CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21090 of 2019
And
Customs Cross Objections No.20153 of 2020

(Arising out of Order-in-Original No. MLR-CUSTM-000-COM-005-19-20 dated 16.09.2019 passed by the Commissioner of Customs, Mangaluru.)

M/s. Mangalore Refinery and Petro chemicals Ltd.
Kuthethoor, P.O. Via Katipalla,
Mangaluru – 575 030.

Appellant(s)

VERSUS

Commissioner of Customs,
Mangaluru Customs Commissionerate,
New Custom House,
Panambur,
Mangaluru – 575 010.

Respondent(s)

APPEARANCE:

Mr. Ravi Raghavan with Ms. Purvi Asati and Ms. Ashwini Nag, Advocates for the appellant.
Mr. P.R.V. Ramanan, Special Counsel (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20625 /2026

DATE OF HEARING: **25.03.2026**
DATE OF DECISION: **06.05.2026**

PER: R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Mangalore Refinery and Petrochemicals Ltd. (MRPL) against Order-in-Original No. MLR-CUSTM-000-COM-005-19-20 dated 16.09.2019 passed by the Commissioner of Customs, Mangaluru.

2. Briefly the facts are MRPL the appellant being an oil refinery apart from other products manufactured 'Reformate' inhouse in their manufacturing activity which is further used as blend stock for manufacture of 'Motor Spirit'. The question in this

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case is regarding the classification of Reformate the Commissioner rejects the classification of the product under 2707 50 00 as claimed by the appellant and re-classifies the same under 2710 1219. Thus on finalization of provisional assessments in respect of 4 bills of entry differential duty of Rs.2,12,11,37,672/- is confirmed under Section 28(4) of the Customs Act, 1962 along with interest and held the goods were liable for confiscation and imposed redemption fine of Rs.100,00,00,000/-.

3. The Learned Counsel submits that the appellant is a Central Public Sector Enterprise and a subsidiary of Oil and Natural Gas Corporation Ltd. (ONGC). It is submitted that the appellant manufactures 'Reformate' at their own refinery in Mangaluru which is further used as blend stock for manufacture of 'Motor Spirit'. During the period from October 2015 to February 2017 since their process units was shut down for maintenance activities they had shortage of the product 'Reformate' hence the same was imported during the disputed period.

4. The import was undertaken vide 4 bills of entry dated 07.10.2015, 02.09.2016, 13.09.2016 and 09.02.2017 and the same was considered under CTI 2707 50 00 availing the benefit of concession rate of customs countervailing duty (CVD) and Special Additional Duty (SAD) vide Notification No. 12/2012 dated 17.03.2012 (Sl. No. 126B & 121E). Referring to the decision of the Hon'ble Tribunal in the case of Reliance Industries Ltd. Vs. Additional Director General (Adjudication), Mumbai 2021 (12) TMI 633-CESTAT Mumbai which was affirmed by the Hon'ble Supreme Court in 2024 (3) TMI 1303 (S.C.). It is submitted that the issue has been settled approving the classification under CTI 2707 50 00.

5. The learned counsel also refers to the TRU Circular and submits that as per the circular the 'Reformate' is classified under sub-heading 2707 50 00. Further, it is stated that the product cannot be classified under CTI 2710 12 19 for the reason

that note 2 and note 4 of Chapter 27 the products of 2710 12 19 satisfy the criteria as to the weight of the non-aromatic constituents exceeding that of the aromatic constituents in it. According to the appellant if the weight of the aromatic constituents exceeds that of the aromatic constituents, then the same would be classified under CTH 2710. He submits that in the present case undisputedly, the aromatic component is in the range of 65%-75% and forms the major component of the impugned product as compare to the non-aromatic components. Further he states that the impugned order has held that the impugned product imported by the appellant is nothing but motor spirit, capable of being used as fuel in motor vehicles. This is disputed on the ground that the quality specification of the imported Reformate as provided in the sales contracts and tender documents are similar and identical to that of the Heavy Reformate produced by the appellant at its refinery.

6. With regard to limitation, it is submitted that whenever there is an interpretation of classification of the product the question of misdeclaration or suppression cannot be all alleged as is held in the case of **Densons Pultretaknik Versus Commissioner of Central Excise, Pune 2003 (155) ELT 211 (SC).** It is also submitted the appellant had requested department for finalization of the provisionally assessed subject bills of entry after production of all the relevant documents and since the assessments were finalized the question of suppression does not arise hence no penalty also could be imposed.

7. The Learned Senior Counsel on behalf of the Revenue submitted that the crux of the dispute raised in this Appeal is whether 'Reformate' would be classifiable under Tariff Item 2707 50 00 of ICT and be subject to Basic Customs duty (BCD) @ 2.5%, Additional Customs duty (CVD) @ 14%, Customs Education Cess @ 2%, Customs SHE Cess @1% and 4% Additional Duty (Imports) as claimed by MRPL or under Tariff Item 2710 12 19 of ICT and be subject to Basic Customs duty of 5%, Additional Customs duty (CVD) @ 14%, Customs Education Cess @ 2%, Customs SHE Cess @1% and 4% Additional Duty

(Imports) and Additional levy of special CVD @ Rs.15 per litre) as claimed by Revenue.

8. The Learned Counsel acknowledges the fact that the Mumbai Bench of this Tribunal vide Final order dated 15.12.2021, held in respect of imports of 'Reformate' made by Reliance Industries Ltd. [RIL], that the said product is classifiable under CTH 2707 50 00 and the appeal filed by Revenue against this Order before the Hon'ble SC was dismissed vide Order dated 19.01.2024 with the remark, "We are not inclined to interfere with the judgment and order passed by the Customs, Excise & Service Tax Appellate Tribunal." But claims that the Hon'ble Tribunal in the said Final Order based its conclusions on the observations and findings in the impugned Order in that case. It is his claim that though the product covered in the present Appeals is identical, the facts and findings in the present impugned order are quite different hence reliance on the said decision may not be appropriate.

9. Referring to the observations of the Hon'ble Tribunal in Paras 16 and 17 of the Final Order are as follows:

> "16. The Adjudicating Authority dealt with this issue and accepted the contention of the appellant that the term "similar products" used in chapter Heading 2707 also includes products obtained by processing of petroleum as the said Explanatory Notes explain the classification of "similar products" obtained from distillation of coal tar and includes processing of petroleum. This part of the finding recorded by the Adjudicating Authority has not been assailed by the Department.
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> 17. Thus, if the product Reformate is classifiable under the four digit Heading CTH 2707, it would not be really material to determine as to under which eight digit Sub-Heading it can be classified because the duty rate structure is the same for all the Sub-Heads. The Adjudicating Authority, therefore, committed an error in thereafter holding that the product Reformate would be classifiable under CTH 2710 12 19."

Therefore, it is his submission that in the impugned order in Para 19.15.1 and 19.15.2 of the impugned order. After examining the contentions of MRPL, in Para 19.15.2, he has concluded that

Reformate does not merit classification under four-digit CTH 2707. Nowhere has the respondent accepted the contention, as was the case in the said Final Order, that the term "similar products" used in chapter Heading 2707 also includes products obtained by processing of petroleum as the said Explanatory Notes explain the classification of "similar products" obtained from distillation of coal tar and includes processing of petroleum. Accordingly, the main ground for holding that the product is classifiable under CTH 2707 as seen from the aforesaid Final Order does not exist in the present case.

10. Referring to the relevant observations in Paras 19 to 21 of the Final order dated 15.12.2021, the learned counsel distinguished the observations made by the Commissioner in the present impugned order. He further submits that in the case of MRPL, apart from test reports, the SCN also relied upon the Tender documents unlike in the case of RIL, both of which show that 100% by volume of 'Reformate distils around 205°C. Even assuming that the term 'at' can be interchangeably used with 'by' when 100% the product under import distils at around 205°C, will it continue to be distilled even 45°C thereafter. One important factor to be reckoned with is, a (+) or (-) acceptability range is generally applicable for scientific values. In this case, by whatever mathematical permutations, one cannot explain the difference of more than 36-45°C as difference between the specified limit and the observed limit of temperature. Further, in the fractional distillation process, it is a well-known fact that products of a group are distilled at a nearer range of temperatures. It is also seen that products having low boiling points are distilled earlier than that having higher boiling points. Thus, use of the term 'by' at one place in the SCN does not give the any reliance on the classification practice adopted in other countries with reference to 'Reformate'. This is not the case in the present Appeals.

11. He also submitted that in Para 54 of the Final Order, the Hon'ble Tribunal has observed that Revenue has not substantiated that the flash point of 'reformate' was below 25°C.

Drawing out attention to Paragraphs 6.4, 19.5 and 19.6 of the impugned order, he submits that the respondent has clearly established that the product imported by MRPL had a flash point below 25°C. This supports the view that the reformate merits classification under CTH 2710 12. He also states that the practice of classification adopted by other PSUs by placing reformate under 2710 12 has been dealt with in Para 19.12 of the impugned order. A copy of the B/E supporting this contention [extracted in the SCN] may be seen at Para 5.10 of the impugned order. It is his contention that the facts and findings noticed in the Final order in the case of RIL can be distinguished from the facts and findings of the impugned order. Hence, though the product is the same by description and the Hon'ble SC has dismissed Revenue's Appeal without a reasoned order, it is submitted that the ratio of the Final Order ought not to be applied to the present Appeals. In the alternative, the matter may be referred to a Larger Bench for the resolution of dispute in the classification of "Reformate.

12. Heard both sides and perused the records. The only issue to be dealt is whether impugned product imported by the appellant is classifiable under CTI 2710 12 as claimed by the Revenue or under 2707 50 00 as claimed by the appellant.

2707	**Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents**
2707 10 00 -	Benzol (benzene)
2707 50 00 -	Other aromatic hydrocarbon mixtures of which 65 % or more by volume (including losses) distils at 250 °C by the ISO 3405 method (equivalent to the ASTM D 86 method)
2710	**Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils:**
2710 12	Light Oils and Preparations:
---	Motor Spirit
2710 12 11	---- Special boiling spirits
2710 12 19	---- Other

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16. The question arises whether the product is classifiable under 2707 or under 2710. The Tribunal in the case of Reliance Industries Ltd. Vs. Additional Director General (Adjudication), Mumbai, (Supra) the Tribunal while dealing with the identical set of facts held as follows:

> "3. Reformate is a mixture of predominantly aromatic C5-C11 hydrocarbon compounds which are obtained by a process of catalytic reforming of Heavy Naphtha, which is an intermediate product obtained in the petroleum refinery from the processing of crude petroleum oils. Heavy Naphtha comprises mainly of straight chain hydrocarbons which are predominantly non-aromatic in nature. The process of catalytic reforming is a series of complex chemical reactions which inter-alia convert many non-aromatic hydrocarbon compounds of Heavy Naphtha into aromatic hydrocarbon compounds. Consequently, Reformate becomes an aromatic rich product comprising as much as 82%-92% by weight of aromatic compounds. As against this, the weight of aromatics in heavy Naphtha is about 10%-20%.
>
> **14.** The first issue that arises for consideration in this appeal is as to whether the product Reformate merits classification under the four-digit CTH 2707. The reason assigned in the show cause notice for not classifying it under aforesaid four digits CTH is that Reformate is not a distillate of coal tar or mineral tar.
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> **15.** In this connection, reference needs to be made to the HSN Explanatory Notes to CTH 2707. They clarify that the said Heading covers, in addition to distillates of coal tar or mineral tar, similar products obtained by the processing of petroleum or by any other process. The relevant portion of Heading 2707 to Explanatory notes to HSN are:
> "27.07 Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the constituents.
>
> ** ** **
>
> This heading covers:
>
> (1) ** ** **
>
> (2) Similar oils and products with a predominance of aromatic constituents obtained by the distillation of low temperature coal tar or other mineral tar, by the "stripping" of coal gas, by the processing of petroleum or by any other process."

16. The Adjudicating Authority dealt with this issue and accepted the contention of the appellant that the term "similar products" used in chapter Heading 2707 also includes products obtained by processing of petroleum as the said Explanatory Notes explain the classification of "similar products" obtained from distillation of coal tar and includes processing of petroleum. This part of the finding recorded by the Adjudicating Authority has not been assailed by the Department.

17. Thus, if the product Reformate is classifiable under the four digit Heading CTH 2707, it would not be really material to determine as to under which eight digit Sub-Heading it can be classified because the duty rate structure is the same for all the Sub-Heads. The Adjudicating Authority, therefore, committed an error in thereafter holding that the product Reformate would be classifiable under CTH 2710 12 19.

18. The second issue that arises for consideration is whether the product Reformate merits classification under CTH 2707 50 00.

19. The reason assigned by the Adjudicating Authority for not classifying it under this eight digit classification is that the Sub-Heading requires 65% or more by volume of the product to distill at 17. 250ºC, but in the present case 65% of the product by volume distills at around 142.5ºC.

20. Learned counsel for the appellant submitted that the distillation of a product is not a flash reaction, but is a process where the inputs start distilling slowly as the temperature rises. Thus, if the requirement stipulated is that a certain percentage of the product (by volume) must distill "at" a certain temperature, it should actually mean that as the product is heated, the distillation to the required extent must happen "by" that temperature. The submission advanced, therefore, is that the expression "at 250ºC" should be read as "by 250ºC".

21. This submission advanced by the learned counsel for the appellant deserves to be accepted. What is important to notice is that the show cause notice also accepts this position since it classifies Reformate under CTH 2710 as "light oils and preparation" under Sub-Heading Note 4 to Chapter 27 alleging that 90% or more by volume of the product distills around 163ºC to 175ºC, whereas the said Note requires distillation of 90% or more of a product at 210ºC. The show cause notice, therefore, itself has read "at 210ºC" to mean "by 210ºC". **The conclusion drawn by the Adjudicating Authority is, therefore, not only incorrect but even otherwise, the Department cannot be permitted take a contrary stand. It follows that the expression "at 250ºC"**

appearing in the description of CTH 2707 50 00, should be read as "by 250ºC". The product would, therefore, merit classification under CTH 2707 50 00".

22. This apart, this position also emerges from a perusal of the Notification No. 12/2014 dated 11-7-2014 and the budget speech of the Finance Minister made on 10-7-2014. The Finance Minister proposed to reduce the tax incidence on Reformate to 2.5% and immediately on the next date, the Customs Notification No. 12/2014 was issued providing for effective rate of basic customs duty on products classifiable under CTH 2707 50 00 as 2.5%.

23. This Notification dated 11-7-2014 seeks to amend the earlier Notification on 17-3-2012 and provides for effective rates of basic and additional duty for specified goods falling under Chapters 1 to 98. It was issued in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act and the relevant portion of the Notification is reproduced below:

"Notification: 12/2014-Cus. Dated 11-7-2014
Effective rates of basic and additional duty for specified goods falling under Chapter 1 to 98 - Amendment to Jumbo Notification No. 12/2012-Cus.
In the said notification-

(A) in the Table-

** ** **

(XV) after serial number 126 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely:-

"126A	2707 40 00	Naphthelene	5%	-	-
126B	*2707 50 00*	*All goods*	*2.5%*	-	-
126C	2708	Coal tar pitch	5%	-	-" ;

(Emphasis Supplied)

24. This has to be read in the context of the budget speech of 2014-15 of the Finance Minister, of which the relevant portion is reproduced below:

"*Indirect Taxes*
212. I now turn to indirect taxes and shall begin with customs duties.

** ** **

214. In order to encourage new investment and capacity addition in the chemicals and petrochemical sector, *I propose to reduce the basic customs duty on reformate from 10 to 2.5 percent*; on ethane, propane, ethylene, propylene, butadiene and ortho-xylene from 5 percent to 2.5

percent; on methy1 alcohol and denatured ethy1 alcohol from 7.5 percent to 5 percent; and on crude naphthalene from 10 percent to 5 percent."

25. It would be clear from the aforesaid Notification that in order to encourage new investment and capacity addition in the chemicals and petrochemical sector, the Finance Minister proposed to reduce the basic customs duty on Reformate from 10% to 2.5% and this is what was actual proposed in the Notification, wherein the customs duty under CTH 2707 50 00 was notified to be 2.5%.

26. The Tax Research Unit Circular issued by the Department of Revenue also, after making reference to the budget speech delivered by the Finance Minister on 10-7-2014 and in particular to the changes in the customs and central excise law and rates of duty proposed in connection with Chapter 27 of the Customs Act, states that the basic customs duty on Reformate and other goods under Sub-Heading 2707 50 00 has been reduced from 10% to 2.5% and the earlier Notification dated 17-3-2012 has been amended to that extent shown at Serial No. 126B in the Notification dated 11-7-2014. The Annexure to the Circular reads as follows:

"(4) *Basic Customs Duty on reformate and other goods under sub-heading 2707 50 00 is being reduced from 10% to 2.5%.* Notification No. 12/2012-Customs, dated 17th March, 2012 as amended by notification No. 12/2014-Customs, dated the 11th July 2014 [new S. No. 126B] refers."

27. Learned special counsel appearing for the Department has however, submitted that reliance upon the Tax Research Unit Circular, which makes reference to the speech of the Finance Minister as also the Customs Notification, and provides for the summary of the changes mentioned in the Annexure, cannot be used in any quasi-judicial or judicial proceedings, where only the relevant legal texts need to be referred to.

28. It is not possible to accept this contention of the learned special counsel appearing for the Department. The Notification dated 11-7-2014 was issued and it is the position emerging from the issuance of this Notification that has been clarified by the TRU Circular. Merely because the Circular states that the Annexure only provide a summary of the changes made and should not be used in any quasi-judicial or judicial proceedings would not in any manner dilute the position emerging from the Notification that has been explained in the Circular.

29. The third issue that arises for consideration is as to whether the product Reformate would merit classification under CTH 2710.

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34. It needs to be remembered that Reformate is a highly rich aromatic product containing 80% or more aromatic content. It cannot, therefore, be covered under category (C) and accordingly, from the purview of CTH 2710 as well. This is for the reason that all the products covered by category (C) must contain, in addition to the substances added, at least 70% of petroleum oils covered by categories (A) and (B). Thus, even if the substances added for making the preparations are considered to be all aromatic in nature, the preparations, by virtue of at least having 70% of categories (A) and (B) oils therein must have 35% non-aromatic constituents (70% of 50%). Thus, the aromatic content at best would be 65% in the preparation of the kind covered under category (C). Reformate, however has 80% aromatic contents and, therefore, cannot be considered under category (C).

35. This apart, from a plain language of the expression "preparations not elsewhere specified or included, containing by weight of 70% or more of petroleum oils, these oils being the basic constituents of the preparations', it is evident that even if it is assumed that Reformate is a preparation, still it will not be classifiable under CTH 2710 as the said Heading specifically excludes preparations which are elsewhere specified or included. It needs to be remembered that Reformate is specifically covered under CTH 2707 and at 8-digit level under CTH 2707 50 00.

36. What also needs to be noted is that Heading 2710 consists of 3 parts namely: (*i*) Petroleum oils and oils obtained from bituminous minerals, other than crude; (*ii*) Preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; and (*iii*) waste oils. The expression 'products covered by the first part of this heading' in the Explanatory Note does not refer to or apply to all 'Primary Products' listed under categories (A), (B) and (C) but only to the first part of the Heading 2710 *i.e.,* 'Petroleum oils and oils obtained from bituminous minerals, other than crude' which covers products (A) and (B). The products falling under category (C) are covered by the second part of the Heading 2710 and not the first part. Thus, the reference drawn to the aforesaid Explanatory Note by the Adjudicating Authority to justify classification of Reformate under CTH 2710 is not correct. The impugned order, thus, deserves to be quashed for this reason also.

40. The fourth issue that arises for consideration is whether Reformate can be classified under CTH 2710 12 19 as "other motor spirit".

41. The contention of the learned special counsel appearing for the Department that Reformate is classifiable under CTH 2710 12 19 cannot be accepted as Reformate is neither a 'motor spirit' nor is it similar to it. Supplementary Note (*a*) to Chapter 27, defines 'motor spirit' to mean 'any hydrocarbon oil (excluding crude mineral oil) which has its flash point below 25ºC and which either by itself or in admixture with any other substance, is suitable for use as fuel in spark ignition engines'. Thus, for a product to be classified as a 'motor spirit', it has to cumulatively satisfy the twin requirements stipulated below:

(*a*) The product is present by itself or in admixture with any other substance; and

(*b*) Such product is suitable for use as fuel in spark ignition engines.

42. The Adjudicating Authority has held that since Reformate is used as a blend stock for Motor Spirit, it would mean that Reformate is used as 'admixture' with 'motor spirit' and would, therefore, be classifiable as a 'motor spirit' in terms of Supplementary Note (*a*).

43. The expression 'admixture with any other substance' in the definition of 'motor spirit' has to be taken as a substance other than mineral oil. This is what was observed by the Tribunal in *Oil India Ltd.* v. *Commissioner of Central Excise*, Shillong 2002 (148) E.L.T. 802 (Tri.-Del.) and *Gail (India) Ltd.* v. *Commissioner of C. Ex. & S.T., Vadodara-II* 2019 (366) E.L.T. 146 (Tri.- Ahmd.) The Civil Appeal filed by the Department against the decision of the Tribunal in Oil India Ltd. was dismissed by the Supreme Court both on the ground of delay as well as on the merits and the decision is reported in 2004 (170) E.L.T. A116 (S.C.).

44. In *Oil India Limited*, the Tribunal held as follows:
"There is also merit in the contention of the appellant that reference to admixture with any other substance is to be taken as substance other than mineral oil."

45. In *Gail (India) Ltd.*, the Tribunal held as follows:
"Thus, to qualify for the phrase 'suitable of use as motor spirit' the product needs to be tested in admixture with anything other than 'mineral oil'."

46. This apart, the expression 'admixture' should refer to a substance which is added in a small quantity or proportion and would not include a product which is added in large proportion. Thus, gasoline to which Reformate is added as a blend stock in a small quantity/proportion cannot be treated to be an 'admixture' so as to justify the finding that Reformate along with gasoline (as an admixture) is suitable for use as a fuel in spark ignition engines.

The Impugned based on the quality control Laboratory report arrives at the following conclusions

i. The reformate imported also contains other products in them other than the aromatics

ii. It is 90% of the product reformate Gets distilled around 155.4 degree C The final boiling point of the product reformate Is 189.6 degrees C and the specification limit for the final boiling point is 205 degree C

iii. The report also mentions that Flashpoint of the product as 41 degrees C which was found actually to be minus 41 degree C as confirmed by Sri Yogesh SN lab supervisor of Messrs MRPL when his statement was recorded by the DRI on 18.01.2018 under section 108 of the Customs Act 1962

iv. The report also mentions the research obtain number(RON) Of the product reformate.

17. The Commissioner in the impugned order holds that the weight of the non-aromatic constituents exceeds that of the aromatic constituents will apply only to the last antecedent that is similar oils. Therefore, the said condition with regard to aromatic constituency does not apply to petroleum oils falling under head in 2710 and since reformate falls under light oil and its preparation the same is not applicable. A second argument is specification limit for final boiling point mentioned in the test reports for the product reform is maximum 210 degrees C hence has 90% or more by volume of the product reformate distills at 210 degree the product is nothing but light oils and preparations and merits classification under chapter 2710 12. The Commissioner also notes that in the instant case it is seen that the reformate is obtained by catalytic reforming/conversion of heavy naphtha which is a distillate of crude oil. Therefore, as naphtha has been derived from crude oil, it falls under category

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a 'primary products pertain to topped crudes as well as light medium and heavy oils which consist predominantly of non-aromatic hydro carbons.

18. The senior counsel appearing for the revenue admits to the fact that the products covered in the present appeals are identical but the facts and findings in the present impugned order are different. At the outset we find that the revenue cannot have two opinions on the identical products, therefore the finding of the Tribunal in the case of RIL that *'the question that the adjudicating authority having accepted that the term "similar products" used in chapter Heading 2707 also includes products obtained by processing of petroleum as the said Explanatory Notes explain the classification of "similar products" obtained from distillation of coal tar and includes processing of petroleum. This part of the finding recorded by the Adjudicating Authority has not been assailed by the Department'* cannot be now disputed on the ground that the present proceedings did not admit the same.

19. Secondly, the finding of the Tribunal which is reproduced below is also not disputed in the present proceedings '**the conclusion drawn by the Adjudicating Authority is, therefore, not only incorrect but even otherwise, the Department cannot be permitted take a contrary stand. It follows that the expression "at 250°C" appearing in the description of CTH 2707 50 00, should be read as "by 250°C". The product would, therefore, merit classification under CTH 2707 50 00'.**

20. In view of the above, since the Hon'ble Supreme Court has upheld the decision of the Hon'ble Tribunal in identical set of facts where identical show-cause notices were issued to all the appellants who had imported reformate during the disputed periods, reopening the issues based on the different observations of the adjudicating authority cannot be sustained.

21. The Hon'ble Supreme Court in the case of **Kunhayammed Versus State of Kerala 2001 (129) E.L.T. 11 (S.C.)** dated 19.07.2000 observed as follows with regard to merger of the order:

44. To sum up our conclusion are :

(i) Where an appeal or revision is provided against an order passed by a court, Tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But,

this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule (1) of Order 47 of the C.P.C.

22. In view of the above, since the Civil Appeal No.8451/2022 dated 19.01.2024 which was dismissed by the Hon'ble Supreme Court by observing that 'we are not inclined to interfere with the impugned judgment and order passed by the Customs, Excise & Service Tax Appellate Tribunal', the order of the Hon'ble Tribunal is merged with that of the Supreme Court. Therefore, we do not find any justification in reopening the issue for the identical products imported by MRPL in the present case. Hence, the impugned order is set aside. The Cross Objection also stands disposed of

Appeal is allowed with consequential relief, if any, as per law and.

(Order pronounced in Open Court on 06.05.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv

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