



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/15-03/Gr-I/P.D.Industries/18-19
B	Order-in-Original No.:	KDL/ADC/PMR/16/2018-19
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. P.D.Industries.

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 P.D.Industries Sampla Beri Road, Village Ismalia-11, Bishwa, Tah.Sampla, Dt.Rohtak, Hariyana filed B/E No. 7731470 dated 21/08/18

BRIEF FACTS OF THE CASE

M/s.P.D.Industries Sampla Beri Road, Village Ismalia-11, Bishwa, Tah.Sampla, Dt.Rohtak, Hariyana filed B/E No. 7731470 dated 21/08/18 for clearance of imported 6 x 20' Contrs. Low Aromatic White Spirit per MV. BERMUDA V. 1832W and classified under CTH No. 27101990, valued at Rs.60,33,902.00 (Assessable Value). The said goods were given first check with the order to draw sample and forward the same to CRCL, Kandla for testing

2. The Test Report No. 1033600 dated 23/08/2018 lab report issued on 12/09/2018 read as below:

"The sample is in the form of clear colour less liquid. It is composed of mixture of mineral hydrocarbons, having following constants:

<i>Initial Boiling Point</i>	<i>: 152 Degree Celsius</i>
<i>Final Boiling Point</i>	<i>: 252 Degree Celsius</i>
<i>Density at 15 Degree Celsius</i>	<i>: 0.7914 gm/ml</i>
<i>Distill at 210 Degree Celsius</i>	<i>: 85%</i>
<i>Flash Point</i>	<i>: 49 Degree Celsius</i>
<i>Smoke Point</i>	<i>: 22 mm</i>

Above reported parameter meets the requirement of Kerosene as per IS 1459-1974 I (Reaffirmed in 2001)."

3. It is evident from the Test Report that the product is "Kerosine" falling under tariff heading 27101910 against the description of Low Aromatic White Spirit, classified under CTH No. 27101990 as declared by the Importer.

4. The goods falling under tariff heading 27101910 are restricted and allowed to be imported through State Trading Enterprises (STE) only as per Policy condition -2 of the Chapter -27 of ITC (HS), Schedule-1.

The policy condition-2 of the Chapter 27 is reproduced below:-

"2.Import of SKO shall be allowed through State Trading Enterprises(STEs).i.e.IOC, BPCL, HPCL and IBP for all purpose with STC being nominated as a STE for supplies to Advance Licence holders. Advance Licence holders shall, however, have the option to import SKO from the above mentioned STEs including STC"

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 of 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 'Kerosine' which falls under Tariff heading 27101910 are restricted for importation and clearance thereof.

7. In view of the above discussion, it is found that the impugned goods valued at Rs.60,33,902.00 are more appropriately classifiable under Tariff heading 27101910 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. In this connection the importer vide their letter dated 13.09.2018 submitted that they are regularly importing various petroleum products, viz. Low Aromatic White Spirit, Mineral Turpentine Oil and Petroleum Hydro Carbon Solvents, etc. through Mundra and Kandla Ports. They are actual users of cargo and having their registered unit at Kila No. 161/16/2, Sampla Beri Road, Vill: Ismalia-11, BISHWA, Tehsil – Sampla, Dist. Rohtak, Haryana. The petroleum products imported by them are to be processed in their unit for making different types of solvents, which in turn is the raw material for Paint and Ink Industry. The captioned goods are supplied by M/s. Evermore Global FZC., Sharjah, UAE, against Proforma Invoice No. EGFZC/057/PP/2018 dated 05/08/18. They have ordered for Low Aromatic White Spirit having Distillation Range of 145 – 240 as guided in IS: 1745 - 1978.

9. They have further submitted that as per the Standard IS 1459-1974 (Reaffirmed in 2001) as referred above, the Final Boiling Point of Kerosene is 300°C Maximum, but as per Test Report the Final Boiling Point of their product is comparatively very low (252°C only). Party has stated that it is also to be noted that as per the above referred standard, the Flash Point of Kerosene is 35°C Minimum, whereas the Flash Point of their product is reported as 49°C. It is pertinent to understand the fact that the goods are crude products and separated on the basis of Distillation, so minor errors are possible. In view of above party would like to submit that the captioned goods imported by them are nothing but Low Aromatic White Spirit only.

10. Party has also submitted that the containers are landed on 24/08/18 and it is incurring heavy detention and demurrage. Party has further submitted that they do not want any Show Case Notice or Personal Hearing in this matter. In view of above submission party has requested for release of goods at the earliest.

DISCUSSION & FINDINGS

11. I have carefully gone through the case records.. I find that the goods imported and declared as Low Aromatic White Spirit per MV. BERMUDA V. 1832W and classified under CTH No. 27101990, but on testing it is found to be 'Kerosine' which falls under Tariff heading CTH No. 27101910 which is a restricted item and import and clearance of the same is subject to fulfilment of certain conditions.

12 The Test Report No 1033600 dated 23/08/2018 and test report issued on 12/09/2018 read as below:

"The sample is in the form of clear colour less liquid. It is composed of mixture of mineral hydrocarbons, having following constants:

<i>Initial Boiling Point</i>	<i>: 152 Degree Celsius</i>
<i>Final Boiling Point</i>	<i>: 252 Degree Celsius</i>
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<i>Flash Point</i>	<i>: 49 Degree Celsius</i>
<i>Smoke Point</i>	<i>: 22 mm</i>

Above reported parameter meets the requirement of Kerosene as per IS 1459-1974 I (Reaffirmed in 2001)."

13. On verification of the above test report, I find that the product imported is having characteristics of Kerosine and accordingly falls under tariff heading 27101910.

14. All the goods falling under tariff heading 27101910 are not freely importable but restricted for imports to be made by the State Trading Enterprises (STE) only as per the policy condition -2 of the Chapter 27 of the ITC (HS) code, reproduced herein below;-

“2.Import of SKO shall be allowed through State Trading Enterprises(STEs).i.e.IOC, BPCL, HPCL and IBP for all purpose with STC being nominated as a STE for suppliesw to Advance Licence holders. Advance Licence holders shall, however, have the option to import SKO from the above mentioned STEs including STC””

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. P.D.Industries has tried to import “Kerosine” by mis-declaring the same as “Low Aromatic White Spirit per classified under CTH No.27101990 . The importer has also mis-classified the item under CTH – 27101990 instead of CTH-27101910. 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*.

“17. The party has requested for waiver of Show Cause Notice vide their letter dated 13.09.2018 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-27101910 in view of Test Report No. 1033600 dated 23/08/2018.

19. I order for confiscation of imported goods i.e. Kerosine valued at Rs. 60,33,902.44 covered under B/E No. 7731470 dated 21/08/18 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. 6,00,000/- (Rupees Six lacs only) under Section 125 of the Customs Act, 1962.

20. I also impose a penalty of Rs. 1,50,000/- (Rupees One lac Fifty Thousand only) on the importer M/s. P.D. Industries 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/P.D.Industries./18-19

Dt. 20.09.2018

To,
M/s. P.D. Industries,
Sampla Beri Road, Village Ismalia-11,
Bishwa, Tah. Sampla,
Dt. Rohtak, Hariyana .

Copy to:

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