

		<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/15-16/Gr-I/Shiva Chemicals/18-19
B	Order-in-Original No.:	KDL/ADC/AK/29 /2018-19
C	Passed by:	<b>AJAY KUMAR</b> Additional Commissioner of Customs, Custom House, Kandla
D	Date of order:	16.11.2018
E	Date of issue:	16.11.2018
F	Importer:	M/s.Shiva Chemicals

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 "Low Aromatic White Spirit ", by M/s. Shiva Chemicals, 2076, Urban Estate, PH-I, Dugri, Ludhiana had filed B/E No. 8401703 dated 10.10.2018.

## BRIEF FACTS OF THE CASE

The importer M/s. Shiva Chemicals, 2076, Urban Estate, PH-I, Dugri, Ludhiana had filed B/E No. 8401703 dated 10.10.2018 for clearance of 178.19 Mts (10 Containers) of "Low Aromatic White Spirit" through their Customs Broker, M/s. Gaurav M Jhaveri, Gandhidham. The importer classified the goods under CTH 27101990. The declared assessable value of the goods is Rs. 87,73,362.84. The goods were given first check with the order to draw sample and forward the same to CRCL, Kandla for testing. The details of the test report are as follows.

### Test Memo bearing No. 1036038 dated 10.10.2018

The report received from CRCL, Kandla 22.10.2018 states that the imported goods is composed of mixture of mineral Hydrocarbon Oil having following constants;

- *Initial Boiling Point = 156°C*
- *Final Boiling Point = 236°C*
- *Distilled at 210°C = 88%*
- *Flash Point = 44°C*
- *Density at 15°C = 0.8082 gm/ml*
- *Smoke Point = 22 mm*
- *With respect to parameters flash point, distillation range, it matches petroleum hydrocarbon solvent as per IS 1745-1978. However, smoke point flash point obtained from the sample u/r matching with the requirement of kerosene as per IS 1459-2016*

1.1 As the report was not clear as to whether it is mixture of mineral hydrocarbon or kerosene, a letter is written to the CRCL Kandla for specific report as to whether the goods are petroleum hydrocarbon solvent or Kerosene. CRCL Kandla vide letter dated 02.11.2018 informed that *with respect to parameters flash point, distillation range, and smoke point the sample u/r meet the requirement of kerosene as per IS 1459-2016*

1.2 It is evident from the Test Reports that the products are "Superior Kerosene Oil" falling under tariff heading 27101910 as against the description of Low Aromatic White Spirit, classified under CTH No. 27101990 as declared by the Importer. 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"*

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.

1.3 It is further noticed that the declared description of the goods in the Bills 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 paras, are found to be '**Kerosene**' which falls under Tariff heading 27101910 are restricted for importation and clearance thereof.



1.4 In view of the above discussion, it is found that the impugned goods valued at Rs.87,73,362.84 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 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. 1.5

1.5 The importer vide their letter dated 15.11.2018 have submitted that they are regularly importing various Petroleum products, viz. Low Aromatic White Spirit, and Petroleum Hydro Carbon Solvents, etc. through Kandla Port. The petroleum products imported by them are supplied as raw material for paint and ink industries. The captioned goods are supplied by M/s ARABIAN IT SOLUTIONS FZE., Sharjah, UAE against Proforma Invoice No AITS/EX/2097. They have ordered for Low Aromatic White Spirit having Distillation Range Of 145-240 as guided in IS: 1745-1978.

1.6 They further requested for waiver of the Show Cause Notice and personal Hearing and to adjudicate the case at the earliest.

### **DISCUSSION & FINDINGS**

2. I have carefully gone through the case records & submissions of the importer and applicable provisions of law. The importer vide letter dated 15.11.2018 has requested for waiver of the show cause notice and Personnel Hearing. I find that the condition of principle of natural justice under section 122A *ibid* has been complied. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

2.1 I find that the importer, M/s. Shiva Chemicals, had filed B/E No. 8401703 dated 10.10.2018 for clearance of 178.19 Mts (10 Containers) of "Low Aromatic White Spirit" through their Customs Broker, M/s. Gaurav M Jhaveri, Gandhidham. However, as per test report No. 1036038 dated 10.10.2018 and further clarification vide its letter dated 02.11.2018, CRCL, Kandla, the imported goods were found "Superior Kerosene Oil" falling under CTH 27101910 instead of "Low Aromatic White Spirit" as declared under CTH 27101990.

2.2 All 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"*

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.

2.3 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.

2.4 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.

2.5 In view of the above, I find that M/s. Shiva Chemicals has tried to import "Superior Kerosene Oil" by mis-declaring the same as "Low Aromatic White Spirit" classified their product under CTH No.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. Also the importer is liable for penal action under Section 112(a) of the Act *ibid*.

3. In view of the aforesaid discussion and findings, I pass the following order.

### **ORDER**

a. I reject the declared classification of imported goods "Low Aromatic White Spirit" which was classified under CTH r/w ITC (HS) Schedule -1's heading 27101990 and order the same to be re-classified under CTH-27101910 in view of report on Test Memo No. 1036038 dated 10.10.2018 and further clarification dated 02.11.2018.

b. I order for confiscation of imported goods i.e "Superior Kerosene Oil" valued at Rs. 87,73,362.84 covered under B/E No. 8401703 dated 10.10.2018 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.7,00,000.00 (Rupees Seven Lakh only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

c. I also impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on the importer M/s. Shiva Chemicals under Section 112(a) of Customs Act, 1962.

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

  
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4. This order is issued 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.

  
(AJAY KUMAR)  
**Additional Commissioner of Customs**  
**Custom House, Kandla**

**F.No.S/15-16/Gr.1/Shiva Chemicals/18-19**

To,

M/s. Shiva Chemicals,  
2076, Urban Estate, PH-I,  
Dugri, Ludhiana

Copy to:

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