NEUTRAL CITATION
2025:GUJHC:70262-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15106 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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M/S ARIHANT AGRO DISTILLATION AND LIQUID TERMINALS LIMITED
Versus
UNION OF INDIA & ORS.

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Appearance:
MR S SUNIL with PURNA KAM SINGH for JAIVIK UDAY BHATT(7319) for the Petitioner
MR PRADIP D BHATE(1523) for the Respondent(s) No. 1
MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 2,3,4,5,6,7,8

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 09/12/2025

ORAL JUDGMENT

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

1. Leave to amend the affidavit dated 09.12.2025 filed by the respondents is granted. Necessary amendment to be carried out forthwith.

2. Heard learned advocate Mr. S. Sunil appearing for the petitioner, Mr.Pradip D. Bhate for respondent No.1–Union of India, and learned Senior Standing Counsel Mr. Utkarsh Sharma appearing for respondent Nos. 2 to 8.

3. **RULE** returnable forthwith. Learned advocates appearing on behalf of the respondents waive service of notice of rule on behalf of the respective respondents. With the consent of the respective parties, the matter is taken up for hearing today itself.

4. Pursuant to the order dated 08.12.2025, learned Senior Standing Counsel Mr.Utkarsh Sharma appearing for the respondents has tendered an affidavit dated 09.12.2025, which is ordered to be taken on record.

5. This Court, vide order dated 14.11.2025, had issued notice and granted ad-interim relief in terms of paragraph No.7(D) of the memo of the writ petition. The entire case of the respective parties hinges on two Test Reports relating to the sample of the cargo Distillate Fuel Oil imported by the petitioner. It is reported that there are two Test Reports in the present case : the first is by Visakhapatnam Laboratory, drawn on 30.09.2025 by the Customs authority at Hazira Customs House, and another is by the Directorate of Revenue Intelligence (DRI), Jamnagar, for the sample, which was drawn on 08.10.2025. It is reported that the Test Report by Visakhapatnam Laboratory dated 23.10.2025 is in favour of the petitioner, whereas the Test Report dated 13.10.2025, which was received by the DRI, Jamnagar, from Visakhapatnam Laboratory, is against the petitioner.

6. The goods of the petitioner, i.e., Distillate Fuel Oil imported vide Bill of Entry No.4764589 dated 27.09.2025, were seized by the DRI, Jamnagar, vide a Seizure Memo dated 29.10.2025. The process of seizure of sample was carried out by the Customs authority at Hazira on 30.09.2025, which was sent for chemical examination to the Central Excise and Customs Laboratory at Vadodara vide Test Memo No.1302661 dated 30.09.2025. By the report dated 23.10.2025, the results were declared and it was opined that the Distillate Fuel Oil meets the requirements of Distillate Fuel Oil as per IS 16731/2019. However, it appears that thereafter the DRI, Jamnagar, collected the sample from the very same cargo on

08.10.2025 and sent it to the Visakhapatnam Laboratory on 10.10.2025, the results of which were received on 17.10.2025. The DRI, Jamnagar, opined that the sample does not comply with IS:16731 in respect of the cloud point and water content, and further it is opined that deliberate efforts were made to lower the flash point and elevate the recovery temperature for 95% beyond 370°so that the product does not meet the requirements of High Flash High Speed Diesel (HFHSD) (IS:16861). Thus, the issue raised in the petition falls in a very narrow compass.

7. It was vehemently contended by learned advocate Mr.S. Sunil appearing for the petitioner that the Lab Report of Vadodara cannot be discarded, having found that the samples met the requirements of the declared product. It was further contended, and as recorded in the earlier order dated 08.12.2025, that the sample which was sent to the Laboratory at Vadodara again by the DRI, Jamnagar, was in contravention of the provisions of Section 144 of the Customs Act, 1962 (for short “the Act”), as it was collected in the absence of the owner.

7.1. In pursuance of the earlier order dated 08.12.2025 as mentioned above, the respondent–Intelligence Officer filed an affidavit dated 09.12.2025, wherein it refers to the contents of the affidavit dated 04.12.2025 filed by the same officer. Since we had noticed irregularity in collecting the sample by the Customs Officer at Hazira and sending the same to the Vadodara Laboratory for testing, we had passed the order dated 08.12.2025 directing the deponent–Intelligence Officer to file a fresh affidavit pointing out the names of the officers who had collected the samples and had sent them to the Vadodara Laboratory.

7.2 Today, in the sealed cover, learned Senior Standing Counsel Mr.Utkarsh Sharma has pointed out the preliminary investigation report, in which the Department has sought clarification from the erring officers who were on duty and were assigned the functions of collecting the sample and sending it to the laboratory. On perusal of the investigation report, we find that the concerned officers have shrugged from their responsibilities in collecting the samples and have denied having collected the samples. One of the officer has named another officer; however, neither of the officers have admitted having collected the samples and sent them to the Vadodara Laboratory.

7.3 Be that as it may, we are not at this stage further commenting on the preliminary investigation report, as the investigation is in progress. Further, we find that while collecting the samples, the Customs authority at Hazira had forwarded the same to the Vadodara Laboratory, which ultimately was found in favour of the petitioner, being violative of the provisions of Section 144 of the Act. It is interesting to note that in the affidavit dated 09.12.2025, in paragraph No.6.4, the following statement is made :-

> *"6.4. Moreover, investigation carried out so far with the customs officials working at Hazira Customs reveal that the sample drawn and sent to CRCL Vadodara was not drawn in the presence of the proper office, therefore, as such it cannot be considered as an authentic sample especially in the context of the intelligence gathered by the DRI, therefore, there was a need to draw another representative sample."*

7.4 Thus, it is admitted on affidavit that the Customs Officials working at Hazira Customs Office, who had drawn the sample and sent it to the CRCL,Vadodara, had not drawn it in the presence of the proper officer and therefore, as such, the sample cannot be considered as an authentic sample, especially in the context of the intelligence gathered by the DRI. At this stage, we may refer to the provision of Section 144 of the Act, which reads as under :-

> *"**144. Power to take samples**.—(1) The proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.*
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> *(2) After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within three months of the date on which the sample was taken, it may be disposed of in such manner as the 1[Principal Commissioner of Customs or Commissioner of Customs] may direct.*
>
> *(3) No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof, 2***".*

7.5 The provision of Section 144 of the Act mandates that the proper officer may, at the entry or clearance of the goods or at any time, while such goods are passing through the customs area, take samples of such goods "in the presence of the owner thereof" for examination or testing or for ascertaining the value thereof or for any other purpose. Thus, the provision of Section 144 of the Act mandates that the proper officer has to draw the samples in the presence of the owner, which in fact was not done, while collecting the samples on both occasions, initially by the Customs Officer at Hazira and subsequently by DRI, Jamnagar.

8. When a specific query was raised to learned Senior Standing Counsel Mr.Utkarsh Sharma as to whether there is any other provision or any administrative instruction which enables the Customs Officers to draw the samples in the absence of the importer,

he is unable to satisfy the Court. Moreover, it is not in dispute that the affidavit mentions the name of the Director, Shri Chirag Arvind Khandor, Director of petitioner- M/s.Arihant Agro Distillation and Liquid Terminals, Mumbai, of the petitioner-Company, who is the importer. No attempts were made to gather details of any other Director, if any, in whose presence the samples could have been taken. It was always open for the officers of the DRI, Jamnagar, to collect the samples in the presence of the owner and send them to the Visakhapatnam Laboratory. As per the statement made hereinabove in paragraph No.6.4 of the affidavit dated 09.12.2025, the respondent-Department has not considered the samples collected by the Customs Officer at Hazira, which were drawn in the absence of the proper officer, as authentic samples; whereas simultaneously, the samples collected by the DRI, Jamnagar, on 08.10.2025 in the absence of the owner were considered authentic, as they were drawn in the presence of panch witnesses. No such procedure of drawing samples is prescribed under the Act. Thus, the respondents cannot approbate and reprobate by declaring the sample collected by the Customs Officer, Hazira, on 30.09.2025 as unauthentic, while treating the sample collected on 08.10.2025 by DRI, Jamnagar, in the absence of the owner as authentic. Thus, both samples collected by the Customs Officer, Hazira, and DRI, Jamnagar, on 30.09.2025 and 08.10.2025 respectively, fail the mandate of Section 144 of the Act, as they were collected in the absence of the owner.

9. Thus, since the initial sample was collected *de hors* the provision of Section 144 of the Act, it cannot be relied upon, and the subsequent Test Report issued by the Visakhapatnam Laboratory cannot be invoked for seizing the goods of the petitioner, as it will

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have no consequence, since at the first instance the samples collected were against the statutory provision of Section 144 of the Act.

10. In the result, the petition ***succeeds***. The sealed cover report is handed over to learned Senior Standing Counsel Mr.Utkarsh Sharma. The impugned action of the respondent in seizing the goods vide Seizure Memo F.No.DRI/JRU/INQ-07/2025-26 issued by the respondent authorities is declared to be illegal and the same is hereby quashed and set aside. The respondent authorities are directed to release the goods of the petitioner forthwith. We further clarify that the investigation may proceed and an appropriate report fixing the accountability of the erring officers shall be prepared, and necessary action, if required, under the relevant provisions or any Rules or Regulations or administrative instructions, shall be taken against them.

11. We further clarify that the petitioner shall file an undertaking before the Customs authority. It is further clarified that it will be open for the respondents to undertake the necessary exercise under the provision of Section 144 of the Act in the presence of the petitioner, to which the petitioner has no objection.

12. **RULE** is made absolute to the aforesaid extent. No order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

phalguni/Supl.1