CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85793 of 2024

(Arising out of Order-in-Original No. 226/2023-24/Commr./Gr. I&IA/NS-I/CAC/JNCH dated 07.12.2024 passed by the Principal Commissioner of Customs, NS-I, JNCH, Nhava Sheva, Taluka-Uran, District Raigad, Maharashtra).

GP Petroleums Limited **.... Appellants**
803, 804, Ackruti Star
8th Floor, MIDC Central Road
MIDC, Andheri (East)
Mumbai – 400 093.

Versus

Principal Commissioner of Customs (NS-I) **...... Respondent**
Jawaharlal Nehru Customs House (JNCH)
Nhava Sheva
Taluka-Uran, District Raigad,
Maharashtra – 400 707.

Appearance:

Shri Prakash Shah, Senior Advocate a/w S/Shri Suyog Bhave, Ananta Khandait, Advocates for the Appellant

Shri Deepak Sharma, 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/85868/2025

Date of Hearing: 07.02.2025
Date of Decision: 06.06.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s GP Petroleums Limited, Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Original No. 226/ 2023-24/ Commr./ Gr.I&IA/ NS-I/ CAC/ JNCH dated 07.12.2024 (herein after, referred to as "the impugned order") passed by the Principal Commissioner of Customs, NS-I, JNCH, Nhava Sheva, Taluka-Uran, District Raigad, Maharashtra – 400 707.

2.1 The brief facts of the case are that the appellants are engaged in manufacturing and trading of Rubber Process Oil (RPO), by blending the RPO with base oil and then selling it to their customers, depending upon the requirements of their customers. The basic raw material is RPO. For the above purpose, the appellants had imported RPO through various ports such as JNPT, Nhava Sheva; Pipavav and Mundra sea ports. During the disputed period i.e. from 19.01.2017 to 09.08.2019, the appellants had imported 'Rubber Processing Oil' under 79 Bills of Entry (B/Es) at the above ports by classifying it under Customs Tariff Item (CTI) 2707 9900 and claimed concessional rate of Basic Customs Duty (BCD) at 2.5% under Serial No. 121E of Notification No. 12/2012-Customd dated 17.03.2012 and Serial No. 143 of Notification No. 50/2017-Customs dated 30.06.2017. Directorate of Revenue Intelligence, Mumbai Zonal Unit (DRI) had developed an intelligence that the appellants had mis-declared the classification of the imported RPO and had alleged that such imported goods are correctly classifiable under CTH 2713 9000 with applicable BCD at the rate of 5% vide Sr. No. 130 of Notification No.12/2012-Customs dated 17.03.2012 and Sr. No. 147 of Notification No.50/2017-Customs dated 30.06.2017. After conducting detailed investigation including examination of various documents, test reports relating to such imports, DRI had issued Show Cause Notice (SCN) No. DRI/MZU/CI/INT-164/2019 dated 23.02.2021, for classification of imported RPO under CTH 2713 9000, demanding differential duty under Section 28(4) of the Customs Act, 1962 both on finally assessed and provisionally assessed imported goods along with interest; confiscation of goods under Section 111(m) ibid and for imposition of penalty on the appellants under Sections 112(a), 114A ibid.

2.2 The details of these B/Es; duty paid by the appellants and the differential duty payable as confirmed in impugned order are given in gist as follows:

Sr. No.	**Seaport of import**	**No. of B/Es**	**Final/ Provi-sional**	**Assessable value in Rs.**	**Duty payable as determined**	**Differential Duty confirmed in impugned order**
				(Amount in Rs.)		
1	JNCH, Nhava Sheva	60	Final	37,66,67,950	9,28,10,038	1,18,32,538
			Provnl.	13,12,71,935	3,29,52,721	40,07,627
		Total		50,79,39,885	12,57,62,759	-
	Less Duty paid at Concessional rate				10,99,22,594	-
	Total duty demanded for imports in JNCH seaport					**1,58,40,165**
2	Pipava Port	17	Final	32,81,38,366	7,99,76,299	1,04,55,696
			Provnl.	7,47,79,885	1,83,13,594	24,26,608
		Total		40,29,18,251	9,82,89,893	-
	Less Duty paid at Concessional rate				8,54,07,589	-
	Total duty demanded for imports in Pipava seaport					**1,28,82,304**
3	Mundra Port	2	Final	85,60,855	21,49,001	
		Less Duty paid@Concessional rate 18,87,645				
		Total duty demanded for imports in Mundra				-
	in Mundra seaport					**2,61,356**
	Total duty confirmed in O-in-O					**2,89,83,825**

2.3 The said SCN dated 23.02.2021 was assigned for adjudication as Common Adjudicating Authority by the Central Board of Indirect Taxes & Customs (CBIC) under clause (a) of section 152 *ibid* vide Notification No. 24/2021-Customs (N.T./CAA/DRI) dated 17.03.2021 for adjudication of the present case by the Principal Commissioner of Customs, NS-I, Nhava Sheva. Accordingly, the adjudicating authority had passed the impugned order 07.12.2024 by classifying the impugned goods under CTI 2713 9000 and rejecting the classification adopted by the appellants under CTI 2707 9900 and denying the concessional duty/exemption claimed by them. Further, in the said impugned order, the learned adjudicating authority had re-assessed the finally assessed B/Es and provisionally assessed B/Es separately; he had also confirmed the differential duty demanded in the SCN dated 23.02.2021, under Section 28(4) of the Customs Act, 1962 by invoking the extended period for the finally assessed B/Es for an amount of Rs. 2,25,49,590/-and under Section 18 ibid for provisionally assessed B/Es for an amount of Rs.64,34,234/-. He further confiscated the impugned goods under Section 111(m) ibid and imposed Redemption fine of Rs.10,00,00,000/- in lieu of confiscation goods under Section 125(1) ibid and also imposed penalties on the appellants under Section 112(a) ibid. Furthermore, he had also appropriated Rs.54,83,549/- deposited by the appellants during the course of investigation against the above confirmation of the demands. Being aggrieved with the impugned order dated 07.12.2024, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate for the appellants at the outset submitted that the impugned order dated 07.12.2024, passed by the Common Adjudicating Authority in adjudication of the SCN dated 23.02.2021 had been passed beyond the statutory time limit prescribed under the Section 28 (9) of the Customs Act, 1962. He further explained that the prescribed time limit of one year for adjudication of the case expired on 22.02.2022; though it was claimed by the Department that the SCN was kept under call book category on the basis of instructions No.4/2021-Customs dated 17.03.2021 issued by the Ministry of Finance, learned Advocate stated that such instructions had directed field formations to keep only a particular SCN as pending and it does not apply to all cases. Further, the SCN dated 23.02.2021 was removed from the call book category on 31.03.2022; however, first personal hearing was granted to them on 14.03.2023, i.e., after more than 11 months. Furthermore, the order dated 20.03.2023 given by the Chief Commissioner of Customs extending the time limit to adjudicate the SCN up to 30.03.2024 issued under Section 28(9)(b) ibid, had come to the notice of the appellants only from the impugned order, and they were never served with such order providing extension of time for adjudication. Even an opportunity for personal hearing before granting such an extension of time has not been given to the appellants, which is clearly in breach of principles of natural justice. Therefore, learned advocate submitted that the SCN has not been adjudicated in terms of the legal provisions of Section 28 ibid, and thus the same is not sustainable on this ground alone. In this regard, learned advocate had relied upon the following judgements passed by the Hon'ble High Courts.

(i) *Shri Ram Agro Chemicals Pvt. Ltd. Vs. Union of India – 2019 SCC online P&H 4918*
(ii) A.B. Sugars Limited Vs. State of Punjab 2009 SCC Online P&H 7974

4.2 Further, learned Advocate also stated that the adjudicating authority had wrongly rejected the classification in respect of disputed imports, on the basis of the previous test reports submitted by the appellants during investigation, on the basis that the same quality of goods which have been tested earlier, have been imported in the present consignments. Further, the adjudicating authority had discarded the test reports submitted by the appellants which were favourable to them, and had incorrectly came to the conclusion that the imported RPO is having aromatic constituents less than 50% by weight. Learned Advocate submitted that out of total 79 B/Es under dispute, the appellants had carried out in-house testing of 64 B/Es, in which the aromatic constituents by weight are indicated as more than 50% and such test reports have been submitted during the investigation, and adjudication. An illustrative case of such B/E and test report has also been provided as part of the appeal papers in the form of Annexure-1. Therefore, he stated that these facts have not been properly considered by the adjudicating authority.

4.3 Learned Advocate further submitted that in terms of Chapter Note 2 to Chapter 27, similar oils and products with the 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, would be specifically included under CTH 2707. Therefore, he claimed that the classification adopted by them in the disputed B/Es are correctly declared. In this regard, he placed reliance on the following:

(i) CBIC Circular No.1189 dated 13.02.1989

(ii) Aspam Petro energy Pvt. Ltd. Vs. Commissioner of Customs, Kandla – 2024 (389) E.L.T. 103 (Tri. – Ahmd.)

(iii) Amit Petrolubes Pvt. Ltd. Vs. Commissioner of Customs, Kandla – 2023 (12) E.L.T. 796 (Tri. – Ahmd.)

4.4 Learned Advocate submitted that the entire case of the Department is based on assumptions drawn on the basis of 10 departmental test reports purportedly obtained by the officers of the DRI from the customs laboratory at Nhava Sheva and Kandla. The Department had reclassified the imported goods under CTI 2713 9000 on the basis of aromatic contents being less than 50% by weight and Aniline point. In these 10 test reports, the aromatic contents have not been mentioned in 7 reports, and the Aniline point is less than 55°C in 7 reports. Therefore, learned advocate submitted that such test reports cannot be relied on for extrapolating such results to apply in respect of all the disputed 79 B/Es. He further stated that it is a settled position in law that the test report can be the basis of classification only for the products for which samples were drawn and such a report cannot be the basis for some other goods, on which no samples were drawn, and the specific test results/reports have not been obtained. This regard they relied upon the following judgements:

(i) Shalimar Paints Ltd. Vs. Commissioner of Central Excise, Calcutta – 2001 (134) E.L.T. 285 (Tri. – Kolkata) affirmed by Hon'ble Supreme Court – 2002 (145) E.L.T. A242 (S.C.)

