



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

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A	File No.	S/10-66/Adj/Commr/Gastrade/2018-19
B	Order-in-Original No.	KND-CUSTM-000-COM-14-2019-20
C	Passed by	Shri Sanjay Kumar Agarwal Pr. Commissioner, Custom House, Kandla.
D	Date of order	0.12.2019
E	Date of issue	0.12.2019
F	Show Cause Notice Nos. & Date	F.No.DRI/AZU/CI/INQ-11(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 Gastrade International and 6 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 paise 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. Gastrade International, 443, Mathura Road, Bhogal, New Delhi-110014, holding IEC No. 0509050531 [herein after referred to as "M/s Gastrade"] is engaged in import and trading of various petrochemicals like, Fuel Oil, Furnace Oil, Base Oil, Mineral Turpentine Oil, Paraffin Wax, Low Aromatic White Spirit etc. M/s Gastrade 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. Further Light Diesel Oil (hereinafter referred to as "LDO") is classifiable under chapter heading 27101940 and attracts the same duties as that of chapter 27101960 i.e. for base oils. As per Import Policy ITC (HS), 2017, High Speed diesel (HSD) and LDO covered under EXIM Code 27101930 and 27101940 respectively, 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".

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. Out of the total cargo of 5561.132 MT per vessel Al Heera, a quantity of 1985.854 MT totally valued at Rs 9,47,86,296/- was imported by M/s Gastrade.

3. A search was conducted at premise of the importer i.e M/s Gastrade, 443, Mathura Road, Bhogal, New Delhi, under Panchnama dated 12.05.2018 wherein the officers found that the premise was locked and nobody was available. Hence the same was sealed under the said panchnama. The said premises was reopened on 14.05.2018 under panchnama dated 14.05.2018 and search was carried out wherein some documents and storage devices were recovered. Search was also carried out under panchnama dated 12.5.2018 at the premises of M/s Gastrade at 2nd Floor, Dhiraj Chamber, Plot No 36, Sector 9, Gandhidham, wherein the officers recovered some files and storage devices.

4. M/s Gastrade International vide letter dated 26.05.2018 contested the Test Report of Central Excise & Customs Laboratory, 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". The importer requested for re-testing of the sample at CRCL, New Delhi or Indian Institute of Petroleum, Dehradun and also requested for provisional release of the seized goods.

4.1. Considering the request for re-testing of M/s Gastrade International, 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 conformed 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.

4.2. The other importer i.e M/s. Rajkamal Industrial Ltd. and its Director Shri Meet Mehta had 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.

4.3. 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.

4.4. 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.

5. M/s Gastrade had also imported consignments with the same description i.e Base Oil SN 50 since Feb, 2018. Hence inquiry was extended to the past consignment to gather more evidences of the material imported in the past. Accordingly, 08 samples pertained to imports made by M/s Gastrade of Base Oil SN50 of M/s Gastrade were provided by the Asstt. Commissioner (D.E), Customs, Kandla. Samples of the following bills of entry of M/s Gastrade were sent to the Central Excise & Customs Laboratory at Vadodara vide various Test Memos all dated 07.06.2018:

1. 5511551 dated 09.03.2018
2. 5281004 dated 19.02.2018

3. 5398812 dated 28.02.2018
4. 6028075 dated 18.04.2018
5. 5616856 dated 17.03.2018
6. 5590857 dated 15.03.2018
7. 5692663 dated 22.03.2018
8. 5788227 dated 29.03.2018

The Chemical Examiner after due testing of the samples as per test memos dated 07.06.2018, vide various reports dated 25.07.2018/ 26.07.2018/ 31.07.2018 opined that the samples met/confirmed the requirements of Light Diesel Oil (LDO) as specified in IS 15770:2008 in terms of the parameters tested by them.

5.1. During the course of the inquiry it was found that M/s Gastrade had sold some consignments of goods imported by declaring the same as Base oil SN 50 to M/s Unique Industries, Survey No. 35, Plot No 1, At Derala, Tal-Maliya Miyana, Morbi. Accordingly, search was carried out at the above mentioned premises of M/s Unique Industries under panchnama dated 27.5.2018 wherein the officers recovered the documents related to the purchase of the said goods from M/s Gastrade. Out of the total goods purchased from M/s Gastrade, the officers also found 15 MT of goods purchased as Base Oil SN50 vide invoice no 658/17.3.2018, issued by M/s Gastrade. The officers drew representative samples from the stored goods and detained the same vide detention memo dated 27.5.2018 and handed over the same to Shri Rajendrabhai Purshottambhai Bhatasana of M/s Unique Industries under Supratnama dated 27.5.2018.

5.2. Samples drawn from the good lying at M/s Unique Industries, Morbi were sent to the Central Excise and Customs laboratory, Vadodara vide test memo dated 29.5.2018. The Chemical Examiner vide his report dated 14th June 2018 opined that the sample is in the form of pale yellow oily liquid. It is composed of mineral hydrocarbon oil more than 70 %.

5.3. Statement of Shri Rajendrabhai P. Bhatasana, partner of M/s Unique Industries, Morbi was recorded under Section 108 of the Customs Act, 1962 on 04.10.2018. Excerpt of his statement is as follows:-

- a. He has stated that they manufacture fuel oil at their factory. He also agreed with the Panchnama dated 27th May 2018.
- b. They started doing business with M/s Gastrade International since February 2018. They were purchasing LAWS (low aromatic white spirit) from M/s Gastrade International prior to February 2018.
- c. When he contacted Shri Deepak Aggarwal for the raw material for making fuel oil, Shri Deepak Aggarwal, informed him that they have another

material which is less expensive and could meet their requirement. Shri Deepak Aggarwal agreed to supply the material on the condition that invoice will have product description as Base oil SN 50 and the material would be similar to LAWS.

- d. Base oil SN 50 was used for maintaining fluidity and Gross Calorific Value of their final product Fuel Oil. Since he was into manufacturing of furnace oil he required lighter oil with density around 0.800 gm / ml for mixing it with furnace sludge (which was purchased from cement and Iron and Steel plants). Since the sludge had a density of around 1.030 gram / ml, it had to be reduced to 0.910 gram / ml to 0.920 gram / ml for being used as furnace oil. This was done by adding lighter oil like MTO, LAWS, LDO etc. which have a density of around 0.800 gram/ml to it. The product supplied by M/s Gastrade International was having density of 0.815 gram / ml and yellowish in colour and had very low viscosity.
- e. He was shown copy of invoice number 658 dated 17th March 2018 of M/s Gastrade International on which the bill of entry number 5511551 was mentioned. He was also shown the test report issued by the Chemical Examiner Grade - II, Central Excise and Customs laboratory, Vadodara dated 27th July 2018 which categorically mentioned that the sample related to goods of bill of entry number 5511551 dated 9th March 2018 is other than base oil and it meets the requirement of light diesel oil as specified in IS 15770:2008. He agreed with the test report issued by the chemical examiner dated 27th July 2018 and also agreed that the goods supplied by M/s Gastrade International to his firm was not base oil SN 50 but light diesel oil conforming to standards of IS 15770:2008. He also stated that before filling up the tank at M/s Unique Industries with the goods supplied by M/s Gastrade International vide invoice number 658 dated 17th March 2018, he had approximately 300 to 500 kgs of other petroleum oil already in the tank. He had used all the material supplied by M/s Gastrade International for manufacturing of furnace oil and not sold it to anybody as such. All the materials received from M/s Gastrade International were similar in nature and used for the same purpose i.e. mixing it with furnace sludge to make the sludge lighter.

5.5 Accordingly, 15 MT of goods declared as Base oil SN 50 imported vide bill of entry number 5511551 dated 9th March 2018 by M/s Gastrade and sold to M/s Unique Industries, Morbi, vide invoice number 658 dated 17th March 2018 totally valued at Rs. 6,60,000/- (assessable value Rs 7,44,107/-) were placed under seizure under Section 110 of the Customs Act, 1962, under reasonable belief that the same are liable for confiscation under the Customs Act 1962, vide seizure memo dated 23rd October 2018.

6. Statement of Shri Deepak Aggarwal, Proprietor of M/s Gastrade, was recorded under Section 108 of the Customs Act, 1962 on 2nd July, 2018, 3rd July, 2018, 31st July, 2018, 1st August, 2018, 8th October 2018 & 2nd April, 2019. Excerpt of his statement is as follows:-

- a. He is the proprietor of the firm and takes decisions regarding all the activities of his firm. He also dealt with the overseas supplier for the import of various items in his firm. The imported product described as Base oil SN 50 was purchased from M/s Renish Petrochem FZE, 37th floor, HDS Tower, Cluster F, JLT, PO Box number 12537, Dubai, through M/s Anaira international, P5, ELOB office, E-32G-19, PO Box No. 50133, Hamariya Free Zone, Sharjah.
- b. During January 2018, Shri Vivek Chandran of M/s Renish Petrochem contacted him for selling Base oil SN 50, which to his knowledge is used for manufacture of lubricating oil / cutting oil, antistatic oil, anti dusting oil, 2T oil, blender for dilution of SN 600 / SN 500, as it has a high flash point which is normally above 150 degrees. To the best of his knowledge there are no BIS or any other standards for Base oil SN 50. However, for a product to classify under base oil, the flash point of the material should be above 150 degree centigrade, since it is mostly used for manufacture of machine oils.
- c. On being shown the panchnama dated 5th May 2018 and the 10 test reports of the samples drawn from their consignment, Shri Deepak found that the Chemical Examiner, Central Excise and Customs laboratory, Vadodara has opined that the sample has characteristics of High Speed Diesel oil / Automotive fuel oil confirming to IS 1460:2005 as amended thereafter, in terms of 1 to 8 parameters of the report.
- d. He agreed that the test report indicated that the goods imported were High Speed Diesel oil and is other than Base Oil. He however could not confirm, how Base oil SN 50 would qualify under group 1 category of base oils. The product was understood by the buyers and sellers as Base oil and hence they had classified the product as base oil under the bill of entry filed before Customs.
- e. He further stated that the parameters of the goods declared by them as Base oil SN 50 and imported by them in the past have remained the same. They had sold the imported base oil SN 50 mostly to M/s Growth Cart India Private Limited, M/s Yamuna Bio Chem, M/s S.N Raj Sales Corporation, M/s Aadi Chemtrade, M/s Unique Industries etc.
- f. He further stated that for import of Base oil SN50 from M/s Renish Petrochem FZE or M/s Anaira International, the quantity, price, terms of

sale etc, was finalized only on phone and no documentary evidence were maintained by them.

- g. He also agreed that Base oil SN 50 cannot be as such used as a fuel. They had sold one or two earlier consignments to M/s Yamuna Bio Energy Private Limited. On going through the statement dated 25th May 2018 of Shri Gaurang Shah, Director of M/s Yamuna Bio Energy Private Limited, he understood that, they were not using Base oil SN 50 in their factory for the manufacture of any machine oils, and were showing that they had manufactured Biodiesel-100 out of it, but actually they had removed the same as Biodiesel-100 without carrying out any process on it. He also stated that they have not challenged the 10 test reports all dated 10th & 11th May 2018.
- h. On being shown the test report of CRCL, New Delhi dated 3rd July 2018 and supplementary notes of chapter 27 wherein meaning of "High Speed Diesel" has been provided, he found that the test report of CRCL, New Delhi has confirmed that all the 10 samples drawn from the import consignment conforms to the specifications of High Speed Diesel oil / Automotive Diesel fuel as per IS 1460: 2005 as further amended.
- i. He was shown Notification No. 07/2015-2020 dated 20th May 2015 issued by DGFT under which High Speed Diesel oil is a restricted item for import subject to policy condition number 05, wherein imports are allowed only 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 number 23015/1/2001-MKT dated 8th March 2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date. Shri Deepak was asked whether M/s Gastrade International, fulfills the condition laid down in the said Notification, to which he stated that his firm did not fulfill the above condition of the Notification.
- j. He accepted the results of 11 parameters mentioned in the test report dated 3rd July 2018 issued by CRCL New Delhi, but not the result pertaining to flash point. He also accepted that the imported consignment is not base oil as mentioned in the test report dated 3rd July 2018.
- k. He was disputing the flash point of the test report dated 3rd July 2018 as the same was not matching with the specifications of diesel manufactured by Indian and International refineries. He stated that the flash point of High Speed Diesel manufactured by the Indian and International refineries were in the range of 45 degrees to 55 degrees centigrade.
- l. He did not have any specific literature of the seized goods. He also did not have the certificate of analysis issued by the original manufacturer i.e. M/s Renish Petrochem FZE, Dubai nor had he requested for the same. Since

the inquiry of DRI began, their email ID deepak@gastrade.com has been closed by them and they are not able to access it.

- m. He was shown the test reports dated 25th, 26th, & 31st July 2018 and he stated that some of the test reports mentioned that the samples were other than base oil, whereas some mentioned that there were no literatures available for Base Oil SN50. He also found that some of the parameters of IS 15770:2008 had been tested and some had not been tested for want of facility. The report mentioned that based on the parameters tested the said samples confirmed to the requirement of Light Diesel Oil (LDO).
- n. They were supplied these goods as Base Oil and no such specifications were either asked by them or provided to them at the time of negotiation. Since M/s Rajkamal was also importing the same goods from the same supplier with description 'Base oil SN50' and the same were being easily sold in the market, they did not inquire much into the specifications of the goods. Whatever Certificate of analysis was sent by the overseas supplier was accepted by them without any verification.
- o. On being shown the statement dated 04-10-2018 of Shri Rajendrabhai P Bhatasana, Partner of M/s Unique Industries, Morbi, he agreed with the same except the fact that he was not satisfied with the end use of the product sold by them.

7. 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/15-12/Gr.I/Gastrade/18-19 dated 25/26.10.2018 addressed to (1) M/s. Gastrade International, 443, Basement, Mathura Road, Bhogal, New Delhi & (2) Shri Deepak Aggarwal, Proprietor of M/s. Gastrade International, 443, Basement, Mathura Road, Bhogal, New Delhi 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.

The Additional commissioner of Customs, Customs House Kandla vide letter F.NO: S/15-14/Gr.I/Unique-Ind/18-19 dated 06.11.2018 addressed to (1) M/s. Unique Industries, Survey No 35, Plot No 1, At Derala, Taluka, Maliya Miyana, Morbi

(2) Shri Rajendra P Bhatasana, Partner of M/s. Unique Industries, Survey No 35, Plot No 1, At Derala, Taluka, Maliya Miyana, Morbi also 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 24/05/2019 in respect of the goods seized by the DRI vide seizure memo dated 23.10.2018.

8. By the said act on the part of M/s Gastrade as discussed in the foregoing paras, it appeared that they have knowingly contravened the provisions of Rule 14 of the Foreign Trade (Regulations) Rules, 1993 in as much as they had wrongly declared the imported product in the bills of entry filed before Customs in order to import goods which were restricted for import by DGFT vide Notification No 07/2015-2020 dated 15th May, 2015. As per Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993 "no person shall employ corrupt or fraudulent practice for the purpose of obtaining any license or importing or exporting any goods." Therefore the import of HSD /LDO by resorting to mis-declaration of description in the import document, before the designated authority of Customs on their part construes "smuggling" as defined in Section 2(39) of the Customs Act, 1962. The provisions of Sub-section (1) and (2) of Section 11 of the Foreign Trade (Development and Regulations) Act, 1992 therefore stand attracted in the instant case and the goods imported by way of mis-declaration of description are to be treated as prohibited goods.

9. M/s Renish Petrochem FZE, Dubai had actually chartered the vessel Al-Heera. Summons dated 09.04.2019 bearing no: CA 172 sr.no: 8574 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 connection with the import of the seized goods loaded on vessel AL HEERA. The Summons was also sent through email info@renishpetrochem.com. However, Shri Hitesh Mehta did not appeared before the DRI officers on the given date. The summons which was dispatched through post was returned by the postal authorities with remarks "OUT OF INDIA/ LONG TIME/ LEFT".

10. Whereas it also appeared from the foregoing that M/s. Renish Petrochem FZE, Dubai, UAE and Shri Hitesh Mehta, of M/s. Renish Petrochem FZE, Dubai, UAE, have also abetted in the act of smuggling of High Speed Diesel in the guise of Base Oil SN 50, in as much as it appeared that they supplied the invoices mentioning the name of the export goods as Base Oil SN50 for co-importer M/s Divinity Impex in the co-mingled cargo, and unsubstantiated Certificate of Analysis indicating the Flash Point of the purported Base Oil SN 50 as 142°C, to facilitate the importer to clear the goods as Base Oil, though, the load port Certificate of Quality report from M/s Geo-Chem Middle

East FZE in respect of the shipment on board vessel MT Al Heera, indicated the flash point of the goods shipped to be 106°C. 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 him to all the three Indian importers.

11. It also appeared that the other co-importers M/s Rajkamal Industrial Pvt Ltd, Ahmedabad and M/s Divinity Impex, Ahmedabad have alongwith M/s Gastrade International hatched a conspiracy to smuggle the High Speed Diesel in the guise of Base Oil SN50. They had very systematically created distinct overseas suppliers to avoid any linkage to the actual supplier. Shri Deepak Agarwal, Proprietor of M/s Gastrade International, admitted that it was not possible to identify the goods separately in the said vessel Al Heera as the same material was also imported by M/s Rajkamal Industrial Pvt Ltd, Ahmedabad and all the goods were supplied by M/s Renish Petrochem FZE. This was further evident from the fact that the Certificate of Quality report in respect of the shipment on the vessel MT Al Heera, available with the master of the vessel was issued for M/s Renish Petrochem FZE, by Geo-chem Middle East FZE and the same was also submitted by M/s. M K Shipping & Allied services, the Shipping Agent for the vessel MT Al Heera, vide their letter dated 27.10.2018. On records, Shri Hitesh Mehta, of M/s. Renish Petrochem FZE, Dubai, UAE, had supplied the lowest quantity of the lot i.e. 1000MT to M/s Divinity Impex, Ahmedabad but had in fact chartered the vessel MT AL HEERA and provided all the managed documents to the shipping line so as to suppress the true description of the goods being shipped on vessel MT Al Heera. Further the cargo was a co-mingled cargo purportedly supplied by three distinct suppliers to three distinct importers 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 charterer of vessel, same vessel, co-mingled goods without demarcation during voyage and during warehousing, same shipping line, same surveyor, same Customs Broker and even the same modus to defraud exchequer and thwart investigations cannot be unplanned or coincidental. Thus it clearly appeared that M/s Rajkamal International, Ahmedabad and M/s Divinity Impex, Ahmedabad have also abetted M/s Gastrade International, in the import of High Speed Diesel in the guise of Base Oil SN 50. Their acts have rendered the goods imported by M/s Gastrade International, liable to confiscation under Section 111 of the Customs Act and consequently they were also liable to penalty under Section

112 (a) of the Customs Act 1962 in the present case of import by M/s Gastrade International.

12. In light of the above facts, a show cause notice F. No. DRI/AZU/CI/ENQ-11(INT-02/2018)/2018 dated 24.04.2019 was issued by the Principal Additional Director General, Directorate of Revenue Intelligence, Ahmedabad to M/s. Gastrade International (Proprietor- Shri Deepak Aggarwal), 443, Mathura Road, Bhogal, New Delhi- 110014, 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 seized goods i.e. 2000 Mts (Bill of entry quantity), 1985.854 MT (seized Quantity) of High Speed Diesel valued at Rs. 9,47,86,296/- and mis-declared as Base Oil SN 50 in the Bills of Entry as per Annexure-A to the SCN, and seized vide seizure Memo 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 seized goods i.e. High Speed Diesel quantity 1985.854 MT (2000 Mts -Bill of entry quantity), having Assessable value of Rs. 9,47,86,296/- and mis-declared as Base Oil SN 50 in the Bills of Entry as per Annexure-A, should not be confiscated under the provisions of Section 111(d) and (m) of the Customs Act, 1962 read with relevant provisions of FTP 2015-2020 as discussed above;
- (iii) Penalty should not be imposed on them under Section 112 (a) and (b) of the Customs Act, 1962 and Section 114AA of the Customs Act, 1962 separately;
- (iv) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962;

12.1. Further, M/s. Gastrade International (Proprietor- Shri Deepak Aggarwal), 443, Mathura Road, Bhogal, New Delhi- 110014 was called upon to show cause to the Principal Commissioner /Commissioner of Customs, Customs House, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat as to why:-

- (i) The seized goods i.e. 15 MT of Light Diesel Oil having invoice value of Rs 6,60,000/- and assessable value of Rs 7,44,107/- and mis-declared as Base Oil SN 50 in the Bill of Entry no 5511551 dated 9.3.2018, and seized vide seizure Memo dated 23.10.2018, should not be classified under the Customs Tariff Heading 2710 1940 instead of declared Customs Tariff Heading 2710 1960;

- (ii) The seized goods i.e. 15 MT of Light Diesel Oil having invoice value of Rs 6,60,000/- and assessable value of Rs 7,44,107/- and mis-declared as Base Oil SN 50 in the Bill of Entry no 5511551 dated 9.3.2018, should not be confiscated under the provisions of Section 111(d) and (m) of the Customs Act, 1962 read with relevant provisions of FTP 2015-2020 as discussed above;
- (iii) Penalty should not be imposed on them under Section 112 (a) and (b) of the Customs Act, 1962 and Section 114AA of the Customs Act, 1962 in respect of the seized goods at (i) above, separately;

12.2 Further, M/s Unique Industries, Survey number 35, plot No. 01, At. Derala, Taluka Maliya Miyana, District Morbi was called upon to show cause to the Principal Commissioner /Commissioner of Customs, Customs House, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat as to why:-

- (i) The seized goods i.e. 15 MT of Light Diesel Oil having invoice value of Rs 6,60,000/- and assessable value of Rs 7,44,107/- and mis-declared as Base Oil SN 50 in the Bill of Entry no 5511551 dated 9.3.2018, should not be confiscated under the provisions of Section 111(d) and (m) of the Customs Act, 1962 read with relevant provisions of FTP 2015-2020 as discussed above;
- (ii) Penalty Should not be imposed on them under Section 112(b) of the Customs Act, 1962.

12.3. Further, Shri Rajendra Bhatasana, Partner of M/s Unique Industries, Survey No. 35, Plot No. 01, At. Derala, Taluka Maliya Miyana, District Morbi was called upon to show cause to the Principal Commissioner/Commissioner of Customs, Customs House, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat as to why Penalty should not be imposed on him under Section 112(b) of the Customs act, 1962.

12.4. 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), 114AA as well as under Section 117 of the Customs Act, 1962, separately.

12.5. Further, M/s Rajkamal Industrial Pvt Ltd, 401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad and M/s Divinity Impex, 506, Shivalik Abase, 100 Ft. Anand Nagar Road, Anand Nagar, 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.

13. DEFENCE REPLY:

13.1. M/s Gastrade International vide letter dated 19.09.2019 has filed their defence reply and written submissions.

13.1.1. GOODS IMPORTED BY THE COMPANY IS BASE OIL SN 50 – The Noticee has rightly declared the impugned goods as Base Oil SN 50 and classified it under Chapter Heading No. 2710 1960 of the Customs Tariff Act, 1975 based on the import documents. Base Oil has not been defined under Chapter 27 of the Customs Tariff Act. The Investigating Authority has allegedly classified it as HSD under Chapter Heading No. 2710 1930 based on test reports issued by the Chemical Examiner at Central Excise and Customs Laboratory at Vadodara, Central Revenues Control Laboratory (CRCL), New Delhi and the Central Laboratory, Indian Oil Corporation Ltd, Mumbai.

13.1.2. "High Speed Diesel" has been defined under Supplementary Notes of Chapter 27 of the Customs Tariff Act. It means any Hydro-Carbon Oil conforming to the India Standard Specifications of Bureau of Indian Standards IS 1460: 2005. Indian Standard ISI 1460; 2005 provides 21 specifications for classifying the product as HSD. Therefore, binding condition for considering a product as HSD and classifying it under Customs Tariff Item 27101930, is that the product must confirm to the Indian Standards Specification of Bureau of Indian Standards IS: 1460:2005. If one or more parameter does not match the said specification, the product cannot be classified as HSD under Tariff item 27101930.

13.1.3. Total 21 Parameters have been prescribed in IS: 1460:2005. However, only 14 Parameters have been tested by IOC. Further, IOC has not given its conclusion also. Thus, the report cannot be termed as complete and conclusive. Since all the 21 Parameters of the impugned product have not been matched with the said IS specifications, the impugned product cannot be classified as HSD. The supplementary Note (h) of Chapter Notes of Chapter 27 of First Schedule of the Customs Tariff Act, 1975 defines "lubricating oil" as any oil, which is ordinarily used, for lubrication, excluding any hydrocarbon oil, which has its flash point below 93.3° C.

13.1.4. It is submitted that lubricating oils are obtained from base oils by mixing appropriate additives. Base Oils typically make up 70% to 99% of a lubricant's formulation. Thus, it is obvious that a product having flash point of more than 93.3° C is used as Base Oil/ Lubricating Oil and cannot be termed or used as HSD. Since flash

point of impugned product has been found to be 110°C or more, it cannot be classified as HSD.

13.1.5. Section 2 of the Petroleum Act, 1934 defines petroleum products in three categories as class A, class B and class C, on the basis of flash point. It clearly states that Petroleum Class 'A' means petroleum having a flash point below 23°C e.g. Petrol, Hexane, Toluene, Naphtha, (ii) Petroleum Class 'B' means petroleum having a flash point of 23°C and above but below 65°C. e.g. HSD, SKO, MTO etc. and (iii) Petroleum Class 'C' means petroleum having a flash point of 65°C and above but below 93°C. Further in respect of Section 11, the Work manual states that no licence is required for any petroleum which has its flash point above 93°C. e.g. Lubricants, LSHS etc. As per test reports of impugned product, its flash point is 110°C or above. Therefore, it cannot be classified as Class B petroleum product. As HSD has been shown as class B petroleum product, the impugned consignment is clearly not HSD.

13.1.6. Further, the Work Manual deals with the petroleum product which has its flash point above 93°C giving examples of Lubricants, LSHS etc. It is submitted that Base Oil and Lubricants have only minor difference as Base Oil is processed/comingled with certain products in small quantities for obtaining desired type of Lubricant. Thus, from the above it is clear that any product having flash point above 93°C is not HSD or any other class B petroleum product.

13.1.7. TEST REPORTS ISSUED BY 3 DIFFERENT LAB NOT RELIABLE – The Noticee submits that Indian Standard ISI 1460: 2005 provides 21 specifications for classifying the product as HSD. Test Reports of the Chemical Examiner, Vadodara itself recorded that only 8 parameters had been tested and that based on the testing of the 8 parameters, the sample had characteristics of high speed diesel oil/automotive fuel oil confirming to IS Specification 1460: 2005 as amended. Since the tests were conducted only in respect of 8 parameters, rendering the said Reports inconclusive and unreliable.

13.1.8. The Noticee submits that the readings of certain parameters of test reports issued by Chemical Examiner at Vadodara that were tested were also completely vague and unscientific. As an example, the reading regarding the parameter Flash Point was recorded as 'above 66°C'. Such a reading is clearly vague inasmuch as whether the flash point of the samples drawn was 500°C or 1000°C or 10,000°C, is not known, leaving it open to any person's imagination. It is for this reason as well that the Noticee requested for re-testing of the samples on all 21 parameters from an independent and reputed laboratory such as Indian Institute of Petroleum, Dehradun.

13.1.9. It is submitted that Central Revenues Control Laboratory (CRCL), New Delhi in his Test Report dated 03.07.2018 certified that the substance was HSD. As the certificate shows that the flash point of the liquid in the range of 78°C to 113°C for

different samples as the flashpoint in case of HSD should be 66°C. The conclusion therefore the liquid was HSD, was not in consonance with the test report. The Noticee contended before the Hon'ble Court that the Department's own Circular recognized that the Departmental laboratories do not have sophisticated equipments needed to carry out certain test. The Hon'ble High Court vide Order dated 30.07.2018 directed the investigating authority to send the requisite quantities of samples to IOCL at Mumbai which is one of the notified laboratories as per Department's Circular dated 16 November, 2017. In view of the order passed by the Hon'ble Gujarat High Court in the case of Rajkamal Industrial Pvt Ltd, the samples were sent to IOCL, Central Laboratory Mumbai for retesting of the goods.

13.1.10. It is submitted that Central Revenues Control Laboratory (CRCL), New Delhi in his Test Report dated 03.07.2018 certified that the substance was HSD. As the certificate shows that the flash point of the liquid in the range of 78°C to 113°C for different samples as the flashpoint in case of HSD should be 66°C. The conclusion therefore the liquid was HSD, was not in consonance with the test report. The Noticee contended before the Hon'ble Court that the Department's own Circular recognized that the Departmental laboratories do not have sophisticated equipments needed to carry out certain test. The Hon'ble High Court vide Order dated 30.07.2018 directed the investigating authority to send the requisite quantities of samples to IOCL at Mumbai which is one of the notified laboratories as per Department's Circular dated 16 November, 2017. In view of the order passed by the Hon'ble Gujarat High Court in the case of Rajkamal Industrial Pvt Ltd, the samples were sent to IOCL, Central Laboratory Mumbai for retesting of the goods.

13.1.11. It is submitted that in any case only 14 out of 21 parameters have been tested. It is not shown as to how the other 7 parameters were irrelevant and inconsequential and were not required to be tested before concluding without anything else that the product was HSD. Further, it is relevant to point out that none of the customers, wherein the investigations have been conducted by the investigating authorities, confirmed that what has been sold to them is Diesel oil and not base oil.

13.1.12. It is submitted that an expert, Shri Bhavadip N. Vaidya, Managing Director of HARB Global Consultants Pvt. Ltd. has given an opinion of the aspect of factors distinguishing Base Oil SN 50 from HSD Oil. He has opined that in order to distinguish a sample of Base Oil SN 50 and HSD Oil, all parameters specified in law have to be considered simultaneously, and a sample proclaimed as "Base Oil" cannot be considered as HSD Oil merely because a few specifications/parameters meet with the parameters of HSD Oil.

13.1.13. It is submitted that any product having flash point of above 66 degrees

would be HSD, is manifestly incorrect and contrary to supplementary notes to Chapter 27 of the Customs Tariff Act, 1975 as for a product having Flash Point of above 93 degrees, the same has been classified and identified under the Customs Tariff as Jute Batching Oil/textile oil. Further, Shri Dwivedi has explained as to how a product having a flash point as high as 110-112 degrees would not be suited for use in a diesel engine.

13.1.14. It is submitted that Test Reports issued by IOCL, Central Laboratory, Mumbai stated that the sample meets the specification for only XIV parameters tested at the laboratory as per specification IS:1460;2005 amended. Flash point in the test reports show in the range of 110-112 degrees and therefore, the disputed goods should not be HSD as alleged by the investigating authorities. These reports have been issued by Dr. Gobind Singh, Manager (Lab.) and they **desire to cross-examine**.

13.1.15 VALUE OF IMPORTED GOODS - The Noticee submits that the captioned Show Cause Notice has not alleged value of the imported goods. It is submitted that price of Base Oil cannot be compared with the price of HSD. HSD's price is always lower than Base Oil SN 50.

LIGHT DIESEL OIL (LDO)

13.2. The Show Cause Notice has proposed to confiscate 15 M.T. imported under Bill of Entry No. 5511551 dated 09.03.2018 and seized under Seizure Memo dated 23.10.2018 on the alleged premise that the Noticee mis-declared description of the imported goods by declaring Base Oil SN 50 and classified under Customs Tariff Heading 27101960 instead of Customs Tariff Heading 27101940. The Show Cause Notice proposes for confiscation of the goods under Section 111(d) and (m) and imposition of penalties. The Show Cause Notice refers to test reports dated 07.06.2018 whereby it was opined by Central Excise & Customs Authority at Vadodara that the samples met the requirements of Light Diesel Oil (LDO) as specified in IS 15770:2008 in terms of parameters tested by them. Similarly, the goods imported by the Noticee under the above referred Bill of Entry was partly sold to M/s. Unique Industries. The Investigating Authority drew the sample from the buyer's premises and tested the said goods through Central Excise and Customs Laboratory whereby it was alleged after referring to Test Memo dated 29.05.2018 that the sample was in form of pale yellow oil liquid and composed of mineral hydro carbon oil more than 70%.

13.2.1. The Noticee denies that they mis-declared description of goods. The Noticee denies that they imported LDO in guise of Base Oil SN 50. It is submitted that Central Excise and Customs Laboratory, Vadodara did not test the goods as per the requirements of IS 15770:2008. Bureau of Indian Standards (BIS) provides 11

specifications to ascertain whether the goods in dispute is LDO or not. The laboratory at Vadodara examined only 8 specifications out of 11.

13.2.2. It reveals that the Vadodara Laboratory has not examined three specifications viz. Carbon residue, Pour Point and Sulphur level which are vital as per BIS 15770:2008. BIS provides that sediment should be maximum 0.10. The Vadodara laboratory examined it and only pointed out that there is presence of sediment in the samples. Merely mentioning presence of sediment in the sample, does not mean that the sample meets the criteria with LDO as alleged in the report.

13.2.3. The Noticee submits that BIS 15770:2008 specifically provides the sample of the material shall be drawn as prescribed in IS 1447. The test report in question has not specified whether the sample has been drawn as prescribed in IS 1447. In absence of providing method of drawing sample in test results, result as pointed out in the test report cannot be relied upon.

13.2.4. It is submitted that other public sector undertakings viz. ONGC, IOC, Bharat Petroleum are dealing in LDO. When they sell LDO, they test the samples under the 11 specifications for examining the goods whether it is LDO or not. The above public undertakings specified for testing method and specification for LDO.

13.2.5. It is submitted that Bharat Petroleum Oil specified specification for LDO wherein it specified that LDO is blend of distillate components and small proportion of residual components. It falls under class C category with flash point of above 66°C. It is marketed under BIS 15770:2008 specification. LDO is used for slow diesel engine. It is used in lift irrigation pump set, D.G. set as a fuel in certain boilers and furnaces and raw Sulphur fuel is required. In the present case, the Vadodara Laboratory has not examine Sulphur level as well as copper strip corrosion and pur point. As per Bharat Petroleum, Sulphur level is compulsory.

13.2.6. During the course of interrogation, a statement of Shri Rajendra P. Bhatasana, Partner of M/s. Unique Industries was recorded wherein he was shown test report issued by the Chemical Examiner dated 27.07.2018 and after perusal of it, he agreed that the test report issued by the Chemical Examiner and agreed that goods supplied by the Noticee was not Base Oil but LDO confirming to standard of IS 15770:2008. The Noticee submits that oral statement of the buyer cannot be relied upon specifically when method of drawl of sample and characteristics of the samples have not been tested as per IS 15770:2008. Even the buyer specifically mentioned in his statement that approximately 300 to 500 kgs of other petroleum oil was lying in the tank before they stored purchased Base Oil SN 50 from the Noticee. In such situation, samples drawn from the tank and sent to laboratory cannot be relied upon.

13.2.7. The statement of the Noticee was recorded whereby he specifically denied that he imported LDO. The investigating authority ought to have appreciated that value of LDO is always lower than the Base Oil and therefore, it would not be feasible for the Noticee to import Base Oil SN 50 in guise of LDO.

13.3. PAST IMPORT - It is submitted that the Noticee and several other importers imported consignments of Base Oil in the past and the same were cleared by customs after test reports in which the samples were found to comply with the specifications of base oil. It is pertinent to note as per various test reports, the samples were clearly found to have a flashpoint of more than 94 degree centigrade.

13.4. The Noticee submits that the Hon'ble Tribunal in the case of Gulf First Petro Product Pvt Ltd Vs C.C.Ex reported in 2014 (310) ELT 393 held that there is no definition of 'base oil' in the chapter notes. The only criterion considered for classification of 'lubricating oil' is flash point. In this case, according to the report of Customs House Laboratory, the flash point of the imported product is above 94° C. Once the flash point is above 94° C, the product cannot be classified under heading 'lubricating oil' at all, since the flash point has to be below 93.3° C.

13.5. SUPPLIES OF HSD BY BPCL, HPCL AND OTHERS- It is submitted that other reputed suppliers viz. HPCL, BPCL and other renowned suppliers supplied HSD having flashpoint not above 75°C. In none of the cases, flashpoint has gone beyond 75°C.

13.6. RE-EXPORT- It is submitted that although they imported the said goods by considering it as Base Oil SN 50, they do not intend to clear the said goods for home consumption and therefore, the restriction regarding import through canalized agency is not applicable which is only in case where the said goods would have been cleared for use or sale or consumption within India. As they do not intend to remove/clear the said goods for use, consumption or sale in India, they would re-export the said goods in terms of the Order dated 03.06.2019 passed by the Hon'ble Tribunal permitting for re-export the goods. They rely on a recent decision of the Hon'ble Tribunal in Sahil Diamonds vs. Commissioner 2010 (250) LT 310 where also, the Hon'ble Tribunal allowed re-export although the importer had not fulfilled one of the conditions for import, viz., production a valid Kimberley Process Certificate ("KPC"). This decision has also attained finality since the Hon'ble Supreme Court vide Order dated 1st April, 2010 dismissed the Civil Appeal filed by the Department. In these circumstances, the goods cannot be confiscated under the provisions of Section 111 of the said Act.

13.7. CONFISCATION UNDER SECTION 111(d) & 111(m) — It is submitted that in view of the submissions made herein above, they have correctly declared the disputed goods as Base Oil SN 50 and therefore, the same cannot be treated as mis-

declaration in description of the goods. Base Oil SN 50 is freely importable and no any restriction has been provided like HSD. Base Oil SN 50 can be imported by any importer without any license. In absence of any restrictions, goods cannot be confiscated under the provisions of Section 111(d) and (m) of the Customs Act.

13.8. It is submitted that as the said goods are Base Oil SN 50, there is no violation of any of the provisions of the said Act or the said Policy meaning thereby that the alleged restriction of the said goods being canalized for import through canalized agency only also does not apply at all. The said goods can be freely imported into India. Hence, the said goods are not liable for confiscation under Section 111(d) of the said Act or otherwise.

13.9. It is submitted that the disputed goods are not liable for confiscation under the provisions Section 111(d) and (m) of the said Act, in the light of the submissions hereinabove, no penalty at all can be imposed on the Noticee and/or its directors under the provisions of Section 112(a)/(b) thereof. As is clear from the text of Section 112(a) the provisions thereof can be invoked in respect of persons who, in relation to any goods, does or omits to do any act which has rendered the goods liable to confiscation under Section 111 of the said Act. Further penalty can also be imposed under Section 112 (a) on persons who abet the doing or omission of such an act. In the instant case inasmuch as the Base Oil has not been imported contrary to any prohibition imposed by or under said Act or any ether law for the time being in force the same are not liable for confiscation under Section 111(d) thereof and consequently no penalty under Section 112 (a) is imposable.

13.10. So far as penalty under the provisions of 112(b) is concerned, it is submitted that penalty thereunder is applicable on person who acquired possession of or in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable for confiscation under Section 111. In the instant case, the Noticee has not at all concerned themselves with any of the aforesaid activities concerning the Base Oil post the arrival thereof within the territorial waters of India and, thereof no penalty can be imposed on them under Section 112(b) of the said Act.

13.11. It is submitted that directors of the Noticee are not liable for penalty under the provisions of Section 114AA of the said Act inasmuch as they have not signed or used, or caused to be made, signed or used, any declaration, statement or documents which is false or incorrect in any material particular, in the transaction of any business for the purposes of the said Act.

14. Shri Vipul Patel and Shri Sumit Patel both partners of M/s Unique Industries, Morbi appeared for personal hearing on 19.09.2019 on behalf of co-noticee No. 6 & 7 of the SCN. They submitted a written reply and stated that they purchased

"Base Oil SN50" from M/s Gastrade to manufacture Industrial Fuel Oil and not used this product as diesel or LDO to sell.

15. Other co-noticee 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.

PERSONAL HEARING:

16. Personal Hearing (P.H.) in the case was first fixed on 22.08.2019 for all the noticees, however, no one appeared on the said date.

A.1. M/s Gastrade International vide letter dated 21.08.2019 have sought for adjournment of personal hearing and sought to re-fix in the second week of September 2019. M/s Unique Industries, Morbi vide letter dated 22.08.2019 also requested to give new date for submitting their written reply. Accordingly, Second P.H. was fixed on 19.09.2019 for all the noticee 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.

A.2. M/s Gastrade International vide letter dated 19.09.2019 have sought for adjournment of personal hearing and requested to fix next date of hearing. Accordingly, next P.H. and cross examination was fixed on 15.10.2019 for all the noticee 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. Shri Deepak Agarwal, Proprietor of M/s Gastrade International and Shri Hardik P Modh, Advocate appeared for P.H. on 15.10.2019 on behalf of M/s Gastrade International and co-noticee at sr. no. 2 of the SCN. On the fixed date 15.10.2019, Dr. Gobind Singh, DGM (Lab) IOCL, Central Lab, Sewree, Mumbai not appeared for cross examination and requested to fix next date. Accordingly, another date was given to them on 07.11.2019.

A.3. Next P.H. and cross examination was fixed on 07.11.2019 for all the noticee 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.

A.4. Shri Rajesh Kumar Jha, Manager of M/s Gastrade International and Shri Hardik P Modh, Advocate appeared for P.H./Cross Examination on 07.11.2019 on behalf of M/s Gastrade International and co-noticee at sr. no. 2 of the SCN. 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: Dr. Gobind Singh.

Q: Where have you been working and for how long?

A: I have been working in IOCL at Sewree at Mumbai since 2012.

Q: How many samples have you tested In respect of petroleum products?

A: I have tested large number of samples running into hundreds of samples.

Q: Are you aware of letter dated 04.08.2018 written by the Assistant Director of DRI whereby it was requested to Mr. Vivek W. Sawant, DGM, IOCL to test the samples as requested under test memo in accordance with the parameters prescribed under IS 1460:2005 for "High Speed Diesel" and to categorize the identity of the goods. Had you tested these good only to ascertain whether the parameters prescribed under Indian Standard IS 1460:2005 for High Speed Diesel?

A: Yes.

Q: As per the letter dated 04.08.2018, you were requested to verify whether the samples were HSD as per IS : 1460:2005. Have you followed these instructions?

A: Yes.

Q: Have you signed the test reports annexed with "Relied upon Documents" at Sr. No. 14 to the Show Cause Notice dated 24.04.2019?

A: Yes.

Q: What does it mean 'reviewed by'?

A: The samples were tested by me and checked, supervised and signed by my senior at the lab.

Q: Table I of IS 1460:2005 provides total 22 parameters are to be tested for ascertaining whether the sample meets with the criteria of HSD?

A : The Sample meets with the specification IS 1460:2005 for the parameters tested at our laboratory which are 14 parameters tested as per our lab capabilities.

Q: Does it mean that the other 8 parameters are not important for ascertaining or deciding whether the sample meets with the criteria of HSD?

A: Already provided in the report that in the lab the samples were tested as per IS 1406:2005 and there is facility available only for testing of 14 parameters and for the remaining 8 parameters, the facility is not available for which I can't comment.

Q: Do you know the function/characteristics of the 8 parameters provided under IS 1406:2005 that have not been tested?

A: As the 8 parameters have not been tested, I can't comment in respect of these parameters.

Q: On perusal of report, have you concluded that it meets with the criteria of high speed diesel of IS 1460:2005?

A: Again, it is submitted in the report that the samples tested for 14 parameters as per IS 1406:2005, at the lab which itself is for high speed diesel.

Q: In respect of Flash Point, two methods are prescribed, Abel as well as PMCC. Remark No. 2 of test report provides that flash point was tested by Abel apparatus method but since it was more than 66°C, sample was tested by PMCC. In which situation, sample of HSD is required to be tested at Abel method and PMCC method?

A: If the temperature is above 66°C then PMCC is required and if the temperature is below 66°C than it is required to do with Able method.

Q: Do you think so one of the ingredients for considering HSD is flashpoint?

A: Can't comment on ingredients. The minimum temperature for Flash Point 35°C as prescribed in standard. We have submitted the report.

Q: What is the maximum and minimum flashpoint for considering the sample as HSD?

A: Only the minimum limit is talked about that is 35°C and there is no maximum limit prescribed in the standard.

Q: If case, the Flash Point exceeds above 100°C, 150°C, 200°C etc. , then does it still pertains to HSD standard?

A: Can't comment as above 35°C whatever the Flash Point is, it does not matter.

Q: Point No. I of supplementary note of Chapter 27 of Customs Tariff Act provides that "Jute Batching Oil", "Textile Oil" are Hydrocarbon oils, which have their flash points on and above 93°C. In case flash point exceeds 93°C, what you call it?

A: Can't comment. As flashpoint isn't the only parameter. We have tested the samples that were submitted to us as per IS 1460:2005.

Q: IOCL supplies HSD to various parties. Have you ever come across any situation in which you have found the Flash Point of all these test reports above 93 °C and considered as a HSD?

A: Flash Point is not the only parameter which is used to measuring the sample as per IS 1460:2005.

Q: Can you say it is an automotive diesel?

A: Already written in the lab report and we have tested the samples as per the parameters as per IS 1460:2005.

A.5. Next P.H. was fixed on 26.11.2019. Shri Rajesh Kumar Jha, Manager of M/s Gastrade International appeared for P.H. on 26.11.2019 and reiterated their previous submissions.

DISCUSSION AND FINDINGS:

17. I have carefully gone through the Show Cause Notice dated 24.04.2019, records of the case, written submissions filed by the noticees 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 noticees 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 noticees, I discuss vital issue/facts involved in this case.

18. 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.

19. I find that the goods imported per vessel MT Al Heera was a combined cargo of three importers namely M/s Divinity Impex, Ahmedabad, M/s Rajkamal Industrial Pvt. Ltd. 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.

20. I find that in this case, M/s Gastrade imported goods described as 'Base Oil SN 50-In Bulk' from foreign supplier M/s Renish Petrochem, FZE, UAE through M/s Anaira International, Sharjah. 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 Gastrade 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.

21. The noticee M/s Gastrade had sought for cross examination of Dr. Gobind Singh, Manager (Lab), IOCL, Central Laboratory, Mumbai. 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.

22. 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" 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
6252184	04.05.2018	500	27101960	Kandla	UAE
6251268	04.05.2018	500	27101960	Kandla	UAE
6251267	04.05.2018	500	27101960	Kandla	UAE
6251258	04.05.2018	500	27101960	Kandla	UAE

23. 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.

23.1. 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.

23.1.1. I find that Central Excise & Customs Laboratory at Vadodara, has sent their report. Details of one of the Test Report/Lab No. RCL/AH/DRI/216 dated 07.05.2018 is reproduced below;

“Report”

The sample 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”.

23.2. I further find that on request for re-testing made by M/s Gastrade, vide letter dated 26.05.2018, the second set of 10 samples was forwarded to Central Revenues Control Laboratory (CRCL), New Delhi vide letter 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.

23.2.1. I find that the CRCL New Delhi, has 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(Ram s 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.

23.3. 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.

23.3.1. 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: (a) Winter /(b) Summer	3°C/15°C	P:10	-3
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	Lubricity 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.

23.4. 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 conforming 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.

24. Now I am taking up the classification issue of the goods seized from the premises of M/s Unique Industries, Morbi. The important facts and key findings of testing labs are discussed in brief:

24.1. I find that M/s Gastrade had imported the goods declared as Base Oil SN50 vide Bill of Entry number 5511551 dated 09.03.2018 and sold the same to M/s Unique Industries, Morbi. Out of the total goods purchased from M/s Gastrade, the officers found 15 MT of goods purchased as Base Oil SN50 was lying at M/s Unique Industries, Morbi. Representative samples was drawn from the stored goods and the same were sent to the Central Excise and Customs laboratory, Vadodara vide test memo dated 29.5.2018 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.

24.1.1. I find that Central Excise & Customs Laboratory at Vadodara, has sent their report. Details of the Test Report/Lab No. RCL/AH/DRI/355 dated 14.06.2018 is reproduced below:

"Report"

The samples have is in the form of pale yellow oily liquid. It is composed of mineral hydrocarbon oil more than 70% having following constants:

- (1) Flash Point (PMCC)= 48°C
- (2) Kinematic viscosity at 40°C= 5.3 Cst
- (3) Density at 15°C= 0.8308 gm/ml
- (4) Distillation range= IBP - 152°C
55ML - 360°C

(Temperature range of thermometer from 0°C to 360°C).

24.2. I find that DRI had extended inquiry of past consignments of import by M/s Gastrade with the same description i.e. Base Oil SN 50. Samples/remnants samples of such consignments of Base oil SN50, drawn by Customs Kandla in the past in respect of imports made by M/s Gastrade of different bills of entry were sent to the Central Excise & Customs Laboratory at Vadodara vide various Test Memos all dated 07.06.2018, which also include Bill of Entry number 5511551 dated 09.03.2018, 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.

24.2.1. I find that Central Excise & Customs Laboratory at Vadodara, has sent their report. Details of Test Report/Lab No. RCL/AH/DRI/448 dated 25.07.2018 for Bill of Entry number 5511551 dated 09.03.2018 is reproduced below;

"Report"

The sample is in the form of light yellow coloured oily liquid, along with sediments/suspended matters. It is mainly composed of Mineral Hydrocarbon oil, having mineral oil content more than 70% by Volume. It is having following characteristics:

- (1) Flash Point = More than 66°C
- (2) Density at 15°C= 0.8253 gm/ml
- (3) Kinematic Velocity at 40°C= 03.2 Cst
- (4)) Distillation Characteristics
 - (a)Initial Boiling point = 198°C
 - (b) Temperature at 10% Recovery = 244°C
 - © Temperature at 50% Recovery = 282°C
 - (d) Temperature at 85% Recovery = 330°C
- (5) Acidity = NIL
- (6) Water = NIL
- (7) Sediments/suspended particles = Present
- (8) Ash = NIL

The sample was tested for the above 08 parameters and the reply to the test memo queries is as under:

- (i) *The sample is other than Base oil*
- (ii) *The sample is other than motor spirit*
- (iii) *The sample does not confirms the requirements of Automotive Diesel Fuel as specified in IS 1460:2017 in terms of Sediments/Suspended particles.*
- (iv) *The sample also does not confirms the requirements of High Flash High Speed Diesel Fuel, as specified in IS 16861:2018 in terms of Sediments/Suspended particles.*
- (v) *The sample confirms the requirements of Light Diesel Oil as specified in IS:15770:2008 in terms of the parameters tested above.*

24.3. I find that the Chemical Examiner, Vadodara after due testing of the sample as per test memo dated 07.06.2018 opined that the samples met / confirmed

the requirements of Light Diesel Oil (LDO) as specified in IS 15770:2008 in terms of the parameters tested by them. Accordingly, the imported goods declared as "Base Oil SN50" by M/s Gastrade and further sold to M/s Unique Industries, Morbi can not be considered as conforming to the declared description, as 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 Light Diesel Oil.

24.4. I also find that Shri Rajendrabhai P. Bhatasana, partner of M/s Unique Industries in his statement had stated that Shri Deepak Aggarwal, proprietor of M/s Gastrade agreed to supply the said material with a condition that the invoice would have the description, Base oil SN50 and also assured that the material would be similar to LAWS (Low Aromatic White Spirit). Shri Rajendra Bhatasana had also agreed with the test report dated 25.7.2018 indicating that the goods are other than Base oil and it meets the requirement of Light Diesel Oil as specified in IS 15770:2008. Shri Bhatasana also agreed that the goods supplied by M/s Gastrade International to his firm was not Base Oil SN 50 but Light Diesel Oil conforming to standards of IS 15770:2008.

25. I find that the department had considered the request of the importer repeatedly and get the sample re-tested and sought clarification from the testing laboratories. These facts demonstrate that the department has taken all steps to secure natural justice to the importer.

26. Further, the noticees have given opinion of Shri Bhavadip N. Vaidya, Managing Director of HARB Global Consultants Pvt. Ltd. and Prof. M. C. Dwivedi (Ex. Department of Chemical Engineering, I.I.T. Bombay) of the aspect of various factors distinguishing Base Oil SN 50 from HSD Oil as obtained by them. However, I find that in these letters, no authentic standards specified by any Govt. Agency or Petroleum Institute of repute have been quoted for purported goods 'Base Oil SN 50' to distinguish them from HSD. Therefore, these opinions are of no value to the facts of the case. I also find that these opinions had been sought by M/s Rajkamal Industrial Pvt. Ltd., Ahmedabad and not by M/s Gastrade.

27. Noticees have argued that Petroleum Class 'B' under Petroleum Act, 1934 means petroleum having a flash point of 23 degree C and above but below 65 degree C, e.g. HSD, SKO, MTO etc. He has argued that as per test reports, its flash point is 110°C or above and hence HSD cannot be classified as Class B petroleum product. 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. Accordingly, I do not find any merit in the argument that since HSD is given as an example in Petroleum class 'B', its Flash Point

has to be below 65°C. Also this argument of the noticees has inherent fallacy. On one hand the noticees accept that as per IS1460:2005, the minimum flash point of HSD should be 35°C by Abel method and minimum 66°C by PMCC method and on the other hand refers to Section 2 of the Petroleum Act, 1934 to say that to be HSD the flash point should be below 65°C. On perusal of classification in class 'A', 'B' & 'C' under Petroleum Act, 1934 it is seen that HSD is given as an example under class 'B' of Petroleum Products. It is true if the flash point of HSD is below 65°C, it would fall under class 'B' products. But flash point of HSD can be above 65°C as per IS standards, in that it would fall in class 'C' category and may also go out of ambit of Petroleum Act, 1934 if the flash point goes above 93°C. 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

contract 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. Gastrade 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. I find support to this finding from the cross-examination of Dr. Gobind Singh, DGM(Lab), IOCL by the noticee. On a specific question on what is the maximum and minimum flash point for considering the sample as HSD, the expert has replied that only the minimum limit prescribed is 35°C and there is no maximum limit prescribed in the standard. On another question by the noticee whether in case the flash point exceeds above 100°C etc., does it still pertains to HSD, the expert replied that as above 35°C whatever the flash point is, it does not matter.

28. 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.

29. 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.

29.1. 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.

30. Further I find that Shri Deepak Aggarwal, proprietor of M/s Gastrade in his statement has accepted that the goods imported by him were not Base oil. He also stated that as per his knowledge for a product to classify as Base oil the flash point had to be more than 150°C. In the instant case all the three test reports show that the flash point was below 150°C thus confirming that the impugned goods are not Base oil. Further Shri Deepak Aggarwal also accepted that Base oil cannot be used as fuel whereas the goods sold to M/s Unique Industries, Morbi were being used for the manufacture of Fuel/furnace oil and not for making lubricating oil, cutting oil, machine oils etc. This also indicates that the goods imported by M/s Gastrade International in the past by mis-declaring the same as 'Base oil SN50' is actually not base oil but a hydrocarbon which can be used as a fuel for burning. The same is also substantiated by the test report of the Chemical Examiner, Vadodara confirming that the goods imported in the past confirmed to standards of Light Diesel Oil, which is actually a fuel used for the purpose of burning.

31. I find that Shri Deepak Aggarwal, proprietor of M/s Gastrade in his statements had expressed his ignorance with regard to the parameters of 'Base Oil SN 50' and could not produce any authentic or statutory literature from a credible authority regarding 'Base Oil SN50', but stated that the product SN 50 is 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. He added that the parameters of the goods declared as 'Base Oil SN 50' imported by them have remained the same in the past too, as they have ordered for the goods of the said specification with their overseas suppliers.

31.1. I also find that M/s Gastrade, 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.

32. 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'.

32.1. 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.

33. Another contention of the noticee is that 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'.

34. Now the dispute on hand is the correct classification of the imported goods i.e. whether the imported goods mis-declared as Base Oil SN 50 (i) in the Bills of Entry as per Annexure-A of the SCN falls under CTH 27101960 or CTH 27101930 and (ii) in the Bill of Entry No. 5511551 dated 09.03.2018 falls under CTH 27101960 or CTH 27101940. 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;
- (f) "Light Diesel Oil (LDO)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS: 15770:2008;

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

(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%	-

34.1. 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. He has also labored hard to drive home the point that goods imported by him as 'Base Oil SN50' is not HSD/LDO 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.

35. 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 its mutually agreed nomenclature as Base Oil SN50 would convey a meaning that goods are indeed Base Oil falling under CTH 2710 1960.

36. 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.

37. However, as discussed in paras *supra*, it is evidently proven from the test reports that the imported goods are HSD/LDO meeting the specification of IS1460:2005/ IS 15770:2008 and classifiable under CTH 2710 1930/ CTH 2710 1940 of Customs Act, 1962.

38. Further, Shri Deepak Aggarwal, Proprietor of M/s Gastrade in his statement has admitted that the imported goods sold by their supplier M/s Renish Petrochem through M/s Anaira International, could be used for manufacture of lubricating /cutting oil, antistatic oil, antidusting oil, 2T oil, blender for dilution of SN500/SN600 as it has a flash point normally above 150°C.

38.1. I find that the product imported by M/s Gastrade clearly confirms to the specification of 'High Speed Diesel' and 'Light Diesel Oil' and thus, the actual use, the product is put into is irrelevant. I find that the Customs Tariff has chosen to classify all products, answering to the specifications prescribed under Supplementary Notes (e) & (f) of Chapter 27. In these circumstances, the actual use the goods are put into is to no relevance at all. I am unable to find any such distinction in the Customs Tariff on the basis of use of the goods. The Customs Tariff classifies the goods solely on the physical specifications mentioned under the Customs Tariff. In respect of 'High Speed Diesel' and 'Light Diesel Oil', Supplementary Notes (e) & (f) 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 "High Speed Diesel" in the sub-heading 2710 1930 and "Light Diesel Oil" in the sub-heading 27101940.

39. I also find that M/s Gastrade and one of the importer M/s Rajkamal Industrial Pvt. Ltd., Ahmedabad 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 the noticee only.

39.1. 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.

40. 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'/'Light Diesel Oil' meriting classification under sub head 2710 1930/2710 1940 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 misdeclared in the Bill of Entry as per Annexure-A to the SCN under reference are rightly classifiable under CTH 2710 1930 i.e. "High Speed Diesel" and misdeclared in the Bill of Entry No. 5511551 dated 09.03.2018 are classifiable under CTH 2710 1940 i.e. "Light Diesel Oil".

41. 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 misclassification under Customs Tariff in CTH 27101960 in place of correct classification under CTH 2710 1930, M/s Gastrade 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 and 2710 1940 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"

Further Import of LDO is allowed through IOC subject to para 2.20 of FTP (2015-20). However, import of HSD/LDO, brought on board in old ships / vessels which are meant for breaking, whether within vessel's machinery/engine or outside (as remnant fuel) and is incidental to such ships / vessels, is "free".

41.1. 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. Further, I find that the import of LDO is canalised and restricted for Import by DGFT vide Notification No 07/2015-2020 dated 20th May, 2015. Thus, if the imports are in violation of aforesaid condition, then the same would be liable to action under the Customs Act.

41.2. 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) and 'Light Diesel Oil' (under CTH No. 27101940), 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. Gastrade, in respect to the import of 'High Speed Diesel'/'Light Diesel Oil' 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.

42. 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, (i) totally weighing 1985.854 MTs of HSD imported vide warehousing Bill of Entry No. 6251258, 6251267, 6251268 & 6252184 all dated 04.05.2018 and (ii) 15 MT imported of LDO vide Bill of Entry No. 5511551 dated 09.03.2018,, 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 themselves liable for penal action under section 112(a) of Customs Act, 1962.

43. I find that in this case Shri Deepak Aggarwal, Proprietor of M/s Gastrade has 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 have 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.

44. I find that M/s Unique Industries, Morbi had purchased LDO from the consignment imported vide Bill of entry no 5511551 dated 9.3.2018 declared as 'Base oil SN50' from M/s Gastrade, without verifying whether the product was actually base oil or otherwise. Shri Rajendra Bhatasana, partner of M/s Unique Industries, had interacted with Shri Deepak Aggarwal, proprietor of M/s Gastrade International for purchase of goods to be used for making furnace oil. Shri Bhatasana in his statement has also stated that when he contacted Shri Deepak to suggest a less expensive and higher

gross calorific value good, Shri Deepak suggested that he had such a product but the invoice of the same would have the description as Base Oil SN50 and the material supplied would be similar to LAWS (Low Aromatic White Spirit). He also agreed with the test report dated 25.7.2018 issued by the Central Excise and Customs Laboratory, Vadodara in respect of the sample drawn from the consignment imported vide bill of entry no 5511551 dated 9.3.2018, that the said goods sold to him was not base oil but 'Light Diesel Oil'. I also find that Shri Deepak Aggarwal in his statement dated 02.04.2019 has also accepted the statement of Shri Rajendra Bhatasana dated 04.10.2018, except that he was not satisfied with the usage of the said goods.

44.1. However, the investigation have failed to bring on record that M/s Unique Industries and Shri Rajendra Bhatasana, Partner of M/s Unique Industries, Morbi have purchased, acquired possession of the goods, which were subsequently seized knowingly that the same were liable to confiscation under Section 111 of the Customs Act, 1962. Therefore, I hold that M/s Unique Industries and Shri Rajendra Bhatasana, Partner of M/s Unique Industries are not liable to penalty under provisions of Section 112 (b) of Customs Act, 1962.

45. I find that M/s. Renish Petrochem, FZE, Dubai, UAE and Shri Hitesh Mehta of M/s. Renish Petrochem, FZE, Dubai, UAE through M/s Anaira International 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.

45.1. I also find that M/s. Renish Petrochem, FZE, Dubai, UAE and Shri Hitesh Mehta of M/s. Renish Petrochem, FZE, Dubai, UAE through M/s Anaira International 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. 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. By these acts, 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 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.

46. I find that the goods imported per vessel MT AL Heera was a co-mingled cargo of three importers namely M/s Divinity Impex, Ahmedabad, M/s Gastrade International, New Delhi 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 Rajkamal Industrial Private Limited, Ahmedabad and M/s Divinity Impex, Ahmedabad have also abetted M/s Gastrade International, New Delhi in the import of High Speed Diesel in the guise of Base Oil SN 50. M/s Rajkamal Industrial Private Limited, Ahmedabad and M/s Divinity Impex, Ahmedabd have also conspired with the other co-importers i.e. M/s Gastrade International, New Delhi 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, 2 & 5 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 Rajkamal Industrial Private Limited, Ahmedabad and M/s Divinity Impex, 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 Gastrade International, New Delhi, liable to confiscation under Section 111(d) and 111(m) of the Customs Act and consequentially M/s Rajkamal Industrial Private Limited, Ahmedabad and M/s Divinity Impex, Ahmedabad, Ahmedabad are also liable to penalty under provisions of Section 112 (a) of the Customs Act 1962.

47. 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, as detailed in Annexure-A to the SCN filed by M/s. Gastrade

International 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 SCN i.e. 1985.854 MTS of High Speed Diesel at declared assessable value of Rs.9,47,86,296/- 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.2,75,00,000/- (Rupees Two Crore Seventy Five Lakh only) in lieu of confiscation under Section 125 of the Customs Act 1962 for re-export purpose only.
- (iii) I impose a penalty of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh only) on M/s Gastrade International (Proprietor-Shri Deepak Aggarwal), 443, Mathura Road, Bhogal, New Delhi- 110014 under Section 112(a) of the Customs Act, 1962.
- (iv) I also impose a penalty of Rs.40,00,000/- (Rupees Forty Lakh only) on M/s Gastrade International (Proprietor-Shri Deepak Aggarwal), 443, Mathura Road, Bhogal, New Delhi- 110014 under Section 114AA of the Customs Act, 1962.
- (v) Further, I reject the classification of 15 MT (seized goods) of the imported goods declared as "Base Oil SN 50" under tariff item 27101960 of the Customs Tariff Act, 1975 in Bills of Entry No. 5511551 dated 09.03.2018 filed by M/s. Gastrade International and subsequently sold to M/s Unique Industries and order to re-classify the imported goods viz. Light Diesel Oil under CTH 27101940 of the Customs Tariff Act, 1975.
I order for confiscation of aforesaid goods i.e. 15 MTS of Light Diesel Oil at declared assessable value of Rs.7,44,107/- under Section 111 (d) and 111(m) of the Customs Act, 1962. However, I give an option to the M/s Unique Industries to redeem the confiscated goods on payment of redemption fine of Rs.50,000/- (Rupees Fifty Thousand only) in lieu of confiscation under Section 125 of the Customs Act 1962.
- (vi) I do not impose any penalty on M/s Unique Industries, Morbi and Shri Rajendra Bhatasana, Partner of M/s Unique Industries, Morbi under Section 112(b) of the Customs Act, 1962.
- (vii) I also impose a penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on 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] under Section 112(a) of the Customs Act, 1962.
- (viii) I also impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on 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] under Section 114AA of the Customs Act, 1962.

- (ix) I also impose a penalty of Rs.4,00,000/- (Rupees Four Lakh only) on 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] under Section 112(a) of the Customs Act, 1962.
- (x) I also impose a penalty of Rs.2,00,000/- (Rupees Two Lakh only) on 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] under Section 114AA of the Customs Act, 1962.
- (xi) I also impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on M/s Rajkamal Industrial Private Limited, 401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad - 380015 under Section 112(a) of the Customs Act, 1962.
- (xii) I also impose a penalty of Rs.2,00,000/- (Rupees Two Lakh only) on M/s. Divinity Impex, 303, Gautam Krupa Apartment, Inside Pratapkunj Society, Vasna, Ahmedabad-380007 under Section 112(a) of the Customs Act, 1962.

[SANJAY KUMAR AGARWAL]
PRINCIPAL COMMISSIONER

F. No. S/10-66/Adj/Commr./Gastrade/2018-19

Dated 05.12.2019

BY RPAD/ SPEED POST:

To,

- (1) M/s. Gastrade International , 443, Mathura Road, Bhogal, New Delhi- 110014
- (2) M/s. Rajkamal Industrial Pvt. Ltd., 401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad, Gujarat-380015.
- (3) 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 Bunglows, Anand Nagar cross road, satellite, Ahmedabad-15].
- (4) Shri 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 Bunglows, Anand Nagar cross road, satellite, Ahmedabad-15]
- (5) M/s Divinity Impex, 303, Shetrunjay Residency, B/H Dev Aurum, Anand Nagar, Ahmedabad, Gujarat, 380015.
- (6) M/s Unique Industries, Survey number 35, plot No. 01, At. Derala, Taluka Maliya Miyana, District Morbi
- (7) Shri Rajendra Bhasana, Partner of M/s Unique Industries, Survey number 35, plot No. 01, At. Derala, Taluka Maliya Miyana, District Morbi

Copy to:

1. The Chief Commissioner of Customs, CCO, 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. Guard File
6. Notice Board