

**GCUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 11476 OF 2017

[Arising out of OIA-MUN-CUSTM-000-APP-026-17-18 dated 02/05/2017 passed by Commissioner of CUSTOMS-MUNDRA]

Gastrade International

.....Appellant

Plot No 201 2 Nd Floor Dhiraj Chamber
Plot No 36 Sector 9, Gandhidham, Gujarat

VERSUS

C.C.-Mundra

.....Respondent

Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:

Shri Vikas Mehta, Consultant for the Appellant
Shri . Anand Kumar,, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
 HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

FINAL ORDER NO .A / 10452 /2024

DATE OF HEARING: 20.02.2024

DATE OF DECISION: 22.02.2024

SOMESH ARORA

The appellant filed Bill of Entry No. 4374096 dated 25.02.20216 with Custom House, Kandla for clearance of 474.860 MTs of imported goods, namely, Petroleum Hydrocarbon Solvent (125/240) Grade M.T.O." The appellant classified the goods under CTH 2710 19 90, i.e. "Others", a freely importable item.

2. Sample was drawn and sent to Customs laboratory, Kandla for testing. As per test report dated 03.03.2016 issued by the laboratory, 90% of goods by volume distilled at 195 degree C, i.e. below 210-degree C followed by 95% distillation at 207-degree C.

3. As per sub-heading Note 4 to Chapter 27,

"4. For the purposes of sub-heading 2710.12, "light oils and preparations" are those of which 90% or more by volume (including losses) distil at 210 degree C (ASTM D 86 method)"

3.1 Ld. Adjudicating Authority cited the above Chapter sub-heading note and ordered for classification of goods under CTH 2710 12 90. Such goods are allowed to be imported through State Trading Enterprise only. As such, Ld. Adjudicating Authority held that the goods imported by appellant were of restricted nature. Consequently, goods were confiscated under Section 111 (d) and 111 (m) of Customs Act, 1962 and fine and penalty under Section 112 (a) (i) of Customs Act, 1962 of Rs. 15.0 lakh and Rs. 7.5 lakh respectively was imposed. Ld. Commissioner (Appeals) has sustained the order of lower authority. Aggrieved, appellant has filed the present appeal. The appellants made the following submissions:

3.2 Hon'ble Supreme Court has held in the case of Commissioner of Central Excise versus Krishna Technochem Pvt. Ltd., 2022 (4) TMI 732 - SUPREME COURT that the word used in sub-heading notes is "at" and not "up to".

3.3 The above decision of Hon'ble Supreme Court has been duly followed by Hon'ble Tribunal at Ahmedabad in the case of Kunjal Synergies Pvt. Ltd. versus C.C., Mundra, 2023 (9) TMI 730 AHMEDABAD where 95% distillation took place below 210 degree C. On this basis, classification under CTH 2710 1990 was upheld (and department's classification under CTH 2710 12 was discarded).

4. Learned A.R, while relying on the findings of the Commissioner (Appeals) also relied upon decision of VENUS PETROCHEMICALS (BOMBAY) PVT. LTD Vs. COMMISSIONER OF CUSTOMS, KANDLA as reported in 2019 (366) ELT 176 (Tri.- Ahmd.) to justify item being treated as restricted and consequently penal actions and fine being justified.

5. Considered. We find that in the instant case, the test report dated 03.03.2016 of Customs Laboratory, Kandla provides that 90% of goods by volume get distilled at 195 degree C, i.e. below 210-degree C followed by 95% distillation at 207-degree C. We find that the Hon'ble Supreme Court in the matter of Commissioner of Central Excise Vs. Krishna Technochem Pvt Ltd., reported in 2022 (4) TMI 732-SUPREME COURT has interpreted the work used in sub-hearing notes is "at" and not "up to". We find that refer to the authorities below 95% of distillation as per the test reported happens as 195 degree °C. Further, the sub-heading note-4 of Chapter 27 vide this follows:-

"4. For the purpose of sub-heading 2710 12 "light oils and preparations" are those of which 90% or more by volume (including losses) distill at 210 °C (ASTM D 86 method)."

6. Department, however, inter alia, interpreted the same as 95% degree C should happen only at 210 degree C and not as 195 degree C to justify its own classification under sub-heading 2710 12 90 which makes such items restricted as per Exim Policy and rejected the Customs Tariff Heading 2710 12 90 as claimed by the appellant. We find that this issue is similar to the one decided by the Hon'ble SUPREME COURT in the matter of Krishna Technochem Pvt. Ltd cited (supra) as well as Kunjal Synergies Pvt. Ltd Vs. C.C., Mundar cited (supra) of this bench only, wherein 95% distillation had taken place below 210 degree C and therefore interpreting at in the above said Chapter note as "upto" the benefit was allowed by classifying the goods under Customs Tariff Heading 2710 1990 and rejecting department's

classification under CTH 2710 12. We, therefore, agree with the aforesaid decision and hold that the classification made by the appellant is correct.

7. Appeal is therefore allowed with consequential relief.

(Pronounced in the open Court on 22.02.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi