		OFFICE OF THE COMMISSIONER OF CUSTOMS NEW CUSTOMS BLDG, NR. BALAJI TEMPLE, KANDLA-370210 (GUJARAT) PHONE : 02836-271468-469 FAX : 02836- 271467
A	File No.:	S/15-01/Gr-I/Global Petro/18-19
B	Order-in-Original No.:	KDL/ADC/PMR/15/2018-19
C	Passed by:	Shri P.M.Rao, Addl. Commissioner of Customs, Kandla
D	Date of order:	20.09.2018
E	Date of issue:	20.09.2018
F	Importer:	M/s. Global Petro.

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 7th 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 “Low Aromatic White Spirit”, by M/s. Global Petro, Plot No. 213, Rajvi Nagar, Galpadar, Kutch, Gujarat 370201, filed B/E No. . 7804982 dated 27.08.2018 .

BRIEF FACTS OF THE CASE

The importer M/s. Global Petro, Plot No. 213, Rajvi Nagar, Galpadar, Kutch, Gujarat 370201, had filed B/E No. 7804982 dated 27.08.2018 for clearance of 179.010 MTS (10 x 20' Containers) of "Low Aromatic White Spirit" through their Customs Broker, M/s. Cargo Clearing Agency (Guj.), Gandhidham. The importer classified the goods under CTH 27101990. The declared assessable value of the goods is Rs. 98,70,564/-. 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. 1033884 dated 28.08.2018 received from CRCL, Kandla states as below:

"The sample is in the form of light yellow color liquid. It is composed of mixture of mineral hydrocarbons, having following constants:

<i>Initial Boiling Point</i>	<i>: 156 Degree Celsius</i>
<i>Final Boiling Point</i>	<i>: 240 Degree Celsius</i>
<i>Density at 15 Degree Celsius</i>	<i>: 0.7937 gm/ml</i>
<i>Distill at 210 Degree Celsius</i>	<i>: 95%</i>
<i>Flash Point</i>	<i>: 50 Degree Celsius</i>
<i>It is Light Oil."</i>	

3. It is evident from the above Test Report that imported cargo was other than their declaration, and test report confirmed that imported goods are other than Low Aromatic White Spirit, but it is Light Oil.

In this regard, Sub-Heading Note-4 of Chapter 27 provides that:-

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

In the instant case, the Test Report as discussed above, confirms that 95% by volume, of the goods distils below 210° C, hence the impugned goods fall within the purview of "Light Oils and Preparations"

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 "Low Aromatic White Spirit classified under CTH No. 27101990 , whereas the goods on being tested, vide test report as mentioned in the preceding para-2, are found to be "light 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. 98,70,564.00 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 vide their letter dated 19.09.2018 have requested for waiver of the Show Cause Notice and personal Hearing and to adjudicate the case on merit and allow clearance on payment of minimum redemption Fine & Penalty.

DISCUSSION & FINDINGS

9. I have carefully gone through the case records. I find that the goods imported and declared as "Low Aromatic White Spirit classified under CTH No. 27101990, but on testing they found to be oil classifiable under CTH 27101290 which is a restricted item and import and clearance of the same is subject to fulfilment of certain conditions.

10 The Test Report bearing No. 1033884 dated 28.08.2018 received from CRCL, Kandla states as below:

"The sample is in the form of light yellow color liquid. It is composed of mixture of mineral hydrocarbons, having following constants:

<i>Initial Boiling Point</i>	<i>: 156 Degree Celsius</i>
<i>Final Boiling Point</i>	<i>: 240 Degree Celsius</i>
<i>Density at 15 Degree Celsius</i>	<i>: 0.7937 gm/ml</i>
<i>Distill at 210 Degree Celsius</i>	<i>: 95%</i>
<i>Flash Point</i>	<i>: 50 Degree Celsius</i>

It is Light Oil."

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

12. 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.

15. 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.

16. In view of the above discussion, I find that M/s. Global Petro has tried to import "light Oil" by mis-declaring the same as "Low Aromatic White Spirit", classified under CTH No.27101990. 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. Further the declared description of the goods also have been found to be suppressed and mis-declared, hence the Importer is also liable for penal action under Section 112(a) of the act *ibid*. The party has requested for waiver of Show Cause Notice vide their letter dated 19.08.2018 and also requested to decide the case on merit basis and look the matter leniently. I find that the importer has requested to release the goods on the grounds since the imported goods i.e.Kerosene are allowed to be imported by STE & STC only, however taking into consideration of the facts of the case and submissions made by the importer for clearance of goods, I find appropriate to consider the request of the importer to clear the impugned goods on payment of applicable rate of duty, in the interest of revenue

17. In view of the above facts, I pass the following order.

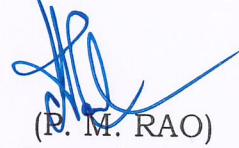
ORDER

18. I reject the declared classification of imported goods "Low Aromatic White Spirit", 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. 1033884 dated 128/08/2018.

19. I order for confiscation of imported goods i.e light oil valued at Rs. 98,70,564/- covered under B/E No. 7804982 dated 27.08.2018 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. 9,50,000/- (Rs.Nine Lakhs Fifty Thousand Only) under Section 125 of the Customs Act, 1962.

20. I also impose a penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) on the importer M/s.Global Petro under Section 112(a) of Customs Act, 1962.

22. 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.



(P. M. RAO)

Addl. Commissioner of Customs
Custom House, Kandla.

F.No. S/15-01/Gr-I/Global Petro/18-19

Dt. 20.09.2018

To,
M/s. M/s. Global Petro,
Plot No. 213, Rajvi Nagar, Galpadar,
Kutch, Gujarat 370201,

Copy to:

1. The Deputy Commissioner (RRA), Custom House, Kandla.
2. The Deputy Commissioner (Recovery), Custom House, Kandla.
- ✓ 3. Guard file.