CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87934 of 2024

(Arising out of Order-in-Original No. 65/SA(65)/ADG(ADJ.)/DRI, MUMBAI/2020-21 dated 09.11.2020 passed by the Additional Director General (Adjudication), Mumbai).

N.V. Rambabu **.... Appellant**
No. 39-1-26, Rangayyanaidu Street
Kakinada (Urban)
East Godavari District
Andhra Pradesh.

Versus

Additional Director General (Adjudication) **....Respondent**
2nd Floor, New Custom House,
Ballard Estate
Mumbai – 400 001.

With

Customs Appeal No. 87951 of 2024

(Arising out of Order-in-Original No. 65/SA(65)/ADG(ADJ.)/DRI, MUMBAI/2020-21 dated 09.11.2020 passed by the Additional Director General (Adjudication), Mumbai).

Aditya Marine **.... Appellant**
Road No.1, Ayodhya Nagar,
Kakinada, East Godavari
Andhra Pradesh – 533 033.

Versus

Additional Director General (Adjudication) **....Respondent**
2nd Floor, New Custom House,
Ballard Estate
Mumbai – 400 001.

Appearance:

Shri Chirag Shetty, Advocate for the Appellant
Shri A.K. Shrivastava, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85829-85830/2025

Date of Hearing: 24.01.2025

Date of Decision: 02.06.2025

Per: M.M. PARTHIBAN

These appeals have been filed by M/s Aditya Marine, Kakinada along with Shri N.V. Rambabu, partner of the appellant firm M/s Aditya Marine (herein after, referred together as "the appellants", for short) assailing the Order-in-Original No. 65/SA(65)/ADG(ADJ.)/DRI, MUMBAI/2020-21 dated 09.11.2020 (herein after, referred to as "the impugned order") passed by the Additional Director General (Adjudication), Mumbai.

2.1 The brief facts of the case are that the appellants are engaged in bunkering business including supply of diesel to ships in Dubai. Furthermore, the appellants also used to trade in Gas oil in Dubai on profit sharing basis. The appellants started importing 'Mineral Spirit Grade C' from M/s Vivan FZE, Hamriyah Free Trade Zone, Sharjah starting in the year 2017. The goods were sold as 'Mineral Spirit' by the appellants to Real Fuel Tech and in turn, Real Fuel Tech sold the same to different buyers. The appellants had imported 'Mineral Spirit' by classifying it under Customs Tariff Item (CTI) 2710 1990 and filed Bills of Entry (B/Es) No. 5951436 and 5951437 both dated 12.04.2018 for 4 containers; though B/E was yet to be filed, but IGM No.2192870 dated 19.04.2018 was filed for 6 containers, for a total quantity of 37.520 MTs contained in ten 20 feet containers, exported from United Arab Emirates (UAE). The Directorate of Revenue Intelligence, Hyderabad Zonal Unit (DRI) had collected an intelligence which indicated that the appellants are involved in smuggling of diesel falling under Customs Tariff Item (CTI) 2710 1930 into India, by mis-declaring the goods as 'Mineral Spirit' through two commercial entities viz., Aditya Marine and SAF Petroleums, Kakinada. Further, the intelligence also indicated that as per the import policy prescribed under Schedule I -- Import Policy ITC (HS) 2017, 'Diesel' falling under CTI 2710 1930 is allowed to be imported only by State Trading Enterprises and such imports are allowed only through IOC subject to para 2.20 of FTP, except for the companies who have been granted rights or marketing of transportation fuels in terms of Ministry of Petroleum & Natural Gas Resolution No.P-23015/1/2001-MKT dated 08.03.2002.

2.2 DRI had also gathered intelligence that one Mr. Nusumu Venkata Rambabu was involved in the smuggling of diesel, falling under Chapter Heading CTH 27101930 of the Customs Tariff Act into India by mis-declaring the same as 'Mineral Spirit'. Based on the said intelligence, DRI had intercepted the imported containers at the port of import and conducted detailed investigation. Accordingly, goods imported vide 2 B/Es Nos. 5951436 and 5951437 both dated 12.04.2018 filed by the appellants for 4 containers; and IGM No.2192870 dated 19.04.2018 filed for 6 containers on which the B/Es are yet to be filed, were put on hold. These goods were examined and the representative samples drawn from 2 containers out of the 10 containers were sent to CRCL, Customs House Laboratory, Chennai for testing. The goods imported by the ten B/Es were seized vide Panchnama dated 04.05.2018 and 30.05.2018, under belief that the same being 'Diesel', but were mis-declared as 'Mineral Spirit'. The goods were sent to the Chemical Examiner, CRCL, Customs House Laboratory, Chennai for testing, who vide test report dated 18.04.2018 and dated 07.05.2018, based on testing 6 parameters concluded that 'the samples are other than Mineral Spirit and may be considered as 'Diesel Oil''. The 6 parameters, tested by the CRCL Customs House Laboratory are as follows: (i) Density @ 15 degree C (ii) Flash Point (PMCC) (iii) Kinematic Viscosity @ 40 degree C (iv) Distillation @ 350 degree C [Percentage recovered (v/v)] (v) Percentage of Ash (vi) Acidity-Inorganic.

