gas, by the processing of petroleum or by any other process."

16. The Adjudicating Authority dealt with this issue and accepted the contention of the appellant that the term "similar products" used in chapter Heading 2707 also includes products obtained by processing of petroleum as the said Explanatory Notes explain the classification of "similar products" obtained from distillation of coal tar and includes processing of petroleum. This part of the finding recorded by the Adjudicating Authority has not been assailed by the Department.

17. Thus, if the product Reformate is classifiable under the four digit Heading CTH 2707, it would not be really material to determine as to under which eight digit Sub-Heading it can be classified because the duty rate structure is the same for all the Sub-Heads. The Adjudicating Authority, therefore, committed an error in thereafter holding that the product Reformate would be classifiable under CTH 2710 12 19.

18. The **second** issue that arises for consideration is whether the product Reformate merits classification under CTH 2707 50 00.

19. The reason assigned by the Adjudicating Authority for not classifying it under this eight digit classification is that the Sub-Heading requires 65% or more by volume of the product to distill at

250^{o}C, but in the present case 65% of the product by volume distills at around 142.5^{o}C.

20. Learned counsel for the appellant submitted that the distillation of a product is not a flash reaction, but is a process where the inputs start distilling slowly as the temperature rises. Thus, if the requirement stipulated is that a certain percentage of the product (by volume) must distill **"at"** a certain temperature, it should actually mean that as the product is heated, the distillation to the required extent must happen **"by"** that temperature. The submission advanced, therefore, is that the expression **"at 250^{o}C"** should be read as **"by 250^{o}C"**.

21. This submission advanced by the learned counsel for the appellant deserves to be accepted. What is important to notice is that the show cause notice also accepts this position since it classifies Reformate under CTH 2710 as "light oils and preparation" under Sub-Heading Note 4 to Chapter 27 alleging that 90% or more by volume of the product distills around 163^{o}C to 175^{o}C, whereas the said Note requires distillation of 90% or more of a product at 210^{o}C. The show cause notice, therefore, itself has read "**at 210^{o}C**" to mean "by **210^{o}C**". The conclusion drawn by the Adjudicating Authority is, therefore, not only incorrect but even otherwise, the Department cannot be permitted take a contrary stand. It follows that the expression **"at 250^{o}C"** appearing in the description of CTH 2707 50 00, should be read as **"by 250^{o}C"**. The product would, therefore, merit classification under CTH 2707 50 00.

22. This apart, this position also emerges from a perusal of the Notification No. 12/2014 dated 11.07.2014 and the budget speech of

the Finance Minister made on 10.07.2014. The Finance Minister proposed to reduce the tax incidence on Reformate to 2.5% and immediately on the next date, the Customs Notification No. 12/2014 was issued providing for effective rate of basic customs duty on products classifiable under CTH 2707 50 00 as 2.5%.

23. This Notification dated 11.07.2014 seeks to amend the earlier Notification on 17.03.2012 and provides for effective rates of basic and additional duty for specified goods falling under Chapters 1 to 98. It was issued in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act and the relevant portion of the Notification is reproduced below:

"Notification: 12/2014-Cus. Dated 11.07.2014

Effective rates of basic and additional duty for specified goods falling under Chapter 1 to 98 – Amendment to Jumbo Notification No. 12/2012-Cus.

In the said notification-

(A) in the Table-

xxxxxxxx

(XV) after serial number 126 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely:-

"126A	2707 40 00	Naphthelene	5%	-	-
126B	**2707 50 00**	**All goods**	**2.5%**	**-**	**-**
126C	2708	Coal tar pitch	5%	-	-";

(emphasis supplied)

24. This has to be read in the context of the budget speech of 2014-15 of the Finance Minister, of which the relevant portion is reproduced below:

"Indirect Taxes

212. I now turn to indirect taxes and shall begin with customs duties.

xxxxxxxxxx

> 214. In order to encourage new investment and capacity addition in the chemicals and petrochemical sector, **I propose to reduce the basic customs duty on reformate from 10 to 2.5 percent;** on ethane, propane, ethylene, propylene, butadiene and ortho-xylene from 5 percent to 2.5 percent; on methy1 alcohol and denatured ethy1 alcohol from 7.5 percent to 5 percent; and on crude naphthalene from 10 percent to 5 percent."
>
> (emphasis supplied)

25. It would be clear from the aforesaid Notification that in order to encourage new investment and capacity addition in the chemicals and petrochemical sector, the Finance Minister proposed to reduce the basic customs duty on Reformate from 10% to 2.5% and this is what was actual proposed in the Notification, wherein the customs duty under CTH 2707 50 00 was notified to be 2.5%.

