# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 87731 of 2016**

[Arising out of Order-in-Original No.36/2016-17/CC/NS-V/JNCH dated 07.10.2016 passed by the Commissioner of Customs (NS-V), JNCH, Nhava Sheva, Mumbai Customs Zone-II.]

**Wellknown Polyesters Limited** .... **Appellant**
14th Floor, 'B" Wing, Nirmal Building
3Backbay Reclamation, Nariman Point
Mumbai – 400 021.

Versus

**Commissioner of Customs (NS-V)** .... **Respondent**
**Nhava Sheva Customs Commissionerate-I**
Jawaharlal Nehru Custom House (JNCH)
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

<u>Appearance:</u>
Shri Vipin Kumar Jain, Advocate for the Appellant
Shri Deepak Sharma, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86195/2026**

Date of Hearing: 10.06.2026
Date of Decision: 24.09.2026

**Per: M.M. PARTHIBAN**

This appeal has been filed by M/s Wellknown Polyesters Limited, Mumbai (herein after, referred to as 'the appellant'), assailing the Order-in-Original No. No.36/2016-17/CC/NS-V/JNCH dated 07.10.2016 (herein after, referred to as 'the impugned order', for short) passed by the Commissioner of Customs (NS-V), Jawaharlal Nehru Customs House (JNCH), Nhava Sheva, Mumbai Customs Zone-II.

2.1 Brief facts of the case, leading to these appeals, are summarized herein below:

2.2 M/s Wellknown Polyesters Limited, Mumbai, the appellant herein is *inter alia,* engaged in manufacture of Polyester Filament Yarn (PFY), Polyester Oriented Yarn (POY), Fully Drawn Yarn (FDY), Draw Textured Yarn (DTY) and Chips in their factory situated Daman. For the purpose of such manufacturing activity, the appellant procures raw materials such as Purified Terephthalic Acid (PTA), Mono Ethylene Glycol (MEG), Spin Finish Oil, Titanium Di Oxide etc. locally as well as through import. Apart from these inputs, for manufacturing Polyester Filament Yarn (PFY) a number of machineries such as polycondensation plant, thermic fluid reactors, piping & vessels, machinery for paste preparation tank, Esterification reactors, Finishers etc., are essentially required. The appellant had imported Continuous Polycondensation (CP) Plant from overseas supplier M/s Oerlikon Barmag, without thermic fluid filled by using EPCG authorisation scrip/license No. 0330032343 dated 30.03.2012 during April, 2012 to July, 2012 for setting up CP plant in their manufacturing facility. Subsequently, the appellant had imported 3,01,296 kgs. of 'Dowtherm RP Heat Transfer Fluid' / 'Dowtherm A Heat Transfer Fluid' valued at Rs.9,86,65,178/- from M/s Dow Chemical International Private Limited, Switzerland vide Bills of Entry Nos. 8114446, 8117765, 8113786 all dated 03.10.2012; 8116561 dated 04.10.2012 involving customs duty of Rs.2,55,07,400/-. In lieu of payment of such duty, the appellant had utilised eight SHIS scrips/licenses issued by the Director General of Foreign Trade under the Status Holders Incentive Scrip (SHIS) scheme in terms of Para 3.16 of Foreign Trade Policy 2009-2014, by availing customs duty exemption under Notification No. 104/2009-Customs dated 14.09.2009, as amended. The aforesaid imported goods were cleared by the jurisdictional customs authorities on the strength of such SHIS scrips extending the duty concessions to the appellant.

2.3 Intelligence was gathered by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (DRI) that the appellant is wrongly availing the notification dated 14.09.2009, inasmuch as only capital goods are allowed under such notification; on the other hand, the appellant had imported 'Dowtherm RP Heat Transfer Fluid' / 'Dowtherm A Heat Transfer Fluid' which is not a capital goods. Therefore, DRI had initiated detailed investigation including recording of statements from various persons concerned with such imports. In terms of Standard Input Output Norms (SION) prescribed by DGFT provides for 'Polyester Partially Oriented Yarn, Dowtherm (Therminol) as one of permitted input; and, similarly for Polyester Filament Yarn, Dowtherm (Heat Transfer Oil) is permitted as one of eligible input by availing duty concession. Therefore, on this ground also, DRI had contended that the appellant is not eligible for customs duty exemption benefits on importation of such goods.

2.4 Upon completion of such investigation, a Show Cause Notice (SCN) dated 14.05.2013 was issued demanding customs duty of Rs.2,55,07,397/- along with interest under Section 28(1) of the Customs Act, 1962, besides proposing for confiscation of goods under Section 111(o) ibid and for imposition of penalty on the appellant under Sections 112(a) ibid. The said SCN dated 14.05.2013 was adjudicated by the learned Commissioner after considering the submissions of the appellant importer, in confirming the duty demand along with interest as proposed in the SCN. However, he refrained from confiscation of impugned goods on the ground that the same was not physically available with the customs authorities and further did not impose penalty on the appellant, by passing the impugned order dated 07.10.2016. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellant at the outset submitted that they had imported Polycondensation plant separately without thermic fluid; and 'Dowtherm RP Heat Transfer Fluid' / 'Dowtherm A Heat Transfer Fluid' thermic fluid separately, even though these are used together for operation of Continuous Polycondensation (CP) Plant in manufacture of Polyester Filament Yarn (PFY) and other final products. In explaining the usage of such thermic fluid by means of a flow diagram, he stated that these thermic fluid are one time charged into the thermic fluid heaters, piping and vessels of CP plant, and thereafter these continuously circulate in a closed loop from the heaters to the reactors and back for the polycondensation process for manufacture of polyester. In this process, the basic raw materials such as Purified Terephthalic Acid (PTA), Mono Ethylene Glycol (MEG) etc. are processed in a molten form, in order to enable final stages of polycondensation take place at temperatures between 270°C and 300°C under high vacuum; therefore, use of thermic fluids are critical for supplying the precise, high-temperature heat required for such reaction. Further, thermic fluids allow the plant to operate efficiently at high temperatures while keeping system pressures low. The definition of 'capital goods' as provided under Para 9.12 of FTP and notification No.104/2009-Customs dated 14.09.2009 is *pari meteria,* and it means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological upgradation or expansion. It also includes refractories for initial lining, catalysts for initial charge, equipment and instruments for testing etc. As the definition of capital goods adopted under FTP and the said notification dated 14.09.2009 is wide enough to cover any machinery along with items required for initial setting up, catalysts, learned Advocate claimed that the essential thermic fluids to keep the continuous polycondensation of the PC plant should also be eligible for the notification benefit as capital goods.

3.2 Learned Advocate further stated that since thermic fluids are essential for achieving continuous polycondensation process, its' separate importation, subsequently to import of PC plant, does not make any distinction, as regards the nature and character of the goods being imported as capital goods. Central Board of Excise & Customs (CBEC) had also issued circular No. 344/60/97-Customs dated 22.10.1997 to clarify that transformer oil which filled in/used to top up in transformer is required for the functioning of such equipment to be considered as part of such goods.

3.3 In support of their submissions, he had relied upon the following judicial pronouncements:

(i) *Reliance Communications Infrastructure Vs. Commissioner of Customs* – 2009 (240) E.L.T. 461 (Tri. – Bang.)

(ii) *Commissioner of Central Excise, Coimbatore Vs. Jawahar Mills* – 2001 (132) E.L.T. 3 (S.C.)

(iii) *Bharti Airtel Limited Vs. Commissioner of Central Excise, Pune* – 2025 (391) E.L.T. 3 (S.C.)

(iv) *Chief Commissioner of Central Goods and Service Tax and Others Vs. Safari Retreats Private Limited and Others*– 2024 SCC Online SC 2691.

(v) *Scientific Engineering House (P) Ltd. Vs Commissioner of Income Tax, Andhra Pradesh* – (1986) 1 Supreme Court Cases 11

(vi) CBEC Circular No. 344/60/97-Customs dated 22.10.1997

In view of the above submissions, learned Advocate pleaded that the appeal filed by the appellant may be allowed.

4. Learned Authorized Representative (AR) for Revenue reiterated the findings in the impugned order and stated that the Commissioner of Customs had examined all the submissions made by the appellant in the impugned order and had come to the conclusion that the definition of capital goods as provided under Notification No.104/2009-Customs dated

14.09.2009, does not cover the impugned goods. Therefore, he pleaded that the appeal filed by the appellant may not be entertained.

5. We have heard both sides, examined the case records and the additional submissions made during the course of hearing, written synopsis along with case law citations in the form of paper books submitted by both sides.

6. The issue involved in the present appeal before the Tribunal is to decide whether the impugned order dated 07.10.2016 passed by the learned Commissioner of Customs, confirming the duty demands in respect of import of 'Dowtherm RP Heat Transfer Fluid' / 'Dowtherm A Heat Transfer Fluid' thermic fluid, by denying the exemption benefit under Notification No.104/2009-Customs dated 14.09.2009, is legally sustainable in terms of the Customs Act, 1962 or otherwise.

7. The period of dispute involved in the present case is October, 2012 as all the five relevant B/Es in which importation of impugned goods relate to 03.10.2012 & 04.10.2012.

8. In the impugned order dated 26.05.2017, learned Commissioner of Customs had come to the conclusion that the benefit of notification No. 104/2009-Customs dated 14.09.2009 is not eligible for import of thermic fluids and consequently, he had confirmed the duty demands made in the SCN dated 14.05.2013 on the basis of following findings:

> *"28. I also note that a request has been made for cross examination of Shri Ravi Agarwal and Shri Suryakant Chimanlal Seth in the event an adverse inference is sought to be drawn from their statements. While I have taken note of the explanations and factual information regarding the thermic fluids offered by Shri Agarwal, I have not relied on his understanding, arrived at after being shown the definition of capital goods in the notification No. 104/2009-Cus., that the thermic fluids are not part of the definition of capital goods. Similarly, I take note of the statement of Shri Seth, including wherein he states that as per SION Dowtherm is an input (raw material) for manufacture of Polyester Partially Oriented Yarn. But his acceptance is not critical to my conclusion arrived at below. Therefore, I deny the request for cross examination of the said two persons.*
>
> *xxx xxx xxx xxx*
>
> *35. I note that in view of notification No. 104/2009-Cus. including a specific definition of capital goods, for deciding the eligibility in the instant case, the definition included in the said notification No. 104/2009-Cus. is relevant and reliance on case laws relating to the scope of definition of capital goods under rule 57Q of Central Excise Rules would not be applicable.*
>
> *xxx xxx xxx xxx*
>
> *38. I hold that thermic fluid cannot be covered under "Capital goods" which is defined to mean any plant, machinery, equipment or accessories required*

*for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernization, technological up gradation or expansion, since the chemical cannot be treated as plant, machinery, equipment or accessories. It is admitted that the chemical is used indirectly in the manufacturing process, but not being in the nature of plant, machinery, equipment or accessories, it cannot be treated as capital goods.*

*39. It is also seen that thermic fluid cannot be treated as capital goods in terms of the second limb of the definition contained in said notification No.104/2009-Cus. which provides for inclusion of packaging machinery and equipment, refractories for initial lining, refrigeration equipment, power generating sets, machine tools, catalysts for initial charge, equipment and instruments for testing, research and development, quality and pollution control under the definition of capital goods.*

*40. Therefore, I hold that the thermic fluid, classifiable under Chapter 29, presented as such before the Customs authorities for assessment, cannot be treated at capital goods on the ground that the fluids were eventually used for initial filing up of the polycondensation plant."*

9. On perusal of case file, certain undisputed facts as highlighted by the learned Advocate for the appellant and not disputed by AR for the Revenue are summarised herein below:

(i) the appellant was having with them valid SHIS scrips/licenses issued by the DGFT authorities, which allowed import of 'capital goods' and such term has been defined under the FTP and in the notification dated 14.09.2009.

(ii) appellant had imported Continuous Polycondensation (CP) Plant without thermic fluid filled therein, under EPCG authorisation No.0330032343 dated 30.03.2012 during the period April, 2012 to July, 2012; and thereafter separately imported thermic fluids required for initial setting up of the CP Plant under valid SHIS scrips.

(iii) Since the impugned goods were not available at the time of investigation, having been cleared by the jurisdictional customs authorities upon importation by extending the duty concessions under SHIS, the appellant produced Chartered Engineer's certificate about the functioning of CP plant and use of thermic fluid in such plant.

(iv) Standard Input Output Norms (SION) specify the quantity of inputs required to produce a unit of output for a particular product or service.

Since the above facts/documents have been relied upon in the impugned order, in support of the findings for confirming the demand in respect of import of impugned goods, it will be important for us to see whether the same can be held as valid evidences for coming to a conclusion on the disputed issue.

10. Firstly in order to address the above issue of coverage under 'capital goods', we would like to refer the relevant legal provisions contained in

Foreign Trade Policy (FTP) framed under Foreign Trade (Development and Regulation) Act, 1992 ('FTDR Act' for short) as it is the relevant statute for the purpose of SHIS scrips; and the definition is provided under the notification No.104/2009-Customs dated 14.09.2009. The extract of the same is given below:

*Foreign Trade (Development and Regulation) Act, 1992.*

***"Section 5. Foreign Trade Policy.***

*The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:*

*Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette."*

*Foreign Trade Policy*

*27th August 2009 – 31st March 2014*

***"Interpretation of Policy***

*2.3 If any question or doubt arises in respect of interpretation of any provision contained in FTP, or classification of any item in ITC (HS) or HBP v1 or HBP v2, or Schedule of DEPB Rates (including content, scope or issue of an authorization there under) said question or doubt shall be referred to DGFT whose decision thereon shall be final and binding.*

***CHAPTER 3***

***PROMOTIONAL MEASURES***
***PROMOTIONAL MEASURES IN DEPARTMENT OF COMMERCE***

***3.14 Status Holders Incentive Scrip (SHIS)***

***3.14.1 Objective***

*(a) Objective of SHIS is to promote investment in upgradation of technology.*
*(b) Status Holders of sectors specified in Para 3.16.4 below, shall be entitled to a Duty Credit Scrip @1% of FOB value of exports made during 2009-10, 2010-11,2011-12 and 2012-13.*
*(c) Status Holders of additional sectors listed in Para 3.10.8 of HBPv1 2009-14 (RE-2010) shall also be eligible for this Status Holders Incentive Scrip on exports made during 2010-11, 2011-12 and 2012-13.*
*(d) This shall be over and above any Duty Credit Scrip claimed/availed under this chapter.*

***3.14.3***
***Ineligible Exports Categories / Sectors for FMS***

*Status Holders of the following Sectors shall be eligible for the Status Holders Incentive Scrip:*

*(i) Leather Sector (excluding finished leather);*

*(ii) Textiles and Jute Sector;*
*(iii) Handicrafts;*
*(iv) Engineering Sector (excluding Iron & Steel, Nonferrous Metals in primary or intermediate forms, Automobiles & two wheelers, nuclear reactors & parts and Ships, Boats and Floating Structures);*
*(v) Plastics; and*
*(vi) Basic Chemicals (excluding Pharma Products).*

***3.17.5***
***Imports Allowed/ Domestic Procurement***

*(a) Duty Credit Scrip may be used for import of inputs or goods including capital goods, provided same is freely importable and / or restricted under ITC (HS). However, import of items listed in Appendix 37B of HBPv1 shall not be permitted to be debited.*

*(b) Duty Credit Scrip under Chapter 3 of FTP can also be utilized for payment of duty against imports under EPCG scheme, provided the item is importable against the Scrip.*

*(c) Duty Credit Scrip can also be utilised for payment of Excise Duty on domestic procurement of such items as permitted to be imported under respective scheme.*

***CHAPTER 9***
***DEFINITIONS***

*9.1 For purpose of FTP, unless context otherwise requires, following words and expressions shall have the following meanings attached to them.*

xxx xxx xxx xxx

*9.12 "Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological upgradation or expansion. It also includes packaging machinery and equipment, refractories for initial lining, refrigeration equipment, power generating sets, machine tools, catalysts for initial charge, equipment and instruments for testing, research and development, quality and pollution control.*

*Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.*

*9.13 "Competent Authority" means an authority competent to exercise any power or to discharge any duty or function under the Act or the Rules and Orders made thereunder or under FTP."*

***Notification No.104/2009-Customs, Dated 14.09.2009 as amended***

*"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, [hereby exempts -*
*(i) capital goods; and*

*(ii) components and spares and parts, for capital goods imported earlier,*
*when imported into India against a duty credit scrip issued under the Status Holders Incentive Scheme in accordance with paragraph 3.16 of the Foreign Trade Policy (hereinafter referred to as the said scrip),*
*(a) from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and*
*(b) from the whole of the additional duty leviable thereon 2[under sub-sections (1), (3) and (5) of section 3] of the said Customs Tariff Act, 1975,*
*subject to the following conditions, namely :-*
*(1) that the said scrip has been issued by the licensing Authority to a status holder against exports of the products of the sectors, namely, leather (excluding finished leather), textiles and jute, handicrafts, engineering (excluding iron and steel, non-ferrous metals in primary or intermediate forms, automobiles and two-wheelers, nuclear reactors and parts and ships, boats and floating structures), plastic and basic chemicals (excluding pharma products) made during 2009-10, 2010-11, 2011-12 or 2012-13 or against exports of the products mentioned below made during 2010-11, 2011-12 or 2012-13, namely :-*

*xxx xxx xxx xxx*

*Explanation, - For the purposes of this notification,-*
*(i) "Capital goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernization, technological upgradation or expansion. It also includes packaging machinery and equipment, refractories for initial lining, refrigeration equipment, power generating sets, machine tools, catalysts for initial charge, equipment and instruments for testing, research and development, quality and pollution control. Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.*

*(ia) "Component" means one of the parts of a sub-assembly or assembly of which a manufactured product is made up and into which it may be resolved and it includes an accessory or attachment to another component.*
*(ib) "Spares" means a part or a sub-assembly or assembly for substitution, that is ready to replace an identical or similar part or sub-assembly or assembly and it includes a component or an accessory.*
*(ic)"Part" means an element of a sub-assembly or assembly not normally useful by itself, and not amenable to further disassembly for maintenance purposes which may be a component, spare or an accessory."*

11.1 From plain reading of the above legal provisions under FTP, it transpires that in order to determine whether a particular category of imports are allowed under a specific export promotion scheme, in order to allow consequential customs duty exemption benefits under the relevant notification for such scheme, it would depend upon the specific policies framed thereunder. Further, it also transpires that in order to carry out the purpose of FTP and to provide relaxation on the grounds of genuine hardship and adverse impact on trade and in public interest, DGFT is authorised to pass such orders for granting requisite relaxation or relief. Furthermore, in case of any question of doubt in respect of interpretation of any provision of FTP etc., the decision of DGFT thereon shall be final and binding.

11.2 The main ground on which the learned Commissioner had denied the exemption benefit of the notification dated 14.09.2009 in the impugned order is that the impugned goods are chemicals classifiable under Chapter 29 and such chemicals cannot be treated as capital goods; SION norms have mentioned the items Dowtherm (Therminol), Dowtherm (Heat Transfer oil) as inputs; and that the clarification of CBIC on 'transformer oil, is in respect of central excise matter.

11.3 The definition the phrase 'capital goods' as provided under the notification No. 104/2009-Customs dated 14.09.2009 and at Para 9.28 of the FTP are extracted and given below for comparison and better appreciation, to state that these are identical.

| ***Definition as per Notification*** | ***Definition under FTP*** |
|---|---|
| *"Capital goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernization, technological upgradation or expansion. It also includes packaging machinery and equipment, refractories for initial lining, refrigeration equipment, power generating sets, machine tools, catalysts for initial charge, equipment and instruments for testing, research and development, quality and pollution control.*<br><br>*Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.* | *"Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological upgradation or expansion. It also includes packaging machinery and equipment, refractories for initial lining, refrigeration equipment, power generating sets, machine tools, catalysts for initial charge, equipment and instruments for testing, research and development, quality and pollution control.*<br><br>*Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.* |

11.4 As stated in the FTP, the objective of SHIS scheme is to promote investment in upgradation of technology. As per the technical details available about the use of thermic fluids and as explained during the hearing of the appeal, it transpires that it is used in electric thermal oil heater boilers enable supplying of precise, high-temperature heat required for the reaction, allow the Continuous Polycondensation plant to operate efficiently at high temperatures while keeping system pressures low. This critical activity performed by thermic fluids is not feasible in the conventional process, where creating or maintaining such continuous standard heating is not feasible. This is for the reason, that in the conventional process for producing polyester there are 4 to 6 reactors are required for producing standard steam, and such heating is impractical due to the massive pressures it would require in tanks, each of which is provided with stirring vanes and its power source and further provided with a distillation column or a condenser for separating and removing the by-product. Furthermore, the polymerization steps are operated in a reduced pressure atmosphere, and thus the necessary additional vacuum means for generation of a reduced pressure is required. That is, the operation of the apparatus requires a higher maintenance cost and a higher apparatus cost. Therefore, use of thermic fluids in the Continuous Polycondensation plant enable higher efficiency throughout the apparatus and result in economical operation based on energy saving throughout the apparatus which is desirable for the production of high molecular weight polyester. Therefore, in our considered opinion the impugned goods fulfil the statutory requirements provided under the FTP for SHIS scheme.

11.5 On careful perusal of the definition of capital goods as provided under Para 9.28 of the FTP and notification dated 14.09.2009, it transpires that it refers to any plant, machinery, equipment or accessories required for manufacture or production of goods. The final products manufactured by the appellant viz., Polyester Filament Yarn (PFY), Polyester Oriented Yarn (POY), Fully Drawn Yarn (FDY), Draw Textured Yarn (DTY) and Chips are duly covered under the 'plastics' industry to which SHIS scheme apply. Further, goods required for manufacture either directly or indirectly in the plant or machinery etc., are also covered under the above definition. Further, certain goods which are in the nature of catalysts for initial charge, which are in the nature of substance that speeds up a chemical reaction without being changed or used up itself, required for manufacture; initial lining for setting up of refractories etc., are also covered under the said definition. On perusal of the facts about the use of the impugned goods viz., 3,01,296 kgs. of imported 'Dowtherm RP Heat Transfer Fluid' / 'Dowtherm A Heat Transfer Fluid', it is evident from the certificate produced by the Chartered Engineer that 2,92,920 kgs. i.e., 97.2% of such goods have been used as one time/initial charging in the Continuous Polycondensation plant as in process thermic fluid in the 'Electric Thermal Oil Heater Boiler'. The usage of impugned goods are for enabling high temperature at very low pressure on a continuous basis for occurrence polycondensation process for manufacture of final products at the appellant's factory. The flow chart produced by the learned Advocate and as available in the Certificate of Chartered Engineer also explains this position vividly. The extract of both the flow chart and certificate along with explanatory charts given are extracted below:

57

*L. R. Damania*

B. E. (Mech) MIE (INDIA)
Chartered Engineer
No. M 37274

Address : Mora Falia, Opp. Custom House,
Nani Daman - 396210. (U.T.)
Phone : Resi. : 2254708

**<u>TO WHOMSOEVER IT MAY CONCERN</u>**

I have examined the Applicant Company's import requirements of Dowtherm RP and Dowtherm A (Thermic Fluids) with regard to their technical description/specification for the initial filling of their Continuous Polycondensation Plant at Daman for Heat Transfer purposes. Having due regard to proper technical scrutiny of relevant designs and drawings of the manufacturing products.

I hereby certify that Thermic Fluids viz. Dowtherm RP and Dowtherm A imported by them under SHIS Scrips have actually been filled-in for the initial start-up of their various machines and Equipments on a one-time basis, required for heat transfer purposes and considered as Capital Goods for all purposes.

Following are the techno-commercial findings of their usage, viz.

i) Thermic Fluids are of petroleum origin, some are purecompounds and some in the form of mixtures of two or more compounds. These liquids give very high temperature at very low vapour pressure. These liquids have boiling points ranging between 250 to 300 Degree Centrigrade and are non toxic in nature. These are thermally very stable and thus can be used for long time without frequent make-ups.

ii) Dowtherm A and Dowtherm RP are the heating Fluids used in Polyester Plants as carrier of heat energy from Thermic Fluid Heaters to main reactors.

iii) These fluids are one time charged in Thermic Fluid Heaters, piping and Vessels,

DAMANIA
(Mech.) MIE. CE,
274, MORA FALIA,

Cont...2

iv) The Fluid is continuously circulated from Thermic Fluid Heater where the temperatures are raised, the same high temperature fluid is pumped to Main Plant for heating reactors.

v) These Fluids are long life fluid and required to be of one time charged in the Plant.

vi) These fluids are universally used for transfer of heat at very low pressure, reducing the risk of high pressure operations.

vii) These fluids are used in the Plant for various manufacturing as per the recirculation circuit as at Ann. I

viii) These fluids are for different units/equipments of the Plant as per details Annex. II

L. R. DAMANIA
B. E. (Mech.) MIE. CE,
M - 37274, MORA FALIA,
NANI DAMAN - 396 210.

Place : Daman

Signature & Seal of Chartered Engineer

Dated :

Registration Number : M 37274

## Brief about Dowtherm Rp and Dowtherm A as Thermic fluid

A **The Thermic fluid:**

Invariably the thermic fluids are of petroleum origin. Some times these are pure compounds and some time these are mixtures of two or more compounds. These liquids give very high temperature at very low vapor pressure. These liquids have boiling points ranging between 250 to 300 °C and are non toxic in nature. These are thermally very stable and thus can be used for long time without frequent make-ups.

B Dowtherm A and Dowtherm Rp are the heating fluids used in polyester plant as conveyor of heat energy from Thermic fluid heaters to main reactors.

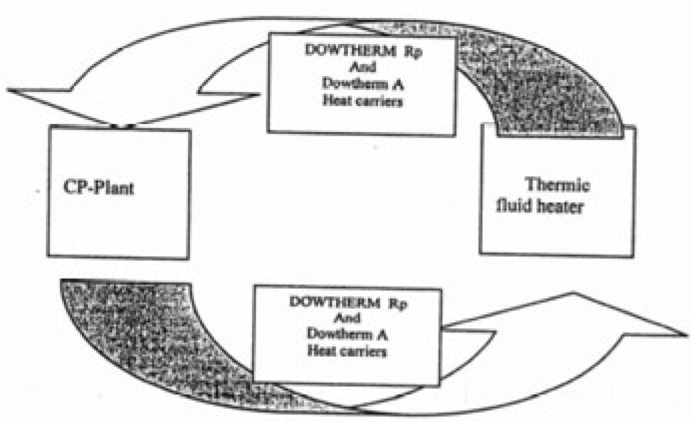
C These fluids are one time charged in thermic fluid heaters,piping and vessels.

D The fluid is continuously circulated from thermic fluid heater where the temeratures are raised, the same high temperature fluid is pumped to Main plant for heating reactors.

E These fluids are long life fluid and required to be one time charged in plant.

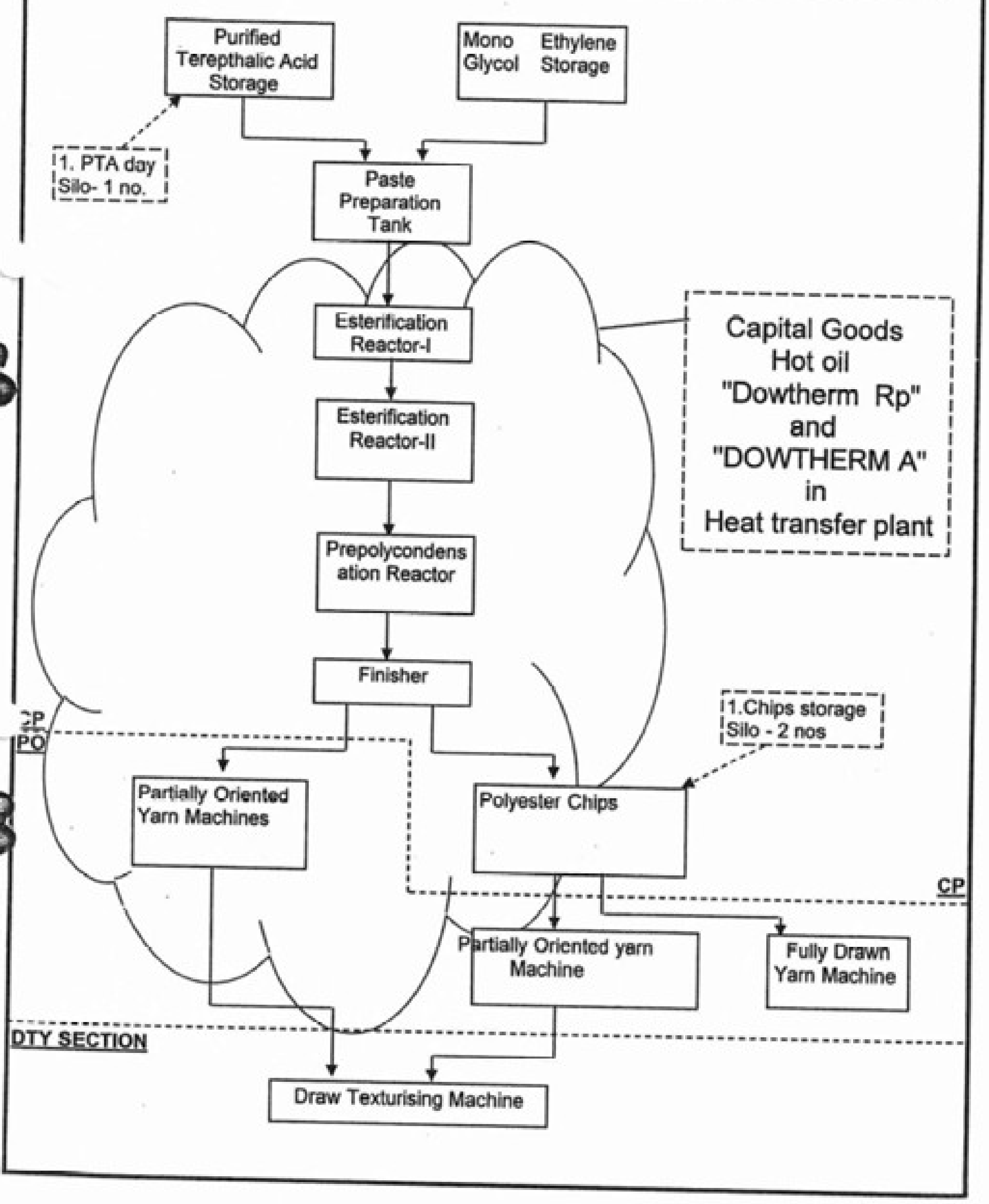
F These fluids are univerally used for transfer of heat at very low pressure, reducing the risk of high pressure operations

### THE RECIRCULATION CIRCUIT

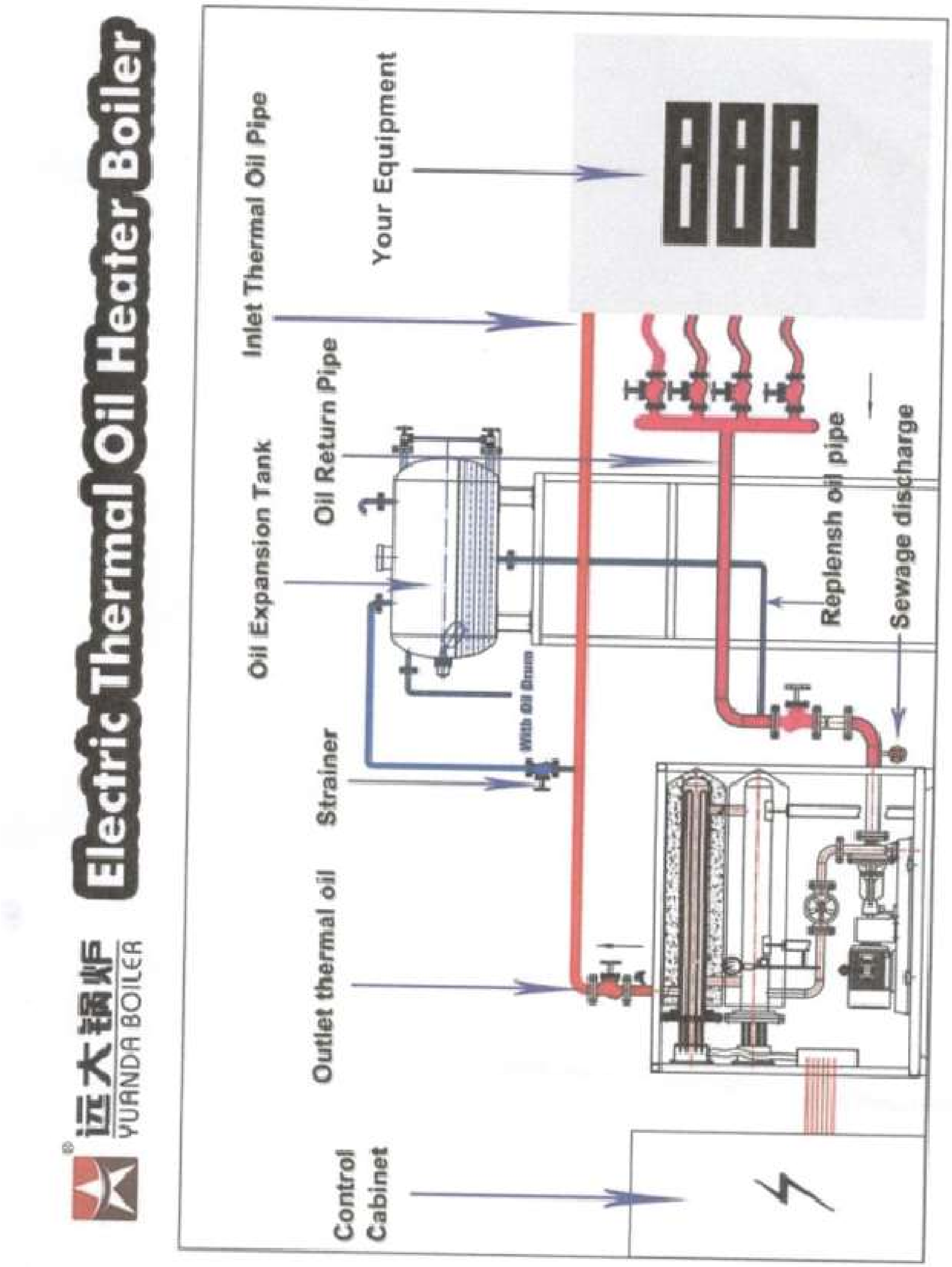


C/87731/2016

## Flowchart Showing Stages Where and How The CG Is To Be Used




B. E. (Mech.)


Electric Thermal Oil Heater Boiler
远大锅炉
YUANDA BOILER
Control Cabinet
Outlet thermal oil
Strainer
Oil Expansion Tank
Inlet Thermal Oil Pipe
Oil Return Pipe
Your Equipment
With Oil Drum
Replensh oil pipe
Sewage discharge

Furthermore, the value of impugned goods have been capitalised in the books of accounts of the appellant, as duly certified by the Chartered Accountants in their certificate dated 29.05.2026, also proves the fact that in terms of financial records also the impugned goods are treated as capital goods.

11.6 In view of the above discussion and analysis of the statutory provisions under FTP and the notification dated 14.09.2009 regarding the scope and coverage of 'capital goods', and the nature of thermic fluids viz., 'Dowtherm RP Heat Transfer Fluid' / 'Dowtherm A Heat Transfer Fluid', we are of the considered view that the impugned goods are covered under the definition of 'capital goods' and thus are eligible for availing exemption under the notification No. 104/2009-Customs dated 14.09.2009.

12.1 We find that the Co-ordinate Bench of the Tribunal in the case of *Reliance Communications Infrastructure Limited* (supra) have held that Gas Suppression System is covered under the category of capital goods and allowed the benefit customs duty exemption under Notification No.97/2004-Customs dated 17.04.2004. The relevant paragraph of the said order is extracted and given below:

> *"6. We have gone through the records of the case carefully. It is seen that the appellants applied for EPCG licence for import of, among other things, a Gas Suppression System. The purpose of the Suppression System is to detect smoke/fire and extinguish with the help of the gas. As outlined by the appellants, the entire system consists of several components including the impugned items viz. HFC 227 EA gas. The application of the appellant for grant of EPCG licence was scrutinized by a Committee consisting of the representatives of the DGFT as well as CBEC. The said Committee, in its wisdom, had permitted the issue of EPCG licence for the entire system. The said gas, which is the impugned item, is a part of the system. The Customs cannot dissect the system and say that one part of the system cannot be treated as Capital Goods and they would be consumables. In our view, once the EPCG licence covers the Gas Suppression System, it is not for the Customs Authorities to object it saying that the gas, which forms part of the system, is a consumable and not covered by the Notification as Serial number in the Notification refers to Capital Goods. The term Capital Goods has a very wide connotation in terms of the Foreign Trade Policy. The definition of Capita! Goods, in terms of para 9.2 of that Foreign Trade Policy is reproduced below :-*
>
> *xxx xxx xxx xxx*
>
> *6.1 On going through the said definition, we can even hold that gas, which is used in the present system, for extinguishing the fire can definitely to be treated as Capital Goods. In any case the Gas Suppression System without the main gas used for extinguishing fire will be meaningless……In view of the above, we hold that the impugned item is entitled for the benefit of the Customs Notification 97/2004-Cus., dated 17-4-2004 and is covered under the EPCG scheme. Hence, we set aside the impugned order and allow the appeal with consequential relief."*

12.2 In this regard, we also find that CBEC vide Circular No. 344/60/97-CX dated 22.10.1997 had clarified in the field of central excise for providing proper categorisation of 'transformer oil' for Modvat purpose. The grounds stated therein are that transformer cannot function without transformer oil, and the manufacturer of transformer cannot be treated as complete without transformer oil filled into it; moreover the transformer oil acts as a coolant which is vital to functioning of the transformers. By applying the same analogy, if the CP plant does not function without thermic fluids, then it has to be treated as part of the such plant, even though no specific clarification is issued in the context of customs notification.

12.3 In view of the above discussions and analysis, we are of the considered view that the impugned order dated 07.10.2016 in denying the exemption benefits under Notification No. 104/2009-Customs dated 14.09.2009 by not treating the impugned goods as 'capital goods' does not stand the scrutiny of law. Therefore, the impugned order is not legally sustainable and the same is liable to be set aside.

13. In the result, by setting aside the impugned order dated 07.10.2016, the appeal filed by the appellant is allowed in their favour.

(Order pronounced in open court on 24.09.2026)

**(S.K. MOHANTY)**
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**
**MEMBER (TECHNICAL)**

Sinha