(ii) Rajkamal Industrial Pvt. Ltd. Vs. Commissioner of Customs, Kandla – 2024 (2) TMI. 314 (Tri. – Ahmd.)

4.5 In their case, learned Advocate submitted that the dispute in classification is arising out of interpretation of law; and that there is no case of any positive act of suppression, collusion, wilful misstatement etc. established by the investigation. Therefore, he submitted that the extended period of limitation under Section 28(4) ibid does not apply to the present case and imposition of redemption fine consequent to confiscation and imposition of penalty on the appellants in the impugned order is not sustainable. In view of the above, he pleaded that on the above basis, their appeal may be allowed.

5. On the other hand, learned Authorised Representative (AR) appearing for Revenue, reiterated the findings made by the learned Principal Commissioner of Customs 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 following:

(i) determine the classification of goods imported by the appellants as to whether, the same merits classification under Customs Tariff Heading (CTI) 2707 9900 described as 'Rubber Processing Oil (RPO)' as claimed by the appellants; or, is it classifiable under CTI 2713 9000 described as 'Other residues of Petroleum oils or oils obtained from bituminous minerals' as determined in the impugned order, for deciding on appropriate levy of customs duty on the basis of appropriate classification of goods; and

(ii) to decide whether confirmation of differential duty demanded under Section 28(4) of the Customs Act, 1962 is legally sustainable: and

(iii) to decide whether confiscation of impugned goods; imposition of redemption fine in lieu of such confiscation and consequent imposition of penalty on the appellants are legally sustainable.

The disputed period involved in this case is from 19.01.2017 to 09.08.2019.

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) The appellants M/s G.P. Petroleums Limited is a limited company with its Managing Directors being Shri Ayush Goel (Promoter Director) and Smt. Deepa Goel (Promoter Director), and the other directors keep on changing with some independent directors. M/s Sah Petroleums Ltd., was taken over by the above promoters on 01.08.2014 and after few months in April, 2015, name of the said the company was changed to/s G.P. Petroleums Limited. The said company continues to manufacture lubricants, greases and rubber process oil under Vasai factory.

(ii) Shri Jagdish Govind Nagwekar, Authorised person of the appellants had given in his voluntary statement dated 04.12.2019 that they had classified Rubber Process Oil (RPO) under CTI 2707 9900 assuming that aromatic content is more than 50% and also based on old departmental instructions dated 13.02.1989and as per the general practice adopted in the trade by all importers. They had imported RPO and blend the same with base oil to change the viscosity as per customer's requirement, and after such blending these are packed in drums and sold in bulk through tankers to tyre manufacturing companies like MRF, CEAT, Goodyear etc. which is used during vulcanization of rubber. Generally they do in house test of imported goods at the time of its receipt and in their letter dated 06.11.2019 submitted to the department, they had given details of B/Es covering all those imports wherein the aromatic constituents is less than 50% and in other cases where the aromatic constituents is more than 50% by weight.

(iii) The standards prescribed for petroleum based oils for Rubber industry is provided under BIS Standard IS 15078:2001, which *inter alia* prescribe the maximum Aniline point as 55°C.

(iv) The impugned goods under dispute is covered under 79 B/Es i.e., 60 B/Es relating to imports under JNCH, Nhava Sheva seaport; 17 B/Es relating to imports under Pipava seaport and 2 B/Es relating to imports under Mundra seaport.

(iv) In respect of 18 B/Es, the appellants on the basis of their in-house chemical test reports *inter alia* indicating the aromatic constituents being less than 50%, had paid the differential duty of Rs.46,85,539/- along with applicable interest of Rs.7,98,010/- during the time of investigation and informed the same to the department vide their letters dated 04.12.2019 and 09.12.2019.

(v) The appellants had claimed that in respect of imports under 64 B/Es, the in-house test reports indicate that the aromatic constituents are more than 50%; however, only a specimen copy of such in-house test report was submitted as Annexure-1.

(vi) In respect of 5 previous test reports of JNCH, Nhava Sheva; 4 previous test reports of Pipava port and 1 previous test report of Mundra port, it is indicated in all such test reports that the imported goods are either having aromatic constituents of less than 50% or that they are not confirming to the standard specifications of IS 15078-2001 prescribed for Petroleum based Process Oil for Rubber Industry.

(viii) In respect of imports under 25 B/Es in JNCH, Nhava Sheva port, DRI investigation had claimed that the appellants had indicated their previous test reports as the basis for claiming the concessional duty of 2.5% BCD; however, these previous test reports specifically indicate that the aromatic constituents are less than 50%.

Since the above facts/documents have been relied upon in the impugned order, in support of the findings on mis-classification of goods as 'Rubber Process Oil' instead of 'Other residues of Petroleum oils', 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.

xxx xxx xxx xxx

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 2707 9900 described as 'Rubber Process Oil (RPO)' as claimed by the appellants; or under CTI 2713 9000 described as 'Other residues of Petroleum oils or oils obtained from bituminous minerals' of the First Schedule to the Customs Tariff Act, 1975. Further, in terms of Chapter Note 2 to Chapter 27, statutory definition of 'Petroleum oils and oils obtained from bituminous minerals' have been provided.

"CHAPTER 27

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

Notes :

xxx xxx xxx xxx

2. References 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****…."*

In terms of the above requirements of Chapter Note 2 for classifying imported goods as petroleum oils and oils obtained from bituminous minerals, we find that the weight of the non-aromatic constituents should exceed that of the aromatic constituents, by weight.

8.5 In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 2707 9900 or CTI 2713 9000 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter level, there is no difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate Chapter Heading either 2707 or 2713, and its sub-heading under which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding Tariff Item. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. The scope of goods covered under CTI 2707 9900 relates to "-- *Other"* under the heading "*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", other than Benzol, Toluol, Naphthelene and other aromatic hydrocarbon mixtures described in CTI 2707 5000*"; and on the other side, the department has re-classified the impugned goods covered under CTI 2713 9000 as "- *Other residues of petroleum oils or of oils obtained from bituminous minerals"*. Hence, we need to closely look at the classification under the First Schedule to the Customs Tariff Act for arriving at proper conclusion on the classification of the impugned goods. The relevant headings and their tariff entries in the First Schedule to the Customs Tariff Act, 1975 of contending Chapter headings 2707 and 2713 are extracted as below:

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

xxx *xxx* *xxx* *xxx*

Chapter Heading	***Description of goods***
(1)	*(2)*
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)
2707 20 00	- Toluol (toluene)
2707 30 00	- Xylol (xylenes)
2707 40 00	- Naphthelene
2707 50 00	- Other aromatic hydro-carbon mixtures of which 65% or more by volume (including losses) distils at 250°C by the ISO 3405 method (equivalent to the ASTM D 86 method)
	- Other :
2707 91 00	-- Creosote oils
2707 99 00	**-- Other**"

And

"Chapter Heading	*Description of goods*
(1)	*(2)*
2713	**Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals**
	- *Petroleum coke :*
2713 11	-- *Not calcined :*
2713 11 10	--- Raw petroleum coke for anode making in aluminium industry conforming to standard IS 17049
2713 11 90	--- Other
2713 12	-- *Calcined :*
2713 12 10	--- Calcined petroleum coke for anode making in aluminium industry conforming to standard IS 17049
2713 12 90	--- Other
2713 20 00	- Petroleum bitumen
2713 90 00	**- Other residues of petroleum oils or of oils obtained from bituminous minerals**"

9.1 It could be seen that by applying the GIR 1, the position is made clear that Chapter Heading 2707 covers within its scope and ambit, mainly of two broad categories of goods:

(i) first one i.e., oils and other products obtained by the distillation of high temperature coal tar in more or less broad fractions, which produces mixtures consisting predominantly of aromatic hydrocarbons and other aromatic compounds, covered under CTHs 2707 10; 2707 20; 2707 30; 2707 40; 2707 50 and 2707 91;

(ii) the second one i.e., 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 covered under CTH 2707 99;

Further, the first broad category of products are further grouped under various CTIs as follows:

(a) Benzol (benzene), toluol (toluene), xylol (xylenes) and solvent naphtha covered under CTI 2707 1000; 2707 2000; 2707 3000;

(b) Naphthalene oils and crude naphthalene covered under CTI 2707 4000;

(c) Anthracene oils and crude anthracene, Phenolic oils, Pyridine, quinoline and acridine bases covered under CTI 2707 5000;

(d) Creosote oils covered under CTI 2707 9100; and

the second broad category of goods cover the following:

(e) 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, covered under CTH 2707 9900;

9.2 Similarly, by applying same GIR 1, it could also be seen that Chapter Heading 2713 covers within its scope and ambit, mainly of three broad categories of goods:

(i) first one i.e., "Petroleum coke" covered under CTH 2713 11 and 2713 12;

(ii) the second one i.e., "Petroleum bitumen" covered under CTI 2713 2000; and

(iii) the third one i.e., "Other residues of petroleum oils" covered under CTI 2713 9000.

