



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंज़िल 4th Floor, हुडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
 दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250671MN000000EFE4

क	फाइल संख्या FILE NO.	1. S/49-24/CUS/MUN/2024-25 2. S/49-25/CUS/MUN/2024-25 3. S/49-26/CUS/MUN/2024-25 4. S/49-28/CUS/MUN/2024-25 5. S/49-29/CUS/MUN/2024-25 6. S/49-30/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-081 to 086-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	16.06.2025
	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order - In - Original No. MCH/ADJ/ADC/AK/268/2023-24 dated 29.02.2024
घ	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	16.06.2025
ङ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. Shri Ramesh Arjanbhai Myatra, Prop. M/s Shiv Commodities Impex, 13 Plot No. 61, Sector - 11 GIDC, Gandhidham - 370201. 2. Shri Shambhubai Devjibhai Dangar Plot No. 18, Sector 2, Ghandhidham 370201. 3. Shri Amit Bhardwaj Proprietor, M/s Saarthee Shipping Co.Office No. 1, 2 nd Floor, Shah Avenue-1 Plot No. 211, Ward 12/B, Ghandidham - 370201.

		<p>4. M/s Blue Water Line Pte. Ltd. 3 Shenton Way, #15-12, Shenton House, Singapore - 068805.</p> <p>5. M/s Abrao Shipping Services LLC M-110, Mezzanie Floor, Sheikh Rashid Building, Sheikh Zayed Road, Al Quoz-3, Dubai (UAE).</p> <p>6. M/s Poseidon Shipping Agency Pvt. Ltd., 610-A Wing, Kohinoor City Mall, Kiroi Road, Off LBS Marg, Kurla West, Mumbai-400070</p>
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1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेंज के रूप में आयातित कोई माल.
(a)	any goods imported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3	पुनरीक्षण आवेदन पत्र संगत निधमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.



4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील :- अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

ORDER-IN-APPEAL

Shri Ramesh Arjanbhai Myatra, Prop. M/s Shiv Commodities Impex, 13 Plot No. 61, Sector - 11 GIDC, Gandhidham - 370201 (hereinafter referred to as 'the **Appellant No.1**'), Shri Shambhubai Devjibhai Dangar, Plot No. 18, Sector 2, Gandhidham - 370201 (hereinafter referred to as 'the **Appellant No. 2**'), Shri Amit Bhardwaj, Prop. M/s Saarthee Shipping Co., Office No. 1, 2nd Floor, Shah Avenue-1, Plot No. 211, Ward 12/B, Gandhidham - 370201 (hereinafter referred to as 'the **Appellant No.3**'), M/s Blue Water Line Pte. Ltd., 3 Shenton Way, #15-12, Shenton House, Singapore - 068805 (hereinafter referred to as 'the **Appellant No. 4**'), M/s Abrao Shipping Services LLC, M-110, Mezzanie Floor, Sheikh Rashid Building, Sheikh Zayed Road, Al Quoz-3, Dubai (UAE) (hereinafter referred to as 'the **Appellant No. 5**') and M/s Poseidon Shipping Agency Pvt. Ltd., Kesar Arcades, 1st Floor, Office No. 9-12, Plot No. 51 Sector 8, Gandhidham - 370201 (hereinafter referred to as 'the **Appellant No. 6**') have filed the present appeals challenging the Order-in-Original bearing No. MCH/ADJ/ADC/AK/268/2023-24 dated 29.02.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner (Customs), Customs House, Mundra Port, Kutch, Gujarat (hereinafter referred to as 'adjudicating authority').



2. Brief facts of the case are that a specific intelligence was gathered by Directorate of Revenue Intelligence (DRI) that import consignment covered by Bill of Entry No. 2478522 dated 23.01.2021 filed by M/s. Shiv Commodities Impex, Room No. 13, Plot No. 61, Sector 11, GIDC, Gandhidham -370201 (IEC No. ALPPM9981 J) imported in 10X20' containers, are suspected to be mis-declared and containing contraband goods.

2.1 Acting on the said intelligence, the consignment of imported goods arrived at Mundra, as per the following details per Table-1, was taken up for investigation by DRI:

Table-1

S.No	Description	Particulars declared
1	B/E No. and Date	2478522 dated 23.01.2021
2	Name of Importer	M/s Shiv Commodities Impex

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3	Address of the Importer	Room No. 13, Plot No. 61 Sector -11 GIDC Gandhidham, Kutch, Gujarat - 370201
4	IEC No. of the importer	ALPPM9981J3
5	Country of Origin	United Arab Emirates
6	Bill of Lading Number and Date	JEA2 101008410 dated 20.01.2021
7	Port of Loading	Jebel Ali
8	Inv. No. and Date	ST21BOEX00 13, dated 14.01.2021
9	Supplier Details	M/s Henkel International Lubricants FZE, P.O. Box 49630, Hamriya Free Zone, Shariyah, UAE.
10	RITC/CTH No.	27101971
11	Qty	195880 Kgs
12	Description of goods	Base Oil (Flexi Bags)
13	Invoice Value	97,940 USD CIF
14	Assessable Value	Rs.72,32,869/-
15	No. of containers	10X20' Containers BSIU2215047 BSIU2964410 BSIU3045578 CAIU2885439 CAIU3199325 SGCU1952164 VSBUE2020754 VSBUE2024425 VSBUE2025720 VSBUE2035461
16	End Use Information	For consumer use under commercial distribution (for trading — wholesale or retail)



17	Supporting documents	<p>1. Bill of Lading dated 20.01.2021 (issued by Abrao Shipping Services LLC, as agents for Blue Water Lines Pte Ltd.)</p> <p>2. Certificate of Analysis dated 14.01.2021 (issued by M/s Henkel International Lubricants FZE)</p> <p>3. Certificate of origin dated 14.01.2021 (issued by M/s Henkel International Lubricants FZE;)</p> <p>4. Commercial invoice dated 14.01.2021 (issued by M/s Henkel International Lubricants FZE;)</p> <p>5. Packing List dated 14.01.2021 (issued by M/s Henkel International Lubricants FZE)</p>
18	Name of the Customs Broker, who filed B/E with Mundra Customs	M/s. Saarthee Shipping Co.

2.2 Copy of Certificate of Analysis dated 14.01.2021 (issued by M/s Henkel International Lubricants FZE) provided by the importer while filing the B/E indicated as follows:

Table 2

Product Name: Base Oil		Typical Analysis Report		
Sr. No.	Physical and Chemical Properties	ASTM	Unit	Result
	Appearance	Visual	NA	Bright and clear
	Color	D 1500	NA	1.1
	Flash Point	D 92	°C	146
	Pour Point	D 97	°C	-6
8	Density@15°C	D 4052	g/cm ³	0.8404

2.3 Representative samples were drawn by the DRI officer from each of the 10 containers covering the import consignments arrived at Mundra under the aforesaid B/E vide Panchnama dated 27.01.2021 (RUD No.2) in presence of a representative of the Customs Broker M/s. Saarthee Shipping Co. Those 10 representative samples so drawn by the DRI were forwarded to the CRCL, Kandla, vide DRI letter dated 02.02.2021.

2.4 Test Reports were received from the CH Lab, Kandla vide Test report No. KCL/QR-32 dated 10.02.2021 and KCL/QR-32 dated 11.02.2021 (RUD No. 3), which in general described as follow:

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"The sample as received is in the form of clear colorless liquid. It is composed of mineral hydrocarbon oil (having mineral contents more than 70% by wt.) having following constants:

TABLE-3

Sr. No.	Characteristics	DRI-39	DRI-40	DRI-41	DRI-42	DRI-43	DRI-44	DRI-45	DRI-46	DRI-47	DRI-48
	TM No.	09	10	11	12	13	14	15	16	17	18
1	Acidity, Inorganic	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
2	Density at 15°C, gm/ml	0.8176	0.8166	0.8236	0.8205	0.8126	0.8176	0.8254	0.8211	0.8173	0.8136
3	Initial Boiling Point, °C	165	168	167	178	170	168	170	171	162	168
4	Final Boiling Point, °C	268	270	277	278	268	268	276	269	266	268
5	Flash Point (PMCC), °C	63	63	63	63	63	63	64	63	63	63
6	Smoke Point, mm	23	24	22	22	23	23	21	21	23	23
7	Dry Point	269	271	280	282	270	270	278	272	270	270

"It is other than Base Oil.

The above sample meets the specification of Kerosene in respect of distillation range, flash point & smoke point as per IS-1459-2018. However, other parameters of Kerosene viz. Copper strip corrosion, char value & Bloom on glass chimney could not be done for want of testing facilities."

2.5 Search of the business premises of the Customs Broker M/s. Saarthee Shipping Co. was carried out on 12.02.2021 (RUD No. 4), during which various documents were recovered under Panchnama dated 12.02.2021.

2.6 As per the Test Reports received from the CH Lab, Kandla, the goods were found to meet the specifications of Kerosene in terms of BIS 1459:2018 and as per the Foreign Trade Policy since the Superior Kerosene Oil (SKO), meeting the BIS 1459:2018, was importable by the STEs only, and which was prohibited for import by the private parties, the said consignment of 195.88 MTs Kerosene, imported in the guise of Base Oil, having declared value of Rs.72,32,869/- with Market value of Rs.1,57,49,770/- (Rs.80405.20 PMT price of Non-PDS SKO, as per the website of IOCL) was reasonably believed as liable for confiscation under the provisions of the Customs Act, 1962, hence the same was placed under seizure vide seizure memo dated 16.02.2021. (RUD No. 6). The seized goods were handed over for safe custody to the representative of CFS M/s. Mundhra Container Freight Station Pvt. Ltd. under Supratnama dated 16.02.21 (RUD No. 7).

2.7 It was found during investigation that the importer had also imported the consignments with declared goods as Base Oil in the past vide B/E No. 2379234, dated 16.01.2021 and 2211024 dated 02.01.2021 filed at Mundra through the same Customs Broker M/s. Saarthee Shipping Co. and the goods covered by those Bills of Entry were cleared from Customs. The DRI had therefore, requested the Mundra Customs to provide them the remnant samples as well as second

samples pertaining to those past imports of the importer and the same were forwarded by the Mundra Customs vide letter dated 22.02.2021.

2.8 Vide letter dated 24.02.2021, the importer requested DRI for re-testing of the samples on the pretext that out of 8 parameters as per BIS 1459:2018, only 3 parameters were checked and crucial parameter of distill recovery at 200° C was missing in the report; that the shipper had got the samples tested at Geo Chem Laboratories and as per the test results, it did not fall in the category of Kerosene and provided copy of the test report dated Nil issued by M/s. Geo Chem Middle East FZE; (RUD No. 10) and requested for allowing them the re-testing of the sample of the goods. Copy of the Laboratory report dated Nil of M/s. Geo Chem Middle East FZE indicated the date of receipt of samples on 13.01.2021 with client name: M/s. Henkel International Lubricants LLC Ajman, UAE. The samples were submitted as "Hydrocarbon Oil" and there was no description of label. The test results reported therein are as follows:

Table -4

Test	Method	Unit	Specification	Result
Flash Point	IP 170	°C	Min 35	62.5
Density @ 15°C	ASTM D 4052	Kg/ m ³	To be reported	818.3
Acidity, Inorganic	ASTM D 974	mgKOH/g	Nil	Nil
Copper corrosion, 3hrs @ 50°C	ASTM D 130	-	-	1a
Smoke Point	ASTM D 1322	mm	Min 18	22.0
Sulphur content	ASTM D 4294	% wt	Max 0.20	0.0010
Burning characteristics		-	-	-
Average Burning rate		Gm/h		166/24
Flame on glass chimney				Grayish Brown
Cloud Point Value	IP 10	Mg/kg	Max 20	54*
Distillation	ASTM D 86	-	-	-
Recovery@200	ASTM D 86	% vol	Min 20	15*
FBP	ASTM D 86	°C	Max 300	271

Remarks * Sample fails to meet grade specification of Hydrocarbon with respect to above tests only.

2.9 The remnant samples of the consignment covered vide B/E No. 2478522, dated 23.01.2021 were forwarded by DRI to the CRCL, New Delhi for re-testing vide letter dated 02.03.2021. However, on receipt of the remnant samples, it was informed from the CRCL, New Delhi vide letter dated 05.03.2021 that the quantity of remnant samples being insufficient for complete analysis, hence the duplicate samples (3 liters each) were necessary. Hence, vide Panchnama dated 05.03.2021, fresh samples were drawn from the subject consignment by the DRI in the presence of the Customs Broker M/s. Saarthee Shipping Co. The samples so drawn vide Panchnama dated 05.03.2021 were forwarded for testing to the CRCL, New Delhi vide letter dated 08.03.2021

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2.10 The remnant and duplicate samples of the past consignments of the importer, which were received from Mundra Customs vide letter dated 22.02.2021 were also forwarded by DRI to the CRCL, New Delhi for re-testing vide letter dated 02.03.2021. In this regard also, it was informed from CRCL, New Delhi vide letter dated 05.03.2021 that the quantity of remnant samples being insufficient for complete analysis, hence the duplicate samples (3 liters each) were necessary. Since those were the only available quantity of samples, the CRCL, New Delhi was requested by DRI to carry out the re-test on the basis of the said samples vide letter dated 08.03.2021.

2.11 Vide letter dated 15.04.2021, (RUD No. 20) the CRCL, New Delhi provided test report in respect of 10 samples pertaining to B/E No. 2478522 dated 23.01.2021, as follow:

CLR No. 73-82 Dt 15.03.2021 (B.E. No. 2478522 dated 23.01.2021)

*Each of the ten samples is in the form of clear colourless liquid. Each is composed of mineral hydrocarbon oils, having mineral hydrocarbon oils more than 70% by wt., having following constants:

TABLE-5

S. No	Characteristics	Requirement of Kerosene as per IS:1459-2018	CLR-73	CLR-74	CLR-75	CLR-76	CLR-77	CLR-78	CLR-79	CLR-80	CLR-81	CLR-82
1	Appearance	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright
2	Acidity, Inorganic	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
3	Density at 15° C, gm/cc	to be reported	0.818	0.818	0.824	0.821	0.817	0.817	0.824	0.816	0.818	0.819
4	Distillation											
	a) Initial Boiling Point, °C	-	174.2	176.6	174.7	174.9	177.5	176.9	173.9	177.6	177	171.7
	b) % Recovered below 200°C, percentage (w/v), Min.	20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20
	c) Final Boiling Point, °C, Max	300	265.3	265.2	279.4	278.7	270.7	272.2	279.2	269.9	265.4	269.4
5	Flash Point (PCCl), °C, Min	25(Abre)	64	64	61	63	66	61	63	64	64	64
6	Smoke Point, mm, Min	18	19	20	20	21	22	21	15	21	21	24
7	Colour (Saybolt), M.A	10	+21	+25	+20	+20	+24	+20	+20	+23	+25	+21
8	Copper Strip corrosion for 01 hrs at 50°C	Not worse than No.1	1a	1a	1a	1a	1a	1a	1a	1a	1a	1a
9	Aniline Point °C	-	63	62	63	62	63	63	63	63	63	61

Each of the 10 samples is other than base oil. The sample meet the requirement of Kerosene, as per IS:1459 except % Recovered below 200 °c. The sample is Kerosene Fraction."

2.12 As regards two duplicate samples of the past consignments of goods declared as Base oil imported by the importer, the CRCL, New Delhi provided their report vide letter dated 05.05.2021, (RUD No. 21) informing as follow:

Each of the 2 samples is in the form of light yellow coloured oily liquid having mercaptane odour. Each is mainly composed of mineral hydrocarbon oil, having mineral hydrocarbon oil content more than 70% by wt. It is having following characteristics:

Table 6

Sr. No.	Parameter	CLR-84 (BE No. 2211024, dated 02.01.2021)	CLR-85 (BE No. 2379234, dated 16.01.2021)
01	Acidity	NIL	NIL
02	Flash Point (COC) in °C	192	194
03	Ash (% by wt)	Nil	Nil
04	Density at 15 °C (gm/ml)	0.8753	0.8762
05	Kinetic viscosity at 40 °C (Cst)	44.32	50.75
06	Kinetic viscosity at 100 °C (Cst)	7.168	9.046
07	Water content	NIL	Nil
08	Sulphur (ppm)	5075.39	5907

Each of the 2 samples is base oils having high content of sulphur.

2.13 Vide letter dated 11.05.2021, (RUD No. 22) the DRI asked CRCL, New Delhi to provide clarification on the re-test report provided vide letter dated 15.04.2021. In this regard, the CRCL, New Delhi informed vide their letter dated 28.05.2021 (RUD No. 23) as follows:

As per the available record, samples under reference has following temperatures at 20% recovery.

TABLE 7

S. No.	Marking on sample	Test Memo No.	Container No.	B/E No.	CLR No. Dt. 15.03.2021	Temperature at 20% recovery (°C)
1.	A1/1	34/20-21	BSIU2215047	2478522 dt.23.01.2021	73	202.8
2	B1/1	35/20-21	BSIU2964410	2478522 dt.23.01.2021	74	203.3
3	C1/1	36/20-21	BSIU3045578	2478522 dt.23.01.2021	75	203.7
4	D1/1	37/20-21	CAIU2885439	2478522 dt.23.01.2021	76	202.1
5	E1/1	38/20-21	CAIU3199325	2478522 dt.23.01.2021	77	202.9
6	F1/1	39/20-21	SGCU1952164	2478522 dt.23.01.2021	78	203.1



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7	G1/1	40/20-21	VSBU202075 4	2478522 dt.23.01.202 1	79	203.7
8	H1/1	41/20-21	VSBU202442 5	2478522 dt.23.01.202 1	80	203.6
9	I1/1	42/20-21	VSBU202572 0	2478522 dt.23.01.202 1	81	202.8
10	J1/1	43/20-21	VSBU203546 1	2478522 dt.23.01.202 1	82	202.9

3. On the basis of investigation and evidences collected the roles of each of the persons concerned, connected or involved in the offence was found as under :-

(i) Shri Ramesh Myatra, Proprietor of M/s Shiv Commodities Impex, Gandhidham:


Shri Ramesh Myatra, Proprietor of M/s Shiv Commodities Impex, Gandhidham, has indulged into import and trading of the goods, which is not permitted for importation by the private parties and can be imported exclusively by the STEs only, for pure monetary gain, indulged himself in the outright smuggling of Kerosene in the guise of Base Oil by way of making, signing, using or causing to be made, signed and used by others, the statements and documents, which were false or incorrect, in the transaction of any business for the purpose of the Customs Act, 1962. It is apparent that he had admitted the fact that the cargo, imported by him, met the requirement of parameters of Kerosene conforming IS:1459, which is restricted item and can only be imported through State Trading Enterprises (STE) as per the provisions of the FTP. Further, he had not complied with other statutory obligations in terms of Essential Commodities Act, Petroleum Act etc. and thereby made the goods liable to confiscation under the provisions of the Customs Act, 1962. He had made deliberately false declaration regarding the place of business and also avoided to provide correct details in his statements under Section 108 of the Customs Act, 1962. By not providing the electronic devices/evidences, which he had used, when the subject transactions were being made and could be having of crucial value to the investigation, he intended to obstruct the officer investigating the case under the provisions of Section 108 of the Customs Act, 1962. The deliberate acts of commission and omission on part of Shri Ramesh Myatra, as a Proprietor of M/s. Shiv Commodities Impex, Gandhidham have rendered the said quantity mentioned above at Table-11 in Para 14.2 supra, liable for confiscation under provisions of Section 111 (d), 111 (m) and 111 (o) of the Customs Act, 1962 as discussed earlier and had also made Shri Ramesh Arjanbhai Myatra, Proprietor of M/s. Shiv Commodities Impex, Gandhidham liable to penalty as per provisions of Section 112 (a) and 112 (b), Section 114AA and Section 117 of the Customs Act, 1962.

(2) Shri Amit Bhardwaj, Prop. M/s. Saarthee Shipping Co., Gandhidham:

Shri Amit Bhardwaj, Prop. M/s. Saarthee Shipping Co. has been instrumental in filing of B/E for the goods and attempting the clearance of such goods, which has been imported on behalf of M/s. Shiv Commodities Impex, Gandhidham. He

failed to advise his client M/s. Shiv Commodities Impex, Gandhidham to comply with the statutory provisions provided in the Customs Act, 1962, Foreign Trade Policy, Petroleum Act etc. for the import of goods conforming to standards of Kerosene IS:1459, though he was aware that such goods fall under restricted category being Kerosene having been mis-declared as Base Oil. He never attempted to check the authenticity and correctness of certificate of analysis being presented with the B/E. He did not care to ensure that the certificate of analysis was relevant only for the goods under import. His inaction was deliberate to oblige his friend Shri Shambhu and Shri Ramesh, who happened to be cousin of his friend. While working as a Licensed Customs Broker, he acted in violation of the obligations casted on such Licensed Customs Brokers in terms of Regulation 10 of the Customs Broker License Regulations, 2018. By these deliberate acts and omissions, he also abetted the practice of illegal import of restricted goods into India and facilitated practices which were in contravention of the provisions of Customs Act, 1962, the Customs Brokers Licensing Regulations, 2018 and other statutes. It further appears that he did not reveal the truth of the entire conspiracy and obstructed the investigation by not giving the factual details of the case. By these acts, it appears that Shri Amit Bhardwaj of M/s Saarthee Shipping Co. has by his deliberate acts and omissions abetted the illegal import of restricted goods into India, who dealt with such offending goods, for which he was well in know that the same was liable for confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962, rendering himself liable to penalty under provisions of Section 112 (a), 112(b), Section 114AA and Section 117 of Customs Act, 1962.

(3) Shri Shambhubhai Devjibhai Dangar



He is the perpetrator, motivator of the above act of illegal import of Kerosene in the guise of Base Oil. He explored the business possibility of entering into import and trading of Kerosene in the guise of Base oil by visiting Dubai based firms and had met Shri Samad. He had made his cousin to float new proprietary concern in the name of M/s. Shiv Commodities Impex, and arranged for him the client base for such illegally imported goods. He has remained evasive in his statement regarding the import and trading activity of Base Oil, though he was very much concerned as the entire import and clearances which has been affected by his ex-employee and financially dependent cousin Shri Ramesh Myatra. Many of the customers of the importer have apparently referred him as the person, who actually referred them about the availability of good quality Base Oil with Shri Ramesh. In the financial dealings, no conclusive purpose for high value transactions with the importer, in the guise of soft loans to his relative were provided. Simultaneously since seizure of the goods of the Importers, no such transactions have continued. The plain reason as to why in spite of having actual interest, connections and funds, he did not himself ventured in the trading of Base Oil, he himself had explored, implicates his conscious knowledge in the illegality of such trade. He has also failed to divulge the proper identities and whereabouts of Shri Samad or Shri Sajid, whose numbers he had recommended and with whom he stated to have met abroad, but the said number was found to be held by a different person, showing his intention to mislead the investigation and to obstruct the officer investigating the case. By all such acts of commissions and omissions, Shri Shambhu Danger has fully abetted the illegal import of contraband goods into India, thus facilitated the act of smuggling

contravening the provisions of the Sections 111(d), 111(m) and 111(o) of the Act and rendered himself liable to penalty under provisions of Section 112(a), 112(b), 114AA and 117 of the Customs Act, 1962.

(4) M/s. Henkel International Lubricants FZE, Sharjah, (UAE) and (5) M/s Stanley Trading LLC, Dubai (UAE)

M/s Henkel International Lubricants, FZE, is a company operating from Dubai and other foreign destination. They have raised the Invoice for the goods under import, have facilitated the importer, in conspiracy with Shri Samad, Shri Sajid and such other conspirators have hatched plan for importing Kerosene conforming to the standard of IS:1459 in violation of the FFP provisions, as well as the provisions of the other statutes like Petroleum Act, 1934 etc., by way of providing the importer with the documents showing the goods as Base Oil, though they had all reason to believe that the goods was Kerosene. It is evident that the false Certificate of analysis was also provided by them, with sole aim to assist the importer to clear the prohibited Kerosene in the guise of Base Oil. Further the act of altering of the HS Code of the goods, name of exporter etc. material particulars in the B/L took place due to their indulgence in the conspiracy. They were well aware about the fact of illegal import, which appears evident from the fact that the Export declaration DEC No. 201-05033038-21, dated 17.01.2021 filed with Dubai Customs was declaring the Exporters as M/s Stanley Trading LLC, where the HS Code 27101911 was declared for goods as Base Oil, but with their indulgence with M/s. Blue Waterlines Pte. Ltd., represented by M/s. Abrao Shipping services LLC in Dubai, they arranged for B/L with falsified details of HS Code 27101971 along with change in the exporter's name from M/s Stanley Trading LLC to M/s Henkel Lubricants International FZE as exporter to M/s Shiv Commodities Impex, which all implicate that their act was premeditated and as per the illegal conspiracy to change the Cargo Declaration to make the otherwise "restricted" goods into "free" for importation, which was corroborated from the statement of the Branch Manager of M/s Poseidon Shipping Agency Pvt. Ltd.. They indulged into such conspiracy, upon being influenced by Shri Samad and Shri Sajid, both of whom became main link between the importer M/s. Shiv Commodities Impex and suppliers M/s. Henkel International Lubricants FZE. The supplier provided the goods to M/s. Shiv Commodities Impex against credit, only upon being introduced by Shri Shambhu Dangar and Shri Samad and there was otherwise no direct contact of the importer with the supplier. In the international trade, such practice of transaction of same goods under export after filing the Customs Declaration is beyond any assumption and imagination. They had option to clarify their stand and come up with the exact reasons for such alterations and changes, but since their intention to abet the importer was apparent, for that they deliberately avoided to respond to the investigating officer by way of providing details and documents being asked for from them and also avoided to turn up before the investigating officer in contravention of the provisions of Section 108(3) of the Customs Act, 1962. Overall, by way of providing falsified documents, M/s. Henkel International Lubricants FZE, Sharjah (UAE) and M/s Stanley Trading LLC, Dubai (UAE) have abetted the offence, which has been committed in contravention of the provisions of the Customs Act, 1962 as well as other statutes. They were approached multiple times by communications for furnishing the details and documents during the investigation, but they

deliberately avoided to respond to the same and thereby it appears that they were determined and intending to create obstruction to the officer investigating a case under the provisions of Section 108 of the Customs Act, 1962. For their acts of omission and commission, M/s. Henkel International Lubricants FZE, Sharjah (UAE) have contravened the provisions of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and thus rendered themselves liable to penalty under Section 112 (a) & (b), Section 114AA and Section 117 of the Customs Act, 1962. Similarly M/s Stanley Trading LLC, Dubai (UAE) also have contravened the provisions of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and thus rendered themselves liable to penalty under Section 112 (a) & 112(b), Section 114AA of the Customs Act, 1962.

(6) M/s. Blue Water Lines Pte. Ltd., Singapore, (7) M/s. Abrao Shipping Services LLC, Dubai and (8) M/s. Poseidon Shipping Agency Pvt. Ltd., Gandhidham.

M/s. Blue Water Lines Pte. Ltd are the owner and operator of the container line. They appointed M/s. Abrao Shipping Services LLC as their agent in Dubai and authorised said company to issue BL on behalf of M/s. Blue Water Lines Pte. Ltd. They also authorised said M/s. Abrao Shipping Services LLC to manage the inventory of the containers for specified destinations. Blue water Line is the shipping line for the two consignments of the Importer, among which the one was placed under seizure and which has been found to be mis-declared as "Base Oil", was, received at Dubai and transported to Mundra by the containers owned and operated by M/s Blue Water Lines Pte. Ltd., who had issued BL No. JEA2101008410, dated 20.01.2021 at Jebel Ali through their agent M/s. Abrao Shipping Services LLC at Dubai, wherein the name and address of the shipper were mentioned as "M/s. Henkel International Lubricants FZE, PO Box 49630, Hamriya Free Zone, Sharjah, UAE, Tel.: 00971-6-7433894, Fax: 00971-6-7433895, Email: Henkel@emirates.net.ae" with description of goods as "10 FLEXI BAGS, 10X20' STD FCL CONTR STC, 10 FLEXI BAGS OF BASE OIL" it was further described in the description of goods "HSN CODE: 27101971, TOTAL NET WEIGHT: 195.880 MT, TOTAL GROSS WEIGHT: 196.880 MT". The IGM No. 2273116, dated 21.01.2021 with Inward date of 23.01.2021 was filed for the said goods at Mundra with the aforesaid description of goods. M/s. Blue Water Lines Pte. Ltd., are being represented by M/s. Poseidon Shipping Agency Pvt. Ltd. at Mundra/ Gandhidham, in India. The investigation has revealed that the said shipping line was very much in possession of export declaration DEC No. 201-05033038-21, dated 17.01.2021 filed with Dubai Customs by shipper/exporter declared as M/s. Stanley Trading LLC (I-S0977) and showing the goods under export classified under HS Code 27101911, reflecting the hazardous nature of goods being transported by them. However, detaching themselves from all safety norms prevailing for international transportation, they facilitated the conspirators of illegal import by preparing and providing BL with false details. No satisfactory clarification as regards the difference in the HS Code Number as well as the name of the consignee/Exporter has been provided by them. From this, it appears that though aware about the actual nature of cargo on the basis of the Export declaration, the container agent/shipping agent had deliberately made alteration in the HS Code No. and name of the exporter/shipper while issuing the BL dated 20.01.2021. The Shipping agents were fully aware about the hazardous nature of goods, but they permitted the shipment under non-



hazardous category and accordingly not disclosed about the same when the ship arrived at Mundra. They did not disclose such nature of goods in the arrival manifest they had filed at Mundra. By such act of deliberate falsification, the shipping Line M/s. Blue Water Lines Pte. Ltd., Singapore had with due assistance of their agents M/s. Abrao Shipping Services LLC, Dubai abetted the importer in their endeavor to push the prohibited consignment of Kerosene into India in disguise of "Base Oil. Further, though being aware about the nature of goods as Hazardous and of Petroleum Class B, the said shipping Line M/s. Blue Water Lines Pte. Ltd., Singapore had with due assistance of their agents M/s. Abrao Shipping Services LLC, Dubai had willfully provided the containers to the supplier of the impugned goods and not only that they prepared and provided the B/L to M/s. Stanley Trading LLC, Dubai and M/s. Henkel International Lubricants FZE1 Sharjah with wrong HS Code Number with sole aim to abet the offence of illegal import being committed in conspiracy of each other. Instead of advising their clients to comply with the statutory provisions, they involved themselves in offence to earn freight and such other consideration of offence, by providing the 10X20' containers and 10 flexi bags for bringing into India illegal consignment of Kerosene from Dubai and being transporter of the goods, they also violated the various other legal obligations casted on them under the provisions of the Petroleum Act etc. They never cared to ensure that the containers and receptacles in which the petroleum product of hazardous nature being transported were complying with the statutory norms and transported under due legal compliance. Thus, the Authorised Sea carrier in this case, M/s. Poseidon Shipping Agency Pvt. Ltd., representing M/s. Blue Water Lines Pte. Ltd., Singapore in India, all have also failed to discharge the obligations casted on them under the provisions of the Sea Cargo Manifest and Transshipment Regulations, 2018. The 10X20 containers and 10 flexibags used as receptacles for the illegally imported Kerosene are, therefore, also liable to confiscation under the provisions of Section 118 of the Customs Act, 1962 along with the confiscation of illegal imported Kerosene. By their conscious act of commission and omission, each of the shipping Line M/s. Blue Water Lines Pte. Ltd., Singapore, M/s. Abrao Shipping Services LLC, Dubai and M/s. Poseidon Shipping Agency Pvt. Ltd. all have contravened the provisions of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and therefore each of them have rendered themselves liable for penal action under the provisions of Section 112(a), 112(b) and 114AA of the Customs Act, 1962 and they have further rendered themselves liable for separate penal action in terms of Regulation 13 of the SCMTR, 2017.

4 In view of the above, a Show Cause Notice was issued under F. No. GEN/ADJ/ADC/150/2022-ADJN. dated 14.02.2022 whereby M/s. Shiv Commodities Impex, Gandhidham represented by its Proprietor Shri Ramesh Arjanbhai Myatra, M/s. Stanley Trading LLV, M/s. Henkel International Lubricants FZE were called upon individually and separately to show cause in writing to the Additional Commissioner of Customs, Mundra Custom House, Kutch, Gujarat, as to why: -

(a) The description and classification of 195.88 MT goods described as "Base Oil" with CTH No. 27101971 imported by them vide B/E No. 2478522 dated 23.01.2021 should not be rejected;

(b) The B/E No. 2478522 dated 23.01.2021 should not be assessed with the correct description of goods as "Kerosene conforming to standard IS 1459" falling under CTH No. 27101932 instead of declared description as Base Oil and CTH No. 27101971;

(c) The quantity of 195.88 MT Kerosene conforming to standard IS 1459 falling under CTH No. 27101932, with declared value of Rs. 72,32,869/-, should not be confiscated under provisions of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962;

(d) Penalty should not be imposed on them separately under each of the provisions of Section 112(a), 112(b), 114(AA) and 117 of the Customs Act, 1962.

4.1. Vide the impugned Show Cause Notice dated 14.02.2022, M/s. Shiv Commodities Impex, Gandhidham represented by its Proprietor Shri Ramesh Arjanbhai Myatra, M/s. Blue Water Lines Pte. Ltd., M/s. Abrao Shipping Services LLC, and M/s Poseidon Shipping Agency Pvt. Ltd., Gandhidham, each of them were called upon individually and separately to show cause in writing to the Additional Commissioner of Customs, Mundra Custom House, Kutch, Gujarat, as to why: -

(a) 10X:20' containers used for transportation and packaging of 195.88 MT Kerosene conforming to standard IS 1459 falling under CTH No. 27101932, imported at Mundra under BL No. JEA:2101008410 dated:20.01.20:21, with IGM No. 2273116 dated 21.01.2021 filed at Mundra having value of Rs.2,00,000/- for each of 10X20' containers, having total value of Rs. 20,00,000/- for 10X20' containers should not be confiscated under the provisions of Section 118 of the Customs Act, 1962;

(b) 10 flexibags used for transportation and packaging of 195.88 MT Kerosene conforming to standard IS 1459 falling under CTH No. 27101932, imported at Mundra under BL No. JEA2101008410 dated:20.01.2021, with IGM No. 2273116 dated:21.01.2021 filed at Mundra having value of Rs. 10,000/- for each flexi bag, having total value of Rs. 1,00,000/- for 10 flexibags should not be confiscated under provisions of Section 118 of the Customs Act, 1962;



4.2. Vide the impugned Show Cause Notice dated 14.02.2022, the following persons/companies/firms/concerns as appearing in Column 2 of the following Table-12, be individually and separately were called upon to show cause in writing to the Additional Commissioner of Customs, Mundra Custom House, Kutch1 Gujarat, as to why Penalty should not be imposed on each of them separately and individually in terms of provisions of Customs Act, 1962 as mentioned below (as appearing at Column (3) to (6) of the table): -

41

TABLE-12

S. No.	Name (Shri / M/s)	Penal provisions under Customs Act, 1962			
(1)	(2)	(3)	(4)	(5)	(6)
1	Shambhubhai Devjibhai Dangar	112(a)	112(b)	114AA	117
2	Amit Bhardwaj, Prop. of M/s. Saarthi Shipping Services	112(a)	112(b)	114AA	117
3	Henkel International Lubricants FZE, P.O. Box 49630, Hamriya Free Zone, Sharjah, UAE	112(a)	112(b)	114AA	117
4	M/s. Stanley Trading LLC, Nasier Square, Shop No.3, Deira, P. O. Box 21516, Dubai (UAE)	112(a)	112(b)	114AA	—
5	M/s. Blue Water Lines Pte. Ltd., Singapore, (represented by M/s. Poseidon Shipping Agency Pvt. Ltd. Gandhidham)	112(a)	112(b)	114AA	—
6	M/s. Abrao Shipping Services LLC, Dubai	112(a)	112(b)	114AA	—
7	M/s. Poseidon Shipping Agency Pvt. Ltd. Gandhidham	112(a)	112(b)	114AA	—

5. It is in the above context the Appellants have filed the present appeals in terms of Section 128 of Customs Act, 1962 before this appellate authority seeking to set aside the impugned order dated 29.02.2024 so passed by the Additional Commissioner of Customs, Customs House Mundra.

5.1 SUBMISSIONS OF THE APPELLANT No.1

(Shri Ramesh Arjanbhai Myatra, Prop. M/s Shiv Commodities Impex)

- It is submitted that the Appellant vide its letters dated 22.02.2021, 24.02.2021, 07.06.2021, 16.06.2021, 19.03.2022, 26.04.2022, 29.03.2023, requested correspondence between DRI and CRCL, New Delhi to ascertain the difference between Kerosene and Kerosene fraction. The Appellant also preferred an application under RTIA with the office of Principal Commissioner of Customs, Mundra (K) seeking certified copy of documents and correspondence exchanged between DRI, Custom House laboratory, Kandla and CRCL, New Delhi. To this, he received reply dated 25.03.2022 from Deputy Commissioner & CPIO, Custom House, Mundra stating that all the original correspondence/documents are available with DRI, Gandhidham being their property. However, the said documents/correspondences were never provided to the Appellant. The Appellant in its reply specifically stated that Diesel/Kerosene fraction have been regularly and without demur, cleared by treating the same as freely importable. For illustration, following amongst other bills of entry was submitted (i) BE No. 6225035 dated 02.06.2023 (ii) BE NO.6439223 dated 16.06.2023 (iii) BE No. 7581561 dated 29.08.2023 (iv) BE No. 7564056 dated 10.09.2023 (v) BE No. 7764078 dated 10.09.2023 (vi) BE No. 7783521 dated 12.09.2023.

- The impugned order is non-speaking order as all the contentions/submissions of the Appellant has been recorded in the

impugned order but did not deal with any of the submissions of the Appellant in the findings of the impugned order. The Respondent has not provided reasons for not taking into considerations the submissions put forth by the Appellant.

- None of the correspondences exchanged between the DRI and CRCL, New Delhi were provided to the Appellant and no reasons were given for the same. The Respondent confirmed the penalty upon the Appellant without giving any finding or any reasoning to the submissions made by the Appellant. Also, the said observation has been made without countering the detailed submissions made by the Appellant before the Respondent.
- It is submitted that the impugned order has been passed without an application of mind and without appreciating the issue involved in the matter. Also, the order passed by the Respondent demonstrates the pre-determined mind set, as all the facts and submissions made by the Appellant have not been considered before passing the impugned order.
- In view thereof, it is submitted that the impugned order of Respondent is a non-speaking inasmuch as it does not consider the contentions of the Appellant as supported by case laws. It is cardinal importance that the Respondent ought to pass order with reasons and to give reasons for applicability/non-applicability of the submissions stated by the aggrieved party. The rule requiring reasons to be given in support of an order is a basic principle of natural justice which must be observed in every quasi-judicial process in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.



It is submitted that it is trite law that justice must not only be done but it must appear to be done and that the Appellant has a right to be told why his perception was not correct. It is submitted that the Respondent erred in not appreciating the fact that the Appellant cannot be confronted with the conclusions without telling him the reasons. Such an act of the Respondent is in violation of principles of natural justice.

➤ The said principle has been upheld by various courts throughout India. Reliance is placed upon the Hon'ble Bombay High Court judgment in the case of **Gunnebo India Pvt Ltd V/s. Commissioner of Service Tax, Navi Mumbai-VII**, 2019 (31) GSTL 34 (Bom), wherein the Hon'ble Court held as under:

6.

*Therefore, the impugned order of the Tribunal is a non-speaking order inasmuch as it does not consider the contentions of the appellant as supported by case law. It is of cardinal importance that the Tribunal passes orders with reasons. As observed by the Apex Court in **Siemen Engineering & Mfg. Co. Ltd. v. Union of India**, AIR 1976 SC 1785, that "the rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretense of compliance*

with it would not satisfy the requirement of law." Moreover, the request of giving reasons also ensures that the orders are not arbitrary. Besides, it enables the parties to know the reason why their submissions have been accepted or not accepted. Further, giving of reasons enable the appellate Court to appreciate and understand the basis for the Tribunal coming to a particular conclusion so as to appropriately deal with a challenge to it.

- Reliance is further placed on the following decision to buttress the aforesaid contention:
 - a. **Padmavati Tubes v Commissioner of C. Ex. & S.T., Vapi** [2017 (351) E.L.T. 38 (Guj.)]
 - b. **Sri Ramakrishna Mills (Coimbatore) Ltd. V Commr. of Cus., Chennai** [2001 (132) E.L.T. 453 (Tri- Chennai)]
- In view of the aforesaid legal and factual background, it is submitted that the Respondent erred in passing a cryptic order not dealing with material and submissions made by Appellant and is in clear violation principles of natural justice and thus the impugned order deserves to be set aside on this count, alone.
- The Respondent grossly erred in denying the right to cross examine Chemical Engineer of CCRL, Kandla and New Delhi whose report has been relied by the Revenue to allege mis declaration on the premise that the Appellant has sought for cross examination without indicating specific reason.
- The Appellant vide its letter dated 19.03.2022 requested the Respondent to grant them an opportunity to cross examine the Chemist/Chemical Engineer of CRCL, Kandla and New Delhi who has carried the test. The Respondent has placed reliance upon the test wherein it is stated that the imported goods are kerosene fraction. In the absence any technical literature in the test reports and Show Cause Notice dated 14.02.2022, the Appellant requested cross-examination Chemist/Chemical Engineer of CRCL, Kandla and New Delhi who has carried the test to ascertain the difference between kerosene and kerosene fraction.
- The Respondent without considering the submissions of the Appellant, blanketly denied cross examination on the ground that sufficient reasons was not provided and relied upon various case laws for denying request for cross examination of people who has made voluntary statements during investigation. It is not the case of Appellant that cross examination be given for co-appellant, the Appellant has merely requested for cross examination of the Chemist/Chemical Engineer who conducted the test to get better understanding of kerosene and kerosene fraction. The Respondent did not even given reasoning to deny request of cross examination of Chemist/Chemical Engineer.
- The Hon'ble CESTAT, Chandigarh in the case of **Golden Enterprises v Commissioner of C., Ex., and ST, Ludhiana** reported in 2016 (341) E.L.T. 293 (Tri. - Chan.) held as under:

"7. On careful consideration of all the materials before us, we find that the chemical examiner's test reports are crucial in this case. In the reports (Para 4 supra), we find that the chemical examiner has indicated that the samples have the characteristic of 'base oil'. From the note appended at the bottom of the reports, it appears to us that the chemical examiner were not in possession of any technical literature about the product PDO. The memo sent by the DRI to the chemical examiner requested him to confirm whether the goods were PDO or not. From a perusal of the test reports we get impression that the chemical examiner has not categorically given his finding or answer to the memo. He has only indicated that the goods have the characteristics of 'base oil' without giving his opinion whether the goods were in fact 'base oil' or were PDO. Cross-Examination of the chemical examiner by the appellant before the Adjudicating Authority would have enabled them to seek categorical answers. Inasmuch as this opportunity was denied to the appellant, we are of the view that serious miscarriage of the principles of natural justice has happened."

➤ The Appellant also places reliance upon the following cases:

- Essar Oil Ltd. v Commr. of Cus. (Preventive), Jamnagar reported in 2015 (326) E.L.T. 310 (Tri. - Ahmd.);
- Kellogs India Ltd. v. Commissioner of Central Excise, Mumbai-VII reported in [2001] 2001 taxmann.com 450 (CEGAT- MUMBAI);
- Sree Visalakshi Mills (P.) Ltd. v. Commissioner of Central Excise, Madurai reported in [1998] 1998 taxmann.com 491 (CEGAT - CHENNAI)



The Respondent erred in rejecting classification of 195.88 MT goods described as "Base Oil" under Custom Tariff Heading (CTH) No. 27101971 and ordered to re-assess the Bill of Entry with the correct description as "Kerosene conforming to standard IS 1459" under CTH No. 27101932. The Respondent erred in holding that the goods are liable for classification under Section 111 (d) and 111 (m) of the Act and imposed penalty upon the Appellant under Section 112 (a), (b) and 114AA of the Act. The Respondent in the impugned order has solely relied upon the test reports dated 15.04.2021, the CRCL, New Delhi to hold the goods imported vide the disputed Bill of Entry was Kerosene.

➤ The Appellants submit that they had rightly declared the disputed goods as Base Oil and classified it under CTH 27101971 of the Customs Tariff Act, 1975 based on the import documents. Base Oil has not been defined under Chapter 27 of the Customs Tariff Act. The Respondent erred in considering it as Kerosene and classifying it under CTH 27101932 based on the test reports issued by the CRCL, New Delhi and CRCL, Kandla. It is pertinent to note that CRCL, New Delhi and CRCL, Kandla have not conducted tests regarding Burning quality and Sulphur content. And out of the rest of the test, the disputed goods do not meet the requirement of Distillation at % recovered below 200°C. Therefore, essentially, out of

10 parameters, the disputed goods do not meet the requirements of 3 parameters.

- The CRCL, New Delhi failed to test Burning quality and total Sulphur. Kerosene is distillate fractions of crude oil in the boiling range of 150-250°C. They are treated mainly for reducing aromatic content to increase their smoke point (height of a smokeless flame) and hydrofining to reduce sulphur content and to improve odour, colour & burning qualities (char value).
- Burning quality test-by verifying Char value would indicate the chemical composition of the Kerosene. Similarly, the bloom on glass chimney test requires that there should not be any appreciable formation of deposits or "bloom" on the lamp glass chimney during burning under normal operating conditions.
- The total sulphur content in petroleum products is an important variable, as sulphur compounds are associated with problems involved in the storage, processing, transportation, and final quality of fuel products. Sulphur also causes severe atmospheric pollution. Sulphur compounds, present in petroleum derivatives such as gasoline, kerosene, diesel fuel, and fuel oil, are corrosive and can inhibit the performance of additives in the final products.
- The test report relied upon by the Respondent lacks in testing of essential parameters of Distillation at % recovered below 200°C, Burning quality and total sulphur therefore, the test reports are wholly inconclusive and unreliable. To buttress this submission, reliance is placed upon the following decisions:

- In the case of **Swarna Oil Services v Commissioner of Customs, Mundra** reported in (2023) 13 Centax 122 (Tri.-Ahmd), the Hon'ble CESTAT, Ahmedabad held as under:

"It is seen that out of the 8 parameters on which the sample has to be tested for determining whether or not the same meets with the specifications of Kerosene, it is seen from both the test results that test have not been undertaken with respect to the following 3 parameters.:

(i) Burning quality

(a) Char value, mg/kg of oil consumed, Max

(b) Bloom on glass chimney

(ii) Colour (Saybolt)

(iii) Total, sulphur, percent by mass, Max

12. It is also not the Revenue's case that the said three parameters can be established by any inferential process or otherwise. Insofar as sulphur is concerned, though no test have been undertaken, we will for the sake of our discussion assume that the said parameters have been met, as the same forms a part of the suppliers test reports and is within the parameters specified in IS1459:1974 (reaffirmed in 1996). However in respect of the other two parameters regarding



burning quality and colour there is absolutely no evidence that the revenue has produced to establish that the said two parameters are met with. The revenue has neither through test results nor otherwise lead any evidence to show that the said two parameters were also met with.

...

14. In our view, in the absence of evidence that the imported goods meet with all the specifications laid down in supplementary note (c) to chapter 27, for a product to be classified as Kerosene, the case made out by the revenue cannot be sustained. Accordingly the impugned orders are set aside and appeals are allowed with consequential reliefs, if any arise, in accordance with law."

- In the case of **Shri. Jethanand Rohra and Anr. V Commissioner of Customs (Import)** reported in 2022-TIOL-629-CESTAT-MUM, the Hon'ble CESTAT, Mumbai while allowing the appeal of the Appellant held as under:

"31. However, in respect of the other two parameters regarding burning quality and colour, there is absolutely no evidence that the Revenue has produced to establish that the said two parameters are met with. Thus, Revenue has failed to demonstrate how the other two said parameters were also met."

- In the case of **Oil Energy v Commissioner of Customs (Prev), Jamnagar** reported in (2023) 12 Centax 256 (Tri.-Ahmd), the Hon'ble CESTAT, Ahmedabad wherein the Hon'ble CESTAT, Ahmedabad maintained the classification by the assessee on the basis that only 3 parameters tested instead of required 8 parameters to conclude that product was superior kerosene oil. The Hon'ble Court held that the test report was not conclusive since the samples were not tested with reference to acidity, burning quality, colour, copper strip corrosion and sulphur content.



It is also submitted that the Revenue failed to ascertain whether the disputed goods are Base Oil or not when the Revenue did not undertake test on the basis of characteristics of Base Oil. It is submitted that neither Base Oil has been defined under any statute nor BIS provides for any standards for it. However, in order to test Base Oil, laboratories have been ascertaining the following characteristics:

- Ash content (% by mass)
- Sediment (% by mass)
- Water content (% by mass)
- Flash Point (COC)
- Density (gm/ml) at 15°C
- Kinematic Viscosity @ 40°C
- Kinematic Viscosity @ 100°C
- Viscosity index
- Sulphur

- It is also submitted that the American Petroleum Institute (API), which apparently has developed 'base oil' classification system, has classified base oil into five major groups:

API Group	Base Oil Characteristics			Manufacturing Method
	Sulphur Wt., %	Saturates Wt.	Viscosity Index VI	
I	>0.03	<90	80-119	Solvent Refined
II	>0.03	<90	80-119	Hydro processed
III	>0.03	<90	120+	Severely Hydro processed
IV	Poly-alpha Olefins (PAOs)			Oligomerization
V	Base Oils not included in Group I, II, III or IV			Various

- As per the above table, one of the basic characteristics to determine Base Oil is sulphur. It is pertinent to note that, the Revenue has failed to test the parameters such as ash content, sediment, water content, Kinematic Viscosity, and sulphur content to ascertain the characteristics of the disputed goods.
- It is submitted that as per the test report, the sample is Kerosene Fraction and not Kerosene. In the past Customs Department has allowed consignment wherein as per the test reports, the goods were Kerosene/Diesel Fraction and not Kerosene.
- The Respondent erred in not relying upon the test report dated 16.01.2021 by Geo Chem Lab, UAE, conducted by the Supplier. It is submitted that as per test report dated 16.01.2021, the disputed goods failed to meet specifications of Hydrocarbon.
- Supplementary Note (c) of chapter Notes of Chapter 27 of First Schedule of the Customs Tariff Act, 1975 denies "superior kerosine oil (SKO)" as any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS : 1459-1974. Therefore, as per the test report of Geo Chem Lab, the samples are other than Hydrocarbons.
- Further, it is also submitted that the Respondent erred in holding that the Appellant had filed Certificate of analysis dated 14.01.2021 issued by the supplier M/s. Henkel International Lubricant FZE, but the said certificate of analysis fails to connect its authenticity with reference to the goods being supplied. The said certificate also failed to describe the place of drawl of sample, date of drawl of sample, quantity of goods, laboratory where the said tests were carried out, certification of the laboratory, qualification of person conducting test etc. material particulars and thereby it cannot provide any connection with the goods under import, but on the contrary, it gives indication that such certificate

of analysis was a camouflage to hoodwink the Customs authorities at Mundra and prepared or caused to have prepared with sole intention of mis-declaring the description and classification of goods under import.

➤ It is submitted that the Certificate of analysis is a document that manufacturers and exporters produce to verify that a set of products have been manufactured as per their customers' requirements. It is a document that states that a particular product was analytically tested as suggested with specified results that ensures quality and safety. Certificate of analysis has been produced by the exporter/supplier and authenticity of which cannot be ascertained by an importer. Therefore, the allegation that the certificate of analysis prepared or caused to have prepared with sole intention of mis-declaring the description and classification of goods under import is baseless as much as the Appellant has not prepared or caused to have prepared the Certificate of analysis.

➤ The Appellant submits that the test report submitted by CRCL, New Delhi did not examine all 10 parameters, therefore, the samples are required to be drawn and send to the Government recognised laboratory to ascertain all 10 parameters.

➤ In the absence of examination of all 10 parameters, the Respondent ought not to have been relied upon test reports of CRCL, New Delhi.

➤ The Appellant submits that the classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof.

In the present case, the Revenue has failed to provide cogent evidence to state that the disputed goods are Kerosene and not Base Oil. Reliance is placed upon the decisions in the case of **HPL Chemicals v. CCE** reported in 2006 (197) ELT 324 (SC) and **Hindustan Ferodo v. CCE** 1997 (89) E.L.T. 16 (SC).

➤ The Respondent erred in relying upon statements of the buyers which were recorded during the course of investigation and tried to demonstrate about the nature of transactions made by the Appellant and the purported use of the goods imported by them. It is submitted that none of the buyers have stated that the Appellant imported Kerosene in the guise of Base Oil.

➤ It is submitted that Statements of Shri Mihir Tejabhai Kangad, Gandhidham, Shri Jatin Satyanarayan Agrawal, Director of M/s. Agrawal Roadlines Pvt. Ltd., Gandhidham and Shri Amit Rajkumar Nehlani, Director of M/s Raj Handlers P. Ltd. were recorded during investigation

A. I.

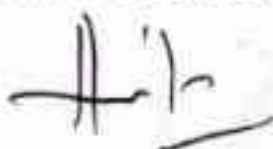
and none of the buyers have stated that the Appellant imported Kerosene. Therefore, their statements are exculpatory.

- Even otherwise, it is submitted that as per official website of Bharat Petroleum, applications for Kerosene (SKO) can be broadly grouped under the following heads:
 - Illuminant In wick-fed chimney lamps, wick-fed incandescent mantle devices, also in pressure burner type lamps fitted with mantles.
 - Fuel in cooking stoves, ranges, ovens, blow lamps, etc.
 - Cleaning fluid/decreasing of components.
 - Solvent in paints/printing inks.
 - Raw material for the manufacture of n-paraffin / White Oil
- Therefore, it is submitted that the Appellant has correctly declared nature of the goods in the Bill of Entry filed by them.
- It is pertinent to note that the Appellant had imported two consignments of Base Oil in the past and the same were cleared by the customs. During the investigation of the present consignment, the Revenue again collected samples of the past consignment and sent the samples for another test from CRCL, New Delhi.
- As per the test report dated 05.05.2021 of the past consignments, the goods are confirmed to be Base Oil. The Appellant has in total imported three consignments, out of which 2 have been cleared and as per the test report dated 05.05.2021, the said two consignments meet the requirements of Base oil.
- The Respondent ought to have appreciated that the Revenue had not ever alleged about the value of the imported goods. It is submitted that the price of Base Oil cannot be compared with the price of Kerosene.
- The Respondent ought to have appreciated that the Revenue have not alleged that the Appellant paid over and above value of declared value to the suppliers. In the absence of any allegations regarding transfer of funds or illicitly made payments to the suppliers, and more particularly in absence of any allegation of valuation of the imported goods, the Respondent wrongly held for misdeclaration of description of the imported goods.
- Without prejudice to the above, it is submitted that although the Appellant imported the disputed goods considering it as Base Oil, the Appellant do not intend to clear the said goods for home consumption and therefore, the restriction regarding import through canalised agency is not applicable which is only in case where the said goods would have been cleared for use of sale or consumption within India. As the Appellant do not intend to remove/clear the said goods for use, consumption or sale in India, the Appellant would re-export the said goods.

- The Appellant submits that in view of the submissions made herein above, they have correctly declared the disputed goods as Base Oil and therefore, the same cannot be treated as mis declaration in description of goods. Base Oil is freely importable and no any restriction has been provided like Kerosene. In absence of any restrictions, goods ought not have been confiscated under the provisions of Section 111 (d) and (m) of the Act.
- As the said goods are Base Oil, there is no violation of any provisions of the Act or the said Foreign Trade Policy meaning thereby that the alleged restrictions of the said goods being canalized for import through canalised agency only also does not apply at all.
- The Respondent has erred in imposing penalty under Section 112(a), (b) and 114AA of the Act. It is submitted that in view of the above submissions made, the disputed goods are not liable for confiscation under the provisions of Section 111 (d) and (m) of the Act, no penalty ought to have been imposed on the Appellant.
- It is clear from the text of Section 112 that a penalty under Section 112 is imposable for different offence under sub-clause (a) and sub-clause (b). Under 112(a) penalty is imposable on any person who in relation to any goods does or omits to do any act which act would render the goods liable for confiscation under Section 111 of the Act or abets the doing or omission of such act. Similarly, penalty under Section 112 (b) is imposable when a person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111.

Section 107 of Indian Penal Code, 1862 defines abetment to include instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omissions to the doing of the said act. Instigation basically means suggesting, encouraging or inciting a person to do or abstain from doing something. Thus, instigation is something which must be sufficient to actively encourage a person to commit an offence. It should not be mere advice or simple suggestion. Conspiracy on the other hand means an agreement between two or more persons to commit an unlawful act where conspirators must actively agree and prepare themselves to commit that offence. For intentionally aiding the offender the abettor has to facilitate the crime or has to help the offender in committing the crime/offence. In any case, the intention to instigate or conspire or aid the offender to commit an illegal act/omission is utmost important.

- In the present case, in as much as the Base Oil has not been imported contrary to any prohibition imposed by or under the Act or any other law




for the time being in force the same are not liable for confiscation under Section 111(d), no penalty under Section 112 (a) and (b) is imposable.

- It is submitted that the Appellant are not liable for penalty under the provisions of Section 114AA of the Act inasmuch as they have not signed or used, or caused to be made, signed or used, any declaration, statements or documents which is false or incorrect in any material particular, in the transaction of any business for the purpose of this Act.

5.2 **SUBMISSIONS OF THE APPELLANT No.2**

(Shri Shambhubai Devjibhai Dangar)

- The Respondent held that the Appellant is the perpetrator, motivator of the above act of illegal import of Kerosene in the guise of Base Oil. The Respondent held that the Appellant explored the business possibility of entering into import and trading of Kerosene in the guise of Base oil by visiting Dubai based firms and had met Shri Samad. The Appellant had made his cousin to float new proprietary concern in the name of M/s. Shiv Commodities Impex, and arranged for him the client base for such illegally imported goods. The Appellant had remained evasive in his statement regarding the import and trading activity of Base Oil, though he was very much concerned as the entire import and clearances which has been affected by his ex-employee and financially dependent cousin Shri Ramesh Myatra. Many of the customers of the importer have apparently referred him as the person, who actually referred them about the availability of good quality Base Oil with Shri Ramesh. In the financial dealings, no conclusive purpose for high value transactions with the importer, in the guise of soft loans to his relative were provided. Simultaneously since seizure of the goods of the Importers, no such transactions have continued. It was alleged that the plain reason as to why in spite of having actual interest, connections and funds, he did not himself ventured in the trading of Base Oil, he himself had explored, implicates his conscious knowledge in the illegality of such trade. He had also failed to divulge the proper identities and whereabouts of Shri Samad or Shri Sajid, whose numbers he had recommended and with whom he stated to have met abroad, but the said number was found to be held by a different person, showing his intention to mislead the investigation and to obstruct the officer investigating the case.
- It is submitted that the Respondent erred in imposing penalty without bringing out any evidence to show that the Appellant has gained anything from the alleged mis declaration. The Revenue failed to bring any evidence to show that the Appellant contravened any provisions of the Act or has in any dealt with the disputed goods.
- The Respondent erred in imposing penalties of Rs. 5,00,000/- under Section 112 (a) and Rs. 1,00,000/- under Section 112 (b) of the Act without appreciating facts of the case.



➤ It is clear from the aforesaid that a penalty under Section 112 is imposable for different offence under sub-clause (a) and sub-clause (b). Under 112(a) penalty is imposable on any person who in relation to any goods does or omits to do any act which act would render the goods liable for confiscation under Section 111 of the Act or abets the doing or omission of such act. Similarly, penalty under Section 112 (b) is imposable when a person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111.

➤ Section 107 of Indian Penal Code, 1862 defines abetment to include instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omissions to the doing of the said act. Instigation basically means suggesting, encouraging or inciting a person to do or abstain from doing something. Thus, instigation is something which must be sufficient to actively encourage a person to commit an offence. It should not be mere advice or simple suggestion. Conspiracy on the other hand means an agreement between two or more persons to commit an unlawful act where conspirators must actively agree and prepare themselves to commit that offence. For intentionally aiding the offender the abettor has to facilitate the crime or has to help the offender in committing the crime/offence. In any case, the intention to instigate or conspire or aid the offender to commit an illegal act/omission is utmost important. In the present case, the Appellant has neither instigated the Importer nor has conspired with the Importer for alleged offence. The Department has not produced any evidence to substantiate involvement or positive act of the Appellant to show his involvement in the alleged offence.

It is submitted that the Appellant has not dealt with or transported goods physically in any manner. It is submitted that "in any other manner dealing with" used in Section 112(b) of the Act has to be read ejusdem generis with the preceding expression in the clause viz. carrying, removal or depositing etc. According to the above doctrine, meaning of expression "in any other manner of dealing with" should be understood in sense similar or comparable to how preceding words viz. carrying, removing, depositing etc. are understood. In other words, "in any other manner dealing with" of the goods is also to some physical manner of dealing with the goods. The Revenue failed to prove that Appellant has dealt with the goods physically, and therefore, penalty under Section 112(b) ought not to have been imposed. Reliance is placed on the decision in the case of **D. Ankneedu Chowdhry v Commissioner of Customs** reported in 2004 (178) ELT 578.

➤ Reliance is also placed upon the decision of the Hon'ble Bombay High Court in the case of **Commissioner of Central Excise Vs. Rakesh Kumar**




Rajendra Kumar & Co. reported in 2015 (325) ELT 506 while interpreting Rule 209A, which is *pari materia* to Section 112(b), held as under:

"The sine qua non for a penalty on any person under the above rule is : either he has acquired possession of any excisable goods with the knowledge or belief that the goods are liable to confiscation under the Act or Rules or he has been in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or has in any other manner dealt with any excisable goods with such knowledge or belief. Acquisition of possession of goods is, indisputably, a physical act i.e. the act which could not have been done without handling or movement of excisable goods as mentioned in the rule. The words "who acquires possession" would indicate that the person sought to be penalized under this rule has to first acquire the possession and then do the activity of transportation etc. as contained in the rule. It is, thus, clear that the physical possession of the goods is a must for doing the activity of transporting referred in Rule 209A. The ratio laid down by this Court in Jayantilal Thakkar & Co. (supra) covers the issue. In the said judgment, it is held that in the given situation, if the assessee is only issuing invoices wherein there is no movement of the goods, they cannot be visited with penalty under Rule 209A."

- The Appellant has only helped in financing the Importer who was his cousin brother. As a cousin, the Appellant has merely, connected the Importer with Shri Samad and Shri Amit Bhardwaj. In fact, the Appellant has a brother requested his acquaintances to procure Base Oil from the Importer. There is no harm in helping your cousin brother. It is also pertinent to note that none of the co-appellants alleged that the Appellant had knowledge about the alleged mis declaration. When there is no evidence to establish that the Appellant had prior knowledge of the goods imported and also when there is no evidence to establish any wrongful intent on the part of the Appellant, penalty ought not to have been imposed. Reliance is placed upon the case of **Shri Dharmesh Kumar Hariyani v C.C. Ahmedabad** reported in 2022 (9) TMI 1223 - CESTAT AHMEDABAD wherein the Hon'ble CESTAT, Ahmedabad held as under:

"5.12 Admittedly, the appellant is only arrange the finance in their regular course of business, appellant did not deal with alleged gold smuggling activity in question. Facts borne on record revealed that the appellant has maintained all along that it never had the possession of the impugned goods nor was in any way concerned with the carrying, removing, etc., of the consignments in question and hence, it was beyond their comprehension that the goods in question were per se liable for confiscation under Section 111(d) ibid. It is nowhere on record that the appellant, in his capacity, was knowingly involved in alleged activity of smuggling gold. Section embodies the phrase "...which he knows or has reason to believe are liable to confiscation under Section 111..." which is of specific importance in



this situation, Revenue has nowhere ascertained as to the knowledge of the appellant whether he knew or had reason to believe that the goods in question were liable for confiscation. Undisputed peculiar facts of the case are that the appellant is neither the importer nor the owner who had acquired possession nor in any way concerned with the carrying, removing, etc., of the goods in question, and Revenue has nowhere ascribed knowledge of the appellant as to the confiscation."

- It is settled law that for imposition of penalty under Section 112 of the Act mens-rea has to be established about the wrongful act. In the present case, the Respondent has not brought forward any shred of evidence to show that the Appellant was aware about the alleged mis declaration. Reliance is placed on the following decisions to support the aforesaid contention:

Commissioner of Customs (Import) V/s. Trinetra Impex Pvt Ltd 2020 (372) ELT 332 (Del) wherein it is held as under:

"11. In respect of the show cause notice dated 8-7-2011, the imposition of the penalty has been made under Section 112(a) of the Act in respect of the goods which have been held to be liable to be confiscated under Section 111 of the Act. Here, the imposition of the penalty on the CHA is founded on the ground that he has abetted the offence. Though, for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, mens rea may not be required to be proved as condition precedent, however, when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present. [Ref. : Amritlakshmi Machine Works v. The Commissioner of Customs (Import), [2016 SCC OnLine Bom 66 = 2016 (335) E.L.T. 225 (Bom.)].

12. In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty. Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-à-vis the respondent."

Suresh Rajaram Newagi v/s Commissioner of Cus 2008 (228) E.L.T 211. In the said decision the Hon'ble Tribunal had set aside the penalty imposed under Section 112 of the Act by holding that in absence of mens rea or knowledge about smuggling activity penalty for abetting the smuggling is not maintainable. The relevant extract of the decision is reproduced for ease of reference:

"In the absence of any concrete evidence about the active role of the appellant and since no evidence has been produced by the Department to show that he is part of any group of smugglers etc.



or that he was aware about the excess goods lying in his shed, penalty cannot be imposed on him as his lapse, if any, could also be considered only as supervisory lapse. I also find that an inquiry has been conducted by Mumbai Port Trust on the very same charges against the appellant and the inquiry report has categorically found that no charge against the appellant is proved. As no direct/circumstantial evidence to show his role as abetting to the smuggling activity exists, therefore, the appellant is not liable to any penalty in absence of mens rea or knowledge of the actual smuggling activity. In this regard, I place reliance on the following case laws :

(i) *Akbar Badruddin Jiwani v. Collector of Customs* reported in 1990 (47) E.L.T. 161 (S.C.);

(ii) *Mangalore Chemicals & Fertilizers Ltd v. Deputy Commissioner* reported in 1991 (55) E.L.T. 437 (S.C.);

(iii) *V. Krishna Raj v. Collector of Customs, Madras* reported in 1995 (80) E.L.T. 628 (Tri.);

(iv) *P.K. Abraham v. Commissioner of Customs, Mumbai* reported in 1999 (114) E.L.T. 480 (Tri.).

3. In the light of the above discussions, I set aside the penalty of Rs. 50,000/- imposed on the appellant and allow the appeal"

➤ In absence of mens-rea and any documentary evidence, the Respondent erred in imposing penalty upon the Appellant under Section 112 (b) the Act. Reliance is also placed upon the following decisions:

- a) *Nazir-Ur-Rahman versus Commissioner of Customs* Mumbai reported in 2004 (174) E.L.T. 493 (Tri. - Mumbai);
- b) *Shankeshwar Metal Corporation versus Commr. of Cus.* (Imports), Mumbai reported in 2014 (312) E.L.T. 344 (Tri.);
- c) *S.M. Dave versus Commissioner of Customs, Kandla* reported in 2009 (247) E.L.T. 437 (Tri. - Ahmd.)

➤ The Respondent erred in imposing penalty of Rs. 2,00,000/- under Section 114 AA of the Act. It is submitted that Section 114AA of the Act provides for imposition of penalty for use of false and incorrect material or causing such use. On plain reading of Section 114AA of the Act, it is clear that there are two essential ingredients that needs to be fulfilled for imposition of penalty under the aforesaid section, a) knowledge and b) that the material should be false. Penalty under section 114AA is imposable only if knowingly or intentionally a false declaration, statement or document is made, signed or used. In the factual matrix of the present case, in the absence of any specific findings with regard to sign / using of any declaration, statement or document, the provisions of Section 114AA of the Act cannot be invoked for imposition of penalties on

the appellant therefore, the Penalty under section 114AA ought to be dropped. Therefore, impugned order dated 29.02.2024 passed by the Respondent is even otherwise bad, erroneous and therefore, it deserves to be set aside.

5.3 SUBMISSIONS OF THE APPELLANT No.3

(Shri Amit Bhardwaj, Prop. M/s Saarthee Shipping Co)

- The Appellant submits that the Respondent confirmed the penalty upon the Appellant without giving any finding or any reasoning to the submissions made by the Appellant. The Respondent erred in making observation without countering the detailed submissions made by the Appellant.
- The Respondent erred in passing the impugned order without an application of mind and without appreciating the issue at hand. The impugned order demonstrates the pre-determined mind set, as all the facts and submissions made by the Appellant have not been considered before passing the impugned order.
- The Respondent ought to have considered the decisions relied upon by the Appellant in its reply vide letters dated 24.03.2022, 29.03.2023 and 15.01.2024.
- The impugned order of Respondent is a non-speaking inasmuch as it does not consider the contentions of the Appellant as supported by case laws. It is cardinal importance that the Respondent ought to pass order with reasons and to give reasons for applicability/non-applicability of the case laws relied upon by the aggrieved party. The rule requiring reasons to be given in support of an order is a basic principle of natural justice which must be observed in every quasi-judicial process in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.
- It is submitted that it is trite law that justice must not only be done but it must appear to be done and that the Appellant has a right to be told why his perception was not correct. It is submitted that the Respondent erred in not appreciating the fact that the Appellant cannot be confronted with the conclusions without telling him the reasons. Such an act of the Respondent is in violation of principles of natural justice.
- The said principle has been upheld by various courts throughout India. Reliance is placed upon the Hon'ble Bombay High Court judgment in the case of **Gunnebo India Pvt Ltd V/s.**



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Commissioner of Service Tax, Navi Mumbai-VII, 2019 (31) GSTL 34 (Bom), wherein the Hon'ble Court held as under:

6.

Therefore, the impugned order of the Tribunal is a non-speaking order inasmuch as it does not consider the contentions of the appellant as supported by case law. It is of cardinal importance that the Tribunal passes orders with reasons. As observed by the Apex Court in Siemen Engineering & Mfg. Co. Ltd. v. Union of India, AIR 1976 SC 1785, that "the rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretense of compliance with it would not satisfy the requirement of law." Moreover, the request of giving reasons also ensures that the orders are not arbitrary. Besides, it enables the parties to know the reason why their submissions have been accepted or not accepted. Further, giving of reasons enable the appellate Court to appreciate and understand the basis for the Tribunal coming to a particular conclusion so as to appropriately deal with a challenge to it.

➤ Reliance is further placed on the following decision to buttress the aforesaid contention:

- c. **Padmavati Tubes v Commissioner of C. Ex. & S.T., Vapi** [2017 (351) E.L.T. 38 (Guj.)]
- d. **Sri Ramakrishna Mills (Coimbatore) Ltd. V Commr. of Cus., Chennai** [2001 (132) E.L.T. 453 (Tri- Chennai)]

➤ In view of the aforesaid legal and factual background, it is submitted that the Respondent erred in passing a cryptic order not dealing with material and submissions made by Appellant and is in clear violation principles of natural justice and thus the impugned order deserves to be set aside on this count, alone.

➤ The Respondent erred in holding that the Appellant failed to advise to his client M/s. Shiv Commodities Impex, Gandhidham, the Importer herein to comply with the statutory provisions provided in the Customs Act, 1962, Foreign Trade Policy, Petroleum Act etc. for the import of goods conforming to standards of Kerosene IS:1459, though he was aware that such goods fall under restricted category being Kerosene having been mis declared as Base Oil.

➤ The Respondent erred in holding that the Appellant never attempted to check the authenticity and correctness of certificate of analysis being presented with the Bill of Entry and did not care to ensure that the certificate of analysis was relevant only for the goods under import.

- The Respondent erred in holding that the Appellant while working as a Licensed Customs Broker, acted in violation of the obligations casted on such Licensed Customs Brokers in terms of Regulation 10 of the Customs Broker License Regulations, 2018.
- It is submitted that the Importer appointed the Appellant as their Custom Broker in terms of Customs Brokers Licensing Regulation 2018 ("CBLR") as per their one-time authority letter dated 31.12.2020. The Appellant as per the procedure requested for the copy of KYC form along with documents such as one time authority letter in the name of the Appellant, Leave and License agreement, Aadhar card of the Proprietor of the Importer, PAN Card, GST Certificate, and IEC Code which was duly received by the Appellant.
- Upon perusal of the Regulation 10 of the CBLR, it is clear that the Custom Broker does not have obligation to ascertain the genuineness of the transaction. The Respondent has erred in holding that the Appellant failed to advise his client M/s. Shiv Commodities Impex, Gandhidham to comply with the statutory provisions provided in the Customs Act, 1962, Foreign Trade Policy, Petroleum Act etc. for the import of goods conforming to standards of Kerosene IS:1459, though he was aware that such goods fall under restricted category being Kerosene having been mis declared as Base Oil. It is submitted that the scope of work of the Customs Broker is to the extent of filing Bill of Entry on the basis documents provided by the Importer. It is not the job of the Custom Broker to open the container and check the description of the goods. The question of advising the client to comply with the requirement of restriction applicable to kerosene would have arisen only if the client were to inform the Appellant about his intent to import kerosene. In fact, the allegation of the Department which is confirmed by the Respondent is based on the alleged test reports, how can a Custom Broker ascertain the nature of the goods. Reliance is placed upon the decision of the Hon'ble Madras High Court in the case of **Commr. of Customs, Tuticorin v Moriks Shipping & Trading (P) Ltd.** reported in 2015 (317) ELT 3 (Mad.) wherein the Hon'ble Madras High Court held as under:

"Even at the very outset, it is evident from the order of the Tribunal that the goods were examined by the Customs Department in its laboratory, and analysis revealed that the goods were common salt instead of Organic Dye Intermediate G-Salt, as declared. Such being the case, this Court is baffled to note how penalty can be levied on the CHA. When the Department itself, only on the basis of the chemical analysis, was able to ascertain that the goods attempted to be exported was not common salt, how can a CHA be expected to know of the exact nature of the product at sight. In the above stated scenario, this Court has no hesitation to hold that

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the Commissioner (Appeals) and the Tribunal's reasoning for setting aside the penalty imposed on the CHA is fully justified."

- The Respondent erred in holding that the Appellant never attempted to check the authenticity and correctness of certificate of analysis being presented with the Bill of Entry. None of the Regulations under CBLR, or any other provision under the Act provide any obligation of the Custom Broker to check the genuineness of the transaction/documents. The allegation of the Respondent is without any authority to law and merely impractical. The Custom Brokers do not have the resources to check the authenticity of the transactions/documents. The Respondent has overlooked the fact that as per the CBLR, the Custom Broker is required to ascertain genuineness of the importer and correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity and functioning of the client at the declared address by using reliable, independent, authentic documents, data or information. As per the statements of the Appellant and import documents, nothing incriminating was found in the documents submitted by them. In fact, the certificate of analysis, invoice, bill of lading etc. mentioned the description of the goods as Base Oil.
- There is no dispute about the settled law that Custom Broker is not an inspector to weigh the genuineness of the transaction. It is merely a processing agent of documents with respect to clearance of goods through the Customs House either himself or through his authorized personnel. Reliance is placed upon the case of

- **B.K. Clearing Agency v Commissioner of Customs (Administration & Airport), Kolkata** reported in 2023-TIOL-409 CESTAT-KOL

- **Kunal Travels (Cargo) v CC (I & G), IGI, Airport, New Delhi** reported in 2017 (354) E.L.T. 447 (Del.)

- **Transpeed Logistics Pvt. Ltd. v Commissioner of Customs (Airport & General)** reported in 2021 SCC OnLine CESTAT 53;

- **Ramvir Singh versus Commissioner of Customs, New Delhi** reported in 2022 (5) TMI 148 - CESTAT NEW DELHI;

- It is submitted that Central Board of Excise and Customs, ("CBEC") New Delhi had issued a clarification vide Circular No. 9/2010-Cus., dated 08.04.2010 which specifically talks about the KYC guidelines. As per the Circular dated 08.04.2010, the firm is required to submit any two of the listed documents in the annexure. The Appellant has received a copy of PAN Card and Aadhar Card along with other documents. Therefore, the

Appellant as per the Circular dated 08.04.2010 and Circular dated 12.2.2015 has followed the guidelines of KYC documents.

- It is submitted that none of the co-noticees have alleged anything incriminating against the Appellant. No evidence has been produced to show any knowledge of the alleged offence on the part of the Appellant. Without prejudice to the above, it is submitted that the Department has failed to test the consignment of Base Oil by following all the parameters in IS 1459:2018.
- The Respondent erred in imposing penalties of Rs. 3,00,000/- under Section 112 (a) and Rs. 1,00,000/- under Section 112 (b) of the Act without appreciating facts of the case. It is clear from the aforesaid that a penalty under Section 112 is imposable for different offence under sub-clause (a) and sub-clause (b). Under 112(a) penalty is imposable on any person who in relation to any goods does or omits to do any act which act would render the goods liable for confiscation under Section 111 of the Act or abets the doing or omission of such act. Similarly, penalty under Section 112 (b) is imposable when a person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111.
- Section 107 of Indian Penal Code, 1862 defines abetment to include instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omissions to the doing of the said act. Instigation basically means suggesting, encouraging or inciting a person to do or abstain from doing something. Thus, instigation is something which must be sufficient to actively encourage a person to commit an offence. It should not be mere advice or simple suggestion. Conspiracy on the other hand means an agreement between two or more persons to commit an unlawful act where conspirators must actively agree and prepare themselves to commit that offence. For intentionally aiding the offender the abettor has to facilitate the crime or has to help the offender in committing the crime/offence. In any case, the intention to instigate or conspire or aid the offender to commit an illegal act/omission is utmost important. In the present case, the Appellant has neither instigated the Importer nor has conspired with the Importer for alleged offence. The Department has not produced any evidence to substantiate involvement or positive act of the Appellant to show his involvement in the alleged offence.
- Various Courts have held that there should be a clear evidence to come to the conclusion that a Custom Broker by their specific act or omission or any act, abetted the illegal importation of offending goods. Penalty cannot



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be imposed on mere assumptions and presumptions on an abettor. Reliance is placed upon the following decisions:

- **Shri Ajith P. and Ors. versus Commissioner of Customs Cochin** reported in 2018 (3) TMI 121 - CESTAT BANGALORE;
- **Ajay Overseas Shipping versus Commissioner of Customs Cochin-Cus** reported in 2019 (10) TMI 334 - CESTAT BANGALORE.

- The Appellant filed the Bill of Entry on the basis of the documents submitted by the Importer such as Packing list, invoice, certificate of analysis and certificate of origin wherein the description of the goods was mentioned as Base Oil. It is also pertinent to note that none of the co-appellants alleged that the Appellant had knowledge about the alleged mis declaration. When there is no evidence to establish that the Appellant had prior knowledge of the goods imported and also when there is no evidence to establish any wrongful intent on the part of the Appellant, penalty ought not to have been imposed. Reliance is placed upon the case of **Lohia Travels and Cargo Vs. Commissioner of Customs, New Delhi (Prev.)** reported in 2015 (8) TMI 141 - CESTAT NEW DELHI, and **M/s Suman International v CC (Port), Kolkata** reported in 2019 (8) TMI 1677 - CESTAT KOLKATA.

- It is settled law that for imposition of penalty under Section 112 of the Act mens-rea has to be established about the wrongful act. In the present case, the Department has not brought forward any shred of evidence to show that the Appellant was aware about the alleged mis declaration. Reliance is placed on the following decisions to support the aforesaid contention:

- Commissioner of Customs (Import) V/s. Trinetra Impex Pvt Ltd 2020 (372) ELT 332 (Del)
- Suresh Rajaram Newagi v/s Commissioner of Cus 2008 (228) E.L.T 211.



- In absence of mens-rea and any documentary evidence, the Respondent erred in imposing penalty upon the Appellant under Section 112 (b) the Act. Reliance is also placed upon the following decisions:

- a) **Nazir-Ur-Rahman versus Commissioner of Customs, Mumbai** reported in 2004 (174) E.L.T. 493 (Tri. - Mumbai);
- b) **Shankeshwar Metal Corporation versus Commr. of Cus. (Imports), Mumbai** reported in 2014 (312) E.L.T. 344 (T);
- c) **S.M. Dave versus Commissioner of Customs, Kandla** reported in 2009 (247) E.L.T. 437 (Tri. - Ahmd.)

- The Respondent erred in imposing penalty of Rs. 2,00,000/- under Section 114 AA of the Act. It is submitted that Section 114AA of the Act provides for imposition of penalty for use of false and incorrect material or causing such use. On plain reading of Section 114AA of the Act, it is clear that there are two essential ingredients that needs to be fulfilled for imposition of penalty under the aforesaid section, a) knowledge and b) that the material should be false. Penalty under section 114AA is imposable only if knowingly or intentionally a false declaration, statement or document is made, signed or used. In the factual matrix of the present case, in the absence of any specific findings with regard to sign / using of any declaration, statement or document, the provisions of Section 114AA of the Act cannot be invoked for imposition of penalties on the appellant therefore, the Penalty under section 114AA ought to be dropped.

5.4 SUBMISSIONS OF THE APPELLANT No. 4, 5 & 6 being common are discussed together as under :-

- The impugned Order-in-Original is against the principles of natural justice, equity and good conscience. Despite the Appellant making written requests to the Respondent, the Annexures to the Show Cause Notice were not furnished to the Appellant to deal with the allegations made against the Appellant. Furthermore, the Respondent has not considered, dealt with and / or decided on the documents furnished by the Appellant in its Reply to the Show Cause Notice in support of its case. In fact, the Respondent has simplicitor adopted the allegations made against the Appellant in the Show Cause Notice, without there being even a whisper about of the Annexures to the Appellant's Reply to the Show Cause Notice. The impugned Order-in-Original is therefore against the principles of natural justice, equity and good conscience and ought to be set aside as against the Appellant.
- The Respondent has ignored the facts in the matter and prevalent practises at the load port to export cargo. The laws at the load port do not permit and / or allow the Line and / or its Agents to remain present at the Shipper's premises for stuffing of the cargo in the empty container provided by the Appellant. The Appellant is not required to test, inspect and / or verify the cargo that is handed over to the Line for carriage in sealed containers. It is pertinent to note that breaking and / or tampering with the seals affixed by the Shipper on the containers is a criminal offence in UAE and hence, there was no manner in which the Line and / or its agents could test / check the cargo which was given to the Line in sealed containers. The Line is entitled to rely on the information and description given to them by the Shipper to be true and correct to issue the Bill of Lading. As a Carrier, the Appellant is responsible for safe carriage of cargo, and has no control over stuffing of the cargo at the load port. Hence, there is no basis for imposition of



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penalty under Section 112 (a) & (b) and / or 114 (AA) of the Customs Act, 1962, on the Appellant for any alleged mistake and / or mis-declaration of the cargo.

- The Appellant states that as the cargo was stuffed by the Shipper at their own premises and arrived at the terminal under the Shipper's seal, the Bill of Lading No. JEA2101008410 dated 19th January 2019 issued by the Line contained the remarks "Shipper's Load and Count" and "S.T.C. — Said to Contain". This document itself demonstrates that the Line nor the Appellant for that matter, had any means of ascertaining the contents in 10 x 20' containers, and had relied on the details provided by the Shipper to the Line / load port Agent, assuming the same to be true and correct, which does not in any manner contravene the provisions of the Customs Act, 1962. In any event, the 10 x 20' containers arrived in India in a sealed and closed condition. Therefore, there was no manner in which the Appellant could have ascertained the contents of the containers nor was there any reason whatsoever for the Appellant to have made any incorrect declaration.
- The Appellant submits there is no substance and / or foundation and / or basis under the Customs Act and / or any other law for the time being in force in India, to sustain the penalty as imposed, or at all. The Respondent has failed to consider the role and responsibilities of the Appellant in the matter. The Appellant had received details of the cargo as set out in the Bill of Lading, on the basis of which declaration, the Appellant's agent had filed the Import General Manifest with the Custom Authorities. The Appellant is entitled in law to rely upon the description of the cargo to be true and correct and declare the same in the Bill of Lading which is what the Appellant has done in the present case.
- In paragraph no.25.1, the Respondent has alleged that the Appellant has not given any explanation "as regards the difference in the HS Code Number as well as the name of the consignee/Exporter provided by them." Further, the Appellant had in their possession the Export Declaration filed by the Shipper at the load port which declared the name of the Shipper as Stanley Trading LLC (I-S0977) and classified the export goods under HS Code 27101911, which classification reflected the hazardous nature of the export cargo. Considering the above, the Respondent has erroneously concluded that the Appellant was aware of the actual nature of cargo based on the Export declaration and had deliberately made alteration in the HS Code number and name of the Shipper in the Import General Manifest and Bill of Lading issued by the Appellant.
- The aforesaid allegation of the Respondent is untrue, false and incorrect. At the foremost, while booking the carriage of cargo, the Shipper had declared the cargo as "BASE OIL". The Appellant as a Carrier is required to declare the cargo in the Bill of Lading as per



the declaration made to the Appellant by the Shipper. The Appellant is not permitted to inspect and / or test the cargo before loading the same for carriage. In the present case, the cargo is stuffed by the Shipper in sealed containers at the Shipper's premises and handed to the Appellant for onward carriage. Hence, the allegation that the Appellant was aware of the nature of the cargo is entirely unfounded.

- With respect to the allegation made against the Appellant vis-a-vis the export declaration filed at the load port, it is pertinent to mention that it is the Shipper who files the export declaration and other documents to the Custom Authorities and not to the Line / load port agents. The Export Declaration is not submitted to the Appellant by the Shipper. Hence, there is no mechanism in place for the Appellant to verify the declarations made by the Shipper in the export documents with the declaration made by the Shipper to the Line in the Bill of Lading. The Appellant was provided with a copy of the Export Declaration only when the inquiry by the Custom Authorities commenced and the Appellant made inquiries with their load port agent who obtained the Shipping Declaration made by the Shipper at the load port. The Respondent has overlooked the load port procedures and confirmed a harsh penalty on the Appellant. On a holistic view of the facts in the matter, there is no breach or violation of the provisions of the Customs Act, 1962 by the Appellant and / or warrant imposition of penalty u/s 112(a), (b) and 114AA of the Customs Act, 1962, on the Appellant; and the impugned Order-in -Appeal ought to be set aside.
- With respect to the HS Code, the Appellant had in their Reply to the Show Cause Notice at "Annexure-1" and "Annexure-2, furnished the HS Code of the Customs Authorities in UAE and the HS Code was accepted by Custom Authorities in India. The Shipper had declared the HS Code - 27101911 in the Export Declaration at Jebel Ali. On a perusal of the description of the cargo under HS Code 27101911 as declared by the Shipper, the same is described as "Base Oil" as per the official website of Custom Authorities at Dubai - www.dubaicustoms.gov.ae. It is pertinent to note that the HS Code 27101911 for 'Base Oil' as per Dubai Customs does not exist and / or is not available under the HS Codes for India. Hence, the Appellant had used the HS Code 27101971, which describes 'base oil' as the HS code for importing the cargo in the present case. The Appellant changed the HS Code to reflect the correct description of the cargo as per Indian customs regulations, which is cannot in any manner amount to misdeclaration and / or abetment to import hazardous cargo in India. The documents / explanation furnished by the Appellant has been entirely overlooked by the Respondent, without even providing any reasons for rejecting the explanation.
- With respect to the change name of the name of the Shipper, the Appellant states that the name of the original Shipper - Stanley



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Trading LLC was changed to Henkel International Lubricants FZE, on the instructions of the new Shipper, Henkel International Lubricants FZE. Furthermore, Stanley Trading LLC and Henkel International Lubricants FZE are part of the same organization and management. This is also evidenced from the Certificate dated 5 January 2019 issued by the Federal Tax Authority, UAE. The said Certificate confirms that Stanley Trading LLC and Henkel International Lubricants FZE are part of a group company and have been assigned 'one' tax registration number. The statutory tax authority in UAE does not distinguish the group companies and considers them as one for tax purposes. In any event, the Line is obligated to change the name of the Shipper, on receiving written confirmation from the original and new Shipper. Be that as it may, this is not a case where the new and original Shipper are unconnected and / or are two different entities. Stanley Trading LLC and Henkel International Lubricants FZE are part of the same organization and management and hence the Appellant accepted the request to change the name of the Shipper to its group company. Despite furnishing the Certificate dated 5th January 2018 issued by the Tax Authority in UAE certifying common identity to the companies for taxation purposes, the Respondent has failed to consider the evidence while imposing a harsh penalty on the Appellant.

- In any event, change in the name of the Shipper and / or declaring HS Code for the cargo that is accepted by the Custom Authorities at the load port does not amount to violation of laws and / or contravention of the Customs Act, 1962 and /or warrant imposition of harsh penalties on the Appellant.
- The Appellant is not the owner of the cargo nor does the Appellant have any interest in the same. On account of the present transaction, it is the Appellant who has suffered huge commercial losses its 10 x 20' containers and 10 flexibags were not returned to the Appellant and were used to store the seized cargo imported by the Importer. Furthermore, to mitigate its commercial losses, the Appellant had to deposit Rs.2,30,000/- as redemption fine u/s 125 of the Customs Act, 1962 to redeem its containers and flexibags. The said fine is not only harsh, excessive and unwarranted, but the same has been imposed without there being any evidence to show that the Appellant was aware of the cargo being purportedly mis-declared by the Shipper / Importer. The Appellant has deposited the redemption fine of Rs.2,30,000/- under protest and to mitigate its losses, and is seeking challenging the imposition of the same on the Appellant in the present Appeal.
- There is no basis and / or substance and / or evidence to prove that the Appellant was aware of and / or had any knowledge of the discrepancy in the description of the cargo, as alleged or at all. The Respondent ought not to have passed the impugned Order in Appeal confirming the penalty u/s 112(a) of the Customs Act, 1962,

without any corroborative evidence to support the allegations against the Appellant. Consequently, the premise on which the Respondent has confirmed the penalty u/s 112 (a), (b) and 114 AA of the Customs Act, 1962, is incorrect and hence, the impugned Order-in-Appeal dated 29th February 2024, ought to be set aside as against the Appellant.

➤ Reliance is placed on the following case laws:-

- MSC Agency (India) Pvt. Ltd. versus Commissioner O Customs (Seaport-Import), Chennai, reported in 2014 (312) E.L.T. 65 (Tri. - Chennai),
- Commissioner Of Customs (Prev.), W.B. versus Sanjib Kr. Deb 2018 (359) E.L.T. 325 (Cal.)

➤ The Appellant states that there is no evidence to sustain the redemption fine and / or penalty on the Appellant as the Appellant was not involved in the alleged misdeclaration of cargo and had no reason to suspect the declaration given to them by the Shipper to be false and / or incorrect.

➤ In view of the above, the Appellant submits that the penalty imposed on the Appellant are arbitrary, without any basis, ultra vires the Customs Act, 1962 and contrary to binding precedents; and liable to be and ought to be quashed and set aside.

➤ The intention of the Respondent simply appears to be to impose penalty on the Appellant for the sake of recovery of revenue, without any appreciation of the facts of the case, legal position, precedents and practice; which is not permissible.



6 PERSONAL HEARING:

Personal hearing was granted to all the Appellants on 30.04.2025 and 10.06.2025 following the principles of natural justice wherein the following authorized representatives of the Appellants appeared on behalf of the appellants as shown below:-

Sr No.	Name of Appellant	Date of personal hearing held in virtual mode	Name of Authorized representative and submissions made.
1	Shri Ramesh Arjanbhai Myatra, Proprietor, M/s Shiv Commodities Impex	30.04.2025	Ms. Shweta Garge, Advocate. She reiterated the submissions made at the time of filing of appeals
2	Shri Shambhubai Devjibhai Dangar		
3	Shri Amit Bhardwaj, Proprietor,		

	M/s Saarthee Shipping Co		
4	M/s Poseidon Shipping Agency Pvt. Ltd.	10.06.2025	Ms. Priyanka Patel, Advocate. She reiterated the submissions made at the time of filing of appeals
5	M/s Blue Water Line Pte. Ltd		
6	M/s Abrao Shipping Services LLC		

7 DISCUSSION AND FINDINGS:

7.1 I have carefully gone through the case records, show cause notice and corresponding order passed by the adjudicating authority and the defense put forth by the Appellants in their appeal.

7.2 I find that all the 6 appeals have been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962. Further, all the appellants have made the mandatory pre-deposit as per Section 129E of the said Act. Accordingly all the 6 appeals are taken up together for disposal.

7.3 That as the appeal has been filed by the instant six Appellants, I restrict myself to the instant six Appellants as detailed above.

7.4 On going through the case records, as available on file, defense submissions of the Appellants it is understood that the present case relates to the **primary issue** whether the description and classification of 195.88 MT goods described as "Base Oil" with CTH No. 27101971 imported vide Bill of Entry No. 2478522 dated 23.01.2021 is liable for rejection or otherwise. All other issues regarding confiscation and levying of penalty under the Act *ibid* comes into play after the primary issue is answered.

7.5 As regards to the classification issue, I find that the representative samples were drawn by DRI officer from each of the 10 containers covering the import consignments arrived at Mundra port under the aforesaid Bill of Entry vide Panchnama dated 27.01.2021 in presence of a representative of the Customs Broker M/s. Saarthee Shipping Co. The 10 representative samples so drawn by the DRI were forwarded to the CH Lab, Kandla, vide DRI letter dated 02.02.2021.

7.6 As per Test report No.KCL/QR-32 dated 10.02.2021 and KCL/QR-32 dated 11.02.2021 of CH Lab, Kandla which is as follow:

"The sample as received is in the form of clear colorless liquid. It is composed of mineral hydrocarbon oil (having mineral contents more than 70% by wt.) having following constants:

Sr. No.	Characteristics	DRI-39	DRI-40	DRI-41	DRI-42	DRI-43	DRI-44	DRI-45	DRI-46	DRI-47	DRI-48
	TM No.	09	10	11	12	13	14	15	16	17	18
1	Acidity, Inorganic	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
2	Density at 15°C, gm/ml	0.8176	0.8165	0.8236	0.8205	0.8126	0.8176	0.8258	0.8211	0.8173	0.8176
3	Initial Boiling Point, °C	165	168	167	178	170	168	170	171	162	168
4	Final Boiling Point, °C	268	270	277	278	268	268	276	269	268	268
5	Flash Point (PNEC), °C	63	63	63	63	63	63	64	63	63	63
6	Smoke Point, mm	23	24	22	22	23	23	21	21	23	23
7	Dry Point	269	271	280	282	270	270	278	272	270	270

"It is other than Base Oil

The above sample meets the specification of Kerosene in respect of distillation range, flash point & smoke point as per IS-1459-2018. However, other parameters of Kerosene viz. Copper strip corrosion, char value & Bloom on glass chimney could not be done for want of testing facilities."

7.7 From the above I find that the Test Reports received from CH Lab, Kandla, the goods were found to meet the specifications of Kerosene in respect of distillation range, flash point and smoke point as per IS-1459-2018. However, other parameters of kerosene viz. copper strip corrosion, char value and bloom on glass chimney could not be done for want of testing facilities.

7.8 Further, the importer vide letter dated 24.02.2021 requested DRI for re-testing of samples on ground that out of 8 parameters as per BIS 1459:2018, 3 parameters were checked and crucial parameter of distill recovery at 200°C was missing in the report; that the shipper had got the samples tested at Geo Chem Laboratories and as per the test results, it did not fall in the category of Kerosene and provided copy of the test report dated Nil issued by M/s. Geo Chem Middle East FZE and requested for allowing them the re-testing of the sample of the goods.

7.9 I find that the remnant samples of the consignment covered vide Bill of Entry No. 2478522 dated 23.01.2021 were forwarded by DRI to the CRCL, New Delhi for re-testing vide letter dated 02.03.2021. However, on receipt of the remnant samples, it was informed by CRCL, New Delhi vide their letter dated 05.03.2021 that the quantity of remnant samples being insufficient for complete analysis, hence the duplicate samples (3 liters each) were necessary. Hence, vide Panchnama dated 05.03.2021; fresh samples were drawn from the subject consignment by the DRI in the presence of the Customs Broker M/s. Saarthee Shipping Co. The samples so drawn vide Panchnama dated 05.03.2021 were forwarded for testing to the CRCL, New Delhi vide letter dated 08.03.2021.

7.10 Further, I find that vide letter dated 15.04.2021, the CRCL, New Delhi provided test report in respect of 10 samples pertaining to B/E No. 2478522 dated 23.01.2021, which are as follow:

CLR No. 73-82 Dt 15.03.2021 (B.E. No. 2478522 dated 23.01.2021)

"Each of the ten samples is in the form of clear colourless liquid. Each is composed of mineral hydrocarbon oils, having mineral hydrocarbon oils more than 70% by wt., having following constants:

TABLE-5

S. No	Characteristics	Requirement of Kerosene as per IS:1459-2018	CLR-73	CLR-74	CLR-75	CLR-76	CLR-77	CLR-78	CLR-79	CLR-80	CLR-81	CLR-82
1	Appearance	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright	Clear & Bright
2	Acidity, Inorganic	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
3	Density at 15°C, gm/cc	to be reported	0.818	0.818	0.824	0.821	0.817	0.817	0.824	0.818	0.818	0.811
4	Distillation											
	a) Initial Boiling Point, °C	—	174.2	176.1	174.2	174.9	172.5	176.0	173.0	177.6	172	177.0
	b) % Recovered below 200°C, percentage (v/v), Min.	20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20	Less than 20
	c) Final Boiling Point, °C, Max	300	269.3	269.2	279.4	278.7	270.7	272.7	278.2	269.9	269.4	203.3
5	Flash Point(PMCC), °C, Min	35(Abel)	64	64	63	63	64	63	63	61	64	64
6	Smoke Point, mm, Min	15	19	20	20	21	22	21	19	21	21	20
7	Colour (Saybolt), Min	10	+21	+23	+20	+20	+24	+20	+20	+23	+23	+23
8	Copper Strip corrosion for 63 hrs at 50°C	Not worse than No.1	1+	1+	1+	1+	1+	1+	1+	1+	1+	2+
9	Aniline Point, °C	—	63	62	63	62	63	63	63	63	63	62

Each of the 10 samples is other than base oil. The sample meet the requirement of Kerosene, as per IS:1459 except % Recovered below 200 °c. The sample is Kerosene Fraction."

From the above table and test report dated 15.04.2021 it is mentioned that the sample meet the requirement of Kerosene, as per IS:1459 except % recovered below 200 °C. The sample is Kerosene Fraction.

7.11 Hence, from the above two test reports of the two different laboratories it can be deduced that in one report dated 11.02.2021 all the parameters were not tested due to non-availability of testing facilities at the laboratory for other parameters and in the second test report dated 15.04.2021 percentage recovered below 200 degree centigrade is not as per prescribed parameter value. Moreover, the opinion as contained in the test reports are merely mentioning about conformity of the samples with certain specifications of IS:1459 and not about conformity with all the parameters thereby meaning that they are not definite and leaving the classification of the impugned goods as unclear.

7.12 Therefore, in view of the ambiguity in laboratory test results in as much as some parameters were not tested, it would be unsafe to draw the inference that the Department had been able to prove their case even by applying the test of preponderance of probability merely because the samples conform to certain parameters. Further, the question arises that if the Department with all the resources at their command and access to various laboratory facilities could not get the samples tested in respect of all the required parameters, how can the appellants get the samples tested to show that these do not conform the specifications and are not the impugned goods so imported vide the aforementioned Bill of Entry does not appear to be reasonable and the results of the tests are inconclusive.

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7.13 In this regard, I place reliance on the judgment of Hon'ble Supreme Court of India in the case law of Gastrade International Vs Commissioner of Customs, Kandla [2025-TIOL-18-SC-CUS] wherein it has been held that:

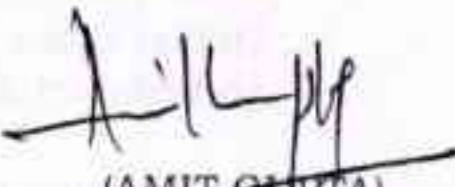
"87.though the questioned product was sent for laboratory test in three premier laboratories, these laboratories did not give conclusive finding that the product is indeed HSD and the expert also could not give a definitive opinion. Further after such a long passage of time we are doubtful whether the oil in question would still retain many of the characteristics and properties which were present at the time of import for an effective testing as aforesaid. Hence, we do not consider it appropriate to direct further testing of the imported product/oil at this point of time and such a retest may be rendered a futile exercise. In our opinion, in the facts and circumstances, it would be more appropriate to give the benefit of doubt to the appellants because of the inconclusive evidence, rather than directing for a fresh testing and seeking fresh expert opinion, as a one-time measure."

7.14 In view of the above discussions, the description and classification of 195.88 MT goods described as "Base Oil" with CTH No. 27101971 imported vide B/E No. 2478522 dated 23.01.2021 succeeds in favour of the appellants.

7.15 As regards to other issues regarding confiscation and levying of penalty under the various Sections of the Customs Act, 1962 upon the appellants the same does not arise as when the primary issue of classification does not sustain then confiscation and levying of penalty also does not sustain as imposed vide the impugned Order dated 29.02.2024.

8 Accordingly, in light of the above discussions, the impugned order dated 29.02.2024 of the adjudicating authority stands quashed and the appeals filed by the above referred six (06) appellants succeed with consequential relief, if any, as per law.




(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

Date: 16.06.2025

F.No. S/49-24/CUS/MUN/2024-25

F.No. S/49-25/CUS/MUN/2024-25

F.No. S/49-26/CUS/MUN/2024-25

F.No. S/49-28/CUS/MUN/2024-25

F.No. S/49-29/CUS/MUN/2024-25

F.No. S/49-30/CUS/MUN/2024-25

1595

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1. Shri Ramesh Arjanbhai Myatra, Prop. M/s Shiv Commodities Impex, 13 Plot No. 61, Sector - 11 GIDC, Gandhidham - 370201
2. Shri Shambhubai Devjibhai Dangar, Plot No. 18, Sector 2, Ghandhidham - 370201
3. Shri Amit Bhardwaj, Prop. M/s Saarthee Shipping Co., Office No. 1, 2nd Floor, Shah Avenue-1, Plot No. 211, Ward 12/B, Ghandidham - 370201
4. M/s Blue Water Line Pte. Ltd., 3 Shenton Way, #15-12, Sheton House, Singapore - 068805

(**to be served through their agents** in India viz. M/s Poseidon Shipping Agency Pvt. Ltd ,610-A Wing, Kohinoor City Mall, Kirol Road, Off LBS Marg, Kurla West, Mumbai-400070)

5. M/s Abrao Shipping Services LLC, M-110, Mezzanie Floor, Sheikh Rashid Building, Sheikh Zayed Road, Al Quoz-3, Dubai (UAE)



to be served through their counterparts in India viz. M/s Poseidon Shipping Agency Pvt. Ltd ,610-A Wing, Kohinoor City Mall, Kirol Road, Off LBS Marg, Kurla West, Mumbai-400070)

6. M/s Poseidon Shipping Agency Pvt. Ltd., Kesar Arcades, 1st Floor, Office No. 9-12, Plot No. 51 Sector 8, Gandhidham - 370201.
7. M/s. Economic Laws Practice,
C-507/508, 5th floor, Titanium Square,
Thaltej Cross Roads, SG Highway,
Ahmedabad-380054.
8. Ms Priyanka Patel, Advocate.
14A, First Floor, 32 Rajbahadur Mansion,
Behind Bombay Stock Exchange, Fort
Mumbai-400023

સત્કાવિત/ATTESTED
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CUSTOMS (APPEALS), AHMEDABAD

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4. Guard File.