IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75360 of 2023
Customs Appeal No.75361 of 2023

(Arising out of Order-in-Appeal No.Kol/Cus/Port/KS/140-142/2023 dated 21.02.2023 passed by Commissioner of Customs (Prev.), Kolkata)

M/s J.M.Petrochemicals Pvt. Ltd.
(H-14 & D-30, Ind.Area,Kosi Kotwan, Mathura-201403, Uttar Pradesh)

Appellant

VERSUS

Commissioner of Customs (Preventiv), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

WITH

Customs Appeal No.75693 of 2023

(Arising out of Order-in-Appeal No.Kol/Cus/Port/KS/140-142/2023 dated 21.02.2023 passed by Commissioner of Customs (Prev.), Kolkata)

M/s Krishna Technochem Pvt. Ltd.
(Vill. + PO-Kanduah Sulati, PS-Sankrail, Ranhati, Howrah)

Appellant

VERSUS

Commissioner of Customs (Preventiv), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

APPERANCE :

Shri Rajesh Chhibber, Advocate for the Appellant
Mr.S.Chakraborty, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75190-75192/2026

DATE OF HEARING : 28 JANUARY 2026
DATE OF DECISION : 28 JANUARY 2026

Per Ashok Jindal :

The appellants are in appeal against the impugned order whereby the goods imported were confiscated under the provisions of Section 111(d) of the Customs Act, 1962, for contravention of Rules 4,5,14,19

& 20 of the Petroleum Rules, 2002, with an option to the appellants to redeem the said imported goods for home consumption on payment of redemption fine of Rs.10,00,000/- and a penalty of Rs.5,00,000/- under Section 112(a)(i) of the Customs Act, 1962, was also imposed on the appellants.

2. The appellants have filed two appeals against the Orders-in-Original passed by the Joint Commissioner of Customs, SIB (Port), Customs House, Kolkata-700001 and the appellant has also filed an another appeal against Orders-in-Original related to importation of "Mineral Hydrocarbon Oil (Other Than Transformer Oil)" under CTH 27101990 as mentioned below in Table A. Since, issue involved in all the cases are same, hence, all the aforesaid appeals are being taken together for common hearing and orders thereof. The details are as below in Table-A:

TABLE-A

Sl. No	e-File No. (CAPPL/xxxx/ 2021 or 2022)	Bill of entry no. & date	Description of Goods	ORDER-IN_ORIGINAL No. & date
1.	2221/2021	9908502 dated 10.12.2020	Mineral Hydrocarbon Oil (Other Than Transformer Oil) under CTH 27101990	KOL/CUS/PORT/JC/SIB/41/2021 DATED 09.07.2021
2.	2304/2021	9103517 dated 08.10.2020 & 9282251 dated 22.10.2020		KOL/CUS/PORT/ JC/SIB/45/2021 DATED 20.07.2021
3.	578/2022	4180571 dated 03.06.2021 & 4665265 dated 13.07.2021		KOL/CUS/ADC/PORT/GR. I/60/2022 DATED 28.01.2022

3. The brief facts of the case are that the appellant no.1 & 2 filed bills of entry mentioned in above table-A for clearance of the impugned goods. After examination of the impugned goods and CRCL test report, the department found that the description and CTH of the impugned goods found as per declaration.

3.1 However, the Department observed that that the license issued to the appellants by PESO authorities in terms of Rule 14 of Petroleum Rule 2002 for import of Class A petroleum products, the appellant no.I was eligible to import 840.00KL of Petroleum Class A in bulk and NIL quantity for "Otherwise than in bulk and appellant no. 2 was eligible to import 1200 KL of Class A petroleum Product in bulk and NIL quantity for "Otherwise than in bulk". As per examination report and submission of the appellants, I found that the goods were imported in small drums (Drums made of Iron/MS Steel of quantity 210 or 220 Liter) instead of bulk condition and the thickness of the drums was about 1.7 MM.

3.2 In view of the above, the lower adjudicating authority found that the imported goods 'Mineral Hydrocarbon Oil' by appellants are correctly classified by importer under Customs Tariff 27101990 and the appellants / importers have falled to get type approval of containers (drums) used for importation of petroleum products required under Rule 4 & Rule 5 of Petroleum Rules, 2002 and submitted import license for petroleum Class-A in bulk. The appellants / importers have brought the goods in containers for which importer have not shown any approval from PESO. No other contravention regarding imports has been noticed except importing petroleum products in containers (drums) and hence transportation /movement of goods shall be allowed only in ISO tank/PESO approved containers. Accordingly, the lower authority / department find that the impugned goods are in contravention of Rule 4, 5 and 14 of Petroleum Rules, 2002; hence are liable to confiscation under provisions of Section 111(d) of the Customs Act. 1962 Subsequently, the importer M/s J.M. Petrochemicals Pvt Ltd have rendered himself liable to penal action under provisions of Section 112(a) (i) of the Customs Act, 1962. On the basis of these findings the lower authority confiscated the goods under section 111(d) of the Customs Act, 1962 and imposed redemption fine and penalty accordingly. Amount of redemption fine and penalty mentioned below in

Table-B

e-File No.	Bill of Entry No. & date	OIO No. KOL/CUS/JC/.../ADJN(PORT) /2017 & Date	Redemption fine in Rs.	Penalty in Rs.
2221/2021	9908502 dated 10.12.2020	KOL/CUS/PORT/JC/SIB/41/ 2021 DATED 09.07.2021	7,00,000/-	5,00,000/-
2304/2021	9103517 dated 08.10.2020	KOL/CUS/PORT/ JC/SIB/ 45/2021 DATED 20.07.2021	5,00,000/-	4,00,000/-
	9282251 dated 22.10.2020		7,00,000/-	5,00,000/-
578/2022	4180571 dated 03.06.2021	KOL/CUS/ADC/PORT/GR. I/60/2022 DATED 28.01.2022	10,00,000/-	5,00,000/-
	4665265 dated 13.07.2021			

3.3 The order was challenged by the appellants before the ld.Commissioner (Appeals), who confirmed the order of the adjudicating authority.

3.4 Aggrieved from the said order, the appellant is before us.

4. The ld.Counsel for the appellant submits that in the appellants' own case, the issue came up before this Tribunal and this Tribunal vide its Final Order Nos.76749-76750/2024 dated 29.08.2024, held that no redemption fine and penalty are imposable on the appellant. In view of this, the impugned orders are to be set aside and appeals be allowed with consequential relief.

5. On the other hand, the ld.A.R. for the Revenue, has justified the impugned order.

6. Heard both the parties and considered the submissions.

7. We find that in the appellants' own case for other imports, the issue came up before this Tribunal and this Tribunal has observed as under :

> *"5. Heard both sides and perused the appeal records.*
>
> *6. From the facts of the case narrated above, we observe that the Appellant-importer is a regular importer of MHO in metallic drums . In the instant case, they filed bill of entry dated 12.09.2020 declaring the same under heading 27101990 along with supporting documents. DRI, Kolkata informed the Pr. Commissioner of Customs about mis-declaration of classification and the impugned goods were examined 100% . Seven samples were drawn and sent for testing to Kolkata CRCL to know whether the sample was light oil, its petroleum class and chemical name, to which it reported the goods to be MHO and Class A Petroleum but does not meet the criteria of light oil and its preparation. Subsequently, reports were received from IOCL and CRCL, New Delhi also.*
>
> *6.1. We observe that on the basis of tests conducted at CRCL, Kolkata, IOCL and CRCL, New Delhi, the ld. adjudicating authority has considered the impugned goods as "Light oils and preparations" under Chapter Heading 2710 1290 and accordingly re-classified the goods under the above Chapter Heading. The ld. adjudicating authority has also ordered confiscation of the goods imported vide Bill of Entry 8789922 dated 12.09.2020. However, he allowed the importer to re-export the goods upon payment of redemption fine of Rs.10,00,000/-. He also imposed a penalty of Rs.7,00,000/- for the various offences committed.*

6.2. On appeal, the Ld. Commissioner (Appeals) held that the imported goods are appropriately classifiable under Chapter Heading 2710 1990, as declared by the importer. He set aside the order passed by the ld. adjudicating authority allowing re-export of the goods on payment of redemption fine. The Ld. Commissioner (Appeals) has allowed the imported goods to be cleared for home consumption. However, the penalty imposed under Section 112(a) of the Customs Act, 1962 for violation of the provisions of the Petroleum Act, 2002 has been upheld vide the impugned order. Aggrieved by the impugned order, the Appellant-importer has filed this appeal against the imposition of penalty. The Revenue is in appeal against the setting aside of the order of the ld. adjudicating authority for re-export and allowing the goods to be cleared for home consumption.

7. Thus, we observe that the issues to be decided in both the appeals together are:

(1) Whether the goods imported are appropriately classifiable under Chapter Heading 2710 1990, as 'Other' as declared by the importer or under Chapter Heading 2710 1290 as "Light oils and preparations", as claimed by the Revenue;

(2) Whether the impugned order is correct in setting aside the order of re-export and in allowing the goods to be cleared for home consumption.

(3) Whether the Appellant-importer is liable for imposition of penalty for violation of the provisions of the Petroleum Act, 2002.

7.1. Issue No. (1) Whether the goods imported are appropriately classifiable under Chapter Heading 2710 1990 as "Other", as declared by the importer or under Chapter Heading 2710 1290 as "Light oils and preparations", as claimed by the Revenue:

With regard to classification of the imported goods, we observe that initially, samples were drawn and the goods were sent to CRCL, Kolkata for analysis. The test report received from CRCL, Kolkata categorically stated that the samples do not meet the criteria of light oil and its preparations. Subsequently, the report received from CRCL, Kolkata was sent to IOCL for their opinion. The report of IOCL also could not provide any specific name for the petroleum product imported by the importer so as to ascertain the proper classification of the goods. Subsequently, the test reports were sent to CRCL, New Delhi. Vide their Report dated 31.03.2021, CRCL, New Delhi have opined that the impugned goods meet the parameters of light oil and its preparations. However, the assessee have not accepted the aforesaid report of CRCL, New Delhi and asked for re-testing of the samples. The Ld. Joint Commissioner has allowed re-testing of the samples. Accordingly, representative samples available with the Department were sent to CRCL, New Delhi for re-testing. On the basis of the retest report received from CRCL, New Delhi, the Department has come to a conclusion that the petroleum products in this case get distilled by 90% or more by volume at 210°C and hence classified the impugned goods as "Light oils and preparations" falling under Chapter Heading 2710 1290.

7.1.1 The Appellant-importer has questioned the method of sampling and tests conducted by CRCL, New Delhi, on the basis of which the ld. adjudicating authority had come to the conclusion that the goods are liable for classification under the CTH 2710 1290. We observe that the report of IOCL Haldia was sent to CRCL Delhi for clarification, who clarified the impugned goods to be light oil without carrying out any testing. We observe that the department did not take action for almost 9 months and sent two duplicate samples to CRCL Delhi vide letter dated 09.08.2021. CRCL, New Delhi vide its report dated 24.11.2011 gave the opinion that the samples sent are light oil and preparations and accordingly, the adjudicating authority classified the goods to be *light oil under the CTH 2710 1290. We observe that there was no mention of method of testing of the old samples lying with the department drawn after 12 months. The Appellant-importer submitted that the department has not followed the instructions issued by Board vide Circular No. 30/2017-Cus. Dated 18th July, 2017, for re-testing the samples. For the sake of ready reference the contents of the said circular is extracted below:*

Circular: 30/2017-Cus, dated 18-Jul-2017

Samples Guidelines for re-testing of samples

Circular No. 30/2017-Cus, dated 18-7-2017

F.No. 450/15/2017-Cus. IV

Government of India

Ministry of Finance (Department of Revenue) Central Board of Excise & Customs, New Delhi

Subject: Detailed guidelines for re-testing of samples - Regarding World Trade Organization (WTO) negotiated Trade Facilitation Agreement (TFA), which aims at simplifying the trade processes and bringing down barriers to trade has come into force w.e.f. 22nd February, 2017. India is a signatory to this agreement.

2. India has placed a number of trade related measures negotiated under the TFA in Category A. Article 5.3.1 envisages granting an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding Further Article 5.3.3 makes it obligatory to consider the result of the second test, if any, for the release and clearance of goods, and, if appropriate, may accept the results of such test. The aforementioned Articles have been placed in category A. In order to have uniformity in approach among the field formations with regard to re-testing of samples, the following procedure is prescribed

a. *Customs officers may draw the samples from import consignments for testing in case of consignments wherever needed. The results of all test reports, adverse or otherwise,* *shall be communicated to the importer or his authorized representative/Customs Broker immediately on its receipt.*

b. *in case the importer or his agent intends to request the Additional/Joint Commissioner of Customs for a re-test, then the same shall be made in writing to the said officer within a period of ten days from the receipt of the communication of the test results of the first test. Customs officers may take a reasoned view in case the importer or his authorized representative Customs Broker is unable to do so for reasons beyond his control*

c. *Where the Additional/Joint Commissioner of Customs grants an opportunity for a second test, he must clearly indicate in writing the name and address of the laboratory/institution where the second test can be carried out. Such referral for re-testing may be made only after being reasonably sure that the desired re-testing facilities exist at the laboratory/institution.*

d. *Re-test should be made only on the remnants of the samples originally tested or on duplicate representative sealed samples in the custody of the Customs Further, to avoid delays, samples for second tests shall be marked as "immediate" before sending to the laboratory. In a case it may so happen that fresh samples have to be drawn, then such sampling should be done in the presence of the importer or his representative/customs broker.*

e. *The requests for re-test of samples on the ground that the original sample was not representative should be entertained only if the consignment is still in Customs control. At the time of drawing the samples, the importer or his representative shall be present and certify that the samples drawn are representative*

f. *The competent authority shall consider the results of the re-test without prejudice to the results of the first test in case there is a variation in the results of the first test and the re-test, the competent authority shall take the decision relying upon either of the tests specifying the grounds in writing for the decision so taken in case the competent authority is unable to decide whether to rely upon the first or the re-test results, then it may order a second re-test provided the consignment is still within the customs control. However, this option should not be resorted to in every case of variation between the first test and re-test results.*

g. *The facility of re-testing, is a trade facilitation measure, which should generally not be denied in the ordinary course. However, there might arise circumstances where the customs officer is constrained to deny the re- testing facility Board expects that* *such denial would be occasional and on reasonable grounds to be recorded in writing*

h. Where the re-testing procedure is done at the instance of the department instead of the importer, the above procedure shall be followed mutatis mutandis.

3. Difficulties, if any, in implementation of this circular, should be brought to the notice of the Board.

4. Hindi version of the circular will follow.

7.1.2. From the guidelines issued for re-testing of samples, we observe that the Appellant-importer has considered the samples already drawn as not representative samples, because of lapse of more than 12 months from the date of drawal of samples. We observe that the Ld. Joint Commissioner has allowed re-testing of the samples. The Appellant-importer has specifically asked for drawal of fresh samples for re-testing, since the consignment is still under the control of customs. The Appellant-importer was of the view that the earlier samples were drawn 12 months before and hence they would have lost many of its properties, as the goods are volatile in nature. The Appellant-importer was of the view that retesting the samples available with the Department would not give the desired results. Thus, as per the Circular cited above, fresh samples could have been drawn since the consignment is still avilable with customs. However, the department has not drawn fresh samples and sent two sets of representative samples drawn earlier to CRCL, New Delhi for re-testing. On the basis of the retest report received from CRCL, New Delhi, the Department has come to the conclusion that the petroleum products in this case get distilled by 90% or more by volume at 210°C and hence to be classified as "Light oils and preparations" falling under Chapter Heading 2710 1290.

7.1.3. We observe that the Appellant-importer requested for re-drawl of samples as the testing was done on old samples would not give the desired result. However, the Department again sent duplicate/triplicate samples and the CRCL Delhi vide its report *dated 24.11.2021 i.e. after more than 12 months from the date of drawal of samples opined that the goods to be light oil and preparations. We agree with the submission of the Appellant-importer that the goods being volatile in nature, testing of samples drawn 12 months before would not give the desired results. The department could have drawn fresh samples for testing, as the goods are still available with customs. Thus, we observe that the Ld. Commissioner (Appeals) has rightly rejected the Test Report of CRCL, New Delhi.*

7.1.4. We observe that the Ld. Commissioner (Appeals) has relied upon the Note 4 to Chapter 27 for classifying the impugned goods under the CTH 27101990. The Ld. Adjudicating authority also relied upon the same Note 4 to classify the impugned goods under the Chapter Heading 2710 1290 For the sake of ready reference the said Note 4 is reproduced below:

> *"Note 4. For the purposes of sub-heading 2710 12, light oils and preparations" are those of which 90% or more by volume (including losses) distil at 210 C according to the ISO 3405 method (equivalent to the ASTM D 86 method)"*

*7.1.5. From the plain reading of the above definition, it is apparent that the petroleum products which get distilled by 90% or more by volume at 210°C are '**light oils and preparations'** for the purpose of Chapter 27 sub-heading 2710 12. The tests are to be conducted as per the Methods prescribed in the Note 4. We observe that none of the reports have specified exactly what percentage of the goods are distilled at 210 degrees, for meeting the requirements as specified under Chapter Note 4 of Chapter 27. The IOCL report specifies 90% distillation at 204 degree and the CRCL, New Delhi report says that more than 90% distilled at 210 degree. However, the method of testing was not declared in CRCL New Delhi report. We observe that the goods being volatile in nature, the quality of the samples deteriorate over a period of time. The test report received from the sample drawn* *immediately after import will display the correct features than the test conducted on the sample drawn earlier and tested after 12 months. In this respect, we observe that the CRCL, Delhi report is not a reliable report as it is based on the samples which were drawn 12 months before. The report received from CRCL, Kolkata will have the correct features as this test was done on the samples drawn immediately after import of the goods. The test report received from CRCL, Kolkata categorically states that the samples do not meet the criteria of light oil and its preparations. We find that the adjudicating authority has not given any valid reason to reject this report. On the contrary, the Ld. Commissioner (Appeals) has analysed all the Test Reports received in this case and conducted a comparative analysis and concluded that the report received from CRCL, Kolkata is more relevant for determining the classification of the impugned goods in this case. The relevant paragraphs from the impugned order passed by the Commissioner (Appeals) are reproduced below for ready reference: -*

> *"7.2 In this regard, I observe that it is important to understand the definition of Light oils and preparations", which is mentioned in Sub Heading Note 4 to Chapter 27 of the Customs Tariff that is reproduced below for ready reference:*
>
> **4. For the purposes of sub-heading 2710 12, "light oils and preparations are those of which 90% or more by volume fincluding losses) distil at 210 °C according to the ISO 3405 method (equivalent to the ASTM D 86 method)"*
>
> *Therein, it is explicitly mentioned that "Light oils and preparations" are those of which 90% or more by volume (including losses) distil at 210 °C, however, the IOCL Test Report dated 16.03.2021 has mentioned that the impugned goods are 90% distilled at 204 °C, which negates the impugned goods to be covered under the said definition*

since the primary & paramount condition has not been fulfilled.

It is observed that the adjudicating authority has relied upon the test report of CRCL, Delhi and did not take cognizance of the test reports of CRCL, Kolkata and IOCL, Haldia on its own discretion arbitrarily. It failed to observe the comments/observation of CRCL, Kolkata, wherein it has mentioned the impugned goods as Mineral Hydrocarbon Oil' and further mentioned that samples of the impugned goods be sent to IOCL/HPCL/BPCL/IIP for identifying the specific name of the goods. The excerpts of the CRCL, Kolkata letter dated 19.02.2021 are as under:-

".... The description of the goods as "Mineral Hydrocarbon Oil was already ascertained, if required, the samples may be sent to JOCL/HPCL/BPCL/IIP Dehradun for specific name as desired and further stated that executive decision may be taken at your end."

I also find that reports of CRCL (Kolkata) & IOCL (Haldia), and CRCL (Delhi) suffer from inherent contradictions, as CRCL (Kolkata) Test Reports dated 20/25/26/27.11.2020 reported that the samples (goods) do not meet the criteria of 'Light Oil and its Preparation' and IOCL has also never suggested the said goods to be falling under the same. But CRCL, Delhi categorized it to be falling under Light Oil and its Preparation.

In a wider spectrum, I observe that the Test reports of CRCL, Kolkata & IOCL are probably comprise of the tests of more pure sample, thus tends to be more accurate since the Test report of CRCL, Kolkata was generated in November, 2020 and IOCL in March, 2021 but the report of CRCL, Delhi was generated in November, 2021, which is after one (1) year of the test happened in CRCL, Kolkata and also after *more than one (1) year of the importation of the impugned goods. Since, it cannot be ignored that the impugned item is of volatile nature and it is the disposition of such substances that they change their characteristics with time depending on their storage conditions. It can be inferred from the test results parameters mentioned below.*

As it can be observed from the test results, the parameters obtained in respect of CRCL, Kolkata & IOCL are overlapping but there is much variance in report obtained from the test at CRCL, Delhi when compared with the test results of CRCL (Kolkata) & IOCL. The data tabulated below expresses it clearly as under:-

Comparison chart of the test results of CRCL (Kolkata) & IOCL and CRCL (Delhi)

Characteristics	CRCL, Kolkata	IOCL	CRCL, Delhi
Flash Point (°C)	4	<0	<25
IBP (°C)	52-78	51	109
90% (°C)	-	204	210
FBP (°C)	226-238	248	254,259
Light Oil and its Preparation	No	No	Yes
Density at 15ºC (Kg/m3)	761.2-787.8	765.5	773.1, 782.7
Aromatics		0.64(%w)	29.0%, 34.7%
Description	Mineral Hydrocarbon Oil	Naphtha mixed with Kerosene	Light oils and preparations

Though, it is evident from the above table that there is substantial variation in Flash Point and IBP in CRCL, Delhi report. Still, the lower adjudicating authority has totally neglected the findings of CRCL (Kolkata) & IOCL to rely upon the findings of CRCL (Delhi) incoherently.

*7.3 Further, I find that the CRCL, Delhi report is inconclusive to some extents, as it has not determined the Flash Point on exact basis, as it has provided the Flash point to be < 25 deg * C and the flash point is required to determine the class of the petroleum product.*

As such the Petroleum Class A, B and C are defined in the Petroleum Act, 1934, which are as given below:

(i) "petroleum Class A ^ prime prime means petroleum having a flash-point below 23 °C.

*(ii) "petroleum Class B" means petroleum having flash-point of 23 deg * C and above but below 65 deg * C*

*(iii) "petroleum Class C ^ prime prime means petroleum having a flash-point of 65 deg * C and above but below 93 deg * C*

On the basis of analytical observations, it is observed that the CRCL, Kolkata and IOCL report are conclusive to determine the impugned goods to be falling under "petroleum Class A ^ prime prime but report of CRCL, Delhi is inconclusive in this regard.

*Further, as per Chapter Note of Chapter 27 of the Customs Tariff, for the purposes of sub-heading 2710 12, "light oils and preparations" are those of which 90% or more by volume (including losses) distil at 210 deg * C according to the ISO 3405 method (equivalent to the ASTM D 86 method). In this regard, IOCL report determines that 90% distillation happens at 204 deg * C but CRCL, Delhi did not determine the temperature at which the 90% distillation takes place but report that the more than 90% recovery happens at 210 deg * C which seems to nothing but an attempt to affirm the case against the importer in the instant the case, which perceives to be a prejudiced action hampering the interest of natural justice.*

7.4 As such, under the above given circumstances, I find that the adjudicating authority wrongly re-determined the impugned goods as "Light oils and preparations, when the IOCL report elaborately defined the distillation percentage *at multiple & sequential stages i.e. IBP @51°C, 10% @95°C, 50%@148°C, 90% @204°C & FBP @248°C, according to which the impugned can't be identified as "Light oils and preparations" in terms of Sub-Heading Note 4 of Chapter 27 of the Customs Tariff Act, 1975, which states 90% or more distillation volume (including losses) at 210 °C is mandatory to be categorized as 'Light oils and preparations'.*

7.5 In this regard, I find that the Hon'ble Supreme Court has also discussed the similar issue in the case of Commissioner of Central Excise versus M/s. Krishna Technochem Pvt. Limited and Anr., wherein it observed as follows:

"2. We have heard Mr. Balbir Singh, learned ASG appearing on behalf of the Appellant. We have gone through the impugned judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, (for short "the Tribunal") more particularly, the reasoning given in para 8. We have also considered the sub-heading notes and as per the said sub-heading notes, for the purposes of sub-heading 2710-12, "Light Oils and Preparations" are those of which 90% or more by volume (including losses) distilled at 210 degree Celsius.

3. In the present case, even as per the Chemical Examiner's Report, the range of distillation of the product in question was between 35 degree to 58 degree Celsius which is much below 210 degree Celsius and the word used in sub-heading notes referred to herein above is "at" and not "up to". Therefore, we see no reason to interfere with the impugned order(s) passed by the Tribunal."

7.1.6. We observe that the Ld. Commissionr (Appeals) has given a categorical finding and classified the impugned goods under the *chapter heading 27101990. We find that the reasoning given by Ld. Commissioner (Appeals) to arrive at the classification is more appropriate and we do not find any reason to interfere with the same. Accordingly, we uphold the classification of the goods approved in the impugned order and hold that the goods imported are appropriately classifiable under Chapter Heading 2710 1990 as declared by the importer.*

8. Issue Nos.

(2): Whether the impugned order is correct in setting aside the order of re-export and in allowing the goods to be cleared for home consumption or not. and
(3) Whether the Appellant-importer is liable for imposition of penalty for violation of the provisions of the Petroleum Act, 2002 or not.

8.1. We observe that the Appellant-importer imported the goods in used and reusable drums having capacity of 215-225 litres. As per Rule 2(1)(xix), petroleum in bulk means petroleum contained in a tank irrespective of the quantity of petroleum contained therein. The goods imported by the Appellant-importer in drums do not fall under the ambit of 'bulk' and the same are classified as 'Other than bulk' The Appellant-importer was having a PESO license valid up to 31.12.2025 for import of 1200.KL petroleum Class A - 1050 KL in bulk, Class B - 100 KL in bulk and Class C - 50 KL in bulk and Nil for petroleum 'Other than bulk'. Thus, the department opined that the PESO license in their possession does not adequately cover the import made under the bill of entry referred above, which renders the goods liable for confiscation. For confiscation of the goods, the findings given by the Ld. adjudicating authority is reproduced below:

> *"61. Rules 4 & 5 of the Petroleum Rules, 2002 applicable in the present cases of import prescribe that:-*
>
> *.........*

I find that Rule 4(1) of the Petroleum Rules, 2002 mandates that containers exceeding one litre in capacity for petroleum Class A shall be of a type approved by the Chief Controller. Further, Rules 5(1) & 5(4) ibid prescribe the constituent material of the containers, their thickness based on capacity and the requirement of a type approval from the Chief Controller. From a combined reading of Rules 4(1), 5(1) and 5(4) of the Petroleum Rules, 2002, I find that the containers more than 1 litre in capacity and upto 300 litres in capacity shall be of a type approved by the Chief Controller. However, no such documents showing type approval from the Chief Controller w.r.t. the drums used for import have been submitted by the importer in respect of the subject Bill of Entry. Further, I find that the importer has also failed to furnish the requisite documents viz. Certificate of storage accommodation in Form II as required under Rule 19 of the Petroleum Rules, 2002 and has also failed to take permission of the Commissioner of Customs to land the impugned goods, as required under Rule 20 of the Petroleum Rules, 2002. Therefore, in view of the foregoing discussions, I find that the importer has violated the provisions of Section 3 of the Petroleum Act, 1934 and those of Rules 4, 5, 14, 19 and 20 of the Petroleum Rules, 2002 which has rendered the impugned goods liable to confiscation under Section 111(d) of the Customs Act, 1962 and I hold accordingly. Further, for their acts of omission and commission rendering the impugned goods liable to confiscation under Section 111(d) of the Customs Act, 1962, the importer is also liable to penal action under Section 112(a)(i) ibid and I hold accordingly."

8.2. On the basis of above findings, the adjudicating authority has held that the goods are liable for confiscation. However, he ordered for re-export of the impugned goods on payment of redemption fine. We observe that the adjudicating authority has *ordered for confiscation of the goods for violation of the provisions of Petroleum Act 2002.*

8.3. Regarding the violations of Petroleum Act, 2002 and the requirement of PESO license, the Appellant-importer submits that they were not aware that they cannot import materials in drums and if they import the same in drums of capacity less than 1000 litres, then the same cannot be considered as 'bulk'. We observe that the Appellant-importer was having PESO license to import Petroleum A, B & C in bulk. In the instant case, the goods were imported in drums having capacity of 220 Litres. We observe that the Appellant-importer were having license to import and store the goods in their own name. Further, we observe that the Appellant-importer has applied for amendment in PESO license and the concerned authority vide letter dated 14.06.2022 has granted license to import the goods other than bulk in class A Petroleum. We also observe that the goods are still lying seized and after 14.06.2022 the Appellant-importer is allowed to import in non-bulk quantity also. Accordingly, we hold that there is no violation of the provisions of the Petroleum Act, 2002 and hence the confiscation and penalty imposed on the Appellant-importer does not survive. <u>Even otherwise, confiscation under 111(d) could be made only for prohibited goods. Under Rule 3 of Petroleum Rule 2002, there were conditions for import in a particular manner and as such there was no prohibition</u>. Under section 3 of the Foreign Trade (Development and Regulation) Rules, the provisions are to be made for prohibiting, restricting or otherwise regulating. Since the original authority allowed for re-export and appellate authority allowed for home consumption, the goods were not prohibited goods. Once the goods are allowed for clearance for home consumption, the same could not be confiscated under 111(d) and so penalty was also not imposable. Further, we observe that the Appellant-importer had PESO license to import Petroleum Class A and for storage of the goods and PESO doesn't approve all the drums. Thus, we agree with the submission of the

Appellant-importer that the violation, if any, is only procedural in nature, which has also been rectified latter by getting the permission for import of 'Other than bulk' also. It is a settled law that the substantial benefit cannot be denied for procedural violations.

8.4. Thus, we hold that there is no violation of the provisions of Petroleum Act, 2002 in this case. Accordingly, we hold that the goods are not liable for confiscation and hence, the redemption fine imposed in the impugned order for allowing clearance of the goods for home consumption is not sustainable. Since there is no violation of Petroleum Act, we uphold the order of the Ld. Commissioner (Appeals) in allowing the goods for clearance to home consumption. Accordingly, we hold that no penalty imposable on the Appellant-importer under section 112(a)(i) of the Customs Act, 1962 and hence we set aside the penalty imposed. For the same reasons, we hold that there is no merit in the appeal filed by Revenue and hence the same is liable for rejection.

10. In view of the above discussions, we pass the following order: -

> *(i) The goods imported are appropriately classifiable under Chapter Heading 2710 1990, as declared by the Appellant-importer.*
>
> *(ii) The order of the Ld. Commissioner (Appeals) in allowing the clearance of the goods for home consumption is upheld.*
>
> *(iii) The penalty imposed on the Appellant-importer for violation of the provisions of the Petroleum Act, 2002 is set aside. The penalty imposed under section 112(a)(i) of the Customs Act, 1962 is also set aside.*

> *11. In view of the above discussions, the appeal filed by the Appellant-importer is allowed and the appeal filed by the Revenue is dismissed.”*

8. In view of this, as the issue is no more res-integra with the appellants’ own case, this Tribunal has earlier held that no redemption fine and penalty are imposable on the appellants in the facts and circumstances of the present cases. Therefore, following the same, we hold that no redemption fine and penalty are imposable on the appellants.

9. In view of this, we set aside the impugned order and allow the appeals with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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