26. The Tax Research Unit Circular issued by the Department of Revenue also, after making reference to the budget speech delivered by the Finance Minister on 10.07.2014 and in particular to the changes in the customs and central excise law and rates of duty proposed in connection with Chapter 27 of the Customs Act, states that the basic customs duty on Reformate and other goods under Sub-Heading 2707 50 00 has been reduced from 10% to 2.5% and the earlier Notification dated 17.03.2012 has been amended to that extent shown at Serial No. 126B in the Notification dated 11.07.2014. The Annexure to the Circular reads as follows:

> "(4) **Basic Customs Duty on reformate and other goods under sub-heading 2707 50 00 is being reduced from 10% to 2.5%.** Notification No. 12/2012-Customs, dated 17th March, 2012 as amended by notification No. 12/2014-Customs, dated the 11th July 2014 [new S. No. 126B] refers."
>
> **(emphasis supplied)**

27. Learned special counsel appearing for the Department has however, submitted that reliance upon the Tax Research Unit Circular, which makes reference to the speech of the Finance Minister as also

the Customs Notification, and provides for the summary of the changes mentioned in the Annexure, cannot be used in any quasi-judicial or judicial proceedings, where only the relevant legal texts need to be referred to.

28. It is not possible to accept this contention of the learned special counsel appearing for the Department. The Notification dated 11.07.2014 was issued and it is the position emerging from the issuance of this Notification that has been clarified by the TRU Circular. Merely because the Circular states that the Annexure only provide a summary of the changes made and should not be used in any quasi-judicial or judicial proceedings would not in any manner dilute the position emerging from the Notification that has been explained in the Circular.

29. The **third** issue that arises for consideration is as to whether the product Reformate would merit classification under CTH 2710.

30. The show cause notice proceeds on the footing that the product is specifically covered under category (C) of the list of the primary products enumerated in the HSN Explanatory Notes to CTH 2710. According to the show cause notice, for a product to be covered under category (C), **processing** to an oil mentioned in category (A) or (B) has to be made and since Reformate has been **processed** out of Naphtha, which is an oil falling under category (A), it is covered by category (C), and thus would be classifiable under CTH 2710 as "preparations not elsewhere specified or included, containing by weight of 70% or more of petroleum oils, these oils being the basic constituents of the preparations."

31. According to the appellant, the preparations of a kind covered by category (C) are those which are prepared by adding various substances to oils covered by categories (A) and (B) to render them suitable for a particular use and in this connection, reliance has been placed on the provisions of HSN Explanatory Note.

32. To appreciate the aforesaid submissions advanced on behalf of the parties, it would be appropriate to reproduce the relevant portion of four digit CTH 27.10 to the Explanatory Notes and the same is reproduced below:

> **"27.10 - 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.**
>
> - 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 waste oils:
>
> xxxxxxxxxxx
>
> **(I) Primary Products**
>
> The products covered by the first part of this heading are those which have undergone any process **other than** those specified in the Explanatory Note to heading 27.09.
>
> The heading includes:
>
> (A) "Topped crudes" (where certain lighter fractions have been removed by distillation), as well as light, medium and heavy oils obtained in more or less broad fractions by the distillation or refining of crude petroleum oils or of crude oils obtained from bituminous minerals. These oils, which are more or less liquid or semi-solid, consist predominantly of **non-aromatic** hydrocarbons such as paraffinic, cyclanic (naphthenic).
>
> They include
>
> xxxxxxxxxxx
>
> (B) Similar oils in which the weight of the non-aromatic constituents exceeds that of the aromatic constituents. They may be obtained by the low temperature distillation of coal,

> by hydrogenation or by any other process (e.g., by cracking, reforming ets.).
>
> This heading includes
>
> xxxxxxxxxx
>
> Further, the heading does not include oils with a predominance by weight of aromatic constituents, obtained by the processing of petroleum or by any other process **(heading 27.07)**.
>
> (C) The oils described in (A) and (B) above to which various substances have been added to render them suitable for particular uses, **provided** the products contain by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals as a basis and that they are not covered by a more specific heading in the Nomenclature.
>
> Examples of the types of products referred to are:
>
> (1) **Petroleum spirit** xxxxxxx
> (2) **Lubricants** xxxxxxx
> (3) **Transformer and circuit-breaker oils** xxxxxxx
> (4) **Cutting Oils** xxxxxxx
> (5) **Cleansing oils** xxxxxxx
> (6) **Mould release oils** xxxxxxx
> (7) **Liquids for hydraulic brakes** xxxxxxx"

33. The HSN Explanatory Notes to CTH 2710 make it clear that the preparations of a kind covered by category (C) are ones which are prepared by adding various substances to oils covered by categories (A) and (B) to render them suitable for a particular use. In fact, the said Notes describe seven different types of preparations, namely, petroleum spirit, lubricants, transformer and circuit breaker, cutting oils, mould release oils and liquids for hydraulic breaks, all of which are physical mixtures of certain substances such as peptizing agents, anti-oxidants, rust preventives, anti-foam agents, emulsifying agents etc., added to the oils covered by categories (A) and (B). Reformate is obtained by a process of chemical transformation i.e. catalytic reforming of Naptha. A third substance, such as anti-rust agents, anti-foam agents etc., is not added for obtaining Reformates. Thus, Reformate is not a preparation of a kind covered by category (C). The distinction between physical addition/mixing and the process of

chemical transformation has been completely ignored in the show cause notice or the order of the Adjudicating Authority.

34. It needs to be remembered that Reformate is a highly rich aromatic product containing 80% or more aromatic content. It cannot, therefore, be covered under category (C) and accordingly, from the purview of CTH 2710 as well. This is for the reason that all the products covered by category (C) must contain, in addition to the substances added, at least 70% of petroleum oils covered by categories (A) and (B). Thus, even if the substances added for making the preparations are considered to be all aromatic in nature, the preparations, by virtue of at least having 70% of categories (A) and (B) oils therein must have 35% non-aromatic constituents (70% of 50%). Thus, the aromatic content at best would be 65% in the preparation of the kind covered under category (C). Reformate, however has 80% aromatic contents and, therefore, cannot be considered under category (C).

35. This apart, from a plain language of the expression "preparations not elsewhere specified or included, containing by weight of 70% or more of petroleum oils, these oils being the basic constituents of the preparations', it is evident that even if it is assumed that Reformate is a preparation, still it will not be classifiable under CTH 2710 as the said Heading specifically excludes preparations which are elsewhere specified or included. It needs to be remembered that Reformate is specifically covered under CTH 2707 and at 8-digit level under CTH 2707 50 00.

36. What also needs to be noted is that Heading 2710 consists of 3 parts namely: (i) Petroleum oils and oils obtained from bituminous

minerals, other than crude; (ii) 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; and (iii) waste oils. The expression 'products covered by the first part of this heading' in the Explanatory Note does not refer to or apply to all 'Primary Products' listed under categories (A), (B) and (C) but only to the first part of the Heading 2710 i.e., 'Petroleum oils and oils obtained from bituminous minerals, other than crude' which covers products (A) and (B). The products falling under category (C) are covered by the second part of the Heading 2710 and not the first part. Thus, the reference drawn to the aforesaid Explanatory Note by the Adjudicating Authority to justify classification of Reformate under CTH 2710 is not correct. The impugned order, thus, deserves to be quashed for this reason also.

37. The doctrine of last antecedent has also been completely mis-interpreted by the Adjudicating Authority. The relevant Chapter Note 2 is reproduced herein below:

> "2. Reference in heading 2710 to "petroleum oils and oils obtained from bituminous minerals" **include not only** petroleum oils and oils obtained from bituminous minerals **but also** similar oils**, as well as** those consisting mainly of mixed unsaturated hydrocarbons**,** obtained by any process**,** provided that the weight of the non-aromatic constituents exceeds that of the aromatic constituents"
>
> **(emphasis supplied)**

38. The aforesaid Chapter Note 2 contains three commas which have been highlighted. 'Provided' is preceded by a comma. What is mentioned therein would, therefore, be applicable to both petroleum oils as well as similar oils.

39. The US Cross Rulings, on which reliance has been placed by the Adjudicating Authority, is not applicable to the facts of the present

case as the Customs Tariff of India and the US Customs Tariff are structurally different. The US Customs Tariff does not a 'comma' after the expression 'oils obtained from bituminous minerals', as the Customs Tariff of India has, and this alters the meaning. The US Customs Tariff also contains additional Notes which are not present in the Indian Tariff.

40. The **fourth** issue that arises for consideration is whether Reformate can be classified under CTH 2710 12 19 as "other motor spirit".

41. The contention of the learned special counsel appearing for the Department that Reformate is classifiable under CTH 2710 12 19 cannot be accepted as Reformate is neither a 'motor spirit' nor is it similar to it. Supplementary Note (a) to Chapter 27, defines 'motor spirit' to mean 'any hydrocarbon oil (excluding crude mineral oil) which has its flash point below 25^{o}C and which either by itself or in admixture with any other substance, is suitable for use as fuel in spark ignition engines'. Thus, for a product to be classified as a 'motor spirit', it has to cumulatively satisfy the twin requirements stipulated below:

(a) The product is present by itself or in **admixture** with any other substance; and

(b) Such product is suitable for use as fuel in spark ignition engines.

42. The Adjudicating Authority has held that since Reformate is used as a blend stock for Motor Spirit, it would mean that Reformate is used as 'admixture' with 'motor spirit' and would, therefore, be classifiable as a 'motor spirit' in terms of Supplementary Note (a).

43. The expression 'admixture with any other substance' in the definition of 'motor spirit' has to be taken as a substance other than

mineral oil. This is what was observed by the Tribunal in **Oil India Ltd.** vs. **Commissioner of Central Excise, Shillong**[13] and **Gail (India) Ltd.** vs. **Commissioner of C. Ex. & S.T., Vadodara-II**[14]. The Civil Appeal filed by the Department against the decision of the Tribunal in **Oil India Ltd.** was dismissed by the Supreme Court both on the ground of delay as well as on the merits and the decision is reported in **2004 (170) E.L.T. A 116 (S.C.)**.

44. In **Oil India Limited,** the Tribunal held as follows:

> "There is also merit in the contention of the appellant that reference to admixture with any other substance is to be taken as substance other than mineral oil."

45. In **Gail (India) Ltd.,** the Tribunal held as follows:

> "Thus, to qualify for the phrase 'suitable of use as motor spirit' the product needs to be tested in admixture with anything other than 'mineral oil'."

46. This apart, the expression 'admixture' should refer to a substance which is added in a small quantity or proportion and would not include a product which is added in large proportion. Thus, gasoline to which Reformate is added as a blend stock in a small quantity/proportion cannot be treated to be an 'admixture' so as to justify the finding that Reformate along with gasoline (as an admixture) is suitable for use as a fuel in spark ignition engines.

47. In connection with the second requirement under '(b)' in the definition of 'motor spirit', the Adjudicating Authority relied upon BIS 2796: 2017 to hold that since Reformate meets the five parameters namely, RON, MON, AKI, Flash Point and Boiling Point mentioned under BIS 2796, it would satisfy the condition of being 'suitable for use

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13. 2002 (148) E.L.T. 802 (Tri.- Del.)
14. 2019 (366) E.L.T. 146 (Tri.- Ahmd.)

as fuel in spark ignition engines' and accordingly, classifiable under CTH 2710 12 19 as a 'motor spirit'.

48. These five parameters alone are not relevant for the purpose of determining classification of a product under 'motor spirit' because they can be fulfilled by a large number of other hydrocarbons which may be used as a blend stock but are not recognized as 'motor spirit'. The Department has also not substantiated that Reformate conforms to all the twenty one parameters of 'motor spirit' contemplated under IS 2796. The appellant has in fact pointed out four parameters namely density, E70 (Evaporation at 70 degrees), E100 (Evaporation at 100 Degrees) and aromatic content out of these twenty one parameters prescribed by IS 2796, which are not satisfied by Reformate. Thus, as Reformate does not conform to all the specification of IS 2796, it cannot be said to be usable as a 'motor spirit'.

49. The contention of the learned special counsel appearing for the Department that the product imported by the appellant is heavy Reformate prepared for a specific use as a blend stock for the manufacture of gasoline is not a reason assigned in the show cause notice and, therefore, cannot be considered to support the impugned order.

50. Learned special counsel also contended that Reformate contains products other than Aromatic and Non-Aromatic compounds, such as Benzene, Ethyl Benzene, Ortho-Xylene, Para-Xylene Meta Xylene etc. This submission cannot also be accepted for the reason that the aforesaid compounds are aromatic compounds.

51. Learned special counsel for the Department also placed reliance upon the Customs Tariffs of UAE and Singapore to contend that the international practice of classification of Reformate is under CTH 2710.

52. What needs to be noted is that the Adjudicating Authority has observed that it would not like to place reliance on the classification practice followed in other countries, apart from USA and, therefore, reference to the Customs Tariff of UAE and Singapore would be beyond the scope of the impugned order.

53. Learned special counsel for the Department also contended that the appellant has not adduced any evidence to prove that the flash point of Reformate is not below 25^{o}C.

54. This contention is also not only beyond the scope of the impugned order, but even otherwise, it was for the Revenue to substantiate that the flash point of Reformate was below 25^{o}C.

55. Thus, for all the reasons stated above, Reformate would merit classification under CTH 2707 50 00 and not under CTH 2710 12 19.

56. The impugned order dated 15.10.2020 passed by the Adjudicating Authority, therefore, cannot not be sustained and is set aside. The appeal is, accordingly, allowed.

(Pronounced on **15.12.2021**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

JB