आयुक्त, सीमा शुल्क का कार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS
न्यू कस्टम हाउस, बालाजी मंदिर के पास, न्यू कांडला 370210
NEW CUSTOMS HOUSE, NEAR BALAJI TEMPLE, NEW KANDLA-370210
दूरभास Phone No. 02836-271468-469 फ़ैक्सFax No 02836-271467

E-mail : adj.kandla-customs@nic.in

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A	**FILE NO.**	**GEN/ADJ/ADC/716/2022-Adjn-O/o Commr-Cus-Kandla**
B	**OIO NO.**	**KCH/ADC/SP/20/2026-27**
C	**Passed by**	**SHWETA PACHURY, ADDITIONAL COMMISSIONER, CUSTOMS HOUSE, KANDLA.**
D	**DATE OF ORDER**	**29.10.2026**
E	**DATE OF ISSUE**	**29.10.2026**
F	**SCN NUMBER & DATE**	**SCN F. No. S/15-01/SIIB/Regal/2018-19 dated 24.08.2022**
G	**Noticee / Party / Importer**	**M/s Regal Paints & Brush Pvt. Ltd., A-7/33, South Side of G. T. Road Industrial Area, Ghaziabad, U.P.**

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 के अंतर्गत प्रपत्र सी. ए. -1 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 of the Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

"सीमा शुल्क आयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डींग, ईश्वर भुवन रोड़, नवरंगपुरा, अहमदाबाद 380 009"
"The Commissioner of Customs (Appeals), Ahmedabad,
4th floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad- 380009."

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee under Court Fee Act and it must accompanied by –

(i) उक्त अपील की एक प्रति और (A copy of the appeal, and)

(ii) इस आदेश की यह प्रति या कोई अन्य प्रति, जिस पर 'कोर्ट फीस एक्ट, 1870' की अनुसूची-I के अनुसार निर्धारित कोर्ट फीस स्टाम्प लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp as prescribed under Schedule – I of the Court Fees Act, 1870.

5.अपील ज्ञापन के साथ ड्यूटि /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील दाखिल करते समय 'सीमा-शुल्क (अपील्स) नियम, 1982' और 'सीमा-शुल्क अधिनियम, 1962' के अन्य प्रावधानों का हर तरह से पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, आयुक्त (अपील्स) के समक्ष मांग शुल्क का 7.5 % भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

Pursuant to the specific intelligence available with DRI, a reference F. No. DRI/AZU/GRU/Sanari-Petro/Int-06/2018 dated 09.10.2018 was received from the Assistant Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham which passed the inputs that some of the goods, which were restricted for import into India, were being imported and cleared as "Industrial Composite Mixture Plus" (hereinafter also referred to as "ICMP" or "Subject goods" and as declared in Bill of Entry) or as "Low Aromatic White Spirit" (hereinafter also referred to as "LAWS" or "Subject goods" and as declared in Bill of Entry), by some importers through Kandla Port, in violation of the Foreign Trade Policy provisions. Furthermore, after the initiation of the inquiry by DRI, it was observed that the test-reports issued by the Custom House Laboratory, Kandla appeared not to be genuine and to avoid the material getting classified as SKO (Kerosene) which is of restricted nature, illegal gratification was passed on to the officers of the Laboratory.

2. Acting on the intelligence received from DRI, 317 remnant samples of the imported cargo declared as "Industrial Composite Mixture Plus (ICMP)/ Low Aromatic White Spirit (LAWS)" imported by various importers, including M/s Regal Paints & Brush Pvt. Ltd., A-7/33, South Side of G. T. Road Industrial Area, Ghaziabad, U.P. available with this office were sent to CRCL, New Delhi vide letter F.No.S/15-01/SIIB/2018-19/Part-1 dated 24.12.2018 for chemical analysis and testing to ascertain the following points for the imported goods intended for clearance with declaration as ICMP/LAWS:

> *"2.(i) whether the sample confirms to description and Characteristics, Specification and Parameters of "Super Kerosene Oil" as per Custom Tariff Act,*
>
> *(ii) if "Super Kerosene Oil", then please specify the smoke point.*

3. If the same does not qualify as "Industrial Composite Mixture Plus", please confirm whether the Characteristics, Specifications and parameters confirm to Motor Spirit (CTH 271012)/Diesel Oil (CTH 27101930 & 27101940).

4. If none of the above, please confirm the identification of the sample."

2.1. From the above, it was noticed that some importers were engaged in importing "Low Aromatic White Spirit (LAWS)" and "Industrial Composite Mixture Plus" (ICMP) by mis-declaring the same and in violation of the Foreign Trade Policy. Accordingly, inquiry was initiated against various importers including M/s. Regal Paints & Brush Pvt. Ltd., A-7/33, South Side of G. T. Road Industrial Area, Ghaziabad, U.P. (IEC No. 0509056539) (hereinafter also referred to as "Importer").

2.2 The details of the LAWS imported by M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. at Kandla Port is given below:

S. No.	B/E	B/E Date	Product	Quantity (In MTs)	Assessable value as declared in B/E (in Rs.)
1	4294143	06.12.2017	LAWS	219.59	9187748.53/-

2.3 The Joint Director, CRCL, New Delhi after due testing of remnant sample in respect of the above Bill of Entry, submitted their report vide letter F. No. 27-Cus/C-32/2018-19 dated 22.07.2019. The Joint Director, CRCL, New Delhi in their above referred test report opined that the sample conform to the specification of Kerosene as per IS: 1459:2018 (Fourth Revision). It does not meet the requirements for Petroleum Hydrocarbon Solvents as per IS: 1745-2018 (Third Revision) in respect of Final Boiling Point.

2.4 The details of the Test Reports issued by the Joint Director, CRCL, New Delhi in respect of consignment covered under the Bill of Entry No. 4294143 date 06.12.2017 is attached as RUD No. 3 to the Show Cause Notice.

2.5. The above test report of the CRCL, New Delhi confirmed that the goods imported under the above-mentioned Bill of Entry was Kerosene as per IS 1459:2018 (Fourth Revision), which were to be classified under CTH No. 27101910, but the same were cleared by mis-declaring its description as "Low Aromatic White Spirit (LAWS)" by declaring wrong classification thereof under CTH 27101990. The total quantity 219.59 MTs having assessable value (excluding duties of customs) covered under aforesaid Bill of Entry as declared comes to Rs. 91,87,748.53/-.

2.6. Para 2.01 of the Foreign Trade Policy 2015-2020, which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, prescribed as follow:

"(a) Exports and Imports shall be 'Free' except when regulated by way of prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed by clicking on 'Downloads' at http: //dgft.gov.in.

(b) Further, there are some items which are 'free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force."

2.7 As per the Schedule I of the Indian Trade Classification (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27, Import Policy for the Superior Kerosene Oil (SKO), as covered under Customs Tariff Heading and Tariff Item No. 27101910 is "State Trading Enterprises" with remarks that "Import subject to Para 2.20 of the Foreign Trade Policy and condition at Policy condition (2) below."

2.8. Para 2.20 of the Foreign Trade Policy 2015-2020, which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 specified as follow:

(a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.

(b) Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

(c) DGFT may, however, grant an authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs.

2.9. Further to the above, the Policy condition (2) prescribed at Schedule I of the ITC (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27 is specified as follows:

"(2) Import of SKO shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL, and IBP for all purposes with STC being nominated as State Trading Enterprises (STEs) for supplies to Advance Licence holders. Advance Licence holders shall however, have the option to import SKO from the above mentioned STEs including STC."

2.10. The list of the State Trading Enterprises (STEs) for FTP purpose, is provided vide Appendix 2J of the Foreign Trade Policy 2015-2020.

2.11. Further to the above, since the SKO in the total quantity in possession exceeding the specified quantity falls under the category of "Petroleum Class B" and the import, storage and handling of the products falling under "Petroleum Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). Import of SKO; in this case, if to be considered as classifiable as "Petroleum Class B", then the License issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported by the importer who are already in possession of License issued under the Petroleum

Rules, 1976. Further for the storage of such "Petroleum Class B" products, statutory provisions have been made, which requires different manner of compliance, if such goods to be stored in Drums and to be stored in tanks. As per Notification No. 105-Cus dated 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962.

2.12. From the above facts, it appears that the goods, though being SKO falling under CTH No. 27101910, were mis-declared as LAWS, falling under CTH No. 27101990, by suppressing its correct description as SKO and correct classification under CTH 27101910, and that the condition stipulated for import through or by STE or against the Special authorisation issued by the DGFT, as per the Foreign Trade Policy 2015-2020, as well as conditions of compliance with the provisions of the Petroleum Act, 1934 (30 of 1934), were not at all complied with by the importer in respect to the import of SKO made by them, which were sought clearance by them under the aforesaid Bills of Entry. Therefore, the said goods are required to be treated as "Prohibited Goods" as defined under Section 2(33) of Customs Act, 1962 and accordingly import of such goods without due compliance with the Policy provisions may have to be categorized as "Smuggling" within the meaning of Section 2(39) of the Customs Act, 1962.

3. During the course of inquiry/investigation with respect to the import of LAWS in the case, Statement of Shri Sanjeev Arora, Director of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. was recorded under Section 108 of Customs Act, 1962 on 10.10.2019. In his statement dated 10.10.2019, Shri Sanjeev Arora inter-alia stated that M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. engaged in manufacturing of all kind of paints and thinners of "Regal" brand; that he mainly looks after the accounts, sales, finance and import related works of the company; that their company had imported one consignment of Low Aromatic White Spirit vide Bill of Entry No. 4294143 dated 06.12.2017 through Kandla Port and submitted documents related to the imports; that they have used LAWS in the manufacturing of paints and thinners and some of the quantity they have sold to M/s Mangali Enterprise Ltd., New Delhi; that their company had purchased Low Aromatic White Spirit from the local market; that they have small testing facility in their factory where they test only flash point; that they do not have any idea of the characteristics of LAWS/ICMP and rely on the declarations and test reports of the supplier only; that as per paint industry, flash point should be in between 37 to 39 and if the same is within the same parameter, then they use the same in manufacturing their product; that they have started using slope Oil purchased from M/s Reliance Industries Ltd. which is available at competitive price and hence stopped import of LAWS; that that they appointed M/s Sarthee Shipping, Gujarat as CHA for the customs clearance of consignment of LAWS; that they had provided authority letters in the name of CHA and KYC details and documents; that they send import documents to the CHA for the consignments on the basis of that CHA files Bills of Entry: that their CHA decides the Customs Tariff Head (CTH) of the import product to be declared in Bill of Entry on the basis of documents forwarded by them; that their CHA used to send them checklist before filing of Bill of Entry; that through his some personal contacts, he got the contact number of M/s Al Sadaf Grease and Lubricant Trading, UAE; that he talked with Shri Sumit Khanna of M/s Al Sadaf Grease and Lubricant Trading, UAE who offered rate of LAWS/ICMP of different mini-refineries; there he placed order telephonically; that supplier sent import

documents and they paid 100% payment; that there is no written contract with supplier.

The statement dated 10.10.2019 of Shri Sanjeev Arora is attached as RUD No. 4 to the Show Cause Notice.

4. From the documents submitted and facts stated in the statement dated 10.10.2019 by Shri Sanjeev Arora, Director of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., it appears that M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. had given a job of importing the goods under dispute on their behalf to M/s Sarthee Shipping, Gandhidham (CHA). On receipt of the documents pertaining to the goods imported and documents issued by supplier M/s Al Sadaf Grease and Lubricant Trading, UAE, the Bill of Entry No. 4294143 dated 06.12.2017 was filed by M/s Sarthee Shipping, Gandhidham, Customs Broker on behalf of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. and cleared the goods claiming classification under CTH 27101990 and declared the description of goods as Low Aromatic White Spirit weighing 219.59 MTs in quantity.

4.1. Further, Shri Sanjeev Arora, Director of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. has been shown the test report issued by the CRCL, New Delhi in respect of Bill of Entry No. 4294143 dated 06.12.2017, during recording of his statement dated 10.10.2019 and after perusing and acceptance of the content of the test report issued by CRCL, New Delhi, he put his dated signatures on the test report. He accepted the content of the said test report, that the sample conforms to the specification of Kerosene as per IS 1459:2018 (Fourth Revision) and it does not meet the requirements for petroleum Hydrocarbon Solvents as per IS:1745:2018 (Third Revision) in respect of Final Boiling Point.

4.2. On scrutiny of the import documents submitted by Shri Sanjeev Arora, Director of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., it is found that the supplier of the goods had given various documents showing the goods as Low Aromatic White Spirit whereas the test report given by the CRCL, New Delhi had shown the manufactured goods as Kerosene as per IS 1459:2018 (Fourth Revision) correctly classified under CTH No. 27101910.

5. The CRCL, New Delhi in its test report has opined that the samples meet the requirements of SKO (Kerosene) as per IS:1459:2018 (Fourth Revision). As per the clarification issued by Bureau of Indian Standards for BIS No: 1745:2018 (Third Revision) it has been clarified that:

> *1. BIS through its technical Committees has published two separate Indian standards for, kerosene and Petroleum Hydrocarbon Solvents, namely IS 1459:2018 Kerosene - Specification (Fourth Revision) and IS 1745:2018 Petroleum Hydrocarbon Solvents - Specification (Third Revision)*
>
> *2. IS 1459 prescribes requirements and methods of sampling and test of Kerosene intended for use as an illuminant and as a fuel and IS 1745 prescribes the requirements and the methods of test for Petroleum Hydrocarbon Solvents generally used in solvent extraction of oils, rubber and*

paint industries, in the formulation of insecticides, for dry cleaning and for textile printing purposes.

*3. **The requirements specifically prescribed in IS 1459 for Kerosene only are a) Acidity, inorganic; b) Burning quality; and c) Smoke point** and that in IS 1745 Petroleum Hydrocarbon Solvents are a) Initial boiling point; b) Aromatic content; and c) Residue on evaporation.*

6. Taking into consideration, the test reports issued by CRCL, New Delhi, it appears that the goods in the instant case had been cleared by M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., vide Bill of Entry No. 4294143 dated 06.12.2017 were not "Low Aromatic White Spirit" falling under CTH No. 27101990, as described in the Bill of Entry, but they were Superior Kerosene Oil (SKO), with its correct classification under CTH No. 27101910, and the item falling under said CTH No. 27101910 can be imported by STEs only and it has to be termed as prohibited goods, by virtue of the provisions of Para 2.01 and 2.20 of the Foreign Trade Policy 2015-2020 read with relevant Policy conditions provided in Tariff Item No. 27101910 in the ITC (HS) Classification of Imported goods 2015-2020, if the relevant conditions for its legal import were not complied with by the concerned importer. In the instant case, it appears that the goods were not imported by or through STEs, but it had been negotiated directly by M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., with the supplier and also not a case of the importer that they were holding Advance License/Advance Authorization or Special License issued by DGFT for import of SKO. Thus, in the instant case, M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., had imported SKO by mis-declaring its correct description and correct classification and had violated the provisions of Para 2.01 read with Para 2.20 of the Foreign Trade Policy 2015-2020 and consequently, the goods covered by Bill of Entry No. 4294143 dated 06.12.2017, should be treated as "Prohibited goods" within the meaning of definition provided vide Section 2(33) of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962. Irrespective of all these, it appears from the documents that the goods were described as "Low Aromatic White Spirit" in the respective Invoices and Bill of Entry No. 4294143 dated 06.12.2017, filed by M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. The testing of the goods had revealed that the same were SKO. Thus, there was evident mis-declaration with the sole intention to circumvent the restrictions imposed on its import under the Foreign Trade Policy 2015-2020.

7. Even in the context of the Notification No. 105-Cus dated 06.08.1938, the goods in respect of which the restricting provisions of the Petroleum Act, 1934 and the rules made thereunder are applicable and where the compliance with those provisions is required from the importer of such goods; if non-compliance is observed on the part of the importer, then the same may have to be treated as contravention of the deemed prohibition imposed on such goods in terms of Section 11 of the Customs Act, 1962. It appears from the facts mentioned hereinabove that since the SKO in the total quantity in possession exceeding the specified quantity falls in the category of "Petroleum Class B" and the import, storage and handling of the products falling under "Petroleum Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). Import of SKO, further to this, if to be considered as classifiable as "Petroleum Class B", then the License issued under the Petroleum

Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported which were already in possession of License issued under the Petroleum Rules, 1976. Further for the storage of such "Petroleum Class B" products, statutory provisions have been made, which requires different manner of compliance, if such goods to be stored in Drums and to be stored in tanks. As per Notification No. 105-Cus dated 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962. Since the importer in the instant case has failed to follow such compliance, it appears that they have also violated the provisions of Section 11 of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962.

8. The import of SKO could be permitted through the STEs only and the exception provided were related to (1) The Advance Licenses holders, through the STEs including STC, as per Policy condition (2) of the Chapter 27 of the ITC (HS) Schedule-1, and (2) the Authorization holder, who were granted such authorization by the DGFT in terms of Para 2.20 (c) of the Foreign Trade Policy.

9. It appears that though having knowledge about the character of the goods under import, the importer M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., had imported and cleared the "prohibited goods" by willfully mis-declaring its description and custom tariff classification. In terms of Section 46 of the Customs Act, 1962, the importer of any goods is required to declare correct details in the Bill of Entry being filed by them, and also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, the importer had filed Bill of Entry with incorrect particulars with the sole aim to suppress the correct nature of Cargo, which were otherwise to be considered as prohibited goods, if its correct character was revealed. Therefore, the goods imported by the importer as such, were also liable for confiscation under Section 111(m) of the Customs Act, 1962 and the goods so imported were to be treated as 'smuggled goods' as defined under Section 2(39) of the Customs Act, 1962.

10. From the facts discussed herein above, it appears that M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., in connivance with the exporter cleared the "prohibited goods" by intentionally mis-declaring the description and custom tariff classification to the extent of managing and manipulating the import documents like the Commercial Invoice, test results from the Custom House Kandla Laboratory, etc. showing the goods as Low Aromatic White Spirit, though they had all the reasons to believe that the goods being imported were SKO (Kerosene). In terms of Section 46 of the Customs Act, 1962, the importer of any goods is required to declare correct details in the Bill of Entry being filed by them, and also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, the importer had filed Bill of Entry with incorrect particulars with the sole aim to suppress the correct nature of cargo, which were otherwise to be considered as prohibited goods, if its correct character were revealed. Therefore, the goods imported by the importer as such, were also liable for confiscation under Section 111(m) of the Customs Act, 1962.

11. From the inquiry conducted, test reports issued by the CRCL, New Delhi in respect of Bill of Entry No. 4294143 dated 06.12.2017 and the statement of Shri Sanjeev Arora, Director of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., recorded under Section 108 of Customs Act, 1962 on 10.10.2019, it appears that the importer was well aware that the characteristics of the goods were of SKO. although the Bill of Entry No. 4294143 dated 06.12.2017 were filed by M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., for the import of total quantity of 219.59 MTs of goods and cleared by resorting to mis-declaring the goods as LAWS, under Section 46 of the Customs Act 1962 and accordingly the aforementioned SKO (Kerosene) imported and cleared in the guise of Low Aromatic White Spirit of 219.59 MTs having declared assessable Value of Rs. 91,87,748.53/- (Ninety One Lakhs Eighty Seven Thousand Seven Hundred and Forty Eight rupees and Fifty Three paise only) (as declared in the Bills of Entry) were liable to confiscation under the provisions of Section 111 (d) and (m) of the Customs Act, 1962 in as much as the goods had been imported in gross violation of restriction/prohibition imposed under the Foreign Policy 2015-2020 as discussed in the Paras supra and by mis-declaring the description of the goods with an intent to clear the prohibited/restricted goods from the Customs Department. The above acts of omission and commission on the part of the importer has rendered the imported goods liable to confiscation under Section 111(d) & (m) of the Customs Act, 1962 and also constitutes "Smuggling" as defined under Section 2 (39) of the Customs Act, 1962. All the above acts of omission and commission on the part of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., has rendered themselves liable for penalty under Section 112 (a) and (b) of the Customs Act, 1962. It thus appears that M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., had knowingly and intentionally made a declaration under the Bill of Entry filed under Section 46 of the Customs Act, 1962, which were false and incorrect. Hence, they have committed offences of the nature as described under the Section 114AA of the Customs Act, 1962 and have consequentially rendered themselves liable to penalty under the said Section 114AA of the Customs Act, 1962. Further, the importer has failed to comply with various provision of the Customs Act, 1962 with which it was his duty to comply. Therefore, he has also rendered himself liable for the penalty under Section 117 of the Customs Act, 1962.

11.1. From the facts discussed hereinabove, it appears that the importer had declared the description of the goods as "Low Aromatic White Spirit" classified under CTH 27101990 in the Bill of Entry No. 4294143 dated 06.12.2017 whereas they had actually imported the Superior Kerosene Oil (SKO) falling under CTH No. 27101910 as per the test reports of CRCL, New Delhi as discussed herein above in the guise of "Low Aromatic White Spirit" under CTH No. 27101990 from Kandla Port which were restricted for importation and clearance thereof. The policy conditions stipulate that;

> *"import of SKO (Kerosene) is subject to Para 2.20 of Foreign Trade Policy and shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL and IBP for all purposes with STC being nominated as a State Trading Enterprise (STE) for supplies to Advance Licence holders. Advance Licence holders shall however, have the option to import SKO from the above mentioned STEs including STC".*

Further, the SKO stands classified as "Petroleum Class B". Thus, Goods became liable for confiscation under Section 111 (d) and (m) of the Customs Act, 1962.

11.2. The subject goods imported into India, without providing correct information in the Bill of Entry No. 4294143 dated 06.12.2017, without properly classifying and in contraventions of various provisions of the Customs Act, 1962, which rendered subject goods liable to confiscation as discussed below:-

(i) The subject goods, which were imported and cleared by mis-declaring the same as LAWS, are restricted in nature and imported in the guise of the import of LAWS, thus rendering the goods liable to confiscation under Section 111(d) of the Customs Act, 1962;

(ii) The correct information were not declared in Bills of Entry No. 4294143 dated 06.12.2017, thus rendering the goods liable to confiscation under Section 111(m) of the Customs Act, 1962; and

(iii) The subject goods were imported and cleared by mis-declaring the goods as LAWS, in violation of the provisions of Petroleum Act, 1934 and consequently violating the Act 30 of 1934, which has deemed application under Section 11 of the Customs Act, 1962, thus rendering the goods liable to confiscation under Section 111 of the Customs Act, 1962.

12. Therefore, in the light of the aforesaid facts, M/s Regal Paints & Brush Pvt. Ltd., A-7/33, South Side of G. T. Road Industrial Area, Ghaziabad, U.P. -201001 were called upon to show cause as to why-

(a) the declared description and classification of imported goods i.e. 219.59 MTs Low Aromatic White Spirit under CTH 27101990 covered under the Bill of Entry No. 4294143 dated 06.12.2017 valued at Rs. 91,87,748.53/- (Ninety One Lakhs Eighty Seven Thousand Seven Hundred and Forty Eight rupees and Fifty Three paise only) should not be declared the correct description as SKO instead of Low Aromatic White Spirit and re-classified under the Customs Tariff Heading 27101910 instead of Customs Tariff Heading 27101990.

(b) the imported goods i.e. 219.59 MTs of SKO falling under CTH No. 27101910 mis-declared as Low Aromatic White Spirit under CTH 27101990 in the Bill of Entry No. 4294143 dated 06.12.2017 valued at Rs. 91,87,748.53/- (Ninety One Lakhs Eighty Seven Thousand Seven Hundred and Forty Eight rupees and Fifty Three paise only) should not be confiscated under provisions of Section 111(d) and 111(m) of the Customs Act, 1962;

(c) Penalty should not be imposed on M/s Regal Paints & Brush Pvt. Ltd., A-7/33, South Side of G. T. Road Industrial Area, Ghaziabad, U.P. under Section 112(a) and (b)(i), 114AA and Section 117 of the Customs Act, 1962.

13. PERSONAL HEARING AND WRITTEN SUBMISSION

The personal hearing in the matter was held on 06.08.2026 and 29.09.2026 where Shri Sanjeev Arora, Director of M/s. Regal Paints & Brush Private Limited,

Ghaziabad, UP requested to rely upon Final Order No. 10353-10384/2025 dated 15.05.2025 of the CESTAT, West Zonal Bench, Ahmedabad in the matter of *"Commissioner of Customs-Kandla vs. Jai Mata Chintpurni Impex"*.

13.1 Further, the Noticee, vide their defence reply dated 23.09.2022, contended that the Show Cause Notice is time-barred as there is no suppression or collusion. They submitted that the imported goods were Low Aromatic White Spirit, declared bona fide on the foreign supplier's documents and cleared unconditionally after Kandla laboratory testing. They disputed the CRCL report's authenticity, denied mis-declaration, and argued confiscation and penalties under Sections 111, 112, 114AA and 117 are unsustainable, praying for dropping of proceedings. They have cited various case laws in support of their arguments.

14. DISCUSSON & FINDING

I have carefully examined the records of the case. The importer imported a consignment declared as 'Low Aromatic White Spirit (LAWS)' under Bill of Entry No. 4294143 dated 06.12.2017 at Kandla Port. The declared quantity was 219.59 MTs having an assessable value of Rs. 91,87,748.53/- (Ninety One Lakhs Eighty Seven Thousand Seven Hundred and Forty Eight rupees and Fifty Three paise only). The goods were cleared under CTH 27101990. On the basis of intelligence received from the Directorate of Revenue Intelligence, remnant samples were sent to the Central Revenue Control Laboratory (CRCL), New Delhi, for re-testing. It was observed that the test-reports issued by the Custom House Laboratory, Kandla appeared not to be genuine and to avoid the material getting classified as SKO (Kerosene) which is of restricted nature, illegal gratification was passed on to the officers of the Laboratory.

14.1. On perusal of the CRCL, New Delhi test report dated 22.07.2019, it was observed that the sample conforms to the specification of Kerosene as per IS 1459:2018. The sample did not meet the requirements for Petroleum Hydrocarbon Solvents as per IS 1745:2018 (Third Revision) in respect of Final Boiling Point. Therefore, the goods are correctly classifiable as Superior Kerosene Oil (SKO) under CTH 27101910 instead of CTH 27101990 as declared.

14.2 The goods falling under said CTH No. 27101910 can be imported by STEs only. By virtue of the provisions of Para 2.01 and 2.20 of the Foreign Trade Policy 2015-2020 read with relevant Policy conditions provided in Tariff Item No. 27101910 in the ITC (HS) Classification of Imported goods 2015-2020, if the relevant

conditions for its legal import were not complied the goods are to be termed as prohibited goods.

14.3 In the instant case, M/s. Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. had imported SKO by mis-declaring its correct description and correct classification and had violated the provisions of Para 2.01 read with Para 2.20 of the Foreign Trade Policy 2015-2020 and consequently, the goods covered by Bill of Entry No. 4294143 dated 06.12.2017, should be treated as "Prohibited goods" within the meaning of definition provided vide Section 2(33) of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962.

14.4 The import of SKO could be permitted through the STEs only and the exception provided were related to (1) The Advance Licenses holders, through the STEs including STC, as per Policy condition (2) of the Chapter 27 of the ITC (HS) Schedule-1, and (2) the Authorization holder, who were granted such authorization by the DGFT in terms of Para 2.20 (c) of the Foreign Trade Policy. The importer hold no such license or authorization.

14.5 Further to the above, the SKO in the total quantity in possession exceeding the specified quantity falls under the category of "Petroleum Class B" and the import, storage and handling of the products falling under "Petroleum Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). Import of SKO; in this case, if to be considered as classifiable as "Petroleum Class B", then the License issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported by the importer who are already in possession of License issued under the Petroleum Rules, 1976. Further for the storage of such "Petroleum Class B" products, statutory provisions have been made, which require different manner of compliance, if such goods are to be stored in Drums and to be stored in tanks. As per Notification No. 105-Cus dated 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962.

14.6 From the above facts, it may be concluded that the goods, though being SKO falling under CTH No. 27101910, were mis-declared as LAWS, falling under CTH No. 27101990, by suppressing its correct description and that the condition stipulated for import through or by STE or against the Special authorisation issued by the

DGFT, as per the Foreign Trade Policy 2015-2020, as well as conditions of compliance with the provisions of the Petroleum Act, 1934 (30 of 1934), were not complied with by the importer. Therefore, the said goods are required to be treated as "Prohibited Goods" as defined under Section 2(33) of Customs Act, 1962 and accordingly import of such goods without due compliance with the Policy provisions may be categorized as "Smuggling" within the meaning of Section 2(39) of the Customs Act, 1962.

14.7 Further, Shri Sanjeev Arora, Director of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. has been shown the test report issued by the CRCL, New Delhi in respect of Bill of Entry No. 4294143 dated 06.12.2017. During recording of his statement dated 10.10.2019 and after perusing and acceptance of the content of the test report issued by CRCL, New Delhi, Shri Sanjeev Arora, Director of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. put his dated signatures on the test report. He accepted the content of the said test report, that the sample conforms to the specification of Kerosene as per IS 1459:2018 (Fourth Revision) and it does not meet the requirements for Petroleum Hydrocarbon Solvents as per IS 1745:2018 (Third Revision) in respect of Final Boiling Point. Further, he stated that he had given the job of importing the goods under dispute on their behalf to M/s Sarthee Shipping, Gandhidham (CHA). The Bill of Entry No. 4294143 dated 06.12.2017 was filed by M/s Sarthee Shipping, Gandhidham, Customs Broker on behalf of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. and cleared the goods claiming classification under CTH 27101990 and declared the description of goods as Low Aromatic White Spirit. The supplier of the goods had given various documents showing the goods as Low Aromatic White Spirit whereas the test report given by the CRCL, New Delhi had shown the manufactured goods as Kerosene as per IS 1459:2018 (Fourth Revision) correctly classified under CTH 27101910.

14.8 The importer had imported and cleared the "prohibited goods" by willfully mis-declaring its description and custom tariff classification to the extent of managing and manipulating the import documents like the Commercial Invoice, test results from the Custom House Kandla Laboratory, etc. showing the goods as Low Aromatic White Spirit, though they had all the reasons to believe that the goods being imported were SKO (Kerosene). In terms of Section 46 of the Customs Act, 1962, the importer of any goods is required to declare correct details in the Bill of Entry being filed by them, and are also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant

case, the importer had filed Bill of Entry with incorrect particulars with the sole aim to suppress the correct nature of Cargo, which were otherwise to be considered as prohibited goods, if its correct character was revealed. Therefore, the goods imported by the importer as such, were also liable for confiscation under Section 111(m) of the Customs Act, 1962 and the goods so imported were to be treated as 'smuggled goods' as defined under Section 2(39) of the Customs Act, 1962.

14.9 It is the Noticee's position that clearance from Kandla serves as prima facie evidence that the nature of the goods aligned with the original declaration. However, the investigation along with the CRCL, New Delhi Test Report has conclusively addressed this point.

14.10 I find that the initial test reports of CRCL, Kandla cannot be relied upon and further CRCL Delhi being apex lab carries higher evidentiary value.

14.11 Further, the Noticee has casted doubt on the genuineness of samples which were sent for testing to CRCL, Delhi. I find that the Department holds the inherent power to verify the correctness of an assessment, especially when the initial testing is suspected to be compromised by fraud or illegal gratification. The samples sent to CRCL Delhi were the sealed remnants/duplicate samples drawn at the time of import in the presence of the Noticee's representative. Since the seals remained intact and the chain of custody was never broken, the samples represent the exact state of the goods at the time of import, regardless of when the laboratory analysis was conducted. Petroleum products of this nature are chemically stable when stored in sealed, airtight containers. The parameters tested by CRCL Delhi are characteristic of the product's fundamental chemical composition, which does not undergo significant alteration. Also, as a premier reference laboratory, the findings of CRCL Delhi provide a more accurate and reliable technical assessment than the initial report.

14.12 It is observed that the re-test conducted by CRCL, New Delhi has concluded that the sample conforms to IS 1459:2018. It is reasonable to infer that the laboratory, being a competent authority, has taken into consideration all relevant parameters as required for arriving at such a conclusion. In the absence of any contrary evidence, the said test report cannot be disregarded.

14.13 Further, the Noticee has not shown any specification to which a product with these characteristics could answer the description "Low Aromatic White Spirit", and has produced no report from any laboratory showing conformity to IS 1745 or any

other white-spirit specification. The supplier's certificate, relied on by the Noticee for its flash-point figure of 39 °C, is a document of the seller; it is not a test report of an independent laboratory and does not state the test method. Further, the Noticee has never disputed the physical properties reported by CRCL on technical grounds.

14.14 Further, it is reiterated that the Bureau of Indian Standards clarification identifies the requirements specific to Kerosene under IS 1459 as acidity inorganic, burning quality and smoke point.

14.15 Attention is invited to Fundamentals of Petroleum and Petrochemical Engineering by Uttam Ray Chaudhuri - Chapter 2.2.2 and Chapter 2.2.2.1, which are reproduced as under:

2.2.2 KEROSENE

Kerosene or superior kerosene oil (SKO) is another domestic fuel mainly used for lighting or lamp oil. It is also used as a domestic stove oil. It is a petroleum product that boils in the range of 140°C–280°C and is available from crude petroleum oil. It is heavier than naphtha or petrol (motor spirit, MS), but lighter than diesel oil. The major properties of kerosene that determine its burning quality are the smoke point and the flash point.

2.2.2.1

The Smoke Point The smoke point is determined as the height of the flame (in millimeters) produced by this oil in the wick of a stove or a lamp without forming any smoke. The greater the smoke point, the better the burning quality.

14.16 Thus, it can be inferred that the major properties of Kerosene that determine its Burning Quality are Smoke Point and Flash Point, and that greater the smoke point, the better is the burning quality. In the instant case, both the Smoke Point and the Flash Point of the samples are in conformity to IS 1459:2018 (Fourth Revision). Therefore, Burning Quality can be adduced to be in conformity too, as Smoke Point and Flash Point determines the Burning Quality of kerosene.

14.17 I find that the Noticee has relied on various case laws in support of their contentions. However, I find that facts and circumstances of the present case are different.

15. The Department expressly relies on technical inference that burning quality follows from smoke point and flash point and that colour (Saybolt) is a purity test applied to a product already identified as kerosene. The CRCL report here is clear: it

states in terms that the sample conforms to the specification for kerosene and fails the specification for hydrocarbon solvents.

15.1 The Department has discharged its burden of proof. The Department has not relied on a bare allegation. A sample of the consignment was tested by CRCL, New Delhi, the referral laboratory of the Board, whose report is accompanied by the Noticee's own signed acknowledgment of it in his statement dated 10.10.2019. The Noticee has produced no test report of any laboratory in rebuttal. I find that the Department has adduced proper evidence, and that the goods declared as "Low Aromatic White Spirit (LAWS)" have been mis-declared and are Superior Kerosene Oil (SKO).

16. Further, I find that the Hon'ble High Court of Chennai, in the case of Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has held that availability of the goods is not necessary for imposing the redemption fine. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. Their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.

16.1 I find that the above view of the Hon'ble Madras High Court was relied upon by Hon'ble Gujarat High Court in the case of M/s. Synergy Fertichem Pvt. Ltd. Hon'ble Gujarat High Court.

17. I find that the goods declared in the subject Bill of Entry No. 4294143 dated 06.12.2017 were found to be mis-declared in terms of classification. The correct information of the goods under import were required to be declared on the (i) IGM under Section 30 of the Customs Act, 1962 (ii) Bill of Entry filed by the Importer under Section 46 of the Customs Act, 1962. However, in the current case, the importer has himself as well as through his agent, has filed the IGM & Bill of Entry with the incorrect particulars with sole aim to suppress the true nature and description of Cargo which was actually prohibited goods. Since in this case, the conditions have not been complied with, the subject goods are liable to be treated as prohibited goods. The Section 111(d) provides for confiscation of goods which are imported /attempted to be imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force. The Section 111(m) provides for confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under this Act. I therefore hold that in

absence of authorization from DGFT and intentional mis-declaration & mis-classification of imported goods, the goods covered under Bill of Entry No. 4294143 dated 06.12.2017 are liable for confiscation under provisions of Section 111 (d) and 111 (m) of the Customs Act, 1962.

18. Based on the inquiry conducted, the test report issued by CRCL, New Delhi in respect of Bill of Entry No. 4294143 dated 06.12.2017, and the statement of Shri Sanjeev Arora, Director of M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., I find that the importer was aware that the imported goods had the characteristics of Superior Kerosene Oil (SKO). However, the goods were mis-declared as Low Aromatic White Spirit (LAWS) in the Bill of Entry filed under Section 46 of the Customs Act, 1962. This mis-declaration was made with the intent to evade restrictions/prohibitions under the Foreign Trade Policy 2015–2020. By these deliberate acts and omissions, he also abetted the practice of illegal imports of restricted goods into India, facilitated practices which were in contravention of the provisions of Customs Act, 1962 and failed to comply with the provisions of this Act and the Allied Acts. By these acts of omission and commission, the importer is therefore liable for penalty under Sections 112 for his role in the improper importation. Furthermore, the false declaration made under the Bill of Entry renders them liable for penalty under Section 114AA of the Customs Act, 1962.

18.1 I find that the acts and omissions attributed to the importer are multifaceted, involving both the submission of false documents and a general failure to comply with statutory obligations under the Act. While the specific intent and fraudulent nature of the contravention are squarely covered under the substantive penal provisions of Section 114AA, the importer's conduct also constitutes a breach of procedural discipline for which no express penalty is otherwise provided elsewhere in the Act. In such circumstances, the gravity of the offense warrants a comprehensive punitive approach. I hold that the contraventions are not mutually exclusive; therefore, resort to the residuary provision under Section 117 is justified in conjunction with the specific penalty. Accordingly, I hold that the appropriate penal action is to be taken under both Section 114AA and Section 117 of the Customs Act, 1962.

19. In view of foregoing discussion and findings, I pass the following order.

ORDER

(i) I reject the declared description and classification of the imported goods i.e. 219.59 MTs valued at Rs. 91,87,748.53/- (Ninety One Lakhs Eighty Seven Thousand Seven Hundred and Forty Eight rupees and Fifty Three paise only), declared as 'Low Aromatic White Spirit', classified under CTH 27101990, imported by M/s. Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. under Bill of Entry No. 4294143 dated 06.12.2017 and re-classify them as "Superior Kerosene Oil (SKO)" under CTH 27101910.

(ii) I find that the impugned goods are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. I impose a redemption fine of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) on M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., in lieu of confiscation under Section 125 of the Customs Act, 1962.

(iii) I impose a penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs only) on M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., under Section 112 of the Customs Act, 1962.

(iv) I impose a penalty of Rs. 55,00,000/- (Rupees Fifty Five Lakhs only) on M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P. under Section 114AA of the Customs Act, 1962.

(v) I impose a penalty of Rs 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) on M/s Regal Paints & Brush Pvt. Ltd., Ghaziabad, U.P., under Section 117 of the Customs Act, 1962.

20. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

29/10/26

(SHWETA PACHURY)
ADDITIONAL COMMISSIONER,
CUSTOMS HOUSE, KANDLA.

F. No. GEN/ADJ/ADC/716/2022-Adjn-O/o Commr-Cus-Kandla Date: 29.10.2026

To,

M/s Regal Paints & Brush Pvt. Ltd.,
A-7/33, South Side of G. T. Road Industrial Area,
Ghaziabad, U.P. -201001.

Copy to: -

1. The Assistant Commissioner of Customs (SIIB), Custom House, Kandla.
2. The Assistant Commissioner of Customs (GR-I), Custom House, Kandla.
3. The Assistant Commissioner of Customs (RRA), Custom House, Kandla.
4. The Assistant Commissioner of Customs (TRC), Custom House, Kandla.
5. The Assistant Commissioner of Customs (EDI), Custom House, Kandla.
6. Guard File.