3.1 Simultaneously, enquires were also conducted by DRI and search operations were carried out at various places. The department arrested the proprietor of appellant's firm and recorded their statements on 17.04.2018 and 18.04.2018. The aforesaid statements were retracted by the appellant Shri N.V. Rambabu before the Magistrate at the time of the hearing of their Bail application. The Learned Additional District & Sessions Judge–cum-Additional Metropolitan Sessions Judge after hearing the rival submissions was pleased to grant bail to the appellant vide order dated 19.05.2018. Statements of some of the Purchasers of the 'Mineral Spirit' were also recorded during the course of investigation by the DRI.

3.2 On completion of investigation, Show Cause Notice (SCN) dated 17.04.2019 were issued to both the entities viz., Aditya Marine and SAF Petroleums, jointly and severally, wherein the Department had proposed to reject the classification of goods imported under the aforesaid 2 live Bills of Entry, and in respect of goods imported in the past vide 21 Bills of Entry, the department had proposed reclassification of the same from 'Mineral Spirit' to 'High Speed Diesel' (HSD) falling under CTH 27101930 of the Tariff Act, on the basis of the evidences: viz.,

(a) the test reports issued by the Customs Laboratory, Chennai relating to the live Bills of Entry,

(b) statements of the appellants,

(c) statements of the purchasers,

(d) invoices issued by Gulf Petrochem FZC to Skynet relating to the sale of ultra low sulfur gas oil/ gas oil recovered from the mail ID of the appellants from the CPU seized by DRI,

(e) diary for the year 2016 recovered from the residential premises of the proprietor of the appellant,

(f) diary of 2018 with the name of Trigel Petrochem Pvt. Ltd. and

(g) marshal quality slip pad recovered from the residential premises of the proprietor of the appellant. The Department also proposed to reject the valuation of the goods i.e., live as well as past imports on the basis that the goods are not 'Mineral Spirit' but 'HSD'.

3.3 The appellants were also called to show cause as to why:

(A) With regard to the live consignment imported vide 2 B/Es and IGM filed:

(i) the declared description of the goods as "Mineral Oil" pertaining to the B/E Nos. 5951436 and 5951437 both dated 12.04.2018 and IGM No.2192870 dated 19.04.2018 should not be rejected and held as "Diesel Oil-High Speed Diesel Oil";

(ii) the declared classification should not be rejected and re-classified under CTH 27101930 of the Customs Tariff Act;

(iii) the value of the goods improperly imported should not be determined as per Rule 9 of the Customs Valuation (Determination of value of imported goods) Rules, 2007;

(iv) the subject seized goods should not be confiscated under Sections 111(d), 111(e),111(f) 111(l) and 111(m) of the Customs Act, 1962 (for short, referred to as the "Act of 1962");

(v) Penalty should not be imposed under Section 112 and Section 114AA of the Act of 1962.

(B) With regard to the consignments imported in the past by the appellants vide 21 B/Es:

(i) the declared description of the goods as 'Mineral Oil' should not be rejected and held as 'Diesel Oil-High Speed Diesel Oil';

(ii) the classification of the imported goods should not be rejected and re-classified as CTH 27101930 of the Tariff Act;

(iii) the value of the goods improperly imported should not be determined as per Rule 9 of the Customs Valuations (Determination of value of imported goods) Rules, 2007;

(iv) the quantity of 1348.96 MTs and 37.52 MTs of goods viz. Diesel Oil-High Speed Diesel Oil valued at Rs.2,45,29,244/- and Rs.6,77,172 should not be held liable for confiscation under Sections 111(d), 111(e), 111(f), 111(l) and 111(m) of the Act of 1962;

(v) the differential duty should not be demanded from them under Section 28(4) of the Act of 1962;
(vi) interest under Section 28AA of the Act of 1962 should not be demanded;

(vii) penalty should not be imposed on them under Section 112, Section 114A, Section 117 and Section 114AA of the Act of 1962.

3.4 The said SCN dated 17.04.2019 was adjudicated by the learned Additional Director General (Adjudication) vide common Order-in-Original No. 65/SA(65)/ADG(ADJ.)/DRI, MUMBAI/2020-21 dated 09.11.2020 confirming all the proposals made in the SCN. Being aggrieved with the impugned order dated 09.11.2020, the appellants have filed these appeals before the Tribunal.

4.1 Learned Advocate for the appellants at the outset submitted that the impugned order dated 09.11.2020, passed as a common order in adjudication of the SCN dated 17.04.2019 against M/s SAF Petroleums and Shri Mohommed Abdul Khader Ansari Vs. ADG (Adjudication) was set aside by the Tribunal in their favour vide Final Order No. A/86141-86142/2023 dated 17.07.2023 [2023 (7) TMI 774 – CESTAT Mumbai]. Therefore, he pleaded that the issue is no more *res integra* and on such basis alone, their appeal shall be allowed.

4.2 Further, learned Advocate also stated that the adjudicating authority had wrongly rejected the classification of the live consignment, on the basis of the test reports dated 16.05.2018 as the same could not be relied upon. The Custom House Laboratory has conducted tests in relation to only 6 parameters out of the required 21 parameters as per IS 1460:2005. Therefore, the conclusion that the imported goods is not 'Mineral Spirts' but 'Diesel Oil' is based on incomplete test report of the sample. It has been held in a number of cases by the Tribunal that incomplete test reports cannot be the basis for rejecting the classification. Some of the cases are:
(i) Deep Water Specific 1 Inc, Transocean Offshore Deepwater Drilling Inc Vs. CC, Vijaywada, 2019 (4) TMI 1704;
(ii) Transocean Discoverer LLC Vs. Commissioner, 2015 (7) TMI 816;
(iii) CGG Marine Vs. Commissioner, 2016 (6) TMI 709;
(iv) Schlumberger Solutions Pvt. Ltd Vs. CC (import), 2016 (11) TMI 170;
(v) Commissioner of Customs Vs. Roshan Petrochem, Final Order No. 40047-40050/2022 dated 04.02.2022.

4.3 In their case, learned Advocate submitted that out of the 6 parameters tested in the aforesaid test report, 3 parameters i.e., Density, Flash Point and Distillation, fulfil the parameters of 'Mineral Spirit', hence even as per the test reports, the goods can be considered as 'Mineral Spirit'. Even assuming, but without admitting that 6 parameters are vital for determining that the goods are HSD, even then the aforesaid test report cannot be relied upon to hold that the Impugned goods are HSD. For goods to be considered as HSD, the minimum distillation percentage as per IS 1460:2005 is 95%. In the present case, the distillation percentage recorded in the test report is 90% i.e., less than 95%. Accordingly, the findings in the test report are prima facie incorrect. He further submitted that he test report of the Customs Laboratory is not conclusive in nature as the same uses the term 'may be' to conclude its observations. Further, he stated that during the cross-examination, Mr. V. Suresh, Joint Director of Customs Laboratory, Chennai had agreed that the results may vary, if a wrong procedure is used for collection of samples and also agreed that he only tested the samples for vital parameters of mineral spirits as well as vital parameters of diesel oil as per IS 1745:1978 and IS 1460:2005 respectively. He also admitted that it was not possible to conduct all tests prescribed under IS 1460:2005 pertaining to Diesel Oil. Therefore, learned Advocate pleaded that the appeals filed by the appellants may be allowed.

5. On the other hand, learned Authorised Representative (AR) appearing for Revenue, reiterated the findings made by the learned ADG in the impugned order and stated that on the basis of the detailed investigation and findings made, the impugned order is sustainable. Therefore, he stated that the appeals filed by the appellants may be dismissed.

6. We have heard both sides, examined the case records and the additional submissions made during the course of hearing, paper books submitted by both sides.

7. The issue involved herein is to decide the classification of goods imported by the appellants as to whether, the same merits classification under Customs Tariff Heading (CTI) 2710 1990 described as 'Mineral Spirit' as claimed by the appellants; or, is it classifiable under CTI 2710 1930 described as 'High Speed Diesel Oil (HSD)' as determined in the impugned order, for deciding on appropriate levy of customs duty on the basis of

appropriate valuation of goods and to decide whether the restrictions/ conditions for import as per ITC-HS of the FTP are applicable on the impugned goods.

8.1 On perusal of case file, certain undisputed facts as highlighted by the Advocate for the appellant and not disputed by AR for the Revenue are summarised herein below:

(i) Mineral Spirit is freely importable and classifiable under CTH 27101990 of the Tariff Act.

(ii) Test report dated 16.05.2018 issued for the live consignment only tested 6 out of the 21 parameters prescribed under IS 1460:2005 for concluding that the goods may be considered as Diesel oil. The test reports uses the term 'may be' while concluding the goods to be Diesel Oil.

(iii) The test of live consignments was conducted by Customs Laboratory, Chennai prior to 07.06.2019 when they did not have equipment/facility for conducting test for HSD, as per the Board Circular No. 43/2017 dated 16.11.2017 read with Board circular No. 15/2019 dated 07.6.2019.

(iv) For the past imports, goods were assessed and cleared from the Customs control at the port of import on the basis of the test reports which categorically state that the imported goods are nothing but mineral spirit and the said test reports have neither been disputed in the SCN nor by the adjudicating authority or by the Learned AR for the Revenue.

(v) The statements of the proprietor of the appellant and other noticees were retracted immediately before the Magistrate during hearing of their bail application and as such these statements are not evidences for confirmation of the adjudged demands by the adjudicating authority.

Since the above facts/documents have been relied upon in the impugned order, in support of the findings on mis-classification of goods as 'Mineral Sprit' instead of 'High Speed Diesel', it will be important for us to see whether the same can be held as valid evidences for coming to a conclusion on the appropriate classification of the goods.

8.2 In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

*"**Section 12. Dutiable goods.** -*

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be

specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

"Section 1. Short title, extent and commencement. *-*

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Duties specified in the Schedules to be levied. *-*

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

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THE FIRST SCHEDULE – IMPORT TARIFF
(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which *has "-". where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".*

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,—

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

8.3 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the

Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

8.4 In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 2710 1990 described as 'Mineral Spirit' or CTI 2710 1930 described as 'Diesel Oil-High Speed Diesel oil (HSD)' of the First Schedule to the Customs Tariff Act. Further, in terms of supplementary note to Chapter 27, statutory definition or meaning has been given for HSD as follows:

"CHAPTER 27
Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

Notes :

xxx xxx xxx xxx

Supplementary Note :

In this Chapter, reference to any standard of the Bureau of Indian Standards refers to the last published version of that standard.
Illustration : IS 1459 refers to IS 1459: 2018 and not to IS 1459: 1974.

In this Chapter, the following expressions have the meanings hereby assigned to them :

(a).....
(e) "high speed diesel (HSD)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS: 1460:2005;"

In terms of the above requirements of supplementary note (e) for classifying imported goods as HSD and on perusal of the case records, we find that in order to determine the characteristics of imported goods whether these are 'Mineral Spirit' or 'Gas Oil or Diesel Oil or HSD', certain standard of measures as has been prescribed by Bureau of Indian Standards (BIS) is required to be fulfilled. BIS standards provide for product specifications on the basis of which the same can be classified under a particular entry. The disputed entries in the present case are of 'Mineral Spirit' and 'High Speed Diesel Oil'. BIS have prescribed Indian Standard for 'Mineral Spirit' as IS 1745:1978 and the same provides for 9 parameters. Once all parameters are fulfilled, the product can be called as 'Mineral Spirit'. Similarly, BIS have also prescribed Indian Standard for HSD as IS 1460:2005 providing for 21 parameters to be tested. Once all the parameters are tested and found as per the prescribed standards, the product can be classified as HSD.

8.5 In the present case, for live consignments, test reports are issued by the Customs Laboratory, Chennai. For example in the test report dated 16.05.2018, after testing 6 parameters has concluded that the goods imported by the appellants may be considered as Diesel Oil. The extract of the said report is as follows:

"REPORT:

The sample is in the form of light yellow coloured liquid. It is composed of mineral hydrocarbon oil, having the following characteristics:

1.	*Density@15°C*	*-*	*0.8350 g/cc*
2.	*Flash Point (PMCC)*	*-*	*>66°C*
3.	*Kinematic viscosity@40°C*	*-*	*3.5 CST*
4.	*Distillation at 350°C % recovered (v/v)*	*-*	*90%*
5.	*% Ash*	*-*	*Nil*
6.	*Acidity – inorganic*	*-*	*NIL*

Based on the above tested parameters, the sample under reference is other than Mineral Spirit. The sample may be considered as Diesel oil.

Sealed remnant returned.

Yours faithfully,
Sd.
(V.SURESH)
JOINT DIRECTOR"

8.6 The extract of the various parameters prescribed under the BIS Standard *IS:1460:2005* for determining a product as HSD or Diesel Oil, is extracted and given below:

IS 1460 : 2005 AUTOMOTIVE DIESEL FUEL — SPECIFICATION

ANNEX C
(Foreword)
EURO IV/BHARAT STAGE IV EMISSION NORMS COMPLIANT — SPECIFICATION FOR AUTOMOTIVE DIESEL FUEL

Sl No.	*Characteristics*	*Requirements*	*Test Method [P:] of IS 1448/ISO/ASTM*
(1)	(2)	(3)	(4)
i)	Acidity, inorganic	Nil	[P : 2]
ii)	Acidity, total, mg of KOH/g, *Max*	To report	[P : 2]
iii)	Ash, percent by mass, *Max*	0.01	[P : 4]/ISO 6245
iv)	Carbon residue (Ramsbottom) on 10 percent residue[1], percent by mass, *Max*	0.30	[P : 8]/ISO 10370
v)	Cetane number, *Min*	51[2]	[P : 9]/ISO 5165
vi)	Cetane index, *Min*	46[2]	D 4737/ISO 4264
vii)	Pour point[3], *Max*:		[P : 10]/D 5949 or D 5950 or D 5985
	a) Winter	3°C	
	b) Summer	15°C	
viii)	Copper strip corrosion for 3 h at 50°C	Not worse than No. 1	[P : 15]/ISO 2160
ix)	Distillation, percent *v/v*, recovered at 360°C, *Min*	95	[P : 18]/ISO 3405
x)	Flash point*:		
	a) Abel, °C, *Min*	35	[P : 20]
	b) Pensky Martens closed cup[4], °C, *Min*	66	[P : 21]
xi)	Kinematic viscosity, cSt, at 40°C	2.0 to 4.5	[P : 25]/ISO 3104
xii)	Sediment, percent by mass, *Max*	–	[P : 30]
xiii)	Total contamination, mg/kg, *Max*	24	EN 12662
xiv)	Density at 15°C[5], kg/m^3	820-845	[P : 16] or [P : 32][6]/D 4052/ ISO 3675 or ISO 12185
xv)	Total sulphur[7], mg/kg, *Max*	50	ISO 20846 or ISO 20847 or ISO 20884/ [P : 83]/D 5453/ D 2622/D 4294/[P : 34][8]
xvi)	Water content, mg/kg, *Max*	200	ISO 12937
xvii)	Cold Filter Plugging Point (CFPP)[3], *Max*:		[P : 110]/D 6371
	a) Winter	6°C	
	b) Summer	18°C	
xviii)	Oxidation stability[9], g/m^3, *Max*	25	ISO 12205 or ASTM D 2274[9]
xix)	Polycyclic Aromatic Hydrocarbon (PAH), percent by mass, *Max*	11	IP 391 or EN 12916
xx)	Lubricity corrected wear scar diameter (wsd 1.4) at 60°C, microns, *Max*	460	ISO 12156-1/Cor 1
xxi)	Oxygen content[10], percent by mass, *Max*	0.6	Annex B

8.7 On comparison of the legal requirement as per supplementary note (e) and BIS standards, and the test report given by the Customs laboratory, it is quite clear that firstly all the 21 test parameters which are required to be done for establishing the fact that a product is 'Diesel Oil/ HSD' have not been tested and reported by the Customs Laboratory. Further, one of the determining parameter i.e., distillation percentage recovered at 360°C minimum at 95% has not been fulfilled, as test report dated 16.05.2018 state that it is only 90%. Therefore, we are of the prima facie view that on the basis of test report provided by the Customs Laboratory alone, the impugned order revising the classification of impugned goods, confirming the adjudged demands and consequent confiscation of imported goods, imposition of penalty on the appellants is not legally sustainable.

9. In this regard, we find that the Hon'ble Supreme Court of India, in an identical set of facts, in Special Leave Petition (Civil) No. 6470 of 2022 with S.L.P. (Civil) Nos. 6472 of 2022 and 32623 of 2024, in the case of *Gastrade International Vs. Commissioner of Customs, Kandla* vide judgement delivered on 28.03.2025 have held that since oil in question does not fully satisfy the specifications of HSD in terms of IS 1460:2005, the correct test to determine the classification of imported goods being most akin to HSD or not, have not been applied. The extract of the relevant paragraphs in said judgement is given below:

> *"2. The issue involved in this batch of appeals is, whether, the imported goods is to be treated as Base Oil as claimed by the appellants or High Speed Diesel (HSD) as determined by the Customs Authorities, which is contested by the appellants. If the product is treated as HSD, it would be a prohibited item that could not have been imported by a private entity other than a State Trading Enterprise, in which event it would be liable to be confiscated and penalty be imposed on the appellant importers.*
>
> *3. The Commissioner of Customs, the Adjudicating Authority held vide order dated 03.12.2019 that the said product is not Base Oil, but HSD and accordingly, ordered confiscation of the same apart from levying penalties. On the other hand, the appellate authority, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held the same to be Base Oil and not HSD, thus reversing the decision of the Adjudicating Authority. On being challenged before the High Court of Gujarat, by the Customs Authorities, the High Court reversed the decision of the Appellate Tribunal and affirmed the decision of the Adjudicating Authority holding the imported goods to be HSD.*
>
> *xxx xxx xxx xxx*
>
> *79. In the present case, what we have observed is that the High Court, on the basis of the laboratory tests, more particularly the third test conducted by IOCL, Mumbai Laboratory and the opinion of the expert, namely Dr. Gobind Singh, and by observing that it is not necessary to establish on the part of the Revenue to prove the fact with mathematical precision, held that the Department has been able to establish its case on the basis of preponderance of probability that the imported oil was not Base Oil but HSD, which could not have been imported by the appellants and upheld the order of the Adjudicating Authority.*
>
> *80. However, this analysis and conclusions arrived at by the High Court are problematic for the following reasons:*
> *(i) There was no expert opinion at all that the samples which were tested were indeed of HSD.*

(ii) The opinion as contained in the test results was merely mentioning about conformity of the samples with certain specifications of IS 1460:2005 and not about conformity with all the specifications.

(iii) Once the rule making authority had clearly delineated the requisite parameters for ascertaining the nature of the goods/substance, compliance/conformity with the stated parameters would be the requirement.

(iv) There are 21 parameters laid down under IS 1460:2005 and none of the tests have shown compliance with all these parameters. The last and third test have reported compliance with 14 parameters, though as discussed above in respect of 2 of the aforesaid 14 parameters, namely, flash point and distillation range, the same are not in conformity. Thus, it cannot be said there is substantial compliance with the parameters of IS 1460:2005.

(v) Flash point, though may not be the most important parameter, yet, its importance in determining the nature of the Automotive oil cannot be ignored. Flash point being a very important criteria to classify petroleum products, non-compliance of the samples on this parameter would make the classification doubtful.

(vi) Evasive answers and non-clarification on certain aspects of the flash point of the samples by the expert Dr. Gobind Singh certainly cast a serious doubt on the samples being identified as that of HSD. The expert himself also has not said that the samples are of HSD except for stating that the samples conform to certain specifications of the IS 1460:2005.

(vii) In view of the ambiguity and lack of clarity in the expert opinion/laboratory test results, it would be unsafe to draw the inference that the Department had been able to prove their case even by applying the test of preponderance of probability merely because the samples conform to certain parameters.

(viii) If the Department with all the resources at their command and access to various laboratory facilities could not get the samples tested in respect of all the 21 parameters, expecting the assesses/appellants to get the samples tested to show that these do not conform the specifications and are not HSD does not appear to be reasonable. Thus, shifting of onus to the assesses to prove otherwise appears to be unreasonable and meaningless.

(ix) The burden was not on the assessees to demonstrate that non-conformity with the remaining 8 parameters would vitiate the conclusion that the samples were of HSD.

81. The aforesaid difficulties in our opinion can be overcome, if we apply the test of "most akin" as contemplated under Rule 4 of the General Rules for Interpretation referred to above.

82. The real test for classification, according to us, would be as to whether any goods or substance in question is "most akin" or bears the closest resemblance or similarity to any of the specified goods mentioned under the Headings and relative Section or Chapter Notes under the Tariff Act, and not by applying the test of preponderance of probability.

xxx xxx xxx xxx

85. The oil in question does not fully satisfy the specifications of HSD in terms of IS 1460:2005. Hence, the correct test will be whether the oil/article in issue is most akin to HSD or not for which appropriate scientific evidence in the form of laboratory test reports and opinion of the scientific experts will be of utmost relevance.

86. For the reasons discussed above, as the results of the test are inconclusive, so being the opinion of the expert, we are unable to agree with the conclusion of the High Court. Under the circumstances, the option before this Court is, either to send the imported product again for further tests and obtain the expert opinion atleast to the effect that the imported product is 'most akin' to HSD even if it does not fulfil all the parameters under IS 1460:2005 or give a benefit of doubt to the appellants and close the proceedings against the appellants by quashing the impugned orders, since the Revenue/Customs Authority cannot take action against the appellants based on inconclusive evidence.

87. As far as the first option is concerned, as noted above, though the questioned product was sent for laboratory test in three premier laboratories, these laboratories did not give conclusive finding that the product is indeed HSD and the expert also could not give a definitive opinion. Further after such a long passage of time we are doubtful whether the oil in question would still retain many of the characteristics and properties which were present at the time of import for an effective testing as aforesaid. Hence, we do not consider it appropriate to direct further testing of the imported product/oil at this point of time and such a retest may be rendered a futile exercise. In our opinion, in the facts and circumstances, it would be more appropriate to give the benefit of doubt to the appellants because of the inconclusive evidence, rather than directing for a fresh testing and seeking fresh expert opinion, as a one-time measure.

88. Before parting with these appeals, we deem it necessary to issue certain ancillary directions. We are of the view that non-examination of any product/article/goods on all the parameters laid down by the customs authority will always lead to uncertainty and doubt, which are required to be removed when dealing with confiscatory proceedings. The genesis of the prolonged litigation lies in the nonavailability of adequate facilities for testing all the parameters provided under Bureau of Indian Standard Specifications. Such a dispute could have been avoided had the testing facilities for all the parameters been available. Since the Authorities themselves had laid down the specific parameters for classification of goods, as in the present case by referring to classification under IS 1460:2005, it is incumbent upon the Authorities to ensure that necessary facilities are made available for testing of any disputed article on all these parameters as otherwise, laying down such parameters would be meaningless. Hence, to avoid these difficulties, doubts and uncertainties in future, the respondents are directed to ensure that proper facilities are made available in the appropriate laboratories for undertaking tests for all these parameters or at least for those parameters which the Authorities consider are of essential character to satisfy the "most akin" test without which the article in issue cannot be properly classified. Accordingly, we direct the respondents to take necessary steps in this regard within a period of six months for proper testing in all the parameters in future.

89. For the reasons discussed above, we allow these appeals by setting aside the impugned common judgment and order dated 20.01.2022 passed in Revenue Tax Appeal No. 297 of 2021, Revenue Tax Appeal No. 298 of 2021 and Revenue Tax Appeal No. 299 of 2021.

90. Appeals are accordingly disposed of in the aforesaid terms."

10. We further find that on the common SCN dated 17.04.2019 and the impugned order dated 09.11.2020, this Tribunal in the case of *SAF Petroleums* (supra) have examined the various evidences relied upon in the SCN, test reports, statements given by appellants etc., in greater details. After detailed discussion on each of these aspects, the Tribunal have held that the none of the evidences relied upon by the department, to allege the mis-classification and under valuation resorted to by the appellants, stand the scrutiny of law and have set aside the impugned order dated 09.11.2020. The relevant paragraphs of the said Final order

> *"20. In any event, for a product to be considered as Diesel Oil, the same requires to fulfil all 21 parameters mentioned in IS 1460:2005. In the present case, the Custom House Laboratory vide aforesaid test reports have tested only 6 parameters. Hence, in other words, the Custom House Laboratory has not tested all the 21 parameters required in terms of IS 1460: 2005. We are of the view that without testing all the aforesaid parameters, the test reports cannot be considered to reclassify the imported goods as Diesel Oil. In this context, the Tribunal in the following cases have consistently taken a view that all the parameters stated under the Indian Standard needs to be tested for goods to be considered under that particular heading:*
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> *xxx xxx xxx xxx*
>
> *22. In view of the above, the case of the department for the live consignment and for the past consignment should fail on the above ground itself, as the primary evidence in the form of test reports cannot be relied upon by the department as held in the preceding paragraphs. With respect to the goods imported by 51 bills of entry, the same in any event are well supported by independent test reports, which conclusively prove that the goods are Mineral Spirit. Neither have the department challenged the contents of the said Test Report nor have they provided any contrary test report to the one produced by the Appellant. In view thereof, the Appeals of the Appellants deserve to be allowed on the aforesaid ground alone. It is settled law that test report of live consignment cannot be used to reject the classification of past import. In this Context, Tribunal in the following cases have consistently held that test report of live bill of entry cannot be used to reject the classification of past import, which after due assessment by the proper officer have been cleared for home consumption:*
>
> *xxx xxx xxx xxx*
>
> *23. Having held the above, it is important to deal with the other evidence relied upon by the Adjudicating authority in the form of statements, emails, diary entries, invoices of Gulf Petrochem issued to Skynet, diary for the year 2018, Marshal Quality slip pad to confirm that charge of mis-classification on both live and past consignment. We would like to note that at the time of hearing of appeal, the department was permitted to counter the arguments of the counsel for the Appellants on undisputed facts. In the reply filed by the Learned AR apart from test reports, cross-examination of Joint director, RTI reply from CPIO, he has placed reliance on statements of buyer, proprietor of the Appellant, co-Appellant and cash book*

maintained by few suppliers to support the order passed by Adjudicating authority. We have already held that test reports, cross-examination of Joint director, RTI reply from CPIO cannot be relied upon to confirm the charge of misclassification. In relation to the other evidences, we note that the statements of proprietor of the Appellant and his son (co-appellant) were retracted by them on the first available opportunity before the Magistrate, which is evident from the respective bail orders. Hence, these retracted statements cannot form the basis to confirm the charge of mis-classification. The law is well settled that merely because an assessee has, under the stress of investigation, signed a statement admitting tax liability, it cannot lead to self- assessment or self ascertainment. In the case of Vinod Solanki [2009 (223) E.L.T. 157 (S.C.)], the Hon'ble Supreme Court has ruled that the initial burden to prove that the confession was voluntary is upon the department and that evidence brought by confession if retracted, must be corroborated by other independent and cogent evidence. The Hon'ble Madras High Court in the case of Senior Intelligence Officer, Director General of Goods and Services Tax Intelligence v Shri Nandi Dhall Mills India Private Limited 2022 (3) TMI 444 (Mad) held that merely because an assessee has, under the stress of investigation, signed a statement admitting tax liability and has also made a few payments as per the statement, cannot lead to self-assessment or self-ascertainment. Though, the judgement was pronounced in respect of GST, it goes to indicate that acceptance by the appellant during the course of recording the statement is not just enough and the same has to be confirmed by adducing independently corroborative evidence. The whole case cannot rest simply on the basis of a retracted statement. In the present case, we have perused the invoices on the basis of which the goods were cleared by the Appellants to its purchasers on payment of GST. The same have shown the goods as 'Mineral spirit' and the department has accepted the same. Even the purchasers who appeared for cross examination have stated that their statement were recorded in duress and the goods purchased from Appellant were Mineral Spirit and sold as mineral spirit only. It is in fact the Appellants, who have produced corroborative evidence showing clearance of goods as Mineral Spirit. It was not open for the adjudicating authority to simply brush aside the retraction and follow the retracted statements without any corroborative evidence.

