

		प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT EMAIL: group1-mundra@gov.in	
A	File No.	CUS/APR/1318/2026- Gr. 1	
B	Order-in-Original No.	MCH/ADC/ZDC/47/2026-27	
C	Passed by	Dipak Zala Additional Commissioner of Customs, Custom House, Mundra.	
D	Date of order	24.04.2026	
E	Noticee/Party/Importer	M/s. Bherunath Traders (IEC AJEPC3758N)	
F	SCN No. & Date	13/2026-27/ADC/AKM/MCH dated 06.04.2026	
G	DIN No.	20260471MO000071717A	

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 बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”

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 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.

5. 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.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क 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.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, 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.

BRIEF FACTS OF THE CASE

M/s. Bherunath Traders (IEC AJEPC3758N) having address at third floor, Shop No. 353, MG Dream Surat Kamrej Road, Surat-394185 (hereinafter referred to as "the Importer"), has filed Bill of Entry No. 3139072 dated 08.07.2025 through their CHA M/s. Continental Shipping Services for import of goods by declaring description as "Lubricating Oil". The Importer have classified the goods under CTI-27101979. The details declared in the Bill of entry are as under:

(Amount in Rs.)

BE No. & Date	Description of goods	Qty. in Kgs	Ass. Value declared
3139072 dated 08.07.2025	Lubricating Oil	196690	77,32,584/-

2.1 The goods under the said Bill of Entry were examined on first-check basis. The examination of goods was carried out by the Docks Examination officers in the presence of authorised representative of Customs Broker (CHA) and authorised representative of the CFS. During the course of examination, representative sample bearing Test Memo (TM) No. 1294426 dated 19.08.2025 was drawn from the consignment and forwarded to Central Revenues Control Laboratory (CRCL), Kandla for the purpose for detailed chemical analysis/testing.

2.2 The Chemical Examiner, Gr-II, CRCL, Kandla issued Test Report as below:

Test Memo No	1294426	Test Memo Dt	19-AUG-2025
BE No	3139072	BE Date	08-JUL-2025
CHA Name	AG 1A		
IEC	AJEPC3758N	Imp Name	BHERUNATH TRADERS
Imp Add	THIRD FLOOR, SHOP NO 353, M G DREAM		
Sup Nm	PRIME PETROLEUM FZC		
Sup Cntry	UNITED ARAB EMIRATES	Inv No	1
Item Desc	LUBRICATING OIL		
Query Desc	1) NATURE 2) COMPOSITON 3) DESCRIPTION OF GOODS 4) INITIAL BOILING POINT 5) FINAL BOILING P		
Lab Cd	CL00AMD4	Lab Rpt No	2977
Lab Rpt Dt	26-AUG-2025	*Press CTRL+E to view	
Lab Rpt	The sample as received is in the form of pale yellow oily liquid having greenish tinch. It is composed of mixtur		
Lab Exam Id	Entry By		
Lab Rpt Entry By	10041762	Lab Rpt Entry Dt	28-AUG-2025

Lab Report

The sample as received is in the form of pale yellow oily liquid having greenish tinch. It is composed of mixture of hydrocarbon oil more than 70 % by wt. having following constant.

Density at 15 deg C. = 0.8381 gm/ml
Flash point (PMCC) = 70.6 deg C
Kinematic viscosity at 40 deg C, = 3.138
Ash content = Nil
Water content = Nil
Distillation range: IBP = 179.2 deg C
95% Distilled at Temp. = 352.8
FBP= 361.1 deg C
Sulphur Content, % = 38.589 PPM
Cetane Index = 54.4
On the basis of above tested parameters sample u/r meet the requirement of High flash high speed diesel oil (IS 16861:2018).
Sealed remnant returned.

3. From the above, it may be seen that CRCL, Kandla reported that the sample was in the form of pale yellow oily liquid having greenish tinch and it is composed of a mixture of hydrocarbon oil having approximately 70% oil content. The laboratory further concluded that the tested parameters of the sample meet the requirement of High flash high speed diesel oil (IS 16861:2018) (hereinafter referred to as “HFHSD” also). The goods were declared in the import documents as “Lubricating Oil” and classified under CTH 27101979. However, upon testing, the sample was found to be a mixture of hydrocarbon oil exhibiting density, flash point, distillation range, kinematic viscosity and calculated cetane index consistent with HFHSD. The laboratory specifically concluded that the tested parameters agree with HFHSD. Thus, while the importer described the product as Lubricating Oil, the chemical examination revealed that the goods are HFHSD.

