CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85761 of 2022

(Arising out of Order-in-Appeal No. 509(Gr. IIC-F)/2021(JNCH)/Appeals dated 25.06.2021 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai Zone-II].

Danish Impex **.... Appellant**
Ground Floor, CTS No. 643/3A/8B/Dor Gali
Near Gangapur pet, Gadag
Karnataka – 582 101.

Versus

Commissioner of Customs, Nhava Sheva-I **....Respondent**
Jawaharlal Nehru Custom House (JNCH),
Nhava Sheva, Taluka Uran
District Raigad,
Maharashtra – 400 707.

WITH

Customs Appeal No. 85146 of 2024

(Arising out of Order-in-Appeal No. 1049(GR-IIC-F)/2023(JNCH)/Appeals dated 05.10.2023 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai Zone-II].

Danish Impex **.... Appellant**
Ground Floor, CTS No. 643/3A/8B/Dor Gali
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Versus

Commissioner of Customs, Nhava Sheva-I **....Respondent**
Jawaharlal Nehru Custom House (JNCH),
Nhava Sheva, Taluka Uran
District Raigad,
Maharashtra – 400 707.

Appearance:

Shri N.D. George, Advocate for the Appellants
Shri Deepak Sharma, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85669-85670/2026

Date of Hearing: 26.02.2026
Date of Decision: 12.05.2026

Per: M.M. PARTHIBAN

These appeals have been filed by M/s Danish Impex, Gadag, Karnataka (herein after, referred to as "the appellants", for short) assailing Order-in-Appeals No.509 (Gr.IIC-F)/2021(JNCH)/Appeals dated 25.6.2021 and No. 1049(GR-IIC-F)/2023(JNCH)Appeals dated 05.10.2023 (herein after, referred to as "the impugned order", for short), both passed by the same authority i.e. Commissioner of Customs (Appeals), Nhava Sheva, Mumbai Zone-II, but different officers holding that position.

2.1 The brief facts of the case are that the appellants are engaged in import and sale of industrial solvents, and for this purpose they had filed Bill of Entry (B/E) No. 2393695 dated 12.03.2019 declaring the imported goods which were exported from United Arab Emirates (UAE) as "Industrial Composite Solvent" and by classifying it under Customs Tariff Item (CTI) 3814 0010, for a total quantity of 108.120 MTs in six containers. The said self-assessed B/E was allowed customs clearance under Customs Automated System on the basis of risk evaluation through appropriate selection criteria commonly called as Risk Management System (RMS), without further verification of self-assessment or for examination of the goods. The Central Intelligence Unit (CIU) of JNCH, had collected certain intelligence and on that basis the said imported goods in all six containers were physically examined by them. On such prima-facie examination by the CIU officers under panchanama dated 22.03.2019, it was found that the imported goods are colourless, petroleum smelling liquid and therefore took six representative sealed samples (RSS) and sent for chemical testing by the Deputy Director of Central Revenue Control Laboratory (CRCL) commonly called as DYCC Laboratory on 26.03.2019. On receipt of the test reports of DYCC stating that the imported goods were tested for eight specified parameters and these meet the specifications/requirements of IS 1459:1974 for Superior Kerosene Oil (SKO), the said imported goods were seized by the department on 25.04.2019.

2.2 On further investigation including search of the premises of customs broker, number of documents were recovered and statements of persons concerned were also recorded. Upon submission of the request by the appellant importer for re-testing of samples of imported goods, representative samples were drawn and forwarded to CRCL laboratory at New Delhi on 09.08.2019. The test reports dated 20.11.2019 received

indicated that the imported goods meet the requirement/specifications as per IS 1459:2018 for kerosene/Superior Kerosene Oil.

2.3 On the above basis, the CIU investigation concluded that the appellants importer had involved in smuggling of Superior Kerosene Oil falling under Customs Tariff Item (CTI) 2710 1910 into India, by mis-declaring the goods as 'Industrial Composite Solvent' classifiable under CTI 3814 0010, since as per the import policy prescribed under Schedule I -- Import Policy ITC (HS) 2017, 'Superior Kerosene Oil' falling under CTI 2710 1910 is allowed to be imported only by State Trading Enterprises (STEs) i.e., IOC, BPC, HPCL and IBP. On the above basis, Show Cause Notices (SCN) dated 20.01.2020 was issued, wherein the Department had proposed to reject the classification of goods imported under the aforesaid Bill of Entry, and had proposed for reclassification of the same from Industrial Composite Solvent' to ''Superior Kerosene Oil' (SKO) falling under CTH 2710 1910, on the basis of the test reports and other evidences.

