ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 14.06.2025

CESTAT Ahmedabad Affirms Importer's Right to Re-Testing Under CBIC Circular and IS Standards

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), West Zonal Bench at Ahmedabad, ruled in favor of Maharaja Exim, Surat, affirming the appellant's right to re-sampling and re-testing under procedural safeguards laid down in CBIC Circular No. 30/2017 and Indian Standard specifications.

Background of the Case

- **Appellant:** Maharaja Exim, Surat
- **Respondent:** Commissioner of Customs, Kandla
- **Appeal No.:** Customs Appeal No. 10784 of 2025-SMC
- **Issue:** Rejection of re-sampling and re-testing request by the Commissioner on the ground that the importer's representative was present during initial sampling and had raised no objection.

Tribunal's Key Observations:

1. Right to Re-Testing: CESTAT acknowledged that re-testing is a legal right, provided it is requested within the stipulated time (10 days of receiving the test report). It was undisputed that Maharaja Exim made the request within this timeframe.

2. Reliance on Supreme Court Judgment: The Bench relied heavily on the landmark ruling in Tata Chemicals Ltd. vs. Commissioner of Customs (Preventive), Jamnagar [2015 (320) ELT 45 (SC)], which stated that:

"There can be no estoppel against law… If sampling is done contrary to prescribed methods, the resulting test reports hold no legal validity."

3. Sampling Standards Ignored: The Tribunal noted that the sampling conducted by customs authorities failed to follow the protocols under:

- IS 436 (Coal Sampling Standards)
- IS 1447 (Part 1):2000 for Petroleum and Petroleum Products

4. Technical Non-Compliance: The absence of required apparatus, proper containers, and prescribed methods led the Tribunal to conclude that the entire sampling procedure was flawed and hence, unreliable.

Tribunal's Direction

- CESTAT directed customs authorities to re-draw fresh samples and conduct re-testing at CRCL Vadodara, strictly in accordance with the Indian Standards IS 1447 (Part 1):2000, specifically paragraphs 3, 4, and 5.
- The re-sampling is to be conducted under proper Panchnama and procedural compliance.

Significance of the Ruling

This decision reinforces critical procedural rights of importers under customs law, emphasizing:

- Adherence to scientific sampling procedures;
- The legal importance of due process in testing of goods;
- That presence of a representative at sampling does not override statutory rights or cure procedural defects.

Conclusion

The CESTAT's order in *Maharaja Exim vs. Commissioner of Customs, Kandla* is a landmark affirmation of due process in customs valuation and testing. It empowers importers to seek redressal where scientific protocols have not been followed and underscores that fair sampling is foundational to just customs adjudication.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Ahmedabad

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10784 of 2025-SMC

(Arising out of OIO-CUS-SIIB-INT-219-2025-SIIB-COMMR-CUS-KANDLA dated 14/05/2025 passed by Commissioner of Customs, Kandla)

MAHARAJA EXIM **..... Appellant**
Office No. 302,
Wing-H, Kuberji Textile Market,
Ring Road, Surat,
Gujarat-395003

VERSUS

Commissioner of CUSTOMS - Kandla Customs **.....Respondent**
Office of the Commissioner of Customs,
Near Balaji Temple,
Kandla, Kuchchh,
Gujarat- 370210

APPEARANCE:
Shri Manish Jain, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No. 10468/2025

DATE OF HEARING: 13.06.2025
DATE OF DECISION: 13.06.2025

SOMESH ARORA

In this case, both re-testing and re-sampling has been sought by the learned Advocate through the present appeal.

1.1 It was his submission that seeking re-testing is his right the only rider being that the same should be sought within the stipulated period normally within 10 days of the receipt of the report. Learned Advocate states that re-testing alongwith re-sampling was sought within stipulated time as per the CBIC Circular No. 30/2017 dated 18th July, 2017 of the conveyance of the report. To this learned AR agreed that the same was sought within the stipulated period. However, the learned AR takes this court to the order passed by the Learned Commissioner rejecting the request which is primarily on the ground that the representative of the appellant was present when the sampling was done and there was no serious objection.

2. Learned Advocate in rejoinder draws attention of this court to the decision of the Tata Chemicals Ltd. Vs. Commissioner of the Customs (Preventive), Jamnagar- 2015 (320) ELT 45 (SC), in which it was found out against the CESTAT in that matter, that the finding that though samples were drawn contrary to law, importer would be estopped from challenging test report based on the same on the ground that their representative was present when samples were drawn and no objection was taken was an incorrect approach. Para 16 & 17 which are of relevance in this case are being reproduced below:-

> ***"16.*** *The admitted position on record is that the samples drawn were not drawn in accordance with law and were drawn with no regard whatsoever to IS 436. That IS 436 would apply to the facts of the present case is made clear by our judgment reported in Bombay Oil Industries (P) Ltd. v. Union of India, 1995 (77) E.L.T. 32 (S.C.), where this Court held following Union of India v. Delhi Cloth & General Mills Co. Ltd., 1963 Suppl. (1) SCR 586 = 1977 (1) E.L.T. (J 199) (S.C.), that if the method of testing of any item of Central Excise tariff is not mentioned, then the Indian Standard Institution's method should be applied. That this would apply to the Customs Act as well. IS 436 lays down :-*
>
> *"5. SAMPLING FROM SHIPS DURING LOADING OR UNLOADING*
>
> *5.1 Sub-lots - For the purpose of sampling, the entire quantity of coal in a ship shall be divided into a suitable number of sub-lots of approximately equal weight as specified in Table 1.*
>
> *5.1.1 A gross sample shall be drawn from each of the sub-lots and shall be kept separately so that there will be as many gross samples as the number of sub-lots into which the lot has been divided.*
>
> *5.2. Sampling of coal from ships shall be carried out, as far as practicable, when coal is in motion. If it is taken on a conveyer, the gross sample shall be collected as per the procedure laid down in Table 3. If not, the gross samples may be drawn during loading or unloading of the ship. For this purpose, the number of increments to be taken shall be governed by the weight of the gross sample and the weight of increment as specified in Table 3 for various size groups of coal."*
>
> *TABLE 1 NUMBER OF SUB-LOTS/GROSS SAMPLES*
>
> *(Clauses 0.3.4.1 and 3.1)*

Weight of the Lot (Metric Tonnes)	***No. of sub-Lots/Gross Samples***
Upto 500	*2*
501 to 1000	*3*
1001 to 2000	*4*
2001 to 3000	*5*
Over 3000	*6."*

Then the IS 436 goes on to describe the procedure to reduce a gross sample into a sample for a lab test etc. in great detail, and speaks about the minimum weight of a gross sample being 75 Kg so far as "Coal, small" is concerned.

17. *Clearly the samples drawn by the Inspector in the present case, have been drawn contrary to the express provisions of IS 436. On this count also, the samples being drawn not in accordance with law, test reports based on the same cannot be looked at.*

The Tribunal's judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the Clearing Agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is Illegal cannot convert itself into something legal by the act of a third person."

2.1 The learned Advocate also seeks to rely on the decision as reported 2015 (322) ELT 607 (P&H) in the case of Gupta Agri Care Pvt. Ltd. Vs. Union of

India, in which direction was given to re-draw homogeneous representative samples for their analysis for re-testing the same.

2.3 Further, he has specifically relied upon the decision as reported in 2015 (322) ELT 528 (Tri. -Mumbai) in the case of Liberty Oil Mills Ltd Vs. Commissioner of Customs (Import), Mumbai in which one prescribed apparatus for testing was not on record which was required as per the standards. The same was found to be vitiating the test report and the methodology was considered as rejectable.

2.4 He also drew attention to the fact that IS 1447 (Part 1):2000 Petroleum and its Products- Methods of Sampling as prescribed by the ISI in which para 4 prescribes the kind of Apparatus to be used for sampling. He also points out that para 3,4 as well as 5 have prescribed various conditions for doing the sampling and same were not followed. He therefore, seeks re-drawl of the sample as per the prescribed procedure as well as retesting of the same even if by the same agency i.e. CRCL, Vadodara. Para 3, 4 & 5 are reproduced below: -

> ***"3 SUMMARY OF PRACTICE***
>
> ***3.1*** *A basic sampling method is available; tank sampling, which is covered in this practice.*
>
> ***3.1.1*** *If the tank contents are not homogeneous from top to bottom of the tank or if the conditions in 3.1.2 are not met, automatic sampling is recommended.*
>
> ***3.1.2*** *Tank samples will be representative if the tank contents are homogeneous from top to bottom. This is rarely the case in actual practice. However, tank samples are acceptable if all of the following conditions prevail:*
>
> *a) The tank contains a heavy component (such as water) that clearly separates from the main component;*
>
> *b) The tank is equipped with either a swing suction or a weir on the outlet that prevents any shipment of the heavy component; and*

c) The tank samples are taken so that none of the heavy component is included.

3.1.3 *See 5 for additional precautions and instructions.*

4. APPARATUS

4.1 Sample Containers

May be clear or brown glass bottles, or cans. The clear bottle is advantageous because it may be examined visually for cleanliness and also allows visual inspection of the sample for free water or solid impurities. The brown glass bottle affords some protection from light. The only cans permissible are those with the seams soldered on the exterior surfaces with a flux of rosin in a suitable solvent. Such a flux is easily removed with gasoline, whereas many others are very difficult to remove. Minutes traces of flux may contaminate the sample so that results obtained on tests of dieletric strength, resistance to oxidation, and sludge formation may be erroneous.

4.1.1 *Plastic Bottles*

Made of suitable unpigmented linear polyethylene may be used for the handling and storage of gas oil, diesel oil, fuel oil and lubricating oil. They should not be used for gasoline, aviation jet fuel, kerosene, crude oil, white spirit, medicinal white oil and special boiling point products unless testing indicates there is no problem with solubility, contamination, or loss of light ends.

NOTES

1 *In no circumstances shall non-linear (conventional) polyethylene containers be used to store samples of liquid hydrocarbons. This is to avoid sample contamination or sample bottle failure. Used engine-oil samples that may have been subjected to fuel dilution should not be stored in plastic containers.*

2 *Plastic bottles have an advantage. They will not shatter like glass or corrode like metal containers. They are generally used only once and discarded so that recleaning and recovery procedures are not required*

4.2 Container Closure

Cork or glass stoppers, or screw caps of plastic or metal, may be used for glass bottles, screw caps only shall be used for cans to provide a vaportight closure seal. Corks must be of good quality, clean, and free of holes and loose bits of cork. Never use rubber stoppers. Contact of the sample with the cork may be prevented by wrapping tin or aluminum foil around the cork before forcing it into the bottle. Glass stoppers must be a perfect fit. Screw caps must be protected by a disk faced with tin or aluminum foil, or other material that will not affect petroleum or petroleum products.

4.3 Cleaning Procedure

All sample Container must be absolutely clean and free of water, dirt, lint, washing compounds, naphtha, or other solvents, soldering fluxes or acids, corrosion, rust, or oil. Before using a container, rinse it with Standard solvent or other naphtha of similar volatility. (it may be necessary to use sludge solvents to remove all traces of sediment and sludge from containers previously used). Then wash the container with strong soap solution, rinse it thoroughly with tap water, and finally with distilled water. Dry either by passing a current of clean, warm air through the container or by placing it in a hot dust-free cabinet at 40°C or higher. When dry, stopper or cap the container immediately. In the ordinary field sampling of crude petroleum, washing with soap and rinsing with water may be eliminated.

4.4 Sampling Cage

This shall be a metal or plastic holder or cage, suitably constructed to hold the appropriate container. The combined apparatus shall be of such a weight as to sink readily in the material to be sampled, and provision shall be made to fill the container at any desired level (see Fig. 2). Bottles of special dimensions are required to fit a sampling cage. The use of sampling cage is generally preferred to that of a weighted sampling beaker for volatile products since loss of light ends is likely to occur when transferring the sample from a weighted sampling beaker to another container.

4.5 Sampling Apparatus

Described in detail under each of the specific sampling procedures. Sampling apparatus shall be clean, dry and free of all substances that might contaminate the material.

5 PRECAUTIONS AND INSTRUCTIONS

5.1 *Sampling certain products requires a due amount of caution for their handling. Refer to Annex A for precautionary statements regarding these products.*

5.2 *Crude Petroleum and Heavy Fuels*

Usually are non-homogeneous. Automatic samplers are recommended for sediment and water (S&W) and density measurement.

5.2.1 *Tank samples may not be representative because.*

5.2.1.1 *The concentration of entrained water is higher near the bottom. The running sample or the composite of the upper, middle and lower sample may not represent the concentration of entrained water.*

5.2.1.2 *The interface between oil and free water is difficult to measure, especially, in the presence of emulsion, layers, or sludge.*

5.2.1.3 *Determining the volume of free water is difficult because the free water level varies across the tank bottom surface. The bottom is often covered by pools of free water or water emulsion impounded by layers of sludge or wax.*

5.3 Gasoline and Distillate Products

Usually are homogeneous but they are often shipped from tanks that have clearly separated water on the bottom. Tank sampling is acceptable under the conditions covered in Foreword.

5.4 *When using tank samples, the S&W deduction is usually the sum of the free water volume (usually determined from a paste cut) and the entrained water volume determined from the S&W analysis of the tank sample. The difficulty of determining the free water volume limits the accuracy of the S&W deduction.*

5.4.1 *Automatic samples are recommended. However, by mutual agreement, shore tanks, ship(s) compartment or manual line samples may be used.*

5.5 Sample Handling and Dividing of Crude Petroleum and Non-uniform Products

5.5.1 *The transfer of crude oil samples from the sample receiver to the laboratory glassware in which they will be analyzed requires special care to maintain their representative nature. The number of transfers should be minimized. Mechanical means of mixing and transferring the samples are recommended. An external circulating system provided with pump and in-line mixing element that couples directly to the sample container is one method. Mixing time and flow rates are critical in such systems. A mixer that is inserted in the sampler container is another method. Whatever handling, dividing, and mixing system is chosen, however, its performance should be verified by introducing and transferring samples of known water concentration.*

5.5.2 *In mixing and transferring representative samples; the variation from known water concentration should not exceed ±0.05 percent when the known water concentration is 1 percent or less and ±5 percent of the known water concentration when it is over 1 percent.*

5.6 Marine Custody Transfer

By mutual agreement, samples can be taken from shore tanks, from ship(s) tanks, or from pipelines. Pipelines samples may be taken automatically or mutually. Properly taken automatic pipeline samples are

the most representative. Manual pipeline samples are less representative than automatic pipeline samples. Manual pipeline sampling is described in 6.4. Tank samples will usually not be representative unless the tank is completely homogeneous and contains no free water.

***5.6.1** Stationary or Shore Tanks*

***5.6.1.1** Crude petroleum tanks may be sampled in the following ways by mutual agreement, composite spot, middle spot, all levels, running samples or by sample cocks. Additional samples may be taken as necessary.*

> *NOTE- Where cmulsions are in relatively higher concentration in the bottom portions of the tank, the lower sample would not be considered representative of this lower third. Automatic line sampling is recommended in such cases. If this is not possible, an outlet sample or bottom sample should be required instead of the lower sample. In addition, a bottom thieving should be made for both opening and closing gauges so that any change in the S&W level at the bottom of the lank may be observed and noted.*

***5.6.1.2** Where tank samples must be used for crude oil fiscalization and the tanks do not have swing suction lines or weirs, it is recommended that upper, middle, and outlet samples be taken. These samples should be tested and reported separately. The S&W deduction should be the average of the three values. Other analyses should also be averaged.*

***5.6.2** Ship or Barge Transfers*

Samples of ship cargoes of crude petroleum may be taken by the following methods by mutual agreement.

***5.6.2.1** From the shore tanks before loading and both before and after discharging as previously described.*

***5.6.2.2** From the pipeline during discharging or loading. Pipeline samples may be taken either manually or with an automatic sampler. If the pipeline requires displacement or flushing, care must be taken that the pipeline sample includes the entire cargo and none of the displacement. Separate samples may be required to cover the effect of the line displacement on the prior or following transfer.*

***5.6.2.3** From the ship(s) tanks after loading or before discharging. An all-levels sample or a running sample shall be obtained from each compartment of the ship(s) cargo tanks.*

a) Except where specifically exempted, when loading a ship, the shore tank sample or the pipeline sample taken from the loading line shall be official. However, ship(s) tank samples may also be tested for sediment and water, and for other quality aspects when required. The results of

these ship(s) tank sample tests, together with the shore tank sample tests may be shown on the cargo certificate.

b) When discharging a ship, the pipeline sample taken from a properly designed and operated automatic line sampler in the discharge line shall be official. Where no proper line sample is available, the ship(s) tank sample will be official except where specifically exempted.

5.7 Finished Products

When loading or discharging finished products, taken samples from both shipping and receiving tanks, and from the pipeline if required.

5.7.1 *Ship or Barge Tanks*

Sample each product after the vessel is loaded or just before unloading.

5.7.2 Tank Cars

Sample the product after the car is loaded or just before unloading.

5.7.3 Package Lots (Cans, Drums, Barrels, or Boxes)

Take samples from a sufficient number of the individual packages to prepare a composite sample that will be representative of the entire lot or shipment. Select at random the individual packages to be sampled. The number of such random packages will depend upon several practical considerations, such as:

a) The tightness of the product specifications;

b) The source and type of the material and whether or not more than one production batch may be represented in the lot;

c) Previous experience with similar shipments, particularly with respect to the uniformity of quality from package to package; and

d) In most cases, the number specified in Table 2 will be satisfactory/

Table 2 Minimum Number of Packages to be selected for sampling

Number of Packages in Lot	*Number of Packages to be Sampled*	*Number of Packages in Lot*	*Number of Packages to be Sampled*
(1)	*(2)*	*(3)*	*(4)*
1 to 3	*all*	*l 332 to 1 728*	*12*
4 to 64	*4*	*l 729 to 2 197*	*13*
65 to 125	*5*	*2 198to2744*	*14*
126to216	*6*	*2 745 to 3 37s*	*15*
217 to 343	*7*	*3 376 to 4 096*	*16*
344to 512	*8*	*4097to4913*	*17*
513 to 729	*9*	*4914to5832*	*18*
730 to 1 000	*10*	*5833to6859*	*19*
1001 to 1331	*11*	*6 860 or above*	*20*

5.8 Obtaining Samples

5.8.1 *Extreme care and good judgment are necessary to ensure samples are obtained that represent the general character and average condition of the material. Clean hands are important. Clean gloves may be worn but only when absolutely necessary, such as in cold weather, or when handling at a high temperature, or for reasons of safety. Select wiping clothes so that lint is not introduced, which would contaminate samples.*

5.8.2 *As many petroleum vapours are toxic and flammable, avoid breathing them or igniting them from an open flame or a spark produced by static. Follow all safety precautions specific to the material being sampled.*

5.8.3 *When sampling relatively volatile products more than 13.8 kPa RVP. Fill and allow the sampling apparatus to drain before drawing the sample. If the sample is to be transferred to another container, also rinse this container with some of the volatile product and then drain. When the actual sample is emptied into this container, upend the sampling apparatus into the opening of the sample container and allow to remain in this position until the contents have been transferred so that no unsaturated air will, be entrained in the transfer of the sample.*

5.8.4 *When sampling non-volatile liquid products 13.8 kPa RVP or less, the sampling apparatus shall be filled and allowed to drain before drawing the actual sample. If the actual sample is to be transferred to another container, rinse the sample container with some of the product to be sampled and drain before it is filled with the actual sample.*

> *NOTE ------When taking samples from tanks suspected of containing flammable atmospheres, precautions should be taken to guard against ignitions due to static electricity. Metal or conductive objects such as gage tapes, sample containers, and thermometers, should not be lowered into or suspected in, a compartment or tank which is being filled or immediately after cessation of pumping. A waiting period will generally permit a substantial relaxation of the electrostatic charge.*

5.9 Handling Samples

5.9.1 *Volatile Samples*

It is necessary to protect all volatile samples of petroleum and petroleum products from evaporation. Transfer the product from the sampling apparatus to the sample container immediately. Keep the container closed except when the material is being transferred. When samples of more than 1 210 kPa RVP are being obtained, be sure to use containers strong enough to meet local safety regulations. After delivery to the laboratory, volatile samples should be cooled before the container is opened.

5.9.2 *Light Sensitive Samples*

It is important that samples sensitive to light, such as gasoline containing tetraethyl lead, be kept in the dark, if the testing is to include the determination of such properties as colour, tetraethyl lead and inhibitor contents, sludge-forming characteristics, stability tests, or neutralization value. Brown glass bottles may be used. Wrap or cover clear glass bottles immediately. It is a definite advantage to use covered cardboard cartons into which the sample bottles may be placed immediately after collection.

***5.9.3** Refined Materials*

Protect highly refined products from moisture and dust by placing paper, plastic, or metal foil over the stopper and the top of the container.

***5.9.4** Container Outage*

Never completely fill a sample container, but allow adequate room for expansion, taking into consideration the temperature of the liquid at the time of filling and the probable maximum temperature to which the filled container may be subjected.

5.10 Shipping Samples

To prevent loss of liquid and vapour during shipment, and to protect against moisture and dust, cover the stoppers of glass bottles with plastic caps that have been swelled in water, wipe dry, place over the tops of the stoppered bottles, and allow to shrink tightly in place. Screw the caps of metal containers down tightly and check for leakage. Appropriate regulations applying to the shipment of flammable liquids must be observed.

5.11 Labelling Sample Containers

Label the container immediately after a sample is obtained. Use waterproof and oilproof ink or a pencil hard enough to dent the tag, since soft pencil and ordinary ink markings are subject to obliteration from moisture, oil smearing, and handling. Include the following information:

a) Date and time (the period elapsed during continuous sampling and the hour and minute of collection for dipper samples);

b) Name of the sampler;

c) Name or number and owner of the vessel, car, or container;

d) Brand and grade of material; and

e) Reference symbol or identification number."

3. This court has considered the rival submissions.

3.1 It finds that even as per the decision of Tata Chemicals Ltd. (cited supra), the sampling has to be done as per the prescribed methodology to allow the sample to be tested in the proper environment. This is the crux of the decision of Tata Chemicals Ltd. as well all the decisions quoted by the learned Advocate. Since the consignment is live and the goods are available, the re-drawl and re-testing as has been sought within the stipulated period and can be conveniently considered. It is in the interest of the department also that the sampling is done as per the prescribed procedure by re-drawing the sample under proper panchnama and sample send to re-testing to the same lab i.e. CRCL, Vadodara, rather at this stage, than regretting later. Therefore, the ends of justice as well as the requirements for the departmental sampling shall be met by acceeding to the request of the appellant. Request, therefore, is allowed with direction to the authorities to draw sample and re-test the same, with CRCL, Vadodara after following prescribed procedure in para 3,4&5 of IS standard 1447 (Part 1) of 2000 (cited above) to the extent applicable.

4. Appeal is allowed in above terms.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Raksha