

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

REGIONAL BENCH – COURT NO.2

**Customs Stay Petition No. 75253 of 2022 and
Customs Appeal Nos. 75662 & 75598 of 2022**

(Arising out of Order-in-Appeal No. Kol/Cus(Port)/AKR/279/2022 dated 10.06.2022 passed by Commissioner of Customs (Appeals), Kolkata.

M/s Kunjal Synergies Private Limited,
15D, Everest House, 46C, J.L. Nehru Road, Kolkata-700071.
Commissioner of Customs (Port), Kolkata

..Appellant

VERSUS

Commissioner of Customs (Port), Kolkata.
15/1, Strand Road, Customs House, Kolkata-700001.

M/s Kunjal Synergies Private Limited

...Respondent

APPEARANCE:

Shri S. S. Chattopadhyay, Authorized Representative for the
Appellant/Revenue
Shri Sudhir Mehta, Advocate for the Respondent/Party

CORAM:

HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

Misc./Stay order No. ...75263/2023...and

FINAL ORDER No...75776-75777/2023

DATE OF HEARING : 11.04.2023

DATE OF PRONOUNCEMENT: 22nd June, 2023

PER K. ANPAZHAKAN :

The Appellant imported the goods with the description "Low Aromatic White Spirit" and filed two Bills of Entry for warehousing, classifying the goods under the CTH 2710 1990. Four Ex Bond Bills of Entry filed by the Appellant earlier have already been assessed and warehoused. An Alert Circular 02/2020 dated 23/03/2020 issued by DRI, New Delhi indicated that some importers are importing Low Aromatic White Spirit classifiable under CTH 271012, as per Chapter Note 4 of Chapter 27 and misclassifying the same to violate the

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provisions of Import Policy. Accordingly, SIB, Kolkata Customs has initiated investigation against the Appellant and detained the said goods imported by the Appellant. Samples were drawn and on the basis of the Test Reports received from CRCL, Kolkata, the Department rejected the classification of 271990 sought by the Appellant and proposed to reclassify the same under the CTH 27101239 as 'Solvent 145/205 as per IS 1745:2018'.

2. The Joint Commissioner of Customs (Port), SIB, Custom House, Kolkata issued a SCN dated 30.06.2021 proposing to reclassify the goods under 27101239. The Notice was adjudicated and the adjudicating authority vide his order dated 24/02/2022 rejected the declared description of the goods "White Spirit in bulk" and re-determined the same as "Solvent 145/205 as per IS 1745:2018". He allowed re-export of the goods imported vide the above said Warehousing Bills of Entry, upon payment of Redemption Fine. He also imposed penalty on the Appellant. The Appellant filed an appeal before the Commissioner (Appeals), who allowed the appeal of the Appellant vide his Order-in-Appeal dated 10/06/2022 and held the classification of the goods under Customs Tariff 27101239 as erroneous and set aside the Order-in-Original and remitted the matter back to the adjudicating authority for proper assessment of the goods. Aggrieved by the Impugned Order, the Appellant is before us.

3. Samples of the impugned goods were drawn and sent to CRCL, Kolkata vide Test Memo Nos. 1080019 dated 13.01.2021 and 1080026 dated 13.01.2021, with a request to specify the following parameters:

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- (i) Colour
- (ii) Density at 15 C
- (iii) Viscosity
- (iv) Flash Point (Abel)
- (v) Class of Petroleum Product (A, B or C)
- (vi) Distillation Range i.e. Initial Boiling Point and Final Boiling Point
- (vii) Whether 90% or more by volume (including losses) distils at 210 C according to the ISO 3405 method (equivalent to the ASTM D 86 Method)?
- (viii) Whether samples meet the criteria of "Light Oil and its preparations"?
- (ix) Percentage of Aromatic Contents
- (x) Specific Chemical name or class of Hydrocarbon along with CAS number
- (xi) Any other specification/remarks.

4. In response to the above queries vide the aforementioned TM No. 1080019 dated 13.01.2021, the Chemical Examiner Gr-I, CRCL, Kolkata has submitted the following Report dated 28.01.2021:

CRCL Test Report: "Received two sample bottles marked as A & B wrapped with cello tape and cloth, Each of the two samples is in the form of clear colourless liquid composed of Mixed of Mineral Hydrocarbon Oil (more than 70% by it) having following constants:

Lab No/Marking	Density at 15 C in gm/cc	Flash Point (COC)	Acidity	Ash Content	Water Content	Aniline Point	IBP	FBP	Aromatic Content % by vol.
3831/A	0.7838	48	Nil	Nil	Nil	58 C	162	194 C	21
3832/B	0.7848	48	Nil	Nil	Nil	58 C	162 C	194 C	21

5. The Chemical Examiner reported that each of the samples under reference meets the criteria of 'Low Aromatic Solvent' as per IS 1745-2018 for petroleum hydrocarbon solvent. He also stated that each of the two samples under reference belonged to petroleum class B.

6. The CRCL Test Report confirmed that the goods are of Petroleum Class B and clear colourless transparent liquid composed of Mineral Hydrocarbon Oil. The CRCL Report indicated that:

- i) the samples under reference meets the criteria of 'low aromatic solvent' as per IS 1745-2018 for petroleum hydrocarbon solvent.
- ii) The samples under reference are Petroleum Class-B as per Petroleum Act, 1934.

7. The Petroleum Class A, B and C are defined in the Petroleum Act, 1934, which are as given below:

- i) "Petroleum Class A" means petroleum having a flash-point below 23 C
- ii) "Petroleum Class A" means Petroleum having flash-point of 23 C and above but below 65 C;
- iii) "Petroleum Class C" means petroleum having a flash-pint of 65 C and above but below 93 C

8. On the basis of analytical observations, it is observed that the CRCL Test Report confirmed that the goods are of Petroleum 'Class B'. Further, as per Chapter Note 4 of Chapter 27 of the Customs Tariff, for the purposes of sub-heading 271012, '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). On the basis of above CRCL Test Report, it could not be ascertained whether the impugned goods are freely importable or to be imported through State Trading Enterprise (STE) only. Therefore, a letter dated 17.02.2021 was issued to the Chemical Examiner, CRCL, Kolkata to clarify the following:

i) Whether the imported goods can be considered as petroleum products namely

- a. Solvent 60/80 (As specified under standard IS 1745)
- b. Solvent 50/120 (As specified under standard IS 1745)
- c. Solvent 145/205 (As specified under standard IS 1745)
- d. Solvent 125/240 (AS specified under standard IS 1745)
- e. Any other Solvent classified as Free as per DGFT Policy
- f. Any other Solvent or hydrocarbon classified as RESTRICTED
i.e. can be imported by STEs only, as per DGFT Policy.
- g. Any other Solvent specified under standard IS 1745.

9. In response to the clarification sought on the Test Reports vide TM Nos. 1080019 & 1080026 both dated 13.01.2021, the Chemical Examiner Gr.I, CRCL, Kolkata vide letter dated 19.02.2021 clarified that both the samples under reference meets the criteria of 145/205 'low aromatic solvent' as per IS 1745-2018 for petroleum hydrocarbon solvent.

10. Therefore, the Department was of the opinion that the seized goods imported vide the impugned Bills of Entry were 'Solvent 145/205 low aromatic as per IS 1745:2018', which is appropriately classifiable under Customs Tariff Item 27101239, which can be imported only by State Trading Enterprises, as per schedule 1 of Import Policy Condition (5) of Chapter 27 of Customs Tariff.

10. The Ld Departmental Representative relied upon the decision of the Tribunal in the case of Venus Petrochemicals, Mumbai Vs

Commissioner of Customs, Kandla 2010(366)ELT 176 (Tri.-Ahmd.) and argued that classification of the goods under CTH 27101239 by the adjudicating authority is proper. He stated that the criteria of Initial Boiling Point and final Boiling Point mentioned in the IS Standards 1745 are only the minimum and Maximum boiling points. As per the test Reports the Initial Boiling Point (IBP) of the impugned goods is 162 and Final Boiling Point (FBP) is 194. Thus, he stated that the Test Reports satisfies the requirements of the said standards and hence the adjudicating authority has rightly classified the said goods under CTH 27101230. The Appellate Authority has wrongly analysed the Interpretatory Rules and held that the said goods cannot be classified under the CTH 27101239. He argued that the impugned order passed by the Appellate Authority is liable to be set aside.

11. Heard both sides and perused the appeal records.

12. The issue to be decided here is the classification of the goods 'low aromatic white spirit' imported by the Appellant. The Appellant has classified the goods under CTH 27101990 and filed the Bills of Entry Nos 2202769 dated 01/01/2021 and 2203997 dated 02/01/2021. Revenue has reclassified the said goods under CTH 27101239 on the basis of Test Report of CRCL, Kolkata, wherein it is stated that the product under reference meets the requirements of 'light oils and preparations' and hence the impugned goods are rightly classifiable as 'Solvent 145/205' as per IS 1745:2018.

13. In order to decide whether the goods can be classified as 'solvent 145/205 as per IS standard 1745/2018, it is required to compare the results of the Test Report for the impugned goods with that of the standard requirements for the solvent 145/205 as per IS 1745/2018. A Comparative Chart of the Test Report dated 13.01.2021 alongwith requirements for Petroleum Hydrocarbon Solvent 145/205 as per IS 1745/2018 is furnished below:

	Lab No./ Marking	Density at 15 C in gm/cc	Flash Point (COC)	Acidity	Ash Content	Water Content	Aniline point	IBP	FBP	Aromatic Content % by Vol.	
As per the test report issued by CRLC., Kolkata	3829/A	0.7838	48	Nil	Nil	Nil	58 C	162 C	194 C	21	
	3830/B	0.7838	48	Nil	Nil	Nil	58 C	162 C	194 C	21	
Requirements for Solvent 145/205 As per the IS 1745/2018			35					145 C	205 C	45	

14. From the above comparative chart, it is to be examined whether the impugned goods can be classified as 'Solvent 145/205' under CTH 27101239. As per the Test Report details furnished above, the IBP of the impugned goods is 162 degree Celsius and FBP is 194 degree Celsius, whereas as per the IS standard 1745 the minimum IFB should be 145 degree Celsius (IBP) and maximum FBP should be 205 degree

Celsius respectively. The Appellant stated that the IFB 162 of the impugned goods is much higher than the minimum IFB requirement of 145 as per the IS 1745 standard. Also the FBP 194 of the impugned goods as per the Test Report is much lower than the maximum FBP requirement of 205, as per IS 1735 standards. The Appellant also stated that the flash point 48 for the impugned goods as per the Test Report is much higher than the requirement of 35 flash point as per IS 1745 standards. The Aromatic content % by volume as per the Test Report found for the impugned goods was 21 whereas the requirement as per IS standard 1745 is 45. Thus, they argued that none of the above parameters in the Test Report are matching with the requirements as per IS 1745 standards for classifying the goods as 'Light Oils and preparations' under CTH 2712.

15. The Appellant cited the decision of the Tribunal Kolkata in the case of Krishna Technochem Pvt Ltd Vs CCE, Haldia, vide Final Order No 77087-77089, dt. 25.09.2019 wherein the applicability of Note 4 to Chapter 27 has been examined. The relevant portion of the order is reproduced below:

"8. Further, in the instant case, sole reliance has been placed by the Ld. Commissioner on the Chemical Examiner's report. As rightly pointed out by the Ld. Advocate that, in the testing report it has been stated that the sample drawn from the appellant's premises is liquid containing mixture of hydrocarbons having distillation range from 35 degree to 58 degree Celsius and flash point below 25 degree Celsius. The classification adopted by the Ld. Commissioner is not in consonance with the Note no. 4 to Chapter 27 of the Tariff which states that "Light Oil and Preparations" are those of which 90% or more by volume (incl. losses) distilled at 210 degree Celsius, whereas the Chemical Examiner has stated that the range of distillation of product is 35

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degree to 58 degree Celsius which is much below 210 degree Celsius. Hence the classification under Chapter 271011 cannot be adopted. Similar observations have been made by the Tribunal in the aforesaid decision.

9. In view of the aforesaid, the classification adopted by the Ld. Commissioner cannot be approved and hence, the entire duty demand, interest and penalty are set aside and the appeals are allowed with consequential relief. The personal penalty imposed on Shri Bindhyachal Singh, Accountant, is also set aside."

The above said decision of the Tribunal Kolkata was upheld by the Hon'ble Supreme Court 2022(379)ELT 273 (S.C.) with the following observations:

"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.

4. The present appeals are, accordingly, dismissed."

16. In view of the above decision, the Appellant stated that when the Test Reports differs from the standards prescribed, the goods cannot be held to satisfy the requirements under IS 1745 standards meant for CTH 2710. Hence the impugned goods cannot be categorized as 'Light Oils and Preparations' as per the CRCL Test report. We find merit in the argument of the Appellant. None of the above said parameters are matching with the minimum or maximum standards fixed as per IS

1745 standards. There is a vast difference between the minimum IFB and maximum FBP fixed as per IS standard 1745 and the result received for the impugned goods. Hence, we hold that the impugned goods cannot be classified under CTH 27101239 as per the comparison between the Test reports received from CRCL and its comparison with the IS Standard 1745 parameters required.

17. We find that Revenue has relied upon Note 4 to Chapter 27 for classifying the impugned goods under the CTH 27101239. 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)”

18. We find that the above condition as prescribed in the Note 4 has not been verified in the CRCL report. It is the primary condition required to be tested for classifying any goods under CTH 2712. From the said Note, it is evident that for purpose of sub heading 2710.12, the “light oils and preparations” are those of which 90% or more by volume (including losses) distil at 210 degree Celsius, but the test report is silent about it. AS per the Test Report, the FBP is 194, which means 100% of the goods evaporate at 194 degree Celsius itself whereas for classification of the goods as ‘solvent 145/205’ under CTH 27101239, the requirement as per Note 4 is that only a maximum of 90% should evaporate at 205 degree celsius. Since the entire 100% of the goods evaporate at 194 degree celsius itself, the goods are not meeting the requirements as specified under Chapter Note 4 of Chapter 27,

accordingly we hold that the impugned goods cannot be classified under CTH 27101239 as claimed by the Revenue.

19. The Appellant stated that they have imported ten consignments of white spirit in the past which were assessed and cleared under CTH 27101990. No dispute was raised on compliance of Petroleum Act 1934, in respect of those ten consignments. In respect of six Bills of Entry where the goods were detained, the Appellate Authority remanded the matter after holding that the goods were not classifiable under CTH 27101239. The Appellant stated that after rejecting the classification under CTH 27101239, the Commissioner (Appeals) should have classified the said goods under CTH 27101990, which is the only residuary entry available for classification of the said goods. Further they contended that remanding the matter for assessment in respect of the said six Bills of Entry by the Commissioner (Appeals) is bad in law. Regarding the remaining four Bills of Entry where goods were assessed and Ex-Bond Bills of Entry were filed, the Appellant contended that the goods should not have been seized/ confiscated since out of charge orders have been issued in respect of these goods.

20. We find merit in the arguments of the Appellant. In the impugned order, the Commissioner (Appeals) has rejected the Classification of the goods under CTH 27101239. When the goods do not satisfy the criteria fixed under Note 4 of Chapter 27, the goods cannot be classified under CTH 27101239. The remaining option available in the Tariff is to classify the same under CTH 27101990 which is the only residuary entry available for classification. Regarding the remaining 4 Bills of Entry, as discussed above the Test Reports of CRCL Kolkata does not provide any

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material evidence for classification of the said goods under CTH 27101239. Since the said goods are rightly classifiable under the CTH 27101990, the classification adopted by the Appellant is in order and hence the goods are not liable for confiscation.

21. In view of the above discussion, we allow the appeal filed by the Appellant. Stay application also gets disposed of.

(Pronounced in the open court on...22nd June,2023.....)

Sd/-
(P. K. Choudhary)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar