		<b>OFFICE OF THE COMMISSIONER OF CUSTOMS</b> NEW CUSTOMS BLDG, NR. BALAJI TEMPLE, KANDLA-370210 (GUJARAT) <b>PHONE : 02836-271468-469 FAX : 02836- 271467</b>
A	File No.:	S/15-01/Gr-I/Ganga Sagar/18-19
B	Order-in-Original No.:	KDL/ADC/UBR/13/2018-19
C	Passed by:	Shri U.B.Rakhe, Addl. Commissioner of Customs, Kandla
D	Date of order:	11.09.2018
E	Date of issue:	11.09.2018
F	Importer:	M/s. Ganga Sagar Petrochem Inc, .

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeal), having office at 7<sup>th</sup> floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad - 380009 in terms of Section 128 of the Customs Act, 1962. it should be filed within sixty days from the date of communication of this order.
3. Appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of Rule 3 of the Customs Appeal Rules, 1982. It shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeal), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. The copy of this order attached herein should bear a Court fee stamp of Re.1/- (Rupee one only) as prescribed under schedule-1, item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/penalty should also be attached to the original appeal.
6. Appeal should also bear a Court Fee Stamp of Rs. 5/-.
7. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.
8. Proof payment of duty/interest/fine/penalty etc. should be attached with the appeal memo.
9. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

**Sub.: Import of "Base Oil" by M/s. Ganga Sagar Petrochem Inc, KH No. 674, Vill Asoda Todran Nahadurgarh, Dist. Jhahhar, Haryana - 124 507 through the CHA M/s. MAT Shipping, Gandhidham, Kutch-370201, Gujarat, filed B/E No. 5302589 dated 21.02.2018.**



### BRIEF FACTS OF THE CASE

1. The importer M/s. Ganga Sagar Petrochem Inc, KH No. 674, Vill Asoda Todran Nahadurgarh, Dist. Jhahhar, Haryana - 124 507 through the CHA M/s. MAT Shipping, Gandhidham, Kutch-370201, Gujarat, filed B/E No. 5302589 dated 21.02.2018. for clearance of the goods covered under said Bill of Entry is BASE OIL SN 60 - Packed in Flexi Bags - 109.98 MTS - Net and 110.580 MTS Gross, classified under CTH 27101960, imported from U.A.E. valued at Assessable Value of Rs.43,63,526.37. The goods were given first check with the order to draw sample and forward the same to CRCL, Kandla for testing

2. The Test Report bearing No. 1024438, Dt. 22.02.2018 received from CRCL, Kandla, states that the imported goods have the characteristics of Diesel Oil having;

constants.

Ash Content	: NIL
Sediment	: NIL
Water Content	: NIL
Flash Point (COC)	: 80 Degree Celsius
Density at 15 Degree	: 0.8289 g/ml
Kinematic Viscosity at 40 Degree	= 3.34 cst
Kinematic Viscosity at 100 Degree	= 1.46 cst
Distillation Range	= 190 Degree - 368 Degree
85% distilled at	= 338 Degree

*On the basis of above reported parameters, it has the characteristics of Diesel Oil.*

3. This is a case of mis-declaration as is evident from the Test Report as referred above in as much as the Test Report clearly mentioned the product as Diesel Oil falling under tariff heading 27101290 against the description of Base Oil SN.60 classified under CTH 27101960 as declared by the Importer.

4. The goods falling under tariff heading 27101290 are restricted and allowed to be imported through State Trading Enterprises (STE) only as per Policy condition -5 of the Chapter -27 of ITC (HS), Schedule-1.

The policy condition-5 of the Chapter 27 is reproduced below:-

*"5.Import allowed through IOC subject to Para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NG's Resolution No. P-23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date".*

5. The importer in this case is neither an STE nor has submitted any documents showing grant of such rights by the DGFT to import or export any of the goods notified for exclusive trading through STEs.

6. It is further noticed that the declared description of the goods in the bill of entry is Base Oil SN.60", whereas the goods on being tested, vide test report as mentioned in the preceding para-2, are found to be 'Diesel Oil' which falls under Tariff heading 27101290 are restricted for importation and clearance thereof.



7. In view of the above discussion, it is found that the impugned goods valued at Rs.43,63,526/-are more appropriately classifiable under Tariff heading 27101290 imported against the provisions of FTP are "illegal import" under the provisions of Section 11 of the Customs Act, 1962 and hence are held liable for confiscation under Section 111 (d) & (m) of the act *ibid*. The importer for such acts of commission/omission is also liable for penal action under Section 112 of the Customs Act, 1962.

8. The importer has submitted a letter ref : GSPF/SPF/RE-EXP/BS-OILSN60/2018/09, dated 15.05.2018 regarding their personal meeting with their supplier M/s. Sunrise Petroleum, U.A.E. at their Sharjah office. They informed their supplier that the above tested goods are not upto their required specification and the same is still lying at CWC-CFS, Kandla since the import landed date and they requested to supplier for accept the same material. The importer vide his letter dated 22.05.2018 informed that the supplier M/s. Sunrise Petroleum, U.A.E. vide their letter ref no. SUN/CEXP/7592/18A, dated 20.05.2018 has accepted their request to take back the same material and therefore they would like to re export the same containers to their supplier. They have also requested to waive show cause notice and personal hearing and decide the case on merit basis.

#### **DISCUSSION & FINDINGS**

9. I have carefully gone through the case records & submissions of the importer and applicable provisions of law. I find that the test reports are specific about composition and characteristics of the goods imported & confirms that goods having characteristics of Diesel oil as per Test Report No. 1024438, Dt. 22.02.2018 which is reproduced as under.

constants.

Ash Content	: NIL
Sediment	: NIL
Water Content	: NIL
Flash Point (COC)	: 80 Degree Celsius
Density at 15 Degree	: 0.8289 g/ml
Kinematic Viscosity at 40 Degree	= 3.34 cst
Kinematic Viscosity at 100 Degree	= 1.46 cst
Distillation Range	= 190 Degree – 368 Degree
85% distilled at	= 338 Degree

*On the basis of above reported parameters, it has the characteristics of Diesel Oil.*

On verification of the above test report, I find that the product imported is having characteristics of Diesel Oil and accordingly falls under tariff heading 27101290.

10. All the goods falling under tariff heading 27101290 are not freely importable but restricted for imports to be made by the State Trading Enterprises (STE) only as per the policy condition -5 of the Chapter 27 of the ITC (HS) code, reproduced herein below:-

*"5.Import allowed through IOC subject to Para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NG's Resolution No. P-23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date".*



Further Para 2.20 of FTP 2015-20 may be read as under-

## **2.20 State Trading Enterprises (STEs)**

*(a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and / or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix 2J.*

*(b) Such STE (s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.*

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

11. The policy provisions mentioned in the Indian Trade Classification (Harmonised System) of Import in the Schedule-1 is binding as per the FTP 2015-20, Chapter-2 and Paragraph 2.02 thereto.

12. In view of the above discussion, I found that M/s. Ganga Sagar Petrochem Inc has tried to import "Diesel Oil" by mis-declaring the same in B/E No. 5302589 dated 21.02.2018. as BASE OIL SN 60. The importer has also mis-classified the item under CTH - 27101990 instead of CTH-27101290. By doing so the importer has violated the provisions of FTP and Customs Act and made the goods liable for confiscation under Section 111 (d) and 111 (m) of the Customs Act, 1962 as the importer is neither an STE nor have submitted any authorization as provided in the Policy condition-5 of Chapter 27 of ITC (HS), Schedule-1, as well the declared description of the goods also have been found to be suppressed and mis-declared. The Importer is also liable for penal action under Section 112(a) of the act *ibid*.

13. I also considered the letter submitted by the imported vide ref : GSPF/SPF/RE-EXP/BS-OILSN60/2018/09, dated 15.05.2018 regarding their personal meeting with their supplier M/s. Sunrise Petroleum, U.A.E. at their Sharjah office. They informed their supplier that the above tested goods are not upto their required specification and the same is still lying at CWC-CFS, Kandla since the import landed date and they requested to supplier for accept the same material. The importer vide his letter dated 22.05.2018 informed that the supplier M/s. Sunrise Petroleum, U.A.E. vide their letter ref no. SUN/CEXP/7592/18A, dated 20.05.2018 has accepted their request to take back the same material and therefore they would like to re export the same containers to the supplier. They have also requested to waive show cause notice and personal hearing and decide the case on merit basis.



14. In view of the above factual and legal matrix, I pass the following order.

**ORDER**

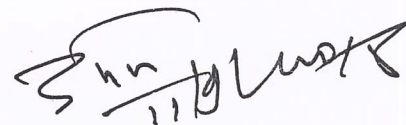
15. I reject the declared classification of imported goods "Base Oil SN60" which was declared classifying under CTH r/w ITC (HS) Schedule -1's heading 27101990 and order the same to be classified under CTH-27101290 in view of Test Report No.1024438 dated 22.02.2018.

16. I order for confiscation of imported goods Diesel oil valued at Rs. 43,63,526.37 covered under Bill of Entry No. 5302589 dated 21.02.2018 under Section 111 (d) & (m) of the Custom Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs. 7,00,000/- (Rs.Seven Lakhs Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

17. I also impose a penalty of Rs. 2,00,000/- (Two Lakhs only) on the importer M/s. Ganga Sagar Petrochem Inc under Section 112(a) of Customs Act, 1962.

18. I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

19. This order is passed without prejudice to the any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.



**(U.B.RAKHE)**

Adl. Commissioner of Customs  
Custom House, Kandla.

F.No. S/15-01/Gr-I/Ganga Sagar/18-19

Dt.11.09.2018

To,  
M/s. Ganga Sagar Petrochem Inc,  
KH No. 674, Vill Asoda Todran Nahadurgarh,  
Dist. Jhahhar, Haryana - 124 507

Copy to:

1. The Deputy Commissioner (RRA), Custom House ~~Mundra~~ *Mundra. Kandla*
2. The Deputy Commissioner (Recovery), Custom House ~~Mundra~~ *Mundra. Kandla*
3. M/s. MAT Shipping, Gandhidham, Kutch-370201
- ✓ 4. Guard file.