

 OFFICE OF THE COMMISSIONER OF CUSTOMS CUSTOM HOUSE KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467		
A	File No.	S/10-11/Adj./Commr/Rajkamal/19-20
B	Order-in-Original No.	KND-CUSTM-000-COM-12-2019-20
C	Passed by	Shri Sanjay Kumar Agarwal Pr. Commissioner, Custom House, Kandla.
D	Date of order	03.12.2019
E	Date of issue	03.12.2019
F	Show Cause Notice Nos. & Date	F.No.DRI/AZU/CI/ENQ-12(INT-02/2018)/2018 dated 22.04.2019 issued by Principal Additional Director General, Ahmedabad Zonal Unit, Ahmedabad
G	Noticee(s)/Co-Noticee(s)	M/s Rajkamal Industrial Pvt. Ltd. and 8 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.

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BRIEF FACTS OF THE CASE:

M/s. Rajkamal Industrial Pvt. Ltd., 401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad, Gujarat-380015 and holding IEC No. 0808004654 (herein after referred to as M/s Rajkamal) is engaged in trading of waxes, Base oils, RPO, Bitumen, Propylene Glycol etc. M/s Rajkamal imports some of the goods traded by them.

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

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

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

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

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

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

3. A search was conducted at premises of importer M/s. Rajkamal Industrial Pvt. Ltd., 401, Dev Arc Corporate, above Croma, S.G. Highway, Ahmedabad, Gujarat, PIN-380015 and the Customs Broker M/s Saarthee Shipping Co. Office No: 1, 2nd Floor, Shah Avenue-1, Plot No: 211, Ward-12/B, Gandhidham on 12.05.2018. Summons dated 12.05.2018 was issued to Shri Bhadresh Mehta, Managing Director of M/s. Rajkamal for his presence before the inquiry officer on 15.05.2018 and another Summons dated 12.05.2018 was issued to Shri Meet B Mehta, Director of M/s. Rajkamal for his presence before the inquiry officer on 16.05.2018. However, both the persons did not appear on the given dates and Shri Bhadresh Mehta informed that he was aged 65 years and was gradually retiring from the company and his son Meet Mehta was looking after the entire business including procurement of goods from domestic and foreign markets. He further informed that he was not aware about the disputed consignments which had been imported by the company and his son Meet Mehta had knowledge about the transactions in dispute and would be in a position to give better answers in the matter related to goods in dispute. He accordingly authorized his son to give statement on his behalf and bound himself by the statements given by his son.

4. During the course of inquiry, a statement dated 12/05/2018 of Shri Vipul Patel, Executive (Logistics), M/s Rajkamal, was recorded under Section 108 of the Customs Act 1962 wherein he stated that M/s Rajkamal, is engaged in the trading of Oil and Lubricating Oil; that the goods are imported from overseas supplier as well as purchased from Manufacturer and Traders in India; that Shri Bhadresh Mehta is the Managing Director of M/s Rajkamal Industrial Pvt. Ltd., and his son Shri Meet Mehta is the Director.

4.1. Statement of Shri Sudhir Gosai, Executive (Import & Accounts), M/s Rajkamal, was recorded on 12/05/2018 under Section 108 of the Customs Act 1962 wherein he stated that they had received a consignment of Base Oil SN 50 at Kandla per vessel MT AL HEERA which was pending for clearance from Customs and at present they did not have any stock of the Base Oil SN 50 at present; that all negotiations for purchase and import of goods was done by their Director Shri Meet Mehta.

4.2. Statement of Shri Amit Bhardwaj, Proprietor of M/s Saarthee Shipping Co., was recorded on 12/05/2018 under Section 108 of the Customs Act 1962 wherein he stated that their main clients who deal in Base Oil are M/s. Rajkamal Industrial Pvt. Ltd., M/s. Gastrade International, M/s. Divinity Impex (only in May 2018); that M/s Rajkamal is known to him since last 8-9 years and they import items like Bitumin, RPO (Rubber Process Oil), Base Oil; that the information was received from M/s Rajkamal on email addressed to M/s Aegis Terminal and surveyors (Geo Chem, Gandhidham) about arrival of the vessel MT Al Heera carrying Base Oil SN50; that they were provided the documents from M/s Rajkamal, M/s Gastrade and M/s Divinity from their emails to his email; that they proceeded to take the discharge permission from the Custom Bond Section; that Wharfage of the cargo was paid by them and the discharge permission from the Customs alongwith the Wharfage paid copy challan was submitted to Vessel Agent (M/s M.K. Shipping); that when the IGM was filed by the shipping line, then they sent the checklist to the importers for their approval and after getting the approval of checklist from the importers on their e-mail, they filed the Warehousing Bills of Entry on 04.05.2018; that the vessel was allowed to discharge in the tank nos. T-140, 149, 150 of M/s Aegis Terminal; that M/s Rajkamal mainly imports Base Oil SN50, SN500; that he had no idea about the difference between the grades of Base oil and he never asked the importers about the same as it was a technical matter.

4.3. Statement of Shri Meet B. Mehta, Director, M/s Rajkamal Industrial Pvt. Ltd., was recorded on 17/05/2018 under Section 108 of the Customs Act 1962. Excerpt of his statement is as follows:-

- a. In the year 2012 M/s Rajkamal Industrial Co., was converted into a Private Limited Company, with he and his father Shri Bhadresh Chinubhai Mehta as its Directors. His father Shri Bhadresh Mehta is the Managing Director of M/s Rajkamal Industrial Pvt. Ltd.
- b. The goods are imported from overseas supplier as well as purchased from Manufacturer and Traders in India and they have been in the trade for substantial years and have vast experience in the area of trading of waxes, base oil etc.
- c. He confirmed the Panchnama dated 12/05/2018 drawn at his office premises at 401, Dev Arc Corporate, Above Croma, ISCON Cross road, Satellite, Ahmedabad 380015.

- d. His father is Managing Director in the firm and keeps an overall supervision of all the activities in their firm. However, all the day to day activities are being dealt by him in the capacity as the Director of the firm. They have been in this business for substantial number of years and have had good rapport with their vendors, so their orders are placed on phone, they do not receive any Proforma Invoice or other document for their confirmation in their business with UAE. They generally get Proforma Invoices in their business with their Korean Suppliers which they have to confirm by accepting the Proforma Invoice with endorsement of their signature and the same is returned back to the supplier for processing the order. In the supplies from UAE based suppliers they only place orders telephonically which is accepted by their supplier after negotiating the price telephonically. Since the vendors/ suppliers are known to them they proceed with the shipment. Their major suppliers in UAE, are (i) Kelorex Energy (ii) Neon Petrochem (iii) Kite International (iv) Renish Petrochem FZE etc.
- e. Mr. Rajesh Shah is the owner of M/s Kelorex Energy, Mr. Navin is the owner of M/s Neon Petrochem, Mr. Prakash is the owner of M/s Kite International while Mr. Hitesh Mehta his paternal uncle is the owner of M/s Renish Petrochem FZE.
- f. They import Group-I Base Oil namely SN50, SN150, SN500 and SN600, Group-II Base Oil namely N60, N70, N100 (procured locally), N150 and N500 and Group-III base oil namely 2CST, 3CST and 6CST.
- g. He was not aware as to what were the specifications required for classifying a Base Oil under Group-I and as per his understanding Yellow Colour Base Oil is Group-I, while Group-II and Group-III there is zero Colour. However, he could not confirm what other specification determine the classification of the Base Oil under Group-I. He undertook to revert with the factual details of the Group wise classification and its specifications within a week's time.
- h. They have always understood Base Oil with Nomenclature SN to be Group-I and the 50 after SN in the Base Oil SN 50 indicates the Kinetic Viscosity at 40°C. In the case of 50 the Kinetic Viscosity at 40°C will be around 5 while 60 would be approximately 7, 70 would be 9 and if it is 150 it would be 20-30 and in the case of 500 it would be approximately 100. He undertook to check the facts and revert within a week's time. He did not have the manufacturing process and the product literature of the item Base Oil SN50 and undertook to submit the same in a week's time.
- i. He agreed that the Test Reports of the sample drawn from the goods imported by them per vessel MT. AL HEERA, given by the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara indicated that the sample has characteristics of High Speed Diesel Oil/Automotive fuel

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

- j. He was not sure about the parameters of Group-I Base Oils hence he could not confirm how SN 50 would qualify as Base Oil. The product SN 50 was understood by them as buyers and by their suppliers as Base oil, accordingly they have classified the product as Base Oil under the Bills Of Entry filed before the Customs authorities.
- k. He was unaware whether the Base Oil SN 50 is a standard internationally recognized Base Oil with duly documented parameters supported with valid literature like the Base Oil SN 500 or not. He submitted a Certificate of Analysis bearing no: 633776 A issued under GDM-CRT-18-19-02217 dated 15-05-2018, issued by M/s Geo-Chem Laboratories Pvt. Ltd., Kandla, detailing the parameters of the sample tested by them; he admitted that they had not drawn any findings/ conclusion or confirmed the description of the product tested.
- l. On being shown a Base Oil analysis report of ARI Energy Co LLC for the Product SN 60 he found that the various parameters in the report have a defined Maximum and Minimum against which the sample had been tested, whereas in the Certificate of Analysis given by Geo Chem, such defined range was absent. He expressed his ignorance on being asked whether the same was indicative of the fact that the product SN 50 is not standard base oil which had definitive parameters.
- m. He said that Base Oil SN 50 was a raw material in the manufacture of Cutting Oil, Antistatic Oil, Antidusting Oil, 2T Oil, Blender for dilution of SN 600 to SN 500, and in Agarbatti making.
- n. He further stated that they had imported various consignments of goods declared as Base Oil SN 50 in the past and that the parameters of the goods declared as Base Oil SN 50 imported by them had remained the same as they had ordered for the goods of the said specification with their overseas suppliers.
- o. He was not aware of the refinery where the product Base Oil SN 50 was manufactured, and stated that he had already undertaken to submit the details after confirming with the suppliers.
- p. The product Base Oil SN 50 was available in the market from October 2017. The said product Base Oil SN 50 is available in the UAE market.
- q. They have sold the Base Oil SN50 to traders and manufacturers. The manufacturers are into the business of manufacturing Lube oils.

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

1. No. 370-170/2018/Customs/Kutch/19-20
- a. On being shown the copy Certificate of Analysis (COA) bearing Serial No: 633776 A issued under File No: GDM-CRT-18-19-02217 dated 15.05.2018 she stated that the same pertained to their office M/s Geo Chem Laboratories Pvt. Ltd., Gandhidham and had been issued by Shri Ashok Parmar who is the Inspection Coordinator.
 - b. The same had been issued based on the Test Report No: GCL/KDL/PET/014/18 dated 12.05.2018 issued by their laboratory under her signature.
 - c. The testing was conducted in respect of the sample drawn by their inspection team from the consignment of Base Oil SN 50, imported per vessel MT AL HEERA and stored in Tank No: AEGIS-150 on 07/05/2018.
 - d. She got the instructions to conduct the test of the sample against certain parameters and accordingly her staff had conducted the test and collated it under the aforesaid Test Report which was issued under her signature to the Inspection Team. The Test Reports were only for some selective parameters and the Test Reports cannot conclusively establish the identity of the sample and so they had not confirmed the identity of the sample in their Test Report or even in the Certificate of Analysis bearing Serial No: 633776 A issued under File No: GDM-CRT-18-19-02217 dated 15.05.2018.
 - e. The samples were not tested against any known specification but test were carried out against the parameters as desired by the customer.
 - f. She had no idea about the identity of the sample Tested as they only tested the sample against some parameters and such test cannot enable them to determine the identity of the sample tested.
 - g. She was not aware about the specifications of Base Oil SN 50 or High Speed Diesel Oil as they do not conduct such Tests of these products; in their routine operations they only check the density of the products to enable the inspection team to calculate the volume or quantity. The routine tests on different parameters are carried out in the case of Edible/Non-edible oils and Coal.
 - h. They have adhered to the ASTM methods as stated in the Test Reports. With regard to the Distillation range she stated that the initial boiling point (IBP) was at 216° C and the Final Boiling Point (FBP) was at 365°C.
 - i. The Test Reports cannot conclusively establish the identity of the sample tested and it is only showing the results against some parameters as requested by their customer.

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

- a. They operate as cargo inspectors and surveyors and have proven expertise in Inspection, Survey and Testing of diverse export, import and locally traded cargos and commodities. M/s Geo Chem Laboratories Pvt. Ltd. at "Iskon Avenue", Plot No: 53, Ward 1/A, Opp. Old Court Building, Gandhidham (Kutch)-370 201, is the branch office with laboratory facility of GEO-CHEM. The laboratory of M/s Geo Chem Laboratories Pvt. Ltd. at "Iskon Avenue", Plot No: 53, Ward 1/A, Opp. Old Court Building, Gandhidham (Kutch)-370 201 is a National Accreditation Board for Testing and Calibration Laboratories (NABL), accredited laboratory for Testing and is issued Certificate No: TC-6437 dated 14/10/2017 valid till 13/10/2019. The NABL accreditation provides scope for testing of certain parameters in the areas of Testing of Oils and Fats and Energy Department – Coal & Coke & Fuel Oil. He did not know the detailed parameters covered under the said NABL accreditation.
- b. M/s. Geo Chem Laboratories Pvt. Ltd. Gandhidham as a surveyor carry out the Inspection of various commodities (dry and liquid) in bulk or containers for Import and Export which include Testing of Quality and ascertaining Quantity of the goods.
- c. They had received an email dated 26/04/2018 on their official email ID dutta.n@geochem.net.in from Sh. Sudhir of M/s. Rajkamal appointing them as the surveyor for their cargo on the vessel MT. AL HEERA. It was further mentioned that there are two more importers namely M/s. Gastrade International and M/s. Divinity Impex for the same cargo on the vessel and nominated them as surveyor for these two Importers also. They had received an email from M/s. Divinity Impex for the nomination for the same and Sh. R. K. Jha of M/s. Gastrade International telephonically confirmed for the nomination for their goods.
- d. Their main work is to check the quantity of the goods for which they check density of the liquid goods just to ascertain the quantity of goods.
- e. They got an email from the Customs Broker M/s Saarthee Shipping Co., to provide test report from vessel MT AL HEERA A/C Rajkamal Industries Pvt. Ltd. M/s Saarthee Shipping Co., asked them to provide the below mentioned report and also requested to confirm the charges of testing:
- Density @29.5 Deg
Flash Point
Viscosity @ 40 Deg
Viscosity @ 100 Deg
Pour Point
Distillation Range
- f. They got confirmation on the same day from Sh. Sudhir of M/s. Rajkamal, for testing of the goods and provide report as soon as possible.

- g. The Certificate of Analysis (COA) bearing Serial No: 633776 A issued under File No: GDM-CRT-18-19-02217 dated 15.05.2018 has been issued based on the Test Report No: GCL/KDL/PET/014/18 dated 12.05.2018 issued by their laboratory. The testing was conducted in respect of the sample drawn by their inspection team from the consignment of Base Oil SN 50, imported per vessel MT AL HEERA and stored in Tank No: AEGIS-150 on 07/05/2018.
- h. He gave the instructions to conduct the test of the sample against certain parameters and accordingly his staff had conducted the test and collated it under the aforesaid Test Report which was issued to the Inspection Team. The Test Reports were only for some selective parameters and the Test Reports cannot conclusively establish the identity of the sample and so they have not confirmed the identity of the sample in their Test Report or even in the Certificate of Analysis bearing Serial No: 633776 A issued under File No: GDM-CRT-18-19-02217 dated 15.05.2018.
- i. On being asked regarding the Entry in the said Certificate of Analysis which reads as-"Tested to Specification" against which it is shown as "Nil", he stated that he had no idea of the specifications for the test of present goods. The samples were not Tested against any known Specification but tests were carried out against the parameters as desired by the customer.
- j. He was not aware about the specifications of Base Oil SN 50 or High Speed Diesel Oil as they do not conduct such Tests of these products, in their routine operations they only check the density of the products to enable the inspection team to calculate the volume or quantity. The routine tests on different parameters are carried out in the case of Edible/Non-edible oils and Coal.
- k. M/s Geo Chem Laboratories Pvt. Ltd., Gandhidham does not have any overseas branches and he was not aware about any such Certificate of Quality issued by M/s Geo Chem Middle East FZE, in respect of the sample of Base Oil SN 50 drawn from Six Tanks of the Vessel MT AL HEERA and Tested on 25-04-2018 at Hamariya FZE, Sharjah, UAE. M/s Geo Chem Laboratories Pvt. Ltd. has branches in India and does not have any branches in any other country. M/s Geo Chem Laboratories Pvt. Ltd. is also not affiliated to any overseas company. There may be various types of errors which may occur at the material time of testing which may lead to difference in Test Results on the same analysis viz: Flash Point, Kinematic Viscosity, of the same goods.
5. M/s Rajkamal vide letters dated 25.05.2018, 06.06.2018, 13.06.2018 and 19.06.2018 contested the Test Report of Central Excise & Customs Laboratory at Vadodara, which held that the samples have characteristics of High Speed Diesel Oil / Automotive Fuel oil confirming to IS 1460:2005 and that it was "other than Base Oil".

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.

5.1. Considering the request for re-testing of M/s Rajkamal, 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.

6. The Assistant Commissioner (Adjudication), Office of the Commissioner of Customs, Kandla vide letter F. No: S/10-52/Adj/Pro-release/Rajkamal/2018-19 dated 13.07.2018 had informed M/s Rajkamal that the Commissioner of Customs, Kandla has decided that provisional release of the subject seized goods (Covered under Bills of Entry Nos: 6252179, 6251273, 6251276 and 6251277 all dated 04.05.2018) cannot be allowed.

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

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

6.3. The Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad vide a letter F. No: DRI/AZU/CI/ENQ-12/2018 dated 31.07.2018 had inquired with Central Revenues Control Laboratory, New Delhi whether the Central Excise And Customs Laboratory at Vadodara and the CRCL, New Delhi had the requisite facilities for testing of samples of HSD against the parameters prescribed under the IS1460:2005 in the light of Circular No. 43 /2017-Customs dated 16th November, 2017 issued under F. No. 401/243/2016-Cus-III and to confirm whether the Flash Points in the range of 78°C to 115°C as found during the testing conform to the standards of Flash Point prescribed for HSD. The Joint Director, Central Revenues Control Laboratory, New Delhi confirmed

vide letter F. No: 27-Cus/05-14/2018-19 dated 01/08/2018 that the Flash Point prescribed at Sr. No: (x) under Annexure C in the IS 1460:2005 as amended March 2010 is 66°C minimum and since the results obtained were more than 66°C it conformed to the specifications of IS 1460:2005 as amended in March 2010. Further vide letter F. No: 27-Cus/05/2018-19 dated 21/08/2018 the Joint Director, Central Revenues Control Laboratory, New Delhi reconfirmed that the testing facilities for the sample of Base Oil and Petroleum products including HSD/Automotive Diesel Fuel were available at Central Excise And Customs Laboratory, Vadodara and the Central Revenues Control Laboratory, New Delhi on reporting date of Test Reports i.e. 11.05.2018 and 03.07.2018 respectively for the parameters reported in the respective test reports.

7.1. Further statement of Shri Meet B. Mehta, Director, M/s Rajkamal was recorded on 03/08/2018 under Section 108 of the Customs Act 1962 wherein he interalia stated that:

- a. He was required to submit the following details:
 1. The factual details of the Group wise classification of Base Oil and its specifications.
 2. The specifications of the product SN 50 and as to how it qualifies under Base Oil Group-I.
 3. The manufacturing process and the product literature of the item Base Oil SN50.
 4. The details of refinery where it was manufactured.

He had submitted the details regarding point numbers 1 and 2 as above vide his letter dated 06.06.2018. However, with regard to the manufacturing process and the product literature of the item Base Oil SN50 as well as the details of refinery where the goods were manufactured, he had not got the same from the suppliers.
- b. On being shown their letter dated 06.06.2018 wherein the Exhibit-A annexed to the said letter which is a write-up given under their letter head detailing the Group wise classification of Base Oil, he stated that he could not find any authoritative/ statutory literature of the classification of base oil.
- c. He could not find any Group wise specifications of the Base Oil. He attached the Certificate of Analysis in respect of products viz: (i) Base Oil SN 500 (ii) GS Gold 150N (iii) GS Gold 220N (iv) GS Gold 600N (v) Base Oil KIXX LUBO 2CST (vi) Base Oil KIXX LUBO 6CST (vii) AD Base 4cSt (Group III) wherein the flash points of Base Oil is shown above 200°C as per ASTM D92 and Cleveland open cup (COC) method in all the Certificate of Analysis except that for Base Oil KIXX LUBO 2CST wherein the Flash Point is 154°C. He accepted that he had not attached any such

- specification or analysis report of Base Oil SN 50 and he did not have any specification for the said Base Oil SN 50.
- d. In the said write-up given by him it is mentioned that Base Oil SN 50 is refined from Petroleum Hydrocarbon having Low Viscosity from 4cst to 12cst and having Boiling Range IBP 220° to FBP 360° and flash point 90° to 150° depending on the requirement of the user. He stated that the said details had been given by him as per the information gathered from a Technical Person but he was not aware about the Technical person or his qualifications.
- e. He had on the basis of information gathered from the Technical Person mentioned in the write up that in other countries Base Oil SN 50 is known by different names like Spray Oil, White Oil, Agarbatti Oil and Other Oils. It is also mentioned that many refineries are producing this product as Spray Oil according to requirement of end users. It is used as Banana Spray Oil, Apple Spray Oil, Orchid Spray Oil, Rubber plantation Spray Oil and Agarbatti Manufacturing. It is specially refined oil designed to use alone or as a combination with insecticides, fungicides and pesticides. It is made up of Refined Petroleum Oil with very high paraffinic content with optimal molecular weight controls a wide verity of other pests and other diseases on Apple, citrus, Pears and other deciduous trees either on its own or in combination with other agrochemicals.
- f. The specifications of various products like HP Rubber Spray Oil, INK/Rolling Oil, Ink Oil (PANOL 60), Mogul HC Low Viscosity Oils and Divyol WOP 60 are similar to the specifications of Base Oil which is given under Exhibit-B annexed to the said letter dated 06.06.2018. He stated that these specifications are similar to Base Oil and different brand names are given to them by the respective sellers.
- g. He could not get any independent specification of Base Oil SN50 of any authoritative/ statutory body/ reputed manufacturer, but he had submitted the specification of Base Oil SN50 given by their suppliers M/s Kelorex Energy FZE. He added that M/s Kelorex Energy FZE is not the manufacturer but is only a trader and that M/s Kelorex Energy FZE is not an accredited agency to issue certifications and they also do not have any laboratories as per his knowledge. He was not aware on what basis the trader has issued the analysis report indicating the parameters of the Base Oil SN 50.
- h. Pursuant to the action of seizure of goods he had talked with their suppliers on phone and it was informed by the suppliers that they had sent the material as per the specifications confirmed by him with them. On being asked whether any documentary details are available regarding the discussions with the supplier on this aspect he stated that there is nothing available as the communication with the supplier was on phone.

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- i. The Base Oil SN 50 is a raw material used in the manufacture of Cutting Oil, Antistatic Oil, Antidusting Oil, 2T Oil, Blender for dilution of SN 600 to SN 500, and in Agarbatti making. On being shown the statement dated 25/05/2018 of Shri Gaurang Shah, Director M/s. Yamuna Bio Energy Private Limited who is the buyer of Base Oil SN50 from them wherein Shri Gaurang Shah has shown manufacture of Bio-Diesel from Base Oil, he stated that he was not aware whether the Base Oil can be used in manufacturing Bio-Diesel.
 - j. On being shown the statements of Shri Anil Kumar Jhajharia Partner of M/s Gujarat Overseas Inc, Ahmedabad recorded on 29.05.2018 and Shri Shyamsunder Pathak, General Manager Finance and Accounts M/s Gujarat Overseas Inc, Ahmedabad recorded on 21.05.2018, he stated that he had directly negotiated with the buyers of his goods and had routed the invoices only through M/s Gujarat Overseas Inc, Ahmedabad as stated in the statements of the respective persons of M/s Gujarat Overseas Inc, Ahmedabad. He admitted that the transactions through M/s Gujarat Overseas Inc, Ahmedabad were merely a paper transaction.
 - k. The cargo in the vessel MT Al Heera from which samples were drawn on 05.05.2018, was a consolidated cargo, with no clear demarcations with regard to the chambers in which goods imported by them were stored, also on discharge from the vessel the cargo were stored in the three tanks at the Liquid Terminal of M/s Aegis Logistics Ltd at Kandla in a consolidated manner and was then seized vide panchnama on 15.05.2018. He added that since the cargo was same there was no such document made indicative of loading of the cargo into individual chambers by the respective suppliers, and that it was not possible to distinguish the goods on the basis of supplier or the three importers including them.
 - l. On being asked to peruse the statement of Shri Deepak Aggarwal Proprietor of M/s Gastrade International, Delhi recorded on 02/07/2018, wherein he has stated that it is not possible to identify the goods separately in the vessel MT Al Heera and all the goods were supplied by M/s Renish Petrochem FZE, he confirmed the facts and added that the goods in his case were supplied by M/s Kelorex Energy FZE.
 - m. He confirmed that the Base Oil SN 50 imported in the past is the same as the present consignment.
 - n. On being shown the test report of the CRCL New Delhi dated 03.07.2018 wherein it is confirmed that the analytical parameters of each of the ten samples conforms to the specifications of High Speed Diesel Oil/ (Automotive Diesel Fuel as per IS 1460:2005 and further amended) and that the samples were other than Base Oil, he stated that he had placed orders for goods called Base Oil SN 50 as per the specifications confirmed by them with their suppliers.

7.2. Further statement of Shri Meet B. Mehta, Director, M/s Rajkamal was recorded on 17/08/2018 under Section 108 of the Customs Act 1962 wherein he interalia stated that:

- a. He found that the Indian Oil Corporation Limited, Mumbai, after due testing of the samples against XIV parameters prescribed under Indian Standards Specification of Bureau of Indian Standards IS: 1460:2005 pertaining to High Speed Diesel has found that the parameters tested meet the specification as per the Specification of Indian Standards IS: 1460:2005 as amended. He found that all the three laboratories wherein the samples were tested have found that the samples conform to the specifications of High Speed Diesel as per IS 1460:2005.
- b. He found that the Flash Point in all the Test Reports are above 93°C hence according to him it is not High Speed Diesel but it is a "jute batching oil" or "textile oil" or "Lube Oil" which have their flash point at or above 93.3° C, as in terms of the Customs Tariff. He was shown the Supplementary Note to Chapter 27 of First Schedule to the Customs Tariff Act 1975, which assigns meanings to certain expressions in the Chapter 27 wherein Sr. Nos. (h) and (i) reads as under:
(h) "lubricating oil" means any oil, which is ordinarily used, for lubrication, excluding any hydrocarbon oil, which has its flash point below 93.30 Centigrade;
(i) "jute batching oil" and "textile oil" are hydrocarbon oils which have their flash point at or above 93.30C, and is ordinarily used for the batching of jute or other textile fibres;
- c. He stated that Lube Oil is Base Oil which is used as Lubricating Oils, however he could not find any such definition or meaning assigned to Lube Oil in the tariff under the Supplementary Notes to Chapter 27 of First Schedule to the Customs Tariff Act 1975.
- d. He added that he had made efforts to get literature/ brochure etc on Base Oil SN 50 from an authentic source/manufacturer but has not been able to get the same.

8.1. M/s. Rajkamal and Shri Meet Mehta Director of M/s. Rajkamal vide an application dated 10.09.2018 filed a draft amendment to their petition seeking to add the following prayer:

- (c1) Hon'ble Court may direct the respondents to permit the petitioner to re-export the goods under the impugned consignment in accordance with the provisions of law.

8.2. The SCA No: 10882 of 2018 filed by Rajkamal and others, was disposed off by the Hon'ble High Court of Gujarat on 17.09.2018, with directions as under:

- (i) That the concerned department viz: competent authority shall consider representation that may be made by the petitioner with regard to provisional release of goods/material seized and/or alternatively to permit them to re-export such goods.
- (ii) Summons or notices so envisaged under Section 28 and Section 28 (4) read with Section 124 of the Act or any other notice/summons that may be issued by the department, for which the petitioner shall be given reasonable time viz: including that of opportunity of hearing before passing the order in accordance with law.
- (iii) Representation shall be made by the petitioner within one week from today, on which the authority shall pass a reasoned order either accepting or not accepting the submissions made in it.

8.3. M/s. Rajkamal vide a letter dated 24/09/2018 made a representation to the Commissioner of Customs, Customs House Kandla seeking provisional release of the goods or for re-export of the seized goods. The Deputy Commissioner of Customs, Customs House Kandla vide letter F.NO: S/10-52/Adj/Pro-release/Rajkamal/18-19 dated 22/11/2018 informed them that the Hon'ble Commissioner of Customs, Kandla has decided that provisional release of the subject seized goods cannot be allowed.

8.4. M/s. Rajkamal filed an appeal before the Hon'ble CESTAT, West Zonal Bench at Ahmedabad against the said order dated 22/11/2018 whereby the Ld. Commissioner of Customs, Kandla decided that provisional release of seized goods will not be allowed. The Hon'ble CESTAT, West Zonal Bench at Ahmedabad vide Final Order No: A/10302/2019 dated 13.02.2019 opined that the provisional release of the goods for re-export can be allowed subject to the reasonable measures of safeguarding the revenue and accordingly while allowing the appeal, set aside the impugned order of the Commissioner of Customs, Kandla. The adjudicating authority was directed to order provisional release of goods for re-export within a period of one month from the date of CESTAT order. Accordingly, it was informed by the Deputy Commissioner (Gr.1), Customs House, Kandla, vide letter F.NO: S/10-52/Adj/Pro-release/Rajkamal/18-19 dated 27/03/2019 that the Pr. Commissioner of Customs, Kandla had ordered for provisional release of goods weighing 2561.132 MTS covered under Bills of entry Nos: 6252179, 6251273, 6251276, 6251277 all dated 04/05/2018 for re-export on execution of Bond for full value of goods backed by Bank Guarantee for Rs. 6,84,41,000/- under Section 110A of the Customs Act, 1962.

9. M/s. Rajkamal filed another Misc. Civil Application No. 1 of 2018 in R/Special Civil Application No. 10882 of 2018 before the Hon'ble High Court of Gujarat. The Hon'ble High Court passed an IA Order on 11/10/2018 as under:

Notice returnable on 01.11.2018. During the pendency of this application, no coercive action against the applicant including arrest of the applicant is permitted.

10. Further statement of Shri Meet Mehta Director of M/s. Rajkamal was recorded on 12.10.2018 under Section 108 of the Customs Act 1962 wherein he interalia stated that:

- a. He was shown the Check list for the 04 Bills of Entry Nos: (i) 6252179 (ii) 6251276 (iii) 6251277 (iv) 6251273 all dated 04.05.2018 alongwith the attached documents viz: Bill of Lading, Invoice, Certificates of Analysis, etc. wherein he found that against the respective parameters mentioned in the 04 Certificates of Analysis submitted alongwith the Bills of Entry the "RESULT" were the same. On perusing the "RESULT" for the parameter Flash Point in the 04 Certificates of Analysis he acknowledged that against the prescribed range of MIN 130°C it is shown as found to be 142°C in all the 04 Analysis Reports which were submitted alongwith the Bills of Entry.
- b. On being confronted with other test reports on record, he admitted that in Test Report of Geochem Laboratory at Gandhidham the Flash Point was 117°C, while in the Test Results of IOCL, Mumbai the Flash Point was 112°C, in the case of CRCL, New Delhi the Flash Point of the samples was found to be in the range of 78°C to 115°C while under the Certificate of Quality report given by Geo-chem Middle East FZE in respect of the Volumetric Composite Sample drawn after loading on vessel MT Al Heera, done for M/s Renish Petrochem FZE, the Flash Point was shown as 106°C.
- c. Thus even applying the specification of Min 130°C as provided under the Certificate of Analysis of M/s Kelorex Energy FZE for the parameter "Flash Point" for the product claimed as Base Oil SN 50 submitted by him alongwith the Bills of Entry, he stood confronted with the clear finding that the goods imported by them were different than that indicated in the import documents filed by them, since the "Flash Point" found in the various test reports as aforesaid for the goods imported were much below the prescribed "Flash Point" of Min 130°C provided under the Certificate of Analysis of M/s Kelorex Energy FZE.
- d. He stated that the method of testing "Flash Point" adopted/shown in the Certificate of Analysis of M/s Kelorex Energy FZE is ASTM D 92 while in the other cases is ASTM D93 and according to him the difference between both the methods would be about 20°C. However, even subtracting 20°C from the 142°C in the Certificate of Analysis of M/s Kelorex Energy FZE, it would not be anywhere near to the "Flash Point" found in the other test reports.

- e. He thereafter admitted that there had been gross mis-declaration of the goods in as much as the parameter of Flash point as indicated in the Certificate of Analysis of M/s Kelorex Energy FZE submitted before the Customs alongwith the Bill of Entry at the material time of import did not match with the reports found for the actual goods imported.
- f. Further, on being asked as to how the Certificate of Quality report was given by Geo-chem Middle East FZE in respect of the shipment on board vessel MT Al Heera for M/s Renish Petrochem FZE, when as per him the purchases were made from M/s Kelorex Energy FZE, and how was it that M/s Renish Petrochem FZE could authorize for Certificate of Quality report from Geo-chem Middle East FZE in respect of the shipment on board vessel MT Al Heera, he stated that he was not aware of the test report, hence he cannot comment on the flash points shown in the said Certificate of Quality or as to how and why M/s Renish Petrochem FZE had gotten the test done.
- g. He reiterated that he did not have any credible or authentic literature/ brochure etc on Base Oil SN 50 from any authentic source/manufacturer and he did not know the name of the manufacturer of the present goods imported per vessel MT AL HEERA covered under IGM No: 2193934 dated 02/05/2018 and imported by us under B/E Nos: 6252179, 6251273, 6251276, 6251277 all dated 04/05/2018. The supplier has not provided the details of the refinery where these goods were manufactured and at present he was also not calling them as he had not made the payments of the present shipment and the supplier was insisting for the same.

10.1 Statement of Shri Bhadresh Chinubhai Mehta, Managing Director, M/s Rajkamal, was recorded on 24/10/2018 under Section 108 of the Customs Act 1962 wherein he interalia stated that:

- a. M/s Rajkamal, is engaged in trading of goods viz: Base Oil, Wax, Liquid Parafin, Bitumen, and chemicals like Glycerine and Propylene Glycol etc. procured locally as well as imported from overseas suppliers.
- b. They have been in the trade for substantial years and have vast experience in the area of trading of waxes, base oil etc. As the Managing Director in the firm, he keeps the overall supervision of all the activities in their firm. He handles local sales and purchases and at times he also interacts with the overseas supplier with regard to the specifications and quality of material.
- c. He agreed that on 12/05/2018 when they heard about the visit of DRI at their office premises, they switched off their mobile phones and did not come back to their office. They were aware that DRI was inquiring into the imports of goods declared by them as Base Oil SN 50 as they had drawn

samples on 05.05.2018 from their import consignment of goods declared as Base Oil SN 50 imported per vessel MT Al Heera.

- d. All the day to day activities are being dealt by his son in the capacity as the Director of the firm. On being shown the statements of Shri Meet Mehta recorded under Section 108 of the Customs Act 1962 on 17.05.2018, 03.08.2018, 17.08.2018 and 12.10.2018, he confirmed the said statements to be true and correct in as much as he was also fully aware about the material facts of the case.
- e. In the case of suppliers based in the Middle East they did not get any Proforma Invoice or other document for their confirmation. Since the vendors/ suppliers were known to them they proceeded with the shipment. However, in the case of their Korean Suppliers, they (Korean Suppliers) insisted on getting Proforma Invoices duly accepted by them for processing the order, before effecting shipments.
- f. They largely deal with Base Oil SN 500 which is a Solvent Neutral Base Oil and is Group I Base oil which they source from UAE. The Group II and III Base Oils are sourced by them from Korea.
- g. He was not aware about the specifications of Base Oil SN 50 and could not say whether it is a Group I Base Oil or otherwise. All the dealings with regard to the import of the said goods declared as Base Oil SN 50 were done by Shri Meet. He has at times negotiated with the local buyers for the supply of the said Base Oil SN 50.
- h. He was shown the Test Report of the tests conducted on the samples drawn from the goods imported per vessel MT. AL HEERA. He found that in all the test reports of the individual three laboratories i.e. Central Excise and Customs Laboratory based at Vadodara, Central Revenues Control Laboratory based at New Delhi and the Indian Oil Corporation Ltd's Laboratory at Mumbai, the samples have been found to conform to the specifications of High Speed Diesel Oil/(Automotive Diesel Fuel as per IS 1460:2005, as amended). He also found that it was also confirmed that the samples were other than Base Oil. He was not aware about the actual product imported since all the negotiations with regard to the import of the said Base Oil SN 50 were done by his son Shri Meet. He was also not aware about the statutory requirements for the imports of High Speed Diesel or Base Oil and he had never interacted with the Customs Broker/CHA.
- i. He was also not aware whether there exists any product by the name Base Oil SN 50. He was shown the Certificate of Analysis CA-BO-2021, CA-BO-2021A, CA-BO-2021B, and CA-BO-2021E all dated 25.04.2018 issued by M/s Kelorex Energy FZE; he found that against the respective parameters mentioned in the Certificate of Analysis, the Results in all the four Analysis Reports submitted along with Bills of Entry were the same. In

respect of the test results for the parameter Flash Point the prescribed range is shown MIN 130°C and it is 142°C in all the Analysis Report. On being asked to peruse the Flash Point of the imported goods as tested by the Geochem Laboratory at Gandhidham he found that the same indicated the Flash Point as 117°C, while the Test Results of IOCL, Mumbai had found the Flash Point to be 112°C, in the case of CRCL, New Delhi the Flash Point of the samples was found to be ranging from 78°C to 115°C. Also on being asked to peruse the Certificate of Quality report given by Geo-chem Middle East FZE in respect of the Volumetric Composite Sample drawn after loading on vessel MT Al Heera, done for M/s Renish Petrochem FZE, he found that the Flash Point found is 106°C. Thus even applying the specification of Min 130°C as provided under the Certificate of Analysis of M/s Kelorex Energy FZE for the parameter "Flash Point" for the product claimed as Base Oil SN 50, he found that the goods imported were different than that indicated in the import documents filed by them, since the "Flash Point" found the various test reports as aforesaid for the goods imported was much below the prescribed "Flash Point" of Min 130°C. He accepted that there had been gross mis-declaration of the goods in as much as the parameter of Flash point as indicated in the Certificate of Analysis of M/s Kelorex Energy FZE submitted before the Customs alongwith the Bill of Entry at the material time of import did not match with the reports found for the actual goods imported.

- j. The cargo in the vessel MT Al Heera, was a consolidated cargo, with no clear demarcations with regard to the chambers in which goods imported by them were stored, also on discharge from the vessel the cargo were stored in the three tanks at the Liquid Terminal of M/s Aegis Logistics Ltd at Kandla in a consolidated manner. He stated that he was not aware whether there is any document or evidence indicative of loading of the cargo into individual chambers by the respective suppliers as all the dealings for the import of the instant goods were done by his son Shri Meet; that it was not possible to distinguish the goods on the basis of supplier or on the basis of the three importers including them. On perusing the statement of Shri Deepak Aggarwal Proprietor of M/s Gastrade International, Delhi recorded on 02/07/2018, wherein he had stated that it was not possible to identify the goods separately in the vessel MT Al Heera and all the goods were supplied by M/s Renish Petrochem FZE, as also in response to queries as to how the Certificate of Quality report was given by Geo-chem Middle East FZE in respect of the shipment on board vessel MT Al Heera for M/s Renish Petrochem FZE, when the purchases were made from M/s Kelorex Energy FZE, and how was it that M/s Renish Petrochem FZE could authorize for Certificate of Quality report from Geo-chem Middle East FZE in respect of the shipment on board vessel MT Al

Heera, he stated that he will check up with his brother in this regard as to how M/s Renish Petrochem FZE and M/s Kelorex Energy FZE are related and as to whether the goods were in fact shipped by M/s Renish Petrochem FZE or otherwise.

- h. He accepted that he had interacted with some of the buyers for the sale of the goods imported as Base Oil SN 50.

11. 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/10-52/Adj/Pro-release/Rajkamal/18-19 dated 26/10/2018 informed that the Commissioner of Customs, Kandla in exercise of power vested with him under the first proviso to Section 110 (2) of the Customs Act 1962, had extended the time limit for issuance of show cause notice for further period of Six Month upto 03/05/2019 in respect of the goods seized by the DRI vide seizure memo F. No. DRI/AZU/CI/INT-02/2018 dated 15.05.2018.

12. M/s Rajkamal failed to submit the true identity of the goods imported and intentionally refrained from submitting/arranging the details of the refinery/ or the original documents pertaining to the production of the purported Base Oil SN50. Hence inquiry was extended to the local address shown in the web portal of M/s Kelorex Energy FZE. In the contact details given in the web portal of M/s Kelorex Energy FZE, the name of one M/s. Kelorex Global Private Limited at Mumbai was given. Summons issued to M/s. Kelorex Global Private Limited was returned by the postal authorities undelivered. Hence the premises of M/s. Kelorex Global Private Limited, at 401, 4th Floor, Building No: 3 Navjivan Society, Dr. Dadasaheb Bhadkamar Marg, Mumbai Central, Mumbai were searched under Panchnama on 30/10/2018. During the course of Panchnama proceedings Shri Vrajesh Patel the Director of M/s Kelorex Global Private Limited informed the officers that the idea of M/s Kelorex Global Private Limited was initiated during his interactions with his friend Shri Rajesh Shah the owner of M/s Kelorex Energy FZE, UAE, who is into the trading of Petroleum products; he suggested that to have a global presence and to facilitate imports into India it was necessary for M/s Kelorex Energy FZE, UAE, to show an office in India and accordingly he (Vrajesh Patel) had consented for starting M/s Kelorex Global Private Limited, however till that date M/s Kelorex Global Private Limited had only obtained a PAN number for registration but did not have any IEC or had not indulged in any transactions and had not filed any income tax return. Shri Vrajesh Patel then called up Shri Rajesh Shah on his UAE number +971 506949631 using speaker phone on his mobile, to ascertain the details of transactions under inquiry by the officers. Shri Rajesh Shah did not attend the call citing reasons of

being engaged in a meeting and asked to call up later. Subsequently Shri Rajesh Shah called up Shri Vrajesh Patel which was also received using speaker phone and Shri Rajesh Shah did not provide the details of the manufacturer; also he could not provide any literature pertaining to Base Oil SN 50. He informed telephonically that they only were only indentors of the supplied product Base Oil SN 50 and that he will provide any details at a later date.

12.1 Statement of Shri Vrajesh Mahesh Kumar Patel, Director, M/s. Kelorex Global Private Limited, was recorded under Section 108 of the Customs Act, 1962 on 08.11.2018, wherein he interalia stated that:

- a. From the said premises at 401, 4th Floor, Building No: 3 Navjivan Society, Dr. Dadasaheb Bhadkamar Marg, Mumbai Central, Mumbai they were operating four firms and companies which include M/s. Kelorex Global Private Limited. M/s. Kelorex Global Private Limited has two directors namely: (i) Shri Vrajesh Mahesh Kumar Patel and (ii) Shri Pranjal Amitkumar Patel.
- b. Shri Rajesh Shah the owner of M/s Kelorex Energy FZE, UAE, does not have any stake in the company M/s Kelorex Global Private Limited.
- c. M/s Kelorex Global Private Limited, Mumbai has not done any sale or marketing for the supplies that may have been made by M/s Kelorex Energy FZE, UAE. On being asked regarding the product Base Oil SN 50 or High Speed Diesel he stated that he did not have any knowledge on the sale of these products by M/s Kelorex Energy FZE, UAE.
- d. M/s Kelorex Global Private Limited, Mumbai has not dealt in any monetary or other transactions on behalf of M/s Kelorex Energy FZE, UAE. In fact both the entities are separate and do not have any relationships, except that M/s Kelorex Global Private Limited, Mumbai was shown in the contact list on the web page of M/s Kelorex Energy FZE, UAE which is <http://www.kelorexenergy.com>.
- e. On being asked whether Shri Rajesh Shah of M/s Kelorex Energy FZE, UAE, had provided the details of the manufacturer or any literature pertaining to Base Oil SN 50, which he had undertaken to provide at a later date, he stated that he had reminded Shri Rajesh Shah of M/s Kelorex Energy FZE, UAE, of his visit to DRI office at Ahmedabad and asked him to provide the details but he has not provided the details to him.

12.2. Statement of Shri Pranjal Amitkumar Patel, Director, M/s. Kelorex Global Private Limited, recorded under Section 108 of the Customs Act, 1962 on 08.11.2018, wherein he interalia stated that:

- a. M/s. Kelorex Global Private Limited has two Directors i.e. himself and his cousin Shri Vrajesh Mahesh Kumar Patel. He affirmed the statement

dated 08.11.2018 of Shri Vrajesh Mahesh Kumar Patel, the other Director of M/s. Kelorex Global Private Limited, Mumbai.

- b. M/s Kelorex Global Private Limited is yet to conduct any business related activity and it has not opened its Bank accounts till date.
- c. He knew Shri Rajesh Shah the owner of M/s Kelorex Energy FZE, UAE, through his cousin, as Shri Rajesh Shah is his friend and it was he who had suggested to show an office in India so as to have a global presence for his firm engaged in trading of Petroleum products, and to facilitate imports into India. On being asked he stated that M/s Kelorex Global Private Limited had got a PAN number for registration of the company but did not have any IEC for conducting any import or export. M/s Kelorex Global Private Limited had not indulged in any transactions and had not filed any income tax return till date.
- d. M/s Kelorex Global Private Limited, Mumbai has not done any sale or marketing for the supplies that may have been made by M/s Kelorex Energy FZE, UAE. He did not have any knowledge on the sale of Base Oil SN 50 or High Speed Diesel by M/s Kelorex Energy FZE, UAE. Their basic intent was to do some marketing and import the product Bitumen.
- e. M/s Kelorex Global Private Limited, Mumbai has not dealt in any monetary or other transactions on behalf of M/s Kelorex Energy FZE, UAE. In fact both the entities are separate and do not have any relationship, except that M/s Kelorex Global Private Limited, Mumbai was shown in the contact list on the web page of M/s Kelorex Energy FZE, UAE which is <http://www.kelorexenergy.com>
- f. Shri Vrajesh had informed him that the details called for by DRI office pertaining to M/s Kelorex Energy FZE, UAE has not been provided by Shri Rajesh Shah. Shri Vrajesh has informed that he has requested Shri Rajesh Shah to provide the information directly to the department.

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

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

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

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

15. Summons dated 09.04.2019 was issued to Shri Hitesh Mehta, of M/s. Renish Petrochem FZE, Dubai, UAE at his known residence in India, at 45, Shivalik Bungalows, Anand Nagar Cross Road, Satellite, Ahmedabad-15, for his presence before

the DRI officers on 15.04.2019 and to give evidence in the case under inquiry. The Summons was also sent through email info@renishpetrochem.com. However Shri Hitesh Mehta did not appear before the DRI officers on the given date. The summons dispatched through post was returned by the postal authorities with remarks "OUT OF INDIA/ LONG TIME/ LEFT".

16. In light of the above facts, a show cause notice F. No. DRI/AZU/CI/ENQ-12(INT-02/18)/2018 dated 22.04.2019 and corrigendum to the said show cause notice dated 03.05.2019 was issued by the Principal Additional Director General, Directorate of Revenue Intelligence, Ahmedabad to M/s. Rajkamal Industrial Pvt. Ltd., 401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad wherein he was called upon to show cause to the Principal Commissioner/ Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat, as to why:

- (i) The impugned goods i.e. High Speed Diesel quantity 2561.132 MT [Bill of Entry Quantity] (Seized quantity 2543.016 MT) having Assessable value of Rs. 12,13,66,504/- and mis-declared as Base Oil SN 50 in the Bills of Entry as per Annexure-A, seized during the panchnama dated 15.05.2018, should not be classified under the Customs Tariff Heading 2710 1930 instead of declared Customs Tariff Heading 2710 1960;
- (ii) The impugned goods i.e. High Speed Diesel quantity 2561.132 MT [Bill of Entry Quantity] (Seized quantity 2543.016 MT) having Assessable value of Rs. 12,13,66,504/- and mis-declared as Base Oil SN 50 in the Bills of Entry as per Annexure-A, seized during the panchnama dated 15.05.2018, should not be confiscated under the provisions of Section 111(d) and (m) of the Customs Act, 1962;
- (iii) Penalty should not be imposed on them under Section 112 (a) and (b) of the Customs Act, 1962;

16.1. Further, Shri Bhadresh C. Mehta the Managing Director and Shri Meet B Mehta Director of M/s Rajkamal Industrial Private Limited, 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:-

- (i) Penalty should not be imposed on them under Section 112 (a) and (b) of the Customs Act, 1962;
- (ii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;
- (iii) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962;

16.2. Further, M/s Kelorex Energy FZE, UAE and Shri Rajesh Shah of M/s Kelorex Energy FZE, UAE [also through M/s. Kelorex Global Private Limited, 401, 4th Floor, Building No: 3 Navjivan Society, Dr. Dadasaheb Bhadkamar Marg, Mumbai Central, Mumbai] were called upon to show cause to the Principal Commissioner/ Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat as to why penalty should not be imposed on them under Section 112 (a), Section 114AA and Section 117 of the Customs Act, 1962.

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

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

DEFENCE REPLY:

17.1 M/s Rajkamal and its directors Shri Bhadresh C Mehta and Shri Meet B Mehta vide letter dated 01.08.2019 have filed their defence reply and made following submissions:

17.1.1. 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.

17.1.2. "High Speed Diesel" has been defined under Supplementary Notes of Chapter 27 of the Customs Tariff Act. It means any Hydro-Carbon Oil confirming 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.

17.1.3. 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.

17.1.4. 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.

17.1.5. 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.

17.1.6. 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.

17.1.7. TEST REPORTS ISSUED BY 3 DIFFERENT LAB NOT RELIED UPON –

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.

17.1.8. 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.

17.1.9. 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.

17.1.10. 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.

17.1.11. 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.

17.1.12. 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.

17.1.13. 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**.

17.1.14. STATEMENT OF BUYERS – It is submitted that the captioned Show Cause Notice referred to statements of two buyers which were recorded during the course of investigation and tries to demonstrate about nature of transactions made by the notice and the purported use of the goods imported by them. It is submitted that none of the buyers have stated the Noticee imported HSD in guise of Base Oil SN50.

17.1.15. 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.

17.1.16. 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.

17.1.17. 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.

17.1.18. 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.

17.1.19. 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.

17.1.20. 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.

17.1.21. 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.

17.1.22. PENALTY OUGHT NOT TO BE IMPOSED ON THE COMPANY AND DIRECTORS: It is submitted that insofar as the proposal for imposition of penalty under the provisions of 112 is concerned the notice does not give any indication as to whether the penalty is proposed either under clause (a) of (b) thereof. The Hon'ble Madras High Court in B. Lakshmi Chand vs. GOI 1983(12)ELT 322 while dealing with an identical issue held that the plain reading of both the clause of Section 112 shows that they are distinct and separate. The Hon'ble Court held that penal action is proposed to be taken

and proceedings are prosecuted and if they should culminate ultimately in the imposition of penalty, then the authorities must be clear in their mind as to whether either of the above clauses would apply or both would apply. Inasmuch the notice is silent on the above aspect it is bad in law and, therefore, required to be dropped/withdrawn.

17.1.23. 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 other 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.

17.1.24. 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.

17.1.24. 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.

17.2. M/s Kelorex Energy FZE, UAE and its Proprietor Shri Rajesh Shah vide letter dated 02.08.2019 have filed their defence reply and made following submissions:

17.2.1. The Noticee submits that the captioned Show Cause Noticee proposing to impose penalties under the provisions of Section 112(a), 114AA, and 117 of the Act is without and/or in excess of jurisdiction. M/s. Kelorex Energy FZE, UAE is the entity incorporated under the law of UAE. Similarly, Rajesh Shah is non-resident individual

and proprietor of the above Firm. The Noticees do not have any business interest in India. In terms of Section 1 of the said Act, the provisions thereof extend only to the whole of India and not beyond India. In this context, he refer to Section 3 of the Indian Penal Code where expression have been incorporated extending the applicability of provision of IPC to territories beyond India. No such provisions exist under the Customs Act and therefore, issuance of the captioned Show Cause Noticee to Noticees is without and/or excess of jurisdiction. The Noticee place reliance upon the following decisions passed by the following tribunal wherein penalty upon the person located outside India cannot be imposed.

- a. Relax Safety Industries —vs- Commissioner 2002 (144) ELT 652 affirmed by the Hon'ble Supreme Court in 2007 (212) ELT 289
- b. Ankit Gopal Agarwal —vs- Commissioner 2009 (234) ELT 646.
- c. Hi Lingos Co. Ltd. —vs- Commissioner 1994 (72) ELT 392 affirmed by the Hon'ble Supreme Court in 1998 (95) ELT A147.
- d. Advance Exports —vs- Commissioner 2007 (218) ELT 39.
- e. C.K Kunhammed —vs- Collector 1992 (62) ELT 146.

17.2.2. It is submitted that the Noticees issued "certificate of analysis" indicating flash points of the alleged goods as 142°C based on the information/details provided by the person from whom the Noticee purchased the goods. M/s. Rajkamal placed an order for supply of Base Oil SN 50 and in turn, he purchased the said goods from the market and supplied to them. At the time of supply of the goods, requisite documents, viz. commercial invoices, packing list, certificate of analysis, country of origin, and other documents as required were submitted for clearance of the goods by the Company. Since load port certificate of quality report from M/s Geo Chem, Middle East FZE shows the flash point of the goods shipped to the 106°C, does not mean that the certificate of analysis issued by the Noticee was wrong.

17.2.3. It is submitted that if the flash point of the product is above 66°C, it is not treated as HSD in terms of the provisions of the Petroleum Act and analysis reports issued by the experts that have been referred to by M/s Rajkamal in the reply by them.

17.2.4. It is further submitted that "certificate of analysis" indicated flash point as 142°C as against the load port report indicate 106°C does not mean that the Noticeee abetted the offence. Even the investigating authorities by their own laboratories viz. 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 examined the samples and indicated separate flash points in each report. This shows that there is no malafide intention on the part of the supplier to indicate wrong flash point in the certificate of analysis.

17.2.5. It is submitted that they co-operated in the investigation and assisted the information which is within his domain. The Noticees did not divulge the information of the manufacturer from whom they purchased the goods in terms of confidentiality as agreed upon between the parties. The Noticees submit that they are traders and it is very important for them not to divulge the information about their source of material, otherwise, they may lose the business. The Noticees being trader, had not provided the details about source of the materials, does not mean that the Noticee has violated any provisions of the Customs Acts.

17.2.6. The Noticee submits that penalty under Section 112(a) can be imposed if a person does or omits to do any act which acts or omission renders such goods liable to confiscation under Section 111 or abetted their doing or omission of such act. It is submitted that the Noticee provided all the requisite documents to show that they supplied Base Oil SN 50 to M/s Rajkamal. Merely not supplying the details of the source of person from whom the Noticee purchased the goods does not mean that the Noticee abetted the offence. The Department has not shown an iota of evidence to demonstrate that the product in dispute is HSD and not Base Oil SN 50 as declared by M/s Rajkamal. Even the test report issued by IOCL at Mumbai show that they examined only 14 parameters out of 21. Its report even has not indicated whether the product in dispute is HSD or Base Oil. Burden lies upon the Department to prove that the imported goods are Base Oil or not. In the absence of any contrary evidences on record, action of the Department for proposing to impose penalty under Section 112(a) of the Customs Act is contrary to the provisions of laws.

17.2.7. It is submitted that the Noticees have not done or omitted to do any act which act or omission would render the goods liable to confiscation under section 111 of the said Act, nor have abetted the doing or omission of any such act. They purchased the disputed goods from the manufacturer and supplied it to M/s Rajkamal as per Order received from them.

17.2.8. PENALTY UNDER SECTION 114AA: Penalty under 114AA can be imposed when a person knowingly or intentionally makes, signs or use any declaration, statement or document which is false or incorrect in material particularly in the transaction of any business for the purpose of this Act. In the present case, the Noticee correctly declared Base Oil in their documents based on the information provided by their suppliers. While filing the export documents at Dubai, the Customs Department has not doubted about the declaration made by them. Since it is a disputed fact that whether the goods in dispute is Base Oil SN 50 or HSD, does not mean that the Noticee intentionally or unknowingly made declaration or assisted the company for clearance of HSD in guise of Base Oil. When goods are not liable to be confiscated, no penalty can be imposed under 114AA of the said Act. Reliance is be placed on the decision of Mumbai Tribunal in the case of Deekay Shipping Services Vs.

Commissioner of Customs, Mumbai, [(2011) 264 E.L.T 269] where it was held that when the goods are not liable for confiscation, no penalty is leviable.

17.2.9. PENALTY UNDER SECTION 117: The Noticees submits that It is not the obligation upon the Noticee to follow any procedures as provided under Indian Customs Act. The Noticees being located outside India complies with all the provisions as required their own country. Therefore, generally penalty under Section 117 cannot be imposed.

17.3. Shri Kumar Pal Mehta, Practicing Company Secretary has filed written submission on behalf of M/s Divinity Impex, Ahmedabad. He submitted that penalty under Section 112 cannot be imposed in the present case.

17.4. 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:

18. Personal Hearing (PH) in the case was first fixed on 08.08.2019 for all the noticees, however, no one appeared on the said date.

A.1. M/s Rajkamal Industrial Pvt. Ltd and its directors Shri Bhadresh C Mehta and Shri Meet B Mehta vide letter dated 06.08.2019 have sought for adjournment of personal hearing and sought to re-fix on 22.08.2019. Accordingly, Second PH was fixed on 22.08.2019.

A.2. M/s Gastrade International vide letter dated 08.08.2019 have sought for adjournment of personal hearing. He has requested 15 days for making written submission.

A.3. Second PH was fixed on 22.08.2019 for all the noticee. Shri Bhadresh C Mehta director of M/s Rajkamal Industrial Pvt. Ltd vide his letter dated 22.08.2019 has requested to extend their hearing up to last week of September.

A.4. Letters of intimation of P.H. to the notice No.4, 5, 6 and 7 have been received back undelivered by the postal authorities.

A.5. Third 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.6. M/s Kelorex Energy FZE, UAE and Shri Rajesh Shah vide letter dated 02.08.2019 (received on 06.05.2019) have made their written submission and requested that an opportunity of P.H. may be granted.

A.7. M/s Rajkamal Industrial Pvt. Ltd vide his letter dated 18.09.2019 has requested for postponement of P.H. for further 60 days.

A.8. Shri Kumar Pal Mehta, Practicing Company Secretary appeared on behalf of M/s Divinity Impex, Ahmedabad on 19.09.2019. He has submitted a written reply and reiterated the contents therein.

A.9. Vide letter dated 01.08.2019, the noticee No. 1 requested for cross-examination of Manager (Lab), IOCL, Central Laboratory, Mumbai.

A.10. 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 Bhadresh P Mehta, Director of M/s Rajkamal Industrial Pvt. Ltd., Ahmedabad and Shri Hardik P Modh, Advocate appeared for P.H. on 15.10.2019 on behalf of M/s Rajkamal and co-noticee at Sr. No. 2, 3 & 8 of the SCN. On the fixed date 15.10.2019, Dr. Govind 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.11. Next P.H. and cross examination was fixed on 07.11.2019 and the same have been also uploaded on the official website of the Custom House, Kandla as per the provisions of Section 153(e) of Customs Act, 1962.

A.12. Shri Bhadresh P Mehta, Director of M/s Rajkamal Industrial Pvt. Ltd., Ahmedabad and Shri Hardik P Modh, Advocate appeared for P.H./Cross Examination on 07.11.2019 on behalf of M/s Rajkamal and co-noticee at sr. no. 2, 3 & 8 of the SCN. Dr. Govind 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. 25 to the Show Cause Notice dated 22.04.2019?

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.13. Next P.H. was fixed on 26.11.2019. Shri Bhadresh P Mehta, Director of M/s Rajkamal Industrial Pvt. Ltd., Ahmedabad appeared for P.H. on 26.11.2019 and reiterated their previous submissions.

DISCUSSION AND FINDINGS:

19. I have carefully gone through the Show Cause Notice dated 22.04.2019 and its Corrigendum dated 03.05.2019, 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.

20. 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.

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

22. I find that in this case, M/s Rajkamal Industrial Pvt. Ltd., Ahmedabad imported goods described as 'Base Oil SN 50-In Bulk' from foreign supplier M/s Kelorex Energy, FZE, UAE. The import was in pursuance of an oral (telephonic) contract between the importer and the supplier on the basis of specifications of aforesaid goods

that were agreed upon between the contracting parties. On this basis the supplier raised tax invoice for supply of 'Base Oil SN 50-In Bulk' to the Importer. In all the documents namely tax invoice, corresponding packing lists, certificate of analysis and bill of lading the goods were described as 'Base Oil SN 50'. The importer adopted this description and filed bills of entry for its clearance by claiming the classification of these goods under CTH 2710 1960 of the First Schedule to Customs Tariff Act, 1975. The case of investigation, as made out in the show cause notice is about mis-declaration of these goods in as much as it is alleged in the notice that goods merit classification under CTH 2710 1930. Therefore, the issue to be decided in this case lie in a narrow compass as to whether goods imported by M/s Rajkamal Industrial Pvt. Ltd. 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.

23. M/s Rajkamal stated that there is no documentary evidence referred in the SCN except three different lab reports. The case is built on test reports out of which they wanted to cross examine 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.

24. Before taking up the classification issue, for sake of brevity, the important facts and key findings of testing labs are discussed in brief. I find that the importer has filed warehousing Bill of Entry for their imported goods declared as "Base Oil SN50-In Bulk" by classifying the imported goods under 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
6252179	04.05.2018	950	27101960	Kandla	UAE
6251276	04.05.2018	550	27101960	Kandla	UAE
6251277	04.05.2018	500	27101960	Kandla	UAE
6251273	04.05.2018	561.132	27101960	Kandla	UAE

25. 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.

25.1. 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.

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

"Report"

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

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

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

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

(i) Whether the sample confirms to description and Characteristics, Specification and Parameters of "Base Oil SN 50".

(ii) If the same does not qualify as "Base Oil SN 50" please confirm the whether the Characteristics, Specification and Parameters confirm to Motor Spirit (Customs Tariff Head 271012)/Diesel Oil (Customs Tariff Head 27101930 & 27101940).

(iii) If none of the above please confirm the identity of the sample.

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

"Report"

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

Test Results of the samples											
Lab No.		CRL-05	CRL-06	CRL-07	CRL-08	CRL-09	CRL-10	CRL-11	CRL-12	CRL-13	CRL-14
TM No.		1A	2A	3A	4A	5A	6A	7A	8A	9A	10A
Characteristics	Limit as per IS 1460:2005 and amended										
Acidity, Inorganic	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Acidity, total mg of KOH/g	To report	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
Ash, percent by mass	0.01(max.)	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Carbon residue(Rams bottom)on 10% residue, percent by mass	0.30(max.)	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Density at 15°C	0.8200-0.8450	.8287	.8316	.8310	.8288	.8284	.8286	.8286	.8282	.8284	.8281
Flash Point (PMCC)	66°C(min.)	113°C	115°C	93°C	88°C	98°C	100°C	95°C	78°C	106°C	111°C
Kinematic Viscosity at 40°C, cSt	2.0 to 4.5	3.7	4.4	4.4	4.4	4.0	3.9	3.5	4.1	4.0	4.0
Kinematic Viscosity at 37.8°C	-	4.3	4.9	4.8	4.7	4.7	4.3	4.3	4.3	4.3	4.3
Distillation range, °C	-	238-356	234-358	234-352	238-354	240-356	238-344	240-354	240-350	240-342	238-325
Percent v/v recovered at 360°C	95	-	-	-	-	-	-	-	-	-	-
95% volume recovered at	-	356°C	358°C	352°C	354°C	356°C	344°C	354°C	350°C	342°C	325°C
Pour Point, Max											
a) Winter	3°C	-	-	-	-	-	-	-	-	-	-
b) Summer	15°C	8°C	8°C	8°C	8°C	8°C	8°C	8°C	8°C	8°C	8°C
Cetane Index	46(min)	65.7	66.0	65.6	66.2	66.0	66.5	66.6	66.6	67.0	67.7
Water content, percent v/v, mg/kg	200(max.)	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil

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

Each is other than Base Oil.

25.3. I further find that M/s. Rajkamal, and Shri Meet Mehta Director of M/s. Rajkamal 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.

25.3.1. 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.

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

26. I find that the test analysis report has been unconditionally accepted by the noticee No.1. I further find that the department had considered the request of the importer repeatedly and got the sample re-tested and sought clarification from the testing laboratories. Further, the laboratories are well equipped and have technical expertise. These facts demonstrate that the department has taken all steps to secure natural justice to the importer.

27. 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.

28. 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 a 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 contact with air under specified conditions and the weight of carbon residue remaining after the test is expressed as a percentage of the weight of the sample.

VOLATILITY

As a rule, the higher the viscosity of a liquid fuel, the lower its volatility. Therefore provided the viscosity lies within specified limits, a satisfactory volatility is automatically ensured. However, the percentage recovered at some particular temperature e.g. 366 deg C, is specified in the case of HSD mainly to control engine fouling due to incomplete combustion of the higher boiling components.

TOTAL SULPHUR

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

CORROSIVE SULPHUR

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

ACIDITY

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

INORGANIC OR MINERAL ACIDITY

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

ORGANIC ACIDITY

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

ASH CONTENT

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

SEDIMENT AND WATER

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

POUR POINT

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

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

COLD FILTER-PLUGGING POINT

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

FLASH POINT

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

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

SPECIFIC GRAVITY

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

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

These literature amply shows that the high flash point of 'HSD' imported by M/s. Rajkamal 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.

29. 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.

30. 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.

30.1. 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.

31. Further I find that Shri Meet B. Mehta, Director of M/s Rajkamal, Ahmedabad in his statement dated 17.05.2018 has agreed that the Test Reports of the sample drawn from the goods imported by them per vessel MT. AL HEERA, given by

the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara indicated that the sample has characteristics of High Speed Diesel Oil/Automotive fuel oil confirming to IS: 1460:2005 and is other than Base Oil, thereby the goods imported is High Speed Diesel Oil.

32. I find that M/s Rajkamal has not produced any document or evidence to substantiate their claim that the goods imported is 'Base Oil SN50'. M/s Rajkamal also failed to produce any authentic or statutory literature detailing the specifications and parameters of the product 'Base Oil SN50'. M/s Rajkamal could not get any independent specification of 'Base Oil SN50' of any authoritative/ statutory body, but they had relied upon the specification of 'Base Oil SN50' given by their suppliers M/s Kelorex Energy, FZE, UAE. However, they themselves accepted that M/s Kelorex Energy, FZE is not the manufacturer but is only a trader and that M/s Kelorex Energy, FZE is not an accredited agency to issue certifications. M/s Rajkamal were not aware on what basis the trader has issued the analysis report indicating the parameters of the 'Base Oil SN 50'.

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

32.2. I also find that Shri Hitesh Mehta of M/s. Renish Petrochem FZE, Dubai, UAE had chartered the vessel MT AL HEERA. Further, Shri Meet B. Mehta, Director of M/s Rajkamal, Ahmedabad in his statement has stated that Mr. Hitesh Mehta is his paternal uncle and is the owner of M/s Renish Petrochem FZE, UAE. Hence it is evident that Shri Meet B. Mehta, Director of M/s Rajkamal, Ahmedabad, was well aware about the nature of the goods, its specifications and its actual suppliers, however they have intentionally kept the department in the dark and have at no stage revealed the details.

33. 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'.

33.1. 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.

34. 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'.

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

SUPPLEMENTARY NOTES :

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

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

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

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

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

36. On a closure scrutiny, it is observed that the description given in the documents prepared by the foreign supplier and on which basis the Importer filed bills of entry is conspicuously silent as to whether 'Base Oil SN50' is Base Oil or otherwise. Therefore, the question which is left open and which does not get answered by the various averments of Importer is whether, by sole virtue of their mutually agreed nomenclature as 'Base Oil SN50' would convey a meaning that goods are indeed 'Base Oil' falling under CTH 2710 1960.

37. 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.

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

39. Further, Shri Meet B. Mehta, Director of M/s Rajkamal in his statement dated 03.08.2018 has stated that the 'Base Oil SN 50' is a raw material used in the manufacture of Cutting Oil, Antistatic Oil, Antidusting Oil, 2T Oil, Blender for dilution of SN 600 to SN 500, and in Agarbatti making.

39.1. I find that the product imported by M/s Rajkamal clearly confirms to the specifications of 'High Speed Diesel' 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) 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' Supplementary Notes (e) of Chapter 27 clearly prescribes the specifications. The product imported by the noticee answers to those specifications and thus there is no reason not to classify the said goods in the sub-heading 2710 1930.

40. I also find that Noticee 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.

40.1. 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.

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

42. I further find that there is no demand of duty in the instant case as they imported goods have yet to be given 'Out of Charge' by Customs after importation. However, by mis-declaration the description of the goods and consequent mis-classification under Customs Tariff in CTH 27101960 in place of correct classification under CTH 2710 1930, M/s Rajkamal have tried to evade the Customs Duty to the tune of Rs. 5,15,61,820/- in addition to circumvent the ITC restrictions on import of goods i.e. HSD. The goods falling under CTH 2710 1930 are restricted for importation as per Import Policy and allowed to be imported through State Trading Enterprises (STE) only, as per Policy Condition (5) of the Chapter 27 of ITC (HS) Schedule -1. The policy condition of the Chapter 27 is reproduced below:-

T. No. 3/19/17/2017/Commission/Rajkamal/19-20

"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"

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

42.2 I find that it is unequivocally proved that the importer has mis-declared the description and classification of imported goods as 'Base Oil SN50' under CTH No. 27101960 instead of 'High Speed Diesel' under CTH No. 27101930, by suppressing its correct description and that the condition stipulated for import through or by STE or against the Special authorization issued by the DGFT, as per the Foreign Trade Policy 2015-2020, were not at all complied with by the importer M/s. Rajkamal, in respect to the import of 'High Speed Diesel' made by them, which was sought clearance by them under the aforesaid Bills of Entry. Therefore, the said goods being restricted goods and imported in violation of FTP 2015-2020 are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

43. As discussed above, I find that the impugned goods imported by mis-declaring the description and in violation of the provisions of FTP 2015-2020 as notified under Foreign Trade (Development & Regulation) Act, 1992, totally weighing 2561.132 MTs imported vide warehousing Bill of Entry No. 6252179, 6251276, 6251277 & 6251273 all dated 04.05.2018, are liable for confiscation under section 111(d) and 111(m) of Customs Act, 1962. Further, I find that the importer by their act of commission and omission making the goods liable for confiscation under section 111(d) and 111(m) of Customs Act, 1962 has made themselves liable for penal action under section 112(a) of Customs Act, 1962.

44. I find that the Hon'ble CESTAT, Ahmedabad vide order no. A/10848/2019 dated 03.05.2019 has given permission to M/s Rajkamal for the provisional release of the goods after furnishing Bond for full value and Bank Guarantee of Rs. 1,29,00,000/- for re-export. In this regard, Deputy Commissioner (Gr.-I), Custom House, Kandla vide his letter dated 03.12.2019, has informed that although the importer has furnished Bond for 100% value and Bank Guarantee of Rs. 1,29,00,000/- i.e. 25% of differential duty, the goods are still lying physically in the bonded warehouse and available for confiscation.

45. I find that in this case Shri Bhadresh C. Mehta, Managing Director and Shri Meet B Mehta, Director of M/s Rajkamal have indulged in presenting documents falsifying the true identity of the goods, before the Customs authorities for import of the goods. Thus they have 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, they have committed offences of the nature as described under the Section 112(a) and 114AA of the Customs Act 1962 and have consequentially rendered themselves liable to penalty under the said Section 112(a) and 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 M/s. Kelorex Energy, FZE, UAE and Shri Rajesh Shah of M/s. Kelorex Energy, FZE, UAE being supplier of the goods facilitated the importers in importing the 'High Speed Diesel', in the guise of 'Base Oil SN 50', which is a restricted good, in violation of policy provisions by way of providing them the documents (i.e. invoice, Certificate of Analysis etc.) showing the export goods as 'Base Oil SN 50' to import High Speed Diesel upon being influenced by Importer.

46.1 I also find that M/s Kelorex Energy, FZE, UAE and Shri Rajesh Shah of M/s Kelorex Energy, FZE, UAE have intentionally or knowingly made documents which were false or incorrect. Further, they have intentionally not submitted the actual documents and details regarding the goods shipped by them. By these acts, M/s Kelorex Energy, FZE, UAE and Shri Rajesh Shah of M/s Kelorex Energy, FZE, 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.

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

48. 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, Gandhidham and M/s Rajkamal Industrial Private Limited, Ahmedabad purportedly supplied by three distinct suppliers and was stored without any specific demarcation and was discharged jointly into the onshore tanks without any demarcation. The surveyor and Customs House Broker was also appointed by M/s Rajkamal Industrial Private Limited and subsequently followed by the others. All the three importer have not submitted or produced any credible or authentic literature document in support of the product claimed as 'Base Oil SN50' imported by them. Such degree of commonality which includes same product, same mis-declaration, same charter of vessel, same vessel, co-mingled goods without demarcation during voyage and during warehousing, same shipping line, same surveyor, same Customs Broker cannot be unplanned or coincidental. Thus it clearly appears that M/s Gastrade International, Gandhidham and M/s Divinity Impex, Ahmedabad have also abetted M/s Rajkamal Industrial Private Limited, Ahmedabad in the import of 'High Speed Diesel' in the guise of 'Base Oil SN 50'. M/s Gastrade International, Gandhidham and M/s Divinity Impex, Ahmedabd have also conspired with the other co-importers i.e. M/s. Rajkamal Industrial Private Limited, Ahmedabad in attempting to smuggle the restricted goods viz. High Speed Diesel. The above referred evidences clearly show the modus operandi adopted by the noticees. Such evidences read with admissions by the noticees show the modus operandi adopted by the noticee No. 1, 8 & 9 in mis-declaring the import consignments. In view of the legal position settled by various judgments, the economic offences like misdeclaration of import consignment are shrouded in dark and the facts are not required to be established with mathematical precision. By these deliberate acts and omissions, M/s Gastrade International, Gandhidham and M/s 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 Rajkamal Industrial Private Limited, liable to confiscation under Section 111(d) and 111(m) of the Customs Act and consequentially M/s Gastrade International, Gandhidham and M/s Divinity Impex, Ahmedabad, Ahmedabad are also liable to penalty under provisions of Section 112 (a) of the Customs Act 1962.

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

ORDER

- (i) I reject the classification of the imported goods declared as "Base Oil SN 50" under tariff item 27101960 of the Customs Tariff Act, 1975 in Warehouse Bills of Entry No. 6252179, 6251273, 6251276 and 6251277 all dated 04.05.2018 filed by M/s. Rajkamal Industrial Private Limited and order to re-classify the imported goods viz. High Speed Diesel under CTH 27101930 of the Customs Tariff Act, 1975.
- (ii) I order for confiscation of the goods covered under Warehouse Bill of Entry, as detailed in Annexure-A to the notice i.e. 2561.132 MTS of High Speed Diesel at declared assessable value of Rs.12,13,66,504/- 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.3,50,00,000/- (Rupees Three Crore Fifty Lakh only) in lieu of confiscation under Section 125 of the Customs Act 1962 for re-export purpose only.
- (iii) I also impose a penalty of Rs.2,00,00,000/- (Rupees Two Crore 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.
- (iv) I impose a penalty of Rs.50,00,000/- (Rupees Fifty Lakh only) on Shri Bhadresh C. Mehta, Managing Director of 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.
- (v) I also impose a penalty of Rs.30,00,000/- (Rupees Thirty Lakh only) on Shri Bhadresh C. Mehta, Managing Director of M/s Rajkamal Industrial Private Limited, 401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad - 380015 under Section 114AA of the Customs Act, 1962.
- (vi) I impose a penalty of Rs.50,00,000/- (Rupees Fifty Lakh only) on Shri Meet B. Mehta, Director of 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.
- (vii) I also impose a penalty of Rs.30,00,000/- (Rupees Thirty Lakh only) on Shri Meet B. Mehta, Director of M/s Rajkamal Industrial Private Limited, 401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad - 380015 under Section 114AA of the Customs Act, 1962.
- (viii) I impose a penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on M/s Kelorex Energy FZE, UAE [also through M/s. Kelorex Global Private Limited, 401, 4th Floor, Building No: 3 Navjivan Society, Dr. Dadasaheb Bhadkamar Marg, Mumbai Central, Mumbai] under Section 112(a) of the Customs Act, 1962.
- (ix) I also impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on M/s Kelorex Energy FZE, UAE [also through M/s. Kelorex Global Private Limited, 401, 4th Floor, Building No: 3 Navjivan Society, Dr. Dadasaheb Bhadkamar

Marg, Mumbai Central, Mumbai] under Section 114AA of the Customs Act, 1962.

- (x) I impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on Shri Rajesh Shah of M/s Kelorex Energy FZE, UAE [also through M/s. Kelorex Global Private Limited, 401, 4th Floor, Building No: 3 Navjivan Society, Dr. Dadasaheb Bhadkamar Marg, Mumbai Central, Mumbai] under Section 112(a) of the Customs Act, 1962.
- (xi) I also impose a penalty of Rs.3,00,000/- (Rupees Three Lakh only) on Shri Rajesh Shah of M/s Kelorex Energy FZE, UAE [also through M/s. Kelorex Global Private Limited, 401, 4th Floor, Building No: 3 Navjivan Society, Dr. Dadasaheb Bhadkamar Marg, Mumbai Central, Mumbai] under Section 114AA of the Customs Act, 1962.
- (xii) I impose a penalty of Rs.8,00,000/- (Rupees Eight 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.
- (xiii) I also impose a penalty of Rs. 4,00,000/- (Rupees Four 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.
- (xiv) I impose a penalty of Rs. 5,00,000 (Rupees Five 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.
- (xv) I also impose a penalty of Rs. 3,00,000 (Rupees Three 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.
- (xvi) I also impose a penalty of Rs. 5,00,000 (Rupees Five Lakh only) on M/s Gastrade International, 201, 2nd Floor Dhiraj Chamber, Plot No: 36 Sector-9, Gandhidham, Kutch-370201 under Section 112(a) of the Customs Act, 1962.
- (xvii) I also impose a penalty of Rs. 2,00,000 (Rupees Two Lakh only) on M/s. Divinity Impex, 303, Shetrunjay Residency, B/H Dev Aurum, Anand Nagar, Ahmedabad, Gujarat, 380015 under Section 112(a) of the Customs Act, 1962.



**[SANJAY KUMAR AGARWAL]
PRINCIPAL COMMISSIONER**

BY RPAD/ SPEED POST:

To,

- (1) M/s. Rajkamal Industrial Pvt. Ltd.,
401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad,
Gujarat-380015.
- (2) Shri Bhadresh C. Mehta, Managing Director,
M/s. Rajkamal Industrial Pvt. Ltd.,
401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad,
Gujarat-380015
- (3) Shri Meet B. Mehta, Director
M/s. Rajkamal Industrial Pvt. Ltd.,
401, Dev Arc Corporate, Above Croma, S.G. Highway, Ahmedabad,
Gujarat-380015
- (4) M/s Kelorex Energy FZE, UAE
E-LOB Office No: E-65F-14 Hamriyah Freezone,
Sharjah, UAE, P.O. Box: 49322 &
[Also through M/s. Kelorex Global Private Limited, 401, 4th Floor,
Building No: 3 Navjivan Society, Dr. Dadasaheb Bhadkamar Marg,
Mumbai Central, Mumbai]
- (5) Shri Rajesh Shah of M/s Kelorex Energy FZE, UAE
E-LOB Office No: E-65F-14 Hamriyah Freezone,
Sharjah, UAE, P.O. Box: 49322 &
[Also through M/s. Kelorex Global Private Limited, 401, 4th Floor,
Building No: 3 Navjivan Society, Dr. Dadasaheb Bhadkamar Marg,
Mumbai Central, Mumbai]
- (6) 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]
- (7) Sh Hitesh Mehta, M/s. Renish Petrochem FZE,
Corporate Office Suit 3704, 3705 & 3706,
HDS Tower Cluster F, JLT, PO Box 12537 Dubai, UAE.
[Also through 45, Shivalik Bunglows, Anand Nagar Cross Road,
Satellite, Ahmedabad-15]
- (8) M/s Gastrade International,
201, 2nd Floor Dhiraj Chamber, Plot No: 36 Sector-9, Gandhidham,
Kutch-370201
- (9) M/s Divinity Impex, 303, Shetrunjay Residency, B/H Dev Aurum, Anand Nagar,
Ahmedabad, Gujarat, 380015.

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. Notice Board
6. Guard file.