| | | |
|---|---|---|
| | **सीमा शुल्क के प्रधान आयुक्त का कार्यालय**<br>**सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात**<br>**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS**<br>**CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT**<br>**Email-adj-mundra@gov.in** | |

| | | |
|---|---|---|
| **A** | **FILE NO.**<br>फ़ाइल संख्या | GEN/ADJ/ADC/1547/2024-Adjn-O/o Pr. Commr- Cus-Mundra |
| **B** | **OIO NO.**<br>आदेश संख्या | MCH/ADC/ZDC/127/2026-27 |
| **C** | **PASSED BY**<br>जारीकर्ता | **Dipak Zala,**<br>Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क,<br>Custom House, Mundra/कस्टम हाउस, मुंद्रा। |
| **D** | **DATE OF ORDER**<br>आदेश की तारीख | 26.05.2026 |
| **E** | **DATE OF ISSUE**<br>जारी करने की तिथि | 27.05.2026 |
| **F** | **SCN F. No. & Date**<br>कारण बताओ नोटिस क्रमांक | GEN/ADJ/ADC/1547/2024-Adjn-O/o Pr. Commr- Cus-Mundra date 21.08.2024 |
| **G** | **NOTICEE/ PARTY/ IMPORTER**<br>नोटिसकर्ता/पार्टी/ आयातक | 1. M/s. Ocean Green Energy (IEC-AAHFO4390G)<br>2. Shri Jitin Bajaj, Partner of M/s Ocean Green Energy<br>3. Shri Manish Alias Manubhai Vora, Partner of M/s Ocean Green Energy |
| **H** | **DIN/**दस्तावेज़ पहचान संख्या | **20260571MO000000A096** |

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**" सीमा शुल्क आयुक्त (अपील),**

**चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009"**

**"THE COMMISSIONER OF CUSTOMS (APPEALS),**

**Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,**

**Navrangpura, Ahmedabad-380 009."**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए ।

Appeal shall be filed within sixty days from the date of communication of this order.

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

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

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं°-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

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

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम,1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

---

**BRIEF FACTS OF THE CASE:**

**M/s Ocean Green Energy (IEC: AAHFO4390G),** C1053, Central Bazar, Opposite Varachha Police Station, Surat, Gujarat (Herein after referred to as '**M/s. OGE or the importer**), are engaged in import/purchase-sale/trading of various chemicals, petrochemicals, etc. including goods declared as 'Mixed Hydrocarbon Oil' (the subject goods) and classifying the same under HS code 27101990. The goods imported by **M/s. OGE** were generally cleared by them through the Customs at Mundra Port, Gujarat and Nhava Sheva Port, Mumbai.

2. Intelligence gathered by the Directorate of Revenue Intelligence, Gandhidham, which indicated that the importer were importing goods falling under Chapter 27 of Customs Tariff, of which import was restricted, in the guise of declared description of 'Mixed Hydrocarbon Oil' and classifying the same under Tariff Item 27101990 of the Customs Tariff i.e. for 'Others'

category under Heading 'Others'. The intelligence further suggested that the import of such goods were governed under the policy condition 5 of Ch. 27 and the same could be imported by "State Trading Enterprises" (Herein after referred to as "**STEs**") only; that since the importer was not having status of "STE" and also not fulfilling the Condition 5 of Ch. 27 of Customs Tariff and thus to circumvent the Import Policy conditions prescribed for the import of subject goods, the importer have mis-declared, mis-classified and illegally imported the subject import goods. An enquiry was initiated against the importers for import made by them under IGM No. *2368674 Dt 13.02.2024* (Bill of Lading No. *MEDUKW345053. The goods covered under said IGM were imported through 10 Containers bearing Nos. THGU1443886, GLDU9522814, TRHU3572035, TGCU2005891, TRHU1902890, GESU3663254, FCIU4296328, TGBU2781607, TTNU1041091, MSMU1455103 at Mundra Port.* The intelligence further indicated that the subject goods was different from the declared one in the IGM/Bill of Lading and also was in violations of import policy provisions. The intelligence also suggested that the importer had not filed Bill of Entry for the said import consignment and trying to divert the goods to escape from any investigation/enquiry by the investigating agencies.

3. Acting upon the intelligence, the above import consignment was put on hold for examination and to draw the representative samples by DRI in order to find out the actual nature, description and classification of the said goods. Investigation was initiated by DRI against the importer by way of drawing samples from live import consignments of the goods from the subject import consignment. In this regard, representative samples were drawn from live consignment of M/s. OGE under Panchnama dated 24.02.2024 at M/s. Hind Terminals Private Limited, Mundra Port. During panchnama proceedings, the representative samples were drawn from each of 10 Containers imported by **M/s. OGE** under Bill of Lading No. *MEDUKW345053.* The details of the import consignment are given as under:

**Table-I**

| **Sr. No.** | **Description of Goods (declared in** | **Invoice/ packing List No. and date** | **Declared classification of the** | **Name of the suppli** | **Container No.** | **Country of** | **Quantity declare** |
|---|---|---|---|---|---|---|---|

| | **BL)** | **(RUD No.03)** | **goods in the Invoice** | **er** | | **Origin** | **d in Packing g list (MTS)** |
|---|---|---|---|---|---|---|---|
| 1 | Mixed Hydrocarbon Oil | 016 dated 17.01.2024 | 27101990 | *Petro Global FZE, Sharjah UAE* | THGU1443886 | Kuwait | 19.105 |
| 2 | | | | | GLDU9522814 | | 19.101 |
| 3 | | | | | TRHU3572035 | | 18.860 |
| 4 | | | | | TGCU2005891, | | 18.860 |
| 5 | | | | | TRHU1902890 | | 18.880 |
| 6 | | | | | GESU3663254, | | 18.845 |
| 7 | | | | | FCIU4296328 | | 19.060 |
| 8 | | | | | TGBU2781607 | | 18.845 |
| 9 | | | | | TTNU1041091 | | 19.060 |
| 10 | | | | | MSMU1455103 | | 18.860 |
| **Grand Total** | | | | | | | **189.500** |

4. During examination, it was noticed that the actual quantity of goods found in each container were different from the quantity mentioned in the corresponding invoices/packing list. The actual quantity of the subject goods found during examination at M/s. Hind Terminal Pvt. Ltd. and CFS were as under;

**Table-II**

| **Sr** | **Descriptio** | **BL No. & Date** | **Name** | **Name** | **Container** | **Countr** | **Actual** |
|---|---|---|---|---|---|---|---|

| **. No.** | **n of Goods (declared in BL)** | | **of the Importer** | **of the supplier** | **No.** | **y of Origin** | **quantity of the goods found during examination (MTS)** |
|---|---|---|---|---|---|---|---|
| 1 | Mixed Hydrocarbon Oil | Bill of Lading No. MEDUKW345053 | M/s Ocean Green Energy | Petro Global FZE, Sharjah UAE | THGU1443886 | Kuwait | 19.000 |
| 2 | | | | | GLDU9522814 | | 19.180 |
| 3 | | | | | TRHU3572035 | | 19.180 |
| 4 | | | | | TGCU2005891 | | 19.055 |
| 5 | | | | | TRHU1902890 | | 17.860 |
| 6 | | | | | GESU3663254 | | 18.540 |
| 7 | | | | | FCIU4296328 | | 19.340 |
| 8 | | | | | TGBU2781607 | | 19.160 |
| 9 | | | | | TTNU1041091 | | 18.940 |
| 10 | | | | | MSMU1455103 | | 19.640 |
| **Grand Total** | | | | | | | **189.895** |

5. One set of the representative samples so drawn from the subject import consignment were sent to the Central Excise & Customs Laboratory,

Vadodara for testing vide Test Memos bearing no. 27/2024 dated 08.03.2024 to 36/2024 dated 08.03.2024.

6. During course of investigation, search was conducted at the business premises of the importer **M/s. OGE** situated at C-1053, Central Bazar, Opp. Varachha Police Station, Surat under Panchnama dated 23.02.2024. During the course of searches at the business premises of **M/s. OGE** as mentioned above, various incriminating documents relating to sale-purchase of the goods imported by them were resumed.

7. After necessary testing of the representative samples pertaining to the subject goods imported by **M/s. OGE**, the Chemical Examiner, Central Excise & Custom Laboratory (CECL), Vadodara issued the Test Reports and conveyed the same to the DRI, Gandhidham Regional Unit. The details of Test Reports are tabulated as below:-

**Table-III**

| S.No. | Sample drawn from | Test Memo No. and Date | Test Report No. & Date |
|---|---|---|---|
| 1 | THGU1443886 | Test Memo No. 27/2024 dated 08.03.2024 | RCL/GRU/DRI/6269 dated 11.03.2024 Signed on 10.04.2024 |
| 2 | GLDU9522814 | Test Memo No. 28/2024 dated 08.03.2024 | RCL/GRU/DRI/6270 dated 11.03.2024 signed on 15.04.2024 |
| 3 | TRHU3572035 | Test Memo No. 29/2024 dated 08.03.2024 | RCL/GRU/DRI/6271 dated 11.03.2024 Signed on 10.04.2024 |
| 4 | TGCU2005891 | Test Memo No. 30/2024 dated 08.03.2024 | RCL/GRU/DRI/6272 dated 11.03.2024 Signed on 10.04.2024 |
| 5 | TRHU1902890 | Test Memo No. 31/2024 dated 08.03.2024 | RCL/GRU/DRI/6273 dated 11.03.2024 signed on |

| | | | |
|---|---|---|---|
| | | | 15.04.2024 |
| 6 | GESU3663254 | Test Memo No. 32/2024 dated 08.03.2024 | RCL/GRU/DRI/6274 dated 11.03.2024 signed on 15.04.2024 |
| 7 | FCIU4296328 | Test Memo No. 33/2024 dated 08.03.2024 | RCL/GRU/DRI/6275 dated 11.03.2024 Signed on 10.04.2024 |
| 8 | TGBU2781607 | Test Memo No. 34/2024 dated 08.03.2024 | RCL/GRU/DRI/6276 dated 11.03.2024 signed on 17.04.2024 |
| 9 | TTNU1041091 | Test Memo No. 35/2024 dated 08.03.2024 | RCL/GRU/DRI/6277 dated 11.03.2024 Signed on 10.04.2024 |
| 10 | MSMU1455103 | Test Memo No. 36/2024 dated 08.03.2024 | RCL/GRU/DRI/6278 dated 11.03.2024 signed on 17.04.2024 |

It was reported by CECL, Vadodara vide all above mentioned Test Reports that each sample was in the form of *light pale yellowish oily liquid. It is composed of Hydrocarbon oil more than 70% by weight. The CECL, Vadodara opined that the samples under reference meet the requirements of* '**Heating Oil (*Light Diesel Oil) (LDO) as per IS:15770:2021***.

8. Since the said test results had apparently indicated that the samples under reference were meeting the requirement of **'Heating Oil (*Light Diesel Oil) as per IS:15770:2021)***. Apparently, the goods were not to be described as "Mixed Hydrocarbon Oil" and also not classifiable under Tariff item No. 27101990, as described and classified in the respective import documents such as Invoice, Packing list, Bills of Lading etc. provided by the importer during investigation.

9. Whereas, as per the Schedule 1-Import Policy of the ITC (HS), pertaining to Section V Chapter 27, only State Trading Enterprises are

permitted to import 'Light Diesel Oil' covered under Tariff Item No. 27101943 of Customs Tariff. As per Para 2.20 of Foreign Trade Policy 2015-20 as extended, any goods, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). As per the Policy condition stipulated for Chapter 27, import of the goods falling under CTH No. 27101943, are allowed through IOC subject to para 2.20 of the Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P & NG's Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL, & IBP who have been marketing transportation fuels before this date.

10. It is apparent that the importer in the present case i.e. **M/s. OGE** were not holding status of STE, hence the subject import made by them appeared to be in violation of the Para 2.01 and Para 2.20 of the Foreign Trade Policy 2015-20 (as extended). The subject goods mis-declared with reference to their description were also imported into India in violation of the provisions of the Petroleum Act, 1934 and therefore the same has to be considered as imported in deemed violation of Section 11 of Customs Act, 1962 also, upon taking the context of the Notification No. 105-Cus dated 06.08.1938. The subject goods were mis-declared and mis-classified in the respective Bill of Lading as "Mixed Hydrocarbon Oil" with classification under Tariff Item No. 27101990 was also in gross violation of the provisions of the Customs Act, 1962. Since it was noticed that the subject goods were mis-declared in terms of classification and imported contrary to the provisions of Foreign Trade Policy 2015-2020 as well as Petroleum Act, 1934 and the Customs Act, 1962, there was reason to believe that the subject goods covered under IGM No. *2368674 Dt 13.02.2024*, appeared to be liable for confiscation under the provisions of Section 111 of Customs Act, 1962. Hence the subject goods having actual available quantity **189.895 MTs** lying at the M/s Hind Terminals Pvt. Ltd., CFS, Mundra Port were placed under seizure on 19.04.2024 under the provisions of Section 110(1) of the Customs Act, 1962. The seized goods were handed over to the representative of M/s. Hind Terminals Private Limited, Survey No. 76/1/1 and 77/1/1, Village-dhrub, Opp. GIDC, Mundra Port, Kutch.

11. In the course of investigation, statements of various persons were recorded under Section 108 of Customs Act, 1962. The brief of the same is as under:-

11.1 **Statement of Shri Vikram Singh, Senior Manager and authorised Representative of M/s MSC Agency India Pvt. Ltd., Gandhidham, was recorded under Section 108 of the Customs Act, 1962, on 02.05.2024:**

On being asked about the work related to import of commodity Mixed Hydrocarbon Oil handled by his firm M/s MSC agency (India) Pvt. Ltd. at Kuwait, he stated that the details of the goods were required to provide the supplier and on the basis of the said details they used to mention the description and classification of the subject goods as 'Mixed hydrocarbon Oil (MHO) and classification thereof under 27101990.

On being asked whether anyone contacted them for clearance of the subject goods, on behalf of the importer M/s. Ocean Green Energy, C 1053, Central Bazar ,Opposite Varachha Police Station, Surat, he stated that no one had been approached for clearance of subject cargo imported by M/s Ocean Green Energy, Surat, however, he had submitted a letter dated 18.02.2024 wherein it has been mentioned that " ***this is to inform you that we got BL No. MEDUKW345053 for Mundra port which is not our ordered cargo. We are requesting to send this cargo to Jebel Ali and we don't have any objection for the same*".**

During statement Shri Vikram Singh confirmed that the subject goods were imported by M/s. Ocean Green Energy covered under Bill of Lading No. MEDUKW345053 and imported through 10 * 20 ft Containers at Mundra Port.

On being asked about as per packing list it appears that the overseas supplier Petro Global FZE has mentioned that 100% advance payment and they had shipped the cargo after taking 100% payment from consignee and Please provide the transaction details between shipper and consignee, he stated that as per documents it appears that the overseas supplier might have taken 100% payment from consignee before loading the cargo. Further he

stated that he would try to provide the transaction details between overseas supplier and consignee with the support of our MSC lines at load port Kuwait.

During statement he was shown the test memo no. 27/2024 to 36/2024 and its reports which were received from CECL , Vadodara, and as per test reports the chemical Examiner, CECL, Vadodara stated that the sample u/r meets the requirement of heating oil (LDO) as per IS 15770-2021. He was asked to offer his comments. Shri Vikram Singh stated that he had seen the test memo no. 27/2024 to 36/2024 and its reports and in token of having seen he put his dated signature on every page of copy of test memo and its reports. He stated that as per test reports it appears that Light Diesel Oil had been imported under B/L No. MEDUKW345053 by M/s. Ocean Green Energy, which was restricted to import by the said importer.

**11.2 Statement of Shri Jitin Bajaj, Partner of M/s. Ocean Green Energy, was recorded under Section 108 of the Custom Act, 1962 on 14.05.2024 (RUD No. 09).**

On being asked about his firm M/s Ocean Green Energy, Shri Jitin Bajaj stated that his firm M/s. Ocean Green Energy was established in year 2021; that there were four partners in his said firm. He further stated that Shri Manish Vora, Shri Hiren Kankadiya, Shri Vipul Vekeriya and he was the partner of his company, and Shri Hiren kankadiya and Shri Vipul Vekeriya were the silent partner of the company and he was 50% share holder and rest 50 % share divided among three partners.

On being asked to provided the complete details of the cargo (i.e., name of cargo, load port, discharge port, CTH, etc.) imported by him, he stated that he had taken IEC in year 2021 and he had been importing only Mixed Hydrocarbon Oil from Dubai and Kuwait. Further he stated that he had imported approx total 300-400 containers of MHO at Nahava Sheva and Mundra Port with CTH 27101990 and he would provide the complete details of quantity imported, amount, etc. as soon as possible.

On being asked how he decided the product for import, he stated that as demands of MHO in market he had started import of the products with partners and further he had started importation for trading purpose.

On being asked about his overseas suppliers and how he contacted the overseas suppliers, Shri Jitin Bajaj stated that his overseas suppliers were M/s. Petro Global FZE, Sharjah, UAE and M/s. Torres international FZE, UAE. He further stated that he heard about both overseas suppliers from some Indian persons and further he verified online and found mobile number of Shri Nazmul Mujabar, UAE and Shri Arvind Awesthi UAE in respect of M/s. Petro Global FZE, Sharjah, UAE and M/s Torres international FZE, UAE respectively.

On being asked about the main customers to whom he supplied MHO products, he stated that that M/s Global Trading Company, Surat was his main customers of MHO, they purchased mostly imported goods i.e. MHO from him.

On being asked about the last import consignments of MHO, he stated that he had ordered last time the Mixed Hydrocarbon Oil to Shri Nazmul Mujabar, UAE, owner of Petro Global FZE, Sharjah, UAE on 19.01.2024 for 10 containers.

He was shown copy of draft Bill of Lading no. MEDUKW345053 in which M/s. Ocean Green Energy, had imported 10 containers at Mundra port with description Mixed Hydrocarbon Oil from Petro Global FZE, Sharjah, UAE. He was asked to provide the Invoice and packing list related to the said BL and asked to offer his comments, he stated that he had seen Draft Bill of Lading no. MEDUKW345053 in which M/s Ocean Green Energy, had imported 10 containers at Mundra port with description Mixed Hydrocarbon Oil from Petro Global FZE, Sharjah, UAE. In token of having seen he put his dated signature on Bill of Lading no. MEDUKW345053. He further stated that he accepted that M/s. Ocean Green Energy had imported 10 containers of Mixed Hydrocarbon Oil from their Dubai based supplier Petro Global FZE, Sharjah, UAE under Bill of Lading no. MEDUKW345053. He had submitted invoice, packing list and payment details regarding the said consignments.

On being asked about he was being shown the copy of Panchnama dated 24.02.2024 drawn at M/s Hind Terminals private limited, Survey No. 76/1/1 and 77/1/1, Village- Dhrub, Mundra port in which examination done

and sample drawn by DRI officers in respect of 10 containers covered under Draft Bill of Lading no. MEDUKW345053 and further sample had been sent for lab testing.

He stated that he had seen the copy of Panchnama dated 24.02.2024 drawn at M/s Hind Terminals private limited, Survey No. 76/1/1 and 77/1/1, Village- Dhrub, Mundra port in which examination done and sample drawn by DRI officers in respect of 10 containers covered under Draft Bill of Lading no. MEDUKW345053 and In token of having seen he put his dated signature on these documents. Further he stated that he accepted that these 10 containers which had been ordered for importation Mixed Hydrocarbon oil to Petro Global FZE, Sharjah, UAE.

He was shown the copy of Test reports in respect of Test Memo no.27/2024 to 36/2024 all dated 08.03.2024 received from Chemical Examiner , C.Ex. & Cus. Lab Vadodara . As per test reports the chemical Examiner, CECL, Vadodara stated that the sample u/r meets the requirement of heating oil (LDO) as per IS 15770-2021. Import of Light Diesel oil was prohibited for unauthorized company/person.

On being asked he stated that he had seen the test memo no. 27/2024 to 36/2024 all dated 08.03.2024 and its reports and In token of having seen he put his dated signature on every page of copy of test memo and its reports. Further he stated that as per test reports it appears that Light Diesel Oil had been imported under B/L No. MEDUKW345053, which was prohibited for the importer who was not authorized for this, however, he had ordered for Mixed Hydrocarbon Oil and not for Light Diesel Oil.

As per test reports Light Diesel Oil was found in his imported containers in guise of Mixed Hydrocarbon Oil. Accordingly, he was asked as to why he had imported the prohibited items and how many containers he had imported the Light Diesel Oil in the past also, he stated that as per test reports Light Diesel Oil was found in his imported containers, however he had ordered to overseas supplier for Mixed Hydrocarbon Oil not for Light Diesel Oil. He further stated that he has seen the test reports and observed that the test result was based on Flash Point only and Final Boiling Point had not been

shown in test reports. Further he stated that he could say that Final Boiling Point was missing in test reports; that as far as he knew Light Diesel Oil testing was based on both Flash Point and Final Boiling Points; that he had never imported Light Diesel Oil in his import consignments.

He was shown copy of a letter dated 18.02.2024 issued by M/s Ocean Green Energy to MSC Agency (India) Pvt. Ltd., Gandhidham. As per the said letter, he had stated that this was not his ordered cargo covered under MEDUKW345053. He was asked to offer his comments. After perusal of the same**,** he stated that he had seen copy of the letter dated 18.02.2024 issued by M/s Ocean Green Energy to MSC Agency (India) Pvt. Ltd., Gandhidham; that in token of having seen he put his dated signature on the same. Further he stated that he sent letter dated 18.02.2024 to MSC Agency (India) Pvt. Ltd., Gandhidham. He further stated that some of his containers were already hold by Noida DRI, so he was afraid that his import consignment might be hold by DRI and again he would face demurrage and detention charges of CFS, so he wrote to MSC Agency (India) Pvt. Ltd., Gandhidham through the letter that those were not his consignments and sent it to Jabel Ali.

On being asked why he had written in letter for sending the cargo to Jabel Ali, he stated that due to less freight for Jabel Ali, he wrote in letter for sending the cargo to Jabel Ali and it could be easy for him.

11.3 **Statement of Shri Vora Manubhai Gobarbhai, Partner of M/s. Ocean Green Energy, was recorded under Section 108 of the Custom Act, 1962, Gandhidham on 26.07.2024:**

On being asked about the firm M/s Ocean Green Energy, he stated that his firm M/s. Ocean Green Energy was established in year 2021; that M/s Ocean Green Energy engaged in business of importation of goods and further do trading the same in Indian local market. Further he stated that there were four partners in his company, Shri Jitin Bajaj, Shri Hiren Savailal Desai, Shri Vipul Vekeriya and he was the partner of his company and Shri Hiren Desai and Shri Vipul Vekeriya were the silent partners in the firm. He further stated that he was holding 13.75% share, Shri Jitin Bhai 50% share in the firm and rest divided among inactive two partners.

On being asked about his work and responsibilities in the firm M/s Ocean Green Energy, he stated that he had been working mostly in Office related work like documentation to M/s Ocean Green like as making sales invoices, payment related etc..

On being asked about the main buyers of imported goods of M/s Ocean Green Energy, he stated that M/s. Global Industrial Solutions, Vadodara was his main buyer of goods imported by M/s Ocean Green Energy, he purchased the goods i.e. MHO from them. Further he stated that he had imported mostly MHO.

On being asked who used to make conversations with overseas suppliers regarding the import of cargo and its payment related to M/s Ocean Green Energy, he stated that mostly Jitin bhai talked to overseas suppliers regarding importation of cargo, although sometimes he also talked to overseas suppliers regarding importation. Further he stated that he looked after the payment of cargo to overseas suppliers on given instruction of another partner Shri Jitin bhai.

On being asked about the goods had his company Ocean Green Energy been imported since 2021, he stated that his Company M/s. Ocean Green Energy had been imported the goods i.e. Base Oil and Mixed Hydrocarbon Oil (MHO). He further stated that no other goods other than Base oil and MHO had been imported by his company since 2021, however in initial 1-2 consignments he had imported of base oil.

On being asked about the overseas suppliers and the persons of his firm M/s. Ocean Green Energy, he stated that his overseas suppliers were M/s. Petro Global FZE, Sharjah and M/s. Taurus international FZE, UAE and their contact person Shri Nazmul Mujavar, UAE Shri Arvind Awasthi UAE, respectively.

He was shown the copy of Panchnama dated 24.02.2024 drawn at M/s. Hind Terminals private limited, Survey No. 76/1/1 and 77/1/1, Village-Dhrub, Mundra port in which examination done and sample drawn by DRI

officers in respect of 10 containers covered under Draft Bill of Lading no. MEDUKW345053 and further sample had been sent for lab testing. He was asked to offer his comments. After perusal of the said documents, he stated that he had seen the copy of Panchnama dated 24.02.2024 drawn at M/s Hind Terminals private limited, of examination of the subject goods and sample drawn by DRI officers from 10 containers covered under Bill of Lading no. MEDUKW345053. In token of having seen he put his dated signature on the said documents. Further he stated that he accepted that those were that 10 containers which had been ordered for importation Mixed Hydrocarbon oil to Petro Global FZE, Sharjah, UAE.

He was shown the copy of Test reports in respect of Test Memo no.27/2024 to 36/2024 all dated 08.03.2024 received from Chemical Examiner, C.Ex. & Cus. Lab Vadodara and as per test reports the chemical Examiner,CECL, Vadodara stated that the sample u/r meets the requirement of heating oil (LDO) as per IS 15770-2021. Import of Light Diesel oil was prohibited for unauthorized company/person. He was asked to offer his comments. After perusal of the said documents he stated that he had seen the test memo no. 27/2024 to 36/2024 and its reports dated 10/15/17.04.2023. In token of having seen he put his dated signature on every page of copy of test memo and its reports. Further he stated that as per test reports it appeared that Light Diesel Oil had been imported under B/L No. MEDUKW345053, which was restricted/prohibited for unauthorized company. He further added that although they had ordered overseas supplier for Mixed Hydrocarbon Oil and not for Light Diesel Oil.

He was being shown printouts of Whatsapp Chat conversations from his mobile phone number 95xxxxxx, which was resumed during search at his office premises, Surat on 23.02.2024. The whatsapp chat conversation held in the different Whatsapp group in which he was one of the active members with other members. The data retrieved from the mobile phone Samsung Galaxy S22+ Model No. SM-S906E/DS Sr. No. RZCT815YBLX of Shri Manish Vora was saved in Toshiba make hard disk bearing Sr. No. 34CPP30ZTCRJ**.** As per these conversations, he (Manish) had sent following relevant messages indicating his involvement in the import of prohibited goods i.e. Bio diesel (for

other than registered Company) with overseas suppliers and others. He was asked to offer his comments.

| **Date and time** | **Sender by** | **Content of text/ image** |
|---|---|---|
| 15.06.2020,07:15:25(UTC+0) | Manish (owner) | Are you dealing in used cooking oil n bio diesel? |
| 15.06.2020,07:16:52(UTC+0) | Manish (owner) | I am Looking for the same |
| 15.06.2020,07:19:08(UTC+0) | Gulf Oil & Gas Middle East FZC | Yes Bio diesel we r dealing |
| 15-06-2020 07:21:29(UTC+0) | Gulf Oil & Gas Middle East FZC | To which port |
| 15-06-2020 07:21:39(UTC+0) | Manish (owner) | Nhvasheva port |
| 15-06-2020 07:23:17(UTC+0) | Gulf Oil & Gas Middle East FZC | Under what name u need n HS code to be mentioned |
| 15-06-2020 07:23:46(UTC+0) | Gulf Oil & Gas Middle East FZC | As Bio Diesel or Hydro carbon Oil |
| 15-06-2020 07:24:32(UTC+0) | Manish (owner) | have you ever sent the same to india before sir? |
| 15-06-2020 08:17:48(UTC+0 | Manish (owner) | Share me specs n cif price for nhvasheva port |
| 15-06-2020 08:55:45(UTC+0) | Gulf Oil & Gas Middle East FZC | Empty file |
| 15-06-2020 08:56:58(UTC+0) | Gulf Oil & Gas Middle East FZC | Before it was going under product name as BIO DIESEL BLENDED WITH BITUMINOUS MINERAL OIL NOW the product name as : MIXED HYDROCARBON OIL |

| | | |
|---|---|---|
| 15-06-2020 08:57:24(UTC+0) | Manish (owner) | FINALLY ITS BIO DIESEL |
| 15-06-2020 08:57:55(UTC+0) | Manish (owner) | pls quote your best cif price |
| 15-06-2020 09:11:40(UTC+0) | Gulf Oil & Gas Middle East FZC | Finally it's Bio Diesel Only |
| 15-06-2020 09:12:05(UTC+0) | Gulf Oil & Gas Middle East FZC | Only Customs product name is different |
| 15-06-2020 09:12:13(UTC+0) | Manish (owner) | I know |
| 15-06-2020 09:12:21(UTC+0) | Gulf Oil & Gas Middle East FZC | I will work out the price |
| 15-06-2020 10:03:45(UTC+0 | Manish (owner) | Sir Which HSN Code are you using for India? |
| 15-06-2020 10:43:59(UTC+0) | Gulf Oil & Gas Middle East FZC | HS Code : 38260000 |
| 17-06-2020 09:44:25(UTC+0) | Manish (owner) | We need only bio diesel |
| 17-06-2020 09:44:53(UTC+0) | Manish (owner) | So whats your final cif? |
| 17-06-2020 09:45:53(UTC+0) | Gulf Oil & Gas Middle East FZC | It's a mix of Bio Diesel n Pure Diesel |
| 17-06-2020 09:46:38(UTC+0) | Manish (owner) | Mix means some containers of bio diesel n sone of pure diesel? |
| 17-06-2020 09:49:15(UTC+0) | Manish (owner) | Mean mixed one, not a separate containers |
| 17-06-2020 09:52:29(UTC+0) | Manish (owner) | Sir Why not u offer me used cooking oil? |
| 17-06-2020 | Manish (owner) | As I require it urgently |

| | | |
|---|---|---|
| 09:52:41(UTC+0) | | |
| 17-06-2020 09:53:13(UTC+0) | Manish (owner) | Will appreciate if u can supply me used cooking oil |
| 18-06-2020 06:36:33(UTC+0) | Gulf Oil & Gas Middle East FZC | Any cargo to be booked for coming week |
| 18-06-2020 06:37:39(UTC+0) | Manish (owner) | i inform u sir |
| 21-12-2020 09:06:20(UTC+0) | Manish (owner) | You there sir? |
| 21-12-2020 09:10:35(UTC+0) | Manish (owner) | Are you dealing in base oil sir? |
| 21-12-2020 11:35:36(UTC+0) | Manish (owner) | ????? |
| 04-01-2021 11:33:31(UTC+0) | Manish (owner) | Are you there? |
| 18-01-2021 11:36:54(UTC+0) | Manish (owner) | why so silent? |
| 19-01-2021 09:40:06(UTC+0) | Manish (owner) | I need pure diesel |
| 19-01-2021 09:40:21(UTC+0) | Manish (owner) | As we discussed earlier |
| 19-01-2021 09:40:39(UTC+0) | Manish (owner) | Cnf rate for nhvasheva pls |
| 19-01-2021 09:48:30(UTC+0) | Manish (owner) | Rate pls |

He stated that he had seen and perused the printouts of Whatsapp Chat conversations from his mobile which was resumed during search at your office premises, Surat on 23.02.2024 and he explained one by one conversation.

| **Date and time** | **Sender by** | **Content of text/ image** | **My comments in text/image** |
|---|---|---|---|
| 15.06.2020,07:15:25(UTC+0) | Manish (owner) | Are you dealing in used cooking oil n bio diesel? | *As per requirement in Indian market, he inquired to Overseas supplier i.e. Gulf Oil & Gas middle for dealing about cooking oil n bio diesel.* |
| 15.06.2020,07:16:52(UTC+0) | Manish (owner) | I am Looking for the same | *He wanted cooking oil and bio diesel at that time.* |
| 15.06.2020,07:19:08(UTC+0) | Gulf Oil & Gas Middle East FZC | Yes Bio diesel we r dealing | *Gulf Oil & Gas Middle East FZC replied that they were dealing the Bio diesel.* |
| 15-06-2020 07:21:29(UTC+0) | Gulf Oil & Gas Middle East FZC | To which port | *About importation at which port.* |
| 15-06-2020 07:21:39(UTC+0) | Manish (owner) | Nhvasheva port | *he replied about port.* |
| 15-06-2020 07:23:17(UTC+0) | Gulf Oil & Gas Middle East FZC | Under what name u need n HS code to be mentioned | *Overseas supplier asked me about HS code about cooking oil and Bio diesel.* |
| 15-06-2020 07:23:46(UTC+0) | Gulf Oil & Gas Middle East FZC | As Bio Diesel or Hydro carbon Oil | *Overseas supplier asked that in which HS code used for bio diesel or Mixed Hydro carbon oil.* |
| 15-06-2020 | Manish | Share me specs | *he inquired about* |

| | | | |
|---|---|---|---|
| 08:17:48(UTC+0 | (owner) | n cif price for Nava Sheva port | *specification and CIF price for importation of cooking oil and biodiesel oil at Nhava Sheva port.* |
| 15-06-2020 08:55:45(UTC+0) | Gulf Oil & Gas Middle East FZC | Empty file | *As far as he remembered he send me specification of used cooking oil (Vegetable oil) and further he deleted the message.* |
| 15-06-2020 08:56:58(UTC+0) | Gulf Oil & Gas Middle East FZC | Before it was going under product name as BIO DIESEL BLENDED WITH BITUMINOUS MINERAL OIL NOW the product name as : MIXED HYDROCARBON OIL | *Overseas supplier stated that Bio diesel blended with bituminous mineral oil and further some persons import the goods with name Mixed Hydrocarbon Oil from Dubai.* |
| 15-06-2020 08:57:24(UTC+0) | Manish (owner) | FINALLY ITS BIO DIESEL | *he asked to overseas supplier that after mixing the product its bio diesel.* |
| 15-06-2020 08:57:55(UTC+0) | Manish (owner) | pls quote your best cif price | *he requested to overseas supplier for quote and CIF price of used cooking oil and Bio diesel.* |

| | | | |
|---|---|---|---|
| 15-06-2020 09:11:40(UTC+0) | Gulf Oil & Gas Middle East FZC | Finally it's Bio Diesel Only | *Overseas supplier replied that its Bio diesel.* |
| 15-06-2020 09:12:05(UTC+0) | Gulf Oil & Gas Middle East FZC | Only Customs product name is different | *Overseas supplier also replied that Customs product name is different but goods is Bio diesel.* |
| 15-06-2020 09:12:13(UTC+0) | Manish (owner) | i know | *he already know, because I heard already about some unknown persons are engaged in this regard.* |
| 15-06-2020 09:12:21(UTC+0) | Gulf Oil & Gas Middle East FZC | I will work out the price | *Further overseas supplier replied that he will send the price of the goods.* |
| 15-06-2020 10:03:45(UTC+0 | Manish (owner) | Sir Which HSN Code are you using for India? | *he inquired to overseas supplier that which HSN code he supplied the goods for India.* |
| 15-06-2020 10:43:59(UTC+0) | Gulf Oil & Gas Middle East FZC | HS Code : 38260000 | *He replied about HS code.* |
| 17-06-2020 09:44:25(UTC+0) | Manish (owner) | We need only bio diesel | *he told about we need only bio diesel.* |
| 17-06-2020 09:44:53(UTC+0) | Manish (owner) | So whats your final cif? | *he told about final CIF of the products.* |
| 17-06-2020 09:45:53(UTC+ | Gulf Oil & Gas Middle | It's a mix of Bio Diesel n Pure | *Overseas supplier told him that the products is* |

| | | | |
|---|---|---|---|
| 0) | East FZC | Diesel | *mixed of bio diesel and pure diesel.* |
| 17-06-2020 09:46:38(UTC+0) | Manish (owner) | Mix means some containers of bio diesel n sone of pure diesel? | *He inquired that mix means some containers of bio diesel and some of pure diesel he supplied.* |
| 17-06-2020 09:49:15(UTC+0) | Manish (owner) | Mean mixed one, not a separate containers | *Or means mixed one not a separate containers.* |
| 17-06-2020 09:52:29(UTC+0) | Manish (owner) | Sir Why not u offer me used cooking oil? | *Further I inquired to overseas supplier about used cooking oil.* |
| 17-06-2020 09:52:41(UTC+0) | Manish (owner) | As I require it urgently | *he told to overseas supplier that I need cooking oil urgently.* |
| 17-06-2020 09:53:13(UTC+0) | Manish (owner) | Will appreciate if u can supply me used cooking oil | *Again he repeat to overseas supplier that he appreciate if he supply me used cooking oil.* |
| 18-06-2020 06:36:33(UTC+0) | Gulf Oil & Gas Middle East FZC | Any cargo to be booked for coming week | *Overseas supplier asked him that any cargo to be booked for coming week.* |
| 18-06-2020 06:37:39(UTC+0) | Manish (owner) | i inform u sir | *he told to overseas supplier that when they need the used cooking oil and bio diesel oil then I inform him.* |
| 21-12-2020 09:06:20(UTC+ | Manish | You there sir? | *Further he asked to overseas supplier that* |

| | | | |
|---|---|---|---|
| 0) | (owner) | | *he is with mobile or not.* |
| 21-12-2020 09:10:35(UTC+0) | Manish (owner) | Are you dealing in base oil sir? | *Further he asked to overseas supplier about supply the base oil.* |
| 21-12-2020 11:35:36(UTC+0) | Manish (owner) | ????? | *Again he asked.* |
| 04-01-2021 11:33:31(UTC+0) | Manish (owner) | Are you there? | *Some times again he asked to overseas supplier.* |
| 18-01-2021 11:36:54(UTC+0) | Manish (owner) | why so siilent? | *Some times again he asked to overseas supplier.* |
| 19-01-2021 09:40:06(UTC+0) | Manish (owner) | I need pure diesel | *he felt that overseas supplier was not interested in base oil so I was trying to hear, when he asked about pure diesel.* |
| 19-01-2021 09:40:21(UTC+0) | Manish (owner) | As we discussed earlier | *he thought that maybe if he remind him about the earlier inquiry he made to the overseas supplier, then maybe he reply, but he did not reply him.* |
| 19-01-2021 09:40:39(UTC+0) | Manish (owner) | Cnf rate for Nhvasheva pls | *Again he asked about CNF rate of base oil for Nhavasheva port.* |
| 19-01-2021 09:48:30(UTC+0) | Manish (owner) | Rate pls | *Again he asked about CNF rate of base oil for Nhavasheva port but he* |

| | | | |
|---|---|---|---|
| | | | *never replied further.* |

Further in token of having seen the printout of chats he put his dated signature on the said pages. Further he stated that he had only inquired about used Cooking oil and Bio diesel from overseas supplier Gulf Oil & Gas Middle East FZC, UAE but he never imported the used cooking oil and Bio diesel from the said overseas supplier. Further he stated that as and when he knew about used cooking oil and bio diesel could import in India only registered company then he never inquired about the products for importation.

On being asked why he was making inquiry for the same with overseas supplier when he did not wanted to import of the same, he stated that some people of Rajasthan who made bio diesel had a demand for used cooking oil as raw material, due to which he made an inquiry about bio diesel and used cooking oil, but as soon as he got the information regarding the importation of bio diesel and used cooking oil that no one other than authorized company could import the bio diesel and used cooking oil then he stopped the inquiry the same from overseas supplier.

On being asked whether it was legal for making the bio diesel in Rajasthan in 2020-21, he stated that making of bio diesel in Rajasthan was legal in 2020-21.

In continuation of question no. 09 he was shown the printouts of the whatsapp chat conversation held in the different Whatsapp group in which he was one of the active members with other members. As per these conversations, he (Manish) had sent following relevant messages indicating his involvement in the importation and trading the bio diesel. Accordingly he was asked to offer his comments;

| **Date and time** | **Sender by** | **Content of text/ image** |
|---|---|---|
| 14-07-2021 05:54:10(UTC+0) | Manish (owner) | Dear sir, Please arrange to send 01 tankar bio fuel diesel to JKIL Ghodbunder by/on 15.07.2021 billing of Metro |

| | | |
|---|---|---|
| | | Line 9 Mira road site. |
| 14-07-2021 07:33:28(UTC+0) | Manish (owner) | Ghodbunder ni gadi kale morning ma test karva aapse |
| 14-07-2021 07:36:19(UTC+0) | Pankaj CHA palak logistics | Ok |

He stated that he had seen and perused the printouts of Whatsapp Chat conversations and he explained one by one conversation.

| **Date and time** | **Sender by** | **Content of text/ image** | **My comments in text/image** |
|---|---|---|---|
| 14-07-2021 05:54:10(UTC+0) | Manish (owner) | Forwarded message- Dear sir, Please arrange to send 01 tankar bio fuel diesel to JKIL Ghodbunder by/on 15.07.2021 billing of Metro Line 9 Mira road site. | *Shri Dhiraj Agarwal, broker of Jay Kumar Infrastructure Limited (JKIL)had sent me this message and he forwarded to the same to Pankaj Shah CHA.* |
| 14-07-2021 07:33:28(UTC+0) | Manish (owner) | Ghodbunder ni gadi kale morning ma test karva aapse | *he had asked CHA to get the test report of the goods that were to be sent to Ghodbunder.* |
| 14-07-2021 07:36:19(UTC+0) | Pankaj CHA palak logistics | Ok | *Pankaj replied that ok.* |

Further in token of having seen the printout of chats he put his dated

signature on the same. He further stated that all MHO goods imported by M/s. Ocean Green Energy at port which had been trading after getting the test reports and pay the Customs Duty.

On being asked about a message which he had forwarded the received message "Dear sir, please arrange to send 01 tanker bio fuel diesel to JKIL Ghodbunder by /on 15.07.2021" to CHA Pankaj. It appeared that he had sent tanker of bio fuel diesel to JKIL on 15.07.2021. He was asked to explain about the said message, he stated that he never sent tanker of bio fuel diesel to JKIL on 15.07.2021, actually he received the message from Shri Dhiraj Agarwal and he was broker of JKIL, he generally used the language bio fuel diesel for Mixed hydrocarbon Oil so he sent message with that language and he forwarded the same to CHA Pankaj, however, he again stated that he never sent tanker of bio fuel diesel to JKIL. Further he stated that JKIL was metro line Construction Company and that company used their MHO for smooth functioning of heavy digging machinery only.

On being asked whether they got the test reports from Govt. lab for those tanker which had sent to JKIL on 15.07.2021 (as per forwarded message), if so, then he was asked to provide the test reports thereof, he stated that got the test reports from DyCC ,Customs Lab, JNPT, Mumbai for those tanker which had sent to JKIL. Further he stated that as per received message from Shri Dhiraj Agarwal, as far as he remember he sent the goods after approx. 1-3 days from 15.07.2021. Further he stated that test reports were not available at that but he assured to provide the same within 2-3 days.

He was shown the whatsapp chat conversations related to question change of nickname of the goods. The details of the messages are as under;

| **Chat Type** | **Date and time** | **Sender by** | **Content of text/ image** |
|---|---|---|---|
| Group | 11-04-2023 13:24:51(UTC +0) | Manish (owner) | Sir Ise bolo nickname me kuch aur likhe. Katariya diesel likha hai, Hum log |

| | | | |
|---|---|---|---|
| | | | diesel nahi bechte. |
| Group | 11-04-2023 13:25:15(UTC +0) | Jitin Bajaj(9825045309 ) | Ok sir |

He stated that he had seen and perused the printouts of whatsapp Group Chat conversations and he explained one by one conversation.

| **Chat Type** | **Date , and time** | **Sender by** | **Content of text/ image** | **My comments** |
|---|---|---|---|---|
| Group | 11-04-2023 13:24:51(UTC+0) | Manish (owner) | Sir Ise bolo nickname me kuch aur likhe. Katariya diesel likha hai, Hum log diesel nahi bechte. | *he send the message to whatsapp group for information. he sold the goods mostly M/s Global Industrial Solution, Vadodara. The firm Katariya Trading was a customer of M/s Global Industrial Solutions. he had clarified that they did not deal in Diesel* |
| Group | 11-04-2023 13:25:15(UTC+0) | Jitin Bajaj | Ok sir | *Jitin bhai replied that Ok sir* |

Further in token of having seen the printout of chats he put his dated signature on it.

On being requested to further clarify the message “sir Ise bolo nickname me kuch aur likhe. Katariya diesel likha hai, Hum log diesel nahi bechte”. He was further asked why he had send the message in group and which person in the group was telling not to write Kataria Diesel, he stated that the firm Katariya Trading was a customer of M/s. Global Industrial Solutions and M/s Global Industrial Solutions was his customer, however

Jitin bhai knew Katariya Trading. Further he stated that M/s Global Industrial solutions told to Jitin bhai that firm Katariya Trading used word with katariya Diesel and the same told to him by Jitin bhai, therefore he told to Jitin bhai for avoid to write the wording of diesel, because he had not been sold diesel. He further added that Katariya Trading was came to know that Katariya admitted complained to M/s. Global Industrial solutions that he used their product in mining company, but his machinery pump were damaged due to use of their product. Further he stated that Jitin bhai knew better about Katariya Trading and that matter.

He was further asked to clarify the following whatsapp conversations**;**

| **Date and time** | **Sender by** | **Content of text/ image** |
|---|---|---|
| 15-12-2022 07:39:04(UTC+0) | Manish (owner) | Sir High sulfur ka kya rate hai ? |
| 15-12-2022 07:42:49(UTC+0) | Mujavar | Mho |
| 15-12-2022 07:42:49(UTC+0) | Mujavar | Ya diesel |
| 15-12-2022 07:43:10(UTC+0) | Manish (owner) | Mho |
| 21-12-2022 14:25:55(UTC+0) | Manish (owner) | Sir Myanmar ke liye MHO ka full specs and materials ka photo bhejiye |
| 21-12-2022 14:26:36(UTC+0) | Manish (owner) | He is asking MHO n in Myanmar, anybody can import diesel by taking permission |
| 27-01-2024 04:51:00(UTC+0) | Mujavar | BL NO. KWI0120186 ( OCEAN ) MUNDRA ETA IS - 13/02/2024 BL NO. MEDUKW345053 ( OCEAN ) I WILL UPDATE SHORTLY |

| | | |
|---|---|---|
| 27-01-2024 04:56:52(UTC+0) | Manish (owner) | Ok |
| 09-02-2024 14:44:49(UTC+0) | Manish (owner) | Sir Agar cargo boe file naa karke return bheje to kya expenses hoga? (**RUD No.13)** |

He stated that he had seen and perused the printouts of Whatsapp Group Chat conversations and he explained one by one conversation.

| **Date and time** | **Sender by** | **Content of text/ image** | **His comments** |
|---|---|---|---|
| 15-12-2022 07:39:04(UTC+0) | Manish (owner) | Sir High sulfur ka kya rate hai? | *he asked about high sulfur in goods for importation.* |
| 15-12-2022 07:42:49(UTC+0) | Mujavar | Mho | *Overseas supplier (Mujavar) asked about MHO for high sulfer.* |
| 15-12-2022 07:42:49(UTC+0) | Mujavar | Ya diedel | *Overseas supplier (Mujavar) asked about diesel for high Sulfer.* |
| 15-12-2022 07:43:10(UTC+0) | Manish (owner) | MHO | *he replied the goods for MHO* |
| 21-12-2022 14:25:55(UTC+0) | Manish (owner) | Sir Myanmar ke liye MHO ka full specs amd materials ka photo bhejiye | *he asked about full specification of MHO for importation in Myanmar and also told him to send photo of materials.* |
| 21-12-2022 14:26:36(UTC+0) | Manish (owner) | He is asking MHO n in | *He used for customers of* |

| | | | |
|---|---|---|---|
| | | Myanmar, anybody can import diesel by taking permissiom | *Myanmar. he asked about anybody can import in myanmar diesel by taking permission.* |
| 27-01-2024 04:51:00(UTC+0) | Mujavar | BL NO. KWI0120186 ( OCEAN ) MUNDRA ETA IS - 13/02/2024 BL NO. MEDUKW345053 ( OCEAN ) I WILL UPDATE SHORTLY | *Overseas supplier send me two BL of our consignments. He told me that he will give updating shortly about consignment of both BL.* |
| 27-01-2024 04:56:52(UTC+0) | Manish (owner) | Ok | *he replied OK* |
| 09-02-2024 14:44:49(UTC+0) | Manish (owner) | Sir Agar cargo boe file naa karke return bheje to kya expenses hoga? | *their earlier import consignment covered under Bill of Lading No. KWI0120186 was put on hold by DRI, Noida at Mundra Port. Therefore to avoid detention and demurrage of the said consignment and also to avoid any litigation related to the said consignment he* |

| | | | |
|---|---|---|---|
| | | | *enquired asked to overseas supplier that if they don't file Bill of entry and the consignments will send back to overseas then how many expenses will come.* |

Further in token of having seen the printout of chats he put his dated signature on the same.

On being asked about their overseas supplier Mujavar sent him about BL no. BL NO. KWI0120186 (OCEAN) MUNDRA ETA IS - 13/02/2024 BL NO. MEDUKW345053 (OCEAN) was that BL no. MEDUKW345053 which had hold by DRI Gandhidham at Mundra, he stated that it was the BL no. MEDUKW345053 which was put on hold by DRI Gandhidham and BL no. KWI0120186 was put on hold by DRI Noida.

On being asked about BL No. MEDUKW345053 of M/s. Ocean Green Energy was hold by DRI Gandhidham and as per documents, it appeared that he had imported 10 Containers covered under BL No. MEDUKW345053, he stated that he had imported 10 Containers covered under BL No. MEDUKW345053 and he perused the test reports issued by CECL Vadodara in r/o 10 containers. Further he stated that he noticed that the chemical Examiner ,CECL, Vadodara stated regarding test reports that the sample u/r meets the requirement of heating oil (LDO) as per IS 15770-2021 and he agreed with the test reports dated 10/15/17.04.2024 issued by CECL Vadodara in respect of his firm M/s Ocean Green Energy.

On being asked about the all the consignments imported by the firm i.e. M/s. Ocean Green Energy since its inception. He was further asked to submit the details/documents along with its test reports, he stated that the same were not readily available with him at present, however, he assured that he would provide the same within 2-3 days. But he did not provided the same.

On being asked about the restrictions on import of Light Diesel Oil by unauthorized company, he stated that in 2020-2021 he was not aware about this so he inquired from overseas supplier, but as and when he knew about Light Diesel Oil was prohibited for unauthorized company then neither inquired nor imported the prohibited goods. Further he stated that he had imported only MHO and base oil only.

As per test reports Light Diesel Oil was found in his imported containers in the guise of Mixed Hydrocarbon Oil. He was asked to why he had imported the restricted items and how many containers he had imported the Light Diesel Oil in the past. He was asked to offer his comments, he stated that as per test reports Light Diesel Oil was found in his imported containers. However he had ordered overseas supplier for Mixed Hydrocarbon Oil not for Light Diesel Oil. Further he stated that he had never imported the Light Diesel Oil.

**11.4 Statement of Shri Jitin Bajaj, Partner of M/s. Ocean Green Energy, was recorded under Section 108 of the Custom Act, 1962, on 27.07.2024:**

On being asked about his work and responsibilities in the importer firm M/s Ocean Green Energy C1053, Central Bazar, Opp. Varachha Police Station, Surat, Gujarat and Residential Address- B-4/1201, Celebrity Green Near Happy Hali Mark Shoppers, Vesu, Surat, he stated that he and Shri Manish bhai looked after the work related to import, sales etc., in the firm M/s Ocean Green Energy. He further added that M/s. Ocean Green Energy was a partnership firm and they started their business in the said firm in the year 2021.

On being asked about the conversations held with the overseas suppliers regarding the import of cargo and its payment related to M/s Ocean Green Energy, he stated that Shri Manish and he had been talked to overseas suppliers regarding importation of cargo related to M/s Ocean Green Energy; that his firm M/s Ocean Green Energy used to import the goods such as 'Mixed Hydrocarbon Oil (MHO). Further he stated that no goods other than MHO had were imported by his firm since 2021.

He was shown printouts of whatsapp Chat conversations resumed from his partner Shri Manish's mobile which was resumed during search at his office premises, Surat on 23.02.2024. The whatsapp chat conversation held in the different Whatsapp group (with whatsup account number 95xxxxx in which he was one of the active members with other members. As per these conversations, he had sent following relevant messages indicating his involvement in the import of prohibited goods (for other than registered Company) i.e. diesel on whatsupp Group. He was asked to offer his comments.

| **Chat Type** | **Date , and time** | **Sender by** | **Content of text/ image** |
|---|---|---|---|
| Group | 11-04-2023 13:24:51(UTC+0) | Manish (owner) | *Sir Ise bolo nickname me kuch aur likhe. Katariya diesel likha hai, Hum log diesel nahi bechte.* |
| Group | 11-04-2023 13:25:15(UTC+0) | Jitin Bajaj | *Ok sir* |
| Group | 02-06-2023 07:58:10(UTC+0 | Jitin Bajaj (9825045309) | *6 buses in break down pump fail due to bad quality of diesel* |

He stated that he had seen and perused the printouts of Whatsapp Group Chat conversations and he explained one by one as under;

| **Chat Type** | **Date and time** | **Sender by** | **Content of text/ image** | **My comments** |
|---|---|---|---|---|
| Group | 11-04-2023 13:24:51(UTC+0) | Manish (owner) | *Sir Ise bolo nickname me kuch aur likhe. Katariya diesel likha* | *they sold the MHO to M/s Global Industrial Solutions and further they sale to different customers like as Katariya Trading.* |

| | | | | |
|---|---|---|---|---|
| | | | *hai, Hum log diesel nahi bechte.* | *Further Kataria Trading sales the products to various customers and he written by mistake katariya diesel with payment and further he and Manish got information via via about the said and further Manish bhai send a message on group for information and also clarified that we don't sale diesel.* |
| Group | 11-04-2023 13:25:15(UTC+0) | Jitin Bajaj | *Ok sir* | *he replied that Ok sir* |
| Group | 02-06-2023 07:58:10(UTC+0 | Jitin Bajaj | *Forwarded message-*<br>*6 buses in break down pump fail due to bad quality of diesel* ***(RUD-15)*** | *he have received a message from bottom level of traders and I forwarded the same to group without any verification.* |

In the above conversations, Manish stated that "sir Ise bolo nickname me kuch aur likhe. Katariya diesel likha hai, Hum log diesel nahi bechte" and he replied that "ok sir". He was accordingly asked whether he knew about Katariya Trading and their customers and why Manish send message on group for avoiding word with Katariya Diesel. He was asked to offer his comments, he stated that he sold the MHO to M/s. Global Industrial

Solutions and further they sale to different customers like as Katariya Trading and Further Kataria Trading sales the products to various customers and one of the customers of Kataria trading written by mistake katariya diesel with payment and further he and Manish got information about that. Further he stated that Manish bhai sent a message on the group for information and instructed that write another word for nickname and also clarified that they didn't sale diesel. He further replied that Ok sir. Further he stated that he knew about Katariya Trading but he didn't know about their customers, however he did not notice this type of mistake by Kataria Trading.

On being asked about a message "6 buses in break down pump fail due to bad quality of diesel" on whatsapp Group. He was asked to clarify the meaning of bad quality of diesel and what was the connection with him, he stated that he sold MHO to his Customers and further they sold to different customers and further sub customers sold to different customers. Further he stated that some customers understood that MHO was like as diesel or bio diesel, however MHO was used as lubricant, burning process, Sulphar tank cleaning etc. and Mixed Hydrocarbon oil was a petroleum base product. Further he stated that some customers blended some diesel oil in MHO and further used in vehicle, so their vehicle had faced breakdown. Further he stated that bottom level customers were not fully aware about Mixed Hydrocarbon Oil and its uses, so they complaint to traders and traders forwarded that type of message on ward and he received via-via and he also forwarded to that message in group, however that type of message was not relevant with his product.

He was shown copy of statement of Shri Manu bhai Govarbhai Vora (Pet name Manish), partner of M/s Ocean Green Energy recorded on 26.07.2024, he confirmed that they imported 10 Containers covered under BL no. MEDUKW345053 in their firm M/s Ocean Green Energy. He further stated that he had seen and perused the copy of statement of Shri Manu bhai Govarbhai Vora recorded on 26.07.2024 and in token of having seen he put his dated signature on it. Further he stated that he agreed with their statement that they had imported 10 Containers covered under BL no. MEDUKW345053 of M/s. Ocean Green Energy. He further stated that the BL no. MEDUKW345053 of M/s Ocean Green Energy was put on hold by DRI

Gandhidham, he had already perused the test report dated 10.04.2024 in respect of TM no. 27/2024, 29/2024,30/2024, 33/2024,35/2024 all dated 08.03.2024, test reports dated 15.04.2024 in respect of TM no. 28/2024, 31/2024,32/2024 and test reports dated 17.04.2024 in respect of TM No. 34/2024 dated 08.03.2024, 36/2024 dated 08.03.2024, issued by Chemical Examiner, CECL Vadodara. Further he stated that he noticed that as per test reports Light Diesel Oil IS 15770-2021 had found in 10 containers covered under MEDUKW345053 of M/s Ocean Green Energy, he agreed with the test reports issued by CECL Vadodara. Further he stated that he had ordered to overseas supplier Petro Global FZE, UAE for MHO.

On being asked about import consignments they had cleared from Customs through his firm M/s Ocean Green Energy i.e. since 2021 to till date. He was asked to provide the details/documents alongwith the Test Reports thereof**.** He stated that more than 20 B/Es have been cleared in respect of M/s Ocean Green Energy since inception of the firm, however, the same were not readily available with him at present, but he assured that he would provide the same within 2-3 days.

**12. TO SUM UP: -**

**12.1.** Intelligence gathered by DRI indicated that M/s. Ocean Green Energy, Surat imported goods declared as 'Mixed Hydrocarbon Oil' whereas the goods were actually other than that of declared and the import thereof was restricted to STEs only; that in terms of non-fulfillment of condition /restriction, the goods were prohibited as per Section 2(33) of Customs Act, 1962. An import consignment covered under Bill of Lading No. MEDUKW345053 was imported by the said importer, however they had not filed Bill of Entry as their earlier import consignment were put on hold by Noida DRI. It appears that the importer was very well aware with the actual nature, description and classification of the subject import goods. They were also aware with the facts that the subject goods imported by them falls under the category of restricted goods and can be imported by the STE. Therefore, the importer attempted to divert the goods from Mundra port to Jable Ali Port to escape the investigation/inquiry initiated by DRI. The imported goods were Light Diesel Oil and falling under the appropriate classification 27101943 may be

imported under the policy condition (5) of Chapter 27 by STEs. The actual imported goods were mis-declared and restricted one under the Ch. 27 of Customs Tariff. The intelligence suggested that IGM No. *2368674 Dt 13.02.2024* was filed at Mundra Port in respect of said import but the importers were not filing Bills of Entry as the subject goods which were already under investigation being mis-declared and restricted for import. M/s. OGE had imported total **189.895 MTS** goods at Mundra Port, describing description of goods as 'Mixed Hydrocarbon Oil' with classification thereof under CTH No. 27101990 through 10 Containers.

**12.2** The samples drawn from the goods imported by M/s. OGE were sent for testing at Central Excise and Customs Laboratory (CECL), Vadodara. The Test Reports received from CECL, Vadodara suggested that *each sample was in the form of light pale yellowish oily liquid. It is composed of Hydrocarbon oil more than 70% by weight. The CECL, Vadodara opined that the samples under reference meet the requirements of '**Heating Oil (Light Diesel Oil) (LDO) as per IS:15770:2021***.

**12.3** Thus, the goods imported in the above import consignment were found in violation of import policy and provisions of Customs Act, 1962 and thereby liable for confiscation under provisions of Customs Act, 1962 being appeared to be smuggled goods as per the Section 2(39) of Customs Act, 1962. The goods imported in the name of M/s. OGE were seized vide seizure memo dated 19.04.2024 under the provisions of Section 110(1) of the Customs Act, 1962. The said importers did not file Bills of Entry for the subject goods smuggled under IGM No. 2368674 Dt. 13.02.2024 and the offending goods.

**12.4** In the meantime statements of various persons including main active partners in the firm alongith the representative so Container Line were recorded. The representative of Container Line confirmed that the declared description and classification of the goods was mentioned as per the details provided by the supplier. He also confirmed that the subject goods pertain to M/s. OGE and they have not approached for release of the subject goods. Shri Vikram Singh confirmed that the importer vide letter dated 08.02.2024

enquired for return the subject goods to Jebel Ali. The importer intentionally had not filed Bill of Entry for the said import consignment. It appears that they were well aware with the actual nature, description and classification of the subject goods. Therefore to escape from the investigation by enforcement agencies, they tried to send the subject goods to UAE. Since the subject goods were of restricted nature and only STEs were allowed for import thereof they intentionally tried to send back the subject goods. The importers during their statement confirmed that the subject goods were pertaining to M/s. OGE and they have intentionally not filed the bill of Entry for the subject goods to avoid the investigation. During investigation in the subject matter, it is revealed that actual nature of goods and its usage as per IS 15770:2021.

**13. NATURE AND CLASSIFICATION OF SUBJECT IMPORT GOODS: -**

**13.1**. During examination of the subject goods under panchnama dated 24.02.2024, representative samples from each of the 10 Containers covered under Bill of Lading No. *MEDUKW345053 (IGM No. 2368674 Dt 13.02.2024* ) imported by M/s. OGE were drawn. The samples so drawn were sent to the CECL, Vadodara for testing thereof. On testing the samples so drawn the CECL, Vadodara in their Test Reports had opined that *each sample was in the form of light pale yellowish oily liquid. It is composed of Hydrocarbon oil more than 70% by weight. The CECL, Vadodara opined that the samples under reference meet the requirements of '**Heating Oil (Light Diesel Oil) (LDO) as per IS:15770:2021***."

Further in terms of the Supplementary Note to Chapter 27 of First Schedule to the Customs Tariff Act 1975, which provides as follow:

In this chapter, reference to any standard of the Bureau of Indian Standards refers to the last published version of the standard.

**13.2.** Looking to the above the BI Standard for the LDO will be IS 15770: 2021 and as per Indian Standard 15770:2021, the general requirements in respect of Light Diesel Oil are specified as under: -

3.1. *The material shall be hydrocarbon oils derived from petroleum. Suitable fuel additives without harmful sideeffects can be used to improve the performance quality. The material shall be free from grit, suspended matter and other visible impurities. The gross calorific value of the fuel may be in the range of 10000 to 10500 kcal/kg.*

*3.1.1. It is either a viscous distillate fuel or a blend of distillate fuel and residuum oil.*

*3.1.2. The use of dyes or markers is permitted.*

*3.2. The material shall also comply with the requirements prescribed in Table 1 when tested according to the appropriate methods prescribed in col 4 of Table 1.*

**Table 1**

| Sl. No. | Characteristics (Test Name/Parameters) | Requirements as per IS: 15770:2008 (Light Diesel Oil) | Method of Test Ref to [P:] of IS 1448 |
|---|---|---|---|
| 1 | Acidity, inorganic | Nil | [P:2] |
| 2 | Ash, percent by mass, Max | 0.02 | [P:4] |
| 3 | Carbon residue (Ramsbottom) on whole sample, percent by mass, Max | 1.5 | [P:8] |
| 4 | Pour Point °C, Max<br>a) Winter<br>b) Summer | <br>12 $^0$C<br>21 $^0$C | [P:10] |
| 5 | Copper Strip corrosion for 3h at 100 °C | Not worse than No.2 | [P:15] |

| | | | |
|---|---|---|---|
| 6 | Flash Point: Pensky Martens, °C Min | 66 $^0$C | [P:21] |
| 7 | Kinematic viscosity cSt, at 40 °C | 2.5 to 15.0 | [P:25] |
| 8 | Sediment content percent by mass, Max | 0.10 | [P:30] |
| 9 | Density at 15 $^0$C, Kg/m3 | To be reported | [P:16]<br>[P:32] |
| 10 | Water content, percent by volume, Max | 0.25 | [P:40] |
| 11 | Total Sulphur, percent by mass, Max | 1.5 | [P:33] |

1) Winter shall be the period from November to February (both months inclusive) and rest of the months of the year shall be called as summer.

2) In case of dispute [P:32] shall be the referee test method.

3) The stringent limits are applicable in certain areas as notified by the competent authority from time-to-time.

**13.3.** Whereas, in the instant case, the nature, appearance, specifications, characteristics of subject goods have been categorically explained in the Test Reports of CECL, Vadodara, in terms of parameters/criteras prescribed vide Indian Standard 15770:2021 and all the requirements prescribed, are meeting indicating the subject goods as heating Oil (Light Diesel Oil). The comparison of requirements of Light Diesel Oil as per IS 15770:2021 vis-a vis the parameters /specifications reported vide the Test Report of CECL, Vadodara are tabulated hereunder: -

| **Characteristics (Test Name/Parameters)** | **Requirements as per IS 15770:2021 (Light Diesel Oil)** | **Test Report No.** RCL/GRU/DRI/6269 dated 11.03.2024 | **Test Report No.** RCL/GRU/DRI/6270 dated 11.03.2024 | **Test Report No.** RCL/GRU/DRI/6271 dated 11.03.2024 | **Test Report No.** RCL/GRU/DRI/6272 dated 11.03.2024 | **Test Report No.** RCL/GRU/DRI/6273 dated 11.03.2024 | **Test Report No.** RCL/GRU/DRI/6274 dated 11.03.2024 | **Test Report No.** RCL/GRU/DRI/6275 dated 11.03.2024 | **Test Report No.** RCL/GRU/DRI/6276 dated 11.03.2024 | **Test Report No.** RCL/GRU/DRI/6277 dated 11.03.2024 | **Test Report No.** RCL/GRU/DRI/6278 dated 11.03.2024 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Acidity, inorganic | Nil | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected |
| Ash, percent by mass, Max | 0.02 | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil |
| Carbon residue (Ramsbott | 1.5 | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| om) on whole sample, percent by mass, Max | | | | | | | | | | | |
| Pour Point °C, Max<br>a) Winter<br>b) Summer | 12 °C<br>21 °C | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected |
| Copper Strip corrosion for 3h at 100 °C | Not worse than No.2 | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected | Not detected |
| Flash Point: Pensky Martens, $^0$C Min | 66 $^0$C | 185 | 184 | 151 | 154 | 187 | 178 | 184 | 181 | 158 | 179 |
| Kinematic viscosity cSt, at 40 °C | 2.5 to 15.0 | 6.571 | 6.778 | 6.676 | 6.672 | 6.796 | 6.658 | 6.844 | 6.676 | 6.62 | 6.657 |
| Sediment content percent by mass, | 0.10 | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Max | | | | | | | | | | | |
| Density at 15 $^0$C, Kg/m3 | To be reported | 0.8418 | 0.8423 | 0.8422 | 0.8420 | 0.8424 | 0.8418 | 0.8425 | 0.8421 | 0.8420 | 0.8420 |
| Water content, percent by volume, Max | 0.25 | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil | Nil |
| Total Sulphur, percent by mass, Max | 1.5 | 0.042 | 0.040 | 0.041 | 0.038 | 0.040 | 0.066 | 0.039 | 0.043 | 0.038 | 0.04 |

**13.4.** Further, it has also been specified in the above-mentioned Test Report of CECL, Vadodara that the samples under reference were meeting the requirement for 'Heating Oil (LDO).

**13.5** The chapter heading of 2710 of Custom Customs Tariff Act, 1975 reads as under: -

**2710 PETROLEUM OILS AND OILS OBTAINED FROM BITUMINOUS MINERALS, OTHER THAN CRUDE; PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED, CONTAINING BY WEIGHT 70% OR MORE OF PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS, THESE OILS BEING THE BASIC CONSTITUENTS OF THE PREPARATIONS; WASTE OILS**

- ***Petroleum oils and oils obtained from bituminous minerals***

***(other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils:***

| | | |
|---|---|---|
| 2710 12 | -- | Light oils and preparations: |
| | --- | Naphtha |
| 2710 12 21 | ---- | Light naphtha |
| 2710 12 22 | ---- | Heavy naphtha |
| 2710 12 29 | ---- | Full range naphtha |
| | --- | Solvent 60/80, solvent 50/120 and solvent 145/205 (petroleum hydrocarbon solvents) as specified under standard IS 1745: |
| 2710 12 31 | ---- | Solvent 60/80 |
| 2710 12 32 | ---- | Solvent 50/120 |
| 2710 12 39 | ---- | Solvent 145/205 |
| | --- | Motor gasoline conforming to standard IS 2796, IS 17021, IS 17586 or IS 17076: |
| 27101241 | ---- | Motor gasoline conforming to standard IS 2796 |
| 2710 1242 | ---- | E 20 fuel conforming to standard IS 17021 |
| 2710 12 43 | ---- | E 12 fuel conforming to standard IS 17586 |
| 2710 12 44 | ---- | E 15 fuel conforming to standard IS 17586 |
| 2710 1249 | ---- | M15 fuel conforming to standard IS 17076 |
| 2710 12 50 | --- | Aviation gasoline conforming to standard IS 1604 |
| 2710 12 90 | --- | Other |
| 2710 19 | -- | Other |

| | | |
|---|---|---|
| 2710 19 20 | --- | Solvent 125/240 (petroleum hydrocarbon solvent) as specified under standard IS 1745 |
| | --- | Kerosene intermediate and oils obtained from kerosene intermediate: |
| 2710 19 31 | ---- | Kerosene intermediate |
| 2710 19 32 | ---- | Kerosene conforming to standard IS 1459 |
| 2710 19 39 | ---- | Aviation turbine fuels, kerosene type conforming to standard IS 1571 |
| | --- | Gas oil and oils obtained from gas oil: |
| 2710 19 41 | ---- | Gas oil |
| 2710 19 42 | ---- | Vacuum gas oil |
| 2710 19 43 | ---- | Light diesel oil conforming to standard IS 15770 |
| 2710 19 44 | ---- | Automotive diesel fuel, not containing biodiesel, Conforming to standard IS 1460 |
| 2710 19 49 | ---- | High flash high speed diesel fuel conforming to standard IS 16861 |
| | ---- | Fuel oils conforming to standard IS 1593: |
| 2710 19 51 | ---- | Grade LV |
| 2710 19 52 | ---- | Grade MV1 |
| 2710 19 53 | ---- | Grade MV2 |
| 2710 19 59 | ---- | Grade HV |
| | --- | Fuels (Class F) or marine fuels conforming to standard IS 16731: |
| 2710 19 61 | ---- | Distillate oil |
| 2710 19 69 | ---- | Residual oil |
| | --- | Base oil and lubricating oil: |
| 2710 19 71 | ---- | Base oil |
| 2710 19 72 | ---- | Engine oil (internal combustion engine crankcase oils) conforming to standard IS 13656 |

2710 19 73 ---- Engine oil conforming to standard IS 14234

2710 19 74 ---- Automotive gear oil conforming to standard IS 1118

2710 19 75 ---- Industrial gear oil conforming to standard IS 8406

2710 19 76 ---- General purpose machinery and spindle oils conforming to standard IS 493

2710 19 77 ---- Turbine lubricating oil conforming to standard IS 1012

2710 19 78 ---- Other lubricating oil, conforming to any other BIS standard

2710 19 79 ---- Other lubricating oil, not conforming to any BIS standard

---- Cuttingoil, hydraulic oil, industrial white oil, jute batching oil, mineral oil for cosmetic industry, Transformer oil:

2710 19 81 ---- Cutting oil conforming to standard IS 1115

2710 19 82 ---- Cutting oil (neat) conforming to standard IS 3065

2710 19 83 ---- Hydraulic oil conforming to standard IS 3098 or IS 11656

2710 19 84 ---- Industrial white oil conforming to standard IS 1083

2710 19 85 ---- Insulating oil for transformer and circuit-breaker (transformer and circuit-breaker oils) conforming to standard IS 335 or 15 12463

2710 19 86 ---- Mineral oil for cosmetic industry conforming to standard IS 7299

2710 19 87 ---- Jute batching oil conforming to standard IS 1758

2710 19 88 ---- Other cutting oil, hydraulic oil, industrial white oil, jute batching oil, mineral oil for cosmetic industry, transformer oil conforming to any other BIS standard

2710 19 89 ---- Other cutting oil, hydraulic oil, industrial white oil, jute batching oil, mineral oil for cosmetic industry, transformer oil, not conforming to any BIS standard

2710 19 90 ---- Other

2710 20 - Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of

| | | |
|---|---|---|
| petroleum these oils | | oils or of oils obtained from bituminous minerals, being the basic constituents of the preparations, containing biodiesel, other than waste oils |
| 2710 20 10 | --- | Automotive diesel fuel, containing biodiesel, conforming to standard IS 1460 |
| 2710 20 20 | --- | Diesel fuel blend (B6 to B20) conforming to standard IS 16531 |
| 2710 20 90 | --- | Other |
| | - | Waste oil: |
| 2710 91 00 | -- | Containing polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBB) |
| 2710 99 00 | -- | Other |

**13.6.** For the identification of the goods, the representative samples of goods imported under Bill of Lading No. MEDUKW345053 was sent to CECL, Vadodara. The Test report of the subject goods received from CECL, Vadodara suggested that each sample was in the form of *light pale yellowish oily liquid. It is composed of Hydrocarbon oil more than 70% by weight. The CECL, Vadodara opined that the samples under reference meet the requirements of* 'Heating Oil (*Light Diesel Oil) (LDO) as per IS:15770:2021*. From the test report received from CECL Vadodara, it appears that the subject goods are rightly classifiable under Tariff Item 27101943 of the Customs Tariff, 1975.

**13.7**. The Schedule I –Import Policy ITC (HS), pertaining to Section V Chapter 27, is given hereunder:

| HS Code | Description | Import | Policy Condition |
|---|---|---|---|

| | | **Policy** | |
|---|---|---|---|
| 27101943 | Light diesel oil conforming to standard IS 15770 | State Trading Enterprise | Import as per Policy Condition (5) of Chapter 27. |

**Policy Conditions:**

(5) Import allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P and NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before this date.

**13.6.** Whereas, in the instant case, the nature, appearance, specifications, characteristics of subject goods have been categorically explained in the Test Reports of CECL, Vadodara, in terms of parameters/criteria prescribed vide Indian Standard 15770:2021 and all the necessary requirements prescribed, are meeting indicating the subject goods as 'Heating Oil (Light Diesel Oil). The comparison of requirements of Light Diesel Oil as per IS 15770:2021 vis-a vis the parameters/specifications reported vide the Test Report of CECL, Vadodara are tabulated above.

**14. Valuation:-**

**14.1.** As per the facts discussed in foregoing paras, the consignment imported in this case vide aforesaid Bill of Lading No. *MEDUKW345053 for which IGM No. 2368674 Dt 13.02.2024* was filed for import by M/s. OGE was reported to be Heating Oil (LDO) as per Test Reports of CECL, Vadodara. The outcome of Test Reports of CECL, Vadodara give reason to believe that the value of the goods can be defined as per goods found in Test Reports i.e. LDO. As Bill of Entry was not filed in the subject case so in order to arrive at a fair reasonable value of the subject goods in question within the framework of law and procedures as ordained in the Valuation Rules, it was also felt necessary to get the appropriate import prices wherein the Light Diesel Oil i.e. the subject goods were imported by the authorized companies. The import data

dated 28.05.2013 shows the import price of LDO as Remenant Oil as INR 51/ Ltr (Exchange Rate on 28.05.2013 was of USD Rs. 55.30/- as per Notification No. 54/2013-Customs dated 16.05.2013. Further the exchange Rate applicable as on 13.02.2024 i.e. at the time of import of subject consignment was USD 83.95 as per Notification No. 10/2024-Customs (N.T.) dated 01.02.2024. Accordingly, the CIF value of Rs. 51/- ( in 2013) is calculated as INR 77.42/- per Ltrs (calculated proportionately with exchange rate). Since the total quantity found in the subject import consignment was 189895 Kgs. and average density of the subject goods came to 0.84211 KG/cubic mtr. Therefore the CIF value of the subject goods came to Rs. 91.94 per KG. In the present matter M/s. OGE imported total 189.895 MTS of light diesel oil falling correctly falling under CTH 27101943, whereas the importer mis-declared the subject goods as 'Mixed Hydrocarbon Oil' and misclassified the same under CTH 27101990. In this way the appropriate assessable value of the subject goods came to Rs.1,74,58,946/-. Every possible effort was made to arrive at a well reasoned and fair valuation with the help of data available on record.

**14.2**. During investigation the declared invoice value of the goods declared as 'Mixed Hydrocarbon Oil' was USD 153495 or Rs. 1,28,85,905/- as per exchange Notification No. Notification No. 10/2024 - Customs (N.T.) dated 01.02.2024. However, the subject goods found grossly mis-declared in respect of description, classification etc. therefore the value declared in the invoices No. 016 dated 17.01.2024 cannot be considered as true transactional value of the subject goods. Since the actual goods in this matter was 'heating Oil (LDO) falling under HS Code 27101943 the appropriate value of **Rs. 1,74,58,946/-** as mentioned in the above para is required to be considered for appropriate assessable value.

**15. CONFISCATION: -**

**15.1.** As narrated above, M/s. OGE have imported the subject goods under Bill of Lading No. *MEDUKW345053 (IGM No. 2368674 Dt 13.02.2024)* and declared the same as Mixed Hydrocarbon Oil in the Bills of Lading and IGM at Mundra port. The Test Reports of CECL, Vadodara categorically and

specifically opined that the sample under reference meet the requirement of 'Heating Oil (LDO)' as per IS:15770:2021. It thus appears that the blatant mis-declaration of description, Classification and other material particulars in the import made by M/s. OGE was part of larger conspiracy of suppressing the nature of goods and its illegal usage in fuels in violation of the Foreign Trade Policy as well as the provisions of various other enactments. It thus appears that the subject goods have been imported by M/s. OGE under gross mis-declaration and mis-classification of the subject goods with respect to description of the goods by adopting fraud, collusions, mis-statement and suppression of facts. As apparent from the facts and evidences gathered during investigation that the subject goods were not having the correct description/CTH thereof as declared by M/s. OGE in the Bills of Lading and IGM with Customs Authorities at Customs House, Mundra. Hence, it appears that the goods imported by the importer do not correspond in respect of material particulars with the IGM and Bills of Lading and thus the same are liable to confiscation under the provisions of Section 111 (d), 111(f) and 111(o) of the Customs Act, 1962.

**15.2.** It is not a case of the importer or the buyers of the goods that any of them were holding status of STE. It is also not a case of the importer or any of the buyers that they had imported the LDO conforming to IS: 15770:2021 through any of the nominated STEs viz. IOC, HPCL, BPCL, IBP or STC for the said purpose. It is also not a case of the importer or the buyers that any of them were holding special authorisation issued by the DGFT for importation of LDO.

**15.3.** From the above, it is revealed that the importation made by the importer is in violation of the Import Policy pertaining to HS Code 27101943 and thereby it is in violation of Para 2.01 and 2.20 of the Foreign Trade Policy 2015-2020 as extended. As per Para 2.01 of the FTP, the imports shall be free, except when regulated by way of prohibition, restriction or exclusive trading through State Trading Enterprises (STEs) as laid down in the Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. Looking to the aforesaid facts, since the goods falling under HS Code 27101943 not

being freely importable, the same would fall in the exceptional character with importation through the STEs only. As per Para 2.20 of the FTP, any goods, import of which is governed through exclusive or special privilege granted to the STEs, may be imported by the concerned STEs as per the condition specified in the ITC (HS). DGFT has however been given authority to grant an authorisation to any other person to import the goods notified for exclusive trading through the STEs.

**15.4.** As per Para 9.41 of the FTP, "Prohibited" indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted. In the instant case, since the import of LDO classifiable under HS Code 27101943 is not permitted by the entities other than STEs, the import of said goods by the private entities is prohibited.

**15.5.** As per Para 2.03 of the FTP, domestic laws/rules/orders/regulations/technical specifications/environmental/safety and health norms applicable to domestically produced goods shall apply mutatis mutandis, to the imports, unless specifically exempted.

**15.6.** As per Section 3 (2) of the FTDR Act, 1992 empowers the Central Government to issue order, making provisions for prohibiting, restricting or otherwise regulating, the import of goods. As per Section 3(3) of the FTDR Act, 1992, all goods to which the order under Section 3(2) applies shall be deemed to be goods the imports of which has been prohibited under Section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly.

**15.7.** Section 5 of the FTDR Act, 1992 empowers the Central Government to formulate and announce by notification the foreign trade policy and also empowered to amend the policy in like manner.

**15.8.** As per Section 8 of the FTDR Act, 1992, the DGFT or any other officer authorised by him empowered to pass order for suspension or cancellation of the IEC Number of a person, who has contravened any of the provisions of the FTDR Act, 1992 or any rules or orders made thereunder or the FTP or any other law for the time being in force relating to Customs or has committed any

other economic offence under any other law for the time being in force.

**15.9.** Section 11(1) of the FTDR Act, 1992 provides that no import shall be made by any person except in accordance with the provisions of the FTDR Act, 1992, the rules and orders made thereunder and the FTP for the time being in force. Penal provisions are also prescribed vide Section 11(2) of the FTDR Act, 1992. As per Section 11(8) of the FTDR Act, 1992, the offending goods are liable to confiscation.

**15.10.** Section 12 of the FTDR Act, 1992 prescribed that the penalty imposed or confiscation made under the FTDR Act, 1992 shall not prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force.

**15.11.** Rule 14 of the FTR, 1993 prohibited making, signing, using or cause to be made, signed or used any declaration, statement or documents for importing any goods, knowing or having reason to believe that such declaration, statement or document is false in any material particular. Employing any corrupt or fraudulent practice in importing the goods have also been prohibited.

**15.12.** Rule 15(2) and (3) of the FTR, 1993 authorizes the person to search and seize the imported goods are liable to confiscation under the FTDR Act, 1992, along with the package, covering or receptacle, in which such goods are mixed with other goods. The provisions of Rule 17 of the FTR, 1993 provides for confiscation of goods imported in contravention of the FTP and the provisions of the FTDR Act, 1992.

**15.13.** As per Section 2(33) of the Customs Act, 1962, the prohibited goods include the goods, import of which is subject to any prohibition under the Customs Act, 1962 or any other law for the time being in force. However, it does not include the goods, in respect of which the conditions subject to which the goods are permitted to be imported have been complied with. In the instant case, the goods imported by M/s. OGE vide aforesaid Bill of Lading and IGM have not complied with the conditions for its import as prescribed in the Import Policy and thereby the goods imported by the importer and their

buyers are to be treated as "Prohibited goods". It is evident that the importer has imported LDO classifiable under HS Code 27101943 without complying with the provisions of the Import Policy relating to said HS Code. The importer was well aware that they do not hold status of STE and that they were not eligible to import the goods, which are imported exclusively by the STEs, even then they had deliberately imported LDO classifiable under HS Code 27101943 exclusively importable by the STEs. To obtain illegal clearance of the imported goods, the importer had arranged the documents with false particulars in Bill of Lading and IGM filed at Mundra Customs declaring the description of goods as Mixed Hydrocarbon Oil and CTH No. 27101990. Had not the DRI initiated investigation and tested the samples of the goods imported by the importer, all arrangements were made for obtaining favorable reports so as to gain clearance of the goods, circumventing the Import Policy provisions. The goods so imported by the importer are contrary to the prohibition imposed under the Customs Act, 1962 as well as other law, including the FTP and the FTDR Act, 1992, hence the goods imported by the importer are liable to confiscation under the provisions of Section 111(d), 111(f) and 111(o) of the Customs Act, 1962 and penal proceedings may also be invokable against the importer as well as other persons involved in the offence.

**15.14.** Since the subject goods imported by M/s. OGE is a petroleum product they required to fulfill the compliance of the Petroleum Act, 1934. As per Section 3 of the Petroleum Act, 1934, import, transportation and storage of petroleum, in violation of the rules made under Section 4 of the Petroleum Act, 1934 is not permissible. As per Section 7 of the Petroleum Act, 1934, a person need not obtain a license for the transport or storage of Petroleum Class C, if the total quantity in his possession at any one place does not exceed 45000 liters and such petroleum is transported or stored in accordance with the rules made under Section 4 of the Petroleum Act, 1934. Looking to the total quantum of goods imported by the importer in the present case, which is 189.985 MTs, the importers were not eligible for said exemption from obtaining licence. Section 23 of the Petroleum Act, 1934 prescribe penal provisions for importing, transporting, storing of petroleum in contravention of the provisions of Chapter-I of the Petroleum Act, 1934, which includes the

violation of the provisions of Section 2,3 and 7 of the Petroleum Act, 1934. Section 24 of the Petroleum Act, 1934 provides for confiscation of petroleum and receptacles.

**15.15.** The provisions of Rule 3(1) of the Petroleum Rules, 2002 are prescribing restriction on delivery or dispatch of any petroleum to anyone in India, other than the holder of a storage licence issued under the Petroleum Rules, 2002 or his authorised agent or a port authority or a person, who is authorised under the Petroleum Act, 1934 to store petroleum without a licence. As per Rule 3(2) of the Petroleum Rules, 2002, the petroleum delivered and dispatched should be of the class, and should not exceed the quantity, which the person to whom, it is delivered or dispatched is authorised to store with or without a licence. In the instant case, the importer is not found in possession of any such licence pertaining to LDO and he had not even applied for any such licence. The suppliers of the goods have apparently not checked all such compliance to be made prior to dispatching the LDO classifiable as Petroleum Class C to Kandla in India.

**15.16.** It appears that the importer fails to provide any explanation as regards to other compliances to be made in terms of Rule 16(3) of the Petroleum Rules, 2002, because they had not made any application before the Chief Controller of Explosives and they had not shown to have obtained NOC from the Ministry of Shipping, Ministry of Environment and Forests or GPCB as well as the Commissioner of Customs, Mundra.

**15.17.** It appears that it is not a case of the importer or the concerned shipping agent that prior to importing the consignment of LDO per MT FSL London at Kandla Port, the prescribed compliance was made in terms of Rule 17 of the Petroleum Rules, 2002, by way of delivering proper declarations by the Masters of the concerned ships in Form I under their signature to the pilot entering into Port approved under Rule 16(1) of the Petroleum Rules, 2002. It further appears that it is also not a case that such declarations were filed by the concerned shipping agents before the conservator of the port before arrival of the concerned ships. There is no evidence provided as regards the movement of Form I in terms of Rule 17(2) of the Petroleum Rules, 2002 by

way of delivering the same by Pilot to the Conservator of Port and subsequently by Conservator of Port to the Commissioner of Customs with all convenient dispatch. Neither the shipping agent nor the importer is found serious about such statutory compliance to be made for importing LDO at Kandla Port.

**15.18.** The Licence for importation, storage, transportation is to be obtained in terms of the procedure prescribed in Chapter VII containing Rules 141 to Rule 161 of the Petroleum Rules, 2002. The provisions of Rule 201 of Petroleum Rules, 2002 provide for exemption from any of the provisions of the Rules, on such conditions, if any, as may be specified by the order to be issued by the Central Government on the recommendation of the Chief Controller of Explosives. However, it appears that it is not a case of the importer that they had even applied for any such licence or sought exemption from making compliance by them with the concerned provisions of the Petroleum Rules, 2002.

**15.19.** Further, in terms of Clause 4 of the Light Diesel Oil (Fixation of Ceiling Prices) Order, 1973 issued under the provisions of Section 3 of the Essential Commodities Act, 1955, every dealer should cause to be permanently display on a special board to be nominated for the purpose at or near the entrance or the place of sale, the stock of LDO held by him from time to time and ready for the delivery etc. Apparently, the importer and buyers of the LDO had never complied with any such statutory norms and thereby they appear to have violated the provisions of LDO Order, 1973 also.

**15.20.** From the above facts, it is revealed that the importer has imported, stored and intended to sale LDO in contravention of the legal obligations imposed on them under the provisions of the Essential Commodities Act, 1955 read with LDO Order, 1973. Thereby, it seems apparent that the importers have imported **189.895 MTs** Heating Oil (LDO), which is liable to confiscation under Section 111(d), 111(f) and 111(o) of the Customs Act, 1962 and the relevant penal provisions are also to be invoked against the persons concerned.

**15.21.** As per Section 30(1) of the Customs Act, 1962, the person-in-

charge of the vessel is required to deliver an Arrival Manifest or Import Manifest by presenting electronically prior to the arrival of the vessel in the Customs station, in such form and manner as may be prescribed. As per the first proviso to Section 30(1) of the Customs Act, 1962, in cases where it is not feasible to deliver arrival manifest by presenting electronically, allow the same to be delivered in any other manner. Section 30(2) of the Customs Act, 1962 makes it mandatory for person delivering the Import Manifest to subscribe to a declaration as to the truth of its contents. Section 30(3) of the Customs Act, 1962 provides for permitting amendment of Import Manifest, if fraudulent intention is not found, but no such application for amending IGM made so far. Even if such application is moved, the same can not be permitted looking to the deliberate omissions noticed in the case on the part of the shipping agent. In terms of Notification No. 111/2003-Cus (NT) dtd.19.12.2003, the person, who is authorised to issue delivery orders in favour of an importer on the basis of which the goods are permitted to be delivered to such importer by the custodian of the goods, is also a person specified by the Central Government to deliver the import manifest/import report in respect of vessel carrying the goods.

**16. Violations of conditions of Foreign Trade Policy 2015-2020 as extended read with Customs Act, 1962 and other allied Acts by way of import of prohibited goods: -**

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

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

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

**16.2.** As per prevailing import policy, the import of all the goods including the Light Diesel Oil conforming to IS 15770:2021, which is classifiable under CTH 27101943 is restricted and allowed for import through the State Trading Enterprises only and governed as per Condition 5 of import policy. As per Para 2.20 of Foreign Trade Policy 2015-20 as extended, any goods, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS).

**16.3.** M/s. OGE, as it appears that it is not holding status as STE. Thus, facts in the matter are that the goods in the instant case have been imported in gross violation of the Import Policy notified vide Notification No: 36/2015-2020 dated 17/01/2017 as amended vide Notification No. 38/2015-20 dated 01.01.2020 issued under Section 5 of the Foreign Trade (Development & Regulation) Act 1992 read with Para 2.01 of the Foreign Trade Policy, 2015-2020. The Policy Conditions were also stipulated under Section 3 of the Foreign Trade (Development and Regulation) Act 1992. In terms of Section 3(3) of the Foreign Trade (Development and Regulation) Act 1992, all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly. Therefore, the said goods are required to be treated as "Prohibited Goods" as defined under Section 2(33) of Customs Act, 1962 and accordingly import of such goods without due compliance with the Policy provisions is required to be categorized as "Smuggling" within the meaning of Section 2(39) of the Customs Act, 1962.

**16.4.** From the above facts, it appears that the goods, though being LDO falling under Tariff Item 27101943, were mis-declared as Mixed hydrocarbon Oil, under Tariff Item 27101990 of Customs Tariff, by suppressing its correct description i.e. Heating Oil (Light Diesel Oil) makes such goods liable for

confiscation under Section 111(f) of the Customs Act, 1962. The condition stipulated for import through or by IOC as per the Foreign Trade Policy, were not at all complied with by the importers M/s. OGE, in respect to the import of LDO made by them, which was imported under the aforementioned Bill of Lading & IGM. Thus, there appears apparent mis-declaration with sole aim to circumvent the restrictions imposed on its import under the Foreign Trade Policy. The subject goods imported by M/s. OGE are thereby liable for confiscation under Section 111(o) of Customs Act, 1962.

**16.5.** Thus, it appears that by indulging into mis-declaration and mis-classification of goods adopting fraud, suppression of facts, willful mis-statement, collusion etc., as evident from the Test Reports of CECL, Vadodara and statements of buyers/end users of subject goods, etc., M/s. OGE have not only violated the provisions of the Customs Act, 1962 but they have also violated other prohibitions pertaining to import of goods under the allied Acts like Petroleum Act, FTDR Act, 1992.

**16.6.** In view of the facts discussed in foregoing paras, the subject goods having quantity **189.895 MTS** imported by M/s. OGE per aforesaid vessels are liable for confiscation under Section 111(d), 111(f) and 111(o) of Customs Act, 1962.

## 17. Role and Culpability

### 17.1. Role and Culpability of M/s. OGE, Central Bazar, Opposite Varachha Police Station, Surat, Gujarat: -

**17.1.1.** From the facts narrated in foregoing paras and evidences gathered during investigation, it appears that M/s. Ocean Green Energy, Surat have imported LDO and mis-declared the same as Mixed Hydrocarbon Oil vide aforesaid Bill of Lading & IGM at Mundra. It further appears that they had not declared the actual description of subject goods and also mis-classified the same under the CTH 27101990 i.e. for Others under Others category of Sub-heading 271019 instead of correct Tariff Item 27101943. It further seems that the entire conspiracy was hatched to suppress the actual

description of goods as LDO being restricted item for import and prohibited in case of non-compliance of condition prescribed for import thereof, they were not entitled to import the same and thus they had illegally imported the same by means of fraud, collusion, willful mis-statement and suppression of facts in gross violation of import policy, provisions of Customs Act, 1962, Petroleum Act, 1934, FTDR Act, 1992 etc. Had the DRI not initiated the investigation, the gamut of illegal import of prohibited item would be continued. Had the DRI not initiated the investigation, the gamut of illegal import of prohibited item would be continued.

**17.1.2.** The provisions of Section 112(a), 112(b) and 114AA of Customs Act, 1962 stipulates as under:-

(a) 112(a):- who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or;

(b) 112(b):- who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111;shall be liable to penalty.

(c ) 114AA:- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

**17.1.3.** Thus, it appears that the omission and commission on the part of M/s. OGE i.e. mis-classification and mis-declaration of subject goods by way of fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject imported goods i.e. Heating Oil (LDO) **189.895 MTs** having assessable value of **Rs. 1,74,58,946/-**(excluding Customs Duty, IGST and other taxes) covered under

aforesaid Bill of Lading and IGM No. *2368674 Dt 13.02.2024* liable to confiscation under section **111(d), 111(f) and 111(o)** of the Customs Act, 1962. It also appears that since M/s OGE were knowingly dealing with such goods, accordingly they have rendered themselves liable to penalty under **Section 112 (a)** and **Section 112(b)** of the Customs Act, 1962.

**17.1.4.** Seemingly M/s. OGE through their representatives knowingly and intentionally made, signed or used Bills of Lading, IGM, Packing list, Invoice etc. and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore M/s. OGE are also be liable to penalty under **Section 114AA** of the Customs Act, 1962.

**17.2. Role and Culpability of Shri Jitin Bajaj and Shri Vora Manubhai Gobarbhai, Partners of M/s. Ocean Green Energy:-**

**17.2.1.** As per IEC records, it has been noticed that M/s. Ocean Green Energy was a partnership firm wherein total 04 partners namely Shri HIREN SAVAILAL DESAI, Shri VIPUL KANTILAL VEKARIYA, Shri MANUBHAI GOBARBHAI VORA and Shri JITIN BAJAJ. Shri MANUBHAI GOBARBHAI VORA and Shri JITIN BAJAJ were the main partners who were handling the import, purchase, sale etc. related work int eh firm. During recording their statement Shri MANUBHAI GOBARBHAI VORA and Shri JITIN BAJAJ specifically confirmed that they both were handling all the business activities in the firm and other 02 partners namely Shri HIREN SAVAILAL DESAI, Shri VIPUL KANTILAL VEKARIYA were the silent partners in the firm. Shri HIREN SAVAILAL DESAI, Shri VIPUL KANTILAL VEKARIYA were not dealing with any business related activities.

During investigation, the mobile phone of Shri Manubhai Vora was resumed and from the data retrieved thereof, it was revealed that Shri Jitin Bajaj and Shri Manish alias Manubhai Vora were actively handling all the business activities in the firm. They both used to made conversations with overseas suppliers. And handling the purchase and sale of the import goods into India. From the mobile phone conversations of Shri Manubhai it was

revealed that they were very well aware with the policy provisions of the petroleum product and restrictions thereon. It is revealed that they were knowingly and deliberately indulged into importing of offending goods i.e. Light Diesel Oil. It appears that Shri Jitin Bajaj and Shri Manubhai Vora were the key person of this firm who were looking after sale-purchase in this company. Initially, they have tried to send back the subject import goods to UAE to escape the action initiated by the enforcement agency. They intentionally not filed the Bill of Entry for the subject goods after having reached the said goods at Mundra Port. Thus, it appears that these persons were very well aware about the characteristics, specification and classification of subject goods vis-a-vis provisions relating to Customs Act, 1962 other allied Acts and Import Policy. They had supervised all the matters related to the import in M/s. OGE dealings with the overseas suppliers and other associates and making documentation/submissions with Customs Authorities. From the facts and evidences gathered during investigation, it appears that both of them had played a pivotal role in the deliberate mis-declaration of the subject imported goods and had indulged in a well-planned conspiracy with a malafide intention to import LDO illegally by fraud, collusion, willful mis-statement, suppression of facts knowing very well that it would amount to violations as discussed above. It further appears that they have knowingly suppressed material facts regarding description and classification of the subject product and mis-declared & mis-classified the same as 'GTL Light Paraffin' under CTH 27101990.

**17.2.2.** It appears that Shri Jitin Bajaj and Shri Manish alias Manubhai Vora deliberately allowed mis-representation, willful mis-statement and suppression of facts with malafide intention regarding nature and description of subject goods and mis-classification thereof which resulted in illegal import of Heating Oil (LDO) in contravention of provisions of Customs Act, 1962, Petroleum Act, 1934 and FTP. Seemingly, they had assisted and abetted the import of LDO which was prohibited in the absence of compliance of condition/s laid down under import policy.

**17.2.3.** In the concerned Bills of Lading, the classification/HS Code of subject goods was not provided/declared/mentioned by the suppliers and the

shipping line/shipping agent, in these documents. However, in the corresponding Bills of Lading, they have classified the subject goods under CTH No. 27101990 under the willful knowledge of Shri Jitin Bajaj and Shri Manish alias Manubhai Vora of M/s. OGE.

**17.2.4.** It appears that the above deliberate acts of commission and omission on the part of Shri Jitin Bajaj and Shri Manish alias Manubhai Vora partners of M/s Ocean Green Energy, have rendered the subject goods Heating Oil (LDO) **189.895 MTS** having appropriate assessable value of **Rs. 1,74,58,946/-** covered under aforesaid Bill of Lading Bill of Lading No. *MEDUKW345053 (IGM No. 2368674 Dt 13.02.2024)* liable to confiscation under Section 111(d), 111(f) and 111(o) of the Customs Act, 1962 and have separately rendered themselves liable to penalty under **Section 112 (a)** and **Section112(b)** of the Customs Act, 1962.

**17.2.5.** The aforementioned Bill of Lading declared with incorrect description and classification of the subject goods under the supervision & active guidance of Shri Jitin Bajaj and Shri Manish alias Manubhai Vora, the key persons of M/s. Ocean Green Energy. It appears that they did not declare the correct particulars of subject goods in the Bills of Lading and other related import documents correctly to cover-up the prohibited nature of the subject goods. Thus, it seems that M/s. OCL under active knowledge of Shri Jitin Bajaj and Shri Manish alias Manubhai Vora knowingly and intentionally made, signed or used or caused to be made signed, or used the Bills of Lading & IGM and other related import documents, which were false or incorrect, in material particulars, for the purposes of illegal importation of goods, it thus appears that Shri Jitin Bajaj and Shri Manish alias Manubhai Vora have separately rendered themselves liable to penalty under **Section 114AA** of the Customs Act, 1962.

**18.1 Accordingly, M/s Ocean Green Energy** (IEC: AAHFO4390G), C1053, Central Bazar, Opposite Varachha Police Station, Surat, Gujarat were hereby called upon to show cause in writing to the Additional Commissioner, Customs House, Mundra, having office situated at office of the Pr. Commissioner of Customs, Mundra Customs, Hose, Port User Building, (Kutch)-Gujarat (India), within 30 (thirty) days from the receipt of the notice

as to why: -

**(a)** The description and classification of the subject imported goods (Light Diesel Oil) mis-declared as "Mixed Hydrocarbon Oil" under CTH 27101990 covered under Bills of Lading No. *MEDUKW345053* (IGM No. *2368674 Dt. 13.02.2024*) as mentioned above should not be rejected and the said imported goods should not be correctly described and re-classified as "Heating Oil (Light Diesel Oil) conforming to standard IS 15770" under CTH 27101943.

**(b)** The subject imported goods LDO **189.895 MTS** having re-determined assessable value of **Rs. 1,74,58,946/-** should not be held liable to confiscation under Section 111(d), 111(f) and 111(o) of the Customs Act, 1962.

**(c)** Penalty should not be imposed on them under Sections 112 (a), 112(b), and 114AA of the Customs Act, 1962, for the reasons discussed above.

**18.2.** Accordingly, **Shri Jitin Bajaj and Shri Manish alias Manubhai Vora,** partners of M/s. Ocean Green Energy are hereby **individually and separately** are called upon to show cause in writing to the Additional Commissioner, having office situated at office of the Pr. Commissioner of Customs, Mundra Customs, Hose, Port User Building, (Kutch)-Gujarat, within 30 (thirty) days from the receipt of the notice as to why Penalty should not be imposed upon them under Sections 112 (a), 112(b), and 114AA of the Customs Act, 1962, for the reasons discussed above.

## WRITTEN SUBMISSION AND PERSONAL HEARING

19. In compliance to the principal of natural justice, personal hearing letter dated 14.05.2026, were given to all 3 noticees i.e. M/s. Ocean Green Energy **(Noticee no. 1),** Shri Jitin Bajaj (**Noticee no. 2**) , Shri Manubhai Vora

(**Noticee no. 3**) to attend PH on 18.05.2026. In response, vide their letter dated 15.05.2026, all 3 noticees submitted that they don't want personal hearing in the matter and requested for re-export, as soon as possible.

## DISCUSSION AND FINDINGS

20. I have carefully gone through the Show Cause Notice, the relied upon documents, the voluntary statements of the Noticees recorded under Section 108 of the Customs Act, 1962, the legal provisions and the records available before me. I note that all three Noticees have chosen not to avail the personal hearing opportunity and have not filed any written submissions on merits. I find that the principle of natural justice has been complied with and therefore, I proceed to decide the case on the basis of applicable laws/rules and documentary evidence available on record.

20.1 I now proceed to decide the issues framed in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided at the stage of adjudication: -

**(a)** The description and classification of the subject imported goods (Light Diesel Oil) mis-declared as "Mixed Hydrocarbon Oil" under CTH 27101990 covered under Bills of Lading No. *MEDUKW345053* (IGM No. *2368674 Dt. 13.02.2024*) as mentioned above should not be rejected and the said imported goods should not be correctly described and re-classified as "Heating Oil (Light Diesel Oil) conforming to standard IS 15770" under CTH 27101943;

**(b)** The subject imported goods LDO **189.895 MTS** having re-determined assessable value of **Rs. 1,74,58,946/-** should not be held liable to confiscation under Section 111(d), 111(f) and 111(o) of the Customs Act, 1962;

**(c)** Penalty should not be imposed on all 3 Noticees under Sections 112 (a), 112(b), and 114AA of the Customs Act, 1962;

**21.** I find that intelligence developed by the Directorate of Revenue Intelligence (DRI), Gandhidham indicated that the importer M/s. Ocean Green Energy was importing restricted petroleum products falling under Chapter 27 of the Customs Tariff by mis-declaring them as "Mixed Hydrocarbon Oil" under CTH 27101990, thereby circumventing the import policy conditions. As per Policy Condition 5 of Chapter 27, Light Diesel Oil can be imported only by State Trading Enterprises (STEs). The present consignment covered under Bill of Lading No. MEDUKW345053 and IGM No. 2368674 dated 13.02.2024 imported in 10 containers was taken up for investigation.

**21.1** I find that acting on the intelligence, the above import consignment was put on hold. Representative samples were drawn from all 10 containers under Panchnama dated 24.02.2024 at M/s. Hind Terminals Pvt. Ltd., Mundra Port. It was noticed during examination that the actual quantity of goods was 189.895 MTS as against the declared quantity of 189.500 MTS in the packing list.

**21.2** I find that the representative samples drawn from each container were forwarded to the Central Excise & Customs Laboratory (CECL), Vadodara vide Test Memos No. 27/2024 to 36/2024 dated 08.03.2024. The Chemical Examiner, CECL, Vadodara, after testing the samples, issued Test Reports (RCL/GRU/DRI/6269 to 6278) stating thateach sample was in the form of light pale yellowish oily liquid composed of hydrocarbon oil more than 70% by weight. The laboratory opined that all the samples meet the specifications of **"Heating Oil (Light Diesel Oil) conforming to IS:15770:2021"**.

**21.3** From the test results, I find that the imported goods were not "Mixed Hydrocarbon Oil" as declared in the Bill of Lading, invoice, and packing list, and were wrongly classified under CTH 27101990. The goods were correctly classifiable as Light Diesel Oil under CTH 27101943. The relevant description of CTH 27101943 as per Customs Tariff Act'1985 is as below:

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 2710 19 39 | --- Aviation turbine fuels, kerosene type conforming to standard IS 1571 | kg. | 5.00 | 5.00 | — | 11.00 | 0.50 | 17.105 | State Trading Enterprises | *Exemption: See Ntfn 52/2017-Cus. dated 30.06.2017 Import as per Policy Condition (5) of Chapter 27 ACD Nil by Ntfn 32/2022-Cus. Excise Duty by Ntfn 11/2017-CE dated 30.06.2017* |
| | --- Gas oil and oils obtained from gas oil: | | | | | | | | | |
| 2710 19 41 | --- Gas oil | kg. | 5.00 | 5.00 | — | 18.00 | 0.50 | 24.490 | State Trading Enterprises | *Import as per Policy Condition (5) of Chapter 27* |
| 2710 19 42 | --- Vacuum gas oil | kg. | 5.00 | 5.00 | — | 18.00 | 0.50 | 24.490 | State Trading Enterprises | *Import as per Policy Condition (5) of Chapter 27* |
| 2710 19 43 | --- Light diesel oil conforming to standard IS 15770 | kg. | 5.00 | 5.00 | — | 18.00 | 0.50 | 24.490 | State Trading Enterprises | *Import as per Policy Condition (5) of Chapter 27* |

**21.4** Further, I find that as per ITC(HS), 2022, Schedule 1: Import Policy, Section V: Mineral Products, Chapter 27: Mineral Fuels, Mineral Oils And Products Of Their Distillation; Bituminous Substances; Mineral Waxes: Goods falling under the description of *"Light Diesel oil" the import policy makes the goods restricted by way of importation by State Trading Enterprises only by virtue of Policy Condition No. 5 which prescribes "Import allowed through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before this date*".

| Sl.No. | Notes | Notification No. | Notification Date |
|---|---|---|---|
| 1 | Import of naphtha is free. | | |
| 2 | Import of SKO shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL and IBP for all purposes with STC being nominated as a State Trading Enterprise (STE) for supplies to Advance Licence holders. Advance Licence holders shall however, have the option to import SKO from the above mentioned STEs including STC | | |
| 3 | Import is restricted in terms of Interim PIC Procedure of Rotterdam Convention on Prior Informed Consent procedure for hazardous chemicals and pesticides. | | |
| 4 | Automobile industries, having RandD registration, are allowed to make free import of reference fuels (Petrol and Diesel) which are not manufactured in India, up to maximum of 5 KL per annum, subjects to the condition that the said imported reference fuels shall be used for RandD and emission testing purposes only | | |
| 5 | Import allowed through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before this date. | 08/2023 | 29/05/2023 |

**Policy Condition (5) of Chapter 27 of ITC (HS) Import Policy**

**21.5** Policy Condition (5) of Chapter 27 of ITC (HS) Import Policy: As per Policy Condition 5 of Chapter 27, only State Trade enterprises can import the said goods. The said policy was amended by Notification No. 27/2015-2020 dated 16.09.2021. The same is produced below:

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

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

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

**S.O.(E):** In exercise of powers conferred by Section 3 read with Section 5 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends policy condition no.5 of Chapter 27 of ITC (HS), 2017, Schedule – I (Import Policy) as under:

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

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

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

*"2.20 State Trading Enterprises (STEs)*

*(a) State Trading Enterprises (STEs) are governmental and nongovernmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which*

*is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.*

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

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

**21.7**. I find that in the instant case, the importer M/s. Ocean Green Energy is neither a STE (State Trading Enterprise) nor any authorization has been granted by DGFT to the Importer for import of said restricted goods.

**21.8** I find that as no Bill of Entry was filed by the importer M/s. Ocean Green Energy for the subject consignment, the value declared in the Invoice No. 016 dated 17.01.2024 submitted by the importer i.e. USD 1,53,495/- or Rs. 1,28,85,905/- (as per exchange rate Notification No. 10/2024-Customs (N.T.) dated 01.02.2024 applicable at the time of import i.e. IGM No. 2368674 dated 13.02.2024, where USD 1 = Rs. 83.95/-) cannot be considered as the true and correct transactional value of the subject goods, since the goods have been found to be grossly mis-declared in respect of description and classification. The declared invoice value pertains to "Mixed Hydrocarbon Oil" and not to the goods actually found i.e. Heating Oil (Light Diesel Oil) conforming to IS 15770:2021 classifiable under CTH 27101943. Therefore, it becomes necessary to arrive at a fair and reasonable assessable value of the actual goods in the framework of the Customs Valuation Rules, 2007.

I find that in order to arrive at a fair and reasonable value, the import

data of LDO has been examined. The import price of LDO is available as Rs. 51/- per litre as per import data dated 28.05.2013, at the exchange rate then prevailing as USD 1 = Rs. 55.30/- as per Notification No. 54/2013-Customs dated 16.05.2013. Applying proportionate adjustment for the exchange rate applicable at the time of the present import i.e. USD 1 = Rs. 83.95/- as per Notification No. 10/2024-Customs (N.T.) dated 01.02.2024, the CIF value of Rs. 51/- per litre (in 2013) works out to Rs. 77.42/- per litre (calculated proportionately with the exchange rate). The average density of the subject goods as determined from the test reports of CECL, Vadodara comes to 0.84211 kg/$m^3$ (i.e. per litre), which gives a CIF value of Rs. 91.94/- per kg (i.e. Rs. 77.42 ÷ 0.84211). The total actual quantity of the subject goods found during examination is 189.895 MTS (i.e. 1,89,895 Kgs). Accordingly, the appropriate assessable value of the subject goods works out to **Rs. 1,74,58,946/- (Rupees One Crore Seventy Four Lakh Fifty Eight Thousand Nine Hundred and Forty Six Only)** [i.e. 1,89,895 Kgs × Rs. 91.94/- per kg]. Every possible effort has been made to arrive at a well-reasoned and fair valuation with the help of data available on record. The appropriate assessable value of the subject goods is therefore taken as **Rs. 1,74,58,946/-** for the purposes of this Order.

## 22. CONFISCATION OF GOODS:

**22.1** I find that the Show Cause Notice has proposed confiscation of the impugned goods under Sections 111(d), 111(f) and 111(o) of the Customs Act, 1962. The relevant legal provisions are reproduced below:

> *"(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
> *(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest, import manifest or import report which are not so mentioned;*
> *(o) any goods which are imported or attempted to be imported or are*

*brought within the Indian customs waters for the purpose of being imported, in violation of any of the provisions of the Foreign Trade (Development and Regulation) Act, 1992 or any order or notification issued thereunder."*

**22.2** I find that M/s. Ocean Green Energy imported 189.895 MTS of goods in 10 containers under Bill of Lading No. MEDUKW345053 (IGM No. 2368674 dated 13.02.2024) at Mundra Port, declaring the goods as "Mixed Hydrocarbon Oil" under CTH 27101990. Upon testing of representative samples drawn from each of the 10 containers under Panchnama dated 24.02.2024 at M/s. Hind Terminals Pvt. Ltd., the Chemical Examiner, CECL, Vadodara, in Test Reports RCL/GRU/DRI/6269 to 6278, opined that each sample was in the form of light pale yellowish oily liquid composed of hydrocarbon oil more than 70% by weight, and that the samples meet the requirements of "Heating Oil (Light Diesel Oil) conforming to IS 15770:2021". Accordingly, the goods are correctly classifiable under CTH 27101943 as Light Diesel Oil conforming to IS 15770:2021. Shri Jitin Bajaj and Shri Manish alias Manubhai Vora, Partners of M/s. Ocean Green Energy, in their voluntary statements dated 27.07.2024 and 26.07.2024 respectively, agreed with the test reports issued by CECL, Vadodara. Thus, there is no ambiguity that the goods were mis-declared by the importer with respect to description, classification and import policy status. The goods actually imported i.e. Light Diesel Oil (LDO) conforming to IS 15770:2021, are restricted goods under Policy Condition No. 5 of Chapter 27 of ITC(HS) and can be imported only by State Trading Enterprises (STEs) or entities specifically authorized by DGFT. M/s. Ocean Green Energy is neither a STE nor does it possess any such authorization from DGFT.

**22.3** I find that in terms of Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, all goods to which any order under Section 3(2) applies shall be deemed to be goods the import of which has been prohibited under Section 11 of the Customs Act, 1962 and all

provisions of that Act shall have effect accordingly. Since the goods i.e. LDO are importable only by STEs under Policy Condition 5 of Chapter 27 and M/s. Ocean Green Energy is not an STE, the import of LDO by M/s. Ocean Green Energy is contrary to the prohibition imposed under the Customs Act, 1962 and other laws in force including the FTDR Act, 1992 and the Foreign Trade Policy. The goods are therefore liable for confiscation under Section 111(d) of the Customs Act, 1962.

**22.4** Further, I find that the goods were not correctly mentioned in the Import Manifest/IGM — having been declared as "Mixed Hydrocarbon Oil" under CTH 27101990 when the actual goods were Light Diesel Oil (LDO) under CTH 27101943. The import manifest filed at Mundra Customs did not correctly describe the actual nature, description and classification of the goods imported. The goods are therefore liable for confiscation under Section 111(f) of the Customs Act, 1962.

**22.5** Further, I find that the goods have been imported in violation of the provisions of the Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy 2015-2020 as extended, including Para 2.01 and Para 2.20/2.21 thereof. The goods are therefore liable for confiscation under Section 111(o) of the Customs Act, 1962.

**22.6** Accordingly, in the manner as discussed above, I find that the said acts of omission and commission on the part of the importer have made the imported goods i.e. 189.895 MTS of Heating Oil (Light Diesel Oil) conforming to IS 15770:2021 imported vide Bill of Lading No. MEDUKW345053 (IGM No. 2368674 dated 13.02.2024) in 10 containers having re-determined assessable value of Rs. 1,74,58,946/- (Rupees One Crore Seventy Four Lakh Fifty Eight Thousand Nine Hundred and Forty Six Only) seized vide Seizure Memo dated 19.04.2024, liable for confiscation under Section 111(d), 111(f) and 111(o) of the Customs Act, 1962.

## 24. IMPOSITION OF REDEMPTION FINE IN LIEU OF CONFISCATION UNDER SECTION 125 OF THE CUSTOMS ACT, 1962:

**24.1** As the impugned goods have been held liable for confiscation under Sections 111(d), 111(f) and 111(o) of the Customs Act, 1962, I now proceed to consider whether an option to redeem the goods on payment of redemption fine under Section 125 of the Customs Act, 1962 should be given to the importer.

**24.2** Section 125(1) of the Customs Act, 1962 reads as under:

> *"Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods … an option to pay in lieu of confiscation such fine as the said officer thinks fit."*

**24.3** A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to the owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. In the present case, the goods i.e. Light Diesel Oil (LDO) are restricted/prohibited in nature for the importer (non-STE) and have been imported in violation of Policy Condition No. 5 of Chapter 27 as well as the provisions of the Petroleum Act, 1934 and Petroleum Rules, 2002. Therefore, the goods are not fit for clearance for home consumption.

**24.4** During the adjudication proceedings, all three Noticees — M/s. Ocean Green Energy, Shri Jitin Bajaj and Shri Manish alias Manubhai Vora — vide their letter dated 15.05.2026 submitted that they do not wish

to avail personal hearing in the matter and requested permission for re-export of the subject goods as soon as possible. As the importer has sought re-export of the goods, an option to re-export can be given to the Noticee, as the goods are not fit for clearance for home consumption due to non-fulfilment of import policy. I find that the goods once confiscated can be redeemed under Section 125 of the Customs Act, 1962. However, redemption is not a right but a discretion to be exercised by the Adjudication Authority. I observe that redemption is not a right but a discretion to be exercised by the Adjudication Authority.

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

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

**25.** I have carefully gone through all the facts of the case, the material evidence on record, the voluntary statements of all the Noticees recorded

under Section 108 of the Customs Act, 1962, the Test Reports of CECL, Vadodara bearing Nos. RCL/GRU/DRI/6269 to 6278, and the WhatsApp chat conversations retrieved from the mobile phone of Shri Manish alias Manubhai Vora during the search proceedings at the business premises of the importer on 23.02.2024. I note that all three Noticees — M/s. Ocean Green Energy, Shri Jitin Bajaj and Shri Manish alias Manubhai Vora — vide their letter dated 15.05.2026 have stated that they do not wish to avail the personal hearing opportunity and have requested re-export of the subject goods. They have not filed any written submissions on merits nor raised any substantive defence against the proposals in the Show Cause Notice. Their letter dated 15.05.2026 contains no challenge to the classification findings, the test reports of CECL Vadodara, or the proposed confiscation and penalties. The case is therefore being decided on the basis of the Show Cause Notice, the relied upon documents, the voluntary statements recorded during investigation and other material evidence available on record. It would now be appropriate to examine the role and liability of each Noticee individually and the same is discussed hereinafter noticee-wise.

**DISCUSSION ON IMPOSITION OF PENALTIES ON NOTICEES:-**

**26. Penalty on M/s. Ocean Green Energy (Importer):**

**26.1** I find that M/s. Ocean Green Energy imported 189.895 MTS of goods in 10 containers under Bill of Lading No. MEDUKW345053 (IGM No. 2368674 dated 13.02.2024) at Mundra Port, declaring the goods as "Mixed Hydrocarbon Oil" under CTH 27101990, whereas the goods were found on testing by CECL, Vadodara to be Light Diesel Oil (LDO) conforming to IS 15770:2021, classifiable under CTH 27101943, which is a restricted item under Policy Condition No. 5 of Chapter 27 and importable only by State Trading Enterprises. Hence, the goods were mis-declared and mis-classified to circumvent the import policy.

**26.2** The deliberateness and malafide intent of M/s. Ocean Green Energy is established from multiple strands of evidence. The WhatsApp chats retrieved from the mobile phone of Shri Manish alias Manubhai Vora during the search on 23.02.2024 and recorded in the panchnama dated 23.02.2024 are particularly revealing. From June 2020, Shri Manish Vora was actively inquiring from overseas suppliers about Bio Diesel and was fully aware that the product was being imported as "Mixed Hydrocarbon Oil" only to conceal its true nature — as the overseas supplier Gulf Oil & Gas Middle East FZC explicitly stated: *"Before it was going under product name as BIO DIESEL BLENDED WITH BITUMINOUS MINERAL OIL NOW the product name as: MIXED HYDROCARBON OIL"* and *"Only Customs product name is different"*, to which Shri Manish Vora replied *"I know"* — a categorical and voluntary admission of guilty knowledge about the modus operandi of using "Mixed Hydrocarbon Oil" as a customs description to conceal restricted petroleum products. The WhatsApp chat dated 11.04.2023 shows Shri Manish Vora instructing the group to change the "nickname" of the product because it was being referred to as "Katariya Diesel" — further establishing that the partners knew the goods were diesel being traded under the guise of MHO. The chat dated 09.02.2024 — just before the seizure — shows Shri Manish Vora inquiring from the overseas supplier about the cost of returning the cargo without filing a Bill of Entry, indicating that when the earlier consignment was held by DRI Noida, the importer immediately contemplated evading investigation in the present consignment too.

**26.3** The letter dated 18.02.2024 written by M/s. Ocean Green Energy to M/s. MSC Agency (India) Pvt. Ltd., Gandhidham, stating *"this is not our ordered cargo... we are requesting to send this cargo to Jebel Ali"* further confirms the guilty mind of the importer. Shri Jitin Bajaj himself admitted in his statement that he wrote this letter not because the goods were actually not his ordered cargo, but because his earlier import consignment was put on hold by DRI Noida and he feared the present consignment would also be held, resulting in detention charges. He further admitted

that the real reason for requesting diversion to Jebel Ali was to escape investigation. This admission squarely establishes the guilty knowledge and deliberate evasion by the importer. M/s. Ocean Green Energy was not an STE and was not authorized by DGFT to import LDO. Their act of importing 189.895 MTS of LDO under the false declaration of "Mixed Hydrocarbon Oil" without filing a Bill of Entry, having full knowledge of the restricted nature of the goods and the applicable policy conditions, constitutes an act of smuggling as defined under Section 2(39) of the Customs Act, 1962. For their acts of omission and commission as borne out by the investigation, M/s. Ocean Green Energy have rendered themselves liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962.

I find that imposition of penalty under Section 112(a) and 112(b) simultaneously amounts to imposition of double penalty; therefore, I refrain from imposition of penalty under Section 112(b) of the Act.

Further, M/s. Ocean Green Energy through their representatives knowingly and intentionally made, signed or used Bills of Lading, IGM, Packing list, Invoice etc. and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, thereby rendering themselves liable for penalty under **Section 114AA** of the Customs Act, 1962.

**27. Penalty on Shri Jitin Bajaj, Partner of M/s. Ocean Green Energy:**

**27.1** I find that Shri Jitin Bajaj is one of the two active partners of M/s. Ocean Green Energy, holding 50% share in the firm, who was actively looking after import, sales and business related operations of the firm. He was in regular communication with the overseas suppliers including M/s. Petro Global FZE, Sharjah, UAE and M/s. Torres International FZE, UAE. In his voluntary statement dated 14.05.2024, he admitted that M/s. Ocean Green Energy had imported approximately 300-400 containers of

MHO at Nhava Sheva and Mundra Ports and that the present consignment under MEDUKW345053 was imported by his firm from M/s. Petro Global FZE. He accepted the Test Reports of CECL, Vadodara and agreed that as per test reports, Light Diesel Oil was found in the 10 containers — however, he sought to shift the blame to the overseas supplier by stating that he had ordered MHO and not LDO.

**27.2** Shri Jitin Bajaj's own WhatsApp chat of 11.04.2023 — where he replied "Ok sir" to Shri Manish Vora's instruction to change the "nickname" of the product away from "Katariya Diesel" — shows his full awareness that the goods being traded were diesel-grade petroleum products. His WhatsApp chat of 02.06.2023 — where he forwarded a message stating "6 buses in breakdown pump fail due to bad quality of diesel" — and his explanation that "bottom level customers understood MHO as diesel or bio diesel" further confirms that the goods were being used as diesel by end-customers, with the knowledge of the partners. His admission that he wrote the letter dated 18.02.2024 to MSC Agency to divert the cargo to Jebel Ali — not because it was wrong cargo but to avoid detention and investigation — is a crucial admission of guilty knowledge. As the partner holding 50% share and responsible for import-related operations across 300-400 consignments, Shri Jitin Bajaj shall be aware of the nature of goods being repeatedly imported. Therefore, it is evident that Shri Jitin Bajaj deliberately allowed mis-representation, willful mis-statement and suppression of facts with malafide intention regarding nature and description of subject goods and mis-classification thereof which resulted in illegal import of Heating Oil (LDO) in contravention of provisions of Customs Act, 1962 and other allied acts. Seemingly, they had assisted and abetted the import of LDO which was prohibited in the absence of compliance of condition/s laid down under import policy. Thus deliberate acts of commission and omission by Shri Jitin Bajaj, partner of M/s Ocean Green Energy, has rendered the subject goods Heating Oil (LDO) **189.895 MTS** having appropriate assessable value of **Rs. 1,74,58,946/-** covered under aforesaid Bill of Lading No. *MEDUKW345053*

*(IGM No. 2368674 Dt 13.02.2024)* liable to confiscation under Section 111(d), 111(f) and 111(o) of the Customs Act, 1962 and has rendered himself liable to penalty under **Section 112 (a)** of the Customs Act, 1962.

I find that imposition of penalty under Section 112(a) and 112(b) simultaneously amounts to imposition of double penalty; therefore, I refrain from imposition of penalty under Section 112(b) of the Act.

Further, the aforementioned Bill of Lading declared with incorrect description and classification of the subject goods under the supervision & active guidance of Shri Jitin Bajaj, the key person of M/s. Ocean Green Energy. It is evident that he did not declare the correct particulars of subject goods in the Bills of Lading and other related import documents correctly to cover-up the prohibited nature of the subject goods. Thus, it is established that Shri jitin Bajaj has knowingly and intentionally made, signed or used or caused to be made signed, or used the Bills of Lading & IGM and other related import documents, which were false or incorrect, in material particulars, for the purposes of illegal importation of goods, thereby rendering himself liable for penalty under Section 114AA of the Customs Act, 1962.

**28. Penalty on Shri Manish alias Manubhai Vora, Partner of M/s. Ocean Green Energy:**

28.1 I find that Shri Manish alias Manubhai Vora is the other active partner of M/s. Ocean Green Energy, who was specifically looking after office work, documentation, payment related matters and was also in communication with overseas suppliers regarding import of cargo on the instructions of Shri Jitin Bajaj. In his voluntary statement dated 26.07.2024, he agreed with the Test Reports of CECL, Vadodara regarding the subject consignment. However, he sought to deny knowledge of the restricted nature of the goods, claiming he had ordered only MHO.

28.2 I find that the WhatsApp chats retrieved from his own mobile phone during search proceedings on 23.02.2024 categorically proves his involvement. As early as June 2020 — more than a year before M/s. Ocean Green Energy started importing MHO in 2021 — Shri Manish Vora was actively negotiating with overseas supplier Gulf Oil & Gas Middle East FZC for Bio Diesel to be imported as "Mixed Hydrocarbon Oil." When the overseas supplier told him "Only Customs product name is different," he replied "I know" — an unambiguous, voluntary admission that he was fully aware that the goods being imported as "Mixed Hydrocarbon Oil" were actually Bio Diesel/restricted petroleum products with a different Customs name. When the overseas supplier confirmed "Finally it's Bio Diesel Only," he responded "FINALLY ITS BIO DIESEL" and asked for the CIF price. This is not the language of an innocent trader who is unaware of the true nature of the goods being imported. The message of 11.04.2023 — *"Sir Ise bolo nickname me kuch aur likhe. Katariya diesel likha hai, Hum log diesel nahi bechte"* — sent by him to the WhatsApp group is a direct instruction to change the "nickname" of the product to avoid the word "diesel" appearing in documentation, with full knowledge that the product was being used as diesel. The message of 09.02.2024 — *"Sir Agar cargo boe file naa karke return bheje to kya expenses hoga?"* — sent to the overseas supplier immediately after the earlier consignment was held by DRI Noida, shows that his first instinct on being apprehended was to try to return the cargo without filing a Bill of Entry, i.e., to evade the law. These chats establish beyond doubt that Shri Manish Vora was not only aware of the true nature of the goods but was one of the key architects of the modus operandi of importing restricted petroleum products under the false description of "Mixed Hydrocarbon Oil." Therefore, it is evident that Shri Manish alias Manubhai Vora deliberately allowed mis-representation, willful mis-statement and suppression of facts with malafide intention regarding nature and description of subject goods and mis-classification thereof which resulted in illegal import of Heating Oil (LDO) in contravention of provisions of Customs Act, 1962 and other allied acts. Seemingly, they had assisted and abetted the import of LDO which was

prohibited in the absence of compliance of condition/s laid down under import policy. Thus deliberate acts of commission and omission by Shri Manish alias Manubhai Vora, partner of M/s Ocean Green Energy, has rendered the subject goods Heating Oil (LDO) **189.895 MTS** having appropriate assessable value of **Rs. 1,74,58,946/-** covered under aforesaid Bill of Lading No. *MEDUKW345053 (IGM No. 2368674 Dt 13.02.2024)* liable to confiscation under Section 111(d), 111(f) and 111(o) of the Customs Act, 1962 and has rendered himself liable to penalty under **Section 112 (a)** of the Customs Act, 1962.

I find that imposition of penalty under Section 112(a) and 112(b) simultaneously amounts to imposition of double penalty; therefore, I refrain from imposition of penalty under Section 112(b) of the Act.

Further, the aforementioned Bill of Lading declared with incorrect description and classification of the subject goods under the supervision & active guidance of Shri Manish alias Manubhai Vora, the key person of M/s. Ocean Green Energy. It is evident that he did not declare the correct particulars of subject goods in the Bills of Lading and other related import documents correctly to cover-up the prohibited nature of the subject goods. Thus, it is established that Shri Manish alias Manubhai Vora has knowingly and intentionally made, signed or used or caused to be made signed, or used the Bills of Lading & IGM and other related import documents, which were false or incorrect, in material particulars, for the purposes of illegal importation of goods, thereby rendering himself liable for penalty under Section 114AA of the Customs Act, 1962.

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

**ORDER**

i. I order to reject the declared description and classification of the impugned goods i.e. 'Heating Oil (Light Diesel Oil) conforming to IS

15770:2021' having total quantity 189.895 MTS mis-declared as 'Mixed Hydrocarbon Oil' under Customs Tariff Item 27101990 in Bills of Lading No. MEDUKW345053 (IGM No. 2368674 dated 13.02.2024) and order to re-classify the same under Customs Tariff Item 27101943.

ii. I order to confiscate the impugned goods i.e. 189.895 MTS of Heating Oil (Light Diesel Oil) conforming to IS 15770:2021 imported by M/s. Ocean Green Energy in 10 containers under Bill of Lading No. MEDUKW345053 (IGM No. 2368674 dated 13.02.2024), having re-determined assessable value of **Rs. 1,74,58,946/- (Rupees One Crore Seventy Four Lakh Fifty Eight Thousand Nine Hundred and Forty Six Only)**, under Sections 111(d), 111(f) and 111(o) of the Customs Act, 1962. However, I give an option to the Importer to redeem the goods only for re-export purpose, upon payment of Redemption Fine of Rs. **17,00,000/- (Rupees Seventeen Lakh Only)** under the provisions of Section 125(1) of the Customs Act, 1962.

iii. I impose a penalty of **Rs. 8,50,000/- (Rupees Eight Lakh Fifty Thousand Only)** on M/s. Ocean Green Energy, under Section 112(a)(i) of the Customs Act, 1962. However, I do not impose penalty under Section 112(b) of the Customs Act, 1962, for the reasons discussed above.

iv. I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakh Only)** on Shri Jitin Bajaj, Partner of M/s. Ocean Green Energy, under Section 112(a)(i) of the Customs Act, 1962. However, I do not impose penalty under Section 112(b) of the Customs Act, 1962, for the reasons discussed above.

v. I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on Shri Manish alias Manubhai Vora, Partner of M/s. Ocean Green Energy, under Section 112(a)(i) of the Customs Act, 1962. However, I do not impose penalty under Section 112(b) of the Customs Act, 1962, for the reasons discussed above.

vi. I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakh Only)** on M/s. Ocean Green Energy, under Section 114AA of the Customs Act, 1962.

vii. I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on Shri Jitin Bajaj, Partner of M/s. Ocean Green Energy, under Section 114AA of the Customs Act, 1962.

viii. I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on Shri Manish alias Manubhai Vora, Partner of M/s. Ocean Green Energy, under Section 114AA of the Customs Act, 1962.

30. This OIO is issued without prejudice to any other action that may be taken against the Noticees under the provisions of the Customs Act, 1962 or rules made thereunder or under any other law for the time being in force.

31. The Show Cause Notice issued vide F. No. GEN/ADJ/ADC/1547/2024-Adjn-O/o Pr. Commr-Cus-Mundra dated 21.08.2024 is hereby disposed of on the above terms.

Digitally signed by Dipakbhai Zala
Date: 27-05-2026 17:39:55

**DIPAK ZALA**

**ADDITIONAL COMMISSIONER OF CUSTOMS,**

**MUNDRA CUSTOMS HOUSE**

To,

1- **M/s Ocean Green Energy (IEC: AAHFO4390G),** C1053, Central Bazar, Opposite Varachha Police Station, Surat, Gujarat (email- happynuts4u@gmail.com ).

2- **Shri Jitin Bajaj,** partner of M/s. Ocean Green Energy, C1053, Central Bazar, Opposite Varachha Police Station, Surat, Gujarat (email- happynuts4u@gmail.com ).

3- **Shri Manish Alias Manubhai Vora,** partner of M/s. Ocean Green Energy, C1053, Central Bazar, Opposite Varachha Police Station, Surat, Gujarat (email- happynuts4u@gmail.com)

**COPY TO:-**

1) The Deputy Director, Directorate of Revenue Intelligence, Regional Unit, Plot No. 5 & 6, Ward-5A, Near Vinayak Hospital, Adipur, Kutch, Gujarat - 370205, for information.
2) The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
3) The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... (with the direction to upload on the official website immediately)