



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/15-24/Gr-I/RVS/18-19
B	Order-in-Original No.:	KDL/ADC/AK/06 /2019-20
C	Passed by:	AJAY KUMAR Additional Commissioner of Customs, Custom House, Kandla
D	Date of order:	23.07.2019
E	Date of issue:	23.07.2019
F	Importer:	M/s. R.V.S Petrochemicals Ltd. Bahadurgadh, Haryana

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.

Subject: Import of "Law Aromatic White Spirit", by M/S. RVS Petrochemicals Limited, holding IEC No. AACCR3680G, and having their Office at Opp: H. P. C. Bottling Plant, Asaudh, Teh. Bahadurgarh, DIST. Jhajjar Bahadurgarh, Haryana – 124 505, filed B/E No. 8594079 dated 24.10.2018

BRIEF FACTS OF THE CASE

Present proceedings have arisen out of Order-in-Appeal No. KDL-CUSTOM-000-APP-015-19-20 dated 10.07.2019, whereby the Order-In-Original No. KDL/ADC/AK/02/2019-20 dated 20.05.2019, was set aside and the matter was remanded back to the proper officer i.e. Additional Commissioner of Customs House, Kandla with direction to examine the facts, documents, evidences and submissions made by the importer and then pass speaking order afresh after following principal of natural justice and adhering to the legal provisions.

1.1 Stated in brief the issue involved is that the importer M/S. RVS Petrochemicals Limited, holding IEC No. AACCR3680G, (PAN No. AACCR3680G) and having their Office at Opp: H. P. C. Bottling Plant, Asaudh, Teh. Bahadurgarh, DIST. Jhajjar Bahadurgarh, Haryana – 124 505, (hereinafter referred to as "the importer", had filled following Warehouse Bills of Entry for clearance of their imported goods declared as below and classified under CTH 27101990 through Customs Broker, M/S. Cargo Clearing Agency (GUJ.), Gandhidham :-

Sl. No	B/E No.	B/E Date	Item's Description	Weight (MT)	Assessable Value Declared (Rs)
1	8801499	10/11/18	LOW AROMATIC WHITE SPIRIT	140.260	78,05,679/-
2	8801500	10/11/18	LOW AROMATIC WHITE SPIRIT	122.840	68,36,230/-
			Total	263.100	1,46,41,909/-

1.2 The goods declared in aforesaid two Bills of Entry were examined on First Check basis, and the representative samples were drawn and forwarded to Customs Laboratory, Kandla, for testing under Test Memo, Test Report No. 1037330 dated 12.11.2018 and 1037331 dated 12.11.2018 respectively. The Test Reports received from Customs Laboratory, Kandla and the test result as received is reproduced below.

Test Report dated 26.11.2018 in respect of Test Memo No. 1037330 Dated 12.11.2018 (B/E No & Date 8801499/10.11.2018) reads as below:-

"The sample is in the form of clear colourless liquid. It is composed of mixture of mineral hydro carbons, having following constants:

Initial Boiling Point : 130° Celsius

Final Boiling Point : 228° Celsius

Density at 15° Celsius : 0.7967 gm/ml

Distill at 210° Celsius : 83%

Flash Point : 43° Celsius

Smoke Point : 19 mm

The above parameters meet the requirement of Kerosene as per IS 1549-2016

Test Report dated 26.11.2018 in respect of Test Memo No. 1037331 Dated 12.11.2018 (BE No. & Date 8801500/10.11.2018) reads as below:-

"The sample is in the form of clear colourless liquid. It is composed of mixture of mineral hydro carbons, having following constants:

Initial Boiling Point : 135° Celsius

Final Boiling Point : 241° Celsius

Density at 15° Celsius : 0.7961 gm/ml

Distill at 210° Celsius : 67%

Flash Point : 46° Celsius

Smoke Point : 20 mm

The above parameters meet the requirement of Kerosene as per IS 1459-2016

1.3 Further vide their letter dated 28.11.2018 the importer submitted that they are not satisfied with the findings of sample vide B/E.8801500 dated 10.11.2018 and requested to arrange for fresh sampling. Accordingly a fresh sample of the goods covered under B/E.No.8801500 dated 10.11.2018 drawn and sent to CRCL, Kandla on 07.12.2018. The Test Reports vide their Lab Report No.3777 dated 17.12.2018 received from Customs Laboratory, Kandla and the test result as received is reproduced below:

Re-Test Report dated 07.12.2018 in respect of Test Memo No. 1037331 Dated 12.11.2018 (BE No. & Date 8801500/10.11.2018) reads as below:-

"The sample is in the form of clear colourless liquid. It is composed of mixture of mineral hydro carbons, having following constants:

Initial Boiling Point : 143° Celsius

Final Boiling Point : 247° Celsius

Density at 15° Celsius : 0.7965 gm/ml

Distill at 210° Celsius : 70%

Flash Point : 45° Celsius

Smoke Point : 19 mm

The above parameters meet the requirement of Kerosene as per IS 1459-2016

The importer vide their letter dtd.01.02.2019 requested for detailed re-testing of the samples of item declared in BE Nos. 8801499 & 8801500 both dated 11.10.2018 from the Indian Institute of Petroleum, Dehradun. As per Importer's request and as per provisions of Circular No. 43/2017-Customs dated 16-11-2017 sample was sent for retesting at CRCL, New Delhi vide letter dated 05.02.2019. The CRCL Delhi report held that the sample under reference conforms to the specification of Kerosene.

1.5 In view of the above following order has been passed vide Order-In-Original No. KDL/ADC/AK/02/2019-20 dated 20.05.2019 by Additional Commissioner Customs House Kandla.

a. Reject the declared classification of imported goods "Law Aromatic White Spirit" which were classified under Customs Tariff Heading 27101990 and order the same to be re-classified under CTH-27101910 in view of Test Reports in respect of Bs/E No. 8801499 & 8801500 both dated 10.11.2018.

b. Order for confiscation of imported goods i.e "Superior Kerosene Oil" valued at Rs. 1,46,41,909/- covered under B/E No. 8801499 & 8801500 both dated 10.11.2018 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 12,00,000.00 (Rupees Twelve Lakhs only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

c. Also impose a penalty of Rs.8,00,000.00 (Rupees Eight Lakh only) on importer M/s. RVS Petrochemicals Ltd under Section 112(a) of Customs Act, 1962.

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

2. Being aggrieved by the Order dated 20.05.2019, the importer filed an Appeal No. 16/2019-20, and appeals to set aside the impugned order and inter alia submitted that;

2.1. The order for confiscation of goods under the provision of Section 111(d) of Customs Act, 1962 for want of a license issued by DGFT. The importer has contended that since they have received the required license issued by DGFT specifically for clearance of Goods (Superior Kerosene Oil) covered by the two bills of entry under consideration which are since lying at the port pending clearance, the impugned order may be annulled and orders for clearance of goods against the license bearing No.3319018550 dated 17.06.2019 may be issued.

2.2. The Importer has contended that the importer was compelled to obtain the import license only to facilitate the clearance as such, there was no mis-declaration warranting invocation confiscation under Section 111(m) of Customs Act, 1962. The importer has also contended that the goods are not liable to confiscation under Section 111(d) and (m) of Customs Act, 1962 and the importer, therefore, is not liable to penalty under Section 112(a) of Customs Act, 1962. Since the license bearing No. 3319018550 dated 17.06.2019 issued by DGFT has not been

placed before the adjudicating authority and has therefore, not been examined by the adjudicating authority while deciding the case.

3. In view of the above following Order is passed vide Order-in-Appeal No. KDL-CUSTM-000-APP-015-19-20 dated 10.07.2019 by Commissioner (Appeals) Ahmedabad.

3.1 The Order-In-Original No. KDL/ADC/AK/02/2019-20 dated 20.05.2019, issued by the Additional Commissioner, Customs House, Kandla, is set aside and the matter is remanded to the proper officer, who will pass suitable Orders after following the due procedure of law mention supra. The case was rely upon of Prem Steels P. Ltd- 2012-TIOL-1317-CESTAT-DEL and the case of Hawkins Cookers Ltd.-2012(284)ELT 677(Tri.Del), which have also relied upon case of Medico Lab -2004(173) ELT 117 (Guj.), wherein it has been held that Commissioner (Appeals) continue to have power of remand even after the amendment of Section 35(A) of the Central Excise Act, 1944 by Finance Act 2001 w.e.f 11.05.2001.

3.2 The Commissioner (Appeals), remit the matter to the proper officer, who shall examine the facts, documents, evidences and submissions by the importer and then pass speaking order afresh after following principles of natural justice and adhering to the legal provisions.

DEFENCE:

4. The importer vide letter dated 12.07.2019 submitted the copy of Order to the department and requested to allow necessary amendments to the Bills of Entry as per the License and allow clearance. They further submitted the licence bearing No. 3319018550 dated 17.06.2019 issued by DGFT vide their letter dated 12.07.2019

DISCUSSIONS AND FINDINGS:

5. I have carefully gone through the entire case records and Order-in-Appeal No. KDL-CUSTM-000-APP-015-19-20 dated 10.07.2019 by Commissioner (Appeals) Ahmedabad, and the directions given by Commissioner(Appeals in his Order-in-Appeal dated 10.07.2019 and I find that the Goods were confiscated under Section 111(d) and 111(m) of the Customs Act, 1964, as amended time to time on the ground of mis-declaration of classification of goods as "Low Aromatic White Sprit" under Customs tariff Heading 27101990 as against "Superior Kerosene Oil" under Customs Tariff Heading 27101910 as well as on the ground of restrictions of import of Superior Kerosene Oil imposed by the Import Export Policy, 2015-2020 (As amended time to time).

5.1 I further find that while filing an appeal before Commissioner (Appeals), Ahmadabad, they pleaded that they have now obtained a specific Liscence bearing No. 3319018550/0/14/00 dated 17.06.2019 for clearance of 263.100 MT of "Superior Kerosene Oil (SKO)" classifiable under Customs Tariff Heading 27101910. I find that they have been issued above said Liscence for clearance of 263.100 MT of "Superior Kerosene Oil (SKO) subject to actual user condition

beside other usual condition of import autorisation. Further, the condition imposed is as under:-

"This import Authorisation also allows clearance of goods already arrived under the Bill of Entry Nos.8801499 and 8801500 both dated 10.11.2018"

Port of Shipment: Kandla(INIXYI)/Any port of India.

5.2 I find that the Import Authorisation License is issued for the clearance of the specific Bills of Entry as mentioned therein for the goods already arrived at Kandla port and therefore the goods, which have been confiscated for the violation of Import export Policy read with section 11 and section 46 of the Customs Act, 1964, are to be allowed by utilizing the import authorization Lisence bearing No. 3319018550/0/14/00 dated 17.06.2019.

6. In view of the above, I pass the following order:

ORDER

- a. I allow the goods to be cleared under License bearing No. 3319018550/0/14/00 dated 17.06.2019 on payment of applicable duties.
 - b. I hereby drop the proceeding initiated under Show Cause Notice bearing No. F.No. S/15-24/Gr.1/RVS/2018-19 dated 04.04.2019.
7. 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
Dated: 23.07.2019

F.No.S/15-24/Gr.1/RVS /18-19

To,

M/S. RVS Petrochemicals Limited,
Opp: H. P. C. Bottling Plant, Asaudh,
Teh. Bahadurgarh, DIST. Jhajjar Bahadurgarh,
Haryana – 124 505,

Copy to:

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