2.4 The appellants were also called to show cause as to why with regard to the consignment imported vide B/E No. 2393695 dated 12.03.2019:

(i) the declared description of the goods as "Industrial Composite Solvent" should not be rejected and held as "Kerosine/ Superior Kerosene Oil";

(ii) the declared classification should not be rejected and re-classified under CTH 2710 1910 of the Customs Tariff Act;

(iii) the value of the goods improperly imported should not be determined as per Rule 4 of the Customs Valuation (Determination of value of imported goods) Rules, 2007;

(iv) the subject seized goods should not be confiscated under Sections 111(d) and 111(m) read with Section 119 of the Customs Act, 1962 (for short, referred to as the "Act of 1962");

(v) Penalty should not be imposed under Section 112(a) and 112(b) of the Act of 1962.

3.4 The said SCNs was adjudicated by the learned Additional Commissioner of Customs vide Order-in-Original No. 432/20-21/ADC/NS-I/JNCH/CAC dated 23.11.2020 confirming all the proposals made in the SCN. Feeling dissatisfied with the order of original authority, the appellants had filed appeal before the learned Commissioner (Appeals) who in disposing the appeal, upheld the order of the original authority and rejected

the appeal filed by the appellants. Being aggrieved with the impugned order dated 25.06.2021, the appellants have filed the appeal being No. C/85761/2022 before the Tribunal. Independent of the above, on the basis of Review Order No. 51/2020-21 dated 22.02.2021, the Department preferred appeal against the order of the original authority dated 23.11.2020 before the Commissioner (Appealsz) pleading for imposition of redemption fine equivalent to the market price of the impugned goods redetermined at Rs.42,23,772/-. However, the learned Commissioner (Appeals) had indicated in the order-in-appeal, the reference of the original order as No. 433/2020-21/ADC/NS-I/CAC dated 22.02.2021 at preamble, paragraphs 1, 2.5, 5 and 6, wherein these details are incorrectly quoted therein. Further, in the said Order-in-Appeal dated 05.10.2023, the learned Commissioner (Appeals) had allowed the Department's appeal by modifying the redemption fine imposed in the order of the original authority by enhancing from Rs.33,00,000/- to Rs.42,23,772/-. Being aggrieved with the Order-in-Appeal dated 05.10.2023, the appellants have filed the appeal being No. C/85146/2024 before this Tribunal.

4.1 Learned Advocate for the appellants at the outset submitted that the impugned orders dated 25.6.2021 and 05.10.2023 have been passed against the same order of the original authority, one by holding the same and another by modifying the redemption fine in enhancing the same. Both the impugned orders have based their findings on the basis of chemical test reports received from the CRCL laboratory. The appellants importer had requested for retesting of the samples in order to meet the requirements of BIS standards specified in IS 1459:1974 in order to decide whether the imported goods are Superior kerosene oil as claimed by the Department or it is industrial composite solvent as declared by them. However, in the test reports submitted by the Department all the requisite parameters have not been tested and therefore the same cannot be relied upon for deciding the classification differently and for confirmation of a adjudged demands on the appellants.

4.2 Further, learned Advocate also stated that the first appellate authority had wrongly rejected the classification of the consignment, on the basis of the test reports of CRCL, as the same could not be relied upon. The Custom House Laboratory both at Nhava Sheva and New Delhi have conducted tests in relation to only 5 or 6 parameters out of the required 8 parameters as per IS 1459:1974. Therefore, the conclusion that the

imported goods is not 'Industrial Composite Solvent' but 'Kerosene/SKO" is based on incomplete test reporting of the sample. It has been held in a number of cases by the Tribunal that incomplete test reports cannot be the basis for rejecting the classification. In this regard, he relied upon the following case laws:

(i) *Gastrade International Vs. Commissioner of Customs, Kandla* – 2025 (392) E.L.T. 529 (S.C.) upholding the Tribunal's order

(ii) *Jaymco Polymers Pvt. Limited Vs. Commissioner of Customs (Import)* – Final Order No. A/85436-85437/2022 dated 09.05.2022 of CESTAT, Mumbai

(iii) *M.V.B. Enterprises Vs. Commissioner of Customs, Nhava Sheva-I* – Final Order No. A/86236/2023 dated 18.08.2023 of CESTAT, Mumbai

(iv) *M.M. Trading Company Vs. Commissioner of Customs, Nhava Sheva-I* – Final Order No. A/87577/2024 dated 29.11.2024 of CESTAT, Mumbai

(v) *N.V. Rambabu Vs. Additional Director General (Adjudication), Mumbai* – (2026) 41 Centax 7 (Tri.-Bom) upheld by the Hon'ble Supreme Court - (2026) 41 Centax 8 (S.C.)

Therefore, he pleaded that the issue is no more *res integra* and on such basis alone, their appeal shall be allowed.

5. On the other hand, learned Authorised Representative (AR) appearing for Revenue, reiterated the findings made by the learned Commissioner of Customs (Appeal) in the impugned order and stated that on the basis of the detailed investigation and findings made, the impugned order is sustainable. On the test results, he stated that out of 8 parameters for testing as per BIS standards, six parameters have been tested and only sulphur content has not been tested. Even in case of hydrocarbon solvents are classifiable under heading 2710 and therefore there was mis-classification in the impugned imports. Therefore, he stated that the appeals filed by the appellants may be dismissed.

6. We have heard both sides, examined the case records and the additional submissions made during the course of hearing, in the form of paper books submitted by both sides.

7. The issue involved herein is to decide the classification of goods imported by the appellants as to whether, the same merits classification under Customs Tariff Heading (CTI) 3814 0010 described as 'Industrial

Composite Solvent' as claimed by the appellants; or, is it classifiable under CTI 2710 1910 described as 'Kerosene/Superior Kerosene Oil (SKO)' as determined in the impugned orders, for deciding on appropriate levy of customs duty on the basis of appropriate valuation of goods and to decide whether the restrictions/ conditions for import as per ITC-HS of the FTP are applicable on the impugned goods.

8.1 On perusal of case file, certain undisputed facts as highlighted by the Advocate for the appellants and not disputed by AR for the Revenue are summarised herein below:

(i) Industrial Composite Solvent classifiable under CTH 3814 0010 of the First Schedule to Customs Tariff Act, 1975 is freely importable and such goods categorized under 38140011/38040012/38140013/38140019 of ITC(HS) under FTP are allowed as 'free' for import.

(ii) Test reports dated 09.04.2019 issued by DYCC laboratory, JNCH for the imported goods tested 5 out of the 8 parameters prescribed under IS 1459:1974 and on the basis of such parameters had reported that these conform to the specifications of Kerosene as per IS 1459:1974

(iii) The retest of imported consignments was conducted by CRCL Laboratory, New Delhi and they tested 6 out of the 8 parameters, for concluding that the goods may be considered as conforming to the specifications of Kerosene as per IS 1459:1974

(iv) The restrictions for import prescribed in the case of Kerosene for import only through STEs does not apply to the Industrial Composite Solvent.

Since the above facts/documents have been relied upon in the impugned order, in support of the findings on mis-classification of goods as 'Superior Kerosene Oil' instead of 'Industrial Composite Solvent, it will be important for us to see whether the same can be held as valid evidences for coming to a conclusion on the appropriate classification of the goods.

8.2 In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

> "***Section 12. Dutiable goods.*** -
> *(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other*

law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

"Section 1. Short title, extent and commencement. *-*

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Duties specified in the Schedules to be levied. *-*

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

xxx xxx xxx xxx

THE FIRST SCHEDULE – IMPORT TARIFF
(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is preceded

by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,—

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

8.3 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification

of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

8.4 In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 3814 0010 declared by the appellants as 'Industrial Composite Solvent' or CTI 2710 1910 described as 'Superior Kerosene Oil (SKO)' of the First Schedule to the Customs Tariff Act. Further, in terms of supplementary note to Chapter 27, statutory definition or meaning has been given for SKO as follows:

"CHAPTER 27
Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

Notes :

xxx *xxx* *xxx* *xxx*

Supplementary Note :

In this Chapter, reference to any standard of the Bureau of Indian Standards refers to the last published version of that standard.
Illustration : IS 1459 refers to IS 1459: 2018 and not to IS 1459: 1974.

In this Chapter, the following expressions have the meanings hereby assigned to them :

(a)…..
(c) "superior kerosine oil (SKO)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS : 1459-1974 (Reaffirmed in the year 1996);"

In terms of the above requirements of supplementary note (c) for classifying imported goods as SKO and on perusal of the case records, we find that in order to determine the characteristics of imported goods whether these are 'Superior Kerosene Oil (SKO)' or 'other Diesel Oil such as High Speed Diesel (HSD) etc., certain standard of measures as has been

prescribed by Bureau of Indian Standards (BIS) which are required to be fulfilled. BIS standards provide for product specifications on the basis of which the same can be classified under a particular entry. The disputed entries in the present case are of ''Superior Kerosene Oil (SKO)' and 'Industrial Composite Solvent'. BIS have prescribed Indian Standard for 'Superior Kerosene Oil (SKO)' as IS 1459:1974 (Reaffirmed in the year 1996) and the same provides for 8 parameters. Once all parameters are fulfilled, the product can be called as ''Superior Kerosene Oil (SKO)'. However, there is no chapter note or sub-heading note or supplementary note for either defining or laying down standards of specification for "Organic or industrial composite solvent" under chapter 38 of the Customs Tariff.

8.5 In the present case, for the imported consignments, test reports are issued by the DYCC Customs Laboratory, JNCH as well as by CRCL laboratory, New Delhi. For example in the test reports dated 09.04.2019, all similarly worded, the Chemical Examiner Gr.-II, JNCH Laboratory, Nhava Sheva had after testing 5 parameters of the IS 1459:1974 has concluded that the goods imported by the appellants meets the specifications/requirement of Superior Kerosene Oil. The extract of the said report is as follows:

"TEST REPORT:

The sample (as received) is in the form of clear colourless liquid. It is composed of mixture of hydrocarbons, more than 70% having following contents:

1.	*Flash Point (by Abel App.)*	-	*47°C*
2.	*Density@15°C*	-	*0.7937 gm/ml*
3.	*KV (Kinematic viscosity) @40°C*	-	*1.13 CST*
4.	*Smoke point*	-	*more than 18 mm*
5.	*Initial boiling point*	-	*167°C*
	90% distilled at	-	*217°C*
6.	*Final boiling point*	-	*237°C*
	at 200°C, 67% by vol. distilled		

The above tested parameters meet the specification/ requirements of IS 1459:1974 for SKO (Superior Kerosene Oil).

Sealed remnant returned.

Sd.
(Dr. Mritunjoy Maity)
Chemical Examiner Gr.-II
JNCH Laboratory, Nhava Sheva"

In the CRCL Laboratory, New Delhi's report the additional specifications that are tested are (1) Appearance (2) Acidity, Inorganic (7) colour (saybolt) (8) copper strip corrosion for 03 hrs at 50°C.

8.6 The extract of the various parameters prescribed under the BIS Standard *IS:1459:1974* for determining a product as Superior Kerosene Oil, is extracted and given below:

IS 1459 : 1974 SPECIFICATION FOR KEROSENE

IS : 1459 - 1974

2.2 The material shall also comply with the requirements given in Table 1, when tested according to the appropriate methods prescribed under 'P' series of IS : 1448*, reference to which is given in col 4 of the table.

TABLE 1 REQUIREMENTS FOR KEROSINE

Sl No.	Characteristic	Requirement	Method of Test, Ref to 'P' of IS : 1448*
(1)	(2)	(3)	(4)
i)	Acidity, inorganic	Nil	P : 2
ii)	Burning quality:		P : 5
	a) Char value, mg/kg of oil consumed, *Max*	20	
	b) Bloom on glass chimney	Not darker than grey	
iii)	Colour (Saybolt)†, *Min*	†10	P : 14
iv)	Copper strip corrosion for 3 h at 50°C	Not worse than No. 1	P : 15
v)	Distillation:		P : 18
	a) Percent recovered below 200°C, *Min*	20	
	b) Final boiling point, °C, *Max*	300	
vi)	Flash point (Abel), °C, *Min*	35	P : 20
vii)	Smoke point, mm, *Min*	18‡	P : 31
viii)	Total, sulphur, percent by mass, *Max*	0·25§	P : 34

*Methods of test for petroleum and its products.

