



सीमा शुल्क के प्रधान आयुक्त का कार्यालय
सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात

**OFFICE OF THE PRINCIPAL COMMISSIONER
OF CUSTOMS
CUSTOMS HOUSE, MUNDRA, KUTCH,
GUJARAT**

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A. File No.	: VIII/48-03/ADJ/ADC/MCH/24-25
B. Passed by	: Amit Kumar Mishra, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra.
C. Noticee(s) / Party / Importer	: M/s Mahakali Eco Energy (IEC-ABRHM4489P)
D. DIN	: 20250271MO000000E9A2
E. Date of SCN	: 13.02.2025

**SHOW CUASE NOTICE UNDER
(UNDER SECTION 124 OF THE CUSTOMS ACT, 1962)**

BRIEF FACTS OF THE CASE:

1. Intelligence was garnered that **M/s Mahakali Eco Energy**, IEC-ABRHM4489P) D-94, Near Bali Mandir, Agra Road, Hanuman, Nagar, Panchavati, Nashik, Maharashtra, 422003(hereinafter referred to as the "importer" or "Mahakali") were importing restricted products falling under Customs Tariff Heading (CTH) 2710 which as per the import policy can be imported by State Trading Enterprises (STEs) only. All goods, import of which is permitted only with an Authorisation/Permission/License or in accordance with the procedure prescribed in a notification/public notice are 'Restricted' goods. Restricted items are importable under certain conditions with the necessary approvals from the relevant Competent Authority. According to the intelligence, the said entity was resorting to the said illicit import by mis-declaring the consignments as "Mixed Hydrocarbon Oil (MHO)" and mis-classifying them under Customs Tariff Item(CTI) 27101990 wherein the import policy is "Free". Therefore, 10 containers covered under 01 Bill of Entry, pertaining to the Importer were put on hold by DRI Noida Regional Unit (hereinafter referred to as "DRI") on 15.02.2024 for examination by officers of DRI.

Sl. No	BE Number	BE date	Name of the Importer	Container Number	CHA
1.	211217 5	12/02/ 24	MAHAKALI ECO ENERGY	CAIU 6551255	SHIVAM CLEARING AGENCY (MUMBAI) PVT LTD
2.	211217 5	12/02/ 24	MAHAKALI ECO ENERGY	CAAU 2092730	SHIVAM CLEARING AGENCY (MUMBAI) PVT LTD
3.	211217 5	12/02/ 24	MAHAKALI ECO ENERGY	CAIU 3119891	SHIVAM CLEARING AGENCY (MUMBAI) PVT LTD
4.	211217 5	12/02/ 24	MAHAKALI ECO ENERGY	CAIU 6343483	SHIVAM CLEARING AGENCY (MUMBAI) PVT LTD

5.	2112175	12/02/24	MAHAKALI ECO ENERGY	DFSU 2257223	SHIVAM CLEARING AGENCY (MUMBAI) PVT LTD
6.	2112175	12/02/24	MAHAKALI ECO ENERGY	SEGU 1254713	SHIVAM CLEARING AGENCY (MUMBAI) PVT LTD
7.	2112175	12/02/24	MAHAKALI ECO ENERGY	SEGU 2614244	SHIVAM CLEARING AGENCY (MUMBAI) PVT LTD
8.	2112175	12/02/24	MAHAKALI ECO ENERGY	UACU 3808031	SHIVAM CLEARING AGENCY (MUMBAI) PVT LTD
9.	2112175	12/02/24	MAHAKALI ECO ENERGY	UACU 4083696	SHIVAM CLEARING AGENCY (MUMBAI) PVT LTD
10.	2112175	12/02/24	MAHAKALI ECO ENERGY	UACU 4139964	SHIVAM CLEARING AGENCY (MUMBAI) PVT LTD

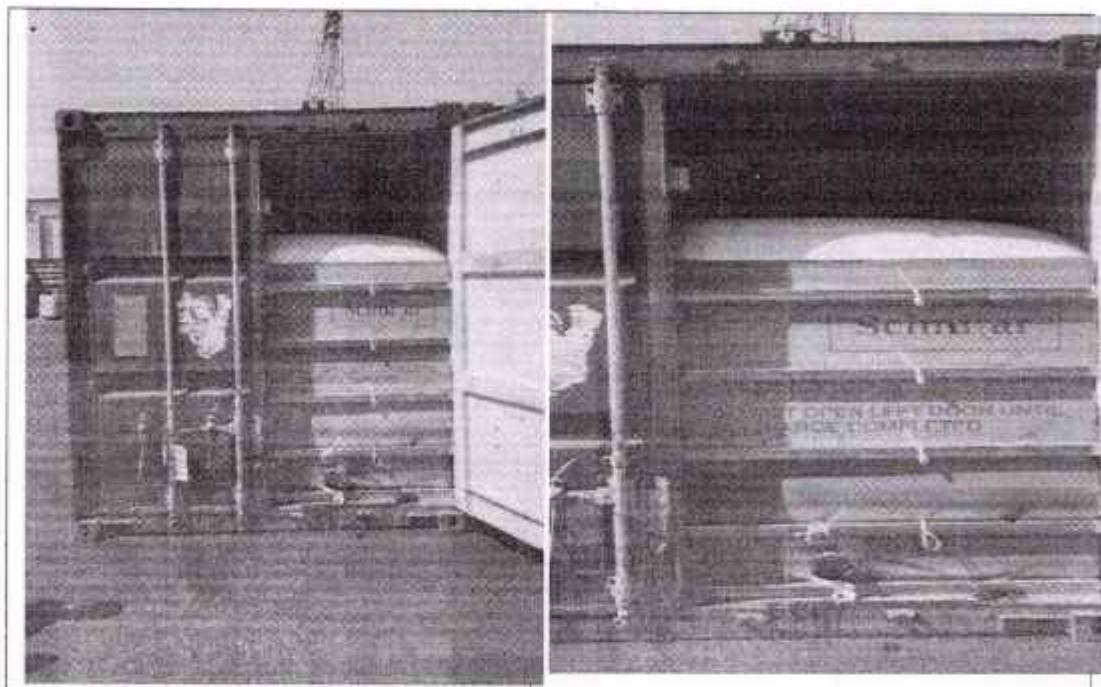
2. Thereafter, the said containers covered under the above-mentioned Bill of Entry were subjected to examination on 14.03.2024 in the presence of the following persons/representatives detailed below:

S. No	BOE No. & Date	No Of container	Examination date	CHA/Auth Representative	Container Freight Station	Representative of CFS
1	2112175 Dt. 12.02.2024	10	14.03.2024	Shri Chavada Kishorsinh Karubha Authorised Rep of M/s Shivam Clearing Agency	Transworld CFS, APSEZ	Shri Zala Luckyrajsinh Ghanshyam Singh, Executive (Operations) of Transworld CFS,

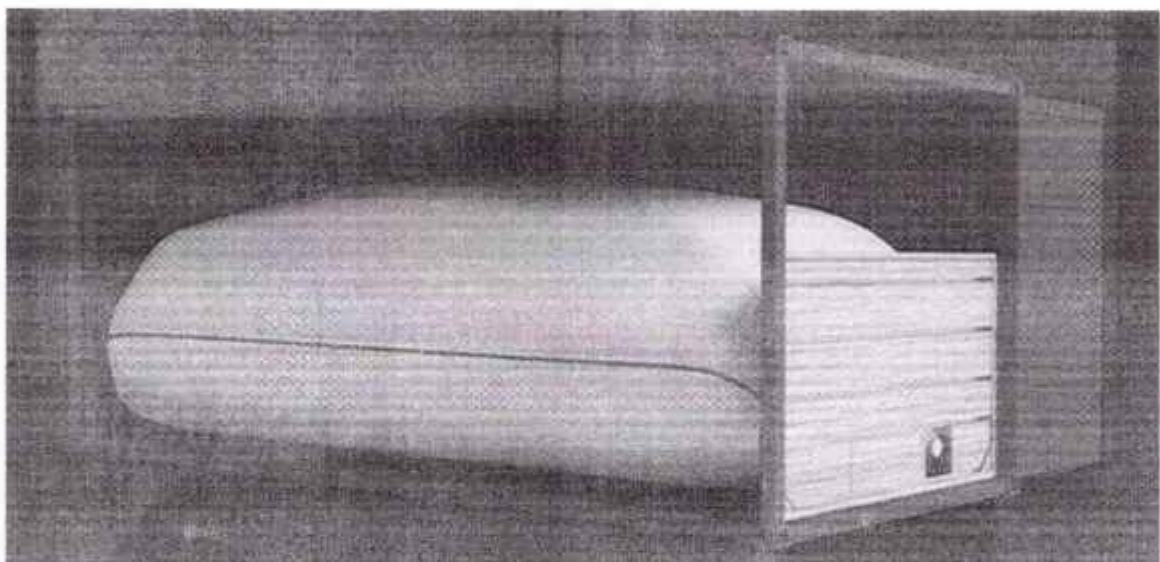
2.(i) And whereas, during the examination, Shri Chavada Kishorsinh Karubha Authorised Representative of M/s Shivam Clearing Agency (Mumbai) Pvt Ltd provided the relevant documents viz Bill of Entry along with the corresponding Invoice and packing list (**RUD -01**) The details of the consignment as per the documents provided is detailed as under:

S.No	Bill Of Entry No	Goods Description (as per Bill of Entry)	Name of the Supplier (as per Bill of Entry)	Chapter Heading (as per BOE)	Ass. Value (In Rupees)	Gross Weight (KGs)
1	2112175 Dt. 12.02.2024	Mixed Hydrocarbon Oil	M/s Petro Global FZE	27101990	1,32,77,023/-	194190
TOTAL					1,32,77,023/-	194190

2.(ii). And whereas during the course of examination, it was observed that Flexi bags containing yellow colored liquid substance were kept inside the containers. The images of the container along with the flexi bag are given below:



(Pictures of the flexibag containers in the consignment)



(Graphical representation of a Flexi bag container- picture taken from open source)

2(iii). Representative sample was drawn from one randomly selected container of the said Bill of Entry. After collecting the sample, the DRI Officer resealed the container with the bottle seal provided by the custodian. The proceeding was documented in the panchnama dated 14.03.2024 (**RUD-02**)

3. Sample was then sent to the lab of CRCL, Vizag for the testing purpose and identification of the goods comprising the consignment. The details of the samples sent to the CRCL Lab are as detailed below:

S.No	Bill of Entry No and date	Sample No
1	2112175 12.02.2024	Dt. MA3- A215388

4. And whereas CRCL tested the sample and sent the respective Test Report of the above sample on 03.06.2024(**RUD-03**). The test report is reproduced as below:

भारत सरकार
राजस्व विभाग
सीमा व्यापक प्रयोगशाला
सहित, सीमा व्यापक प्रयोगशाला
विवराय, विवराय-530 001



Government of India
Ministry of Finance
Department of Revenue
CUSTOM HOUSE LABORATORY
5th FLOOR
CUSTOM HOUSE, PORT AREA
VIZAGAPATHAM - 530 001.
Tel/Fax: 0691-2562900
e-mail: chemical_examiner@cahlab.org.in

TEST REPORT

Date: 03.06.2024

Lab NO.: 10-DH3
F. No: DRUNR/CI-26/Int-0/Eng-13/2024/490

Sample No. & Seal No: MA3-A215388

Sample Received from: DRI Noida Regional Unit

Description of Sample: Mixed Hydrocarbon Oil

Date of Receipt: 10.04.2024

Sample Place: Sample not Drawn by this laboratory.

Report: The sample is in the form of Light brown colored oily liquid. It is mainly composed of mineral hydrocarbons oil having mineral oil content more than 70 % by weight. It has the following characteristics:

Appearance: Light brown.

Acidity (Organic) = Nil.

Acid content = Nil.

Carbon residue content = 0.18 % by wt.

Distillation:

Temp. at 95% (v/v) recovered : 360.0 °C

Flash Point : 52.2 °C

Kinematic Viscosity at 40°C = 3.06 cSt

Density at 15°C = 0.8384 g/ml

Total Sulphur = 24.66 mg/Kg

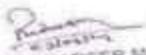
Water content = Nil.

Cetane Index = 37.47

Concurrence with GC/MS chromatogram pattern of Automotive Diesel fuel - The sample chromatogram concords with the standard chromatogram with respect of carbon chain.

The sample has been tested for all the characteristics parameter listed above. The sample meets the requirement of Automotive Diesel fuel (Bharat stage IV) as mentioned in IS 1460:2017. There is no specification available "mixed hydrocarbon oil" in any National/ International Standards.

Sealed comment sample returned herewith.


Mr. **PRADIP MARCH**
Chemical Examiner-Chief
Date 03.06.2024
Custom House Laboratory
Other 1460 stage, Bharat stage IV
Custom House-Vizagapatnam-530 001

End of the Report

Note 1: The results relate only to the items tested.

Note 2: Sample not Drawn by this laboratory.

Note 3: The report shall not be reproduced except in full without approval of this laboratory.

Note 4: Remaining sample should be collected within 30 days otherwise it will disposed off.

5. And whereas the parameters of the Test Report suggested that the goods being imported in the said containers was Automotive Diesel Fuel Conforming to IS:1460. Further, the specifications of Automotive diesel fuel as per IS: 1460 of the Bureau of Indian Standards (BIS) are reproduced below:

**Table 1 Requirement for Automotive Diesel Fuel
(Clauses 3.1.4 and 3.2)**

Sl. No.	Characteristic (1)	Requirement		Method of Test, Ref to [P :] of IS 1448/ASTM/IP/ISO Annex (5)
		Bharat Stage IV (3)	Bharat Stage VI (4)	
i)	Appearance	Clear, bright and free from sediments, suspended matter and undissolved water at normal ambient fuel temperature	clear, bright and free from sediments, suspended matter and undissolved water at normal ambient fuel temperature	Visual
ii)	Acidity, inorganic, mg of KOH/g	Nil	Nil	ISO 6618/ASTM D974 ^(b) / IP 139
iii)	Acidity, total, mg of KOH/g, Max	0.20	0.20	[P : 2] ^(b) /ASTM D664/ ASTM D974 / IP 139
iv)	Ash, percent by mass, Max	0.01	0.01	[P : 4] ^(b) /ASTM D 482/IP 4
v)	Carbon residue (Ramsbottom or micro) on 10 percent residue ⁽¹⁾ , percent by mass, Max	0.30	0.30	[P : 8] ^(b) /ISO 10370/ASTM D 524/IP 14/ASTM D 4530
vi)	Cetane number, Min	51 ⁽²⁾	51 ⁽²⁾	[P : 9] ^(b) /ASTM D 613
vii)	Cetane index, Min	46 ⁽²⁾	46 ⁽²⁾	ISO 4264 ^(b) /ASTM D4737/ IP 380
viii)	Pour point ⁽³⁾ , Max:			[P : 10] ^(b) /ASTM D 5949/ASTM D 5950/ASTM D 5985/ASTM D97/ASTM D7346/IP 15
a)	Winter	3°C	3°C	[P : 15] ^(b) /ASTM D 130/IP 154
b)	Summer	15°C	15°C	
ix)	Copper strip corrosion for 3 h at 50°C	Not worse than No. 1	Not worse than No. 1	
x)	Distillation, 95 percent v/v, recovery, °C, Max	360	360	[P : 18] ^(b) /ISO 3405/ASTM D 86/ASTM D 7345/IP 123
xi)	Flash point, Abel ⁽⁴⁾ , °C, Min	35	35	[P : 20] ^(b) /ISO 3679/ IP170/ IP523/ EN13736
xii)	Kinematic viscosity, cSt, at 40°C	2.0 to 4.5	2.0 to 4.5	[P : 25] ^(b) /ISO 3104/ASTM D 445/ASTM D 7042/IP 71
xiii)	Total contamination, mg/kg, Max	24	24	EN 12662 ^(b) /IP 440
xiv)	Density at 15°C, kg/m ³	815-845 ⁽⁵⁾	810-845 ⁽⁵⁾	[P : 16] ^(b) /[P : 32]/ISO 12185/ ASTM D 4052/ASTM D 1298/IP 160
xv)	Total sulphur, mg/kg, Max	50	10	ISO 13032 ^(b) /ISO 20884/ISO 20846 ^(b) /ASTM D 5453/ASTM D 2622/ASTM D 7220/[P : 34] For Bharat Stage IV grade only [P : 153] ^(b) /ASTM D 4294
xvi)	Water content, mg/kg, Max	200	200	ISO 12937/ASTM D 6304
xvii)	Cold Filter Plugging Point (CFPP) ⁽⁶⁾ , Max:			[P : 110] ^(b) /ASTM D 6371/ IP 309
a)	Winter	6°C	6°C	
b)	Summer	18°C	18°C	
xviii)	a) Oxidation stability ⁽⁵⁾ , g/m ³ , Max	25	25	[P : 154] ^(b) /ASTM D 2274/IP 388
b)	Oxidation stability by Rancidity meter ⁽⁷⁾ , hours, Min	20	20	EN 15751
xix)	Polycyclic Aromatic Hydrocarbon (PAH), percent by mass, Max	8	8	EN 12916 ^(b) /IP 391/ASTM D 6591
xx)	Lubricity corrected wear scar diameter (wsd 1.4) at 60°C, microns, Max	460	460	P 149/ISO 12156-1/Cor 1
xxi)	FAME content ⁽⁸⁾ , % v/v, Max	7.0	7.0	Annex A ^(b) /ASTM D7371/ EN14078

6. And whereas on analysis of the parameters detailed in the Test Report vis-à-vis the parameters stipulated in the BIS standards of Automotive diesel fuel conforming to standard IS:1460, it appeared in accordance with the intelligence, that goods being imported appeared to be mis-declared and following conclusion appeared to flow from the analysis:

Sl. No.	Bill of Entry No.	Date of Bill of Entry	No. of containers	Product description as per the analysis of the Test report
1.	2112175	12.02.2024	10	Automotive diesel fuel conforming to standard IS: 1460

Thus, it appeared that the samples drawn from consignment pertaining to BE no: 2112175 dated 12.02.2024 appear to conform to limits stipulated in IS:1460 specifications which pertains to the Indian Standard of Automotive diesel fuel. The items Automotive diesel fuel are restricted and can be imported by the State Trading Enterprises(STEs) only.

7. In the light of the parameters of the Test Report of the CRCL, the goods imported under BE no. 2112175 dated 12.02.2024, appear to be liable to be classified under CTH 27101944 under the description of Automotive diesel fuel

conforming to standard IS 1460. The relevant description of CTH 27101944 as per Customs Tariff Act'1985 are as below:

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
2710 19 44	--- Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460	kg. 2.50 2.50 -- 14% + Rs. 0.08 15 per litre	State Trading Enterprises	Import as per Policy Condition (5) of Chapter 27 SWS - 3% by Ntn 12/2018-Cus.
2710 19 49	High flash high speed diesel fuel conforming to standard IS 16861	kg. 2.50 -- 14% + Rs. 0.08 15 per litre	State Trading Enterprises	Import as per Policy Condition (5) of Chapter 27 SWS - 3% by Ntn 12/2018-Cus.

Chapter Heading 27101944

8. Further, 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 "Gas oil and oils obtained from gas oil: --- Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460" 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". The screenshots of the relevant extracts are as below:

27101944	Gas oil and oils obtained from gas oil: --- Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460	State Trading Enterprise	Import as per Policy Condition (5) of Chapter 27.
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Product Description and Import Policy

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 R&D 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 R&D 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.	06/2023	29/05/2023

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

9. Further, during the course of the investigation, it appeared that the CHA was actively involved in assisting and facilitating the improper import and clearance of the restricted goods namely "Automotive diesel fuel as per IS:1460" as mentioned above, therefore a search was attempted at the premises of CHA M/s Shivam Clearing Agency (Mumbai) Pvt Ltd, However the firm M/s Shivam Clearing Agency (Mumbai) Pvt Ltd was found non-existent at the said address. Outcome of the visit was submitted by the Intelligence Officer, DRI in his visit note dated 30/04/2024 **(RUD-04)**

10. And whereas, summons were issued to the importer M/S Mahakali Eco Energy on 21.06.2024 **(RUD-05)** for appearance on 28.06.2024. Shri Ashutosh Pangavane, S/o Shri Vilasrao (A/P Ugaon, Taluka- Niphad, Distt- Nashik- Maharashtra-422303), Partner of M/s Mahakali Eco Energy, D-94, Near Bali Mandir Agra road, Hanuman Nagar, Panchwati Nashik, Maharashtra, 422003 appeared voluntarily on 02.07.2024 and tendered his voluntary statement under Section 108 of the Customs Act 1962 **(RUD- 06)** wherein he inter-alia stated:

- *I hereby state that I am one of the partners of M/s Mahakali Eco-Energy, the other partner being Sh. Vijay Dattatreya Bhatt, who is not actively involved in the running of the business and I look after the operations of both of my businesses. M/s Mahakali Eco Energy was established in February 2022 as a trading firm for the trading of Tyre Oil, Pyrolysis Oil, Fuel Oil and Mix Hydrocarbon Oil. The registered office of the firm is located at D-94, Near Bali Mandir Agra road, Hanuman Nagar, Panchwati Nashik, Maharashtra, 422003. There are about 3 employees in the firm comprising of 1 accountant and 2 salesperson.*

As far as my personal details are concerned, I am a BBA Graduate from Panchvati College Nashik, which I completed in 2005. After completing my graduation I helped my father in agriculture and farming. Then in year 2009 I ventured in this oil business and started trading of waste oil, which was purchased from factories. After that in 2018 I started a manufacturing unit of Tyre Oil in Nashik which is still in operation by the name of M/s Janardan Fuels at plot no S/2 Musal gaon, Taluka- Sinnar, Nashik, Maharashtra. In the meantime, I started M/s Mahakali Eco Energy and started Importing MHO (Mix Hydrocarbon Oil). In my family, My father Sh. Vilasrao, passed away in 2014. I am married to Ms Snehal, and I have one son who is 6 years old. I have 2 younger sisters, and I live with my mother, my sisters, my wife and my son on the above-mentioned address.

- **Question 1: Please provide certified copy of Buyer-seller agreement for the consignments.**

Answer: No buyer seller agreement has been executed by the overseas supplier.

- **Question 2: Please state with whom and how do you place an order with the overseas supplier.**

Answer: The order is placed by me with the overseas suppliers over the telephone.

- **Question 3: Please submit the details of the overseas suppliers of MHO imported by you which have been put on hold by DRI at Mundra.**

Answer: The orders are placed through 5-6 suppliers overseas, however majorly we buy MHO from M/s Petro Global Fze. In the instant consignment also, the supplier is M/s Petro Global Fze. We usually contact one person namely Sh Sachin more, who looks after the sales of the M/s Petro Global Fze, on his mobile +971521597165.

- **Question 4: Please describe your product viz MHO (Mix Hydrocarbon Oil) and state the characteristic parameters/specifications based on which the declaration has been made.**

Answer: To my understanding MHO is mixed hydrocarbon oil. As far as the parameters/specification of the product i.e. MHO is concerned I do not know in detail.

- **Question 4: If you are not aware of the parameters/specifications of the MHO then on what basis it is being imported by you?**

Answer: My main business is of tyre oil in Nashik and I was approached by Sh. Arindum Chakrabarty of M/s AC Oil Holding who communicated his requirement of MHO. I searched for a supplier from Dubai of the same and therefore in order to supplement my income I arranged for the import of MHO for him only.

- **Question 5: Please provide certified copies of Chemical Analysis report or Test report of all the consignments of MHO imported by you.**

Answer: In some cases, the suppliers provided chemical analysis/test reports but the same are not available to me. I also wish to state that no chemical analysis report has been provided by the supplier in respect of the instant consignment put on hold.

- **Question 6: Please refer to your reply to Question No 5 above and please submit chemical/test reports in respect of the consignment in which the supplier has not provided any test report.**

Answer: No such report has been provided by the supplier.

- **Question 7: What is the status of the overseas suppliers of the import of MHO?**

Answer: To my knowledge all the overseas suppliers are traders.

- **Question 8: Please provide the Details of the refinery/oil firm from where each consignment has originated/been manufactured.**

Answer: I am not aware of the source of purchase of MHO by my overseas supplier. However, I will try to ascertain the source and provide information accordingly.

- **Question 9: Please provide Certificate Analysis Report issued by the Original manufacturer/refinery/oil firm for each consignment along with a Certified copy of the invoice generated by the firm to the overseas supplier and Details (contact details and correspondence addresses) of all traders between the overseas supplier and the Original manufacturer/ refinery for each consignment.**

Answer: No such document or report is available with me, nor has been provided by the overseas supplier. I am not aware of the address and details of the traders as sought by you.

- **Question 10: Kindly detail the basis of the classification of the consignment under CTI 27101990 and declaration of the same as Mix Hydrocarbon Oil.**

Answer: We declared the product as MHO and classified it under CTH 27101990 as per the discussions with the CHA and as advised by him only.

- **Question 11: Please provide a Certified copies of each :
Load Port report
surveyor report of the port
Compliance report.**

Answer: No such document or report is available with me, nor has been provided by the overseas supplier.

- **Question 12: Please refer to the reply of Question 2 above and provide the certified copies of communication (emails/letters etc.) with the overseas suppliers w.r.t. the consignments.**
Answer: As stated by me above all the communication with the supplier happens telephonically and hence no such copies of communication (emails/letters etc.) are available with me
- **Question 13: Please provide details of key officials (name and designation) of your company.**
Answer: All the important work and decisions are looked after by me only. And as stated above my other partner Sh. Vijay Dattatreya Bhatt is not actively involved in the operation of the company. As far as the employees are concerned, they are not concerned with the import of MHO and only follow the instructions given by me.
- **Question 14: Please provide a Certified copy of the Invoice for each consignment, including itemized description, quantities, values, and any applicable discounts or rebates.**
Answer: M/s Mahakali Eco Energy has imported about 25 Consignments of Mix Hydrocarbon oil in the past 2 years. I am Submitting copies of the invoices of the said consignments along with the relevant bill of Entry, Bills of Lading and sea waybill.
- **Question 15: Please provide a Certified copy of bank statement indicating payments made to suppliers for consignments.**
Answer: As desired, I am submitting a bank statement of the firm maintained with Yes Bank bearing account no.039863400000549 for the financial year 01/04/2023 to 31/03/2024 which shows financial transactions of the firm during the said financial year.
- **Question 16. Please provide the details of the warehouse/storage place where the imported goods are stored after their import by your firm?**
Answer. M/s Mahakali Eco Energy does not have any warehouse/storage place where the imported goods are stored as the MHO imported by the firm after customs clearance is delivered directly to the buyers.
- **Question 17. Please peruse the test report submitted by CRCL Vizag with regard to the test memo dated 09.04.2024 pertaining to samples drawn from your consignment on hold at Mundra port covered under BOE no 2112175 dated 12/02/2024. As per the test report the conclusion arrived at by the CRCL regarding the goods is "Automotive Diesel Fuel BSIV as mentioned in IS 1460:2017". Please peruse the said report and offer your comments.**
Answer. I have seen the copy of the test report dated 03.06.2024 of the CRCL in respect of the sample drawn from the consignment covered under BOE no 2112175 dated 12/02/2024 pertaining to M/s Mahakali Eco Energy and I have signed the said report as a token of having seen it. I have also perused the parameters detailed in the test report and I submit that I agree with the conclusion of CRCL of the oil as "Automotive Diesel Fuel BSIV as mentioned in IS 1460:2017".
- **Question 18. Your kind attention is invited to the conclusion of the test report wherein the oil has been found to be "Automotive Diesel Fuel BSIV" whereas you have declared the same as Mix Hydrocarbon Oil in BOE no 2112175 dated 12/02/2024 filed by you. The test report suggests misdeclaration on your part. Please offer your comment in this regard.**
Answer. I agree that the description given in BOE no 2112175 dated 12/02/2024 and the conclusions of the test report of CRCL dated 03.06.2024 are different. The Bill of Entry was filed on the basis of order placed by me with the overseas supplier and the import documents provided by him. When the container was put on hold, I sought clarification from the overseas supplier M/s Petro Global FZE, who would email who wide email dated 16th may 2024

informing that "the material in below attached BL was planned to export for other countries but by mistake from Kuwait party. This material was sent to Mahakali Eco Energy in Nasik. We regret the inconvenience caused to Mahakali Eco Energy". Thus the supplier has sent wrong item by mistake and not the one that I ordered. I regret for the mistake and having accept the findings of the CRCL, Vizag, I request that the same may be re-exported back to the supplier.

- **Question 19.** Your kind attention is again invited to the conclusion of the test report wherein the oil has been found to be "Automotive Diesel Fuel BSIV". On the basis of the conclusion of CRCL that the goods are actually Automotive Diesel Fuel classifiable under CTH 27101944. In the light of the test report and your reply to question No 18 above, do you agree that the Automotive Diesel Fuel imported by you in consignment covered under BOE no 2112175 dated 12/02/2024 is correctly classifiable under CTH 27101944 and not 27101990 as classified by you in the bill of entry filed by you.

Answer. In view of the conclusion of the CRCL report I agree that the correct classification of the oil in the consignment covered under BOE no 2112175 dated 12/02/2024 is under CTH 27101944.

- **Question 20.** Please refer to your reply to question number 19 above wherein you have agreed that the correct classification of the oil is i.e automotive diesel fuel confirming to IS, 1460:2017, is a restricted item and can only be imported by STE (State Trading Enterprise).

Answer. Yes, I have been shown the said provisions and I have come to know that automotive diesel fuel confirming to IS, 1460:2017, is a restricted item and can only be imported by STE (State Trading Enterprise). In view of this fact and also as stated by me, Since it is not as per my order which has been acknowledged by the overseas supplier also in his email dated 16. 05. 2024. As requested by me in reply to question no 18 I once again request that the consignment may be reexported back to the overseas supplier..

11. And whereas, summons were also issued to the CHA M/s Shivam Clearing Agency (Mumbai) Pvt Ltd on 05.07.2024 (**RUD-07**) for appearance on 16.07.2024. Vide E-mail dated 19.07.2024 (**RUD-08**) M/s Shivam Clearing Agency (Mumbai) Pvt Ltd requested to be given the another date on 23.07.2024 for appearance. However again vide E-mail dated 23.07.2024 (**RUD-09**) they expressed their inability to attend the office and requested for a further date for appearance. As such a fresh summons was issued to CHA M/s Shivam Clearing Agency (Mumbai) Pvt Ltd on 24.07.2024 (**RUD-10**) for appearance on 09.08.2024. Shri Ranjit Behera S/o Shri Benu Behera Branch Manager of M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd, (Plot No. 6/A, Siddharth Nagar, Baroi, PO-Baroi, Kachchh, Gujrat-370421) appeared on 09.08.2024 (**RUD-11**) and tendered his voluntary statement under Section 108 of the Customs Act'1962 wherein he inter-alia stated:

- I submit that I completed my High School from Kama Guru High School, Kamaguru, Odissa in the year 2010, after that I completed my diploma in Electrical Branch in 2013. I started working as a container surveyor at Mundra Port from 2014. After that I worked with different firms such as M/s Bright Shiptrans, M/s A. R. Shipping etc. In 2023, I started working with M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. As a Branch manager, I manage all the Customs clearance work at Mundra Port on behalf of M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. I am living with my wife Ms Chinmayi Behera on the above-mentioned local address in Mundra. Certain Questions were put before me to which I replied as under:

- Question 1: Please explain the business of M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd.?

Answer: M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. is Pvt Limited Firm in which, Shri Santosh Thavi and his wife Ms. Saroj Thavi are the directors of this firm. As stated by me above the firm is engaged in the custom clearance of import and export consignments at Nhava Sheva Port and Mundra port.

- Question 2: Please state the present location of Shivam Clearing Agency (Mumbai) Pvt. Ltd.

Answer: Presently the local office of Shivam Clearing Agency (Mumbai) Pvt. Ltd. is located at Plot No. 176, Ward -4A, Adipur, Kachchh, Gujrat. The head office of Shivam Clearing Agency (Mumbai) Pvt. Ltd. situated at Room no. 411, Sangharsh Sadan A, FER Bandar, Mumbai, Maharashtra-400027.

- Question 3: How many people are working in M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd.? Please provide their details, designation, responsibilities and Mobile no

Answer: A total of 5 people including me work in Shivam Clearing Agency (Mumbai) Pvt. Ltd. at Mundra Port, whose details are as under:

Name	Designation/ Assigned	Work	Mobile No.
Shri Pradeep Rajput	Accountant	93276772 24	
Shri Narpat Singh Jadeja	Field Work at Mundra Port	75671048 10	
Shri Dilli Rao	Field Work at Mundra Port	989881691 2	
Shri Uday Rajput	Documentation work	909947480 9	
Shri Kishor Singh Chavada	Field Work at Mundra Port	823850792 5	

- Question No.4: Please elaborate the nature of field work of the staff detailed above?

Answer. These employees mainly handle logistic work like bringing new clients, loading and unloading of cargo, grounding of container for examination and, dispatch of the consignment after examination and out of charge is given by the Customs.

- Question 5: Please name the companies/firms for whom M/s Shivam Clearing Agency (Mumbai) Pvt Ltd are providing customs clearance services?

Answer: Our major clients include:

M/s Mahakali Eco Energy.

M/s Ocean Green Energy.

These are the client to whom M/s Shivam Clearing Agency (Mumbai) Pvt Ltd are providing customs clearance services at Mundra Port. However, I have no knowledge regarding the head office client's details. Only Shri Santosh Thavi, Director of the firm can provide this information.

- Question 6: What are the other ports where you are providing customs clearance services?

Answer: As per my knowledge, major business of M/s Shivam Clearing Agency (Mumbai) Pvt Ltd is at Nhava Sheva and Mundra.

- Question 7: How do M/s Shivam Clearing Agency (Mumbai) Pvt Ltd provide customs clearance facilities? Please explain the same with regard to the functioning of your firm.

Answer: Our clients forward the import documents by courier only. Documents are examined by the staff who later on prepare check list which is sent to the clients for approval. Once the checklist is approved, the bill of entry is filed online on the ICEGATE website at the Mumbai office. Shri Uday Rajput filed Bill of entry online. After it is approved, the examination of the cargo is conducted by the customs officers in the

presence of the Authorised representative of the firm. After the examination and out-of-charge given by the customs the documents are handed over to the transporter who is engaged by the importer only for delivery at the designated address.

- Question 8: Please define payment terms of M/s Shivam Clearing Agency (Mumbai) Pvt Ltd with the mentioned firms in Sl. No.5.

Answer: Many CHAs were doing MHO work in Mundra, so I also started it in Nov 2023. I had connected these two clients with M/s Shivam Clearing Agency (Mumbai) Pvt Ltd and charged Rs 5000/- plus GST per container from them, out of which I gave Rs. 1000/- to 1200/- per container to M/s Shivam Clearing Agency (Mumbai) Pvt Ltd and the rest remained with me to manage the Mundra office.

- Question 09: Please state, who gets the examination conducted at the port for the import consignment of M/s Shivam Clearing Agency (Mumbai) Pvt Ltd?

Answer: Shri Kishor Singh Chavada gets the examination conducted at Mundra port.

- Question 11: Are you aware that some containers which have been declared to contain MHO have been put on hold by the DRI Noida Regional unit at Mundra port?

Answer: Yes, DRI Noida Regional Unit has put on hold some consignments of MHO as detailed Below:

Sl. No.	Importer Name	Bill of Entry	Containers
1	M/S Mahakali Eco Energy	2112175 Dt. 12.02.2024	10
2	M/S Ocean Green Energy,	2112373 Dt. 12.02.2024	10

- Question 12: What were the documents that were provided by the importer in respect of containers put on hold and as mentioned in question above?

Answer: M/S Mahakali Eco Energy and M/S Ocean Green Energy forwarded invoices, packing list and Bill of Lading through courier on the basis of which we file the respective bill of entry.

- Question 13: What is the Item "MHO/ Mix Hydrocarbon Oil/Mixed Hydrocarbon Oil/Mineral Hydrocarbon Oil", mentioned in the Bills of entries filed by you on behalf of these importers?

Answer: As per the information provided by the importer it is a type of petroleum product.

- Question 14: Please state, what is the use of MHO?

Answer: I have no information regarding the use of MHO.

- Question 15: Have you been provided with any chemical analysis report/ test report of the product by the importer issued by the supplier.

Answer: No, we have not been provided with any chemical analysis report or test report by the importer issued by the importer.

- Question 16: If no chemical analysis report/ test report of the product is submitted by the importer than what was the basis of classification of the product under Chapter Heading 27101990 in the category of item "Others"

Answer: CTH mentioned on the invoice of the supplier itself which were provided by the importer. The Bill of entry was therefore filed accordingly.

- Question 17: Please peruse the respective test reports of consignments that have been put on hold by DRI Noida regional Unit and are

mentioned in reply to question 11 above. The test results of each of the consignment have been summarized in the table below.

S. No.	Importer Name	Bill of Entry	Sample/ Seal No.	Test Report Result	Lab Name
1	M/S Mahakali Eco Energy	211217 5 Dt. 12.02.2024	MA3-A215388	Automotive Diesel Fuel BSIV (IS 1460:2017)	CRC L
	M/S Ocean Green Energy	211237 3 Dt. 12.02.2024	OA2-A215384	Gas Oil	CRC L

Please peruse the test reports and offer your comments.

Answer: I have perused both the test reports detailed above. I have also gone through the parameters mentioned in both the test reports and signed the test reports as a token of having seen the same. After testing of the sample, the lab has come to a conclusion that the consignment does not consist of MHO but Automotive Diesel Fuel and Gas Oil as mentioned in the respective report.

- Question 18: Do you agree with the outcome of the test reports and the result mentioned therein?

Answer: Yes, I agree with the conclusion arrived at by the lab as mentioned in both the test reports.

- Question 19: Please give your opinion on whether MHO as declared by you in the bills of entry and the item identified as per the test result of the respective item are same or different?

Answer: It is evident that the goods identified by the laboratory as per the test report and the declaration made in the Bill of Entry are different.

- Question 20. Your kind attention is invited to the conclusion of the test report for the sample of M/S Mahakali Eco Energy wherein the oil has been found to be "Automotive Diesel Fuel BSIV as per IS 1460:2017", on the basis of the conclusion of CRCL lab, and hence are classifiable under CTH 27101944. Hence, the goods are actually ADF as per IS 1460:2017 and are classifiable under CTH 27101944. Do you agree that the ADF as per IS 1460:2017 imported in consignment covered under BOE no 2112175 Dt. 12.02.2024 filed by M/s Shivam Clearing Agency (Mumbai) Pvt Ltd and imported by M/S Mahakali Eco Energy, is correctly classifiable under CTH 27101944 and not 27101990.

Answer: In view of the CRCL report, I am in agreement with the conclusion that the correct classification of the oil in the consignment covered under BOE no 2112175 Dt. 12.02.2024 should be under CTH 27101944. The declaration of the item made in the bill of entry is incorrect and wrong.

- Question 21: Your kind attention is invited to the conclusion of the test report wherein the parameters suggest that the oil can be concluded as "Gas Oil". Whereas M/s Shivam Clearing Agency (Mumbai) Pvt Ltd have declared the same as Mixed Hydrocarbon Oil in BOE No. 2112373 Dt 12.02.2024 filed by M/s Shivam Clearing Agency (Mumbai) Pvt Ltd. On the basis of the parameters given by CRCL lab, the goods are actually Gas Oil which is correctly classified under CTH 27101941. Do you agree that the GAS oil imported in consignment covered under Bill of Entry no 2112373 Dt 12.02.2024 imported by M/S Ocean Green Energy is correctly classifiable under CTH 27101941 and not 27101990?

Answer: In view of the conclusion made as per the parameters given by CRCL report, I agree that the correct classification of the oil in the consignment

covered under Bill of Entry no 2112373 Dt 12.02.2024 should be under CTH 27101941. The declaration of the item made in the bill of entry is also incorrect and wrong.

- Question 22: Please take cognizance of your reply to the question no 20 and 21 above and state whether the goods declared in the Bills of entries were mis-declared.

Answer: I agree that the goods identified by the labs and the one declared in the Bills of entry are different. However, I wish to submit that the declaration and classification in the bill of entry was made on the basis of the documents and information provided by importer.

- Question 22: Please take cognizance of the reply to question no 22 above. The items identified by the lab comprising the consignments and classifiable under the said headings are not freely importable as they are restricted in nature and can only be imported by STEs (State Trading Enterprises). Then why Bill of Entry has been filed by way of misdeclaration for restricted items.

Answer: I again submit that the Bill of entry was filed on the basis of documents and information provided by the importer in which the CTH was already mentioned and declared in the invoice of the supplier. The issue of mis-declaration can only be explained by the importer and the supplier.

12. And whereas, investigation and other proceedings of the case could not be completed within stipulated period of six months, an extension of further six months was sought from the Competent Authority which was accordingly granted vide letter dated 14.08.2024 (**RUD-12**).

13. Further, in view of the Test Reports, it appeared that the imported goods were mis-declared as "Mixed Hydrocarbon Oil" and mis-classified under CTH: 27101990 instead of CTH: 27101944 by the importer with the intent of importing "Automotive diesel fuel conforming to IS 1460" which are restricted commodities and can be imported by STEs only as per the import policy as brought out above. As a result, it seems that they attempted to import the restricted commodities by mis-declaring the same. Consequently, the imports made by the importer under 2112175 Dt. 12.02.2024 appeared to be illicit and in gross violation of the relevant provisions of the Foreign Trade Policy 2023, the Import Policy conditions, and the Customs Act of 1962. Therefore, the goods imported under the aforementioned Bills of Entry at Mundra Port seemed liable for confiscation under the provisions of Section 111(d), (f), (l), and (m) of the Customs Act, 1962. As a result, the consignments were seized vide Seizure memos as detailed below:

S.No	Bill Of Entry No and Date	Seizure memo DIN no.	Seizure date
1	2112175 Dt. 12.02.2024	202409DDZ8000000D86D (RUD-13)	13.09.2024

14. LEGAL PROVISIONS

14.1 From the foregoing it appears that the goods in the instant case, Automotive Diesel Fuel is correctly classifiable under CTH 2710 1944,. The relevant portion of the Customs tariff head 2710 reads as under:

SECTION-V

CHAPTER-27

(1)	(2)	Policy	Remarks
2710	Petroleum oils and oils obtained from bituminous minerals, (other than crude) preparations not elsewhere specified or included,		

		containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations other than those containing bio-diesel and other than waste oils		
		Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils:		
2710 19	--	Other :		
27101944	---	Gas oil and oils obtained from gas oil: ---- Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460	State trading enterprises	Import as per policy conditions (5) of Chapter 27

14.2 Policy Conditions of Chapter 27:

- (1) -----.
- (2) -----.
- (3) -----.
- (4) -----.
- (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&NG's Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date.*

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

Powers to make provisions relating to imports and exports. –

- (1) -----.
- (2) *The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.*
- (3) *All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.*

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

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

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*

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

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

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

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

"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with ;

14.8 Section 2(39) of the Customs Act'1962-

"smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

14.9 Section 17 of the Customs Act, 1962:

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

(2)

(3)

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

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

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

(4A) The importer who presents a bill of entry shall ensure the following, namely: -

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

14.11. Section 112 of the Customs Act, 1962 :

Penalty for improper importation of goods, etc.- Any person, - (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest"

14.12. Section 114AA of the Customs Act, 1962 – Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

14.13 Section 3 of the Petroleum Act, 1934

Import, transport and storage of petroleum.—(1) No one shall import, transport or store any petroleum save in accordance with the rules made under section 4. (2) Save in accordance with the conditions of any licence for the purpose which he may be required to obtain by rules made under section 4, no one shall import petroleum Class A, and no one shall transport or store any petroleum.

14.14 Section 4 of the Petroleum Act, 1934 Rules for the import, transport and storage of petroleum—

The Central Government may make rules—

a) prescribing places where petroleum may be imported and prohibiting its import elsewhere;

b) regulating the import of petroleum;

c) prescribing the periods within which licences for the import of petroleum Class A shall be applied for, and providing for the disposal, by confiscation or otherwise, of any [petroleum Class A] in respect of which a licence has not been applied for within the prescribed period or has been refused and which has not been exported;

d) regulating the transport of petroleum;

e) specifying the nature and condition of all receptacles and pipe-lines in which petroleum may be transported;

- f) regulating the places at which and prescribing the conditions subject to which petroleum may be stored;
- g) specifying the nature, situation and condition of all receptacles in which petroleum may be stored;
- h) prescribing the form and conditions of licences for the import of 5 [petroleum Class A], and for the transport or storages of any petroleum, the manner in which applications for such licences shall be made, the authorities which may grant such licences and the fees which may be charged for such licences;
- i) determining in any class of cases whether a licence for the transport of petroleum shall be obtained by the consignor, consignee or carrier;
- j) providing for the granting of combined licences for the import, transport and storage of petroleum, or for any two of such purposes;
- k) prescribing the proportion in which any specified poisonous substance may be added to petroleum, and prohibiting the import, transport or storage of petroleum in which the proportion of any specified poisonous substance exceeds the prescribed proportion; and
- l) generally, providing for any matter which in its opinion is expedient for proper control over the import, transport and storage of petroleum including the charging of fees for any services rendered in connection with the import, transport and storage of petroleum.

14.15 Rule 4 of Petroleum Rules, 2002: Approval of containers. –

- (1) Containers exceeding one litre in capacity for petroleum Class A and five litres in capacity for petroleum Class B or petroleum class C, shall be of a type approved by the Chief Controller.
- (2) Where the approval of the Chief Controller is sought to a type of container not previously approved, an application together with copies of drawings thereof to scale showing the design, materials to be used, the method of construction and capacity of the container together with two samples containers and a fee of rupees one thousand for scrutiny shall be submitted to the Chief Controller.
- (3) Nothing in sub-rules (1) and (2) shall apply to containers in the possession of the Defence Forces of the Union.

14.16 Rule 6 of Petroleum Rules, 2002: Containers for petroleum Class B and Class C

- (1) Containers for petroleum class B or petroleum class C shall be constructed of steel or iron and be of a type approved by the Chief Controller.
- (2) An air space of not less than 5 percent of its capacity shall be kept in each container for petroleum Class B and not less than 3 percent of its capacity in each container for petroleum Class C.
- (3) Nothing in this rule shall apply to containers in the possession of the Defence Forces of the Union.

14.17 Rule 25 of Petroleum Act, 2002: Petroleum to be imported by land only at authorized places.

No petroleum shall be imported into India by land except at places specially authorized for the purpose by the Central Government.

14.18 Rule 30 of Petroleum Act, 2002: Restriction on passengers, combustible and inflammable cargo –

Save as provided in rules 38, 39 and 52 and clause, (b) of rule 60, no ship, vessel or vehicle shall carry petroleum Class A or petroleum Class B and Class C in bulk if it is carrying passengers or any combustible cargo other

than petroleum: Provided that nothing in this rule shall prohibit the use of dunnage for packing purposes in the case of coastwise transport of petroleum Class A otherwise than in bulk.

14.19 Rule 35: Tank fittings on ships or vessels. -

The following provisions shall apply for the transport of petroleum other than petroleum Class C in ship or other vessels, namely: -

- (a) All tanks shall be fitted with independent approved filling and suction pipes and valves, or with stand pipes with blank flanges, all pipes being carried down nearly to the bottom of the tanks, and no petroleum in bulk shall be taken on board or discharged except through such pipes and valves, unless otherwise permitted by the Chief Controller in writing;
- (b) All tanks shall be fitted with manholes having screw-down cover with petroleum-tight joints and, in the case of tanks intended for use with petroleum class A, with ventilators or relief valves of approved pattern properly protected with wire gauge of a mesh not less than 11 meshes to linear centimeter; and
- (c) Ventilators similarly protected shall be fitted to all spaces, around tanks.

15. Discussion and Findings:

Whereas it appears from the foregoing paras that:

- (i) As per condition No.5 of Import Policy of Chapter 27, the import of Automotive Diesel Fuel which was imported by M/s Mahakali Eco Energy Trading in the consignment seized by DRI, by way of mis-declaration, is allowed only through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before the said date. Thus it is evident that the said goods are not freely importable but can be imported only by State Trading Enterprises such as IOCL, HPCL, BPCL and IBP.
- (ii) M/s Mahakali Eco Energy appeared to be well aware about the said restriction imposed by the Policy. As such it appears that in order to circumvent the said provision, in collusion with the CHA namely M/s Shivam Clearing Agency (Mumbai) Pvt Ltd along, as well as Overseas Suppliers namely M/s Petro Global FZE Dubai devised a modus operandi to import Automotive Diesel Fuel - (restricted commodity), in the garb of importing freely importable goods.
- (iii) In accordance with the said modus operandi, the importer resorted to the import of Automotive Diesel Fuel by declaring the same as "Mixed Hydrocarbon Oil (MHO)". They classified the said goods i.e "Mixed Hydrocarbon Oil (MHO)" under Customs Tariff Heading (CTH) 27101990 which pertains to "Others" where no restriction was prescribed in the Import Policy. In accordance with said modus operandi, the suppliers namely M/s Petro Global FZE in Dubai appear to have deliberately declared the said goods in the import documents viz invoices and the corresponding packing list as "Mixed Hydrocarbon Oil (MHO)".
- (iv) It appears that on the basis of fudged and fabricated documents namely invoice, Packing List etc, the Importer namely M/s Mahakali Eco Energy filed Bill of Entries wherein they declared the goods as "Mixed Hydrocarbon Oil (MHO)" and classified the same under Chapter Heading 27101990 wherein no restriction was in force in terms of the Import Policy.

- (v) It further appears that M/s Mahakali Eco Energy all along were aware of the fact that the items which they sought to import actually were restricted items and as such they were not eligible to import the Automotive Diesel Fuel. The documents were manipulated so that the same could be cleared on the basis of the mis-declaration and misclassification of the goods with the Customs at Mundra Port.
- (vi) During the course of the investigations, M/s Mahakali Eco Energy as well as their related entities involved in the case, were asked to submit supporting and related relevant documents, like buyer seller agreement, details of refinery/oil firm from where the consignment originated, copies of communication made with the supplier, copies of export declaration form filed in the supplier country etc pertaining to the said consignments vide summons issued to them. The said documents were called for as they would have enabled the identification of the commodity imported by M/s Mahakali Eco Energy in the consignment under investigation. It appears that the documents were deliberately not submitted by them so as to prevent the identification of the commodity by the Officers of the DRI.
- (vii) In order to ascertain the exact nature of the goods and to confirm the identity, samples were drawn from the consignment which were sent to Government Lab namely CRCL, Vizag. The parameters of the test conducted by the Lab clearly suggest that the commodity covered under the consignments pertaining to the importer as declared in the import documents and the Bill of Entry were different and not as per the import documents filed by the importer. The parameters of the samples drawn from the consignments covered under BEs 2112175 Dt. 12.02.2024 on being tested and analysed, indicate that all the parameters conform to the specification of IS:1460 which pertains to Automotive Diesel Fuel. As there is no deviation in all the parameters as mentioned in the Test reports vis-a vis parameters prescribed under IS:16861, there appears to be no doubt about the identity of the said commodity.
- (viii) The commodity sought to be actually imported viz, Automotive Diesel Fuel under the subject consignments find specific mention in different tariff Item and not the tariff Item in which they were declared in the import documents i.e 27101990 which does not lay down any restriction if the goods are covered under the said CTH and are classified accordingly. It appears that the item has been given description Mixed Hydrocarbon Oil so that the same can be classified in the category of Chapter Heading 27101990 pertaining to others deliberately where there is no restriction in the import of commodities falling in the said category of the Customs Tariff Act'1985.
- (ix) The importer failed to provide any document to substantiate the chemical composition/constituent if any of Mixed Hydrocarbon Oil. It appears that the misclassification was done deliberately so as to mislead the department. The correct classification is 27101944 pertaining to "Automotive diesel Fuel as per IS 1460". The act of mis-declaration and misclassification leading to import of restricted goods namely Automotive Diesel Fuel has been categorically accepted and acknowledged in their respective voluntary statements by M/s Mahakali Eco Energy and the CHA M/s Shivam Clearing Agency (Mumbai) Pvt Ltd.
- (x) M/s Mahakali Eco Energy are not an STE entity and hence they are not eligible to import the said restricted goods. Therefore they appeared to

resort to the act of mis-declaration and mis-classification so as to import the said restricted goods.

(xi) M/s Mahakali Eco Energy failed to submit any document in support of the item Mixed Hydrocarbon Oil declared by the supplier in the import documents and Bills of Entry filed by M/s M/s Shivam Clearing Agency (Mumbai) Pvt Ltd. Even subsequently during the course of the investigations after the containers were put on hold, till date they have not been able to submit any such document to substantiate the identity of the goods in accordance with declaration in Invoice & Packing list as well as bill of entry.

(xii) M/s Mahakali Eco Energy failed to provide specific use of the item "Mixed Hydrocarbon Oil". On being asked in his voluntary statement tendered under Section 108 of the Customs Act'1962 whether he was aware about the parameters/specifications of the MHO,Shri Ashutosh Pangavane, Partner of M/s Mahakali Eco Energy,replied that he is unaware of the specification.He also failed to provide information about the specific industry which used the Mix/Mixed Hydrocarbon Oil. Further, he could not state anything about the parameters /specification of Mixed Hydrocarbon Oil. Further even the CHA could not give any information about the use of the Mixed Hydrocarbon Oil. This suggests that they were not aware about the use of the said commodity i.e "Mixed Hydrocarbon Oil" as the same was not intended to be imported actually in the containers put on hold and subsequently examined by the Officers of the DRI.

(xiii) The party also appear to have violated the provisions of Petroleum Act, 1934. The goods were imported in gross violation of the said provisions. The Petroleum Act, 1934, classifies petroleum products into 3 categories based on their flash points as detailed below:

S.No	Petroleum products Class	Flash Point
1	Class A	Below 23°C (73°F)
2	Class B	Between 23°C and 65°C (73°F to 149°F)
3	Class C	Between 65°C and 93°C (149°F to 200°F)

Further, as per the test reports the goods in question here fall under the "Class B" category of petroleum products as per the Petroleum Act 1934. Class B petroleum products are hazardous, and their import, storage, and transport are strictly regulated. Now to import the class B category of petroleum products an Importer has to follow certain rules and require certain certifications as discussed below:

1. *Class B petroleum products must be handled with proper care due to their flammable nature. The Petroleum Act and the Petroleum Rules, 2002, mandate the use of appropriate containers for the storage and transport of such products. Flexi bags are not suitable for carrying Class B petroleum products because they do not meet the stringent safety standards for the containment of flammable liquids. Containers used for storing and transporting Class B petroleum must be certified as per PESO standards and must be explosion-proof and fire-resistant to prevent any accidental ignition. The use of Flexi bags, which are typically not compliant with these safety norms, violates this requirement.*
2. *Any importer dealing with Class B petroleum products must have requisite licenses and approvals, such as an import license from the Petroleum and Explosives Safety Organization (PESO).*

By importing restricted Class B petroleum in Flexi bags in total disregard of the safety norms which could lead to serious mishaps, it appears that M/s Mahakali Eco Energy, in the greed for earning illicit profits have put the public and the environment at great risk.

(xiv) Shri Ashutosh Pangavane, Partner of M/s Mahakali Eco Energy, on being shown the Test Reports and the parameters mentioned therein has accepted the conclusions and findings of the Test Reports of CRCL. He has also accepted that the consignments were mis-declared and misclassified. On the basis of the conclusions of the Test Reports he agreed that the respective consignments comprised of Automotive Diesel Fuel as suggested in the said Test Report. However he has sought to shift the onus and blame for mis-declaration upon the supplier and has claimed that the issue of the mis-declaration can be explained by the supplier. He has sought to project his innocence in the case which however was not the case. The fact that the importer has not produced any document from the supplier or the supplier has not issued any clarification till date, suggests that the consignment was as per the orders placed by M/s Mahakali Eco Energy.

(xv) The provisions of Section 17 (1) of the Customs Act, 1962 read with Section 2 (2) of the Customs Act and CBIC Circular No. 17/2011- Customs dated 08.04.2011 lay down onus on the importer and the CHAs to determine duty, classification etc. by way of self-assessment. The importer at the time of self-assessment is required to ensure that he declared the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. By furnishing incorrect and wrong information in the import documents, it appears that M/s Mahakali Eco Energy and the CHA M/s Shivam Clearing Agency (Mumbai) Pvt Ltd appear to have violated the provisions of the said Section 17(1) read with Section 2(2) of the Customs Act'1962.

(xvi) In terms of Section 46(4) of the Customs Act, 1962, the importer has to certify the truth of the contents of the Bills of Entry. Further, in terms of Section 46 (4A) of the Customs Act, 1962, the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein; shall ensure the authenticity and validity of any document supporting it; and shall ensure compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force. In the instant case it appears that the importer was fully aware of the actual goods imported by them. Also on being shown the Test Reports, Shri Ashutosh Pangavane, Partner of M/s Mahakali Eco Energy has accepted that they had mis-declared the description imported under subject bills of entry before the custom authorities in his voluntary statement. Thus, in view of the facts discussed in the foregoing paras and material evidences available on records, it appears that the importer has contravened the provisions of Section 46(4) and 46(4A) of the Customs Act, 1962, in as much as they had intentionally mis-declared the description of the goods imported by them with a malafide intention to import a restricted good under the garb and guise of a freely importable good.

(xvii) Further, by attempting to import restricted goods, the importer- M/s Mahakali Eco Energy appear to have indulged in the act of smuggling as

defined under Section 2(39) of the Customs act'1962. With the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was the obligatory on their part to declare the actual description and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. Therefore, by not disclosing the true and correct facts to the proper officer, at the time of filing of Bill of Entry for the respective consignment, the importer appears to have indulged in mis-declaration and mis-classification by way of suppression of facts and willfully mis-declared and mis-classified the imported goods with intent to import restricted goods. Thus, the importer appears to have contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods.

(xviii) The facts and the investigations have revealed that the CHAs- M/s Shivam Clearing Agency (Mumbai) Pvt Ltd was actively involved in facilitating and assisting the customs clearance of the restricted goods namely Automotive Diesel Fuel in the garb of Mixed Hydrocarbon Oil. The CHA appear to have failed to fulfil the following obligations as prescribed under Regulation 10 of Customs Broker Licensing Regulation 2018-

- (d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;
- (e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;
- (q) co-operate with the Customs authorities

M/s Shivam Clearing Agency (Mumbai) Pvt Ltd appear to have not advised their client as obligated vide obligation (d) of the Regulation 10 to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof. They further did not bring the violations and contraventions of the import of restricted goods by way of mis-declaration and mis-classification to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs as required under the Regulation. They did not advise them against importing restricted commodities by way misclassification and mis-declaration in flexi bags in violation of the provisions of the Customs Act'1962 and the Petroleum Act'1934. M/s Shivam Clearing Agency (Mumbai) Pvt Ltd appear to also have violated the obligation (e) as they did not exercise due diligence to ascertain the correctness of the details and documents provided by the importer for filing of bill of entries. They have been found to be in the business of customs clearance for a considerable period of time yet they did not ask for any proper chemical/analysis report from the importer in support of the details and the description filed by them in the Bills of Entry in respect of the goods sought to be imported under vide the consignments under investigation. M/s Shivam Clearing Agency (Mumbai) Pvt Ltd also did not co-operate with the Customs authorities as provided under obligation (q) of the Regulation 10 of the CBLR. During the course of the investigations they did not disclose vital information relating to the case

on their own. However, on being shown the relevant documents subsequently they have accepted the Lab Reports and have also accepted that the consignments were mis-declared and misclassified in their voluntary statements.

Thus the CHA- Shivam Clearing Agency (Mumbai) Pvt Ltd appear to have acted in tandem with the importer- M/S Mahakali Eco Energy in the illicit and illegal import of the restricted commodity. They have attempted to project their innocence in the case by stating that they filed import documents on the basis of the documents provided by the importer but considering the goods and the Chapter of the goods they had the responsibility of ensuring that the importer does not indulge in the illicit act of smuggling of restricted commodities or violate the provisions of Customs Act'1962 which rested on their shoulders in accordance with the obligations laid down in Regulation 10 of the Customs Broker Licensing Regulation 2018. But they have been found to have not observed and complied with the obligations prescribed under the Customs Broker Licensing Regulation 2018.

(xix) The consignments consisting of 10 containers pertaining to one BE appears to be imported by way of mis-declaration and mis-classification as Mixed Hydrocarbon Oil in the manner as discussed above in contravention of Section 17 (1), Section 46(4) and 46(4A) ,and appears liable for confiscation in terms of Section 111(d), (f), (l) and (m) of Customs Act, 1962. Further, Shri Ashutosh Pangavane, Partner of M/s Mahakali Eco Energy, M/s Mahakali Eco Energy, M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd and Shri Ranjit Behera S/o Shri Benu Behera Branch Manager of M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd, for their respective roles in the instant case appear to have rendered themselves liable for imposition of penalty under Section 112 (a) or (b), and 114 AA of the Customs Act'1962.

15. ROLE PLAYED BY THE ENTITIES IN THE CASE:

A. Role played by the Importer- M/S Mahakali Eco Energy:

Whereas it appears that M/S Mahakali Eco Energy deliberately resorted to illicit import of restricted goods (Automotive Diesel Fuel) under the guise of "Mixed Hydrocarbon Oil (MHO)" to bypass import restrictions applicable to non-State Trading Enterprises (STEs). They misused Customs Tariff Heading 27101990 ("Others") to declare the goods as freely importable. M/s Mahakali Eco Energy colluded with supplier- M/s Petro Global FZE to submit falsified invoices, packing lists etc, that misrepresented the true nature of the goods. They further failed to declare the correct classification and description of goods during self-assessment under Section 17(1) of the Customs Act, 1962. and provided inaccurate and incomplete information in the Bills of Entry thereby violating Sections 46(4) and 46(4A) of the Customs Act, 1962. It appears that M/s Mahakali Eco Energy were fully aware that the imported items were restricted commodities (Automotive Diesel Fuel) and not "Mixed Hydrocarbon Oil," as evidenced by voluntary statements. They appear to have deliberately withheld key documents, including buyer-seller agreements and export declarations, to prevent the identification of the goods. The mis-declared goods namely Automotive Diesel Fuel have been categorized as hazardous Class B petroleum products (Automotive Diesel Fuel) but were imported in unsafe Flexi bags, violating and compromising safety norms mandated by the Petroleum Rules, 2002. The misdeeds and

malafide acts of M/s Mahakali Eco Energy appear to be confirmed from the fact that they accepted the findings of the lab tests conducted by CRCL, which confirmed the goods as Automotive Diesel Fuel. They have attempted to pass the responsibility for their malafide act of importing restricted goods on the shoulders of the supplier. The illicit acts of M/s Mahakali Eco Energy which include misdeclaration, misclassification, and illegal importation of restricted petroleum products appear to violate multiple provisions of the Customs Act, 1962, the Foreign Trade Policy, and the Petroleum Act, 1934 for financial gain. The illicit import of the said restricted goods viz Automotive Diesel Fuel amounts to act of smuggling as defined under Section 2(39) of the Customs Act'1962. Thus, for their acts of omission and commission in the case borne out by the investigation, M/s Mahakali Eco Energy appear to have rendered themselves liable for penalty under the provisions of Sections 112 (a) or (b) and 114 AA of the Customs Act'1962.

B. Role played by the Shri Ashutosh Pangavane partner of M/s Mahakali Eco Energy

Shri Ashutosh Pangavane has been found to be one of the partners of the firm – M/s Mahakali Eco Energy. He has been found to be the active partner who appears to be actively involved in managing the affairs of the firm. He appears to be fully aware that the imported goods were restricted commodity (Automotive Diesel Fuel) and intentionally mis-declared them as "Mixed Hydrocarbon Oil (MHO)" to bypass import restrictions imposed by the Customs Tariff and Foreign Trade Policy. He appears to have deliberately failed to provide relevant supporting documents, including buyer-seller agreements, export declarations, or specific uses of the purported "Mixed Hydrocarbon Oil," . This further appears to substantiate the charge of consciously importing restricted goods in the guise of mis-declared goods. As a partner of the firm who was responsible for ensuring compliance, Shri Ashutosh Pangavane failed to declare the actual description, classification, and applicable duty of the imported goods, thereby violating the provisions of Section 17(1) of the Customs Act, 1962. Shri Ashutosh Pangavane admitted to the findings of CRCL lab tests that identified the goods as Automotive Diesel Fuel but attempted to shift blame onto the shoulders of the suppliers. He failed to ensure compliance of licensing and safety requirements mandated for handling Class B petroleum products. He withheld vital documents and information during the investigation to prevent the identification of the true nature of the goods. As a key decision-maker, Shri Ashutosh Pangavane knowingly engaged in acts that meet the definition of smuggling under Section 2(39) of the Customs Act, 1962, and appears to have thereby rendered himself liable for penalty under the provisions of Sections 112 (a) or (b) and 114 AA of the Customs Act'1962.

C. Role played by the CHA- M/s Shivam Clearing Agency (Mumbai) Pvt Ltd

Similarly, it appears that M/s Shivam Clearing Agency (Mumbai) Pvt Ltd the CHA of the Importer-M/s Mahakali Eco Energy was also equally involved in the illicit import of the restricted goods namely restricted items (Automotive Diesel Fuel) under the guise of freely importable goods labelled as "Mixed Hydrocarbon Oil (MHO)." As a Customs House Agent, they did not advise M/s Mahakali Eco Energy to comply with the applicable laws under the Customs Act, 1962, and the Petroleum Act, 1934. They similarly allowed misclassification and misdeclaration of restricted petroleum products as "Mixed Hydrocarbon Oil (MHO)." M/s Shivam Clearing Agency (Mumbai) Pvt Ltd failed to exercise due diligence and did not verify the accuracy and the authenticity of import documents, including invoices and packing list. This becomes more

important and critical in view of the kind of goods being imported. M/s Shivam Clearing Agency (Mumbai) Pvt Ltd appear to have filed false/fabricated documents, enabling the import of restricted petroleum products in unsafe Flexi bags, violating the Petroleum Act, 1934, and Customs Act, 1962. For their acts of omission and commission in the case borne out by the investigation, which amounts to smuggling in accordance with Section 2(39) of the Customs Act'1962, M/s Mahakali Eco Energy appeared to have rendered themselves for penalty under the provisions of Sections 112 (a) or (b) and 114 AA of the Customs Act'1962

D. Role Played by Shri Ranjit Behera Manager of M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd

Shri Ranjit Behera has been found to be working in the capacity of Manager of M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. In his voluntary statement tendered under Section 108 of the Customs Act'192, he has stated that he is managing customs clearance work to various importers on behalf of M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd at Mundra Port. Thus he is in a key and important position in the firm. He appears to have not discharged his responsibility properly and thus appears to have facilitated the illicit import of restricted goods by M/s Mahakali Eco Energy. As he has himself submitted that he was looking after documentation, he appears to have not exercised due diligence while scrutinizing and thereafter filing of the Bills of Entry. He also appears to have played a role in the mis-classification of the goods under the category of "Others" of Chapter 2710. He should have refrained and advised M/S Mahakali Eco Energy from indulging in illicit and illegal import of the restricted goods. For his failure to discharge his duties responsibly and in accordance with the obligations laid down in the Regulation 10 of Customs Broker Licensing Regulation 2018, Shri Ranjit Behera appears to have rendered himself liable for penalty under the provisions of Sections 112 (a) or (b) and 114 AA of the Customs Act'1962 for his role in the in the case as discussed supra.

16. Now therefore M/s. Mahakali Eco Energy(IEC-ABRFM4489P) D-94, Near Bali Mandir, Agra Road, Hanuman, Nagar, Panchavati, Nashik, Maharashtra, 422003 are hereby called upon to show cause in writing to the Additional Commissioner of Customs, 5B, Port User Building, Mundra Port, Mundra, Gujarat – 370421 as to why:-

- (i) The declared classification of the impugned goods i.e. Automotive Diesel Fuel conforming to IS 1460 having total quantity 194.190 mis-declared as Mixed Hydrocarbon Oil under Customs Tariff Item 27101990 under Bill of Entry no. 2112175 Dt. 12.02.2024 should not be rejected and re-classified under the Customs Tariff Item 27101944.
- (ii) Automotive Diesel Fuel conforming to IS 1460 sought to be imported by them in 10 containers pertaining to one BOE having declared value of **Rs.1,32,77,023/-** (One crore Thirty Two Lakhs, Seventy Seven Thousand and twenty three only) seized under Section 110 of the Customs Act'1962 vide Seizure Memorandums dated 13.09.2024 lying seized at Mundra Port should not be confiscated under Sections 111(d), (f), (l)& (m) of the Customs Act'1962.
- (iii) Penalty should not be imposed upon them under Section 112(a) and/or 112(b) and/or 114AA of the Customs Act'1962.

17. Now therefore Shri Ashutosh Pangavane partner of M/s Mahakali Eco Energy(Plot no 6/A Siddharth Nagar, Baroi, Kachchh, Gujarat-370421) is hereby called upon to show cause in writing to the Additional Commissioner of Customs, 5B, Port User Building, Mundra Port, Mundra, Gujarat-370421as to why penalty should not be imposed upon him under Section

112 (a) or (b) and 114 AA of the Customs Act'1962, for their role in the illicit import of restricted commodity namely Automotive Diesel Fuel in the manner as discussed above.

18. Now therefore M/s Shivam Clearing Agency (Mumbai) Pvt Ltd,Customs House Agent-CHA (Plot, o 176 Ward 4A Adipur, Kachchh, Gujarat) are hereby called upon to show cause in writing to the Additional Commissioner of Customs, 5B, Port User Building, Mundra Port, Mundra, Gujarat – 370421as to why penalty should not be imposed upon them under Section 112 (a) or (b) and 114 AA of the Customs Act'1962,for their role in the illicit import of restricted commodity namely Automotive Diesel Fuel in the manner as discussed above.

19. Now therefore Shri Ranjit Behera, Branch Manager of M/s Shivam Clearing Agency (Mumbai) Pvt Ltd- CHA, (Plot No 6/A Siddharth Nagar, Baroi, Kachchh, Gujarat- 370421), is hereby called upon to show cause in writing to the Additional Commissioner of Customs, 5B, Port User Building, Mundra Port, Mundra, Gujarat – 370421for his act and omission as discussed above, as to why penalty should not be imposed upon him under Section 112(a) and/or 112(b) and/or 114AA of the Customs Act'1962.

20. The Noticees should state in their written reply to this notice to the Adjudicating Authority i.e. the Additional Commissioner of Customs, 5B, Port User Building, Mundra Port, Mundra, Gujarat – 370421 as to whether they desire to be heard in person. If no reply to this notice is received from them within 30 days from the date of receipt of this notice or if they fail to appear for the personal hearing on the date and time intimated to them, the case is liable to be decided ex parte on the basis of evidences available on record without any further reference to them

21. The Noticees has an option to make an application under Section 127(B) of the Customs Act, 1962 prior to adjudication of this case, to the Settlement Commission to have the case settled, in such form and in such manner, specified in the rules and also inform the same to the Adjudicating Authority

22. The copies of the documents relied upon in this Show Cause Notice are enclosed.

23. The Department reserves its rights to add, alter, amend, modify or supplement this Show Cause Notice at any time on the basis of any evidence, material facts related to import of goods in question and/or persons who could not be traced out during the investigation, which may come to the notice of the department after issuance of this notice and prior to the adjudication of the case. This Show Cause Notice is issued under Section 124 of Customs Act, 1962 without prejudice to any other action that may be taken against the persons / firms mentioned herein above or any other person under the Customs Act, 1962 or any other law for the time being in force in India.

24. A copy of the Show Cause Notice is also transmitted to the noticees at their e-mail-id as under in terms of clause(c) of sub-section 1 of section 153 of the Customs Act, 1962, so that such service through e-mail shall be deemed to have been received by the noticees in terms of clause (c) of sub-section 1 of section 153 of the Customs Act, 1962.

S. No.	Name of the Noticee	Email-id
1.	M/s Mahakali Eco Energy	Mahakaliecoenergy@gmail.com

2.	Shri Ashutosh Pangavane partner of M/s Mahakali Eco Energy	
3.	M/s Shivam Clearing Agency (Mumbai) Pvt Ltd	
4.	Shri Ranjit Behera, Branch Manager of M/s Shivam Clearing Agency (Mumbai) Pvt Ltd	<u>mcamundra@gmail.com</u> / <u>thavi.shivam@gmail.com</u>

Encl: RUDs of the SCN.

AMIT KUMAR MISHRA
(Amit Kumar Mishra)
Additional Commissioner,
Custom House, Mundra.

F. No.: VIII/48-03/ADJ/ADC/MCH/24-25

Date: 13-02-2025

DIN: 20250271MO000000E9A2

To,

- 1. M/S Mahakali Eco Energy, (IEC- ABRFM4489P)**
D-94, Near Bali Mandir, Agra Road,
Hanuman Nagar, Panchavati,
Nashik, Maharashtra, 422003
- 2. Ashutosh Pangavane partner of M/s Mahakali Eco Energy**
Plot no 6/A Siddharth Nagar,
Baroi, Kachchh, Gujarat-370421
- 3. M/s Shivam Clearing Agency (Mumbai) Pvt Ltd ,**
Address 1: Plot No 176 Ward 4A Adipur,
Kachchh Gujrnat-370205
Address 2: Room no 411, Sangharsh Sadan, FER Bandar,
Mumbai Maharashtra-400027
- 4. Shri Ranjit Behera,**
Branch Manager of M/s Shivam Clearing Agency (Mumbai) Pvt Ltd
Plot No 6A Siddharth Nagar,
Baroi, Kachchh Gujarat- 370421

Copy to:

1. The Deputy Director, Directorate of Revenue Intelligence, Noida
2. The Assistant Commissioner, EDI, Customs Mundra **(For uploading on Mundra Customs Website)**
3. Guard File