CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 87029 of 2024

(Arising out of Order-in-Appeal No. 778(Gr. I)/2024(JNCH)/Appeals dated 10.06.2024 passed by the Commissioner of Customs (Appeals), JNCH, Mumbai-II, Nhava Sheva.)

Al Amaan International **.... Appellants**
Shop No.65, Erskine Road, Null Bazar
Mumbai – 400 003.

Versus

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

Appearance:

Shri Ashwini Kumar Prabhakar, Advocate for the Appellant

Shri Rajiv Ranjan, 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/86970/2025

Date of Hearing: 24.02.2025

Date of Decision: 24.02.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Al Amaan International, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Appeal No. 778(Gr. I)/2024(JNCH)/Appeals dated 10.06.2024 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Appeals), JNCH, Mumbai-II, Nhava Sheva.

2.1 The brief facts of the case are that the appellants had imported 'Industrial Reducer Oil (in flexi bags)' classifying it under Customs Tariff Item (CTI) 2701 1990, by filing Bill of Entry (B/E) No.5385804 dated 05.04.2023 seeking clearance of goods from Customs authorities at the port of import. The department assessed the imported goods on first check basis by examination and representative samples of imported goods were drawn and were forwarded to the Joint Director Chemical Examiner, Central Revenue Control Laboratory (CRCL), NCH, Mumbai with a request to test and chemically analyze the samples of imported goods on the following parameters:-

> *(i) Nature (ii) Composition (iii) Description of goods (iv) Initial Boiling Point (v) Final Boiling Point (vi) content of base oil (vii) %age of volume including loss (viii) Flash point (ix) Please give specific comments that the goods are other than transformer oil (x) whether base oil or otherwise. Is it other than light oils and preparations, solvents (60/80, 50/120, 145/205, 125/240); Kerosene (IS:1459 IS:1571); Vacuum gas oil, LDO (IS:15770); Automotive Diesel Fuel not containing Bio Diesel (IS 1489); Diesel blend (IS:16531) and HFHSD Fuel (IS:16861); Motor Spirit/Gasoline"*

2.2 The Chemical Examiner (DYCC), CRCL Lab, JNCH, Nhava Sheva forwarded the test report dated 19.04.2023 of the sample, as under:-

> *"The sample as received is in the form of yellowish oily liquid is composed of mixture of hydrocarbon more than 70% by weight having following constants:*
>
> *Density at 15 degree C = 0.8090 gm/ml*
> *Flash Point (Abel) = 33.60 degree C*
> *K.V. at 40 degree C = 1.58 cst*
> *Ash Content = Nil*
> *TAN = Nil*
> *Centane Index = 51.87*
> *Distillation range –*
> *IBP = 80.4 degree C*
> *85% distilled at temp = 307.30 degree C*
> *90% distilled at temp = 325.1 degree C*
> *95% distilled at temp = 350.8 degree C*
> *FBP = 370.1 degree C*
> *Based on GC-MS and other tested parameters, sample u/r is diesel containing small amount of lower hydrocarbon.*
>
> *The sample u/r does not meet the requirements of light oil and preparation, solvent 60/80, 50/120, 145/205, 125/240 (IS 1745:2018), Kerosene (IS 1459-2018, IS 1571:2017), Vacuum Gas Oil, Light Diesel oil (IS:15770:2008), Automotive Diesel Fuel (IS:1460:2019), High Flash High Speed Diesel-HFHSD (IS: 1686/20181) and Diesel Fuel Blend B6-B20 (IS 16531:2016), Transformer oil, Gas Oil (IS 17789:2022), and Kerosene Intermediate (IS 17793)."*

The appellants importer contested on the test report of DYCC stating that the goods are composed of diesel fraction and not diesel; and the matter was referred back to CRCL Laboratory. In their further report dated 03.05.2023 it was reported that 95% part of the sample satisfies the requirement of Automotive Diesel fuel in respect of tested parameters like density, flash point, KV at 40 degree calcium, distillation range, ash content, TAN & Cefane index and approximately 5% of the sample are of lower hydrocarbon. GEMS studies also confirmed presence of Diesel in the consignment and reported that the report was in order, and concluded by stating that however, the sample does not meet the requirements of Automotive Diesel Fuel BIS :1460/2017. On the basis of CRCL test report and three chemical examiners of CRCL lab confirming that the sample may be considered as 'mixture of hydrocarbons mainly containing diesel fraction' the matter was taken up for adjudication by the Additional Commissioner of Customs, JNCH Custom House.

2.3 On the basis of above, the original authority had adjudicated the case by passing an Order-in-Original dated 16.02.2024 in re-assessment of the goods covered under B/E No. 5385804 dated 05.04.2023 by amending the description of goods as "Automotive Diesel Fuel" under Section 17(5) of the Customs Act, 1962 and changed the classification of the imported goods under CTI 2710 1944; its confiscation under Section 111(d), 111(m) *ibid* and offering an option to redeem the goods for re-export for a redemption fine of Rs.2,00,000/- under Section 125 *ibid* and imposed penalties of Rs.1,00,000/- under Section 112(a) *ibid* and Rs.75,000/- under Section 114AA *ibid* on the appellants-importer. In an appeal filed by the appellants against such original order dated 16.02.2024, the Commissioner (Appeals) had upheld the order of the original authority and rejected the appeal by the appellants. Feeling aggrieved with the said Order-in-Appeal dated 10.06.2024, which is impugned herein, the appellants have filed this appeal before the Tribunal.

3.1. Learned Advocate for the appellants submitted that the imported goods were duly examined by the jurisdictional Customs authorities who had also drawn representative samples of such goods and subjected the same for testing. By relying upon the CRCL test report of such goods which clearly stated that the imported samples did not meet the requirements of IS 1460- IS standard prescribed for Automotive Diesel Oil, and that these are mixture of 'Mineral Hydrocarbon Oil', clearly proved that the appellants-importer have correctly declared the imported goods. However, the adjudicating authority had re-assessed the goods by changing the classification and its description on the basis such test reports.

3.2 Learned Advocate further submitted that test reports given by CRCL laboratory of New Custom House, having clearly stated that the imported goods did not the requirements of the IS standards for *Automotive Diesel fuel (IS:1460),* it is not feasible for the customs authorities to classify the imported goods contrary to such test reports. Therefore, he claimed that the department's views on re-classification of imported goods are not duly supported by any evidence/document and they had not been given an opportunity to defend their case properly by issue of SCN. Hence, he pleaded that the impugned order is not legally sustainable.

3.3 In addition to the above, learned Advocate stated that such disputed issues were already addressed by the Tribunal and it was held that such orders are not sustainable. In support of their stand, learned Advocate had relied upon following decisions of the Tribunal in the respective cases mentioned below:

(i) *Essar Oil Limited Vs. Commissioner of Customs (Preventive)* – 2014 (312) E.L.T. 492 (Tri. - Ahmd.)

(ii) *Rudraksh Petrochem Pvt. Ltd. Vs. Commissioner of C. Ex. Indore* - 2016 (342) E.L.T. 393 (Tri. - Del.)

(iii) *Deepwater Pacific 2 INC* & *Transocean Offshore Deepwater Drilling INC.* Vs. *Commissioner of Customs, Vijayawada* - 2020-TIOL-839-CESTAT Hyd.

(iv) *Gaurav Lubricants Industries Pvt. Ltd. Vs. Commissioner of Customs, Ahmedabad* - 2024 (387) E.L.T. 211 (Tri. - Ahmd.)

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order and submitted that issue of classification of impugned goods, has been examined by the authorities below based on test report. Thus, learned AR justified the action in the impugned order, for re-classifying the goods subjecting it to confiscation and for imposition of penalties on appellants.

5. We have heard both the learned Advocate appearing for the appellants and the learned Authorized Representative of the Department and perused the case records.

6. The dispute between the appellants-importer and the department lies in the appropriate classification of imported goods and thereafter applicability of the relevant import conditions prescribed under ITC-HS policy of FTP and whether such import attract the alleged violations under

the Customs Act, 1962. The appellants has declared the goods as 'Industrial Reducer Oil (in flexi bags)' by classifying it under Customs Tariff Item (CTI) 2701 1990, whereas the department had contended that the said goods are classifiable as 'Automotive Diesel Fuel' falling under CTI2710 1944 of the First Schedule to the Customs Tariff Act, 1975, which is restricted for import as specified in ITC-HS.

7. Before we consider the submissions made by both sides, it is important to note that the undisputed facts with the respect to the factual matrix of the case are as follows:

> (i) The representative sample of imported goods have been tested and the test result was obtained;
>
> (ii) The test reports of CRCL laboratory had given the overall composition of the goods and specific report as to whether such goods confirm to the IS standards prescribed for Solvents, Motor Gasoline, Aviation Turbine Fuel, Light Diesel Oil, Automotive Diesel Fuel, High Speed Diesel, as sought by the customs department;
>
> (iii) Imports made by B/E No. 5385804 dated 05.04.2023, for which goods the dispute is in appeal before the Tribunal are yet to be cleared from Customs control;

8.1 The adjudicating authority, for re-assessment of the imported goods and in coming to a conclusion for re-classifying it under CTI 2710 1944 as 'Automotive Diesel Oil' had given the following findings:

> *"24. I find that the imported goods declared as Industrial Reducer Oil were found to be 95% Automotive Diesel Oil fuel which is permitted to be imported only by State Trading Enterprises. The importer M/s Al Amaan International is not permitted to import Automotive Diesel Fuel. Further from the above I find that the importer has mixed 5% lower hydrocarbon in the Automotive diesel Fuel to evade the parameters of IS 1460 of Automotive Diesel Fuel. Since as the imported are to be imported only by State Trading Enterprises and the importer is not permitted for the import therefore the goods are liable for confiscation under Section 111(d) of the Customs Act, 1962.*
>
> *25. I find that importer had mis-declared the subject goods as 'Mixed Hydrocarbon Oil' and the goods are actually automotive diesel fuel (95%) mixed with lower hydrocarbon classifiable under CRI 2710 1944 of the ITC (HS). As such, the subject goods is liable for confiscation under Section 111(d) of the Customs Act, 1962 read with Condition No.5 of Chapter 27 of the ITC (HS)…..*
>
> *26. I find that the importer had wilfully mis-declared the subject goods as 'Mixed Hydrocarbon Oil' and the goods are actually automotive diesel fuel (95%), mixed with lower hydrocarbon classifiable under CTI 2710 1944 of the ITC (HS). Therefore, the importer has made himself liable for penalty under section 114AA of the Customs Act, 1962….*

27. In view of the above facts, test reports of DYCC and submission of Importer, I find that the impugned goods merits classification in CTH 2710 1944 and import of the same is restricted…"

ORDER

(i) I reject the self-assessment made under Section 17(1) of the Customs Act, 1962 with respect of Bill of Entry No. 5385804 dated 05.04.2023 and the declared goods as "Industrial Reducer Oil ".

(ii) I order for reassessment of the impugned goods covered under Bill of Entry No. 5385804 dated 05.04.2023 under section 17(5) of the Customs Act, 1962. I order re-classification of the goods under CTH 27101944 with amendment in description as "Automotive Diesel Fuel".

(iii) I confiscate the goods imported vide B/E No. 5385804 dated 05.04.2023 with total declared value of Rs. 33,25,070/-(Thirty Three Lakh Twenty Five thousand and seventy rupees only) under Section 111(d) & Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the goods for re-export on payment of Redemption Fine of Rs. 2,00,000 (Rupees Two Lakh only) under Section 125 of the Customs Act, 1962. If the redemption fine is not paid within 120 days of the issue of this Order, the option given for redemption shall become void in compliance of Section 125(3) of the Customs Act, 1962, unless an appeal against this order is pending. Re-export is allowed subject to non-availment of any export benefit and compliance with other laws as may be applicable.

(iv) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Importer M/s Al Amaan Internation under Section 112(a) of the Customs Act, 1962.

(v) I impose penalty of Rs. 75,000/- (Rupees Seventy Five Thousand only) on the Importer M/s Al Amaan Internation under Section 114AA of the Customs Act, 1962"

8.2 Learned Commissioner (Appeals) had also examined the issue of classification and gave the following findings in upholding the original order dated 16.02.2024. The relevant paragraphs of the impugned order dated 10.06.2024 is extracted below:

"21. I find that the impugned goods declared as 'Industrial Reducer Oil' were found to be 95% Automotive Diesel Oil fuel which is permitted to be imported only by State Trading Enterprises as per import policy condition of CTH 27101944. Hence, the appellant M/s Al Amaan International is not permitted to import Automotive Diesel Fuel. Further, from the above, I also find that the appellant had mixed 5% lower hydrocarbon in the Automotive diesel Fuel to overcome the parameters of IS 1460. Therefore, I find the impugned goods liable for confiscation under Section 111(d) of the Customs Act, 1962 read with Condition No.5 of Chapter 27 of the ITC (HS). Since the goods are liable for confiscation, I find that the appellant M/s Al Amaan International has rendered himself liable for penal action under Section 112(a) of the Customs Act, 1962."

9.1 In terms of the legal provisions under Section 2(2) and Section 17 ibid, the phrase "assessment" would mean determination of the duty liability of imported goods including *inter alia* in arriving at the appropriate tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act, 1962. Further, 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."

9.2 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.

9.3 In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 2710 1944 or CTI 2710 1990 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter, heading and sub-heading level, there is no difference of opinion among the department and the appellants. The dispute in classification therefore lies in the very narrow compass of analysis of the two entries of the Customs Tariff items under which the impugned goods are to be covered as per the facts of the case, for properly classifying the impugned product. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods.

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

NOTES :

1. This Chapter does not cover:
….

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….

xxx xxx xxx xxx

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

(a) "motor spirit" means any hydrocarbon oil (excluding crude mineral oil) which has its flash point below 250C and which either by itself or in admixture with any other substance, is suitable for use as fuel in spark ignition engines. "Special boiling point spirits (tariff item Nos. 2710 12 11, 2710 12 12 and 2710 12 13)" means light oils, as defined in Sub-heading Note 4, not containing any anti-knock preparations , and with a difference of not more than 600C between the temperatures at which 5% and 90% by volume (including losses) distil;

(b) "natural gasoline liquid (NGL)" is a low–boiling liquid petroleum product extracted from Natural Gas;

(c) "superior kerosine oil (SKO)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS : 1459-1974 (Reaffirmed in the year 1996);

(d) "aviation turbine fuel (ATF)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS : 1571:1992:2000;

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

(f) "light diesel oil (LDO)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS: 15770:2008;…."

Tariff Item	**Description of goods**
2710	*PETROLEUM OILS AND OILS OBTAINED FROM BITUMINOUS MINERALS, OTHER THAN CRUDE; PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED, CONTAINING BY WEIGHT 70% OR MORE OF PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS, THESE OILS BEING THE BASIC CONSTITUENTS OF THE PREPARATIONS; WASTE OILS*
	- Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils

	being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils:
2710 12	*-- Light oils and preparations:*
	--- Naphtha:
2710 13	*--- Solvent 125/240 (petroleum hydrocarbon solvent)*
xxx	xxx xxx xxx
2710 19	*-- Other:*
	--- Gas oil and oils obtained from gas oil:
2710 19 41	*---- Gas oil*
2710 19 42	*---- Vacuum gas oil*
2710 19 43	*---- Light diesel oil conforming to standard IS 15770*
2710 19 44	*---- Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460*
xxx	xxx xxx xxx
2710 19 90	*--- Other*
xxx	*xxx xxx xxx"*

9.4 From plain reading of the above tariff extract, it transpires that in order to determine the classification of the goods, particularly in respect of the goods specified in Supplementary Note 1 to Chapter 27, Natural Gasoline Liquid (NGL), Superior Kerosine Oil (SKO), Aviation Turbine Fuel (ATF), High Speed Diesel (HSD), Light diesel oil (LDO) etc. are required to fulfil the characteristics of goods as per the Standard of Measures prescribed by Bureau of Indian Standards (BIS). As the same provide for product specifications on various criteria/parameters, on the basis of which the same can be classified under a particular entry, conformity with specific IS standard parameters is of paramount important to classify the goods under that specific tariff item. The disputed entries in the present case are of 'Automotive diesel fuel', not containing biodiesel or 'High Speed Diesel Oil', conforming to standard IS 1460 as claimed by the department under CTI 2710 1944; and 'Industrial Reducer oil' falling under CTI 2710 1990 as submitted by the appellants. Indian Standard for 'Automotive Diesel Fuel' (ADF) is IS 1460:2005 and it provides the specification for ADF for the vehicles meeting Bharat Stage IV/Euro IV Vehicular Emissions Norms based on the Auto Fuel Policy, issued by the Ministry of Petroleum and Natural Gas, Government of India, and the same has been incorporated in Annex C to IS 1460:2005 providing for twenty one (21) parameters to be tested for their conformity to IS standards. Once all parameters are fulfilled, the product can be called as 'Automotive Diesel Fuel'. However, for 'other' residuary goods' including 'Industrial Reducer oil' there is no specific IS standard prescribed in the tariff; but they have to qualify the general Section Note 2 which specify that those shall be 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 to be treated as petroleum oils and oils obtained from bituminous minerals and other similar oils.

9.5 We have perused the extract of test reports given at paragraph 16 of the Order-in-Original dated 16.02.2024, which is extracted below:

> *"Based on the facts an experiment was conducted in this Laboratory. The sample u/r was subjected to distillation. It was found that sample contains a major fraction (~95%) which had boiling range of 150 C-360 C and this fraction tested positive for confirmation of automotive diesel fuel as per IS:1460:2017. Hence the sample was reported as composed of automotive diesel fuel with small amount of lower hydrocarbons, the same had already been clarified from this Laboratory on 03-05-2023."*

From the above specific report of the samples of the impugned goods, it transpires that the imported goods under dispute are mixture of hydrocarbon oil, though containing diesel fraction, has been tested for boiling range; However, all 21 parameters which are required to be tested, for fulfilling the standard requirements as specified under IS:1460:2005 to be considered as Automotive Diesel Fuel has not been tested. In view of the above specific factual record establishing that the classification of impugned goods cannot be categorised under CTI 2710 1944, inasmuch as these goods do not fulfil the criteria mentioned for Automotive Diesel Fuel as per IS:1460:2005, the conclusion arrived at in the original order and which is confirmed in the impugned order, by the authorities below does not stand the scrutiny of law.

10. We also find force in the argument advanced by the learned Advocate for the appellants that submissions made by the appellants-importer alone cannot form the basis to confirm the charge of mis-classification and to re-classify the goods from 'Industrial Reducer oil' to 'Automotive Diesel Fuel'. The law is well settled that the Hon'ble Supreme Court in the case of *H.P.L. Chemicals Limited* (supra) have held that classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. We find that the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the test report given by the CRCL laboratory and from relevant tariff entries in First Schedule to the Customs Tariff Act, it is quite clear that the

goods are classifiable as 'other' residuary goods' including 'Mixed Hydrocarbon oil' under CTI 2719 1990 and not as 'Automotive Diesel Fuel' under CTI 2710 1944. Department's own Chemical Examiner of CRCL laboratory after examining the chemical composition of the representative samples of imported goods has said that it is not fulfilling the requirements of Automotive Diesel Fuel as per IS standards, in their report dated 19.04.2023 and confirmed the same in their further report dated 03.05.2023.

11. In view of the above discussions and analysis, it is made clear that none of the evidences relied upon by the department, to allege the mis-classification and mis-declaration of the description resorted to by the appellants, stand the scrutiny of Law. We are of the considered opinion that the department failed to substantiate the allegations by cogent and legally admissible evidences. Hence, under the above facts and in the circumstances of the case, we have no hesitation in allowing the appeal in favour of the appellants by setting aside the impugned order, as the same does not stand the scrutiny of law.

12. In the result, by setting aside the impugned order dated 10.06.2024, the appeal filed by the appellants is allowed.

(Operative portion of the Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM