

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

दस्तावेज पहचान संख्या/

Document Identification Number (DIN) - 20240971MM0000666D18

1.	फाइल क्रमांक/ File Number	VIII/10-533/Commr./O&A/2015
2.	मूल आदेश क्रमांक/ Order-In-Original Number	JAM-CUSTM-PRV-COM-004-24-25
3.	आदेश पारित करने वाला प्राधिकारी/ Authority Passing the Order	धिरेंद्र लाल / Dhirendra Lal आयुक्त/ Commissioner, सीमा शुल्क (निवारक) / Customs (Preventive), जामनगर/ Jamnagar.
4.	आदेश की तिथि/ Date of Order	10.09.2024
5.	आदेश जारी करने की तिथि/ Date of issue of Order	10.09.2024
6.	कारण बताओ नोटिस संख्या और तारीख/ Show Cause Notice number and date	संख्या/ No.: VIII/10-533/Commr./O&A/2015 दिनांक / dated: 15-02-2016
7.	नोटिस पाने वाले का नाम/ Name of the Noticee	मेसर्स एस्सार ऑयल लिमिटेड (बब मेसर्स. नायरा एनर्जी), पी.बी. संख्या 24, जिला- देवभूमि द्वारका गुजरात - 361 305 M/s Essar Oil Ltd. (Now M/s. Nayara Energy), P.B. No. 24, Dist. - Dev Bhumi Dwarka, Gujarat - 361 305

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

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

2. इस मूल आदेश से व्यथित कोई भी व्यक्ति, सीमा शुल्क अधिनियम, धारा की 1962 129A(1)a, सीमा शुल्क नियम (अपील), 1982 के नियम 6(1) के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से तीन महीने के भीतर फॉर्म सीए 3-में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए 3-में अपील का प्रपत्र, चार प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। (हो प्रति प्रमाणित एक कम से कम से जिनमें)

सीमा शुल्क, उत्पाद शुल्क और सेवा कर
अपीलीय न्यायाधिकरण, पश्चिम जोनल
बेंच,
दूसरी मंजिल, बहुमाली भवन असरवा, गिरधर
नगर ब्रिज के पास, गिरधर नगर, अहमदाबाद,
(गुजरात) - 380 004

Customs, Excise and Service Tax
Appellate Tribunal (West Zonal Bench)

2nd Floor, Bahumali Bhavan Asarwa, Near
Girdhar Nagar Bridge, Girdhar Nagar,
Ahmedabad (Gujarat) - 380 004

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



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

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

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

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

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

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

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

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

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

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



BRIEF FACTS OF THE CASE:

M/s. Essar Oil Limited, Essar House, 11, K.K.Marg, PO Box No.-7945, Mahalaxmi, Mumbai-400034 having IEC Code No. 0392042312 and Central Excise Registration No. AAACE0890PXM005 (hereinafter referred to as "Noticee") have a Petroleum Oil Refinery at Vadinar, Jamkhambhalia, District-Jamnagar. EOL import various types of Crude Oil, like Heavier Crude Oil and Crude Condensate of different origins to manufacture various petroleum products like Furnace Oil, High Speed Diesel, Motor Spirit, Naphtha, LPG, Superior Kerosene Oil, Bitumen etc. which are partly exported and partly sold within India. For clearance of the imported goods, they file Bills of Entry with Customs House, Vadinar, classifying both "Crude Petroleum Oil" and "Petroleum Crude Condensate" under Customs Tariff Heading 27090000.

2. The Noticee had filed bill of entry no. F-33/07.07.2014 at Custom House, Vadinar classifying the imported products as below.

1. 55593.000 MT Iranian Heavy Crude Oil
2. 15117.000 MT Marun Khami Condensate
3. 10596.000 MT Sirri Condensate

The above products were classified under CTH-27090000 claiming benefit of exemption Noti. No.12/2012-Cus dtd.17.03.2012 (Sr.No.127) and cleared under NIL rate of duty. The Noticee had signed a Contract having reference no. PMO-MK/2062/92 dated 18.03.2014 with National Iranian Oil Company, Iran for the import of Marun Khami, and Ilam Condensate which was further amended vide Contract Reference No. PMO-MK/1318/93 dated 30.06.2014 for Sirri Condensate in place of Ilam Condensate. The subject of investigation was in respect of Sirri Condensate 10596.000 MT classified under CTH-27090000 which appeared to be Natural Gasoline Liquid (NGL) classifiable under CTH-27101220 attracting effective duty of Customs @ 20.291%.

3. Intelligence gathered by the officers of Directorate of Revenue Intelligence, Jamnagar revealed that The Noticee were showing imports of some Crude Petroleum Condensates for refining under CTH 2709 which are actually refined Petroleum Products classifiable under CTH 2710. Sub-heading Note No. 4 of Chapter 27 states that "For the purposes of sub-heading 271012 "light oils and preparations" are those of which 90% or more by volume (including losses) distil at 210°C (ASTM D 86 method)". Thus the Products obtained by undertaking processes on Crude Petroleum, which are other than those as specified in the Explanatory Note to heading 27.09 are classifiable under CTH 2710. Intelligence indicated that Sirri Condensate imported by the Noticee had characteristics of Natural Gasoline Liquid (NGL). Intelligence further revealed that Sirri Condensate imported by EOL by classifying the same under CTH 2709 was petroleum product of CTH 2710 and which has all characteristics of NGL attracting Customs duty @ 20.291%.

4. For verification of the said intelligence in respect of Sirri Condensate, the Custom House Laboratory, Kandla was requested to provide the Test Report issued by them in respects of samples pertaining to goods

imported by the Noticee under the cover of B/E No. F-33/07.07.2014. The Custom House Laboratory, Kandla forwarded the Sample Test Reports (placed at Sr. No. 1 of the RUD) which read as under:-

Sl. No.	Bill of Entry No. and Date	Description of import goods declared in the B/E	Test Report No. and Date	Test Report
01	F-33 / 07.07.2014	3) Sirri Condensate (10596.000 MT)	2307 inward dtd. 13.08.2014 issued on dtd. 30.10.2014	<p>The sample is in the form of yellowish brown volatile liquid. It is composed of mineral hydrocarbon oil having following constants-</p> <p>Flash Point - below 25°C Distillation range - 43-165°C A.P.I. Gravity - 76.2</p> <p>The sample distillation range obtained for the sample u/r is conform to the distillation range for Natural Gasoline (NGL) as per GPA 3132."</p>

5. It appeared that after initiating the inquiry, the Noticee voluntarily deposited the differential duty along with interest under protest vide Challan No. 373 dtd. 31.10.2014 amounting Rs. 11,02,15,833/- (differential duty) and No. 374 dtd. 31.10.2014 amounting Rs. 63,59,303/- (interest).

6. The import documents pertaining to the above Bill of Entry were obtained from the Customs House, Vadinar. The import documents consisting of the original Bills of Entry, copies of the Bills of Lading, Certificates of Origin, Load Port Reports, Sample Test Reports (original), IGMs etc. were provided to the DRI, Jamnagar under letter dtd.15.10.2014.

7. In view of the Sample Test Reports issued by the Custom House laboratory, Kandla in respect of import vide B/E No. F-33/07.07.2014 wherein it was clearly opined that the imported goods conform to the distillation range for Natural Gasoline (NGL) as per GPA 3132, statements of the concerned officials of M/s. Essar Oil Ltd. were recorded, which are discussed in the following paras :-

7(a)(i) Statement of Shri Rajesh Sharma, Head of the Indirect Taxation of M/s. Essar Oil Ltd. was recorded on 11.11.2014 wherein he stated that being the head of Indirect Taxation in his company he supervised, monitored and was responsible for filing of Bill of Entry, Shipping Bills and all other documentation work related to the imports and exports; he further stated that they receive import documents from their Head-office, Mumbai consisting of Bill of Lading, Load Port Analysis Report, Certificate of Origin and the Contract which are then checked up at Vadinar refinery; and based on these documents they prepare the Bill of Entry, work out the duty payable and file the same with the Custom House, Vadinar.

(ii) He stated that under B/E No. F-33/2014-15 dated 07.07.2014 the Noticee imported 55593 MT of Iranian Heavy Crude Oil, 15117 MT of Marun

Khami Condensate and 10596 MT of Sirri Condensate, which was assessed provisionally on 07.07.2014 for want of final price, quantity, and test result of the Custom House Laboratory and any other documents related to the imports. On being asked he provided copy of the Test Report of sample of the Sirri Condensate given by their in-house laboratory. He was shown the Test Result of in-house laboratory of the Noticee as presented by him and asked whether he agreed to the fact that in the guise of Condensate Crude Oil as Sirri Condensate, import of NGL was made by them. He replied that they have imported Condensate and the import documents conform to the same but as per the test result achieved in their in-house laboratory, the said consignment appears to have characteristics of Natural Gasoline Liquid (NGL).

(iii) On being asked whether the overseas suppliers/sellers for the said three consignments covered under the B/E No. F-33/07.07.2014 were same he replied in affirmative and further added that the supplier for the said three consignments under B/E No. F-33/07.07.2014 is National Iranian Oil Company, Iran; with which they have signed a Contract reference no. PMO-MK/2062/92 dated 18.03.2014 for the product Marun Khami, and Ilam Condensate; that for Iranian Heavy Crude Oil they have separate Contract with NIOC. He further stated that the Contract Reference No. PMO-MK/2062/92 dated 18.03.2014 with NIOC was subjected to amendment vide Contract Reference No. PMO-MK/1318/93 dated 30.06.2014; vide which Sirri Condensate was decided to be imported in place of Ilam Condensate. He was also asked as to how many consignments of Sirri Condensate were imported by the Noticee till date to which he replied that they have imported one consignment of Sirri Condensate and some consignments of Sirri Crude.

(iv) Shri Rajesh Sharma was also shown the Test Report No. 2307 (inward dated 13th Aug. 2014) issued on 30.10.2014, by the Joint Director, Custom House Laboratory, Kandla for the consignment of Sirri Condensate imported under B/E No. F-33/07.07.2014. The said Sample Test Result reports as under :-

"The sample is in the form of yellowish brown volatile liquid. It is composed of mineral hydrocarbon oil having following constants-

Flash Point - below 25°C

Distillation range - 43-165°C

A.P.I. Gravity - 76.2

The sample distillation range obtained for the sample u/r is conform to the distillation range for Natural Gasoline (NGL) as per GPA 3132". He was then asked whether he agreed to the fact that the Noticee had imported NGL in the guise of Sirri Condensate to which after perusing the same replied that the report confirms the sample to have characteristics of NGL.

(v) On being asked whether he agreed to the fact that the consignment of Petroleum Product declared by them under B/E No. F-33/2014-15 dated 07.07.2014 as Sirri Condensate was actually Natural Gas Liquid classifiable under CTH 2710 he replied that as per his knowledge they imported Crude Condensate declared as Sirri Condensate under B/E No. F-33/07.07.2014. He was asked whether he meant that the test results of their Sirri in-house laboratory and the Custom House Laboratory, Kandla were not acceptable to them; he stated that both the results of the said two laboratories reported

that the distillation range of the subject consignment Sirri Condensate falls between 0°C-178°C in in-house laboratory and 43-165°C in C.H. Laboratory, Kandla.

(vi) He was shown the Sub-heading Notes No. 4 of the Chapter 27 of the Customs Tariff, as per which, for the purposes of sub-heading 2710.12 "light oils and preparations" are those of which 90% or more by volume (including losses) distill at 210°C" and asked whether he agreed both this. After perusing the said sub-heading note he replied that the sub-heading note shown, qualifies the imported consignment of Sirri Condensate for classification under CTH 2710.12; however they imported Condensate which has not gone through any processes as informed by their supplier and therefore he considers the said consignment classifiable under CTH 2709.

(vii) On being told that the API Gravity of the consignment imported under B/E No. F-33/07.07.2014 reported by in-house laboratory shows to be 76.89 and by C.H. Laboratory, Kandla shows to be 76.2 which conforms to the API Gravity of NGL he replied that he was not an expert on the above issue and therefore had to check with their technical team. However, on being shown the letter dated 31st Oct. 2014 addressed to the Superintendent of Customs, Custom House, Vadinar wherein he admitted that the said consignment of Sirri Condensate imported under B/E No. F-33/07.07.2014 was having characteristics of NGL as found out in the test result of the in-house laboratory he stated that he agreed with the said letter sent from their own company M/s. Essar Oil Ltd.

7(b)(i) Statement of Shri Pradeep S. Prabhu, Head of In-House Laboratory of M/s. Essar Oil Ltd. was recorded on 13.11.2014, wherein he stated that as the head of the In-house Laboratory he ensured testing of all the samples sent to the laboratory by the Company; that samples of import and export consignments are received for testing; that internal samples of various petroleum products are also sent to the laboratory for testing from time to time; that he is heading a team of officials like area managers, supervisors, and the chemists conducting the testing on the samples; that after completion of the testing he reports the test results to the concerned section from where sample had been forwarded.

(ii) He further stated that normally he checks two parameters in case of samples of Crude Petroleum or the Crude Petroleum Condensates and those are Basic Sediments & Water Content (BS&W) and Density of the Crude; that the purpose is to see if the crude contains water and he also check the Density for purpose of ascertaining the quantity; that whenever specially directed by the company he also undertake checking of many other parameters on the samples of Crude, like Sulphur content, total acid number, distillation range etc.

(iii) On being asked what parameters were checked in the case of samples of Sirri Condensate imported through vessel MT Alert on 07.07.2014, which was sent to the laboratory he replied that on the sample of Sirri Condensate imported through vessel MT Alert, he carried out testing for density, BS & W, Sulphur, total acid number, pour point, Reid Vapour Pressure (RVP), Salt Content, Viscosity, API Gravity, Distillation range etc. and which are as under:-



Density & 15°C- 679.0 Kg/m³

API - 76.89

BS & W- Nil

Sulfur - 0.022 (Wt%)

Total Acid No.- < 0.05

RVP @ 38°C- 74 (KPa)

Salt content- 0(PTB)

Distillation range- IBP-36°C upto 95% distillation at 149°C and FBP at 178°C.

The above test results for BS & W and Density was reported to the Economic Planning and Supply (EPS) on 11.07.2014 and then for other parameters the same were reported on 10th Sept. 2014. A report duly signed by him as above for Sirri Condensate imported through vessel MT Alert was also presented.

(iv) On being asked as what was his conclusion in view of the test result as above for the import consignment of Sirri Condensate he replied that he only measure the parameters on the samples; that he cannot conclude about the product description as such; that only because description is given on the samples he can say it is Crude, Condensate or any other product; that his duty is only to check the various parameters as per requirement.

(v) On being asked can a Petroleum Crude Oil or the Crude Petroleum Condensate have the above characteristics and specifically the distillation range of 36°C to 178°C he replied that he cannot say anything on the above. On being asked who told him to check the many other parameters on the sample of Sirri Condensate he stated that Mr. Prateek Shah of Economic Planning and Supply (EPS) directed him to check the additional parameters as above.

(vi) He was also shown the Test report No. 2307 (inward dated 13th Aug. 2014) issued on date 30.10.2014, by the Joint Director, Custom House Laboratory, Kandla for the consignment of Sirri Condensate imported under B/E No. F-33/07.07.2014. The said Sample Test Result report was under :-

"The sample is in the form of yellowish brown volatile liquid. It is composed of mineral hydrocarbon oil having following constants-

Flash Point - below 25°C

Distillation range - 43-165°C

A.P.I. Gravity - 76.2



The sample distillation range obtained for the sample u/r is conform to the distillation range for Natural Gasoline (NGL) as per GPA 3132". He was asked whether he agreed to the fact that EOL had imported actually NGL in the guise of import of Sirri Condensate he evaded direct answer and stated that he was unable to comment on that.

7(c)(i) Further statement of Pradeep S. Prabhu, Head of In-House Laboratory of M/s. Essar Oil Ltd. was recorded on 14.11.2014 (placed at Sr. No. 6 of the RUD), wherein he stated as follows.

(ii) On being asked whether the distillation range of any Crude Oil or Condensate be lower than 200°C to which he replied that he has not carried out any testing in the in-house laboratory of the Noticee, of any Crude Oil or Condensate having distillation range lower than the 200°C and therefore would not be able to say anything in this matter. He was also asked whether he could name any Crude Oil of any origin or area and also any Crude Condensate of any origin which has API around 76 and distillation range around IBP- 36°C and FBP - 178°C he replied that he doesn't know any Crude Oil or any Condensate Crude having above characteristics as such.

8. It appeared from the investigation carried out by the DRI in respect of import of Siri Condensate by the Noticee under B/E nos. F-33/07.07.2014 that the same was not qualifying for classification under CTH 27090000 as claimed under the bill of entry, as the characteristics emerged from the sample test reports of Customs laboratory, Kandla as well the in house test report done by the laboratory of the Noticee, indicate the imported consignment to be NGL classifiable under CTH-27101220.

9. It further appeared that the Noticee were importing various kinds of Crude Petroleum Oil from different sources/ origin for their refinery at Vadinar and all such imports were taking place at Vadinar Port. On arrival of the vessel at SPM (Single Point Moorings) of Vadinar Port's anchorage, the officers of Customs were boarding the vessel along with the officials of the Noticee as deputed for purpose of completing the Custom's formalities including the drawl of representative samples. The samples were drawn from the importing vessels by the Customs officers and the Noticee's officials in the presence of the accompanying independent surveyors of the importer & overseas supplier. The representative samples of such import goods so drawn by Customs in the presence of the authorized representative of importer and surveyor were subsequently sent to the Custom House Laboratory, Kandla for analysis thereof. On receipt of the Import Documents pertaining to the import consignments from their Head Office at Mumbai, Shri Dewang A. Mankad, DGM, M/s. Essar Oil Ltd. filed the Bill of Entry. On presentation of the Bill of Entry by the Noticee, the same was assessed provisionally by the Customs in terms of Section 18 of the Customs Act, 1962 for want of original import documents, ascertainment of actual quantity of import goods viz. Crude and the Sample Test Report to be received from the Custom House Laboratory, Kandla. Thereafter, all the issues like final receipt/ landed quantity of import goods, the Sample Test Report, receipt of final price once settled, then the B/E was finalized by the Customs.

10. By virtue of Noti. No. 12/2012-Cus dtd. 17.03.2014 (Sr. No. 127) the import duty on Crude Oil falling under Customs Subheading 27090000 attracts nil customs duty except the NCCD and the Education Cess & Higher Education Cess. The above mode of levy of the Customs Duty was adopted by the Custom House, Vadinar on import of Crude Petroleum Oil and Crude Petroleum Condensate classifying both under CTH 27090000 as appeared from the Bills of Entry obtained therefrom.

11. However, in view of the foregoing Paras, it appeared that the Noticee filed Bill of Entry Nos. F-33/07.07.2014 with Custom House, Vadinar purportedly for the import of Crude Oil and the descriptions and quantities were as under:-



Sr. No.	B/E No. & Date	Description of Import goods as per B/E	Quantity	Classified under CTH
01	F-33/07.07.14	(i) Iranian Heavy Crude Oil (ii) Marun Khami Condensate (iii) Sirri Condensate	55593.00 MT 15117.00 MT 10596.00 MT	27090000

The above imported goods were classified under CTH 27090000. The bill of entry was provisionally assessed by the Customs by extending benefit of Noti. No. 12/2012-Cus dtd.17.03.2012 (Sr. No. 127), charging only the NCCD and EDN Cess & SHE Cess on NCCD. Based on the provisional assessment done, the Noticee cleared the imported goods. The representative Samples drawn by the Customs from the above import consignment were sent to the Custom House Laboratory, Kandla for chemical analysis of the sample. The Sample Test Reports issued by the Custom House Laboratory, Kandla on the basis of analysis done on the sample were as under:-

Sr. No.	B/E No./Date and description of goods	Test Report Reference no./Date	Sample Test Report of Custom House Laboratory, Kandla
01	F-33/07.07.14 Sirri Condensate (10596.000 MT)	2307 inward dtd.13.08.2014 issued on dt.30.10.2014	The sample is in the form of yellowish brown volatile liquid. It is composed of mineral hydrocarbon oil having following constants- Flash Point - below 25°C Distillation range - 43-165°C A.P.I. Gravity - 76.2 The sample distillation range obtained for the sample u/r is conform to the distillation range for Natural Gasoline (NGL) as per GPA 3132."

Further, it appeared that the Noticee also carried out in-house laboratory test on the imported goods and the result achieved were as under.

Density @ 15°C- 679.0 Kg/m³

API - 76.89

BS & W- Nil.

Sulfur - 0.022 (Wt%)

Total Acid No.- < 0.05

RVP @ 38°C- 74 (KPa)

Salt content- 0(PTB)

Distillation range- IBP-36°C upto 95% distillation at 149°C and FBP at 178°C.



12. Gas Processors Association (GPP) of USA is the standard Natural Gasoline Specification and Test Methods accepted all over the world through ASTM. As per the GPP Natural Gasoline is defined for commercial purpose by the following:-

Product Characteristics

Specification

Test Method

Reid Vapour Pressure	10-34 Pounds	ASTM DP-323-82
Percentage evaporated at 140°F	25-85	ASTM D-216-77 (82)
Percentage evaporated at 275°F	not less than 90	ASTM D-216-77 (82)
End point	not more than 375°F	ASTM D-216-77 (82)
Corrosion	not more than classification 1	ASTM D-130-80
Colour	not less than plus 25 (Saybolt)	ASTM D-156-82
Reactive sulphur	Negative, "sweet"	GPA 1138

As per Wikipedia definition Natural Gasoline is a natural gas liquid with a vapour pressure intermediate between natural gas condensate (drip gas) and liquefied petroleum gas and has a boiling point within the range of gasoline. The typical gravity of natural gasoline is around 80 API.

13. In view of the Test Reports of the Chemical Examiner, Custom House Laboratory, Kandla, and the in-house laboratory test report of the Noticee, it appeared that the imported goods i.e. 10596.000 MT of Sirri Condensate under B/E F-33/07.07.2014 was having the characteristics of NGL and merit classification under CTH-27101220 on the following parameters:

Parameters	Kandla Chemical Examiners Report	In-house test report of The Noticee	Wikipedia definition and (GPP) of USA
API	76.2	76.89	80
Distillation Range	43-165°C	0-178°C	--
Reid Vapour Pressure	--	@ 38°C- 74 (KPa)	10-34 pounds
Sulphur	--	0.022 (Wt%)	Negative, "sweet"

14. Thus, it appeared from the above that the imported goods of Siri Condensate covered under Bills of Entry No. F-33/07.07.2014 possessed the characteristics of NGL and not of the Crude Condensate as declared by the importer in the Bill of Entry at the time of import. The fact is amply clear from the in house test result of the Noticee as well as Chemical Examiner, Kandla test result and further clarification obtained from the Gas Processors Association (GPP) of USA in this regard.

15. The sub-heading 2710 has been divided in four parts (*up to 6 digits*) i.e. 271012, 271019, 271091 and 271099. The goods falling under 271012 i.e. Light Oils and preparations are the goods of which 90% or more by volume (including losses) distil at 210°C. However, the distillation range provided by the Chemical Examiner, Custom House, Kandla and also the in house Test Report supplied by the Noticee shows the range between 43-165°C and 36-149°C respectively which shows that the impugned goods is NGL and classifiable under CTH-27101220.

16. From the facts and the circumstances of the case as enumerated in the foregoing Para, it appeared that -

a) The Noticee had imported the processed product of the Petroleum Crude Oil i.e NGL falling under CTH 27101220, at Vadinar Port and filed B/E Nos. F-33/07.07.2014 with Custom House, Vadinar for clearance of the same by mis-declaring it as Sirri Condensate and classifying the same wrongly under CTH 27090000.

b) The import consignment was not confirming to the characteristics of the Crude Condensate which was later confirmed in the test reports to be Natural Gasoline Liquid (NGL) falling under CTH 27101220 as reported by the Chemical Examiner of CRCL, Kandla. On being shown the Chemical Test Report of Kandla and also the Sub-heading Note 4 of the Chapter 27, Shri Rajesh Sharma, Head of Indirect Taxation of The Noticee he stated that the test report as well as the Sub-heading Note 4 of Chapter 27 confirms the sample to be of NGL.

c) Further, the Noticee vide letter dtd. 31.10.2014 addressed to the Superintendent of Customs, Vadinar had themselves stated that the parameters of the imported consignment i.e. Sirri Condensate are not in line with the Crude Condensate and the same appeared to be in line with the Natural Gasoline Liquid (NGL) classifiable under CTH-27101220, therefore would like to pay differential duty along with interest voluntarily under protest.

d) Shri Pradeep S. Prabhu, Head of in-house laboratory of the Noticee who conducted the test of the imported consignment was specifically asked whether Petroleum Crude Oil or Crude Petroleum Condensate have the distillation range of 36°C to 178°C but he evaded direct answer and showed ignorance. Similarly on being shown the test report of Chemical Laboratory, Kandla he had no explanation and gave evasive reply. He was also asked whether he could name any Crude Oil or Crude Condensate of any origin which has API around 76 and distillation range around 36°C to 178°C to which he stated that he doesn't know any of them having the above characteristics.

17. It appeared from the above discussed facts that the Noticee had cleared 10596.000 MT of Natural Gasoline Liquid (NGL) falling under CTH 27101220, valued at **Rs. 55,79,23,078/-** by way of willful mis-declaration in the guise of Sirri Condensate classifying the same under CTH 27090000 in the Bills of Entry Nos. F-33/07.07.2014. Therefore, the classification of the impugned goods declared by the Noticee under CTH 27090000 was wrong and liable to be re-classified to the appropriate classification i.e. under CTH 27101220, as discussed above. By way of willful mis-declaration as explained above, the Noticee have evaded the Customs Duty amounting to Rs. 11,02,15,833/- (as per Duty Calculation Sheet at Annexure-A to this SCN) which was otherwise payable on the goods actually cleared in the guise of "Sirri Condensate" and hence the said amount of Customs Duty is liable to be recovered from EOL under Section 18(2) of the Custom Act, 1962/the bond executed during the provisional assessment/Section 28 of Customs Act, 1962 along with applicable interest at the prescribed rate under Sections 18(3) *ibid*.

18. It appeared that the Noticee had imported 10596.000 MT of Natural Gasoline Liquid (NGL), classifiable under CTH 27101220 and filed B/E No F-33/07.07.2014, mis-declaring the description and also mis-classifying the cargo as "Sirri Condensate" and classifying the same under CTH 27090000 in the Bill of Entry to evade the payment of appropriate amount of Customs Duty leviable thereon and hence by suppressing the correct description and mis-classifying the imported goods the Noticee had contravened the provisions of Section 46 of the Customs Act, 1962 and rendered the

impugned goods liable to confiscation under Section 111(m) of the Customs Act, 1962.

19. It appeared that the said act of willful mis-declaration of description of "Natural Gasoline Liquid (NGL)" as "Sirri Condensate" and falsely classifying the same under CTH 27090000 was done by the Noticee with an intention to evade payment of appropriate duty leviable on the impugned imported goods covered under CTH 27101220. By the act of mis-declaration of description and mis- classification of goods in the Bill of Entry No. F-33/07.07.2014, EOL had rendered the "10596.000 MT of "Natural Gasoline Liquid (NGL)" liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962. For the said act of omissions and commissions, on the part of EOL for evasion of duty which had rendered the impugned goods liable to confiscation under Section 111(m) of the Customs Act, 1962, they have rendered themselves liable for penalty under Sections 114A and 112(a) of the Customs Act, 1962.

20. The above act of omission and commission culminated into issuance of Show Cause Notice No. VIII/10-533/Commr./O&A/2015 dated 15-02-2016, asking the Noticee to show cause as to why:

(a) the classification of the goods imported i.e 10596.000 MT declared as Sirri Condensate and wrongly claimed by them under CTH 27090000 in Bill of Entry No. F-33/07.07.2014 should not be rejected and appropriately reclassified as Natural Gasoline Liquid (NGL) and re-assessed under CTH 27101220 and the benefits claimed under Notification No. 12/2012-Cus dtd. 17.03.2012 (Sr. No. 127) should not accordingly be denied.

(b) 10596.000 MT of Natural Gasoline Liquid (NGL) reclassified under CTH 27101220, valued at Rs. 55,79,23,078/-, cleared illegally by them under B/E No. F-33/07.07.2014 should not be confiscated under Section 111 (m) of the Customs Act, 1962. However, as the goods have been cleared on the Provisional duty bond and are not available for confiscation, why fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act, 1962.

(c) The Bill of Entry F-33/07.07.2014 should not be finally assessed under CTH-27101220 and the Customs differential duty amounting to Rs. 11,02,15,833/- (Rupees Eleven Crores Two Lacs Fifteen Thousan Eight Hundred Thirty Three Only) on 10596.000 MT of Natural Gasoline Liquid (NGL) as detailed in Annexure-A to this notice, should not be recovered from them under Section 18 (2) of the Customs Act, 1962/the bond executed during the provisional assessment/Section 28 of Customs Act, 1962.

(d) Interest should not be recovered from them on the said differential Customs duty, as at (c) above, under Sections 18(3) of the Customs Act, 1962, read with Section 28AA of the Customs Act, 1962.

(e) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962 for the reasons discussed above.

(f) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962 for the reasons discussed above.



(g) The amount of duty of Rs. 11,02,15,833/- paid vide Challan No. 373/31.10.2014 and interest of Rs. 63,59,303/- paid vide Challan No. 374/31.10.2014 should not be appropriated against duty and interest.

DEFENCE REPLY:

21. The Noticee had vide their letter dated 06-06-2016 made their submissions, wherein they have stated that the SCN is totally vague as while it seeks to classify the Sirri condensate imported by it as Natural Gasoline under CTH 2710 1220 on the basis of the Chemical Examiner's report to conform to the distillation range for Natural Gasoline as per GPA 3132; that it may be pertinent to note that the Chemical Examiner has, in its report, nowhere stated that the product is other than crude petroleum oil as declared by it or that it merits classification as Natural Gasoline under CTH 27101220 as has been made out by the department; that the Chemical Examiner has very rightly refrained from giving his opinion regarding the exact classification of condensate as he was fully aware that merely because one of the parameter of condensate imported by it was common with that of Natural Gasoline was common would not lead an inference that the product is to be considered as natural gasoline as it is a matter of record as brought out in earlier investigations where opinion/ statement of Chemical Examiner and Dy. Chief Chemist were recorded that the physio chemical properties and parameters of crude condensate overlapped with physio chemical characteristics and parameters of some refined / processed products of CTH 2710 and the two products cannot be distinguished on the basis of basic parameters like ash content, flash point, sediment content, water content, acidity, distillation range etc. and that in such circumstances it becomes imperative to call for load port report, origin certificate or supplier's certificate which are to be matched with laboratory result in order to confirm the goods; that in view of the overlapping nature of the physio chemical properties and parameters for crude condensate and refined processed products, it was imperative for the investigating officers to call for the load port report, supplier's certificate, quality report and to carryout investigations at the supplier's end to find out the correct nature of the product supplied; that in the absence of the same merely because the distillation range or the API gravity matched with that of Gasoline, that by itself will not render condensate imported by it as Natural Gasoline especially when all the relevant documents like Bill of Lading, Invoices, Quality report, Supplier's certificate of origin, contract, shipment report described the product as condensate and the price negotiated was for condensate and not a refined product; that therefore the proceedings initiated by the SCN are liable to be dropped.

21.1 The Noticee further submitted that the issue regarding classification of condensate, has already been decided by the Hon'ble Tribunal in its favour vide its order No. A/123/12312/2014 dated 18.12.2014 as reported in 2015 (326) ELT 310 wherein it has been conclusively held that when products of chapter heading 2709-2710 have similar characteristics/ compositions, then the only way to entertain the contrary classifications adopted by the appellant thereof was to extend the investigations to the place of origin of the goods; that the Hon'ble tribunal further observed that in the case before it, no enquiry seems to have been made with the supplier which is under Govt. of Qatar and it was also not the

case of the Revenue that the customs document provided by the appellant at the time of clearances were fake or forged by deliberately giving the wrong description; that the above Tribunal decision is applicable on all fours to the present case as the goods in question have been imported from National Iranian Company which is the Government of Iran undertaking and the accompanying documents which are all third party documents described the product as condensate; that there is not even a whisper, leave alone a suggestion/ allegation in the SCN that these third party documents are fake or forged; that it is also not departments case that the goods are undervalued; that there is also no evidence that supplier of goods has carried out any process on the goods, whereas on the contrary the supplier's certificate clearly states that no process has been undertaken at its end and no evidence has been brought out to establish that goods were processed at supplier's end; that it stands beyond reason as to why will it re-refine the products which as per SCN are already refined; that therefore the tribunal's decision applies on all fours to its case and the entire proceedings are liable to be dropped.

21.2 The Noticee further submitted that during the course of investigations undertaken by the DRI in the year 2010 in connection with import of condensate, the Chemical Examiner has, in his opinion, under cover of his letter dated 5.8.2010 very categorically stated that since the parameters are overlapping, no amount of testing could determine conclusively whether the product is crude condensate or refined petroleum condensate; that the Chemical Examiner has, in his opinion, relied upon the minutes of the meeting of the World Customs Organization Harmonizing System Committee wherein the said committee after due deliberations by experts from different countries came to conclusion that the Chemical composition and physical properties were so similar and overlapping that there was no practical way of differentiating between two groups of products; that this opinion of the Chemical Examiner clearly shows that merely based on the testing of product, it cannot be said whether the same was petroleum condensate or refined petroleum condensate and the other document such as supplier's certificate etc. are to be referred to for deciding true characteristics of the products and therefore, the proceedings initiated by the SCN are accordingly liable to be dropped.

21.3 The Noticee further submitted that as stated above, the classification of condensate petroleum crude oil has been the subject matter of deliberation by the World Customs Organization and in fact, the matter was examined by its Review Sub-Committee at its 18th session which thereafter referred the matter to the Scientific Sub-Committee for advice inter alia on the following points, i.e : "(a) appropriate definition or description of "Natural Gas Condensate" and "(b) how the product could be distinguished from similar synthetic product of Heading 2710."; that the matter was thereafter examined by the said sub-committee but it also could not reach to any definite conclusion looking into the complexities of the issues involved and the overlapping nature of its various characteristics and ultimately concluded that there was almost no practical way of distinguishing between the two groups of products. The matter was ultimately submitted to Harmonized System Committee which was entrusted with the job of providing a suitable definition of the gas condensate as is evident from the Harmonised System Committee, Brussels 24th session report dated 8.10.1999 also referred to with approval, extracted and relied upon by the Hon'ble Tribunal

in Para 6.3 of its order dated 18.12.2014 referred to above; that after due deliberations and recommendations, the Explanatory Notes of HSN were amended in the year 2002 wherein Chapter Heading 27.09 following addition was made : *"The heading also covers gas condensate i.e. crude oil obtained during the stabilization of natural gas immediately upon its extraction..."* that once it has been held by International Organization like World Customs Organization that physio chemical parameters of crude petroleum oil, petroleum condensate and petroleum products of CTH 2710 are difficult to differentiate due to overlapping nature and that there is almost no practical way of distinguishing between the two groups of products and once Dy. Chief Chemist in its correspondence with DRI has also opined that supplier's certificate is an important document in such cases, the parameters of which are to be matched with that of lab result in order to conform the goods, no inference can be drawn from the Chemical Examiner's report without calling for any literature or quality report or inspection agency report from supplier and the inference drawn by the department is patently wrong and unsupported by any other evidence; that the DRI officers had required it vide its letter dated 30.10.2014 to submit copies of bill of lading, invoice, load port report, contract, discharging plan etc. which was duly submitted but has now decided the classification without any reference to such reports; that in its case the supplier has given a clear certificate that the Sirri condensate supplied by it are crude oils obtained from stabilization of natural gas immediately upon its extraction and that condensate is natural, independent stream coming from the fields and do not undergo any other process; that in spite of categorical and unequivocal certificate from the supplier, Siri condensate imported by it can never be considered as Natural Gasoline as is being proposed in the SCN and therefore, the proceedings initiated are, therefore, liable to be dropped.

21.4 The Noticee further submitted that the provisions of Section 18(2) of the Customs Act, 1962 under which the differential duty is recoverable after finalization of provisional assessment and those of Section 28 and in particular of Section 28(4) ibid are mutually exclusive; that the provisions of Section 28 are invocable only when there has been some non-levy or short levy in cases where final assessment has already taken place and such non levy or short levy can be recovered within the time limit prescribed under sub-section (1) of Section 28 of the Customs Act, 1962 with reference to the relevant date under Explanation to Section 28; that the relevant date in case of provisional assessment is when any short levy or non-levy is detected after adjustment of duty as a consequence of final assessment under Section 18 of the Customs Act, 1962; that the provisions of Section 28 of the Customs Act, 1962, therefore can come into play only when there is any short-levy or non-levy which is detected after provisional assessment is finalized and adjustment of duty has already been taken place as contemplated under Section 18(2) of the Customs Act, 1962; that Section 28 of the Customs Act, 1962 has, therefore, no application in respect of provisional assessment as such, as any short-levy or non-levy has yet to take place and relied upon the following case laws: (a) Finolex Industries Ltd. V CC reported in 2003 (159) ELT 949 (Tri); (b) Sterlite Optical Technologies Ltd. v. CC, Mumbai - 2003 (55) RLT 721 (T-Mum.); (c) Radiant Acrylic v. CCE, Jaipur - 2005 (66) RLT 778 (Tri.-Del.); (d) Commissioner of C. Ex. & Customs, Mumbai v. I.T.C. Ltd. reported in 2006 (203) E.L.T. 532 (S.C.) and (e) Sraikella Glassworks Works Pvt. v. CCE Patna reported in 1997 (91) ELT 497 (S.C.).

21.5 The Noticee further submitted that it can never be charged with misclassification of the goods as this was a case of provisional assessment of goods where the assessments were to be finalized on the basis of test report from the Chemical Examiner and original import documents; that the import of crude oil is always subject to test and the assessments are finalized in accordance with the test results; that it is not department's case that chemical parameters were mis-declared; that the Cargo Manifest, Certificate of Origin issued by NIOC, Certificate of quantity & quality issued by NIOC, Bill of lading filed by it along with the B/E specifically indicated the API gravity to be 77.2 and has been so found on test by Chemical Examiner also; that even then the SCN proposes to treat the imported product as Natural Gasoline on the basis of API gravity which was already declared as 77.2; that in view of this, they cannot be charged with mis-declaration of the description of the goods, once the said goods conform to the description as given in the suppliers' documents, load port documents and its own contract and the API gravity was correctly declared by it; that therefore the the SCN is totally untenable and without any basis and is accordingly liable to be dropped. Further, as stated above, once the goods have been correctly described in all its documents along with API gravity, it cannot be charged with any mis-declaration and consequently the goods cannot be confiscated under Section 111(m) of the Customs Act, 1962 and the proposal in the SCN in this regard is liable to be dropped.

