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|  | <p align="center"><b>OFFICE OF THE PRINCIPAL<br/>COMMISSIONER OF CUSTOMS<br/>CUSTOMS HOUSE, MUNDRA, KUTCH-<br/>GUJARAT -370421</b><br/> <b>PHONE : 02838-271426/271428</b><br/> <b>FAX :02838-271425</b><br/> <b>E-mail: adj-mundra@gov.in</b></p> | <br><b>आज़ादी का<br/>अमृत महोत्सव</b> |
| <b>A</b> <b>FILE NO./फ़ाइल संख्या</b>   | GEN/ADJ/ADC/932/2024-Adjn-O/o Pr<br>Commr-Cus-Mundra   |  |
| <b>B</b> <b>OIO NO./आदेश संख्या</b>   | MCH/ADC/AKM/400/2025-26  |  |
| <b>C</b> <b>PASSED BY/जारीकर्ता</b>   | Amit Kumar Mishra,<br>ADDITIONAL COMMISSIONER,<br>Customs House, Mundra.   |  |
| <b>D</b> <b>DATE OF ORDER/आदेश की<br/>तारीख</b>                                   | 25.11.2025   |  |
| <b>E</b> <b>DATE OF ISSUE/जारी करने की<br/>तिथि</b>                               | 01.12.2025   |  |
| <b>F</b> <b>SCN No. &amp; Date/कारण बताओ<br/>नोटिस क्रमांक</b>                    | GEN/ADJ/ADC/932/2024-Adjn-O/o Pr<br>Commr-Cus-Mundra dated 29.05.2024  |  |
| <b>G</b> <b>NOTICEE/ PARTY/<br/>IMPORTER</b><br>नोटिसकर्ता/पार्टी/आयातक           | 1. M/s. Panila Chem Pvt. Ltd.  |  |
| <b>H</b> <b>DIN/दस्तावेज़ पहचान संख्या</b>  | 20251271MO000000AF79   |  |

- यह आदेश संबंधित को निःशुल्क प्रदान किया जाता है।
- This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 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 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**"सीमाशुल्क आयुक्त (अपील),  
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,  
नवरंगपुरा, अहमदाबाद 380 009"**

**"THE COMMISSIONER OF CUSTOMS (APPEALS),  
HAVING HIS OFFICE AT 4<sup>TH</sup> FLOOR, HUDCO BUILDING, ISHWAR BHUVAN  
ROAD,  
NAVRANGPURA, AHMEDABAD-380 009."**

- 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.

6. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

- (i) उक्त अपील की एक प्रति और

A copy of the appeal, and

- (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

7. अपील ज्ञापन के साथ ड्यूटी/ 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.

8. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का 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.

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

An appeal against this order shall lie before the Commissioner (A) 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.

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**Brief facts of the Case:**

**1.1** M/s Panila Chem Pvt. Ltd. ( IEC : 2417503646) (hereinafter referred to as “Noticee/exporter”) having registered address at Bhayani Skyline, 7th Floor, Opposite Joggers Park, Atabhai Road, Bhavnagar – 364001 has filed a Shipping Bill No. 7688841 dtd. 20.02.2024 for export of goods namely “A A Industrial Solvent” (hereinafter referred as “impugned/subject goods” for the sake of brevity).

**1.2** Whereas the exporter has self-assessed the goods and classified the same under HSN Code 3814 0010 for the impugned goods destined to M/s Sakata INX (Bangladesh) Private Limited having quantity of 13.44 Metric Tonne at the rate of 1180 US dollar per metric tonne in stuffed in self-sealed container no. ECNU2275158 through invoice number 001CD0705 dtd. 20.02.2024. The goods were having declared FOB value of Rs. 12,15,244.8/- and claimed drawback of Rs.14,583/-.

**1.3** Whereas, during the course of verification of Shipping Bill, a query in the EDI system was raised by the Deputy Commissioner, Export Assessment, Custom House, Mundra. The query given to the exporter was ‘What is the composition of the product.’ The exporter through EDI portal has replied ‘Documents uploaded in e-sanchit’ and also submitted copies of analysis report of the impugned goods via e-mail. The exporter has submitted the certificate of analysis and Material Safety Data Sheet.

**1.4** Whereas, the export assessment section with a apprehension that the impugned goods appears to be ‘un-denatured Ethyl Alcohol’ falling under HSN – 2207 2000 decided for testing of the impugned goods in order to arrive at the actual classification of the goods. Thereafter the docks examination section was requested that drawl of sample from the self-sealing container containing the impugned goods and forwarding the same to CRCL, Kandla in order to ascertain the composition of the goods.

**1.5** Whereas, the representative sealed sample vide Test Memo No. 108/07.03.2024 was forwarded to CRCL, kandla and the Chemical Examiner upon testing of the same has given the report vide Test report No. 12360 dtd. 12.03.2024 as follows:

*Report: The sample as received is in the form of clear colourless liquid. It is mainly composed of Ethyl Alcohol together with small amount of Ethyl Acetate.*

*Technical Opinion*

*% composition:*

*Ethyl Alcohol –  
93.79 % Ethyl  
Acetate – Balance*

*It is other than undenatured Ethyl Alcohol.*

**1.6** Whereas, upon receipt of the report from the CRCL, Kandla the export assessment section vide its email dtd. 14.03.2024 had sought a clarification report from the CRCL that whether the composition of the goods is denatured or otherwise. In response to the same, CRCL has submitted a reply dated 14.03.2024 informing the following:

*“As per BIS Standard IS-4117, under the category of Specially Denatured Alcohol, there are two designations such as Designation 6 and 6a.*

*under the Denaturant Designation - 6: Denaturant Ethyl Acetate 1 litre per 100 litre of Alcohol &;*

*under the Denaturant Designation - 6a: Denaturant Ethyl Acetate 5 Litre per 100 Litre of Alcohol.*

And hence the composition of the sample as per the test report (12360/08-03- 2024) issued on 12-03-2024 agrees with the second category (6a), that is minimum 5 Litre of Ethyl Acetate per 100 litre of Alcohol. So, in light of above it may be considered as Specially Denatured Alcohol under the denaturant designation-6a”

**1.7** Whereas, upon the receipt of the clarification report from CRCL, the Export Assessment Section had taken a view that the exporter has mis-declared the goods and the same are liable for confiscation under relevant provisions of the Customs Act, 1962.

**1.8** Whereas, the Export Assessment section has forwarded the matter to SIIB for investigation of the present and the past consignment of the exporter pertaining to impugned goods.

## **2. Investigation:**

**2.1** Whereas, considering the nature of irregularities made by the exporter in the matter, a summon dated 03.04.2024 under the provisions of Section 108 of the Customs Act, 1962 was issued to the director of M/s Panila Chem Limited for tendering the statement in the matter and also to produce documents in support of the manufacture and uses of the impugned goods.

**2.2** Whereas, the statement of Shri Pankaj Nagindas Bhayana, director of M/s Panila Chem Ltd. was recorded on 06.04.2024 (RUD – 9) wherein he inter-alia stated :

- He is the director of M/s Panila Chem Ltd. since 2017 and he looks after finance and general administration.
- they have been exporting the impugned goods since last 03 years.

- that A A Industrial solvent as declared in shipping bill, invoice packing list and other documents is Absolute Alcohol Industrial Solvent.
- that the firm imports denatured ethyl alcohol from USA to Pipava Port. The denatured ethyl alcohol is with 5 ppm bitterant and it is further denatured with 1% ethyl acetate as well as 50 ppm bitterant.
- that bitterant is a chemical used for giving bitter taste to the denatured alcohol and the same is used as per the prohibition rules issued by the prohibition and excise department of government of Gujarat State.
- that the composition of Denatured ethyl alcohol, ethyl acetate and bitterant is 98.95%, 1 % and 0.05 % respectively.
- that after the mixture of denatured ethyl alcohol, ethyl acetate and bitterant, sampling is done in the presence of custom officer and sample is forwarded to CRCL, Vadodara.
- that after the receipt of the report from CRCL, Vadodara and assessment of bill of entry, the firm files X-bond bill of entry as per their requirement.
- that after the goods are released from the customs, the material is unloaded in the storage tank is taken to the feed tank in plant known as Molecular Sieve Dehydration(MSDH) removing the moisture using heating by thermic fuel. Thereafter we remove higher alcohols (also called Fusel oil) by passing it through columns in our plant. Subsequently we add solvent 6 % ethyl acetate to get final product Absolute Alcohol Industrial Solvent.
- that they do agree with the lab report dtd. 12.03.2024 of CRCL, Kandla for the impugned goods, however they do not agree with the opinion that the impugned goods falls under 6(a).
- that they add 6% ethyl acetate as a solvent to get their final product as ethyl acetate is most favorable for ink industries for their customers.
- that they have classified the goods under 3814 inspite of specific CTH 2207 because the composite of organic solvents falls under 3814.

### **Rules of Interpretation:**

**2.3** As specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), Classification of goods in this Schedule shall be governed by the following principles.

1. The titles of Sections, Chapters and Sub-Chapters are provided

for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

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

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

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

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

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

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in

numerical order among those which equally merit consideration.

### **Classification:**

**2.4** The exporter has classified the goods under chapter 38 of the Custom Tariff Act, 1975. The Chapter 38 of Section – VI of the Custom Tariff Act, 1975 deals with Miscellaneous Chemical Products. The notes 1 of the same is produced below:

#### **SECTION-VI**

#### **CHAPTER-38**

##### *Chapter 38*

##### *Miscellaneous chemical products*

#### **NOTES:**

1. This Chapter does not cover:

- (a) separate chemically defined elements or compounds with the exception of the following :
  - (1) artificial graphite (heading 3801);
  - (2) insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up as described in heading 3808;
  - (3) products put up as charges for fire-extinguishers or put up in fire-extinguishing grenades (heading 3813);
  - (4) certified reference materials specified in Note 2 below;
  - (5) products specified in Note 3 (a) or 3 (c) below;

**2.4.1** Upon perusal of the note 1 of the chapter note wherein it has been specified that ‘that this chapter does not cover separate chemically defined elements or compounds’; in the instant matter the exporter has classified the goods under HSN Code 3814 0010.

The tariff reading of the same is as below:

|             |   |
|-------------|---|
| <b>3814</b> | <b>ORGANIC COMPOSITE SOLVENTS AND THINNERS,<br/>NOT ELSEWHERE SPECIFIED OR INCLUDED;<br/>PREPARED PAINT OR VARNISH REMOVERS</b> |
| 381400      | - <i>Organic composite solvents and thinners, not</i>   |

#### **SECTION-VI**

#### **CHAPTER-38**

| (1)        | (2)  | (3) | (4) | (5) |
|------------|--|-----|-----|-----|
|            | <i>elsewhere specified or included; prepared paint or varnish removers :</i>     |     |     |     |
| 3814 00 10 | --- Organic composite solvents and thinners, not elsewhere specified or included | kg. | 10% | -   |
| 3814 00 20 | --- Prepared paint or varnish removers   | kg. | 10% | -   |

upon perusal of the tariff heading, it emerges that the HSN code 3814 refers to the 'organic composite solvents and thinners, not elsewhere specified or included'.

**2.4.2** Whereas, during the course of recording of statement the exporter has submitted a document (RUD – 10) describing the manufacturing process of the impugned goods as below :

• **TECHNICAL DESCRIPTION**

**PROCESS – A:** Imported denatured ethyl alcohol (ethanol) with a pungent odour, impurities, and moisture is unloaded into the raw material storage tank. This raw material is then transferred to the daily feed tank for further processing. The alcohol from the feed tank is fed into the evaporator column for the boiling of the ethanol-water mixture. The mixture is heated in the evaporator column with the help of a re-boiler, using thermal fluid from the boiler.

The vapour from this evaporator column is passed through a pair of molecular sieve beds of silica to trap water molecules in the bed. In the molecular sieve bed, water molecules are trapped while alcohol molecules pass through. At any given time, one bed is in working mode, and the second bed is in regeneration mode for the reactivation of the silica bed (adsorption process). This vapour is passed through the bed to remove water only.

After passing through the molecular sieve bed of silica, this vapour is cooled in a cooler. The cooled material is received in the plant receiver and transferred to the daily receiver. From the daily receiver, this material is transferred to bulk storage. In this procedure, we are removing water content from denatured ethyl alcohol.

**PROCESS – B:** Imported denatured ethanol and/or output from the MSDH section material are transferred to the daily feed tank of the PPGE plant. Diluted caustic soda lye and potassium permanganate solution are dosed into the feed tank to balance the pH of the feed to column.

Thermal heating is provided to the reboiler of the high boiler column. Vapour from the high column passes to the reboiler of Low Boiler Column 2 for heating. Vapour from the Low Boiler Column passes to the bottom of Low Boiler Column 1. After removing the

**2.4.3** Also during the course of recording the statement, the exporter was asked that what further manufacturing is done after the imported goods is released from the customs. The exporter has given the following reply:

**Q - 12. After the goods are released from Customs, what further manufacturing is done ?**

**Ans :** The material is unloaded in the storage tank is taken to the feed tank in plant known as Molecular Sieve Dehydration(MSDH) removing the moisture using heating by thermic fuel. Thereafter we remove Higher alcohols (also called Fusel oil) by passing it through columns in our plant. Subsequently we add solvent 6 % ethyl acetate to get final product Absolute Alcohol Industrial Solvent.



Upon perusal of the submission made by the exporter, it has emerged that the exporter:

- Imports denatured ethyl alcohol from Pipavav Port.
- The imported goods are transferred from port to bonded warehouse tank.
- The imported goods are thereafter denatured using BIS specified denaturant such as ethyl acetate, isopropyl alcohol and acetone.
- Subsequently, the denatured ethyl alcohol is used in the manufacture of impugned goods i.e. A A Industrial Solvent.

**Mis-classification:**

**2.5.1** The exporter in his detailed submission has expressly mentioned that they merely add ethyl alcohol and another bitterant to get the final product i.e. Absolute Alcohol Industrial Solvent.

**2.5.2** Hence, the fact becomes clear that the exporter has used the wording of the impugned goods as A A Industrial Solvent in the guise of Absolute Alcohol Industrial Solvent which is nothing else but denatured ethyl alcohol.

**2.5.3** In furtherance to the above, the clarification given by the Chemical Examiner, CRCL, that the goods falls under the category of Specially Denatured Alcohol having designation 6a which corresponds to denaturant ethyl acetate 5 litres per alcohol.

**2.5.4** The ethyl alcohol is generally used as solvent and also in the manufacture of a large scale of products such as polyethylene, acetic acid, butyl alcohol, styrene, butadiene etc. It may be used in the form of rectified spirit or ordinary denatured spirit.

Specially Denatured Alcohol is composed of alcohol and specified denaturants that may be readily removed by simple chemical processes. While especially denatured alcohol is not fit for human consumption by virtue of the denaturants used to denature the product, it can, through certain recovery processes, be made potable. For such reasons, its use is controlled through the registration of users.

**2.5.5** The BIS Standard IS - 4117: 2008 Alcohol Denaturants - specification stipulates the essential requirements as well as limit test for the denaturants in specially denatured alcohol.

