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

REGIONAL BENCH- COURT NO. 01

Customs Appeal No. 10161 of 2026
[Arising out of Order in Original KND-CUSTM-000-COM-18-2025-26 dated 28/07/2025 passed by Commissioner of Customs-Kandla]

HAZEL MERCANTILE LIMITED **.....Appellant**
Veritas House, 70 Mint Road,
Fort 482-400001, 27

VERSUS

COMMISSIONER OF CUSTOMS-KANDLA **.....Respondent**
Office of the Commissioner of Customs,
Near Balaji Temple, Kandla, Kachchh, Gujarat-370210

WITH

- **Customs Appeal No. 10162 of 2026 (SREYAS CHOUDHARY)**
- **Customs Appeal No. 10163 of 2026 (SAURABH RAJPUT)**
- **Customs Appeal No. 10164 of 2026 (SATISH GAICHAR)**
- **Customs Appeal No. 10165 of 2026 (RAJARAM SHANBHAG)**
- **Customs Appeal No. 10166 of 2026 (NITIN KUMAR DIDWANIA)**
- **Customs Appeal No. 10167 of 2026 (Ashok Desai)**
- **Customs Appeal No. 10168 of 2026 (Minesh Shah)**

(Arising out of OIO No. KND-CUSTM-000-COM-18-2025-26 dated 28.07.2025 passed by Commissioner of Customs-Kandla)

APPEARANCE:
Shri Suyog Bhave, Advocate for the Appellant
Shri Jaspreet Singh Sukhija, Additional Commissioner (AR) for the Respondent

CORAM: HON'BLE SH. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE SH. A.K. JYOTISHI, MEMBER (TECHNICAL)

Final Order No. 10728-10735/2026

DATE OF HEARING:05.08.2026
DATE OF DECISION: 07.09.2026

SOMESH ARORA

In the instant case, the dispute pertains to Naphtha which was stated to be imported by the HAZEL MERCANTILE LIMITED (appellant) from Oman. Other appellants have been subjected to penalty.

1. The Appellant is a limited company, inter alia, engaged. in the business of import and export of various chemicals including Petro-chemicals. The Appellant is also engaged in trading of Naphtha, whereby the

Appellant imports Naphtha from outside India and makes local sales or export of the same. The Appellant has also obtained the requisite License to sell/trade Naphtha in the local market from the District Magistrate, Kachchh-Bhuj.

1.2 In the normal course of business, the Appellant entered into a contract no. HML/VPL/022/2021-REV1 dated 03.02.2021 with Verzone PTE Ltd. ("Verzone"), for the export of Naphtha. Pursuant to the above, Verzone even made part payment of the consideration in advance. For the purpose of procuring the Naphtha, the Appellant entered into a contract dated 11.01.2021, bearing no. AUR/HML/LN-04/2021(R) with Aureole Trading LLC, UAE ("Aureole") for the supply of Naphtha at the price of AED 1930 with an expected date of shipment of January-February 2021 as per the INCOTERMS CFR-2010. The port of loading was any UAE/OMAN port and port of discharge was any Indian Port.

1.3 As per the above contract, the Appellant opened the documentary credit, i.e., Letter of Credit in favour of Aureole vide Letter of Credit no. 84670FLC0000421 dated 28.01.2021 and amended Letter of credit no. 84670/FLC0000421 through Punjab National Bank as well as Letter of Credit No. 06070211M0000092 dated 17.02.2021 through State Bank of India. The amendment was carried out to change in the quality of Naphtha to be imported.

1.4 As per the contract, Aureole is stated to have shipped the cargo through vessel MT Tuna from the port of loading Sohar, Oman to the port of discharge Kandla, India, through Delta Shipping Trading LLC vide seven Bills of lading, the details whereof are as under:-

(i) Bill of lading no. 01, quantity 3000 Metric tons of Naphtha. vide commercial invoice no. ARL/HML/N0201/2021-22 dated 02.02.2021.

(ii) Bill of lading no. 02, quantity 3000 Metric tons of Naphtha vide commercial invoice no. ARL/HML/N0202/2021-22 dated 02.02.2021.

(iii) Bill of lading no. 03, quantity 3000 Metric tons of Naphtha vide commercial invoice no. ARL/HML/N0203/2021-22 dated 02.02.2021.

(iv) Bill of lading no. 04, quantity 3000 Metric tons of Naphtha vide commercial invoice no. ARL/HML/N0204/2021-22 dated 02.02.2021.

(v) Bill of lading no. 05, quantity 3000 Metric tons of Naphtha vide commercial invoice no. ARL/HML/N0205/2021-22 dated 02.02.2021.

(vi) Bill of lading no. 06, quantity 3000 Metric tons of Naphtha vide commercial invoice no ARL/HML/N0206/2021-22 dated 02.02.2021.

(vii) Bill of lading no. 07, quantity 2110.767 Metric tons of Naphtha vide commercial invoice no. ARL/HML/N0207/2021-22 dated 02.02.2021.

1.5 Before exporting the goods, the goods were tested, and certificate of quality was issued by MIS at Load Port vide Reference no. OMN/0048496/SOH dated 02.02.2021. The Vessel MT Tuna arrived at Kandla Port on 06.02.2021. The Appellant had appointed M/s Hemjyot Agency having CB/CHA no. AAAFH2124ECH002 as a Customs Broker for the custom clearance of the said cargo.

1.6 M/s. Hemjyot Agency, had filed 7 Bills of Entry for warehousing of the imported Naphtha. The cargo was stored in the Liquid Storage Tank Terminal of M/s Friends Salt Works and Allied Industries, Kandla ("FSWAI")

Testing of the imported goods

2. Pending clearance of the said cargo for warehousing, it appears that the officers of Custom House, Kandla drew samples from the imported goods and one of the samples drawn was sent to CRCL, Kandla, for the purpose of testing. Thereafter, the Appellant came to know that, customs officers had obtained test report no. 2659863 dated 06.02.2021 of the Chemical Examiner, Central Revenues Customs Laboratory, Kandla ("CRCL Kandla") in which it was allegedly observed that the imported goods were mixture of hydrocarbon having following constituents:

(i) Density at 15-degree C : 0.6474 CC.

(ii) Initial Boiling Point : 40-degree C.

(iii) 10% distill V/V : 42-degree C.

(iv) 50% distil V/V : 52-degree C.

(v) 90% distill V/V :119-degree C.

(vi) Flashpoint below 25-degree C.

2.1 The test report by CRCL Kandla did not specify the sample to be Natural Gasoline Liquid ("NGL") or Naphtha and did not specify the testing method under which the sample of the said cargo was tested. That vide letters dated 16.02.2021 and 17.02.2021, the Ld. Deputy Commissioner, Customs requested the Ld. Joint Director CRCL, Kandla to confirm whether the goods are full range Naphtha or otherwise.

2.2 It further appears that in response to the above, the Ld. Joint Director CRCL, Kandla replied vide letter dated 19.02.2021 stating that based on the Analytical, of the Chemist on the sample under reference and available Technical literature on chemistry, the sample under reference is Natural Gasoline Liquid. Simultaneously, at the request of the Appellant, a test of the imported goods was conducted by TUV India Pvt Ltd, for which sample was drawn on 09.02.2021. The samples were drawn and collected by the TUV India Pvt. Ltd. from the sample of the same cargo from which the customs officers had collected the sample for the testing. The Test Report by TUV India Pvt. Ltd. was handed over to the Appellant on 20.02.2021. Vide (a) Test Report No. TUV/PCG/JAM2021/33(r-1) (b) Test Report No. TUV/PCG/JAM2021/33(r-1), (c) Test Report no. TUV/PCG/JAM2021/34(r-1) and (d) Test Report no. TUV/PCG/JAM2021/34(r-2), it was explicitly certified the imported goods to be Naphtha and not NGL. The report further concluded that, on the basis of the Carbon C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, if it is a Natural Gasoline Liquid in that case Carbon chain will be totally different.

3. Vide letter dated 16.02.2021, placing reliance on the above test report, the Appellant requested for re-export of the said goods stored in the Liquid Storage Tank Terminal of FSWAI. As stated above, the imported goods were meant for export to Verzone, which had paid part of the purchase. Simultaneously, vide letter dated 16.02.2021 (to be read as 22.02.2021), the Appellant requested the customs officers for the re-testing of the goods stored in the Liquid Storage Tank Terminal of FSWAI. The letter also specified that the goods were meant for export. However, no reply was stated to be received by the appellant in response to the above letters. However, no reply was received in response to the above letters.

4. A Summons dated 25.02.2021 was issued by the Additional Director, Directorate of Revenue Intelligence, Ahmedabad ("DRI") to the Appellant under section 108 of the Act. Further, on 25.02.2021, the officers of the DRI visited the Appellant office at Mumbai and conducted search proceedings. During the course of the search proceedings, the mobile phones of the directors and certain employees of the Appellant were also seized under Panchnama dated 25.02.2021. Simultaneously, the mobile phones of the Appellant's CHA, M/s Hemjyot Agency, were also seized under a separate Panchnama dated 25.02.2021.

5. Further, the officers of the DRI also seized the goods stored in the Liquid Storage Tank Terminal of FSWAI, vide Seizure Memo and Panchnama dated 26.02.2021.

The purported reasons for seizure of goods as stated in paragraph no. 2 of the seizure memo dated 26.02.2021, read thus:

> *"Whereas, from the subject goods imported in Vessel MT TUNA, representative samples were drawn and send by Customs House, Kandla to the Custom House Laboratory, Kandla for testing. After necessary testing, the Chemical Examiner, Custom House Laboratory, Kandla have opined that the sample under reference is Natural Gasoline Liquid. Thus, it appears that the imported goods have been mis-declared and mis-classified as Naphtha under CTH 27101229 by the importer in the aforementioned 07 bills of Entry pending for out of charge at goods registration level at Proper officer of Dock examine filed by the importer at Custom House, Kandla instead of declaring correct description thereof as 'Natural Gasoline Liquid classifiable under CTH No 27101290."*

5.1 Vide letter dated 28.02.2021, the Appellant replied to the seizure memo dated 26.02.2021 issued by the Sr. Intelligence Officer, DRI and, inter alia, requested to permit the Appellant to officially draw samples under its supervision of the goods under the above referred bill of entries by following due procedure and further requested to re-test the samples drawn by at least 3 different laboratories recognized by the authorities and also permit the Appellant to obtain report from 3 laboratories of the Appellant's choice, which are duly accredited.

6. During the course of the investigation proceedings, the statement of following persons was recorded under Section 108 of the Act:

(i) Shri Satish Gaichor, Associate General Manager-Logistics of the Appellant, on 25.02.2021 and 17.02.2022;

(ii) Shri Nitin Kumar Didwania, Managing Director of the Appellant, on 12.04.2021;

(iii) Shri Bharat J. Goswami, Terminal Manager of M/s FSWAI, on 23.12.2021;

(iv) Shri Pramod Dharamshi Soneta, Partner of Customs Broker firm, M/s Hemjyot Agency, on 21.12.2021

(v) Shri Illa Giri Visweswarrao, Manager of Samudra Marine Services Pvt. Ltd., on 22.01.2022.

<u>First Special Civil Application before the Hon'ble Gujarat High Court</u>

7. Thereafter, the Appellant filed Special Civil Application No. 4803 of 2021 before the Hon'ble Gujarat High Court challenging the legality and validity of the purported seizure of imported cargo. After filing the Special Civil Application No. 4803 of 2021, the Ld. Additional Director, DRI, vide his letter dated 12.03.2021 responded to the Appellant's letter dated 28.02.2021. Vide order dated 05.04.2021, the Hon'ble Gujarat High Court was pleased to permit the retesting of the samples from the imported cargo and directed that equal numbers of samples be provided to the Appellant as also retained by the The text the different laboratories for retesting. The text of Hon’ble Gujarat High Court is reproduced below:

C/SCA/4803/2021 ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4803 of 2021

M/S HAZEL MERCHANTILE LTD.
Versus
CHIEF COMMISSIONER OF CUSTOMS, GUJARAT ZONE, AHMEDABAD

Appearance:
MR GAURAV K MEHTA(5227) for the Petitioner(s) No. 1
for the Respondent(s) No. 1
MR DEVANG VYAS(2794) for the Respondent(s) No. 2

CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 05/04/2021

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH)

1. We have heard Shri Vikram Nankani, learned Senior Counsel assisted by Shri Gaurav Mehta, learned counsel for the petitioner and Shri Devang Vyas, learned Additional Solicitor General for the respondents.

2. Mr. Nankani has confined this petition only to the limited request that the respondents may get a retesting carried out after drawing fresh samples from the seized goods which are in the custody of the respondent-department. According to Mr. Nankani, this request is made in view of the three different reports having been submitted by the chemical laboratory

NOTARY S.M.H.ZAIDI Mumbai & Thane Dist. Reg. No. 3840 My Commission Expires 25 Sept. 2026 GOVT. OF INDIA

ADVOCATE

C/SCA/4803/2021 ORDER

which are on record. He further submits that the petitioner had applied for the retesting, however, the said request has been declined by the department vide communication dated 12.03.2021.

3. Mr. Devang Vyas, learned Additional Solicitor General although resisted the request of drawing of fresh samples and wanted that re-test could be carried out from the remains of the previous samples already drawn but largely accepts that there is no difficulty nor any prejudice caused to the department, in case fresh samples are drawn from the seized goods which are in the custody of the department and equal number of samples be provided to the petitioner as also retained by the department and also sent to the different laboratories by the petitioner as also by the department at the cost of the petitioner for all the retesting being carried out and the drawing of the samples.

4. In view of the above stand taken by the learned ASG, we are of the view that let a fresh application be filed by the petitioner before the competent authority for drawing of fresh samples, appropriate number of them for both the parties and for the laboratory and thereafter, retesting be carried out from the different laboratories at the choice of the department as also the petitioner. Such exercise may be carried out within a period of one week and thereafter the laboratory may be requested to submit its report to the competent authority at the earliest.

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In view of above, the petition stands disposed of.

(VIKRAM NATH, CJ)

JYOTI V. JANI (BHARGAV D. KARIA, J)

Re-testing and further investigation proceedings

8. In compliance with the order of the Hon'ble Gujarat High Court, on 06.04.2021, the Appellant requested the department for re-testing of the subject goods and the said letter was acknowledged on 07.04.2021. In the said letter, the Appellant had mentioned that the fresh samples be tested as per the parameters prescribed in the said letter to avoid any dispute in future about the methods adopted by the Testing Laboratory for the testing of the fresh samples. Vide Panchnama dated 09.04.2021, five sealed samples bearing nos. S1 to S5 were drawn in the presence of the DRI and the customs officers. The samples marked as S1 and S2 were taken over by the DRI officers; the samples marked as S3 was taken over by the customs officer; and the samples marked as S4 and S5 were handed over to the Appellant. Subsequently, the Ld. Additional Director, DRI issued summons dated 07.04.2021 to Mr. Nitin Didwania, the Appellant's Director with a direction to appear before him on 12.04.2021 and also to provide all the documents in respect of the subject goods and also to tender his statement.

9. The Additional Director, DRI issued another letter dated 08.04.2021 to Mr. Nitin Didwania with a direction to appear before him on 12.04.2021 for the enquiry and informing that the fresh samples are scheduled to be drawn on 09.04.2021. On 12.04.2021, Mr. Nitin Didwania visited the office of the Ld. Additional Director, DRI on 12.04.2021 and his statement was recorded by the officers of the Ld. Additional Director, DRI and Mr. Nitin Didwania submitted all the relevant documents pertaining to the subject goods and as requisitioned by the officers of the Ld. Additional Director, DRI.

10. Vide letter dated 15.04.2021, the Appellant formally requested the Additional Director, DRI to clarify the basis and rationale for the selection of testing parameters adopted during the re-testing of the subject goods, as per DRI Memo No. DRI/AZU/GRU/HAZEL/INT-06/2021 dated 25.02.2021.

11. As the Applicant, despite a lapse of considerable period of time, no response was received from the DRI addressing the specific query regarding the applicability of the 23 parameters open specifications for Naphtha, which are internationally recognized and routinely relied upon in technical assessments and commercial transactions. It is submitted that these open specifications covering critical parameters such as distillation range, PNA profiling, Sulphur content, Olefin content, and other parameters would have sufficed to resolve the ambiguity surrounding the classification and re-testing of the subject goods. It is submitted by the appellant that the lack of

a reasoned reply from the DRI constitutes a procedural lapse and undermines the transparency and fairness expected in technical adjudication.

12. In absence of any response to the above letter, on 16.04.2021, the Appellant submitted the sealed sample no. 4 for the re-testing to Geo Chem Laboratories Pvt. Ltd. ("Geo Chem") and mentioned the parameters and method to be adopted for the re-testing of the sealed sample no. Simultaneously on 16.04.2021, the Appellant also submitted the sealed sample no. 5 for the re-testing to the Indian Institute of Petroleum, Dehradun ("IIP"), vide letter dated 16.04.2021, and mentioned the parameters and method to be adopted for the re-testing of the sealed sample Pursuant to the fresh testing carried out by Geo Chem, vide its Report dated 11.05.2021, Geo Chem certified that the sample "CONFORMS TO OSN SPECIFICATIONS OF NAPHTHA WITH RESPECT TO THE TESTS CARRIED OUT". In other words, it was categorically stated that the sample, as provided by the customs authorities, drawn from the imported goods, was confirmed by Geo Chem to be Naphtha.

13. Similarly, IIP, Dehradun also issued its test report on 18.05.2021 vide Ref No. ASD417:2021 through email. The report states and confirms that the said sample was of Naphtha as per analysis of all the parameters. After obtaining the Test Report from the IIP, Dehradun and Geo Chem, Mumbai, the Appellant submitted them to the Respondent vide letter dated 19.05.2021. In the meantime, without responding to the letter dated 15.04.2021, vide Test Memo dated 15.04.2021, the DRI forwarded a sample to Central Revenues Customs Laboratory, Delhi ("CRCL Delhi") with seven specific queries.

14. Vide its Test Report dated 28.05.2021, CRCL Delhi concluded that the sample has a low boiling point liquid extracted from natural gas and that it is NGL. The details of the tested parameters are summarized below:

Sr. No.	Parameter	Analysis
1.	Acidity	NIL
2.	Flash Point (abel) in "C	Less than 25
3.	Ash (% by wt.)	Nil
4.	Density at 15°C (gm/ml)	0.6499
5.	API gravity	86.12
6.	Water content	Nil
7.	Reactive sulphur	Sweet
8.	Distillation Initial boiling point Temperature at 5% recovery Temperature at 10% recovery Temperature at 50% recovery	35 39 40 47.5 78

	Temperature at 90% recovery Final Boiling Point	112
9.	% Evaporated at 60°C	80
10.	% Evaporated at 135°C	Complete (100%)
11.	Total C5 Hydrocarbons	65.89
12.	Total C6 Hydrocarbons	20.20
13.	Total Aromatics	01.96
14.	Total Olefins	05.245

15. As per the appellant, CRCL, Delhi conducted the test only on five (5) parameters whereas CRCL, Kandla tested only two (2) parameters. However, as per the appellant neither CRCL, Delhi nor CRCL, Kandla provided any details of the test methodology, used for conducting these tests. Pertinently, IIP, Dehradun conducted the test comprehensively covering all the parameters set by IS 17794:2022 for petroleum product classification, as per the claim of the appellant.

<u>Proceedings pertaining to provisional release and re-export</u>

16 In the meanwhile, vide letter dated 15.04.2021, the Appellant requested the department to release the subject goods on provisional basis. Subsequently, vide letter dated 04.05.2021, marked as "Reminder-2", the Appellant requested for release of the subject goods on provisional basis. In response to the above, vide letter dated 12.05.2021, the Appellant was informed by the Ld. Additional Director, DRI to contact the Respondent for provisional release, who is the competent Authority for deciding the application for provisional release and for further action in the subject matter. Consequently, vide the Appellent's letter dated 12.05.2021, the Appellant requested the Ld. Principal Commissioner to release the subject goods on provisional basis. Subsequently, vide letter dated 14.05.2021, the Appellant, once again, requested the Ld. Principal Commissioner to release the subject goods after obtaining the report from the Geo Chem for the sealed sample no. 4.

17 As per the Appellant, Vide letter dated 27.05.2021, the Appellant informed the Central Board of Indirect Taxes and Customs, Delhi ("CBIC") regarding the illegality carried out by the customs authorities in the above matter with all the documents including test reports. Vide email dated 27.05.2021, the Appellant reminded the Ld. Additional Director, DRI to permit re-export of the subject goods. Vide email dated 27.05.2021, the Ld. Additional Director, DRI stated that he has already informed through his

letter dated 12.05.2021 to approach Chief Commissioner Customs, Kandla, as he has the jurisdiction over the subject matter.

18 In view of the failure on the part of the customs authorities, inter alia, in considering the Appellant's repeated requests to permit re-export of the subject goods, the Appellant filed Special Civil Application No. 7840 of 2021, before the Hon'ble Gujarat High Court, challenging, inter alia, the legality and validity of seizure of goods.

19 Vide its order dated 24.08.2021, the Hon'ble High Court directed the Chief Commissioner of Customs, Kandla, to take a decision on the Appellant's application for provisional release of the subject goods within four weeks.

20 A Special Leave Petition No. 15718 of 2021 filed against the order dated 24.08.2021 came to be dismissed, vide order dated 08.10.2021 with the observation that the customs authorities will comply with the directions of the Hon'ble High Court contained in order dated 24.08.2021 and the Appellant would fully co-operate in this regard. Vide its communication dated 27.10.2021, the decision of the Respondent to reject the Appellant's request for provisional release for re-export of the subject goods was communicated to the Appellant by the Assistant Commissioner of Customs. Being aggrieved by the decision of the Respondent rejecting the request for provisional release for re-export, the Appellant preferred an appeal to this Tribunal, with an application for early hearing of the appeal. Vide its Final Order dated 03.12.2021, this Tribunal allowed the Appellant's appeal by directing the Respondent to permit provisional release and export of the goods on the Appellant's executing a bond of the total value of the goods and granted liberty to approach the customs authorities for waiver certificate for the demurrage charges, which will be considered in accordance with law in the facts and circumstance of the case. The Appellant preferred an application before this Tribunal under Rule 41 of the CESTAT (Procedure) Rules, 1982 praying for implementation of its earlier Final Order dated 03.12.2021. Vide its Order dated 06.01.2022, this Tribunal was allowed the Appellant's application and directed the customs authorities to implement its order with immediate effect and report the compliance on 11.01.2022. In compliance with the orders of this Hon'ble Tribunal, the office of the Respondent, vide its letter dated 10.01.2022 informed the Appellant that cargo is allowed clearance for export.

21 Subsequently, on 19.01.2022, the Proper Officer also made Let Export Order for export of the said cargo and the vessel was asked to be made ready to load the cargo which was always meant for export. The office of the Respondent also prepared a panchnama to assess the quantity to be exported. It is pertinent to note that there was loss of 1014.379 MT since the goods were seized for almost one year. On 19.01.2022, the Vessel arrived at the Port for loading of the Naphtha meant for re-export. However, on 25.01.2022, the DRI informed FSWAI that cargo be kept on hold for export.

22. The Ld. Additional Director, DRI filed Special Civil Application No. 1715 of 2022 before the Hon'ble Gujarat High Court against the Final Order dated 03.12.2021 passed by this Tribunal. Vide its order dated 27.01.2022, the Hon'ble Gujarat High Court was pleased to permit export of the cargo subject to the Appellant providing bank guarantee of Rs. 15 crores. The entirety of the remaining consignment, after accounting for the loss due to prolonged seizurej was exported under & different Shipping Bills 15 after furnishing the bank guarantee of Rs. 15 crores, vide letter dated 29.01.2022.

23 Subsequently, vide order dated 21.04.2022, the Hon'ble High Court was pleased to dispose of the above SCA filed with a direction to reduce the bank guarantee to Rs. 8 crores. In the meantime, the Hon'ble Supreme Court was pleased to dispose of Civil Appeal No. 7780 of 2021 filed by the Appellant, vide its order dated 04.01.2022, with a direction to the Respondent to decide the waiver application as directed by this Hon'ble Tribunal within a period of 10 days from the date of the order. Pursuant to the above, Show Cause Notice F. No. GEN/ADJ/ADC/510/2023-Adjn dated 28.03.2023 was issued. The said show cause notice directed the Appellant to show cause to the Hon'ble Additional Commissioner of Customs, Kandla, as to why:

(i) The description and classification of the imported goods, declared as Naphtha under CTH 2710 1229, covered under seven bills of entry should not be rejected and the said goods should not be described as NGL and re-classified under CTH 2710 1290;

(ii) The assessable value of the imported goods declared as Rs. 79,63,76,540 in the impugned seven bills of entry should not be rejected and the same should not be considered according to the market value, i.e., approximately Rs. 278,95,19,113;

(iii) The imported goods should not be held liable for confiscation under Section 111(d), 111(m), 111(p) and 111(0) of the Customs Act, 1962 ("Act");

(iv) Penalty should not be imposed on the Appellant under Sections 112(a), 112(b), 114AA and 117 of the Act;

(v) The amount of applicable re-test fees payable by the Appellant in terms of Section 145 of the Act should not be recovered from the Appellant; and

(vi) The bank guarantee furnished by the Appellant should not be encashed towards the above liabilities, i.e., fine and/or penalties.

24 Being aggrieved by the captioned show cause notice, the Appellant preferred Special Civil Application No. 10224 of 2023 before the Hon'ble Gujarat High Court challenging the legality and validity thereof. Vide its Order dated 18.01.2024, the Hon'ble High Court was pleased to direct that the captioned show cause notice be adjudicated by the Respondent-Commissioner. Vide letter dated 23.02.2024, the Appellant requested the Respondent to provide copies of the records pertaining to the test reports issued by CRCL Kandla and CRCL New Delhi as well as an opportunity to cross-examine the persons on whose statement reliance was sought to be placed in the show cause notice. Appellant's letter dated 23.02.2024. Subsequently, in absence of any response to the above request, keeping its rights and contentions open, the Appellant filed a detailed reply to the show cause notice vide its letter dated 10.04.2024

25 Further, vide letter dated 16.12.2024, the Appellant filed additional submissions, specifically relying on the judgment of this Hon'ble Tribunal in Reliance Industries Ltd. v. Commissioner of Customs, Ahmedabad [2024 (10) TMI 1555-CESTAT Ahmedabad), wherein it is held that NGL is a subset of the broader genus of chemicals known as Naphtha. Based on the same, it was submitted that even assuming without admitting that the imported goods are NGL, the same are only a kind of Naphtha and are correctly classified under CTI 2710 1229. Thereafter, on 22.04.2025, a personal hearing was granted, which was attended by the authorized representatives of the Appellant, who reiterated the submissions made in the detailed reply and the additional submissions and requested that the show cause notice be dropped. Without granting any cross-examination, vide the Order-in-Original No. KND-CUSTM-000-COM-18-2025-26 dated 28.07.2025. Aggrieved by the order present appeal has been preferred by the appellant.

GROUNDS

26. NGL is a sub-specie/kind of Naphtha and thus, the imported goods are correctly classified as Naphtha In any event and assuming without admitting that the imported goods were NGL and not Naphtha, NGL is a sub-specie/kind of Naphtha and thus, the imported goods are correctly classified as Naphtha under CTH 2710 1229. It is pertinent to note that this Hon'ble Tribunal, in Reliance Industries Ltd. v. Commissioner of Customs, Ahmedabad [2024 (10) TMI 1555-CESTAT Ahmedabad], has held that NGL is a subset of the broader genus of chemicals known as Naphtha.

26.1 In the said case though the advance authorization was granted for Naphtha, and the goods imported were found to be NGL, the same was permitted as NGL was a type of Naphtha. The relevant extract of the said judgment is reproduced below:

> *"4. We have carefully considered the submission made by both sides and perused the records. We find that the issue to be decided in the present case is that-*
>
> *(i) whether, even if the imported goods considered as Natural Gasoline Liquid (NGL) as claimed by the revenue, the same falls under the broad description of Naphtha and consequently the clearance of goods under advance authorization which mentioned the imported goods as "Naphtha" is correct and legal or otherwise.*
>
> *(ii) Whether the goods imported by the appellant is "Naphtha" classifiable under tariff item no. 27101290 of the Custom Tariff Act, 1975 or Natural Gasoline Liquid (NGL) classified under Tariff Item No 27101220 of Custom Tariff Act, 1975*
>
> *4.1 We find that the appellant have declared the imported goods in the bills of entry as Naphtha under Tariff Item No. 27101290. The goods were cleared under advance authorization. The sample copy of the advance authorization is scanned below: page 73-75, 76-77 of common paper book.*
>
> *4.2 From the above import authorization in the list of import item Naphtha is mentioned under ITC 27101290, though we do not agree that imported goods is not Naphtha but NGL, the appellant vehemently argued that even the NGL is also Naphtha therefore, since the Naphtha is allowed to be imported, the imported goods is allowable under the same advance authorization. The appellant have vehemently argued that assuming without admitting the goods in question were NGL still the benefit of exemption under advance authorization was admissible to the appellant and NGL is also a type of Naphtha. Since broad description given in the advance authorization, we are of the view that even though the type of Naphtha is different but the same is clearly covered under the advance authorization and hence irrespective of the department's contention that the goods is NGL but the NGL is also a type of Naphtha, the same is covered by the advance authorization. Accordingly, the clearance of goods under Advance Authorization cannot be questioned.*

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4.5 From the above it is evident that naphtha is a genus and NGL is a species. Accordingly, advance authorization specifically covered and allow import of naphtha. It is clear that all species including NGL, would be covered under the genus of Naphtha, and will also automatically get covered by the Advance Authorizations in the present case. In view of this assuming without admitting that the goods in question imported were NGL the same shall have no revenue implication as the said import of Naphtha squarely covered by advance authorization in question. As such there was neither any infirmity in the import of the goods in question nor in the exemption claimed by the appellant under the advance authorization scheme read with governing notification 18/2015-CUS dated 01.04.2015 (as amended) therefore, even if the contention of the revenue is that the goods imported in NGL is correct then also the clearance of goods under advance authorisation cannot be said to be incorrect or illegal. On this basis itself the entire demand is liable to be set aside.

4.6 Without prejudice to the above, we also find that the NGL is a type of Naphtha which is evident from the legislative changes made under the Finance Act, 2019 with Notification No. 89/2019-Cus (N.T) 10.12.2029 to heading 2710 of the Customs Tariff Act, 1975 whereby the 8 digits tariff items under 6 digits sub heading 271012 which covers light oils and preparations were substituted. As per this substitution, the specific tariff item 27101220 which covered NGL was deleted and three new tariff items 27101221 (Light Naphtha), 27101222 (Heavy Naphtha) and 27101223 (Full Rich Naphtha) were inserted to cover Naphtha. An interpretation of this substitution indicates that the same was brought in effect (a) to end the dispute on classification of Naphtha and NGL (b) to specifically covered all types of Naphtha including NGL. It is for this reason because the specific entry of NGL was deleted as the same goods have rendered the tariff items 27101221, 27101222 and 27101223 otiose. Therefore, we do not find any infirmity in either the import of goods in question or in the exemption claimed by the appellant under advance authorization.

(emphasis supplied)

26.2 An Appeal was filed against the Reliance Industries Judgement by the Ld. Commissioner of Customs, Ahmedabad wherein the Hon'ble Supreme Court vide its Order dated 09.04.2025 (in Civil Appeal Nos. 5133-5137 of 2025- Commissioner of Customs, Ahmedabad Vs. M/s. Reliance Industries Ltd.) was pleased to dismiss the Appeal stating that 'there was no good reason to interfere with the said Order of CESTAT, Ahmedabad'. Therefore, the said order is final and reversed by the Hon'ble Apex Court.

26.3 From the above, it is clear that NGL is a sub-specie of the larger genus Naphtha. It is submitted that the Respondent has erred in brushing aside and not following the above judgment in the case of Reliance Industries (supra) on the ground that the same pertained to eligibility under Advance Authorization and that this Hon'ble Tribunal held that even if the classification dispute remains, the benefit of Advance Authorization is allowed. The said case also recognized Natural Gasoline and Naphtha as distinct products classified by its origin and properties. It is submitted that the Respondent has erred in relying on paragraph 4.7 of the above judgment in isolation without considering the discussion and findings of this Hon'ble Tribunal in the earlier paragraphs. However, prior to the aforesaid discussion in paragraph 4.7, in paragraph 4.6, this Hon'ble Tribunal has also examined the legislative changes brought into the CTH 2710 vide the Finance Act, 2019, whereby tariff items 2710 1221, 2710 1222 and 2710 1223 were introduced specifically covering Naphtha. In this regard, this Hon'ble Tribunal has categorically held that the said tariff items, i.e., 2710 1221, 2710 1222 and 2710 1229, would include all kinds of Naphtha, especially including NGL.

26.4 Thus, even assuming without admitting that the imported goods are NGL, it is submitted that the same are only a kind of Naphtha and are correctly classified under CTI 2710 1229. The imported goods are Naphtha and not NGL, as is evident from the test reports and the contracts for import and re-export It is submitted that the imported goods are Naphtha and not NGL and the Appellant has correctly declared the same as Naphtha in the subject Bills of Entry. It is submitted that undisputedly, Naphtha and NGL are two different products having distinct chemical composition. It is submitted that in the present case, four independent agencies have provided detailed test reports certifying that the imported goods satisfy the chemical composition and other parameters attributable to Naphtha.

26.5 Further, both the contract for importing goods and the contract for exporting goods covers transactions of Naphtha only. Adhering to all the applicable laws and after opening valid letter of credits through proper banking channels, the Appellant re-exported the subject imported goods which were always meant for re-export. The imported goods have also been re-exported and accepted by the Appellant's customer as 'Naphtha'. No complaints have been received by the Appellant's customer that the said product is not Naphtha.

<u>Test Reports issued by four independent agencies certifying that the imported goods are Naphtha</u>

26.6 It is submitted that four independent agencies have certified that the imported goods are Naphtha. At the first instance, even before the goods were exported to India, the imported goods were tested and vide test report /certificate dated 02.02.2021, it was certified that the imported goods are Naphtha.

26.7 From a bare perusal of the said test report dated 02.02.2021, it is manifest that the said certification is based on testing of several parameters. Further, the said test report is prepared at the load port itself, i.e., at Sohar, Oman.

26.8 It is submitted that the Respondent has erred in brushing aside the said report by stating that there is sufficient evidence to indicate that the load port for the imported goods is not Sohar, Oman as indicated in the said report. It is submitted that the load port for the imported goods is Sohar, Oman and the allegation that the said load port is any other place is merely based on conjecture and surmises. Further, it is submitted that samples of the imported goods were also tested by TUV India Pvt. Ltd. and vide test reports dated 20.02.2021, it is certified that the imported goods are Naphtha. The said samples were drawn from the storage facility of FSWAI on 09.02.2021. It is pertinent to note that TUV India Pvt. Ltd. gave the test reports dated 20.02.2021 after conducting the test on all the standard parameters, as detailed therein, and it is on the basis of these parameters that the imported goods are certified to be Naphtha. It is submitted that the Respondent has erred in brushing aside the said test report on the ground that no permission was obtained from the customs authorities for drawing the said samples from the customs warehouse operated by FSWAI.

27. In any event, pursuant to the Order dated 05.04.2021 passed by the Hon'ble Gujarat High Court in SCA No. 4803 of 2021, the Appellant was provided with two fresh samples and were permitted to get them tested by two independent agencies. Consequently, vide test report dated 11.05.2021 issued by Geo Chem and test report dated 18.05.2021 issued by IIP, Dehradun, it is once again certified that the said samples, admittedly drawn from the imported goods, are samples of Naphtha. The relevant extracts of conclusions from both the test reports have been reproduced below:

<u>Test Report dated 11.05.2021 issued by Geo Chem</u>

> REMARKS: CONFORMS TO OSN SPECIFICATIONS OF NAPHTHA WITH RESPECT TO THE TESTS CARRIED OUT.

<u>Test Report dated 18.05.2021 issued by IIP, Dehradun</u>

> 3.1.3 Conclusion:
>
> Based on the above observations/results, this sealed naphtha sample (Marked as $5 with Seal No. 715255, Location: MT Tuna) falls under the light naphtha range.

27.1 From the above, it is clear that both the agencies have independently analyzed the samples and based testing against several parameters have concluded that the samples are Naphtha. It is submitted that the said test reports have sought to be ignored by the department basis the allegation that the Appellant had influenced / attempted influence both the said agencies by stating in the Appellant's letters to them that the samples being handed over are Naphtha samples and that the Appellant communicated to the agencies that the customs authorities had reservations on the quality. It is submitted that the above allegation regarding influencing or attempting to influence is factually baseless, erroneous and misconceived. Vide letters dated 16.04.2021, the Appellant had forwarded the samples to both the independent agencies. Irrespective of the subject or the context disclosed in the said letters, the Appellant's direct and concise request/ query to the said agencies has been reproduced below:

> *We request you to analyse the same and certify that the goods confirm to Naphtha or otherwise and oblige.*

27.2 From the above, it is clear that the request made before both the agencies was to analyse and certify whether the samples are Naphtha or some other product. It is reiterated that in response to the above query and based on a detailed multi-parameter testing, both the independent agencies have concluded that the samples are Naphtha.

28. Further, it is submitted that both the agencies are independent and in no manner related to us. More particularly, neither the Appellant nor any of its employees / directors have any influence or control over the decision-making or day-to-day operations of either of the agencies. IIP, Dehradun operates directly under the umbrella of the Council of Scientific and Industrial Research ("CSIR"). The CSIR-IIP, Dehradun is in turn managed and controlled by Ministry of Science and Technology, Government of India. The President of the CSIR is the Hon'ble Prime Minister of India. Further, IIP, Dehradun is accredited with ISO 9001: 2015 certificate and having the advance technology of testing and better infrastructure. IIP plays a vital and integral role in both national and international scientific and technological advancement and holds consultative meetings on R&D with NITI Aayog. Similarly, Geo Chem, founded in 1964, is an independent inspection and testing company. It is one of the largest and reputable inspection and testing organizations in India. It is renowned as cargo inspectors and surveyors and have proven their expertise in Inspection, Survey and Testing of diverse export, import and locally traded cargos and commodities.

28.1 Thus, it is submitted that both the agencies are independent, without the Appellant's influence and experts in the field of testing and analysis. In any event, it is submitted that the Respondent has erred in observing that the Appellant did not consult the department prior to forwarding the samples to the two laboratories. In this regard, it is pertinent to note that prior to sending the samples to the two independent laboratories on 16.04.2021, vide its letter dated 15.04.2021, the Appellant had first approached the DRI giving details of the parameters on which the Appellant proposed that testing should be carried out. However, without responding to the above letter, vide Test Memo dated 15.04.2021, the DRI forwarded a sample to CRCL Delhi requesting them to test the same on certain identified parameters.

28.2 It is submitted that as per the directions of the department, the Appellant submitted the sealed samples marked as S4 and S5 (handed over to the Appellant vide panchnama dated 09.04.2021 in the presence of the DRI and the customs officers) to the two independent laboratories for testing the parameters vide its letters dated 15.04.2021. It is submitted that since April 2021, till the issuance of the show cause notice in March 2023, even after receipt of the Appellant's letter dated 15.04.2021 as well as the test reports of both the independent laboratories, the department did not raise any objections regarding the tested parameters. It is submitted that the Respondent has erred in holding that the two reports cannot be accepted since they appear to be different and contradictory to each other. It is submitted that the said finding is factually incorrect inasmuch as both the reports conclude that the samples are Naphtha. It is submitted that merely because the report issued by Geo Chem does not mention the quality of Naphtha (Light, Heavy or Full Range) and has tested limited parameters as compared to IIP, that by itself does not make the two test reports in contradiction of each other.

28.3 Further, it is submitted that the Respondent has erred in holding that the test reports by IIP, Dehradun and Geo Chem cannot be relied upon since neither is categorically denying that the goods are not NGL. It is submitted that by concluding that the samples are Naphtha, the corollary of such conclusion is that the samples are not NGL and thus, no separate testing or analysis or conclusion is required to deny that the goods are NGL.

29. In view of the above, it is submitted that the four test reports issued by four independent agencies categorically conclude that the imported goods are Naphtha and thus, the imported goods cannot be assessed as NGL.

Test Reports issued by Customa Authorities are cryptic and based on incomplete parameters

29.1 In any event, the test reports issued by the CRCL, Kandla and CRCL, Delhi concluding that the imported goods are NGL cannot be relied upon inasmuch as the same are cryptic and based on incomplete parameters. Further, the said test reports did not deny that the goods are not Naphtha. It is pertinent to note that during the course of the investigation, under Panchnama dated 09.04.2021, five samples were drawn by the DRI officers from the imported goods for the purpose of testing them. It is pertinent to note that the said Panchnama does not refer to the sampling method used in selection of the samples. Vide the test report dated 15.02.2021, the CRCL Kandla stated that the sample is composed of mixture of hydrocarbons and further referred to certain parameters which were tested. However, the said report did not provide any details of the test methodology used in forming the conclusions stated therein. In order to obtain further clarification as to whether the imported goods is Naphtha or otherwise, further letters dated 16.02.2021 and 17.02.2021 were addressed by the office of this Hon'ble Commissioner to the CRCL Kandla.

29.2 Subsequently, vide letter dated 19.02.2021, the CRCL Kandla stated

thus:

> *"In this regard it is to inform you that, based on the Analytical of the Chemist on the sample under reference and available Technical literatures on chemistry, the sample under reference is Natural Gasoline Liquid."*

29.3 It is submitted that the above test report is clearly cryptic inasmuch as the same purportedly draws the conclusion that the sample is NGL by merely referring to the alleged analysis by the chemist and "available technical literatures on chemistry". The test report does not refer to any test methodology, tested parameters or the analysis. In any event, it is submitted that the Appellant has not been provided with the details of the purported analysis of the chemist or copies of the alleged technical literature on chemistry referred to in the report. Apart from the above, vide test memo dated 15.04.2021, a sample of the imported goods was also sent to CRCL Delhi for the purpose of retesting. Vide the test report dated 28.05.2021, the CRCL Delni has concluded that the sample is a low boiling liquid extracted from natural gas and that it is NGL. The said test report refers to 14 parameters claimed to be tested. However, the said test report also does not provide any details of the test methodology used.

29.4 From a perusal of the captioned test report dated 15.02.2021 issued by CRCL Kandla and test report dated 28.05.2021 issued by CRCL Delhi, it is pertinent to note that neither report gives details of the test methodology used. Also, CRCL Delhi as well as CRCL Kandla failed to test other standard specifications for measurement of Naphtha as prescribed by the BIS, like, Reid Vapor Pressure, Distillation, Paraffin (N-Paraffin & Iso Paraffin), Olefins, Naphthene etc. Further, the captioned letter dated 19.02.2021 summarily concludes that the sample is NGL by referring to certain alleged technical literature. However, neither the alleged unknown technical literature has been referred to or reproduced in the said letter nor has a copy been provided to the Appellant.

29.5 Further, it is clear that the sampling method as well is not known or referred to in the Panchnama dated 09.04.2021 under which the samples were drawn. In Fomento Resources Pvt. Ltd. v. Commissioner of Cus., Vijayawada [2019 (370) ELT 1381 (Tri.- Hyd.)], the Hon'ble Tribunal has held that where the Chemical Examiner's test report is extremely cryptic, inasmuch as the same does not indicate as to how the sample was tested and what parameters were tested, the said test report cannot be relied upon.

29.6 Further, in light of the above pitfalls in the testing and the test reports, vide the Appellant's letter dated 23.02.2024, the Appellant had requested this Hon'ble Commissioner to provide all records pertaining to the sampling and the two test reports. However, no response has been received to this date. In PLG Impex v. Commissioner of Customs, Jodhpur [2022 (382) ELT 353 (Tri.- Del.)], the Hon'ble Tribunal has held that a test report which is provided to the importer after the last date of personal hearing and does not mention details of the test methodology adopted cannot be relied upon.

29.7 Thus, it is submitted that without providing the relevant documents pertaining to the sampling and test reports, the above test reports cannot be relied upon in the present case. In any event, it is submitted that the said test reports are based on limited parameters. It is submitted that the test report dated 08.02.2021 issued by the CRCL, Kandla has drawn to the said conclusion based on mainly the appearance and few other parameters such as the boiling point, flash point and the distillation results. It is submitted that the said report issued by CRCL, Kandla does not contain any details regarding the chemical composition or the other tests applied by the four independent agencies as mentioned above. Similarly, the test report dated 28.05.2021 issued by the CRCL, Delhi has drawn conclusions based on testing of limited number of parameters as opposed to the detailed tests carried out by the independent agencies.

30. In this regard, it is pertinent to note that the Bureau of Indian Standards ("BIS") has notified the standards for Naphtha, namely, IS 17794:2022 in March 2022. Hereto annexed and marked as Exhibit "HHH" is the copy of the BIS issued IS 17794:2022. The IIP, Dehradun's test report is comprehensive, covering all parameters set by IS 17794:2022 for petroleum product classification. The CRCL, Kandla and CRCL, Delhi are incomplete, relying only on two (2) and five (5) parameters, insufficient for distinguishing complex hydrocarbons such as Naphtha and Natural Gasoline. Even the report by CRCL Delhi if considered vis-à-vis the notified standards for Naphtha by BIS, the subject goods are proved to be Naphtha, and not NGL. It is submitted that the imported goods fully satisfy the said standards notified for Naphtha.

31. From a bare perusal of the said standards, it is clear that the BIS requires 13 parameters to be tested for Naphtha. However, both CRCL, Kandla and CRCL, New Delhi have tested only two and five parameters, respectively, in respect of the imported goods, as in detailed below:

Sr. No.	**BIS Standards Testing Parameter**	**CRCL Kandla**	**CRCL Delhi**
1	Appearance	-	-
2	Density @ 15°C	-	-
3	Colour Saybolt	-	-
4	Reid Vapour Pressure (RVP)	-	-
5	Sulphur		-
6	Distillation: I.B.P.**	Tested	Tested
7	90% Recovered	Tested	Tested
8	Distillation: F.B.P.**	-	Tested
9	Recovery	-	-
10	Total Paraffins	-	-
11	Olefins	-	Tested
12	Naphthenes	-	-
13	Aromatics	-	Tested

On comparison of the BIS standards and the reports issued by CRCL Kandla and CRCL New Delhi, it is clear that both the authorities have not tested vital parameters covered by the said standards before concluding that the samples are NGL.

32 As against the above, the two independent agencies, namely, Geo Chem and IIP, Dehradun, have tested all the parameters mentioned in the BIS standards as detailed below:

Sr. No.	BIS Standards Testing Parameter	Geo Chem	IIP, Dehradun
1	Appearance	-	-
2	Density @ 15°C	Tested	Tested
3	Colour Saybolt	Tested	Tested
4	Reid Vapour Pressure (RVP)	Tested	Tested
5	Sulphur	Tested	Tested
6	Distillation: I.B.P.**	Tested	Tested
7	90% Recovered	Tested	Tested
8	Distillation: F.B.P.**	Tested	Tested
9	Recovery	Tested	Tested
10	Total Paraffins	Tested	Tested
11	Olefins	Tested	Tested
12	Naphthenes	Tested	Tested
13	IIP, Dehradun	Tested	Tested

A bare reading of the above comparisons would indicate that the Imported goods have been declared by the CRCL as NGL based on insufficient testing.

32.1 Thus, it is submitted that the Respondent has erred in holding that the test report of CRCL Delhi is more comprehensive to ascertain whether the imported goods are Naphtha or NGL. In any event, it is submitted that the Respondent has erred in holding that the imported goods were having characteristics of NGL and not Naphtha based on the C5-C6 carbon numbers in the report issued by IIP. Further, it is submitted that the Respondent has erred in placing reliance on the definition of NGL as per the US Energy Information Administration and Hess Corporation's Safety Data Sheet of Natural Gasoline, to hold that NGL consists of hydrocarbons with carbon numbers predominantly in the range C5 to C8. It is submitted that the said finding is incorrect inasmuch as NGL actually falls in the range of C2 to C5. It is submitted that even Naphtha has carbon numbers predominantly in the range of C5 to C10. In this regard, reliance is placed on the following stating that Naphtha has carbon numbers in the range of C5 to C10:

(i) Definition of Solvent Naphtha (Petroleum) as published by the United States of America Environmental Protection Agency in the Substance Registry Services:

A complex combination of hydrocarbons obtained from the distillation of crude oil or natural gasoline. It consists predominantly of saturated hydrocarbons having carbon numbers predominantly in the range of C5 through C10 and boiling in the range of approximately 35.degree.C to 160. degree. C (95.degree. F to 320.degree.F).

(ii) Definition of Naphtha as published by Safe Work Australia in the Hazardous Chemical Information System:

A complex combination of hydrocarbons obtained from the distillation of crude oil or natural gasoline. It consists predominantly of saturated hydrocarbons having carbon numbers predominantly in the range of C5 through C10 and boiling in the range of approximately 350 to 1600 (95F to 320F)

(iii) "Catalytic Co-Processing of delayed coker naphtha with VGO streams", Oil and Gas Technical Journal, 2nd Edition, published in May 2023 by the Centre for High Technology, Ministry of Petroleum & Natural Gas, Government of India (Pg. 76):

In this context, catalytic cracking and hydrocracking units perform relevant roles in the upgradation of intermediate oils whereas cokers and visbreakers intensify heavier oils and residue. Amongst the aforementioned upgraded streams, thermally cracked naphthas consideration as they consist of complex mixtures of low-require special quality components in the C5- C12 range. Coker naphtha in particular is characterized with high sulphur concentration and low octane rating. Upgrading such low-quality stream entails selective hydrogenation. However, with the increasing quantum of heavy oil and residue, many refineries end up with a surplus of thermally cracked naphtha which negatively affects the profitability.

32.2 From the above, it is clear that the carbon numbers for Naphtha are predominantly in the range of C5 to C10. Thus, the test results reported by IIP evidencing that the hydrocarbons for the tested samples were predominantly in C5-C6 range further proves the fact that the imported goods were Naphtha.

32.3 In view of the above, it is submitted that the test reports issued by the CRCL, Kandla and CRCL, New Delhi cannot be relied upon, and the imported goods cannot be considered to be NGL

<u>Contract for Import, Contract for Export and Re-export</u>

32.4 It is submitted that both the contracts for import and export as well as the relevant invoices pertaining to the subject goods describe the subject goods as Naphtha. As stated above, the Appellant had entered into a Contract dated 03.02.2021 with Verzone, Singapore for supply of Naphtha. For fulfillment of the said export order, the Appellant entered into another Contract dated 11.01.2021/ 27.01.2021 with Aureole for procurement of the Naphtha. Thus, it is submitted that the imported goods were always meant for re-export. The Appellant imported Naphtha and were obligated to import Naphtha for the purpose of fulfillment of the Appellant's obligations of supply of Naphtha to Verzone, Singapore. It is submitted that till date no complaint or communication is received from Verzone, Singapore that the goods received by them were not Naphtha. It is pertinent to note that both the import and export invoices mention the products as Naphtha.

33. Undisputedly, pursuant to the permission for re-export granted to the Appellant, the Appellant have exported the Naphtha to Verzone vide eight

Shipping Bills. It is submitted that in absence of any complaint or communication from Verzone regarding the product exported not being Naphtha, the impugned order holding that the imported goods are not Naphtha is liable to be set aside. In any event, the negative inferences drawn based on the Whatsapp chats referring to a change in the HSN are incorrect. The said change in HSN was pertaining to CTH of Light Naphtha as against Full Range Naphtha. The said change was in no manner related to the import of any NGL.

33.1 Further, it is submitted that the Respondent has erred in drawing a negative inference by placing reliance on certain Whatsapp chats indicating insistence to mention the product name as 'Naphtha' in all documents. It is submitted that the requirement to mention the correct name of the product, i.e., Naphtha, was valid since the imported goods were Naphtha and to avoid any misdeclaration. Without prejudice to the above, it is submitted that the Respondent has erred in placing reliance on the statement of Mr. Satish Gaichor and Whatsapp chats regarding discussion on availability and supply of Gasoline and Gasoil. It is submitted that the said discussion pertained to a separate potential transaction of Gasoline which has nothing to do with the impugned import of Naphtha. Appositely, Gasoline, Gasoil and NGL are different products altogether. It is pertinent to note that ultimately no Gasoline or Gasoil was supplied by the Appellant to any buyer and that the said fact is affirmed by the director of the Appellant in his statement In any event, it is submitted that the department has not brought on record any evidence suggesting that the said discussion pertained to the impugned imports.

<u>Application of Most Akin Test</u>

33.2 It is submitted that the Respondent has erred in applying the 'most akin' test and holding that the imported goods are most akin to NGL and therefore should be described and classified as NGL It is submitted that even applying the most akin test, the imported goods are Naphtha and thus most akin and closely resemble Naphtha. It is submitted that the Respondent has erred in holding that Geo Chem and IIP only focused on Naphtha parameters whereas CRCL Delhi tested for both Naphtha and NGL. It is submitted that both Geo Chem and IIP carried out comprehensive testing on a comprehensive list of parameters leading to the categorical conclusion that the samples were of Naphtha.

33.3 On the contrary, as stated above, CRCL Delhi omitted several of the standard parameters as notified by BIS, especially, Distillation Range, PNA profiling, and Sulphur content, thus, their conclusion lacks the rigor required under BIS norms. Overlapping parameters like density or flash point alone cannot establish dual testing for both NGL and Naphtha. These are not exclusive indicators and must be interpreted in conjunction with the full suite of tests. Hence, it cannot be concluded that CRCL Delhi has tested for both NGL and Naphtha. It is pertinent to note that similar to CRCL Delhi, both IIP and Gen Chem have also tested several parameters which are applicable for both NGL and Naphtha and have concluded that the samples are Naphtha.

33.4 It is pertinent to note that while comparing CRCL Delhi, IIP, and Geo Chem, it may appear that they have all tested parameters that may be applicable to both NGL and Naphtha, however, the critical distinction lies in the depth and specificity of the testing. Geo Chem and IIP conducted comprehensive testing aligned with BIS and ASTM standards, including parameters that are diagnostic of Naphtha. In contrast, CRCL Delhi's testing was limited to overlapping parameters, which, while relevant are, insufficient to conclusively determine the nature of the sample. Therefore, the conclusion drawn by Geo Chem and IIP that the sample is Naphtha is not only reasonable but also technically substantiated. Thus, it is submitted that the Respondent has erred in relying solely on the test report issue by CRCL Delhi and brushing aside the test reports issued by IIP and Geochem to hold that the samples are most akin to NGL and not Naphtha.

33.5 In view of the above, it is submitted that the imported goods are Naphtha and not NGL.

<u>There is no misdeclaration as regards the port of loading or shipper in the subject Bills of Entry.</u>

34. It is submitted that there is no misdeclaration as regards the port of loading or shipper in the subject Bills of Entry. It is submitted that the Appellant filed the Bills of Entry based on the documents received from the supplier, Aureole. Further, along with the Bills of Entry, the Appellant have also submitted the Bills of Lading issued by Delta Shipping as well as the Commercial Invoices issued by Aureole. It is a common industrial trade practice in petrochemical trading to use a back-to-back letter of credit (LC) as a trade finance instrument where an intermediary uses a primary LC from a buyer to back a secondary LC issued to their supplier, allowing the trader to fund the purchase from the supplier without upfront capital. The process involves the intermediary securing a master LC from the end-buyer, then

using it as collateral to open a back-to-back LC for the supplier of the petrochemicals. Once the supplier ships the products and presents compliant documents (e.g., BL, invoice, packing list, COO), their bank pays them, and these documents are then passed to the intermediary's bank to trigger payment from the master LC.

34.1 From a bare perusal of the Bills of Lading, it is manifest that the port of loading for the imported goods was Sohar, Oman and not Iraq as is alleged in the show cause notice under reply. It is submitted that the reliance placed on the purported Whatsapp chats by the Respondent to hold that port of loading was actually Iraq is erroneous. Further, it is submitted that the Respondent has erred in placing reliance on the purported Certificate of Origin, Commercial invoices, Bill of Lading and Delivery Order, all dated 24.01.2021, allegedly showing the port of loading as Iraq.

34.2 From a bare perusal of the said Bill of Lading, it is evident that the said documents pertain to a different shipment, which has nothing to do with the transactions hereunder, that was loaded in Iraq and was meant for delivery in the United Arab Emirates. No mention whatsoever is made, in any of the said relied upon documents, regarding delivery or unloading at Kandla, India. Thus, it is submitted that the said documents, pertaining to some other shipment, are not relevant and cannot be relied upon to allege that the port of loading / country of origin is Iraq. Further, undisputedly, no monetary benefit has accrued to the Appellant due to the alleged change in the port of loading / country of origin and the shipper. In any event and even assuming without admitting that the port of loading/ country of origin of the imported goods is Iraq, it is submitted that the Appellant has not applied for any preferential tariff treatment or any other benefit based on the country of origin. In any event, it is submitted that the supplier, Aureole, bought the loaded cargo/goods through Delta Shipping. The same is evident from the fact that even in the other export documents, relied upon by the Respondent, Aureole was mentioned as the Notify Party. In that case, there is no mala fide intention in mentioning the name of Aureole as the name of shipper / supplier.

34.3 In view of the above, it is submitted that there is no misdeclaration in of either the port of loading/ country of origin or the shipper.

<u>The assessable value of the imported goods is correct and cannot be rejected based on an ad-hoc value.</u>

35. It is submitted that the assessable value of the imported goods is correctly disclosed based on platts publication and, in any event, the same cannot be rejected based on an ad-hoc value. In view of the submissions made above, it is amply clear that the imported goods are correctly disclosed as Naphtha and cannot be considered as NGL. It is submitted that the valuation adopted by the Appellant in respect of the imported Naphtha is correct and, admittedly no allegation is made regarding the correctness of the said valuation.

35.1 The case of the department pertaining to the change in valuation flows from the allegation that the imported goods are NGL and not Naphtha. Even assuming without admitting that the imported goods are NGL and not Naphtha, it is submitted that the valuation adopted in the show cause notice under reply based on the prices purported to be taken from the website "globalpetrolprices.com" is arbitrary and unreasonable. It is noteworthy that the prices on the website, "globalpetrolprices.com", are averages of the prices collected (without having assessed the local market conditions) from different parts of the world and also, not real-time, thus, are unreliable having inconsistencies/inaccuracies and due to fluctuating market conditions and reporting lags (i.e., there is a delay between when the prices are collected and when they are published online).

35.2 It is submitted that the ad-hoc reliance placed on the prices displayed on the said website, without any detailed examination of the product and the applicability of such prices to the imported goods is erroneous and vitiated in law. In Union of India v. Garware Nylons Ltd. [1996 (87) ELT 12 (SC), the Hon'ble Supreme Court was pleased to hold thus:

> *15. In our view, the conclusion reached by the High Court is fully in accord with the decisions of this Court and the same is justified in law. The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mare assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary.*

35.3 In the present case, the Respondent has failed to discharge the burden of proof. Classifying the goods as NGL; rejecting the BIS-compliant test reports from Geo Chem and IIP; and placing the reliance on speculative digital communications and third-party website's unverified prices all lack the evidentiary rigor mandated by law. The Show Cause Notice proceeded on assumptions and selective reliance, without placing on record any cogent material documentary or technical that would justify the conclusions drawn. As held in Garware Nylons, such an approach is legally unsustainable and must be set aside. It is submitted that by relying upon the prices displayed on the said website without due examination of the same, the department has failed to discharge the burden of proof. In any event, from a bare perusal of the screenshot of the said website annexed as an RUD to the show cause notice under reply, it is clear that the said gasoline price pertains to High Octane - 95 Gasoline.

35.4 It may please be noted that NGL servea raw materials for various products, including LPG, synthetic rubber, solvents, and importantly, as blending components to create gasoline whereas High Octane-95 Gasoline is a high-performance, specific type of motor fuel designed for a higher Research Octane Number (RON) (95 RON) offering better engine performance, fuel economy, and cleaner combustion. Therefore, both the products, High Octane-95 Gasoline and NOL. are completely different products, thus, considering prices of High Octane-95 Gasoline instead of NGL is totally flawed and vitiated in law. It is submitted that even assuming without admitting that the imported goods are NGL, the revaluation ought to have been done by considering prices of NGL and not the price of High Octane Gasoline. 95

35.5 In the present case, the show cause notice is completely silent on the octane level of the imported goods. No investigation and no examination have been made of this aspect. Even assuming without admitting that the imported goods are NGL, it is respectfully submitted that the goods are chemically and commercially closer to Naphtha than to high-octane Gasoline. Naphtha is a low-octane petrochemical feedstock, typically used in the production of plastics, solvents, and reformulated fuels. In contrast, 95 Octane Gasoline is a highly refined automotive fuel, enriched with additives and designed for internal combustion engines.

35.6 The reliance on retail-grade 95 Octane Gasoline prices, such as those published on globalpetrolprices.com, is misplaced and misleading. These prices reflect consumer-grade fuel sold at petrol stations, Inclusive of excise duties, blending costs, and retail margins. Naphtha, by contrast, is traded as a bulk industrial commodity, with pricing governed by FOB contracts, feedstock benchmarks, and refinery gate values. Therefore, even if the classification were to lean toward NGL, the valuation must be based on comparable low-octane petrochemical grades, not on high-octane retail fuels. Using inflated gasoline benchmarks distorts the customs valuation and violates the principles laid down under Section 14 of the Customs Act, 1962 and the Customs Valuation Rules, 2007, which mandate valuation based on transaction value or comparable commercial substitutes. Thus, it is submitted that the said high octane prices cannot be relied upon for the correct valuation of the imported goods. It is respectfully submitted that the reliance placed on high-octane gasoline prices such as those for 95 Octane retail-grade fuel - is immaterial and improper for the purpose of valuing the imported goods. The imported product, even if assumed to be NGL, is chemically and commercially distinct from high-octane gasoline, which is a refined automotive fuel subject to retail taxation, blending costs, and distribution margins. In contrast, NGL and Naphtha are bulk petrochemical feedstocks, traded on industrial terms and priced based on FOB contracts and refinery gate benchmarks. Valuation under Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 mandates that the value must reflect the transaction value or, where unavailable, be derived from comparable commercial substitutes not unrelated consumer-grade products.

35.7 Thus, it is submitted that the said high octane prices cannot be relied upon for the correct valuation of the imported goods. Further, it is pertinent to note that the department has sought to adopt the price of NGL as on 01.02.2021 as applicable in India. It is submitted that the subject goods having been imported from as alleged), the prices Oman (or in any case from Iran/Iraq applicable in the country of origin / port of loading must be applied for determining the value of the imported goods.

35.8 In view of the above, it is submitted that the assessable value of the imported goods is correctly disclosed and, in any event, the same cannot be rejected based on an ad-hoc value sought adopted by the Respondent. It is submitted that the Respondent has erred in not considering the above submissions and recording any findings in respect thereof.

In any event, the value of the imported goods cannot be re-determined by substitution of the declared value with an ad-hoc value without the sequential application of Rules.

36. Without prejudice to the above, it is submitted that in the present case, the value cannot be directly re-determined without due application of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ("Valuation Rules").

36.1 From a perusal of the show cause notice and the impugned order, it is clear that the department proposed to reject the declared value of the imported goods and thereafter directly re-determine based on prices of gasoline appearing on 'globalpetrolprices.com'. It is settled law that once the declared value has been rejected under the provisions of Rule 12 of the Valuation Rules, the re-determination can only be done sequentially under Rule 4 to Rule 9 of the Valuation Rules, and not under Rule 3(1) of the Valuation Rules. The provision for sequential application of Rules 4 to 9, pursuant to rejection of value under Rule 12, is enshrined under Rule 12(2)(i) of the Valuation Rules itself.

36.2 Further, reliance is placed on the following judgments:

(1) Century Metal Recycling Pvt. Ltd. v. Union of India, 2019 (367) ELT 3 (SC)

(ii) Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai, 2000 (122) ELT 321 (SC)

(iii) Innobiz Electronics Pvt. Ltd. v. Commissioner of Customs, Tuticorin, 2017 (352) ELT 82 (Tri.- Chennai)

(iv) PNP Polytex Pvt. Ltd. v. Commissioner of Cus., Nhava Sheva, 2015 (318) ELT 649 (Tri.- Mumbai)

36.3 In the present case, it appears that the Respondent has rejected the declared value purportedly under Rule 12 of the Valuation Rules. However, thereafter, the Respondent has re-determined the value by directly, without any discussion on the sequential application of Rules 4 to 9 of the Valuation Rules. In any event, it is submitted that the proper office cannot substitute the transaction value of the imports but can only re-determine the assessable value through the sequential application of the valuation rules.

36.4 In M/s Universal Offset v. Commissioner of Customs (Export), New Delhi [2024 (9) TMI 71 CESTAT NEW DELHI], this Hon'ble Tribunal has held thus:

> *16. The FOB value is the value which the buyer agrees to pay to the seller as a consideration for the goods without including the past of transportation and transit insurance. C&F, on the other hand includes the FOB value the cost of transportation up to the port of destination. CIF includes the FOB value the cost of transportation the cost of transit insurance up to the port of destination. International trade is done, among others, in all three forms. It is for the buyers and the sellers to decide in what form the price will be sold, the currency in which it is to be paid and the value for the goods. This transaction value (either in FOB or CIF or C&F) is a product of negotiation between the buyer and the seller. It is the consideration which the buyer pays to the seller for the goods. This transaction value cannot be altered by anyone who is a stranger to the contract including the customs officers. What the officers can*

determine under the Customs Valuation Rules is whether to accept the transaction value as the value under the Customs Act to assess duty or to reject it and determine the value following some other method prescribed in the Valuation Rules. In other words, what the officer decides is the assessable value of the goods under the Customs Act. In the normal course, the transaction value is the assessable value. However, there are exceptions under section 14 read with the Valuation Rules. The Valuation Rules indicate conditions under which the proper officer can doubt the transaction value and reject it. If the transaction value is rejected as the assessable value, then it has to be determined under any of the other methods provided in the Valuation Rules.

17. What needs to be noted is the customs officer does not and cannot alter the transaction value, but can only reject the transaction value and re-determine the assessable value through some other methods. An illustration will make the distinction clear. "A", living in U.K., sells his luxury car to "B" in India for GBP 1,000/-. The Customs Officer, finding this value too low and not reflecting the true value of the car, rejects this transaction value and re-determines the value of the car as GBP 10,000/-. Duty has to be paid as per the re-determined assessable value of GBP 10,000/-. However, the transaction value continues to be GBP 1,000/- and will not change. Therefore "B" has to remit only GBP 1,000/- to "A" as consideration for the car as agreed to between them. However, he will have to pay duty on the value determined, by the proper officer ie. on GBP 10,000/-. This distinction is significant and applies in almost every case of import and export. Besides the mutual obligations between the buyer and the seller, the foreign exchange remittances or, as the case may be, the obligation to receive remittance of foreign exchange under the Foreign Exchange Management Act depends on the transaction value. In this case, for instance, the transaction value agreed to between the buyer and the seller is equivalent to Rs. 1,45,21,020/-in U.S.D. If the goods are exported, Universal will have to receive a remittance of equivalent amount within the stipulated time. Even if the customs officer re-determines the value as Rs. 2,75,400/- even if such re-determination is upheld in appeals, the obligation of the overseas buyer to remit an amount equivalent to Rs. 1,45,21,020/- does not reduce. It is a product of negotiation between the buyer and the seller. The responsibility of the exporter to get remittance of this amount under FEMA also does not get diminished because the officer re-determines a different value as the assessable value.

36.5 Thus, it is submitted that even in the present case, the Respondent it cannot substitute the transaction value of the imported goods with the prices of gasoline appearing on a website. In view of the above, it is submitted that the impugned order, to the extent it re-determines the value of the imported goods, iş liable to be quashed and set aside on this ground itself. The statements of the various persons cannot be relied upon since the procedure prescribed under Section 1388 of the Act has not been followed and no cross-examination has been permitted

36.6 It is further submitted that the statements of various persons cannot be relied upon without following the mandatory procedure prescribed under Section 138B of the Act. Section 138B stipulates that a statement made by a person before a Customs officer shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness and the statement is admitted in evidence. Further, Section 138B(2) states that the above procedure shall apply to all proceedings under the Act.

37. In the present case, the show cause notice and the impugned order refers to and relies upon the statements of various persons. However, it is pertinent to note that the said statements have been recorded under Section 108 of the Act. Accordingly, it is submitted that if reliance is sought to be placed on the said statements, Section 138B of the Act mandates that the relevant persons must be examined as a witness. In the present case, however, none of the above persons have been examined as a witness, nor is there any finding recorded as to why the statements should be admitted in evidence, prior to placing reliance on the statements. The strict compliance of the procedure prescribed in Section 138B of the Act (and the identical Section 9D of the Central Excise Act, 1944) to adjudication proceedings has also been judicially recognized and no statements can be relied upon in case of failure to comply with Section 138B. Some of the judicial precedents are referred to herein below:

(i) Ambika International v. Union of India, 2018 (361) ELT 90 (P&H)

(ii) Hi Tech Abrasives Ltd. v. Commissioner of C. Ex. & Cus., Raipur, 2018 (362) ELT 961 (Chattisgarh)

(iii) Meenakshi Food Products (P) Ltd. v. CCE & ST, Ahmedabad-II, 2019 (370) ELT 1330 (Tri. Ahmd.)

(iv) Commissioner of Central Excise, Delhi-I v. Kuber Tobacco India Ltd., 2016 (338) ELT 113 (Tri.- Del.)

37.1 In any event, it is submitted that the statements cannot be relied upon the without providing to the Appellant an opportunity to cross-examine the relevant person.

In Commissioner of Central Excise, Meerut-I v. Parmarth Iron Pvt. Ltd. [2010 (260) ELT 514 (All.)], the Hon'ble Allahabad High Court has held thus:

> *16. We, therefore, have no hesitation in holding, that there is no requirement in the Act or Rules, nor do the principles of natural justice and fair play require that the witnesses whose statements were recorded and relied upon to issue the show cause notice, are liable to be examined at that stage. If the Revenue choose not to examine any witnesses in adjudication, their statements cannot be considered as evidence. However, if the Revenue choose to rely on the statements, then in that event, the persons whose statements are relied upon have to be made available for cross-examination for the evidence or statement to be considered.*

37.2 In view of the above, it is submitted that the heavy reliance placed on the statements by the Respondent is violative of Section 1388 of the Act.

38. From a bare perusal of the impugned order, it is manifest that the allegations made against the Appellant are primarily based on the said erroneous reliance on the statements and thus, it is submitted that the impugned order is liable to be set aside.

In any event, the imported Naphtha is not liable for confiscation under Section 111 of the Act.

39. It is submitted that the imported goods are not liable for confiscation under Sections 111(d) or 111(m) or 111(0) or 111(p) of the Act. The relevant extract of Section 111 of the Act has been reproduced below:

> *SECTION 111. Confiscation of improperly imported goods, etc.-*
>
> *The following goods brought from a place outside India shall be liable to confiscation:-*
>
> *(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
>
> *(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;*
>
> *(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer,*
>
> *(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.*

39.1 It is submitted that the imported goods are not prohibited under the Act or under any other law for the time being in force and thus, are not liable to be confiscated under Section 111(d) of the Act.

39.2 In view of the above submissions, it is amply clear that the imported goods are Naphtha and not NGL. It is submitted that the import of Naphtha is not prohibited under the Act or under any other lave for the time being in force. It is submitted that the allegations pertaining to violations of the FTP and the Petroleum Rules, 1976 are incorrect inasmuch as the referred provisions of the two laws are applicable only to NGL and not to the imported goods, being Naphtha. It is further submitted that there is no misdeclaration as envisaged under Section 111(m) of the Act.

39.3 Undisputedly, the Notice has not mis-declared the value of the imported Naphtha in any of the documents submitted by it for the import. The Appellant acted in good faith, relying on scientific reports and technical literature. That there is no evidence of willful misdeclaration or intent to evade duty. It is an undisputed fact that the penal consequences require mens rea or negligence, which is absent in the present case. The case of the department pertaining to change in valuation are based on the allegation that the imported goods are NGL and not Naphtha.

39.4 In view of the above submissions, it is clear that the imported goods are Naphtha and not NOL, and thus, it is submitted that no misdeclaration is made in respect of the value of the imported goods. It is further submitted that the Appellant has not mis-declared any other particulars in the Bills of Entry.

39.5 As stated above, the Appellant has disclosed the correct particulars with regard to the shipper as well as the country of origin / port of loading. In any event, it is reiterated that the Appellant has not availed any benefit under the Act or the FTP based on the country of origin of the imported goods and thus, the goods are not liable for confiscation under Section 111(m) of the Act. In this regard, reliance is placed on the following judgments:

(i) Agarwal Industrial Corporation Ltd. v. Commr. Of Cus., Mangalore, 2020 (373) ELT 280 (Tri.- Bang.)

(ii) Vijay Kumar Gandhi v. Commissioner of Cus., Visakhapatnam, 2003 (159) ELT 835 (Tri.- Bang.)

(iii) Jagmohan Jindal v. Collector of Customs, 1991 (55) ELT 122 (Tribunal)

39.6 Further, it is submitted that all the relevant particulars, including the shipper and country of origin / port of loading, have been disclosed by the Appellant in the Bills of Entry based on the documents shared with the Appellant by the supplier. In any event, it is submitted that no condition, either for exemption or prohibition, has been violated by the Appellant in the present case as envisaged under Section 111(o) of the Act.

39.7 Undisputedly, no exemption has been claimed by the Appellant in the present case and thus, no such condition is applicable to the imported goods. Further, it is submitted that the imported goods, being Naphtha, are not prohibited for import as well and not subject to any conditions for import. It is submitted that the allegation that the imported goods are NGL and in terms of the FTP, only IOC can import the same, is completely incorrect. In any event, it is submitted that the subject goods are not illegally imported and thus, no confiscation can be made in terms of Section 111(p) of the Act. It is submitted that the imported goods are correctly described and valued and appropriate customs duty has been discharged on import of the same. Further, it is pertinent to note that this Hon'ble Tribunal was pleased to permit re-export of the same. In view of the above, it is submitted that the imported goods are not liable for confiscation under Sections 111 of the Act.

In any event, no penalty can be imposed on the Noticee under Section 112 of the Act

40. In any event, it is submitted that no penalty can be imposed under Section 112(a) or 112(b) of the Act. Section 112(a) of the Act provides for imposition of penalty on any person who does or omits to do any act in relation to any goods, rendering the goods liable for confiscation under Section 111 of the Act. Section 112(b) of the Act provides for imposition of penalty on any person who acquires possession of or is in any way concerned with goods that are liable for confiscation under Section 111 of the Act.

40.1 In the present case, in view of the submissions made above, it is clear that the imported goods are not liable for confiscation under Section 111 of the Act. Thus, the question of imposition of penalty under Section 112(a) or 112(b) of the Act does not arise.

In any event, no penalty can be imposed on the Appellant under Section 114AA of the Act

41. In any event, it is submitted that no penalty can be imposed on the Appellant under Section 114AA of the Act. Section 114AA of the Act reads thus:

> ***SECTION 114AA. Penalty for use of false and incorrect material.***
>
> *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

41.1 It is submitted that the Appellant has not knowingly or intentionally made, signed or used any declaration, statement or document which is false or incorrect.

41.2 From the above submissions, it is manifest that the imported goods are Naphtha and are correctly valued. Further, the appropriate amount of customs duty has been correctly discharged by the Appellant at the time of import.

41.3 It is submitted that the case of the department regarding misdeclaration of material particulars in the Bills of Entry and other documents for the purpose of illegal import are baseless and completely incorrect. In any event, it is a settled position in law that no penalty can be imposed where there is no demand. (Coolade Beverages Limited (2004) 172 ELT 451 (All.)). It is submitted that the erroneous and misconceived conclusion was drawn by the department on the basis of the incomplete tests of the imported goods which were conducted only for a few parameters as against the specifically prescribed parameters and without fully appreciating and considering the statements made and documents submitted by the Appellant. Reliance is placed on the judgement dated 28.03.2025 in the matter of Gastrade International vs. Commissioner of Customs, Kandla [2025 INSC 411]. The relevant paragraphs of the said judgement are reproduced herein below:

> *Paragraph 86. For the reasons discussed above, as the results of the test are inconclusive, so being the opinion of the expert, we are unable to agree with the conclusion of the High Court. Under the circumstances, the option before this Court is, either to send the imported product again for further tests and obtain the expert opinion at least to the effect that the imported product is 'most akin' to HSD even if it does not fulfil all the parameters under IS 1460:2005 or give a benefit of doubt to the appellants and close the proceedings against the appellants by quashing the impugned orders, since the Page 74 of 76 Revenue/Customs Authority cannot take action against the appellants based on inconclusive evidence.*
>
> *Paragraph 87. As far as the first option is concerned, as noted above, though the questioned product was sent for laboratory test in three premier laboratories, these laboratories did not give conclusive finding that the product is indeed HSD and the expert also could not give a definitive opinion. Further after such a long passage of time we are doubtful whether the oil in question would still retain many of the characteristics and properties which were present at the time of import for an effective testing as aforesaid. Hence, we do not consider it appropriate to direct further testing of the imported product/oil at this point of time and such a retest may be rendered a futile exercise. In our opinion, in the facts and circumstances, it would be more appropriate to give the benefit of doubt to the appellants because of the inconclusive evidence, rather than directing for a fresh testing and seeking fresh expert opinion, as a one-time measure.*

42. In further support of the Appellant's submission that penalty under Section 114AA is unwarranted, reference may be made to the constitutional principle laid down in Union of India v. Garware Nylons Ltd. (1996 (87) ELT 12 (SC)), which held that the burden of proof lies on the Revenue to

establish misdeclaration with substantive material mere assertion is insufficient.

42.1 In the present case, the Department has failed to produce any credible evidence documentary or technical to establish intentional misdeclaration or falsity in material particulars. Reliance on speculative WhatsApp chats and unrelated pricing website falls short of the evidentiary rigor required under the law. Accordingly, the invocation of Section 114AA is not only procedurally flawed but constitutionally unsound.

42.2 In view of the above comparative analysis and judicial precedents, the invocation of Section 114AA in the present case is factually unfounded and legally untenable. The Appellant has acted in good faith, relying on credible technical reports and discharging duty as per declared classification. The Department has failed to establish any deliberate misstatement or material falsity, nor has it produced admissible evidence to support its claim. Accordingly, the imposition of penalty under Section 114AA is liable to be set aside.

In any event, no penalty can be imposed on the Appellant under Section 117 of the Act

43. In any event, it is submitted that no penalty can be imposed on the Appellant under Section 117 of the Act. Section 117 of the Act reads as follows:

SECTION 117. Penalties for contravention, etc., not expressly mentioned.

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

44. It is submitted that the Respondent has erred in holding that the Appellant has committed acts of non-cooperation and omission in furnishing data and records as summoned under Section 108 of the Act. It is submitted that the Appellant has co-operated with the customs authorities during the course of the investigation and furnished all the relevant information.

44.1 Thus, it is submitted that no penalty can be imposed on the Appellant under Section 117 of the Act. In any event, all the summons/notices issued by the investigating officers have been appropriately responded to and thus, no criminal offence has been committed by the Appellant or directors/employees its. In any event, it is submitted that all the summons/notices issued by the investigating officers have been appropriately responded to and thus, no criminal offence has been committed by the Appellant or its directors/employees.

44.2 It is submitted that Mr. Saurabh Rajput a person summoned is no longer in the service of the Appellant. Further, the Appellant has not received any Summons/Notice from the Court and/or the Complainant till date in the above criminal complaints purported to have been filed. In any event, it is submitted that the above Directors/Officers have appeared before the investigating officers in response to the summons issued. The Appellant and its Directors/Officers have co-operated during the course of the investigation. The response from the respective Director/Officer was sent in reply to the summons.

44.3 From the foregoing facts, it is a crystal clear that the said Directors/Officers have not committed any offence as alleged in the subject SCN or otherwise. The Appellant craves leave to produce, refer and rely on the above notices and responses at the time of hearing-

In any event, the imposition of fine in lieu of confiscation is ex-facie untenable in law.

45. Without prejudice and in any event, the imposition of fine in lieu of confiscation is ex-facie without jurisdiction and without the authority of law having regard to admitted fact that the goods are not available for confiscation. It is a settled position in law that when the goods are not available for confiscation, no fine can be imposed for redemption thereof. In this regard, reliance is placed on the judgment of the Hon'ble Bombay High Court in Commissioner of Customs (Import), Mumbai v.Finesse Creation Ine. [2009 (248) ELT 122 (Bom.ll. wherein the Hon'ble Bombay High Court was pleased to hold thus:

> *5. In our opinion, the concept of redemption fine arises in the event that goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.*

45.1 The above judgment has been affirmed by the Hon'ble Supreme Court as reported at 2010 (255) ELT A120 (SC).

45.2 Further, the Hon'ble Bombay High Court in Commissioner of Customs (Import) Mumbai Versus Air India Ltd [2009 (8) TMI 115 BOMBAY HIGH COURT), has held as thus:

> *5.... the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.*

45.3 In the present case as well, the imported goods have already been cleared for re-export and are not available for confiscation. Further, as submitted above, even otherwise, in the present case, the imported goods are not liable for confiscation under Section 111 of the Act. Thus, it is submitted that no redemption fine can be imposed on the Appellant under Section 125 of the Act.

Other Submissions

46. It is submitted that in the present case, the investigation appears to have been carried out in a haphazard manner inasmuch as during the course of the investigation, initially it was alleged that the Imported goods are Gasoline whereas subsequently it is being alleged that the imported goods are Natural Gasoline Liquid. It is submitted that Gasoline and Natural Gasoline are different products having different chemical composition and characteristics. Further, it is submitted that the assessable value of the imported goods which was mentioned in the seizure memo dated 26.02.2021 and which claimed to be considered as per the market value has no correlation with the imported goods and appear to have been entered in an ad hoc and arbitrary manner.

46.1 In any event, it is submitted that there is an inordinate and unexplained delay in the issuance of the captioned show cause notice and that is illegal as being violative of the provisions the Customs Act. From a perusal of the records, it is clear that the investigation in respect of the imported goods, including the re-testing directed by the Hon'ble Gujarat High Court, was completed around May 2021 itself. However, the captioned show cause notice is issued on 28.03.2023, after a lapse of almost two years, without any reasonable cause and that makes the show cause notice liable to be dismissed on this count itself.

Department submissions:

47. The department in contra submitted its own factual narrative on various grounds for rebuttal. The findings in the impugned order reiterated:

47.1 M/s. HML had imported 20110.77 MT goods in vessel MT Tuna declaring the same as Naphtha vide 07 Bills of Entry all dated 06.02.2021 filed at Customs House, Kandla. They had not specified the category of Naphtha (Light, Heavy or Full Range) in the Bills of Entry but declared the classification of the same under CTH No. 27101229 which is linked with Full Range Naphtha. This anomaly in the description of subject goods was also noticed in the contract with so called supplier M/s. Aureole Trading LLC, Oman and Letter of Credit gathered during investigation as M/s. HML mentioned description of goods as Light Naphtha [CTH No. 27101221] also. However, on testing of samples drawn at KANDLA, the Custom House Laboratory Kandla vide Test Report dated 15.02.2021 read with clarification dated 19.02.2021 has opined that the subject goods were Natural Gasoline Liquid. Accordingly, the subject goods imported by M/s. HML per MT Tuna were seized under Customs Act, 1962 on 26.02.2021. M/s. HML challenged the seizure as well as the Test Report and clarification of the Custom House Laboratory Kandla before Hon"ble Gujarat High Court. On orders of Hon"ble Gujarat Court dated 05.04.2021, fresh samples from the subject goods were drawn and sent for re-testing at CRCL, New Delhi. The CRCL New Delhi vide re-test report dated 28.05.2021 opined that the subject goods were Natural Gasoline Liquid. Thus, it appears that the subject goods were mis-declared and mis-classified with respect to description of goods as the same being NGL was classifiable under CTH No. 27101290 of Customs Tariff and import of goods classifiable under CTH No. 27101290 including NGL was restricted to STEs only as per Condition 5 of import policy for Ch. 27.The Whatsapp Chat conversations and other evidences gathered during investigation also indicate that M/s. HML used to manipulate the nature/specifications of goods by way of blending/mixing/altering the description and classification /HS Code in the documents are also manipulated fraudulently by specifically insisting to mention the product as „Naphtha" in all documents.

47.2 The country of origin of subject goods was declared by M/s. HML as Oman and port of loading was declared as Sohar, Oman. However, from the Whatsapp Chat conversations and other evidences gathered during investigation such as Certificate of Origin dated 24.01.2021, Commercial

Invoice no. TN-100081-21 dated 24.01.2021 etc., it appears that the vessel MT Tuna did not even berth at Sohar, Oman and the country of origin of subject goods was Iraq. From the Bill of Lading No. TN-100019-21 dated 24.01.2021, Certificate of Origin dated 24.01.2021, Cargo Manifest dated 24.01.2021, Commercial Invoice no. TN-100081-21 dated 24.01.2021 and Delivery Order No. 2021-007732 dated 28.01.2021 etc and whatsapp chat conversations retrieved during investigation, it appears that the port of loading was Basrah, Iraq. Shri Nitin Kumar Didwania, Managing Director of M/s. HML also admitted the mis-declaration of Country of Origin in his statement dated 12.04.2021.It further appears that in order to avoid the country of origin/route of journey and other violations of statutory provisions, the vessel MT Tuna came to India after deliberately switching off the Automatic Identification System (AIS).

47.3 The shipper/supplier of subject goods has been declared as M/s. Delta Shipping & Trading LLC, Sohar, Omanin the corresponding Bills of Lading and M/s. Aureole Trading LLC, UAE in the Bills of Entry filed with Customs Authorities at Kandla. However, investigation revealed that both the said names of shipper/supplier are concocted and mentioned in the documents during hatching of conspiracy as apparent from the Whatsapp Chat conversations held among the key persons of M/s. HML and their other associates. In the Whatsapp Chat conversations, it was discussed either to use Iraqi documents for clearance of goods from Customs Kandla or to use name of M/s. Aureole Trading LLC, UAE in the import documents. M/s. HML never disclosed such Iraqi documents with Customs, Kandla and the investigating officers of DRI. However, certain documents such as Bill of Lading No. TN- 100019-21 dated 24.01.2021, Certificate of Origin dated 24.01.2021, Cargo Manifest dated 24.01.2021, Commercial Invoice no. TN-100081-21 dated 24.01.2021 and Delivery Order No. 2021-007732 dated 28.01.2021 etc retrieved from the mobile phone of Shri Nitin Kumar Didwania, Managing Director of M/s. HML and Shri Satish Gaichor, indicate that M/s. HML imported subject goods from Iraq per vessel MT Tuna using name of M/s. Delta Shipping & Trading LLC, Sohar, Oman and M/s. Aureole Trading LLC, UAE. The Whatsapp Chat conversations retrieved during investigation also indicate that M/s. HML in connivance of other associates used to blend/alter/manipulate the nature/specifications of subject goods. Finally, the goods arrived at Kandla and discharged from the vessel MT Tuna were Natural Gasoline Liquid. Thus, it appears that M/s. HML have mis-declared the name of shipper/supplier in the Bills of Entry filed by them at CH, Kandla for clearance of subject goods.

47.4 The received quantity of subject goods provided by Shri Bharat Goswami, Terminal Manager, FSWAI in Litres is 31183563 Litres (RUD No. 52). Considering the market rate of Gasoline at Rs. 88.92 per litre as on 01.02.2021 as per website globalpetrolprces.com, the market value of received quantity 19990.541 MT i.e. 31183563 Litres (out of declared qty. 20110.77 MT) subject goods is calculated as approximately Rs. 278,95,19,113/-(RUD No. 53). Whereas,M/s. HML has declared the assessable value in the Bills of Entry as Rs. 79,63,76,540/- only which is much lesser even after further value additions on account of customs duty, other taxes and other expenses.

47.5 From above, it appears that the subject goods imported by M/s. HML per vessel MT Tuna were mis-declared with respect to description, value, country of origin, port of loading, shipper/supplier details etc. and illegally imported by way of fraud, collusion, willful mis-statement and suppression of facts. The facts and major evidences collected so far in this regard, are tabulated here:

Material Particulars	**Declared with Customs in the Bs/E and supporting documents**	**As per investigation**	**Evidences in support of outcome of investigation**
Description	Naphtha (No specific category Lighter Heavy or Full Range, declared)	NGL	Test Report dated 15.02.2021 read with clarification dated 19.02.2021 of Customs House Laboratory, Kandla, Re-Test Report dated 28.05.2021 pf CRCL, New Delhi and Whatsapp Chat conversations indicating the manipulation in the nature of goods. The statement of Shri Nitin Kumar Didwania in which he deposed that the subject goods imported by them seemed to be extracted from Natural Gas.
CTH	27101229 (i.e. for Full Range Naphtha)	27101290	Customs Tariff
Value	Rs. 79,63,76,540/- (declared assessable value)	Rs. 278,95,19,113/- (approximate market value)	Website Globalpetrolpriecs.com
Country origin of	Oman	Iraq	Certificate of Origin dated 24.01.2021, Commercial Invoice no. TN.100081-21 dated24.01.2024, statement of Shri Nitin Kumar Didwania,
Port of Loading	Sohar	Basrah	Bill of LadingNo.TN-100019-21 dated 24.01.2021,Cargo Manifest dated 24.01.2021,Commercial Invoice no. TN100081-

			21 dated 24.01.2021
Shipper/cons Ignor	Aureole Trading LLC (as per Bs/E) Delta (as per Bs/E)	Jabal A1-Aswad company	Bill of Lading No. TN-100019-21 dated 24.01.2021 Manifest datd 24.01.2021, Certificate of Origin dated 24.01.2021, Commercial Invoice no . TN-100081-21 dated 24.01.2021

As narrated in foregoing paras, M/s. HML re-exported the subject goods on furnishing Bank Guarantee of Rs. 15 Crore (reduced amount Rs. 8 Crore) in terms of Order dated 27.01.2022 of Honlible Gujarat High Court.

NATURE /DESCRIPION OF SUBJECT GOODS: -

48. Whereas, the subject import goods imported by M/s. HML have been reported to be NGL by Customs House Laboratory, Kandla and CRCL, New Delhi. NGL is defined as: -

48.1 From above discussed definitions of NGL, it transpires that NGL/Natural Gas Liquid (NGL) **is extracted from Natural Gas** by processing such as absorption, condensation, adsorption, cooling etc

48.2 As per U.S. Energy Information Administration (EIA), Natural gasoline and Natural Gas Liquid (NGL) are defined as under: -

"Natural gasoline: A term used in the gas processing industry to refer to a mixture of liquid hydrocarbons (mostly pentanes and heavier hydrocarbons) extracted from natural g. It includes isopentane."

48.3 As per Hess Corporation's Safety Data Sheet of Natural Gasoline, Natural Gasoline is a complex mixture of petroleum hydrocarbons separated as a liquid from natural gas and/or natural gas liquids from which methane, ethane, propane, butane, and possibly pentane have been extracted. It consists of hydrocarbons with carbon numbers predominantly in the range C_5 to C_8. It is a liquid at atmospheric temperature and pressure. NGL was defined in Supplementary Notes of Ch. 27 of ITC (HS), that the subject products were covered under the definition of NGL that "NGL is a low-boiling liquid petroleum product extracted from Natural Gas.

48.4 In the instant case, on being specifically asked in the statement dated 12.04.2021 of Shri Nitin Kumar Didwania, Managing Director of M/s. HML, he stated that the subject goods imported by them declaring as Naphtha were seems to be extracted from Natural Gas. The re-test report dated 28.05.2021 of CRCL, New Delhi suggests that the sample *is mainly composed of lighter mineral hydrocarbon oil* more than 70% by weight and conclusion of the re-test report reads as "The *sample is a low boiling liquid extracted from natural gas. It is „NGL"."*

48.5 From the above definations and as specially elaborated suplementry note of Chapter-27, test results of Customs House Laboratory, Kandla vide Test Report dated 15.02.2021 read with clarification dated 19.02.2021 and conclusive observations of chemical examiners of CRCL, New Delhi conveyed vide re-Test Reports dated 28.05.2021 for the goods imported per vessel MT Tuna, it is revealed that the subject product was a mixture of hydrocarbon, a low boiling petroleum product and was extracted from Natural Gas. Thus, it appears that the subject product imported by M/s. HML per vessels MT Tuna by declaring the same as Naphtha was nothing but NGL (NGL).

48.6 The 04 Test Reports relied upon by M/s. HML in their support appear to be not reliable and maintainable on the following grounds:-

(1) **Test Report/Certificate of Quality of M/s. Muscut International Shipping & Logistics LLP (MIS) said to be the load port report:-** There appear sufficient evidences which indicate that the port of loading declared by M/s. HML i.e. Sohar, Oman is not correct. Similarly, the shipper/supplier/consignee declared by M/s. HML as M/s. Aureole Trading LLC is also merely on papers and were not the actual supplier/shipper/consigner. In such a circumstances, when supplier/shipper/consigner are not correct, the so called load port report of M/s. MIS lost its genuineness and the same cannot be relied upon as a valid document.

(2) **Test Report of M/s. TUV India Pvt. Ltd.:-** As narrated in foregoing para 13 that M/s. HML relied on a Test Report of M/s. TUV India Pvt. Ltd. claiming that the report was pertaining to samples drawn by their surveyor M/s. TUV India Pvt. Ltd. and that the Test Report indicated the subject goods as Naphtha. Whereas, the Test Report was not authentic and not relating to the subject goods as no permission from Customs authorities was admittedly taken by M/s. HML or M/s. TUV India Pvt. Ltd. for drawing of samples from the warehoused goods. Thus, there appeared no evidential value for the Test Report of M/s. TUV India Pvt. Ltd. referred by M/s. HML in support of their claim.

(3) **Test Report of M/s. Geochem Laboratories Pvt. Ltd. :-** M/s. HML vide letter dated 16.04.2021 said to have sent the samples of subject goods to M/s. Geo-Chem Laboratories Pvt. Ltd. and specified the subject of this request letter dated 16.04.2021 as <u>"testing of Naphtha samples"</u> . They had influenced the

laboratory by making wrong and vague submissions stating that *"The goods were declared as Naphtha and meant for manufacturer of Poly-Olefins and the product is high paraffinic Naphthabut the Department has reservations on the quality and wishes to revenfy the same. We request you to analyse the same and certify that the goods confirm to Naphtha or otherwise and oblige".* Thus, it appears that M/s. HML had not only attempted to get biased report in their favour but also,they suppressed the actual contention of Department and also mis-represented the facts by stating that the Department has reservations on the quality of Naphtha. Accordingly the test report based on such query /requests cannot be relied upon and considered as evidence.

(4) **Test Report of IIP, Dehradun:-** As it appears from the similar request letter dated 16.04.2021 of M/s. HML addressed to IIP Dehradun in which also the importer had attempted to influence the laboratory by way of making wrong and vague representation and succeeded to get biased report as apparent from the termology used by IIP Dehradun about the testing as illustrated below:- Project **Title: -** Studies on Sealed Naphtha Samples

Report No.: ASD 417:2021: Sealed sample of Naphtha (Marked as S5 with Seal No. 715255), Location: MT Tuna with letter having subject "Testing of sealed samples of naphtha dated 16.04.2021 Naphtha".

Introduction: Studies on Sealed Naphtha Samples from M/s. Hazel Mercantile Limited, Mumbai

Standard Test Methods:Naphtha samples (Marked as S5 with Seal No. 715255, Location MT Tuna was analysed in our laboratory...)

Results: Naphtha Sample (Marked as S5 with Seal No. 715255 Location: MT Tuna) Report

Conclusion: "Based on the above observations/results, this sealed naphtha sample (Marked as S5 with Seal No. 715255, Location MT Tuna) falls under the light naphtha range."

49. As it narrated in foregoing paras that the the conclusions of said two reports of M/s. Geo Chem Laboratories Pvt. Ltd. and IIP Dehradun were not in conformity to each other and these reports were not based on the factual parameters/queries to be tested from the NGL aspect based on the misleading facts provided by M/s. HML and accordingly the same appear to be non-maintainable.48.8. The subject goods imported by M/s. HML vide aforesaid 07 Bills of Entry were not Naphtha as it was specifically asked vide Test Memos No. 17/08/02/2021 dated 08.02.2021 and another Test Memo bearing no. 44/2021 dated 15.04.2021 to Customs House Laboratory, Kandla and CRCL, New Delhi respectively, as to whether the

subject goods were "Naphtha", or otherwise? But after necessary testing both the said laboratories did not confirm the subject goods as Naphtha. Further, Shri Nitin Kumar Didwania in his statement dated 12.04.2021 indicated that the subject goods appeared to be extracted from Natural Gas, which is indicating the subject goods were not Naphtha but the same are NGL.

CLASSIFICATION OF SUBJECT IMPORT GOODS: -

50. In Order to decide the appropriate classification of subject goods, the factual developments related to the statutory classification of various grades of Naphtha vis-à-vis NGL in brief is herein below:

50.1 Vide Notification No. **36/2015-20, dtd. 17.01.2017,** the Central Government notified the ITC (HS) Classification of relevant period, under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, prescribing therein the scheme of classification of goods as well as the provisions relating to Import/Export of each of such items. In terms of said ITC (HS) Classification, 2017, the following are the relevant entries under Chapter 27 of Schedule I pertaining to the Import Policy:

Exim Code	Item Description	Policy	Policy conditions
2710	Petroleum Oils and Oils obtained from Bituminous minerals (Other than Crude) and preparations not elsewhere specified or included, containing y weight 70% or more of petroleum oils or of oils obtained from bituminous minerls. These oils being the basis constituents of the prep;		
271012	Light oils and Predations:		
	Motor Spirit		
27101211 to 27101219		State Trading Enterprises	Import as per Policy conditions(5)

27101220	NGL (NGL)	State Trading Enterprise	Import as per Policy conditions(5)
27101290	Other	State Trading Enterprise	Import as per Policy conditions(5)

50.2 From the above provisions of ITC (HS) Classification, it is apparent that there was no specific entry for goods described as "Naphtha" of different grades. There were no entries for the different grades of solvents, Aviation Gasoline etc. Thus, Naphtha was then classifiable under other category i.e. 27101290. The goods described as "NGL" as per the supplementary Note (b) provided in Chapter 27 of the ITC (HS), was falling at Exim Code 27101220, which was restricted for import by the Policy as well as Policy condition provided against the said Exim Code. As per the Policy, the item NGL falling under Exim Code 27101220 could be imported by STEs and as per the Policy condition (5) prescribed in Chapter 27, the import of said item is allowed through IOC subject to para 2.20 of the FTP, except for the companies, who have been granted rights for marketing of transportation fuels in terms of Ministry of P&G"s Resolution No. P-23015/1/2001-MKT, dtd.08.03.2002 including HPCL, BPCL & IBP, who have been marketing transportation fuels before the date.

50.3 Vide Notification No. 41/2015-2020, dtd.05.12.2017, the Central Government had notified the revised Foreign Trade Policy 2015-20 under the provisions of Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, which came into effect from 05.12.2017.

(a) In terms of Para 2.01 of the revised Foreign Trade Policy 2015-20, all imports should be free, unless regulated by way of "prohibition", "restriction" or "exclusive trading through State Trading Enterprises (STEs), as laid down in the ITC (HS) Classification.

(b) It was clearly stipulated in Para 2.01 of the FTP 2015-20 that there are some items, which are free for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

(c) In Para 2.02 of the FTP 2015-20, it was clarified that the ITC (HS) is aligned at 6-digit level with the international Harmonized System goods Nomenclature maintained by World Customs Organization. However, it was further clarified in said Para 2.02 of the FTP 2015-20that India maintains national Harmonized System of goods at 8-digit level.

(d) It was also prescribed vide Para 2.02 of the FTP 2015-20that the import/export policy for all goods are indicated against each item in ITC (HS).

(e) As provided vide Para 2.20 of the FTP 2015-20, any goods, import or export of which is governed through exclusive or special privilege granted to STEs may be imported or exported by the concerned STEs, as per the conditions specified in the ITC (HS). Although it was also provided in Para 2.20 of the FTP 2015-20 that the DGFT, may, grant an authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs.

50.4 Later on, w.e.f. 01.01.2020, the following changes were introduced in respect of the entries available in Chapter 27 of the Customs Tariff:

271012	-	Light Oils and Preparations
	--	Naphtha
27101221	---	Light Naphtha
27101222	---	**Heavy** Naphtha
27101229	---	Full Range Naphtha
	--	Solvent 60/80, solvent 50/120 and solvent 145/205 (petroleum hydrocarbon solvents) as specified under standard IS 1745:
27101231 to 27101239	---	
	--	Motor gasoline confirming to standard IS 2796, IS 17021 or IS 17076:
27101241 to 27101249	---	
17101250	--	Aviation Gasoline conforming to standard IS 1604
27101290	--	Other

50.5 Thus, pursuant to the above changes, the specific entries were provided for the goods of the categories of Naphtha, Solvent, Motor Gasoline and Aviation Gasoline, which were earlier classified under residuary entry of "Others", whereas the entry of NGL earlier available vide CTH No. 27101220 was removed and accordingly the NGL seemingly became classifiable under the residuary entry of 27101290.

50.6 The Central Government vide Notification No. 38/2015-20, dtd.01.01.2020 issued under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 2.01 of the FTP 2015-20, introduced following changes in respect of the entries available in Chapter 27 of the ITC (HS): -

Exim Code	Item Description	Policy	Policy conditons
271012	Light Oils and Preparations		
	Naphtha		
2710122 1	Light Naptha	State trading Enter prises	Import as per Policy conditions (5) of Chapter 27
2710122 2	Heavy Naptha	State Trading Enterprises	Import as per Policy condition (5) of Chapter 27
2710122 9	Full Range Naphtha	State Trading Enter prises	Import as per Policy condition (5) of Chapter 27
	Solvent 60/80, Solvent 50/120 and solvent 145/205 (petroleum hydrocarbon solvents) as specified under standard IS 1745:		
2710123 1 to 2710123 9		State Trading Enter prises	Import as per Policy condition (5) of Chapter 27
	Motor gasoline confirming to standard IS 2796, IS 17021 or IS 17076		
2710124 1 to 2710124 9		State trading Enterprises	Import as per Policy condition (5) of Chapter 27
2710125 0	Aviation Gasoline conforming to standard IS 1604	State trading Enterprises	Import as per Policy condition (5) of Chapter 27
2710129 0	Other	State trading Enterprises	Import as per Policy condition (5) of Chapter 27

50.7 In light of the above, it appears that Naphtha, by virtue of Policy condition (1) of the Chapter 27, became importable through STEs. Further, the commodities, which were falling under residuary entry of "Others" category were became classifiable with the specific entries provided.

50.8 Later on, vide Notification No. **51/2015-20, dtd.18.03.2020,** issued under Section 3 of the Foreign Trade (Development and Regulation)

Act, 1992 read with Para 1.02 and 2.01 of the FTP 2015-20, the Import Policy for three categories of Naphtha and other items were amended. The product Naphtha, which was earlier importable by the STEs only was made freely importable. Apparently, there was no such change of Policy provided for NGL falling under Exim Code 27101290.

50.9 Vide Notification No. **60/2015-20, dtd.31.03.2021** issued under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 1.02 of the FTP 2015-20, the Central Government extended the validity of said FTP 2015-20 from 31.03.2021 to 30.09.2021.

50.10 It would be pertinent to mention here that even prior to the date of deletion of said entry of CTH 27101220, the import of NGL was continuously being allowed through State Trading Enterprises only as per Condition No. 5 of Import Policy for Ch. 27. Further, from the evidences gathered during the investigation, it seems that Shri Nitin Kumar Didwania, Managing Director of M/s. HML and other key persons involved in the import of goods, hatched the conspiracy of illegal import and were well aware about the actual nature of goods being imported by M/s. HML. It further appears that the subject goods being described as NGL being light mineral hydrocarbon oil having low boiling point and extracted from Natural Gas as confirmed in the test reports, the same is appropriately classifiable under „Others" category with Tariff Heading of CTH 27101290 in the existing tariff and ITC (HS) Classification. However, during the course of investigation and vide their submissions made before Hon'ble Gujarat High Court, M/s. HML challenged the classification of subject goods under CTH 27101290. In this regard, the following further submissions are pertinent to be added here.

50.11 The entries prescribed under sub-heading 271012 („Light Oils and preparations") of Customs Tariff at the time of import of subject goods are as under: -

2710 1221---Light naphtha

2710 1222 -------------------------------------- Heavy naphtha

2710 1229 -------------------------------------- Full range naphtha

2710 1231 -------------------------------------- Solvent 60/80,

2710 1232 -------------------------------------- Solvent 50/120

2710 1239 -------------------------------------- Solvent 145/205

2710 1241 --------------------------------------Motor gasoline conforming to standard IS 2796

2710 1242 ---------------------------------------E 20 fuel conforming to standard IS 17021

2710 1249 -------------------------------------- M15 fuel conforming to standard IS 17076

2710 1250 ---------------------------------- Aviation gasoline conforming to standard IS 1604

2710 1290----------------------------------Other

50.12. In the instant case, after receipt of Test Report dated 15.02.2021 read with clarification dated 19.02.2021 from the Customs Laboratory, Kandla (which were further supported with Re-Test Report of CRCL, New Delhi), there is no alternative to find matching category of specifically described goods, as provided within the general sub-heading of 271012, hence the classification of goods as various grades of Naphtha under the heading of 271012 as provided vide CTH No./HS Code 27101221, 27101222, 27101229 is not available for the instant goods. The goods were also not specified in the said Test Reports as Solvents, Motor Gasoline or Aviation Gasoline also, so as to classify the same under CTH/HS Code 27101231, 27101232, 27101239, 27101241, 27101242, 27101249 or 27101250. In that case, for the goods falling under heading 271012 has been left with only option of getting classification under the residuary entry of "Others" under CTH/HS Code 27101290.

50.13 Thus, it appears that the subject goods NGL are appropriately classifiable under CTH No. 27101290 of Customs Tariff.

50.14 Therefore, it seems that the goods imported by M/s. HML by declaring the same as Naphtha (under CTH No. 27101229 i.e. for Full Range Naphtha) are actually NGL and the same was appropriately classifiable under Customs Tariff Heading 27101290 of Customs Tariff. The classification of subject goods adopted by M/s. HML under the said CTH 27101229 is thus required to be rejected and the same are required to be re-classified under its appropriate CTH 27101290.

51. Whereas on the facts and evidences discussed above and keeping in view the related statutory provisions of Customs Act, 1962 and other regulations, it appears that M/s. HML have suppressed the actual transaction values and have declared lower value of the above-mentioned import consignment. The assessable value declared by M/s. HML is not in inconsonance with the current market price of similar goods being sold in the Indian market. Since no data of the import of Natural Gasoline Liquidis noticed, the prevailing rates of similar Goods (Gasoline)are considered for

ascertaining the approximate market value of the subject goods on the basis of rates of Gasoline available on website globalpetrolprces.com. The received quantity of subject goods provided by Shri Bharat Goswami, Terminal Manager, FSWAI in Litres is 31183563 Litres. Considering the market rate of Gasoline at Rs. 88.92 per litre as on 01.02.2021 as per website globalpetrolprces.com, the market value of received quantity 19990.541 MT i.e. 31183563 Litres (out of declared qty. 20110.77 MT) subject goods is calculated as approximately Rs. 278,95,19,113/-. Whereas, M/s. HML has declared the assessable value in the Bills of Entry as Rs. 79,63,76,540/- only which is much lesser even after further value additions on account of customs duty, other taxes and other expenses.

52. In view of the above a SCN dated 28.03.2023 was issued to M/s. Hazel Mercantile and others.

SUMMARY OF FINDINGS/OBSERVATIONS OF HON'BLE COURT-

53. In this case, the petitioner (Hazel Mercantile Ltd.) challenged the seizure of the imported consignment initially declared as *Naphtha* but sought to be classified by Customs authorities as *Natural Gasoline Liquid (NGL).* The petitioner relied on test reports from Geo Chem Laboratories and the Indian Institute of Petroleum, both suggesting the product was Naphtha or within its range. However, the Customs' CRCL (Central Revenue Control Laboratory), an accredited government laboratory, conducted a retest and conclusively opined in its report dated 28.05.2021 that the consignment was Natural Gasoline Liquid (NGL).

54. The Hon'ble High Court noted that the petitioner had independently sent samples for retesting to private labs (Geo Chem and IIPM) without consulting the statutory authorities, and had also suggested a detailed list of 66 testing parameters, later reduced to 49 and from Affidavit-in-Reply of the respondents, the Court found that no parameters were suggested by the importer for test of goods as NGL; and noted that CRCL unequivocally found the goods to be NGL. The petitioner sought judicial intervention under Article 226 to weigh the validity of these reports and quash the seizure. The Hon'ble High Court declined while holding that it cannot undertake a comparative analysis of disputed scientific reports or interfere in technical classification matters during the course of an investigation. The Court emphasized that such determinations fall within the domain of statutory authorities and cannot be preemptively adjudicated in writ jurisdiction.

EVIDENCE AVAILABLE ON RECORD-

55. Proceeding further, I refer to the following evidences available on record as referred in the Show cause notice.

(i) Statements

(ii) Chats

(iii)Test Reports

DISCUSSION ON EVIDENCE FROM STATEMENTS REFERRED IN THE SCN-

56. Statement of Shri Satish Gaichor, Associate General Manager Logistics of M/s. HML was recorded on 25.02.2021 (RUD No. 12) wherein he, interalia, stated that-

56.1. their Managing Director Shri Nitin Kumar Didwania and Marketing team consisting of Shri Minesh Shah, Director, Shri Saurabh Rajput, Shri Sreyas Choudhary were looking after overall activities relating to placing of orders to overseas suppliers , negotiation of rates, making payments etc.;

56.2. As regards one Whatsapp Chat dated 11.02.2021 between Shri Satish Gaichor and Shri Nitin Kumar Didwania, Managing Director of M/s. HML, he stated that vide this Chat, *he had asked their Managing Director regarding supply of Gasoline and Gasoil by M/s. HML as per requirement (specifications) from the buyers;* that their Managing Director asked him for report/specifications. On being asked, Shri Satish Gaichor, stated that it was not remembered to him whether any further development took place in this regard and whether the said party had supplied them the report/specifications of Gasoline and Gasoil. He added that the details of concerned buyer and said attached specifications, were also not readily remembered /available with him.

56.3 In the Whatsapp printouts taken by Shri Satish Gaichor from his mobile phone, he told that some conversations were held by him with some brokers namely Shri Shyam Tiwari, CAFS (Coal & Freight Services), Ahmedabad, Shri Sreejith, Dubai, Nikhil of Braemer/La Mer, Shri Ranganatha Reshamwala, Dubai etc and Shri Ashok Desai, Head of Department-Logistics of M/s. HML; that he did not have complete address, email Id of any of these brokers and assured to provide the same. *He further stated that these*

<u>brokers and Shri Ashok Desai had discussed with him through these Whatsapp chat messages regarding supply of Gasoline and Gasoil and last cargos etc.</u> (RUA No. 2)

57. Shri Nitin Kumar Didwania, Managing Director, M/s. HML during his statement, interalia, stated that-

57.1. when apprised that as per Bills of Lading bearing no. 01 to 07 all dated 02.02.2021, for import of 20110.77 MT subject goods in vessel MT Tuna, the shipper was mentioned as M/s. Delta Shipping & Trading LLC, Sohar, Oman whereas in the concerned commercial Invoice/Packing List, the shipper was mentioned as M/s. Aureole Trading LLC, UAE. On being asked to explain, Shri Nitin Kumar Didwania stated that their supplier for 20110.77 MT subject goods in vessel MT Tuna was M/s. Aureole Trading LLC, UAE, accordingly in concerned commercial Invoice/Packing List, the shipper was mentioned as M/s. Aureole Trading LLC, UAE. He expressed that it was possible that M/s. Aureole Trading LLC, UAE had arranged the said goods through M/s. Delta Shipping & Trading LLC, Sohar, Oman, accordingly, the Bills of Lading were containing shipper details as M/s. Delta Shipping & Trading LLC, Sohar, Oman.

57.2. when shown statement dated 25.02.2021 of Shri Satish Gaichor, Associate General Manager-Logistics of M/s. HML and on being asked to comment regarding correctness of facts stated by him, Shri Nitin Kumar Didwania stated that the facts relating to him/M/s. HML mentioned in the statement were true. As regards the Whatsapp Chat dated 11.02.2021 between Shri Satish Gaichor and Shri Nitin Kumar Didwania regarding supply of Gasoline and Gasoil by M/s. HML as per requirement (specifications) from the buyers, Shri Nitin Kumar Didwania stated that there are several business activities Shri Satish Gaichor was doing as he was looking after logistic work, and he (Shri Nitin Kumar Didwania) had asked the report like parameters of Gasoline/Naphtha which the buyers intended to buy/sell. On being further asked who were the buyers requested for supply of Gasoline in that case and from whom/where they/M/s. HML used to arrange Gasoline, Shri Nitin Kumar Didwania stated that neither Shri Satish Gaichor had told him, nor he was aware who was the buyer in that case; that they had not supplied Gasoline to any buyer.

57.3. On being asked how many consignments of Gasoline/NGL M/s. HML had imported during last five years, Shri Nitin Kumar Didwania replied in negative stating that they had not imported Gasoline/NGL during last five years. He also denied to have supplied any consignment of Gasoline/NGL in transit through

India and/or fully outside India during the last five years. Shri Nitin Kumar Didwania was apprised that in his statement dated 25.02.2021, Shri Satish Gaichor explained that some brokers namely Shri Shyam Tiwari, CAFS (Coal & Freight Services), Ahmedabad, Shri Sreejith, Dubai, Nikhil of Braemer/La Mer, Renganath of Reshamwala, Dubai etc and Shri Ashok Desai, Head of Department-Logistics of M/s. HML had discussed with him regarding supply of Gasoline and Gasoil and last cargos etc. through Whatsapp chat messages. On being asked to provide the details of Gasoline imported/purchased/arranged by M/s. HML from/through these brokers/persons during last five years, Shri Nitin Kumar Didwania stated that they had not imported/purchased/arranged Gasoline from/through these brokers/persons during last five years.

58. Statement of Shri Bharat J. Goswami, Terminal Manager of M/s. FSWAI, Khar Rohar Road, Kandla, Kutch, wherein, he interalia, stated that-

58.1. he was working as Terminal Manager in M/s. FSWAI, Khar Rohar Road, Kandla; that his firm was in the business of storage and warehousing as liquid terminals and acting as public warehouse and their liquid terminal was declared as landing place under Section 8(a) of Customs Act, 1962 and appointed as "Public Bonded Warehouse" under Section 57 of Customs Act, 1962.

58.2. On being asked further, he stated that their firm started storage/warehousing for consignments of M/s. HML before his joining in FSWAI firm and he used to contact Shri Satish Gaichor of M/s. HML for business activities. He further stated that the intimation of arrival of vessels carrying import goods for M/s. HML with respect to three import consignments imported in vessel MT Aston-I, MT Tuna and MT Arihant were given to them by the said importer vide email dated 02.11.2021, 04.02.2021 and 19.02.2021 respectively; that the said importer declared the description of import goods in those email as Naphtha (Light), Naphtha and Naphtha respectively. Shri Bharat J. Goswami further stated that they allotted them (M/s. HML) the tanks prescribed for Naphtha/Light Naphtha by the competent authority. He also provided Tank wise quantity received in their terminal with respect to said three consignments as under: -

S. No.	Name of the vessel	Goods declared By importer	Quantity declared by importer in email intimation (MT)	Quantity Actually received (MT)	Quantity Actually received (Ltr)	Tanks allotted
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	MT Aston-I	Naphtha (Light)	26801.637	26151.519	39788988	302,320,322,411,425,428,502,504,509,512,527,529,537,539
2	MT Tuna	Naphtha	20110.77	19990.541	28972281.6	324,425,510,527,529,530,536,537,539
3	MT Arihant	Naphtha	9621.26	9704.504	13062665.3	319,531,533,538

58.3. On being asked further, he stated that at the time of storage of goods imported vide said three vessels by M/s. HML, there was no goods stored in the Tanks mentioned above; that as on date no stock of goods imported in vessel MT Aston-I was there and in case of other tanks mentioned above, no goods other than the goods mentioned above were stored in comingled state. On being further asked whether all the above-mentioned Tanks were authorized/nominated by competent authority to store goods declared as Naphtha (Heavy/Light/Full Range), Shri Bharat J. Goswami stated that all the tanks mentioned above were authorized/nominated by Naphtha License issued by District Magistrate, Kachchh-Bhuj. In this regard, he submitted copy of such Naphtha License and (Petroleum and Explosive Safety Organization (PESO) Licenses issued by Controller of Explosives, Vadodara to their firm, duly signed by him.

58.4. During his statement, Shri Bharat J. Goswami was shown copy of Naphtha License dated 13.11.2020 issued by District Magistrate, Kachchh-Bhuj issued to M/s. HML and asked that in this License, their terminal"s Tank No. 531, 533 and 536 were not mentioned/nominated/allowed to store goods declared as Naphtha, whereas they had stored the subject goods in those three tanks too. In reply to the same he stated that his firm received a Naphtha License dated 13.11.2020 issued by District Magistrate, Kachchh-Bhuj in which the Tank numbers were mentioned as „any available tank". He was further asked how and from whom, another Naphtha License was received, he stated that one Mr. Vinodbhai of M/s. HML working at Gandhidham Branch vide email dated 23.12.2021 sent that License to his firm.

58.5. On being asked, Shri Bharat J. Goswami stated that M/s. TUV India Pvt. Ltd. were surveyors appointed by M/s. HML for said three import consignments. He was further asked whether M/s. HML had informed him or his firm about re-export of goods imported by them (M/s. HML) in vessel MT Tuna and MT Arihant and stored at their terminal, he stated that no such intimation of re-export was received by him/or his firm from M/s. HML; that as regards the goods imported per vessel MT Aston-I and importer"s request/intimation for re-export for major part, he stated that he would check their record and assured to revert back within 02 days but he did not revert back.

58.6. On being asked further why they had accepted the goods imported by M/s. HML per said vessels which were other than that of mentioned in their Licenses issued by competent authority, Shri Bharat Goswami stated that they had accepted the goods on the basis of email received from the importer wherein they had declared the subject goods as Naphtha (Heavy/ Light/Full Range) instead of NGL/SBPS; that declaring the product as Naphtha (Heavy/ Light/Full Range) in the relevant documents was not the decision of his firm/terminal. He further added that in the documents provided by the importer and/or their appointed Customs Broker as later stage also, those documents were also containing product name as Naphtha (Full Range Naphtha)/Light Naphtha so they were not aware about the actual nature/description of the subject goods.

58.7 On being asked whether his firm/terminal was authorized to store/warehouse goods such as NGL (NGL) and Special Boiling Point Spirit (SBPS) and if so what further cautions/arrangement were required to be made for storing warehousing such goods in their terminal, he stated that he was not aware about the same; that he would discuss with his management and would revert within 02 days but no further response was received from him.

59. Statement of Shri Pramod Dharamshi Soneta, Partner of Customs Broker firm M/s. Hemjyot Agency, wherein, he interalia, stated that-

59.1. he was looking after the overall supervision and control on the business activities of M/s Hemjyot Agency; that his firm was in the business of Customs clearance of import and export consignments at Kandla, Mundra and Nhava Sheva ports as Customs Broker having CHA License No. 11/0859 (PAN based Registration No. AAAFH2124ECH002). He stated that his firm M/s. Hemjyot Agency started work of Customs clearance of consignments of M/s. HML as Customs Broker for Kandla and Mundra port in the year 2000;

that he used to contact Shri Nitin Kumar Didwania, Managing Director of M/s. HML

59.2. On being asked, Shri Pramod Soneta stated that as a normal practice with other importers, his firm used to send check lists to importer/exporter before finalizing every Bill of Entry and Shipping Bill and only after receipt of approval of the same from concerned importer/exporter, they filed the Bill of Entry and Shipping Bill. He provided copy of the check list and approval thereof from M/s. HML with respect to three import consignments pertaining to M/s. HML imported in vessel MT Aston-I, MT Tuna and MT Arihant. He also provided sample copy/printouts of email communications held with M/s. HML in respect of said three import consignments.

59.3. On being asked being a Customs Broker why he had not suggested the importer to file the Bill of Entry for goods importer per vessel MT Arihant within the stipulated time period, Shri Pramod Soneta stated that he had repeatedly requested Shri Nitin Kumar Didwania, Managing Director of M/s. HML to file the Bill of Entry but he (Shri Nitin Kumar Didwania)had given directions not to file the Bill of Entry until and unless he directed to do so; that on 30.03.2021, Shri Nitin Kumar Didwania asked him (Shri Pramod Soneta) to send check list and accordingly they (M/s. Hemjyot Agency) sent the same and on receipt of approval from the said importer, the warehousing Bill of Entry was filed. On being asked further to provide the reasons/reply /application made by M/s. HML in connection to waiver of action under Section 48 of Customs Act, 1962, he stated that he would check their record and provide the same within 03 days but he did not provide.

59.4. On being asked why they had declared the subject goods imported by M/s. HML per said vessels as Naphtha/Light Naphtha instead of NGL/SBPS, Shri Pramod Soneta stated that while preparing the Check List for filing of Bill of Entry and Shipping Bill (in the case of re-export), they followed the description mentioned in the import documents provided by the said importer and also the directions of the importer who had approved the check list for filing of Bills of Entry and Shipping Bills as the case may be; that due to same declaring the product as Naphtha/Light Naphtha in the import documents was not the decision of his firm but it was decided by the importer.

59.5. On being asked who had decided classification of goods in respect of import/re-export made by M/s. HML in relation to the goods imported per vessel MT Aston-I, MT Tuna and MT Arihant, Shri Pramod Soneta stated that as per the import documents and directions of the M/s. HML, classification was declared.

Further, based on subsequent approval of importer for Check List for filing of Bills of Entry/Shipping Bills, they declared the classification and filed those documents.

59.6. On being asked further about appropriate classification of goods NGL (NGL) and Special Boiling Point Spirit (SBPS), Shri Pramod Soneta stated that both those products were light oils and preparations (CTH 271012) and as on date there was no specific entry for both those products in the Customs Tariff, hence the same were appropriately classifiable under „others" category of CTH 271012 i.e. 27101290 as per Customs Tariff.

59.7. He was also shown documents said to had been received from Punjab National Bank, Foreshore Road Branch, Mumbai regarding Letter of Credit bearing no. 84670FLC0000421 dated 28.01.2021 opened by M/s. HML in favour of Aureole Trading LLC (UAE) in respect of goods imported in vessel MT Tuna. After perusal of the said documents he stated that he in the application form, Contract dated 11.01.2021 with M/s. Aureole Trading LLC and other supporting documents, the product to be imported was mentioned as „Light Naphtha" (HS Code 27101221) whereas in the Bills of Entry the same was mentioned as Naphtha (HS Code 27101229) i.e. linked with for Full Range Naphtha; that as regards the difference in the description of goods and CTH mentioned in the all LC documents and Bills of Entry, he stated that he had not seen the LC and supporting documents earlier, so he could not alert or suggest the importer about the same.

60. Statement of Shri IIla Giri Visweswarrao, Manager of M/s. Samudra Marine Services Pvt. Ltd., wherein, he interalia, stated that-

60.1. M/s. Samudra Marine Services Pvt. Ltd. was engaged in the business activities of clearance of import /export consignments acting as vessel agency and Customs Broker; their Head Office is in Mumbai and branch offices are at Sikka, Gandhidham, Pipavav and Budgebudge; that they do not have any office/establishment outside India. On being asked, Shri IIla Giri Visweswarrao stated that they did not have any fix principal shipping line , so they were not working as agent of any shipping line on permanent basis and neither they had entered into agreement with any shipping line. He added that they were getting orders from different shipping lines/vessel owners to assist their vessel operations at Kandla, Mundra and Mumbai sea ports. He explained the step by step procedure to handle import of bulk liquid cargo.

60.2. They received nomination for this vessel MT Tuna from one M/s. Swiss Carriers S.A., Nafsikas 24, Athens 16673, Voula vide email dated 03.02.2021. He produced copy of some email conversations and documents. On being asked, Shri IIla Giri Visweswarrao stated that he was not aware as to whether M/s.

Swiss Carriers S.A. was the actual owner/charterer of the vessel MT Tuna as it may be agent/broker of the owner/charterer. He assured to inquire in the matter and to revert back within 02 days. He further stated that he was also not aware who was the actual shipper/supplier/consigner party of the 20110.767 MT cargo and who had booked the cargo in the said vessel and what documents were provided initially to the vessel owner by the overseas shipper/supplier/consigner party; that Mr. Cruz. Eduardo Sts. Ana was the Master of vessel MT Tuna at her arrival at Kandla. As regards the load port of the cargo imported at Kandla per vessel MT Tuna, Shri IIla Giri stated that as per the documents received by them from M/s. Swiss Carriers S.A., the port of loading of the cargo imported at Kandla per vessel MT Tuna was Sohar, Oman, however, he was not aware about the actual port of loading. He assured to inquire in the matter and to revert back within 02 days. On being asked whether the 20110.767 MT cargo imported at Kandla port per vessel MT Tuna was loaded from Iraq or Iran, he stated that he was not aware and assured to inquire in the matter and to revert back within 02 days but he did not do so.

60.3. On being asked, Shri IIla Giri Visweswarrao stated that he did not know any members of such chat conversations except Shri Nitin Kumar Didwania and he did not have any conversation with Shri Nitin Kumar Didwania; that he used to communicate with Shri Satish Gaichor, AGM-Logistics for official dealing with this importer. After going through the Chat conversations available in the statement of Shri Nitin Kumar Didwania, Shri IIla Giri Visweswarrao stated that the vessel MT Tuna was brought to Kandla switching off the AIS system but he was not aware why the same was switched off; that he would inquire in the matter and revert back within 02 days. He added that he also found that the timings of vessel Tuna were concocted and manipulated and various other material particulars of all three vessels including the HS Codes for the goods imported per vessel MT Tuna, were manipulated and were false and fabricated; that he found it apparent from these Whatsapp Chat conversations that the vessel MT Tuna did not even berth at Sohar, Oman.

60.4. On being asked, Shri IIla Giri Visweswarrao stated that as an authorized career, they were responsible for collecting the correct and complete details of the cargo they were booking and after confirming correctness thereof also required to declare the same on all declarations and customs papers with their subscribing about correctness thereof; that in case any incorrect details are found they are supposed to inform the Customs department about such instances. He added that they are also required to advise their clients including other counterpart offices at foreign port to comply with the statutory provisions Indian law demands from them; that they were also required to keep proper record and track of movement all the cargo arrived at port and were responsible for safety, security and delivery of the imported, exported or coastal goods in their custody. He further deposed that in the instant case, they had relied upon the Bills of Lading and other details received vide emails from the owners/charterers/agents/brokers and filed IGM accordingly. On being asked, he assured to provide copy of authorized career registration details of his company and bond/security furnished by them in this regard, within 02 days but he did not do so.

DISCUSSION ON EVIDENCE FROM CHATS AND OTHER EVIDENCE RETRIEVED BY DRI-

61. I find that the Chat has been retrieved from the device of Shri Nitin Kumar Didwania, the details and his explanation are as given below:-

Sr. No.	**Chat Details**	**Body /content of Chat**	**Supplementary Question and /or Comments/explanat ion of Shri Nitin Kumar Didwania**
1	Start Time: 18-07-2020 09:14:52 (UTC+0) Last Activity: 25-02-2021 08:04:38(UTC+0) Participants: 989127025761@s.whats app .net Omid, 971501159789@s.whats app .net Alex Aby. Hif, 989123377852@s.whats app .net Ali. Trilliance, 989127401664@s.whats app .net Saba.trilliance. Ali, 989035386365@s.whats app .net FJ, NitinDidwania System Message System Message Timestamp: 18-07-2020 09:14:52 (UTC+0)	989127401664 @s.w hatsapp.net created group "Light Naphtha	*Q:- Who created the said Whatsapp Group and please inform about the members of the said group alongwith their whereabouts?* *Ans:- This group was created by Ms. Saba* *Of Trilliance PetrochemicalLtd., one of the group representative of suppliers. Other members /Participants of this Whatsapp group are as follow: - 989123377852@s.* wh*atsapp.net* *Ali Trilliance,* *989127025761@s.wh atsapp.net Omid and 9890353 86365@s .wh* *atsapp.net FJ are other representatives of suppliers group. I am not awar about their full name and other whereabouts.971501159789@s.wh atsapp.net Alex Aby.* *Hif, and me are Representative of our company.*

	Source App: WhatsApp	ops"	
2	From: 98 9127401664@s.whatsapp	For tuna, since AIS will be off is it ok to do dox of oman without entering to sohar anchorage? I afraid vessel arrest order is circulated in all GCC countries	*Q:- When MT Tuna did not reach Oman, why port oj loading was mis-declared as Sohar, Oman foi subject goods imported in vessel MT Tuna?*
			Ans: - The Bills of Entry were filed by us as per the documents received from the supplier. We have just placed orders for supply oj Naphtha. No benefit oj country of origin was availed by us, and there is no revenue implication and *hence there was no malafide intention on ow part behind this.*
3	From: Nitin Didwania (owner) Timestamp: 31-13 :58:43(UTC+0) Source App: WhatsApp	Do we have Iraq doxs for this	*Q: - What did you manage with Iraq documents? Please provide such documents.*
4	From: 98 9127401664@s.whatsapp .net Saba.trilliance. Ali Timestamp: 31-01-2021 13:59:30(UTC+0) Source App: WhatsApp	yes we have	*Ans: - I will ask the suppliers to provide such Iraqi documents if possible and will revert back accordingly within a week time.*
5	From: 98 9127401664@s.whatsapp .net Saba.trilliance. Ali Timestamp: 31-kandla?	shall we come with iraq dox to	

	01-2021 14:01:58(UTC+0) Source App: WhatsApp		
6	From: Nitin Didwania (owner) Timestamp: 31- 16:01:21(UTC+0) Source App: WhatsApp	Yes. We will manage	
7	From: Nitin Didwania (owner) Timestamp: 01-02-2021 09:17:45(UTC+0)	Saba, my logistic says that for tuna, we cannot do Iraq. We need loadport on	*Q: - It shows all acts oj mis-declaration were done with your active consent and*
	Source App: WhatsApp	bl to be either khorfakkan, or sharjah. I do not need other docs like coo etc.	*supervision. Why did you do so. Please comment.* *Ans: - The Bills of Entry were filed by us as per the documents received from the supplier. We have just placed orders for supply oj Naphtha. No benefit oj country of origin was availed by us, and there is no revenue implication and hence there was no malafide intention on ow part behind this.*
8	From: 98 9127401664@s.whatsapp .net Saba.trilliance. Ali Timestamp: 01-entering 02-2021 11 :15 :21(UTC+0) Source App: WhatsApp	And idont feel safe for entering into port limits of sohar	*Q: - Why did you not provide the documents to Customs having correct material particulars?* *Ans: - The Bills of Entry were filed by us as per the documents received from the supplier. We have just placed orders for supply oj Naphtha. No benefit oj country of origin was availed by us, and there is no revenue implication* and *hence there was no malafide intention on ow part behind this. The import was legitimately done and the purchase was under LC from Indian bank.*
9	From: Nitin Didwania (owner) Timestamp: 01- 11 :34:38(UTC+0) Source App: WhatsApp	Ais is manageable, but even in jndia they may ask for last port clearance.	
10	From: Nitin Didwania (owner) Timestamp: 01- 11:35:33(UTC+0) Source App: WhatsApp	Sts may be difficult If nothing else works out, we will bring the cargo to India with Iraq and I will mange but that is the last option.	
11	From: 98 9127401664@s.whatsapp .net Saba.trilliance. Ali Timestamp: 01- 02-2021 11:53 :49(UTC+0) Source App: WhatsApp	We can still get sohar dox.	
12	From: 989127401664@s.whatsapp .net Saba.trilliance. Ali Timestamp: 01- clearance	Maybe we use last as iraq pc?	

	02-2021 11:54:10(UTC+0) Source App: WhatsApp		
13	From: Nitin Didwania (owner)	Seems fine. This may work. Pls go ahead	
	Timestamp: 01- 11 :55:27(UTC+0) Source App: WhatsApp		
14	From: 989127025761@s.whatsapp		
	.net Omid Timestamp: 03 - 05 :44:43(UTC+0) Source App: WhatsApp	I'm preparing Sohar docs. Will share them with you once ready	
15	From: 989127025761@s.whatsapp .net Omid Timestamp: 03- 10:39:33(UTC+0) Source App: WhatsApp	@971501159789 is it possible to change the name of the shipper? The guy provides these docs in Sohar for us uses their company and issues docs usually and can later support those docs this way to be safe	*Q: - Who was the guy and his company who used to provide you the documents having manipulated/ incorrect material particulars?* *Ans: - I am not aware. I will inquire with the sender of this message and will revert within a week time.*
16	From: 971501159789@s.whatsapp .net Alex Aby. Hif Timestamp: 03-02-discussed, 2021 10:50:35(UTC+0) Source App: WhatsApp	@989127025761 as we can use Delta shipping and trading LLC *as* the Shipper. We did the same last time for Aston 1, which went to india	*Q: - It appears that similar malpractice of mis-declaration of material particulars was being done for subject goods imported in vessels MT*
17	From: 971501159789@s.whatsapp .net Alex Aby. Hif Timestamp: 03-02-Delta team only to change the	Also as discussed pls ask the Delta team only to change the shipper and balance all to remain same as per the DI provided	*Aston I, MT Tuna and MT Arihant? Please comment What is the actual role of Delta shipping and trading LLC in the import made by you/your company in said three vessels viz. MT Aston I, MT Tuna and MT Arihant?* Ans:- As stated ablve, it is possible that M/s. Aureole Trading LLC, UAE had arranged the said goods through M/s. Delta Shipping & Trading LLC, Sohar, Oman, accordingly, the Bills of Lading are containing shipper details as M/s. Delta Shipping & Trading LLC Sohar, Oman
18	From: 971501159789@s.whatsapp .net Alex Aby. Hif Timestamp: 04-02	Attachment: # Chats\WhatsApp_Native\attachments576\thumb-tuna BL_02 (3000 MT) -1.jpg Body:	
19	From: 971501159789@s.whatsapp .net Alex Aby. Hif Timestamp: 04-02-	3. HS CODE CHANGED IN ALL OBLS. 4. LC DETAILSADDEN IN 6 & 7	*Q: - What was actual /original HS Code which was changed?* *Ans: - The change was in the CTH of light Naphtha and Full Range Naphtha*

62. The Whatsapp group „Light Naphtha Ops", entire conspiracy of mis-declaration and manipulation of documents is discussed among the key persons including Shri Nitin Kumar Didwania, Managing Director of M/s. HML and their overseas associates. The illustrative chat messages of said Whatsapp group „Light Naphtha Ops" appear to be pertaining to subject goods imported per vessel MT Tuna are tabulated hereunder: -

Chat details	**Body /Chat content**
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 22-01-2021 07:09:13(UTC+0) Source App: WhatsApp	Also pls find below documentary instructions for 20 KT Kharg vessel mt Tuna
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 27-01-2021 05:59:57(UTC+0) Source App: WhatsApp	@989127025761 @989127401664 pls share the docs for Tuna and the shipment docs
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 27-01-2021 06:00:09(UTC+0) Source App: WhatsApp	Pls also share the load port quality report
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 28-01-2021 05:20:34(UTC+0) Source App: WhatsApp	@989127025761 pls advise on the status of MT Tuna
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 28-01-2021 05:20:45(UTC+0) Source App: WhatsApp	Also the documentation for the same
From: Nitin Didwania (owner) Timestamp: 28-01-2021 06:36:07(UTC+0) Source App: WhatsApp	Omid, in the quality analysis, they have missed the oxygenates, can you pls try o get the same.
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 28-01-2021 07:25:33(UTC+0) Source App: WhatsApp	Hi Mr Nitin, they have recently operational issue in Abadan and thats why cargo is on deep discount. I had not experience of their heavy cargo before. But their light cargo has like 1000 ppm oxy. Better we test in India and see.

From: Nitin Didwania (owner) Timestamp: 29-01-2021 12:33:17(UTC+0) Source App: WhatsApp	Noted. Good. Only problem is that this cargo is high oxy, I could have blended partial cargo as the oxy of kharg was high.
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 29-01-2021 12:39:45(UTC+0)	We need to do internal transfer documentation first
Source App: WhatsApp	
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 29-01-2021 12:39:56(UTC+0) Source App: WhatsApp	In the name of Aureole
From: Nitin Didwania (owner) Timestamp: 30-01-2021 07:36:07(UTC+0) Source App: WhatsApp	Since the tuna is under problem, it is best that we take possession of our material as early as possible.
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 04:47:29(UTC+0) Source App: WhatsApp	Hi @971501159789 has tuna been accepted kamdla?
From: Nitin Didwania (owner) Timestamp: 31-01-2021 07: 59:01(UTC+0) Source App: WhatsApp	Tuna to kandla seems to be ok.
From: Nitin Didwania (owner) Timestamp: 31-01-2021 08:05:08(UTC+0) Source App: WhatsApp	Let me know if finally we are planning for tuna to come to India. We have sold some cargoes locally And arihant is further delayed.
From: Nitin Didwania (owner) Timestamp: 31-01-2021 08:05:41(UTC+0) Source App: WhatsApp	Also, do not forget to pressurize kharg for rebate because of off spec cargo to us.
From: Nitin Didwania (owner) Timestamp: 31-01-2021 08:12:25(UTC+0) Source App: WhatsApp	Since the delivery to jg summit and yncc is delayed. ……………………………. we will have to sail out asap. Actually topping up is a practical and cost effective mechanism but we will not be able the justify delay and origin as well
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 09:15:40(UTC+0) Source App: WhatsApp	Shall we keep ais off till kandla?
From: Nitin Didwania (owner) Timestamp: 31-01-2021 09:47:00(UTC+0) Source App: WhatsApp	Yes pls
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 13:50:57(UTC+0)	for tuna, since MS will be off. is it ok to do dox of oman without entering to sohar anchorage? i afraid vessel arrest order is

Source App: WhatsApp	circulated in all GCC countries
From: Nitin Didwania (owner) Timestamp: 31-01-2021 13:58:43(UTC+0) Source App: WhatsApp	Do we have Iraq doxs for this
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 13:59:30(UTC+0) Source App: WhatsApp	yes we have
From: 989127401664@s .whatsapp. net Saba.trilliance. Ali	shall we come with iraq dox to kandla?
Timestamp: 31-01-2021 14:01:58(UTC+0) Source App: WhatsApp	
From: Nitin Didwania (owner) Timestamp: 31-01-2021 16:01:21(UTC+0) Source App: WhatsApp	Yes. We will manage
From: Nitin Didwania (owner) Timestamp: 01-02-2021 09:17:45(UTC+0) Source App: WhatsApp	Saba, my logistic says that for tuna, we cannot do Iraq. We need loadport on bl to be either sohar, khorfakkan, or sharjah. I do not need other docs like coo etc.
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 01-02-2021 11:15:21(UTC+0) Source App: WhatsApp	And idont feel safe for entering into port limits of sohar
From: Nitin Didwania (owner) Timestamp: 01-02-2021 11:34:38(UTC+0) Source App: WhatsApp	Ais is manageable, but even in jndia they may ask for last port clearance.
From: Nitin Didwania (owner) Timestamp: 01-02-2021 11:35:33(UTC+0) Source App: WhatsApp	Sts may be difficult ....try. If nothing else works out, we will bring the cargo to India with Iraq and I will mange but that is the last option.
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 01-02-2021 11:53:49(UTC+0) Source App: WhatsApp	We can still get sohar dox.
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 01-02-2021 11:54:10(UTC+0) Source App: WhatsApp	Maybe we use last port clearance as iraq pc?
From: Nitin Didwania (owner) Timestamp: 01-02-2021 11:55:27(UTC+0) Source App: WhatsApp	Seems fine. This may work. Pls go ahead
From: 989127025761@s.whatsapp.net	Also please let me know if you are OK with the below timings for Tuna. NOR Sohar Jan 30th

Omid Timestamp: 03-02-2021 08:58:00(UTC+0) Source App: WhatsApp	48 hours of loading Completion of loading Feb 2nd early AM hours
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 03-02-2021 09:32:40(UTC+0) Source App: WhatsApp	@989127025761 pls find attached the draft BL and DI for MT Tuna
From: 989127025761@s.whatsapp.net Omid Timestamp: 03-02-2021 10:39:33(UTC+0) Source App: WhatsApp	@971501159789 is it possible to change the name of the shipper? The guy who provides these docs in Sohar for us uses their company and issues docs usually and can later support those docs this way to be safe
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 03-02-2021 10:50:35(UTC+0) Source App: WhatsApp	@989127025761 as discussed we xan use Delta shipping and trading LLC as the Shipper. We did the same last time for Aston 1, which went to india
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 03-02-2021 10:51:18(UTC+0) Source App: WhatsApp	Also as discussed, pls ask the Delta team only to change the shipper and balance all to remain same as per the DI provided
From: Nitin Didwania (owner) Timestamp: 03-02-2021 14:22:52(UTC+0) Source App: WhatsApp	Saba, is it possible to get a typical of the balance light with the oxy and olefin.
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 04-02-2021 05:26:41(UTC+0) Source App: WhatsApp	They are using the light nap for blending of gasoline
From: 989127025761@s.whatsapp.net Omid Timestamp: 04-02-2021 07 :31:40(UTC+0) Source App: WhatsApp Attachments: #1: chats \ WhatsApp_Native \ attachments576 \DRAFT DOCS.pdf	——

From: 989127025761@s.whatsapp.net Omid Timestamp: 04-02-2021 07:32:06(UTC+0) Source App: WhatsApp Attachments: #1: chats \ WhatsApp_Native \ attachments576 \TUNA BLS.pdf	____
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 04-02-2021 10:25:03(UTC+0) Source App: WhatsApp	3. HS CODE CHANGED IN ALL OBLS. 4. LC DETAILS ADDED IN 6 86 7
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 04-02-2021 10:25:04(UTC+0) Source App: WhatsApp	We will require 2 Certificates of origin 3. For BL#1,2,3,4,5 4. Certificate of Origin for BL#6 86 7
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 04-02-2021 10:26:14(UTC+0) Source App: WhatsApp	Dear Omid kindly ask delta to revise the OBL as per above. Also to issue 2 sets of Certificate of origin as per BL nos

63 Further relevant documents were also recovered from the mobile phone of Shri Nitin Kumar Didwania: -

(i) A document having title „Free Zone Bill of Entry", Hamriyah Free Zone dated 28.01.2021 showing port of loading Basrah, Iraq, vessel name-Tuna, Qty. 20110767 KG

(ii) one document having title supplier Analysis Report containing Port/location-Basrah/Iraq and vessel Nave-MT Tuna

64. On the basis of above chats and documents discussed above that the subject goods were loaded from Basrah Iraq and were originated in Iraq whereas the same were mis-declared in the import documents submitted with Kandla Customs as loaded from Sohar, Oman and originated from Oman.

65. I find that the following relevant Whatsapp Chat conversations have been retrieved from the mobile phone of Shri Satish Gaichor.

Chat No. 2139 with Shri Nitin Kumar Didwania: -

Sr. No.	**Chat Details**	**Body**

1	From: 919821026617@s.whatsapp.net HML - NKD Timestamp: 31-01-2021 7:21:34 AM(UTC+0) Source App: WhatsApp	Body: Hi @971501159789 has tuna been accepted in kamdla?
2	From: 918291990409@s.whatsapp.net SG (owner) Timestamp: 11-02-2021 7:28:23 AM(UTC+0) Source App: WhatsApp	Body: Do u have reliable supplier in uae for Gasoil and Gasoline?
3	From: 918291990409@s.whatsapp.net SG (owner) Timestamp: 11-02-2021 7:28:23 AM(UTC+0) Source App: WhatsApp	Body: Kindly confirm if they can supply the Gasoil and Gasoline as per the attached specification
4	From: 918291990409@s.whatsapp.net SG (owner) Timestamp: 11-02-2021 7:28:23	Body: Can hazel supply
	AM(UTC+0) Source App: WhatsApp	
5	From: 919821026617@s.whatsapp.net HML - NKD Timestamp: 11-02-2021 10:20:22 AM(UTC+0) Source App: WhatsApp	Body: Need report
6	From: 919821026617@s.whatsapp.net HML - NKD Timestamp: 22-02-2021 6:16:10 AM(UTC+0) Source App: WhatsApp	Attachments: #1: chats \WhatsApp Native \attachments2139 \ IMG-20210222-WA0009.jpg (Content of Clarification dated 19.02.2021 given by Customs House Laboratory, Kandla suggesting that the sample under reference was Natural Gasoline Liquid)

Chat No. 1789 with Shri Abby-Alex:-

Sr. No.	Chat Details	Body
	From: 918291990409@s.whatsapp.net SG (owner) Timestamp: 30-01-2021 1:37:32 PM(UTC+0) Source App: WhatsApp	Body: **VV IMP:** 1. We need a full survey of quality with the oxygenates. Same has to be done on priority and reports to be shared on priority prior vessel sailing to Kandla. 4. WATER CONTENT ANALYSIS REPORT TO BE SEPARATELY INFORMED (NOT PART OF MAIN REPORT). **5. All docs must mention "NAPHTHA" as product**
	From: 971501159789@s.whatsapp.net HME - Abby Alex Timestamp: 02-02-2021 5:18:14 AM(UTC+0) Source App: WhatsApp	Attachments: #1: chats \WhatsApp Native \ attachments1789 \ BILL OF (The sender sent Bill of Lading for MT Tuna containing port of loading as Basrah, Iraq)
	From:971501159789@s.whatsapp.net HME - Abby Alex Timestamp: 03-02-2021 8:58:41 AM(UTC+0) Source App: WhatsApp	Body: Also please let me know if you are OK with the below NOR Sohar Jan 30th 48 hours of loading
		Completion of loading Feb 2nd early AM hours
	From:918291990409@s.whatsapp.net (owner) Timestamp: 04-02-20219:52:18 AM(UTC+0) Source App: WhatsApp	Body: 3. HS CODE CHANGED IN ALL OBLS. 4. LC DETAILS ADDED IN 6 & 7
	From:918291990409@s.whatsapp.net (owner) Timestamp: 04-02-20219:52:18 AM(UTC+0) Source App: WhatsApp	Body: We will require 2 certificates of origin 3. For BL# 1,2,3 5 4. certificate of Origin for BL#6&7
	From: 97150 1159789@s.whatsapp.net HME - Abby Alex Timestamp: 04-02-2021 11:03:19 AM(UTC+0) Source App: WhatsApp	Body: @971501159789 As per your instruction, Tuna is sailing towards the discharge port with AIS turned off

65.1 Following further relevant documents also recovered from the mobile phone of Shri Satish Gaichor.

- Bill of Lading No. TN-100019-21 dated 24.01.2021
- Free Zone Bill of Entry dated 28.01.2021, Hamriyah Free Zone, Sharjah, UAE (vessel MT Tuna, Bill of Lading No. TN-100019-21)
- Cargo Manifest dated 24.01.2021
- Certificate of Origin dated 24.01.2021
- Commercial invoice no. TN-100081-21 dated 24.01.2021
- Delivery order no. 2021-007732 dated 28.01.2021

66. As per these documents recovered from the mobile phone of Shri Satish Gaichor, the shipper/consignee was mentioned as M/s. Jabal Al-Aswad Co., Notify address was mentioned as M/s. Aureole Trading (LLC), Hamriyah Free Zone, Sharjah, UAE, vessel Name was MT Tuna, Qty. was 20110.767 MT, Port of Loading was Basrah (Iraq), Shipper"s description of goods was „Naphtha" and the HS Code for the goods was mentioned as 27075000.

67. From the above mentioned documents recovered from the mobile phone of Shri Satish Gaichor, the name of shipper/consigner appeared as M/s. Jabal Al-Aswad Co., Iraq for the 20110.767 MT goods being transported in vessel MT Tuna. It is further observed that the subject goods were loaded from Basrah, Iraq. This aspect is also corroborated with the facts of Whatsapp Chat conversations held among key persons who were discussing to get clearance of the cargo on the basis of some Iraqi Document. In these documents, the description of goods was mentioned as „Naphtha" but the HS Code for the same was mentioned as 27075000. It is pertinent to refer here that from the Chat conversations, it is apparent that the key persons had specifically insisted the concerned dealing hand to mention the product name as „Naphtha" in all documents. In order to get the content of these documents explained, Shri Satish Gaichor was issued Summons directing him to tender statement to get explained the content of above-mentioned conversations and other evidences /documents/images appeared relevant in the ongoing investigation but he avoided to provide any details/information/documents in this regard. This act of reluctance and non-cooperation on his part clearly indicated the aspect of manipulation of import documents.

68. From the evidences /documents/images/Whatsapp chat conversations retrieved from the mobile phone data of Shri Nitin Kumar Didwania and Shri Satish Gaichor, it is clear that the subject goods were originated in Iraq and were brought to India via Hamariyah, Sharjah, UAE in vessel MT Tuna. It further appears that in order to suppress the actual material particulars such as nature/description of subject goods, country of origin, shipper, port of loading etc., the conspirators prepared documents showing the supplier/shipper as M/s. Aureole Trading LLC, UAE in commercial invoice and M/s. Delta Shipping LLC in the concerned Bills of Lading. As discussed above that the product name as „Naphtha" was mentioned on being specifically insisted by the key persons of M/s. HML. specifically The port of loading and country of origin were declared as Sohar (Oman) and Oman respectively, whereas, it is apparent from the Whatsapp Chat conversations retrieved from the mobile phone of Shri Nitin Kumar Didwania, Managing Director of M/s. HML and other key persons that the vessel MT Tuna even did not berth at Sohar, Oman.

69. It is further observed that M/s. Verasco FZE, Hamriyah Free Trade Zone, UAE (previously known as Hazel International FZE), was having Tank storage terminal and processing plant in Sharjah, UAE. In order to get explained the matter and examine the role of M/s. Verasco FZE in manipulation of subject goods with respect to its nature by blending/processing and manipulation of documents with respect to their material particulars, Summons were issued to M/s. Hazel International FZE/ M/s. Verasco FZE, but they did not respond.

69.1. Shri Satish Gaichor was also shown the data contained in his mobile phone which was extracted under Panchnama dated 08.03.2021 to 11.03.2021. After seeing the data, he deposed that this data included the data of his mobile phone which was surrendered by him during Statement dated 25.02.2021. I explained the specific Whatsapp Chats and documents recovered from his mobile phone as under:-

Chat No. 1789 with Shri Abby-Alex:-

Chat Details	**Body**	**My comment/submissions on the body/content of chat**
From: 91829 1990409@s .whats app.net SG (owner) Timestamp: 27-01-2021 12:49:27 PM(UTC+0) Source App: WhatsApp	*"Body: have u passed on this message for Arihant*	*"This was the direction/inquiry of our MD Shri Nitin Kumar Didwania regarding goods imported by us in vessel MT Arihant.*

From: 918291990409@s.whatsapp.net SG (owner) Timestamp: 27-01-2021 12:49:39 PM(UTC+0) Source App: WhatsApp	*Body:* *also please advice what is BL qty for Arihant*	
From: 971501159789@s.what s app.net HME - Abby Alex Timestamp: 27-01-2021 1:42:31 PM(UTC+0) Source App: WhatsApp	*Body:* *We are arranging Iraq does for her, will arrive Sohar in 3 days then we will arrange Omani does for kandla discharge*	*Mr. Alex Abby, our UAE counter part informed that they were arranging documents showing Iraq origin of subject goods and then documents showing Oman origin of goods were for Kandla discharge. I am not aware why the two types of documents i.e. Iraqi and Omani documents were prepared. Mr. Alex Abby or our MD Shri Nitin Kumar Didwania can explain about*
From: 971501159789@s.what s app.net HME - Abby Alex Timestamp: 27-01-2021 1:42:51 PM(UTC+0) Source App: WhatsApp	*the same. Body:* *Above message for Arihant does*	
From: 918291990409@s.whatsapp.net SG (owner) Timestamp: 30-01-2021 1:37:32 PM(UTC+0) Source App: WhatsApp	*Body:* W *IMP: 1. We need a full survey of quality with the oxygenates. Same has to be done on priority and reports to be shared on priority prior vessel sailing to Kandla.* *4. WATER CONTENT ANALYSIS REPORT TO BE SEPARATELY INFORMED (NOT PART OF MAIN REPORT).* *5. All does must mention "NAPHTHA" as product*	*This direction was from Shri Nitin Kumar Didwania, MD of M/s. HML to analyze the specifications/ parameters of goods etc. in import related documents. I just forwarded the message received from Shri Nitin Kumar Didwania to concerned persons including Mr. Abby Alex. Our MD Shri Nitin Kumar Didwania can explain why he specifically directed that all does must mention "NAPHTHA" as product.*

From: 971501159789@s.what s app.net HME - Abby Alex Timestamp: 02-02-2021 5:18:14 AM(UTC+0) Source App: WhatsApp	*Attachments:* *#1: chats\WhatsApp Native\attachments 1789 \BILL OF LAD1NG...pdf* *(The sender sent Bill of Lading for MT Tuna containing port of loading as Basrah, Iraq)*	*Mr. Abby Alex sent Bill of Lading and other related documents pertaining to MT Tuna. This Bill of Lading and concerned Certificate of Origin contains Country of origin as Iraq and Port of Loading Basrah, Iraq for 20110.767 MT goods. The goods were the same which were imported to Kandla India per vessel MT Tuna. I am not aware the purpose of declaring the country of origin as Oman in the documents submitted with Customs House, Kandla.* *Our MD Shri Nitin Kumar Didwania can explain the reason for same.*
From: 971501159789@s.what s app.net HME - Abby Alex Timestamp: 03-02-2021 8:58:41 AM(UTC+0) Source App: WhatsApp	*Body:* *Also please let me know if you are OK with the below timings for Tuna.* *NOR Sohar Jan 30th* *48 hours of loading* *Completion of loading Feb 2nd early AM hours*	*I am not aware why did these timings were created though the vessel MT Tuna did not berth at Oman as per Whatsapp chat conversations. Our MD Shri Nitin Kumar Didwania can explain the reason for same.*
From: 918291990409@s.whats app.net SG (owner) Timestamp: 04-02-2021 9:52:18 AM(UTC+0) Source App: WhatsApp	*Body:* *3. HS CODE CHANGED IN ALL OBLS.* *4. LC DETAILS ADDED IN 6 86 7*	*These messages were only forwarded by me as received from our MD Shri Nitin Kumar Didwania. I am not aware about the purpose of changing HS Code, actual details which HS Code was changed and requirement of two Certificates of Origin.* *Our MD Shri Nitin Kumar Didwania can explain the reason for same.*
From: 91829 1990409@s .whats app.net SG (owner) Timestamp: 04-02-2021 10:20:03 AM(UTC+0) Source App: WhatsApp	*Body:* We *will require 2 Certificates of origin* *3. For BL# 1,2,3,4,5* *4. Certificate of Origin for BL# 6 & 7*	
From: 971501159789@s.what s app.net HME - Abby Alex Timestamp: 04-02-2021 *11:03:19* AM(UTC-F0) Source App: WhatsApp	*Body:* *@971501159789* *As per your instruction, Tuna is sailing towards the discharge port with AIS turned off."*	*Mr. Abby Alex sent this message informing that as per instructions of our MD of M/s. HML, the AIS of vessel MT Tuna was switched off while moving towards Kandla, India to discharge the goods."*

83. During the statement, Shri Satish Gaichor was asked to comment on the following discrepancies:-

	As per Bills of Lading no. 1 to 7 dated 02.02.2021 submitted by us with Customs, Kandla	As per documents (other than Bills of Lading) said to have been produced by us alongwith concerned Bills of Entry	As per documents recovered during investigation (Bill of Lading No.TN-100019-21 dated 24.01.2021, Cargo Manifest dated 24.01.2021, Certificate of Origin dated 24.01.2021,Commercial no. TN-100081-21 dated 24.01.2021, Free Zone Bill of Entry dated 28.01.2021)
Shipper/ Supplier /Consignee	M/ s. Delta Shipping and Trading LLC, Sohar, Oman	M/ s. Aureole Trading LLC, Dubai, UAE	Jabal Al- Aswad Company, Iraq
Port of Loading	Sohar, Oman	Sohar, Oman	Basrah, Iraq
Country of Origin	Not mentioned	Oman	Iraq
HS Code/CTH of Product	271011229	27101229	27075000
Qty. (MT)	20110.767	20110.767	20110.767

70. Shri Satish Gaichor stated that their MD Shri Nitin Kumar Didwania could explain the reason behind same; that they had just followed his instructions regarding preparation of documents and submission of the same with Customs Authorities. On being asked to provide documents having correct material particulars and also to provide corresponding export documents submitted by actual overseas supplier/shipper with respective Customs Authorities such as Export declaration form/shipping bills, insurance documents etc. pertaining to goods exported to India per said three vessels, Shri Satish Gaichor stated that these documents were not available with him; that their MD Shri Nitin Kumar Didwania is the right person to provide the same.

DISCUSSION ON EVIDENCE FROM TEST REPORTS-

71. Relying on various Test reports that were referred to in the order of the Hon'ble High Court of Gujarat, SCN alleged that the goods to be Natural Gasoline Liquid and the noticee submitted that the goods are Naphtha. The Show cause notice has alleged that M/s. Hazel Mercantile

Ltd. (M/s. HML) imported 20110.77MT Natural Gasoline Liquid (NGL)/Motor Gasoline in the guise of goods declared as 'Naptha' classifying the same under CTH 27101229. The import of NGL/Motor Gasoline is a restricted item and can be imported through State Trading Enterprise (STEs) only in terms of policy condition of Chapter 27. The noticee argues that the goods are Naptha under CTH 27101229 as per Test reports of Geo Chem and IIP, Dehradun.

72. I find that the department as well as the importer has relied upon various Test reports/Certificates. The Test reports relied upon in the SCN are as follows:-

(1)TEST REPORT AND OPINION OF CHEMICAL EXAMINER-

Test report bearing No. 6454/2659863/06.02.2021 dated 25.02.2021 (RUD-3), which is reproduced below:-

T.M.140.

CUSTOM HOUSE
KANDLA

IMP. 17/08/021:2021 Dated. 08/02/2021

(TO BE FILLED BY IMPORTERS / EXPORTERS / CHA)

THE FOLLOWING SAMPLES ARE FORWARDED FOR FAVOUR OF ANALYSIS

Group I B/E NO. 2659863 Date. 06/02/2021 Type IMPORT. CHA NO. HEMJYOT AGENCY

HEMJYOT AGENCY

Manufacturer's Name

Supplier's Name M/s. AUREOLE TRADING(L.L.C)

Name and Address of,

Importers/ Exporters M/s.HAZEL MERCANTILE LIMITED.

Country OMAN Vessel'sName MT. TUNA

Import / Export IMPORT

Marks & Numbers IN BULK

Description NAPHTHA (CTH NO: 27101229)

Specification

Brand Literature Enclosed

90/21
9.02

FOR OFFICE USE ONLY

Key Word 1 NATURE Key Word 2 COMPOSITION

Test Query1. VFY DESCRIPTION 2. Whether it is naphthae-

3. Flash point 4. or otherwise

5. Distillation Range

Conditions of + whether it is naphthae or otherwise

Release : 1. Againts Bond (A) Bond No. (B) Exp.Date

2. Partial Release Rage Released

T.R.Validity In Months ASSTT.COMMISSIONER OF CUSTOMS

Signature of Shed P.O. (GROUP

P.O. (D.E.)
C.H. KANDLA

10/2/21

PRAKASH ... PATIL
Superintendent / AO (Gr.1)
Customs, Kandla

TEST RESULT

Test Report No. 26598863/8-2-21 T.R.Date

Lab No. Lab Date Examined ID

The Sample as received is in the form of colorless liquid. It is composed of mixture of hydrocarbons having following constants :-

TECHNICAL OPINION :

1) Density at 15°C → 0.6474 gm/ml.
2) Initial boiling point → 40°C
3) 10% distill v/v → 42°C
4) 50% distill v/v → 52°C
5) 90% distill v/v → 119°C
6) Flash point → Below 25°C

Sealed second sample returned herewith

15/02/21

Analysed and returned to the Asstt.Commissioner or

and the Result Technical opinion as above.

Renuant Sample Fully Consumed/Retaubed/Returnd.

15/02/2021

चिलका नरेश

CHILAKA NARESH.

रसायन परीक्षक ग्रेड-II

Chemical Examiner Grade-II.

Date :

CHEMICAL EXAMINER/DY.CHIEF CHEMIST

P1: P. C. Agrawal 25/02/21

P2: 25-02-2021

(2) **TEST REPORT BY CRCL, DELHI-** In pursuance of the direction of Hon'ble High Court, the department forwarded the sample to CRCL, Delhi for retesting vide letter dated 15.04.2021 under Test Memo No. 44/2021-22 dated 15.04.2021 **(RUD No. 26).** In the Test Memo, the laboratory was asked to examine the sample with respect to all possible descriptions of goods including Naphtha as declared by M/s. HML. The queries raised vide Test Memo No. 44/2021-22 are as under:-

- *"Whether the representative sample confirms to description/ Characteristics/ Specifications/properties of "Naphtha" i.e. "Full Range Naphtha" as per Customs Tariff heading (CTH) 27101229?*
- *Whether the representative sample is mixture/ blended item of Light Naphtha (CTH- 27101221) and/or Heavy Naphtha (CTH-27101222) and/or Full Range Naphtha (CTH- 27101229) with or without any other goods and falling under `Others' category goods as per CTH 27101290.*
- *Whether the representative sample confirms to Characteristics/ Specrications/ properties of "Natural Gasoline Liquid"?*
- *Whether the representative sample confirms to Characteristics/ Specrications/ properties of "Motor Gasoline" as per CTH 27101241?*
- *Whether the representative sample is mixture/blended item of any of the goods mentioned at Sr. No. 2 to 5 above with or without any other goods and falling under `Others' category goods as per CTH 27101290 of Customs Tariff*
- *Whether the representative sample is other than that of mentioned at Sr. No. 2 to 6 above? If so, details /identification thereof?"*

(3) The CRCL, New Delhi provided the test results vide Re-Test Report bearing C.No. 27-Cus/C-08/2021-22 dated **28.05.2021(RUD No. 27).**

भारत सरकार
वित्त मंत्रालय, राजस्व विभाग
केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड
केन्द्रीय राजस्व नियंत्रण प्रयोगशाला
हिलसाइड रोड, पूसा, नई दिल्ली - 110012

Government of India
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Central Revenues Control Laboratory
Hillside Road, Pusa, New Delhi - 110012
Tel: 011-21520122/21520123; Fax: 011-25843495,
Email: [illegible] Website: http://crcl.gov.in

C.No. 27-Cus/C-08/2021-22

Date: 28.05.2021

To

The Additional Director
Directorate of Revenue Intelligence,
Regional Unit, Plot No. 193 Sector - IV
OSLO, Gandhidham (Kutch) - 370 201

Sir,

Sub: - Testing/retesting of sample reg.-

Please refer to your office letter F.No. DRI/AZU/GRU/Hazel/INT-06/2021/5557, dated 15.04.2021 and letter of even no. Dt. 11.05.2021, forwarding therewith 03 intact sealed sample for retesting. Out of these three samples, following one sample has been analysed and test report is as under.

Particulars of sample	Declared description of Goods	CLR No. Designated by CRCL, New Delhi
Sample marked as B1, Surveyor seal No. 715208	Goods declared as Naphtha under CTH 27101229 (The declared CTH covers Full range Naphtha)	CLR 02 dt.11.05.2021

RETEST-REPORT

The samples is in the form of clear colourless liquid having. It is mainly composed of lighter mineral hydrocarbon oil, having mineral hydrocarbon oil content more than 70% by Wt. It is having following characteristics.

Sr.No	Parameter	CLR-02 (Sample marked as B1)
01	Acidity	NIL
02	Flash point (abel) in °C	Less Than 25
03	Ash (% by wt.)	Nil
04	Density at 15 °C (gm/ml)	0.6499
05	API gravity	86.12
06	Water content	Nil
07	Reactive sulphur	sweet
08	Distillation Initial boiling point Temperature at 5 % Recovery Temperature at 10 % Recovery Temperature at 50 % Recovery Temperature at 90% recovery Final boiling point	 35 39 40 47.5 78 112
09	% Evaporated at 60 °C	80
10	% Evaporated at 135°C	Complete (100 %)
11	Total C5 Hydrocarbons	65.89
12	Total C6 Hydrocarbons	20.20
13	Total Aromatics	01.96
14	Total olefins	05.245

The sample is a low boiling liquid extracted from natural gas. It is "Natural Gasoline Liquid".

Yours faithfully

(Dr T.A. Sreenivasa Rao)
Joint Director (NFSG)

Copy To: The joint Director, C.H. Laboratory, Kandla

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The conclusion of Re-Test Report of the CRCL, New Delhi with respect to the sample drawn from the subject goods on 09.04.2021 is reproduced hereunder: -

*"The sample is in the form of clear colourless liquid having. it is mainly composed of lighter mineral hydrocarbon oil, having mineral hydrocarbon oil content more than 70% by Wt. It is having following characteristic………..**The <u>sample is a low boiling liquid extracted from natural gas. It is `11IGL."</u>***

73. The noticee/importer relies on the following Test reports-

(1) Test Report/Certificate of Quality of M/s. Muscut International Shipping & Logistics LLP (MIS) said to be the load port report:- I find that there are sufficient evidences in the form of chats and documents which indicate that the port of loading declared by M/s. HML i.e. Sohar, Oman is not correct. Similarly, the shipper/supplier/consignee declared by

M/s. HML as M/s. Aureole Trading LLC were not the actual supplier/shipper/consigner. Therefore, the load port report of M/s. MIS loses its authenticity and the same cannot be relied upon as a valid document while deciding the issue of classification.

(2) Test Report of M/s. TUV India Pvt. Ltd.:- I find that M/s. HML relied on a Test Report of M/s. TUV India Pvt. Ltd. claiming that the report was pertaining to samples drawn by their surveyor M/s. TUV India Pvt. Ltd. and that the Test Report indicated the subject goods as Naphtha. I find that no permission was sought from Customs authorities while drawing the samples, thus the same can not be relied upon.

(3) **RE-TESTING BY M/s. HML AS PER ORDER OF HON'BLE HC OF GUJARAT-**

In Pursuance of the order dated 05.04.2021 of the Hon'ble High Court of Gujarat, samples marked as S4& S5, were submitted to M/s. Geo Chem Laboratories Pvt. Ltd and IIP, Dehradun respectively by the importer. The test report provided by M/s. Geochem is as under:-

CERTIFICATE

GEO CHEM

GEO-CHEM LABORATORIES PRIVATE LIMITED

TEST CERTIFICATE

Certificate No.	:	PET/21/05/000443
DATE	:	11/05/2021
Party's Name & Address	:	M/S. HAZEL MERCANTILE LIMITED MUMBAI.
Party's Letter Ref. No.& Date	:	LETTER WITH SUBJECT "TESTING OF SEALED SAMPLES OF NAPHTHA" DATED 16/04/2021
Sample Described as	:	NAPHTHA
Date of Receipt of Sample	:	07/05/2021
Date/s of Analysis	:	07/05/2021 - 11/05/2021
Tested to Specification	:	---
Stamped / Sealed By	:	TUV - 715217
Analysis No.	:	PET/21/05/000443
Sample ID Mark (as described by Party)	:	SAMPLE NO.: S4 TANK NO: 425 NAME OF IMPORTER: M/S. HAZEL MERCANTILE LIMITED SURVEYOR SEAL: TUV INDIA PVT. LTD.

DISCIPLINE : CHEMICAL TESTING
GROUP : PETROLEUM AND PETROLEUM PRODUCTS

TEST	METHOD/TECHNIQUE	RESULTS	UNIT OF MEASURE	REQUIREMENTS OSN SPEC
SPECIFIC GRAVITY @ 60°F	ASTM D - 4052 - 18	0.6506	---	0.650 min.
DENSITY @ 15°C	ASTM D - 4052 - 18	0.6500	gm/ml	---
SAYBOLT COLOR	ASTM D - 156 - 15	+ 30	SAYBOLT COLOR	20 min.
REID VAPOUR PRESSURE	ASTM D - 323 - 15a	12.7	psi	13 max.
		87.5	kpa	89.6 max.
MERCURY (Hg)	GC-MLD/QS/CA-1/5.4/56 (ICP)	<1	µg/l (ppb)	20 max.
ARSENIC (As)	GC-MLD/QS/CA-1/5.4/56 (ICP)	<1	µg/l (ppb)	50 max.
LEAD (Pb)	GC-MLD/QS/CA-1/5.4/56 (ICP)	<10	µg/l (ppb)	150 max.
CARBON DISULPHIDE (CS_2)	REF. ASTM D - 6228 - 10	0.41	mg/l	---
OXYGENATES	GC-MLD/QS/CA-E/5.4/01 - 2017			50 max.
MTBE		2	mg/l (ppm)	---
ETBE		1	mg/l (ppm)	---
TAME		<1	mg/l (ppm)	---
METHANOL		<1	mg/l (ppm)	---
MEK		<1	mg/l (ppm)	---
ETHANOL		<1	mg/l (ppm)	---
2 PROPANOL		<1	mg/l (ppm)	---
2 BUTANOL		<1	mg/l (ppm)	---
1 BUTANOL		<1	mg/l (ppm)	---
TOTAL OXYGENATES		<10	mg/l (ppm)	---

Continued On Next Page

SAMPLE NOT DRAWN BY GEO-CHEM LABS

RECORD NO.: GCMLD/QR/7.8/02 AMENDMENT NO. 1 00 ISSUE NO. :03 PAGE NO.: 1 OF 2

Nº 854175

NOTARY S.M.H.ZAIDI Mumbai & Thane Dist. Reg. No. 3840 My Commission Expires 25 Sept. 2026 GOVT. OF INDIA

TRUE COPY

ADVOCATE

CERTIFICATE

GEO CHEM

A Registered Independent Inspection & Testing Company

GEO-CHEM LABORATORIES PRIVATE LIMITED,
Tel: +91 22 6797 4999 Fax: +91 22 6797 461

TEST CERTIFICATE

Certificate No. : PET/21/05/000443 DATE : 11/05/2021

TEST	METHOD/TECHNIQUE	RESULTS	UNIT OF MEASURE	REQUIREMENTS OSN SPEC
DISTILLATION :	ASTM D - 86 - 18			
INITIAL BOILING POINT		35	°C	24 Min.
5% RECOVERY		39	°C	---
10% RECOVERY		40	°C	---
20% RECOVERY		41	°C	---
30% RECOVERY		42	°C	---
40% RECOVERY		44	°C	---
50% RECOVERY		47	°C	---
60% RECOVERY		51	°C	---
70% RECOVERY		57	°C	---
80% RECOVERY		63	°C	---
90% RECOVERY		80	°C	---
95% RECOVERY		106	°C	---
FINAL BOILING POINT		170	°C	204 Max.
RECOVERY		98.0	% vol.	---
LOSS		1.5	% vol.	---
RESIDUE		0.5	% vol.	---

REMARKS : CONFORMS TO OSN SPECIFICATIONS OF NAPHTHA WITH RESPECT TO THE TESTS CARRIED OUT.

NOTE 1. Test Certificates for the said sample are based on PET/21/05/000443 & PET/21/05/000443-I

SAMPLE NOT DRAWN BY GEO-CHEM LAB

For GEO-CHEM LABORATORIES PVT. LTD.

MANGESH SHINDE
MANAGER
(CHEMICAL ANALYSIS - ENERGY)
(AUTHORISED SIGNATORY)

-END OF CERTIFICATE-

SS

RECORD NO. : GCMLD/QR/7.8/02 AMENDMENT NO. : 00 ISSUE NO. : 03 PAGE NO.: 2 OF 2

№ 854176

HIGH COURT OF GUJARAT AHMEDABAD CERTIFIED COPY

NOTARY GOVT. OF INDIA

TRUE COPY

CERTIFICATE

GEO CHEM

GEO-CHEM LABORATORIES PRIVATE LIMITED

TEST CERTIFICATE

DATE : 11/05/2021

Certificate No.	:	PET/21/05/000143-I
Party's Name & Address	:	M/S. HAZEL MERCANTILE LIMITED MUMBAI.
Party's Letter Ref. No.& Date	:	LETTER WITH SUBJECT "TESTING OF SEALED SAMPLES OF NAPHTHA" DATED 16/04/2021
Sample Described as	:	NAPHTHA
Date of Receipt of Sample	:	07/05/2021
Date/s of Analysis	:	07/05/2021 - 11/05/2021
Tested to Specification	:	---
Stamped / Sealed By	:	TUV - 715212
Analysis No.	:	PET/21/05/000143-I
Sample ID Mark (as described by Party)	:	SAMPLE NO : S4 TANK NO : 425 NAME OF IMPORTER : M/S. HAZEL MERCANTILE LIMITED SURVEYOR SEAL : TUV INDIA PVT. LTD.

DISCIPLINE : CHEMICAL TESTING
GROUP : PETROLEUM AND PETROLEUM PRODUCTS

TEST	METHOD/TECHNIQUE	RESULTS	UNIT OF MEASURE	REQUIREMENTS OSN-SPEC
SULPHUR (S)	ASTM D - 4294 - 16	157	mg/kg (ppm)	550 max.
FLASH POINT	IP 170	BELOW 0	°C	---
BENZENE CONTENT	ASTM D - 5134 - 00	0.29	% vol.	---
ORGANIC CHLORIDE	ASTM D - 4929B	<1	ppm wt.	1 Max.
EXISTENT GUM :				
UNWASHED	ASTM D - 381 - 19	0.7	mg/100ml	---
WASHED	ASTM D - 381 - 19	<0.5	mg/100ml	---
PIONA + CARBON BREAKUP :	ASTM D - 5134 - 08			
TOTAL PARAFFIN		94.10	% vol.	65.0 min.
N-PARAFFIN		47.93	% vol.	30.0 min.
ISO PARAFFIN		46.25	% vol.	---
AROMATICS		0.87	% vol.	---
NAPHTHENES		4.91	% vol.	---
OLEFINS		0.05	% vol.	1.0 max.

REMARKS : CONFORMS TO OSN SPECIFICATIONS OF NAPHTHA WITH RESPECT TO THE TESTS CARRIED OUT.

NOTE 1 : Test Certificates for the said sample are issued as PET/21/05/000143 & PET/21/05/000143-I

NOTE 2 : ORGANIC CHLORIDE TEST IS SUBCONTRACTED.

SAMPLE NOT DRAWN BY GEO-CHEM LAB

For GEO-CHEM LABORATORIES PVT. LTD.

MANGESH SHINDE
MANAGER
(CHEMICAL ANALYSIS)
(AUTHORISED SIGNATORY)

-END OF CERTIFICATE-

SS
RECORD NO.: GCMLO/QR/7.8/02 AMENDMENT NO. : 00 ISSUE NO. : 03 PAGE NO. : 1 OF 1

NOTARY
S.M.H. ZAIDI
Mumbai & Thane Dist.
Reg. No. 3640
My Commission Expires 25 Sept. 2026
GOVT. OF INDIA

No. 108597

CERTIFIED COPY

(4) The Test report provided by IIP, Dehradun is reproduced hereinbelow:-

Indian Institute of Petroleum, Dehradun *Confidential*

1.0 INTRODUCTION

Studies on Sealed Naphtha samples from M/s Hazel Mercantile Limited, Mumbai.

2.0 STANDARD TEST METHODS

Naphtha sample (Marked as S5 with Seal No.715255, Location: MT-Tuna) was analyzed in our laboratory for the following tests using respective standard test methods.

S.No.	Properties	Standard method
1	Specific Gravity g 60°F	ASTM D4052
2	Density @l5 °C	ASTM D4052
3	Colour Saybolt	ASTM D156
4	RVP @37.8 °C	ASTM D6378
5	Total Sulfur(ppm)	ASTM D4294
6	RON	GC method
7	MON	GC method
8	Existent Gum	ASTM D381
9	Distillation. °C	
	IBP	
	5%(v/v)	
	10%(v/v)	
	20%(v/v)	
	30%(v/v)	
	40%(v/v)	
	50%(v/v)	
	60%(v/v)	ASTM D86
	70%(v/v)	
	80%(v/v)	
	90%(v/v)	
	95%(v/v)	
	FBP	
	Recovery	
	Residue	
	LOSS	
10	Composition, liquid vol%	ASTM D6730
	Total Paraffins	
	n-Paraffins	

Indian Institute of Petroleum, Dehradun | *Confidential*

	Olefins	
	Nahthenes	
	Aromatics	
11	Benzene	UOP 744
12	Carbon Di Sulphide	ASTM D5623
13	MTBE	ASTMD4815
	ETBE	
	TAME	
	DIPE	
	Methanol	
	Ethanol	
	Isopropanol,	
	n-propanol	
	isobutanol	
	tert-butanol	
	sec -butanol	
	n-butanol	
	Total Oxygenates	

RESULTS

Naphtha Sample (Marked as S5 with Seal No.715255, Location: MT-Tuna) Report:

Physico-Chemical Properties and Composition:

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S.No.	Properties	Report
1	Specific Gravity g 60/60°F	0.6514
2	Density @15 °C (we)	0.6513
3	Colour Saybolt	>+30
4	RVP @37.8 °C(kPa)	85.8
5	Total Sulfur(mg/kg)	210
6	RON (by GC method)	69.9
7	MON (by GC method)	67.8
8	Existent Gum(mg1100 mL)	1.7
9	Distillation, °C	
	IBP	27.0
	5%(v/v)	36.5
	10%(v/v)	41.0
	20%(v/v)	42.0
	30%(vlv)	43.0
	40%(v/v)	45.0
	50%(v/v)	46.5

Indian institute of petroleum Dehradum	Confidential

	60%(v/v)	49.0
	70%(v/v)	52.5
	80%(v/v)	59.0
	90%(v/v)	72.5
	95%(v/v)	87.5
	FBP	115.5
	Recovery%(v/v)	96.0
	Residue%(v/v)	1.0
	Loss%(v/v)	3.0
10	Composition, liquid vor/o	Volume %
	Total Paraffins(Normal & iso)	95.10
	Naphthenes	3.86
	Olefins	0.22
	Aromatics	0.82
	n-Paraffins	48.35
11	Composition, liquid vol%	Volume %
	Benzene	0.37
12	Composition, liquid (mg/kg)	mg/kg
	Carbon Di Sulfide	6.06
13	Composition, liquid vol%	Volume %
	MTBE	0.01
	ETBE	0.00
	TAME	0.02
	DIPE	0.00

	Methanol	0.00
	Ethanol	0.00
	Isopropanol,	0.00
	n-propanol	0.00
	isobutanol	0.00
	tert-butanol	0.00
	sec -butanol	0.00
	n-butanol	0.00
	Total Oxygenates	0.03

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Carbon number wise analysis (% volume) based on ASTM D6730 method:

Carbon No.	**Paraffin**			**Naphthenes**	**Olefins**	**Aromatics**
	Normal	Iso	Total Paraffin			
1	**--**	**--**	**--**	**--**	**--**	**--**
2	0.04	--	0.04	--	--	--
3	--	--	--	--		----
	1.12	--	1.12	--	--	--
5	34.07	28.39	62.46	0.93	0.00	--
6	9.92	12.88	22.80	1.32	0.01	0.28
7	2.42	3.67	6.09	1.15	0.21	0.32
8	0.67	1.55	2.22	0.40	0.00	0.22
9	0.11	0.26	0.37	0.06	0.00	--
10		--	--	--	--	--
11	--	--	--	--	--	--
12	--	--	--	--	--	--
Total	**48.35**	**46.75**	**95.10**	**3.86**	**0.22**	**0.82**

Conclusion:

Based on the above observations/results, this sealed naphtha sample (Marked as S5 with Seal No.715255, Location: MT-Tuna) falls under the light naphtha range.

73 Kindly note that the analysis results given above cannot be deemed to be a certificate on your product. These are the results of analysis performed on samples provided to us.

74. I find that the Hon'ble High Court of Gujarat vide order dated 15.09.2021, while deciding the issue of validity of test reports made some important observations as reproduced below:-

> ***"What is evident from the communications annexed to the petition is that the petitioner independently forwarded the samples for re-testing to the Geochem Laboratory and to the 11PM without consulting the statutory authorities. Based on the order dated 05.04.2021 passed by the Court, it appears that the petitioner by its letters supplied a long list of 66 parameters proposed to be tested which was subsequently changed to a proposal of 49 parameters for testing.*** **From reading of the affidavit-in-reply of the respondent, it appears that no parameters were suggested by the petitioner pertaining to the test of goods as Natural Gasoline Liquid. Even if the letters dated 16.02.2021 and 17.02.2021 which are pressed into service by Mr. Nankani** are considered as creating a doubt about the Custom House Laboratory what is indicated is that ***though the***

<u>lines of investigation was in context of whether the goods was Naphtha, the CRCL report dated 28.05.2021 (page 447 of the paperbook) in accordance with the parameters prescribed by the authorities in the test memo indicate unequivocally that the consignment is that of Natural Gasoline Liquid.</u>

We are afraid then when the validity of the reports are disputed inasmuch as it is the case of the Union of India through its investigating agency that the parameters and scientific analysis of the reports on which the petitioner seeks reliance are contradictory, this Court would be loathe in weighing its options on such disputed questions of fact and disturbing the seizure memo an exercise which cannot be undertaken in the midst of an investigation."

75. The Hon'ble Court observed that the test reports relied upon by the petitioner (M/s. HML) were contradictory in nature in respect of analysis, parameters and conclusions and also opined that the samples were forwarded to the laboratories without consulting the statutory authorities. The Hon'ble Court further noted that M/s. HML did not suggest any parameter for testing of sample as "NGL". It was further stressed upon by the Hon'ble Court that the CRCL report dated 28.05.2021 in accordance with the parameters prescribed by the authorities in the test memo indicate unequivocally that the consignment was that of Natural Gasoline Liquid.

76. Without prejudice to the above fmdings, I proceed to examine the parameters tested by Geochem and IIPL as given below:-

MT TO MA (NAPHTHA ANALYSIS CO IVI PAR 'SIC' PI)					
		G ECAC I-I EIVI		II P.	
Sr Pio	Parameters	Method	Result	Method	Result
0	Appearance				
3_	Specific Gravity @ eCI F	ASThA 04052:2035	0 65	ASThA 04052	0.653_4
2	Cie nsity @ 15 C		0.6506 girro I		0.6519 mica
9	Colour Saytiolt	ASTIVI 03_5e:203_5	G retorter than 910	ASTIVI ID 156	Greater than -.510
4.	Reid Vapour Pressure (RV P)	ASThA 0929:2020	3_2.7 Fast/837.6 Imal	ASThA 0637E	835.83 IcPal
5	Sulphur	ASTIVI 04294.: mome	157 pprn	ASThA 04.294.	23_0 m(3,(43
e	Flash Point	I P-170 203_9	**Below 0 chow C**		
	ERsti 1 lation: I. B. P."""		95 **chow C**	ASThA Cane	27.0 deg C
	5% Recovered		**50 chow C**		55.5 deg C
	10% Re cove red		**40 chow C**		41.0 deg C
	20% Recovered		**45_ doom C**		42.5 deg C
	90% Re cove red		**.12 chow C**		**45.0** deg C
	4-0% Re cove red		**4.4 chow C**		45.0 deg C
	SO% Re cove red		**42 chow C**		**45.5** deg C
	67% Re cove red		**51 c how C**		49.0 deg C
	70% Re cove red		59 **chow C**		**52_**5 deg C
	130% Re cove red		**55 chow C**		59_0 deg C
	90% Re cove red		**HO chow C**		72.5 deg C
	95% Re cove red		**105 chow C**		837.5 deg C
	ERsti 1 lation: F.13.P.....		**120 chow C**		115.5 deg C
	Re cove ry		**00.0 96 vol**		96.0 96 yd.)
	Residue		**1.5 96 vol**		1.0 96 yd.)
	LOSS		**0.5 96 vol**		9.0 96 yd.)
a	Total Paraffins	ASThA 053_94:200n	94.3_83 36(v,v)	ASThA 06790	95 10 36(v,v)
9	hi-Paraffins		**47_93 56(Ne"e)**		443.95 36(v,v)
10	0 1 ef i ns		**0.05 56(Ne"e)**		0.22 36(v,v)
11	hiaphthe nes		**4. 0156(Ne",)**		9.836 36(v,v)
12	Aromatics		**0.02 56(Ne"e)**		0.832 96(v,v)
19	Benzene		**0.20 56(Ne"e)**	1.10P 74-4-	0.97 36(v,v)
14-	Total Organic Chloride	ASThA 04929 B	x 3_ PP Et		
15	Mercury	GC-NAIAD/OS/CA- VS. 4,56 (I CP)	x 1 PP Et		
15	Arsenic		x 1 PP Et		
17	Le ad Content		x **1-01.1.13**		
1B	Carbon ER Sul p hide	ASThA 0622E:10	***.,.83/1***	p.s rivi osema	6.06 rrogjkis
19	0 E E	GC- NA 1_0,05,CA- E,S. 4,01- 203_7		ASThA 0463_5 : 1 mg/1O.	
	AA				
	EFI3E		**1 mg/1**		**0.00 56(Ne"e)**
	IVITI3E		**2 rross/1**		**0.01 56(Ne"e)**
	01 PE				0.00 36(v,v)
	PA				
	'FAME		x 1 mg/1		0.02 36(v,v)
	PE				
	Methanol				00 ***%(v",)***
	Aceto ne				
	VA				
	IVI EK		x 1 **mg/1**		
	Ethanol		x 1 mg/1		0.00 36(v,v)
	PI- Propancal		x 1 rrogji		**0.00 56(Ne"e)**
	rap.				
	um- Etuttaincal		x 1 mg/1		0.00 36(v,v)
	Total Oxygenates		x 10 mg/1		0.09 36(v,v)
20	R 0 hi	ASThA 02699		ASThA 02699	69.9
23_	MC) hi	ASThA 02700		ASThA 02700	67.83
22	Existent Gum	ASThA 0533_		ASThA 09B3_	1.7

29	Acidity				
24-	Ash				
25	API gravity				
26	Water Content				
27	Reactive Sul phur				
25	% Evaporated at SO E'en C				
29	% Evaporated at 155 E'en C				
90	Total C2 Hydrocarbons				0.00 96 (v,v)
51	Total C2 Hydrocarbons				0.04 96 (Ne/s•)
92	Total Ca 1-lycl roc. rtio ns				0.00 96 (v,v)
55	Total C4- 1-lycl roc. rtio ns				1.12 96 (v,v)
54	Total CS Hydrocarbons				69.99 96 (Ne/Ne)
55	Total Ce Hydrocarbons			ASThA 06790	24.43_ 96 (v,v)
55	Total C7 Hydrocarbons				7.77 96 (v,v)
97	Total CB Hydrocarbons				2.834 96 (v,v)
53	Total C9 1-lycl roc. rtio ns				0.45 96 (v,v)
59	Total C10 Hydrocarbons				0.00 96 (v,v)
40	Total C11 Hydrocarbons				0.00 96 (v,v)
4-1	Total C12 Hydrocarbons				0.00 96 (v,v)

77. I find that both the labs (Geo Chem and IIP, Dehradun) have tested samples for "Naphtha". As evident from the test reports, they neither tested any parameter for NGL nor were they asked to do so. It is clearly observed by the Hon'ble Court also that the samples were sent to these labs without consulting the statutory authorities. It is further seen that IIP Dehradun has carried out Carbon Number wise analysis based on ASTM D6730 method, however, the same has not been done by Geo Chem laboratory, though the Geochem lab has done Carbon Break up as Total Paraffin, N-Paraffin, Iso Paraffin etc. Thus, the findings of the Hon'ble Court and the department's contention that the two reports are contradictory in terms of parameters and analysis have merit.

78 Natural gasoline is defined as a liquid hydrocarbon mixture condensed from natural gas, composed mostly of C5-C6 alkanes (e.g. -67% pentane, -22% hexane) and also containing isopentane—components not typical in naphthas whereas Petroleum naphtha has broader carbon range (C5-C9 to C10) and often contains significant aromatics and naphthenes.

79 As per U.S. Energy Information Administration (EIA), Natural gasoline and Natural Gas Liquid (NGL) are defined as under: -

> *"Natural gasoline: A term used in the gas processing industry to refer to a mixture of liquid hydrocarbons (mostly pentanes and heavier hydrocarbons) extracted from natural gas. It includes isopentane."*

80. As per Hess Corporation's Safety Data Sheet of Natural Gasoline, Natural Gasoline is a complex mixture of petroleum hydrocarbons separated as a liquid from natural gas and/or natural gas liquids from which methane, ethane, propane, butane, and possibly pentane have been extracted. It

consists of hydrocarbons with *carbon numbers predominantly in the range C5 to C8.*

81 From the perusal of Test report of IIP Dehradun, it is seen that the said samples had more concentration of C5-C6 only and the remaining Carbon numbers were very less which indicate that the imported goods were having characteristics of NGL and not naphtha.

82. Further on perusal of the Test report by CRCL, Delhi, I find that the said Test report incorporates not only the parameters of NGL but also of Naphtha. The said Test report tested parameters like Distillation, Flash point, API gravity etc, which are the parameters meant for Naphtha and also tested parameters viz. % Evaporated at 60°C, % evaporated at 135 °C, total C5 and C6 hydrocarbons among others which are the parameters for testing of Natural Gasoline Liquid. On the basis of careful analysis of the parameters meant for NGL as well as Naphtha, the Joint Director opined that the sample was a Natural gasoline Liquid, whereas IIP Dehradun and Geochem had neither been advised nor directed to test the samples for parameters of NGL.

83. In view of the above discussion and fmdings, I find that the test report of CRCL, Delhi is more comprehensive to ascertain whether the imported goods were Naphtha or Natural Gasoline Liquid and the findings of % of C5-C6 hydrocarbons recorded in IIP, Dehradun supports the conclusion that presence of lower hydrocarbon i.e. C5(63%) and C6(24%) hydrocarbons is sufficient to treat the goods as NGL.

CHANGE IN TARIFF-

84 Vide Notification No. 36/2015-20, dtd. 17.01.2017, the Central Government notified the ITC (HS) Classification of relevant period, under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, prescribing therein the scheme of classification of goods as well as the provisions relating to Import/Export of each of such items. In terms of said ITC(HS) Classification, 2017, the following are the relevant entries under Chapter 27 of Schedule I pertaining to the Import Policy:

Exim Code	Item Description	Policy	Policy conditions
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 basis constituents of the preparations other than those containing biodiesel and other		
271012	Light oils and Preparations:		
	Motor spirit		
2710 12 11 to 27101219		State Trading Enterprises	Import as per Policy condition (5)
27101220	NGL (NGL)	State Trading Enterprises	Import as per Policy condition (5)
27101290	Other	State Trading Enterprises	Import as per Policy condition (5)

84.1. From the above provisions of ITC (HS) Classification, it is apparent that there was no specific entry for goods described as "Naphtha" of different grades. There were no entries for the different grades of solvents, Aviation Gasoline etc. Thus, Naphtha was then classifiable under other category i.e. 27101290. The goods described as "NGL" as per the supplementary Note (b) provided in Chapter 27 of the ITC (HS), was falling at Exim Code 27101220, which was restricted for import by the Policy as well as Policy condition provided against the said Exim Code. As per the Policy, the item NGL falling under Exim Code 27101220 could be imported by STEs and as per the Policy condition (5) prescribed in Chapter 27, the import of said item is allowed through IOC subject to para 2.20 of the FTP, except for the companies, who have been granted rights for marketing of transportation fuels in terms of Ministry of P&G's Resolution No. P-23015/1/2001-MKT, dtd.08.03.2002 including HPCL, BPCL & IBP, who have been marketing transportation fuels before the date.

85. Vide Notification No. 41/2015-2020, dtd.05.12.2017, the Central Government had notified the revised Foreign Trade Policy 2015-20 under the

provisions of Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, which came into effect from 05.12.2017.

86. In terms of Para 2.01 of the revised Foreign Trade Policy 2015-20, all imports should be free, unless regulated by way of "prohibition", "restriction" or "exclusive trading through State Trading Enterprises (STEs), as laid down in the ITC (HS) Classification.

87. It was clearly stipulated in Para 2.01 of the FTP 2015-20 that there are some items, which are free for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

88. In Para 2.02 of the FTP 2015-20, it was clarified that the ITC (HS) is aligned at 6-digit level with the international Harmonized System goods Nomenclature maintained by World Customs Organization. However, it was further clarified in said Para 2.02 of the FTP 2015-20 that India maintains national Harmonized System of goods at 8-digit level. It was also prescribed vide Para 2.02 of the FTP 2015-20that the import/export policy for all goods are indicated against each item in ITC (HS)

89. As provided vide Para 2.20 of the FTP 2015-20, any goods, import or export of which is governed through exclusive or special privilege granted to STEs may be imported or exported by the concerned STEs, as per the conditions specified in the ITC (HS). Although it was also provided in Para 2.20 of the FTP 2015-20 that the DGFT, may, grant an authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs. Later on, w.e.f. 01.01.2020, the following changes were introduced in respect of the entries available in Chapter 27 of the Customs Tariff:

271012	--	Light Oils and Preparations
	---	Naphtha
27101221	----	Light Naphtha
27101222	----	Heavy Naphtha
27101229	----	Full Range Naphtha
	—	Solvent 60/80, solvent 50/120 and solvent 145/205 (petroleum hydrocarbon solvents) as specified under standard IS 1745:
2710123 to 1	----	
	---	Motor gasoline confirming to standard IS 2796, IS 17021 or IS 17076:
2710124 to 1	----	
27101250	---	Aviation Gasoline conforming to standard IS 1604
27101290	---	Other

89.1 Thus, pursuant to the above changes, the specific entries were provided for the goods of the categories of Naphtha, Solvent, Motor Gasoline and Aviation Gasoline, which were earlier classified under residuary entry of "Others", whereas the entry of NGL earlier available vide CTH No. 27101220 was removed and accordingly the NGL seemingly became classifiable under the residuary entry of 27101290.

90 The Central Government vide Notification No. 38/2015-20, dtd.01.01.2020 issued under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 2.01 of the FTP 2015-20, introduced following changes in respect of the entries available in Chapter 27 of the ITC (HS): -

271012	Light Oils and Preparations		
	Naphtha		
27101221	Light Naphtha	State Trading Enterprises	Import as per Policy condition (5) of Chapter
27101222	Heavy Naphtha	State Trading Enterprises	Import as per Policy condition (5) of Chapter
27101229	Full Range Naphtha	State Trading Enterprises	Import as per Policy condition (5) of Chapter
	Solvent 60/80, solvent 50/ 120 and solvent 145/205 (petroleum hydrocarbon solvents)		
27101231-27101239		State Trading Enterprises	Import as per Policy condition (5) of Chapter
	Motor gasoline confirming to standard IS 2796, IS 17021 or IS		
27101241 27101249		State Trading Enterprises	Import as per Policy condition (5) of Chapter
27101250	Aviation Gasoline conforming to standard IS 1604	State Trading Enterprises	Import as per Policy condition (5) of Chapter 27

27101290	Other	State Trading Enterprises	Import as per Policy condition (5) of Chapter

91. In light of the above, it is proposed in the SCN that Naphtha, by virtue of Policy condition (1) of the Chapter 27, became importable through STEs. Further, the commodities, which were falling under residuary entry of "Others" category became classifiable with the specific entries provided.

92. Later on, vide Notification No. 51/2015-20, dtd.18.03.2020, issued under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 1.02 and 2.01 of the FTP 2015-20, the Import Policy for three categories of Naphtha and other items were amended. The product Naphtha, which was earlier importable by the STEs only was made freely importable. Apparently, there was no such change of Policy provided for NGL falling under Exim Code 27101290

NO AMENDMENT IN SUPPLEMENTARY NOTE-

93. I find that Supplementary note (b) to Chapter 27 defined NGL as "low boiling liquid petroleum product extracted from Natural Gas". It is pertinent to mention that despite the deletion of entry 27101220 for NGL from the tariff w.e.f 01.01.2020, the supplementary note (b) has neither been amended nor deleted. This clearly shows that even though the Tariff Entry 27101220 NGL has been removed the commodity NGL is still defined under Customs Tariff Act, 1962 which implies that w.e.f 01.01.2020 tariff entries under 2710 have been enlarged incorporating Various classes of Naphtha, Solvent, Motor Gasoline, Aviation Gasoline and others.

94. I find that the noticee has relied upon the decision of Reliance Industries Ltd. Versus Commissioner of Customs, Ahmedabad (2024) 25 Centax 195 (Tri.- Ahmd.) to argue that the imported goods are classifiable as Naphtha and not as NGL. I find that the said decision of the Hon'ble Tribunal was in respect of allowing benefit of exemption from payment of applicable duties of customs, in terms of Notification Nos. 18/2015-Cus and 21/2015-Cus, both dated 01.04.2015 against Advance Authorizations. On going through the decision, I find that the Hon'ble Tribunal held that-

> **4.7** *We find that as discussed above the NGL is also a "Naphtha? and therefore, allowed to be cleared under Advance Authorisation, The revenue also contended that ITC HS code of Naphtha and NGL is different, hence, Advance Authorisation having different ITC HS code, i.e. 27101290 and NGL being*

<u>*under 27101220 the clearance of goods cannot be allowed under the Advance Authorisation. We find that as per above discussion, we expressed our view that NGL is also a type of "Naphtha?. So long description is correctly mentioned if ITC HS code is under dispute, clearance under such Advance Authorisation is allowable in view of the judgment in the case of Condor Footwear (I) Limited v. Commr. of Customs, Ahmedabad 2019 (367) E.L.T. 653 (Tri.-Ahmd)*</u> which is reproduced below:-

"5. We have gone through the rival submissions. We find that appellants are holder of license issued for availment of benefit under Notification No. 93/2004-Cus. It is not disputed that the description in the SION norms covers the goods imported by the appellant. However, the Revenue is of the view that the goods are classifiable under Chapter Heading 3920 49 00 as against the Heading 5903 10 90 mentioned in the license. Though the license has been amended, the Revenue rejected the amendment on the ground that such amendments did not have retrospective effect. The Revenue has relied on the decision of the Tribunal in the case of *Square D. Textiles Exports Limited (supra)* and the decision of Hon'ble High Court of Punjab & Haryana in the case of *Vikrant Overseas (supra).*

5.1 It is seen that SION norms did not prescribe any heading against the description of the goods. A perusal of the Notification No. 93/2004-Cus. also shows that there is no mention of sub-heading or heading against the goods permitted for import against license. Ld. Counsel has argued that the classification of the goods has no bearing for admissibility of import under the notification. The appellant have also produced the minutes of meeting held on 11-6-2009 wherein their case for amendment of licenses was considered by the licensing authority. In the minutes of the said meeting, the Ministry of Commerce has held as follows :-

Case No. 208	M/s. Condor Footwear (India) Limited Surat
NC.11/10 dated 116-2009	F. No. 1/84/162/42/AM10-DES-V
Request for import against Advance Authorisation No. 5210021658, dated 6-6-2007 - under Para 4.7 of HBP (Vol. 1) 2004-2009	

"Decision : The Committee considered the case as per agenda and along with other relevant papers and heard Sh. Rakesh Adnani, Director and Sh. Surendra Gandhi, an authorized representative of the firm, who appeared for personal hearing before NC. They explained the case along with relevant papers and sample of the export item. In this case advance authorization in question was issued on 6-6-2007 to the applicant firm and input output norms were ratified by norms Committee by allowing the inputs as per SION at S. No. A-3541. In this case firm imported Synthetic cloth for Uppers (Non-Woven/Woven/Knitted/Laminated with PVC/PU) HSW-KNO6B-LP. The Committee felt that as per SION, A-3541, it is clearly specified that the import item *viz.,* Synthetic cloth for Uppers (Non-Woven/Woven/ Knitted/Laminated with PVC/PU) and Synthetic cloth for Insole (Non-Woven/Woven/Knitted/Laminated with PVC/PU) are to be used for Uppers & Insole of the export product Synthetic Slippers/Sandals with PU Sole of all sorts irrespective of ITO (HS) Code, It has been observed that description of import item was classified under ITC (HS) Code 5903 10 90 with effect from the date of issue of the advance authorization. It was observed that in this case, the SION permitted the import item as per Bill of Entry and description covered

under ITO (HS) Code 5903 10 90. The sample submitted by the firm has a clear view that item's description allowed under SION at S. No. A-3541 are classified under ITC (HS) Code 3920 49 00 instead of ITC (HS) Code 5903

10 90. Thus, Committee after detailed deliberations in consultation with the representatives of technical authorities present in the meeting felt that in both the heading of ITC (HS) code, the description of item of import and export are the same as per relevant SION, the condition of matching of ITC (HS) Code does not arise here. Hence, in this case, it is clarified that change in the ITC (HS) Code has no bearing on the benefits to be given under advance authorization issued under Para 4.7 of HBP."

From the above, it is apparent that as far as the benefit of Notification No. 93/2004-Cus. is concerned, the classification of goods specified in SION norms is not relevant unless it is specifically mentioned in the SION norms. The committee at Ministry of Commerce has also clarified that any change in the ITC (HS) Code has no bearing on the benefits to be given under advance authorization issued under Para 4.7 of HBP.

5.2 The Revenue has relied on the decision of Hon'ble High Court of Punjab & Haryana in the case of *Vikram Overseas (supra).* It is seen that the facts in the said case are significantly different. In the said case, the amendment was substantial in nature whereas in the present case it is of procedural in nature. The Hon'ble High Court of Bombay in the case of *Bhilwara Spinners Limited v. UOI -* 2011 (267) E.L.T. 49 (Bom.) distinguished the decision of Punjab & Haryana High Court in the case of *Vikrant Overseas (supra)* on the ground that license was amended with a clear intention of having a retrospective effect. In the instant case the committee has clarified that any change in the ITC (HS) Code has no bearing on the benefits to be given under advance authorization issued under Para 4.7 of HBP. In this circumstance, we hold that amendment made to the license will have a retrospective effect and the benefit of the notification cannot be denied on the ground that the classification of the goods did not match the classification specified in the advance license as long as the description of the goods matches with that prescribed in the license.

6. In view of the above, appeals are allowed."

4.8 In view of above decision, even if ITC HS code is different but so long description is correct, the clearance of import is allowed. Accordingly, irrespective of dispute raised by revenue on classification, the appellant is otherwise eligible for clearance of goods under Advance Authorisation, therefore, the impugned order is not sustainable on this ground alone.

95 I find that the issue involved in the matter of M/s. Reliance Industries, referred above, was eligibility for clearance of goods under Advance Authorisation and the Hon'ble Tribunal held that even if the classification dispute remains, the benefit of Advance authotisation is allowed. Thus, the decision of Hon'ble Tribunal can not be taken as a basis for classification of goods.

TEST OF `MOST AKIN'-

96. As discussed in the foregoing paras, the imported goods have been declared as Naptha by the importer and department has proposed classification as "Natural Gasoline Liquid". On the basis of Test Report issued by Geo Chem and IIP, Dehradun, I find that the tests have been carried out in order to analyse the parameters of Naphtha and no parameter of NGL had been tested whereas CRCL, Delhi has tested parameters of Naptha viz.

Distillation (IBP, 5% recovery, 10% recovery, 50% recovery, 90% recovery and Final Boiling Point), Density at 15 °C, Aromatics, Olefins etc. as well as parameters of Natural Gasoline Liquid viz. Total C5, C6 Hydrocarbons, % Evaporated at 60°C, % evaporated at 135°C, Reactive Sulphur etc.

97. On careful analysis of the parameters tested, I find that the parameters tested suggest that the imported goods are most akin to Natural Gasoline Liquid even when some of the parameters are also falling within the limit of Naphtha.

98 I find that the in case of a quandary as to the real nature of goods, test of most akin or closest resemblance has been held to be the valid test of classification by the Hon'ble Supreme Court of India in tha matter of Gastrade International Versus Commissioner of Customs, Kandla (2025) 29 Centax 8 (S.C.)/2025 (392) E.L.T. 529 (S.C.), relevant paras of the same are reproduced below-

> ***"83.*** *By way of illustration, we may explain the position. If an importer classifies the imported goods as "X", which is disputed by the Customs authority and classifies the same as "Y", the test would be whether the goods imported are "most akin" to "X" or "Y" in terms of Rule 4 of the aforesaid Rules. The importer may also claim if he so wishes, that the goods are most akin to "Z", though it may be akin to "Y" also, if such claim is more beneficial to him. Thus, it has to be shown by the Customs Authority that the imported goods bear the most affinity or resemblance or similarity to be "most akin" to the specified goods and not mere similarity or akinness. In other words, the test will be whether the imported goods bear the closest resemblance or similarity with the specified good so that these can be considered to be "most akin" to the specified good. Certainly, the principle of preponderance of probability may fall short of the more heightened test of "most akin" for proper classification. The imported goods may bear resemblance to more than one specified goods, in which unless the high degree in the test of preponderance of probability is applied, there may be difficulties in the proper classification. However, the said difficulty may be overcome if the test of "most akin" is applied. If the attributes of the imported goods show that the goods are "most akin" to the specified goods amongst an array of other specified goods, these imported goods have to be classified as the specified goods with which these goods bear the most resemblance or most akinness. Thus, in our view, application of the principle of preponderance of probability does not provide an accurate test. The more accurate and precise test will be whether the goods in question are "most akin" or most similar to the specified goods, as provided under Rule 4 referred to above."*

99 The importer declared the goods as Naphtha, while the department proposed their classification as Natural Gasoline Liquid (NGL). Test reports from Geo Chem and IIP focused only on Naphtha parameters, whereas CRCL, Delhi tested for both Naphtha and NGL parameters. Upon analyzing the full set of test results, the characteristics of the imported goods are found most closely resembled NGL, though some traits matched Naphtha. This conclusion aligns with the Supreme Court's ruling in Gastrade International vs. Commissioner of Customs (2025), which held that for classification, the correct test is not mere probability but determining to which product the goods are "most akin", i.e., the closest in resemblance among the possible classifications.

SUMMARY-

100 In view of the above discussion and findings, it is seen that the case pertains to the import of a petroleum product by M/s Hazel Mercantile Ltd. (HML), which was declared as "Naphtha" under Customs Heading 27101229. However, upon examination and testing—particularly by CRCL, Delhi—it was found that the imported goods were actually "Natural Gasoline Liquid" (NGL), a restricted item allowed to be imported only through State Trading Enterprises (STEs) as per the Foreign Trade Policy. The CRCL report, conducted under official direction and encompassing both Naphtha and NGL parameters, conclusively identified the product as "Natural Gasoline Liquid" or NGL. In contrast, private lab (Geo Chem and IIP, Dehradun) reports relied upon by the importer lacked statutory backing, did not test for NGL parameters.

101. It is also seen from the report of IIP, Dehradun that on account of predominance of pentane (63%) alongwith hexane (24%), goods are to be treated as NGL, more so when available literature on the NGL and Naphtha have overlapping constituents in the range of C4-C12, with lower range like the higher proportions of pentane indicating an item to be in the nature of NGL.

102. Despite the deletion of a specific tariff entry for NGL (27101220) from 01.01.2020, the supplementary note defining NGL remains intact, affirming that NGL is still a separately identified and restricted product under the Customs Tariff. The importer's reliance on the Reliance Industries Tribunal ruling is held misplaced, as that decision dealt with eligibility for Advance Authorisation rather than classification under import policy. Therefore, the classification of the imported goods as NGL—restricted for import—stands legally and technically justified.

103. In view of the above findings and evidences placed on record, I hold that the imported goods are correctly classifiable as "Natural Gasoline Liquid" or NG under CTH 27101290.

CONFISCATION OF GOODS-

104. I find that the though being NGL falling under CTH No. 27101290, were mis-declared as Naphtha, under CTH No. 27101229 of Customs Tariff, by suppressing its correct description i.e. NGL. The condition stipulated for import through or by IOC as per the Foreign Trade Policy, were not at all

complied with by the importer M/s. HML, in respect to the import of NGL made by them, which was sought clearance by them under the said Bills of Entry. Thus, there is evident mis-declaration with sole aim to circumvent the restrictions imposed on its import under the Foreign Trade Policy. The subject goods imported by M/s. HML per MT Tuna are therefore liable for confiscation under Section 111(o), 111(m) and 111(d) of Customs Act, 1962.

105. Further, even in the context of the Notification No. 105-Cus dtd. 06.08.1938, the goods in respect of which the restricting provisions of the Petroleum Act, 1934 and the rules made there under are applicable and where the compliance with those provisions is required from the importer of such goods; if non-compliance is observed on the part of the importer, then the same have to be treated as contravention of the deemed prohibition imposed on such goods in terms of Section 11 of the Customs Act, 1962. Import of NGL; further to this, if to be considered as classifiable as "Petroleum Class A", then the Licence issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class A" and only such Petroleum is allowed to be imported which are already in possession of Licence issued under the Petroleum Rules, 1976. As per Notification No. 105-Cus dtd. 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962. Since the importer in the instant case has failed to follow such compliance, it is clear that they have also violated the provisions of Section 11 of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) and 111(p) of the Customs Act, 1962.

106. Since the goods have been released on provisional basis for the purpose of re-export, Redemption fine is imposable under Section 125 of the Customs Act, 1962.

VALUATION OF GOODS-

107. I find that the received quantity of subject goods provided by Shri Bharat Goswami, Terminal Manager, FSWAI in Litres is 31183563 Litres (RUD No. 52). Considering the market rate of Gasoline at Rs. 88.92 per litre as on 01.02.2021 as per website globalpetrolprces.com, the market value of received quantity 19990.541 MT i.e. 31183563 Litres (out of declared qty. 20110.77 MT) subject goods is calculated as approximately Rs. 278,95,19,113/-(RUD No. 53). Whereas,M/s. HML has declared the assessable value in the Bills of Entry as Rs. 79,63,76,540/- only which is

much lesser even after further value additions on account of customs duty, other taxes and other expenses

108. Further additional submissions were made by the advocate producing the comparative chart of various reports which is as follows:-

1

MT TUNA (NAPHTHA ANALYSIS COMPARISION)

		GEOCHEM		IIP		CRCL (Delhi)		CRCL (Kandla)	
Sr No	Parameters	Method	Result	Method	Result	Method	Result	Method	Result
0	Appearance								
1	Specific Gravity @ 60°F	ASTM D4052:2018	0.65	ASTM D4052	0.6514		0.6499		0.6474
2	Density @ 15°C		0.6506 g/ml		0.6513 g/c3				
3	Colour Saybolt	ASTM D156:2015	Greater than 30	ASTM D156	Greater than +30				
4	Reid Vapour Pressure (RVP)	ASTM D323:2020	12.7 psi/87.6 kpa	ASTM D6378	85.8 kPa				
5	Sulphur	ASTM D4294:2016	157 ppm	ASTM D4294	210 mg/kg				
6	Flash Point	IP-170 2013	Below 0 deg C				Less than 25 deg C		Less than 25 deg C
7	Distillation: I.B.P.**	ASTM D86:2020	35 deg C	ASTM D86	27.0 deg C		35 Deg C		40 Deg C
	5% Recovered		39 deg C		36.5 deg C		39 Deg C		
	10% Recovered		40 deg C		41.0 deg C		40 Deg C		42 Deg C
	20% Recovered		41 deg C		42.5 deg C				
	30% Recovered		42 deg C		43.0 deg C				
	40% Recovered		44 deg C		45.0 deg C				
	50% Recovered		47 deg C		46.5 deg C		47.5 Deg C		52 Deg C
	60% Recovered		51 deg C		49.0 deg C				
	70% Recovered		53 deg C		52.5 deg C				
	80% Recovered		63 deg C		59.0 deg C				
	90% Recovered		80 deg C		72.5 deg C		78 Deg C		119 Deg C
	95% Recovered		106 deg C		87.5 deg C				
	Distillation: F.B.P.**		120 deg C		115.5 deg C		112 Deg C		
	Recovery		98.0 % vol		96.0 % vol				
	Residue		1.5 % vol		1.0 % vol				
	LOSS		0.5 % vol		3.0 % vol				
8	Total Paraffins	ASTM D5134:2008	94.18 %(v/v)	ASTM D6730	95.10 %(v/v)				
9	N-Paraffins		47.93 %(v/v)		48.35 %(v/v)				
10	Olefins		0.05 %(v/v)		0.22 %(v/v)				
11	Naphthenes		4.91 %(v/v)		3.86 %(v/v)				
12	Aromatics		0.87 %(v/v)		0.82 %(v/v)		5.245 % (v/v)		
13	Benzene		0.29 %(v/v)		0.37 %(v/v)		1.96 % (v/v)		
14	Total Organic Chloride	ASTM D4929 B	<1 PPB	UOP 744					
15	Mercury	GC-MLD/QS/CA-I/5.4/56 (ICP)	<1 PPB						
16	Arsenic		<1 PPB						
17	Lead Content		<10 PPB						
18	Carbon Di Sulphide	ASTM D6228:10	0.41 mg/l	ASTM D5623	6.06 mg/kg				
19	DEE	GC-MLD/QS/CA-E/5.4/01-2017		ASTM D4815					
	AA								
	ETBE		1 mg/l		0.00 %(v/v)				
	MTBE		2 mg/l		0.01 %(v/v)				
	DIPE				0.00 %(v/v)				
	PA								
	TAME		<1 mg/l		0.02 %(v/v)				
	PE								
	IBA								
	Methanol		<1 mg/l		0.00 %(v/v)				
	Acetone								
	VA								

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BIS STANDARDS FOR NAPHTHA		
BIS Requirement	Test Method Ref IS 1448 (Part)/ISO	Methods in case of Dispute
Clear & Bright	Visual	
620-800 kg/m3	Part 167/Part 16	ASTM D 4052, ASTM D1298
Report	Part 14	ASTM D156, ASTM D6045
97 kPa Max	Part 39	ASTM D 5191, ASTMD 323, ASTM D 6378
1.0 Mass % Max	Part 153	ASTM D 5453, ASTM D 2622, ASTM D 4294
Light Naphtha - 25 Deg C Min Full Range Naphtha - 25 Deg C Min Heavy Naphtha - 75 Deg C Min	Part 18	ASTM D 86, IP 123, ISO 3405
190 Deg C Max	Part 18	ASTM D 86, IP 123, ISO 3405
Light Naphtha - 110 Deg C Max Full Range Naphtha - 205 Deg C Max Heavy Naphtha - 205 Deg C Max	Part 18	ASTM D 86, IP 123, ISO 3405
Report (in mg/100 ml)	Part 29	ASTM D 381, ASTM 1353
Min 25 %(v/v)	Part 181	ASTM D 6730, ASTM D 6839
40 %(v/v)	Part 181	ASTM D 6730, ASTM D 6839
Report (in % v/v)	Part 181	ASTM D 6730, ASTM D 6839
Report (in % v/v)	Part 181	ASTM D 6730, ASTM D 6839

1A

MT TUNA (NAPHTHA ANALYSIS COMPARISION)									
		GEOCHEM		IIP		CRCL (Delhi)		CRCL (Kandla)	
Sr No	Parameters	Method	Result	Method	Result	Method	Result	Method	Result
	MEK		<1 mg/l						
	Ethanol		<1 mg/l		0.00 %(v/v)				
	N-Propanol		<1 mg/l		0.00 %(v/v)				
	TBA								
	N-Butanol		<1 mg/l		0.00 %(v/v)				
	Total Oxygenates		<10 mg/l		0.03 %(v/v)				
20	RON	ASTM D2699		ASTM D2699	69.9				
21	MON	ASTM D2700		ASTM D2700	67.8				
22	Existent Gum	ASTM D381		ASTM D381	1.7				
23	Acidity						NIL		
24	Ash						NIL %(v/v)		
25	API gravity						86.12		
26	Water Content						NIL		
27	Reactive Sulphur	(					Sweet		
28	% Evaporated at 60 Deg C						80%		
29	% Evaporated at 135 Deg C						Complete (100%)		
30	Total C1 Hydrocarbons			ASTM D6730	0.00 % (v/v)				
31	Total C7 Hydrocarbons				0.04 % (v/v)				
32	Total C3 Hydrocarbons				0.00 % (v/v)				
33	Total C4 Hydrocarbons				1.12 % (v/v)				
34	Total C5 Hydrocarbons				63.39 % (v/v)		65.89 % (v/v)		
35	Total C6 Hydrocarbons				24.41 % (v/v)		20.20 % (v/v)		
36	Total C7 Hydrocarbons				7.77 % (v/v)				
37	Total C8 Hydrocarbons				2.84 % (v/v)				
38	Total C9 Hydrocarbons				0.43 % (v/v)				
39	Total C10 Hydrocarbons				0.00 % (v/v)				
40	Total C11 Hydrocarbons				0.00 % (v/v)				
41	Total C12 Hydrocarbons				0.00 % (v/v)				

1A

BIS STANDARDS FOR NAPHTHA		
BIS Requirement	Test Method Ref IS 1448 (Part)/ISO	Methods in case of Dispute

109 The Learned Advocate also made following additional submissions to bring on record various case law:

109.1 In case of multiple contacting test reports, benefit of doubt must be given to the assessee and the test report in favour of assessee must be given precedence.

109.2 In the present case, the test reports issued by Geo Chem Laboratories Pvt. Ltd. ("Geochem") [Pg. 270 of Appeal] and by IIP, Dehradun, explicitly conclude that the imported goods are Naphtha, as is declared by the Appellant. It is reiterated that the above test reports are based on testing of the relevant parameters specified in the Indian Standard 17794:2022 issued by the Bureau of Indian Standards, as applicable for Naphtha. As against the above, it is the case of the department that the report dated 15.05.2021 [Pg. 146 of Appeal], including the clarification dated 19.02.2021 [Pg. 150 of Appeal], as issued by the CRCL, Kandla as well as the test report dated 28.05.2021 issued by CRCL, Delhi [Pg. 284 of Appeal], have concluded that the imported goods are Natural Gasoline Liquid ("NGL")

109.3 At the outset, it is submitted that the reports relied upon by the department have not tested the parameters mentioned in the BIS standard applicable for Naphtha.

110. Further, it is submitted that the CRCL test reports are also not based on testing of the parameters specified in the Standard 3132-84 issued by the Gas Processors Association, USA. Most importantly, it is submitted that the CRCL test reports also do not specify the underlying technical literature or the tested parameters to justify the conclusion that the samples were "extracted from natural gas", which requirement forms part of the very definition of the term NGL as per Supplementary Note (b) to Chapter 27. It is submitted that in light of the above flaws in the test reports issued by the CRCL, the Respondent erred in relying upon them to hold that the imported goods are NGL. In any event, it is a settled position in law that in case of conflicting test reports, the benefit of doubt must be given to the assessee and the test report in favour of the assessee must be given precedence.

111. In this regard, reliance is placed on the following judgments, copies whereof are enclosed: a. Shri Lakshmi Cotsyn Ltd. v. Commissioner of Cus. & C. Ex., Kanpur, 2011 (263) ELT 299 (Tri.- Del.) b. Commissioner of Customs, Mumbai v. Atlas Mercantile Pvt. Ltd., 2019 (366) ELT 911 (Tri.- Mumbai), Department SLP dismissed on the ground of monetary limits, 2024 (387) ELT 262 (SC) c. Colourtex Industries Pvt. Ltd. v. CC, Ahmedabad, 2024 (2) TMI 1638 – CESTAT Ahmedabad 10. It is submitted that in the present case as well, the reports issued by Geochem and IIP, based on BIS

standards for Naphtha, are in favour of the Appellant, whereas the uncorroborated test reports issued by the CRCL, Kandla and CRCL, Delhi, are in favour of the department. Thus, it is submitted that considering the apparent conflict, the benefit of doubt must be given to the Appellant and, therefore, the impugned order is liable to be set aside on this ground itself. Submissions pertaining to observations of the Hon'ble Gujarat High Court in its Order dated 24.08.2021. In any event, it is submitted that the Respondent has erred in relying on the observations made by the Hon'ble Gujarat High Court in its Order dated 24.08.2021 [Pg 301 of Appeal], passed while deciding the plea of the Appellant challenging the seizure of imported goods and requesting provisional release. It is submitted that the Respondent has erred in relying on the observations made by the Hon'ble Gujarat High Court in paragraphs 8 to 10 of the Order dated 24.08.2021, without reproducing the entire context of the said observations.

112. From a perusal of the Order dated 24.08.2021, it is clear that in the said paragraphs 8 to 10, the Hon'ble Gujarat High Court has merely set out the opposing contentions of both sides in respect of the conflicting test reports. Thereafter, in paragraph 11 of the said Order, the Hon'ble Gujarat High Court, having taken note of the contentions of both parties, observed that an examination into the said contentions qua the validity of the test reports would be a question of fact, which could not be adjudged in a petition filed under Article 226 of the Constitution of India. Thus, it is submitted that the observations, relied upon by the Respondent in the impugned order, were not findings of the Hon'ble Gujarat High Court but were merely a record of the opposing contentions of the parties.

113. Department also availed the window provided to it to make any further submissions and vide letter dated 12.08.2026 submitted as follow:-

113.1 **Direct Application of the Supreme Court Judgment in Gastrade International:**

The Hon'ble Supreme Court's ruling in Gastrade International [2025 INSC 411] directly bolsters the Respondent's case and dismantles the Appellant's reliance on their private, restricted test reports.

- **The 'Most Akin' Test (Rule 4):** The Supreme Court explicitly held that classification must be determined by assessing which specified product the goods are 'most akin' to, invoking Rule 4 of the General Rules for Interpretation of the Customs Tariff. The objective chemical data—specifically the extremely high C5-C6 pentane/hexane concentration—makes the imported cargo chemically and physically 'most akin' to NGL, falling squarely under the restricted category of CTH 27101290.

- **Supremacy of Chapter Notes Over External Standards:** The Supreme Court reiterated that classification must be determined strictly according to the terms of the headings and relative Chapter Notes. The Appellants argue that CRCL did not test parameters specified in external BIS or American GPA standards for Naphtha. However, Supplementary Note (b) to Chapter 27 of the Customs Tariff Act statutorily defines NGL as a 'low boiling liquid petroleum product extracted from Natural Gas.' The CRCL report aligns perfectly with this statutory Tariff definition, which legally supersedes any external, private, or international guidelines the Appellant wishes to selectively apply.

113.2. **'Conflicting Test Reports' and Benefit of Doubt:** The Appellants have heavily relied upon the Tribunal decisions in Shri Lakshmi Cotsyn Ltd. 2011 (263) ELT 299 (Tri.- Del.), Atlas Mercantile Pvt. Ltd. 2019 (366) ELT 911 (Tri.- Mumbai), and Colourtex Industries Pvt. Ltd. 2024 (2) TMI 1638 to argue that in the event of conflicting test reports, the benefit of doubt must be given to the assessee, and the reports of Geo Chem and IIP Dehradun should take precedence. This reliance is entirely misplaced and misconstrued on factual and scientific grounds.

- **Revenue’s reports are not contradictory:** The decisions in Shri Lakshmi Cotsyn Ltd., Atlas Mercantile Pvt. Ltd., and Colourtex Industries Pvt. Ltd. Cited by the appellants in their additional submissions dealt with situations where the department’s reports themselves were contradictory and further re-test were not done. Benefit of doubt was given to the assessee because Revenue’s own reports were contradictory. In the instant case the said judgements are distinguishable because Revenue’s reports are not contradictory. The contradictions are in conclusion of private laboratories reports (based on Appellants close-ended query) and Revenue’s test reports. Thus, there arises no question of granting Benefit of Doubt to assessee.
- **Objective Science vs. Subjective Visual Tests:** The judgments cited by the Appellant, particularly Shri Lakshmi Cotsyn and Atlas Mercantile, pertained to disputes over whether

textile yarn was 'textured' or 'non-textured'. In those cases, the Tribunal noted that the tests were largely 'subjective' visual examinations, leaving room for human error and genuine ambiguity. In stark contrast, the present case involves the exact chemical composition of liquid hydrocarbons using advanced objective chromatography. There is no subjective ambiguity in chemical carbon chain profiling.

- **Absence of True 'Conflict' in Raw Data:** The Appellants' argument is built on the false premise that the private test reports and the CRCL reports contradict each other. While the conclusions drawn by the private labs (based on close-ended queries) suggested 'Naphtha', the raw scientific data within the Appellant's own IIP Dehradun report confirms a massive 85.26% concentration of C5–C6 hydrocarbons (Pentane and Hexane). This chemical footprint scientifically affirm the akinness to Natural Gasoline Liquid (NGL). This is in line with Hon'ble Supreme Court's decision in Gastrade International cited above emphasising 'most akin' test. The raw data of the test reports unequivocally indicate that the goods are most akin to NGL, notwithstanding the conclusion of the reports based on biased, close ended query.

113.3. **Rebuttal Regarding the Hon'ble Gujarat High Court's Observations:** The Appellants contend that the Respondent erred in relying on paragraphs 8 to 10 of the Hon'ble Gujarat High Court's Order dated 24.08.2021, arguing that the Court was merely recording opposing contentions and not rendering final findings of fact.

- **Substantive Evidence Trumps Interim Observations:** The validity of the Order-inOriginal does not hinge solely on the interim observations of the Hon'ble High Court. The confiscation and penalties are grounded in absolute, unassailable evidence of fraud that emerged after the High Court's initial involvement.
- **Proof of Deliberate Fraud (Mens Rea):** The Appellants conveniently ignore the digital forensic evidence recovered from their own mobile devices. WhatsApp chats directing the vessel MT Tuna to turn off its AIS transponder, coupled with the forensic recovery of the original Iraqi Bill of Lading, prove beyond any doubt that the cargo originated in Basrah, Iraq, and not Oman. This deliberate fabrication of origin documents

completely vitiates any claim to 'good faith' or the 'benefit of doubt' that the Appellants are seeking under the guise of conflicting test reports.

- **Detailed oral arguments regarding the fraud and evidence:** The hearing that took place on 05.08.26 before the Hon’ble Tribunal primarily focussed on the test reports of the laboratories. No arguments regarding ‘how the fraud was perpetrated’ and ‘what evidence are available’ took place before the order was reserved. Though all the details are available in the SCN, OIO and Revenue’s submissions, it is requested that the Hon’ble Tribunal may consider hearing the case for examination of the fraud and evidence.

113.4 The Appellants are attempting to equate a deliberate, orchestrated Customs fraud with a routine classification dispute. The Supreme Court in Gastrade International demands complete scientific evaluation and strict adherence to Tariff Chapter Notes to determine what a product is 'most akin' to. The CRCL report, supported by the Appellant's own raw data, unequivocally proves the cargo is NGL. When this scientific truth is combined with the proven forgery of shipping documents and the AIS blackout, the claim for 'benefit of doubt' collapses entirely.

Discussions and findings

114. We have gone through the conflicting reports placed on record by both sides over the stated position of the department that the imported product is Natural Gasoline Liquid and not Naphtha as claimed the party. We understand that as held by the Apex Court in 2023 (383) ELT 241 (S.C) in the matter of Hewlett Packard India Sales Pvt. Ltd. V. Commissioner of Customs (Import), Nhava Sheva if a change of classification if sought by the department even from self assessment, then the department has to discharge the burden of proof.

114.1 We find that in TATA Chemical Limited Vs. Commissioner of Customs (Prev), Jamnagar as reported in 2015 (320) ELT 45 (S.C), Hon’ble Apex Court held that chemical examination if based on statutory procedure and BIS standards shall be preferred as they represent the understanding of trade about the chemical product and in case of contrary test reports, the same should not be settled without reason. Further, in Union of India vs Garware Nylons Ltd. as reported in 1996 (87) ELT 12 (SC), the Hon’ble Supreme Court while indicating that the burden of proof to show mis classification lies on the revenue laid a useful proposition that technical ambiguity, if any, existing must be resolved on evidence and no opinion or consequences can rest, if the scientific materials is of doubtful nature.

114.2 In 2022 (382) E.L.T 23 (S.C)-C.C, Mundra Vs. Sunrise Traders the Hon'ble Supreme Court held that the expert opinion of chemical Examiners if inconclusive cannot be accepted to disturb classification sought by the assessee. Also, following the decision of the Apex Court in the matter reported in 2026 (395) ELT 429 (Gujarat) in the case of Aparajita Energy Private Limited, the Hon'ble Gujarat High Court further elaborated that the expression "Most akin" must be shown by the department to have been established, including the extent of characteristic, to change the nature of classification must be shown through the test report. Further, in (2025) 29 Centax. 8 (SC) in the matter of Gastrade International v. Commissioner of Customs Kandla. The Hon'ble Supreme Court while elaborating how the expression "most akin" should be interpreted in Para 87 of the order observed that if parameters were inconclusive on the basis of evidence available on record, the benefit of doubt must be given to the appellant. This Tribunal has also held the statement of a person of conflicting peripheral evidences emanating from some of the documents cannot determine classification of technical goods in 2025 (391) ELT 652 (Tri-Ahm.) in the matter of Stonex India Pvt. Ltd. Vs. C.C.E. In 2019 (367) ELT 346 (Mad.) in the matter of R.R Steels Limited Vs. C.C (Chennai). The first report was adverse, the second favourable, the Hon'ble High Court preferred the second. Similarly, in 1987 (28) ELT 346 (Mad.) in the matter of Jenson Enterprises v. Collector of Customs, Cochin, with the conflicting reports placed on records, the opinion of basic scientific investigation is to be preferred than the opinion given without any basis.

115. In the instant case from the available comparative chart made out by the party, 41 Parameters have been shown as relevant to establish, whether the product is Naphtha or not? The BIS requirement approves of 12 Parameters and 11 types of test including 12^{th} as the visual examination in the case of any dispute to establish the nature of product. We also find that the CRCL Delhi by specific gravity at nine different temperatures has used 10 tests to come to the results on the basis of various temperatures only. The CRCL, Kandla had arrived at the same six parameters by testing specific gravity at various temperatures. The Geochem Laboratory which is specific to chemical substances has tested higher number of parameters at various temperature which are 19 Number. The Indian Institute of Petroleum

(IIP) Dehradun likewise also checked the highest parameters at various tempretures (total 41) to conclude that the product was light Naphtha.

116. The AR has objected to the reference letter of the party to IIP as same being suggestive, as it already indicated while making reference that the product was Naphtha and Indian Institute of Petroleum (IIP) to provide as to what kind of product Naphtha and it was concluded that it was light Naphtha.

117. We find that the CRCL, New Delhi in its reports dated 28.05.2021 provided as below:

भारत सरकार
वित्त मंत्रालय,राजस्व विभाग
केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड
केन्द्रीय राजस्व नियन्त्रण प्रयोगशाला
हिलसाइड रोड, पूसा, नई दिल्ली- 110012

Government of India
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Central Revenues Control Laboratory
Hillside Road, Pusa, New Delhi - 110012
Tel: 011-21520122/21520123; Fax: 011-25843495,
Email: [illegible] Website: http://crcl.gov.in

C.No. 27-Cus/C-08/2021-22

Date: 28.05.2021

To

The Additional Director
Directorate of Revenue Intelligence,
Regional Unit, Plot No. 193 Sector - IV
OSLQ, Gandhidham (Kutch) – 370 201

Sir,

Sub: - Testing/retesting of sample reg.-

Please refer to your office letter F.No. DRI/AZU/GRU/Hazel/INT-06/2021/5557, dated 15.04.2021 and letter of even no. Dt. 11.05.2021, forwarding therewith 03 intact sealed sample for retesting. Out of these three samples, following one sample has been analysed and test report is as under.

Particulars of sample	Declared description of Goods	CLR No. Designated by CRCL, New Delhi
Sample marked as S1, Surveyor seal No. 715208	Goods declared as Naphtha under CTH 27101229 (The declared CTH covers Full range Naphtha)	CLR 02 dt.11.05.2021

RETEST-REPORT

The samples is in the form of clear colourless liquid having. It is mainly composed of lighter mineral hydrocarbon oil, having mineral hydrocarbon oil content more than 70% by Wt. It is having following characteristics.

Sr.No	Parameter	CLR-02 (Sample marked as S1)
01	Acidity	NIL
02	Flash point (abel) in °C	Less Than 25
03	Ash (%by wt.)	Nil
04	Density at 15 °C (gm/ml)	0.6499
05	API gravity	86.12
06	Water content	Nil
07	Reactive sulphur	sweet
08	Distillation Initial boiling point Temperature at 5 % Recovery Temperature at 10 % Recovery Temperature at 50 % Recovery Temperature at 90% recovery Final boiling point	 35 39 40 47.5 78 112
09	% Evaporated at 60 °C	80
10	% Evaporated at 135°C	Complete (100 %)
11	Total C5 Hydrocarbons	65.89
12	Total C6 Hydrocarbons	20.20
13	Total Aromatics	01.96
14	Total olefins	05.245

The sample is a low boiling liquid extracted from natural gas. It is "Natural Gasoline Liquid".

Yours faithfully

2857

(Dr T.A. Sreenivasa Rao)
Joint Director (NFSG)

Copy To: The Joint Director, C.H. Laboratory, Kandla

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118 The report tested only 7 & 8 parameters on various temperatures and concluded that it was Natural Gasoline Liquid. We find that the Geochem Laboratory is a leading inspection testing and cargo Certification Company existing since 1964 has tested various parameters in most detailed manner and concluded as follows:

CERTIFICATE

GEO CHEM

GEO-CHEM LABORATORIES PRIVATE LIMITED

EE

TEST CERTIFICATE

Certificate No. : PET/21/05/000443 DATE : 11/05/2021

Party's Name & Address	:	M/S. HAZEL MERCANTILE LIMITED MUMBAI.
Party's Letter Ref. No.& Date	:	LETTER WITH SUBJECT "TESTING OF SEALED SAMPLES OF NAPHTHA" DATED 16/04/2021
Sample Described as	:	NAPHTHA
Date of Receipt of Sample	:	07/05/2021
Date/s of Analysis	:	07/05/2021 - 11/05/2021
Tested to Specification	:	---
Stamped / Sealed By	:	TUV - 715212
Analysis No.	:	PET/21/05/000443
Sample ID Mark (as described by Party)	:	SAMPLE NO : S4 TANK NO : 425 NAME OF IMPORTER : M/S. HAZEL MERCANTILE LIMITED SURVEYOR SEAL : TUV INDIA PVT. LTD.

DISCIPLINE : CHEMICAL TESTING
GROUP : PETROLEUM AND PETROLEUM PRODUCTS

TEST	METHOD/TECHNIQUE	RESULTS	UNIT OF MEASURE	REQUIREMENTS OSN SPEC
SPECIFIC GRAVITY @ 60°F	ASTM D - 4052 - 18	0.6506	---	0.650 min.
DENSITY @ 15°C	ASTM D - 4052 - 18	0.6500	gm/ml	---
SAYBOLT COLOR	ASTM D - 156 - 15	+ 30	SAYBOLT COLOR	20 min.
REID VAPOUR PRESSURE	ASTM D - 323 - 15a	12.7	psi	13 max.
		87.5	kpa	89.6 max.
MERCURY (Hg)	GC-MLD/QS/CA-I/5.4/56 (ICP)	<1	µg/l (ppb)	20 max.
ARSENIC (As)	GC-MLD/QS/CA-I/5.4/56 (ICP)	<1	µg/l (ppb)	50 max.
LEAD (Pb)	GC-MLD/QS/CA-I/5.4/56 (ICP)	<10	µg/l (ppb)	150 max.
CARBON DISULPHIDE (CS_2)	REF. ASTM D - 6228 - 10	0.41	mg/l	---
OXYGENATES	GC-MLD/QS/CA-E/5.4/01 - 2017			
MTBE		2	mg/l (ppm)	50 max.
ETBE		1	mg/l (ppm)	---
TAME		<1	mg/l (ppm)	---
METHANOL		<1	mg/l (ppm)	---
MEK		<1	mg/l (ppm)	---
ETHANOL		<1	mg/l (ppm)	---
2 PROPANOL		<1	mg/l (ppm)	---
2 BUTANOL		<1	mg/l (ppm)	---
1 BUTANOL		<1	mg/l (ppm)	---
TOTAL OXYGENATES		<10	mg/l (ppm)	---

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SAMPLE NOT DRAWN BY GEO-CHEM LABS

SS
RECORD NO.: GCHLD/QR/7.8/02 AMENDMENT NO. : 08 ISSUE NO. : 03 PAGE NO.: 1 OF 2

Nº 854175

NOTARY
S.M.H.ZAIDI
Mumbai & Thane Dist.
Reg. No. 3540
My Commission Expires 25 Sept. 2026
GOVT. OF INDIA

TRUE COPY
ADVOCATE

CERTIFICATE

GEO CHEM

GEO-CHEM LABORATORIES PRIVATE LIMITED.

TEST CERTIFICATE

Certificate No. : PET/21/05/000443 DATE : 11/05/2021

TEST	METHOD/TECHNIQUE	RESULTS	UNIT OF MEASURE	REQUIREMENTS OSN SPEC
DISTILLATION :	ASTM D - 86 - 18			
INITIAL BOILING POINT		35	°C	24 Min.
5% RECOVERY		39	°C	---
10% RECOVERY		40	°C	---
20% RECOVERY		41	°C	---
30% RECOVERY		42	°C	---
40% RECOVERY		44	°C	---
50% RECOVERY		47	°C	---
60% RECOVERY		51	°C	---
70% RECOVERY		53	°C	---
80% RECOVERY		63	°C	---
90% RECOVERY		80	°C	---
95% RECOVERY		106	°C	---
FINAL BOILING POINT		170	°C	204 Max.
RECOVERY		98.0	% vol.	---
LOSS		1.5	% vol.	---
RESIDUE		0.5	% vol.	---

REMARKS : CONFORMS TO OSN SPECIFICATIONS OF NAPHTHA WITH RESPECT TO THE TESTS CARRIED OUT.

NOTE 1 Test Certificates for the said sample are issued as PET/21/05/000443 & PET/21/05/000443-I

SAMPLE NOT DRAWN BY GEO-CHEM LAB

For GEO-CHEM LABORATORIES PVT. LTD.

MANGESH SHINDE
MANAGER
(CHEMICAL ANALYSIS - ENERGY)
(AUTHORISED SIGNATORY)

-END OF CERTIFICATE-

SS

RECORD NO. : GCHLD/QR/7.8/02 AMENDMENT NO. : 00 ISSUE NO. : 03 PAGE NO.: 2 OF 2

Nº 854176

HIGH COURT OF GUJARAT * AHMEDABAD * CERTIFIED COPY

NOTARY GOVT. OF INDIA

CC CERTIFICATE CC

GEO-CHEM LABORATORIES PRIVATE LIMITED

GEO CHEM

TEST CERTIFICATE

DATE : 11/05/2021

Certificate No.	:	PET/21/05/000443-I
Party's Name & Address	:	M/S. HAZEL MERCANTILE LIMITED MUMBAI.
Party's Letter Ref. No.& Date	:	LETTER WITH SUBJECT "TESTING OF SEALED SAMPLES OF NAPHTHA" DATED 16/04/2021
Sample Described as	:	NAPHTHA
Date of Receipt of Sample	:	07/05/2021
Date/s of Analysis	:	07/05/2021 - 11/05/2021
Tested to Specification	:	---
Stamped / Sealed By	:	TUV - 715712
Analysis No.	:	FET/21/05/000443-I
Sample ID Mark (as described by Party)	:	SAMPLE NO : S4 TANK NO : 425 NAME OF IMPORTER : M/S. HAZEL MERCANTILE LIMITED SURVEYOR SEAL : TUV INDIA PVT. LTD.

DISCIPLINE : CHEMICAL TESTING

GROUP : PETROLEUM AND PETROLEUM PRODUCTS

TEST	METHOD/TECHNIQUE	RESULTS	UNIT OF MEASURE	REQUIREMENTS OSN-SPEC
SULPHUR (S)	ASTM D - 4294 - 16	157	mg/kg (ppm)	650 max.
FLASH POINT	IP 170	BELOW 0	°C	---
BENZENE CONTENT	ASTM D - 5134 - 00	0.29	% vol.	1 Max.
ORGANIC CHLORIDE	ASTM D - 4929B	<1	ppm wt.	
EXISTENT GUM :				
UNWASHED	ASTM D - 381 - 19	0.7	mg/100ml	---
WASHED	ASTM D - 381 - 19	<0.5	mg/100ml	---
PIONA + CARBON BREAKUP :	ASTM D - 5134 - 08			
TOTAL PARAFFIN		94.10	% vol.	65.0 min.
N-PARAFFIN		47.93	% vol.	30.0 min.
ISO PARAFFIN		46.25	% vol.	---
AROMATICS		0.87	% vol.	---
NAPHTHENES		4.91	% vol.	---
OLEFINS		0.05	% vol.	1.0 max.

REMARKS : CONFORMS TO OSN SPECIFICATIONS OF NAPHTHA WITH RESPECT TO THE TESTS CARRIED OUT.

NOTE 1 : Test Certificates for the said sample are issued as PET/21/05/000443 & FET/21/05/000443-I

NOTE 2 : ORGANIC CHLORIDE TEST IS SUBCONTRACTED.

SAMPLE NOT DRAWN BY GEO-CHEM LAB

For GEO-CHEM LABORATORIES PVT. LTD.

MANGESH SHINDE
MANAGER
CHEMICAL ANALYSIS
(AUTHORISED SIGNATORY)

-END OF CERTIFICATE-

SS

RECORD NO: GCMLD/QR/7.8/02 AMENDMENT NO. : 00 ISSUE NO. : 03 PAGE NO. : 1 OF 1

NOTARY GOVT. OF INDIA
S.M.H. ZAIDI
Mumbai & Thane Dist.
Reg. No. 3640
My Commission Expires 25 Sept. 2026

No. 108597

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118.1 Thus, it is clear that the lab which specializes in the discipline of chemical testing and also has a dedicated section of petroleum and petroleum product has clearly stated the product on the basis of test carried out to be Naphtha. Further, Indian Institute of Petroleum, Dehradun ("IIP"), tests reports which have been often accepted even by the various Courts on perto products has also concluded on the basis of various tests carried out by it that the product falls within the range of light Naphtha.

119 The Objection of the Department that while sending the report the party had stated the product to be Naphtha and therefore the same was improper being suggestive, cannot be given credence as the test of report by IIP is based on elaborate testing to determine the nature of the product. Normally, the lab of a stature will not take a broad description given on its face value. The argument of the AR is rejectable by his, as more detailed report obtained by the party on the samples given to him and sent to Geochem through a very detailed examination has also concluded the product to be Naphtha only. Samples were as drawn by the department only

119.1 For the above reasons, and on the basis that the two test reports by specialized testing agencies who were having greater wherewithal to test petroleum products than the labs of the department have concluded positively in favour of the appellant, same reports are therefore preferred by us as acceptable.

120 We are fortified in our findings of selecting more specialized agencies over general testing agencies and also while adopting one out of conflicting report, reason have to be given by the following case law:

- Decision of this Bench in the matter of Colourtex Industries Pvt. Ltd V. CC, Ahmedabad -2024 (2) TMI 1638-CESTAT Ahmedabad- Which opted for report favorable to party for reasons stated (Textile related reports of Textile committee to be preferred)
- Commissioner of Customs Mumbai v. Atlas Mercantile Pvt. Ltd-2019 (366) ELT 911 (Tri. Mumbai). The SLP of department was dismissed on monetary limits in this case in 2024 (387) ELT 262 (S.C) due to law tax effect but still rules as the last word on the subject Shri. Lakshmi Cotsyn Ltd. Vs. Commissioner of Cus. & C.EX., Kanpur-2011 (263) ELT 299 (Tri-Del)-Textile committee for textiles is a specialized agency and C.R.C.L is a general physician.

120.1 We now proceed to deal with other evidences that revenue has placed on record including the evidence of Whatsapp chat, conversation and other evidences and submissions during the investigation regarding the product claimed to be Naphtha by the party. We find that requirement of Section 138C, which equally apply as per various rulings even on whatsapp chats by treating mobile also as computer, and same requires as follows:

> ***138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence***
>
> *(1) Notwithstanding anything contained in any other law for the time being in force,-*
>
> *(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or*
>
> *(b) a fascimile copy of a document; or*
>
> *(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer print-out") if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,*
>
> *shall be deemed to be also a document for the purposes of this Act and the rules made there under and shall be admissible in any proceedings there under, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible shall be the following, namely:-*
>
> *(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely:-*
>
> *(a) the computer print out containing the statement was produced by the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*
>
> *(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived:*
>
> *(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and*
>
> *(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of said activities.*
>
> *(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in duse (a) of sub-section (2) was regularly performed by computers, whether-*
>
> *(a) by a combination of computers operating over that period; or*
>
> *(b) by different computers operating in succession over that period; or*
>
> *(c) by different combinations of computers operating in succession over that period; or*

> *(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,*
>
> *all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer, and references in this section to the computer shall be construed accordingly.*

120.2 It is clear that evidence gathered can be allowed even if from the whatsapp chats and even if retrieved from the mobile phone if various conditions are fulfilled. (i) Regularity of information to be fed for the purposes of any activities regularly carried on over that period by person having lawful control over the use of mobile. (ii) All the conditions of sub section (2) are also required to be fulfilled. Further the sub Section (3) provides that information if is carried out by different computers i.e. mobiles over that period then all the computers used i.e. mobiles used for the purposes during that period shall be treated for the purpose of section constituting a single computer and term computer (i.e. mobile) shall be construed accordingly. This necessitates that the mobile at both ends and more than one mobile if used should be part of the investigation. Under Sub Rule (4), there is a requirement i.e. certificate should be given by the person who feeds the information or operates the computer (i.e. the mobile) of such certificate there is no talk by the department of such certification, also a clear-cut admissible statements is also not on record so as to provide a substitute for the certificate required under the aforesaid rule. The adversarial statements, if any, of others are required to be subjected to examination and cross-examination which is missing in this case. Again, department has not brought out as to what would have been gained by the appellant by declaring a different country of origin against the preferred documentary evidence. In its various statements, the director concerned of Hezel Mercantile Limited has duly tried to explain each and every WhatsApp talk also and not pointing to any offence having been made. The absence of certificate is clearly in violation of requirements of Section 138C. In this context, we are of the view that the certificate of Section 138C (4) of Customs Act, 1962 can be substituted only by an admissible statements to indicate legal compliance. Further as has been held in (2026) 40 Centex 34 (Tri. Bom) in the matter of M/s. Mukund Steel Ltd. Vs. Commissioner of Customs (NS-III), Raigad, it has to be shown as to what benefit was available to the party by changing the origin of goods when no concessional benefit was being derived Para 26 to 27 of the aforesaid decision becomes important and are being reproduced below:-

> ***"Para 26.*** *The exercise of classification in accordance with settled judicial precedent applied to enacted law warranting conformity of imported goods with substituting description has not been undertaken. Even the supporting evidence to demonstrate that the goods were shipped from Karachi to eliminate the classification claimed in the bill of entry, viz., data from website in Pakistan, purported originals of bills of lading that were presented in India and 'pre-shipment inspection certificates (PSIC)' having been erroneously issued, do suffer from lack of validation prescribed by law for electronic evidence and custody trail as well as lack of credibility in statements of personnel of one 'pre-shipment inspection agency (PSIA)' which made itself available for investigation. Above all, it was not demonstrated that it made commercial sense to import 'stainless steel melting scrap' from Pakistan. Thus, there is no indirect evidence that could be pieced together to conclude that the claim of goods having originated from United Arab Emirates (UAE) and, thereby, classifiable under tariff item 9806 0000 of First Schedule to Customs Tariff Act, 1975.*
>
> ***Para 27.*** *The importer has, from the circumstances of origin of the goods having been suspect, re-exported the goods available with them. Their claim of having filed documents made available to them by shippers for clearance of the past consignments has not been countered with clear and acceptable evidence to the contrary. Invoking of extended period of limitation under section 28(4) of Customs Act, 1962 is without the support of essential ingredients which are equally required for invoking section 114A of Customs Act, 1962. By continuation of proceedings after compliance with section 28(2) of Customs Act, 1962, in pursuit of extending period of limitation without availability of necessary ingredients, as seen from the invalidation of relied upon documents and information, retention of the amount deposited thereto is jeopardized. Classification disputes turn entirely upon onus of displacement of claimed classification resting upon customs officials and by reference solely to General Rules for Interpretation of the Import Schedule appended to Customs Tariff Act, 1975 with no scope for any interpretation beyond the enumerations in the First Schedule. In the peculiar facts and circumstances of the adjudication order, which has deviated far from the framework of assessment of goods and relied instead upon untested facts, unproven documents and uncorroborated statements, the findings in the impugned order are jeopardized."*

120.3 We are of the view that adjudication order in this case suffers from the same vice of relying on untested facts, unproven documents and un-corroborated statements including the digital evidence, therefore, even in this case also the findings are jeopardized. Also in this, the re-export of cargo has already taken done and accepted. Further, we also find that as approved by the Hon'ble Supreme Court in the matter of Commissioner of Customs Vs. Reliance Industries Limited reported in 2024 (4) TMI 1022-S.C vide order dated 9th April, 2025, the decision of this Tribunal as reported in Reliance Industries Limited Vs. Commissioner of Customs reported in 2024 (10) TMI 1555-CESTAT AHMEDABAD, this Bench (different constitution), inter alia, held as follows:-

"4.2 From the above import authorization in the list of import item Naphtha is mentioned under ITC 27101290, though we do not agree that imported goods is not Naphtha but NGL, the appellant vehemently argued that even the NGL is also Naphtha therefore, since the Naphtha is allowed to be imported , the imported goods is allowable under the same advance authorization. The appellant have vehemently argued that assuming without admitting the goods in question were NGL still the benefit of exemption under advance authorization was admissible to the appellant and NGL is also a type of Naphtha. Since broad description given in the advance authorization, we are of the view that even though the type of Naphtha is different but the same is clearly covered under the advance authorization and hence irrespective of the department's contention that the goods is NGL but the NGL is also a type of Naphtha, the same is covered by the advance authorization. Accordingly, the clearance of goods under Advance Authorization cannot be questioned.

4.3 As regard ITC code no. even if the departments contention is that TI 27101290 does not cover NGL for the purpose of advance authorization it does not affect the eligibility to clear the goods under the advance authorization so long the description mentioned in the advance authorization covers the description of imported goods. Therefore, even if it is assumed that the goods imported is NGL, the same is permissible to be cleared under the advance authorization which is issued for imported item namely Naphtha. We find that the Glossary of petroleum terms under IS 4639: 1968 defines Naphtha/petroleum Naphtha as under:-

> *"A generic term applies to refined, partly refined or unrefined petroleum products and liquid products of natural gas not less than 10% of which distil below 175°C and not less than 95% of which distil below 240°C when subjected to standard method"*

4.4 Further IS specification 11794;2022 which provides the requirements and test methods of Naphtha used as a feed stock in petrochemical plant, steam cracking, fuel pump as a gasoline and various other applications in the refineries defines Naphtha as "Petroleum Naphtha is an intermediate of crude distillation. It is either a light distilled petroleum fraction derive out of various processes in the refinery or a light liquid fraction recovered in the production of crude oil and natural gas. The refinery sources of Naphtha are crude distillation unit, crude catalytic cracking unit, Hydro treaters, Hydrocrackers, Naphtha splitters etc. It is generally known as Naphtha. It is further found that Chemical Condensed Dictionary, 6th Edition also defined Naphtha as " A generic term

applies to refined, partly refined or unrefined petroleum products and liquid products of natural gas, not less than 10 % of distills below 347°F (175°C) and not less than 95% of which distil below 474°F (240°C) when subjected to distillation in accordance with the standard method of test for distillation of gasoline , naphtha, kerosene and similar petroleum products (ASTMD86)".

4.5 From the above it is evident that naphtha is a genus and NGL is a species. Accordingly, advance authorization specifically covered and allow import of naphtha. It is clear that all species including NGL , would be covered under the genus of Naphtha, and will also automatically get covered by the Advance Authorizations in the present case. In view of this assuming without admitting that the goods in question imported were NGL the same shall have no revenue implication as the said import of Naphtha squarely covered by advance authorization in question. As such there was neither any infirmity in the import of the goods in question nor in the exemption claimed by the appellant under the advance authorization scheme read with governing notification 18/2015-CUS dated 01.04.2015 (as *amended)therefore, even if the contention of the revenue is that the goods imported is NGL is correct then also the clearance of goods under advance authorization cannot be said to be incorrect or illegal. On this basis itself the entire demand is liable to be set aside.*

4.6 Without prejudice to the above, we also find that the NGL is a type of Naphtha which is evident from the legislative changes made under the Finance Act, 2019 with Notification No. 89/2019-Cus (N.T) 10.12.2029 to heading 2710 of the Customs Tariff Act, 1975 whereby the 8 digits tariff items under 6 digits sub heading 271012 which covers light oils and preparations were substituted. As per this substitution, the specific tariff item 27101220 which covered NGL was deleted and three new tariff items 27101221 (Light Naphtha), 27101222 (Heavy Naphtha) and 27101223 (Full Rich Naphtha) were inserted to cover Naphtha . An interpretation of this substitution indicates that the same was brought in effect (a) to end the dispute on classification of Naphtha and NGL (b) to specifically covered all types of Naphtha including NGL. It is for this reason because the specific entry of NGL was deleted as the same goods have rendered the tariff items 27101221, 27101222 and 27101223 otiose. Therefore, we do not find any infirmity in either the import of goods in question or in the exemption claimed by the appellant under advance authorization."

120.4 It is clear that in that case, this Tribunal held that though they do not agree that "imported goods" are "not Naphtha" but NGL, if still went on to hold that even NGL is nothing but a species of the generic term Naphtha, only that distillation in that is 10% at below 175°C and 95% of which distills below 240°C. It also relied upon IS specification 11794:2022 to arrive at this decision and in Para 4.5 held that all species including "NGL" would be covered the genus of "Naphtha" and therefore entitled to Advance Authorization, as was required in that case. It is also cleared from the conclusion at the end of Para 4.6 that this Tribunal found no infirmity neither in the import of goods under Tariff Heading 27101290 nor in the claim of exemption. This becomes more evident from Para 4.10 of the same decision reproduced below:-

"4.10 We further find that the department has failed to discharge the burden cast upon them to establish that the subject goods were classifiable under tariff item 27101220 of the Customs Act, 1975 as NGL as against Tariff Item No. 27101290 as Naphtha claimed by the appellant. It is a trite law that burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them and it is further the taxing authority to lay evidence in their behalf , this view is supported by Hon"ble Supreme Court Judgment in the of State of Madhya Pradesh vs. Marico Industries ltd reported in 2016 (338) ELT 335 (SC). We also find that TI 27101220 of the Custom Tariff Act, 1975 covers NGL and as per supplementary note (V) under Chapter 27 of Customs Tariff Act, 1975, NGL is defined as " A low boiling liquid petroleum

> *product extracted from natural gas" . Thus, to classify under TI No. 27101220 of the Custom Tariff Act, 1975 as NGL it must satisfy the following conditions:-*
>
> *(i) the product must be low boiling liquid petroleum product &*
>
> *(ii) the product must be extracted from natural gas."*

120.5 Therefore, it is clear that the matter of classification of Naphtha has also travelled right up to the Apex Court in that case and the same has been decided as consideration of "NGL" as species of genus "Naphtha". As regard, the department relies on Gastrade International Limited Vs. Commissioner of Customs-Kandala as reported in 2025 (4) TMI 23 (S.C) in the cited decision, it was held that if by testing of parameters 'most Akin' test in relation to the alleged product is established by the department then on the basis of akinness based on vital tests the classification can be arrived at. However we find this argument is self defeating as has already been found that report of IIP Dehradun as well as GEO are based upon much higher number of parameters and apart from being reports of more specialized agency than CRCL etc., also succeed to pass the test of akinness in favour of the appellant.

120.6 Thus, on the basis of akinness, as also the consequences when tests are inconclusive, or even on the basis of "common parlance" test of "NGL" being species of "Naphtha", the department has not been able to authoritatively establish the classification it has sought. In the facts and legality of the matter, therefore the classification of the appellant cannot be allowed to be disturbed.

120.7 Based on above factual and legal proposition, we find that the conclusion reached by the adjudicating authority below are incorrect and cannot be adopted by us. Accordingly, we are inclined to allow the appeal by ignoring other pleas of the department as we are with appellant on the basis of facts and legal propositions, on merits. In parting, we appreciate efforts of both sides in placing various elaborate agreements before us specially by the

A.R of the department. We also suggest that department rather than relying on Section 138C, which is meant for computers should create a dedicated sui-generis Section for mobile phones as evidence and prescribe procedure to extract it.

121. Appeals are allowable. Some are therefore allowed.

(Pronounced in the open court on 07.09.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Prachi