4. It is pertinent to mention that, principles for the classification of goods are governed by the Harmonized Commodity Description and Coding System (Harmonized System or HSN) issued by the World Customs Organization, Brussels and the General Rules for Interpretation specified there under. Rule 1 of General Rules for the Interpretation (GIR) specified in the Import Tariff provides that the classification shall be determined according to the terms of Heading and any relative Section or Chapter notes. The same is produced below: -

GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM

Classification of goods in the Nomenclature 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 :

4.1 In light of above mentioned GIR Rule 1, since the impugned goods are High flash high speed diesel fuel conforming to standard IS 16861, the same are rightly classifiable under CTI 27101949 instead of the declared CTI 2710 1979 for declared description ‘Lubricating Oil’.

4.2 From the above, it appears that the impugned goods have been mis-declared in terms of description and classification. The importer declared the goods as “Lubricating Oil”; however, as per the CRCL Test Report, the product has been found to be High flash high speed diesel fuel conforming to standard IS 16861. Thus, the declared description does not correspond with the actual nature and specification of the goods. Thus, the goods attract merit classification under CTI 2710 1949, which is specified for classification of High flash high speed diesel fuel conforming to standard IS 16861. As per Policy Condition No. 5 of Chapter 27, the import of High flash high speed diesel fuel conforming to standard IS 16861 is restricted and permitted only through State Trading Enterprises (STEs). The said policy condition was amended vide Notification No. 27/2015-2020 dated 16.09.2021, whereby the restriction on import through STEs was reaffirmed.

Accordingly, the goods in question, being High flash high speed diesel fuel conforming to standard IS 16861 classifiable under CTH 27101949 and restricted for import except through STEs, were not freely importable by the importer. The declaration of the goods as "Lubricating Oil" under a different tariff heading, therefore, appears to be a deliberate mis-declaration aimed at circumventing the applicable import policy restrictions. The relevant portion of Notification No. 27/2015-2020 dated 16.09.2021 is reproduced below:

To be published in the Gazette of India Extraordinary Part-II, Section-3, Sub-Section (II)

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade

Notification No. 27/2015-2020
New Delhi, Dated: 16th September, 2021

Subject: Amendment of policy condition no. 5 of Chapter 27 of ITC (HS), 2017, Schedule – I (Import Policy).

S.O.(E): In exercise of powers conferred by Section 3 read with Section 5 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 policy condition no.5 of Chapter 27 of ITC (HS), 2017, Schedule – I (Import Policy) as under:

Existing Policy Condition	Revised Policy Condition
Import allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P and NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before this date.	Import allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of MoP&NG Resolution No. P-23015/1/2001-MKT dated 08.03.2002 for products excluding gasoline conforming to standard IS 2796 (ITC HS Code: 27101241) and Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460 (ITC HS Code 27101944) which would be allowed to be imported by entities in terms of MoPNG Resolution No. P-12029(11)/2/2018-OMC-PNG dated 08.11.2019".

2. **Effect of the Notification:** Policy condition no.5 of Chapter 27 of ITC (HS), 2017, Schedule – I (Import Policy) amended in terms of Government Resolution No. P-12029(11)/2/2018-OMC-PNG dated 08.11.2019.

4.3 From above, it is seen that import of restricted goods is allowed subject to para 2.20 of Foreign Trade Policy (now para 2.21 of FTP) and the same is produced

below:

“2.20 State Trading Enterprises (STEs)

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

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

5. In the present case, the Importer, is neither a State Trading Enterprise (STE) nor has any authorization been issued to them by the DGFT for the import of the said restricted goods. As discussed above, the goods in question, being High flash high speed diesel fuel conforming to standard IS 16861 classifiable under CTH 27101949, are restricted for import and can be imported only through State Trading Enterprises in terms of Policy Condition No. 5 of Chapter 27 of the ITC (HS). However, upon testing, goods found to be mis-declared in terms of description and classification. The goods were imported, despite being restricted in nature and not freely importable except through STEs. Further, Section 46 of the Customs Act, 1962 mandates that an importer, while presenting a Bill of Entry, shall make and subscribe to a declaration as to the truthfulness of its contents and produce supporting documents such as the invoice and other prescribed documents. In the instant case, the importer failed to make a true and correct declaration regarding the nature and classification of the goods. Accordingly, by reason of such acts of omission and commission, the impugned goods appear liable for confiscation under the provisions of Section 111(d) and Section 111(m) of the Customs Act, 1962.

6. Further, it appears that the importer has attempted to import restricted goods which were, upon testing, found mis-declared in terms of description and classification. This act of importer has rendered themselves liable for penalty under Section 112(a) of the Customs Act, 1962.

7. LEGAL PROVISIONS:

7.1 From the foregoing it appears that the goods in the instant case i.e High flash high speed diesel fuel conforming to standard IS 16861 is correctly classifiable under CTH 2710 1949. The relevant portion of the Customs tariff head 2710 reads as under:

SECTION-V

CHAPTER-27

(1)		(2)	Policy	Remarks
2710		Petroleum oils and oils obtained from bituminous minerals, (other than crude) preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations other than those containing bio-diesel and other than waste oils		
		Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils:		
2710 19	--	Other :		
2710 1949	----	High flash high speed diesel fuel conforming to standard IS 16861	State trading enterprises	Import as per policy conditions (5) of Chapter 27

7.2 Policy Conditions of this Chapter:

- (1) ----.
- (2) ----.
- (3) ----.
- (4) ----.
- (5) *Import allowed through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NG's Resolution No. P23015/ 1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL & IBP who have been marketing transportation*

fuels before this date.

7.3. Section 3 of The Foreign Trade (Development and Regulation) Act, 1992:

Powers to make provisions relating to imports and exports. –

(1) ----

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

7.4. Section 2(2) of the Customs Act, 1962:

“assessment” means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
- (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*
- (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefore under this Act or under the Customs Tariff Act or under any other law for the time being in force;*
- (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*
- (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;*
- (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;*

7.5 Section 2(14) of the Customs Act, 1962: *“dutiable goods” means any goods which are chargeable to duty and on which duty has not been paid;*

7.6 Section 2(16) of the Customs Act, 1962: *“entry” in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under Section 84.*

7.7 Section 2 (33) of the Customs Act 1962:

“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 ;

7.8 Section 17 of the Customs Act, 1962:

Section 17. Assessment of duty. – (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2)

(3)

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5).....

7.9. Section 46(4) and Section 46(4A) of the Customs Act, 1962:

46(4) :

The importer while presenting a bill of entry shall ¹¹[* * *] make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, ¹²[and such other documents relating to the imported goods as may be prescribed]

46(4A):

The importer who presents a bill of entry 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.

7.10. Section 112 of the Customs Act, 1962:

Penalty for improper importation of goods, etc.- Any person, - (a) 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 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, 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 the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the

provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

.....

7.11. Section 140 of the Customs Act, 1962: Offences by companies. - *(1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

7.12 Section 111. Confiscation of improperly imported goods, etc. – The following goods brought from a place outside India shall be liable to confiscation:-

(a) –

(b)

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

8. Importer vide letter dt. 17.02.2026 informed that the discrepancy has occurred due to an inadvertent mistake on the part of the exporter at the time of shipment. They further submitted that M/s. Bherunath Traders is not at fault in this mistake. This is the first time they received this type of cargo and assured that this mistake will not repeat again. They will ensure no such goods will load in future. Shipping Line detention/demurrage, ground rent & other charges have been increased to a very high level & also increasing day by day. Thus, they have requested to accept their bona-fide request and allow them waiver permission without any SCN and PH also with re export permission.

9. Whereas it appears from the foregoing paras that:

- (i) As per condition No. 5 of the Import Policy, import of High flash high speed diesel fuel conforming to standard IS 16861 which were sought to be imported by the importer in the consignments by way of mis-declaration, is allowed only through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NGs Resolution No. P23015/1/2001-MKT. dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before the said date. Thus, it is

evident that the said goods are not freely importable but can be imported only by State Trading Enterprises such as IOCL, HPCL, BPCL and IBP.

- (ii) The Importer appeared to be well aware of the said restriction imposed by the Policy. The goods, import of which is permitted only with an Authorisation /Permission/ License or in accordance with the procedure prescribed in a notification / public notice are 'Restricted' goods. The Importer had imported the said restricted goods namely High flash high speed diesel fuel conforming to standard IS 16861 by declaring the same as "Lubricating Oil". They classified the said goods i.e "Lubricating Oil" under Customs Tariff Heading (CTH) 27101979 where no restriction is prescribed in the Import Policy.
- (iii) In order to ascertain the exact nature of the goods and to confirm the identity, samples were drawn from the consignment which were sent to Government Lab CRCL. The parameters of the test conducted by the Labs clearly suggest that the commodity covered under the consignments pertaining to the importer as declared in the import documents and the Bill of Entry were different and not as per the import documents filed by the importer. The parameters of the samples drawn from the consignments covered under the subject shipment, on being tested and analysed, indicate that the imported goods are High flash high speed diesel fuel conforming to standard IS 16861.
- (iv) The commodity sought to be actually imported viz HFHSD under the subject consignments find specific mention in different tariff Item and not the tariff Item in which they were declared in the import documents i.e 27101979 which does not lay down any restriction if the goods are covered under the said CTH and are classified accordingly. It appears that the item has been given description Lubricating Oil so that the same can be classified in the category of Chapter Heading 27101979 deliberately where there is no restriction in the import of commodities falling in the said category of the Customs Tariff Act' 1985.
- (v) It appears that the misclassification was done so as to mislead the department. The correct classification is 27101949 pertaining to "High flash high speed diesel fuel conforming to standard IS 16861". The importer has not disputed the test report and has sought re-export. The Importer is not an STE entity and hence they are not eligible to import the said restricted goods. Therefore, they appeared to resort to the act of mis-declaration and mis-classification so as to import the said restricted goods.
- (vi) The provisions of Section 17 (1) of the Customs Act, 1962 read with Section 2 (2) Customs Act, 1962 and CBIC Circular No. 17/2011-Customs dated 08.04.2011 lay down onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that he declared the correct classification, applicable

rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. By furnishing incorrect and wrong information in the import documents, it appears that the Importer appears to have violated the provisions of the said Section 17(1) read with Section 2(2) of the Customs Act, 1962.

- (vii) In terms of Section 46(4) of the Customs Act, 1962, the importer has to certify the truth of the contents of the Bill of Entry. In the instant case it appears that the importer was fully aware of the actual goods imported by them. The Importer also did not dispute the test reports and did not opt re-testing of the goods. Thus, in view of the facts discussed in the foregoing paras and material evidences available on records, it appears that the importer has contravened the provisions of Section 46(4) and 46(4A) of the Customs Act, 1962, in as much as they had intentionally mis-declared the description of the goods imported by them to import a restricted good under the guise of a freely importable good
- (viii) Further, by attempting to import restricted goods, the importer appears to have indulged in the act of importing prohibited goods. With the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was the obligatory on their part to declare the actual description and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. Therefore, by not disclosing the true and correct facts to the proper officer, at the time of filing of Bill of Entry for the respective consignment, the importer appears to have indulged in mis-declaration and mis-classification by way of suppression of facts and willfully mis-declared and mis-classified the imported goods with intent to import restricted goods. Thus, the importer appears to have contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods.

10. Further, it is also noted that said goods have been imported in flexi bags fitted in 10x20' containers. Whereas, it is noted from PUBLIC NOTICE NO. 08/2024 issued by this office provides that storage and transportation of Class A, B and C petroleum products is allowed in containers as defined in the Petroleum Rules, 2002 as amended. Further, Rule 5 and Rule 6 of the Petroleum Rules, 2002 provide the specifications of the containers for Petroleum Class A, B & C products. As per Rule 4 of the Petroleum Rules, 2002, Containers exceeding one litre in capacity for petroleum Class A and five litres in capacity for petroleum Class B or petroleum class C, shall be of a type approved by the Chief Controller. In light of the Petroleum (Amendment) Rules, 2024/ Petroleum Rules, 2002, PESO has clarified that flexi bags fitted in general purpose 20 feet containers are not covered under the definition of container falling under

Petroleum Rules, 2002. Further, Petroleum and Explosives Safety Organisation (PESO) is not giving any license/permission for transportation of petroleum products in flexi bags fitted in general purpose 20 feet containers. Therefore, as per Public Notice No. 08/2024, the petroleum products covered under the Petroleum Rules, 2002 framed under Petroleum Act, 1934 must be imported only in containers as specified under the provisions of the said Rules. Further, it is also noted from Public Notice 08/2024 dated 27.09.2024 that Section 2(b) categorizes petroleum class A, B and C on the basis of flash point

- “petroleum Class A” means petroleum having a flash-point **below twenty-three degrees** Centigrade
- “petroleum Class B” means petroleum having a flash-point of **twenty-three degrees Centigrade and above but below sixty-five degrees** Centigrade;
- “petroleum Class C” means petroleum having a flash-point of **sixty-five degrees Centigrade and above but below ninety-three degree** Centigrade

10.1 The flash point of the HFHSD as per test report is less than 93 °C, thus, it falls under the petroleum Class C products. Accordingly, its import (HFHSD) is not allowed in flexi bags loaded in 20 feet containers in view of Public Notice 08/2024 dated 27.09.2024, supra, because the flexi bags fitted in 20 feet containers does not fall under the definition of containers as per Petroleum Rules, 2002, as amended. Therefore, the import of HSSD goods imported are in violation of the Petroleum Rules, 2002, as amended. Thus, the said imported goods cannot be allowed to be cleared due to violation of petroleum rules and Public Notice 08/2024 also. Thus, on this ground also the imported goods are confiscable under Section 111(d) of the Customs Act, 1962.

11. Whereas it appears that the Importer resorted to illicit import of restricted goods under the guise of " Lubricating Oil" to bypass import restrictions applicable to non-State Trading Enterprises (STEs). They misused Customs Tariff Heading 27101979 to declare the goods as freely importable. They further failed to declare the correct classification and description of goods during self-assessment under Section 17(1) of the Customs Act, 1962. And provided inaccurate and incomplete information in the Bill of Entry, violating Sections 46(4) and 46(4A) of the Customs Act, 1962. The mis-declaration appears to be confirmed from the fact that they accepted the findings of the lab tests. They have attempted to pass the responsibility for their malafide act of importing restricted goods on the shoulders of the supplier. The said acts of the importer which include mis declaration, misclassification, and illegal importation of restricted petroleum products appear to violate multiple provisions of the Customs Act, 1962, the Foreign Trade Policy, and the Petroleum Act, 1934 for financial gain. The illicit import of the said restricted goods tantamount to the act of smuggling as defined under Section 2(39) of the

Customs Act'1962. Thus, for their acts of omission and commission, the Importer have rendered themselves for penalty under the provisions of Sections 112 (a) and/or 112(b) of the Customs Act'1962.

12. Accordingly, M/s. Bherunath Traders (IEC AJEPC3758N) was called upon to show cause as to why: -

- (i) The declared classification of the impugned goods i.e., "High flash high speed diesel fuel conforming to standard IS 16861", mis-declared as "Lubricating Oil" under Customs Tariff Item 27101979 under Bill of entry no. 3139072 dated 08.07.2025; should not be rejected and re-classified under the Customs Tariff Item 27101949.
- (ii) High flash high speed diesel fuel conforming to standard IS 16861 sought to be imported by them having declared value of Rs. 77,32,584/- should not be confiscated under Section 111(d) & 111(m) of the Customs Act,1962.
- (iii) Penalty should not be imposed upon them under Section 112(a) and/or 112(b) of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING & WRITEN SUBMISSIONS

13. Importer vide mail and letter dt. 22.04.2026 submitted that the allegation of mis-declaration is not correct. The goods were declared on the basis of documents provided by the overseas supplier. There was no independent mechanism available to us at the time of import to ascertain the exact chemical composition of the goods prior to filing of the Bill of Entry. The discrepancy has arisen purely on account of an inadvertent error on the part of the supplier, which was beyond our knowledge and control. We further submit that we have not disputed the CRCL test report, which indicates that the goods conform to High Flash High Speed Diesel (HFHSD). Our acceptance of the test report reflects our bona fide conduct and transparency.

13.1 They further submitted that cargo was examined on first-check basis, and the goods in question are not prohibited goods but are only restricted in nature. They have not sought clearance of the goods for home consumption and have requested permission for re-export. In such circumstances, it is a settled position that re-export should be allowed, particularly when the import is bona fide and no mala fide intent is established.

13.3 Noticee further submitted that they are already facing undue financial hardship including heavy demurrage, detention, and ground rent charge. Hence, requested for lenient view at the time of imposing fine and penalty. They further requested to allow re-export of the goods and waiver of fine and penalty. Noticee further stated that that they do not want personal hearing and sought adjudication in the subject case.

DISCUSSION AND FINDINGS

14. I have carefully gone through the facts of the case available on records. The importer has requested permission for re-export of the impugned goods and has also waived the requirement of personal hearing. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records. I have carefully gone through the facts available on the record. I find that the following issues are required to be decided in present adjudication proceedings:

- (i) Whether description of the goods declared as 'Lubricating Oil' classified under CTI 27101979 is liable to be rejected and the same is required to be re-determined as 'High Flash High Speed Diesel' under CTI 27101949, or otherwise.
- (ii) Whether the impugned goods are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962, or otherwise.
- (iii) Whether the importer is liable for penalty under Section 112(a) of the Customs Act, 1962, or otherwise.

15. I find that the Importer had imported the goods having description as "Lubricating Oil" by classifying the same under CTI 27101979. However, the CRCL, Kandla, vide Test Memo No. 1294426 dated 19.08.2025, has reported that that the sample was in the form of pale yellow oily liquid having greenish tinch and it is composed of a mixture of hydrocarbon oil having approximately 70% oil content. The laboratory further concluded that the tested parameters of the sample meet the requirement of High flash high speed diesel oil (IS 16861:2018). The goods were declared in the import documents as "Lubricating Oil" and classified under CTH 27101979. However, the laboratory specifically concluded that the tested parameters agree with HFHSD.

16. I observed that the importer has not questioned the correctness of the laboratory report. It is a settled position of law that the test report of the Central Revenue Control Laboratory, being an authorized Government laboratory, carries significant evidentiary value and prevails over trade description or private test certificates. In the case of M.M. Trading Company vs. Commissioner of Customs, Mundra (Final Order No. A/11695/2023 dated 14.08.2023), the Hon'ble CESTAT, Ahmedabad has categorically held that when the importer does not seek re-test of the sample or challenge the laboratory findings at the appropriate stage, the test report attains finality and cannot subsequently be assailed. The Tribunal further observed that an error not resisted is deemed to have been accepted and that acquiescence to the laboratory findings precludes later challenge. In the present case, the importer has not contested the CRCL findings. Therefore, the CRCL report establishes the nature of the goods as HFHSD, and the same must prevail over the declared trade description of "Lubricating Oil".

17. Classification of the Goods:

17.1. It is evident that the goods have been found mis-declared in respect of description. Thus, it is imperative here to decide the classification of the goods i.e. "HFHSD". I find that importer had classified the goods under CTI 27101979. The relevant portion of HSN code 2710 is being reproduced here for reference purpose:

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

Tariff		Description of goods
2710 19 49	----	High flash high speed diesel Conforming to standard IS 16861
2710 1979	----	Other lubricating oil, not conforming to any other BIS standard
2710 19 90	---	Other

17.2 I notice that the GIR, which are binding principles for uniform classification under the HS Nomenclature (as per the World Customs Organization - WCO), provide a step-by-step methodology to resolve such disputes, and their application here supports the re-classification under CTI 27101949. Under the General Rules for the Interpretation of the Import Tariff (GIR), classification of imported goods must be determined according to the terms of the headings, section and chapter notes, and, only when these are not decisive, by resorting to subsequent interpretative principles. Therefore, it is imperative to first examine whether the description and characteristics of the imported goods correspond to the heading under which they were declared.

17.3 As per GIR-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." I observe that GIR 1 mandates starting with the plain language of the headings and notes, without resorting to subsequent rules unless ambiguity arises.

17.4 In the present case, the goods were declared under CTI 27101979 as "Lubricating Oil". Heading 2710 covers "Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals." Within Heading 2710, specific tariff items exist for Motor Spirit, Aviation Turbine Fuel, High Speed Diesel, Lubricating Oil, Heating Oil (LDO) and other defined petroleum products, followed by a residual entry "Other." The CRCL test report establishes that the impugned goods are HFHSD. I find that the essential character and technical identity of the goods correspond to

HFHSD. Once the goods are found to answer specifically to HFHSD, classification under the entry "Lubricating Oil" (CTI 27101971) becomes legally impermissible. It is a settled principle of tariff interpretation that a specific description prevails over a general or residuary entry. The residuary entry can be invoked only when goods cannot be classified under any specific tariff description within the heading. In the present case, the goods are squarely covered by the specific tariff item CTI 27101949 pertaining to HFHSD. Therefore, applying GIR 1 and relying on the plain language of Heading 2710 and its specific tariff entries, I hold that the imported goods, being HFHSD, merit classification under CTI 27101949 and not under the entry CTI 27101979 as declared by the importer.

18.1 Having determined the classification, the next issue relates to the import policy applicable to the goods. I find that the Importer has violated the Policy condition (2) of the ITC (HS) for Exports and Imports 2015-2020 for chapter 27 which mandates that "Import of Automotive Diesel Fuel 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." The Importer has also violated the Policy condition (5) of the ITC (HS) for Exports and Imports 2015-2020 for chapter 27 which mandates that "Import allowed through IOC subject to Para 2.20 of the Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NG's Resolution No. P-23015/1/2001-MKT, dtd.8.3.2002 including HPCL, BPCL and IBP, who have been marketing transportation fuels before this date."

18.2 I state that Para 2.01 of Foreign Trade Policy provides that exports and imports shall be free except when regulated by way of prohibition, restriction, or exclusive trading through State Trading Enterprises has laid down in Indian Trade Classification (harmonized system) of exports and imports. Para 2.01 empowers the DGFT to impose restrictions on export and import through a notification for the purposes mentioned in the said para. I noticed that in present case, the importer is not a STE nor having license/rights for marketing of transportation fuels. Thus, they had violated the provisions of Para 2.01 of Foreign Trade Policy.

18.3 I find that Policy Condition No. 5 of Chapter 27 of ITC (HS), as amended vide Notification No. 27/2015-2020 dated 16.09.2021, stipulates that import of HFHSD is "Restricted" and permitted only through State Trading Enterprises (STEs). In terms of Section 2(33) of the Customs Act, 1962, "prohibited goods" include not only goods absolutely banned but also those whose import is subject to any prohibition under the Act or any other law for the time being in force. When goods are imported in contravention of such conditions or without the mandatory authorization, they assume the character of "prohibited goods" for the purposes of the Act. A restriction imposed under the Foreign Trade Policy operates as a prohibition unless the prescribed conditions are fulfilled. In the instant case, the importer is neither a notified State Trading Enterprise nor has produced any authorization issued by the DGFT permitting such import for home consumption clearance. Therefore, the import of a canalized item by the importer is contrary to the restriction imposed under the Foreign Trade Policy. Consequently, the goods

become liable to confiscation under Section 111(d) of the Customs Act, 1962 as goods imported contrary to prohibition imposed under law.

18.4 Further, Section 46 of the Customs Act casts a statutory obligation upon the importer to make a true and correct declaration in the Bill of Entry regarding the nature, description and classification of goods and to ensure compliance with any restriction or prohibition applicable to such goods. In the present case, the goods were declared as “Lubricating Oil” under CTI 27101971, whereas chemical examination has established them as a canalized item under ‘restricted’ category. Thus, the goods do not correspond in respect of description and classification with the declaration made under the Act. Once factual discrepancy between declaration and actual nature of goods is established, the goods become liable to confiscation under Section 111(m), irrespective of whether such misdeclaration was intentional or otherwise. Accordingly, I hold that the goods are liable to confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962.

19. As I have already held these goods liable for confiscation in previous para under Section 111 of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods. The Section 125 *ibid* reads as under: -

“Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit.”

19.1 A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods to redeem the goods by paying redemption fine. The importer during the investigation period has requested permission for re-export of the goods. The importer has also waived the requirement of personal hearing and has not disputed the laboratory test report. Section 125 of the Customs Act, 1962 empowers the adjudicating authority, in cases where goods are liable to confiscation, to grant an option to redeem the goods on payment of fine in lieu of confiscation. In the present case, the goods have remained under customs control and have not been cleared for home consumption. The importer, upon being informed of the test results, has sought re-export and has not pressed for clearance into the domestic market. I observe that confiscation must follow as a consequence of statutory violation. The principles of proportionality and fairness in adjudication require that while enforcement of law is ensured, the punishment should be proportionate to the nature of violation.

19.2 I find that import of certain petroleum products, including diesel and related products, is canalized through State Trading Enterprises and requires

authorization, which the importer admittedly does not possess. Thus, the issue that arises is not one of absolute prohibition of the goods per se, but of non-fulfilment of the statutory and policy conditions governing their import. In the present case, the importer has failed to obtain the requisite authorization and has thus not satisfied the mandatory pre-conditions for import and clearance of the goods for home consumption. Therefore, the infirmity lies in the importer's failure to comply with the prescribed statutory conditions. In the absence of fulfilment of these essential conditions, the goods cannot be permitted to be cleared into the domestic market.

19.3 I further observe that ordering confiscation in the present case and not allowance for re-export would not serve any meaningful revenue purpose. Such a course would only result in unnecessary litigation and prolonged detention of containers at the port without yielding any revenue to the Government. The goods in question are not per se banned items; rather, their import is regulated and conditional. The confiscation ordered herein is thus a legal consequence of non-fulfilment of statutory conditions and absence of requisite authorization.

19.4 In view of the above discussion, I am of the considered view that the ends of justice would be met by allowing redemption of the subject goods for the limited purpose of re-export. Imposition of redemption fine along with penalty is sufficient to address the violation and convey a clear deterrent message to similarly placed importers. At the same time, this course ensures that the goods do not enter the domestic market in violation of statutory conditions. Therefore, exercising powers under Section 125 of the Customs Act, 1962, I deem it appropriate to allow the importer an option to redeem the goods for the limited purpose of re-export on payment of redemption fine under the provisions of Section 125 of the Customs Act, 1962.

20. From the above, it is evident that the impugned goods were found to be mis-declared in respect of description and classification. The subject goods found 'restricted' in nature, thus, falls within the meaning of prohibited category of goods due to their import contravening import policy. The above discussed acts on the part of the importer have rendered the subject goods liable to confiscation under Section 111 of the Customs Act, 1962. Accordingly, I hold that the importer is liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

21. In view of the aforesaid discussions and findings, I pass the following order:

ORDER

- (i) I reject the declared classification of the goods under CTI 27101979 and hold that the impugned goods are correctly classifiable under CTI 27101949 as "High flash high speed diesel".
- (ii) I confiscate the impugned goods having assessable value of Rs. 77,32,584/- under the provisions of Sections 111(d) and 111(m) of the Customs Act, 1962. However, in exercise of powers conferred under Section 125 of the Customs Act, 1962, I give an option to the importer to redeem the

confiscated goods for the limited purpose of re-export only, on payment of redemption fine **of Rs. 8,00,000/- (Rupees Eight Lakhs only)**.

- (iii) I impose a penalty of **Rs 3,50,000/- (Rupees Three Lakhs Fifty Thousand only)** upon the Importer under Section 112(a)(i) of the Customs Act, 1962.

22. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

Additional Commissioner of Customs,
Assessment Group-I/IA,
Custom House, Mundra

To,

To,

M/s. Bherunath Traders (IEC AJEPC3758N),
Third floor, Shop No. 353,
MG Dream Surat Kamrej Road, Surat- 394185.

Copy To:

- (i) The Deputy Commissioner of Customs (Review/TRC), CH, Mundra.
(ii) The Deputy Commissioner of Customs (EDI), CH, Mundra