

	<p style="text-align: center;"><b>सीमा शुल्क (निवारक) के आयुक्त का कार्यालय, सीमा शुल्क भवन, जामनगर - राजकोट हाइवे, विक्टोरिया ब्रिज के पास, जामनगर (गुजरात) - 361 001</b></p> <p style="text-align: center;"><b>Office of the Commissioner of Customs (Preventive), 'SEEMA SHULK BHAVAN', Jamnagar - Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) - 361 001</b></p> <p style="text-align: center;"><b>Email: commr-custjmr@nic.in; adj-custjmr@nic.in</b></p>
---	--

दस्तावेज़ पहचान संख्या/

Document Identification Number (DIN) - 20240971MM0000111D82

1.	फाइल क्रमांक/ File Number	VIII/10-74/Commr./O&A/2014
2.	मूल आदेश क्रमांक/ Order-In-Original Number	JAM-CUSTM-PRV-COM-005-24-25
3.	आदेश पारित करने वाला प्राधिकारी/ Authority Passing the Order	धिरेन्द्र लाल / Dhirendra Lal आयुक्त/ Commissioner, सीमा शुल्क ( / Customs (Preventive), जामनगर/ Jamnagar.
4.	आदेश की तिथि/ Date of Order	10.09.2024
5.	आदेश जारी करने की तिथि/ Date of issue of Order	10.09.2024
6.	कारण बताओ नोटिस संख्या और तारीख/ Show Cause Notice number and date	संख्या/ No.: DRI/AZU/MISC-17/2010 दिनांक / dated: 20-03-2014
7.	नोटिस पाने वाले का नाम/ Name of the Noticee	मेसर्स एस्सार ऑयल लिमिटेड (अब मैसर्स नायरा एनर्जी), पी.बी. संख्या 24, जिला- देवभूमि द्वारका गुजरात - 361 305  M/s Essar Oil Ltd. (Now M/s. Nayara Energy), P.B. No. 24, Dist. - Dev Bhumi Dwarka, Gujarat - 361 305

1. इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है।

The original copy of this order is provided free of cost to the person concerned.

2. इस मूल आदेश से व्यक्ति कोई भी व्यक्ति, सीमा शुल्क अधिनियम, 1962की धारा129 A(1)a, सीमा शुल्क (नियम, 1982 के नियम 6(1) के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से तीन महीने के भीतर फॉर्म सीए 3-में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए 3-में अपील का प्रपत्र, चार प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। )जिनमें से कम से कम एक प्रमाणित प्रति हो।।



सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण, पहिले जोनल बैच,	Customs, Excise and Service Tax Appellate Tribunal (West Zonal Bench)
दूसरी मंजिल, बहुमाली भवन असरवा, गिरधर नगर ब्रिज के पास, गिरधर नगर, अहमदाबाद, (गुजरात) - 380 004	2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad (Gujarat) - 380 004

Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-3, within three months from the date of receipt of this order, under the provisions of Section 129A(1)(a) of the Customs Act, 1962, read with Rule 6(1) of the Customs (Appeals) Rules, 1982. The form of appeal in Form No. CA-3 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

3. अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये ) 0.50 पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।

The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paisa only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

4. अपील के साथ, सीमा शुल्क अधिनियम 1962, की धारा 129A) की उप-धारा(6) के अंतर्गत किसी भी राष्ट्रीयकृत बैंक द्वारा न्यायाधिकरण की उक्त पीठ के सहायक रेजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट रु। .-/1000रु। .-/5000 या रु। .-/10,000जैसा भी लागू हो, ऐसे स्थान पर स्थित शाखा के लिए जारी किया जाना चाहिए, जहां पर उक्त पीठ स्थित है।

The appeal should be accompanied with a cross demand draft in favour of the Assistant Registrar of the Bench of the Tribunal, on a branch of any Nationalized Bank located at a place where the bench is located for Rs. 1,000/- (in cases where the duty, interest, fine, or penalty demanded is Rs. 5 lakh or less), Rs. 5,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 5 lakhs but less than Rs. 50 lakhs) and Rs. 10,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 50 lakhs) as applicable under Sub-Section (6) of the Section 129(A) of the Customs Act, 1962.

5. अपीलीय ज्ञापन के साथ शुल्क भुगतान जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 129(E) के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।

Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 129 (E) of the Customs Act, 1962.

6. अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क (अपील) नियम, 1982 और सिस्टेट प्रक्रिया (प्रोसेजर) नियम, 1982 के सभी नियमों का पूरा पालन हुआ है।

While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.

7. इस आदेश के खिलाफ अपील, सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।

An appeal, against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal, on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.



**BRIEF FACTS OF THE CASE:-**

M/s Essar Oil Limited, P.O. Box No.-24, Head P.O. Khambhalia, Dist.- Jamnagar, having registered office at " Essar House", 11, K.K. Marg, P.O. Box No.-7945, Mahalaxmi, Mumbai-400034 (hereinafter referred to as "the Noticee") have a Petroleum Oil Refinery at Vadinar, Jamkhamhalia, District-Jamnagar. They import "Petroleum Crude Oil" and "Crude Petroleum Condensate" to manufacture various petroleum products like Furnace Oil, High Speed Diesel, Motor Spirit, Naphtha, LPG, Superior Kerosene Oil, Bitumen etc. which are partly exported and partly sold within India. The Noticee are having IEC Code No. 0392042312 and Central Excise Registration No. AAACE0890PXM005. They import different types of "Crude Petroleum Oil" of various origins to manufacture. For clearance of the same, they file Bills of Entry with Customs House, Vadinar, classifying both "Crude Petroleum Oil" and "Petroleum Crude Condensate" under Customs Tariff Heading 27090000. Prior to changes in duty structure vide Union Budget 2010-11, the effective rate of duty for the goods covered under CTH 27090000 was NIL in terms of Notification No. 21/2002-Cus dated 01.03.2002 read with Notification No. 74/2008-Cus dated 04.06.2008.

2. Intelligence gathered by the officers of Directorate of Revenue Intelligence indicated that in the guise of "Petroleum Crude Oil" and "Crude Petroleum Condensate", the Noticee was importing Refined Petroleum Products, i.e., petroleum products - other than Crude, covered under CTH 27101990 which attracts Customs Duty. The intelligence further indicated that the Noticee has indulged in clearance of such imported goods at NIL rate of duty by way of falsely classifying the same under CTH 27090000.

3. For verification of the aforesaid intelligence, the Custom House Laboratory, Kandla was requested to provide the Test Reports issued by them in respects of samples pertaining to goods imported by the Noticee under the cover of B/E Nos. F-48/07.09.2009, F-50/18.09.2009, F-63/23.10.2009, F-91/28.12.2009 & F-100/09.01.2010. The Custom House Laboratory, Kandla forwarded copies of the said five Sample Test Reports which read as under:-

Sl. No	Bill of Entry No. and Date	Description of import goods declared in	Test Report No. and Date	Test Report
01.	F-48/07.09.2009	Akpo Condensate Crude Oil of Greece origin	CRCL/Imp ort/2707 dated 12.10.2009	<p>The sample is in the form of blackish liquid. It is composed of mineral hydrocarbon oil flashing below 25°C.</p> <p>Density at 15°C → 0.7975 g/ml</p> <p>Distillation Range → 60°C to 354°C</p> <p>Sample indicates the properties of mixture of mineral hydrocarbon oil and not the petroleum crude oil. The party may be asked to provide the details of the origin of the product and other related literature in support of his claim of the product as crude petroleum oil in order to further study the case.</p>



02	F-50/ 18.09.2009	CPC Crude Oil of Russian Origin	CRCL/ Import/ 2707 dated 12.10.2009	<p>The sample is in the form of blackish liquid. It is composed of mineral hydrocarbon oil flashing below 25°C.</p> <p>Distillation Range → 62°C - 358°C.</p> <p>Density at 15°C → 0.7995.</p> <p>Sample mandates the properties of mixture of mineral hydrocarbon oil and not the petroleum crude oil. The party may be asked to provide the details of the origin of the product and other related literature in support of his claim of the product as crude petroleum oil in order to further study the case.</p>
03.	F-100 dated 09.01.10	De-odorized Field Condensate Crude Oil (Qty. 58094.01 MT)	CRCL/ Import/ 4587 dated 16.02.10	<p>The sample is in the form of colourless liquid. It is composed of mixture of mineral hydrocarbon oil having flash point below 25°C.</p> <p>Distillation Range → 47°C - 300°C.</p> <p>Density at 15°C → 0.7568.</p> <p><b><u>In the preliminary findings the sample appears to be a processed product of crude petroleum oil.</u></b> For detailed report party may be asked to provide the Certificate of Origin of product and Test Certificate of load port report along with party's claim in support of their product as a crude petroleum oil may be submitted to this laboratory for further study of the case. Two liters more quantity of the sample may be forwarded to this laboratory to carry out the other parameters necessary to ascertain the actual nature of the sample.</p>
04.	F-91 dated 28.12.0909	Qatar LSC Crude Oil (Qty. 61626.485 MT).	CRCL/ Import/ 4105 dated 15.01.10	<p>The sample is in the form of Pale yellow oily liquid. It is composed of mixture of mineral hydrocarbon oil, flash point below 25°C.</p> <p>Density at 15°C → 0.74788.</p> <p>Distillation Range → 45°C - 326°C.</p> <p><b><u>It is other than Petroleum Crude Oil.</u></b></p> <p>However the literature regarding to the claim of the party in support of his product as Crude Petroleum Oil may be submitted to this laboratory for further examination.</p>
05.	F-63 dated 23.10.09	Forozan Blend Crude Oil (Qty. 71860 MT)	CRCL/ Import/ 3108 dated 09.11.09	The sample is in the form of brownish oily liquid composed of mineral hydrocarbons oil having flash point



	Low Sulphur Condensate Crude Oil (Qty. 60878.396 MT).		<p>below 25°C.</p> <p>Density at 15°C → 0.7487.</p> <p>API Gravity at 60°F → 57.4.</p> <p><b>Note: → <u>The sample indicates the property of Naphtha.</u></b> However for identification of the product, party may be asked to submit Certificate of Origin of the product and its load port report / certificate of analysis in support of the claim of the party for his product.</p>
--	---	--	---

4. The import documents pertaining to the above mentioned five Bills of Entry were called for from the Custom House, Vadinar. The import documents consisting of the original Bills of Entry, copies of the Bills of Lading, Certificate of Origin, Load Port Reports, Sample Test Reports (original), IGMs etc. were provided to the DRI, Jamnagar under cover of letters as under:

- a. F.No. VIII/48-05/MISC/VDR/2010-11 dated 30.04.2010 of the Superintendent of Customs, Custom House, Vadinar.
- b. F.No. VIII/48-05/MISC/VDR/2010-11 dated 03.05.2010 of the Superintendent of Customs, Custom House, Vadinar.
- c. VIII/48-01/T/2010-11 dated 04.05.2010 of the Assistant Commissioner of Customs, Customs Division, Jamnagar.
- d. VIII/48-17/T/2010-11 dated 06.05.2010 of the Assistant Commissioner of Customs, Customs Division, Jamnagar.

5. The Assistant Commissioner of Customs, Customs Division, Jamnagar informed vide letter F.No. VIII/48-17/T/2010-11 dated 06.05.2010 that the Bill of Entry No.F-91/28.12.2009 has been assessed finally by them on 18.02.2010 and remaining other four Bills of Entry No.F-48/07.09.2009, F-50/18.09.2009, F-63/23.10.2009 and F-100/09.01.2010 were not finalized and were assessed provisionally.

6. Based on the investigation made by DRI in regard to the import under B/E No.F-91/28.12.2009, a show cause notice was issued to the importer viz. M/s. Essar Oil Ltd., and others on 16.08.2010, by the Additional Director General, DRI, Zonal Unit, Ahmedabad.

7. Further investigations were made by DRI in respect of clearances under the cover of Bills of Entry No.F-48/07.09.2009, F-50/18.09.2009, F-63/23.10.2009 and F-100/09.01.2010.

8. Vide letter No. VIII/48-17/T/2010-11/401 dated 11.05.2010 of the Assistant Commissioner of Customs, Customs Division, Jamnagar, it was reported that two samples of two different grades of Crude Petroleum Oil imported under B/E No.F-63/23.10.2009, per MT United Star were drawn and only one sample was sent to the Custom House Laboratory, Kandla for testing purpose. Under B/E No.63/23.10.2009, two different grade of crude (1. LS Condensate, 2. Forozan Blend Crude Oil) were imported by Essar Oil Ltd., therefore it was asked from Customs to specify whether the samples sent for testing to Custom House Laboratory belonged to LS Condensate or the Forozan Blend Crude Oil. Then vide letter No. VIII/48-17/T/2010-11 dated



06.05.2010 of the Assistant Commissioner of Customs, Customs Division, Jamnagar it was further reported that which sample was sent to the laboratory was not ascertainable. However, on receipt of remaining three samples pertaining to the said B/E No.63/23.10.2009, it was ascertained that the sample sent by Custom to the laboratory at Kandla for testing pertained to LS Condensate and accordingly vide letter no. DRI/JRU/INT-7/2010 dated 09.06.2010 the Assistant Commissioner of Custom, Customs Division, Jamnagar was informed about the same. So from the B/E No. F63/23.10.2009 only sample of LS Condensate was sent to the Custom House Laboratory, Kandla for testing and test report received from there bering No. CRCL/Import/3108 dated 09.11.2008, was that of the consignment of LS Condensate for which inquiry was initiated by the DRI on receipt of intelligence. So hereinafter in this SCN import consignment covered under B/E No. F-63/23.10.2009 may be treated only for LS Condensate.

9. In view of the fact that emerged from the Sample Test Report issued by the Custom House laboratory, Kandla for various imports of the Noticee, undertaken vide B/E No. F-48/07.09.2009, F-50/18.09.2009, F-63/23.10.2009 and F-100/09.01.2010, wherein it was clearly opined that the imported goods were other than "Petroleum Crude Oil", "Having property of Naphtha" and "Processed Product of Crude Petroleum Oil", the statements of the concerned officials of the Noticee were recorded, which are reproduced as under :-

9(a) Statement of Shri Nishant K. Chouhan, Senior Manager of the Noticee was recorded on 04.05.2010, wherein besides other things he, inter alia, stated that as the Senior Manager he had been looking after the work of imports of the Noticee and all kind of Custom's documentation work related to the same; that in the import he ensured filing of Bills of Entry and subsequent clearances of the import cargo from the Customs; that for all of his work, he reported to his senior Shri P.S. Reddy, JGM in EPIL; that the Noticee was importing the Petroleum Crude Oil and all imports of Petroleum Crude Oil were made at Vadinar port; that there was International Supply and Trading Department (IST) in the Noticee based at Mumbai Head Office, which were providing them the prior intimation and documentation of impending Crude Oil at Vadinar; that thereafter they filed Bills of Entry along with documents such as Provisional Cargo Value Declaration, Bill of Lading and other load port documents (i.e. certificate of origin, quality/ quantity certificate and freight/ insurance, wherever applicable) with Vadinar Custom House; that the import bills of entry would be signed by authorized signatory; that Shri P.S. Reddy was authorized to sign these documents; that on provisional assessment by the customs authorities, they would make duty payment through the nominated bank and got 'out of charge' from the Customs and then they would get the import cargo cleared from the Customs; that they were importing various types of Crude Oil like Arab Extra Light, Dubai Crude, Murban Crude Oil, Iran Heavy Oil, Forozen Crude Oil, Nowrooz Crude Oil, Nigerian Crude Oil, Khuff Condensate, De-Odorised Field Condensate etc.; that the independent surveyors appointed by their company were regularly drawing the samples of the imported products and the same were sent to their in-house laboratory for testing purpose; that they did not send the samples to the Government laboratory. Independent surveyor meant the surveyor appointed by their company and their overseas suppliers; on seeing the Sample Test Report of the Petroleum Crude Oil imported by the Noticee, under B/E Nos. F-63/23.10.2009, F-91/28.12.2009 and F-100/09.01.2010, issued by Custom House Lab, Kandla vide their report Nos.

CRCL/Import/3108 dated 09.11.2009, CRCL/Import/4105 dated 15.01.2010 and CRCL/Import/4567 dated 16.02.2010 respectively, he stated that the samples were explained to be Naphtha, Other than Petroleum Crude Oil and Processed Product of the Crude Petroleum respectively; that they were not informed by the Customs till date about the above said three reports; that in case of B/E Nos. F-63/23.10.2009, F-91/28.12.2009 and F-100/09.01.2010, they did not give the in house laboratory test report to the Customs as the same was not desired by them;

9(b) In his statement dated 05.05.2010 Shri Pothula Seshi Reddy, Joint General Manager of M/s Essar Project India Limited ( EPIL), *inter alia* stated that he looked after imports and exports of the Noticee and in relation to all the documentation work was done by other officers of the company under his supervision; that he reported to his senior Shri Ashok Aggrawal, Vice President in the Noticee and also taking directions from him in all the pertinent issues; He further confirmed that he was aware about the provisions of the Customs and Central Excise Laws relating to the imports and Exports; that boarding formalities of the vessel at Vadinar on behalf of the Noticee had been carried out by their sister concern M/s. Vadinar Oil Terminal Ltd.(herein after referred as VOTL), having it's office at Vadinar Port's jetty; that as regards drawing of samples, none of the Noticee's staff members attended sampling work on board the ship; that officers from VOTL might be aware of the same; that with regard to final invoice of import vide B/E F-63 dated 23-10-2009 that they did not provide the same as it was not called for by the Customs; that with regard to variation in the analysis report in some cases the final assessment was done, he stated that they were asked by the Superintendent of Customs, Vadinar to submit documents viz. Load Port Report, Certificate of Origin, Literature etc. in respect of B/E F-39/04.08.2009, F-40/11.08.2009, F-48/07.09.2009 and F-50/18.09.2009 as there appeared variation in the description of crude oil declared in the Bs/E and the CRCL's report and accordingly submitted the required documents to the Customs.

9(c) In his statement dated 18.05.2010, Shri Deepak Sachdeva, Port Captain, VOTL *inter alia* stated that as the Head of Marine in VOTL, he looked after all the port terminal work of Essar facilities in Vadinar Port and took all the decisions related to the company works; that VOTL was engaged in the work of providing services of oil intake and oil evacuation at Vadinar Port; that there was one SPM (Single Point Mooring) and two Jetties at Vadinar Port under his charge; that they had daily meeting with the officials of the Essar Oil Limited (the Noticee) for the vessels coming with the import cargo or for the vessels intended to load at Essar Jetty at Vadinar Port and he accordingly drew plan in accordance with their meeting with the Noticee's officials for handling the vessels at SPM, Vadinar Port and at the Essar Jetty; that their deputed boarding officer remained present on board during the entire operation and duration of the vessel; that their Boarding Officer attended the vessel along with the Shipping Agent, Customs Officer, Surveyor and KPT Pilot and Mooring Gang; that then the boarding officer (of VOTL) ensured Hose Connection, Cargo Figure Reconciliation with Surveyor, and then he would participate and witness the drawl of samples by the Customs in presence of the surveyor with the help of Ships' staff; that there were at least five representative samples which were drawn from the import consignments as explained above out of which two samples were given to the Customs, one to the surveyor and two representative samples were retained by them; that the sample memos were always endorsed by the Boarding Officer deputed by him,

along with the attending surveyor and the Customs Officer present at the time of sampling. He further confirmed that the said procedure of sampling was invariably done for every vessel coming with import cargo; that VOTL had entered into an agreement with the Noticee for the purpose of providing services as explained above and the copy of which would be provided by him next day; that they were concerned only with the quantity of import cargo which was verified based on the documents received from the load port through Master of the vessel; that besides, their Boarding Officer remained present along with the Surveyor during Tank Ullage where surveyor and VOTL issued their respective Ullage Report separately for every import consignment; that all the above import cargo was discharged at Essar SPM, Vadinar Port. Further, as regards a question whether the sample memos of the samples drawn did bear the signatures of VOTL, Customs & Surveyor for every cases, he deposed that all the concerned persons/authorities attending or witnessing drawal of the samples signed the sample memo. He then produced the documents related to the imports undertaken through vessel MT North Sea, MT Sea Ulsan & MT ISI Olive. Later the import documents retained and maintained by VOTL for vessel MT United Star, MT Athinea and MT Ocean Quest were also sent by Capt. Deepak Sachdeva. Shri Deepak Sachdeva also provided the copy of the import documents retained and maintained by VOTL for vessels MT United Star, MT Athinea & MT Ocean Quest along with agreement between THE NOTICEE and VOTL as referred by him in his statement. The import documents of MT Athinea showed five Representative Samples were drawn jointly by the Customs and VOTL in presence of the independent surveyor and from which two samples were retained by Customs.

9(d) In his statement dated 20.05.2010, Shri T. Srinivas, the Head, International Supply & Trading of the Noticee, *inter alia* stated that he had Joined the Essar Group since September 2009, as the Head of IST, and since then he had been responsible for activities pertaining to import of crude oil, export of products, ship chartering and operations, oil price risk management besides the control function through the IST-Finance group. He then gave details of crude oil sourcing, Geographical spread, Term contracts, Spot contracts etc.

9(d)(i) On being asked about the imports undertaken under the following Bs/E with details of the vessels given against each:

<b>Sr. No.</b>	<b>B/E No. &amp; Date</b>	<b>Name of Vessel</b>	<b>Description of imported goods</b>
01	F-48/07.09.2009	MT Cap Victor	AKPO Condensate Crude Oil
02	F-50/18.09.2009	MT North Sea	CPC Blend Crude Oil
03	F-63/23.10.2009	MT United Star	CPC Blend Crude Oil
04	F-91/28.12.2009	MT Athinea	Qatar LSC Crude Oil
06	F-100/09.01.2010	MT Ocean Quest	De-odorised Field Condensate Crude



On being asked Shri T. Srinivas explained in chronological order the modalities adopted for import, as under:

**S.No.1 Akpo condensate:**

The contract had been finalized on high seas sales basis with MSTC, a copy of which was enclosed; that the supplier to MSTC was BP and major contractual terms were:

- Grade of crude oil: Apko Condensate

- Delivery mode: C&F basis
- Delivery in: September 2009 at Vadinar.
- Price on C&F basis: The price of Brent crude oil published during 1-30<sup>th</sup> September 2009, plus a premium of \$2.345/bbl.
- Quantity: 1 million barrels approx

The B/L, cargo manifest, certificate of authenticity, certificate of origin, certificate of quality and certificate of quantity of the above cargo as issued by the terminal/authorities. The report of the independent inspector was M/s.Inspectorate was attached.

**S.No.2 : North Sea:**

The contract for import of CPC Blend crude oil was done with STC on high sea sales basis. The cargo was supplied through Gunvor:

- Grade of crude oil: CPC Blend
- Delivery mode: Cost & Freight basis
- Delivery: September 2009 at Vadinar.
- Price: The price of Dubai crude oil published during 1-30<sup>th</sup> September 2009, plus a premium of \$1.66/bbl. Further discount as per item 6 of contract on completion of final pricing (USD 225000)
- Quantity: 700,000 barrels approx

The independent inspector was M/s.SGS and their report is attached.

**S.No.3 : United Star:**

This shipment had two cargoes viz. Foroozan of Iranian origin and Low Sulphur Condensate of Qatari origin.

**Foroozan of Iranian origin:**

Seller: National Iranian Oil Company (NIOC) – Govt. company of Iran.

Pricing terms: The price is the Asian standard price formula. By way of explanation, it may be mentioned that the formula for crude oil is linked to the average price of Oman and Dubai grades of crude during the month of loading of the cargo with adjustment for quality differential.

Delivery: FOB



Quantity: As this was part of the term contract with NIOC, quantity as per requirement and ship has been taken (about 515 kb approx. was lifted in the vessel United Star).

The inspection in the load port in Iran was carried out by International Cargo Surveyor and report is attached.

**Low Sulphur Condensate:**

Seller: BP.

Quantity: 500kb with 5% operational tolerance

Price: The average price of Dubai price for the month of loading (Oct'09) minus a discount of \$0.421/bbl.

Delivery: FOB

The inspection was carried out by SGS and report is attached.

Vessel Chartered for lifting of the cargo: The vessel United Star was chartered for lifting of the above two cargoes. The vessel was fixed under voyage charter basis. The vessel was fixed at a rate of 67.5 World Scale;

S.No.4 : **Low Sulphur Condensate:** The contract for import of LSC was done with Vitol Asia Pte Ltd.

- Grade of crude oil: LSC
- Delivery mode: FOB
- Loading: December 2009.
- Price:
 

For 475 kb; Monthly average price of Dubai of Dec'09 minus \$1.517/bbl.

For quantity over 475 kb; Monthly average price of Dubai of Dec'09 minus \$0.68/bbl.
- Quantity: 500,000 barrels approx

The independent inspector was M/s.SGS and their report is attached.

Vessel MT Athinea was fixed for this voyage on voyage charter at a rate of 100 world scale. The charter party of this vessel fixture is attached.

S.No.5 : DFC Crude oil supplied by vessel Ocean Quest.: The contract for import was done with Tasweeq, Govt. company of Qatar.

- Grade of crude oil: DFC
- Delivery mode: FOB
- Loading: 1-8 January 2010 at Vadinar
- Price: The condensate price was a mix of Naphtha (50%), Keosene (25%) and gasoil (20%)
- Quantity: 500,000 barrels approx

The independent inspector was M/s. Inspectorate and their report is attached.

Vessel MT Ocean Quest was fixed for this voyage on voyage charter at a rate of 125 world scale. The charter party of this vessel fixture is attached.

9(d)(ii) As regards the sample report indicating the property of Naphtha for the sample drawn of imported goods vide B/E F-63/23.102009, he stated that he could not claim expertise in the area of testing of crude oil/condensates and further stated that condensates were usually known to have large proportion of naphtha, and produced crude oil assay of M/s. SGS for LSC crude oil; that API gravity of crude oil is 57.84°, which is in line with sample test report shown to him; regarding observation that sample was

flashing below 25°C, it was not unusual for condensates and infact some crude oils also to flash below 25°C due to the contents of light products like LPG, Naphtha etc.;

9(d)(iii) On seeing the Bill of Entry No. F-100/09.01.2010 under which 58094.01 MT of De-odourised Field Condensate was shown imported at Vadinar Port per MT Ocean Quest as well as sample Test Report No. CRCL/Import/4587 dated 16<sup>th</sup> February 2010, for the said import as given by CRCL, Kandla, wherein it was reported to be "the processed product of Petroleum Crude Oil", Colour of the sample was mentioned to be colourless, he stated his observation and views as under:

(a) *The sample was flashing below 25 deg C.*

*This has no significance in establishing that the sample under consideration was not crude oil/ condensate.*

(b) *Distillation Range is shown as 47 deg C to 300 deg C.*

*This was a large distillation range and hence not in the nature of any single petroleum product; that the sample was indeed a mixture of hydrocarbons and not a product. It may be worth mentioning that crude oil and condensates were complex mixture of different hydrocarbons.*

(c) *The density at 15°C : 0.7568*

*This density shows that it is inline with the assay of Deodourised Field Condensate.*

On seeing the Bill of Entry No. F-48/07.09.2009 and F-50/18.09.2009 under which Apko Condensate Crude Oil and CPC Blend Crude Oil was shown imported at Vadinar Port as well as sample Test Report No. CRCL/Import/2705 dated 12<sup>th</sup> October 2010 and CRCL/Import/2707 dated 12<sup>th</sup> October 2010, for the said import as given by CRCL, Kandla, wherein it was reported to have the properties of mixture of Mineral Hydrocarbon and not the Petroleum Crude Oil, he stated his observation and views as under:

(i) B/E No. 48/07.09.2009"

(a) *The sample was flashing below 25 deg C.*

*This has no significance in establishing that the sample under consideration was not crude oil/ condensate.*

(b) *Distillation Range is shown as 60 deg C to 354 deg C.*



*This was a large distillation range and hence not in the nature of any single petroleum product; that the sample was indeed complex mixture of hydrocarbons not confirming to any petroleum product like naphtha or kerosene or diesel fuel, but akin to crude oil/ condensates distillation range.*

(c) *The density at 15°C: 0.7975*

*This density shows that it is inline with the assay of Akpo Blend of Nigeria..*

(ii) B/E No. 50/018.09.2009

(a) The sample was flashing below 25 deg C.

This has no significance in establishing that the sample under consideration was not crude oil/ condensate.

(b) Distillation Range is shown as 60 deg C to 358 deg C.

This was a large distillation range and hence not in the nature of any single petroleum product; that the sample was indeed complex mixture of hydrocarbons not confirming to any petroleum product like naphtha or kerosene or diesel fuel, but akin to crude oil/ condensates distillation range.

(c) The density at 15°C: 0.7995

This density shows that it is inline with the assay of CPC Blend Crude oil, having specific gravity 0.8054, which is close to density mentioned in report.

9(d)(iv) On being asked whether he could confirm that the Low Sulphur Condensate Crude Oil imported under B/E No. F-63/23.10.2009, Qatar Low Sulphur Condensate imported under B/E No. F-91/23.10.2009, De-odourised Condensate Crude Oil imported under B/E No. F-100/09.01.2010 and AKPO Condensate Crude Oil imported under B/E No. F-48/07.09.2009 were all imported in as condition directly from the Oil Well and whether he could explain, keeping in view the load port in all of the above imports except in case of B/E No. F-48/07.09.2009, was Ras Laffan and also the supplier was Tasweeq of Qatar, he deposed that he submitted that Akpo condensate (B/E no. F-48/07.09.2009) was of Nigerian origin whereas the other cargoes were from Ras Laffan, Qatar; that the prime supplier of the cargoes from Ras Laffan was Tasweeq, though they had imported condensates from some trading companies like BP and Vitol besides Tasweeq directly; that all the cargoes had been loaded from the Qatari port of Ras Laffan as evidenced from the Certificates of origin supplied for each cargo. He further stated that to the best of his understanding the said cargoes were condensates; that in support of his view, he had produced an international publication of crude oils "Rim Intelligence Crude" dated 14<sup>th</sup> May 2010, wherein it clearly showed the inclusion of DFC and LSC in this publication suggested that the global oil community considered them as condensates and not as products. Other condensates like Arun Condensate, North West Shelf Condensate, etc. were also included. He further added that in light of the above, he strongly believed that this was in the nature of crude oil/condensate as per classification under CTH 2709. Shri T. Srinivas further deposed that as the Head-IST, he was directly responsible for activities pertaining to procurement of crude oil and to arrange for the oil to be shipped to Vadinar; that the formalities at discharge port viz. Vadinar were carried out by their Indirect Taxation Dept of Essar Oil Limited, Vadinar. He further stated that at IST Dept., they had procedures in place to ensure that the crude oil desk procures crude oil as per requirement; that upon completion of the crude oil purchase, the crude oil group advised the Ship Operations group under IST Dept of the cargoes finalized. He further added that since imports were perennial in nature and have to be carried out day in and day out, it was normal international practice to have an independent inspector at the load port to ensure the loading of the cargo, determination of quantity, quality, origin, etc.; that accordingly, at Essar, they ensured that the cargo loading was done as per contract by appointing an independent inspector and advised them to inspect and carryout all activities



with respect to quality and quantity determination, sample collection, etc; this was a practice which was followed rigorously by the IST group of Essar Oil Limited. He further clarified that he would like to check on the difference between LSC and DFC; that but his understanding was that those were two distinct condensates from different fields; that this was amply reflected in the crude oil assays provided wherein he would like to draw attention to page no.4 of both the assays of DFC and LSC; that he summarised below the difference in the yields to show that those were distinct streams and not as a result of any processing carried out:

	Deodorized Condensate	Field	Qatar Low Sulphur Condensate
LPG	4.49	3.26	
Naphtha	43.2	47.12	
Naphtha/Kerosene	5.88/11.37	5.66/9.58	
Kerosene	8.67/4.49	8.18/2.92	
Kerosene/Light Gas Oil	7.05	7.27	
Light Gas oil	9.85	9.93	
Light Gas oil Residue	5.0	6.09	

9(d)(v) To a question whether original documents for imports of Crude Petroleum Oil were being supplied to the IDT, THE NOTICEE at Vadinar by IST, the Noticee at Mumbai for final assessment of the Bill of Entry on settlement of the final payment against imports, he replied that initially at the time of import they would send copies of the import documents received by them through e-mail (scan copy) and later on receipt of the original documents the same were sent to the IDT of the Noticee at Vadinar by them for final assessment by the Customs Department. On being asked whether the different kind of Condensate Crude Oil imported by them were stored in the same Shore Tank at Vadinar refinery wherein the Crude Petroleum Oil would be stocked, Shri T. Srinivasan replied in affirmative and added that the condensate was discharged from the ship into the crude oil tank farm where other crude oil grades were stored; that the general practice was to segregate/store the crude oil into three categories viz. (a) condensate/light crude, (b) Medium Gravity Crude and (c) Heavy Tough Crude; that to clarify further, condensate could be stocked together in same tank with another light crude oil.

9(e) In her statement dated 24.05.2010, Ms. Madhurima Gupta, Head of Crude Oil Trading in International Supply & Trading, in the Noticee *inter alia* stated that she was responsible for activities pertaining to finalization of the contracts for import of crude oil; that her job involved finalization of term and spot contracts for purchase of crude oil and condensates; that after technical clearance, based on the crude oils/condensates identified by Economic Planning & Scheduling Deptt, they discussed with various suppliers of specific grade(s) of crude oils/condensates; that the terms and conditions and price was discussed and delivery schedule was also considered at the time of finalization of the deal; that as per the standard practice set out in the company the final decisions for import of the Crude Oil/Condensate was taken by her taking into considerations requirement of the refinery at a given point of time; that this included suitability of grade, delivery schedule and economic parameters etc.; on their request Tasweeq (Marketing arm of the Qatar Petroleum) had sent them Assays for the De-odorised Field Condensate and Qatar Low Sulphur Condensate and she produced copies of the same; that under B/E No. F-63/ 23.10.2009 Qatar Low Sulfer Condensate was imported by the Noticee at Vadinar Port and for the said import Load Port was



Ras Laffan, Qatar; that in the contract on FOB/C&F basis, it was suppliers' duty to place goods (Crude /Condensate) on ship however, the prime supplier for these cargoes were Tasweeq; that prior to Ras Laffan they did not have any control on these cargoes; that they had no idea about what happened between production and loading; that Ras Laffan was one of the main load ports for loading DFC, Q-LSC. She was shown Sample Test Report of two consignments imported by the Noticee under B.E F-63/23.10.2009 & F-100/09.01.2010 issued on testing of the representative samples by CRCL as detailed below:

Sr. No.	Sample test Report Nos. & E.E No.	Cargo Declared in B/E	Test Reports say
01	CRCL/Import/3108 dated 09.11.2009 F-63/23.10.2009	Low Sulfer Condensate	Sample indicates properties of Naphtha
02	CRCL/Import/4587 dated 16.02.2010 F-100/ 09.01.2010	De-odourised Field Condensate	Processed product of Crude Petroleum Oil

On being asked to clarify as to what processes were undertaken on the import goods before being loaded into vessels at Load Port. Ms. Madhurima Gupta replied that the goods imported under the three Bills of Entry as above were in line with the Assays submitted for Q-LSC/LSC and DFC; that they considered the Assay quality for evaluating, suitability of processing in their refinery; that the density quoted in the Test Report were in line with the Assays; that what processes were undertaken on the goods by suppliers were not known to her; that daily prices of both Q-LSC and DFC were quoted under the Crude Intelligence Report of RIM and as a sample of the same was being submitted by her; that further Platt Crude Oil Market Wires dated 14<sup>th</sup> may 2010 was being submitted which also gave price of Qatar LSC and Ras Gas (old name of DFC); that therefore, the above consignment was pertaining to Condensate and not of Naphtha; that on being asked as to why over the period from 2008 to 2009 the Noticee has increased the imports of Condensate Crude Oil of various types/grade, she replied that the procurement/import of the Crude was made as per the feedback/requisition received from EPS Deptt. Of the Noticee; that she was therefore unable to provide reasons of increase in import of Condensate; that both Crude and Condensate were stored in the Tankages in the Crude Tank Farm and a consolidated stock of Crude Oil included stock of condensate; that they did not maintain separate stock of the Condensate alone.

10. The representative Samples drawn by the Customs from the import consignment covered under four B/E Nos. F-48/07.09.2009, F-50/18.09.2009, F-63/23.10.2009 and F-100/09.01.2010 were sent to the Custom House Laboratory, Kandla and the Chemical Examiner Gr-I, Custom House Laboratory, Kandla vide their Test Report bearing No. CRCL/Import/2705 dated 12.10.2009, CRCL/Import/2707 dated 12.10.2009, CRCL/Import/3108 dated 09.11.2009 and CRCL/Import/4587 dated 16.02.2010 clearly opined that the imported goods were "other than Petroleum Crude Oil", for B/E Nos.48/07.09.2009 & 50/18.09.2009, 'Naphtha for B/E No.F-63/23.10.2009 and "Processed products of Petroleum Crude Oil for B/E No.F-100/09.01.2010 and also requested to provide literature from the importer for the subject import consignment in proof of the said item being Petroleum Crude Oil. In response to the said report of Chemical Examiner,



Custom House Laboratory, Kandla, the literature of importer were forwarded to them by the Superintendent of Customs, Customs House, Vadinar vide letter F.No. VIII/48-45/VDR/Sample/2009-10 dated 13.05.2010 requesting therein to provide further clarification with regard to the import under F-48/07.09.2009, F-50/18.09.2009, F-63/23.10.2009 and F-100/09.01.2010. In response to the above letter of the Superintendent of Customs House, Vadinar, the Chemical Examiner, Customs House Laboratory, Kandla vide his letter No. KCL/2/Misc-corres-other ports/2010-11/2776-01 dated 04.06.2010, provided his further report in regard to the Sample Test Reports issued for B/E No. F-48/07.09.2009 and F-50/18.09.2009, and vide his letter No. KCL/2/Misc-corres.-other ports/2010-11/2832-(1) dated 15.06.2010 provided further clarification/ report with regard to the Sample Test Reports issued for B/E Nos. F-63/23.10.2009 and F-100/09.01.2010. It was reported in the letter of Chemical Examiner that all the cases covered under above said three B/Es (*and some other B/Es like 76/27.11.2009, 73/15.12.2008 and 73/19.11.2009*) had been examined with a stand point of the findings of their laboratory, literature submitted by the party and definition coined in HSN; that it was observed in Test Memo of B/E No. F-100/09.01.2010, F-91/28.12.2009 and F-63/23.10.2009, the product had been mentioned as Crude Petroleum Oil whereas the laboratory findings in all these cases indicated it to be composed of mineral hydrocarbon oil with wider distillation range of 95% or more recovery thereby deviating from the definition of Crude Petroleum Oil. It was further stated in the said letter of Chemical Examiner that in the literature submitted by the party, it has been admitted that samples in question were Petroleum Condensate and their chemical composition were also in agreement of the laboratory test results and therefore, it appeared that the description in the test memo might have been inadvertently written as Crude Petroleum Oil, however, both the products were covered in the definition of SH 2709 of HSN. Further it was reported that from the aforementioned facts, it was concluded that the samples were of Crude Petroleum Condensate covering under the definition of oil obtained from the bituminous material, crude, covered under SH 2709 of HSN.

11. In his statement dated 29.06.2010 Dr. Gyan Prakash Sharma, Chemical Examiner Gr.-1, Custom House Laboratory, Kandla *inter alia* stated that he had been serving as the Chemical Examiner Gr-1, at the Custom House Laboratory, Kandla Port since May 2008. He was shown the Sample Test Report No. CRCL/Import/2705 dated 12<sup>th</sup> October 2009, issued by him for the goods imported under B/E No. F-48/07.09.2009. On being asked whether he agreed to the fact that the said report was issued by him and to clarify what testing were carried out on the samples and what parameters were verified, based on which the said report was issued, he replied that the above said sample test reports were issued by him; that test reports were not complete as some of the parameters were required to be further confirmed, on the basis of Certificate of Origin/ Test Certificate of the supplier; that the reasons for this was that Crude Petroleum Oil, Crude Petroleum Condensate, Natural Gas Liquid (NGL) and some goods classified under CTH 27101990 were closely related at some points. At those points of parameters, there was no thin line of demarcation between Crude Oil and Condensate Oil, Condensate Oil and some goods of CTH 27101990, NGL; that as could be seen from the World Customs Organisation's observation on this subject at Page No. 3, as presented by him, wherein it had been admitted that the Physico Chemical Characteristics of Gas Condensate for similar to the synthetic products of CTH 2710 due to the overlapping in their Physico Chemical Properties; that when the properties of some goods fall under such



overlapping condition then it became difficult just to ascertain or distinguish the product; that under such circumstances the Certificate of Origin/ Test Certificate of Supplier was also required to be verified and the parameters needed to be checked in the light of that certificate. He further added that Distillation Range and Flash Points were reported and other parameters not reported were residue after distillation, Carbon Content, and distillation contents recovered at different temperatures, API gravity; that however he had to say that the sample was checked for these parameters and results obtained were in the overlapping range of the three namely Crude Petroleum Oil, Petroleum Condensate and NGL (goods covered under CTH27101990); that therefore a clear cut conclusion could not be drawn in their test report and they just mentioned that sample indicated property of mixture of mineral hydrocarbons however it may be covered in any of the three depending on the re-examination with reference to the importer's literature like Certificate of Origin/ Test Certificate of Supplier. He further added that he had come prepared for the two B/E Nos. F-48/07.09.2009 and F-50/18.09.2009 in view of the letter No. DRI/JRU/INT-7/2010 dated 16.06.2010; that he therefore requested to give another date to come prepared for other imports files which he had to go through in his office; that he would present himself in person on 6<sup>th</sup> July 2010 in the office, with all the records pertaining to the B/E Nos. F-63/23.10.2009, F-91/28.12.2009 and F-100/09.01.2009.

12. A further statement of Dr. Gyan Prakash Sharma, concerned Chemical Examiner Gr.-1, Custom House Laboratory, Kandla was recorded on 06.07.2010, wherein, he was shown his letter No. KCL/2/Misc-corres-other ports/2010-11/2832-(1) dated 15.06.2010, wherein he contradicted his earlier report issued for B/E No. F-63/23.10.2009 reported to be showing the properties of Naptha, but later he reported the same to be "Crude Petroleum Condensate" in contradiction to the earlier sample test report.

- He was therefore asked as what was the reasons for the final test report being different from the earlier one upon which he stated that the preliminary test results of the sample indicated that sample was not Crude Petroleum Oil, rather it's finding were indicating that it might be a Crude Condensate or the processed petroleum products of CTH 2710 due to the overlapping of characteristics; that the test result carried out by them on the sample for the parameters like Ash Content, Flash Point, sediment content, water content, inorganic acidity, bitumen test etc. indicated the sample having property of both Crude Petroleum condensate and processed product thereof thereby ruling out the possibility of Petroleum Crude Oil; that then on receipt of the literature from the importer (namely Certificate of origin/Certificate of Quality etc.) and on the basis of the sulphur test carried out on remnant sample he concluded the sample being Crude Petroleum Condensate. He however further added that his final test report given vide letter dated 15.06.2010 was not confirming the import goods being Crude Petroleum Condensate but he had to say that the parameters tested by them were matching with the literature of importer quoting the product to be Crude Petroleum Condensate for the same being a natural product.
- The Description of goods declared under the B/E Nos. F-63/23.10.2009, F-91/28.12.2009 and F-100/09.01.2010 were "Low Sulfur Condensate Crude Oil", Low Sulfur Condensate Crude Oil" and



"De-odourised Field Condensate" respectively. Dr. G.P.Sharma, the Chemical Examiner gave final test report to the effect of all the three samples were Crude Petroleum Condensate. The initial report dated 15.01.2010 for the three samples were like "Sample having properties of Naphtha", "other than Petroleum Crude Oil" and for third report said "processed product of Petroleum Crude Oil". He was asked to explain whether all the three samples covered under B/E Nos. F-63/23.10.2009, F-91/28.12.2009 and F-100/09.01.2010 were crude in nature or the processed product of Petroleum Crude Oil or Crude Petroleum Condensate, upon which Dr. G.P.Sharma, the Chemical Examiner stated that as he had already explained, they could not confirm the above three goods as Crude Petroleum Condensate because the properties of such natural products were quite overlapping with the processed products of Petroleum, therefore their final test reports given vide letter Nos. KCL/2/Misc-corres-other ports/2010-11/2776-01 dated 04.6.2010 for import under B/E Nos. F-48/07.09.2009 and F-50/18.09.2009 and KCL/2/Misc-corres-other ports/2010-11/2832-(1) dated 15.06.2010 for B/E Nos. F-63/23.10.2009, F-91/28.12.2009 and F-100/09.01.2010 should not be taken as the final report confirming the same to be Petroleum Crude Condensate.

- For the samples of import goods covered under B/E Nos. F-63/23.10.2009, F-91/28.12.2009 and F-100/09.01.2010, it appeared from the analysis tests carried out at Custom House Laboratory, Kandla that ash content, sediment, bitumen test, flash point and water content were all showing properties of the processed product of Petroleum Crude Oil or Condensate. Further, he was asked under the circumstances why the said three samples could not be said to be processed product of petroleum crude upon which he stated that the three samples could certainly be called processed product of the "Petroleum Crude Oil"/ "Crude Petroleum Condensate" falling under CTH 27101990 on the basis of their findings of various parameters; that this was also in accordance with the observance of World Customs Organisation (Harmonized System Committee), for Classification of the Gas Condensate (Point 10, Page NC0132E1), copy of which was submitted by him.

13. Vide DRI's letter F.No. DRI/JRU/INT-07/2010 dated 22.07.2010, the Chemical Examiner, Custom House Laboratory, Kandla was asked to provide clarification on the Sample Test Reports issued by him in regard to the imports covered under B/E Nos. F-48/07.09.2009, F-50/18.09.2009, F-63/23.10.2009, F-91/28.12.2009 and F-100/09.01.2010 and in response of the above said letter the Chemical Examiner of the Custom House Laboratory, Kandla vide letter F.No. KCL/20/TO/2009-10 dated 05.08.2010 has provided detailed report as under:-



Explaining the reasons for calling for the literature of the importer by the Customs House Laboratory of Kandla, it was informed that the "Petroleum Crude Oil" and "Crude Petroleum Condensate" are basically obtained from the petroleum oil fields in their natural form, but the profile of their hydrocarbon constituents present in their composition are different in respect of the proportions of different hydrocarbons e.g. lighter hydrocarbon (C6-C9) are much more abundant in the petroleum condensate as compared to Crude Petroleum Oil; that there is no thin

line of demarcation of physico-chemical parameters between Crude Petroleum Oil and Petroleum Condensate; that the physico-chemical characteristics in some cases are overlapping with each other in such a way that it is not possible to distinguish them, therefore the Supplier's Certificate is an important document in such cases, the parameters of which are to be matched with that of laboratory results in order to confirm the goods. Giving further clarification on the subject, it was informed that apart from this, the chemical composition of Crude Petroleum Condensate further overlaps/ matches with some petroleum hydrocarbon goods falling under CTH 2710 of CTA (under which all processed products of Petroleum Crude and Condensate are covered); that the physico chemical characteristics in certain cases are so much overlapping between Crude Petroleum Condensate and goods covered under CTH 27101990 that it becomes very difficult to distinguish them, on the basis of the basic parameters like flash point, density & API gravity, distillation range, etc., and therefore under such circumstances, it becomes imperative to call the load port report/origin certificate of the supplier and the parameters reported therein needs to be verified in the laboratory in order to confirm the goods, in question.

- Accordingly it was further opined that in view of the above discussed facts, uncertainties and vast variations in the physico chemical properties of Crude Petroleum Oil and Crude Petroleum Condensate, the Customs House Laboratory of Kandla issued earlier the preliminary test reports of the samples, in question, because the basic parameters of the samples were in the overlapping region of Crude Oil, Crude Condensate and goods covered under 2710 (*processed products of the Petroleum Crude*); that afterwards, the parameters of the load port report and test results of the laboratory were matched quantitatively and then vide their office letters dated 04.06.2010 and 15.06.2010, he had confirmed the goods having cross-checked the parameters mentioned in load port report with that of the Test Results obtained in his laboratory. However, it was clarified by the Chemical Examiner that confirmation of the nature of the goods, on the basis of verifying the parameters of origin certificate was merely indicative and not conclusive because the authenticity of the origin certificate was not known to their laboratory.



As regarding the sample test report wherein it was confirmed that the impugned imported goods to be processed product of the Crude Petroleum Oil it was clarified by the Chemical Examiner in his said letter that the wording "processed products" meant that the goods covered under 2709 has been subjected to a process which has caused to lose the essential nature of the product and leading the goods to be covered under CTH 2710; that in the instant case, wherever, they mentioned "processed product", it meant that the goods could not be covered under CTH 2709 but were covered under CTH 2710. He further added that the possibility of predominance of aromatic contents of the subject products was ruled out by their distillation characteristics and hence could not be classified under CTH 2707.

- He further clarified that under above said circumstances, in spite of the overlapping of parameters of the said goods, the Test Reports for goods

covered under the Bill of Entry No. 63/ 23.10.2009, 91/28.12.2009 and 100/9.1.2010 were exactly matching with the findings/ Test Results/ Petroleum Products covered under CTH 27101990. Further regarding Sulfur test conducted on the remnant samples by the laboratory, he clarified that, the Sulfur contents observed in the above said goods, the magnitude of the Sulfur was very low and even less than quantity found in many processed products of Crude Petroleum Oil and therefore, the goods covered under the above said three Bills of Entry No. 63/ 23.10.2009, 91/28.12.2009 and 100/9.1.2010, could be considered as processed products of Petroleum Crude Oil. It was further stated by the Chemical Examiner that the said report of the Chemical Examiner in respect of goods covered under these three Bills of Entry were issued only on the basis of the tests conducted and not on the basis of comparison with the supplier's report/ load port report/ origin; that in the initial Test Reports in respect of these three Bills of Entry the Custom House Laboratory, Kandla has already reported that the said samples were not of "Crude Petroleum" in nature but were of processed product of Crude Petroleum Oil; that the subsequent letters of the Custom House Laboratory, Kandla dated 4.6.2010 and 15.6.2010 were also not inconsistent with the said reports, because what they discussed in those letters was mere matching of the test parameters of origin certificates with that of lab results. He further submitted that the above findings were given by him also on the basis of his experience, he could say that such type of goods falling under CTH 27101990 were being regularly imported and tested at Customs Laboratory at Kandla.

- Regarding goods covered under the other Bills of Entry viz. 48/07.09.2009 and 50/ 18.09.2009 he explained in his said letter that the nature of goods were found to be different from the goods covered under above mentioned three Bills of Entry (i.e., 63/ 23.10.2009, 91/28.12.2009 and 100/9.1.2010); that the quantity of residue left in distillation testing was considerably high and further, the Bitumen Tests were positive/ unclear, the Ash Contents were positive and recovery of distillate was less; that therefore these parameters indicated towards the sample having characteristics of Crude Petroleum Oil/ Condensate Oil; that however the exact nature of the goods i.e., goods covered under Bills of Entry No. 48/07.09.2009 and 50/ 18.09.2009 could not be conclusively inferred from the tests conducted by them in their laboratory.

14. In his statement dated 09.08.2010, Shri Ashok Aggrawal, Head (Indirect Taxation) of the Noticee *inter alia* stated that he joined in March-2008 as Head (Indirect Taxation); that he had to look after the issues of Customs, Central Excise and Service Tax in the company; that the issues related to understanding of the laws pertaining to Customs, Central Excise and Service Tax were decided by him in the company in consultation with corporate indirect taxation and consultants; that as regarding the documentation work related to the Imports and exports undertaken by the Noticee from the port of Vadinar were looked after by his sub-ordinates namely Shri P.S.Reddy & Shri Nishant Chouhan.

- On being asked about whether he was aware about the procedures to be adopted and followed for clearing the import consignments particularly in case of import of Petroleum Crude Oil upon which he responded affirmatively and further explained that he was aware about

the procedures related to clearance of the import consignments particularly Petroleum Crude Oil, wherein he added that on receipt of the import documents from their International Supply and Trading (IST) department at corporate office at Mumbai, they used to prepare Bills of Entry and file the same in the Custom House, Vadinar which were subjected to provisional assessment by Customs for want of original documents and the final price related to goods, freight and insurance which was in fact received by the company later on as a matter of practice; that based on the provisional assessment done by Customs their import goods were got cleared and on receipt of final invoice, and original documents related to insurance and freight they were submitting the same to Custom House, Vadinar requesting them to finalise the bills of entry.

- Shri Ashok Aggrawal was further asked whether this was for the first time that import of Crude Condensate shown by the Noticee and also whether this was for the first time that the sample Test Report of import goods viz. Crude Petroleum Condensate differed with the description of goods declared in the B/E upon which he stated that earlier they had also imported many consignments of Crude Condensate; that however for the first time they received intimation regarding variation in the description of import goods as a matter of test results in Custom House Laboratory, Kandla vide letter No. VIII/48-15/Sample/09-10 dated 11.12.2009 of the Superintendent of Customs, Customs House, Vadinar about import under B/E no. F-48/07.09.2009 & F-50/18.09.2009 wherein vide B/E No. F-48/07.09.2009 they showed import of AKPO Condensate; that in the test result for the sample of B/E No. F-48/07.09.2009, sample test report of CRCL, Kandla gave the report to the effect of same being other than Petroleum Crude Oil.

15. Investigations carried out in respect of imports of Petroleum Crude Oil/ Condensate by EOL under B/E No. F-48/07.09.2009, F-50/18.09.2009, F-63/23.10.2009, F-91/23.12.2009 and F-100/09.012010 revealed that the products covered under the B/E F-48/07.09.2009 & F-50/18.09.2009 were not qualifying for classification under CTH 27101990 for the characteristics indicated in the sample test reports, analysis results in laboratory for various parameters, cross examination and submissions of the chemical examiner of CRCL, Kandla, which collectively indicated these two import consignments, having characteristics of Crude oil. A show cause Notice has already been issued to EOL for mis-declaration in the import under B/E No. F-91/23.12.2009. The other two imports of EOL covered under B/E F-63/23.10.2009 (only for consignment of LSC) and F-100/09.012010 are covered in the present show cause notice.

16. By virtue of the Not. No. 74/2008-Customs dated 04.06.2008, through an amendment in Not. No. 21/2002-Customs dated 01.03.2002, the import duty on Crude Oil falling under Customs Subheading 2709 (Sr. No. 487 of Not. No. 21/22002-Cus), was made NIL and this notification was effective for the period in which the import under investigation, has taken place. In view of the Custom's Notification, Crude Petroleum Oil falling under CSH 2709 was charged to NIL rate of duty except for the fact that the NCCD and the Education Cess & Higher Education Cess calculated on NCCD was

charged on import of such goods. The above mode of levy of the Customs Duty was adopted by the Custom House, Vadinar on import of Crude Petroleum Oil and Crude Petroleum Condensate classifying both under CTH 27090000 as observed from the Bills of Entry obtained therefrom.

17. The Noticee filed Bill of Entry No. F-63/23.10.2009 and F-100/09.01.2010, with Custom House, Vadinar purportedly for import of 60787.396 MT of Petroleum Crude Oil Low Sulphur Condensate Crude Oil of Qatar Origin and 58094.010 MT of Petroleum Crude Oil De-odourised Field Condensate Crude Oil of Qatar origin and the same was then classified under CTH 27090000. Based on above mentioned Bs/E filed by the Noticee, the same was provisionally assessed by the Customs by extending benefit of Not. No. 21/2002-Customs dated 01.03.2002 as amended by Not. No. 74/2008-Customs dated 04.06.2008, charging only the NCCD and EDN Cess & SHE Cess on NCCD. Based on the provisional assessment done on the above two imports by the Customs, the Noticee cleared the imported goods. The representative Samples drawn by the Customs from the above said two import consignment were sent to the Custom House Laboratory, Kandla for chemical analysis of the sample. The Sample Test Report was issued by the Custom House Laboratory, Kandla on the basis of analysis done on the sample vide letter No. CRCL/Import/4105 dated 15<sup>th</sup> January 2010 which reads as under:-

Sl. No	Bill of Entry No. and Date	Test Report No. and Date	Test Report
03.	F-100 dated 09.01.10	CRCL/ Import/ 4587 dated 16.02.10	<p>The sample is in the form of colourless liquid. It is composed of mixture of mineral hydrocarbon oil having flash point below 25°C.</p> <p>Distillation Range → 47°C - 300°C.</p> <p>Density at 15°C → 0.7568.</p> <p><b><u>In the preliminary findings the sample appears to be a processed product of crude petroleum oil.</u></b> For detailed report party may be asked to provide the Certificate of Origin of product and Test Certificate of load port report along with party's claim in support of their product as a crude petroleum oil may be submitted to this laboratory for further study of the case. Two liters more quantity of the sample may be forwarded to this laboratory to carry out the other parameters necessary to ascertain the actual nature of the sample.</p>
05.	F-63 dated 23.10.09	CRCL/ Import/ 3108 dated 09.11.09	The sample is in the form of brownish oily liquid composed of mineral hydrocarbons oil having flash point below 25°C.



			Density at 15°C → 0.7487.  API Gravity at 60°F → 57.4.  Note: → <u>The sample indicates the property of Naphtha.</u> However for identification of the product, party may be asked to submit Certificate of Origin of the product and its load port report / certificate of analysis in support of the claim of the party for his product.
--	--	--	--

18. In view of the instruction contained in the above said Sample Test Report of the Chemical Examiner, Custom House Laboratory, Kandla, to send the literature of the importer pertaining to the import consignment covered under two Bs/E, the literature of the importer were forwarded to the Custom House Laboratory, Kandla by the Superintendent of Customs, Vadinar vide letter F.No. VIII/48-45/VDR/Sample/2009-10 dated 13.05.200 requesting to provide further clarification in regard to the imports under B/E No.F-63/23.10.2009 and F-100/09.01.2010. The Custom House Laboratory, Kandla issued letter F.No. KCL/2/Misc-cores-other ports/2010-11/2832-1 dated 15.06.2010, addressed to the Superintendent of Customs, CH, Vadinar stating that the literature submitted by the party and definition coined in HSN had been examined and it had been observed that in the Test Memo of B/E No. F-100, & F-63, the product had been mentioned as Crude Petroleum condensate whereas the laboratory findings in all the three cases indicated it to be composed of mineral hydrocarbon oil a wider distillation range with 95% or more recovery thereby deviating from the definition of Crude Petroleum Oil and concluded that the samples were the Crude Petroleum Condensate covering under the definition of oil obtained from bituminous material, crude, covered under SH 2709 of HSN. However, as the above referred letter was in contradiction to his earlier test reports and as the said letter also did not specifically reflect exact nature and composition of the subject goods, further clarification was sought from Dr. G.P.Sharma, Chemical Examiner Gr-I, Custom House Laboratory, who through his statement dated 06.07.2010 and vide his report letter No. KCL/20/TO/2009-10 issued on date 05.08.2010, provided the detailed account of the physico-chemical characteristics of the Petroleum Goods covered under the said four B/Es:

Sr. No.	B/E No. & Date	Findings of various test results in laboratory.
1	F-63/ 23.10.2009	<p>Sample:</p> <ul style="list-style-type: none"> <li>i. Was in the form of brownish oily liquid,</li> <li>ii. Burnt with sooty flame,</li> <li>iii. Ash content-&gt; NIL</li> <li>iv. Separation with conc. <math>H_2SO_4</math> → 100% (no heat generated),</li> <li>v. Sediment and water content → NIL,</li> <li>vi. Density at 26°C → 0.7398 &amp; at 15°C → 0.7487,</li> <li>vii. Specific Gravity at 60/60°F → 0.7491,</li> <li>viii. API Gravity at 60°F → 57.4</li> <li>ix. Distillation range → 95% distillation by 341°C</li> <li>x. Flash Point below 25°C</li> </ul>
2	F-100/ 09.01.2010	<p>Sample:</p> <ul style="list-style-type: none"> <li>i. Was in the form of colourless liquid,</li> <li>ii. Burnt with sooty flame,</li> <li>iii. Ash content-&gt; NIL</li> <li>iv. Sediment → NIL,</li> </ul>

		<ul style="list-style-type: none"> <li>v. Water content -&gt; NIL,</li> <li>vi. Bitumen test -&gt; Unclear,</li> <li>vii. API Gravity at 60°C -&gt; 55.85</li> <li>viii. Distillation range -&gt; 96% by 300°C (47°C-300°C)</li> <li>ix. Flash Point-&gt; below 25°C</li> <li>x. Density at 32°C -&gt; 0.7416 &amp; at 15°C -&gt; 0.7552</li> </ul>
--	--	---

- (i) For the goods covered under B/E Nos. 63 and 100, distillation range showed 95% recovery upto 341°C and 96% recovery upto 341°C and 96% recovery upto 300°C. Besides Ash Content, Sediments and Water Content were NIL in both the cases and API Gravity was found 57.4 and 55.85 respectively.
- (ii) The report dated 05.08.2010 was issued by the Chemical Examiner, Customs House Laboratory, Kandla in regard to the three B/E Nos. F-63/23.10.2009, F-91/28.12.2009 & F-100/09.01.2010 only on the basis of the tests conducted in the laboratory and not on the basis of the comparison with the supplier's report/load port report/origin certificate. The confirmation vide letter dated 15.06.2010, was only to the effect that they had confirmed the goods having cross checked the parameters mentioned in load port report/origin certificates with that of their test results. That the confirmation of the nature of the goods on the basis of verifying the parameters of origin certificate was merely indicative and not conclusive;
- (iii) That the goods covered under B/E No. F-63/23.10.2009 and F-100/09.01.2010 samples of which forwarded to Customs House Laboratory, Kandla for testing was actually Processed product of the Petroleum Crude Oil and by the wording "processed product" they meant that the goods covered under CTH 2709 has been subjected to a process which has caused to lose the essential nature of the product and leading the goods to be covered under CTH 2710. It was further reported that the possibility of predominance of aromatic contents of the subject products was ruled out by their distillation characteristics and hence could not be classified under CTH 2707;
- (iv) It was further reported by the Chemical Examiner of the Customs House Laboratory, vide his report dated 05.08.2010 that the Parameters of the goods covered under B/Es F-63/23.10.2009 and F-100/09.01.2010, were exactly matching with the findings/ test results of the Petroleum Products covered under CTH 27101990;
- (v) Further giving clarification on the Sulphur content observed in the test result , it was reported vide his report dated 05.08.2010 that the magnitude of Sulphur was very low and even less than the quantity found in many processed products of Crude Petroleum Oil and therefore the goods covered under B/E No. F-63/23.10.2009 and F-100/09.01.2010 could be considered as processed product of the Petroleum Crude Oil.
- (vi) On further being asked to specify the content of Sulphur in the import goods covered under F-63/23.10.2009 and F-100/09.01.2010, it was reported by the concerned Chemical Examiner vide his letter No. KCL/Misc-Corrs./02/Other-port/2010-11 dated 14.10.2011, that Sulphur content in the import consignments covered in B/E F-63/23.10.2009 was 0.10 % and in F-100/09.01.2010 it was 0.22%.

19. As the matter under investigation involved question of differences between descriptions of the goods imported by the Noticee under Bill of Entry



No. F-63/23.10.2009 and F-100/09.01.2010 which was declared as "Low Sulphur Condensate" and "De-odourised Field Condensate", both of Qatar origin Crude Oil and after chemical analysis opined by the Chemical Examiner Gr-I, Custom House, Kandla as "Processed product of Petroleum Crude Oil". Various literatures defining Petroleum Crude Oil, Condensate and their Refined/processed products were referred to in:

- The Hawley's Condensed Chemical Dictionary defines Petroleum Crude Oil as:

*"A highly complex mixture of paraffinic, cycloparaffinic (naphthenic), and aromatic hydrocarbons, containing a low percentage of Sulfur and trace amount of nitrogen and oxygen compounds. Said to have originated from both plant and animal sources 10-20 million years ago. The most important petroleum fractions, obtained by cracking or distillations, are various hydrocarbon gases (butane, ethane, propane), naphtha of several grades, gasoline, kerosene, fuel oils, gas oil, lubricating oils, paraffin wax, and asphalt. From the hydrocarbon gases, ethylene, butylenes, and propylene are obtained; these are important industrial intermediates, being the source of alcohols, ethylene glycols and monomers of a wide range of plastics, elastomers, and pharmaceuticals. Benzene, phenol, toluene and xylene can be made from petroleum and hundreds of other products, including biosynthetically produced proteins, are petroleum derived. After 5% of the petroleum consumed in the US is used as feedstock by the chemical industries.*

*Occurrence: .....*

*Properties: Viscous, dark brown liquid, unpleasant odour, d. 0.78-0.97, flash p 20-90F.*

- Description mentioned in the Customs Tariff under CTH 27090000 reads as:  
*Petroleum oils and oils obtained from bituminous minerals, crude*
- Para 27.09 of the Explanatory Notes, fourth edition (2007), Volume - 1, issued by the World Customs Organisation reads as under:  
*27.09 - Petroleum oils and oils obtained from bituminous minerals, crude*

*This heading covers crude petroleum oils and crude oils obtained from bituminous minerals (e.g. from shale, calcareous rock, sand), i.e., natural products, whatever their composition, whether obtained from normal or condensation oil-deposits or by the destructive distillation of bituminous minerals. The crude oils thus obtained remain classified in this heading even when they have been subjected to the following processes :*

- (1) *Decantation.*
- (2) *De-salting.*
- (3) *Dehydration.*
- (4) *Stabilisation in order to normalise the vapour pressure.*



(5) *Elimination of very light fractions with a view to returning them to the oil-deposits in order to improve the drainage and maintain the pressure.*

(6) *The addition of only those hydrocarbons previously recovered by physical methods during the course of the above mentioned processes.*

(7) *Any other minor process, provided it does not change the essential character of the product.*

*The heading also covers gas condensates i.e., crude oils obtained during the stabilisation of natural gas immediately upon its extraction. This operation consists of obtaining, mainly by cooling and depressurisation, the condensable hydrocarbons (C4 to approximately C20) from the wet natural gas.*

- The policy circular no.28/(RE-99)/99-02 dated 18.08.1999 issued by the DGFT, New Delhi, in agreement with WCO, clarifies that 'Condensate is also classifiable under CTH 27090000.'
- Condensate has been defined in Wikipedia, the free encyclopaedia as under :

*Natural gas condensate is a low-density mixture of hydrocarbon liquids that are present as gaseous components in the raw natural gas produced from many natural gas fields. It condenses out of the raw gas if the temperature is reduced to below the hydrocarbon dew point temperature of the raw gas. The natural gas condensate is also referred to as simply condensate, or gas condensate, or sometimes natural gasoline because it contains hydrocarbons within the gasoline boiling range. Raw natural gas may come from any one of three types of gas wells....*

➤ Description of the goods covered under Customs Tariff Heading 2710 is as under :

*"Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils"*

*"Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than waste oils".*

20 As defined in Para 27.09 of the Explanatory Notes, fourth edition (2007), Volume - 1 of the World Customs Organisation and as mentioned in the policy circular No. 28/(RE-99)/99-02 dated 18.08.1999 issued by the DGFT, New Delhi "Condensate" is covered under CTH 27090000 i.e. "Petroleum Oils and oils obtained from bituminous minerals, Crude. The Para 27.09 of the Explanatory Notes, fourth edition (2007), Volume - 1 of the World Customs Organisation also states that some of the processes do not amount to refining and thus even after carrying out those processes on "Crude Oil", it



is still termed as "Crude Oil" only. However, in the instant case the Chemical Examiner Gr-I, Custom House Laboratory, Kandla has specifically stated that the impugned product was subjected to a process which has caused to lose the essential nature of the product and leading the goods to be covered under CTH 2710. The above test results also indicated that the sample was having no "crude" properties as Ash Content, Water Content, Sediment were found as NIL and bitumen test carried on sample gave negative results. Further, no residue was left after complete distillation, which revealed absence of undistillable impurities. This clearly leads to the conclusion that the impugned goods imported by the Noticee under Bill of Entry No. F-63/23.10.2009 and F-100/09.01.2010 were not covered under sub-heading 2709 as declared but was squarely covered under sub-heading 2710.

21. The sub-heading 2710 has been further, divided in four parts (up to 6 digits) i.e., 271011, 271019, 271091 and 271099. The goods falling under 271011 i.e., Light Oils and preparations are the goods of which 90% or more by volume (including losses) distil at 210 C. However, the distillation range provided by the Chemical Examiner Gr-I, Custom House, Kandla and also the load port report supplied by the Noticee show much higher distillation range i.e 45 to 322 degree centigrade and thus the impugned goods could not be covered 271011. Besides other refined/ processed products covered under heading 271019 which have specified IS specification, there is provision for goods termed as "others" under CTH 27101990 for which no IS specification has been fixed. Therefore, in the light of above discussion, it is evident that the impugned goods were appropriately classifiable under CTH 27101990.

22. From the facts and the circumstances of the case as enumerated in the foregoing Paras, it was observed that :-

- a. the Noticee had imported the Processed Product of the Petroleum Crude Oil falling under CTH 27101990, at Vadinar Port and filed B/E No. F-63/23.10.2009 and F-100/09.01.2010, with Custom House, Vadinar for clearance of the same by mis-declaring it as Crude Petroleum Condensate and declaring the import goods falsely as "Low Sulphur Condensate Crude Oil" and "De-odourised Field Condensate Crude Oil" and then classified the same wrongly under CTH 27090000.
- b. The import of Crude Petroleum Condensate under B/E No. F-63/23.10.2009 and F-100/09.01.2010 was not made by the Noticee for the first time and in the earlier past also they had so many times imported the consignments of Crude Petroleum Condensate of various origins and samples of which were tested at Customs House Laboratory. However, under B/E No. F-63/23.10.2009 and F-100/09.01.2010, and others they cleared the processed product of the petroleum Crude Oil in the guise of Crude Condensate and thereby evaded the Customs Duty payable thereon by virtue of the said goods actually falling under 27101990 as proved in the Sample Test Report of CRCL, Kandla. The mis-declaration of the imported goods was done by the Noticee apparently with intention to get the undue benefit of Customs Duty which was NIL by virtue of the Not. No. 74/2008-Customs & Not. No. 21/2002-Customs (Sr. No.487) on the Petroleum Product falling under CTH 27090000. Hence by way of mis-declaration of imported goods under B/E No. F-63/23.10.2009 and F-100/09.01.2010, the Noticee cleared the processed product of the Petroleum Crude as also confirmed by the Chemical Examiner, Customs House Laboratory, Kandla in his



statement dated 06.07.2010 and vide his detailed report dated 05.08.2010.

c. It was further observed that three consignments of Crude Condensate shown imported by the Noticee and cleared under three B/Es No. F-63/23.10.2009, F-91/28.12.2009 and F-100/09.01.2010, by declaring the description of the same respectively as LSC Crude Oil, Qatar LSC Crude Oil & De-odourised Field Condensate respectively, were all shipped from the same port viz. Port of Ras Lafaan (Qatar) and overseas supplier in all these cases of import was same party namely Tasweeq. All the these import consignments were later confirmed in the test reports to be the processed product of the Petroleum Crude falling under CTH 27101990 as reported by the Chemical Examiner of CRCL, Kandla. It was specifically mentioned by the Chemical Examiner in his report that the imported goods covered under three B/Es as mentioned above, were subjected to the processes which changed the essential character of the Crude Petroleum Oil and therefore the said goods were categorised to be falling under CTH 271019990. On being asked about the nature of the processes undertaken on the petroleum product the IST Head of the Noticee, Shri T. Srinivasan in his statement dated 20.05.2010 was unable to say what kind of processes were undertaken on Petroleum Crude before being shipped to them and similarly in her statement dated 24.05.2010, Smt. Madhurima Gupta, the Head of the Crude Desk (IST) of the Noticee, also showed inability to say anything in this regard. Furthermore the Assay Reports were resorted to by the two officials of the Noticee in their respective statements for conforming to the import goods being Crude Petroleum Condensate, however, the same cannot be considered for the reasons the characteristics of the import goods covered under two Bs/E No. F-63/23.10.2009 and F-100/09.01.2010 were elaborately explained by the Chemical Examiner in his clarification issued vide letter dated 05.08.2010, to be the processed product of Petroleum Crude Oil, falling under CTH 27101990 with the same parameters which were even not disputed by the officials of the Noticee.

d. The contention of Shri T. Srinivas, submitted vide his statement dated 20.05.2010, that the subject consignment was imported from Qatar, where the supplier was Tasweeq, a National Government company of Qatar, and who were regular exporter of Crude Condensate, is not tenable in view of the fact that Tasweeq, is also a very large exporter of many lighter processed product of Petroleum Crude Condensate like Naphtha, Gasoline, Plant Condensate (also a type of lighter Naphtha) etc.. Moreover port of Ras Lafaan (in the instant case Load port is Ras Lafaan), is known very well for having some of the world's largest Condensate Processing Plants over there and also for very huge export of the lighter processed/refined petroleum products therefrom.



It also appeared from the statement dated 04.05.2010 of Shri Nishant Chouhan, Senior Manager of the Noticee, that the Noticee deliberately tried not to follow the prescribed procedures regarding sampling of import cargo, testing thereof and consciously they tried to keep themselves from this in-itable statutory requirement to finally assess the case of import. It is because in his statement recorded on 04.05.2010, Shri Nishant Chouhan feigned ignorance of sampling whether done on the imported goods or not and also stressed that Customs department had never informed them about any sampling, if

done, of the import goods. However, this was untrue in view of the letter No. VIII/48-15/Sample/09-10 dated 11.12.2009 of the Superintendent of Custom, Customs House, Vadinar addressed to THE NOTICEE regarding report of Customs House Laboratory, Kandla about B/E No. F-48/07.09.2009 & F-50/18.09.2009, which was responded by Shri Nishant Chouhan himself vide letter No. REF/IMP/EOL/Crude/2009-10 dated 21.12.2009, explaining in detail about the sampling procedures, facility of testing at the Noticee's in-house laboratory and then taking recourse to the Customs Circular No. 25/2005-Customs dated 06.06.2005 for waiving of sample test to be done at the revenue laboratory. It was quite apparent from the said letter that Shri Nishant Chouhan tried to mislead the department by seeking waiver of sample test to be carried out at the Government Laboratory in regard to the import goods, taking recourse to the said Customs Circular which was meant only for the Export goods. The above fact implied that the Noticee consciously tried to seek waiver of the sample testing at Custom House Laboratory, Kandla by way of falsely quoting the authority issued in this regard so that their mis-declaration would not come to the notice of the department.

23. It is evident from the above discussed facts that the Noticee has cleared **60787.396 MT + 58094.010 MT** of the Refined Petroleum Product falling under CTH 27101990, totally valued at **Rs. 355,15,07,761/-** by way of willful mis-declaration in the guise of LSC Crude Oil and De-odourised Field Condensate falling under CTH 27090000 in the Bills of Entry No. F-63/23.10.2009 and F-100/09.01.2010. The Test Report dated 09.11.2009 and 16.02.2010 issued for the said two Bs/E, and final clarification letter dated 05.08.2010 all issued by the Chemical Examiner, Customs Laboratory, Kandla clearly revealed that the impugned goods were Processed Product of Crude Petroleum Oil i.e., other than "Qatar LSC Crude Oil" and "De-odourised Field Condensate" as declared by the Noticee in the said two Bs/E. From the said Test Report it is evident that the goods imported and cleared under Bills of Entry No. F-63/23.10.2009 and F-100/09.01.2010 filed with Custom House, Vadinar were "Refined Petroleum Product" covered under CTH 27101990. Therefore, the classification of the impugned goods declared by the Noticee under CTH 27090000 was wrong and liable to be re-classified to the appropriate classification viz. CTH 27101990, as discussed above. By way of willful mis-declaration as explained above, the Noticee have evaded the Customs Duty amounting to Rs. 90,21,77,111/- which was otherwise payable on the goods actually cleared in the guise of "LS Condensate Crude Oil" and "De-Odourised Field Condensate" hence the said amount of Customs Duty is liable to be recovered from the Noticee under proviso to Section 28(4) of the Customs Act, 1962 read with proviso to Section 18(2) of the Customs Act, 1962 along with the appropriate interest applicable thereon under Section 28AA of the Customs Act, 1962.

24. The Noticee had imported 118881.4061 MT of Processed Products of Petroleum, correctly classifiable under CTH 27101990 and filed B/E No F-63/23.10.2009 and F-100/09.01.2010, mis-declaring the description and also mis-classifying the cargo as "LS Condensate Crude oil" & "De-Odourised Field Condensate, under CTH 27090000 in the said Bill of Entry to evade the payment of appropriate amount of Customs Duty leviable thereon and hence by suppressing the correct description and mis-classifying the imported goods the Noticee has contravened the provisions of Section 46 of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation)

Act, 1992 and Rules 11 & 14 of the Foreign Trade (Regulation) Rules 1993 and rendered the impugned goods liable to confiscation under Section 111(d) and (m) of the Customs Act, 1962.

25. The said act of willful mis-declaration of description of "Refined Petroleum Oil" as "LS Condensate Crude Oil" and "De-Odourised Field Condensate" and falsely classifying the same under CTH 27090000 was done by the Noticee with an intention to evade payment of appropriate duty leviable on the impugned imported goods covered under CTH 27101990. By the act of mis-declaration of description and mis-classification of goods in the Bill of Entry No. F-63/23.10.2009 and F-100/09.01.2010, the Noticee has rendered the "118881.406 MT of "Refined Petroleum Oil" liable to confiscation under the provisions of Section 111 (d) & (m) of the Customs Act, 1962. For the said act of omissions and commissions, on the part of the Noticee for evasion of duty which has rendered the impugned goods liable to confiscation under Section 111(d) & (m) of the Customs Act, 1962, they have rendered themselves liable for penalty under Sections 114A and 112(a) of the Customs Act, 1962.

26. The International Supply and Trading (IST) department in the Noticee, headed by Shri T. Srinivas was responsible for forwarding all the import documents to the officials of Indirect Taxation of the Noticee at Vadinar, to file the Bill of Entry for clearance of import goods imported at Vadinar Port. Then on receipt of the import documents from IST the B/E was prepared and filed by Shri Nishant Chouhan at Vadinar Custom House, as confirmed in view of the statement of various officials of the Noticee and Shri T. Srinivas himself. Therefore in respect of Bill of Entry No. F-63/23.10.2009 and F-100/09.01.2010, actual imported goods was Refined Product of Petroleum Crude Oil falling under CTH 27101990, however the documents forwarded from IST, falsely showed the import goods to be LS Condensate Crude Oil and De-Odourised Field Condensate and then same were classified under 27090000 to evade payment of Customs Duty. Shri T. Srinivas being head of IST was, therefore, responsible for supplying the import documents pertaining to B/E No. F-63/23.10.2009 and F-100/09.01.2010, which misrepresented the description of goods and therefore facilitated the illegal clearance of the Processed Product of Petroleum Crude Oil in the guise of LSC Crude Oil. The role of Shri T. Srinivas, Head of the IST in the Noticee, was crucial in causing import of Petroleum Crude Oil and Petroleum Crude Condensate as also appeared from his statement dated 20.05.2010. He was further given another Summons dated 06.08.2010 to appear in person to give his further statement in the present matter which he did not comply apparently with intention to avoid further questioning in the issue. Therefore in view of the above it appears that Shri T. Srinivas willfully indulged in acts relating to mis-declaration of goods imported of under the Bill of Entry no. F-63/23.10.2009 and F-100/09.01.2010 was willful and which resulted in evasion of the Customs Duty as well as rendered the goods liable for confiscation under Section 111(d) and (m) of the Customs Act, 1962 as explained in detail in the foregoing Para and by such acts he rendered himself liable for penalty under Section 112 (a) of the Customs Act, 1962.

27. The imports of the Noticee were looked after by Shri Nishant K. Chouhan, Senior Manager in the Noticee. He actively indulged in illegal clearance of the Refined Petroleum Products classifiable under CTH 27101990, in the guise of import of "Petroleum Crude Condensate". The B/E No. F-63/23.10.2009 and F-100/09.01.2010 in the instant case was prepared

and filed in the Custom House, Vadinar by Shri Nishant Chouhan, wherein he mis-declared the description of import goods as "LS Condensate Crude Oil" and "De-Odourised Field Condensate" and falsely classified the same under CTH 27090000 and also got the same cleared illegally without payment of the Customs Duty by availing undue benefit of Notification No. Notification No. 21/2002-Customs read with Notification No. 74/2008-Customs. Shri Nishant K. Chouhan was well aware of the fact that the impugned goods were Refined Petroleum product classifiable under CTH 27101990 but he knowingly got the said goods cleared without payment of duty in the guise of import of "Crude Petroleum Condensate". The above clearly indicate malafide intention of Shri Nishant K. Chouhan in respect of clearance of impugned goods by way of evasion of Customs Duty amounting to Rs. 91,25,61,312/- and also rendered the impugned goods totally valued at Rs. 355,15,07,791/- liable to confiscation. Therefore, for the above discussed acts of omissions and commissions, rendering the impugned goods liable to confiscation, Shri Nishant K. Chouhan, Senior Manager of the Noticee has rendered himself liable for penalty under the provision of Section 112(a) of the Customs Act, 1962. The above act of omission and commission culminated into issuance of Show Cause Notice No. DRI/AZU/MISC-17/2010 dated 20-03-2014, asking them to show cause as to why

- (a) The classification of the goods imported i.e 118881.406 MT of the Refined Petroleum Product, wrongly claimed by them under CTH 27090000 in Bill of Entry No. F-63/23.10.2009 and F-100/09.01.2010 should not be rejected and appropriately reclassified under CTH 27101990 and benefits claimed under Notification No. 21/2002-Cus dated 01.03.2002 read with Notification No. 74/2008-Cus dated 04.06.2008 should not accordingly be denied.
- (b) **118881.406 MT** of the Refined Petroleum Product reclassified under CTH 27101990, totally valued at **Rs. 355,15,07,761/-** cleared illegally by them under B/E No. F-63/23.10.2009 and F-100/09.01.2010 should not be confiscated under Section 111 (d) & 111(m) of the Customs Act, 1962. However, as the goods have been cleared and are not available for confiscation, why fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act, 1962.
- (c) The final assessment of the two Bills of Entry F-63/23.10.2009 and F-100/09.01.2010 be allowed under proviso to Section 18(2) of the Customs Act, 1962 and the Customs Duty amounting to **Rs. 90,21,77,111/-** leviable on 118881.406 MT of the Refined Petroleum Product cleared vide Bill of Entry No. F-63/23.10.2009 and F-100/09.01.2010 should not be demanded and recovered from them under proviso to Section 28(1) of the Customs Act, 1962.
- (d) The interest at the appropriate rate should not be charged on the above amount of Customs Duty evaded by them, in terms of Section 28 AA of the Customs Act, 1962.
- (e) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962 for the reasons discussed above.
- (f) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962 for the reasons discussed above.
- (g) Penalty should not be imposed upon to Shri T. Srinivas, Head of International Supply and Trading (IST), M/s Essar Oil Limited under



Section 112(a) and Section 114AA of the Customs Act, 1962 for the reasons discussed above.

(h) Penalty should not be imposed upon to Shri Nishant Chouhan, Senior Manager, M/s Essar Oil Limited under Section 112(a) and Section 114AA of the Customs Act, 1962 for the reasons discussed above

**DEFENCE SUBMISSIONS:**

28. The Noticee has vide their letter dated 02-07-2015 submitted their defence reply wherein they have interalia, submitted that the evidence relied upon in the Show Cause Notice, if read correctly and in its entirety, support the description and classification claimed by us in the Bills of Entry; that the sole basis of the DRI's case is the opinions and reports given by the Chemical Examiner, which, if read in their entirety, do not support the allegations made in the Show Cause Notice. The Notice seeks to read, albeit out of context, some lines and passages from these reports/opinions and based on such selective reading/mis-reading of the reports, a charge of mis-declarations and mis-classification has been levelled against us. Those passages, merely state that going purely by the physio chemical characteristic of the goods, the goods 'could be' either 'petroleum crude condensate' falling under CTH 2709 or 'processed petroleum product' falling under CTH 2710 of the Customs Tariff. The Chemical Examiner has throughout maintained in all his opinions and reports that a final conclusion on this matter could be reached only by looking at other commercial documents relating to the subject goods such as the Load Port Certificate, Certificate of Origin, assay report etc. When these documents were produced before the Chemical Examiner, he confirmed in his opinion dated 15-6-2010 that the goods were in fact petroleum condensate covered under heading 2709 of HSN, as claimed by us.

28.1 The Noticee further submitted that the allegations in the Show Cause Notice run contrary to the evidence relied upon in the Notice. The description of the goods and the classification claimed by them in the Bills of Entry was, in their submission, fully supported by the following evidence which the Notice itself refers to:

- i) Sale Contract with BP and Tasweeq describing the goods as Low Sulphur Condensate (LSC) and deodorized field condensate;
- ii) Bill of Lading Nos. LSC 2009 0056-A, LSC 2009 0056-B, SER NO 1213/09 and DFC-2010-004-01;
- iii) Certificate of Origin issued by Tasweeq, (a company wholly owned by the Government of Qatar) and National Iranian Oil Company;
- iv) Certificate of quantity issued by Tasweeq and National Iranian Oil Company. Certificate issued by SGS, an independent Inspection Agency, submitted during the course of investigation by Mr T Srinivas.



- RIM Intelligence Report submitted in the course of investigation by Mr T Srinivas.
- vii) Platt report submitted by Ms Madhurima Gupta in the course of her statement.
- viii) The explanations and statements given by Mr T Srinivas and Ms. Madhurima Gupta in their statements.

ix) The opinion dated 15.6.2010 of the Chemical Examiner concluding that the imported goods are Crude Petroleum Condensate covered under Chapter Heading 2709 of the HSN. This conclusion has been reaffirmed by the Chemical Examiner in his two statements dated 29.7.2010 and 6.7.2010 and also in his final opinion dated 5.8.2010. This aspect of the matter will be explained further in this reply.

The above documents establish beyond doubt that the goods are Low Sulphur Condensate as claimed in the Bill of Entry. Since it is not in dispute that Low Sulphur Condensate are classifiable under Chapter Heading 2709 of the Customs Tariff, the case of alleged duty evasion made out against us in the Show Cause Notice has no legs to stand on. The genuineness and authenticity of these third party documents, most of which originate from M/s Tasweeq (a Government of Qatar Undertaking) have not been disputed in the Show Cause Notice. In their submission, therefore, the evidence in the form of opinion and report of the Chemical Examiner do not go beyond suggesting that the goods could be a "processed petroleum product". The very same reports are equally emphatic in saying that the product could as well be "petroleum condensate" as claimed by us. Such evidence which does not go beyond suggesting likely "classification" or likely "description" is not sufficient to prove a serious charge of mis-declaration. Tasweeq, who are the suppliers of the product in their country of origin, is a Government of Qatar Undertaking. SGS which has issued Certificate of Quality and Assay Reports is an organization of international repute, whose certificates are accepted as good evidence of the nature and quality of the products even under the Foreign Trade Policy (FTP) issued by the Ministry of Commerce, Government of India. Platt Report is also a credible document which the Indian Customs rely upon frequently, as is evident from several reported judgements. The Show Cause Notice, however, has chosen to ignore all these documents without as much as giving an explanation for doing so.

28.2 The Notice referred to and relied upon the following reports, statements and opinions of the Chemical Examiner:

- i) Test Report dated 15-1-2010
- ii) His further report contained in his letter dated 15-6-2010.
- iii) Two statements dated 29-6-2010 and 6-7-2010 of the Chemical Examiner recorded by the DRI under Section 108 of the Customs Act.
- iv) Opinion of the Chemical Examiner contained in his letter dated 5-8-2010.

and stated that the very first report dated 15-1-2010 of the Chemical Examiner was an inconclusive one, wherein he had merely desired that we submit some literature in support of our claim to enable the laboratory to further examine the matter. This report which the Notice itself described as a 'provisional one' is therefore meaningless; that the second opinion of the chemical Examiner, contained in his letter dated 15-6-2010, wherein the Chemical Examiner, after examining the literature submitted by us, concluded that the goods in question were 'crude petroleum condensate' covered under Chapter sub-heading 2709 of HSN, which was therefore in their favour; that the opinion dated 15-6-2010 of the Chemical Examiner was sought to be discredited by the DRI by relying upon two statements of the same Chemical Examiner, one dated 29-6-2010 and the other dated 6-7-2010. In their submissions, those statements do not advance the DRIs case as DRI itself has in its letter dated 22-7-2010 conceded that the



above-referred reports, letters and statements of the Chemical Examiner were 'inconclusive' as they give conflicting versions. The further opinion was given by the Chemical Examiner, under cover of letter dated 5-8-2010. The sum and substance of this third opinion dated 5-8-2010 is that due to overlapping physio chemical character, it was impossible for him to come to a definite conclusion whether the product was a petroleum condensate of CTH 2709 or a processed product of the type covered under CTH 2710. It is on this logic that he states that the goods imported by us could be either petroleum condensate or a processed product of petroleum crude oil. Significantly, in this third opinion of his, the Chemical Examiner stands by his earlier opinion dated 15-6-2010 wherein he had concluded that the product was a 'crude petroleum condensate' of the kind covered under CTH 2709 of HSN. While further stating that the product could be processed petroleum product, he has qualified this opinion by putting a caveat that the said opinion was being issued 'only on the basis of the tests conducted and not on the basis of comparison with the supplier's report/load port report/origin'. It is significant and relevant to point out here that in his last report, the Chemical Examiner does not describe the product as a 'refined petroleum product'. The Notice, however, misreads this report by alleging that according to this report of the Chemical Examiner, the product was a 'refined petroleum product' falling under CTH 2710 1990.

28.3 The Noticee further pointed out that the conclusion of the Chemical Examiner that the product in question is a "processed petroleum product" may not be inconsistent with the description and classification claimed by us as condensate. It is an accepted position that all crude oils including condensate are subjected to some preliminary processing before being sold. The Explanatory Notes to the HSN in fact gives a list of such processes which are carried out on the crude products before their being marketed. Neither the Chemical Examiner nor the Show Cause Notice have shown that any processes, in addition to those referred to in the Explanatory Notes to the HSN, were carried out in relation to the cargo in question. The Notice, however, sought to misread the opinion of Dr. Sharma by claiming that the reference to the word "processed" in his opinion was in fact a reference to the word "refined", there is however no basis for making such assumption and further contended that in view of the DRI's own observation that the various report, opinions and statements of the Chemical Examiner are inconclusive and conflicting, it is evident that the evidence of the said Chemical Examiner is not sufficient to prove a charge of mis-declaration of description and mis-declassification of goods and prayed that on the said sole ground, the Notice issued to them deserves to be quashed and set aside *in limine*.

28.4 The Noticee further submitted that the allegation that the products in question were refined petroleum products and not crude is preposterous, absurd and illogical for the following reasons:-



- (a) The product was contracted and purchased as a "low sulphur condensate" which is a feed stock for a refinery, and is therefore not a refined product.
- (b) DRI investigations have proved and established that after Customs clearance, the cargo in question was in fact used in our refinery as feed stock. If indeed the product was already a refined product, as claimed by the DRI, there is no explanation in the notice as to why such a refined product would once again be subjected to a process of refining by us, at a considerable cost. The fact that the product was taken straight away to the crude tanks, is not in dispute and therefore the suggestion that the product was a refined product is illogical on the face of it.

- (c) The price at which the product was purchased was the price bench marked to the price of crude oil as is evident from the sale contract. The cargo in question was purchased at a discount to the prevailing Dubai crude basket price. If indeed the product a refined product there would be no logic for anyone to have sold the cargo to us at a discount to the crude price.
- (d) The fact that the sample tested by the chemical examiner was found by him to be a mixture of mineral hydrocarbon oil with distillation range of 45 degree C. to 322 degree C. by itself militates against the suggestion in the notice that the product imported by us was a refined product, as refined products do not have such a wide distillation range.

28.5 The Noticee contend that the Low sulphur content in the product by itself was not a relevant factor for classifying the product in question as a refined petroleum product. The opinion of the Chemical Examiner dated 5.8.2010 refers to "low sulphur content" as one of the reasons of possibility for the possibility of the product being a processed petroleum product. Such assumption made by the Chemical Examiner is clearly untenable for the reason that low sulphur content is a common characteristic in several kinds of condensates and crude oils for instance;

1. Algerian condensate has a sulphur content of 0.001% (Origin Algeria)
2. Selipner condensate has a sulphur content of 0.07% (Origin North Sea)
3. Snohvit condensate has a sulphur content of 0.02% (Origin North Sea)
4. Njord condensate has a sulphur content of 0.05% (Origin North Sea)
5. Beatrice condensate has a sulphur content of 0.06% (Origin North Sea)
6. North West Shelf condensate has a sulphur content very close viz. close to zero (Australia)
7. Tanguh condensate has a sulphur content of 0.04% (Indonesian origin)
8. Cossack has a sulphur content of 0.045% (Australian origin)
9. Agbami crude oil has a sulphur content of 0.05% (Nigerian origin)
10. Azeri crude oil has a sulphur content of 0.15% (Azerbaijan)

Even crude oil within the country like KG D-6 and Mangala have as their sulphur content as low as 0.06%. Thus low sulphur content by itself is no basis for concluding that the product is either a refined or a processed product. It was also contended that the Chemical Examiner himself had in his statement dated 6.7.2010 stated that the conclusion that the product was a crude petroleum condensate had been reached after conducting a sulphur test on the remnant sample. In other words, the Chemical Examiner obviously did not find the low sulphur content as a relevant factor for determining the product's description or classification. In any event the fact that the product has low sulphur content is writ large on the description of the product viz. low sulphur condensate. It is therefore submitted that the conclusion reached by the Chemical Examiner based on low sulphur condensate in his in his opinion dated 5.8.2010 is flawed.

28.6 The Noticee submitted that it is settled law laid down by the Supreme Court in the case of HPL Chemicals Ltd. vs CCE, reported in 2006 (197) ELT 324 and Puma Ayurvedic Herbal (P) Ltd. vs CCE, 2006 (196) ELT 3 (SC) that once an assessee has claimed a particular classification based on the description of the goods contained in third party document such as supplier's invoice, Certificate of Analysis etc. the burden of proving that the classification so claimed was incorrect or that the description was mis-declared is entirely upon the Revenue, which it must discharge by producing credible and conclusive evidence. In the present case, the Notice does nothing more than cite and rely upon conflicting and self-contradictory opinions of a Chemical Examiner, which, by DRI's own admission, are inconclusive and insufficient for coming to any firm conclusion. The voluminous evidence in the form of commercial documents issued by an organization owned wholly by the Government of Qatar and Certificates and reports issued by a reputed organization such as SGS,

Platt and RIM, have all been overlooked and ignored as if they were never produced or cited. Significantly, the genuineness and the credibility of these documents produced by us has not been doubted anywhere in the Notice. The so-called evidence cited in the Notice, which is conflicting, contradictory and inconclusive by DRI's own admission is therefore insufficient to discharge the burden of proof, which lies upon the Department and consequently the allegation of mis-declaration of description as well as of wrong classification of Rules cannot be sustained merely on the basis of such shaky and vacillating opinion of a Chemical Examiner.

28.7 The Noticee further submitted that the role of a Chemical Examiner is confined to testing product for its composition, properties etc. The Chemical Examiner is not competent to comment on the issue of classification of goods under the Customs Tariff as he cannot profess to have any expertise on an issue of classification. In the present case, all the reports and opinions of the Chemical Examiner center around the two competing Tariff Entries 2709 and 2710. In view of this well settled legal position, the Chemical Examiner had evidently gone beyond his brief in offering his opinion on the issue of classification. It is also evident that opinions of the Chemical Examiner have got coloured and consequentially his opinions have lost all credibility and relevance. Admittedly, going strictly by the composition as well as the physiochemical properties of the product, the samples could as well have been crude condensate as claimed by us. This position is accepted by the Chemical Examiner in all his opinions, including the last one dated 5-8-2010. Also this position is further fortified by the Minutes of the Organization Systems Committee of the World Customs Organization, which has been cited by the Chemical Examiner in his statement dated 6-7-2010. It is clear from the evidence on record that a case of mis-declaration against us cannot be established merely by referring to or relying upon the composition and the physical chemical properties of the product in question. In the light of this accepted position, the opinion, statements and reports given by the Chemical Examiner are in fact wholly irrelevant.

28.8 The further submitted that the Notice has failed to appreciate that during the relevant period, the responsibility of assessment including arriving at a correct classification was that of the Revenue. It is nobody's case that they had suppressed any documents based on which the proper officer could have classified the product as refined petroleum product. Since the classification arrived at by the proper officer was based on third party documents which we had received from the overseas supplier, correctness of which is not in dispute. It was not open to the DRI to allege that there was a willful mis-declaration on our part. The Noticee contended that neither do any of the test results nor does the statement dated 6.7.2010 bear out the fact that the goods imported by them were processed products of petroleum crude oil classifiable under heading 27101990. The letter of the chemical examiner dated 5.8.2010 cannot by any stretch of examination be considered as his detailed report and in any case the reading of the same makes it clear that the same is completely baseless, unsubstantiated and is also influenced by DRI's letter dated 22.7.2010. Dr. Sharma has in his first part of the letter confirmed the fact that the test result arrived at by him matched with those mentioned in the load port reports and also that since the physio-chemical characteristics were overlapping it was not possible to distinguish petroleum condensate from processed product of Petroleum Crude Oil and therefore the suppliers certificate was an important document in such cases. After so stating in his letter the chemical examiner has without any basis stated that in spite of the overlapping parameters, test results in respect of sample drawn at Bill of entry No. F-91 dated 28.12.2009 exactly match with the findings /test results of petroleum



products covered under heading 27101990. The conclusions arrived at by Dr. Sharma in his opinion dated 5.8.2010 are completely unsubstantiated and baseless and contrary to what has been stated in his test reports as also in his statements recorded before the investigating officers. It is a settled law that the Chemical Examiner's role is confined to reporting the chemical and technical characteristics of products and cannot transgress into determining the classification of a product. What also needs to be appreciated is that heading 2710 1990 is a residuary entry and covers within its ambit other petroleum oils and oils obtained from bituminous minerals and other preparations not elsewhere specified or included, containing by weight 70% or more petroleum oils and oils obtained from bituminous minerals and excludes light oils and preparations thereof. It is surprising that the Chemical Examiner, without determining as to what the product precisely was, has determined its classification under heading 2710 1990. They further contended that Ras-Laffan was known to have the world's largest condensate processing plant as also for exports of refined products, this by itself could not lead to the conclusion that the goods imported by us were also refined petroleum products.

28.9 Insofar as the allegation in the notice that they had deliberately tried to seek waiver from the sample being tested by the Customs by misquoting a circular is concerned, the said allegation was completely baseless and untenable. In any case samples had been drawn and the testing did not establish that the goods were classifiable under a chapter other than 2709 and consequently no adverse inference can be drawn against us in this regards. They further submitted that the Show Cause Notice seek to recover customs duty amounting to Rs. 90,21,77,111/- under Section 28 (4) of the Customs Act, 1962 by invoking the extended period. In this regard they submit that there has been no mis-declaration with intent to evade duty on their part as the goods have been described in the Bill of Entry as per the description contained in the Bill of Lading, Invoice, Sale Contract, Quality Report, Quantity Report, Assay Report etc. and classification claimed even if incorrect, cannot be said to be an act of mis-declaration, once, it is not the department's case that the goods were not in accordance with Invoice, Sale Contract, Load Port Certificate, Quality Report, Quantity Report etc. It is a settled law that claiming of classification or exemption under a Heading other than subsequently determined by the department does not amount to mis-declaration or attempt to evade duty, especially when the description of the goods is correctly and fully given in the Bills of Entry and is as per the accompanying documents, like Invoice, Certificate of Origin, Certificate of Quantity, Certificate of Quality, Analysis Report, Literature, Bill of Lading, Packing List etc. Reliance in this regard is placed on the Supreme Court's decision in the case of Commissioner vs Sav Nife Power System - 2002 (141) ELT 95 (SC), Northern Plastic Ltd vs Commissioner - 1998 (101) ELT 549 (SC) and the Tribunal's decision in the case of Hindustan Lever Ltd vs Commissioner - 1996 (83) ELT 520 (T). Therefore, the entire demand is time barred and, therefore, liable to be set aside. As regards Confiscation, Penalty and Interest the Noticee submitted that even otherwise the provisions of Section 111 (d) and Section 111 (m) of the Customs Act, 1962 under which the confiscation has been proposed are not attracted in our case. Insofar as Section 111 (d) is concerned, the same can be invoked only in cases, where goods are imported contrary to prohibition imposed by the Customs Act, 1962 or any other law for the time being in force. Assuming, without admitting, that the goods imported were processed products of petroleum, it is nobody's case that the goods imported are prohibited or there is any restriction imposed on the import of the same. In view of this, the goods cannot be held as liable to confiscation under Section 111 (d) of the Customs Act, 1962 which is clearly inapplicable in the present case. As regards Section 111 (m) of the Customs Act, 1962



is concerned, the same can be invoked only in cases where goods do not correspond to the description of the goods as spelt out in the Bill of Entry. In the present case, since the description of the goods as indicated in the Bills of Entry was based on third party documents, the correctness of which has not been disputed, the goods cannot be confiscated under Section 111 (m) of the Customs Act, 1962. Therefore, the proposal to confiscate the goods under Section 111 (m) of the Customs Act, 1962, is illegal, erroneous and, therefore, liable to be dropped.

28.10 The demand for duty raised against them not being sustainable, so also the allegation regarding mis-declaration, consequently the proposal in the Notice seeking to confiscate the goods, levy interest and impose penalty are also not sustainable.

28.11 The Noticee further submitted that as has already been pointed out earlier, the issue is no longer res integra as the Show cause notice pertaining to Bill of Entry No. F-91 dated 28.12.2009 based on the same investigation, same reports of the Chemical Examiner and same reasoning as raised in the present Show Cause Notice has on appeal been decided by the Hon'ble Tribunal in our favour vide its Order No. A/12311-12312/2014 dated 18.12.2014. The Hon'ble Tribunal in its order has elaborately discussed each and every allegations made in the present Show Cause Notice as well as the evidences relied upon by the department in support of the said allegations and has conclusively held that there is no logical reason with the Revenue not to accept the classification claimed by us on the basis of the documents available on record as per our contract dated 11.12.2009 entered with Vitol Asia Pte. Limited, Singapore. They also submitted that the contract referred to in the Tribunal's order is similar to the one entered into by us in respect of the present SCN and therefore the said decision applies on all fours to our case. It would be useful to reproduce the relevant paras of the said decision for better understanding of the issue:

28.12 Further the Hon'ble Tribunal has in para 7 of its order has very clearly stated that the observations made by it are applicable to all bill of entries of crude oil finalized by Superintendent, Vadinar under F-VIII/48-4/FIN/2003 - Part III dated 25.2.2010. It may be stated that the present two bill of entries are part of the said order, and therefore, tribunal's decision cited above in relation to bill of entry F-No. 91/23.12.2009 is equally applicable to the bill of entry F-63/23.10.2009 and F-100/09.01.2010 and contended that in view of their above submissions and the Tribunal's decision in their own case in respect of the same investigation, the entire proceedings initiated by the Show Cause Notice are liable to be dropped.

#### **DISCUSSIONS & FINDINGS:**

29. I find that the present show cause notice bearing No. DRI/AZU/MISC-17/2010 dated 20-03-2014 was issued by the Additional Director General, DRI, AZU, Ahmedabad, which was made answerable to the Commissioner of Customs (Preventive), Jamnagar. This show cause Notice was subsequently transferred to call book on 24-11-2016 pending adjudication of the case. The present SCN is part of the same investigation carried out by the DRI wherein a show cause notice was already issued to the Noticee in respect of Bill of Entry No. F-91 dated 28-12-2009 for import of 61626.485 MTs. of 'Qatar LSC Crude Oil', classifying them under CTH 2709. The Show Cause Notice dated 16-08-2010 involving B/E No.F-91/28.12.2009 issued to M/s. Essar Oil Ltd. for intended mis-classification, was subsequently adjudicated by the Commissioner of Customs (Preventive), Jamnagar vide Order in Original No.11/Commissioner/2012 dated 28-02-



2013, confirming the demand. The Noticee filed an appeal before the CESTAT and the CESTAT allowed the appeal of the Noticee vide Final Order No.A/12311-12312/2014-WZB/AHD dated 18-12-2014, reported in [2015(326) ELT 310 (Tri. Ahmd)]. The department filed Civil Appeal before the Hon'ble Supreme Court against the above referred order of the appellate authority, awaiting decision, the present show cause notice was transferred to Call Book. Now, since the case has been decided by the Hon'ble Supreme Court vide order dated 23-01-2024, same is retrieved from the Call Book and taken up for the purpose of adjudication.

30. I have carefully gone through the records and facts of the case, including the charges in the SCN and the rival submissions made by the Noticee. I find that the core issue to be decided in the present show cause notice is whether the goods viz. 'Low Sulphur Condensate Crude Oil' and "De-odourised Field Condensate Crude Oil" is classifiable under CTH 27090000, as classified by the Noticee, or under CTH 27101990, based on the test report of Chemical Examiner, Customs Laboratory, Kandla, wherein it was opined after chemical analysis by the Chemical Examiner that the impugned goods in question was "Procesed Product of Petroleum Crude Oil". I find from the records that the present SCN is part of the same investigation carried out by the DRI wherein a show cause notice was already issued to the Noticee in respect of Bill of Entry No. F-91 dated 28-12-2009 for import of 61626.485 MTs. of 'Qatar LSC Crude Oil', classifying them under CTH 2709, which was subsequently adjudicated by the Commissioner of Customs (Preventive), Jamnagar vide Order in Original No.11/Commissioner/2012 dated 28-02-2013, confirming the demand. As stated hereinabove, the said Order-in-Original was challenged before the CESTAT and the CESTAT allowed the appeal of the Noticee vide Final Order No.A/12311-12312/2014-WZB/AHD dated 18-12-2014, reported in [2015(326) ELT 310 (Tri. Ahmd)]. Consequently, department had filed a Civil Appeal before the Hon'ble Supreme Court against the above referred order of the appellate authority, wherein the Hon'ble Supreme Court vide order dated 23-01-2024 dismissed the Civil Appeal of the department.

31. I find it intrinsic to visit the decision of the CESTAT in the said case referred to above and reported in [2015(326) ELT 310 (Tri. Ahmd)], wherein the CESTAT held that -

*"6. Heard both sides and perused the case records. The issue involved is as to what should be the correct classification of the imported goods described as 'Qatar Low Sulphur Condensate' (Qatar LSC) in the Bill of Entry No. F-91, dated 28-12-2009. Main appellant is claiming the classification under CTH 27090000 as a natural gas condensate whereas the Adjudicating authority has held the classification of the goods under CTH 27101990 based on the test reports and written opinions given by the Chemical Examiner, Kandla. If the goods are classifiable under CTH 27090000 then all the goods get exempted under Notification No. 21/2002-Cus., dated 1-3-2002 read with Notification No. 74/2008-Cus., dated 4-6-2008*



**6.1 Both the above competing entries as per Custom Tariff Act are as follows :-**

<b>Tariff Items</b>	<b>Description of goods</b>
27090000	Petroleum oils and oils obtained from bituminous minerals, Crude.
2710	Petroleum oils and oils obtained from bituminous minerals, other than crude;
27101990	

**6.2 Corresponding HSN explanatory notes for CTH 27.09 and 2710 are as follows :-**

27.09

PETROLEUM AND OILS OBTAINED FROM  
BITUMINOUS MINERALS CRUDE.

This heading covers crude petroleum oils and crude oils obtained from bituminous minerals (e.g. from shale, calcareous rock, sand), i.e., natural products, whatever their composition, whether obtained from normal or condensation oil-deposits or by the destructive distillation of bituminous minerals. The crude oils thus obtained remain classified in this heading even when they have been subjected to the following process:

- (1) Decantation.
- (2) De-salting
- (3) Dehydration
- (4) Stabilisation in order to normalize the vapour pressure
- (5) Elimination of very light fractions with a view to returning them to the oil-deposits in order to improve the drainage and maintain the pressure,
- (6) The addition of only those hydrocarbons previously recovered by physical methods during the course of the above-mentioned processes.
- (7) Any other minor process, provided it does not change the essential character of the product.

The heading also covers gas condensates, i.e., crude oils obtained during the stabilization of natural gas immediately upon its extraction. This operation consists of obtaining, mainly by cooling and depressurization, the condensable hydrocarbons (C4 to approximately C20) from the wet natural gas.

27.10

PETROLEUM OILS AND OILS OBTAINED FROM  
BITUMINOUS MINERALS, OTHER THAN  
CRUDE; PREPARATIONS; NOT ELSEWHERE  
SPECIFIED OR INCLUDED, CONTAINING BY  
WEIGHT 70% OR MORE OF PETROLEUM OILS  
OR OF OILS OBTAINED FROM BITUMINOUS  
MINERALS, THESE OILS BEING THE BASIC  
CONSTITUENTS OF THE PREPARATIONS;  
WASTE OILS.

Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than waste oils;\*

**6.3** As per the above HSN explanatory notes, which are followed for interpreting the Customs Tariff also, all petroleum oils and oils of CTH 27.09 are obtained from Bituminous minerals (e.g. Shale, Calcareous rock and sand) and are natural products but also include gas condensates obtained during stabilization of natural gas immediately upon its extraction. However, the processes like De-calcination, De-salting, Dehydration, Stabilisation, Elimination of very light fractions, cooling and de-pressurization etc. for obtaining condensable hydrocarbons (C4 to C20) from the wet natural gas does not take the end gas condensates out of CTH 27.09. On the other hand CTH 27.10 contained petroleum oils and oils obtained from bituminous minerals which are other than crude. The logical interpretation of the above HSN explanatory will be whether the goods imported by the main appellant have only undergone the processes specified in HSN explanatory notes under CTH 27.09 or have undergone any other process which is so major that it change the essential charter of the natural product. Learned advocate appearing on behalf of the appellant argued that Qatar LSC is a mixture of natural Hydrocarbons on which no process other than those specified in HSN explanatory notes under CTH 27.09 has been undertaken. That similar composition of products of CTH 2910 could overlap for some mixtures of CTH 2710. That internationally it is not possible to distinguish between the two categories of products of 27.09 and 27101990. It is observed from the report dated 8-10-1996 of Harmonized System Committee of World Customs Organization, Brussels on classification of 'Gas Condensates' that 'Gas Condensate' of CTH 2709 are similar in composition to some of the products of CTH 2710. Para 10 to 13 of their report is relevant and is reproduced below :-

"How to distinguish "gas condensates" from similar synthetic products of heading 27.10

\*10. In this regard there was almost consensus in the Sub-Committee that the chemical composition and physical characteristics of "gas condensates" and similar synthetic products of heading 27.10 were in fact very similar and overlapped in my cases. There was almost no practical way of distinguishing between the two groups of products.



11. After discussion, the Sub-Committee agreed that the information obtained so far was insufficient for reaching a satisfactory conclusion in respect of the definition of "gas Condensates" and distinguishing them from the similar products of heading 27.10. Nevertheless, the Sub-Committee agreed to submit to the Review Sub-Committee the following text concerning the description of "gas condensates". For the first indent, on which opinions were divided, there are two options, (1) the text drafted by the Secretariat on the basis of information provided by China and the EC and (2) an alternative text drafted on the basis of information provided by the US. Both texts have been placed in square brackets.

*"Natural gas condensates*

- (are crude oils obtained from the stabilization, immediately on extraction of natural gas. This operation consists of extracting the condensable hydrocarbons contained in the "wet" natural gas, mainly by cooling and depressurization (through throttling) or
- (are obtained, at well-site gas processing plants, by condensing C4 to approximately C20 hydrocarbons contained in the "wet" natural gas)
- normally consist of (C4 to approximately C20) hydrocarbons with no unsaturated hydrocarbons or only trace amounts thereof; the main components are (C6 to C9) hydrocarbons.
- are normally clear or transparent liquids, but sometimes are yellowish or coloured.
- approximately (80)% by volume distil at about (200)°C;
- (have an octane value not exceeding 30);
- (have an API gravity of 55 to 65)."

12. In view of the Scientific Sub-Committee's indication that a definition of "gas condensates" and how to distinguish them from similar products of heading 27.10 could not be satisfactorily produced, the Review Sub-Committee at its 19th Session agreed that the proposal for a new subheading in heading 27.09 to cover "gas condensates" should not be further examined during the review cycle for the HAS 2002 version.

13. It is also felt that the classification of "gas condensates" should be submitted to the Harmonized System Committee together with the information obtained so far from Chinese EC, the United States and Canada; administrations were invited to provide further information regarding the chemical composition, physical characteristics and definition of the "gas condensates" under consideration."

7. In the light of above factual matrix, it is apparent that there are overlapping in the nature and properties of Natural Gas Condensates of CTH 2709 and some the synthetic products of CTH 2710. This dispute/confusion has been internationally accepted by the World Customs Organization, Brussels as per report dated 8-10-1996 of Harmonised Systems Committee on classification of 'Gas Condensates'. Chemical Examiner, Kandla in its very first report dated 29-1-2010 certified that the sample tested is pale yellow oily liquid and is comprised of mixture of mineral hydrocarbons. In the same report, he is opining that the sample is of 'other than petroleum crude' and in the same breath he further asks for the literature on the claim of the appellant. When the literature is supplied by the Superintendent, Vadinar Chemical Examiner promptly confirm that samples are of crude Petroleum and are classifiable under SH 2709 of HSN. A chemical analyst dealing with physico chemical testing of petroleum products impulsively could not have said in report dated 29-1-2010, that the goods are 'other than Petroleum Oil' and simultaneously asking for the literature/related documents when internationally it is accepted that it is difficult to distinguish 'Gas Condensates' of CTH 27.09 and similar synthetic products of CTH 27.10. The same could be said of all the bills of entry of Crude Oil finalized by Superintendent, Vadinar under Order F. No. VIII/48-4/FIN/2003- Pt III, dated 25-2-2010. It is also observed that after a favourable report dated 15-6-2010 was given by the Chemical Examiner, saying that imported goods are Crude Petroleum Condensate, DRI obtained fresh opinion dated 5-8-2010 from the Chemical Examiner by writing a letter dated 22-7-2010. Para 5 & 6 of this letter read as follows :-

\*5. Your test report, above mentioned letters and statements do not give any conclusive opinion of the subject goods. It also appears that you have refrained yourself from giving specific details of the process which the said goods have undergone and other details which may help in deciding the correct classification. It appears that you have rather given conflicting reports and replies, which do not lead to conclusion of correct nature/nomenclature and



classification of the goods. As you are aware, these particular imports have Revenue implication involving crores of rupees.

6. It is therefore advised that the matter may be taken seriously and specific and conclusive and reasoned reports showing nature/nomenclature and classification of the goods on the basis of the test conducted be submitted to this office URGENTLY."

8. Two statements dated 6-7-2010 and 29-6-2010 of Dr. Gyan Prakash Sharma, Chemical Examiner Grade-I, Kandla were also recorded by the investigation to clarify the conflicting opinions given by the Chemical Examiner. It is observed from answer to Q. No. 3 in the statement dated 6-7-2010 and answer to Q. No. 1 of statement dated 29-6-2010 that Chemical Examiner was aware of the overlapping and similar nature of Crude Gas Condensate of CTH 2709 and similar synthetic products of CTH 2710. In the event of conflicting opinions appellant was clearly justified in asking for the cross-examination of the Chemical Examiner which was rejected by the adjudicating authority. It is observed from the judgments relied upon by the adjudicating authority to reject the cross-examination, as discussed in Para 33.2 of the OIO, dated 28-2-2013, that none of them says that cross-examination in all cases should be denied. In the relied upon case law of Jagdish Shankar Trivedi v. CCE, Kanpur - 2006 (194) E.L.T. 220 (Tri-Del.) the person mentioned in Supreme Court's extracted passage, whose cross-examination was asked for, was an informer. In case of anti-smuggling/anti-evasion cases name/identification of informer is always protected. In other relied upon case, it was never said by any court that cross-examination should be invariably rejected. Rather most of the judgments relied upon by the adjudicating authority say that request of cross-examination has to be seen with respect to facts of each case. In the present proceedings the report, opinion and statements of the chemical examiner are the only evidences with the Revenue to say that imported goods are required to be classified under CTH 2710. Therefore, adjudicating authority was not right in rejecting the cross-examination of the chemical examiner.

8.1 Learned AR relied upon the case law of Reliance Cellulose Products Limited v. CCE, Hyderabad (supra) and Hindalco Industries Limited v. CCE, Allahabad (supra) to argue that chemical report of the departmental chemical examiner cannot be brushed aside. Para 12 of the Apex Court judgment in the case of Reliance Cellulose Products Limited v. CCE, Hyderabad (supra) is reproduced below : -

"12. These orders are now under challenge before this Court. We were referred to a number of test reports obtained by the appellant from various persons and on the basis of these opinion, the reports of the Departmental Chemical Examiner and also the Chief Chemist were assailed. We are of the view that the Assistant Collector cannot be said to have erred in relying upon the reports given by the Chemical Examiner and the Chief Chemist. It may be that in a given case, the report of the Chief Chemist may be demonstrated to be palpably wrong. In such a case, the Court may direct re-examination of the whole issue. But that is not the case here. It has not been shown that the Chemical Examiner or the Chief Chemist were in error in their analysis in any way. The views expressed by the Chief Examiner and Chief Chemist of the Government cannot be lightly brushed aside on the basis of opinion of some private persons obtained by the appellant."

It is seen from the above that Hon'ble Apex Court has also observed that there could be a situation where report of the Chemical Examiner is palpably wrong. In the present case we observe that chemical examiner has given conflicting opinions, therefore, the same can be questioned. The facts of the case before the Apex Court were thus different than the facts and circumstances of these proceedings. In the case of Hindalco Industries Limited v. CCE, Allahabad (supra), Hon'ble Allahabad High Court only observed that if assessee is not satisfied with the analysis report he can ask for retest. In the present case, appellant is not agitated with the physico. Chemical analysis made by the Chemical Examiner but is aggrieved with the opinions given by him in the classification of the imported goods. It is now a settled proposition of law that a chemical examiner can give opinion on the chemical nature of the goods tested but cannot suggest whether a 'Gas Condensate' imported by the appellant will be classifiable under 2709 or 2710. The international authorities on classification of 'Crude Gas Condensate' has expressed concern and confusion over the difficulty in distinguishing these products of CTH 2709 from similar synthetic products of CTH 2710. When products of CTH 2709 and 2710 have similar characteristics/compositions then the only way to entertain a contrary classification adopted by the appellant, was to extend the investigation to the place of origin of the goods. No such enquiry seems to have been made with the supplier which is owned by Govt. of Qatar. It is also not the case of the Revenue that Customs documents provided by the appellant at the time of clearance are fake or forged by deliberately given a wrong description. Appellant has argued that the price at which the 'Gas Condensate' is imported tallies with the crude rates as per the established journals of the imported products. There is no evidence on



record to indicate that imported goods were of refined category falling under CTH 2910 which fetched higher value in international oil market. Rather there is no case that the imported goods are undervalued. It is also difficult to comprehend that the present importer will bring refined products for re-refining of the same again. It is not the case of the Revenue that appellant has sold the imported goods as such. Nothing was brought on record that non-aromatic constituent of the imported goods was more than aromatic constituents, by way of a chemical test report, as required under Chapter Note 2 of Chapter 27 of the Customs Tariff Act. There is also nothing on record that the supplier of imported goods has done any major processes on the natural product other than those specified in HSN explanatory notes under HSN Heading No. 27.09

and, allowed the appeal filed by the Noticee.

32. I further find that Civil Appeal Nos. 5719-5720/2015 was filed by the department against the above order of the CESTAT, wherein the Hon'ble Supreme Court has dismissed the appeals holding that "the findings arrived at by the customs, Excise & Service Tax Appellate Tribunal (for short "CESTAT") are findings of fact and we do not find any substantial question of law at all."

33. I find that the above order of the CESTAT is squarely applicable in the present case, since the the Bills of Entry involved in the said order and in the present show cause notice are part of the same investigation. Further, upon perusal of the above referred CESTAT's order, I find that the CESTAT has critically examined the issue and in its finding held that internationally it is not possible to distinguish between the two categories of products of 27.09 and 27101990, as it is observed from the report dated 8-10-1996 of Harmonized System Committee of World Customs Organization, Brussels on classification of 'Gas Condensates' that 'Gas Condensate' of CTH 2709 are similar in composition to some of the products of CTH 2710; In this regard there was almost consensus in the Sub-Committee that the chemical composition and physical characteristics of "gas condensates" and similar synthetic products of heading 27.10, therefore, there was almost no practical way of distinguishing between the two groups of products.

34. I also find it relevant to comprehend the findings of the CESTAT regarding the report of the Chemical Examiner that a chemical analyst dealing with physico chemical testing of petroleum products impulsively could not have said in his report that the goods are 'other than Petroleum Oil' and simultaneously asking for the literature/related documents, when internationally it is accepted that it is difficult to distinguish 'Gas Condensates' of CTH 27.09 and similar synthetic products of CTH 27.10. Also, when products of CTH 2709 and 2710 have similar characteristics/compositions then the only way to entertain a contrary classification adopted by the appellant, was to extend the investigation to the place of origin of the goods. In the present case also, I find that no enquiry seems to have been made with the supplier Tasweeq, a Government of Qatar Undertaking. I find that it is not the case of the department that Customs documents provided by the Noticee at the time of clearance were fake or forged by deliberately given a wrong description. I also find force in Noticee's contention that the price at which the 'Gas Condensate' is imported tallies with the crude rates as per the established journals of the imported products and there was no evidence on record to indicate that imported goods were of refined category falling under CTH 2910 which fetched higher value in international oil market, nor a case that the imported goods were undervalued.



35. I also place reliance in the case of *Commissioner v. Oil India Ltd.* reported in 2002 (148) E.L.T. 802 (Tri. -Del.), wherein the CEGAT has relied on the relevant portion of the Board's TA No. 125/81, dated 17-11-81, which reads as follows :-

*"4. The Ministry of Petroleum, Chemicals & Fertilizers, (Department of Petroleum) who were consulted, have examined the matter in detail in consultation with the Oil & Natural Gas Commission and Oil India Ltd., who are the producers of crude oil in the country. Based on their opinion, that Ministry have advised that Condensate is a petroleum in natural state and is crude oil.*

*5. Having regard to the advice tendered by the Ministry of Petroleum based on the opinion of the trade understanding, Board is of the view that Condensate is classifiable as crude mineral oil under item 68 CET."*

and held that ".....8. In view of the Board's clarification dated 17-11-81 the Revenue cannot take up a contention that condensate will not come under Item 68 of the old Tariff. The above clarification further makes it clear that condensate is a petroleum in natural state and is crude oil. It is to be classified as crude mineral oil. If that be so, it would directly come under sub-heading 2709.00 which takes in petroleum oils and oils obtained from bituminous materials and crude."

36. I further find that Civil Appeal was filed by Commissioner of Central Excise, Shillong against the above CEGAT Order, before the Apex Court [reported in 2004 (170) E.L.T. A116 (S.C.)] and the Hon'ble Supreme Court, while dismissing the appeal on the ground of delay as well as on merits, passed the following order:-

*"The Civil Appeal is dismissed on the ground of delay as well as on merits. The Appellate Tribunal in its impugned order had held that petroleum products, condensate formed by condensation of lighter fraction of crude oil during process of separation is petroleum in natural state, and crude oil classifiable as crude mineral oil under sub-heading 2709.00 of Central Excise Tariff Act, 1985."*

Also, the Policy Circular No.28/(RE-99)/99-02 dated 18.08.1999 issued by the DGFT, New Delhi, in agreement with WCO, clarifies that 'Condensate is classifiable under CTH 27090000

37. I find that in view of the discussions and findings by the Tribunal holding the goods i.e. '**Crude Condensate**' are rightly classifiable under CTH 2709 instead of CTH 2710 as alleged by the department, and the endorsement by the Hon'ble Supreme Court to the finding of the Tribunals, dismissing the appeal of the department, I am of a considered view that the 60787.396 MT of 'Low Sulphur Condensate Crude Oil of Qatar origin' and 58094.010 MT of 'De-odourised Field Condensate Crude Oil of Qatar origin' imported by the Noticee M/s. Essar Oil Ltd., Khamphalia, vide Bills of Entry No. F-63 dated 23.10.2009 and F-100 dated 09.01.2010, is rightly classified under CTH 27090000 and I hold accordingly.

In view of the above discussion and findings, I pass the following

#### ORDER

I drop the proceedings initiated vide Show Cause Notice No. DRI/AZU/MISC-17/2010 dated 20-03-2014 against the Noticee M/s. Essar Oil Ltd., PO Box No.24, District - Dev Bhumi Dwarka, Pin - 361 305.



39. This order is issued without prejudice to any other action that may be taken against the Noticee or any other person under the Customs Act, 1962 or any other law for the time being in force.

  
(Dhirendra Lal)  
Commissioner

F.No.VIII/10-74/Commr/ O&A/2014

Dated: 10.09.2024

**BY REGD POST A.D. / HAND DELIVERY**

To

1. M/s. Essar Oil Limited,  
PO Box No.-24,  
Dist.-Dev Bhumi Dwarka.

2. Shri T. Srinivas,  
Head of International Supply and Trading (IST),  
M/s Essar Oil Limited,  
11, K.K.Marg, Mahalaxmi, Mumbai

3. Shri Nishant Chouhan, Senior Manager,  
M/s Essar Oil Limited. PO Box No.-24,  
Dist.-Dev Bhumi Dwarka



**Copy submitted to:**

1. The Chief Commissioner, Customs Gujarat Zone, Ahmedabad.
2. The Additional Director General, DRI, AZU, Ahmedabad
3. The Deputy/ Assistant Director, DRI, RU, Jamnagar
4. The Deputy/ Assistant Commissioner, Custom Division, Jamnagar.
5. The Deputy Commissioner (Systems), Customs (Prev.), Jamnagar.
6. The Superintendent, Custom House, Vadinar.
7. Guard File.