



**सीमा शुल्क आयुक्त का कार्यालय,
नवीन सीमा शुल्क भवन, नया कांडला**

**OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.**

A	फ़ाइल संख्या/ File No.	S/10-74/ADJ/ADC/Alpine/2018-19
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/04/2019-20
C	पारित कर्ता/ Passed by	SH. AJAY KUMAR, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	21.06.2019
E	जारी करने की दिनांक/Date of issue	21.06.2019
F	एस०सी०एन० सं० एवं दिनांक/ SCN No. & Date	DRI/GRU/INV-9/09-10 Dated 13/08/2010
G	नोटीसी/ पार्टी Noticee/Party	M/s Alpine Poly Cam, 15/A/44, Pratap Chamber-II, 5th Floor, Karol Bagh, Delhi — 110 005.

1. यह अपील आदेश संबन्धित को नि प्रदान शुल्क:किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A (1) के अंतर्गत प्रपत्र सीए- 3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“सीमा शुल्क आयुक्त (अपील), कांडला
मंजिल वी 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड
अहमदाबाद 380 009”
**“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
7th Floor, Mridul Tower, Behind Times of India, Ashram Road
Ahmedabad - 380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -
 - (i) उक्त अपील की एक प्रति और
A copy of the appeal, and
 - (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 2/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
5. अपील जापन के साथ झूटि/ व्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
.6अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), अधिनियम शुल्क सीमा और 1982, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s Alpine Poly Cam, 15/A/44, Pratap Chamber-II, 5th Floor, Karol Bagh, Delhi — 110 005 (PAN No. BXEPS1677R) (hereinafter referred as M/s. APC, Delhi) had imported 29.42 MT goods declaring the goods as "Heavy Spindle Oil" in the Bill of Entry bearing No. 325901 dated 12.01.2010, filed with Custom House, Kandla through their appointed CHA, M/s HMT Clearing Agency, Gandhidham for clearance of the same by classifying it under CTH 27101980.

1.1 Information received by the officers of DRI, Gandhidham indicated that consignments of Base Oil and Lubricating Oil were being imported through Kandla Port, and the same were being cleared by mis-declaring its description as "Heavy spindle Oil", and undervaluing the same to evade payment of appropriate Customs Duty. Acting on the said information, the officers of DRI, Gandhidham examined the goods covered under said Bill of Entry and drawn the samples from the two containers and the same were chemically analyzed by the Chemical Examiner (Gr.1), Central Excise and Customs Laboratory, Vadodara. The Test Memo No. is 20/09-10 and 21/09-10 both dated. 28.01.2010 revealed that none of the said imported goods were "Heavy spindle Oil" as declared before the Customs Authorities and import documents. From the referred test reports it is evident that the subject goods were Base Oil "SN 150" appropriately classifiable under CTH 27101960, as against the declared classification of 27101980 for "Heavy Spindle Oil" in the said Bill of Entry. Therefore, the said consignment detained under Panchnama dtd. 19.01.2010 were placed under seizure vide Seizure Memo dtd. 16.02.2010 by the Senior Intelligence Officer, DRI, Gandhidham under the provisions of Section 110 of Customs Act, 1962, under reasonable belief that the same goods were liable to confiscation under the provisions of the Customs Act, 1962. The said seized goods were handed over to the Custodian i.e. M/s Arvind V. Joshi & Co., CFS, Mithi Rohar, Gandhidham for safe custody, under Supratnama dtd. 16.02.2010.

1.2 Statement of Shri Amit Bhardwaj, Power Attorney of M/s HMT Shipping Agency, Gandhidham, CHA was recorded under provisions of Section 108 of the Customs Act, 1962 before Senior Intelligence Officer, DRI, Gandhidham wherein he inter alia stated that he has filed the said Bill of Entry as per the documents provided by M/s APC, Delhi. Being a Commerce Graduate he was not aware of chemical parameters like Viscosity, Flash Point etc. and bills of entry filed by him in the name of Spindle Oil for said importers in the past. After seeing the Chemical Examiner's report, finally he admitted that the importers had imported Base Oil and Lubricating Oil (SAE30) and mis-declared it as Spindle Oil with the intention to evade Customs Duty and being a CHA he would pursue the matter with importer to pay the differential duty.

1.3 Shri Sanjay, Sharma, Proprietor of M/s. APC, Delhi stated in his statement dated 13th May 2010 that they did not know the CTH of the impugned goods. He further stated that the imported goods were being sold directly to various parties of Delhi and Ahmadabad. He also stated that this was his first import consignment of Heavy spindle Oil and his other import

products were Residue Wax, Rubber Process Oil which were imported at Delhi. It is therefore, clear that M/s. APC, Delhi was fully aware of chemical composition/characteristics and its usage, since being engaged in the imports of other petroleum products, as 'stated by him in his statement dated 13.05.2010, Hence, mis-declaration 'was deliberate in the same with the intention to evade payment of appropriate customs duty and attempted to clear the same by way of mis-declaring description and grossly undervaluing the same. After having seen the test reports, he admitted that the goods imported by them were "Base Oil SN 150" and agreed to pay duty at the enhanced rate of US \$800 PMT for Base Oil SN 150.

1.4 M/s. APC, Delhi has paid total customs duty amounting to Rs. 290,182/- (Rupees Two Lacs Ninety Thousand One Hundred and Eighty Two Only) vide TR- 6 Challan No. 184 dated 24th May'2010 in respect of 29.42 MT of goods declared as Heavy Spindle Oil in the Bill of entry No. 325901 dated 12.01.2010, found to be Base Oil SN 150 on testing, and requested for provisional release of the said goods. Accordingly, the Additional Director, DRI, Gandhidham vide letter F. No.: DRI/GRU/INV-9/2009-2010 dated 4th June'2010 communicated No Objection for provisional release of seized goods, to the Commissioner of Customs, Kandla.

1.5 Base Oil and Spindle Oil are two separate commodities and are classified under different Customs Tariff Headings. Looking to the properties, chemical composition and use as lubricant, Spindle Oil is covered under the Customs Tariff Heading of "Lubricating Oil" but some of its specifications differ from the specifications of the goods termed as "Lubricating Oil". A comparison of some important parameters contained in the test reports of Central Excise and Customs Laboratory, Vadodara, vis-a-vis the Indian Standard Specifications. For General Purpose Machinery and Spindle Oils Part-II Spindle Oils (First Revision) revealing the difference is detailed below:

TABLE-I

Parameters	Specification of spindle Oils as per Indian Standard – Part-II Spindle Oils	Test Results of representative samples as per CRCL, Vadodara
		Base Oil SN 150
Kinematic Viscosity in Centistokes at 40°C	19.8 to 24.2	More than 30 cst
Colour	3.5	Light Yellow
Flash Point	180°C	210°C-215°C
Ash	0.01	Less than 0.01
Acidity mg KOH/g1 Max	0.15	Less than 0.1

TABLE-2

Spindle Oil	Base Oil
<p>1. As per Product information of bp lubricants Spindle Oils are a series of light colored and low viscosity oils for lubrication of high speed spindles. Spindle Oils exhibit outstanding oxidation stability, are fortified to reduce wear and are inhibited to prevent corrosion of lubricated parts. Spindle Oils also provide effective lubrication over the full range of loads and temperatures normally encountered by textile equipment and machine tool spindles, Spindle Oils hold power and maintenance costs to a minimum.</p> <p>2. Product description downloaded from http://www.salcooils.com/spindleoil.html describes Spindle Oil as the Mobil Velocite Oil Numbered Series oils are premium performance products primarily designed for the lubrication of high-speed spindles in machine tools. They are also used in some critical hydraulic, circulation systems and air line oilers where the appropriate viscosity grade is selected. They are formulated from select high-quality, low viscosity base oils and additives that impart goods resistance to oxidation and protection from rust and corrosion. They possess very goods resistance to foaming and separate readily from water.</p>	<p>As per product information downloaded from http://baseoilmarket.com/oil.php Modern Base oils are the result of a long and complex distillation and refining processes. The feedstock used is crude oil. This substance is not of uniform quality but consists of several thousands of hydrocarbons compounds in which the elements carbon and hydrogen are present in all molecules and, in part, are bound to other elements. Most of the hydrocarbons in the base oil are paraffinic, but it also contains naphthenic and aromatic molecules. When the finished lubricant, such as motor oil, is made these, several additive compound are used to improve the base oil properties.</p>

