



OFFICE OF THE Pr.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/02/2019-20
C	Passed by:	AJAY KUMAR Additional Commissioner of Customs, Custom House, Kandla
D	Date of order:	20.05.2019
E	Date of issue:	20.05.2019
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. 8801499 and 8801500 both dated 10.11.2018

BRIEF FACTS OF THE CASE

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/-

1.1 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 Dt. 12.11.2018 and 1037331 Dt. 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

1.2 Vide letter dated 05.12.2018 the importer contended that they are regularly importing various petroleum products, viz. Low Aromatic White Spirit, Petroleum Hydrocarbon Solvents, Industrial Composite Mixture Plus and Fuel Oils etc, through Kandla and Mundra ports. They are supplying these products to the actual users, who engaged in paint & Ink Industry. The captioned goods are supplied by M/s. Greek Traders FZC, Sharjah, UAE vide invoice No.GREEK/EX/903 dated 15.10.2018. They have ordered for Mix Hydrocarbon Solvent having distillation range of 145-240 as guided in 1745-1978. They have also contended that as per the Standard IS 1459-2016 as referred above, the Final Boiling Point of Kerosene is 300 Degree Celsius, but it come to understand that the Final Boiling Point of their product is comparatively very low(228 only). It is also to be noted that as per the above referred standard, the Flash Point of Kerosene is 35 degree Celsius minimum whereas the flash point of their product is 43 degree Celsius.

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

1.4 The importer vide their letter dated 12.12.2018 requested permission for storage of imported cargo of 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 263.100 MTS into Customs Bonded Warehouse of M/s.Adani Port & SEZ, Mundra.

1.5 Vide letter dated 04.01.2019 they further submitted that they have approached BIS for further clarification in the matter and they have informed that Kerosene & Petroleum Hydrocarbon Solvents are two different products and are having separate standards fixed for them in BIS. They contended that the parameter such as acidity n organic b) burning quality and smoke point are only for kerosene whereas the parameters such as colour by saybolt, copper strip corrosion, density, flash point and final boiling point and sulphur content are common at different values/limits are prescribed in both the standard. So the goods re required to be checked on these lines and accordingly requested for assessment of the goods

1.6 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 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. CRL106 & 107 dated 27.02.2019

B/E No. 8801499 DATED 10.11.2018 & B/E No. 8801500 DATED 15.11.2018.

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	Requirment of Kerosene as per IS:1459-2018	Test Reports pertaining to Lab no. 106 dated 27.02.2019, B/E No. 8801499 dated 10.11.2018	Test Reports pertaining to Lab no. 107 dated 27.02.2019, B/E No. 8801500 dated 10.11.2018
1	Acidity, Inorganic	NIL	NIL	NIL
2	Density at 15° C, Kg/m3	Not Limited but to be reported	792.7	791.9
3	Distillation:			
	a) Initial Boiling point, Degree C	--	158	158
	b) % recovered below 200°C, percentage (v/v) Min	20	67	67
	c) Final Boiling Point, °C Max	300	247	248
	d) Dry Point °C	--	241	241
4	Flash point (Abel), °C Min	35	42	42
5	Smoke Point, mm, Min	18	21	21
6	Aromatic Content, % by Volume	--	18	18
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."

1.7 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."

1.7.1 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."

1.7.2 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.

1.7.3 Further to the above, the Policy condition (2) prescribed at Schedule I of the ITC (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27 specified as follow:

"(2) Import of SKO shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL, and IBP for all purposes with STC being nominated as State Trading Enterprises (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."

1.7.4 The list of the State Trading Enterprises (STEs) for FTP purpose, as provided vide Appendix 2J of the Foreign Trade Policy 2015-2020 is as follow:

- "S. NO. STATE-TRADING ENTERPRISES**
1. Food Corporation of India (FCI)
 2. State Trading Corporation (STC)
 3. Indian Oil corporation (IOC)
 4. Bharat Petroleum Corporation Ltd. (BPCL)
 5. Hindustan Petroleum Corporation Ltd. (HPCL)

6. Oil and Natural Gas Corporation Ltd. (ONGC)
7. Minerals and Metals Trading Corporation (MMTC)
8. Indian Potash Ltd. (IPL)
9. National Dairy Development Board (NDDB)
10. National Cooperative Dairy Federation (NCDF)
11. National Agriculture Cooperative Marketing Federation of India Ltd.(NAFED)
12. Projects and Equipment Cooperation of India Ltd.(PEC)
13. Spices Trading Corporation Limited (STCL)
14. Central Warehousing Corporation (CWC)"

1.8 Further to the above, since the SKO in the total quantity in possession exceeding the specified quantity falls in the category of "Petroleum Class B" and the import, storage and handling of the products falling under "Petroleum Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). Import of SKO; further to this, if to be considered as classifiable as "Petroleum Class B", then the Licence issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported which are already in possession of Licence issued under the Petroleum Rules, 1976. Further for the storage of such "Petroleum Class B" products, statutory provisions have been made, which requires different manner of compliance, if such goods to be stored in Drums and to be stored in tanks. As per Notification No. 105-Cus dated 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962.

1.9 Taking into consideration, the test reports issued by CRCL, Kandla and CRCL, New Delhi, the goods have been imported by M/s RVS Petrochemicals Ltd vide Bill of Entry No.8801499 dated 10.11.2018 & Bill of Entry No.8801500 dated 10.11.2018 are not "LOW AROMATIC WHITE SPIRIT" falling under CTH No. 27101990, as has been described in the Bs/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.

1.10 As per Section 2(33) of the Customs Act, 1962, "Prohibited Goods" has been defined as "any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with". In the instant case, it is apparent that the goods were not imported by or through STEs, but directly by M/s RVS Petrochemicals Ltd. It is also not a case of the importer that they were holding Advance Licence/Advance Authorisation or Special Licence issued by DGFT. In that case, the import of SKO by /s RVS Petrochemicals Ltd has to be considered in violation of the provisions of Para 2.01 read with Para 2.20 of the Foreign Trade Policy 2015-2020 and consequently, the goods covered by No.8801499 dated 10.11.2018 & Bill of Entry No.8801500 dated 10.11.2018 may be treated as "Prohibited goods" within the meaning of definition provided vide Section 2(33) of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962.

1.11 Even in the context of the Notification No. 105-Cus dated. 06.08.1938, the goods in respect of which the restricting provisions of the Petroleum Act, 1934 and the rules made there under are applicable and where the compliance with those provisions is required from the

importer of such goods; if non-compliance is observed on the part of the importer, then the same may have to be treated as contravention of the deemed prohibition imposed on such goods in terms of Section 11 of the Customs Act, 1962. It is apparent from the facts aforementioned that since the SKO in the total quantity in possession exceeding the specified quantity falls in the category of "Petroleum Class B" and the import, storage and handling of the products falling under "Petroleum Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). Import of SKO; further to this, if to be considered as classifiable as "Petroleum Class B", then the Licence issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported which are already in possession of Licence issued under the Petroleum Rules, 1976. Further for the storage of such "Petroleum Class B" products, statutory provisions have been made, which requires different manner of compliance, if such goods to be stored in Drums and to be stored in tanks. As per Notification No. 105-Cus dtd. 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962. Since the importer in the instant case has failed to follow such compliance, it appears that they have also violated the provisions of Section 11 of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962.

1.12 In terms of Section 46 of the Customs Act, 1962, the importer of any goods is required to declare correct details in the Bill of Entry being filed by them, and also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, the importer had filed Bill of Entry with incorrect particulars and classification, which was otherwise to be considered as prohibited goods, if its correct description and classification is declared. Therefore, the goods imported by the importer as such, is also liable for confiscation under Section 111(m) of the Customs Act, 1962.

1.13 The import of SKO can be permitted through the STEs only and the exception provided are related to (i) The Advance Licence holders, through the STEs including STC, as per Policy condition -2 of the Chapter 27 of the ITC (HS) Schedule-1, and (ii) The Authorisation holder, who were granted such authorisation by the DGFT in terms of Para 2.20 (c) of the Foreign Trade Policy. It appears that it is not a case of the importer that they are eligible to get classified or eligible in terms of said two exceptional cases and that they were legally entitled to remain out of purview of the restriction imposed by the Policy condition -2 of the Chapter 27 of the ITC (HS) Schedule-1. In the absence of compliance by the importer with any of the aforesaid statutory obligations, redemption of the goods cannot be allowed to the importers on payment of fine and penalties after re-classifying the goods and modifying the CTH No. thereof. Even in the context of the provisions of the Petroleum Act, 1934 (30 of 1934) is since making the goods liable to confiscation, redemption of the goods to the importer cannot be permitted to the importer.

1.14 The export of SKO falling under CTH No. 27101910 is although made "free" at of Sr. No. 114 of the Schedule 2 of the ITC (HS) Classification pertaining to Export Policy; the condition has been stipulated therein about obtaining NOC from the Ministry of Petroleum and Natural Gas. Hence, any request to permit re-export of the goods is supposed to be made with required NOC from the Ministry of Petroleum and Natural Gas, which may not be available to the importer in the instant case, as they have from the very first instance not followed the provisions of the Petroleum Act, 1934.

1.15 The importer had imported the Superior Kerosene Oil (SKO) falling under CTH No. 27101910, in the guise of "LOW AROMATIC WHITE SPIRIT" falling under CTH No. 27101990 from Kandla Port. The policy conditions stipulate that "import of SKO (Kerosene) is subject to Para 2.20 of Foreign Trade Policy and shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL and IBP for all purposes with STC being nominated as a State Trading Enterprise (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, the SKO stands classified as "Petroleum Class B".

1.16 M/S. RVS Petrochemicals Limited, had imported the goods i.e. Kerosene, being prohibited goods and mis-declaring and thereby mis-classifying the same makes the goods liable for confiscation under section 111(d) and 111(m) of Customs Act, 1962, and the act of making the goods liable for confiscation by the importer makes them liable for penalty under section 112(a) of Customs Act, 1962. Accordingly Show Cause Notice bearing No. F.No. S/15-24/Gr.1/RVS/2018-19 dated 04.04.2019 has been issued to the importer as to why:-

- a) The goods imported by them under Bill of Entry No.8801499 dated 10.11.2018 & Bill of Entry No.8801500 dated 10.11.2018 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.

DEFENCE REPLY

2. M/s. RVS Petrochemicals Limited has filed their written submissions vide their letter dated 02.05.2019 wherein they have submitted that the goods were tested by the Customs laboratory at Kandla and it was reported vide Test Report dated 26.11.2018 that goods were composed of mixture of mineral hydrocarbons. It was further reported that the parameters met the requirement of Kerosene as per IS 1459-2016. As per these reports, the final boiling point was observed as 228 degree C for goods covered by BE No. 8801499 and 241 degree C for goods covered by BE No. 8801500. They further contended that there was huge difference between the final boiling of two samples and M/s. RVS firmly believed that they never intended to import Kerosene or any goods having final boiling point of above 240 degree C, M/s. RVS made a request for re-sampling and re-testing in respect of goods covered by bill of entry No. 8801500 (for which final boiling point was reported as 241, i.e. above 240 degree C. The Customs laboratory at Kandla re-tested the redrawn sample of goods covered by BE No. 8801500 and reported the final boiling point as 247 degree C (thus reporting higher boiling point than earlier report). Since no justification was given for reporting higher boiling point in respect of one and same goods, M/s. RVS were compelled to make another request for re-testing by Indian Institute of Petroleum Dehradun in accordance with guidelines issued by Board vide Circular No. 43/2017-Customs, dated 16.11.2017.

2.1 The importer further contended that despite making a mention in the Show cause notice that importer's request was acceded and sample was sent for retesting to IIP, Delhi, it is a matter of record that the samples that were originally drawn from goods covered by both the bills of entry were sent for retesting by CRCL, Delhi instead of IIP, Dehradun. CRCL, Delhi, to whom sample was not required as per Show cause notice itself, retested the goods and reported the final boiling point as 247 and 248 degree C (i.e. higher than by Chemical

laboratory, Kandla). And by citing higher boiling point, CRCL, Delhi reported that: 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." Thus, the goods imported by M/s. RVS were treated as Kerosene by the entire set up of Customs laboratories at Kandla and New Delhi solely on account of one parameter, i.e. final boiling point.

2.2 The allegations and averments leveled in the notice against M/s. RVS are hereby denied, being an incorrect appreciation of facts and applicable law. Save and except what is specifically admitted herein, no part of notice which is not expressly dealt with, shall be deemed to be admitted and we crave to address those paragraphs in due course of adjudication proceedings as may be necessary. The submissions advanced herein below are independent of and without prejudice to each other. They never intended to import Kerosene, a restricted item for import and they hereby reiterate that they have not imported Kerosene. The conclusion arrived by department in this regard is erroneous for more than one reasons and hence, the same cannot be sustained in the eyes of law.

2.3 They further submit that reliance placed by department on the report of CRCL, New Delhi is contrary to CBEC Circular No. 43/2017-Customs, dated 16.11.2017 inasmuch as it is admitted in the Show cause notice itself that samples were being sent to IIP, Dehradun. Therefore, no reliance can be placed on readings of test reports issued by any other institution and Show cause notice suffering from such factual inaccuracies and contrary to CBEC circular is liable to be withdrawn. It is evident from the various reports cited in the Show cause notice that the only parameter separating petroleum hydrocarbon solvent and kerosene is final boiling point. The final boiling point of petroleum hydrocarbon solvent is 240 degree C whereas that of Kerosene is maximum 300 degree C. Thus, even as per the criteria laid down by CRCL, New Delhi, goods having final point of 240 degree C or less must be treated as petroleum hydrocarbon solvent.

2.4 CBEC vide circular No. 30/2017-Cus dated 18.7.2017 have issued guidelines to reconcile the difference between test results in the facts and circumstances where variation is reported. According to para 2(f) of the said circular, in case there is a variation in the results of the first test and the re-test, the competent authority shall take the decision relying upon either of the tests specifying the grounds in writing for the decision so taken. However, the Show cause notice does not pinpoint the test result that is relied to support the allegations. In any case, given the contradiction where sample is said to have been sent to IIP, Dehradun while report of CRCL, New Delhi is relied, no reliance can be placed on the readings reported by CRCL, New Delhi.

2.5 They further submitted that insofar as remaining 03 reports are concerned, it is a matter of record that the Show cause notice relies upon only one test report in respect of goods covered by BE No. 8801499 dated 10.11.2018. The final boiling point reported in this test report is 228 degree C which is less than 240 degree C accepted as separator between Petroleum hydrocarbon solvent and Kerosene by department's own apex laboratory i.e. CRCL, New Delhi. Hence, it is our humble submission that goods covered by BE No. 8801499 dated 10.11.2019 fulfills the requirement of Petroleum hydrocarbon solvent even by department's own standards and therefore, the same must be released unconditionally. With regard to goods covered by BE No. 8801500 dated 10.11.2018, it is submitted that there is following

variation between the two test reports issued by the same laboratory, i.e. Customs laboratory, Kandla:

Sl. Parameter	Report dtd 26.11.2018	Report dtd 07.12.2018	Remarks
1. Initial BoilingPoint	135	143	Higher than previous report
2. Final BoilingPoint	241	247	Higher than previous report
3. Density at 15degree C	0.7961	0.7965	Higher than previous report
4. Distill at 210degree C	67%	70%	Higher than previous report
5. Flash Point	46 degree C	45 degree C	Lower than previous report
6. Smoke Point	20 mm	19 mm	Lower than previous report

2.6 The goods were tested for the first time on 26.11.2018 whereas it was tested for the second time by the same laboratory on 07.12.2018 but with different results for one and the same goods. Therefore, it was incumbent for Show cause notice to notify us about the test report which is relied for pressing the charge. It is a universal law that if the density of a liquid increase, boiling point will increase because the molecular bonds, which are bonds between the molecules will be stronger making it harder to break and thus, requiring more heat. The density reported at the time of testing for the second time (0.7965) is more that first time (0.7961) leading to higher final point in the second report (247 degree C) over the first report (241 degree C). Higher the density, higher the effort (heat) to break down the molecules and hence, the second report carried out after a passage of few days when density had already risen.

2.7 It may be appreciated that the variation between the cut-off recognized by department for Petroleum hydrocarbon solvent against Kerosene for the goods covered by BE No. 8801500 dated 10.11.2018 is confined to only 1 degree C, which is less than 0.4% when weighed against 240 degree C. Such a minor variation can be attributed to a host of factors like calibration of testing equipment, change of chemist taking the reading, test conditions, etc. and can be weeded out in the course of cross-examination of concerned chemists read with the variation limit prescribed in the Petroleum Act, 1934. Thus, conclusion drawn in Show cause notice that goods covered by BE No. 8801500 are nothing but Kerosene is not correct and proper.

2.8 They further submitted that these goods are lying in port for want of Customs clearance since November, 2018. Around 06 months have gone by. They have already incurred demurrage/detention charges of Rs. Approximate 30 Lacs till date and are mounting with each passing day. Very recently, Hon'ble Tribunal at Ahmedabad has passed Order No. A/10003/2019 dated 02.01.2019, in the case of Venus Petrochemicals (Bombay) Pvt. Ltd. have reduced the fine and penalty imposed by department for release of restricted goods that were confiscated under section 111 (d) of Customs Act,1962. They requested to follow the above decision of Hon'ble Tribunal and release the goods covered by BE No. 8801500 dated 10.11.2018 by imposing token fine and/or penalty by taking into account meagre variation of less than 1% as well as demurrage/detention/rent, etc. totally amounting to Rs. Approximate 30 Lacs that is already incurred by us..”

2.9 The importer also prayed and give due consideration to the above submissions and drop the charges against goods covered by both the Bills of entry or drop the charges against goods covered by BE 8801499 dated 10.11.2018 and release the goods without any conditions and/or release goods. Further the importer vide letter dated 10.05.2019 requested for early hearing in the matter for the disposal of the matter.

PERSONNEL HEARING

3. A personnel hearing in the case has been granted to the importer on 15.05.2019. Shri Naval Kishore Agrawal, authorised representative appeared on behalf of the importer and reiterated the facts mentioned in their letter dated 02.05.2019. He further stated that from the CRCL, Kandla report the final boiling point is 228 degree Celcius whereas in CRCL, New Delhi report it is 247 degree Celcius which confirm the BIS of white spirit which should be considered.

DISCUSSION & FINDINGS

4. I have carefully gone through the case records & submissions of the importer and applicable provisions of law and I find that the importer, M/s. RVS Petrochemicals Limited had filed B/E No. 8801499 & 8801500 both dated 10.11.2018 for clearance of 263.100 Mts of "LOW AROMATIC WHITE SPIRIT" through their Customs Broker, M/s. Cargo Clearing Agency (Guj), Gandhidham. However, as per "Test Memo No. 1037330 & 1037331 both dated 12.11.2018, the imported goods were found "Superior Kerosene Oil" falling under CTH 27101910 instead of "LOW AROMATIC WHITE SPIRIT" as classified and declared under CTH 27101990 under Section 46 of the Customs Act, 1962. 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 10.11.2018 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 samples were sent for retesting at CRCL, New Delhi vide letter dated 05.02.2019. The CRCL New Delhi vide their, "Lab No. CRL106 & 107 dated 27.02.2019 given the results and accordingly it is found that 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.

4.1 The importer contended that they requested to send the sample for re-testing at IIP, Dehradun. However the samples were forwarded to CRCL, New Delhi as per guidelines of CBIC Circular No.43/2017-Customs dated 16.11.2017. Circular 43/2017 stipulates the detailed guidelines with respect to forwarding of samples for testing to the Outside Laboratories. In the said Circular a list of commodities alongwith CTH has been given for the re-testing at outside laboratories. On perusal of the said list, I find that the goods falling under CTH 27101990 is not included in the Annexure to the Circular. In view the same the goods were forwarded to CRCL, New Delhi. On perusal of the Test Reports received from CRCL, Kandla as well as CRCL, New Delhi it is found that both the reports confirmed that the product imported by the importer is nothing but Superior Kerosene Oil. None of the laboratories have made any other remarks in their results evidencing that the product under question is other than SKO. I find that the samples were sent CRCL, New Delhi is as per the direction and guidelines in Circular No.43/2017.

4.2 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."

4.2.1 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."

4.2.2 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-2].

(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.

4.2.3 Further to the above, the Policy condition (2) prescribed at Schedule I of the ITC (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27 specified as follow:

"(2) Import of SKO shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL, and IBP for all purposes with STC being nominated as State Trading Enterprises (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."

4.3 I find that since the SKO, in the total quantity in possession exceeding the specified quantity, falls in the category of "Petroleum Class B" and the import, storage and handling of the products falling under "Petroleum Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). Import of SKO; further to this, if to be considered as classifiable as "Petroleum Class B", then the Licence issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported which are already in possession of Licence issued under the Petroleum Rules, 1976. Further for the storage of such "Petroleum Class B" products, statutory provisions have been made, which requires different manner of compliance, if such goods to be stored in Drums and to be stored in tanks. As per Notification No. 105-Cus dtd. 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962.

4.4 Taking into consideration, the test reports issued by CRCL, Kandla and CRCL, New Delhi, I find that the goods, which have been imported by M/s RVS Petrochemicals Ltd vide Bill of Entry

No.8801499 dated 10/11/2018 & Bill of Entry No.8801500 dated 10.11.2018 are not "LOW AROMATIC WHITE SPIRIT" falling under CTH No. 27101990, as has been described in the Bills of Entry, 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 State Trading Enterprises only and it has to be termed as prohibited goods/restricted 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.

4.5 Further I find that in the instant case, it is apparent that the goods were not imported by or through STEs, but directly by M/s RVS Petrochemicals Ltd. It is also not a case of the importer that they were holding Advance Licence/Advance Authorisation or Special Licence issued by DGFT. In that case, the import of SKO by /s RVS Petrochemicals Ltd has to be considered in violation of the provisions of Para 2.01 read with Para 2.20 of the Foreign Trade Policy 2015-2020 and consequently, the goods covered by No.8801499 dated 10.11.2018 & Bill of Entry No.8801500 dated 10.11.2018 are liable for confiscation under Section 111(d) of the Customs Act, 1962.

4.6 I also find that in terms of Section 46 of the Customs Act, 1962, the importer of any goods is required to declare correct details in the Bill of Entry being filed by them, and also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, the importer had filed Bill of Entry with incorrect particulars and classification, which was otherwise to be considered as prohibited/restricted goods, if its correct description and classification is declared. Therefore, the goods imported by the importer as such, is also liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.7 In view of the above, I find that M/s. R.V.S.Petrochemicals Ltd have imported restricted goods i.e. "Superior Kerosene Oil" by mis-declaring the same as "Law Aromatic White Spirit" classified their product under CTH No.27101990 instead of CTH-27101910. By doing so the importer is also liable for penal action under Section 112(a) of the Act *ibid*.

4.8 I further find that the goods were imported in the month of November, 2018, however due to the reasons of delay in testing/re-testing, the goods are lying for six months which has already incurred heavy demurrage and detention, therefore, I am taking lenient view in imposing redemption fine and penalty.

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

ORDER

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

6. 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 :20.05.2019

F.No.S/15-24/Gr.1/RVSD /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.