



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12943 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 14559 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 14552 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 14562 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

Sd/-

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Sd/-

=====		
Approved for Reporting	Yes	No
	✓	
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**NOYA INFRASTRUCTURE LLP, THROUGH ITS AUTHORISED
SIGNATORY RAJOTTAM SARBOTTAM GANGULY & ORS.**

Versus

UNION OF INDIA, MINISTRY OF FINANCE & ORS.

Appearance:

**MR S N SOPARKAR, SENIOR ADVOCATE WITH MR AMIR S PATHAN
WITH MR VIRAT G POPAT(3710) for the Petitioner(s) No. 1,2,3**

**MR MIHIR JOSHI, SENIOR ADVOCATE WITH MR KUNAL NANAVATI WITH
MR KAUSTUBH SHRIVASTAV FOR NANAVATI ASSOCIATES(1375) for the
Petitioner(s) No. 1 (SCA Nos.14552,14559,14562 of 2025)**

**MR ANURAG OZA, SENIOR STANDING COUNSEL FOR MR PRADIP D
BHATE(1523) for the Respondent(s) No. 1,3
MR CB GUPTA(1685) for the Respondent(s) No. 2**

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

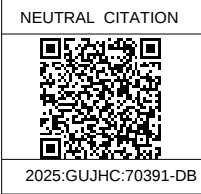
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 09/12/2025

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

RULE. Learned advocates waive service of
notice of rule for and on behalf of the
respective respondents.



The additional affidavit filed by respondent No.3 as well as the additional affidavit filed by petitioner No.3 of SCA No.12493 of 2025 are ordered to be taken on record.

Since similar issue is involved, the matters are heard and decided together however, initial facts are taken from SCA No.12943 of 2025.

1. The present petitions have been filed seeking, more or less, the following similar relief:

"2A. The petitioners challenges the seizure memo dated 01.10.2025, issued by the Intelligence Officer, DRI, wherein it has been stated that the test report in respect of sample drawn from the imported goods reveals that the sample does meet the requirements of Distillate Oil as per IS 16731:2019."

2. On the basis of the said report, the Distillate Oil has also been seized, and accordingly, they are praying for directions to set aside the action of the respondent authorities in detaining the imported bulk liquid cargo oil.

3. The petitioners are involved in trading of industrial oil and other allied pursuits and are engaged in importing bulk liquid cargo being Distillate Oil in various quantities from tank vessel viz. MT-Vayu, vide Bill of Entry Nos.4161474, 4161518, 4161492, 4161496, 4161500 and 4161512 dated 28.08.2025 at Pipavav Port,



Amreli (Gujarat). The petitioners also have a certificate of analysis issued by the company from which they had purchased the material i.e. Chevron General Trading LLC, which showed that the imported product is Distillate Oil. On 01.08.2025, when the liquid was transferred from MT-Vayu into Customs Bonded Storage Tank No. T-307, such cargo was placed under investigation for the alleged mis-declaration, and the officers of the Directorate of Revenue Intelligence (DRI), Delhi Zonal Unit, recorded panchnama and drew representative samples in triplicate from the said Tank No.T-307 in the presence of the petitioners' representatives, customs brokers, and independent surveyors. On completion of the sample collection process, the cargo was detained under Section 110 of the Customs Act, 1962 on the information of possible mis-declaration, vide a Detention Memo dated 01.09.2025.

4. It is the case of the petitioners that despite completion of discharge operations, as well as drawal of test samples, and despite there being Public Notice No.76/2020 issued by the New Customs House, Mumbai as well as Public Notice No.14/2017 issued by the Office of the Commissioner of Customs, Kandla, the Customs authorities have neither released the cargo nor furnished any test results of the samples drawn on 01.09.2025. It appears that during the pendency of



the writ petitions, the Test Report dated 30.09.2025 was declared, and the same mentions that the imported goods do not meet the requirements of Distillate Oil as per IS 16731:2019, and accordingly, Seizure Memo dated 01.10.2025 was issued by the Intelligence Officer, DRI, which is the subject matter of challenge in the present writ petitions.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

5. Learned Senior Advocate Mr.Soparkar as well as learned Senior Advocate Mr.Joshi appearing for the respective petitioner(s) have referred to the Test Report dated 30.09.2025 and have submitted that as per the said Test Report issued by the Central Revenues Control Laboratory at Delhi Zonal Unit (CRCL), out of 14 characteristics / parameters mentioned therein, one of the parameters at Sr. No.14 i.e. Cloud Point, states that the sample under reference does not meet the requirement of Distillate Oil as per IS 16731:2019 and also does not meet the requirement of Automotive Diesel Fuel as per IS 1460:2025 with respect to the parameter at Sr. No.8. They have submitted that it is further mentioned in the Test Report that the samples have the characteristics of diesel fraction with a small amount of a heavier fraction of hydrocarbons. Learned Senior Advocates, at the outset, have submitted that on the basis of the said Test Report, the cargo has



been seized after issuance of the Seizure Memo dated 01.09.2025. It is submitted that Test Memo No.99 of 2025 dated 03.09.2025 prepared by the Directorate of Revenue Intelligence (DRI) was forwarded to the CRCL for the subsequent Test Report in the case of the petitioners, whereas in an identical cargo of Distillate Oil, which was detained at the Custom House, Kandla, the Director of CRCL informed the Assistant Commissioner of Custom House, Kandla, that the Distillate Oil or any other Distillate Oil in reference to fraction of hydrocarbons in the Distillate Marine Fuels or any other Distillate Oil is of no consequence, as all these products are diesel fraction. They have referred to the communication dated 04.11.2025 in this regard and have submitted that pursuant to the aforesaid opinion and the findings recorded by the Commissioner of Custom House, Kandla, the cargo of Distillate Oil was ordered to be provisionally released. Thus, they have submitted that the petitioners cannot be discriminated on the parameters which were found in the cargo of Distillate Oil in other cases and which were seized at Kandla.

6. Learned Senior Advocates have also referred to the parameters and their minimum and maximum values, which have been referred to in the Additional Affidavit dated 08.12.2025 filed by the respondents, and have submitted that the

parameters mentioned therein relating to density, kinematic viscosity, distillation-IBP, distillation recovery, cloud point and flash point are satisfied in the case of the petitioners and also in the case of the other traders whose goods have been released provisionally by the Kandla authority. While referring to the decision of the Apex Court in the case of Gastrade International vs. Commissioner of Customs, Kandla, (2025) 8 S.C.C. 342, it is submitted by the learned Senior Advocates that the Test Report itself does not precisely state that the samples collected from the cargo of the petitioners conclusively mention that the cargo is not Distillate Oil. Thus, it is urged that the impugned Seizure Memo may be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE PETITIONERS :

7. In response to the aforesaid submissions, learned Senior Standing Counsel Mr.Oza appearing for the respondent authority has submitted that the writ petitions do not require any intervention, and it is urged that the same may be rejected in view of the specific findings recorded in the Test Report pointing out that bulk liquid cargo imported by the petitioners cannot be declared as "Distillate Oil" as the same does not meet the parameters of the Indian Standards. It is submitted that the goods imported by the



petitioners in the form of Distillate Oil are found to be Diesel / High Flash High Speed Diesel (HFHSD), which are restricted in terms of the Policy Condition No.5, Chapter-27 of Schedule-I of the Import Policy-ITC (HS) 2022 and the same cannot be considered for release.

8. Learned Senior Standing Counsel has submitted that the goods imported by the petitioners were reported not meeting the requirements of IS 16731:2019 with respect to Cloud Point, which is apparent from the Test Report, and they do not meet the requirement of Automotive Diesel Fuel as per IS 1460:2025 with respect to distillation parameters, and the cargo has the characteristics of diesel fraction with a small amount of heavier fraction of hydrocarbons. He has submitted that on the basis of the Test Report, it is established that the imported goods do not conform to the Indian Standards for Distillate Oil and have consequently been mis-declared at the time of import and hence, it cannot be released. He has further placed reliance on the Test Report, more particularly density mentioned at 15°C, which is a parameter expected to be higher for Distillate Marine Fuel and lower for diesel, as specified in Indian Standards. It is submitted that according to the Test Reports, the measured values are



0.8203 gm/cm³ and 0.8347 gm/cm³, which fall closer to the typical range for diesel under Indian Standards.

9. Thus, learned Senior Standing Counsel has submitted that in respect of the consignment imported by the petitioners vide vessel MT-Vayu, the report clearly records that the *"sample has characteristics of diesel fraction with a small amount of higher fraction of hydrocarbons"*, and in view of this categorical finding, the same substantiates that the imported goods predominantly conform to the composition and distillation profile of diesel fuel and not Distillate Oil. It is contended that unauthorised import of diesel in the guise of Distillate Marine Fuel and subsequent supply with the same description also results in loss of government revenue due to differential higher tax structure, and mis-declaration enables these business entities to unlawfully claim input tax credit, which would otherwise be unavailable to them if the goods were supplied as diesel, which is outside the GST regime. He has further referred to the contents of his Additional Affidavit dated 08.12.2025 and has submitted that the petitioners cannot be granted the benefit of release of subject goods imported at the Kandla port as the

same is materially different from the Distillate Oil imported by the petitioners.

10. Learned Senior Standing Counsel has finally contended that on verification of the end use of the imported goods / oil traded by the petitioners in the past, it has come to notice that the goods declared as Distillate Oil have been finally supplied to goods transport agencies, construction companies, etc. and they have been used as diesel in trucks, excavators being non-stationary or as light diesel oil in construction business, which strengthens the DRI belief that the subject goods are nothing but restricted for import in terms of the policies as mentioned hereinabove. Thus, it is submitted that parity claimed by the petitioners with the goods released by the Kandla authority cannot be given since the petitioners stand on a different behavioural footing. It is also submitted that the reliance placed by the petitioners on the judgment of the Apex Court in the case of ***Gastrade International (supra)***, which has also been relied upon by the authorities of Kandla Port for releasing the Distillate Oil, will not come to the rescue of the petitioners as the ratio of the said judgment will not apply to the case of the goods imported by them in view of the Test Report and the failure of the parameters.



11. In rejoinder to the aforesaid submissions, learned Senior Advocates have placed reliance on the Additional Affidavit dated 08.12.2025 filed by the petitioners and have submitted that the allegations levelled by the respondents about misuse of the Distillate Oil by the end users in the form of diesel in the vehicles etc. are ill-conceived since petitioner No.3-One Chemical Company has been importing Distillate Oil for the very first time, and no inquiry or investigation is pending until now. They have further submitted that petitioner No.2-Sweven Impex has been importing Distillate Oil for around 30 times since September 2023 and no issue whatsoever has come up, and in the past, only once the consignment of Distillate Oil was detained; however, the same was released on payment of requisite duty in July 2024. So far as petitioner No.1-Noya Infrastructure LLP is concerned, it has been importing the same goods for over 100 times since 2023 and no issue whatsoever has come up until now. In the case of petitioner No.1-Noya Infrastructure LLP also, once the consignment of Distillate Oil was detained; however, the same was released on payment of duty, and thus, it is submitted that bald allegations have been made against the petitioners in the affidavit-in-reply as mentioned hereinabove.



12. During the course of dictation of this judgement, learned Standing Senior Counsel Mr.Utkarsh Sharma, on behalf of learned Standing Senior Counsel Mr. Oza, has given a chart of different parameters and the details of the Lab Report in respect of the petitioners of the writ petition being Special Civil Application No.12943 of 2025.

ANALYSIS

13. We have heard the learned advocates appearing for the respective parties and also perused the documents as pointed out by them.

14. The facts which are established from the pleadings and from the record are that the cargoes of the petitioners consisting of Distillate Oil have been seized by the Customs authorities. The entire case of the respondents hinges on the Test Report dated 30.09.2025. The sample, which was collected from the cargo, appears to have been sent to Delhi for chemical testing, and accordingly, the report mentions about 14 parameters / characteristics which the sample has to satisfy in order to declare whether the import by the petitioners is Distillate Oil or not. The relevant chart is reproduced hereinafter:

Chart of Special Civil Application No.12943
of 2025

S. No	Characteristics	Test Method	Test Result	Specified Value
1	Total Acid Number, mg of KOH/g, Max	ASTM D974: 2022	Nil	0.20
2	Ash Content (% by mass), Max	IS:1448 (Part4/Sec-1): 2021	Nil	0.01
3	Carbon residue (Ramsbottom) on 10% Residue (% by mass), Max	IS 1448 PART-8:2012	Nil	0.3
4	Calculated Cetane Index, min	IS 1448 PART-174:2020	57.67	46
5	Pour Point, °C, max	IS: 1448 (Part10/Sec 2): 2021	<-10	3
6	Copper strip corrosion for 3 h at 50°C	IS: 1448 (Part15):2004	1a	Class 1
7	Distillation, Initial Boiling Point (°C)	IS: 1448 (Part 18):2020	180.2	--
8	Distillation, 95 percent v/v, recovery, °C, Max	IS: 1448 (Part 18):2020	389.5	Max 360
9	Distillation, Final Boiling Point (°C)	IS: 1448 (Part 18):2020	400.6	--
10	Flash Point (Abel) (°C), min	IS: 1448 (Part 20):2019	53.3	Min 35
11	Kinematic Viscosity at 40°C, cSt	IS 1448 (Part 25): 2018	3.6611	2.0 to 4.5
12	Density at 15°C (kg/m ³)	IS: 1448 (Part16):2014	834.7	810-845
13	Water Content mg/kg	IS: 1448 (Part 18):2015	Nil	0.02
14	Cloud Point, °C, max	IS: 1448 (Part10/Sec 1): 2021	-6.2	-16

15. From the pleadings as mentioned hereinabove, we are of the opinion that the respondents have travelled beyond the reasons mentioned in the Test Report. The Test Report definitely concludes by holding that *"Based on the above tested parameters, the sample under reference does not meet the requirement of Distillate Oil as per IS 16731:2019 with respect to parameter at Sr. No.14."* In Special Civil Application Nos. 14552, 14559 and 14562/2025, the Test Report reveals cloud point as -5.4°C. Thus, the first reason which disqualifies the cargoes of the petitioners

from being declared as Distillate Oil is the parameter/characteristic at Sr.No.14, i.e. Cloud Point. The Test Report indicates that the Cloud Point of the cargo of the petitioners is -6.2°C , whereas the specified value of the same is -16°C . The Report of three importers i.e Noya, Sweven and One Chemical of three Special Civil Application No.12943 of 2025 further reveals that the sample does not meet the requirement of Automotive Diesel Fuel as per IS 1460:2025 with respect to the parameter at Sr.No.8. This opinion is missing in Reports of other captioned writ petitions, hence the issue of Automotive diesel will not arise in their case. Unquestionably, the petitioners of Special Civil Application No.12943 of 2025 have not declared their cargo as Automotive Diesel Fuel and hence, the parameter at Sr. No.8 would be of no consequence, as it is found not to be Automotive Diesel Fuel. However, there is a caveat added in the Test Reports of all the captioned writ petitioners(importers) that *"the Distillate Oil has the characteristics of diesel fraction with a small amount of heavier fraction of hydrocarbons."* The contents and the final opinion of the Test Report, if closely read, would highlight two parameters : (i) that the sample has failed the parameter of Cloud

Point, and (ii) that it has "characteristics" of diesel fraction. We may first deal with the second reason relating to diesel fraction.

16. The Test Report is not definite that the Distillate Oil is in fact diesel, and the opinion in the report reflects that *"it has characteristics of diesel fraction with a small amount of heavier fraction of hydrocarbons."*

17. We may at this stage refer to the findings and opinions regarding similar cargo of Distillate Oil which was seized by the Customs authorities at Kandla. Similar parameters were found to be infringed as in the case of the petitioners, and it was referred for clarification to the Director of the CRCL by the communication dated 04.11.2025. The Director of CRCL informed the Assistant Commissioner of Customs, Kandla as under:

*"To,
The Assistant Commissioner (SIIB),
O/o Commissioner of Customs,
Custom House Kandla,
Gujarat-370210*

*Sub- Request for further clarification on CRCL, Vizag
lab reports-m/reg.*

Sir,

*Please refer to your office letter F.No.
CUS/SIIB/MISC/1023/2025-O/o Commr-Cust-Kandla, vide
dated 30.10.2025, requesting for clarification on*



test reports issued by CRCL, Vizag lab pertaining B.E. No.4638916 dated 21.09.2025 & B.E. No.4614126 dated 21.09.2005, filed by M/s. Prajakt Agro Industries Pvt. Ltd.

2 In this regard, it is to inform that, this office, vide letter dated 15.10.2025, had clarified that, based on the test reports issued by Chemical Examiner Gr-1, CRCL, Vizag, the samples under reference does not meet the requirement of petroleum products as mentioned in test memo as per the respective Indian standards. Also based on the aforesaid test reports, which states that the samples have the carbon chain similar to Diesel fraction, CRCL New Delhi clarified than the samples under reference have the characteristics of Diesel fraction. Further, it was also clarified that whether the products under reference are deliberately mixed with lighter fraction of hydrocarbons or otherwise could not be ascertained.

3. further, it is to inform that, the term 'Diesel fraction' referred above is a middle distillate oil which included HFHSD (IS 16861), Automotive Diesel Fuel (IS 1460), Gas Oil (IS 17789), Distillate Marine Fuel (IS 16731), Light Diesel Oil (IS 15770).

4. whenever, the sample does not meet the requirement of any of the aforesaid products as per respective Indian standards, it is due to deviation from this limits with respect to one or more parameters. However, the sample can be categorized as Diesel fraction, based on carbon claim, distillation range and other parameters. Further sych sample may have close similarity with any one or more of the above referred Indian Standards as they have overlapping parameter and come under the category of 'diesel fraction' or 'diesel'.

5. In view of the above, whether the sample under reference is more akin to HFHSD (IS 16861) or Distillate Marine Fuel (IS 16731), or any other distillate oil is on no consequence as all these products are diesel fraction."



18. So far as the samples of Distillate Oil, which were collected by the Customs authority at Kandla, and sent to Vishakapatnam are concerned, on the opinion sought from the Assistant Commissioner, the Director of CRCL, it is opined that the sample if is akin to High Flame High Speed Diesel IS-16861 or Distillate Marine Fuel IS 16731 or any other Distillate Oil having the "diesel fraction" is of no consequence, as all these products can, in fact, be said to have a "diesel fraction." Thereafter, the authorities have arrived at the findings for this parameter of Distillate Oil, which were seized by Kandla Custom House and sent to Visakhapatnam Laboratory in the case of similarly situated importers. In view of the similar report indicating infringement of the parameters akin to the petitioners', it was opined that it cannot be concluded with certainty that the aforesaid diesel fraction fulfills all parameters of Distillate Marine Fuel.

19. While placing reliance on the judgement of the Apex Court in the case of **Gastrade International (supra)**, the Customs Officer at Kandla provisionally released the seized cargo of Distillate Oil. The release was premised on the



Director, CRCL's communication dated 04.11.2025, which stated that for determining whether the sample falls under High Flame High Speed Diesel (IS 16861) or Distillate Marine Fuel (IS 16731) is inconsequential, since all such products have diesel fractions. As the sample did not fully conform to any single standard owing to deviations in one or more parameters, the ambiguity operated in favour of the importer, there being no definitive conclusion on the parameters.

20. By applying the "most akin" test, as enunciated by the Apex Court in the case of **Gastrade International (supra)**, the Customs authorities released the goods classified as Distillate Marine Fuel.

21. Similarly, for the cloud-point parameter, the Directorate, CRCL, by communication dated 28.10.2025 in the case of seizure by Kandla Customs, has clarified as follows :

"3. The said standard also says that the purchaser should ensure that the cold flow characteristics (Pour Point, Cloud Point, and Cold Filter Plugging Point) are suitable for the ship's design and its intended voyage

5 Further, the standard also states that issues relating to low temperature operability (le deposition of solidified wax in fuel tanks, fuel lines, centrifuges, and filters) can occur with

distillate fuels and the pour point requirement as defined in the standard cannot guarantees operability for all ships in all climates.

4. As per the CIMAC Guideline on Cold Flow Properties of Marine Fuel Oils (CIMAC WOT-Fuels), which is also referred to in IS 16731:

"The Cloud point is defined as the temperature at which wax crystals start to visibly form in the fuel and a transparent fuel becomes cloudy.

cooled. Pour point is the lowest temperature at which the fuel will continue to flow when it is

The Cold Filter Plugging Point (CFPP) provides a relative indication of where filterability problems may begin to occur, potentially restricting fuel flow to the engine.

Typically, the difference between each of the above temperatures will be about 2-5 degrees for untreated fuels.

A Pour Point of say 12 °C will not cause any problems in warm tropical climates. such as Singapore, lack of attention to the fuel's cold flow properties could have serious consequences once the ship arrives in Northern Europe or North America, especially during the colder months of the year.

The fuel temperature should be kept approximately 10 deg C above the pour point in order to avoid any risk of solidification however this may not reduce the risk of filter blocking in case of high CFPP and Cloud Point".

5. In view of the above, if the intended use of the sample under reference is as marine fuel in ships in the colder weather conditions, the cloud point requirement becomes significant. For other usage the cloud point is not a significant parameter. Hence, the end use of the sample under reference may be ascertained at your end."

22. We may at this stage refer that in the case of Distillate Marine Fuel, which was collected as a sample by the Kandla Customs authority, the same was also having a Cloud Point below -16°C , i.e. -11°C , whereas in the case of the petitioners it is -6.2°C and -5.4°C . Thus, the Distillate Marine Fuel having a Cloud Point of -11°C was ordered to be released by the Customs authority on the opinion of the CRCL, and hence, in our opinion, the petitioners cannot be discriminated, since the respondent authorities have no definite opinions and the opinions vary so far as the parameter of Cloud Point is concerned, and also with regard to the diesel fraction having fractional hydrocarbons.

23. At this stage, we may refer to the decision of the Apex Court in the case of **Gastrade International (supra)**. The relevant observations are as under:

"97. However, this analysis and conclusions arrived at by the High Court are problematic for the following reasons:

97.1. There was no expert opinion at all that the samples which were tested were indeed of HSD.

97.2. The opinion as contained in the test results was merely mentioning about conformity of the samples with certain specifications of IS 1460:2005 and not about conformity with all the specifications.

97.3. Once the rule-making authority had clearly delineated the requisite parameters for ascertaining the nature of the goods/substance, compliance/conformity with the stated parameters would be the requirement.

97.4. There are 21 parameters laid down under IS 1460:2005 and none of the tests have shown compliance with all these parameters. The last and third test have reported compliance with 14 parameters, though as discussed above in respect of 2 of the aforesaid 14 parameters, namely, flash point and distillation range, the same are not in conformity. Thus, it cannot be said there is substantial compliance with the parameters of IS 1460:2005.

97.5. Flash point, though may not be the most important parameter, yet, its importance in determining the nature of the automotive oil cannot be ignored. Flash point being a very important criteria to classify petroleum products, non compliance of the samples on this parameter would make the classification doubtful.

97.6. Evasive answers and non-clarification on certain aspects of the flash point of the samples by the expert Dr Gobind Singh certainly cast a serious doubt on the samples being identified as that of HSD. The expert himself also has not said that the samples are of HSD except for stating that the samples conform to certain specifications of the IS 1460:2005.

97.7. In view of the ambiguity and lack of clarity in the expert opinion/laboratory test results, it would be unsafe to draw the inference that the Department had been able to prove their case even by applying the test of preponderance of probability merely because the samples conform to certain parameters.

97.8 If the Department with all the resources at their command and access to various laboratory facilities could not get the samples tested in respect of all the 21 parameters, expecting the assesses-appellants to get the samples tested to show that these do not conform the specifications and are not HSD does not appear to be reasonable. Thus,

shifting of onus to the assesseees to prove otherwise appears to be unreasonable and meaningless.

97.9. The burden was not on the assesseees to demonstrate that non-conformity with the remaining 8 parameters would vitiate the conclusion that the samples were of HSD.

98. The aforesaid difficulties in our opinion can be overcome, if we apply the test of "most akin" as contemplated under Rule 4 of the General Rules for Interpretation referred to above.

99. The real test for classification, according to us, would be as to whether any goods or substance in question is "most akin" or bears the closest resemblance or similarity to any of the specified goods mentioned under the headings and relative section or Chapter Notes under the Tariff Act, and not by applying the test of preponderance of probability.

100. 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 event, 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."

24. Thus, the Apex Court has held that, in view of the ambiguity and lack of clarity in the expert opinion/laboratory test results, it would be unsafe to draw the inference that the Department had been able to prove its case even by applying the test of preponderance of probability merely because the samples conform to certain parameters. It is further held that if the Department, with all the resources at its command and access to various laboratory facilities, could not get the samples tested in respect of all the 21 parameters, expecting the assesses-appellants to get the samples tested to show that these do not conform to the specifications and are not HSD does not appear to be reasonable. It is also held that the real test for classification would be as to whether any goods or substance in question is "most akin" or bears the closest resemblance or similarity to any of the specified goods mentioned under the

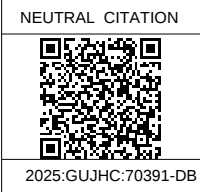


headings and relative Section or Chapter Notes under the Customs Tariff Act, 1975 and not by applying the test of preponderance of probability.

25. In the present case, if the "most akin" test is applied, the same would, in fact, be in favour of the petitioners, as the respondents have not definitively concluded that the Distillate Oil imported by the petitioners is, in fact, High Flame High Speed Diesel or a Diesel to an extent that it would change the nature of classification from Distillate Oil to Diesel. The petitioners cannot be discriminated in view of the communication dated 28.10.2025 written by the CRCL, Delhi, to the Assistant Commissioners of Kandla authorities relating to the similar parameters/characteristics which were found in the tests of the samples of Distillate Oil. However, at this stage, we may clarify that so far as the parameters/characteristics of Distillate Oil relating to cloud point are concerned, the Director of CRCL has already clarified that the relevance of cloud point would depend upon the climatic conditions of the area in which the same is used. Ultimately, it is clarified that if the Distillate Oil is a marine

fuel used in ships operating in colder weather conditions, the cloud point becomes relevant, and for other usages, the Cloud Point is not a significant parameter, and hence, it is further informed that the end use of the sample under reference may be ascertained.

26. Thus, there is no definite conclusion with regard to the cloud point, and it depends upon the vessel being operated in specific areas. At this stage, we may also refer to the characteristics of Indian Standards for petroleum products relating to Marine Fuel. The table annexed to the pour point/cloud point/cold filter plugging point for vessels operated by Distillate Marine Fuel stipulates that "Pour point cannot guarantee operability for all ships in all climates," and the purchaser should confirm that the cold flow characteristics (pour point, cloud point, cold filter plugging point) are suitable for the design of the ship and the intended voyage. Thus, the cargo imported by the petitioner cannot be ordered to be seized on the basis of the parameter of cloud point, as it will be relevant only at the place, vessel, and time of use, and will depend on the end user.



27. During the course of the hearing, the respondents have also tried to impress this Court by pointing out the infringement of other parameters also, i.e. density, kinematic viscosity, distillation-IBP, distillation recovery, distillation final boiling point, and flash point. However, we have noticed that so far as the parameter of density at 15°C is concerned, the same is satisfied by the petitioners' cargo, including kinematic viscosity, distillation-IBP, distillation recovery, distillation final boiling point, and flash point, since the Test Report does not indicate any violation of other parameters and is confined only to two characteristic, as mentioned hereinabove, i.e. Cloud Point parameter and observations that the Distillate oil has the characteristics of a diesel fraction with a small amount of heavier fraction of hydrocarbons. Hence, we are not inclined to further delve into the other parameters.

28. All the writ petitions **succeed**. The impugned Seizure Memos issued by the Intelligence Officer of the DRI are hereby quashed and set aside. The action of the respondent authorities in detaining the imported bulk liquid cargo of Distillate Oil through the respective vessels of the



petitioners, which is presently stored in Customs Bonded Storage at Pipavav Port, Amreli (Gujarat) is hereby quashed and set aside. We further direct the respondents to release the bulk liquid cargo of Distillate Oil imported through the vessels. We further clarify that, as done in the case of the cargo of Distillate Oil seized by the Kandla Customs authorities, the traders shall file an end-use certificate before the Custom authority. **RULE** is made absolute accordingly.

Registry to place a copy of this order in the connected matter(s).

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(PRANAV TRIVEDI, J)

NVMEWADA/S-2,3