



**OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOM HOUSE KANDLA
NEAR BALAJI TEMPLE, NEW KANDLA**

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A	File No.	S/10-10/Adj./Commr/Divinity/2019-20
B	Order-in-Original No.	KND-CUSTM-000-COM-13-2019-20
C	Passed by	Shri Sanjay Kumar Agarwal Pr. Commissioner, Custom House, Kandla.
D	Date of order	05.12.2019
E	Date of issue	05.12.2019
F	Show Cause Notice Nos. & Date	F.No.DRI/AZU/CI/INQ-13(INT-02/2018)/2018 dated 24.04.2019 issued by Principal Additional Director General, Ahmedabad Zonal Unit, Ahmedabad
G	Noticee(s)/Co-Noticee(s)	M/s Divinity Impex and 5 Ors.

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**Customs Excise & Service Tax Appellate Tribunal,
West Zonal Bench,
2nd Floor, Bahumali Bhavan Asarwa,**

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.

BRIEF FACTS OF THE CASE:

M/s. Divinity Impex., 506, Shivalik Abase, 100 Ft. Anand Nagar Road, Anand Nagar, Ahmedabad, Gujarat-380015 and holding IEC No. 0816923833 [herein after referred to as M/s Divinity] are engaged in trading of waxes, Base oils, RPO, Bitumen, Propylene Glycol etc. M/s Divinity imports some of the goods traded by them.

2. An information received by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit indicated illegal import/smuggling of Diesel per vessel Al Heera coming from UAE to Kandla on 03/05/2018. The information also indicated that the import item was declared as "Base Oil SN 50" and is to be cleared under Chapter heading 2710 which is for Base Oil. The information further suggested that there is no item called SN 50 in the Base Oil market and the actual item is Diesel. The information added that the flash point of the product was increased and except for the flash point all other characteristics will match with Diesel.

2.1 Base Oil is classifiable under the chapter heading 27101960 while High speed diesel (HSD) is classifiable under the chapter heading 27101930 of the Customs Tariff. As per Import Policy ITC (HS), 2017, High Speed diesel (HSD) covered under EXIM Code 27101930, are allowed to be imported only by the State Trading Enterprises.

2.2. Based on the aforesaid intelligence, representative samples from each of the 10 Tanks in the vessel were drawn under Panchnama dated 05/05/2018, when the vessel MT Al Heera, berthed at the Kandla Port. One set (10 bottles) of sample drawn was sent for testing at Central Excise & Customs Laboratory at Vadodara on 07/05/2018 vide Test Memo Number 01 to 10 all issued under F. No: DRI/AZU/CI/INT-02 /2018. The Chemical Examiner after due testing of the samples drawn gave the reports as detailed hereunder on 10/05/2018 and 11/05/2018 that the samples have characteristics of High Speed Diesel Oil / Automotive Fuel oil confirming to IS 1460:2005 and amended thereafter. It was further mentioned that samples were "other than Base Oil".

Sr. No.	Test Report/ Lab No:	Date	Date Of Report
01	RCL/AH/DRI/216	07/05/2018	11/05/2018
02	RCL/AH/DRI/217	07/05/2018	10/05/2018
03	RCL/AH/DRI/218	07/05/2018	11/05/2018
04	RCL/AH/DRI/219	07/05/2018	11/05/2018
05	RCL/AH/DRI/220	07/05/2018	11/05/2018
06	RCL/AH/DRI/221	07/05/2018	11/05/2018
07	RCL/AH/DRI/222	07/05/2018	11/05/2018
08	RCL/AH/DRI/223	07/05/2018	11/05/2018
09	RCL/AH/DRI/224	07/05/2018	11/05/2018
10	RCL/AH/DRI/225	07/05/2018	11/05/2018

2.3. The goods imported per vessel MT Al Heera was a comingled cargo of three importers namely M/s Rajkamal Industrial Pvt. Ltd. Ahmedabad, M/s Gastrade International, Gandhidham and M/s Divinity Impex, Ahmedabad. The goods were stored in the 10 tanks on the vessel without any demarcation or separation for the respective importer. The imported goods were declared as "Base Oil SN50-In Bulk" and were classified under Customs Tariff Heading 27101960 in the respective warehousing Bills of entry filed by the individual importers for the import of the goods.

The goods thus (mis)declared as 'Base Oil SN 50', imported per vessel MT AL HEERA covered under IGM No: 2193934 dated 02/05/2018 and imported by (i) M/s Rajkamal Industrial Pvt. Ltd. Ahmedabad vide warehousing B/E Nos: 6252179, 6251273, 6251276, 6251277 all dated 04/05/2018 (ii) M/s Gastrade International, Gandhidham vide warehousing B/E Nos: 6251258, 6251267, 6251268, 6252184 all dated 04/05/2018 and (iii) M/s Divinity Impex, Ahmedabad vide warehousing B/E Nos: 6251270, 6251278, both dated 04/05/2018 were seized under Section 110 of the Customs Act 1962 on 15/05/2018.

3. A search was conducted at premises of importer M/s. Divinity Impex., 506, Shivalik Abase, 100 Ft. Anand Nagar Road, Anand Nagar, Ahmedabad, Gujarat, PIN-380015 and the Customs Broker M/s Saarthee Shipping Co. Office No: 1, 2nd Floor, Shah Avenue-1, Plot No: 211, Ward-12/B, Gandhidham on 12.05.2018. During the course of search proceedings premises of M/s. Divinity Impex were found to be locked and search proceedings could not be completed. Hence the office premises were sealed under Panchnama dated 12/05/2018. Summons dated 18.05.2018 was issued to Shri Parth Narendrakumar Shah, Proprietor of M/s. Divinity. The summons was returned back as he was not available on his known office address and residential address. Later, Shri Parth Narendrakumar Shah, Proprietor of M/s. Divinity Impex appeared to record his statement before the DRI on 20/06/2018 and assured of his presence for search of his office premises. On 21/06/2018 search was conducted on office premises of M/s. Divinity Impex under Panchnama dated 21/06/2018. During the course of search proceedings some documents related to import were withdrawn.

4. During the course of inquiry, a Statement of Shri Amit Bhardwaj, Proprietor of M/s Saarthee Shipping Co., was recorded on 12/05/2018 under Section 108 of the Customs Act 1962 wherein he stated that their main clients who deal in Base Oil are M/s. Rajkamal Industrial Pvt. Ltd., M/s. Gastrade International, M/s. Divinity Impex (only in May 2018); that M/s Rajkamal is known to him since last 8-9 years and they import items like Bitumin, RPO (Rubber Process Oil), Base Oil; that the information was received from M/s Rajkamal on email addressed to M/s Aegis Terminal and surveyors (Geo Chem, Gandhidham) about arrival of the vessel MT Al Heera carrying Base Oil SN50; that they were provided the documents from M/s Rajkamal, M/s Gastrade and M/s Divinity from their emails to his email; that they proceeded to take the discharge permission from the Custom Bond Section; that Wharfage of the cargo was

paid by them and the discharge permission from the Customs alongwith the Wharfage paid copy challan was submitted to Vessel Agent (M/s M.K. Shipping); that when the IGM was filed by the shipping line, then they sent the checklist to the importers for their approval and after getting the approval of checklist from the importers on their e-mail, they filed the Warehousing Bills of Entry on 04.05.2018; that the vessel was allowed to discharge in the tank nos. T-140, 149, 150 of M/s Aegis Terminal; that Base Oil is imported in grades like SN50, SN70, SN100, SN300, SN500; that he had no idea about the difference between the grades of Base oil and he never asked the importers about the same as it was a technical matter.

4.1. Statement of Ms Samayita Chakraborty, Lab-Manager M/s Geo Chem Laboratories Pvt. Ltd., Gandhidham (Kutch)-370 201 was recorded on 01/06/2018 under Section 108 of the Customs Act 1962. Excerpt of his statement is as follows:-

- a. On being shown the copy Certificate of Analysis (COA) bearing Serial No: 633776 A issued under File No: GDM-CRT-18-19-02217 dated 15.05.2018 she stated that the same pertained to their office M/s Geo Chem Laboratories Pvt. Ltd., Gandhidham and had been issued by Shri Ashok Parmar who is the Inspection Coordinator.
- b. The same had been issued based on the Test Report No: GCL/KDL/PET/014/18 dated 12.05.2018 issued by their laboratory under her signature.
- c. The testing was conducted in respect of the sample drawn by their inspection team from the consignment of Base Oil SN 50, imported per vessel MT AL HEERA and stored in Tank No: AEGIS-150 on 07/05/2018.
- d. She got the instructions to conduct the test of the sample against certain parameters and accordingly her staff had conducted the test and collated it under the aforesaid Test Report which was issued under her signature to the Inspection Team. The Test Reports were only for some selective parameters and the Test Reports cannot conclusively establish the identity of the sample and so they had not confirmed the identity of the sample in their Test Report or even in the Certificate of Analysis bearing Serial No: 633776 A issued under File No: GDM-CRT-18-19-02217 dated 15.05.2018.
- e. The samples were not Tested against any known Specification but test were carried out against the parameters as desired by the customer.
- f. She had no idea about the identity of the sample Tested as they only tested the sample against some parameters and such test cannot enable them to determine the identity of the sample tested.
- g. She was not aware about the specifications of Base Oil SN 50 or High Speed Diesel Oil as they do not conduct such Tests of these products; in their routine operations they only check the density of the products to enable the inspection team to calculate the volume or quantity. The

routine tests on different parameters are carried out in the case of Edible/Non-edible oils and Coal.

- h. They have adhered to the ASTM methods as stated in the Test Reports. With regard to the Distillation range she stated that the initial boiling point (IBP) was at 216° C and the Final Boiling Point (FBP) was at 365°C.
- i. The Test Reports cannot conclusively establish the identity of the sample tested and it is only showing the results against some parameters as requested by their customer.

4.2. Statement of Shri Gagan Malhotra, Senior-Manager M/s Geo Chem Laboratories Pvt. Ltd., Gandhidham (Kutch)-370 201 was recorded on 01/06/2018 under Section 108 of the Customs Act 1962. Excerpt of his statement is as follows:-

- a. They operate as cargo inspectors and surveyors and have proven expertise in Inspection, Survey and Testing of diverse export, import and locally traded cargos and commodities. M/s Geo Chem Laboratories Pvt. Ltd. at "Iskon Avenue", Plot No: 53, Ward 1/A, Opp. Old Court Building, Gandhidham (Kutch)-370 201, is the branch office with laboratory facility of GEO-CHEM. The laboratory of M/s Geo Chem Laboratories Pvt. Ltd. at "Iskon Avenue", Plot No: 53, Ward 1/A, Opp. Old Court Building, Gandhidham (Kutch)-370 201 is a National Accreditation Board for Testing and Calibration Laboratories (NABL), accredited laboratory for Testing and is issued Certificate No: TC-6437 dated 14/10/2017 valid till 13/10/2019. The NABL accreditation provides scope for testing of certain parameters in the areas of Testing of Oils and Fats and Energy Department – Coal & Coke & Fuel Oil. He did not know the detailed parameters covered under the said NABL accreditation.
- b. M/s. Geo Chem Laboratories Pvt. Ltd. Gandhidham as a surveyor carry out the Inspection of various commodities (dry and liquid) in bulk or containers for Import and Export which include Testing of Quality and ascertaining Quantity of the goods.
- c. They had received an email dated 26/04/2018 on their official email ID dutta.n@geochem.net.in from Sh. Sudhir of M/s. Rajkamal appointing them as the surveyor for their cargo on the vessel MT. AL HEERA. It was further mentioned that there are two more importers namely M/s. Gastrade International and M/s. Divinity Impex for the same cargo on the vessel and nominated them as surveyor for these two Importers also. They had received an email from M/s. Divinity Impex for the nomination for the same and Sh. R. K. Jha of M/s. Gastrade International telephonically confirmed for the nomination for their goods.
- d. Their main work is to check the quantity of the goods for which they check density of the liquid goods just to ascertain the quantity of goods.

- e. They got an email from the Customs Broker M/s Saarthee Shipping Co., to provide Test report from vessel MT AL HEERA A/C Rajkamal Industries Pvt. Ltd. M/s Saarthee Shipping Co., asked them to provide the below mentioned report and also requested to confirm the charges of testing:
- Density @29.5 Deg
 - Flash Point
 - Viscosity @ 40 Deg
 - Viscosity @ 100 Deg
 - Pour Point
 - Distillation Range
- f. They got confirmation on the same day from Sh. Sudhir of M/s. Rajkamal, for testing of the goods and provide report as soon as possible.
- g. The Certificate of Analysis (COA) bearing Serial No: 633776 A issued under File No: GDM-CRT-18-19-02217 dated 15.05.2018 has been issued based on the Test Report No: GCL/KDL/PET/014/18 dated 12.05.2018 issued by their laboratory. The testing was conducted in respect of the sample drawn by their inspection team from the consignment of Base Oil SN 50, imported per vessel MT AL HEERA and stored in Tank No: AEGIS-150 on 07/05/2018.
- h. He gave the instructions to conduct the test of the sample against certain parameters and accordingly his staff had conducted the test and collated it under the aforesaid Test Report which was issued to the Inspection Team. The Test Reports were only for some selective parameters and the Test Reports cannot conclusively establish the identity of the sample and so they have not confirmed the identity of the sample in their Test Report or even in the Certificate of Analysis bearing Serial No: 633776 A issued under File No: GDM-CRT-18-19-02217 dated 15.05.2018.
- i. On being asked regarding the Entry in the said Certificate of Analysis which reads as-"Tested to Specification" against which it is shown as "Nil", he stated that he had no idea of the specifications for the test of present goods. The samples were not Tested against any known Specification but tests were carried out against the parameters as desired by the customer.
- j. He was not aware about the specifications of Base Oil SN 50 or High Speed Diesel Oil as they do not conduct such Tests of these products, in their routine operations they only check the density of the products to enable the inspection team to calculate the volume or quantity. The routine tests on different parameters are carried out in the case of Edible/Non-edible oils and Coal.
- k. M/s Geo Chem Laboratories Pvt. Ltd., Gandhidham does not have any overseas branches and he was not aware about any such Certificate of Quality issued by M/s Geo Chem Middle East FZE, in respect of the

sample of Base Oil SN 50 drawn from Six Tanks of the Vessel MT AL HEERA and Tested on 25-04-2018 at Hamariya FZE, Sharjah, UAE. M/s Geo Chem Laboratories Pvt. Ltd. has branches in India and does not have any branches in any other country. M/s Geo Chem Laboratories Pvt. Ltd. is also not affiliated to any overseas company. There may be various types of errors which may occur at the material time of testing which may lead to difference in Test Results on the same analysis viz: Flash Point, Kinematic Viscosity, of the same goods.

4.3. Statement of Shri Parth Narendrakumar Shah, Proprietor, M/s Divinity Impex, was recorded on 20/06/2018 under Section 108 of the Customs Act 1962. Excerpt of his statement is as follows:-

- a. He was engaged in trading of petrochemical item such as Base oil, Fuel Oil, Bitumen and LAWS. He is the proprietor of the firm and look after the work of sales, purchase and other related work of trading. He has another company M/s. Arrow Petrochem Pvt. Ltd., Ahmedabad in which he and his brother Sh Harshal Narendrakumar Shah are the directors.
- b. The goods are imported from overseas supplier as well as purchased from Manufacturer and Traders in India and they have been in the trade for substantial years and have experience in the area of trading of Bitumen, LAWS etc.
- c. He is the proprietor of the firm and keeps an overall supervision of all the activities in their firm. He has been in this business for some time and has good rapport with their vendors so their orders are placed on phone; they do not receive any Proforma Invoice or other document for their confirmation in their business with UAE. In the supplies from UAE based suppliers they only place orders telephonically which is accepted by their supplier after negotiating the price telephonically. Since the vendors/suppliers are known to them they proceed with the shipment. Their major suppliers in UAE, are (i) Kite International (ii) Renish Petrochem FZE etc.
- d. Mr. Prakash is the owner of M/s Kite International while Mr. Hitesh Mehta, his father's friend, is the owner of M/s Renish Petrochem FZE.
- e. They import Base Oil namely SN50 for the first time and aware of other grade such as SN150, SN500.
- f. He was not aware as to what were the specifications required for Base Oil SN50; he understands that any oil of Flash Point above 94° C may be classified as Base Oil SN50. However, he could not confirm what other specs determine the classification of the Base Oil as Base Oil SN50.
- g. He agreed that the Test Reports of the sample drawn from the goods imported by them per vessel MT. AL HEERA, given by the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara indicated that the sample has characteristics of High Speed Diesel Oil/Automotive fuel

oil confirming to IS: 1460:2005 and is other than Base Oil, thereby the goods imported is High Speed Diesel Oil.

- h. He was not sure about the parameters of Group-I Base Oils hence he could not confirm how SN 50 would qualify as Base Oil. The product SN 50 was understood by them as buyers and their suppliers as Base oil, accordingly they have classified the product as Base Oil under the Bills Of Entry filed before the Customs authorities.
- i. He said that Base Oil SN 50 is a raw material used in the manufacture of Lubricating Oils.
- j. He further stated that they had not imported any consignments of goods declared as Base Oil SN 50 in the past and heard about the product Base Oil SN 50 for the first time in January, 2018. The said product Base Oil SN 50 is available in the UAE market
- k. He was not aware of the refinery where the product Base Oil SN 50 was manufactured, and stated that he had already undertaken to submit the details after confirming with the suppliers.
- l. The cargo in the vessel MT Al Heera from which samples were drawn on 05.05.2018, was a consolidated cargo, with no clear demarcations with regard to the chambers in which goods imported by them were stored, also on discharge from the vessel the cargo were stored in the three tanks at the Liquid Terminal of M/s Aegis Logistics Ltd at Kandla in a consolidated manner and was then seized vide panchnama on 15.05.2018. He added that since the cargo was same there was no such document made indicative of loading of the cargo into individual chambers by the respective suppliers, and that it was not possible to distinguish the goods on the basis of supplier or the three importers including M/s. Divinity.

5. M/s Divinity vide letter dated 17.07.2018 contested the Test Report of Central Excise & Customs Laboratory at Vadodara, which held that the samples have characteristics of High Speed Diesel Oil / Automotive Fuel oil confirming to IS 1460:2005 and that it was "other than Base Oil". They requested for provisional release of the seized goods.

5.1. Considering the request for re-testing made by one of the Importer M/s. Rajkamal Industrial Pvt. Ltd., the second set of 10 samples was sent to Central Revenues Control Laboratory (CRCL), New Delhi. The CRCL New Delhi vide their report issued under F. No: 27-Cus/C-05 to 14/2018-19 dated 03.07.2018 confirmed that the analytical parameters of each of the ten samples conforms to the specifications of High Speed Diesel Oil/(Automotive Diesel Fuel as per IS 1460:2005 and further amended). It was also confirmed that the samples were other than Base Oil.

6.1. M/s. Rajkamal Industrial Pvt. Ltd., and Shri Meet Mehta Director of M/s. Rajkamal Industrial Pvt. Ltd., filed a Special Civil Application No: 10882 of 2018 before the Hon'ble High Court of Gujarat. The Hon'ble High Court of Gujarat vide an interim order dated 30.07.2018 directed the department to send the requisite quantity of samples to the IOCL, Mumbai which is one of the notified laboratories as per the departments circular dated 16.11.2017. Accordingly, samples were forwarded to Indian Oil Corporation Limited, Mumbai vide letter dated 08/08/2018.

6.2. The Central Laboratory, Indian Oil Corporation Limited, Mumbai vide letter REF: IOCL/LSE/10/2018 dated 14/08/2018 gave the Quality Control Test Report for High Speed Diesel Specification IS: 1460:2005 Amendment No: 2 March 2010. In the remarks of the report it was mentioned that Sample meets the specification for XIV parameters tested as per the specification IS:1460:2005 amended.

6.3. The Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad vide a letter F. No: DRI/AZU/CI/ENQ-12/2018 dated 31.07.2018 had inquired with Central Revenues Control Laboratory, New Delhi whether the Central Excise And Customs Laboratory at Vadodara and the CRCL, New Delhi had the requisite facilities for testing of samples of HSD against the parameters prescribed under the IS1460:2005 in the light of Circular No. 43 /2017-Customs dated 16th November, 2017 issued under F. No. 401/243/2016-Cus-III and to confirm whether the Flash Points in the range of 78°C to 115°C as found during the testing conform to the standards of Flash Point prescribed for HSD. The Joint Director, Central Revenues Control Laboratory, New Delhi confirmed vide letter F. No: 27-Cus/05-14/2018-19 dated 01/08/2018 that the Flash Point prescribed at Sr. No: (x) under Annexure C in the IS 1460:2005 as amended March 2010 is 66°C minimum and since the results obtained were more than 66°C it conformed to the specifications of IS 1460:2005 as amended in March 2010. Further vide letter F. No: 27-Cus/05/2018-19 dated 21/08/2018 the Joint Director, Central Revenues Control Laboratory, New Delhi reconfirmed that the testing facilities for the sample of Base Oil and Petroleum products including HSD/Automotive Diesel Fuel were available at Central Excise And Customs Laboratory, Vadodara and the Central Revenues Control Laboratory, New Delhi on reporting date of Test Reports i.e. 11.05.2018 and 03.07.2018 respectively for the parameters reported in the respective test reports.

7. Further statement of Shri Parth Narendrakumar Shah, Proprietor of M/s Divinity Impex was recorded on 26/09/2018 under Section 108 of the Customs Act 1962 wherein he interalia stated that:

- a.** He was shown the test report of the CRCL New Delhi issued vide their letter under F. No: 27-Cus/C-05 to 14/2018-19 dated 03.07.2018 wherein it is confirmed that the analytical parameters of each of the ten samples conforms to the specifications of High Speed Diesel Oil/ (Automotive

Diesel Fuel as per IS 1460:2005 and further amended) and that the samples were other than Base Oil.

- b. He was shown the test reports dated 14/08/2018 issued by the Indian Oil Corporation Limited, Central Laboratory, at Mumbai after due testing of the samples against XIV parameters prescribed under Indian Standards Specification of Bureau of Indian Standards IS: 1460:2005 pertaining to High Speed Diesel has found that the parameters tested meets the specification as per the Specification of Indian Standards IS: 1460:2005 amended.
- c. He compared all the test reports with the analysis report issued by M/s. Renish Petrochem, FZE, UAE bearing no. CA-BO-2021C & CA-BO-2021D dated 25.04.2018 with respect to the goods imported by him and found that as per the analysis report issued by M/s. Renish Petrochem, FZE, UAE the flash point requirement for Base Oil is 130° C and the test results is shown as 142° C. Further flash point as per the test reports issued by CRCL, New Delhi and Indian Oil Corporation Limited, Central Laboratory, at Mumbai is approx. 112°C which is different from analysis report submitted by him.
- d. He agreed that the analysis report UAE bearing no. CA-BO-2021C & CA-BO-2021D dated 25.04.2018 issued by M/s. Renish Petrochem, FZE, UAE does not pertains to the goods imported. Further he stated that M/s. Renish Petrochem, FZE is a trader and he was not aware that how M/s. Renish Petrochem, FZE has issued the Analysis report.

8. During investigation, DRI Ahmedabad Zonal Unit requested the Commissioner of Customs, Kandla to grant the extension of time for the issuance of show cause notice in terms of Section 110 (2) read with Section 124 of the Customs Act, 1962 to enable the investigating agency to conduct thorough and deep investigation and to take the investigation to its logical conclusion.

The Additional commissioner of Customs, Customs House Kandla vide letter F. No.: S/15-13/Gr-I/Divinity/18-19 dated 26/10/2018 informed that the Commissioner of Customs, Kandla in exercise of power vested with him under the first proviso to Section 110 (2) of the Customs Act 1962, had extended the time limit for issuance of show cause notice for further period of Six Month upto 03/05/2019 in respect of the goods seized by the DRI vide seizure memo F. No.: DRI/AZU/CI/INT-02/2018 dated 15.05.2018.

9. M K Shipping & Allied services the Shipping agent for the vessel MT AL HEERA which arrived at Kandla port on 04/05/2018 and was cleared on 05/05/2018 vide letter dated 27.10.2018 submitted the documents pertaining to MT AL HEERA, which included:

- (i) Copy of BL No: HAM/KAN/BO/042, 043, 044, 045, 046, 047, 048, 049, 050, and 051 dated 25.04.2018 & cargo manifest for quantity 5561.132MT
- (ii) Load Port Stowage Plan, Load Port Ullage & Load Port Certificate of quality
- (iii) Copy of port clearance no; HM/2018-5504 dated 25.04.2018 issued by Department of Seaports & Customs, Govt. of Sharjah, UAE.
- (iv) Ships Declarations
- (v) Import General Manifest.

9.1. Statement of Shri Sanjay Dhanwani, Senior Agency Executive, M/s M K Shipping & Allied Services, Gandhidham (Kutch) was recorded under Section 108 of the Customs Act, 1962 on 30/01/2019 wherein he interalia stated that:

- a. M K Shipping & Allied services was sub agent of the vessel MT AL HEERA which arrived at Kandla port on 04/05/2018 and was cleared on 05/05/2018. They acted on behalf of M/s. Marinelinks Shipping Agencies, 1st Floor, ABCO Trade centre, Kottara Chowki, Mangaluru who were the main agent of the vessel. They got all instructions from M/s. Marinelinks Shipping Agencies for the clearance of vessel.
- b. They had been informed by M/s. Marinelinks Shipping Agencies that the vessel was chartered by M/s. Renish Petrochem FZE, Dubai, UAE for a full voyage i.e. from load port(Hamariya, Sarjah) till discharge port(Kandla Port).
- c. They were informed by M/s. Marinelinks Shipping Agencies that they had sent PDA (Port Disbursement Account) to M/s. Renish Petrochem FZE for an amount of 27550 USD out of which an amount of 17546 USD is pending with M/s. Renish Petrochem FZE and for the dues M/s. Marinelinks Shipping Agencies have contacted Sh. Anshul Gupta, Shipping and Chartering Manager, M/s. Renish Petrochem FZE. Sh. Anshul Gupta had informed that he had left the company and company had gone bankrupt.
- d. They had been informed by M/s. Marinelinks Shipping Agencies that M/s. Marinelinks Shipping Agencies were in no way connected with the load port custom house agents and load port terminal and after loading only they had received usual documents i.e. Bill of Lading & Cargo manifest. Further these documents had been submitted by them at the time of drawl of samples on 05/05/2018.
- e. They were solely responsible for the handling of the vessel at Kandla port, which included activities declaring the vessel at port, filing IGM with Customs, obtain berthing/ un-berthing from port in port berthing meeting, handling boarding of Customs, immigration, Port Health Officer, obtaining the port clearance for the vessel.

- f. They were in no way connected with the cargo the same is handled by the cargo agent appointed by the receivers and in the case of MT Al Heera the receivers M/s Divinity Impex, M/s Gastrade International and M/s Rajkamal Industrial Pvt. Ltd., had appointed M/s Sarthee Shipping as the agents for the receiver who is fully concerned with the cargo on board.
- g. The IGM was filed on the basis of the Bill of Lading.

9.2. Summons dated 09.04.2019 was issued to Shri Hitesh Mehta, of M/s. Renish Petrochem FZE, Dubai, UAE at his known residence in India, at 45, Shivalik Bunglows, Anand Nagar Cross Road, Satellite, Ahmedabad-15, for his presence before the DRI officers on 15.04.2019 and to give evidence in the case under inquiry. The Summons was also sent through email info@renishpetrochem.com. However Shri Hitesh Mehta did not appear before the DRI officers on the given date. The summons dispatched through post was returned by the postal authorities with remarks "OUT OF INDIA/ LONG TIME/ LEFT".

10. In light of the above facts, a show cause notice F. No. DRI/AZU/CI/ENQ-13(INT-02/18)/2018 dated 22.04.2019 was issued by the Principal Additional Director General, Directorate of Revenue Intelligence, Ahmedabad to M/s. Divinity Impex (Shri Parth Narendrakumar Shah, Proprietor), 506, Shivalik Abase, 100 Ft. Anand Nagar Road, Anand Nagar, Ahmedabad wherein he was called upon to show cause to the Principal Commissioner/ Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat, as to why:

- (i) The impugned goods i.e. High Speed Diesel quantity 1000.00 MT [Bill of Entry Quantity] (Seized quantity 992.927 MT) having Assessable value of Rs. 4,78,89,766.20 /- and mis-declared as Base Oil SN 50 in the Bills of Entry as per Annexure-A, seized during the panchnama dated 15.05.2018, should not be classified under the Customs Tariff Heading 2710 1930 instead of declared Customs Tariff Heading 2710 1960;
- (ii) The impugned goods i.e. High Speed Diesel quantity 1000.00 MT [Bill of Entry Quantity] (Seized quantity 992.927 MT)having Assessable value of Rs. 4,78,89,766.20 /- and mis-declared as Base Oil SN 50 in the Bills of Entry as per Annexure-A, seized during the panchnama dated 15.05.2018, should not be confiscated absolutely under the provisions of Section 111(d) and (m) of the Customs Act, 1962;
- (iii) Penalty should not be imposed on him under Section 112 (a) and (b) of the Customs Act, 1962;
- (iv) Penalty should not be imposed on under Section 114AA of the Customs Act, 1962;
- (v) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962;

10.1. Further, M/s. Renish Petrochem FZE, Dubai, UAE, and Shri Hitesh Mehta, of M/s. Renish Petrochem FZE, Dubai, UAE, [also through his known address in India at 45, Shivalik Bunglows, Anand Nagar cross road, satellite, Ahmedabad-15] were called upon to show cause to the Principal Commissioner/ Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat as to why penalty should not be imposed on them under Section 112 (a), Section 114AA and Section 117 of the Customs Act, 1962.

10.2. Further, M/s Gastrade International, Gandhidham and M/s Rajkamal Industrial Pvt. Ltd., Ahmedabad were called upon to show cause to the Principal Commissioner/ Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat as to why penalty should not be imposed on them under Section 112 (a), of the Customs Act, 1962.

DEFENCE REPLY:

11. Shri Kumar Pal Mehta, Practising Company Secretary duly appointed by M/s Divinity Impex (Shri Parth Narendrakumar Shah, Proprietor), Ahmedabad appeared for personal hearing on 22.08.2019 and has filed their written submissions and reiterated the contents therein. He requested that they may be allowed re-export of goods as they are facing financial difficulties.

11.1. In their written submission, they inter-alia submitted that the Principal Additional Director General, DRI does not have jurisdiction to issue a show cause notice under Section 28 of the Customs Act. He has submitted that the proper officer for the purposes of Section 28 of the Customs Act will be that officer who has been assigned the specific function of assessment of bill of entry. In other words, the proper officer for issuing Show Cause Notice under Section 28(1) will be the proper officer who has assessed the concerned bills of entries under Section 17 of the Customs Act.

11.2. They submitted that a letter dated 26.10.2018 was issued to the M/s. Divinity Impex by the Additional Commissioner, Custom House, Kandla, wherein the decision of the Commissioner was communicated that the period of issuance of SCN under proviso to Section 110(2) of Customs Act, 1962 has been extended up to 03.05.2019 and no notice was issued for seeking extension as per Section 2 of Section 110 of customs Act, 1962. Therefore, extending the time limit for issuing the SCN invoking the proviso to sub section 2 of section 110 of Customs Act, without issuing of SCN for this purpose is illegal.

11.3. They submitted that as company, they are engaged in trading of various petroleum oils, which are primarily imported by them and further sold to various actual

users. One of the oils which they import is 'Base Oil SN50', which is basically a heavy hydrocarbon produced from the refining of crude oil and finds its application in various industrial sectors. The 'Base Oil SN50' is non-hazardous in nature and is not a substitute for any kind of fuel.

11.3.1. They submitted that they have imported 'Base Oil SN 50' for the first time. At the time of import, along with the Bill of Entry, they also file all the other documents such as Bill of Lading, Packing list, Supplier's invoice, certificate of analysis etc. The Certificate of Analysis issued by their supplier clearly provides for the product's specifications, as also the International Standards and parameters used for testing the said specifications. The said Certificate also clearly certifies that the Base Oil SN50 so supplied is not classified as any kind of hazardous.

11.3.2. They submitted that samples from each of the ten tankers carrying the Base Oil SN50 of the vessel MT Al Heera, were drawn and sent to CECL, Vadodara for testing and analysis. Their consignment of Base Oil SN50, stored in tankers T-150, T-140 and T-149 at the storage premises of M/s. Aegis Logistics Ltd, has been seized by the Revenue under Seizure Memo dated 15.05.18 on the allegation that they have mis-declared the consignment imported as 'Base Oil SN50', which otherwise in Revenue's view is 'High Speed Diesel Oil/Automotive Fuel Oil', making the said goods liable for confiscation under Section 110 of the Customs Act, 1962. The aforesaid allegation of the Revenue is solely premised on a Test Report issued by CECL, Vadodara, wherein as per the panchnama dated 15.05.18, it has been confirmed that "the samples drawn under Panchnama 05.05.18 have characteristics of High Speed Diesel Oil/Automotive Fuel Oil confirming to IS 1460:2005 and amended thereafter, in terms of parameters 1 to 8 and that the sample is other than Base oil". However, the said Test Report, which forms the sole basis of Revenue's allegation, for reasons beyond their contemplation, has neither been furnished to them nor any reasons have been ascribed for non-furnishing the same.

11.3.3. They submitted that there has been no mis-declaration on their part, as also the fact that what has been imported by them is only Base Oil SN50 and not High Speed Diesel Oil, as being alleged by the Revenue authorities. They further submitted that the seizure of their consignment by the Revenue is clearly arbitrary, illegal and untenable for the following amongst other grounds:-

- (i) It is submitted that at the time of importation, they had duly submitted the Test Report/Certificate of Analysis issued by their supplier, wherein it has been categorically stated that the consignment is of 'Base Oil SN50'. The Certificate specifies the various parameters undertaken for testing the consignment, as also the International Standards used for arriving at the conclusion that the said consignment is Base Oil SN50 only. The said certificate further certified the Base Oil SN50 supplied is not classified as any kinds of hazardous. Inasmuch as the Revenue has neither challenged

or questioned the said certificate/test report issued by the supplier nor have they stated anywhere in the Seizure Memo that such a Certificate of Analysis is to be rejected or is defective in any manner, the entire chemical analysis undertaken by the Revenue is therefore, illegal and ultra vires to Section 18(b) of the Customs Act, 1962. Consequently, the seizure of the consignment is also clearly illegal and without any authority of law. To substantiate the aforesaid submission, reliance is place on the law laid down by the Hon'ble Supreme Court in the case of Tata Chemicals Ltd. vs. C.C. reported in 2015 (320) ELT 45 (SC), relevant extract of which has been reproduced herein below for ease of reference:

"14. In our opinion, the expression "deems it necessary" obviously means that the proper officer must have good reason to subject imported goods to a chemical or other tests. And, on the facts of the present case, it is clear that where the importer has furnished all the necessary documents to support the fact that the ash content in the coking coal imported is less than 12%, the proper officer must, when questioned, state that, at the very least, the documents produced do not inspire confidence for some good prima facie reason. In the present case, as has been noted above, the Revenue has never stated that CASCO's certificate of quality ought to be rejected or is defective in any manner. This being the case, it is clear that the entire chemical analysis of the imported goods done by the Department was ultra vires Section 18(b) of the Customs Act."

- (ii) The Revenue's entire case for seizing their consignment is solely based on the Test Reports issued by the CECL, Vadodara, which, as already mentioned above, for reasons beyond their contemplation, has neither been furnished to them nor have any reasons been ascribed for the same. Further, neither the Seizure Memo nor the panchnama recording the seizure of their consignments clearly bring out as to which parameters of the IS Specifications 1450: 2005 governing the High Speed Diesel Oil have been confirmed. It is settled law that in view of the principles of natural justice, an assessee is entitled to copies of all the documents which have been relied upon by the Revenue to implicate it. Further, an assessee must be made aware of the exact case being made out against him so as to enable him to prepare an effective defence to the same.
- (iii) It is submitted that the IS Specification 1460:2005 provides for 21 parameters to be fulfilled in order to confirm as to whether a commodity is High Speed Diesel Oil/Automotive Fuel Oil or not. It is axiomatic that each such parameter covers within its ambit a specific property/specification governing the exact nature and use of the commodity to confirm that the same is High Speed Diesel Oil/Automotive Fuel Oil. In other words, a

commodity can be termed to be High Speed Diesel/Automotive Fuel Oil. In other words, a commodity can be termed to be High Speed Diesel/Automotive Fuel Oil, only when all the 21 parameters prescribed in the IS Specification 1460:2005 have been fulfilled and/or confirmed to. We submit that inasmuch as the Test Report has opined its view only on 8 parameters, out of the 21 parameters prescribed in the said IS Specification 1460:2005, the Test Report is clearly inconclusive and meaningless and the consequent reliance placed by the Revenue on the said Test Report to allege that the goods imported is High Speed Diesel Oil is clearly misconceived and untenable. Accordingly, the seizure made by the Revenue is clearly illegal.

- (iv) It is submitted that on drawing a comparison between the test results of the consignment in question, as provided in their supplier's certificate of analysis with that of the specifications/parameters prescribed in IS 1460:2005, it is clearly evident that the consignment imported by us do not confirm to the parameters, especially Flash Point and Kinematic Viscosity. Accordingly, the said consignment by no stretch of imagination can be held to be High Speed Diesel Oil/ Automotive Diesel Oil.
- (v) It is submitted that though the IS 1460:2005 prescribes the Flash Point to be minimum 66 degree Celsius (Panskey Closed Cup Method) for a product to be High Speed Diesel, the same has to be read in accordance with the exact nature and characteristics of the parameter. As per Section 2(c) of the Petroleum Act, 1934, the expression 'Flash Point' of any petroleum refers to the lowest temperature at which it will yield a vapour which will give a momentary flash when ignited. In other words, the 'Flash Point' is the lowest temperature at which a liquid will form a Vapour in the air near its surface that will 'flash', or briefly ignite, on exposure to the open flame. It is a general indication of the flammability or combustibility of a liquid. Further, below the Flash Point, insufficient vapours are available to support combustion. To illustrate, if a petroleum product has a Flash point of min.66 degree Celsius, it indicates that at a temperature of 66 degree Celsius and above, the said product will start forming vapours, which on being exposed to an open flame, will flash/ignite. However, if the said petroleum product is exposed to an open flame at any temperature below 66 degree Celsius, insufficient vapours will be formed and consequently it will not flash and/or ignite. Likewise, if another petroleum product having a Flash Point at min 142 degree Celsius is exposed to an open flame at temperature to 142 degree Celsius and above, the same will flash or ignite. However, if the same product having Flash Point of 142 degree Celsius is exposed to an open flame at any temperature below 142 degree Celsius, it will not flash or ignite due to insufficient formation of

vapours. The above illustrations are being summarized in the following tabulated manner for ease of reference:

Petroleum Product	Flash Point (°C)	Exposed to Temperature	Form Vapours (Y/N)	Ignite/Flash on exposure to an open flame (Y/N)
A	66	66°C and above	Yes	Yes
A		Below 66°C	Insufficient	No
B	142	142°C and above	Yes	Yes
B		Below 142°C	Insufficient	No

In view of the aforesaid meaning ascribed to the expression 'Flash Point' as per the Petroleum Act, 1934 as also the technical parameters for High Speed Diesel Oil as prescribed under IS 1460:2005, it is clearly evident that the consignment in question having a Flash Point of 142°C, being enormously higher than the one prescribed for High Speed Diesel i.e. 66°C, the same can by no stretch of imagination be considered as High Speed Diesel Oil. To remove any confusion about exact interpretation of the specification of a 'minimum 66°C', at the cost of repetition, it is once again submitted that the product imported by them having Flash Point of 142°C, can never flash and/or ignite, when exposed to an open flame at the temperature of 66°C, prescribed in IS 1460:2005. In fact, the product imported by them will flash/ignite only when exposed to temperature of 142°C and above. As for any product to be qualified as High Speed Diesel Oil, owing to its specific end-use of being a fuel, the same must also flash/ignite when exposed to temperature between 66°C to 141°C, which, however in the instant case, as explained above, the product in question will not flash/ignite at any temperature below its Flash Point of 142°C. Thus, the same by no stretch of imagination can be held to be High Speed Diesel Oil, as per IS 1460:2005.

- (vi) It is submitted that Chapter 27 of the Customs Tariff inter-alia covers various types of mineral oils and fuels. Under the said Chapter 27, Tariff Heading 2710 specifically covers petroleum oils and oils obtained from bituminous minerals. This Tariff Heading broadly covers two kind of petroleum products, specific to their end use, such as those oils which are used in the Industrial Sectors and commonly referred to as heavy oils such as Base Oil, Lubricating Oil, Jute Batching Oil etc. As per the

Supplementary notes to Chapter 27 of the Customs Tariff Act, and as per specifications of BIS, the Flash Point is one of the most important parameter for classifying whether a petroleum product is a fuel or not. As already submitted, the Flash Point is an indication of combustibility/Flammability of a particular product. In essence, lower the Flash Point of a product, more is the combustibility and thus, is hazardous in nature. Inasmuch as the product in question is concerned, since its Flash Point is much higher than what has been prescribed for High Speed Diesel Oil, it clearly shows that their product cannot be used as a fuel and similarly cannot be considered as 'High Speed Diesel Oil'. For this reasons per se, the Supplier's Certificate of analysis has also certified it to be non-hazardous in nature, clearly making it a distinction from the highly flammable and hazardous High Speed Diesel Oil.

- (vii) It is further submitted that the CIF price of Base Oil SN50 imported by them is about 10% higher than the price of High Speed Diesel Oil in the international market. This factual position is clearly evident from a perusal of the International prices for High Speed Diesel Oil to that of the Base Oil, as published in S&P Global (PLATTS Report). This also proves that what has been imported by them is only Base Oil and not High Speed Diesel Oil, as alleged by the Revenue. In view of the of the aforesaid, it is clearly evident beyond doubt that the product in question imported by them is Base Oil only and not High Speed Diesel, as being alleged by the Revenue. Consequently, the seizure done by the Revenue is clearly illegal and untenable and that the goods should be released forthwith.
- (viii) For the reasons stated hereinabove, it is not understood how the Director, Central Laboratory has opined to classify the product as High Speed Diesel, therefore, for this reasons we would like to examine the chemical examiners to bring on record any other material if available with them in what matter they have classified the product as High Speed Diesel and not base oil, therefore, the impugned goods are not mis-declared by the notice.

In view of the above facts and circumstances of the case if where Laboratory reports differ decision should be in favour of the assessee. In view of the above it is to be held that the description entered in the bill of entry is correct and there is no mis-declaration or mis-representation of any sort.

11.4. The SCN has proposed confiscation of exported goods under section 111 (a) of the customs Act. Relevant part is extracted as under:

111. *Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:—*

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

Clause (a) of Section 111 also relates to “any goods” which do not correspond in any material particular with the entry made. It is submitted that goods have not been mis-declared by the noticees in bill of entry. Further noticees have not violated any of the conditions. There is no mis-declaration in the bill of entry with regards to material particular of goods. Thus goods are not liable for confiscation in the present case.

11.4.1. Section 111(a) can be invoked when there is mis-declaration of description or value. In this case it is not so. There being no wilful misdeclaration on the part of the appellant, penalty is not sustainable. Reliance is placed on the decision of Hon'ble Apex Court in the case of *Northern Plastic Ltd. v. Commissioner of Customs and Central Excise - 1998 (101) E.L.T. 549 (SC)* which was followed by the Tribunal in the case of *ISGEC Heavy Engineering Ltd. v. Commissioner of Customs (Exports) - 2015 (318) E.L.T. 284 (Tri.- Mumbai)*.

In case of DEC Agrotec Pvt Ltd. report in 2015 (327) E.L.T. 674 (Tri. - Mumbai) wherein Hon'ble Cestat has held as under;

6. We have gone through the impugned order. We observe that in this case the description of the goods was found to be correct and it is only the drawback serial number which was found to be incorrect and on being pointed by the Revenue during examination of the goods, the appellant accepted the new drawback serial number. Keeping in view of the above facts, we do not consider it to be a fit case for imposition of redemption fine and penalty. Accordingly, the redemption fine and penalty are set aside.

Reliance is also placed upon decision in case of *ISGEC Heavy Engineering Ltd. v. Commissioner — 2015 (318) E.L.T. 284 (Tribunal)* wherein Hon'ble Court has held as under:

5. After dispensing with the requirement of any pre-deposit, we take up the appeal itself for consideration. We have also perused the export document filed by the appellant and observe that the appellant had given correct description of the goods under export and also correctly classified goods under Customs Tariff and RITC. The appellant committed a mistake while quoting the serial number of the drawback schedule. Therefore, there is no wilful misdeclaration on the part of the appellant while making the claim for drawback. In the instant case, it is for the

Customs authority to verify the claim of the appellant and determine the quantum of drawback the appellant is eligible for. In the case of *Northern Plastic Ltd.*, the Apex Court held that if the appellant being importer claimed duty exemption on the *bona fide* belief that he is eligible for exemption, it cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act, 1962 so long as the appellant has given full and correct particulars, as regards the nature of the goods. The ratio of the said decision applies to the facts of the present case. In the present case we have already noticed that the appellant had given correct description of goods and the only error committed by the appellant was quoting the wrong serial number of the drawback schedule. In these circumstances, the question of confiscation of the goods and imposition of fine would not arise at all. Accordingly, we allow the appeal. The bank guarantee executed by the appellant shall be discharged and returned forthwith.

11.5. The SCN has proposed penalty on the noticees under Section 112 (a) & (b) of Customs Act, 1962. The Noticees have submitted that in the present case Section 111 of the Customs Act cannot be invoked since there is mis-declaration of description or value, therefore, no penalty could be imposed under 112 (a) & (b) of Customs Act, 1962.

11.6. The SCN has proposed penalty on the noticees under Section 114AA of Customs Act, 1962. The Noticees have submitted that they have not made, signed or used any false or incorrect declaration, statement or document. In any case the alleged manipulation is not a material particular. The noticees have not given any false statement, document which is false or incorrect therefore, Section 114 AA will not apply.

11.7. The Noticees have submitted that they have not made, signed or used any false or incorrect declaration, statement or document. Thus the penalty under Section 117 will not apply since there is no violation of any of the provisions of the act.

11.8. In view of the above, it is prayed that the proceedings initiated against the Noticee in the aforesaid show cause notice may kindly be dropped.

12. Other co-noticees have not filed any written submissions as per the available records.

PERSONAL HEARING:

13. Personal Hearing (PH) in the case was first fixed on 30.07.2019 for M/s Divinity Impex. However, no one appeared on the said date. Next P.H. was fixed on 22.08.2019 for all the noticees.

13.1. Shri Kumar Pal Mehta, Practicing Company Secretary and authorized representative of M/s Divinity Impex appeared for personal hearing in the matter on 22.08.2019. At the time of hearing, he made a written submission and reiterated the

contents therein. He requested that they may be allowed re-export of goods as they are facing financial difficulties. In the said submission, he has also requested for cross-examination.

13.2. Next P.H. was fixed on 19.09.2019 for all the noticee except M/s Divinity Impex and the same have been also uploaded on the official website of the Custom House, Kandla as per the provisions of Section 153(e) of Customs Act, 1962.

13.3. Next P.H. and cross examination was fixed on 15.10.2019 and the same have been also uploaded on the official website of the Custom House, Kandla as per the provisions of Section 153(e) of Customs Act, 1962. M/s Divinity Impex vide letter/mail dated 14.10.2019 have sought for adjournment of personal hearing/cross examination.

13.4. Next P.H. and cross examination was fixed on 07.11.2019 and the same have been also uploaded on the official website of the Custom House, Kandla as per the provisions of Section 153(e) of Customs Act, 1962.

13.5. Shri Kumar Pal Mehta, Practicing Company Secretary and authorized representative of M/s Divinity Impex appeared for P.H./Cross Examination on 07.11.2019 on behalf of M/s Divinity Impex. Dr. Gobind Singh, DGM (Lab) IOCL, Central Lab, Sewree, Mumbai was also present on 07.11.2019 for Cross Examination. The record of cross examination is as under:

Q: What is your name?

A: Shri (Dr.) Gobind Singh.

Q: What is your qualification?

A: Ph.D Chemistry.

Q: How many years of experience do you have?

A: 7 years.

Q: How many samples have you tested till now?

A: whatever the samples that are submitted to me, I have tested them.

Q: What are the exact numbers of samples you have tested?

A: whatever the number of samples that are submitted to me by DRI, I have tested them.

Q: Have you personally examined the samples?

A: Yes

Q: When did you receive the samples from DRI?

A: 09.08.2018

Q: Have you yourself prepared the report?

A: There is a procedure for that. The samples were received by concerned authority, after that I have tested and prepared the report and my senior has reviewed the report thereafter.

Q: After how many days of the seizure of the sample by the DRI, the sample was received by you?

Adjudicating Authority intervened and said that this is a matter of record and it is a sheer wastage of time of Adjudicating Authority and the person whose cross examination is being done.

Q: What is the standard specification for testing the samples of HSD?

A: IS 1460:2005

Q: How many parameters were tested for the samples?

A: A total of 14 parameters were tested as prescribed in the standard as per the Lab capabilities

Q: Did certain parameters were not tested due to the testing facility of other parameters not being available at the lab?

A: Yes, as the lab is a marketing lab and it is not a refining lab.

Q: Have you tested the sample as per IS 1460:2005?

A: This sample has been tested as per the standard IS 1460:2005 and under this specification there are total 22 tests covered out of which we have tested only 14 parameters as per our Lab capability.

13.5.1. After completion of cross examination on 07.11.2019, Shri Kumar Pal Mehta, Practising Company Secretary and authorized representative of M/s Divinity Impex vide letter dated 07.11.2019 had requested to conduct the cross-examination afresh of Dr. Gobind Singh, DGM (Lab) IOCL, Central Lab, Sewree, Mumbai.

13.6. Other co-noticees did not appear for any personal hearing in the matter on the fixed dates nor they have made any correspondences with the department in this regard.

DISCUSSION AND FINDINGS:

14. I have carefully gone through the Show Cause Notice dated 24.04.2019, records of the case, written submissions filed by the noticee as well as submissions made at the time of Personal Hearing. Statements of various persons were recorded and various evidences were gathered during the investigation. The noticee have challenged the allegations on factual as well as legal counts. Before proceeding for appreciation of evidences discussed in the impugned SCN and the submissions made by the noticee, I discuss vital issue/facts involved in this case.

15. The foremost issue to be decided in the present case is classification of the imported consignments of 'Base Oil SN 50'. The proposals made in the impugned show cause notice related to confiscation of imported consignment and penal action under Custom Act, 1962 are to be decided accordingly thereafter.

16. I find that the goods imported per vessel MT Al Heera was a combined cargo of three importers namely M/s Rajkamal Industrial Pvt. Ltd. Ahmedabad, M/s Divinity Impex, Ahmedabad, and M/s Gastrade International, Gandhidham. The goods were stored in the 10 tanks on the vessel without any demarcation or separation for the respective importer.

17. I find that, in this case, M/s Divinity imported goods described as 'Base Oil SN 50–In Bulk' from foreign supplier M/s Renish Petrochem, FZE, UAE. The import was in pursuance of an oral (telephonic) contract between the importer and the supplier on the basis of specifications of aforesaid goods that were agreed upon between the contracting parties. On this basis the supplier raised tax invoice for supply of 'Base Oil SN 50–In Bulk' to the Importer. In all the documents namely tax invoice, corresponding packing lists, certificate of analysis and bill of lading the goods were described as 'Base Oil SN 50'. The importer adopted this description and filed bills of entry for its clearance by claiming the classification of these goods under CTH 2710 1960 of the First Schedule to Customs Tariff Act, 1975. The case of investigation, as made out in the show cause notice is about mis-declaration of these goods in as much as it is alleged in the notice that goods merit classification under CTH 2710 1930. Therefore, the issue to be decided in this case lies in a narrow compass as to whether goods imported by M/s Divinity under aforesaid documents merit classification under CTH 2710 1960 as claimed by them or under CTH 2710 1930 as proposed in the show cause notice.

18. The noticee M/s Divinity Impex has sought for cross examination of laboratory. Looking to the contentions of the noticee, I found it appropriate to grant the cross-examination. Accordingly, cross examination of Dr. Gobind Singh, Manager (Lab), IOCL, Central Laboratory, Mumbai was allowed to follow the principles of natural justice.

18.1. Cross examination of Dr. Gobind Singh, IOCL, Mumbai was done by Shri Kumar Pal Mehta, Practising Company Secretary and authorized representative of M/s Divinity Impex on 07.11.2019 before me. During cross examination, I objected Shri Kumar Pal Mehta to asking of questions which were not relevant to the evidentiary value of the test report – like the time taken from the drawl of sample to time at which the sample was received in IOCL lab. This can be calculated from the facts on record and on this cross examination of expert is not required. Also the authorised representative (Shri Kumar Pal Mehta) was objecting if the expert was referring to the test report which is relied upon in the SCN. The authorised representative in fact wanted that the expert would give his replies as wished by him (authorised representative). He was repeatedly interrupting the expert when he was replying. Such things were not permitted. This frustrated the advocate and after cross examination was over, he sought

time for taking lunch and utilized that time for writing objection to cross examination so as to further delay the adjudication proceedings.

19. The noticee has argued that ADG, DRI has no jurisdiction to issue SCN under Section 28 of the Customs Act, 1962. I find that subject SCN has not been issued under Section 28 of the Customs Act, 1962. Present Show Cause Notice was issued on 24.04.2019 for misdeclaration of description of imported goods i.e. classification of the imported consignments of 'Base Oil SN50'. Therefore, without going into the merits of this argument, I find that issuance of subject SCN by the Additional Director General of DRI is not without jurisdiction.

20. Next contention of the noticee is that extending the time limit for issuing the SCN invoking the proviso to sub section 2 of section 110 of Customs Act, without issuing of SCN for this purpose is illegal. The noticee relied on the case law of (i) Principal Commissioner of Customs vs Beauty Gem 2018 (359) ELT 299 (ii) Gaunir Impex Pvt. Ltd. 2017 (3460 ELT 106 (MAD) (iii) M/s Swees Gems & Jewellery-Final Order No. 50283-50284/2019.

20.1. First of all the above case laws (i) Principal Commissioner of Customs vs Beauty Gem 2018 (359) ELT 299 (ii) Gaunir Impex Pvt. Ltd. 2017 (3460 ELT 106 (MAD) are pertaining the period where provisions of Section 110(2) of Customs Act, 1962 was not amended. Further the facts and circumstances as discussed in the said judgments are not identical to the facts and circumstances in the present case, hence the judgments are not squarely applicable to the present case.

20.2. I find that Customs Act was amended vide Finance Act, 2018 with effect from 29.03.2018 and the amended proviso of Sub-Section (2) of Section 110 of the Customs Act, 1962 states that:

"Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply".

Whereas prior to amendment the provisions of Section 110(2) are as under:

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Principal Commissioner of Customs or Commissioner of Customs for a period not exceeding six months.

20.3. From the above it is clear that the proviso to Section 110(2) of Customs Act, 1962 was suitably amended and clause of "on sufficient cause being shown" is not there and the same has been amended and replaced by the clause "for reasons to be recorded in writing". The competent authority i.e. Commissioner of Customs, Kandla has after recording the reasons in writing granted the extension of the same. I found that since the investigation by DRI was taking time and some inquiry were made from the foreign agency. Therefore, it was not possible for issuance of SCN within the 6 months of seizure of goods. Therefore, the Commissioner has extended the time of 6 months after recording reason in writing. Further, I find that amendment of Section 110 came into force w.e.f. 29.03.2018 and present Show Cause Notice was issued on 24.04.2019.

20.4. Further, I find that this issue was examined by the Hon'ble High Court of Rajasthan in an appeal (D.B. Custom Appeal No. 1/2019) filed before the Court against the CESTAT, Delhi Order No. 50283-50284/2019 in the case of M/s Swees Gems & Jewellery. The Hon'ble High Court of Rajasthan allowed revenue appeal by stating the effect of amendments done in section 110(2). The relevant para i.e. para no. 19 of the Hon'ble High Court order is reproduced below for better understanding:-

"The effect of these amendments, is that the rigor of unamended Section 110(2) has been softened. Now, a person, whose goods are detained, can claim provisional release. At the time when IJ Rao was decided, that facility was not available. Seen in the context of these facts, it is apparent that a textual reading of Section 110(2) would lead one to conclude that no separate notice is necessary, before extending the period of limitation by a further six months (for issuance of show cause notice); the authority has to record reasons in writing, which of course, should be based on materials and inform the concerned party about the extension before the expiry of the first period of six months. At this stage, it is necessary to also notice that even in IJ Rao (supra) the court recognized that not all reasons can be disclosed, because investigative process and information gathering can be confidential."

21. Before taking up the classification issue, for sake of brevity, the important facts and key findings of testing labs are discussed in brief. I find that the importer has filed warehousing Bill of Entry for their imported goods declared as "Base Oil SN50-In Bulk" by classifying the imported goods Customs Tariff Head 27101960 of CTA, 1975. The details of the Warehouse Bills of Entry are as below:

Warehouse Bills of Entry No.	Warehouse Bills of Entry Date	Quantity Imported (in MT)	Declared Classification	Port of import	Declared country of origin
6251270	04.05.2018	500	27101960	Kandla	UAE
6251278	04.05.2018	500	27101960	Kandla	UAE

22. I further find that, the officer of DRI has drawn the representative sample from the imported goods from each of the 10 Tanks in the vessel MT AL Heera during Panchnama dated 05.05.2018 and forwarded the same to the Central Excise & Customs Laboratory, Vadodara for testing the sample.

22.1. I find that one set (10 bottles) of sample was drawn and the same was forwarded to Central Excise & Customs Laboratory at Vadodara vide letter F. No: DRI/AZU/CI/INT- 02 /2018 dated 07/05/2018 for testing the sample with request to clarify:-

- (i) Whether the sample confirms to description and Characteristics, Specification and Parameters of "Base Oil SN 50"
- (ii) If the same does not qualify as "Base Oil SN 50" please confirm the whether the Characteristics, Specification and Parameters confirm to Motor Spirit (Customs Tariff Head 271012)/Diesel Oil (Customs Tariff Head 27101930 & 27101940).
- (iii) If none of the above please confirm the identity of the sample.

22.1.1. I find that Central Excise & Customs Laboratory at Vadodara, had sent their report. Details of one of the Test Report/Lab No. RCL/AH/DRI/216 dated 11.05.2018 is reproduced below;

"Report"

The samples have is in the form of light pale yellow coloured oily liquid. It is composed of mineral hydrocarbon oil having following characteristics:

- (1) Flash Point (PMCC)= above 66°C
- (2) Ash Content= NIL
- (3) Acidity= NIL
- (4) Water Content= NIL
- (5) Density at 15°C= 0.8301 gm/ml
- (6) Distillation recovery
 - (i) at 350°C= more than 85%
 - (ii) at 360°C= more than 95%
- (7) Kinematic Velocity at 40°C= 3.80 CST
- (8) Sediment= NIL

In view of the above analytical parameter the sample has characteristics of High Speed Diesel Oil / Automotive Fuel oil confirming to IS 1460:2005 and amended thereafter in terms of parameters 1 to 8 mentioned above. It is "other than Base Oil".

22.2. I further find that on request for re-testing made by one of the Importer M/s Rajkamal, vide letter dated 25.05.2018, the second set of 10 samples was forwarded to Central Revenues Control Laboratory (CRCL), New Delhi vide letter F. No. DRI/AZU/CI/INT-02/2018 dated 05.06.2018 for testing the sample with request to clarify:-

- (i) Whether the sample confirms to description and Characteristics, Specification and Parameters of "Base Oil SN 50".
- (ii) If the same does not qualify as "Base Oil SN 50" please confirm the whether the Characteristics, Specification and Parameters confirm to Motor Spirit (Customs Tariff Head 271012)/Diesel Oil (Customs Tariff Head 27101930 & 27101940).
- (iii) If none of the above please confirm the identity of the sample.

22.2.1. I find that the CRCL New Delhi, had sent their report vide letter F. No. 27-Cus/C-05 to 14/2018-19 dated 03.07.2018, the same is reproduced below;

"Report"

Each of the ten samples is in the form of pale yellow coloured liquid. Each is composed of mineral hydrocarbon oil, having more than 70% mineral hydrocarbon oil and possesses following characteristics:

Test Results of the samples											
Lab No.		CRL-05	CRL-06	CRL-07	CRL-08	CRL-09	CRL-10	CRL-11	CRL-12	CRL-13	CRL-14
TM No.		1A	2A	3A	4A	5A	6A	7A	8A	9A	10A
Characteristics	Limit as per IS 1460:2005 and amended										
Acidity, Inorganic	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Acidity, total mg of KOH/g	To report	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
Ash, percent by mass	0.01(max.)	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Carbon residue(Rams bottom)on 10% residue, percent by mass	0.30(max.)	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Density at 15°C	0.8200-0.8450	.8287	.8316	.8310	.8288	.8284	.8286	.8286	.8282	.8284	.8281
Flash Point (PMCC)	66°C(min.)	113°C	115°C	93°C	88°C	98°C	100°C	95°C	78°C	106°C	111°C
Kinematic Viscosity at 40°C, cSt	2.0 to 4.5	3.7	4.4	4.4	4.4	4.0	3.9	3.5	4.1	4.0	4.0
Kinematic Viscosity at 37.8°C	-	4.3	4.9	4.8	4.7	4.7	4.3	4.3	4.3	4.3	4.3

Distillation range, °C	-	238-356	234-358	234-352	238-354	240-356	238-344	240-354	240-350	240-342	238-325
Percent v/v recovered at 360°C	95	-	-	-	-	-	-	-	-	-	-
95% volume recovered at	-	356°C	358°C	352°C	354°C	356°C	344°C	354°C	350°C	342°C	325°C
Pour Point, Max											
a) Winter	3°C	-	-	-	-	-	-	-	-	-	-
b) Summer	15°C	8°C	8°C	8°C	8°C	8°C	8°C	8°C	8°C	8°C	8°C
Cetane Index	46(min)	65.7	66.0	65.6	66.2	66.0	66.5	66.6	66.6	67.0	67.7
Water content, percent v/v, mg/kg	200(max.)	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil

On the basis of above analytical parameters, each of the ten samples conforms to the specifications of High Speed Diesel Oil/(Automotive Diesel Fuel as per IS 1460:2005 and further amended).

Each is other than Base Oil.

22.3. I further find that other Importer M/s. Rajkamal Industrial Pvt. Ltd., Ahmedabad and its Director Shri Meet Mehta had filed a Special Civil Application before the Hon'ble High Court of Gujarat. The Hon'ble High Court of Gujarat vide an interim order dated 30.07.2018 directed the department to send the requisite quantity of samples to the IOCL, Mumbai which is one of the notified laboratories as per the departments circular dated 16.11.2017. Accordingly, Central Laboratory, Indian Oil Corporation Limited, Mumbai vide letter dated 04.08.2018 was requested to test the samples in accordance with the parameters prescribed under IS 1460:2005. I find that the IOCL, Mumbai is a designated laboratory under Circular No. 43/2017-Customs dated 16th November, 2017 issued under F. No. 401/243/2016-Cus-III for testing of "C-14-C-20 N Parafins", "Petroleum Bitumen 60/70", "Diesel Oil" and "Waksol 9-11 A Grade". The issue in dispute was mainly whether product imported was qualifying as High Speed Diesel, a hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS: 1460:2005. After due confirmation from the Central Laboratory, Indian Oil Corporation Limited, Mumbai the samples were forwarded to them vide letter dated 08/08/2018.

22.3.1. I find that the Central Laboratory, Indian Oil Corporation Limited, Mumbai vide letter REF: IOCL/LSE/10/2018 dated 14/08/2018 gave the Quality Control Test Report for High Speed Diesel. Details of one of the Test Report No. LSE/3791/2018 dated 14.08.2018 is reproduced below:

"Report"

Sr. No.	CHARACTERISTICS	REQUIREMENTS	TEST METHOD(P) of IS:1448/ISO/ASTM	RESULTS
I	Acidity, inorganic	Nil	P:2	Nil
II	Acidity, total, mg of KOH/g, Max	To report	P:2	0.06
III	Ash, percent by mass, Max	0.01	P:4	0.002
IV	Carbon residue(Ramsbottom) on percent residue, percent by mass, Max	0.30	P:8	0.03
V	Cetane Number, Min.	51	P:9	FNA
VI	Cetane Index, Min	46	D-4737	66.9
VII	Pour Point, Max:	3°C/15°C	P:10	-3

	(a) Winter / (b) Summer			
VIII	Copper strip corrosion for 3 hrs at 50°C	Not worse than No. 1	P:15	1a
IX	Distillation, % v/v, recovered at 360°C, Min	95	P:18	95
X	Flash Point a) Abel°C Min b) Pensky martens closed cup, °C, Min	35 66	P:20 P:21	--- 112
XI	Kinematic Viscosity, cSt, at 40°C	2.0 to 4.5	P:25	3.997
XII	Sediment, percent by mass, Max	-	P:30	0.02
XIII	Total Contamination, mg/Kg, Max	24	EN12662	FNA
XIV	Density at 15°C, kg/m ³	820-845	P:16	829.5
XV	Total Sulphur, mg/kg, Max	50	D-4294	37
XVI	Water content, mg/kg, Max	200	ISO-12937	75
XVII	Cold Filter Plugging Point°C(CFPP), Max, (a) Winter (b) Summer	6°C/18°C	P:110	FNA
XVIII	Oxidation Stability, g/m ³ , Max	25	ISO:12205	FNA
XIX	Polycyclic Aromatic Hydrocarbon(PAH), %m, Max	11	IP-391	FNA
XX	Lubicity Corrected Wear Scar Dia.@ 60°C, microns, Max	460	ISO:12156-1	FNA
XXI	Oxygen Content, %m, Max	0.6	Annex.B	FNA

REMARKS:

1. FNA: Stands for "Facility Not Available"

2. Flash Point test was first done by Abel apparatus but, since it was more than 66, it was done by PMCC.

3. As stated in Point No. 6 of your letter F. No. DRI/AZU/CI/ENQ-12(INT-02 /2018)/2018 dated 08/08/2018 stating as per the order of the Hon'ble High Court of Gujarat, this sample has been tested as per Indian Standard IS:1460:2005 as amended & under this specification there are total XXI test covered out of which we have tested only XIV parameters as per our lab capability.

4. This sample meet the specification for only XIV parameters tested as per our lab as per specification IS:1460:2005 amended.

22.4. I find that the test reports of samples of the goods imported have categorically held that the goods were other than base oil and the same have been found to conform to the specifications of High Speed Diesel Oil / Automotive Fuel oil confirming to IS 1460:2005. Accordingly, the imported goods declared as "Base Oil SN50-In Bulk" can not be considered as conforming to the declared description.

23. I find that the test analysis report has been unconditionally accepted by the Shri Parth Narendrakumar Shah, Proprietor of M/s Divinity Impex. I further find that the department had considered the request of the importer repeatedly and got the sample re-tested and sought clarification from the testing laboratories. Further, the laboratories are well equipped and have technical expertise. These facts demonstrate that the department has taken all steps to secure natural justice to the importer.

24. Noticees have argued that the expression 'Flash Point' as per Section 2(c) of the Petroleum Act. 1934 as also the technical parameters for High Speed Diesel Oil as prescribed under IS 1460:2005, it is clearly evident that the consignment in question having a Flash Point of 142°C, being enormously higher than the one prescribed for High Speed Diesel i.e. 66°C, the same can by no stretch of imagination be considered as High Speed Diesel Oil.

24.1. I find that test report of different laboratory came to the conclusion that the imported product is HSD on the basis of different characteristics/parameters which also include Flash point. I find that laboratory have given their test report on the basis of

testing of different characteristics/parameters of HSD. As per specification IS 1460:2005, flash point test is not only criteria to ascertain the conformity in respect to given specification. There are other 13 parameter tested at IOCL Mumbai Lab which also confirms that the given samples are meeting the specification for High Speed Diesel. To understand more on importance of flash point or otherwise, I have searched the literature available on the subject. The literature downloaded from the reputed websites is as under:

Wikipedia

Flash Point :

The flash point of a volatile material is the lowest temperature at which vapours of the material will ignite, when given an ignition source.

The flash point is a descriptive characteristic that is used to distinguish between flammable fuels, such as petrol (gasoline in the US), and combustible fuels, such as diesel. It is also used to characterize the fire hazards of fuels. Fuels which have a flash point less than 37.8 °C (100.0 °F) are called flammable, whereas fuels having a flash point above that temperature are called combustible.

Petrobazaar.com

DIESEL FUELS (HSD/LDO)

DEFINITION

A diesel fuel is any fuel suitable for burning in diesel or compression ignition engines. Petroleum diesel fuels may be distillates or blends of distillates and residual fuels.

In a compression ignition engine, air alone is drawn in to cylinder and compressed until it is very hot (about 500 deg C). At this stage, finely atomized fuel is injected at a very high pressure, which is ignited by the heat of compression and hence the term compression ignition (C.I). A spark ignition engine on the other hand, relies upon a carburetor to supply into the cylinder a mixture of gasoline vapour and air, which after compression, is ignited by a spark.

The average compression ratio of a diesel engine is much higher (about 15:1) than that of a gasoline engine (about 8:1) and this is the reason for the higher thermal efficiency of the diesel engine (about 33% as compared to about 25% of the gasoline engine) which makes for economy in operation.

NOMENCLATURE

Two main grades of diesel fuel are marketed in India, High Speed Diesel (HSD) and Light diesel Oil (LDO). The former is a 100% distillate fuel whereas the latter is a blend of distillate fuel with a small proportion of residual fuel.

END USE

HSD is normally used as a fuel for high speed diesel engines operating above 750rpm i.e. buses, lorries, generating sets, locomotives, pumping sets etc. Gas turbine requiring distillate fuels make use of HSD as fuel. LDO is used for diesel engines, generally of the stationery type operating below 750 rpm.

IGNITION QUALITY

When fuel is injected into the combustion chamber of a diesel engine, ignition does not occur immediately. The interval between the commencement of fuel injection and commencement of combustion is known as the "ignition delay" and is a measure of the ignition quality of fuel. This delay period depends upon the nature of the fuel, the engine design and on the operating conditions. If the delay is too long, the engine may be hard to start and when the accumulated fuel does ignite, the rate of pressure rise may be so great that it causes roughness or diesel knock. The effects of diesel knock are similar to the effects of knocking in gasoline engines, viz. a loss of efficiency and power output and possibility of mechanical damage to the engine if knocking is prolonged.

CETANE NUMBER

The most accurate method of assessing the ignition quality of diesel fuel is by measuring its cetane number in a test engine, the higher the cetane number the higher the ignition quality. The cetane number of fuel is defined as a percentage of cetane, arbitrarily given a cetane number of 100, in a blend with alphas-methyl-naphthalene (cetane number-0), which is equivalent in ignition quality to that of the test fuel.

VISCOSITY

Defined simply, viscosity means resistance to flow or movement. In metric system, centistoke is the unit for its measurement. It is function of the time taken in seconds for a given volume of oil to flow through a calibrated viscometer under specified conditions. Viscosity depends on temperature and decreases as temperature increases, so no numerical value has any meaning unless the temperature is specified.

CARBON RESIDUE

Different fuels have different tendencies to crack and leave carbon deposits when heated under similar conditions. This property is normally measured by the Conradson or the Ramsbottom coke tests. In these tests, a sample of the fuel is heated without contact with air under specified conditions and the weight of carbon residue remaining after the test is expressed as a percentage of the weight of the sample.

VOLATILITY

As a rule, the higher the viscosity of a liquid fuel, the lower its volatility. Therefore provided the viscosity lies within specified limits, a satisfactory volatility is automatically

ensured. However, the percentage recovered at some particular temperature e.g. 366 deg C, is specified in the case of HSD mainly to control engine fouling due to incomplete combustion of the higher boiling components.

TOTAL SULPHUR

This is significant because it governs the amount of sulphur oxides formed during combustion. Water from combustion of fuel collects on the cylinder walls, whenever the engine operates at low jacket temperatures. Under such conditions, sulphurous and sulphuric acids are formed, which attack the cylinder walls and piston rings, promote corrosion, and thus cause increased engine wear and deposits. Total sulphur is expressed as a percentage of the weight of the fuel sample.

CORROSIVE SULPHUR

It is important that diesel fuels shall be free of these sulphur compounds which in themselves attack metal parts of the engine or the fuel system. This characteristic is tested by the Copper Strip Corrosion Test, a severe discoloration or pitting of the polished strip indicating the presence of corrosive sulphur compound in the fuel.

ACIDITY

This should be low in order that corrosion of metals in contact with the fuel during storage and distribution is minimized.

INORGANIC OR MINERAL ACIDITY

Where diesel fuels are treated with mineral acid as part of the refining procedure, traces of mineral acid remaining in the final product would obviously be undesirable. Hence, zero limit is usually specified for this property.

ORGANIC ACIDITY

This is due to the naphthenic type which are constituents of crude petroleum. Their presence in small amounts is not necessarily an indication of improper refining or poor quality. Although much weaker than mineral acids, they may attack galvanized metal and this is why the use of galvanized containers for the storage of diesel fuels is not recommended.

ASH CONTENT

Ash is a measure of the incombustible material present in a fuel and is expressed as a percentage of the weight of the fuel sample. In the case of distillate fuels, it usually consists of rust, tank scale or sand which settles out readily. Blends of distillate and residual fuel, e.g. LDO may additionally contain metal oxide derived from oil soluble and insoluble metallic compounds. Ash is significant because it can give rise to deposit problems such as abrasion, malfunctioning of injectors and high temperature corrosion, particularly with residual fuels.

SEDIMENT AND WATER

These are absolutely undesirable contaminants and should be as low as possible. The higher the specific gravity and viscosity of a fuel, the greater the quantity of water and sediments it can hold in suspension. Large quantities of sediment can affect the combustion of a fuel, and if abrasive, may cause excessive wear of closely fitting parts of fuel pumps and injectors. It may also clog filters and build up deposits in tanks and piping.

POUR POINT

The pour point of a fuel is the lowest temperature at which it will pour or flow when chilled under prescribed conditions. It is a very rough indication of the lowest temperature at which a given fuel can be readily pumped. However, since practical conditions are quite different from those under which the laboratory test is conducted, many fuels can be pumped at temperatures well below their laboratory pour point.

Sometime cloud point is measured. This the temperature at which paraffin wax begins to crystallize or separate from solution when the fuel is chilled under prescribed conditions. This may settle out in the fuel system and cause blockage of filters- leading to malfunctioning or stalling of the engine.

COLD FILTER-PLUGGING POINT

The cold filter plugging point (CFPP) is defined as the highest temperature at which the fuel, when cooled under prescribed conditions, either will not flow through the filter (45 microns) or will require more than 60 seconds for 20 ml to pass through. This is the temperature at which wax crystals begin to cause blockage of filter.

FLASH POINT

This has no bearing on performance but is important largely from the point of view of safety in handling the fuel and minimum values are usually specified in the specification.

The flash point of High Speed diesel is stipulated as min. 32 deg C and thus it falls under the category of Class 'B' of Petroleum products. While other diesel fuels have a flash point of min 66 deg C and hence fall in the category of class 'C' of petroleum products.

SPECIFIC GRAVITY

This is defined as a ratio of weight of given volume of oil to the weight of same volume of water at a given temperature. Another index for measuring this characteristic is by Density, mass per unit volume at a standard temperature. Specific Gravity/Density is of limited usefulness as a direct measure of diesel fuel quality. However, it provides a convenient means of controlling product uniformity in refinery operations and of converting volume to weight. Variations in specific gravity affect the volumetric fuel

consumption of an engine, since the higher the specific gravity the higher the heat content in a unit volume of fuel. However this is not significant in use unless the variations are very large.

These literature amply shows that the high flash point of 'HSD' imported by M/s. Divinity but misdeclared as 'base oil' has no bearing on performance but has bearing on safety in handling only and that is why only minimum value has been specified in IS1460:2005 specifications.

25. It is found that over and above the report of IOCL, the department is having analysis report of CRCL and after analysis, a clear-cut opinion has come on record that the so called base oil imported is definitely HSD. It is also found that there is no product described by the noticee as 'Base Oil SN50' in its import documents and therefore, such description is a deliberate attempt to mislead the department and to suppress the actual imported restricted goods.

26. I find that The Directorate of Revenue Intelligence, Ahmedabad had inquired with Central Revenues Control Laboratory, New Delhi whether the Central Excise & Customs Laboratory at Vadodara and the CRCL, New Delhi had the requisite facilities for testing of samples of HSD against the parameters prescribed under the IS1460:2005 in the light of Circular No. 43/2017-Customs dated 16th November, 2017 issued under F. No. 401/243/2016-Cus-III. The Joint Director, Central Revenues Control Laboratory, New Delhi reconfirmed that the testing facilities for the sample of Base Oil and Petroleum products including HSD/Automotive Diesel Fuel were available at Central Excise and Customs Laboratory, Vadodara and the Central Revenues Control Laboratory, New Delhi on reporting date of Test Reports i.e. 11.05.2018 and 03.07.2018 respectively for the parameters reported in the respective test reports.

26.1 As discussed above, I find that the findings of the three independent laboratories of repute has held that the sample meets the specification for parameters tested as per the specification IS:1460:2005 prescribed for High Speed Diesel, a hydrocarbon oil.

27. The noticee have contested that as per the Supplementary notes to Chapter 27 of the Customs Tariff Act, and as per specifications of BIS, the Flash Point is one of the most important parameter for classifying whether a petroleum product is fuel or not.

27.1 I find that for the safe handling, storage & safe transportation the classification of petroleum products is done on the basis of flash point characteristic, since the petroleum goods are highly inflammable & hazardous. All the petroleum product is further confirm for their categorization by the certifying the product as per

relevant BIS standard. In this case the cargo is meeting the BIS specification IS 1460:2005 for HSD with respect to tested parameters. Further, I find that in the test report of the three independent laboratories other characteristics, specification and parameters have been also discussed in addition to the Flash point, on the basis of which laboratory have come into conclusion that the imported goods is High Speed Diesel. I further find that the noticee have never argued about the other characteristics, specification and parameters of test report.

28. Further, Shri Parth Narendrakumar Shah Proprietor of M/s Divinity Impex, Ahmedabad in his statement dated 20.06.2018 has agreed that the Test Reports of the sample drawn from the goods imported by them per vessel MT. AL HEERA, given by the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara indicated that the sample has characteristics of High Speed Diesel Oil/Automotive fuel oil confirming to IS: 1460:2005 and is other than Base Oil, thereby the goods imported is High Speed Diesel Oil. He has also agreed that he was not aware as to what were the specifications required for Base Oil SN50. He understands that any oil of Flash Point above 94° C may be classified as Base Oil SN50. However, he could not confirm what other specifications determine the classification of the Base Oil as Base Oil SN50.

29. I find that M/s Divinity has not produced any document or evidence to substantiate their claim that the goods imported is 'Base Oil SN50'. M/s Divinity also failed to produce any authentic or statutory literature detailing the specifications and parameters of the product 'Base Oil SN50'. M/s Divinity could not get any independent specification of 'Base Oil SN50' of any authoritative/ statutory body, but he had relied upon the specification of Base Oil SN50 given by their suppliers M/s Renish Petrochem, FZE, Dubai, UAE. However, they themselves accepted that M/s Renish Petrochem, FZE is not the manufacturer but is only a trader and he was not aware that how M/s Renish Petrochem, FZE had issued the analysis report. M/s Divinity also agreed that the analysis report issued by M/s Renish Petrochem, FZE, Dubai, UAE does not pertain to the goods imported.

29.1 I also find that M/s Divinity, purportedly did not place any written order for the goods 'Base Oil SN50' and could not produce any authentic or authoritative literature about what is 'Base Oil SN50'. The trader who purportedly supplied the so called 'Base Oil SN50' to them did not provide the name of refinery where the same was manufactured so that details of the product could be had directly from source.

29.2. Further, Shri Parth Narendrakumar Shah in his statement has said that Mr. Hitesh Mehta is his father's friend and is the owner of M/s Renish Petrochem FZE, UAE. Hence it is evident that Shri Parth Narendrakumar Shah, was well aware about

the nature of the goods, its specifications and its actual suppliers, however they have intentionally kept the department in the dark and have at no stage revealed the details.

30. I find that in this case, certain documents describing it as 'Base Oil SN 50' were prepared. As such, to use the broad terminology to cover an imported petroleum product is only to disguise the correct specification or declaration to be made and to give it a broad spectrum definition with a view to escape any charge of misdeclaration. All such declarations are as absurd as describing "High Speed Diesel" as "Base Oil SN 50". These facts reveal that the whole game plan has been to misdeclare the product so imported, under cover of coining the product broadly as 'Base Oil SN 50'.

30.1. The above deliberation leads me to conclude that Noticees have failed to discharge the onus to prove that goods imported per Al Heera were Base Oil falling under CTH 27101960 of Customs Tariff Act, 1975.

31. Another contention of the noticee is that IS Specification 1460:2005 provides for 21 parameters to be fulfilled in order to confirm as to whether a commodity is High Speed Diesel Oil/Automotive Fuel Oil or not. Test Report has opined its view only on certain parameters.

31.1. Importer is contesting for other parameter which is not tested without questioning the results of other passing numbers of parameters by testing lab. This clearly indicates that they have accepted the conformance of imported goods as per HSD specification tested by three different laboratories. Further, M/s IOCL have tested only 14 parameters out of 22 for HSD IS1460:2005 and since all the parameters have not been tested, it can be said that the sample is of HSD. But, I find fallacy in this argument as the noticee had not pointed out which of these remaining 8 parameters will not be satisfied, if tested. Unless that is pointed out by noticee it is only a hollow argument and has no substances in it. Also M/s IOCL themselves have their refineries and producing HSD. They would have facility to test the vital parameters for determination as to whether the sample meets the specifications of IS1460:2005. Once they have performed the tests for which they have the facility and given the report that the sample meets the 14 parameters of IS1460:2005 for which the facility is available with them, I think nothing remains for determination further and it can safely be concluded that imported item was mis-declared as 'Base Oil SN 50' and sought to be cleared under CTH 27101960. The actual item is 'High Speed Diesel' and that the flash point of the product was increased and even then since the specification prescribe minimum flash point only, all the tested parameters including flash point match with 'High Speed Diesel'.

32. Now the dispute on hand is the correct classification of the imported goods i.e. whether the imported goods falls under CTH 27101960 or CTH 27101930. Coming to the issue of classification of the imported goods as per the tested parameters, I refer to the Supplementary Notes to Chapter 27 of First Schedule to the Customs Tariff Act, 1975.

SUPPLEMENTARY NOTES :

In this Chapter, the following expressions have the meanings hereby assigned to them:

(e) "High Speed Diesel (HSD)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS: 1460:2005;

The scheme of classification ingrained under Chapter 27 of the First Schedule to Customs Tariff Act, 1975 is as under:

SECTION-V		CHAPTER-27			
(1)		(2)	(3)	(4)	(5)
2710		Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils:			
2710 19	----	Other :			
2710 19 10	---	Superior kerosine oil (SKO)	Kg	10%	-
2710 19 20	---	Aviation turbine fuel (ATF)	Kg	10%	-
2710 19 30	---	High speed diesel (HSD)	Kg	10%	-
2710 19 40	---	Light diesel oil (LDO)	Kg	10%	-
2710 19 50	---	Fuel oil	Kg	10%	-
2710 19 60	---	Base oil	Kg	10%	-

32.1. The CTH of 'Base Oil' under 2710 19 60 simply mentions the heading as 'Base Oil'. However, there is no definition of 'Base Oil' in the chapter notes. Further, I do not found any item description as 'Base Oil SN50' in Chapter 27 of CTH. The above scheme envisage that 2710 19 60 will be applicable to only 'Base Oil'. In the above classification schedule to the Customs Tariff Act, 1975, there is no reference about the term 'SN 50' that is employed by the contracting parties. However, the Importer has relied heavily on the description of the goods which is shown as 'Base Oil SN 50' to be classifiable under CTH 2710 19 60. They have also labored hard to drive home the point that goods imported by him as 'Base Oil SN50' is not HSD and hence, they had rightly classified it under CTH 2710 19 60. Support is also drawn from invoices issued by the foreign supplier, packing list, chemical analysis reports etc.

33. On a closure scrutiny, it is observed that the description given in the documents prepared by the foreign supplier and on which basis the Importer filed bills of entry is conspicuously silent as to whether 'Base Oil SN50' is Base Oil or otherwise.

Therefore, the question which is left open and which does not get answered by the various averments of Importer is whether, by sole virtue of their mutually agreed nomenclature as 'Base Oil SN50' would convey a meaning that goods are indeed 'Base Oil' falling under CTH 2710 1960.

34. I find that 'Base Oil SN50' is not a standard product and it does not have any standard specification. When this consensual view relied upon by the Importer is applied to the present case, it becomes clear that specifications supplied by the foreign supplier to Importer for entering into an oral agreement for supply of goods described as 'Base Oil SN50' cannot be considered as forming any standard set of specifications for goods called 'Base Oil'. To put it differently, goods supplied against such pre-ordained specifications and named as 'Base Oil SN50' by the Importer and foreign seller will not *per se* become 'Base Oil' for the purpose of classification under CTH 2710 1960 of Customs Tariff Act, 1975.

35. However, as discussed in paras *supra*, it is evidently proven from the test reports that the imported goods are HSD meeting the specification of IS1460:2005 and classifiable under CTH 2710 1930 of Customs Act, 1962.

36. I find that the Customs Tariff has chosen to classify all products, answering to the specifications prescribed under Supplementary Notes (e) of Chapter 27. The Customs Tariff classifies the goods solely on the physical specifications mentioned under the Customs Tariff. In respect of "High Speed Diesel" Supplementary Notes (e) of Chapter 27 clearly prescribes the specifications. The product imported by the noticee answers to those specifications and thus there is no reason not to classify the said goods in the sub-heading 2710 1930.

37. I also find that Noticees have repeatedly pleaded to get the sample tested by reputed laboratories. I do not find any merit in this plea in as much as the Importer have not put forth any concrete ground for rejecting the test report of Chemical Examiners relied upon in the Show Cause Notice. In fact, the testing by laboratory of M/s IOCL was permitted by the Hon'ble High Court of Gujarat on the plea of one of the importer M/s Rajkamal Industrial Private Limited only.

37.1. I also find that Hon. Supreme Court in case of Polyglass Acrylic Manufacturing Company Limited, 2003 (153) ELT 276 has observed that test report obtained at the instance of revenue has a great force and it should not be ignored. Similarly, Hon. Tribunal in case of Collector of Central Excise, Ahmedabad vs. Cellulose Products of India, 2000 (124) ELT 1133 [maintained by Hon. Supreme Court as reported per 2001 (127) ELT A 165] has observed that test report of Departmental Chemist/Chief Chemist is to be preferred over opinion of outside agencies. I am therefore unable to admit this plea of Importer. I also rely on the decision of Hon. Supreme Court in case of Reliance Cellulose Products Limited, 1997 (93) ELT 646

wherein at para 12 and 13 *ibid*, it is held that the views expressed by the Chief Examiner and Chief Chemist of the Government cannot be lightly brushed aside on the basis of opinion of some private persons obtained by the appellant.

38. I find that the importer's main contention is that since the product is 'Base Oil SN 50', it cannot be treated as 'High Speed Diesel' meriting classification under sub head 2710 1930 and therefore classifiable under CTH 2710 1960. However the Importer could not produce any technical literature to show what the 'Base Oil SN 50' is. Further, I find that the various evidences discussed above clearly indicate that the goods under reference are rightly classifiable under CTH 2710 1930 i.e. 'High Speed Diesel'.

39. I further find that there is no demand of duty in the instant case as they imported goods have yet to be given 'Out of Charge' by Customs after importation. However, by mis-declaration the description of the goods and consequent mis-classification under Customs Tariff in CTH 27101960 in place of correct classification under CTH 2710 1930, M/s Divinity have tried to evade the Customs Duty in addition to circumvent the ITC restrictions on import of goods i.e. HSD. The goods falling under CTH 2710 1930 are restricted for importation as per Import Policy and allowed to be imported through State Trading Enterprises (STE) only, as per Policy Condition (5) of the Chapter 27 of ITC (HS) Schedule -1. The policy condition of the Chapter 27 is reproduced below:-

"Import allowed through IOC subject to para 2.20 of Foreign Trade Policy except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NG's Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date"

39.1. I further find that the importer had not placed on record to show that the import is by either STE or they have not submitted, any documents showing grant of such rights, by the DGFT to import any of the goods notified exclusive trading through STEs. Thus, if the imports are in violation of aforesaid condition, then the same would be liable to action under the Customs Act.

39.2. I find that it is unequivocally proved that the importer has mis-declared the description and classification of imported goods as 'Base Oil SN50' under CTH No. 27101960 instead of 'High Speed Diesel' under CTH No. 27101930, by suppressing its correct description and that the condition stipulated for import through or by STE or against the Special authorization issued by the DGFT, as per the Foreign Trade Policy 2015-2020, were not at all complied with by the importer M/s. Rajkamal, in respect to the import of 'High Speed Diesel' made by them, which was sought clearance by them under the aforesaid Bills of Entry. Therefore, the said goods being restricted goods and

imported in violation of FTP 2015-2020 are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

40. As discussed above, I find that the impugned goods imported by mis-declaring the description and in violation of the provisions of FTP 2015-2020 as notified under Foreign Trade (Development & Regulation) Act, 1992, totally weighing 1000 MTs imported vide warehousing Bill of Entry No. 6251270, 6251278, both dated 04.05.2018, are liable for confiscation under section 111(d) and 111(m) of Customs Act, 1962. Further, I find that the importer by their act of commission and omission making the goods liable for confiscation under section 111(d) and 111(m) of Customs Act, 1962 has made himself liable for penal action under section 112(a) of Customs Act, 1962.

41. I find that in this case Shri Parth Narendrakumar Shah, proprietor of M/s Divinity Impex have indulged in presenting documents falsifying the true identity of the goods, before the Customs authorities for import of the goods. Thus he has knowingly and intentionally made a declaration under the Bill of Entry filed under Section 46 of the Customs Act 1962, which is false and incorrect. Hence, he has committed offences of the nature as described under the Section 112(a) and 114AA of the Customs Act 1962 and has consequentially rendered himself liable to penalty under the said Section 112(a) and 114AA of the Customs Act 1962. Since, he has been found liable for penalty under the Section 112(a) and 114AA, no separate penalty is required under section 117 of the Customs Act 1962.

42. I find that M/s. Renish Petrochem FZE, Dubai, UAE and Shri Hitesh Mehta of M/s. Renish Petrochem FZE, Dubai, UAE being supplier of the goods facilitated the importers in importing the High Speed Diesel, in the guise of 'Base Oil SN 50', which is a restricted good, in violation of policy provisions by way of providing them the documents (i.e. invoice, Certificate of Analysis etc.) showing the export goods as 'Base Oil SN 50' to import High Speed Diesel upon being influenced by importer.

43. I also find that M/s. Renish Petrochem FZE, Dubai, UAE and Shri Hitesh Mehta of M/s. Renish Petrochem FZE, Dubai, UAE have intentionally or knowingly made documents which were false or incorrect. Further, they have intentionally not submitted the actual documents and details regarding the goods shipped by them. By these acts, M/s. Renish Petrochem FZE, Dubai, UAE and Shri Hitesh Mehta of M/s. Renish Petrochem FZE, Dubai, UAE have rendered themselves liable to confiscation under Section 111(d) and 111(m) of the Customs Act and consequentially they are liable to penalty under provisions of Section 112 (a) as well as Section 114AA of the Customs Act 1962. Since, they have been found liable for penalty under the Section 112(a) and 114AA, no separate penalty is required under Section 117 of the Customs Act 1962.

44. I also find that M/s. Renish Petrochem FZE, Dubai, UAE and Shri Hitesh Mehta of M/s. Renish Petrochem FZE, Dubai, UAE had also chartered the vessel MT AL HEERA and provided all the documents containing false details to the shipping line so as to suppress the true description of the co-mingled cargo being shipped by them to all the three Indian importers. For their acts of omission and commission M/s. Renish Petrochem FZE, Dubai, UAE and Shri Hitesh Mehta of M/s. Renish Petrochem FZE, Dubai, UAE have rendered the goods liable to confiscation under Section 111(d) and 111(m) of the Customs Act and consequentially they are liable to penalty under Section 112 (a) as well as Section 114AA of the Customs Act 1962. Since, they have been found liable for penalty under the Section 112(a) and 114AA, no separate penalty is required under section 117 of the Customs Act 1962.

45. I find that the goods imported per vessel MT AL Heera was a co-mingled cargo of three importers namely M/s Divinity Impex, Ahmedabd, M/s Gastrade International, Gandhidham and M/s Rajkamal Industrial Private Limited, Ahmedabad purportedly supplied by three distinct suppliers and was stored without any specific demarcation and was discharged jointly into the onshore tanks without any demarcation. The surveyor and Customs House Broker was also appointed by M/s Rajkamal Industrial Private Limited and subsequently followed by the others. All the three importer have not submitted or produced any credible or authentic literature document in support of the product claimed as Base Oil SN50 imported by them. Such degree of commonality which includes same product, same mis-declaration, same charter of vessel, same vessel, co-mingled goods without demarcation during voyage and during warehousing, same shipping line, same surveyor, same Customs Broker cannot be unplanned or coincidental. Thus it clearly appears that M/s Gastrade International, Gandhidham and M/s Rajkamal Industrial Private Limited, Ahmedabad have also abetted M/s Divinity Impex in the import of High Speed Diesel in the guise of Base Oil SN 50. M/s Gastrade International, Gandhidham and M/s Rajkamal Industrial Pvt. Ltd., Ahmedabad have also conspired with the other co-importers i.e. M/s. Divinity Impex, Ahmedabad in attempting to smuggle the restricted goods viz. High Speed Diesel. The above referred evidences clearly show the modus operandi adopted by the noticees. Such evidences read with admissions by the noticees show the modus operandi adopted by the noticee No. 1, 3 & 4 in misdeclaring the import consignments. In view of the legal position settled by various judgments, the economic offences like misdeclaration of import consignment are shrouded in dark and the facts are not required to be established with mathematical precision. By these deliberate acts and omissions, M/s Gastrade International, Gandhidham and M/s Rajkamal Industrial Pvt. Ltd., Ahmedabad also abetted the practice of illegal imports of restricted goods into India, actively engaged and facilitated practices which were in contravention of the provisions of Customs Act, 1962 as well as other Statutes. Their acts have rendered the goods imported by M/s Divinity Impex, liable to confiscation under Section 111(d) and

111(m) of the Customs Act and consequentially M/s Gastrade International, Gandhidham and M/s Rajkamal Industrial Pvt. Ltd., Ahmedabad are also liable to penalty under provisions of Section 112 (a) of the Customs Act 1962.

46. In view of above, I pass following orders:-

ORDER

- (i) I reject the classification of the imported goods declared as "Base Oil SN 50" under tariff item 27101960 of the Customs Tariff Act, 1975 in Warehouse Bills of Entry No. 6251278 dated 04.05.2018 and 6251270 dated 04.05.2018, filed by M/s. Divinity Impex, Ahmedabad and order to re-classify the imported goods viz. High Speed Diesel under CTH 27101930 of the Customs Tariff Act, 1975.
- (ii) I order for confiscation of the goods covered under Warehouse Bill of Entry, as detailed in Annexure-A to the notice i.e. 1000 MTS of High Speed Diesel at declared assessable value of Rs.4,78,89,766.20/- under Section 111 (d) and 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakh only) in lieu of confiscation under Section 125 of the Customs Act 1962 for re-export purpose only.
- (iii) I also impose a penalty of Rs.75,00,000/- (Rupees Seventy Five Lakh only) on M/s. Divinity Impex, 303, Shetrunjay Residency, B/H Dev Aurum, Anand Nagar, Ahmedabad-380015 (Shri Parth Narendrakumar Shah, Proprietor) under Section 112 (a) of the Customs Act, 1962.
- (iv) I also impose a penalty of Rs.20,00,000/- (Rupees Twenty Lakh only) on M/s Divinity Impex, 303, Shetrunjay Residency, B/H Dev Aurum, Anand Nagar, Ahmedabad-380015 (Shri Parth Narendrakumar Shah, Proprietor) under Section 114AA of the Customs Act, 1962.
- (v) I also impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on M/s. Renish Petrochem FZE, Dubai, UAE [also through 45, Shivalik Bunglows, Anand Nagar Cross Road, Satellite, Ahmedabad-15] under Section 112 (a) of the Customs Act, 1962.
- (vi) I also impose a penalty of Rs. 2,00,000 (Rupees Two Lakh only) on M/s. Renish Petrochem FZE, Dubai, UAE [also through 45, Shivalik Bunglows, Anand Nagar Cross Road, Satellite, Ahmedabad-15] under Section 114AA of the Customs Act, 1962.
- (vii) I also impose a penalty of Rs. 1,50,000 (Rupees One Lakh and Fifty Thousand only) on Shri Hitesh Mehta of M/s. Renish Petrochem FZE, Dubai, UAE [also

- through 45, Shivalik Bunglows, Anand nagar Cross Road, Satellite, Ahmedabad-15] under Section 112(a) of the Customs Act, 1962.
- (viii) I also impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on Shri Hitesh Mehta of M/s. Renish Petrochem FZE, Dubai, UAE [also through 45, Shivalik Bunglows, Anand Nagar Cross Road, Satellite, Ahmedabad-15] under Section 114AA of the Customs Act, 1962.
- (ix) I also impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on M/s Gastrade International, 201, 2nd Floor, Dhiraj Chamber, Plot No: 36 ,Sector-9, Gandhidham, Kutch-370201 under Section 112 (a) of the Customs Act, 1962.
- (x) I also impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on M/s Rajkamal Industrial Pvt. Ltd., 401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad - 380015 under Section 112 (a) of the Customs Act, 1962.


[SANJAY KUMAR AGARWAL]
PRINCIPAL COMMISSIONER

F. No. S/10-10/Adj/Commr./Divinity/2019-20

Dated: 05.12.2019

BY RPAD/ SPEED POST:

To,

- (1) M/s. Divinity Impex,
303, Shetrunjay Residency,
B/H Dev Aurum, Anand Nagar,
Ahmedabad-380015,
- (2) Shri Parth Narendrakumar Shah, Proprietor,
M/s. Divinity Impex,
303, Shetrunjay Residency,
B/H Dev Aurum, Anand Nagar,
Ahmedabad-380015
- (3) M/s. Rajkamal Industrial Pvt. Ltd.,
401, Dev Arc Corporate,
Above Croma, S.G. Highway,
Ahmedabad, Gujarat-380015
- (4) M/s Gastrade International,
201, 2nd Floor Dhiraj Chamber,
Plot No: 36 Sector-9, Gandhidham,
Kutch-370201

- (5) M/s. Renish Petrochem FZE,
Corporate Office Suit 3704, 3705 & 3706,
HDS Tower Cluster F, JLT, PO Box 12537 Dubai, UAE
[Also through 45, Shivalik Bungalows, Anand Nagar Cross Road,
Satellite, Ahmedabad-15]
- (6) Sh Hitesh Mehta,
M/s. Renish Petrochem FZE,
Corporate Office Suit 3704, 3705 & 3706,
HDS Tower Cluster F, JLT, PO Box 12537 Dubai, UAE
[Also through 45, Shivalik Bungalows, Anand Nagar Cross Road,
Satellite, Ahmedabad-15]

COPY TO:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad
2. The Additional Director General, DRI, AZU, Ahmedabad.
3. The Assistant/Deputy Commissioner (RRA), Custom House Kandla.
4. The Asstt/Dy Commissioner (Recovery), Custom House Kandla.
5. Notice Board
6. Guard file.