9.3 Broadly, we find that the chapter heading 2707 deals with "various types of oils and other products of the distillation of high/low temperature Coal tar or other mineral tar". These are obtained by the 'stripping' of coal gas by the processing of petroleum or by any other process. Whereas, Chapter heading 2713 deals with products of residue which are "petroleum coke, petroleum bitumen or other residues of petroleum oils" usually obtained cracking or destructive distillation or as a residue of the distillation of crude petroleum. The scope of coverage of Chapter heading 2707 is largely based on the aromatic constituents of the products of the distillation of coal tar, where the wight of the aromatic constituents exceeds that of the non-aromatic constituents, in order to get covered under this heading. Further, where the non-aromatic constituents exceed that of aromatic constituents in respect of petroleum oils obtained from bituminous minerals then these would be classifiable either under heading 2710 in terms of Chapter Note 2 to Chapter 27 or under heading 2713 as residues of petroleum oils. From the above, we are of the prima facie view that appropriate classification of imported goods can be decided based on the fact evidencing the aromatic and non-aromatic constituents of the goods; and whether these are of residues of petroleum oils or oils obtained from bituminous minerals. Thus, on the basis of the above terms of customs tariff headings, sub-headings and tariff entries providing the scope of coverage of goods read with relevant Chapter Note 2 to Chapter 27, being the legal basis of classification under the Customs Tariff Act, 1975, we are of the considered opinion, that if the impugned goods containing the aromatic constituents by weight exceeds that of the non-aromatic constituents, then appropriate classification of the impugned goods would be under CTI 2707 9900. Otherwise, where the impugned goods containing the non-aromatic constituents by weight exceeds that of the aromatic constituents or where the aromatic constituents is less than 50%, and not fulfilling the requirements of chapter note 2, then the appropriate classification of the impugned goods would be under CTI 2713 9000.

9.4 We also find that the Central Board of Excise & Customs (CBEC) vide Circular No.11/89 dated 13.02.1989 had examined the issue of classification of Speciality Oil (Processed Oil) in the context of doubts expressed for classification whether under sub-heading No. 2719.50 or 2713.39/2713.30 or under sub-heading No. 2707.90 of the Schedule to the Central Excise Tariff Act, 1985 being a discussion point in South Zone Tariff-cum-General Conference of Collectors of Central Excise. Based on the discussion held in the said tariff conference and in consultation with the Deputy Chief Chemist, CRCL, the issue was decided by the Board and communicated to the filed formations for uniformity in assessment. In such instructions issued by CBIC also it is found that basis for classification of Rubber Process Oil is based on the fact whether the aromatic constituents exceeds that of the non-aromatic constituents, which is in supportive of our views on classification of impugned goods. The extract of the said circular is given below:

"Circular No. 11/89, dated 13-2-1989
F. No. 87/2/88-CX.3
Government of India
Ministry of Finance
(Department of Revenue)
New Delhi
Subject : Classification under Heading No. 27.10 or 27.13 or 27.07.

A doubt has been raised as to whether Speciality oils (Processed Oils) manufactured out of furfural extracts are classifiable under sub-heading No. 2719.50 or 2713.39/2713.30 or under sub-heading No. 2707.90 of the Schedule to the Central Excise Tariff Act, 1985.

2. The matter came up for discussion at the South Zone Tariff-cum-General Conference of Collectors of Central Excise held at Bangalore on 4th and 5th October, 1988. It was pointed out at the Conference that Speciality oils (Processed Oils) under dispute contained aromatic constituents predominately over non-aromatic constituents and therefore, the said goods cannot be classified under Heading No. 27.10 in view of the provisions of Chapter Note 2 of Chapter 27 of CET. In such case, the Conference viewed that the goods in question would be appropriately classifiable under sub-heading No. 2713.39 during the period from 28-2-1986 to 29-2-1988 and under sub-heading No. 2713.30 from 1-3-1988 onwards. The Conference, however, desired that the views/comments of the Deputy Chief Chemist, CRCL might be obtained before the issue was finally settled.

3. Accordingly, the Deputy Chief Chemist, CRCL was consulted on the issue. The Deputy Chief Chemist, CRCL has stated that HSN Explanatory Note under HSN Heading No. 27.13 covers extracts derived from the treatment of lubricating oils with certain selective solvents and thus furfural extracts of different grades would squarely fall under sub-heading no. 2713.39/2713.30 during the relevant period as 'other residues of petroleum oils or of oils obtained from bituminous materials'. The Processed oils (Speciality oils) in question, are manufactured

> *products obtained by blending the said extracts. These are tailor-made products to meet the specific requirements for a particular use viz. rubber processing oils and are individually identifiable as rubber processing oils and thus would cease to be furfural extracts and, for these reasons, the processed oils in question do not remain qualified for classification under sub-heading No. 2713.39/ 2713.30 as 'other petroleum residues'. In view of the provisions of Chapter Note 2 of Chapter 27, the possibility of classification of such goods under Heading No. 27.10 of CET is also ruled out since aromatic constituents in this case predominate over non-aromatic constituents. The Deputy Chief Chemist, CRCL, has opined that the more appropriate sub-heading for the goods in question would be 2707.90 as 'similar products in which the weight of aromatic constituents exceeds that of the non-aromatic constituents. The Board agrees with the views of the Deputy Chief Chemist in the matter.*
>
> *4. Accordingly, it is hereby clarified that the 'Speciality Oils' (Processed Oils) in question would be appropriately classifiable under sub-heading No. 2707.90.*
>
> *5. The above guidelines may be brought to the notice of the lower field formations and the trade interests also may be suitably advised."*

9.5 From the impugned order, we also note that there is a specific BIS standards prescribed in respect of petroleum based oils for Rubber industry provided as IS 15078: 2001. Some of the characteristics and the standard requirements for Type-I Aromatic RPO are given at paragraph 1.4(xii) of the impugned order at internal page 7 of 67. This include Aniline point specified at the maximum of 55°C, being the standard prescribed under BIS for RPO/Petroleum oil for use in Rubber industry. Therefore,compliance with the above IS standard specifications would also support the classification of RPO accordingly.

9.6 On perusal of the records of the case, it transpires that the Rubber Process Oil (RPO) imported by the appellants were subjected to chemical testing by drawing samples of the imported consignment at the port of import, and the goods are assessed to customs duty on the basis of such test reports. In case of where the goods are being cleared out of customs control pending receipt of test report, then the goods are assessed by the Customs Apprising Group of the jurisdictional Customs Comissionerate on 'provisional' basis by taking necessary test bond with suitable undertaking to pay differential duty on demand, when the imported goods are finally assessed on the basis of the test report under Section 18(2) of the Customs Act, 1962.

9.7 It also transpires from the records that the appellants had submitted vide their letters dated 06.11.2019, 04.12.2019 and 09.12.2019 that in respect of 18 B/Es imported through JNCH port, the aromatics constituents was less than 50%, and they have made payment of differential duty of Rs.25,26,471/- along with interest of Rs.5,49,360/-. Further, the appellants have also mentioned therein that they would submit to the investigation authorities all the test reports conducted in their in-house laboratory for all imported consignments of RPO, and they are prepared to pay under protest the differential duty, where the aromatics constituents are less than 50% in respect of all past consignments. The list of such 18 B/Es imported through JNCH port or as follows:

Sr. No.	**Bill of Entry No.**	**Date**
1.	9233431	08.04.2017
2.	9577875	05.05.2017
3.	2454143	14.07.2017
4.	2807819	10.08.2017
5.	4750474	10.01.2018
6.	4923987	23.01.2018
7.	6424914	17.05.2018
8.	7413095	28.07.2018
9.	7695935	18.08.2018
10.	8050942	14.09.2018
11.	9260759	14.12.2018
12.	9437535	27.12.2018
13.	9670379	16.01.2019
14.	9924449	04.02.2019
15.	2698381	03.04.2019
16.	3348446	22.05.2019
17.	3869739	29.06.2019
18.	4437402	09.08.2019

Since the fact that non-aromatic constituents by weight exceeds that of the aromatic constituents, i.e., in other words, the aromatic constituents is less than 50%, in all the above imported consignments of 18 B/Es through JNCH port, Nhava Sheva the appropriate classification of such goods covered under these 18 B/Es would be under CTI 2713 9000 and not under CTI 2707 9900, as claimed by the appellants. Further, the appellants vide letter dated 09.12.2019 had also informed the department that they had made payment of differential duty of Rs.25,26,471/- along with interest of Rs.5,49,360/- towards the remaining consignments, where they had accepted that the aromatic constituents is less than 50%. Thus, the importer had made a total payment of Rs.46,85,539/- along with interest of Rs.7,98,010/- i.e., total amount of Rs.54,83,549/- during investigation.

9.8 We further find that CBEC had issued instructions vide Circular No. Customs dated 18.07.2017, wherein detailed guidelines have been provided for re-testing of samples, in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding, on the basis of the request submitted by the importers. The extract of such circular is given below:

"Circular No. 30/2017-Cus.,
dated 18-7-2017

F. No. 450/15/2017-Cus.IV
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs
New Delhi
*****

Subject : Detailed guidelines for re-testing of samples - Regarding.

World Trade Organization (WTO) negotiated Trade Facilitation Agreement (TFA), which aims at simplifying the trade processes and bringing down barriers to trade has come into force w.e.f. 22nd February, 2017. India is a signatory to this agreement.

2. India has placed a number of trade related measures negotiated under the TFA in Category A. Article 5.3.1 envisages granting an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding. Further Article 5.3.3 makes it obligatory to consider the result of the second test, if any, for the release and clearance of goods, and, if appropriate, may accept the results of such test. The aforementioned Articles have been placed in category A. In order to have uniformity in approach among the field formations with regard to re-testing of samples, the following procedure is prescribed :

a. Customs officers may draw the samples from import consignments for testing in case of consignments wherever needed. The results of all test reports, adverse or otherwise, shall be communicated to the importer or his authorized representative/ Customs Broker immediately on its receipt.

b. In case the importer or his agent intends to request the Additional/Joint Commissioner of Customs for a re-rest, then the same shall be made in writing to the said officer within a period of ten days from the receipt of the communication of the test results of the first test. Customs officers may take a reasoned view in case the importer or his authorized representative Customs Broker is unable to do so for reasons beyond his control.

c. Where the Additional/Joint Commissioner of Customs grants an opportunity for a second test, he must clearly indicate in writing the name and address of the laboratory/institution where the second test can be carried out. Such referral for re-testing may be made only after being reasonably sure that the desired re-testing facilities exist at the laboratory/institution.

d. Re-test should be made only on the remnants of the samples originally tested or on duplicate representative sealed samples in the custody of the Customs. Further, to avoid delays, samples for second tests shall be marked as "immediate" before sending to the laboratory. In a case it may so happen that fresh samples have to be drawn, then such sampling should be done in the presence of the importer or his representative/customs broker.

e. The requests for re-test of samples on the ground that the original sample was not representative should be entertained only if the consignment is still in Customs control. At the time of drawing *the samples, the importer or his representative shall be present and certify that the samples drawn are representative.*

f. The competent authority shall consider the results of the re-test without prejudice to the results of the first test. In case there is a variation in the results of the first test and the re-test, the competent authority shall take the decision relying upon either of the tests specifying the grounds in writing for the decision so taken. In case the competent authority is unable to decide whether to rely upon the first or the re-test results, then it may order a second re-test provided the consignment is still within the customs control. However, this option should not be resorted to in every case of variation between the first test and re-test results.

g. The facility of re-testing, is a trade facilitation measure, which should generally not be denied in the ordinary course. However, there might arise circumstances where the customs officer is constrained to deny the re-testing facility. Board expects that such denial would be occasional and on reasonable grounds to be recorded in writing.

h. Where the re-testing procedure is done at the instance of the department instead of the importer, the above procedure shall be followed mutatis mutandis.

3. Difficulties, if any, in implementation of this circular, should be brought to the notice of the Board."

9.9 In the present case, for the imported consignments, test reports are required to be issued by the Customs Laboratory, at the respective ports of import, where samples have been drawn for testing by the customs officers at the time of assessment. Further, the procedure for sampling of import/export goods, storage of samples, arranging for tests, recording of test reports and related matters at Jawaharlal Nehru Custom House have been prescribed in Public Notice No. 05/2011 dated 21.04.2009, with a view to facilitating the process. Such procedure also provides for verification of self-assessment made by the importer, wherever the revenue implications are high, and in case of doubtful declaration by importer, or where verification of item description or specification is needed. However, wherever there is test report available for the same commodity with reference to the same supplier and the same importer, unless there is a reason for doubt, a previous test report which is less than 6 months old can be relied upon. If the imported goods are accompanied by manufacturers invoice, and manufacturers test report or test report of an accredited testing lab in the country of export of the goods, the goods may be released without a test bond. Therefore, it is also noticed that on the basis of certain previous test reports, the impugned goods could have also been cleared extending the concession claimed by the appellants. However, during investigation, the custom house laboratory at JNCH, Nhava Sheva; Pipava and Mundra have given the test reports in respect of imported consignments by the appellants during the disputed period which indicated that the importer goods does not meet the requirement of petroleum based process oil for rubber industry as per IS 15078:2001 in respect of the specified parameters like Kinematic viscosity at 100˚C, density, Aniline Point; and that the aromatic constituents are of less than 50% by weight. Accordingly in respect of 25 B/Es of imports under JNCH, Nhava Sheva where the imported goods have been cleared on the basis of previous test reports, as mentioned in the respective B/E, since the requirement of adherence to BIS standards for RPO and aromatic constituents not being above 50% by weight, these goods are also alleged by the DRI investigation and the adjudicating authority had classified it to be under CTI 2713 9000 and not under CTI 2707 9900, as claimed by the appellants. The list of such B/Es are given below:

Sr. No.	**Bill of Entry No.**	**Bill of Entry Date**	**Previous Test Report (PTR)**
1.	8252989	19.01.2017	198 dtd. 20.01.2017
2.	9233431	08.04.2017	198 dtd. 20.01.2017
3.	9577875	05.05.2017	198 dtd. 20.01.2017
4.	2059354	12.06.2017	198 dtd. 20.01.2017
5.	2104275	15.06.2017	198 dtd. 20.01.2017
6.	2807819	10.08.2017	244 dtd. 17.07.2017
7.	2818587	11.08.2017	244 dtd. 17.07.2017
8.	2899390	18.08.2017	244 dtd. 17.07.2017
9.	3165378	08.09.2017	244 dtd. 17.07.2017
10.	4750174	10.01.2018	1649 dtd. 10.01.2018
11.	6424914	17.05.2018	450 dtd. 18.05.2018
12.	7413095	28.07.2018	1326 dtd. 30.07.2018
13.	7695935	18.08.2018	1683 dtd. 24.08.2018
14.	8050942	14.09.2018	450 dtd. 18.05.2018
15.	8424090	11.10.2018	450 dtd. 18.05.2018
16.	8562186	22.10.2018	450 dtd. 18.05.2018
17.	9260759	14.12.2018	1326 dtd. 30.07.2018
18.	9437535	27.12.2018	1326 dtd. 30.07.2018
19.	9670379	16.01.2019	1326 dtd. 30.07.2018
20.	9924449	04.02.2019	1326 dtd. 30.07.2018
21.	2698381	03.04.2019	1326 dtd. 30.07.2018
22.	3348446	22.05.2019	1326 dtd. 30.07.2018
23.	3456252	30.05.2019	1326 dtd. 30.07.2018
24.	3869739	29.06.2019	1326 dtd. 30.07.2018
25.	4437407	09.08.2019	Not Specified

10.1 On the issue of classification of the impugned goods, other than those covered in the above B/Es, the learned adjudicating authority had come to the conclusion that the goods are classifiable under CTI 2713 9000 on the basis of the following findings as recorded in the impugned order. The relevant paragraphs are extracted and given below:

> *"4.10….. I find that in the subject case, from the aromatic constituents and aniline point mentioned in the departmental test reports, previous test report (PTR) number mentioned in the description*

of the Bills of Entry, as well as same quality, specification of the goods and their identical supply chain involved, it is evident that the aromatic constituents of the imported Rubber Process Oil was less than 50%. Given the past behavior of the Noticee, their in-house test reports showing aromatic constituents as more than 50% has no credibility. Moreover, only test reports of the Customs laboratory, other suitable Govt. laboratories or private accredited laboratory, can be considered for the said purpose. Further, the test reports were not submitted at the time of filing of the Bills of Entry and were submitted at a later stage after several years of import. The submission of their in-house test reports by the Noticee appears to be an afterthought and therefore, cannot be relied upon. In view of the above, I discard the test reports submitted by the Noticee and conclude that the Rubber Process Oil consignments imported by the Noticee were having aromatic constituents less than 50%; thus, they were wrongly classified under CTI 27079900, instead of the correct CTI 27139000.

xxx xxx xxx xxx

4.10.2…..From the above, I find that all the consignments of 'Rubber Process Oil' imported by the Noticee were having identical supply chain viz., originating from same set of suppliers and same country; and were having same quality and specification viz. they were distillates coming directly from the distillation of refinery without involving any further processing. Thus, in terms of the recommendation of the Deputy Chief Chemist, CRCL, as mentioned in the above Circular, the product imported by the Noticee, being unprocessed residues of petroleum oils or of oils obtained from bituminous materials, is rightly classifiable under chapter heading 2713.

4.10.3 Notwithstanding the above I find that the issue of correct classification of RPO has been settled by the Hon'ble CESTAT, Mumbai vide its Final Order Nos.A/87132-87137/2017-WZB/CB dated 26.04.2017 in Appeal Nos.C/86916-86919 and 86944-86945/2014-Mum in respect of Sah Petroleums Ltd. Vs. Commissioner of Customs (Import), JNCH, Nhava Sheva, [2017 (358) E.L.T. 483 (Tri. Mumbai)]. It is pertinent to mention here that aforesaid company M/s Sah Petroleums Ltd., which was one of the Appellants in the above case, was subsequently taken over by new promoters Shri Ayush Goel and Smt. Deepa Goel and renamed as M/s GP Petroleums Ltd. Thus, the aforesaid order of the Hon'ble Tribunal was in respect of the Noticee involved in the instant case itself. Merely changing the importer's name and its promoters would not alter the significant law point i.e., the classification of RPO decided by the Hon'ble CESTAT in the importer's own case. The classification of RPO will remain unchanged, given that the goods were of identical/similar nature imported from same supplier and country and declared with same description as Bills of Entry by M/s Sah Petroleums Ltd., and there has been no change in the nature of imported goods, relevant Chapter Heading and Custom laws."

However, we find that the procedure prescribed in Circular No.30/2017-Customs dated 18.07.2017 for re-testing as a measure of trade facilitation, either on production of in-house test reports submitted by the appellants in support of the classification claimed by them or for denying their claim have not been followed by the departmental authorities. Further, there is no justification shown by the adjudicating authority for out right rejection of the in-house test reports submitted by the appellants where the aromatic constituents were more than 50%, by simply stating that it is an afterthought. In an illustrative case of B/E No. 3456252 dated 30.05.2019 covering import of RPO at JNCH, Nhava Sheva port, the appellants had submitted the chemical analysis report showing aromatic constituents as % of mass of 72.58%, the extract of which is placed below. However, such factual detail which is crucial in determination of the classification of impugned goods has not been examined in the impugned order.