**2.5.6** The aforesaid Indian Standard provides for three Annexures namely:

ANNEX A – which provides formulae for denatured alcohol

ANNEX B – which provides for permissible end use application

ANNEX C – which provides for methods of tests for various denaturants

**2.5.7** The exporter has submitted that they use ethyl acetate as denaturant as well as solvent. This fact is true that ethyl acetate appears in ANNEX A of IS 4117:2008 which provides formulae for denatured alcohol as well as ANNEX B of IS 4117:2008 which provides for permissible end use application.

**2.5.8** The relevant extract is produced below:

| <b>ANNEX A</b>                                     |   |   |                           |
|--|---|---|---------------------------|
| <i>(Foreword, and Clause 4; Annex B and E-2.6)</i> |   |   |                           |
| <b>FORMULAE FOR DENATURED ALCOHOL</b>              |   |   |                           |
| <b>Designation</b>                                 | <b>Denaturant</b>   | <b>Amount of Denaturant for 100 Litres of Alcohol</b> | <b>Use (Ref to Annex)</b> |
| <b>A — Completely Denatured Alcohol</b>            |   |   |                           |
| CD 1   | Methyl alcohol + Ethyl Acetate                              | 16.0 litre + 1.0 litre                                | B                         |
| CD 2   | Isopropyl alcohol + Ethyl acetate                           | 8.0 litre + 4.0 litre                                 | B                         |
| CD 3   | Acetone + Ethyl acetate                                     | 8.0 litre + 1.0 litre                                 | B                         |
| CD 4   | Methyl alcohol + Petroleum naphtha                          | 6.5 litre + 1 litre                                   | B                         |
| CD 5   | Gasoline  | 2 to 5 litres   | B                         |
| <b>B — Specially Denatured Alcohol</b>             |   |   |                           |
| SD 1   | Methyl alcohol  | 5.0 litre   | B                         |
| SD 1a  | Methyl alcohol  | 10.0 litre  | B                         |
| SD 2 <sup>1)</sup>                                 | Benzene/Toluene   | 5.0 litre   | B                         |
| SD 2a <sup>1)</sup>                                | Benzene or Toluene  | 1.5 litre   | B                         |
| 2b   | Cyclohexane + Denatonium benzoate/<br>Denatonium saccharide | 2.0 litre<br>4 g                                      | B                         |
| SD 3   | Acetone   | 8.0 litre   | B                         |
| SD 3a  | Acetone + Methyl isobutyl ketone                            | 8 litre + 1.5 litre                                   | B                         |
| SD 4 <sup>2)</sup>                                 | Acetaldehyde  | 1.5 litre   | B                         |
| SD 5 <sup>2)</sup>                                 | Chloroform  | 5.0 litre   | B                         |
| SD 6   | Ethyl acetate   | 1.0 litre   | B                         |
| SD 6a  | Ethyl acetate   | 5.0 litre   | B                         |
| SD 7   | Formaldehyde  | 10.0 litre  | B                         |
| SD 7a  | Formaldehyde + Menthol                                      | 2.5 litre + 2.5 kg                                    | B                         |
| SD 7b  | Formaldehyde + Menthol                                      | 1.25 litre + 4.5 kg                                   | B                         |

**2.5.9** The exporter in para 12 of his submission dated 06.04.2024 has stated that A A industrial solvent is manufactured by using denatured ethyl alcohol and after removing the moisture and impurities form the denatured ethyl alcohol they add more quantity of ethyl acetate as solvent.

From the afore-said submission made by the exporter it is clear that by adding further quantity of ethyl acetate, the exporter has placed the final product in the category of Specially Denatured Alcohol i.e. SD 6a which corresponds to 5 litres of Ethyl Acetate per 100 litres of Alcohol.

Hence, the impugned goods A A Industrial Solvents are nothing else than Denatured Ethyl Alcohol and more specifically specially denatured ethyl alcohol as pointed out by chemical examiner.

**2.5.10** Moreover, the exporter in para 13 of his submission dated 06.04.2024 has stated that the A A industrial solvent is used in manufacture of ink and the Bangladesh customs also considers the same product under 3814 0010.

The end use specified in the ANNEX B of IS 4117 : 2008 has specified that formulae authorized for end use product/process of ink is 1, 1a, 3, 12, 12a, 13. The relevant extract of the Indian Standard is as below:

**IS 4117 : 2008**

| <b>Sl No.</b> | <b>Formulae Authorized</b>   | <b>Product or Process</b>                              |
|---------------|------------------------------|--|
| (1)           | (2)                          | (3)  |
| 61            | 3, 3a, 9, 10, 11, 12a        | Hair and scalp preparations                            |
| 62            | 1, 2a, 2b, 3, 12, 13         | Hormones (processing)                                  |
| 63            | 1, 9, 10, 11, 13             | Incense  |
| 64            | 1, 1a, 3, 12, 12a, 13        | Inks   |
| 65            | 1a, 3, 3a, 9, 10, 11, 12, 13 | Insecticides, pesticide and pesticide intermediates    |
| 66            | 4, 6, 14                     | Iodine solutions (including U.S.P. and N.F. tinctures) |
| 67            | 1, 1a, 13                    | Laboratory reagents (for sale)                         |
| 68            | 1, 1a, 13                    | Laboratory uses, general (own use only)                |
| 69            | 1, 3, 12                     | Lacquer thinners                                       |

Upon perusal of the same it has emerged that for manufacturing of ink the authorised formulae is different from that used by the exporter. Although, at this juncture, when impugned goods is neither ink nor it is to be manufactured in India, the Indian Standard does not apply.

### **Correct classification of the Impugned goods**

**2.6** The exporter has classified the goods under Chapter 38 of the Customs Tariff Act, 1975. Note 1 of the chapter 38 clearly specifies that it does not cover separate chemically defined elements or compounds.

In the instant matter, the impugned goods, in fact, are defined separately under HSN code 22072000 and hence it is squarely eliminated

from the purview of chapter 38 itself.

From the discussions made above, it has emerged that the impugned goods i.e. A A Industrial Solvent is Denatured Ethyl Alcohol which is appropriately classifiable under HSN Code 2207 2000. The relevant extract of the Custom Tariff Act, 1975 is as below:

|            |  |  |      |   |
|------------|--|--|------|---|
| 2207       | UNDENATURED ETHYL ALCOHOL OF AN<br>ALCOHOLIC STRENGTH BY VOLUME OF 80%<br>VOL. OR HIGHER; ETHYL ALCOHOL AND OTHER<br>SPIRITS, DENATURED, OF ANY STRENGTH |  |      |   |
| 2207 10    | - Undenatured ethyl alcohol of an alcoholic<br>strength by volume of 80% vol. or higher:<br>--- Rectified spirit :                                       |  |      |   |
| 2207 10 11 | ---- Concentrates of alcoholic beverages   |  | 150% | - |
| 2207 10 19 | ---- Other   |  | 150% | - |
| 2207 10 90 | --- Other  |  | 150% | - |
| 2207 20 00 | - Ethyl alcohol and other spirits, denatured, of<br>any strength   |  | 5%   | - |

**2.6.1** The HSN Code 2207 20 00 pertains to ethyl alcohol and other spirits, denatured, of any strength and as has been discussed above the A A Industrial Solvent is nothing else but denatured ethyl alcohol and hence rightly classifiable in this heading.

### **Export Policy**

**2.7** Whereas, the Directorate General of Foreign Trade vide its Notification No. 29/2015-20 dtd. 28.08.2018 issued vide F. No. 01/91/180/21/AM-18/EC inserted new entry of Sr. no. 115A in Chapter 27 of Schedule 2 of ITC(HS) Classification of Export & Import Items and revised the policy of export of ethyl alcohol and other spirits, denatured, of any strength from 'free' to 'restricted'. The relevant extract of the said notification (Notn. 29 dated 28.08.2018 English.pdf (dgft.gov.in)) is as below:

## Directorate General of Foreign Trade

**Notification No. 29 /2015-2020**  
**New Delhi, Dated: 28 August, 2018**

**Subject: Export Policy of Bio-fuels.**

**S.O. (E):** In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the export policy of biofuels under Chapter 27 of ITC (HS), 2018, Schedule – 2 (Export Policy).