24. We also find merits in the arguments of the Appellants that the adjudicating authority has erred in the impugned order by placing reliance on the invoices of Gulf Petrochem FZC to hold that the goods imported under live consignments were not mineral spirit but HSD. We find that these invoices cannot be relied upon to hold that the goods were mis-declared by the Appellants. On perusal of the records, we find that the aforesaid invoices were printed out from email id of safpetro555@gmail.com from the computer seized by the DRI during investigation. We find that the foreign supplier of the Appellants is Skynet and the remittance for goods supplied to the Appellants was made to Skynet in Singapore as is evident from their invoices submitted by the Learned Advocate during the course of hearing. However, all the invoices that were retrieved from the aforesaid mail id were issued by Gulf Petrochem FZC to Skynet for the sale of Gas Oil or Ultra Low Sulfar gas oil. On perusal of the records, we find that there is no invoice relating to sale of these 'Gas Oil' or 'Ultra Low Sulfur gas oil' from Skynet to Appellants nor is there any invoice from Skynet to Appellants for sale of HSD. The

Department neither questioned Gulf Petrochem FZC nor Skynet to ascertain as to whether they supplied 'Gas oil' or Ultra Low Sulfur gas oil' to the Appellants instead of Mineral Spirit. We are of the view that in absence of any invoice from Skynet showing sale of goods other than Mineral Spirit and also in absence of aforesaid supplier being questioned, the invoices issued by Gulf Petrochem FZC cannot be relied upon to hold mis-declaration and consequent confirmation of the duty demand.

25. Furthermore, the invoices issued by Gulf Petrochem FZC relates to period prior to 13.04.2018 i.e., date prior to filing of live bills of entry. Hence, the said invoices cannot relate to the live consignments as all the invoices were issued prior to 13.04.2018. With respect to past consignments, we have noted above that the same were assessed and cleared on the strength of proper certificates/test reports certifying the goods to be Mineral Spirit. The said reports have not been questioned by the department in the SCN or the impugned order and therefore the question of Appellant's importing any other goods other than Mineral Spirit in the 51 bills of entry does not arise. In any event, the invoices in question are for 'Ultra Low Sulfur gas oil; or 'gas oil'. Adjudication authority in the impugned order in para 5.6.8 has accepted that 'Ultra Low Sulfur gas oil; or 'gas oil' is not the same as 'HSD'. Hence, for this reason as well, we are of the view that no reliance can be placed on the aforesaid invoices for demanding duty.

26. On reliance placed by the adjudicating authority on the diary of 2016 as it stated Dubai payment/Dubai hawala to hold that the Appellants received HSD from Dubai, on perusal of the said dairy we find that the same nowhere mentions about receipt or sale of HSD by the Appellants. Furthermore, the foreign supplier of the Appellants is Skynet and as per their invoices, all payments were made in favour of the supplier in Singapore and not Dubai. Hence, we are of the opinion that said Diary cannot be relied upon to dispute the classification of goods. We would like to add here that the Learned AR during the hearing had agreed that the said diary cannot be relied upon and hence did not place any reliance on it. Similarly, reliance placed on marshal slip pad diary belonging to Trigel Petrochem P Ltd. will not further the case of the department as the same does not mention anything about purchase of HSD by the Appellants.

27. Based on the aforesaid discussions, we hold that classification of goods imported under the 3 live bills of entry and 51 past Bills of Entry have been wrongly rejected.

28. Having held the above, the question of valuation will have to be allowed in favour of the Appellant as the same was disturbed by the department on the ground that goods imported were Diesel Oil and not Mineral Spirit.

29. In view of the above discussions and analysis, it is made clear that none of the evidences relied upon by the department, to allege the mis-classification and under valuation resorted to by the appellants, stand the scrutiny of Law. We are of the considered opinion that the department failed to substantiate the allegations by cogent and legally admissible evidences. Hence, under the facts and in the circumstances of the case, we have no hesitation in allowing the appeals in favour of the appellants."

11. In view of the foregoing discussions and analysis, and on the basis of the Final order No. A/86141-86142/2023 dated 17.07.2023 passed by the Tribunal in the very same impugned order dated 09.11.2020 in the case of other co-noticees and on the basis of judgement of the Hon'ble Supreme Court, we are of the considered view that the impugned order dated 09.11.2020 revising the classification of imported goods under CTI 2710 1930 and confirmation of adjudged demands, confiscation of goods and imposition of penalties on the appellants does not stand the scrutiny of law.

12. In the result, the impugned order dated 09.11.2020 passed by the learned adjudicating authority is set aside and the appeals filed by the appellants are allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in open court on 02.06.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha