



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/15-19/Gr-I/Raj Petro/18-19
B	Order-in-Original No.:	KDL/ADC/AK/07 /2019-20
C	Passed by:	AJAY KUMAR Additional Commissioner of Customs, Custom House, Kandla
D	Date of order:	29.07.2019
E	Date of issue:	29.07.2019
F	Importer:	M/s. Raj Petro Specialities Pvt. Ltd. Mumbai.

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 "FARSOL-A", by M/s. Raj Petro Specialities Pvt. Ltd. Mumbai holding IEC No. 0301069123, and having their Office at Boomerang Business Centre, B-1/101, Chandivali Farm Road, Andheri(East), Mumbai-400072,, filed B/E No. 8422475 dated 11.10.2018, and B/E No. 8739652 dated 05.11.2018.

BREIF FACT OF THE CASE

1. M/s Raj Petro Specialities Private Limited, holding IEC No.0301069123, and having their Office at Boomerang Business Centre, B-1/101, Chandivali Farm Road, Andheri(East), Mumbai-400072, (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 Nidhi Shipping Pvt. Limited, Gandhidham :

Sl. No	B/E No.	B/E Date	Item's Description	Weight (MT)	Assessable Value Declared (Rs.)
1	8422475	11/10/2018	FARASOL-A HWO 185 (HEAVY WHITE OIL 185)	90.40	6136085.14
2	8739652	05/11/2018	FARASOL-A (MOLEX RAFFINATE BOTTOM)	108.46	7365655.69
Total				198.86	13501740.83

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 No.1036137 dated 12.10.2018 and 1037289 dated 09.11.2018 respectively. The Test Reports received from Customs Laboratory, Kandla and the test result as received is reproduced below :-

Test Report dated 30.10.2018 in respect of Test Memo No. 1036137 Dated 12/10/2018(B/E No&Date 8422475 / 11.10.2018) 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 : 183° Celsius
Final Boiling Point : 230° Celsius
Density at 15° Celsius : 0.8119 gm/ml
Distill at 210° Celsius : 64%
Flash Point : 70° Celsius
Smoke Point : 20 mm*

Kinetic velocity at 37.8 degree Celsius =1.37cst. Sample meets the requirement of Kerosene as per IS 1459/2016 with respect to the parameters of flash point, distillation range and smoke point.It does not meet the requirements of heavy white oil as per IS 1083.

Test Report dated 26.11.2018 in respect of Test Memo No. 1037289 Dated 12/11/18 (BE No.&Date 8739652 /05.11.2018) 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 : 178° Celsius

Final Boiling Point : 237° Celsius

Density at 15° Celsius : 0.8047 gm/ml

Distill at 210° Celsius : 62%

Flash Point : 74° Celsius

Smoke Point : 18 mm

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

3. The importer M/s Raj Petro Specialities Pvt. Ltd. vide their letter dated 15.11.2018 not disputed the abovementioned parameters tested by CRCL, Kandla. However they requested to test some other parameters like the Pour Point or Freezing Point, Sulphur Content and Carbon Chain of the product at CRCL, New Delhi. In this regard, the importer was informed vide this office letter F. No. S/15-19/Gr.I/Raj Petro/2017-18 dated 12.12.2018 that IS specifications does not prescribe testing of Pour Point or Freezing Point, density and Carbon Chain. As far as sulphur content is concerned, IS 1459-1974 for SKO prescribes maximum limit and as per importers own submission sulphur content was below this limit. In view of the above, they were informed that, if any parameter which needs to be determined as per IS 1459-1974 for SKO and not been determined in earlier test report can be mentioned for seeking test/re-test. Therefore, retesting of parameters which have not been defined in IS 1459-1974 for SKO was not allowed.
4. The importer vide their letter dated 03.12.2018 requested permission for storage of imported cargo of 108.460 MTS of Farasol-A imported vide Bill of Entry number 8739652 dated 05.11.2018 from Arvind V. Joshi & Co. CFS, Village-Mithirohar, Gandhidham to avoid further heavy detention and demurrage on containers. By considering the above said request of the importer, the permission was granted vide letter dated 19.12.2018 for storage of above referred consignment of 108.460 MTS into tank number INCCCL-09 at Customs Bonded Warehouse M/s Indo-Nippon Chemical Co. Ltd.(IXYIU028), Kandla wherein they have already stored 90.400MTS of same commodity imported vide BE number 8422475 dated 11.10.2018 as test parameters results were similar for both the lots.
5. The importer vide their letter dtd.30.01.2019 requested for detailed re-testing of the samples of item declared in BE Nos. 8422475 dated 11.10.2018 and 8739652 dated 05.11.2018

as per Circular No. 43/2017-Customs dated 16.11.2017. 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 01.02.2019.

6. Importer vide their letter dated 05.02.2019 requested the permission for storage of the cargo of 108.460 MTS of Farasol-A, packed in 06 containers at M/s Adani Port and SEZ Ltd. Enclosure II, Liquid Storage Terminal Navinal Island, Mundra Informing that the tank number INCCCL-09 has insufficient capacity to store this quantity of oil also as they have already stored 90.400MTS of same commodity imported vide BE number 8422475 dated 11.10.2018 in the tank. As the importer had produced space certificate received from Adani Port & SEZ alongwith copy of licence issued to Adani Port & SEZ by the Chief Controller of Explosives, Nagpur and copy of transit insurance, permission was granted on 08.02.2019 to transfer 108.460 MTS of FARASOL-A to Adani Ports & SEZ P. Ltd's storage tank.

7. Meanwhile Importer vide their letter dated 01.02.2019 requested for amendment in Bills of Entry no. 8422475 dated 11-10-2018 and 8739652 dated 05-11-2018 for change in description to FARASOL-A (Molex Raffinet Bottom (MRB) otherwise known as Petroleum Hydrocarbon Solvent (125-240-IS 1745:1978). Since the matter was still under investigation, the Importer's request for amendment was denied vide letter dated 14.02.2019.

8. The Test Reports for re-testing of sample was received from CRCL, New Delhi vide letter dated 12.03.2019 and same is reproduced below.

"Lab no. CRL104 & 105 dated 27.02.2019

B/E No. 8422475 dated 11.10.2018 & B/E No. 8739652 dated 05.11.2018

Each of the two samples in the form of colorless oily liquid. Each is composed of Mineral Hydrocarbon oil (More than 70% by weight) possessing the following parameters:-

S.No	Characteristics	Requirement of Kerosene as per IS:1459-2018	Test Reports pertaining to Lab no. 104 dated 27.02.2019, B/E No. 8422475 dated 11.10.2018	Test Reports pertaining to Lab no. 105 dated 27.02.2019, B/E No. 8739652 dated 05.11.2018
1	Acidity, Inorganic	NIL	NIL	NIL
2	Density at 15° C, Kg/m ³	Not Limited but to be reported	805.8	804.7
3	Distillation:			

	a) Initial Boiling point, Degree C	--	191	192
	b) % recovered below 200°C, percentage (v/v) Min	20	35	30
	c) Final Boiling Point, °C Max	300	250	250
	d) Dry Point °C	--	242	240
4	Flash point (Abel), °C Min	35	66	66
5	Smoke Point, mm, Min	18	25	25
6	Aromatic Content, % by Volume	--	20	25
7	Copper strip corrosion for 3h at 50°C	Not worse than No.1	Not worse than No.1	Not worse than No.1

On the basis of above parameters, the sample under reference conforms to the specification of Kerosene as per IS 1459:2018. Each do not meet the requirements for Petroleum Hydrocarbon solvents as per IS 1745:1978 in respect of Final Boiling Point."

9.1. Para 2.01 of the Foreign Trade Policy 2015-2020, which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, prescribed as follow:

"(a) Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed by clicking on 'Downloads' at <http://dgft.gov.in>

(b) Further, there are some items which are 'free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force."

9.2. As per the Schedule I of the Indian Trade Classification (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27, Import Policy for the Superior Kerosene Oil (SKO), as covered under Customs Tariff Heading and Tariff Item No. 27101910 is "State Trading Enterprises" with remarks that "Import subject to Para 2.11 of the Foreign Trade Policy and condition at Policy condition (2) below."

9.3. Para 2.20 of the Foreign Trade Policy 2015-2020, which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 specified as follow:

(a) State Trading Enterprises (STEs) are governmental and nongovernmental 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 Enterprise (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 authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs.

10. Taking into consideration, the test reports issued by CRCL, Kandla and CRCL, New Delhi, it appears that the goods, which has been imported by M/s Raj Petro Specialities Private Limited vide Bill of Entry no.8422475 dated 11/10/2018 is not FARASOL-A HWO 185(HEAVY WHITE OIL 185) and also vide Bill of Entry no. 8739652 dated 05-11-2018 is not FARASOL-A(MOLEX RAFFINATE BOTTOM) falling under CTH No. 27101990, as has been described in the B/E, but it is Superior Kerosene Oil (SKO), with its correct classification under CTH No. 27101910, and the item falling under said CTH No. 27101910 can be imported by STEs only and it has to be termed as "prohibited goods", by virtue of the provisions of Para 2.01 and 2.20 of the Foreign Trade Policy 2015-2020 read with relevant Policy conditions provided in Tariff Item No. 27101910 in the ITC (HS) Classification of Imported goods 2015-2010, if the relevant conditions for its legal import were not complied with by the concerned importer.

11. In view of the above Show Cause Notice has been issued vide F. No. S/15-19/Gr-1/Raj Petro/18-19 dated 22.03.2019 by Additional Commissioner Customs House Kandla, Office of the Pr.Commissioner of Customs, Kandla Customs House ,Kandla, as to why:-

- a) The goods imported by them under Bill of Entry No.8422475 dated 11.10.2018 and Bill of Entry No. 8739652 dated 05.11.18 and classified under CTH 27101990 should not be re classified under CTH 27101910 of the Custom Tariff Act,1975
- b) The above mentioned goods imported by them should not be confiscated under Section 111 (d) and (m) of Customs Act, 1962;
- c) The importer should not be penalized under Section 112 (a) of Customs Act, 1962.

12. The show cause notice was issued without prejudice to any other action that may be taken against the importer or any other person, in this regard, under the Customs Act, 1962 or under any other law for the time being in force in the Republic of India.

13. The show cause notice was issued without any prejudice to the right of the Department to modify and / or amend the show cause notice and disclose additional evidences in support of the allegations, before the adjudication of the case.

DEFENCE:

14. The importer vide letter dated 29.04.2019 submitted the copy of the licence bearing No. 0350003763 dated 03.04.2019 issued by DGFT, alongwith Licence amendment Sheet dated 25.04.2019 issued by Asst. Director General of Foreign Trade Mumbai, the following remarks mentioned in the sheet, "*The Description of the import item FARASOL-A is amended to read as SKO (Superior Kerosine Oil, ITC (HS) Code No.27101910 for Bill of Entry No. (1) 8422475 dtd. 11.10.2018, Kandla, (2) Bill of Entry No. 8739652 dtd.05.11.2018 Kandla*", and requested to allow necessary amendments to the Bills of Entry as per the License and allow clearance.

15. The importer vide letter dated 23.05.2019 requested of withdrawal of Show Cause Notice issued vide F. No. S/15-19/Gr-1/Raj Petro/18-19 dated 22.03.2019 by Additional Commissioner Customs House Kandla,

DISCUSSIONS AND FINDINGS:

16. I have carefully gone through the entire case records and Show Cause Notice issued vide F. No. S/15-19/Gr-1/Raj Petro/18-19 dated 22.03.2019 by Additional Commissioner Customs House Kandla, 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 "FARASOL-A" 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).

17. And I also find that the Goods were already cleared on payment of applicable duties, after submission of licence bearing No. 0350003763 dated 03.04.2019 issued by DGFT, alongwith Licence amendment Sheet dated 25.04.2019 issued by Asst. Director General of Foreign Trade Mumbai.

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

ORDER

- a. I hereby drop the proceeding initiated under Show Cause Notice bearing No. F.No. S/15-19/Gr-1/Raj Petro/18-19 dated 22.03.2019.

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19. 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/15-19/Gr-1/Raj Petro/18-19

Dated: 29.07.2019

To,

**M/s Raj Petro Specialities Private Limited,
(IEC No.0301069123),Boomerang Business Centre,
B-1/101, Chandivali Farm Road,
Andheri(East), Mumbai=400072,**

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.