Indian Customs EDI System - Imports V1.5R001
JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707
BILL OF ENTRY FOR HOME CONSUMPTION

[Custom Stn: INNSA1] CHA : AABCI0301CCE001 [M/S.IOCC SHIPPING PVT.LTD.]
BE No/Dt./cc/Typ:3456252/30/05/2019/N/H
Importer Details :0392057387 PAN : AABCS5295BFT001 AD Code : 6360156
GP PETROLEUMS LTD.
1 :PLOT NO.5 TO 14,BH.DEEWAN & SHAH,I
NDL.EST.,VALIV VILL.VASAI E,
THANE,MAHARASHTRA 401201 Payment Method : Transaction
IGM No :2225914/30/05/2019 Port Of Loading :Jebel Ali
Cntry Of Orgn.: UNITED ARAB EMIRATES Cntry Of Consgn.:
BL No : IIX1153ESSA9283CBD H/BL No :
Date : 23/05/2019 Date :
No. Of Pkgs. : 48 PKG Gross Wt. : 1003240.000 KGS
Marks:AS PER B/L
& Nos
Inv No & Dt. : EXP/BO/0527/19 24/05/2019 INDO SWISS OIL FZC
Inv Val : 459282.40 USD TOI: CF P.O.BOX 53125,
Freight : 0.00 HAMRIYAH FREEZONE,
Insurance : 23135.00 INR SHARJAH,
SVB Load(Ass):
SVB Load(Dty): Cust. House: UNITED ARAB EMIRATES -0
Misc. Charges: 0.00 HSS Load Rate: 0.00% Amount: 0.00
0.00
EDD : 0.00 Discount Rate: 0.00 Discount Amount: 0.00
Third Party: - XBE Duty FG Int.: 0.00
BuyerSeller Reltd : No
Item Details
Exchange rate: 1.00 USD = 71.1500 INR

Slno RITC / Qty / Unit	Description / Unit Price / Ass Val	CTH / CETH	C.Notn C.NSNO / E.Notn E.NSNO	RSP / Cus Dty Rt / Exc Dty Rt	Load PROV / BCD amt(Rs) / CVD amt(Rs)
1 27079900	RUBBER PROCESS OIL (PACKED IN FLEXI BAGS) (PTR NO. :1326, DT.30.07.2018)				
998440.00 KGS	0.460000 32701077.76	27079900 NOEXCISE	050/2017 143	2.50 %	817526.90
Educational Cess on CVDs :				0.00 %	0.00
Sec & Higher Edu. Cess on CVD :				0.00 %	0.00
Customs Educational Cess :				0.00 %	0.00
Customs Sec & Higher Edu. Cess :				0.00 %	0.00
Social Welfare Surcharge:				0.00 %	0.00
				10.00 %	81752.70
IGST			001/2017 III31	18.00 %	6048064.50
GST Cess			001/2017 56	0.00 %	0.00

Rs. 32701077.76

	Rs.	32701077.76	Page Total	Rs.	6947343.90
BCD	Rs.	817526.90	BE Gross Total	Rs.	6947343.90
ANTID	Rs.	0.00	NCD Duty	Rs.	0.00
CVD	Rs.	0.00	SAFEGUARD Duty	Rs.	0.00
CESS	Rs.	0.00	Sch 2 Spl Excise Duty	Rs.	0.00
TTA	Rs.	0.00	GSIA	Rs.	0.00
Edu. Cess CVD	Rs.	0.00	Customs Edu. Cess	Rs.	0.00
Health CVD	Rs.	0.00	Addl Duty - (Imports)	Rs.	0.00
SHE. Cess CVD	Rs.	0.00	SH Cust Edu. Cess	Rs.	0.00

Duty Payable: Rs. 6947344
Rs. Sixty Nine Lakh Forty Seven Thousand Three Hundred and Forty Four only

Container Details

1 2225914 F BSIU2354891	2 2225914 F BSIU2388905	3 2225914 F BSIU2441044
4 2225914 F BSIU2523121	5 2225914 F BSIU2527214	6 2225914 F BSIU2814955
7 2225914 F BSIU2815458	8 2225914 F BSIU2816536	9 2225914 F BSIU2892330
10 2225914 F BSIU2929147	11 2225914 F BSIU2929337	12 2225914 F BSIU2933609
13 2225914 F BSIU2979770	14 2225914 F CAIU2577349	15 2225914 F CAIU3413062
16 2225914 F CAIU3651440	17 2225914 F GESU2872120	18 2225914 F GESU3086825
19 2225914 F HDXU2055008	20 2225914 F IRSU2053655	21 2225914 F IRSU2070040
22 2225914 F IRSU2246973	23 2225914 F IRSU2410388	24 2225914 F IRSU2416494
25 2225914 F IRSU2553270	26 2225914 F IRSU2569894	27 2225914 F IRSU2596360
28 2225914 F IRSU2612033	29 2225914 F IRSU2613071	30 2225914 F IRSU2711530
31 2225914 F IRSU2739265	32 2225914 F IRSU2776253	33 2225914 F IRSU2801377
34 2225914 F IRSU2810487	35 2225914 F IRSU2830400	36 2225914 F PARU2058086
37 2225914 F PARU2413745	38 2225914 F PARU2468141	39 2225914 F PARU2612217
40 2225914 F PARU2687896	41 2225914 F PCIU1709290	42 2225914 F SBAU2864411
43 2225914 F SBAU2868762	44 2225914 F SBAU2889549	45 2225914 F SBAU2968859
45 2225914 F SKIU2045660	47 2225914 F SKIU2054810	48 2225914 F WOSU3209090

GSTIN Details

Document No	Typ	State Cd/Name	IGST Ass.val	IGST Amt	GST Cess Amt
27AABCS5295B1ZE	G	27 MAHARASHTRA	33600357	6048064	0

[NIC]

1/ 1

ANNEXURE "I"

Gulf Petrochem
Towards New Horizons

GP PETROLEUMS LIMITED
Plot No 4 to 15 Behind Dewan & Saha Industrial Estate,
Valive village, vasai (E), Thane, Maharashtra -401208

998

ANALYSIS REPORT

Test Report No & Date	QC/RM / Green RPO / dtd-.04.06.2019
Sample	Green RPO
Supplier Name	INDO SWISS OIL FZC
Challan No	3456252
Date	04.06.2019

Sr.No.	Tests	Method	IPOL Result
1	Appearance	Visual	Opaque
2	Color	ASTM D 1500	Dark Brown
3	Sp. Gravity @30 °C	ASTM D 1298	1.001
4	Sp. Gravity @15 °C	ASTM D 1298	1.010
6	KV @ 100°C,(cSt)	ASTM D 445	26.88
8	Flash Point COC °C	ASTM D 92	240
9	Pour Point, °C	ASTM D 97	+18
10	Aniline Point °C	ASTM D611	38
11	Acidity , mg KOH/gm	ASTM D 974	Nil
12	Clay Gel Analysis	ASTM D 2007	-
	Aromatics, % mass		72.58
	Saturates, % mass		15.47
	Polar Compounds, % mass		11.95

Remark -. Ok

Tested By: Nandan Kinge

Therefore, we do not find any merits in such findings recorded by the adjudicating authority for classification of the imported goods under CTI 27139000 in the rest of the B/Es, other than those discussed as above in preceding paragraph at 9.7 above.

10.2 We further find that at the time of investigation, the test reports conducted by the departmental CRCL laboratory on various import consignments made by the appellants were sought from the jurisdictional Customs/CRLC authorities covering the entire disputed period. In respect of the majority of imports covered under 60 B/Es imported through JNCH, Nhava Sheva port, the Joint Director, JNCH CRCL Laboratory had replied vide letter File No. S/16-16/2020-21/LAB/JNCH dated 29.07.2020 that as per the data available with them, in respect of Rubber Process Oil imported by the appellants during the period from 2014 onwards till date (29.07.2020) only two samples having reference B/E No.4750474 dated 10.01.2018 and B/E No.7695935 dated 18.08.2018 had been tested in JNCH Laboratory. Out of these two test reports, the authorities were able to trace only the test report w.r.t. B/E No.7695935 dated 18.08.2018; and for the other B/E analysis report as recorded in the Chemist's register was provided to the Senior Intelligence Officer, DRI/investigation authorities. In the said two reports, there is no indication of the presence of aromatic or non-aromatic constituents in the sample of the imported goods is given. The extract of the said letter is given below:

भारत सरकार वित्त मंत्रालय, राजस्व विभाग केंद्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड जवाहरलाल नेहरू सीमा शुल्क भवन प्रयोगशाला जवाहरलाल नेहरू सीमा शुल्क भवन न्हावा शेवा, ताल-उरण, जिला- रायगढ़ महाराष्ट्र-400707		Government of India Ministry of Finance, Department of Revenue Central Board of Indirect Taxes & Customs Jawaharlal Nehru Custom House Laboratory Jawaharlal Nehru Custom House Nhava Sheva, Tal-Uran, Dist-Raigad Maharastra-400707 TEL: 022-27240261; Email ID. jdjnchlab2019@gmail.com

File No: S/16-16/2020-21/LAB/JNCH Date: 29.07.2020

To
The Senior Intelligence Officer,
CI Cell, DRI, MZU.

Sir,

Sub: Enquiry in respect of 'Rubber Process Oil' imported by M/s. GP Petroleums Ltd._reg.

Please refer to your letter F. No. DRI/MZU/CI/INT-164/2019/1756 dated 28.05.2020. In this connection it is mentioned that as per the data available in JNCH Laboratory, only two samples described as 'Rubber Process Oil' imported by M/s. GP Petroleums Ltd. having BE No. 4750474 dt. 10.01.2018 and 7695935 dt. 18.08.2018, during the period from 2014 onwards till date had been tested in JNCH Laboratory. Out of the two, only one test report is traceable (BE No. 7695935 dt. 18.08.2018) and a copy of the same is enclosed. For the second sample (BE No. 4750474 dt. 10.01.2018), copy of analysis report recorded in chemist's register is enclosed for necessary action.

Yours faithfully

29/7/2020

V. Suresh
Joint Director, NFSG
JNCH Laboratory
Nhava Sheva

Similarly, the Joint Director of CRCL, Customs House Laboratory at Kandla have given test repo0rts of 5 samples tested by them relating to the following B/Es viz. one B/E No. 8088043 dt. 05.01.2017 of Mundra port and four B/E Nos. 4485292 dt. 20.12.2017; 5688855 dt. 22.03.2018; 8703844 dt.01.112018;4493164 dt.14.08.2019 of Pipavav port, where the Aniline point has been indicated as 44°C, 42° C, 42° C, 43° C and 43° C respectively, where the maximum permissible as per IS15098:2001 in 55°C. In the above factual position, it is not known how the learned adjudicating authority had come to a conclusion that the aromatic constituents of the imported RPO was less than 50% as recorded in his findings at para 4.10 of the impugned order, the extract of which is given in paragraph 9.1 above.

10.3 In the impugned order, the adjudicating authority had confirmed the demands proposed in the SCN by invoking extended period of limitation, on the ground that the appellants have made misleading declarations, mis-classified the imported goods and claimed ineligible exemption benefits. From the facts on record, it clearly transpires that in respect of all the imported goods, the appellants have filed the B/E providing the description of the goods along with supporting documents such as suppliers invoice etc., and have claimed the customs tariff classification of the goods as per their understanding and also claimed concessional rate of custom duty by availing the notification benefits. The knowledge of the classification of imported goods in the earlier cases of imports under the business entity M/s Sah Petroleums Limited and the Tribunal's order dated 26.04.2017 in that case has also been shown as the ground for deliberate act of mis-declaration.

10.4 In a number of cases, the Tribunal have held that in cases of classification disputes, extended period cannot be invoked and penalty cannot be imposed claiming it as mis-statement, as the customs statute provide for modifying self-assessment made by an importer through re-assessment by proper officer. In the case of *Midas Fertchem Impex Pvt. Ltd. Vs. Principal Commissioner of Customs, ACC (Import), New Delhi* in Final Order No. A/50027-50031/2023 dated 13.01.2023 - 2023 (384) E.L.T. 397 (Tri.-Del.), a similar view was taken by the Tribunal by holding that wrong classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression. Further, the Hon'ble Supreme Court in the case of *Pushpam Pharmaceuticals Company Vs. Collector of C.Ex., Bombay* - 1995 (78) E.L.T. 401 (S.C.) in Civil Appeal No. 1957-58 of 1988 vide judgement dated 28.03.1995 have held the act of proviso clause providing the extended period for demand in certain cases specified therein such as collusion, wilful mis-statement, suppression of facts with an intention to evade duty carves out an exception and permits the authority to exercise this power within five years; a perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. Hence, the Hon'ble Supreme Court have held that such acts must be deliberate. In the present case, the dispute is only on classification of imported goods and for the claim of duty concession under customs notification. In view of the above decisions of various judicial forum, these claims of the importer cannot *per se* be termed as mis-declaration, as such claim has to be examined in the process of assessment of goods.

10.5 Further, in terms of the definition provided for 'assessment' under Section 2(2) of the Customs Act, 1962 (substituted w.e.f. 29.03.2018), it includes determination of the dutiability of goods and the amount of duty so payable, with reference to the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act and exemption or concession of duty, consequent upon any notification issued under the Customs statute for the time being in force. Further, under Section 17 *ibid*, the proper officer of Customs may verify the self-assessment made by the importer and where it is found on verification, examination or testing of the goods, that the self-assessment is not done correctly, he may re-assess the duty leviable on such goods. The above legal provisions clearly enunciate that determination of proper duty payable on the import goods on verification of self-assessment made by an importer / appellants under Section 17(2) *ibid* and if the self-assessment is not done correctly, then the requirement of proper officer to make re-assessment under sub-sections (4)&(5) of Section 17 *ibid*, being the functions to be carried out as per the legal provisions of the Customs statute. Hence, the claim of tariff classification of goods, duty exemption under notification cannot be implied to mean wilful suppression of facts regarding true nature of the imported goods (RPO) and the importer has mis-classified with an intention to evade duty by the appellants as claimed in the SCN at paragraph 8.5 for invoking the extended period of limitation under Section 18(4) ibid. Further, the requirement of declaring the requisite particulars by the importer in the form of filing B/E as prescribed under the Regulations, indicating the various particulars of the imported goods including description, classification, value of goods, duty concession/ exemption claimed by them etc., are to enable self-assessment under Section 17 ibid and the same cannot be claimed as the grounds for invoking the extended period under the category of mis-declaration. It is also a fact on record, that the adjudicating authority on re-assessment of finally assessed B/Es had confirmed the differential duty by invoking the extended period of limitation under Section 18(4) ibid. In view of the above factual position and as there is no specific grounds or evidences placed on record by the investigation in the SCN dated 23.02.2021 and that there is no specific findings recorded in the impugned order proving the ingredients of mis-declaration or suppression of facts with an intention to evade duty, we are of the considered view that the invocation of extended period in the present case does not stand the scrutiny of law.

10.6 From the records of the case, it is also seen that the appellants have claimed that in some of the provisionally assessed B/Es, where the test bonds have been executed, subsequently such assessments were finalized extending the benefit of exemption, without any demand of differential duty as the aromatic constituents were higher than 50%. For example, the appellants have stated in B/E No.4688651 dated 23.03.2016 for import of RPO in ten containers, the assessment was made 'provisional' with a test bond for Rs. 29,89,380/- for which they have claimed that the aromatic constituents was 69.64% thereby the classification under CTI 2707 9900 adopted by them was correct. Further, it is also seen that the Test Bond initially accepted by the Customs Appraising Group of the JNCH, Nhava Sheva for the aforesaid B/E on 29.03.2016 was cancelled later.

An extract of the aforesaid illustrative B/E and the test bond where Bank Guarantee executed is first accepted at the time of provisional assessment and later Bond/Bank Guarantee cancelled by the Department is extracted and given below:

Original (Customs Copy)
Indian Customs EDI System - Imports V1.5R001
JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707
BILL OF ENTRY FOR HOME CONSUMPTION Provisional

[Custom Stn: INNSA1] CHA : AABCI0301CCH001 M/S IOCC SHIPPING PVT.LTD.
BE No/Dt./cc/Typ: [redacted]/23/03/2016/N/H
Importer Details : 0392057387 PAN : AABCS5295BF[illegible]
GP PETROLEUMS LTD.
1 :PLOT NO.5 TO 14,BH.DEEWAN & SHAH.I
NDL.EST.,VALIV VILL.VASAI E,
THANE,MAHARASHTRA 401201

IGM No :2133574/23/03/2016 24/03/2016 Port of Loading :Jebel Ali
Cntry Of Orgn.: UNITED ARAB EMIRATES Cntry of Consgn :
BL No : MAXDXB13951526 HBL No
Date : 21/03/2016 Date
No. Of Pkgs : 10 BGS Gross Wt : 200335.000 KGS
Marks AS PER B/L
& Nos

Inv No & Dt. : EXPRPO21/03/16S1 21/03/2016 KINETIC MULTIPLIER FZC
Inv Val : 43853.70 USD TOI: CF P.O. BOX: 53125 HAMRIYAH FREE
Freight : 0.00 ZONE,
Insurance : 1850.00 INR SHARJAH
SVB Load(Ass) : Cust. House: UNITED ARAB EMIRATES
SVB Load(Dty) : HSS Load Rate: 0.00% Amount: 0.00
Misc. Charges: 0.00 0.00
Discount Rate: 0.00 Discount Amount: 0.00
EDD : 0.00 XBE Duty FG Int 0.00
Item Details
Exchange rate: 1.00 USD = 67.4500 INR

Slno RITC	Description			RSP	Load PROV
Qty	Unit Price	CTH	C.Notn C.NSNO	Cus Dty Rt	BCD amt(Rs)
Unit	Ass Val	CETH	E Notn E.NSNO	Exc Dty Rt	CVD amt(Rs)
1 27079900	RUBBER PROCESSING OIL (FLEXI BAG				1
199.19	220.000000	27079990	012/2012 112 P	2.50 %	74678.30
MTS	2987130.38	27079900		14.00 %	428653.20
	Educational Cess on CVDs			0.00 %	0.00
Sec & Higher Edu. Cess on CVD				0.00 %	0.00
	Customs Educational Cess			2.00 %	10066.60
Customs Sec & Higher Edu. Cess				1.00 %	5033.30
	Addl Duty - (Imports)	: 019/2006		4.00 %	140222.5

Declaration
1. I/We Certify that the above entries are correct.
2. I/We further declare that wherever the RSP is applicable same has been truthfully declared

CHA Importer
M/S.IOCC SHIPPING PVT.LTD. GP PETROLEUMS LTD.
Signature Signature

continued on page:2
NIC
1/2

Indian Customs EDI System Imports V1 SR001
JNCH, NHAVA SHEVA TAL:URAN, DIST RAIGAD-400707
BILL OF ENTRY FOR HOME CONSUMPTION Provisional

[Custom Stn: INNSA1] CHA : AABCI0301CCH001 :M/S.IOCC SHIPPING PVT.LTD.
BE No/Dt./cc/Typ:4688651/23/03/2016/N/H
Importer Details : 0392057387 PAN : AABCS5295BFT001
GP PETROLEUMS LTD.
Inv No & Dt. : EXPRPO21/03/16S1 21/03/2016 KINETIC MULTIPLIER FZC

Item Details

slno RITC	Description			RSP	Load PRC
Qty	Unit Price	CTH	C.Notn C NSNo	Cus Dty Rt	BCD amt(Rs.)
Unit	Ass Val	CETH	E.Notn E NSNo	Exc Dty Rt	CVD amt(Rs.)
					Y
2 27079900	RUBBER PROCESSING OIL (FLEXI BAG)				
0.15	220.000000	27079900	012/2012 1	2.50 %	86.20
MTS	2279.512	27079900		14.00 %	322.80
	Educational Cess on CVD			0.00 %	0.00
Sec & Higher Edu. Cess on CVD				0.00 %	0.00
	Customs Educational Cess			2.00 %	7.60
Customs Sec & Higher Edu. Cess				1.00 %	3.80
	Addl Duty - (Imports)		019/2006	4.00 %	105.60

Rs.	2989379.89		Page Total	Rs.	659149.90
	Rs.	2989379.89	BE Gross Total	Rs.	659149.90
BCD	Rs.	74734.50	NCD Duty	Rs.	0.00
ANTID	Rs.	0.00	SAFEGUARD Duty	Rs.	0.00
CVD	Rs.	428976.00	Sch 2 Spl Excise Duty	Rs.	0.00
CESS	Rs.	0.00	GSIA	Rs.	0.00
TTA	Rs.	0.00			
Edu. Cess CVD	Rs.	0.00	Customs Edu. Cess	Rs.	10074.20
Health CVD	Rs.	0.00	Addl Duty - Imports)	Rs.	140328.10
SHE. Cess CVD	Rs.	0.00	SH Cust Edu Cess	Rs.	5037.10

Duty Payable: Rs. 659150
Rs. Six Lakh Fifty Nine Thousand One Hundred and Fifty only

Container Details

1 2133574 F BSIU2754096 2 2133574 F GESU2538140 3 2133574 F HNSU2014408
4 2133574 F MXCU0002910 5 2133574 F MXCU0030342 6 2133574 F MXCU0047561
7 2133574 F MXCU0051290 8 2133574 F TEXU2051114 9 2133574 F TGHU3266120
10 2133574 F UXXU2419226

BOND Details

BondCd	BondNo	BondAmt	BGRate	BGAmt	BondDebited	BGDebited
TB		2989380	0	0		0
1	09-14	IEP2.1				
2	15-20	IEP2.1				

Declaration
1. I/We Certify that the above entries are correct.
2. I/We further declare that wherever the RSP is applicable same has been truthfully declared

CHA Importer
M/S.IOCC SHIPPING PVT.LTD. GP PETROLEUMS LTD.

Signature Signature

[NTC

2 / 2

भारतीय गैर न्यायिक

भारत INDIA

500 FIVE HUNDRED RUPEES

पाँच सौ रुपये Rs. 500

INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA X 861982

31 DEC 2015

MAYEKAR

TEST BOND

KNOW ALL BY THESE PRESENTS THAT Messrs: GP PETROLEUMS LTD. PLOT NO.5 TO 14,BH.DEEWAN & SHAH INDL.EST., VALIV VILL.VASAI E. THANE,MAHARASHTRA - 401201 Hereinafter referred to as the "Importer" which expression shall unless or excluded by or repugnant to the context include their successors hereby firmly bind over selves unto to the president of India (hereinafter refered to as the Government) to pay demand and without demur Rs. 29,89,380/- (Rupees Twenty Nine Lac Eighty Nine Thousand Three Hundred Eighty Only) the difference between the duty finally assessed under sub-section 2 of section 18 of the Customs Act, 1962 read with the customs Provisional duty assessment Regulations 1963, by the Commissioner of Customs, Mumbai, hereinafter called the Commissioner which expression shall include the person for the time being performing the duties of the Commissioner of Customs, Mumbai) and the duty provisionally assessed by the Commissioner in respect of the said goods under sub-section 1 of section 18 of the Customs Act, 1962.

SEALED with our seal with this 28th day of March 2016

BOND/BG CANCELLED

AO/DFIA

For GP PETROLEUMS LTD.

Authorised Signatory

BOND ACCEPTED

GRUA A/O

GRUA A/O

The Assistant Commissioner of Customs (hereinafter call the proper officer) has agreed to make provisional assessment of the goods described in schedule below imported by the importer pending submission of further documents and furnishing information and / or completion of further inquiries by S.V.B / S.I.I.B. and/or chemical or other test and proper officer has agreed to allow clearance of the goods subject to the Importer's proving to the satisfaction of the proper officer that Open General License / Import License is valid for and cover the entire goods mentioned in the schedule below and upon Importer agreeing to furnish such bond as is herein contained.

NOW THE CONDITIONS OF THE ABOVE BOND ARE SUCH THAT :-

1. If the Importer pays to the President the difference between the duty finally assessed and the duty provisionally assessed in respect of the goods mentioned in the schedule and,

2. If the Importers pays to the President any penalty and any fine that may be adjusted in lieu of confiscation of the said goods for importation of the goods or part thereof without a valid O.G.L. / Import License.

THEN THE ABOVE WRITTEN BOND SHALL BE VOID AND OF NO EFFECT OTHERWISE THE SAME SHALL REMAIN IN FULL FORCE AND VIRTUE.

1. This bond is given under the orders of the Central Government for performance of an act in which the public are interested.
2. The President through the Dy .Commissioner of Customs, Mumbai or other officer may remover the amount due in the manner laid down in sub-section 142 of the Customs Act 1962 without prejudice to any other mode of recovery.

SCHEDULE OF GOODS

1.	BILL OF ENTRY NO. & DATE	: 4688651, DT : 23/03/2016
2.	NAME OF THE VESSEL	: AL BIDDA/JN606E
3.	DESCRIPTION OF GOODS	: RUBBER PROCESSING OIL
4.	COUNTRY OF ORIGIN	: U.A.E
5.	QUANTITY	: 199.335 MTS
6.	ASSESSABLE VALUE	: Rs. 29,89,380/-

WITNESS:-

1.

SIGNATURE OF IMPORTER

ATTESTED

GP PETROLEUMS LTD.

Authorised Signatory

M. H. CHOUDHARY
PUBLIC NOTARY
(GOVT. OF INDIA)

29 MAR 2016

10.7 Since, the demand of duty under Section 18 ibid on re-assessment of provisionally assessed B/Es did not place on record any specific chemical test report(s) as evidence in support of the fact that non-aromatic constituents exceeds that of aromatic constituents and further had outrightly rejected the in-house test reports produced by the appellants, the basis for its re-assessment under CTI 2713 9000 and consequent demand of differential duty under Section 18 ibid, in our considered opinion does not stand the scrutiny of law.

11.1 On the issue of adjudication of the SCN within the prescribed period under Section 28(9) ibid, the appellants had placed an argument that the order of the Chief Commissioner of Customs, Zone-II dated 22.03.2021 was not provided to them and they were not given an opportunity of hearing. The relevant sub-section (9) of Section 28 ibid is extracted and given below:

> *"(9) The proper officer shall determine the amount of duty or interest under sub-section (8),—*
> *(a) within six months from the date of notice,* [1]***[********]*** *in respect of cases falling under clause (a) of sub-section (1);*
> *(b) within one year from the date of notice,* [1]***[********]*** *in respect of cases falling under sub-section (4):*
> [2]***[Provided*** *that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:*
> ***Provided further*** *that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.]"*

Since, in the present case the SCN has been issued invoking the extended period, it is claimed by the appellants that the time limit of one year would apply from the date of issue of the SCN on 23.02.2021. However, as explained in the impugned order at paragraph 4.2, in view of the CBIC's instructions Customs dated 17.03.2021 issued in pursuant to the Hon'ble Supreme Court's judgement in the matter of M/s Canon India Private Limited Vs. Commissioner of Customs in Civil Appeal No.1827 of 2018 – 2021 (376) E.L.T. 3 (S.C.), the subject SCN was transferred to Call Book category vide Order dated 22.03.2021. It is mentioned therein that the aforesaid position was intimated to the appellants by the Department vide its letter dated 07.04.2021. Subsequently, after the legal amendments made with respect to 'proper officer' for issuing SCNs under the Customs Act, the matter was taken up from call book category for adjudication, duly providing an opportunity for personal hearing to the appellants on

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[1] *Words "where it is possible to do so," omitted by the Finance Act, 2018, w.e.f. 29-3-2018.*
[2] *Inserted by the Finance Act, 2018, w.e.f. 29-3-2018.*

14.03.2023. Further, in terms of the sub-section (9) of Section 28 ibid, extension of time limit for adjudicating the present SCN upto 30.03.2024 was granted by the Chief Commissioner of Customs. Thereafter, again the adjudicating authority had given fresh opportunities for personal hearing to the appellants on 08.11.2023, 07.12.2023. As on both occasions, the appellants had requested for adjournment of the hearing; one another opportunity was given on 27.12.2023, and the personal hearing was attended by Shri K.S. Mishra, Advocate and Shri Prashant Kubal, Consultant on behalf of the appellants.

11.2 On the above issue, the legal provisions as it existed prior to 29.03.2018, provide that the time limit is prescribed under sub-section (9) of Section 28 ibid would apply for adjudication of the notice is 'where it is possible to do so'. However, subsequent to the amendment introduced in the Finance Act, 2018 w.e.f. 29.03.2018, in cases involving extended period, the immediate senior officer in rank/superior authority to the adjudicating authority, having regard to the circumstances under which adjudication of the SCN could not be done within the prescribed period of one year, has been empowered to extend the time limit for a further period of one another year. In the present case, the aforesaid requirement of Section 28(9) ibid have been duly followed by the adjudicating authority. We also find that the Tribunal in the case of *Kopertek Metals Private Limited Vs. Commission of CGST (West), New Delhi* – 2024 (12) TMI 269 – CESTAT NEW DELHI, dealing with the issue of statutory time limit of one year provided under Section 11A(11) of the Central Excise Act, 1944 for adjudication of the case in respect of Central Excise matters, have held that the facts of each case has to be examined to find out whether there were circumstances or insurmountable exigencies which made it impracticable for the adjudication to take place, as has been held by the Hon'ble Delhi High Court in Swatch Group of India Pvt. Ltd. Vs, Union of India 2023 (386) E.L.T. 356 (Del.). In the *Kopertek* case *(supra)* the Tribunal had set aside the demands in all 209 SCNs on the ground that there was no plausible explanation as to why it was not possible for the Adjudicating Authority to complete the adjudication process within the stipulated time.

11.3 We find that in the present case, the adjudicating authority had given detailed explanation of the grounds why he could not adjudicate the case, and the case was kept under call book category, without adjudication, due to the specific instructions of the CBIC relating to the matter of Canon India case pending before the Hon'ble Supreme Court and the permission had been given for extension of the time period for adjudication of the case by the proper authority in terms of Section 28(9) of the Customs Act, 1962.

11.4 Further, in the case of Canon India (supra) the Hon'ble Supreme Court held in its judgement dated 09.03.2021, that the entire proceeding in that case initiated by the Additional Director General of the DRI by issuing show cause notices in all the matters before them are invalid without any authority of law and liable to be set-aside and accordingly the ensuing demands were also set aside. However, in the Review Petition No.400 of 2021 filed in Civil Appeal No.1827 of 2018, the Hon'ble Supreme Court vide its judgement dated 07.11.2024 *inter alia* have held that the enactment of sub-section (11) of Section 28 cures the defect pointed out in ***Sayed Ali*** *(supra)* and the judgment in ***Mangali Impex*** *(supra)* deserves to be set aside. It was also clarified in the said judgement dated 07.11.2024 that the officers of Directorate of Revenue Intelligence, Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence and Commissionerates of Central Excise and other similarly situated officers are proper officers for the purposes of Section 28 and are competent to issue show cause notice thereunder. Therefore, any challenge made to the maintainability of such show cause notices issued by this particular class of officers, on the ground of want of jurisdiction for not being the proper officer, which remain pending before various forums, shall now be dealt with in the manner specified in that judgement. In respect of appeals pending before the CESTAT, it was decided by the Apex Court that they shall now be decided in accordance with the observations made in that decision. Besides the above discussions on the power or authority to issue SCN, which has been finally settled by the Hon'ble Supreme Court, we do not find any infirmity in the impugned order passed in adjudication of the SCN in the present case, as the said adjudication order has been passed on 07.02.2024 much prior to the last date of 30.03.2024.

12.1 On the identical issues of classification of Rubber Process Oil, demand of duty by invoking extended period, we find that the Coordinate Bench of the Tribunal in the case of *Sah Petroleums Limited Vs. Commissioner of Customs (Import), JNCH, Nhava Sheva* – 2017 (358) E.L.T. 483 (Tri.-Mumbai) have examined the issue of classification of Rubber Process Oil (RPO) in identical set of facts and have held that raw RPO merit classification under Chapter Heading 2713 90. The relevant paragraphs of the said order is extracted and given below:

"21. *The next issue to be decided in the present appeals is whether the goods are classifiable under Chapter sub-heading 2707 9900 as canvassed by the revenue or 2710 1960 as canvassed by the Appellants or under 2713 9000 as alternatively pleaded by the Appellants. We find that goods were purported to be classified under Chapter sub-heading 2707 9900 by the revenue on the ground that Rubber Process Oil (RPO) which meets the requirements stipulated in the Chapter Note 2 of Chapter 27 would remain appropriately classifiable under sub-heading 2710 and that in case where the weight or aromatic constituent exceeds that of non-aromatic constituents then such product would appear more appropriately classifiable under 2707 subject to meeting the requirements. The Chapter Note 2 of Chapter 27 read as under :*

> *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 un-saturated hydrocarbons, obtained by any process, provided that the weight of the non-aromatic constituents exceeds that of the aromatic constituents.*
>
> *However, the references do not include liquid synthetic polylefins of which less than 60% by volume distills at 3000C, after conversion to 1013 millibars when a reduced- pressure distillation method is used.*

22. *The revenue has sought classification under 2707 on the ground that as the aromatic constituents exceeds the non-aromatic constituents hence the goods will fall under Chapter sub-heading 2707. As far as issue of classification under Chapter sub-heading 2713 is concerned we find that raw RPO is being imported and is blended with various solvents to manufacture finished RPO for use by rubber industry which would meet the BIS Specifications laid down in BIS : 15078 : 2001 in terms of viscosity and density. The imported raw RPO is manufactured from Vacuum Gas Oil which is raw material for lubricating refineries. When it is cracked at high temperature and treated with solvents vaiious types of lubricating oil are obtained and the remaining extracts are derived from the treatment of lubricating oil with selected solvents. These residues or extracts are not similar to those oils as listed in 27.07 namely benzol (benzene), toluol (toluene) xylol (xylenes), solvent naptha, naphthalene oils and crude naphthalene, anthracene oils and crude anthracene, phenolic oils (phenols, cresols, xylenols etc), pyridine, quinolone and acridine basis and creosote oils. Unless it is similar oil, the raw RPO would not merit classification under Chapter sub-heading 27.07. Being "other residues of petroleum oils or of oils obtained from bituminous materials" will merit classification under Chapter Heading 2713. The classification of RPO under chapter heading 2713.39/2713.30 was recommended by the Deputy Chief Chemist and same was accepted by C.B.E. & C. in its circular No. 11/1989, dated 13-2-1989. We also find that the CRCL in its communication dated 23-8-2013 has also stated that RPO are mainly aromatic extracts which are produced during the refining of lubricating oil base stocks and that such aromatic extracts derived from treatment of lubricating oils with certain selected solvents are covered by heading 2713 9000. The Chapter sub-heading 27.13 covers Petroleum Coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals. The imported goods RPO cannot be classified under Chapter sub-heading 27.07 as it is not applicable to residues of petroleum oils or of oils obtained from bituminous minerals. Further even as per the HSN Explanatory Notes to said chapter the correct classification would be* *under Chapter sub-heading 271390 00. The more specific tariff heading is ought to be assigned to the goods in case if two headings are equally applicable. We therefore hold that the raw RPO imported by the Appellants would merit classification under chapter heading 2713.90 and would be liable to duty accordingly.*

23. *The demands against the Appellants have also been raised by invoking extended period of limitation in respect of previous imports. We find that during the course of earlier imports also the samples were drawn by the Customs Authorities and were sent for testing. The aromatic contents were found to be less than 50% by weight and the goods were allowed to be cleared. In such view of facts it cannot be said that the Appellants have suppressed any facts from department. Further we find from the bill of entry for home clearances that there is no mention of any provisional assessment of the same which shows that the Bills of Entry were finally assessed. From the detailed discussions made hereinabove, it can be seen that the issue involved is grave interpretation of law that whether goods in question is hazardous or otherwise and also involved issue on classification. The outcome of the case is based on strict laboratory tests of various agencies, hence it cannot be expected from the appellants that they know the nature of imported goods, accordingly, the impression of facts cannot be attributed to the appellants. We are therefore of the view that the demands are also hit by limitation of time and the demands raised by invoking extended period of limitation are not sustainable.*

24. *In view of our above findings we set aside the confiscation of goods, duty demand and penalties imposed. We hold that the impugned goods be classifiable under Chapter sub-heading 27139000 and the same shall be assessed accordingly. The demands made against the Appellants by invoking extended period of time are also not sustainable in view of our above observation and findings."*

12.2 In this regard, we find that the department having been aggrieved with the above order of the Tribunal in the case of Sah Petroleums Ltd., have filed Civil Appeal before the Hon'ble Supreme Court. In the said appeals filed by the Principal Commissioner of Customs (Import-II), Mumbai, in a bunch cases involving M/s Gandhar Oil Refinery (I) Ltd., Sah Petroleums Ltd. and others, the Hon'ble Supreme Court of India in Civil Appeal Diary No. 22552 of 2017 vide judgement delivered on 08.09.2017 have held that the judgement of the Tribunal does not warrant any interference and dismissed the appeals filed by the department. However, the question of law pertaining classification of goods were left open. The relevant extract of the said judgement is given below:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).   OF 2017
(Diary No(s). 22552/2017)

PRINCIPAL COMMISSIONER CUSTOMS (IMPORT II)-MUMBAI Appellant(s)

VERSUS

GANDHAR OIL REFINERY (I) LTD. ETC.   Respondent(s)

O R D E R

We have heard learned Solicitor General appearing for the appellant and perused the record. We do not see any cogent reason to entertain the appeals. The judgment impugned does not warrant any interference.

The appeals are dismissed.

However, question of law pertaining to the classification of goods under the Customs Tariff Act is left open.

........................J.
(J. CHELAMESWAR)

........................J.
(S. ABDUL NAZEER)

NEW DELHI
September 8, 2017

13.1 In view of the foregoing discussions and analysis, and on the basis of the orders passed by the Tribunal, particularly in the identical set of facts in the case of *Sah Petroleums Ltd.,* (supra) which was also upheld by judgement of the Hon'ble Supreme Court dated 08.09.2017, we are of the considered view that the impugned order dated 07.12.2024 confirming the adjudged demands by invoking the extended period of limitation under Section 28(4) of the Customs Act, 1962 and consequent confiscation of imported goods, imposition of redemption fine, penalties on the appellants is not legally sustainable. Since, the demand of duty under Section 18 ibid on re-assessment of provisionally assessed B/Es did not place on record any specific chemical test report(s) as evidence in support of the non-aromatic constituents exceeding that of aromatic constituents and further had outrightly rejected the in-house test reports produced by the appellants, the demands confirmed in this regard and the demand of duty which could be computed under Section 28(10B) *ibid* also does not stand the scrutiny of law. As regards classification of the goods, since the Hon'ble Supreme Court had left the question of law open in the case of M/s Gandhar Oil Refinery (I) Ltd., Sah Petroleums Ltd. and others, the issue of classification of Rubber Process Oil have been examined in detail in paragraphs No. 9.1 to 9.9 above, in terms of the legal provisions of the Customs statute.

13.2 Consequent to such determination of the principles of classification of the impugned goods on the basis of the customs tariff headings, sub-headings and tariff entries read with relevant Chapter Note 2 to Chapter 27 of the Customs Tariff Act, 1975, we are of the considered view, that if the impugned goods containing the aromatic constituents by weight exceeds that of the non-aromatic constituents, then appropriate classification of the impugned goods would be under CTI 2707 9900. Otherwise, where the impugned goods containing the non-aromatic constituents by weight exceeds that of the aromatic constituents or where the aromatic constituents is less than 50%, and that the requirements of chapter note 2 has not been fulfilled, then the appropriate classification of the impugned goods would be under CTI 2713 9000. Accordingly, as discussed in detail at paragraph 9.7 above, the appellants had submitted vide their letters dated 06.11.2019, 04.12.2019 and 09.12.2019 that in respect of (i) import consignments covered under 18 B/Es imported through JNCH port, where the aromatics constituents was less than 50%, and that they have made payment of differential duty of Rs.21,59,068/- along with interest of Rs.2,48,650/- on 05.12.2019; and (ii) in respect of the remaining consignments, where they had accepted that the aromatic constituents is less than 50%, they had paid the differential duty of Rs.25,26,471/- along with interest of Rs.5,49,360/-. Thus, the importer had made a total payment of Rs.46,85,539/- along with interest of Rs.7,98,010/- i.e., total amount of Rs.54,83,549/- on the ground that the imported goods having aromatic constituents of less than 50% by weight, is not classifiable under CTI 2707 9900 as claimed by them, and are right classifiable under the alternate classification of CTI 2713 9000 as determined by the department. Therefore, the total differential duty of customs along with interest paid by the appellants for an amount of Rs. 54,83,549/- and appropriated in the impugned order dated 07.12.2024 at paragraph 5(i) is sustained.

14. In the result, the impugned order dated 07.12.2024 passed by the learned adjudicating authority is set aside to the above extent and the appeal filed by the appellants are partly allowed in their favour.

(Order pronounced in open court on 06.06.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha