

DIN:20260271ML000000FB8

 <p>सत्यमेव जयते</p>	<p>आयुक्त, सीमा शुल्क का कार्यालय, OFFICE OF THE COMMISSIONER OF CUSTOMS न्यू कस्टम हाउस, बालाजी मंदिर के पास, न्यू कांडला 370210 NEW CUSTOMS HOUSE, NEAR BALAJI TEMPLE, NEW KANDLA-370210 दूरभास Phone No. 02836-271468-469 फ़ैक्स Fax No 02836-271467 E-mail : commr-cuskandla@nic.in</p>	
---	---	---

A FILE NO.	GEN/ADJ/ADC/15/2021-Adjn-O/o Commr-Cus-Kandla
B OIO NO.	KDL/ADC/VS/12/2025-26
C Passed by	VISHWAJEET SINGH, COMMISSIONER (in-situ), CUSTOMS HOUSE, KANDLA.
D DATE OF ORDER	12.02.2026
E DATE OF ISSUE	12.02.2026
F SCN NUMBER & DATE	SCN F.No. S/15-01/SIIB/Red Cobra/2018-19 dated 27.11.2020
G Noticee / Party / Importer	M/s. Red Cobra Corporation, 124, Model Colony, Yamuna Nagar, Haryana, PIN 135001

1. यह अपील आदेश संबन्धित को निःशुल्क 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),
7^{वीं} मंजिल, मृदुलटावर,टाइम्सऑफ इंडिया के पीछे,आश्रम रोड़,अहमदाबाद-380 009”
“**The Commissioner of Customs (Appeals), Ahmedabad,
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009.**”

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

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

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

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

- i. उक्त अपील की एक प्रति और (A copy of the appeal, and)
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम-1870के मद सं० 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

DIN:20260271ML000000FB8

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 ड्यूटी / 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.

DIN:20260271ML000000FB8

Subject:- SCN F.No. S/15-01/SIIB/Red Cobra/2018-19 dated 27.11.2020 issued to M/s M/s. Red Cobra Corporation i.r.o Bill of Entry No. 8222113 dated 27.09.2018.

BRIEF FACTS OF THE CASE

2. Acting on the intelligence received from DRI, 317 remnant samples of the imported cargo declared as “Industrial Composite Mixture Plus (ICMP)/ Low Aromatic White Spirit (LAWS)” imported by various importers, including M/s Red Cobra Corporation, 124, Model Colony, Yamuna Nagar, Haryana, available with this office were sent to CRCL, New Delhi vide letter F. No. S/15-01/SIIB/2018-19/Part-I dated 24.12.2018 for chemical analysis and testing to ascertain the following points for the imported goods intended for clearance with declaration as ICMP/LAWS, as DRI during their investigation observed that the test reports issued by the Custom House Kandla appears to be influenced and not to be genuine.

“ 2 . (i) whether t h e s a m p l e c o n f i r m s t o d e s c r i p t i o n a n d C h a r a c t e r i s t i c s , S p e c i f i c a t i o n a n d P a r a m e t e r s o f “ **Superior Kerosene Oil** ” a s p e r C u s t o m T a r i f f A c t ,

(i i) i f “ **Superior Kerosene Oil** ” , t h e n p l e a s e s p e c i f y t h e s m o k e p o i n t .

3 . I f t h e s a m e d o e s n o t q u a l i f y a s “ **Industrial Composite Mixture Plus** ” , p l e a s e c o n f i r m w h e t h e r t h e C h a r a c t e r i s t i c s , S p e c i f i c a t i o n s a n d p a r a m e t e r s c o n f i r m s t o M o t o r S p i r i t (C T H 2 7 1 0 1 2) / D i e s e l O i l (C T H 2 7 1 0 1 9 3 0 & 2 7 1 0 1 9 4 0) .

4 . I f n o n e o f t h e a b o v e , p l e a s e c o n f i r m t h e i d e n t i f i c a t i o n o f t h e s a m p l e ”

2.1 From the above, it has come to the notice that some importers were engaged in importing the “Low Aromatic White Spirit (LAWS)” and “Industrial Composite Mixture Plus” (ICMP) by mis-declaring the same and in violation of the Foreign Trade Policy. Accordingly, inquiry was initiated against various importers including one M/s Red Cobra Corporation, 124, Model

Colony, Yamuna Nagar, Haryana (IEC No. AQPPK3420P) (hereinafter also referred to as "Importer").

2.2 The details of the LAWS imported by M/s Red Cobra Corporation, Haryana at Kandla Port is given below:

S. NO.	B/E	B/E Date	Product	Quantity (In MTs)	Assessable value as declared in B/E (in Rs)
1	8222113	27.09.2018	LAWS	107.14	5266557.90

2.3 The Joint Director, CRCL, New Delhi after due testing of remnant samples in respect of the Bill of Entry filed by M/s Red Cobra Corporation, Haryana, as above, submitted report vide letter F.No. 27-Cus/C-32/2018-19 dated 01.05.2019, The Joint Director, CRCL, New Delhi in their above referred test reports opined that the sample conforms to the specification of Kerosene as per IS: 1459:2018 (Fourth Revision) and does not meets the requirements for petroleum Hydrocarbon Solvents as per IS:1745-2018 (Third Revision), in respect of Final Boiling Point.

2.4. The details of the All the Test Reports issued by the Joint Director, CRCL, New Delhi in respect of consignments covered under the Bills of Entry mentioned in the table in Para 2.2 above, are as under:

B/E-8222113 dated 27.09.2018			
S. No.	Characteristics	Specification for Kerosene as per IS:1459-2018	Test Results
	<i>Report</i>		The sample is in the form of colorless oily liquid. It is composed of Mineral Hydrocarbon Oil (More than 70% by weight) possessing the following parameters:
1	<i>Acidity, Inorganic</i>	<i>Nil</i>	Nil
2	<i>Density at 150 degree C Kg/ m3</i>	<i>Not limited but to be reported</i>	791.7
3	<i>Distillation</i>		
	<i>A) Initial boiling point, 0C</i>	-	157
	<i>B) 5% volume distilled, 0C</i>	-	165
	<i>C) 90% volume distilled, 0C</i>	-	219
	<i>D) % Recovered below 2000C, percentage (v/v), Min.</i>	20	75

	E) Final Boiling Point, 0C, Max.	300	260
	F) Dry Point, 0C	-	253
4	Flash Point (Abel), 0C, Min	35	43
5	Smoke Point, mm, Min.	18	23
6	Aromatic Content, % by Volume	-	18
7	Copper strip corrosion for 3h at 500C	Not worse than No.1	Not worse than No.1
8	Kinematic viscosity cSt, At 400C	-	1.27
9	Conclusion		Sample conforms to the specification of Kerosene as per IS 1459:2018 (Fourth Revision). It does not meet the requirements for petroleum Hydrocarbon Solvents as per IS:1745-2018 (Third Revision) in respect of Final Boiling Point.

2.5. The above test reports of the CRCL, New Delhi confirmed that the goods imported under above mentioned Bills of Entry filed by M/s Red Cobra Corporation, Haryana was Kerosene as per IS 1459:2018 (Fourth Revision), which were to be classified under CTH No. 27101910, but the same were cleared from customs by mis-declaring its description as “Low Aromatic White Spirit (LAWS)” by declaring wrong classification thereof under CTH 27101990. The total quantity 107.14 MTs having assessable value as declared under aforesaid Bills of Entry comes to Rs. 5266557.90

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

“(a) Exports and Imports shall be ‘Free’ except when regulated by way of prohibition’, ‘restriction’ or ‘exclusive trading through State Trading Enterprises (STESs)’ as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of ‘Prohibited’, ‘Restricted’, and STE items can be viewed by clicking on ‘Downloads’ at [http // dgft. gov.in](http://dgft.gov.in)

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

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

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

(a) State Trading Enterprises (STEs) are governmental and 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 practices, to compete for participation in such purchases or sales.

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

2.9. Further to the above, the Policy condition (2) prescribed at Schedule I of the ITC (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27 is specified as follows: "(2) Import of SKO shall be allowed through State Trading Enterprises (STES) i.e. IOC, BPCL, HPCL, and IBP for all purposes with STC being nominated as State Trading Enterprises (STE) for supplies to Advance Licence Holders. Advance Licence Holders shall however, have the option to import SKO from the above mentioned STEs including STC."

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

"S. No. STATE-TRADING ENTERPRISES

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

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

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

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

3. During the course of inquiry/investigation with respect to the import of LAWS in the case, statement of Shri Sukhdev Singh Gujral, Authorised Signatory of M/s Red Cobra Corporation, 124, Model Colony, Yamuna Nagar, Haryana was recorded under Section 108 of Customs Act, 1962 on 10.10.2019. In his statement dated 10.10.2019, Shri Sukhdev Singh Gujral inter-alia stated that M/s Red Cobra Corporation, Haryana is engaged in the trading of Bitumen and petroleum products; that the firm had imported one consignment of Low Aromatic White Spirit vide Bill of Entry No. 8222113 dated 27.09.2018 through Kandla Port and submitted documents related to the import; that they had sold said imported LAWS to different customers; that their firm had not purchased Low Aromatic White Spirit; that they do not have any testing facility and rely only on the test report supplied by the supplier; that the import of LAWS is quite problematic as it is supplied in flexi bags which is quite risky as it may leak and hence, they

have stopped import of LAWS; that he met Shri Riyaz of M/s Shree Sanari Shipping who recommended the name of M/s MAT Shipping and hence they appointed M/s MAT Shipping, Gandhidham for the customs clearance of LAWS consignment; that they placed order telephonically for the product and the supplier send the specifications and price of the products available and thereafter the desired product is selected and order was placed;; that they used to send import documents to the CHA for the consignment, on the basis of which they used file Bill of Entry; that CHA decide the Customs Tariff Head (CTH) of the import product to be declared in bill of entry on the basis of import documents forwarded by them; that CHA suggested that the product "Low Aromatic White Spirit" can be classified under the CTH 27101990 and hence the same was classified under the CTH; that they used to send documents and receive checklist for the same, before filing of Bill of Entry; that there was no written contract with supplier

Further, the relevant Question-Answer of the statement dated 10.10.2019 of Shri Sukhdev Singh Gujral is reproduced herein below:

Q.22 Please peruse the following Test Report issued by, CRCL, New Delhi with the details as mentioned below Table:

S. No.	BE No.	BE Date	TM No.	TM Date	LAB Report No./Date	Result
1	8222113	27.09.2018	1035430	27.12.2018	CLR-285/07.05.2019	Kerosene

Please comment.

Answer ; Yes, I hereby peruse me above Test Report issued by CRCL, New Delhi vide TM No. as mentioned in above Table, and put my dated signatures on the test report after perusing and agreeing with the contents of the same. I further state that on going through the said test report, the CRCL, New Delhi has opined that the sample confirms the requirements of Kerosene as specified in IS: 1459:2018. I further state that in the said Test Report, it is also being mentioned that "It does not meet the requirements for Petroleum Hydrocarbon Solvents as per US: 174S-2018 (Third derision) in respect of Final Boiling Point." and the said Test Report shows the product as Kerosene.

Q. 23 Plea:se clarify whether your company/firm is a State Trading Enterprises(STEs) ?

Answer: I state that we are not a State Trading Enterprises(STEs).

Q.24 Please clarify whether your company/firm has been granted Authorization from DGFT to import or export of goods mentioned in Para 2.11 of General Provisions regarding Import and Export under Foreign Trade Policy 2009-2014 ?

Answer: I state that our firm has been granted Importer-Exporter Code AQPPK342OP. No such Authorization has been granted from DGFT to import or export any such goods.

Q.25 As per Para 2. 11 of General Provisions regarding Import and Export under

Foreign Trade Policy 2009-2014:

“2.11 Any goods, import or export of which is governed through exclusive or special privileges granted to STE(s), may be imported or exported by STE(s) as per conditions specified in ITC (HS). DGFT may, however, grant an Authorization to any other person to import or export any of these goods.

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 other than countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchase or sales.”

Answer: I state that we have imported LAWS only. We have not imported any type of Kerosene, etc. I have not done any violation of law and I have not imported any restricted item.”

4. From the documents submitted and facts stated in the statement dated 10.10.2019 by Shri Sukhdev Singh Gujral, Authorised Signatory of M/s Red Cobra Corporation, Haryana, it appears that M/s Red, Cobra Corporation, Haryana had given a job of importing the goods under dispute on their behalf to M/s MAT Shipping, Gandhidham (CHA); that they had handed over the documents to Customs Broker concern for filing of Bills of Entry and to arrange clearance of the goods. On receipt of the documents pertaining to the goods imported, issued by supplier M/s Petrafos Energy DMCC, Dubai, UAE, the Bills of Entry No. 8222113 dated 27.09.2018 was filed by M/s MAT Shipping, Gandhidham, Customs Broker on behalf of M/s Red Cobra Corporation, Haryana and cleared the goods claiming classification under CTH 27101990 and declared the description of goods as Low Aromatic White Spirit weighing 107.14 MT in quantity.

4.1 Further, Shri Sukhdev Singh Gujral, Authorised Signatory of M/s Red Cobra Corporation, Haryana has been shown the test report issued by the CRCL, New Delhi in respect of Bill of Entry No. 8222113 dated 27.09.2018, during recording of his statement dated 10.10.2019 and after going through and perusing and agreeing with the content of the test report dated 30.05.2019 issued by CRCL, New Delhi, he put his dated signatures on the test report and he neither objected the

contents of the report nor produced any document/literature which might show his disagreement with the report.

4.2. On scrutiny of the import documents submitted by Shri Sukhdev Singh Gujral, Authorised Signatory of M/s Red Cobra Corporation, Haryana, it is found that the supplier of the goods had given various documents showing the goods as Low Aromatic White Spirit whereas the test report given by the CRCL, New Delhi had shown the manufactured goods as Kerosene as per IS 1459:2018 (Fourth Revision) correctly classified under CTH No. 27101910.

5. The CRCL, New Delhi in their test report of bills of entry mentioned in Table of para 2.2 (except for Sr. No. 5) has opined that the samples meet the requirements of SKO (Kerosene) as per IS:1459:2018 (Fourth Revision). As per the clarification issued by Bureau of Indian Standards for BIS No: 1745: 2018(Third Revision) it has been clarified that:
 6. *BIS through its technical Committees has published two separate Indian standards for, kerosene and Petroleum Hydrocarbon Solvents, namely IS 1459: 2018 Kerosene - Specification (FourthRevision) and IS 1745: 2018 Petroleum Hydrocarbon Solvents - Specification (Third Revision).*
 7. *IS 1459 prescribes requirements and methods of sampling and test of Kerosene intended for use as an illuminant and as a fuel and IS 1745 prescribes the requirements and the methods of test for Petroleum Hydrocarbon Solvents generally used in solvent extraction of oils, rubber and paint industries, in the formulation of insecticides, for dry cleaning and for textile printing purposes.*
3. The requirements specifically prescribed in IS 1459 for Kerosene only are a) Acidity, inorganic; b) Burning quality; and c) Smoke point and that in IS 1745 Petroleum Hydrocarbon Solvents are a) Initial boiling point; b) Aromatic content; and c) Residue on evaporation.
6. Taking into consideration, the test reports issued by CRCL, New Delhi, it appears that the good imported had been cleared by No. 8222113 dated 27.09.2018vide Bill of Entry No. No. 8222113 dated 27.09.2018, were not “Low Aromatic White Spirit” falling under CTH No. 27101990, as described in the Bills of Entry, but they were Superior Kerosene Oil (SKO), with its correct classification under CTH No. 27101910, and the item falling under said CTH No. 27101910 can be imported by STEs only and it has to be termed as prohibited goods, by virtue of the provisions of Para 2.01 and 2.20 of the Foreign Trade Policy 2015-2020 read with relevant Policy conditions provided in Tariff Item No. 27101910 in the ITC (HS) Classification of Imported goods 2015-2020, if the relevant conditions for its legal import were not complied with by the concerned importer. In the instant case, it appears that the goods were not imported by or through STEs, but it had been negotiated directly by the said importer with the supplier and also not a case of the importer that they were

holding Advance License/Advance Authorization or Special License issued by DGFT for import of SKO. Thus, M/s Red Cobra Corporation, Haryana had imported SKO by mis-declaring its correct description and correct classification and had violated the provisions of Para 2.01 read with Para 2.20 of the Foreign Trade Policy 2015-2020 and consequently, the goods covered by Bills of Entry No. 8222113 dated 27.09.2018, should be treated as "Restricted goods imported without the requisite authorisation under the Foreign Trade Policy" within the meaning of definition provided vide Section 2(33) of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962. Irrespective of all these, it appears from the documents that the goods were described as "Low Aromatic White Spirit" in the respective Invoices and Bills of Entry no. No. 8222113 dated 27.09.2018 filed by M/s Red Cobra Corporation, Haryana. The testing of the goods had revealed that the same were SKO. Thus, there was evident mis-declaration with the sole intention to circumvent the restrictions imposed on its import under the Foreign Trade Policy 2015-2020.

7. Even in the context of the Notification No. 105-Cus dated 06.08.1938, the goods in respect of which the restricting provisions of the Petroleum Act, 1934 and the rules made there under are applicable and where the compliance with those provisions is required from the importer of such goods; if non-compliance is observed on the part of the importer, then the same may have to be treated as contravention of the deemed prohibition imposed on such goods in terms of Section 11 of the Customs Act, 1962. It appears from the facts mentioned hereinabove that since the SKO in the total quantity in possession exceeding the specified quantity falls in the category of "Petroleum Class B" and the import, storage and handling of the products falling under "Petroleum Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). Import of SKO, further to this, if to be considered as classifiable as "Petroleum Class B", then the License issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported which were already in possession of License issued under the Petroleum Rules, 1976. Further for the storage of such "Petroleum Class B" products, statutory provisions have been made, which requires different manner of compliance, if such goods to be stored in Drums and to be stored in tanks. As per Notification No. 105-Cus dated 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962. Since the importer in the instant case has failed to follow such compliance, it appears that they have also violated the provisions of Section 11 of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962.
8. The import of SKO could be permitted through the STEs only and the exception provided were related to (1) The Advance Licenses holders, through the STEs including STC, as per Policy condition (2) of the Chapter 27 of the ITC (HS) Schedule-1, and (2) the Authorization holder, who were granted such authorization by the DGFT in terms of Para 2.20 (c) of the Foreign Trade Policy. In the instant case, in the absence of compliance by the importer with any of the aforesaid statutory obligations, redemption of the goods could not be allowed to the importers on payment of fine and penalties after re-classifying the goods and modifying the CTH No. thereof. Even in the context of the provisions of the Petroleum Act, 1934 (30 of 1934), making the goods liable to

confiscation, redemption of the goods to the importer could not be permitted in the absence of continuation of such non-compliance on the part of the importer.

9. Whereas it appears that though having knowledge about the character of the goods under import, the said importer had imported and cleared the “prohibited goods” & “restricted goods” by willfully mis-declaring its description and custom tariff classification. In terms of Section 46 of the Customs Act, 1962, the importer of any goods is required to declare correct details in the Bill of Entry No. 8222113 dated 27.09.2018 being filed by them, and also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, M/s Red Cobra Corporation, Haryana had filed Bills of Entry No. 8222113 dated 27.09.2018 with incorrect particulars with the sole aim to suppress the correct nature of Cargo, which were otherwise to be considered as prohibited goods, if its correct character was revealed. Therefore, the goods imported by M/s Red Cobra Corporation, Haryana as such, were also liable for confiscation under Section 111(m) of the Customs Act, 1962 and the goods so imported of which test report arrived as SKO were to be treated as ‘smuggled goods’ as defined under Section 2(39) of the Customs Act, 1962.
10. From the facts discussed herein above, it appears that the said importer, in connivance with the exporter cleared the “prohibited goods” & “restricted goods” by intentionally mis-declaring the description and custom tariff classification to the extent of managing and manipulating the import documents like the Commercial Invoice, test results from the Custom House Kandla Laboratory, etc. showing the goods as Low Aromatic White Spirit, though they had all the reasons to believe that the goods being imported were SKO (Kerosene). In terms of Section 46 of the Customs Act, 1962, the importer, for import of any goods, is required to declare correct details in the Bill of Entry No. 8222113 dated 27.09.2018 being filed by them, and also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, the importer M/s Red Cobra Corporation, Haryana had filed Bill of Entry with incorrect particulars with the sole aim to suppress the correct nature of cargo, which were otherwise to be considered as prohibited goods & restricted goods, if its correct character were revealed. Therefore, the goods imported by M/s Red Cobra Corporation, Haryana, were also liable for confiscation under Section 111(d) & (m) of the Customs Act, 1962.
11. From the facts discussed hereinabove, it appears that the importer had declared the description of the goods as “Low Aromatic White Spirit” classified under CTH 27101990 in the Bill of Entry mentioned in the table in para 2.2 whereas they had actually imported the Superior Kerosene Oil (SKO) falling under CTH No. 27101910 falling under CTH 2710 1910 as per the test reports of CRCL, New Delhi as discussed hereinabove in the

guise of "Low Aromatic White Spirit" under CTH No. 27101990 from Kandla Port which were restricted for importation and clearance thereof. The policy conditions stipulate that;

"import of SKO (Kerosene) is subject to Para 2.20 of Foreign Trade Policy and shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL and IBP for all purposes with STC being nominated as a State Trading Enterprise (STE) for supplies to Advance Licence holders. Advance Licence holders shall however, have the option to import SKO from the above mentioned STEs including STC".

Further, the SKO stands classified as "Petroleum Class B" Thus, Goods became liable for confiscation under Section 111 (d) and (m) of the Customs Act, 1962.

11.2. The subject goods imported into India, without providing correct information in the Bill of Entry No. 8222113 dated 27.09.2018, without properly classifying and in contraventions of various provisions of the Customs Act, 1962, which rendered subject goods liable to confiscation as discussed below

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

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

(iii) The subject goods were imported and cleared by mis-declaring the goods as LAWS, in violation of the Provisions of Petroleum Act, 1934 and consequently violating the Notification no. 30 of 1934, which is deemed application under Section 11 of the Customs Act, 1962 & violation of the Provisions of Hazardous and other Waste (Management and Transboundary Movement) Rule 2016. Thus rendering the goods liable to confiscation under Section 111 of the Customs Act, 1962.

12. Accordingly, in the light of the aforesaid facts, M/s Red Cobra Corporation, 124, Model Colony, Yamuna Nagar, Haryana was called upon to show cause to the **Additional** Commissioner of Customs, Kandla Custom House, Kutch, Gujarat as to why:-
- a. the declared description of the subject goods i.e. Low Aromatic White Spirit (LAWS) imported vide Bill of Entry No. 8222113 dated 27.09.2018 should not be rejected and the goods should not be considered as Superior Kerosene Oil (SKO).
 - b. Classification of goods imported vide Bill of Entry No. 8222113 dated

- 27.09.2018 should not be changed from CTH 27101990 to CTH 27101910.
- c. the imported goods i.e. **107.14 MTs** of SKO falling under CTH No. 27101910 mis-declared as Low Aromatic White Spirit under CTH 27101990 in the Bill of Entry No. 8222113 dated 27.09.2018 as discussed in **Para 2.2** to this SCN valued at Rs. **5266557.90/- (Fifty Two Lakhs Sixty Six Thousand Five Hundred and Fifty Seven rupees and Ninety paise only)** should not be held liable for confiscation under provisions of Section 111(d) and 111(m) of the Customs Act, 1962;
- d. Penalty should not be imposed on the importer under Section 112(a), Section 112 (b) (i), Section 114AA & Section 117 of the Customs Act, 1962.

13. **Keeping in Abeyance and Retrieval from Call Book:**

13.1. The adjudicating authority has observed that in one case of M/s. Swarna Oil Services pertains to import of SKO (Superior Kerosene Oil) by mis-declaring the same as Petroleum Hydrocarbon Plus, departmental appeal was pending before the Hon'ble High Court of Gujarat. Accordingly, the competent authority i.e. the then Commissioner, Customs Kandla has accorded permission & approved that the present case qualified to be kept in abeyance in terms of read with Circular No. 162/73/95-CX dated 14.12.1995 and 992/16/2014-CX dated 26.12.2014. The noticee has been informed vide letter dated 12.01.2022 that said SCN has been kept in abeyance with the approval of competent authority.

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

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

WRITTEN SUBMISSION AND PERSONAL HEARING

14. To follow the principles of natural justice, letters dated 24.06.2025, 04.07.2025, 15.07.2025, 14.10.2025, 29.10.2025 and 24.12.2025 were issued to M/s Red Cobra Corporation, 124, Model Colony, Yamuna Nagar, Haryana, The aforesaid Personal Hearing letter dated 24.12.2025 were sent to the email address: redcobracorp@gmail.com. Simultaneously, the said letters were also dispatched through speed post. The five Personal Hearing letters sent through speed post were shown returned back due to the reasons "refused". The Personal Hearing letter dated 24.12.2025 sent through speed post (No. EG195445288IN) was shown as delivered on 06.01.2026. The aforesaid two letters dated 29.10.2025 and 24.12.2025 for P.H. were also affixed on the notice board of the Custom House, Kandla.

The mode of service of notice under the Customs Act, 1962 is specifically provided under Section 153 of the Act.

153. Modes for service of notice order, etc.—(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:— (a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him; (b) **by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;** (c) **by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;** (d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or (e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, **by affixing a copy thereof on the notice board of the office** or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

The Hon'ble Supreme Court in *M/s. Madan and Co. v. Wazir Jaivir Chand*, AIR 1989 SC 630, it was remarked that when the postman is unable to deliver the letter/notice on repeated attempts either on account of the addressee 'not found' not in station, addressee is left or not met' the presumption of service arises as it is not possible for a landlord to ensure that the registered letter/notice sent by him is actually received by the tenant.

This principle has been reaffirmed in *C.C. Alavi Haji v. Palapetty Muhammed and Ajeet Seeds Ltd. v. K. Gopala Krishnaiah*, wherein it was categorically held that when a notice is returned with postal endorsements like "refused", "not claimed", "house locked" or "addressee not in station", due service has to be presumed unless the contrary is proved by the addressee.

Accordingly, even after six consecutive opportunities for Personal Hearing, neither did any person appear for the Personal Hearing nor was any written submission received by this office on behalf of the importer.

DISCUSSION & FINDING

15. I have carefully gone through the Show Cause Notice as well as available of records of the case. Six personal hearing were given on 29.06.2025, 10.07.2025, 21.07.2025, 22.10.2025, 06.11.2025 and 29.12.2025 to the noticee. Before going into the merits of the case, I find that enough opportunities were given to the noticee to attend personal hearing before deciding the case. However, the noticee nor any representative appeared for attending the personal hearing on any scheduled dates. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case ex-parte on the basis of documentary evidences available on records. I further find

that the Show Cause Notice dated 27.11.2020 was duly served upon the noticee in terms of Section 153 of the Customs Act, 1962 and no written reply to the Show Cause Notice has been received.

The points to be decided in the instant case are as to:-

- Whether declared description and classification of imported goods i.e. Low Aromatic White Spirit under CTH 27101990 covered under the Bill of Entry No. No. 8222113 dated 27.09.2018, should not be declared the correct description as SKO instead of Low Aromatic White Spirit and re-classified under the Customs Tariff Heading 27101910 instead of Customs Tariff Heading 27101990.
- Whether the imported goods i.e. 107.14 MTs of SKO falling under CTH No. 27101910 mis-declared as Low Aromatic White Spirit under CTH 27101990 in the Bill of Entry No. 8222113 dated 27.09.2018 by way of Misdeclaration and Misclassification valued at Rs. 5266557.90/- are liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962;

16. The importer M/s Red Cobra Corporation, 124, Model Colony, Yamuna Nagar, Haryana (IEC No. AQPPK3420P)), imported a consignment declared as 'Low Aromatic White Spirit (LAWS)' under Bill of Entry No. 8222113 dated 27.09.2018 at Kandla Port. The declared quantity was 107.14 MTs having an assessable value of Rs. 5266557.90/-. The goods were cleared under CTH 2710 1990. Subsequent investigations by the Directorate of Revenue Intelligence, remnant samples were sent to the Central Revenue Control Laboratory (CRCL), New Delhi, for re-testing.

On perusal of the CRCL test report dated 07.05.2019, I find that the sample conforms to the specifications of Kerosene as per IS:1459-2018, particularly in respect of flash point, smoke point and distillation characteristics. The sample does not meet the requirements of Petroleum Hydrocarbon Solvents under IS:1745-2018 in respect of Final Boiling Point. The distillation range and flash point recorded are consistent with the tariff description of Kerosene falling under CTH 2710 1910. Therefore, the goods are correctly classifiable under CTH 2710 1910 instead of CTH 2710 1990 as declared.

16.3. The CRCL report established that the imported product was Superior Kerosene Oil (SKO) as per IS:1459:2018, which falls under the restricted category as per Foreign Trade Policy 2015-2020 and could only be imported through State Trading Enterprises (STEs) like IOC, BPCL, HPCL, and IBP. The importer was neither an STE nor held any DGFT authorization to import SKO. I also find that during the course of recording of statement of **Shri Sukhdev Singh Gujral, Authorised Signatory of M/s Red Cobra Corporation, Haryana** under Section 108 of the Customs Act, 1962, he had revealed that his firm had placed the import order through M/s Petrafos Energy DMCC, Dubai, UAE, and had cleared the consignment through their CHA, M / s M A T Shipping, Gandhidham. Further, **after perusing the copy of the CRCL Delhi Report dated 07.05.2019 in respect of the goods imported by his firm, he accepted the contents of the CRCL report confirming that the product was Kerosene and admitted that they were not a State Trading Enterprise and held no authorization from DGFT to import SKO.**

16.4 I find that the importer did not possess any authorization from DGFT nor did they act through an STE. Thus, the goods imported are in violation of Para 2.01 and 2.20 of the FTP 2015–2020 and are to be treated as “Prohibited Goods” under Section 2(33) of the Customs Act, 1962. The importation, therefore, is contrary to the prohibitions imposed under the Customs Act and Foreign Trade Policy, rendering the goods liable for confiscation under Section 111(d) of the Customs Act, 1962. However, as the goods have already been cleared and are not physically available for confiscation, I impose a redemption fine of Rs. 5,25,000/- (Rupees Five Lakh Twenty Five Thousand only) under Section 125(1) of the Customs Act, 1962 in lieu of confiscation.

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

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

17. I find that the goods declared in the subject Bill of Entry No. 8222113 dated 27.09.2018 were found to be mis-declared in terms of classification and also there is requirement of authorization from DGFT or an Advance Licence for import of SKO. Since in this case, the condition has not been complied with, the subject goods are liable to be treated as prohibited goods. The Section 111(d) provides for confiscation of goods which are imported /attempted to be imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force. The Section 111(m) provides for confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under this Act. I therefore hold that in absence of authorization from DGFT and intentional mis-declaration & mis-classification of imported goods, the goods covered under Bill of Entry No. 8222113 dated 27.09.2018 valued at Rs. 5266557.90/- (Fifty Two Lakhs Sixty Six Thousand Five Hundred and Fifty Seven rupees and Ninety paise only), are liable for confiscation under provisions of Section 111 (d) & (m) of the Customs Act, 1962.

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

ORDER

- i. I hold that the goods imported by M/s Red Cobra Corporation, Haryana, under Bill of Entry No. No. 8222113 dated 27.09.2018 valued at Rs. 5266557.90/- (Fifty Two Lakhs Sixty Six Thousand Five Hundred and Fifty Seven rupees and Ninety paise only), declared as 'Low Aromatic White Spirit' under Bill of Entry No. 8222113 dated 27.09.2018 are classifiable as 'Superior Kerosene Oil (SKO)' under CTH 2710 1910.
- ii. The goods are liable for confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962. However, as the goods have already been cleared and are not physically available for confiscation, I impose a redemption fine of Rs. 5,25,000/- (Rupees Five Lakh Twenty Five Thousand only) under Section 125(1) of the Customs Act, 1962 in lieu of

confiscation.

- iii. I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on M/s Red Cobra Corporation under Section 112 of the Customs Act, 1962.
- iv. I further impose a penalty of Rs. 5266558/- (Fifty Two Lakhs Sixty Six Thousand Five Hundred and Fifty eight rupees only) under Section 114AA of the Customs Act, 1962.
- v. I impose a penalty of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand only) on M/s Red Cobra Corporation under Section 117 of the Customs Act, 1962.
- vi. The SCN F.No. S/15-01/SIIB/Red Cobra/2018-19 dated 27.11.2020 issued by the Additional Commissioner, Customs House, Kandla, is hereby disposed off.

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

Digitally signed by
VISHWAJEET SINGH
Date: 16-02-2026
17:09:46
(VISHWAJEET SINGH)
COMMISSIONER (in-situ),
CUSTOMS HOUSE, KANDLA.

F. No. GEN/ADJ/ADC/42/2020-Adjn-O/oCommr-Cus-Kandla Date:12.02.2026.

To,
M/s Red Cobra Corporation,
124, Model Colony,
Yamuna Nagar,
Haryana.

Copy to :-

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