From the above Tables, it is amply clear that certain parameters of the impugned goods, mentioned in the test reports of Central Excise and Customs Laboratory, Vadodara are different from the specifications of Spindle Oils as defined in "the Indian Standards — Part II-Spindle Oils". The Kinematic Viscosity reported in the chemical analysis report of Central Excise and Customs Laboratory, Vadodara is more than 30 cst for Base Oil SN 150 but the same is 19.8 to 24.2 for Spindle Oil as specified under the Indian Standards — Part II — Spindle Oils (First Revision). Further, the colour of the goods found as light yellowish has been specified in numerical 3.5 in the Indian standards. Similarly, the Flash Point reported in the test reports of Central Excise and Customs Laboratory, Vadodara are also different from the Flash Point specified by the *Indian Standards for Spindle Oils*. The Chemical Examiner (Gr.1), Central Excise and Customs laboratory, Vadodara, in his report dated 15.02.2010, has categorically reported that the samples were not of "Heavy Spindle Oil". The reports do not indicate the goods to be Heavy Spindle Oil, as claimed by the importer and it 'is established from the Chemical Analysis reports all dated 15.02.2010 of Central Excise and Customs Laboratory, Vadodara that the goods covered under B/E No. 325901 dated 12.01.2010 are Base Oil SN 150 as against

declaration as "Heavy Spindle Oil" in the said B/E. The goods, as per test reports therefore, appropriately fall under CTH 27101960 of the Customs Tariff Act' 1975.

1.6 M/s. APC, Delhi imported the goods declared ás "Heavy Spindle Oil", and filed Bill of Entry No. 325901 dated 12th Jan'2010, declaring the C&F value of goods as US \$ 400 PMT. It is evident from the foregoing Paras that description and classification of the goods was wrongly declared in the above referred Bill of Entry. The mis-declaration and wrong classification was made with a view to evade the Customs duty. The test reports received from Central Excise and Customs Laboratory, Vadodara clearly indicate that the impugned goods were other than "Heavy Spindle Oil", and were Base Oil SN 150. Therefore, the goods were found to be other than the goods declared in the Bill of Entry. It is settled law that in the event of mis-declaration of description of the goods, the declared value is required to be rejected and just and fair values of the goods are to be ascertained. Therefore, in the instant case, the value declared in the following Bill of Entry and invoices cannot be related to the cargo actually imported under the cover of the same and cannot be accepted as transaction value in terms of Section 14 of the Customs Act'1962 and is required to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules' 2007. The just and fair value of the goods is required to be determined under the Customs Valuation (Determination of Value of Imported Goods) Rules' 2007 read with Section 14 of the Customs Act'1962.

1.7 The Test Reports submitted by the Central Excise and Customs Laboratory, Vadodara clearly indicated mis-declaration of goods, imported vide Bill of Entry No. 325901 dated 12.01.2010, which is now under seizure. It further appears that the parameters such-as description of goods and quality of goods have been mis-declared by the said importer at the time of importation of said goods. The verification and scrutiny of Import Data suggested that there was significantly higher value at which identical or similar goods were imported and assessed at or about the same time in comparable quantities in a comparable commercial transaction. The importer was provided with sufficient opportunity to furnish further information including documents or other evidence. However, despite providing sufficient opportunity, the importer failed to provide information and / or documents or other evidences of correct transaction value of the impugned imported goods. Hence, as provided under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, in the absence of a response of the importer, it shall be deemed that the transaction value of impugned imported goods cannot be determined under the provisions of sub-rule (1) of Rule 3; that the same is required to be rejected under Rule 12 *ibid*; and that it is required to be determined by proceeding sequentially in accordance with Rules 4 to 9 *ibid*.

1.8 Hence, by going sequentially for re-determination of fair value of the impugned goods under the said Rules, it appears that Rule 4 of the Customs Valuation (Determination of Value

of Imported Goods) Rules, 2007 cannot be invoked in the instant case as no import of identical goods into India at or around the period of importation of the impugned goods could be found. Hence, it appears that the value of the impugned goods cannot be determined under Rule 4 *ibid*.

Valuation of Base Oil SN 150 which is mis-declared as Heavy Spindle Oil:

1.9 For re- determination of value of Base Oil SN 150 under the said Rules, it appears that Rule 4 and 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 cannot be invoked as no import data of identical or similar goods into India at or around the period of importation of the impugned goods could be found. Hence, it appears that the value of the imported Base Oil cannot be fixed under Rule 4 or 5 *ibid*. Further, in terms of Rule 6 of the said Rules applicability of Rule 7 was considered, which provides method of valuation based on the market value of the "goods being valued", "identical goods" or "similar goods". As discussed, above, no data regarding importation of "identical goods" and "similar goods" was available; therefore, market value of the same could not be obtained. Going sequentially, applicability of Rule 8 of the said Rules was considered. It was found that in the absence of details of "the cost or value or materials and fabrication or other processing employed in producing the imported goods" Rule 8 of the said Rules is also not applicable in the instant case.

Therefore, applicability of Rule 9 of the said Rules was considered. Note 3(b) to Rule 9 provides flexibility in considering value of goods similar in other respects but having different *country of origin*. Hence, availing the flexibility provided by Note 3(b) to Rule 9 of the said Rules, value of Base Oil SN 500 of UAE Origin imported into India by various importers was considered for arriving at just and fair value of the Base Oil SN 150 imported by M/s. APC. Delhi from UAE. The verification and scrutiny of imports data, indicated that C&F value of Base Oil SN 500 of UAE Origin, imported through Nhava Sheva Port by different importers @ US\$ 800 — 815 PMT. The Base Oil imported by M/s. APC, Delhi has also UAE Origin, hence the price of Base Oil SN 500 imported into India from UAE, as a Country of Origin was considered for arriving at the appropriate value for the goods imported by M/s. APC, Delhi. The price taken for are just and fair as both the places of country of origin are same i.e. UAE. Shri Sanjay Sharma, Proprietor of M/s. APC, Delhi had agreed in his statement recorded U/S 108 of the Customs Act'1962, to pay the duty on the re-determined assessable value @ C&F 800 US\$ PMT for Base Oil SN 150 imported by them. The importer has accordingly paid the duty.

1.10 M/s. APC, Delhi had imported 29.42 MT of Base Oil SN 150, correctly classifiable under CTH 27101960 and filed B/E No. 325901 dated 12.01.2010, mis-declaring the description, value and also mis-classifying the cargo as "Heavy Spindle Oil", under CTH 27101980 @ C&F 400 US\$ PMT in the said B/E to evade the payment of appropriate amount of Customs Duty leviable thereon and hence by suppressing the correct description, value and mis-classifying the imported goods M/s. APC, Delhi has contravened the provisions of Section 46 of the Customs

Act, 1962 read with Section 14 of the Foreign Trade (Development and Regulation) Act, 1992 and Rules 11 & 14 of the Foreign Trade (Regulation) Rules 1993 and rendered the seized 29.42 MT of Base Oil SN 150 liable to confiscation under Section 111(d) and (m) of the Customs Act, 1962.

1.11 M/s. APC, Delhi have attempted to clear 29.42 MT of Base Oil under Bill of Entry No. 325901 dated 12.01.2010, evading payment of appropriate amount of Customs Duty by resorting to willful suppression of material facts. By this act they have attempted to evade customs duty totally amounting to Rs. 1,45,091/- (One Lac Forty-Five Thousand and Ninety-One Only) in respect of the goods sought clearance under said B/E. This act on the part of M/s. APC, Delhi has rendered 29.42 MT Base Oil SN 150 totally valued at Rs. 11,34,631/- (re-determined assessable value) liable to confiscation under Section 111(d) and (m) of the Customs Act, 1962. For the said acts of omissions and commissions, M/s. APC, Delhi have rendered themselves liable to penalty under Sections 114A and 112(a) of the Customs Act, 1962.

2. Therefore, M/s. Alpine Poly Cam, was issued to show cause notice in writing to the Additional Commissioner of Customs, New Custom House, Near Balaji Temple, New Kandla within 30 (thirty) days from the date of receipt of the notice, as to why:

- (i) the value of US\$ 400 PMT C&F declared in respect of 29.42 MT of cargo declared as "Heavy Spindle Oil" in the B/E No. 325901 dated 12th Jan'2010, found to be Base Oil SN 150 on testing, should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined in terms of Section 14 of the Customs Act'1962 'read with the Customs Valuation (Determination of Value of Imported Goods) Rules'2007 @ C&F US \$ 800/- PMT;
- (ii) the total duty of Rs. 2,90,182/- (Rupees Two Lacs Ninety Thousand One Hundred and Eighty Two Only) leviable on the re-determined assessable value of Rs. 11,34,631/- (Rupees Eleven Lacs Thirty-Four Thousand Six Hundred Thirty-One Only) in respect of 29.42 MT of Base Oil SN 150 @ US\$ 800/- PMT C&F, should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act'1962:
- (iii) the total duty of Rs. 2,90,182/- (Rupees Two Lacs Ninety Thousand One Hundred and Eighty Two Only) already paid vide Challan No. 184 dated 24th May' 2010, should not be appropriated towards duty demanded at (ii) above;
- (iv) the interest at the applicable rate should not be charged under the provisions of Section 28AB of the Customs Act'1962:
- (v) the 29.42 MT cargo declared as "Heavy Spindle Oil" in the B/E No. 325901 dated 12 Jan'2010, found to be Base Oil SN 150 on testing, totally valued at Rs. 11,34,631/- (Rupees Eleven Lacs Thirty-Four Thousand Six Hundred Thirty-One Only), should not

be confiscated under the provisions of Section 111(d) and (m) of the Customs Act'1962:

- (vi) the penalty under the provisions of Section 114A as well as under the provisions of Section 112(a) of the Customs Act'1962, should not be imposed upon them;

PERSONAL HEARING

3. Letter of personal hearing for sake of natural justice vide letters dated 12.04.2019, 26.04.2019 and 10.05.2019 were issued to the noticee to appear before Adjudicating Authority on 25.04.2019, 10.05.2019 and 24.05.2019 respectively. But the noticee neither appeared for the personal hearing nor submitted any written submission.

DISCUSSION AND FINDINGS

4. I have carefully gone through the Show Cause Notice No. DRI/GRU/INV-9/2009-10 dated 13.08.2010 and facts of the case. For the sake of natural justice, I have given three times of personal hearing to the notices vide letters dated 12.04.2019, 26.04.2019 and 10.05.2019 to remain present and file their written submissions and documentary evidences to defend their case, however, neither they appeared for personal hearings nor produced any written submission. Therefore, I take up the case on its merits and as per available records for a decision.

4.1 I find that the facts of the case indicate that acting upon the intelligence, officer of DRI, Gandhidham examined the goods covered under said Bill of Entry and drawn the samples from the two containers and the same were chemically analyzed by the Chemical Examiner (Gr. 1), Central Excise and Customs Laboratory, Vadodara. The Test Memo No. is 20/09-10 and 21/09-10 both dated 28.01.2010 revealed that none of the said imported goods were "Heavy spindle Oil" as declared before the Customs Authorities. From the referred test reports it is evident that the subject goods were "Base Oil SN 150" appropriately classifiable under CTH 27101960, as against the declared classification of 27101980 for "Heavy Spindle Oil" in the said Bill of Entry.

4.2 I find that during the statement of Shri Amit Bhardwaj, Power Attorney of M/s HMT Shipping Agency, Gandhidham, he stated that he had filed the said Bill of Entry as per the documents provided by M/s APC, Delhi. Being a Commerce Graduate he was not aware of chemical parameters like Viscosity, Flash Point etc. and bills of entry filed by him in the name of Spindle Oil for said importers in the past. After seeing the Chemical Examiner's report, finally he admitted that the importers had imported Base Oil and Lubricating Oil (SAE30) and mis-declared it as Spindle Oil with the intention to evade Customs Duty and being a CHA he would pursue the matter with Importer to pay the differential duty

4.3 I also find that, Shri Sanjay, Sharma, Proprietor of M/s. APC, Delhi during his statement dated 13" May'2010, after having seen the test reports, admitted that the goods imported by them were Base Oil SN 150 and agreed to pay duty at the enhanced rate of US \$ 800 PMT for Base Oil SN 150. It is therefore, clear that M/s. APC, Delhi was fully aware of chemical composition/characteristics and its usage, since being engaged in the imports of other petroleum products, as stated by him in his statement, Hence, mis-declaration was deliberate

in the same with the intention to evade payment of appropriate Customs duty and attempted to clear the same by way of mis-declaring the goods through their appointed CHA for clearance of the same by classifying it under CTH 27101980.

4.4 I have also gone through the parameters/specification of Spindle Oil and Base Oil SN 150 as per test reports received from Central Excise and Customs Laboratory, Vadodara indicating that Base Oil and Spindle Oil are two separate commodities and are classified under different customs tariff headings as below.

Parameters	Specification of spindle Oils as per Indian Standard – Part-II Spindle Oils	Test Results of representative samples as per CRCL, Vadodara
		Base Oil SN 150
Kinematic Viscosity in Centistokes at 40°C	19.8 to 24.2	More than 30 cst
Colour	3.5	Light Yellow
Flash Point	180°C	210°C-215°C
Ash	0.01	Less than 0.01
Acidity mg KOH/g1 Max	0.15	Less than 0.1

Spindle Oil	Base Oil
<p>1. As per Product information of bp lubricants Spindle Oils are a series of light colored and low viscosity oils for lubrication of high speed spindles. Spindle Oils exhibit outstanding oxidation stability, are fortified to reduce wear and are inhibited to prevent corrosion of lubricated parts. Spindle Oils also provide effective lubrication over the full range of loads and temperatures normally encountered by textile equipment and machine tool spindles, Spindle Oils hold power and maintenance costs to a minimum.</p> <p>2. Product description downloaded from http://www.salcooils.com/spindleoil.html describes Spindle Oil as the Mobil Velocite Oil Numbered Series oils are premium performance products primarily designed for the lubrication of</p>	<p>As per product information downloaded from http://baseoilmarket.com/oil.php Modern Base oils are the result of a long and complex distillation and refining processes. The feedstock used is crude oil. This substance is not of uniform quality but consists of several thousands of hydrocarbons compounds in which the elements carbon and hydrogen are present in all molecules and, in part, are bound to other elements. Most of the hydrocarbons in the base oil are paraffinic, but it also contains naphthenic and aromatic</p>

<p>high-speed spindles in machine tools. They are also used in some critical hydraulic, circulation systems and air line oilers where the appropriate viscosity grade is selected. They are formulated from select high-quality, low viscosity base oils and additives that impart good resistance to oxidation and protection from rust and corrosion. They possess very good resistance to foaming and separate readily from water.</p>	<p>molecules. When the finished lubricant, such as motor oil, is made these, several additive compounds are used to improve the base oil properties.</p>
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4.5 From the above Table, I find that certain parameters of the impugned goods, mentioned in the test reports of Central Excise and Customs Laboratory, Vadodara are different from the specifications of Spindle Oils as defined in "the Indian Standards — Part II-Spindle Oils". The Kinematic Viscosity reported in the chemical analysis report of Central Excise and Customs Laboratory, Vadodara is more than 30 cst for Base Oil SN 150 but the same is 19.8 to 24.2 for Spindle Oil as specified under the Indian Standards — Part II — Spindle Oils (First Revision). Further, the colour of the goods found as light yellowish has been specified in numerical 3.5 in the Indian standards. Similarly, the Flash Point reported in the test reports of Central Excise and Customs Laboratory, Vadodara are also different from the Flash Point specified by the *Indian Standards for Spindle Oils*. The Chemical Examiner (Gr.1), Central Excise and Customs Laboratory, Vadodara, in his reports dated 15.02.2010, has categorically reported that the samples were not of "Heavy Spindle Oil". The reports do not indicate the goods to be Heavy Spindle Oil, as claimed by the importer and it is established from the Chemical Analysis reports all dated 15.02.2010 of Central Excise and Customs Laboratory, Vadodara that the goods covered under Bill of Entry No. 325901 dated 12.01.2010 are Base Oil SN 150 as against declaration as "Heavy Spindle Oil" in the said Bill of Entry. As per test reports the goods in question are appropriately fall under CTH 27101960 of the Customs Tariff Act' 1975.

4.6 I find that M/s. APC, Delhi imported the goods declared as "Heavy Spindle Oil", and filed Bill of Entry No. 325901 dated 12th Jan'2010, declaring the C&F value of goods as US \$ 400 PMT. It is evident from the above discussions and test reports that description and classification of the goods was wrongly declared in the above referred Bill of Entry. It is settled law that in the event of mis-declaration of description of the goods, the declared value is required to be rejected and just and fair values of the goods are to be ascertained. Therefore, in the instant case, the value declared in the following Bill of Entry and invoices cannot be related to the cargo actually imported under the cover of the same and cannot be accepted as transaction value in terms of Section 14 of the Customs Act'1962 and is required to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules' 2007.

4.7 I find that for re- determination of value of Base Oil SN 150 under the said Rules, it appears that Rule 4 and 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 cannot be invoked as no import data of identical or similar goods into India at or around the period of importation of the impugned goods could be found. Hence, it appears that the value of the imported Base Oil cannot be fixed under Rule 4 or 5 *ibid*. Further, in terms of Rule 6 of the said Rules applicability of Rule 7 was considered, which provides method of valuation based on the market value of the "goods being valued", "identical goods" or "similar goods". As discussed, above, no data regarding importation of "identical goods" and "similar goods" was available; therefore, market value of the same could not be obtained. Going sequentially, applicability of Rule 8 of the said Rules was considered. It was found that in the absence of details of "the cost or value or materials and fabrication or other processing employed in producing the imported goods" Rule 8 of the said Rules is also not applicable in the instant case.

4.8 Therefore, applicability of Rule 9 of the said Rules was considered. Note 3(b) to Rule 9 provides flexibility in considering value of goods similar in other respects but having different country of origin. Hence, availing the flexibility provided by Note 3(b) to Rule 9 of the said Rules, value of Base Oil SN 500 of UAE Origin imported into India by various importers was considered for arriving at just and fair value of the Base Oil SN 150 imported by M/s. APC. Delhi from UAE. The verification and scrutiny of imports data, indicated that C&F value of Base Oil SN 500 of UAE Origin, imported through Nhava Sheva Port by different importers @ US\$ 800 — 815 PMT. The Base Oil imported by M/s. APC, Delhi has also UAE Origin, hence the price of Base Oil SN 500 imported into India from UAE, as a Country of Origin was considered for arriving at the appropriate value for the goods imported by M/s. APC, Delhi. The price taken for are just and fair as both the places of country of origin are same i.e. UAE. Shri Sanjay Sharma, Proprietor of M/s. APC, Delhi had agreed in his statement recorded U/S 108 of the Customs Act'1962, to pay the duty on the re-determined assessable value @ C&F 800 US\$ PMT for Base Oil SN 150. The importer has accordingly paid the duty as discussed above.

4.9 I find that Noticee have imported heavy spindle oil under CTH 27101980 by way of mis declaration which is correctly classifiable under CTH 27101960 as discussed above and agreed to pay customs duty on enhanced value of the goods and paid accordingly. I find that they have wilfully/intentionally cleared the goods by way of mis-classification to evade the customs duty. The classification and valuation in the Bills of Entry were not true and correct with an intention to evade duty of customs. Therefore, the goods in question are liable for confiscation. Mis-classification is one of the modality to evade the Customs duty and less payment of duty. In cases where classification is not correctly stated for some purpose, that is to say not mentioning correct classification of the goods, then it would amount to violation of the conditions for import of the goods. The purpose of changing of description/classification may be for some other purpose, but it would certainly amount to illegal/ unauthorized and against the statue. Therefore, the goods under question are liable for confiscation under section 111(d)

and (m) of the Customs Act, 1962. By suppressing the correct description, value and misclassifying the imported goods M/s. APC, Delhi has also contravened the provisions of Section 46 of the Customs Act, 1962 read with Section 14 of the Foreign Trade (Development and Regulation) Act, 1992 and Rules 11 & 14 of the Foreign Trade (Regulation) Rules 1993 and rendered the seized 29.42 MT of Base Oil SN 150 liable to confiscation under Section 111(d) and (m) of the Customs Act, 1962.

4.10 The SCN proposes imposition of penalty under Section 112(a) of the Customs Act, 1962. I find that Section 112(a) of the Customs Act, 1962, stipulates that any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act is liable to penalty as prescribed under the said Section. I find that the goods have already been made liable for confiscation for violation of Section 111 of the Customs Act, 1962, therefore noticee is also liable for penal action under Section 112(a) of the Customs Act, 1962.


4.11 The SCN also proposes penalty under Section 114(a) of the Customs Act, 1962. Section 114(a) of the Customs Act, 1962 stipulates that penalty for short levy or non-levy of duty in certain cases where duty has not been levied or has been short levied or interest has not been charged or paid or refund erroneously refunded by reason of collusion or any willful misstatement or suppression of facts, the person who is liable to pay duty or interest, as the case may be. I find that in the present case the Noticee has intentionally mis-declared the imported goods with the intension to evade the Customs duty and made liable themselves for penal action under the provisions of Section 114A of Customs Act'1962.

5. In view of the foregoing discussions and findings, I pass the following order:

ORDER

- (i) I reject the value of US\$ 400 PMT C&F declared in respect of 29.42 MT of cargo declared as "Heavy Spindle Oil" in the B/E No. 325901 dated 12th Jan'2010, found to be "Base Oil SN 150" on testing, under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine in terms of Section 14 of the Customs Act'1962 'read with the Customs Valuation (Determination of Value of Imported Goods) Rules'2007 @ C&F US \$ 800/- PMT;
- (ii) I order to recover the total duty of Rs. 2,90,182/- (Rupees Two Lacs Ninety Thousand One Hundred and Eighty Two Only) leviable on the re-determined assessable value of Rs. 11,34,631/- (Rupees Eleven Lacs Thirty-Four Thousands Six Hundred Thirty-One Only) in respect of 29.42 MT of Base Oil SN 150 @ US\$ 800/- under provisions to Section 28 (1) of the Customs Act'1962:
- (iii) I order to appropriate an amount of duty of Rs. 2,90,182/- (Rupees Two Lacs Ninety Thousand One Hundred and Eighty Two Only) already paid vide Challan No. 184 dated 24th May' 2010,

- (iv) I order to recover the interest at the applicable rate under the provisions of Section 28AB of the Customs Act'1962.
- (v) I order to confiscate the 29.42 MT cargo declared as "Heavy Spindle Oil" in the Bill of Entry No. 325901 dated 12 Jan'2010, found to be Base Oil SN 150 on testing, totally valued at Rs. 11,34,631/- (Rupees Eleven Lacs Thirty-Four Thousand Six Hundred Thirty-One Only), under the provisions of Section 111(d) and (m) of the Customs Act'1962. However, I give an option to redeem the goods on payment of Redemption fine of Rs. 2,00,000.00 (Rs. Two Lacs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.
- (vi) I impose penalty of Rs.2,90,182.00 (Rupees Two Lacs Ninety Thousand One Hundred and Eighty Two Only) under the provisions of Section 114A of the Customs Act, 1962 on M/s Alpine Poly Cam. However, I give an option, under proviso to Section 114A, to the Noticee, to pay 25% of the amount of total penalty imposed at (vi) above, subject to payment of total amount of interest confirmed at (iv) above and the amount of 25% of penalty imposed at (vi) above within 30 days of receipt of this order;
- (vii) I do not impose penalty under Section 112(a) of the Customs Act, 1962 on M/s Alpine Poly Cam under the Proviso of the Section 114 A of the Customs Act, 1962.
6. This Order is issued without prejudice to any other action that may be taken against the above mentioned firms and persons under provisions of the Customs Act, 1962 or any other law for the time being in force.


(AJAY KUMAR)
Additional Commissioner,
Custom House, Kandla

By Registered Post AD

Dated:21.06.2019

F.No. S/10-74/Adj./ADC/Alpine/2018-19

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AP

To/
M/s Alpine Poly Cam, 15/A/44,
Pratap Chamber-II,
5th Floor, Karol Bagh, Delhi — 110 005.

COPY TO:

1. The Principal Commissioner of Customs, Custom House, Kandla.
2. The Additional Director, Regional Unit DRI, Plot No. 193, Sector-IV, Oslo, Gandhidham-370201, Kutchh (Gujarat).
3. The Assistant Commissioner (RRA), Custom House, Kandla.
4. The Assistant Commissioner (Recovery), Custom House, Kandla.
5. The Assistant Commissioner (EDI), Custom House, Kandla.
6. Guard File