

आयुक्त, सीमा शुल्क का कार्यालय, OFFICE OF THE COMMISSIONER OF CUSTOMS न्यू कस्टम हाउस, बालाजी मंदिर के पास, न्यू कान्डला 370210 NEW CUSTOMS HOUSE, NEAR BALAJI TEMPLE, NEW KANDLA- 370210 दूरभास Phone No. 02836-271468-469 फैक्स Fax No 02836-271467 E-mail : commr-cuskandla@nic.in	
A FILE NO.	GEN/ADJ/ADC/16/2021-Adjn-O/o Commr-Cus-Kandla
B OIO NO.	KCH/ADC/VS/11/2025-26
C Passed by	Vishwajeet Singh ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, KANDLA.
D DATE OF ORDER	12.02.2026
E DATE OF ISSUE	12.02.2026
F SCN NUMBER & DATE	SCN F.No. S/15-01/SHIB/A.R./2018-19 dated 27.11.2020
G Noticee / Party / Importer	M/s. A.R. Petrochem Pvt. Ltd., 9153, GF Gali No.3, Multani Dhanda, Paharganj, New Delhi-110055
H DIN NUMBER	20260271ML000000A6CD

1. यह अपील आदेश संबन्धित को निःशुल्क 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 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 128 A of 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 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 accompanied by -

- i. उक्त अधील की एक प्रति और (A copy of the appeal, and) अधिनियम 1870-के मद्द पर 6-प्रति निर्धारित 5-रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क

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.

5. अधील कागज के साथ ज्यूटि/खाल/एच/व्युमिना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अधील प्रस्तुत करते समय, सीमा शुल्क (नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्राधानों 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.

7. इस आदेश के तिकट अधील हेतु जारी शुल्क या शुल्क और व्युमिना विवाद में ही, जारी केवल व्युमिना विवाद में ही, Commissioner (A) के समक्ष भुगतान 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.

Subject:- SCN F.No. SCN F.No. S/15-01/SIIB/A.R./2018-19 dated 27.11.2020 issued to M/s. A.R. Petrochem Pvt. Ltd., i.r.o Bill of Entry No. 5802638 dated 30.03.2018 and Bill of Entry No. 5981391 dated 14.04.2018.

BRIEF FACTS OF THE CASE

1. 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 A R Petrochem (P) Ltd, 9153, GF Gali No.3, Multani Dhanda, Paharganj, New Delhi-110055 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(RUD-2) for chemical analysis and testing to ascertain the following points for the imported goods intended for clearance with declaration as ICMP/LAWS, as DRI during their investigation observed that the test reports issued by the Custom House Kandla appears to be influenced and not to be genuine.

"2.(i)whether the sample conforms to description and Characteristics, Specification and Parameters of "Superior Kerosene Oil" as per Custom Tariff Act,

(ii) if "Superior Kerosene Oil", then please specify the smoke point.

2. If the same does not qualify as "Industrial Composite Mixture Plus", please confirm whether the Characteristics, Specifications and parameters conforms to Motor Spirit (CTH 2710 12)7Diesel Oil (CTH 2710 1930 & 2710 1940).

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

2.1 From the above, it has come to the notice that some importers were engaged in importing the "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 one M/s A R Petrochem (P) Ltd., New Delhi (IEC No. 0513094211) (hereinafter also referred to as "Importer").

2.2 The details of the LAWS imported by M/s A R Petrochem (P) Ltd., New Delhi 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
1	5802638	30.03.2018	LAWS	267.65	12083222.45
2	5981391	14.04.2018	LAWS	247.04	11169693.16
			TOTAL	514.69	23252915.61

2.3 The Joint Director, CRCL, New Delhi after due testing of remnant sample in respect of the Bills of Entry filed by M/s A R Petrochem (P) Ltd., New Delhi as discussed in the para 2.2 of this notice, submitted their report vide letters F. No. 27-Cus/C-32/2018-19 dated 20.05.2019 and 22.05.2019 (RUD No.3). The Joint Director, CRCL, New Delhi in their above referred test reports 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 Report issued by the Joint Director, CRCL, New Delhi in respect of consignment covered under the Bill of Entry No. 580263 dated 30.03.2018 and Bill of Entry No.5981391 dated 14.04.2018 are as under :-

S. No.	Characteristics	Specification for Kerosene as per IS:1459-2018	Test Results
			B/E-5802638 dated 30.03.2018
	Report		The sample is in the form of pale yellow colourless oily liquid. It is composed of Mineral Hydrocarbon Oil (More than 70% by weight) possessing the following parameters:
1	Acidity, Inorganic	Nil	Nil
2	Density at 15' degree C Kg/m3	Not limited but to be reported	797.1
3	Distillation		
	A) Initial boiling point, °C	-	166
	B) 5% volume distilled, °C	-	177

9	Conclusion	-	Sample conforms 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.
8	Kinematic viscosity cSt, at 40°C	-	1.32
7	Copper strip corrosion for than No.1	Not worse	Not worse than No.1
6	Aromatic Content, % by Volume	-	17
5	Smoke Point, mm. Min.	18	21
4	Flash Point (Abel), °C, Min	35	50
	(F) Dry Point, °C	-	245
	Boiling Point, °C Max.		
	(E) Final 300	250	
	Recovered below 200°C, percentage (v/v), Min.		
	(D) % 20	55	
	(C) volume distilled, °C	90%	222

s. N o	Characteristics	Specification for Kerosene as per IS:1459-2018	Test Results
			B/E-5981391 dated 14.04.2018
	Report		The sample is in the form of colourless oily liquid. It is composed of Mineral Hydrocarbon Oil (More than 70% by weight) possessing the following parameters:

1	Acidity, Inorganic	Nil	Nil
2	Density at 15' degree C Kg/m ³	Not limited but to be reported	797.9
3	Distillation		
	A) Initial boiling point, °C	-	165
	B) 5% volume distilled, °C	-	173
	C) 90% volume distilled, °C		224
	D) % Recovered below 200°C, percentage (v/v), Min.	20	57
	E) Final Boiling Point, °C, Max.	300	246
	F) Dry Point, °C		242
4	Flash Point (Abel), °C, Min	35	46
5	Smoke Point, mm, Min.	18	23
6	Aromatic Content, % by Volume		16
7	Copper strip corrosion for 3h at 50°C	Not worse than No.1	Not worse than No.1
8	Kinematic viscosity est. at 40 C	-	1.34
9	Conclusion		Sample conforms 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.

2.5. The above test reports of the CRCL, New Delhi confirmed that the goods imported under above mentioned Bills of Entry filed by M/s A R Petrochem (P) Ltd., New Delhi were Kerosene as per IS 1459:2018 (Fourth Revision), which were to be classified under CTH No. 27101910, but the same were cleared from customs by mis-declaring its description as "Low Aromatic White Spirit (LAWSP)" by declaring wrong classification thereof under CTH 27101990. The total quantity 514.69 MTs having assessable value (excluding duties of customs) covered under aforesaid Bills of Entry as declared comes to Rs. 2,32,52,915.61/-.

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 (STESs) as laid down in Indian Trade Classification (Harmonized System) (ITC (HS)) of Exports and Imports. The list of 'Prohibited', 'Restricted', and STES items can be viewed by clicking on 'Downloads' at <http://dgtl.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-21.

(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 (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."

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

“S. No. STATE-TRADING ENTERPRISES

1. Food Corporation of India (FCI)
2. State Trading Corporation (STC)
3. Indian Oil corporation (IOC)
4. Bharat Petroleum Corporation Ltd. (BPCL)
5. Hindustan Petroleum Corporation Ltd. (HPCL)
6. Oil and Natural Gas Corporation Ltd. (ONGC)
7. Minerals and Metals Trading Corporation (MMTC)
8. Indian Potash Ltd. (IPL)
9. National Dairy Development Board (NDDB)
10. National Cooperative Dairy Federation (NCDF)
11. National Agriculture Cooperative Marketing Federation of India Ltd (NAFED)
12. Projects and Equipment Cooperation of India Ltd. (PEC)
13. Spices Trading Corporation Limited (STCL)
14. Central Warehousing Corporation (CWC)”

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 Petroleum Act, 1934 (30 of 1934), were not at all complied with by the importer M/s A R Petrochem (P) Ltd., New Delhi 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 Sunil Kumar Aggarwal, Director of M/s A R Petrochem (P) Ltd., New Delhi was recorded under Section 108 of Customs Act, 1962 on 04.11.2019 .

4 In his statement dated 04.11.2019, Shri Sunil Kumar Aggarwal inter-alia stated that M/s A R Petrochem(P) Ltd., New Delhi is engaged in trading of Bitumin, Tyre Oil (Burner

Oil), LAWS etc; that he is one of the director in the company and looks after purchase and import related works of the company; that their company had imported two consignment of Low Aromatic White Spirit vide Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 through Kandla Port and submitted documents related to the imports; that they have not purchased LAWS from local market; that they do not have any testing facility and they rely only on the test report supplied by the supplier; that they searched from different sources that M/s Mansour Al Hamadi General Trading LLC, Dubai is supplying LAWS to various parties and hence they talked with Shri Mansour Al Hamadi, Director of M/s Mansour Al Hamadi General Trading LLC, Dubai and met him personally in UAE; that after receipt of the rates, they placed order telephonically and sent the purchase order on email and supplier send them proforma invoice and 30% advance payment was made; that the import of LAWS was quite problematic, as there was delay in the clearance of the cargo and hence they stop import of LAWS; that M/s Rishi Kiran Logistics Pvt. Ltd, Gandhidham is the CIA who arranged the custom clearance of these two consignments of LAWS; that one of his business friend suggested the name of M/s Rishi Kiran Logistics Pvt. Ltd, Gandhidham for custom clearing agent and accordingly they appointed M/s Rishi Kiran Logistics Pvt. Ltd, Gandhidham 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 were also given to them; that they send import documents to the CHA for the consignments on the basis of that they files Bills of Entry; that their CHA in consultation with him decides the Customs Tariff Head (CTH) of the import product to be declared in bills of entry; that their CHA used to send them checklists before filing of Bills of Entry; that the transportation of the imported LAWS is booked after by their company and in some cases, buyers themselves providing the transport; that there is no written contract with the supplier

Further, the relevant Question-Answer of the statement dated 04.11.2019 of Shri Sunil Kumar Aggarwal is reproduced herein below:

“Q.22 Please peruse the following Test Report issued by, CRCL, New Delhi with the details as mentioned below Table:

No	BOE No.	BLK Date	TM No.	TM Date	LAB RKPRT No	Result
1	5981391	14.04.2018	1026488	16.04.2018	CLR-212/10, 04.2019	Kerosene
2	5802638	30.03.2018	1025985	02.04.2018	CLR-235/10, 04.2019	Kerosene

Please comment.

Answers Yes, I hereby peruse the above Test Report issued by CRCL, New Delhi vide TM No. as mentioned in above Table, and put my dated signatures on the test report after perusing and accepted the contents of the same. I further state that on going through the said test report, I find that the CRCL, New Delhi has opined that the sample confirms the requirements of Kerosene as specified in IS:1459:2018. I further state that in the said Test Report, it is also being mentioned that "It does not meet the requirements for Petroleum Hydrocarbon Solvents as per IS: 1745-2018 (Third Revision) in respect of Final Boiling Point." and the said Test Report shows the product as Kerosene.

Q. 23 Please clarify whether your firm is a State Trading Enterprises

(STEs) or otherwise?

Answer: I state that we are not a state Trading Enterprises (STEs).

Q. 24 Please clarify whether your firm has been granted Authorisation from DGFT to import or export of goods mentioned in Para 2.20 of Foreign Trade Policy 2015-2020?

Answer: I state that our firm has been granted Importer-Exporter Code 0513094211. Further, no such authorization has been granted from DGFT to import or export for any such goods as mentioned in Para 2.20 of Foreign Trade Policy 2015-2020.

Q. 25 As per Para 2.20 of Foreign Trade Policy 2015-2020.'

"2.20 (a)STEs are governmental and non-governmental enterprises, including marketing boards, which deals with goods for export and or import. Any goods, import or export of which is governed through exclusive or special privileges granted to STE(s), may be imported or exported by STE(s) 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 authorization to any other to import or export any of the goods notified for exclusive trading through STEs."*

Please Comment.

Answer: As this is a policy matter, I offer no comments on it."

4. From the documents submitted and facts stated in the statement dated 04.11.2019 by Shri Sunil Kumar Aggarwal, Director of M/s A R Petrochem (P) Ltd., New Delhi, it appears that M/s A R Petrochem (P) Ltd., New Delhi had given a job of importing the goods under dispute on their behalf to M/s Rishi Kiran Logistics Pvt. Ltd, Gandhidham (CHA). On receipt of the documents pertaining to the goods imported and documents issued by supplier, i.e., M/s Mansour Al Hamadi General Trading LIC, Dubai, the Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 were filed by M/s Rishi Kiran Logistics Pvt. Ltd, Gandhidham, Customs Broker on behalf of M/s A R Petrochem (P) Ltd., New Delhi and cleared the goods claiming classification under CTH 27101990 and declared the description of goods as Low Aromatic White Spirit weighing **514.69 M T** in quantity.

4.1 Further, Shri Sunil Kumar Aggarwal, Director of M/s A R Petrochem (P) Ltd., New Delhi has been shown the test reports issued by the CRCL, New Delhi in respect of Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated

14.04.2018, during recording of his statement dated 04.11.2019 and after perusing and acceptance of the content of the test reports issued by CRCL, New Delhi, he put his dated signatures on the test reports. He accepted the content of the said test reports, 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 Sunil Kumar Aggarwal, Director of M/s A R Petrochem (P) Ltd., New Delhi, it is found that the supplier of the goods had given various documents showing the goods as Low Aromatic White Spirit whereas the test reports 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.

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 A R Petrochem (P) Ltd., New Delhi vide Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 were not "Low Aromatic White Spirit" falling under CTH No. 27101990, as described in the Bills 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 A R Petrochem (P) Ltd., New Delhi 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

A R Petrochem (P) Ltd., New Delhi 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 Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018, 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 Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 filed by M/s A R Petrochem (P) Ltd., New Delhi. 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.

6. 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.

7. 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. In the instant case, in the absence of compliance by the importer with any of the aforesaid statutory obligations, redemption of the goods could not be allowed to the importers on payment of fine and penalties after re-classifying the goods and modifying the CTH No. thereof. Even in the context of the provisions of the Petroleum Act, 1934 (30 of 1934), making the goods liable to confiscation, redemption of the goods to the importer could not be permitted in the absence of continuation of such non-compliance on the part of the importer.

8. Whereas it appears that though having knowledge about the character of the goods under import, the importer M/s A R Petrochem (P) Ltd., New Delhi 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 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.

9. From the facts discussed herein above, it appears that M/s A R Petrochem (P) Ltd., New Delhi, in connivance with the exporter cleared the "prohibited goods" by intentionally mis-declaring the description and custom tariff classification to the extent of 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 Bills 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.

10. Whereas, from the inquiry conducted, test reports issued by the CRCL, New Delhi in respect of Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 as discussed in Para 2.2 of this notice hereinabove and the statement of Shri Sunil Kumar Aggarwal, Director of M/s A R Petrochem (P) Ltd., New Delhi recorded under Section 108 of Customs Act, 1962 on 04.11.2019, it appears that the importer was well aware that the characteristics of the goods were of SKO, although the Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 were filed by M/s A R Petrochem (P) Ltd., New Delhi for the import of total quantity of 514.69 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 514.69MT having declared assessable Value of Rs. 2,32,52,915.61/- (Two Crores Thirty Two Lakhs Fifty Two Thousand Nine Hundred and Fifteen rupees and Sixty One 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 A R Petrochem (P) Ltd., New Delhi have rendered themselves liable for penalty under Section 112 (a) and (b) of the Customs Act, 1962. It thus appears that M/s A R Petrochem (P) Ltd., New Delhi had knowingly and intentionally made a declaration under the Bills 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 Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 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 hereinabove 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 Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018, 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. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018, 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 Notification No. 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.

6. Now therefore, in the light of the aforesaid facts, M/s A R Petrochem (P) Ltd., 9153, GF Gali No.3, Multani Dhanda, Paharganj, New Delhi-110055 is hereby called

upon to show cause to the Additional Commissioner of Customs, Kandla Custom House, Kutch, Gujarat as to why:-

- a. the declared description of the subject goods i.e. Low Aromatic White Spirit (LAWS) imported vide Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 should not be rejected and the goods should not be considered as Superior Kerosene Oil (SKO).
- b. Classification of above goods imported vide Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 should not be changed from CTH 27101990 to CTH 27101910.
- c. the imported goods, i.e. 514.69 MTs of SKO falling under CTH No. 27101910 mis-declared as Low Aromatic White Spirit under CTH 27101990 in the Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 as discussed in Para 2.2 to this SCN valued at Rs. 2,32,52,915.61/- (Two Crores Thirty Two Lakhs Fifty Two Thousand Nine Hundred and Fifteen rupees and Sixty One paise only) should not be held liable for confiscated under provisions of Section 111(d) and 111(m) of the Customs Act, 1962;
- d. Penalty should not be imposed on M/s A R Petrochem (P) Ltd., 9153, GF Gall No.3, Miltani Dhanda, Paharganj, New Delhi-110055 under Section 112(a) and (b), 114AA and 117 of the Customs Act, 1962.

12.1. The aforesaid Show Cause Notice vide F.No. S/15-01/SIIR/A R/2018-19 dated 27.11.2020 issued to M/s A R Petrochem (P) Ltd., 9153, GF Gall No.3, Miltani Dhanda, Paharganj, New Delhi-110055, was kept in abeyance with the approval of competent authority as per Section 28(9A) of the Customs Act, 1962 read with Circular No. 162/73/95-CX dated 14.12.1995 and 992/16/2014-CX dated 26.12.2014, on dated 07.10.2021, on the basis of the case of M/s. Swarna Oil Services(Custom House, Mundra) dropped by the CESTAT, Ahmedabad and on the basis of the case of M/s. Jai Mata Chintapurni Impex, M/s. V.V. Enterprises, M/s. Shree Sanart Shipping, M/s. Jampriya Energy, M/s. G.R. Pahwa and M/s. Shagun Enterprise by setting aside the OIO with consequential relief by the Commissioner Appeals. And the department had filed appeals at Hon'ble Gujarat High Court against OIA passed by CESTAT, Ahmedabad in the case of M/s. Swarna Oil Services (Custom House, Mundra) filed case vide Tax Appeal No. 142/2021 and 143/2021.

The aforesaid appeals filed were disposed of by the Hon'ble High Court of Gujarat vide Oral Order dated 09.10.2024 in view of Circular dated 6th August, 2024 issued by the Central Board of Indirect Taxes and Customs (CBIC), not maintainable before the Court in view of low tax effect. Thus, the aforesaid SCN dated 19.11.2020 has been retrieved from the Call Book for further process.

WRITTEN SUBMISSION AND PERSONAL HEARING

13. M/s A R Petrochem (P) Ltd., has filed written submission on 30.03.2021. The notice reply can be categorized in following main points:-

13.1 The dispute involved in this case is about description and classification which department has attempted to resolve by relying on not only contradictory (Custom House laboratory, Kandla v/s CRCL, New Delhi), incomplete (Residue on

evaporation not tested) and non-compliant reports (IS 1745 not followed) but incorrect reading (Final Boiling within the parameters laid down for Hydrocarbon Solvent under IS 1745). The notice does not allege any lacunae on the part of Custom House laboratory at Kandla, therefore, the Chemical Examiners who tested the samples at both the laboratories are to be allowed to cross-examine.

13.2 when goods are not available for confiscation having been cleared at the material time, imposition of redemption fine is not in accordance with law. The notice replied upon judgement of 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), and Judgment of Hon'ble High Court of Bombay in the case of Finesse Creations Ltd., 2009 (248) ELT 122 (Bom.).

13.3 To follow the principles of natural justice, letter dated 24.06.2025, 04.07.2025 & 15.07.2025 were issued to the importer asking them to appear for Personal Hearing. Shri Vikas Mehta, Consultant appeared on behalf of the noticee on 21.07.2025 and requested for adjournment for one week and assured to appear on 28.07.2025. Further opportunities of personal hearing were given on 22.10.2025 and 06.11.2025 in the case. Shri Vikas Mehta, Consultant appeared on behalf of the noticee on 06.11.2025 by video conference, and reiterated facts of their earlier submission dated 30.03.2021 and assure that the noticee shall file further submission in the matter.

13.4 Further written submission on 18.12.2025 in the matter filed by the noticee, after attending personal hearing on 06.11.2025, wherein they have submitted following points :

- CRCL reports make no mention of the method of testing.
- CRCL has not tested the goods for 03 characteristics, i.e. Burning Quality, Colour and Sulphur content
- CRCL has not reported reading for 01 characteristic, i.e. Copper strip corrosion for 3 hours at 50-degree C.
- For 02 characteristics, the initial boiling point and final boiling point reported by CRCL satisfies the IS for Petroleum Hydrocarbon Solvent, which is 150 degree C (min) and 300 degree C (max) for Solvent 150/300 under IS 1745:2018.
- Thus, out of 10 specifications prescribed in IS 1459-2018 for Kerosene,
 - (i) 03 were not tested (Burning Quality, Colour and Sulphur content).
 - (ii) 01 was not reported in specific terms (Copper strip corrosion).
 - (iii) 01 does not satisfy the specification for SKO (Appearance)
 - (iv) 01 meets the IS specifications for Petroleum Hydrocarbon Solvents (Distillation - IPB & FBP).

14. The noticee submitted that the decision of Hon'ble Supreme Court in the case

of *Gastrade International versus Commissioner of Customs, Kandla 2025 (4) TMI 23* – Supreme Court would squarely apply, wherein, it is held that once the rule making authority had clearly delineated the requisite parameters for ascertaining the nature of the goods/substance, compliance/conformity with the stated parameters would be the requirement (para 80 (iii) *ibid*). The notice has requested to follow the decision *supra* of Hon'ble Supreme Court and vacate the notice.

DISCUSSION & FINDING

15. I have carefully gone through the Show Cause Notice, available of records of the case and written submission by the noticee as well as submission at the time of personal hearing. The points to be decided in the instant case are as to:-

- Whether declared description and classification of imported goods i.e. Low Aromatic White Spirit under CTH 27101990 covered under the Bills of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018, 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
- Whether the imported goods i.e. 514.69 MTs of SKO falling under CTH No. 27101910 mis-declared as Low Aromatic White Spirit under CTH 27101990 in the Bill of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 by way of Misclassification and Miscclassification valued at Rs. 2,32,52,915.61/- (Two Crores Thirty Two Lakhs Fifty Two Thousand Nine Hundred and Fifteen rupees and Sixty One paise only) are liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962;
- Whether M/s A R Petrochem (P) Ltd., 9153, G F Gali No.3, Muliani Dhandra, Paharganj, New Delhi-110055 has failed to comply with the Provisions of Petroleum Act, 1934 and consequently violating the Notification No. 30 of 1934, which has deemed application under Section 11 of the Customs Act, 1962 and thereby rendered the goods liable for confiscation under section 111 (d) & (m) of the Customs Act, 1962 and therefore, rendered himself liable for penal action under Section 112(a) and (b), 114AA and 117 of the Customs Act, 1962.

16.1 The importer M/s A R Petrochem (P) Ltd., 9153, G F Gali No.3, Muliani Dhandra, Paharganj, New Delhi-110055 (IIC No. 0513094211), imported a consignment declared as Low Aromatic White Spirit (LAWS) under Bill of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 at Kandla Port. The declared quantity was 514.69 MTs having an assessable value of Rs. 2,32,52,915.61/- (Two Crores Thirty Two Lakhs Fifty Two Thousand Nine Hundred and Fifteen rupees and Sixty One paise only). The goods were cleared under CTH 2710 1990. Subsequent investigations by the Directorate of Revenue Intelligence, remnant samples were sent to the Central Revenue Control Laboratory (CRCL), New Delhi, for re-testing.

16.2 On perusal of CRCL Test Reports No. CLR-235 dated 10.04.2019 (B/E 5802638) and

CLR-212 dated 10.04.2019 (B/E 5981391), it is observed that the samples conform to the specifications of Kerosene as per IS:1459-2018 (Fourth Revision). The reports further categorically state that the samples do not meet the requirements of Petroleum Hydrocarbon Solvents as per IS:1745-2018 in respect of Final Boiling Point.

Classification under the Customs Tariff is governed by the General Rules for Interpretation (GRI). Applying Rule 1, classification is determined according to the terms of the headings and relevant Chapter Notes. Where competing headings are argued, Rule 4 provides that goods shall be classified under the heading to which they are "most akin".

In the present case, the CRCL findings establish conformity with IS 1459 (Kerosene) and non-conformity with IS 1745 (Solvents). The decisive technical parameter of Final Boiling Point, along with smoke point and flash point characteristics, demonstrates that the product bears essential character and closest resemblance to Superior Kerosene Oil (SKO).

Accordingly, I hold that the goods are correctly classifiable under CTH 2710 1910 and not under CTH 2710 1990 as declared.

16.2A The noticee has contended that certain parameters such as Burning Quality, Colour and Sulphur content were not tested and that isolated distillation parameters fall within solvent ranges. I find that classification does not require mechanical satisfaction of every parameter where decisive distinguishing factors establish the true nature of the goods. The CRCL report specifically negates conformity with IS 1745 in respect of Final Boiling Point, which is a critical parameter for petroleum hydrocarbon solvents. Mere overlap of certain ranges does not override the overall conformity to IS 1459. Therefore, the objection of the noticee does not alter the classification finding.

16.3 The noticee has requested cross-examination of the Chemical Examiners of CRCL. I find that the classification finding is based upon scientific analysis conducted by CRCL, New Delhi, which is the apex revenue laboratory. The sampling procedure has not been shown to be defective nor has the noticee produced any contrary independent expert report.

Adjudication proceedings under the Customs Act are quasi-judicial in nature and not governed by strict rules of the Evidence Act. Cross-examination is not an automatic right and must be shown to be necessary to establish prejudice. In the present case, no specific prejudice has been demonstrated. The request for cross-examination is therefore rejected.

In this regard, request for cross examination of Chemical Examiner of CRCL, Kandla and Chemical Examiner of CRCL of new Delhi is also not correct on following ground :-

It is observed that denial of request for cross-examination has been held as not violating the principles of natural justice during quasi-judicial proceedings in the following case laws and reliance is placed on the same:-

I. In the case of Patel Engg. Ltd. vs. UOI reported in 2014 (307) ELT 862 (Bom.)

Hon'ble Bombay High Court has held that;

"Adjudication – Cross-examination – Denial of- held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances – Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors – Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23];

11. In the case of **Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.E., Baroda** [2002 (142) E.L.T. 640 (Tri.-Mumbai)], learned Tribunal has observed at Para 17 that-
 "Natural Justice – Cross-examination – Confessional statements – No infraction of principles of natural justice where witnesses not cross-examined when statements admitting evasion were confessional."

13. In the case of **Commissioner of Customs, Hyderabad V. Tallaja Impex** reported in 2012(279) E.L.T. 433 (Tri.), it was held that-
 "In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross examination cannot be claimed as a matter of right."

14. Hon'ble Tribunal in its decision in **Sridhar Patnis v/s Commissioner of Central Excise, Hyderabad** reported as 2006(198) E.L.T. 514 (Tri-Bang) has held that:
 "..... denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, we find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized" (Para 9)

15. Hon'ble Punjab and Haryana High Court in its decision in the case of **Azad Engg Works v/s Commissioner of Customs and Central Excise**, reported as 2006(2002) E.L.T. 423, has held that:
 "..... It is well settled that no rigid rule can be laid down as to when principles of natural justice apply and what is their scope and extent. The said rule contains principles of fair play. Interference with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon'ble the Supreme Court in **K.L. Tripathi v. State Bank of India and others**, AIR 1984 SC 273"
 16. Hon'ble Tribunal in the case of **P Pratap Rao Sait v/s Commissioner of Customs** reported as 1988 (33) E.L.T. (Tri) has held in Para 5 that:
 "..... The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable."
 17. Similarly in **A.T. Jalauddin v/s Enforcement Director** reported as 2010(261) E.L.T. 84 (Mad HC) the Hon'ble High Court has held that:

"..... Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons. We may refer to the paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kannungo & Co. v. Collector, Customs, Calcutta)."

16.4 Thus, in light of the above, the permission sought for cross-examination is denied herewith.

16.5 Further, the submission in the matter filed by consultant of the noticee, after attending personal hearing on 06.11.2025, on the ground that CRCL, New Delhi had not tested 03 specification (Burning Quality, Colour and Sulpher content), out of 10 specifications prescribed in IS 1459-2018 for Kerosene. CRCL has not reported reading for 01 specification (Copper strip corrosion) in specific terms, 1 specification (Appearance), does not satisfy the specification for SKO, and 01 specification (Distillation - IPB & FBP), meets the IS specifications for Petroleum Hydrocarbon Solvents, therefore the decision of Hon'ble Supreme Court in the case of Gastrade International versus Commissioner of Customs, Kandla 2025 (4) TMI 23 – Supreme Court would squarely apply, wherein, it is held that once the rule making authority had clearly delineated the requisite parameters for ascertaining the nature of the goods/substance, compliance/conformity with the stated parameters would be the requirement.

16.6 I have gone through the written submission as well as the decision of Hon'ble Supreme Court in the case of Gastrade International versus Commissioner of Customs, Kandla dated 28.03.2025. The Hon'ble Supreme Court in this case at para 40 held that "classification under the Customs Act would be required to be examined in the light of the "General Rules for the interpretation of this Schedule" as provided in the First Schedule – Import Tariff in Part 2 of the Tariff Act (hereinafter referred to as the "Rules") The aforesaid Rules provide the principles on the basis of which the goods in the First Schedule to the Tariff Act are to be classified, which had escaped the attention of all the three forums below and each forum had adopted its own methodology to determine the proper classification of the goods/substance in issue as discussed above dehors the aforesaid rules for interpretation."

General Rules for the interpretation of this Schedule Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

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

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or

substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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

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

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

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin."

At para 42 of the decision in this case the Hon'ble Supreme Court in this case held that The aforesaid Rule 4 abundantly makes it clear that goods which cannot be classified in accordance with the preceding rules shall be classified under the heading appropriate to the goods to which they are "most akin."

In para 82, Hon'ble Supreme Court in this case held that "the real test for classification, according to us, would be as to whether any goods or substance in question is "most akin" or bears the closest resemblance or similarity to any of the specified goods mentioned under the Headings and relative Section or Chapter Notes under the Tariff Act, and not by applying the test of preponderance of probability."

In para 83, Hon'ble Supreme Court in this case held that "If the attributes of the imported goods show that the goods are "most akin" to the specified goods amongst an array of other specified goods, these imported goods have to be classified as the specified goods with which these goods bear the most resemblance or most likeness."

In view of the above, I find that the precise test for classification of imported goods will be whether the goods in question are "most akin" or most similar to the specified goods, as provided under Rule 4 referred to above. This case is related to dispute of classification of imported goods whether it should be treated as "Low-Aromatic White Spirit (LAWS)" and "Industrial Composite Mixture Plus" (ICMP) as claimed by Importer or as Superior Kerosene Oil (SKO), as claimed by the Revenue authority. The test report clearly mentioned that "Sample conforms 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." Thus the product in question is most similar to the specified goods i.e. Superior Kerosene Oil (SKO), and bear the most resemblance or most akinness to the specified goods i.e. Superior Kerosene Oil (SKO).

16.5 Further, I find that as per the Foreign Trade Policy 2015-2020, SKO is importable only through State Trading Enterprises (STEs) such as IOC, BPCL, HPCL, and IBP, with STC being nominated as the STE for supplies to Advance License holders. The importer did not possess any authorization from DGFT nor held an Advance License for import of SKO. The import was also made without a valid license under the Petroleum Act, 1934.

16.6. The CRCL report established that the imported product was Superior Kerosene Oil (SKO) as per IS:1459:2018, which falls under the restricted category as per Foreign Trade Policy 2015-2020 and could only be imported through State Trading Enterprises (STEs) like IOC, BPCL, HPCL, and IBP. The importer was neither an STE nor held any DGFT authorization to import SKO. I also find that during the course of recording of statement of **Shri Sunil Kumar Aggarwal, Director of M/s A.R. Petrochem Pvt. Ltd., New Delhi** under Section 108 of the Customs Act, 1962, he had revealed that his firm had placed the import order through M/s Mansour Al Hamadi General Trading LLC, Dubai, and had cleared the consignment through their CHA, M/s Rishi Kiran Logistics Pvt. Ltd., Gandhidham Further, **after perusing the copy of the both CRCL Delhi Report dated 10.04.2019 in respect of the goods imported by his firm, he accepted the contents of the CRCL report confirming that the product was Kerosene and admitted that they were not a State Trading Enterprise and held no authorization from DGFT to import SKO.**

16.7 I find that the importer did not possess any authorization from DGFT nor did they act through an STE. Thus, the goods imported are in violation of Para 2.01 and 2.20 of the FTP 2015-2020 and are to be treated as "Prohibited Goods" under Section 2(33) of the Customs Act, 1962. The importation, therefore, is contrary to the prohibitions imposed under the Customs Act and Foreign Trade Policy, rendering the goods liable for confiscation under Section 111(d) of the Customs Act, 1962.

16.8 Without prejudice to the above findings, it is noted that SKO is regulated under various statutory frameworks including the Petroleum Act, 1934. However, since the confiscation in the present case is independently sustainable on account of violation of FTP provisions and misdeclaration under Sections 111(d) and 111(m) of the Customs Act, detailed examination of compliance under the Petroleum Act is not essential for adjudication of the present proceedings.

16.9. I find that the goods declared in the subject Bill of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 were found to be mis-declared in terms of classification and also there is requirement of authorization from DGFIT or an Advance Licence for import of SKO. Since in this case, the condition has 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 DGFIT and intentional mis-declaration & mis-classification of imported goods, the goods covered under Bill of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018 valued at Rs. 2,32,52,915.61/- (Two Crores Thirty Two Lakhs Fifty Two Thousand Nine Hundred and Fifteen rupees and Sixty One paise only), are liable for confiscation under provisions of Section 111 (d) & (m) of the Customs Act, 1962.

Based on the inquiry conducted, the test report issued by CRCL, New Delhi in respect of Bill of Entry No. 5802638 dated 30.03.2018 and 5981391 dated 14.04.2018, and the statement of Shri Sunil Kumar Aggarwal, Director of M/s A.R. Petrochem Pvt. Ltd., New Delhi. 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 for a total quantity of 514.69 MTs, with a declared assessable value of Rs. 2,32,52,915.61/-. This mis-declaration was made with the intent to evade restrictions/prohibitions under the Foreign Trade Policy 2015-2020. As a result, the goods are liable for confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962. The act of mis-declaring restricted/prohibited goods for clearance constitutes "smuggling" under Section 2(39) of the Customs Act. The importer is therefore liable for penalty under Sections 112(a) and (b) for their role in the improper importation. Furthermore, the false declaration made under the Bill of Entry renders them liable for penalty under Section 114A of the Customs Act. The importer also failed to comply with mandatory provisions of the Act, attracting penalty under Section 117 ibid.

17. I find that redemption fine under section 125 of the Act, is impossible on the importer even the goods are not physically available for confiscation. I relied upon judgement dated 11.08.2017 of Hon'ble High Court of Chennai, in the case of Visicon Automotive Systems India Limited, has held that availability of goods is not necessary for imposing redemption fine. The Hon'ble Court held "...opening words of Section 125, 'Whenever confiscation of any goods is authorised by this Act ...', brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. 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 Ferrichem Pvt. Ltd. Hon'ble Gujarat High Court at para 174 and 175 held that "We would like to follow the dictum as laid down by the Madras High Court in Para-23 in the case of Visicon Automotive Systems India Limited Vs. CF-STAT, Chennai".

Hence, I conclude that goods are liable for confiscation under section 111 of the Act; and redemption fine is imposable on the imported goods even if they have been cleared from the customs port and are not presently available for confiscation.

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

ORDER

(i) I hold that goods imported by M/s A.R. Petrochem Pvt. Ltd. under Bill of Entry No. 5802638 dated 30.03.2018 and Bill of Entry No. 5981391 dated 14.04.2018 declared as "Low Aromatic White Spirit" are correctly classifiable as Superior Kerosene Oil (SKO) under CTH 2710 1910.

(ii) I hold that the said goods, totally weighing 514.69 MTs and valued at Rs. 2,32,52,915.61/-, are liable for confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962.

(iii) I impose a redemption fine approximately 20% of the value of the goods i.e. Rs.46,51,383/- (Rupees Fourty Six Lakhs Fifty One Thousands Three Hundreds and Eighty three only) on M/s A.R. Petrochem Pvt. Ltd. under Section 125 of the Customs Act, 1962, in lieu of confiscation as goods are already released.

(iv) I impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) on M/s A.R. Petrochem Pvt. Ltd. under Section 112(a) of the Customs Act, 1962.

(v) I impose penalty of at Rs. 2,32,52,915.61/- (Two Crores Thirty Two Lakhs Fifty Two Thousand Nine Hundred and Fifteen rupees and Sixty One paise only) under Sections 114AA of the Customs Act, 1962.

(vi) The Show Cause Notice dated 27.11.2020 stands disposed of accordingly.

19. 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.

Digitally signed by
VISHWAJEET SINGH
Date: 12-02-2026
~~(VISHWAJEET SINGH)~~
COMMISSIONER (in-situ),
CUSTOMS HOUSE, KANDLA.
KANDLA CUSTOMS HOUSE,
KANDLA.

01 copy
03.03.2026
15:00

To,

M/s. A R Petrochem (P) Ltd.,
9153, GF Gall No.3,
Multani Dhandra, Paharganj,
New Delhi-110055.

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 (RA), 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