2. New entries at Sl. No. 115A, 115B and 115C are inserted in Chapter 27 of Schedule 2 of ITC (HS) Classification of Export & Import Items as follows:

| S.No. | Tariff Item<br>HS Code | Unit | Item Description   | Present<br>Policy | Revised<br>Policy | Policy Condition   |
|-------|------------------------|------|--|-------------------|-------------------|--|
| 115A  | 2207 20 00             | Kg/u | Ethyl alcohol and other spirits, denatured, of any strength.   | Free              | Restricted        | Export is permitted under license only for non-fuel purposes |
| 115B  | 2710 20 00             | Kg/u | Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or | Free              | Restricted        | Export is permitted under license only for non-fuel purposes |

**2.7.1** Whereas, in the instant case, the impugned goods falls under the 'restricted' category and exporter has not produced any license for the export of the same.

**2.7.2** Whereas, consequent to issuance of Notification No. 29/2015-20 dated 28.08.2018 the impugned goods could only be exported with license only for non-fuel purpose. However, in the instant case the exporter attempted to export the same by way of mis- declaring the same as "A A Industrial Solvent" and classified the same under CTH 3814 0010 to avoid the restriction. However, the goods are found as 'Denatured Ethyl Alcohol' Classifiable under CTH 2207 2000 and is restricted for export. Thus, non-compliance of the existing DGFT Policy makes the goods as Prohibited and exporter has attempted to export the same by way mis-declaring and mis-classifying the same.

**2.7.3** Whereas, as per the data available in EDI system, the exporter has exported the impugned goods 'A A Industrial Solvent' vide 20 shipping bills by mis-declaring and mis-classifying the same. The details of the shipment made is as below:

**TABLE - A**

| S/no | S/B No. | S/B<br>Date | Qty. | Units. | FOB.(Rs.<br>In Lakh) | DBK.<br>(Rs. In<br>lakhs) | Item Description.                                  |
|------|---------|-------------|------|--------|----------------------|---------------------------|--|
| 1    | 2519366 | 30-04-2020  | 64   | MTS    | 50.95                | 0                         | A. A. INDUSTRIAL SOLVENT                           |
| 2    | 2519845 | 30-04-2020  | 40   | MTS    | 32.59                | 0                         | A. A. INDUSTRIAL SOLVENT                           |
| 3    | 2551461 | 04-05-2020  | 96   | MTS    | 77.32                | 0                         | A. A. INDUSTRIAL SOLVENT                           |
| 4    | 2554266 | 05-05-2020  | 26   | MTS    | 21.11                | 0                         | A. A. INDUSTRIAL SOLVENT                           |
| 5    | 3150595 | 12-06-2020  | 18   | MTS    | 12.77                | 0                         | A. A. INDUSTRIAL SOLVENT - ISO TANK NO.AACU8701848 |
| 6    | 3150595 | 12-06-2020  | 18   | MTS    | 12.73                | 0                         | A. A. INDUSTRIAL SOLVENT - ISO TANK NO.AACU8701895 |
| 7    | 3174657 | 13-06-2020  | 18   | MTS    | 12.68                | 0                         | A. A. INDUSTRIAL SOLVENT - ISO TANK NO.FWUU3251650 |
| 8    | 3174657 | 13-06-2020  | 19   | MTS    | 12.92                | 0                         | A. A. INDUSTRIAL SOLVENT - ISO TANK NO.SEGU8062610 |
| 9    | 3174657 | 13-06-2020  | 19   | MTS    | 12.86                | 0                         | A. A. INDUSTRIAL SOLVENT - ISO TANK NO.EXFU2503302 |
| 10   | 3177869 | 14-06-2020  | 18   | MTS    | 12.74                | 0                         | A. A. INDUSTRIAL SOLVENT - ISO TANK NO.DKOU2501798 |
| 11   | 3177869 | 14-06-2020  | 19   | MTS    | 12.93                | 0                         | A. A. INDUSTRIAL SOLVENT - ISO TANK NO.SEGU8037880 |
| 12   | 3177869 | 14-06-2020  | 18   | MTS    | 12.65                | 0                         | A. A. INDUSTRIAL SOLVENT - ISO TANK NO.EXFU5573983 |
| 13   | 3177869 | 14-06-2020  | 19   | MTS    | 12.83                | 0                         | A. A. INDUSTRIAL SOLVENT - ISO TANK NO.SLZU2517219 |
| 14   | 3177869 | 14-06-2020  | 18   | MTS    | 12.75                | 0                         | A. A. INDUSTRIAL SOLVENT - ISO TANK NO.EXFU5535392 |
| 15   | 4983715 | 05-09-2020  | 52   | MTS    | 34.69                | 0                         | A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE)       |

|              |         |            |              |     |               |             |  |
|--------------|---------|------------|--------------|-----|---------------|-------------|--|
|              |         |            |              |     |               |             | SOLVENTS)  |
| 16           | 6765273 | 25-11-2020 | 16           | MTS | 9.83          | 0           | A.A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS) |
| 17           | 6846072 | 28-11-2020 | 52           | MTS | 33.12         | 0           | A.A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS) |
| 18           | 2292852 | 08-06-2021 | 50           | MTS | 37.2          | 0.48        | A.A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS) |
| 19           | 2707172 | 26-06-2021 | 52           | MTS | 40.66         | 0.53        | A.A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS) |
| 20           | 3150554 | 15-07-2021 | 52           | MTS | 41.08         | 0.53        | A.A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS) |
| 21           | 8428134 | 05-02-2021 | 52           | MTS | 33.99         | 0           | A.A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS) |
| 22           | 1258040 | 09-05-2022 | 26.6         | MTS | 26.44         | 0.34        | A.A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS) |
| 23           | 7613359 | 20-01-2022 | 52.8         | MTS | 45.66         | 0.59        | A.A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS) |
| 24           | 7627257 | 21-01-2022 | 79.2         | MTS | 68.45         | 0.89        | A.A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS) |
| 25           | 1338852 | 27-05-2023 | 13           | MTS | 13.1          | 0.17        | A.A. INDUSTRIAL SOLVENT                              |
| 26           | 2546807 | 18-07-2023 | 13.44        | MTS | 12.82         | 0.17        | A.A. INDUSTRIAL SOLVENT                              |
| 27           | 6046710 | 14-12-2023 | 13.44        | MTS | 12.32         | 0.15        | A.A. INDUSTRIAL SOLVENT                              |
| <b>Total</b> |         |            | <b>935.2</b> |     | <b>719.19</b> | <b>3.85</b> |  |

**2.7.4** Whereas, the expression " Prohibited Goods" is defined in Section 2(33) of the Customs Act, 1962 meaning "any goods, the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force, but it does not include any such



goods in respect of which, the conditions subject to which the goods are permitted to be imported or exported have been complied with." The relevant extract is produced as under :

## **Section 2. Definitions –**

In this Act, unless the context otherwise requires,

*(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;*

**2.7.5** Whereas, upon perusal of the Section 2(33) of the Customs Act, 1962 depicts that even prohibited goods could be permitted to be imported or exported subject to some terms and conditions. The moment those conditions are complied with, those goods would cease to be prohibited goods. This is why the exclusion clause contained in the second part of Section 2(33) uses the expression "any such goods". Therefore, it appears that the Customs Act recognizes only two types of goods namely: (1) those that are prohibited; and (2) those that are not prohibited. The Act also recognizes the fact that even prohibited goods could be imported or exported subject to certain conditions. If those conditions are fulfilled, prohibited goods would automatically become non-prohibited goods and if those conditions are not fulfilled, the goods takes the shape of prohibited goods. In the instant matter, the impugned goods are not accompanied with a license as stipulated by the Directorate General of Foreign Trade vide its Notification No. 29/2015-20 dtd. 28.08.2018 issued from F. No. 01/91/180/21/AM-18/EC, and hence becomes prohibited goods.

**2.7.6** Whereas, in the absence of the license the impugned goods have become prohibited goods. Moreover, from the year 2020 to 2024, the exporter has exported 935.2 metric tonnes of the impugned goods having declared FOB of Rs. 719.19 Lakhs and also claimed drawback of Rupees 3.85 Lakhs in certain shipments as provided in Table-A above. The exporter has made wrong and false declaration in terms of description and HSN code in the previous 20 shipping bills exported from the year 2020 to 2023 also.

## **Violations**



**3.1** Whereas, as per the provisions of Section 50 (3) of the Customs Act, 1962, the exporter shall ensure the accuracy of the information and also compliance with the restriction or prohibition, relating to the goods under this act for the time being in force. The relevant extract is produced below:

SECTION 50. Entry of goods for exportation. -

(1) The exporter of any goods shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export [in such form and manner as may be prescribed] :

[Provided that .....

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

**3.2.** Whereas, it appears that, the exporter by resorting to mis-declaration of the goods has failed to comply with the provisions of the Section 50 of the Customs Act, 1962.

**3.3.** Whereas, the exporter attempts to export the said goods in contravention of the existing DGFT Policy, thus, rendered the said goods liable for confiscation under Section 113(d) of the Customs Act, 1962. Furthermore, for rendering the goods liable for confiscation, the exporter has also rendered himself liable for penal action under Section 114(i) of the Customs Act, 1962.

*SECTION 113. Confiscation of goods attempted to be improperly exported, etc. - The following export goods shall be liable to confiscation:-*

.....

(d) any goods attempted to be exported or brought within the limits

*of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77:*

*SECTION 114. Penalty for attempt to export goods improperly, etc. - Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -*

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;*

### **3.4 Confiscation of Past Exports and Live Shipment**

Whereas, the Section 2(19) of the Customs Act, 1962 given the definition of the export goods as follows:

Section 2. Definitions -

In this Act, unless the context otherwise requires,

*(19) "export goods" means any goods which are to be taken out of India to a place outside India;*

The wording 'attempt to export' in section 113 of the Customs Act, 1962 cannot be construed that the goods become liable for confiscation only when an attempt is made and not then the goods are actually exported. To interpret the said sections to mean that Section 113 can only be attracted when the goods are attempted to be exported and will have no application when goods have in fact been exported will defeat the purpose and object for which the said provisions have been introduced.

As can be seen that the liability of the goods to confiscation arises under Section 113, as soon as the goods are attempted to be exported and the attempt to export the goods necessarily precedes the actual export of the goods.

Whereas, the impugned goods become liable for confiscation, as soon as the attempt is made. There is no provision in the Act to suggest that this accrued liability is wiped out or extinguished with the exportation of the impugned goods. However, it is a fact that after the goods had actually been exported the liability of the goods to be confiscated may not be enforceable by actual confiscation of the goods. Personal penalty of any person who, in relation to the goods, does or omits to do any act which act or omission renders the goods liable to confiscation under Section 113 or abets the doing or omission of such an act has been provided in Section 114. This provision is attracted as soon as the goods incur the liability to confiscation under Section 113 and such liability arises when the goods are attempted to be exported contrary to any prohibition.

Whereas, it is to be noted that at the time when the goods are sought to be exported they are undoubtedly 'export goods' within the meaning of Section 2(19) of the Customs Act. The liability of personal penalty provided in Section 114 of the Act, which arises with the accrual of the liability of the goods to confiscation under Section 113 of the Act at the stage of the attempt to export the said goods, clearly remains and the said liability is capable of enforcement.

In view of the above discussion, the past export made by the exporter as mentioned in Table A and live shipment is liable for confiscation.

### **3.5 Recovery of drawback availed on illegitimate exports:**

Whereas, as per the provisions of Section 75 of the Customs Act, 1962 (52 of 1962) and section 37 of the Central Excise Act, 1944(1 of 1944), the Customs and Central Excise Duties Drawback Rules, 2017 were issued vide notification no. 88/2017 - Customs (N.T.) dtd. 21.09.2017. Section 17 of the said Rules deals with the recovery of drawback that has been availed erroneously. The relevant extract is produced below:

**17. Repayment of erroneous or excess payment of drawback and interest.** - *Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 (52 of 1962).*

In the instant matter the exporter has already availed drawback to the tune of **Rs. 3.85 lakh** by exporting goods as mentioned in Table A and the same is liable to be recovered under Section 17 of the Customs and Central Excise Duties Drawback Rules, 2017.

**4. From the foregoing enquiry, it appears that:**

- i.** the description as well as CTH of the goods to be exported vide shipping bill no. 7688841 dated 20.02.2024 i.e. "A A Industrial Solvent" declared under CTH 3814 0010 are liable to be rejected and as the goods are found to be 'Denatured Ethyl Alchohol', hence is required to be classified under CTH 2207 2000.
- ii.** the description as well as CTH of the goods already exported, vide 20 shipping bills mentioned in Table A above, i.e. "A A Industrial Solvent" declared under CTH 3814 0010 are liable to be rejected and as the goods are found to be Denatured Ethyl Alchohol', hence is required to be classified under CTH 2207 2000.
- iii.** the impugned goods having weight 13.44 MTS of Denatured Ethyl Alchohol covered under Shipping Bills No. 7688841 dated 20.02.2024 having FOB value of Rs. 12,15,244/- (Rupees Twelve Lakhs Fifteen Thousands and Two Hundred Forty Four only), are liable for confiscation under Section 113(d) and (i) of the Customs Act, 1962,
- iv.** the impugned goods having declared weight of 935.2 Metric Tonnes of Denatured Ethyl Alchohol covered vide shipping bills as mentioned in Table A above having FOB value of Rs. 7,19,19,000/- (Rupees Seven Crore Nineteen Lakhs Nineteen Thousands only), are liable for confiscation under Section 113(d) and (i) of the Customs Act, 1962,
- v.** the drawback claim of Rs. 14,583/- for the goods attempted to be exported vide Shipping Bill no. 7688841 dtd. 20.02.2024 is liable to be rejected.
- vi.** the drawback already availed illegitimately of Rs. 3.85 lakhs is liable to be recovered under the provisions of Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017.
- vii.** furthermore, for rendering the goods liable for confiscation under Section 113(d) and (i) of the Customs Act, 1962, the exporter M/s.

Panila Chem Ltd. (IEC 2417503646) are also liable for penalty under Section 114(i) of the Customs Act, 1962.

**5.** Accordingly, Show Cause Notice was issued to M/s Panila Chem Pvt. Ltd. (IEC : 2417503646) on 29.05.2024 wherein they were called upon to show cause to the Additional Commissioner of Customs, Mundra as to why:

- i.** the description as well as CTH of the goods to be exported vide shipping bill no. 7688841 dated 20.02.2024 i.e. "A A Industrial Solvent" declared under CTH 3814 0010 should not be rejected and as the goods are found to be 'Denatured Ethyl Alcohol', hence the same should not be classified under CTH 2207 2000.
- ii.** the description as well as CTH of the goods already exported vide 20 shipping bills mentioned i.e. "A A Industrial Solvent" declared under CTH 3814 0010 should not be rejected and as the goods are found to be Denatured Ethyl Alcohol', hence the same should not be classified under CTH 2207 2000.
- iii.** the impugned goods having weight 13.44 MTS of Denatured Ethyl Alcohol covered under Shipping Bills No. 7688841 dated 20.02.2024 having FOB value of Rs. 12,15,244/- (Rupees Twelve Lakhs Fifteen Thousands and Two Hundred Forty Four only), should not be confiscated under Section 113(d) of the Customs Act, 1962,
- iv.** the impugned goods having declared weight of 935.2 Metric Tonnes of Denatured Ethyl Alcohol covered vide shipping bills as mentioned in Table A above having FOB value of Rs. 7,19,19,000/- (Rupees Seven Crore Nineteen Lakhs Nineteen Thousands only), should not be confiscated under Section 113(d) and (i) of the Customs Act, 1962,
- v.** the drawback claim of Rs. 14,583/- for the goods attempted to be exported vide Shipping Bill no. 7688841 dtd. 20.02.2024 should not be rejected.
- vi.** the drawback already availed illegitimately of Rs. 3.85 lakhs should not be recovered under the provisions of Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017.
- vii.** penalty should not be imposed upon the exporter M/s. Panila Chem Ltd. (IEC 2417503646) under the provisions of Section 114(i) of the Customs Act, 1962.

**6.1** M/s. Panila Chem Pvt. Ltd. Vide letter dated 11.07.2024 had requested for Provisional release for Back to Town cargo of AA Industrial Solvent vide Shipping Bill No. 7688841 dated 20.02.2024.

**6.2** The adjudicating authority acting on the exporter's application has permitted for back to town of cargo vide Shipping Bill No. 7688841 dated 20.02.2024 on submission of bond equal to the value of the goods i.e. Rs. 12,15,245/- and bank guarantee of Rs. 5,00,000/- as decided as per Para 2.2 of the circular no. 35/2017-Customs dated 16.08.2017.

**Written Submission of the exporter and Record of Personal Hearing**

**7.** "Audi alteram partem" is an essential principle of natural justice that dictates to hear the other side before passing any order. Therefore, in compliance of principle of natural justice, opportunities to be heard were granted to the notice on 26.09.2025, 13.10.2025 and 29.10.2025 through virtual mode. Shri Vikas Mehta, Authorised representative of M/s. Panila Chem Pvt Ltd. appeared for hearing on 29.10.2025 at 5:30pm. During the hearing, he inter alia submitted that-

(i). DGFT has already accepted classification of A. A. Industrial Solvent under Chapter heading 3814 00 10 in advance authorisations that were issued pursuant to their application duly supported by data showing composition of A. A. Industrial Solvent as containing more than 90% Ethanol.

(ii). DGFT has already clarified in Policy Circular No. 28/(RE-99)/99-02 dated 18.8.1999 that Solvent (combination of Ethanol Isopropanol), which is similar A. A. Industrial Solvent, falls under Chapter heading 3814.

(iii). In the case of Mata Santoshi International Marketing Pvt. Ltd. and others (before Hon'ble High Court of Mumbai) Department's itself has considered mixture of Ethyl Alcohol and Ethyl Acetate as "Solvent Mixture" and not Ethyl Alcohol so as to demand and recover duty drawback paid to exporter on Ethyl Alcohol having a minimum strength of 94.58% v/v (similar to goods covered by impugned notice).

(iv). Since department as well as DGFT have already classified the goods under Chapter heading 3814, the impugned notice may be dropped.

(v). In the alternative, necessary clarification may be sought from DOFT who has already issued advance authorizations.

(vi). He prayed for 15 days' time to make further submissions.

**8.** Exporter has submitted final reply to Show Cause Notice dated 29.05.2024 vide their letter dated 24.11.2025 wherein he has submitted:-

**8.1** Exporter submitted that DGFT has already accepted classification of A. A. Industrial Solvent under Chapter heading 3814 00 10 in advance authorisations that were issued pursuant to their application duly supported by data showing composition of A. A. Industrial Solvent as containing more than 90% Ethanol.

**8.2** DGFT has already clarified in Policy Circular No. 28/(RE-99)/99-02 dated 18.8.1999 that Solvent (combination of Ethanol Isopropanol), which is similar A. A. Industrial Solvent, falls under Chapter heading 3814.

**8.3** In the case of Mata Santoshi International Marketing Pvt. Ltd. and others (before Hon'ble High Court of Mumbai) Department's itself has considered mixture of Ethyl Alcohol and Ethyl Acetate as "Solvent Mixture" and not Ethyl Alcohol so as to demand and recover duty drawback paid to exporter on Ethyl Alcohol having a minimum strength of 94.58% v/v (similar to goods covered by impugned notice).

**8.4** They have also made a request to seek clarification from DGFT considering that DGFT have not only issued DGFT Policy Circular No. 28(RE-99)/99-02 dated 18.08.1999 in similar facts and circumstances but have also issued advance authorization and even fixed input-output norms involving the very same items for import and export.

**8.5** It is an admitted position that the goods is a raw material for use in manufacture of ink in Bangladesh.

**8.6** According to the test reports relied by the department, goods are other than undenatured Ethyl Alcohol (Test Report No. 12360 dated 08.03.2024 in respect of Shipping Bill No. 7688841 dated 20.02.2024).

**8.7** The Chemical Examiner Grade-I, vide email dated 14.03.2024 further clarified that goods are "Specially Denatured Alcohol" under the denaturant designation -6a of BIS Standard IS-4117.

**8.8** The notice has classified the goods reported to be "other than undenatured Ethyl Alcohol" under CTH 2207 20 00.

**8.9** CTH 2207 20 00 deals with following (as duly reproduced in the notice): 2207 20 00 Ethyl alcohol and other spirits, denatured of any strength. However, the Chemical Examiner has reported that goods are other than undenatured Ethyl Alcohol. The report did not state that goods are denatured ethyl alcohol. Thus, to this point, CTH 2207 did not extend to the goods, that is proposed now.

**8.10** Thereafter, the Export Assessment Group, Mundra sent a query dated 14.03.2024 to Chemical Examiner Grade-1 seeking the following clarification: *"Please clarify... the composition of goods is denatured or otherwise"*.

**8.11** The Chemical Examiner, Grade-I vide email dated 14.03.2024 replied that-

*"..it may be considered as Specially Denatured Alcohol under the denaturant designation -6a (as BIS Standard IS-4117)."*

**8.12** But then, the notice also states that "for manufacturing of ink, the authorised formulae is different from that used by the exporter" and further, "the Indian Standard does not apply" in this case. The above clearly establish that the item under consideration is a customized industry-specific raw material which is not covered by any IS standard.

**8.13** Owing to above, it is our humble submission that goods cannot considered as "a separate chemically defined element or compound" and therefore, it does not merit ouster from Chapter 38 by citing Note 1 *ibid*.

**8.14** Hence, the proposed rejection and change in classification from Chapter 3814 (dealing with Organic Composite Solvent, not elsewhere specified or included) to Chapter 2207 (dealing with Ethyl alcohol and other spirits, denatured of any strength) lacks legal justification.

**8.15** Without prejudice to above, it is submitted that the entire issue involved in this case is about interpretation of 02 competing entries. We have classified the goods under CT11 3814 on account of our bona fide belief that goods are a customized raw material and therefore the same cannot be classified under CTH 2207 in a straight- jacket manner. Owing to this, it is submitted that goods are not liable for confiscation under section 113 (d) and (i) of Customs Act, 1962, being not restricted and not intentionally mis-declared and mis-classified for any reason. On this basis, it is submitted that we are not liable for penalty under section 114 (i) of Customs Act, 1962.

**8.16** Hon'ble Larger Bench of Hon'ble Tribunal in the case of Shiv Kripa Ispat Pvt. Ltd. v/s Commissioner of C. Ex. & Cus., Nasik, 2009 (235) ELT 623 (Tri.-LB), as well by Hon'ble High Court of Bombay in the case of Finesse Creations Ltd., 2009 (248) ELT 122 (Bom.), which is duly maintained by Hon'ble Supreme Court, as reported at 2010 (255) ELT A 120 (S.C) has held that when goods are not physically available, having been



cleared at the material time, no orders for confiscation (and imposition of fine) can be passed at a later date.

**8.17** For the same set of reasons, as stated in para above, it is submitted that we are not liable to penalty under section 114 (i) of Customs Act, 1962. Reliance is placed on the decision of Hon'ble Tribunal in the case of Time Tech Enterprises Pvt. Ltd., 1999 (105) ELT 340 (T), wherein, it is held that:

*"3. After considering the submissions of the learned DR, I observed that the Commissioner (Appeals) while setting aside the penalty had relied upon the decision of the Supreme Court in the case of Akbar Badruddin Jiwani Collector of Customs reported in 1990 (47) E.LT. 161 (S.C.) in which it was held that where the appellant has not acted dishonestly, or with deliberate or distinct object of breaching the law, penalty should not be imposed. The penalty is imposable under Section 112 of the Customs Act on appreciating the facts and circumstance in each case. In present matter, it is observed that the appellant had imported the Oakwood Lamunator and they had classified it rouler Heading 8465 The department had classified the item under sub-heading 8477.89 observing that resort to Heading 8479 is to be taken only when the items cannot be classified in any of the preceding headings of Chapter 84. The Additional Commissioner, after considering the various heading, came to the conclusion that the machine is classifiable under Heading 8479.89. The Commissioner (Appeals) after appreciating the facts of the matter came to the conclusion that the goods have become liable to confiscation as a result of difference of opinion about the classification between the importer and the department and no penalty is imposable. The department has not made out any case for imposition of penalty and as such the appeal is not admitted."*

**8.18** In view of the above, it is prayed to give due consideration to the above and earlier submissions and drop the proceedings initiated against us vide Show Cause Notice No. GEN/ADJ/ADC/932/2024-Adjn-O/o Pr. Commr-Cus-Mundra dated 29.05.2024.

### **DISCUSSION AND FINDINGS**

**9.** I have carefully gone through the SCN, records of the case, submissions of the noticee and records of personal hearing held before me. With respect to the subject consignment, the following issues arise for determination in this adjudication:

- (i) Whether the declared description of the impugned goods i.e. "AA Industrial Solvent" and declared classification thereof as "38140010" are liable to rejected or otherwise.

- (ii) Whether the impugned goods are “Denatured Ethyl Alcohol” and rightly classifiable under CTH 22072000 or otherwise.
- (ii) Whether the impugned goods under shipping bill No. 7688841 dated 20.02.2024 is liable for confiscation under section 113 (d) of the Customs Act, 1962 or otherwise.
- (iii) Whether the impugned goods having declared weight 935.2 MT vide shipping bills as mentioned in table-A are liable for confiscation under section 113 (d) and (i) of the Customs Act, 1962 or otherwise.
- (iv) Whether Drawback claims are liable for rejection and same are recoverable from exporter or otherwise.
- (v) Whether the noticee is liable for penalty under section 114(i) of the Customs Act, 1962 or otherwise.

**10.** After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, submissions, circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements.

**11.** To decide the description and classification of the impugned goods in question, it would be prudent to know what the goods is, what the main ingredients of the goods are.

**11.1.1** I find that exporter filed shipping bill no. 7688841 dated 20.02.2024 for export of goods declared as “AA Industrial Solvent”. During the assessment of the said shipping bills, on viewing certificate of analysis, an instruction has been passed to docks officer for drawl of sample and forward it to CRCL, Kandla in order to ascertain the composition of the goods. The representative sealed samples vide test memo no. 108/07.03.2024 was forwarded to CRCL, Kandla for testing and the Chemical examiner upon testing of the same, reported on 12.03.2024 as follow:

*“The sample as received is in the form of clear colourless liquid. It is mainly composed of Ethyl Alcohol (93.79%) together with small amount of Ethyl Acetate (Balance)”.*

**11.1.2** A clarification sought from the CRCL vide mail dated 14.03.2024 that whether the composition of the goods is denatured or otherwise. In response to the same, CRCL has submitted a reply dated 14.03.2024 informing the following:

*“As per BIS Standard IS-4117, under the category of Specially Denatured Alcohol, there are two designations such as Designation 6 and 6a.*

*under the Denaturant Designation - 6: Denaturant Ethyl Acetate 1 litre per 100 litre of Alcohol &;*

*under the Denaturant Designation - 6a: Denaturant Ethyl Acetate 5 Litre per 100 Litre of Alcohol.*

*And hence the composition of the sample as per the test report (12360/08-03- 2024) issued on 12-03-2024 agrees with the second category (6a), that is minimum 5 Litre of Ethyl Acetate per 100 litre of Alcohol. So, in light of above it may be considered as Specially Denatured Alcohol under the denaturant designation-6a”.*

**11.1.3** I find that Shri Pankaj Nagindas Bhayana, director of M/s. Panila Chem Ltd. in his statement dated 06.04.2024 stated that their firm imports denatured ethyl alcohol from USA, after importation they add 6% ethyl acetate as a solvent to get their final product. The outcome of the laboratory analysis (CRCL, Kandla) determined that the chemical composition of the sample aligns with the specification for Category 6A under the Bureau of Indian Standards (BIS) IS 4117:2008.

**11.1.4** Review of the certificate of analysis, test reports and clarification received from expert chemical examiner of CRCL Kandla confirmed the description of the subject goods as “Specially Denatured Alcohol”. Now, I have to decide the correct classification of the subject goods.

**11.2.1** I find that the exporter has classified the subject goods under chapter 38 of the Custom Tariff Act, 1975. The Chapter 38 of Section – VI of the Custom Tariff Act, 1975 deals with Miscellaneous Chemical Products. In the instant matter, the exporter has classified the goods under HSN Code 3814 0010. Upon perusal of the tariff heading, it emerges that the HSN code 3814 refers to the 'organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers”.

Explanatory notes of heading 3814, are provided below:-

*“This heading covers organic solvents and thinners (whether or not containing 70 % or more by weight of petroleum oil) provided that they are not separate chemically defined compounds and are not covered by a more specific heading. They are more or less volatile liquids which are used, inter alia, in the preparation of varnishes and paints or as degreasing preparations for machinery parts, etc.”*

Upon review of the explanatory notes for heading 3814, it is established that the scope is limited to organic solvents and thinners that are not

chemically defined compounds and are not classifiable under a more specific heading. It is determined that if the product not specific covered in any of the chapter/heading, then should be classified under Chapter 38 and heading 3814.

**11.2.2** Explanatory notes of the heading 2207, are provided below:

*The heading covers:*

*(1) Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher.*

*(2) Ethyl alcohol and other spirits, denatured, of any strength.*

*Ethyl alcohol is the alcohol which occurs in beer, wine, cider and other alcoholic beverages. It is obtained either by fermentation of certain kinds of sugar by means of yeast or other ferments and subsequent distillation, or synthetically.*

*Ethyl alcohol and other spirits, denatured, are spirits mixed with substances to render them unfit for drinking but not to prevent their use for industrial purposes. The denaturants used vary in different countries according to national legislation. They include wood naphtha, methanol, acetone, pyridine, aromatic hydrocarbons (benzene, etc.), colouring matter.*

*Ethyl alcohol is used for many industrial purposes, e.g., as a solvent in the manufacture of chemicals, varnishes, etc., for heating or lighting, for the preparation of spirituous beverages.*

**11.2.3** I find that Rule 3(a) of the General Rules of Interpretation of Harmonized system, provided below:-

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

The heading 2207 covers ethyl alcohol and other spirit, denatured, of any strength. I also find that as per General Rule of Interpretation (GRI) 3(a), heading 2207 is more specific than heading 3814, which provides for "Organic composite solvent and thinners, not elsewhere specified or included. The chapter heading under consideration (2207) are as follows:

|       |  |
|-------|--|
| 2207: | Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher; ethyl alcohol and other spirits, denatured, of any strength. |
|-------|--|

- 2207 10: Undenatured ethyl alcohol of alcoholic strength by volume of 80% vol. or higher:
- 2207 20 00: **Ethyl alcohol and other spirits, denatured, of any strength.**

**11.2.4** As per General Rule of Interpretation (GRI) 1, goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

**11.3** In view of the above facts, findings, Customs Tariff, explanatory notes, General Rule of interpretation, I hold that impugned goods are “Specially Denatured Alcohol” and rightly classifiable under “22072000”.

**12.1** Regarding this issue, I find that the Directorate General of Foreign Trade vide its Notification No. 29/2015-20 dtd. 28.08.2018 issued vide F. No. 01/91/180/21/AM-18/EC amends the export policy under Chapter 27 of ITC(HS), 2018, Schedule-2 (export policy), inserted new entry at Sl. no. 115A in respect to HS Code 22072000 having item description “Ethyl alcohol and other spirits, denatured, of any strength” wherein revised the policy from “Free” to “Restricted” with condition “Export is permitted under license only for non-fuel purposes.

**12.2** I also find that it is a fact that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; ‘Self-Assessment’ has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on exported goods by the exporter himself by filing a shipping bill, in the electronic form. Provisions of the Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make proper & correct entry for the exported goods by presenting a shipping bill electronically to the proper officer. As per Regulation 4 of the Shipping Bill (Electronic Declaration) Regulations, 2011 (issued under Section 157 read with Section 50 of the Customs Act, 1962) the Shipping Bill shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a shipping bill number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the exporter who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of notifications claimed, if any, in respect of the exported goods while presenting the shipping bill. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the exporter to

declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the exported goods.

**12.3** From the above, I find that the Noticee has violated Sub-Section 2 & 3 of Section 50 of the Customs Act, 1962 as they have mis-declared and mis-classified the goods. I find that the Noticee was required to comply with Section 50 which mandates that the exporter filing the shipping bill must make true and correct declarations and ensure the following:

Section 50 of the Customs Act, 1962. Entry of goods for exportation.—

(1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as may be prescribed.

[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.]

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:—

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

**12.4** I find that the Show Cause Notice propose confiscation of goods under the provisions of Section 113(d) and 113(i) of the Customs Act, 1962. Provisions of Section 113(d) and 113(i) of the Customs Act, 1962 is reproduced herein below:

*113(d): any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*113(i): any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;]*

*[(ii) any goods entered for exportation under claim for drawback which do not*

*correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;]*

**12.5** As the provisions of Section 113 (d) & 113(i) suggests in the instant case, the exporter did not declare correct item description and did not classify under appropriate CTH hence, contravened the provisions of Section 50 of the Customs Act, 1962. Further, the exporter failed to comply with the export policy for the goods, making them prohibited. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 113 (d) and 113(i) of the Customs Act, 1962.

**13.** I find that the exporter did not declare correct item description and did not classify under appropriate CTH hence, contravened the provisions of Section 50 of the Customs Act, 1962. Further, the export failed to comply with the export policy for the goods, making them prohibited. Hence, goods are liable for confiscation Section 113 (d) and 113(i) of the Customs Act, 1962. Therefore, I find drawback claim of Rs. 14,583/- by the exporter vide shipping bill no. 7688841 dated 20.02.2024 and drawback already availed illegitimately of Rs. 3.85 lakhs vide shipping bills as mentioned in table-A above are liable to be rejected under the provisions of Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017.

**14.** I find that the SCN proposes penalty on the noticee under the provisions of Section 114(i) of the Customs Act, 1962. Provisions of Section 114(i) of the Customs Act, 1962, are re-produced herein below:

Section 114 of the Customs Act, 1962:

*Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -*

*114 (i): in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;*

I find that it is clear from the provision that penalty under section 114 can be imposed in case where the act or omissions on the part of the exporter/noticee renders the goods liable for confiscation under Section 113 of the Act.

From the discussions as above paras, I find that impugned goods i.e. "denatured ethyl alcohol" is prohibited goods. Exporter has mis-declared and mis-classified the impugned goods to avoid the prohibition, hence, proposal to impose penalty in the case under Section 114(i) of the Customs Act, 1962 is correct and sustainable in law.

**15.** In view of the forgoing discussion and findings, I pass the following order:

### **ORDER**

**i.** I order to reject the description as well as classifications of the impugned goods, to be exported vide Shipping Bill No. 7688841 dated 20.02.2024 and goods exported vide 20 shipping bills as per table-A above i.e. "AA Industrial Solvent" under CTH-38140010 and order to be re-determined as "Denatured Ethyl Alcohol" and re-classified under CTH-22072000.

**ii.** I order to confiscate the Impugned goods having weight 13.44 MTS of "Denatured Ethyl Alcohol" covered under Shipping Bill No. 3540664 dated 28.08.2024 having FOB value Rs. 12,15,244/- (Rupees Twelve Lakh Fifteen Thousand Two Hundred and Forty-Four) under Section 113(d) of the Customs Act, 1962. Since, the impugned goods already released for back to town provisionally, on submission of bond equal to the value of the goods i.e. Rs. 12,15,245/- and bank guarantee of Rs. 5,00,000/- as decided as per Para 2.2 of the circular no. 35/2017-Customs dated 16.08.2017. I impose redemption fine of **Rs. 2,00,000/-(Rupees Two Lakh Only)** under Section 125 of the Customs Act, 1962.

**iii.** I order to confiscate the impugned goods having weight "935.2 MTS of Denatured Ethyl Alcohol covered vide shipping bills as mentioned in Table-A above having FOB value of Rs. 7,19,19,000/- (Rupees Seven Crore Nineteen Lakh Nineteen Thousand only) under section 113(d) & 113(i) of the Customs Act, 1962. However, the goods covered under 20 shipping bills as mentioned in Table-A are already exported are not physically available. Therefore, I refrain from imposing redemption fine on the said goods.

**iv.** I order to reject erroneously claimed Drawback Rs. 14,583/- in the shipping bill no. 7688841 dated 20.02.2024 and already availed drawback of Rs. 3.85 Lakh vide 20 shipping bills as mentioned in table-A. Further, I order to recover already availed under the provisions of Rule 17 of Customs



and Central Excise Duties Drawback Rules, 2017.

**V.** I order to impose Penalty of **Rs 20,00,000/- (Rupees Twenty Lakh Only)** on the exporter under Sections 114(i) of the Customs Act, 1962.

**Vi.** I order for enforcement of bond and Bank Guarantee submitted by M/s. Panila Chem Pvt. Ltd. at the time of provisional release of goods for back to town. If the amounts of dues (as confirmed above) are paid in full by the exporter, the Bond and Bank Guarantee may be cancelled by the competent authority.

16. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

17. In terms of the above order the SCN No. GEN/ADJ/ADC/932/2024Adjn-O/o Pr Commr-Cus-Mundra Dated 29.05.2024 stands disposed of.

(Amit Kumar Mishra),  
Additional Commissioner of Customs,  
Custom House, Mundra.

BY SPEED POST/MAIL

To,

M/s Panila Chem Pvt. Ltd.,  
Bhayani Skyline, 7th Floor, Opposite Joggers Park,  
Atabhai Road, Bhavnagar – 364001.

Copy to:

The Deputy/Assistant Commissioner of Customs, TRC/RRA/EDI, Mundra.

GEN/ADJ/ADC/932/2024-Adjn