आयुक्त, सीमा शुल्क का कार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS
न्यू कस्टम हाउस, बालाजी मंदिर के पास, न्यू कांडला 370210
NEW CUSTOMS HOUSE, NEW KANDLA-370210
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DIN: 20260571ML00006126D8

A	**FILE NO.**	GEN/ADJ/ADC/349/2023-Adjn-O/o Commr-Cus-Kandla
B	**OIO NO.**	**KDL/ADC/VS/ 16 /2025-26**
C	**Passed by**	**VISHWAJEET SINGH, COMMISSIONER (in-situ), CUSTOMS HOUSE, KANDLA.**
D	**DATE OF ORDER**	**07.05.2026**
E	**DATE OF ISSUE**	**07.05.2026**
F	**SCN NUMBER & DATE**	SCN F. No. S/15-01/SIIB/Vishv/2018-19 dated 30.01.2023
G	**Noticee / Party / Importer**	M/s. Vishveshwar Oil & Lubricants Pvt Ltd, F-138, Gali No.5, Pandav Nagar, Patparganj, Delhi- 110091

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा128 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),
7वीं मंजिल, मृदुलटावर,टाइम्सऑफ इंडिया के पीछे,आश्रम रोड़,अहमदाबाद-380 009”
“The Commissioner of Customs (Appeals), Ahmedabad,
Having his office at 7th Floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad-380009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए ।
   Appeal shall be filed within sixty days from the date of communication of this order.

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

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

i. उक्त 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 सं° 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 ड्यूटि /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

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

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

Whereas, pursuant to the specific intelligence available with DRI, a reference F. No. DRI/AZU/GRU/Sanari-Petro/Int-06 /20 18 dated 09.10.2018 was received from the Joint Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham informing that some of the goods, which were restricted for import into India, were being imported and cleared as "Industrial Composite Mixture Plus" or "Law Aromatic White Spirit" (hereinafter also referred to as "ICMP" or "LAWS" or "Subject goods" and as declared in Bill of Entry), by some importers through Kandla Port, in violation of the Foreign Trade Policy provisions. Furthermore, after the initiation of the inquiry by DRI, it was observed that the test-reports issued by the Custom House Laboratory, Kandla appeared not to be genuine and to avoid the material getting classified as SKO (Kerosene) which is of restricted nature, illegal gratification was passed on to the officers of the Laboratory.

2. Acting on the intelligence received from DRI, 317 remnant samples of the imported cargo declared as "Industrial Composite Mixture Plus (ICMP) / Low Aromatic White Spirit (LAWS)" imported by various importers, including M/s. Vishveshwar Oil & Lubricants Pvt Ltd, F-138, Gali No.5, Pandav Nagar, Patparganj, Delhi- 110091 (hereinafter also referred to as "*the said importer*") available with this office were sent to CRCL, New Delhi vide letter F.No. S/15-01/SIIB/2018-19/Part-1 dated 24.12.2018 for chemical analysis and testing to ascertain the following points for the imported goods intended for clearance with declaration as ICMP/IAWS, as DRI during their investigation observed that the test reports issued by the Custom House Kandla appears to be influenced and not to be genuine.

"*2(i) whether the sample confirms to description and Characteristics, Specification and Parameters of "Super Kerosene Oil" as per Custom Tariff Act,*

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

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

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

2.1 From the above, it has come to the notice that some importers were engaged in importing the "Low Aromatic White Spirit (LAWS)" and "Industrial Composite Mixture Plus" (ICMP) by mis-declaring the same and in violation of the Foreign Trade Policy. Accordingly, inquiry was initiated against various importers including the said importer.

2.2 The details of the LAWS imported by the said importer at Kandla Port which remnant samples were sent to CRCI, New Delhi for re-testing purpose, is given below:

S. No.	BE No.	BE Date	Product	Quantity (in MTs)	Assessable value as declared in B/E (in Rs)
1	4929914	24.01.2018	LAWS	187.240	85,27,407

2.3 The Joint Director, CRCL, New Delhi after due testing of remnant samples in respect of the Bills of Entry mentioned in the table in para 2.2 above filed by the said importer, submitted their report vide letter F. No. 27-Cus/C-32/2018-19 dated 24.07.2019; wherein, he opined that the sample conforms to the specification of Kerosene as per IS: 1459:2018 (Fourth Revision). It does not meet the requirements for petroleum Hydrocarbon Solvents as per IS: 1745-2018 (third Revision) in respect of Final Boiling Point.

2.4 The details of the Test Reports issued by the Joint Director, CRCL New Delhi in

respect of consignments covered under the Bills of Entry mentioned in the table in Para 2.2 above, are as under;

B/E-4929914 dated 24.01.2018			
S. No.	***Characteristics***	***Specification for Kerosene as per IS:1459-2018***	***Test Results***
	Report		*The sample is in the form of light brown coloured oily liquid. It is composed of Mineral Hydrocarbon Oil (More than 70% by weight) possessing the following parameters:*
1	*Acidity, Inorganic*	*Nil*	*NIL*
2	*Density at 150 degree C Kg/m3*	*Not limited but to be reported*	*802*
3	*Distillation*		
	A) Initial boiling point, 0C	*-*	*176*
	B) 5% volume distilled, 0C	*-*	*183*
	C) 90% volume distilled, 0C	*-*	*253*
	D) % Recovered below 2000C, percentage (v/v), Min.	*20*	*32*
	E) Final Boiling Point, 0C, Max.	*300*	*275*
	F) Dry Point, 0C	*-*	*272*
4	*Flash Point (Abel), 0C, Min*	*35*	*49*
5	*Smoke Point, mm, Min.*	*18*	*23*
6	*Aromatic Content, % by Volume*	*-*	*16*
7	*Copper strip corrosion for 3h at 500C*	*Not worse than No.1*	*Not worse than No.1*
8	*Kinematic viscosity cSt, At 400C*	*-*	*1.48*
9	*Conclusion*		***Sample conforms to the specification of Kerosene as per IS 1459:2018 (Fourth Revision)**. It does not meet the requirements for petroleum Hydrocarbon Solvents as per IS: 1745-2018 (Third Revision) in respect of Final Boiling Point.*

2.5. The above test reports of the CRCL, New Delhi confirmed that the goods imported under the Bills of Entry mentioned in the table in Para 2.2 above, filed by the said importer was Kerosene as per IS 1459:2018 (Fourth Revision), which were to be classified under CTH No. 27101910, but the same were cleared from customs by mis-declaring its description as “Low Aromatic White Spirit (LAWS)” by declaring wrong classification

thereof under CTH 27101990. The total quantity 187.240 MTs having assessable value (excluding duties of customs) covered under aforesaid Bills of Entry as declared comes to Rs. 85,27,407/-.

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

"(a) Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports.

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

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

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

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

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

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

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

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

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

"*S. No. STATE-TRADING ENTERPRIESES*

1. Food Corporation of India (FCI)
2. State Trading Corporation (STC)
3. Indian Oil corporation (IOC)
4. Bharat Petroleum Corporation Ltd. (BPCL)
5. Hindustan Petroleum Corporation Ltd. (HPCL)

6. Oil and Natural Gas Corporation Ltd. (ONGC)
7. Minerals and Metals Trading Corporation (MA4TC)
8. Indian Potash Ltd. (IPL)
9.National Dairy Development Board (NDDB)
10. National Cooperative Dairy Federation (NCDF)
11. National Agriculture Cooperative Marketing Federation of India Ltd (NAFED)
12. Projects and Equipment Cooperation of India Ltd. (PEC)
13. Spices Trading Corporation Limited (STCL)
14. Central Warehousing Corporation (CWC)"

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

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

3. During the course of investigation with respect to the import of LAWS in the case, statement of Shri Ravi Aggarwal, Director of the said importer was recorded under Section 108 of Customs Act, 1962 on 24.01.2023; wherein, he inter-alia stated that his firm is engaged in trading and manufacturing of petrochemicals products; that he is looking after all the work related to the firm; that their firm had imported one consignments of Low Aromatic White Spirit through Kandla Port and submitted documents related to the imports; that they had sold LAWS to M/s. Indian International, M/s. Reliable Industries, M/s. Apex Metchem (P) Ltd & M/s. Shri Balaji Enterprises; that they place order telephonically for the products and the supplier sends the specifications and price of the products available and thereafter they select the desired products and place the orders; that M/s. Cargo Clearing Agency (Gujarat) as their CHA who arranged the customs clearance of consignments of LAWS; that they have provided authority letters in the name of CHA; that their CHA used to send them checklist before filing of Bill of Entry; that CHA in consultation with him, decide the Customs Tariff Head (CTH) of the import product to be declared in bill of entry; that there is no written contract with supplier.

Further the relevant Question-Answer of the statement dated 24.01.2023 of Shri Ravi Aggarwal is reproduced herein below:

"*Q.23: Please peruse the following Test Report issued by, CRCL, New Delhi with the details as mentioned below Table:*

S. No.	BE No.	BE Date	TM No.	TM Date	Lab Report No. & Date	Result
1	4929914	24.01.2018	1023273	24.01.2018	CLR-419/05.07.2019	Kerosene

Please comment.

Answer: Yes, I have carefully read the above mentioned Lab Test Report issued by CRCL, New Delhi in respect of Bills of Entry filed by us as mentioned in above Table. I further state that on going through the said test report, the CRCL, New Delhi has opined that the sample confirms the requirements of Kerosene as specified in IS:1459:2018 (Fourth Revision). I further state that in the said Test Report, it is also being mentioned that "It does not meet the requirements for Petroleum Hydrocarbon Solvents as per IS: 1745-2018 (Third Revision) in respect of Final Boiling Point" and the said Test Report shows the product as Kerosene. Having read and understood the Lab Test Reports in respect of above mentioned Bill of Entry to my satisfaction, I put my dated signatures on the test reports."

4. Further, Shri Ravi Aggarwal, Director of the said importer have been shown the test reports issued by the CRCL, New Delhi in respect of Bill of Entry as discussed in Para 2.2 and 2.4 of this notice during recording his statement dated 24.01.2023 wherein he understood the content of all the test reports issued by CRCL, New Delhi that the sample confirms the requirements of Kerosene as specified in IS:1459:2018 and it does not meet the requirements for Petroleum Hydrocarbon Solvents as per IS: 1745-2018 (Third Revision) and the test reports shows the product as Kerosene.

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

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

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

"*1. BIS through its technical Committees has published two separate Indian standards for, kerosene and Petroleum Hydrocarbon Solvents, namely IS 1459: 2018*

Kerosene - Specification (Fourth Revision) and IS 1745: 2018 Petroleum Hydrocarbon Solvents - Specification (Third Revision).

2. IS 1459 prescribes requirements and methods of sampling and test of Kerosene intended for use as an illuminant and as a fuel and IS 1745 prescribes the requirements and the methods of test for Petroleum Hydrocarbon Solvents generally used in solvent extraction of oils, rubber and paint industries, in the formulation of insecticides, for dry cleaning and for textile printing purposes.

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

6. Taking into consideration, the test reports issued by CRCL, New Delhi, it appears that the goods in the instant case had been cleared by the said importer vide Bills of Entry mentioned in the table in para 2.2 were not "Low Aromatic White Spirit" falling under CTH No. 27101990, as described in the Bills of Entry, but they were Superior Kerosene Oil (SKO), with its correct classification under CTH No. 27101910, and the item falling under said CTH No. 27101910 can be imported by STEs only and it has to be termed as prohibited goods, by virtue of the provisions of Para 2.Ol and 2.20 of the Foreign Trade Policy 2015-2020 read with relevant Policy conditions provided in Tariff Item No. 27101910 in the ITC (HS) Classification of Imported goods 2015-2020, if the relevant conditions for its legal import were not complied with by the concerned importer. In the instant case, it appears that the goods were not imported by or through STEs, but it had been negotiated directly by the said importer with the supplier and also not a case of the importer that they were holding Advance License/ Advance Authorization or Special License issued by DGFF for import of SKO. Thus, in the instant case the said importer had imported SKO by mis-declaring its correct description and correct classification and had violated the provisions of Para 2.01 read with Para 2.20 of the Foreign Trade Policy 2015-2020 and consequently, the goods covered by Bills of Entry mentioned in the table in para 2.2, should be treated as "Prohibited goods" within the meaning of definition provided vide Section 2(33) of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962. Irrespective of all these, it appears from the documents that the goods were described as "Low Aromatic White Spirit" in the respective Invoices and Bills of Entry mentioned in the table in para 2.2 filed by the said importer. The testing of the goods had revealed that the same were SKO. Thus, there was evident mis-declaration with the sole intention to circumvent the restrictions imposed on its import under the Foreign Trade Policy 2015-2020.

7. Even in the context of the Notification No. 105-Cus dated 06.08.1938, the goods in respect of which the restricting provisions of the Petroleum Act, 1934 and the rules made thereunder are applicable and where the compliance with those provisions is required from the importer of such goods; if noncompliance is observed on the part of the importer, then the same may have to be treated as contravention of the deemed prohibition imposed on such goods in terms of Section 11 of the Customs Act, 1962. It appears from the facts mentioned hereinabove that since the SKO in the total quality in possession exceeding the specified. quantity falls in the category of "Petroleum Class B" and the import, storage and handling of the products falling under "Petroleum Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). import of SKO, further to this, if to be considered as classifiable as "Petroleum Class B", then the License issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported which were already in possession of License issued under the Petroleum Rules, 1976. Further for the storage of such "Petroleum Class B" products, statutory provisions have been made, which requires different manner of compliance, if such goods to be stored in Drums and to be stored in tanks. As per

Notification No. 105-Cus dated 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962. Since the importer in the instant case has failed to follow such compliance, it appears that they have also violated the provisions of Section 11 of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962

8. The import of SKO could be permitted through the STEs only and the exception provided were related to (1) The Advance Licenses holders, through the STEs including STC, as per Policy condition (2) of the Chapter 27 of the ITC (HS) Schedule-1, and (2) the Authorization holder, who were granted such authorization by the DGFF in terms of Para 2.20 (c) of the Foreign Trade Policy. In the instant case, in the absence of compliance by the importer with any of the aforesaid statutory obligations, redemption of the goods could not be allowed to the importers on payment of fine and penalties after re-classifying the goods and modifying the CTH No. thereof. Even in the context of the provisions of the Petroleum Act, 1934 (30 of 1934), making the goods liable to confiscation, redemption of the goods to the importer could not be permitted in the absence of continuation of such non-compliance on the part of the said importer.

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

I0. From the facts discussed herein above, it appears the said importer in connivance with the exporter cleared the "prohibited goods" by intentionally mis-declaring the description and custom tariff classification to the extent of managing and manipulating the import documents like the Commercial Invoice, test results from the Custom House Kandla Laboratory, etc showing the goods as Low Aromatic White Spirit, though they had all the reasons to believe that the goods being imported were SKO (Kerosene). In terms of Section 46 of the Customs Act, 1962, the importer of any goods is required to declare correct details in the Bill of Entry being filed by them, and also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, the importer had filed Bill of Entry with incorrect particulars with the sole aim to suppress the correct nature of cargo, which were otherwise to be considered as prohibited goods, if its correct character were revealed. Therefore, the goods imported by the importer as such, were also liable for confiscation under Section 111(m) of the Customs Act, 1962.

11. Whereas, from the inquiry conducted, test reports issued by the CRCL, New Delhi in respect of Bills of Entry mentioned in the table in para 2.2, it appears that the importer was well aware that the characteristics of the goods were of SKO, although the Bills of Entry mentioned in the table in para 2.2 were filed by the said importer for the import of total quantity of 187.240 MTs of goods and cleared by resorting to mis-declaring the goods as LAWS, under Section 46 of the Customs Act 1962 and accordingly the aforementioned SKO (Kerosene) imported and cleared in the guise of Low Aromatic White Spirit of 187.240 MTs having declared assessable Value of Rs. 85,27,407/- (Eight Five Lakhs Twenty Seven Thousand and Four Hundred Seven only) (as declared in the Bills of Entry) were liable to confiscation under the provisions of Section 111 (d) and (m) of the Customs

Act, 1962 in as much as the goods had been imported in gross violation of restriction/prohibition imposed under the Foreign Policy 2015- 2020 as discussed in the Paras supra and by mis-declaring the description of the goods with an intent to clear the prohibited/restricted goods from the Customs Department. The above acts of omission and commission on the part of the importer has rendered the imported goods liable to confiscation under Section 111(d) & (m) of the Customs Act, 1962 and also constitutes "Smuggling" as defined under Section 2 (39) of the Customs Act, 1962. All the above acts of omission and commission on the part of the said importer have rendered themselves liable for penalty under Section 112 (a) and (b) of the Customs Act, 1962. It thus appears that the said importer had knowingly and intentionally made a declaration under the Bills of Entry filed under Section 46 of the Customs Act, 1962, which were false and incorrect. Hence, they have committed offences of the nature as described under the Section 114AA of the Customs Act, 1962 and have consequentially rendered themselves liable to penalty under the said Section 114AA of the Customs Act, 1962. Further, the importer has failed to comply with various provisions of the Customs Act, 1962 with which it was his duty to comply.

12.1. From the facts discussed hereinabove, it appears that the importer had declared the description of the goods as "Low Aromatic White Spirit" classified under CTH 27101990 in the Bills of Entry mentioned in the table in para 2.2 whereas they had actually imported the Superior Kerosene Oil (SKO) falling under CTH No. 27101910 as per the test reports of CRCL, New Delhi as discussed hereinabove in the guise of "Low Aromatic White Spirit" under CTH No. 27101990 from Kandla Port which were restricted for importation and clearance thereof. The policy conditions stipulate that;

> "*import of SKO (Kerosene) is subject to Para 2.20 of Foreign Trade Policy and shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL and IBP for all purposes with STC being nominated as a State Trading Enterprise (STE) for supplies to Advance Licence holders. Advance Licence holders shall however, have the option to import SKO from the above mentioned STEs including STC*". Further, the SKO stands classified as "Petroleum Class B" Thus, Goods became liable for confiscation under Section 111 (d) and (m) of the Customs Act, 1962.

12.2. The subject goods imported into India, without providing correct information in the Bills of Entry mentioned in the table in para 2.2, without properly classifying and in contraventions of various provisions of the Customs Act, 1962, which rendered subject goods liable to confiscation as discussed below :-

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

(ii) The correct information were not declared in Bills of Entry mentioned in the table in para 2.2 above, thus rendering the goods liable to confiscation under Section 111(m) of the Customs Act, 1962; and

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

12.3. Accordingly, in the light of the aforesaid facts, M/s. Vishveshwar Oil & Lubricants Pvt Ltd, New Delhi has been called upon to show cause to the Additional Commissioner of Customs, Kandla Custom House, Kutch, Gujarat as to why:-

(a) the declared description of the subject goods i.e. Low Aromatic White Spirit

(LAWS) should not be rejected and the goods should not be considered as Superior Kerosene Oil (SKO).

(b) the imported goods should not be re-classified under CTH 27101910 instead of CTH 27101990.

(c) the imported goods i.e. 187.240 MTs of SKO falling under CTH No. 27101910 mis-declared as Low Aromatic White Spirit under CTH 27101990 in the Bills of Entry mentioned in the table in para 2.2 valued at Rs. 85,27,407/- (Eighty-Five Lakhs Twenty-Seven thousand and Four Hundred Seven only) should not be confiscated under provisions of Section 111 (d) and 111 (m) of the Customs Act, 1962;

(d) Penalty should not be imposed on the said importer under Section 112(a), Section 112 (b) (i), Section114AA and Section117 of the Customs Act, 1962.

13. Kept in Abeyance and Retrieval:

13.1. The adjudicating authority has observed that in one case of M/s. Swarna Oil Services pertains to import of SKO (Superior Kerosene Oil) by mis-declaring the same as Petroleum Hydrocarbon Plus, departmental appeal was pending before the Hon'ble High Court of Gujarat. Accordingly, the competent authority i.e. the then Commissioner, Customs Kandla has accorded permission & approved that the present case qualified to be kept in abeyance in terms of Section-28(9A) of the Customs Act, 1962 read with Circular No. 162/73/95-CX dated 14.12.1995 and 992/16/2014-CX dated 26.12.2014. The noticee has been informed vide letter dated 19.04.2023 that said SCN has been kept in abeyance with the approval of competent authority.

13.2. Whereas, the Central Board of Indirect Taxes & Customs, New Delhi vide instruction issued under F. No. 390/Misc/30/2023-JC dated 02.11.2023 enhanced the monetary limit to Rs. 1 Crore, below which appeal shall not to be filed before the High Court. The case of M/s. Swarna Oil Services falls within the updated monetary limit, accordingly, the Commissioner, Customs, Kandla has ordered for withdrawal of appeal in the said case.

13.3. The appeal has been withdrawn in the case of M/s. Swarna Oil Services from the Hon'ble High Court of Gujarat on Monitory Ground. Considering the facts that no departmental appeal was pending before the Hon'ble High Court of Gujarat in similar matter, the instant Show Cause Notice has been retrieved from Call Book vide approval dated 17.02.2025 granted by the Competent Authority.

14. PERSONAL HEARING AND WRITTEN SUBMISSION:

14.1. To follow the principles of natural justice, Personal Hearing Notice dated 24.06.2025, 03.07.2025, 15.07.2025 and 24.07.2025 for Hearing on 30.06.2025, 10.07.2025, 21.07.2025 and 30.07.2025 respectively were issued to the Noticee to appear for to be heard in Personal. On behalf of the noticee, Shri Rajesh Chhiber, Advocate submitted vakalatnama dated 18.07.2025 to represent as Authorized Signatory of the Noticee and attended the PH in person, wherein he reiterated their written submission which is produced under;

The issue involved in the instant case relates to classification of imported of Low Aromatic White Spirit (LAWS in short) by the noticee during the period involved in the instant case. As per the case of department, the imported goods were Superior Kerosene Oil (SKO). In the instant case, the respective noticee imported LAWS falling under heading 27101990 during March 2018 & April 2018 against respective bills of entry. Samples were drawn by the customs department, which were sent to CRCL, Kandla for testing after which the goods were allowed to be cleared by the custom department on payment of appropriate duty. Since the noticee is a manufacturer, they brought the goods to their factory and used them for the manufacture of goods liable to

appropriate duties. Though the report of CRCL Kandla was not provided to the noticee, but since no adverse view was taken by the department and allowed clearance of imported goods, the same was sufficient to show that the CRCL Kandla did not find any discrepancy in nature of goods declared by the noticee.

Nothing happened thereafter for quite some time when the DRI, Regional Unit, Gandhidham initiated investigation on the basis of some intelligence that some of the importers were importing SKO in the name of Industrial Composite Mixture Plus (ICMP in short)/ Low Aromatic White Spirit (in short LAWS) with the connivance of CRCL Kandla for illegal gratification. On such basis, the samples available with the custom department were sent to CRCL Delhi to ascertain as to whether the samples confirm to the description of SKO, and if yes specify the smoke point and if the same does not confirms to be SKO, whether the same confirms to Motor Spirit. The CRCL was also asked to identify the product if the sample does not qualify as either SKO or Motor Spirit. It would be pertinent to mention here at the time of sending samples to CRCL Delhi, the noticee was not informed.

Though the import was made in March/April 2018, the CRCL Delhi submitted its report after almost one year vide their report dated 23.05.2019, 26.06.2019 and 22.07.2019 respectively. On such basis the department formed a view that there was misclassification on the part of importer. Thereafter statement of authorized person of noticee was recorded on 07.01.2020 when he was asked questions with regard to import of goods. He was asked to comment on the conclusion given in report of CRCL Delhi to which he did not object. It was solely on such basis, the DRI concluded that the goods in question were SKO and not LAWS. The DRI further observed that since SKO was prohibited item and could be imported by authorized agency, the noticee was not eligible to import the same. On the basis of said investigation, instant notice stands issued alleging import of prohibited goods proposing change of classification, imposition of redemption fine and penalty. Admittedly, there has been no revenue implication in terms of duty as no differential custom duty has been demanded in the notice.

The noticee submits as under:

Before making submissions on the allegations leveled in the notice, the noticee raised preliminary objections to the notice as under:

1. At the outset it is submitted that the show cause notice was issued in 2022 and adjudication proceedings have been initiated in 2025 which is beyond normal period of adjudication. In similar matters, where there was delay in adjudication, various courts/CESTAT set aside the order on said ground itself. The noticee rely upon the decision of CESTAT in the case of Kopertek Metals P. Ltd. under Final Order No.59511-59720/2024 dated 25.11.2024 and Hon'ble Delhi High Court judgment dated 10.12.2024 in the case of VOS Technologies India P. Ltd. Therefore, the notice deserves to be dropped on this ground alone.

2. In any case, it must be brought on record as to why the adjudication was pending and on what basis the matter has been taken up now for adjudication so as to enable the noticee to make submissions accordingly. The noticee has been made to understand that since on earlier occasions, similar cases were made out by the department and Hon'ble CESTAT in the case of Swarna Oils upheld the contention of importers.

3. In the instant case, the show cause notice has proposed for confiscation and penalty and there has been no duty demand as the duty paid by the noticee was assessed by the proper officer on the bill of entry. Since the assessment of the bill of entry was without any condition the assessment became binding on the department as well. Therefore, if the department had any grievance, it could have filed appeal against said order. In other words, without challenging the assessment on the bill of entry, the department could not change the classification.

4. It is alleged in the notice that illegal gratification was passed to the officers of laboratories, without even mentioning the name of officers and as to how many officers were involved in the same. In the case of noticee, the period involved spread over to 8 months. It is also the case of department itself that number of importers were involving importing goods in the manner stated above, but there has been no mention as to which of the importer or some of the importer or all the importers passed on such gratification. Further, there is no mention as to when, how, by

whom, to whom and in what manner such gratification was passed on. Above, all, but for the vague allegation in the opening para of the show cause notice, there is no further mention about the same in subsequent paras. None of the result of so-called investigation has neither been relied upon in the notice nor provided to the noticee. Such vague allegation without having an iota of supporting evidence has no value in the eyes of law. That was the reason as to why the noticee requested for providing evidences to the noticee, which has not been done till date. Therefore, before proceeding with the adjudication, the noticee be provided the details of so-called investigation by the department. It would not be out of place to mention here that till now the noticee has not received any communication from any agency with regard to so called gratification passed on to the officers of CRCL Kandla, meaning thereby that there is not involvement of noticee in the same.

5. It is submitted that it is an admitted fact that the samples were drawn by customs department at the time of import, which were sent to CRCL Kandla, on whose report the goods were allowed to be cleared. Surprisingly, said test reports have not been made RUD in the notice, whereas even if the same were not accepted to the department, the same were required to be part of notice. That was the reason as to why the noticee asked for providing the same, which has not been provided till date. Therefore, before proceeding with the case, such test reports be provided to the noticee.

6. It is submitted that it is an admitted fact that before sending samples to CRCL Delhi, the noticee was not informed at all. Therefore, said testing loses its relevance altogether. Further the very fact that CRCL Delhi tested the goods almost one year from the date of import was sufficient to discard the same as the product in question were petroleum product and the sample could not represent the true character of goods.

7. Without prejudice to other submissions, it is submitted that the entire case of department is based on report of CRCL Delhi. A perusal of the test report reproduced in para 2.4 of the notice shows that it has referred to the specifications for kerosene as per IS:1459:2018, report on characteristics and the test results. It is submitted that though it is mentioned in said para that the specifications are as per IS: 1459:2018 but a perusal of said IS would show that some of the important specifications have not been tested. The noticee has already submitted said IS which would prove that there is no mention about burning quality having (a) char value, (b) Bloom on glass chimney, color (saybolt) and Total sulphur, percent by mass, Max, which are otherwise essential characteristics for deciding the product to be SKO.

8. It is submitted that it is admittedly alleged in the notice that the DRI got information that SKO was being imported in the name of ICMP and LAWS. In another bunch of matters, the goods were sent to CRCL Delhi on whose report the goods were classified to be SKO. In said case, the goods were confiscated and fine and penalties were imposed. In all notices involved in said case, penalty was also imposed upon Shri RP Meena, Chemical Examiner, CRCL Kandla. All parties, including Shri Meena filed appeal contesting the adjudication order and the department also filed respective appeals. The appellate authority by a common order in appeal allowed appeals of assessee and rejected appeals of department. The department filed appeals before the Hon'ble CESTAT, which have also been rejected by Final Order No. 10353-384/2025 dated 15.05.2025. Attention is drawn towards para 1.4 wherein Hon'ble CESTAT referred to the decision of appellate authority that the CRCL Delhi test report was without conducting the tests in respect of a) char value, (b) Bloom on glass chimney, color (saybolt) and Total Sulphur, percent by mass, Max. The same is exactly the position in the instant case. Therefore, instant proceedings are squarely covered by the decision of Hon'ble CESTAT and consequently, the show cause notice needs to be dropped being devoid of merits.

9. It would be pertinent to mention here that on earlier occasion also, the department raised similar issue in the case of Swarna Oils were also all the specifications were not tested which was the reason for Hon'ble CESTAT to allow the appeals vide Final Order No. A/11026-28/2020 dated 11.06.2020 the bunch of appeal holding that certain parameters were not tested by the department. Said order is also having a direct impact on the present case.

10. It would be of pertinent to mention here that entire case made out against the noticee is outcome of investigation of DRI as alleged in RUD1 itself. A perusal of RUD 1 shows that the noticee name was not in the list of importers. Still the same has been relied upon. It is submitted

that on the basis of said investigation the department made out cases against respective importers. Therefore, once said investigation leading to adjudication has been settled in favor of importers, the same has to be followed in the instant case.

11. It is submitted that in the instant case also, CRCL Delhi did not test the specifications as - a) char value, (b) Bloom on glass chimney, color (saybolt) and Total sulphur, percent by mass, Max, which were also missing in the cases referred in the foregoing paras. Therefore, at the outset, the test not being conclusive, no reliance can be placed upon the same. Consequently, the notice needs to be dropped on this ground also.

12. In addition, it is submitted that though in the test report of CRCL Delhi, total number of 8 parameters have been mentioned, but even the same are also not conclusive. There is no mention of any specification criteria against sl. No. 3(A), (B), (C), (F), 6 & 8, whereas the conclusion has been drawn on the basis of test reports with regard to said specifications meaning thereby that the test reports cannot be relied upon. In this regard attention is drawn towards the judgment of Hon'ble Supreme Court in the case of Tata Chemicals Ltd. vs. CC, Jamnagar, wherein it has been laid down that the testing should strictly in accordance with norms. In the instant case, some of the specifications, as mentioned above, have not been mentioned in the test report. Therefore, said test reports have no evidentiary value. the noticee also relies upon recent judgment of apex court in the case of Gastrade International vs. CC, Kandla reported in 2025(4)TMI- 23-Supreme Court where in para 47 it has categorically been held that when all the parameters are not tested, the test report cannot be relied upon. In other words, the law stands reaffirmed that for deciding the issue of classification, all the parameters are required to be tested, which has not been done in the instant case. Therefore, the notice deserves to be dropped on this ground as well.

13. Attention is also drawn towards the conclusion wherein though it has been held to confirming specifications of SKO, the only reason for not accepting the same to be petroleum hydrocarbon solvent was on the basis of final boiling point. In this regard it is submitted that in the test result in para 2.4 the nature of the sample has been declared as mineral hydrocarbon oil (in short MHO) and the sole basis to deny the product to be MHO is the Final Boiling Point. As per the report final boiling point of SKO is 300 degree maximum and since the same was less than that in the test reports, the same was considered to be SKO. In this regard, the noticee refer to the IS:1745:2018 wherein parameters have been given for classifying the MHO. A perusal of the same would show that in respective categories the maximum range of FBP has been prescribed. Therefore, merely because any oil has FBP less than, the same per se could not be declared to be SKO.

14. It is submitted that since the sole basis of case of department was the test report of CRCL Delhi, the noticee requested for cross examination of concerned person, which has not been granted till date. In fact, there is no denial to the same as well. Therefore, either the cross examination of officer of CRCL Delhi be allowed or the test report of CRCL Delhi be deleted from the show cause notice for the purpose of adjudication.

15. It is also submitted that the sole reason for initiating the investigation was alleged gratification to CRCL Kandla Officer. He was also made party in earlier case where his appeal was allowed. It seems that due to the same, the department did not make him a party to the show cause notice, which itself is sufficient to show that the department had no evidence to support its stand. Therefore also, the impugned order deserves to be dropped.

16. It will not be out of place to mention here that the noticee being a manufacturer of goods liable to GST, had received the imported goods in the factory and used the same for intended purpose. There is not even iota of evidence to show that the noticee used such goods as kerosene. No investigation has been made by the DRI in this regard, which also disproves the case of department as alleged in the show cause notice.

17. As regard proposal for confiscation of goods, it is submitted that it is an admitted fact that the goods were allowed to be cleared by the custom department without any condition. Once that was so, the goods were to consider as discharged all custom obligations. Further, it is not the case here that any goods were seized during investigation. Therefore, when the goods were no longer physically available, the same could not be confiscated. The noticee rely upon the decision of

CESTAT in the case of Shive Kripa Ispat P. Ltd. vs. CC, Nashi wherein three member bench of CESTAT held that where the goods were not physically available, the same could not be confiscated and redemption fine could not be imposed. Therefore, the proposal in the show cause notice for confiscation of goods is without any basis.

18. As regard penalty, it is submitted as under:

Penalty under Section 112(a) & (b) and 114AA of the Customs Act has been proposed. For ready reference, relevant section is reproduced below:

*112. **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, harboring, 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,

*114AA. **Penalty for use of false and incorrect material.-***

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes this Act, shall be liable to a penalty not exceeding five times the value of goods.]

A perusal of the above would clearly show that the ingredients of said provisions are altogether missing in the instant case. The customs department did not raise any query at the time of import and even the DRI has not brought on record any evidence that the noticee was aware of the fact that the imported goods were SKO. The department has not disputed or even doubted the documents submitted by the noticee at the time of import goods. Therefore, no penalty under said provisions is warranted.

19. The show cause notice has also proposed penalty under Section 117 of Customs Act 1962. For ready reference, the same are also reproduced below:

*117. **Penalties for contravention, etc., not expressly mentioned**.*

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding lone lakh rupees].

20. It is submitted that penalty under said can be proposed only when the contravention being alleged is not specifically mentioned in the show cause notice. Further when penalty under Section 112 & 114 was proposed, there was no scope for invocation of Section 117. In any case, once the department invoked Section 117, the department agreed that there was no other provision under which penalty could be imposed. Since Section 117 is subsequent in number, the moment it was invoked, it superseded all previous provisions. Therefore, if at all any penalty is to be imposed, the same cannot be imposed in any provision other than section 117.

21. Last but not the least, it is submitted that department alleged suppression on the part of noticee by observing that number of importers were involved in such manner of import. Once it is the case of department, it was all the more necessary on the part of department to disclose the as to what evidences were available with the department that the noticee was aware of the fact that the goods imported were SKO and gratification was passed on to CRCL Officer. Therefore, the show cause notice is without any supporting evidences.

22. It is submitted that penalty under said can be proposed only when the contravention being alleged is not specifically mentioned in the show cause notice. Further when penalty under Section 112 & 114 was proposed, there was no scope for invocation of Section 117. In any case,

once the department invoked Section 117, the department agreed that there was no other provision under which penalty could be imposed. Since Section 117 is subsequent in number, the moment it was invoked, it superseded all previous provisions. Therefore, if at all any penalty is to be imposed, the same cannot be imposed in any provision other than section 117.

23. Last but not the least, it is submitted that department alleged suppression on the part of noticee by observing that number of importers were involved in such manner of import. Once it is the case of department, it was all the more necessary on the part of department to disclose the as to what evidences were available with the department that the noticee was aware of the fact that the goods imported were SKO and gratification was passed on to CRCL Officer. Therefore, the show cause notice is without any supporting evidences.18. Last but the least, it is submitted that the manner in which notice has leveled allegation would be sufficient to show that notice was issued only because the DRI investigated the matter. In this regards attention is drawn towards opening para, wherein the goods have been declared to be restricted one. In para 2.12 and para 6, the goods have been declared to be prohibited goods. Again, in para 11.2, the goods have been declared to be restricted goods. This clearly shows that the department was not at all serious about its case while framing charges against the noticee.

19. Under the above circumstances, it is prayed that the show cause notice may kindly be dropped.

14.2. Further, during the course of Personal Hearing along with reiterating their written submission the Authorized Representative of the importer seeks permission for cross-examination of Delhi CRCL Officers, stating that the CRCL Report was without prior knowledge of the importer. The request of the cross examination has been examined and I found that none of the statements of the persons whose cross examination has been sought for were recorded under section 108 of the Customs Act, 1962 or relied upon in the instant show cause notice, therefore, I found that there is no violation of principles of natural justice during quasi-judicial proceedings in denial of the cross examination, accordingly, vide letter dated 01.08.2025 issued under F.No. GEN/ADJ/ADC/349/ 2023- Adjo- O/o-Commr- Cus- Kandla with valid DIN- 20250871ML000032323F the importer has been informed regarding denial of the request of the cross-examination and another Personal Hearing fixed on 05.08.2025 to be heard in person.

14.3. Thereafter, Personal Hearing Notice dated 23.10.2025 for Hearing on 29.10.2025 was issued to the Noticee to appear for to be heard in Personal. On behalf of the noticee, Shri Rajesh Chhiber, Advocate & Authorized Signatory of the Noticee attended the PH in person, wherein he reiterated their written submission.

14.4. Further, vide letter dated 02.04.2026 Shri Rajesh Chhiber, Advocate & Authorized Representative of the importer has re-submitted their defence on the same line as submitted earlier along with a request that "*no further personal hearing is required in the matter.*"

14.5. Accordingly, it is evident that sufficient opportunities for personal hearing and valid service of notices through e-mails has been done in this matter and the authorized representative from the importer side has completed their submission informing that no further personal hearing is required in the matter.

15. DISCUSSON & FINDING

15.1. I have carefully examined the case records, including the Show Cause Notice, Relied upon Documents, statements, laboratory reports received from CRCL, New Delhi, submissions made by the notice, the records of personal hearings, and other relevant material on records. 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. The points to be decided in the instant case are as to:

- Whether the declared description & classification of imported goods i.e. Low Aromatic White Spirit under CTH 27101990 covered under the Bill of Entry No. 4929914 dated 24.01.2018, is incorrect & to be corrected as SKO instead under the CTH 27101910.

- Whether the imported goods i.e. 187.240 MTs of SKO declared as Low Aromatic White Spirit under CTH 27101990 in the Bill of Entry No. 4929914 dated 24.01.2018 valued at Rs. 85,27,407/- are liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962.

- Whether the importer has rendered himself liable for penal action under Section 112(a) and Section 112 (b)(i), Section114AA and Section117 of the Customs Act, 1962 on the basis of allegation made in the SCN.

15.2. The importer M/s. Vishveshwar Oil & Lubricants Pvt Ltd, F-138, Gali No.5, Pandav Nagar, Patparganj, Delhi- 110091, imported a consignment declared as 'Low Aromatic White Spirit (LAWS)' under Bill of Entry No. 4929914 dated 24.01.2018 at Kandla Port. The declared quantity was 187.240 MTs having an assessable value of Rs. 8527407/-. The goods were cleared under CTH 2710 1990. Subsequent investigations by the Directorate of Revenue Intelligence, remnant samples were sent to the Central Revenue Control Laboratory (CRCL), New Delhi, for re-testing.

15.3. On perusal of the CRCL, New Delhi lab report forwarded vide letter dated 01.05.2019, it is found that the sample conforms to the specifications of Kerosene as per IS:1459-2018. The sample did not meet the requirements of Petroleum Hydrocarbon Solvents (Solvent 125/240) as per IS:1745-2018 (Fourth Revision). Therefore, the goods are correctly classifiable as Superior Kerosene Oil (SKO) under CTH 2710 1910 instead of CTH 2710 1990 as declared.

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

15.5. The CRCL report established that the imported product was Superior Kerosene Oil (SKO) as per IS:1459:2018, which falls under the restricted category as per Foreign Trade Policy 2015-2020 and could only be imported through State Trading Enterprises (STEs) like IOC, BPCL, HPCL, and IBP. The importer was neither an STE nor held any DGFT authorization to import SKO. I also find that during the course of recording of statement dated 06.12.2022 of Shri Ravi Aggarwal, Director of the said importer firm, under Section 108 of the Customs Act, 1962, had revealed his firm is engaged in trading and Manufacturing of petrochemicals products; that he is looking after all the work related to the firm; that their firm had imported one consignments of Low Aromatic White Spirit through Kandla Port and submitted documents related to the imports; that they had sold LAWS to M/s. Indian International, M/s. Reliable Industries, M/s. Apex Metchem P Ltd & M/s. Shri Balaji Enterprises; that they place order telephonically for the products and the supplier sends the specifications and price of the products available and thereafter they select the desired products and place the orders; that M/s Cargo Clearing Agency (Gujarat) as their CHA who arranged the customs clearance of consignments of LAWS; that they have provided authority letters in the name of CHA; that their CHA used to send them checklist before filing of Bill of Entry; that CHA in consultation with him, decide the Customs Tariff Head (CTH) of the import product to be declared in bill of entry; that there is no written contract with supplier.

15.6. Further, after perusing the copy of the CRCL, Delhi Report dated 01.05.2019 in respect of the goods imported by his firm, he accepted the contents of the CRCL report confirming that the product was Kerosene and admitted that they were not a State Trading Enterprise and held no authorization from DGFT to import SKO.

15.7. I find that the importer did not possess any authorization from DGFT nor did they act through an STE. Thus, the goods imported are in violation of Para 2.01 and 2.20 of the FTP 2015–2020 and are to be treated as "Prohibited Goods" under Section 2(33) of the Customs Act, 1962. The importation, therefore, is contrary to the prohibitions imposed under the Customs Act and Foreign Trade Policy, rendering the goods liable for confiscation under Section 111(d) of the Customs Act, 1962. I find that restricted goods imported without compliance become prohibited under Section 2(33).

15.8. I find that the Hon'ble High Court of Chennai, in the case of Visteon Automotive Systems India Limited vs The Customs dated 11.08.2017, has held that availability of goods is not necessary for imposing redemption fine. The Hon'ble Court held "....opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. I find that confiscation can be upheld even if goods are not physically available.

15.9. Further, in the instant case, the SKO being imported falls under "Petroleum Class B", based on the quantity and type of product. Import, storage, and handling the products falling under "Petroleum Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). The License issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported which were already in possession of License issued under the Petroleum Rules, 1976. Without this license, the import of Petroleum Class B products is not permitted. Storage in drums or tanks is subject to separate statutory conditions. Notification No. 105-Cus dated 06.08.1938 states that any import made in contravention of the Petroleum Act, 1934 (30 of 1934) is deemed a violation of Section 11 of the Customs Act, 1962. Since the importer in the instant case has failed to follow the provisions of the Petroleum Act, 1934 (30 of 1934), I find that they have also violated the provisions of Section 11 of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962.

16. The Authorized Representative of the importer Shri Rajesh Chibber, Advocate in the written submission made on behalf of the importer has emphasis on the following points;

16.1. The importer contended that while the CRCL Kandla report was not served upon the noticee, the Department's subsequent clearance of the subject goods implies that no adverse findings were recorded. It is the noticee's position that such clearance serves as prima facie evidence that the nature of the goods aligned with the original declaration. However, the investigation has conclusively addressed this point. It has been established that the test reports issued by the Custom House Laboratory, Kandla, were fraudulent. Evidence

indicates that illegal gratification was provided to laboratory officials to suppress the fact that the material was, in fact, SKO (Kerosene)—a restricted commodity—thereby circumventing statutory classification and import restrictions. I find that the initial test reports of CRCL, Kandla cannot be relied upon due to intelligence indicating manipulation, and further CRCL Delhi being apex lab carries higher evidentiary value.

16.2. The importer further contended that at the outset it is submitted that the show cause notice was issued in 2022 and adjudication proceedings have been initiated in 2025 which is beyond normal period of adjudication. However, the importer did not adhere that the adjudicating authority i.e. the then Commissioner, Customs Kandla has accorded permission to kept the Show Cause Notice in call book on the basis of one similar case of M/s. Swarna Oil Services and accordingly, the importer has been informed vide letter dated 19.04.2023 that said SCN has been kept in abeyance with the approval of competent authority. However, the case of M/s. Swarna Oil Services falls within the updated monetary limit, accordingly, the Commissioner, Customs, Kandla has ordered for withdrawal of appeal in the said case and the appeal has been withdrawn in the case of M/s. Swarna Oil Services from the Hon'ble High Court of Gujarat on Monitory Ground. Further, considering the facts that no departmental appeal was pending before the Hon'ble High Court of Gujarat in similar matter, the instant Show Cause Notice has been retrieved from Call Book vide approval dated 17.02.2025 granted by the Competent Authority.

16.3. In the written submission the importer emphasis that, the show cause notice has proposed for confiscation and penalty and there has been no duty demand as the duty paid by the noticee was assessed by the proper officer on the bill of entry. Since the assessment of the bill of entry was without any condition the assessment became binding on the department as well. Therefore, if the department had any grievance, it could have filed appeal against said order. In other words, without challenging the assessment on the bill of entry, the department could not change the classification. In this context I observed that Department categorically denies that the assessment of the Bill of Entry attains absolute finality in a manner that precludes subsequent investigative action. While it is true that the Bill of Entry was assessed by the Proper Officer, such assessment is predicated on the truthfulness and accuracy of the declarations made by the importer at the material time. The present Show Cause Notice (SCN) has been issued based on fresh evidence and suppressed facts that were not within the knowledge of the Proper Officer during the initial assessment. It is a well-settled principle of Customs Law that if an assessment is obtained through mis-declaration, collusion, or by withholding vital information, the Department retains the statutory right to initiate proceedings for confiscation and penalty under the Customs Act. The importer's argument that the Department must file an appeal against its own assessment is misplaced in this context, as the discovery of illegal gratification and fraudulent practices vitiates the original assessment, rendering it voidable and subject to recovery actions without the prerequisite of a formal appeal against the initial entry. I find that assessment does not attain finality if obtained by mis-declaration.

16.4. The importer in the written submission has also contented that it is alleged in the notice that illegal gratification was passed to the officers of laboratories, without even mentioning the name of officers and as to how many officers were involved in the same. In the case of noticee, here it is pertinent to mention that the notice is issued on the basis of intelligence reports & systematic findings including lab reports therefore, I find that the non-mentioning of specific names of the officers at this stage does not dilute the gravity of the allegations as the investigation has unearthed the broad modus involving multiple importers engaged in importing the "Low Aromatic White Spirit (LAWS)" and "Industrial Composite Mixture Plus" (ICMP) by mis-declaring the same and in violation of the Foreign Trade Policy.

16.5. The importer further submitted that it is an admitted fact that the samples were drawn by customs department at the time of import, which were sent to CRCL Kandla, on whose report the goods were allowed to be cleared. Surprisingly, said test reports have not been made RUD in the notice, whereas even if the same were not accepted to the department, the same were required to be part of notice. I find that the investigation is not bound to rely upon the report submitted by CRCL, Kandla and same is excluded from the RUDs and I not found any relevance in the argument. I find that non-inclusion of CRCL Kandla report does not vitiate proceedings as it is not relied upon; no prejudice caused.

16.6 Another argument in the written submission by the importer is that - before sending samples to CRCL Delhi, the noticee was not informed at all. Therefore, said testing loses its relevance altogether. Further the very fact that CRCL Delhi tested the goods almost one year from the date of import was sufficient to discard the same as the product in question were petroleum product and the sample could not represent the true character of goods. Whereas, going through the investigation details and procedure I find that testing cannot loses relevance due to a lack of prior intimation or the passage of time. Department maintains the legality of the re-testing based on the following grounds: Further, Department holds the inherent power to verify the correctness of an assessment, especially when the initial testing is suspected to be compromised by fraud or illegal gratification. Procedural intimation to the noticee is not a mandatory prerequisite for investigative re-testing when the integrity of the original samples is already secured in Departmental custody. The samples sent to CRCL Delhi were the sealed remnants/duplicate samples drawn at the time of import in the presence of the noticee's representative. Since the seals remained intact and the chain of custody was never broken, the samples represent the exact state of the goods at the time of import, regardless of when the laboratory analysis was conducted. Moreover, the importer's argument regarding the "perishable" nature or change in character of the petroleum product is scientifically unsubstantiated. Petroleum products of this nature are chemically stable when stored in sealed, airtight containers. The parameters tested by CRCL Delhi are characteristic of the product's fundamental chemical composition, which does not undergo significant alteration over a one-year period. Also as a premier reference laboratory, the findings of CRCL Delhi provide a more accurate and reliable technical assessment than the initial report.

16.7. The submissions made that out of required parameters on which sample has to be tested for determining whether or not the same meets with the specifications of Kerosene, the test have not been undertaken with respect to the 3 parameters namely Burning Quality, Colour and Total Sulphur, percent by Mass, Max and that insofar as Sulphur is concerned, though no test have been undertaken. It is observed that the re-test conducted by CRCL, New Delhi has concluded that the sample conforms to IS 1459:2018. It is reasonable to infer that the laboratory, being a competent authority, has taken into consideration all relevant parameters as required for arriving at such a conclusion. In the absence of any contrary evidence, the said test report cannot be disregarded.

16.8 I further find that the contention of the noticee regarding non-testing of certain parameters such as burning quality, colour and total sulphur is not sufficient to discard the test report of CRCL, New Delhi. The essential characteristics such as distillation range, flash point and smoke point have been duly tested and are determinative.

16.9 I also find that the reliance placed by the noticee on judicial pronouncements regarding non-testing of all parameters is distinguishable, as the CRCL report gives a definitive finding. In the context, reliance is placed on the judgment of the Hon'ble High Court of Gujarat in the case of Commissioner of Customs (Preventive) Versus Nayara Energy Ltd. as reported in 2019 (370) E.L.T. 28 (Guj.), on the issue where in respect of a product, when only 2 of 3 parameters out of total 9 parameters were tested as specified under IS 1593:1982, such product can be construed as a product conforming to the standard specified under IS 1593: 1982, has held in affirmative.

Para 19 is reproduced as under:

"19……..in the opinion of this court, the adjudication authority has failed to consider the relevant material namely the explanation submitted by the respondent explaining that all the seven parameters required for LSFO are duly satisfied in the case VGO. As noted earlier, out of seven parameters, three parameters were duly tested and found to be confirming to the specification of IS 1593:1982. Insofar as the other four parameters are concerned, the respondent had duly explained that insofar as the water content is concerned, since the FCC feed boils in the range of 300°C - 570°C, whereas the boiling point of water is 100°C the water would have evaporated earlier in the distillation process and hence, water content was not expected in LSFO. Insofar as ash and sediments are concerned, it was explained that ash and sediments were likely to be found in the residue crucible of the distillation columns, and that as the FCC feed is composed wholly of intermediate steams drawn as side cuts (excluding the residue) from distillation columns, the residue will not be present in the Feed. As regards flash point, it was pointed out that LSFO FCC feed is heavier than diesel cut has IBP of around 300°C. It is expected to generate sufficient vapours which form combustible mixture at around temperature of 150°C or more. Hence, the specifications of minimum 66°C will necessarily be met. As regards inorganic acid, it was pointed out that there was no possibility of inorganic acid being present in the stream as inorganic acids are water soluble and since water evaporates at 100°C , there was no possibility of presence water soluble inorganic acids in the Feed. It was, accordingly, explained by the respondent that insofar as the other four parameters are concerned, they are not required to be tested as they can be inferred from the very process which way followed by the respondent. However, the adjudicating authoriy has failed to take such explanation into consideration."

16.10. Taking the same principle as that of the Tribunal in M/s. Nayara Energy Ltd. (Supra) reference is invited Fundamentals of Petroleum and Petrochemical Engineering by Uttam Ray Chaudhuri - Chapter 2.2.2 and Chapter 2.2.2.1, are reproduced as under :

2.2.2 KEROSENE
Kerosene or superior kerosene oil (SKO) is another domestic fuel manly used for lighting or lamp oil. It is also used as domestic stove oil. It is a petroleum product that boils in the range of 140°C -280°C and is available from crude petroleum oil. It is heavier than naphtha or petrol (motor spirit) , but heavier than diesel oil. The major properties of Kerosene that determines its Burning Quality are Smoke Point and Flash Point.

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

point, the better the burning quality....”
Further, referring Modern Petroleum Refining Process authored by B.K. Bhaskara Rao-Chapter 2.3.6.3 is reproduced as under:

2.3.6.3 Smoke Point
Smoke point is an indication of clean burning quality of kerosene. Illumination depends upon the flame dimension although it is not related to flame height.
……..Smoke Point is defined as the maximum height of flame in millimetres at which the given oil will burn without smoke. Thus smoke point test (P31,IP 57) enables burning quality to be measured by adjusting the wick height to give proper non-Smokey flame.

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

Further, as per the www.sayboltanalyzer.com, the Saybolt color test is often used to determine if a fuel contains contaminants or has degraded during storage. Specifically that the **saybolt color chart is used as an indication of the overall purity of kerosene** and can identify if improper storage or handling of the fuel has occurred. Accordingly, it can also be adduced the Colour (Saybolt) test determines the purity of Kerosene oil, and that is done only after a product is confirmed to be Kerosene.

Thus, it is more than evident when the 3 parameters are in conformity with specifications IS 1459:2018 (fourth revision), the remaining two parameters namely Burning quality and Colour (Saybolt) are bound to confirm to Kerosene Oil.

Further, the Hon’ble ‘Tribunal has also held that the burden of classification is on revenue and well settled by the Apex Court in the case of HPL. Chemicals Vs. CCE reported in 2006 (197) ELT 324 and that dealing with a similar fact, the ratio laid down by the Apex Court in Hindustan Ferodo Vs, CCE 1997 (89) ELT 16 is applicable.

16.11. In above context, the Apex Court in the case of M/s Reliance Cellulose Products Ltd Vs Collector of Central Excise as reported in Judgement 1997 Supp(1) SCR 485 has categorically held that 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 applicant. Further, in the case of M/s Visal Lubetech Corpn, as reported in 2016 (342) ELT 201 (Mad), the Hon’ble High Court of Madras held that the duty exercised by the Chemical Examiner of the Central Laboratory is in effect discharging a statutory duty, and therefore, he is not witness to proceedings.

16.12. Further in Anand Mohata Agro Indus. P. Ltd. Versus C.C (IMPORT), Mumbai reported in 2019 (370) E.L.T. 1656 (Tri.- Mumbai), the Tribunal held that in absence of any challenge of the test report of the CRCL by the assessee, it is the assessee who has to establish their claims on the benefit of exemption notification, and this would be applicable in the present case also. Para 7 is reproduced as under;

"7….We do not find any material to support the contention of the appellant, inasmuch as the test report of the Dy. Chief Chemist has not been challenged by the appellant by filing necessary appeal before the higher forum for retesting nor the remnant sample with the Dy. Chief Chemist, after conducting the tests mentioned in the respective test report, have been subjected to further test by any other agency to discard the Dy. Chief Chemist's test report on the carotenoid contents of the imported crude palm oil. Needless to mention that in view of the principal of law laid down by Hon'ble Supreme Court in Dilip Kumar & Co case (supra), it is the assessee has to establish while claiming the benefit of exemption notification that this case falls within the four corners of the notification. In the present case, the appellant could not be able to justify that carotenoid contents is more than 500 mg/kg contrary to the Dy. Chief Chemist's Report, and consequently eligible to the benefit of said notification. Therefore, in our view, the observations recorded by the Learned Commissioner (Appeals) in upholding the orders of the Adjudicating Authority docs not warrant interference"

16.12 Further, in Commissioner of Customs, Vijayawada vs Essel Mining & Industries Ltd. reported in 2019 (370) E.L.T. 928 (Tri. - Hyd.) held that Central Revenue Control Laboratory is an appellate laboratory of the C.B.E. & C. Its report is final for all tests made by the department. Para 4 is reproduced as under:

"*4. On consideration of the submissions made and perusal of records, we find that the first appellate authority has considered all the aspects of the case and came to a conclusion that CRCL report needs to be relied upon. We reproduce the relevant findings of the first appellate authority which are as under*:

"The appellants requested for re-testing of the samples at a different laboratory and the remnant samples were sent to the Central Revenue Central Laboratory, New Delhi for re-test. The laboratory vide its report F.No.33-Cus/C21/2008-09. dated 11-11-2008 stated that the iron content of the subject samples was 58.62%. Central Revenue Control Laboratory is an appellate laboratory of the C.B.E. &C.. Its report is final for all tests made by the department and as such the Adjudicating Authority ought to have accepted it. But the adjudicating authority has got the samples tested at another laboratory for which there is nothing on records to show any reasonable ground why he has not accepted the final test report of the Central Revenue Control Laboratory and whether he has obtained the consent of the Chief Chemist/ Commissioner. He has also not intimated the appellants of the proposal to get the samples tested at National Metallurgical Laboratory which amounts to violation of principles of Natural Justice..."

16.13. Department has tested the samples and has classified the imported cargo in conformity with the ascertained description. Thus, Department has adduced proper evidence and discharged the burden of proof. Accordingly, the goods declared as "Industrial Composite Mixture Plus (ICMP)" have been mis-declared for description and on ascertaining, it is found to be Superior Kerosene Oil (SKO).

16.14. Further, the Gujarat High Court vide Order dated 09.03.2026 dismissed a batch of writ petitions (R/SPECIAL CIVIL APPLICATION NO. 16799 of 2025 With R/SPECIAL CIVIL APPLICATION NO. 1239 of 2026 With R/SPECIAL CIVIL APPLICATION NO. 1355 of 2026 With R/SPECIAL CIVIL APPLICATION NO. 1356 of 2026 With R/SPECIAL CIVIL APPLICATION NO. 1357 of 2026 With R/SPECIAL CIVIL APPLICATION NO. 1375 of 2026 With R/SPECIAL CIVIL APPLICATION NO. 1542 of 2026) filed by importers challenging the seizure of "industrial oil" by the Directorate of Revenue Intelligence (DRI). The central issue was whether the imported

product was genuinely industrial oil (freely importable) or actually restricted Automotive Diesel Fuel (ADF) / High-Speed Diesel (HFHSD). Based on test reports from CRCL, Visakhapatnam and MRPL, the Court found that the product consisted predominantly of diesel fractions (95–98%) and was "most akin" to HFHSD, though it failed certain parameters like flash point. The reports also indicated deliberate adulteration with lighter hydrocarbons to alter key properties and evade import restrictions. Applying the Supreme Court's "most akin test" from *Gastrade International*, the Court distinguished that case because, here, the reports were clear and conclusive. It held that multiple laboratory tests covering all 21 parameters were valid and supported the DRI's findings. Since ADF/HFHSD are restricted imports, the seizure was upheld. The Court emphasized environmental risks of releasing such adulterated fuel and ruled that the petitions lacked merit, though it allowed the petitioners to apply for re-export of the goods.

16.15. The Gujarat High Court held that the Supreme Court's ruling in *Gastrade International* did not apply to the present case because the factual and evidentiary situations were materially different. In *Gastrade International*, the Supreme Court found that the laboratory reports and expert opinions were **inconclusive and ambiguous**, as they merely showed that the samples matched some parameters of diesel but did not definitively establish that the product was High-Speed Diesel (HSD), nor did they apply the "most akin" test properly. Additionally, not all **21 required parameters** were tested, and there was no clear expert conclusion identifying the product as HSD. In contrast, in the present case, the test reports from CRCL and MRPL were **clear, detailed, and conclusive:** they covered all 21 parameters collectively and explicitly stated that the product was **"most akin to HFHSD"** and largely composed of diesel fractions (95–98%). Moreover, the reports specifically detected **adulteration with lighter hydrocarbons,** explaining deviations such as low flash point. Unlike in *Gastrade*, where uncertainty benefited the importer, here the scientific evidence clearly established both the nature of the product and the deliberate alteration of its properties. Therefore, the High Court concluded that the ratio of *Gastrade International*—which applies in cases of ambiguity and incomplete testing—could not be invoked where the classification is supported by **definite findings and comprehensive testing,** as in the present matter.

17. In light of the judgment of the Gujarat High Court in R/Special Civil Application No. 16799 of 2025 batch, the submissions of the noticee are not legally sustainable. The reliance placed on incomplete testing and selective non-compliance with parameters under IS standards is misplaced, as the Court has held that classification need not depend on mechanical satisfaction of each parameter if the overall scientific analysis establishes the true nature of the goods. The contention regarding contradictory reports of Kandla laboratory and CRCL also fails, since greater evidentiary value attaches to a detailed and conclusive report based on comprehensive testing. Further, the reliance on Gastrade International vs Commissioner of Customs is misconceived, as the said judgment applies only in cases of ambiguity and inconclusive testing, whereas in the present matter the CRCL test results clearly indicate the nature of the product. The argument based on isolated parameters such as final boiling point and alleged non-testing of certain characteristics is also untenable, since classification must be determined on the basis of overall composition and predominant characteristics rather than selective conformity. In such circumstances, the plea that the issue is merely one of classification without any element of mis-declaration cannot be accepted, and the defense raised by the noticee does not merit acceptance.

18.1. Therefore, in view of the above discussions, I hold that the importer has imported Kerosene as per IS 1459:2018 classifiable under CTH 27101910 by mis-declaring the same as Low Aromatic White Spirit (LAWS) under CTH 27101990. The SKO being imported falls under "Petroleum Class B", based on the quantity and type of product. Import, storage, and handling the products falling under "Petroleum Class B" are governed by the

provisions of the Petroleum Act, 1934 (30 of 1934). The License issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported which were already in possession of License issued under the Petroleum Rules, 1976.Without this license, the import of Petroleum Class B products is not permitted. Storage in drums or tanks is subject to separate statutory conditions. Notification No. 105-Cus dated 06.08.1938 states that any import made in contravention of the Petroleum Act, 1934 (30 of 1934) is deemed a violation of Section 11 of the Customs Act, 1962. Since the importer in the instant case has failed to follow the provisions of the Petroleum Act, 1934 (30 of 1934), I find that they have also violated the provisions of Section 11 of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d)& 111(p) of the Customs Act, 1962.In the instant case, in the absence of compliance by the importer with any of the aforesaid statutory obligations, redemption of the goods could not be allowed to the importers on payment of fine and penalties after re-classifying the goods and modifying the CTH No. thereof.

18.2. Further, I find that the Hon'ble High Court of Chennai, in the case of Visteon Automotive Systems India Limited vs The Customs dated 11.08.2017, has held that availability of goods is not necessary for imposing redemption fine. The Hon'ble Court held "....opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.

18.3. I find that the above view of the Hon'ble Madras High Court was relied upon by Hon'ble Gujarat High Court in the case of M/s. Synergy Fertichem Pvt. Ltd. vs State of Gujarat on 23 December, 2019, Hon'ble Gujarat High Court at para 174 and 175 held that *"We would like to follow the dictum as laid down by the Madras High Court in Para-23 in the case of Visteon Automotive Systems India Limited Vs CESTAT, Chennai."*

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

18.5. I find that the goods declared in the subject Bill of Entry No. 4929914 dated 24.01.2018 were found to be mis-declared in terms of classification and also there is requirement of authorization from DGFT or an Advance License for import of SKO. The correct information of the goods under import were required to be declared on the (i) IGM under Section 50 of the Customs Act, 1962 (ii) Bill of Entry filed by the Importer under Section 46 of the Customs Act, 1962. However in the current case, the importer has himself as well as through his agent, has filed the IGM & Bill of Entry with the incorrect particulars with sole aim to suppress the true nature and description of Cargo which was actually prohibited goods. Since in this case, the condition has not been complied with, the subject goods are liable to be treated as prohibited goods. The Section 111(d) provides for confiscation of goods which are imported /attempted to be imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force. The Section 111(f) provides that any dutiable or prohibited goods required to be mentioned

under the Act or its rules in an import manifest or import report, but which are not so mentioned, are liable to confiscation. Further, The Section 111(l) provides that any dutiable or prohibited goods which are found to be mis-declared in value or in any other material particular in any document required under the Act are liable to confiscation. The Section 111(m) provides for confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under this Act. I therefore hold that in absence of authorization from DGFT and intentional mis-declaration & mis-classification of imported goods, the goods covered under Bill of Entry No. 4929914 dated 24.01.2018 with declared value of Rs. 85,27,407/-, are liable for confiscation under provisions of Section 111(d), and Section 111(m) of the Customs Act, 1962.

18.6. Based on the inquiry conducted, the test report issued by CRCL, New Delhi in respect of Bill of Entry No. 4929914 dated 24.01.2018, and the statement of Shri Ravi Agarwal, Director of the said importer firm, I find that the importer was aware that the imported goods had the characteristics of Superior Kerosene Oil (SKO). However, the goods were mis-declared as LAWS in the Bill of Entry filed under Section 46 of the Customs Act, 1962 for a total quantity of 287.140 MTs, with a declared assessable value of Rs. 85,27,407/-. This mis-declaration was made with the intent to evade restrictions/prohibitions under the Foreign Trade Policy 2015–2020. As a result, the goods are liable for confiscation under Sections 111(d), and Section 111(m) of the Customs Act, 1962. The act of mis-declaring restricted/prohibited goods for clearance constitutes “smuggling” under Section 2(39) of the Customs Act, 1962. The importer knowingly committed the offence as described under Section 135(1)(a) & 135(1)(a)(b) of the Customs Act, 1962, in as much as the offence committed was punishable under Section 135 (i) (A) of the Customs Act 1962. By these deliberate acts and omissions, he also abetted the practice of illegal imports of restricted goods into India, facilitated practices which were in contravention of the provisions of Customs Act, 1962 and failed to comply with the provisions of this Act. By these acts of omission and commission, the importer is therefore liable for penalty under Sections 112(a) (i) for their role in the improper importation. Furthermore, the false declaration made under the Bill of Entry renders them liable for penalty under Section 114AA of the Customs Act, 1962.

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

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

ORDER

(i) I reject the declaration and classification of the imported goods i.e. 251 MTs valued

at Rs. 85,27,407/- (Rupees Eighty Five Lakhs Twenty Seven Thousand Four Hundred and Seven only), declared as 'Low Aromatic White Spirit', classified under CTH 27101990, imported by M/s. Vishveshwar Oil & Lubricants Pvt Ltd, New Delhi under Bill of Entry No. 4929914 dated 24.01.2018

(ii) I hold that the imported goods i.e. 251 MTs valued at Rs. 85,27,407/- (Rupees Eighty Five Lakhs Twenty Seven Thousand Four Hundred and Seven only), imported by M/s. Vishveshwar Oil & Lubricants Pvt Ltd, New Delhi under Bill of Entry No. 4929914 dated 24.01.2018, are classifiable as 'Superior Kerosene Oil (SKO)' under CTH 2710 1910..

(iii) I find that the said goods as in point (i) above, are liable for confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962; however, as the goods have already been cleared, I impose a redemption fine of Rs. 11,00,000/- (Rupees Eleven Lakhs Only) in lieu of confiscation under Section 125(1) of the Act.

(iv) I impose a penalty of Rs. 20,000-00/- (Rupees twenty Lakhs only) on M/s. Vishveshwar Oil & Lubricants Pvt Ltd, New Delhi, under Section 112 of the Customs Act, 1962.

(v) I further impose a penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs only) under Section 114AA of the Customs Act, 1962 on M/s. Vishveshwar Oil & Lubricants Pvt Ltd, New Delhi for making false declarations in the Bill of Entry No. 4929914 dated 24.01.2018.

(vi) I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on M/s. Vishveshwar Oil & Lubricants Pvt Ltd, New Delhi, under Section 117 of the Customs Act, 1962 for contravention of other provisions of the Act.

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

21. The SCN F.No. S/15-01/SIIB/VISHV/2018-19 dated 30.01.2023 issued to M/s. Vishveshwar Oil & Lubricants Pvt Ltd, New Delhi by the Additional Commissioner, Customs House, Kandla, is hereby disposed off.

22. This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

Digitally signed by
VISHWAJEET SINGH
Date: 07-05-2026
17:32:23

VISHWAJEET SINGH
COMMISSIONER (in-situ),
CUSTOMS HOUSE, KANDLA.

F. No. GEN/ADJ/ADC/349/2023-Adjn-O/o Commr-Cus-Kandla

Date:07-05-2026

To,

M/s. Vishveshwar Oil & Lubricants Pvt Ltd,

F-138, Gali No.5, Pandav Nagar, Patparganj,

Delhi- 110091085

Copy to :-

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