21.6 The Noticee submitted that once the goods cannot be confiscated, as brought out above, the question of imposing any fine in lieu of confiscation does not arise; that the goods cannot be confiscated under Section 111 (m) of the Customs Act, 1962, it is his submission that even assuming that the goods could have been held liable to confiscation, they could still have neither been confiscated nor redemption fine be imposed as these goods were never available for seizure/confiscation at the time of investigations which were initiated after the goods had already been cleared and relied upon the cases, Punjab & Haryana High Court in the case of CCE Vs. Raja Impex Pvt. Ltd. reported in 2008 (229) ELT 185 (P&H); Bombay High Court decision in the case of CCE Vs. Finesse reported in 2009 (248) ELT 122 (Bom) as upheld by the Supreme Court as reported in 2010 (255) ELT A120-SC; Commissioner of Customs Vs. Sudarshan Cargo reported in 2010 (258) ELT 197 (Bom); that in view of above, the proposal in the SCN to impose redemption fine in lieu of confiscation is totally untenable and accordingly liable to be set aside.

21.7 The Noticee submitted that once no differential duty is required to be paid by it under Section 18(2) of the Customs Act, 1962 as the product has been correctly classified under CTH 2709 eligible for exemption under Notification 12/2012-Cus dated 17.3.2012 (Sr. No. 127), the question of charging any interest under Section 18(3) read with Section 28AA of the Customs Act, 1962 does not arise. Further, that the proposal in the SCN to impose penalty both under Section 112(a) as well as under Section 114A is totally illegal as section 114A itself provides that once a penalty is imposed under this Section, no penalty will be imposable under Section 112. In view of this, the entire proceedings initiated by the SCN are liable to be dropped as the SCN fails to spell out the exact Section under which it wants to impose penalty; that the penalty under Section 112(a) can be imposed on a person who in relation to any goods does or omits to do any act or omission which would render such goods liable to confiscation under Section 111 or abets



doing or omission of such act, whereas in the present case, as brought out above, it has neither done any act or omitted to do any act which has rendered the goods liable to confiscation as there has been no mis-declaration on its part in respect of the description of the goods, and therefore, a penalty under Section 112(a) cannot be imposed; that once the assessments were provisional and were yet to be finalized, a demand could not have been raised under Section 28 of the Customs Act, 1962 and duty was required to be adjusted in terms of Section 18 (2) of the Customs Act, 1962. A demand under Section 28 can be raised only after the assessments are finalized and after such finalization, the duty paid and adjusted is found to be short levied, non-levied etc. either on account of misinterpretation, mistake etc. or on account of fraud, suppression etc. But the same cannot be raised under Section 28 while finalizing the provisional assessment. In view of this, penalty could not have been imposed under Section 114 A of the Customs Act, 1962 as this mandatory penalty can be imposed only in those cases where the duty has been determined under Sub-section (8) of Section 28 of the Customs Act, 1962. Since in this case and in all cases provisional assessment, the differential duty is determined not under Section 28(4) but under Section 18 (2) of the Customs Act, 1962 at the time of finalization of provisional assessment, a penalty Section 114 A of the Customs Act, 1962 cannot be imposed.

DISCUSSIONS & FINDINGS:

22. I find that the present show cause notice bearing No. VIII/10-533/Commr./O&A/2015 was issued by the Commissioner of Customs (Preventive), Jamnagar on 15-02-2016, which was subsequently transferred to call book on 24-11-2016 pending adjudication of the case. I find that in similar case of the same Noticee i.e. M/s. Essar Oil Ltd., the Noticee had filed Bill of Entry No. F-91 dated 28-12-2009 for import of 61626.485 MTs. of 'Qatar LSC Crude Oil', classifying them under CTH 2709. Test Report dated 15-01-2010 of the Chemical Examiner, Customs, Kandla confirmed the goods in question as 'other than Petroleum Crude Oil' therefore classifiable under CTH 2710, and simultaneously called for further product literature from the Noticee. Subsequently, the Chemical Examiner, Customs, Kandla had vide his letter dated 15-06-2010 opined that the product to be 'Crude Petroleum Condensate' classifiable under 2709. However, the Chemical Examiner, Customs, Kandla had vide his letter dated 05-08-2010, issued further clarification, again classifying the goods in question under CTH 27101990. The Show Cause Notice dated 16-08-2010 issued to M/s. Essar Oil Ltd. for intended mis-classification, was adjudicated by the Commissioner of Customs (Preventive), Jamnagar vide Order in Original No.11/Commissioner/2012 dated 28-02-2013 confirming the demand. The Noticee filed an appeal before the CESTAT and the CESTAT allowed the appeal of the Noticee vide Final Order No.A/12311-12312/2014-WZB/AHD dated 18-12-2014, reported in [2015(326) ELT 310 (Tri. Ahmd)]. The department filed Civil Appeal before the Hon'ble Supreme Court against the above referred order of the appellate authority, awaiting decision. Therefore, the present show cause notice was transferred to Call Book. Now, since the case has been decided by the Hon'ble Supreme Court vide order dated 23-01-2024, the present case is retrieved from the Call Book and taken up for the purpose of adjudication.



23. I have carefully gone through the records and facts of the case, including the charges in the SCN and the rival submissions made by the Noticee. I find that the precise issue to be decided in the present show cause notice is whether the goods viz. 'Siri Condensate', particularly '**Crude Condensate**' is classifiable under CTH 27090000, as classified by the Noticee, or under CTH 27101220, as alleged by the department since it possess the characteristics of Natural Gasoline Liquid (NGL), based on the test report of Chemical Examiner, Customs Laboratory, Kandla. I also, find that the similar issue in another case was challenged in the CESTAT by the Noticee against the Commissioner of Customs, Jamnagar's Order in Original No.11/Commissioner/2012 dated 28-02-2013.

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

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

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

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

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

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

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

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

27.10	PETROLEUM OILS AND OILS OBTAINED FROM BITUMINOUS MINERALS, OTHER THAN CRUDE; PREPARATIONS; NOT ELSEWHERE SPECIFIED OR INCLUDED, CONTAINING BY WEIGHT 70% OR MORE OF PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS, THESE OILS BEING THE BASIC CONSTITUENTS OF THE PREPARATIONS; WASTE OILS.
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Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than waste oils;"

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

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

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

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



"Natural gas condensates

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

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

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

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

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

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

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

8. Two statements dated 6-7-2010 and 29-6-2010 of Dr. Gyan Prakash Sharma, Chemical Examiner Grade-I, Kandla were also recorded by the investigation to clarify the conflicting opinions given by the Chemical Examiner. It is observed from answer to Q. No. 3 in the statement dated 6-7-2010 and answer to Q. No. 1 of statement dated 29-6-2010 that Chemical Examiner was aware of the overlapping and similar nature of Crude Gas Condensate of CTH 2709 and similar synthetic products of CTH 2710. In the event of conflicting opinions appellant was clearly justified in asking for the cross-examination of the Chemical Examiner which was rejected by the adjudicating authority. It is observed from the judgments relied upon by the adjudicating authority to reject the cross-examination, as discussed in Para 33.2 of the OIO, dated 28-2-2013, that none of them says that cross-examination in all cases should be denied. In the relied upon case law of Jagdish Shankar Trivedi v. CCE, Kanpur - 2006 (194) E.L.T. 290 (Tri.-Del.) the person mentioned in Supreme Court's extracted passage, whose cross-examination was asked for, was an informer. In case of anti-smuggling/anti-evasion cases name/identification of informer is always protected. In other relied upon case, it was never said by any court that cross-examination should be invariably rejected. Rather most of the judgments relied upon by the adjudicating authority say that request of cross-examination has to be seen with respect to facts of each case. In the present proceedings the report, opinion and statements of the chemical examiner are the only evidences with the Revenue to say that imported goods are required to be classified under CTH 2710. Therefore, adjudicating authority was not right in rejecting the cross-examination of the chemical examiner.

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

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

It is seen from the above that Hon'ble Apex Court has also observed that there could be a situation where report of the Chemical Examiner is palpably wrong. In the present case we observe that chemical examiner has given conflicting opinions, therefore, the same can be questioned. The facts of the case before the Apex Court were thus different than the facts and circumstances of these proceedings. In the case of Hindalco Industries Limited v. CCE, Allahabad (supra), Hon'ble Allahabad High Court only observed that if assessee is not satisfied with the analysis report he can ask for retest. In the present case, appellant is not agitated with the physico. Chemical analysis made by the Chemical Examiner but is aggrieved with the opinions given by him in the classification of the imported goods. It is now a settled proposition of law that a chemical examiner can give opinion on the chemical nature of the goods tested but cannot suggest whether a 'Gas Condensate' imported by the appellant will be



classifiable under 2709 or 2710. The international authorities on classification of 'Crude Gas Condensate' has expressed concern and confusion over the difficulty in distinguishing these products of CTH 2709 from similar synthetic products of CTH 2710. When products of CTH 2709 and 2710 have similar characteristics/compositions then the only way to entertain a contrary classification adopted by the appellant, was to extend the investigation to the place of origin of the goods. No such enquiry seems to have been made with the supplier which is owned by Govt. of Qatar. It is also not the case of the Revenue that Customs documents provided by the appellant at the time of clearance are fake or forged by deliberately given a wrong description. Appellant has argued that the price at which the 'Gas Condensate' is imported tallies with the crude rates as per the established journals of the imported products. There is no evidence on record to indicate that imported goods were of refined category falling under CTH 2910 which fetched higher value in international oil market. Rather there is no case that the imported goods are undervalued. It is also difficult to comprehend that the present importer will bring refined products for re-refining of the same again. It is not the case of the Revenue that appellant has sold the imported goods as such. Nothing was brought on record that non-aromatic constituent of the imported goods was more than aromatic constituents, by way of a chemical test report, as required under Chapter Note 2 of Chapter 27 of the Customs Tariff Act. There is also nothing on record that the supplier of imported goods has done any major processes on the natural product other than those specified in HSN explanatory notes under HSN Heading No. 27.09

and, allowed the appeal filed by the Noticee.

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

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

27. I also find it relevant to comprehend the findings of the CESTAT regarding the report of the Chemical Examiner that a chemical analyst dealing with physico chemical testing of petroleum products impulsively could not have said in his report that the goods are 'other than Petroleum Oil' and simultaneously asking for the literature/related documents, when internationally it is accepted that it is difficult to distinguish 'Gas Condensates' of CTH 27.09 and similar synthetic products of CTH 27.10. Also, when products of CTH 2709 and 2710 have similar characteristics/compositions then the only way to entertain a contrary classification adopted by the appellant, was to extend the investigation to the place of origin of the goods. In the present case also, I find that no enquiry seems to have been made with the supplier M/s National Iranian Oil Company, Iran (NIOC), a government-owned National Oil and Natural Gas producer under the direction of the Ministry of Petroleum of Iran, but on the contrary I find from the records that the Noticee has provided a certificate



bearing No. PMO-MK/1715/93 dated 29-10-2014 issued by NIOC, marked as Annexure-C to their defense submission dated 06-06-2016, wherein the supplier has declared that Siri "Condensate, being supplied by NIOC are Crude oils obtained from the stabilization of natural gas, immediately upon its extraction. This Operation consists of extracting the condensable hydrocarbon contained in the Wet natural gas, mainly by cooling and depressurization. The condensate is a natural, independent stream coming from the fields and do not undergo any other process.", which is in consonance with the parameters mentioned in Para 27.09 of the Explanatory Notes, Fourth Edition (2007), Volume-1, issued by the World Customs Organization, and referred in CESTAT's order discussed in paras supra. I find that it is not the case of the department that Customs documents provided by the Noticee at the time of clearance were fake or forged by deliberately given a wrong description. I also find force in Noticee's contention that the price at which the 'Gas Condensate' is imported tallies with the crude rates as per the established journals of the imported products and there was no evidence on record to indicate that imported goods were of refined category falling under CTH 2910 which fetched higher value in international oil market, nor a case that the imported goods were undervalued.

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

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

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

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

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



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

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

30. I find that in view of the discussions and findings by the Tribunal holding the goods i.e. '**crude condensate**' rightly classifiable under CTH 2709 instead of CTH 2710 as alleged by the department, the endorsement by the Hon'ble Supreme Court to the finding of the Tribunals, dismissing the appeal of the department, and reliance placed by me in the case cited herein above, I am of a considered view that the 10596.000 MT of '**Sirri Condensate**' imported by the Noticee M/s. Essar Oil Ltd., Khambhalia, vide Bill of Entry No. F-33 dated 07.07.2014, is rightly classified under CTH 27090000 and I hold accordingly.

31. In view of the above discussion and findings, I pass the following order:-

ORDER

I drop the proceedings initiated vide Show Cause Notice No. VIII/10-533/Commr./O&A/2015 dated 15-02-2016 against the Noticee M/s. Essar Oil Ltd., PO Box No.24, District - Dev Bhumi Dwarka, Pin - 361 305.

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


(Dhirendra Lal)
Commissioner

F. No. VIII/10-533/Commr./O&A/2015

Date : 10-09-2024

BY Speed Post A.D/ E-MAIL.

To

M/s. Essar Oil Ltd.,
PO Box No.24,
Head P.O Khambhalia,
District - Dev Bhumi Dwarka,
Pin - 361 305

Copy submitted to:

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