†Where Saybolt chromometer is not available, Lovibond colour of the sample kept in an 18-in cell may be measured according to IS : 1448 [P : 13]-1960 ' Methods of test for petroleum and its products, P : 13 Colour by Lovibond tintometer ' in which case, the colour shall not be deeper than Standard White (IP 4·0).

‡For supplies to Defence, the smoke point of the product shall be 21 mm, *Min* and for Railways it shall be 20 mm, *Min*.

§For supplies to Defence, total sulphur content, percent by mass, of the product shall be 0·20, *Max*.

*Methods of test for petroleum and its products.

8.7 On comparison of the legal requirement as per supplementary note (c) to chapter 27 and BIS standards, and the test report given by the Customs laboratory, it is quite clear that firstly all the 8 test parameters viz., (i) Acidity, Inorganic; (ii) Burning quality, (a) Char value, mg/kg of oil consumed, Max. and (b) Bloom on glass chimney; (iii) Colour (Saybolt), Min.; (iv) Copper strip corrosion for 3 hr. at 50˚C; (v) Distillation: (a) Percent recovered below 200˚C, Min., (b) Final boiling point, ˚C, Max.; (vi)

Flash Point (Abel), ˚C, Min.; (vii) Smoke point, mm, Min.; and (viii) Total, sulphur, percent by mass, Max. have been specified, with specific values to be conforming to the maximum or minimum level or standards. These are required to be done for establishing the fact that a product is 'Superior Kerosene Oil/SKO' by matching all the eight specified parameters. However, in the present case all these parameters have not been tested and reported by the Customs Laboratory. Further, two of the determining parameters i.e., Burning quality and Total sulphur content determined as percent by mass has not been conducted. Therefore, we are of the prima facie view that on the basis of test report provided by the JNCH Customs Laboratory or by the CRCL Laboratory, the impugned order upholding the revising of the classification of impugned goods, confirming the adjudged demands and consequent confiscation of imported goods, imposition of penalty on the appellants is not legally sustainable.

9.1 On similar factual matrix of the case of import of mineral hydrocarbon oil/ mixed mineral in the case of Jaymco Polymers Private Limited (supra), the Co-ordinate Bench of the Tribunal vide Final Order Nos. A/85436-85437/2022 dated 09.05.2022 have set aside the order confirming the adjudged demands on the ground that such test reports not providing all prescribed specified parameters as per IS1459:1794 are not valid. The relevant paragraphs of the said order is extracted and given below:

> *"16.3.2. What the Respondent has failed to appreciate, there are 8 parameters/properties under the IS 1459: 1974 which are required to be tested and reported for confirming whether a product is kerosene or not and not 10 parameters, as otherwise held by him. What the Respondent has further failed to appreciate, that though the Test Report has reported 10 parameters, however, in effect these are only 7 parameters which have been tested and reported in the Test Report as Initial Boiling Point, Final Boiling Point, Volume Distilled at 200°C and 90% distilled at, form part of a single parameter viz. Distillation Range. In view thereof, the Respondent has erred in holding that 10 parameters have been tested.*
>
> *16.3.3. Further what the Respondent has failed to take cognizance of the fact that Out of the said 7 parameters, only 4 parameters viz. Flash Point, Acidity, Distillation range and Smoke Point match to those parameters which are required to be tested under IS 1459: 1974. In other words, out of the 8 parameters mandated under IS 1459: 1974, only 4 parameters have been viz. Flash Point, Acidity, Smoke Point and Distillation range have been tested and reported, and the rest 4 mandatory parameters have not been tested and reported at all. The other 3 parameters tested and reported in the Test Report viz. density, ash content and kinematic viscosity have not been envisaged by the IS 1459: 1974 and accordingly are inconsequential to the case at hand.*

16.3.4 The mandatory 4 parameters/properties enlisted under IS 1459: 1974, which have not been tested and reported in the Test Report are as under:
i. Burning Quality, which includes testing the Char Value, mg/kg of oil consumed and Bloom on glass chimney
ii. Color (Sayabolt)
iii. Copper strip corrosion for 3h at 50°C
iv. Total Sulphur, percent by mass

16.3.5 In view of the aforesaid, inasmuch as the Test Report has not tested and reported the aforesaid 4 mandatory parameters/ properties, the said Test Report is completely inconclusive to hold that the consignment is one of kerosene. In view thereof, the said Test Report, by no stretch of imagination, could have been used as a reliable piece of evidence for seizing the consignment in question or draw any adverse inference/ conclusion against the Appellant. In addition, the Appellant submits that even if Color (Sayabolt) and Burning Quality test is not considered, still the Respondent has failed to show and establish the satisfaction of the other two mandatory parameters rendering the Test Report completely inconclusive and thereby unreliable. The impugned order, thus, deserves to be quashed and set aside.

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28. It is admitted position of law that for a product to be classified under CTH 27101944/27101932 as SKO, it has to meet with the specifications in Supplementary Note – (C) under Chapter 27 which reads as under:-

> *"Superior Kerosene Oil (SKO)" means Hydrocarbon Oil conforming to Indian Standards Specification of Bureau of Indian Standards IS 1459 : 1974(reaffirmed in 1996)."*

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38. Under the facts and circumstances and the evidences on record, we find that in absence of evidences that the imported goods meet all the specifications as laid down in Supplementary Note (c) to Chapter 27 for classification of a product as Kerosene and Supplementary Note (e) so as to classify a product as diesel, the case made out by the Revenue cannot be sustained.

39. We also find that the test reports are vitiated and not reliable as sampling has been done improperly and not in conformity to the prescribed specifications. We further find that there is miscarriage of justice by denying the prayer for retest. We further hold that in the facts of the present case there is no scope for applying preponderance of probability or the principle of probability, as there are explicit rules and or instructions laid down for classification. We also hold that the Test reports relied upon by Revenue are inconclusive.

40. In view of our findings we allow the appeals and set aside the impugned order. The goods under import are to be classified as per CTH heading claimed/declared by the appellant in the bills of entry. Accordingly, we hold that rejection of transaction value is also bad and thus, declared value has to be accepted. Redemption fine and penalties on the appellants are also set aside."

9.2 In this regard, we find that the Hon'ble Supreme Court of India, in an identical set of facts, in Special Leave Petition (Civil) No. 6470 of 2022 with S.L.P. (Civil) Nos. 6472 of 2022 and 32623 of 2024, in the case of *Gastrade International Vs. Commissioner of Customs, Kandla* vide judgement delivered on 28.03.2025 have held that since oil in question does not fully satisfy the specifications of HSD in terms of IS 1460:2005, the correct test to determine the classification of imported goods being most akin to HSD or not, have not been applied. The extract of the relevant paragraphs in said judgement is given below:

> *"2. The issue involved in this batch of appeals is, whether, the imported goods is to be treated as Base Oil as claimed by the appellants or High Speed Diesel (HSD) as determined by the Customs Authorities, which is contested by the appellants. If the product is treated as HSD, it would be a prohibited item that could not have been imported by a private entity other than a State Trading Enterprise, in which event it would be liable to be confiscated and penalty be imposed on the appellant importers.*
>
> *3. The Commissioner of Customs, the Adjudicating Authority held vide order dated 03.12.2019 that the said product is not Base Oil, but HSD and accordingly, ordered confiscation of the same apart from levying penalties. On the other hand, the appellate authority, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held the same to be Base Oil and not HSD, thus reversing the decision of the Adjudicating Authority. On being challenged before the High Court of Gujarat, by the Customs Authorities, the High Court reversed the decision of the Appellate Tribunal and affirmed the decision of the Adjudicating Authority holding the imported goods to be HSD.*
>
> *xxx xxx xxx xxx*
>
> *79. In the present case, what we have observed is that the High Court, on the basis of the laboratory tests, more particularly the third test conducted by IOCL, Mumbai Laboratory and the opinion of the expert, namely Dr. Gobind Singh, and by observing that it is not necessary to establish on the part of the Revenue to prove the fact with mathematical precision, held that the Department has been able to establish its case on the basis of preponderance of probability that the imported oil was not Base Oil but HSD, which could not have been imported by the appellants and upheld the order of the Adjudicating Authority.*
>
> *80. However, this analysis and conclusions arrived at by the High Court are problematic for the following reasons:*
> *(i) There was no expert opinion at all that the samples which were tested were indeed of HSD.*
> *(ii) The opinion as contained in the test results was merely mentioning about conformity of the samples with certain specifications of IS 1460:2005 and not about conformity with all the specifications.*
> *(iii) Once the rule making authority had clearly delineated the requisite parameters for ascertaining the nature of the goods/substance,*

compliance/conformity with the stated parameters would be the requirement.
(iv) There are 21 parameters laid down under IS 1460:2005 and none of the tests have shown compliance with all these parameters. The last and third test have reported compliance with 14 parameters, though as discussed above in respect of 2 of the aforesaid 14 parameters, namely, flash point and distillation range, the same are not in conformity. Thus, it cannot be said there is substantial compliance with the parameters of IS 1460:2005.
(v) Flash point, though may not be the most important parameter, yet, its importance in determining the nature of the Automotive oil cannot be ignored. Flash point being a very important criteria to classify petroleum products, non-compliance of the samples on this parameter would make the classification doubtful.
(vi) Evasive answers and non-clarification on certain aspects of the flash point of the samples by the expert Dr. Gobind Singh certainly cast a serious doubt on the samples being identified as that of HSD. The expert himself also has not said that the samples are of HSD except for stating that the samples conform to certain specifications of the IS 1460:2005.
(vii) In view of the ambiguity and lack of clarity in the expert opinion/laboratory test results, it would be unsafe to draw the inference that the Department had been able to prove their case even by applying the test of preponderance of probability merely because the samples conform to certain parameters.
(viii) If the Department with all the resources at their command and access to various laboratory facilities could not get the samples tested in respect of all the 21 parameters, expecting the assesses/appellants to get the samples tested to show that these do not conform the specifications and are not HSD does not appear to be reasonable. Thus, shifting of onus to the assesses to prove otherwise appears to be unreasonable and meaningless.
(ix) The burden was not on the assessees to demonstrate that non-conformity with the remaining 8 parameters would vitiate the conclusion that the samples were of HSD.

81. The aforesaid difficulties in our opinion can be overcome, if we apply the test of "most akin" as contemplated under Rule 4 of the General Rules for Interpretation referred to above.

82. The real test for classification, according to us, would be as to whether any goods or substance in question is "most akin" or bears the closest resemblance or similarity to any of the specified goods mentioned under the Headings and relative Section or Chapter Notes under the Tariff Act, and not by applying the test of preponderance of probability.

xxx xxx xxx xxx

85. The oil in question does not fully satisfy the specifications of HSD in terms of IS 1460:2005. Hence, the correct test will be whether the oil/article in issue is most akin to HSD or not for which appropriate scientific evidence in the form of laboratory test reports and opinion of the scientific experts will be of utmost relevance.

86. For the reasons discussed above, as the results of the test are inconclusive, so being the opinion of the expert, we are unable to agree with the conclusion of the High Court. Under the circumstances, the option before this Court is, either to send the imported product again for further

tests and obtain the expert opinion atleast to the effect that the imported product is 'most akin' to HSD even if it does not fulfil all the parameters under IS 1460:2005 or give a benefit of doubt to the appellants and close the proceedings against the appellants by quashing the impugned orders, since the Revenue/Customs Authority cannot take action against the appellants based on inconclusive evidence.

87. As far as the first option is concerned, as noted above, though the questioned product was sent for laboratory test in three premier laboratories, these laboratories did not give conclusive finding that the product is indeed HSD and the expert also could not give a definitive opinion. Further after such a long passage of time we are doubtful whether the oil in question would still retain many of the characteristics and properties which were present at the time of import for an effective testing as aforesaid. Hence, we do not consider it appropriate to direct further testing of the imported product/oil at this point of time and such a retest may be rendered a futile exercise. In our opinion, in the facts and circumstances, it would be more appropriate to give the benefit of doubt to the appellants because of the inconclusive evidence, rather than directing for a fresh testing and seeking fresh expert opinion, as a one-time measure.

88. Before parting with these appeals, we deem it necessary to issue certain ancillary directions. We are of the view that non-examination of any product/article/goods on all the parameters laid down by the customs authority will always lead to uncertainty and doubt, which are required to be removed when dealing with confiscatory proceedings. The genesis of the prolonged litigation lies in the nonavailability of adequate facilities for testing all the parameters provided under Bureau of Indian Standard Specifications. Such a dispute could have been avoided had the testing facilities for all the parameters been available. Since the Authorities themselves had laid down the specific parameters for classification of goods, as in the present case by referring to classification under IS 1460:2005, it is incumbent upon the Authorities to ensure that necessary facilities are made available for testing of any disputed article on all these parameters as otherwise, laying down such parameters would be meaningless. Hence, to avoid these difficulties, doubts and uncertainties in future, the respondents are directed to ensure that proper facilities are made available in the appropriate laboratories for undertaking tests for all these parameters or at least for those parameters which the Authorities consider are of essential character to satisfy the "most akin" test without which the article in issue cannot be properly classified. Accordingly, we direct the respondents to take necessary steps in this regard within a period of six months for proper testing in all the parameters in future.

89. For the reasons discussed above, we allow these appeals by setting aside the impugned common judgment and order dated 20.01.2022 passed in Revenue Tax Appeal No. 297 of 2021, Revenue Tax Appeal No. 298 of 2021 and Revenue Tax Appeal No. 299 of 2021.

90. Appeals are accordingly disposed of in the aforesaid terms."

9.3 We further find that in the case of *N.V. Rambabu Vs. Additional Director General (Adjudication), Mumbai* (supra), after detailed analysis of

the factual matrix of the case, as done here above, since all the requisite parameters as specified for fulfilling IS standard for treating the imported goods as HSD oil and to bring under the specific tariff item as per supplementary note (e), was not completed, the decision of the customs authorities for such revision of classification and adjudged demands were set aside. The said order of the Tribunal was appealed against before the Hon'ble Supreme Court in Civil Appeal Diary No. 10390 of 2026. On examining the same, the Hon'ble Supreme Court by relying on its own judgement in the case of *"Gastrade International* v. *Commissioner of Customs, Kandla", vide judgment dated* 28.03.2025, they dismissed the said Civil Appeal observing that they find no good ground and reason to interfere with the impugned judgment passed by Tribunal vide its judgement dated 20.03.2026.

10. In respect of impugned Order-in-Appeal dated 05.10.2023, we find that the learned Commissioner (Appeals) had enhanced the redemption fine, by modifying his own earlier order passed dated 25.06.2021. In terms of Section 128A *ibid*, the Commissioner (Appeals) can pass such order by confirming, modifying or annulling the order of original authority; he is not permitted to upheld confirmation of order of original authority in one order dated 25.06.2021 and modify the same in another order dated 05.10.2023, against the same order of original authority, irrespective of the appeal having been preferred by two different persons. Further, as required under the first proviso to sub-section (3) to Section 128A *ibid*, the learned Commissioner (Appeals) has not provided any reasonable opportunity to the appellants to defend the case. Therefore, for these reasons, we consider that the Order-in-Appeal dated 05.10.2023, is *ab initio* void being contrary to the legal provisions under Section 128A *ibid*.

11. In view of the foregoing discussions and analysis, and on the basis of the Final order No. A/85436-85437/2022 dated 09.05.2022 passed by the Co-ordinate West Zonal Bench of the Tribunal in the identical facts of the case and on the basis of judgements of the Hon'ble Supreme Court quoted above, we are of the considered view that the impugned orders dated 25.6.2021 and 05.10.2023, revising the classification of imported goods under CTI 2710 1910 and confirmation of adjudged demands, confiscation of goods and imposition of penalties, redemption fine on the appellants does not stand the scrutiny of law.

12. In the result, the impugned orders, upholding/modifying the order passed by the adjudicating authority, passed by the learned Commissioner of Customs (Appeals) are set aside and the appeals filed by the appellants are allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in open court on 12.05.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha