CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 11585 OF 2025

[Arising out of CUS-SIIB-MISC-1023-2025-SIIB dated 06/11/2025 passed by Commissioner of CUSTOMS-AHMEDABAD]

PRAJAKT AGRO INDUSTRIES PVT LTD **Appellant**
Plot No. 705, GIDC, Sachin, Chorasi,
Surat, Gujarat-394230

Vs.

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

Appearance:
Shri Manish Jain, Advocate for the Appellant
Smt. Sunita Menon, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10024/2026

Date of Hearing : **12/01/2026**
Date of Decision : 19/01/2026

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the Provisional Release Order No. CUS / SIIP / MISC / 1023 / 2025- SIIP - O/O Commr.- CUS - Kandla dated 06.11.2025 through which the learned Commissioner, while exercising powers under Section 110A of the Customs Act, 1962 consequent upon seizure under Section 110, ordered provisional release of seized goods covered by Bills Of Entry No. 4614126 dated 19th September, 2025 and BOE No. 4638916 dated 21st September, 2025 in favour of the appellant M/s. Prajakt Agro Industries Ltd, subject to the conditions mentioned in para 7 and 8 of the impugned order. Prayer has been made that the conditions imposed by the learned Commissioner in the impugned order, being onerous and not in consonance with the judgment of Hon'ble Gujarat High Court in **Noya Infrastructures LLP & Ors** vs. **Union of India & Ors.** - 2025 (12) TMI 1026 – (Gujarat High Court) may be set aside / modified.

1.1 Brief facts of the case are that appellant imported Distillate Marine Oil classifying the same under CTH 2710 19 61 of the Customs Tariff Act, 1972, vide Bills of Entry No. 4614126 dated 19.09.2025 and NO. 4638916 dated 21.09.2025. According to the department, the subject goods contained diesel or High Flash High Speed Diesel *(HFHSD)*. According to the investigating agencies, HFHSD of IS 16861 is classified under CTH 2710 19 49, and its import is restricted and allowed through IOC, subject to para 2.21 of the Foreign Trade Policy.

1.2 The samples of the goods were sent for testing to CRCL Visakhapatanam and the same were examined by CRCL, Visakhapatnam, which subsequently issued two Test Reports dated 07.10.2025 and 09.10.2025. The findings of these reports are summarized as follows:

a) The sample does not meet the parameter of IS 16731-Distillate marine fuel in respect of **cloud point,** which is above -16 °C, which makes it unsuitable for application in marine fuels.
b) Samples were analysed on GC-MS, and GC-MS Data revealed that the sample has a carbon chain similar to the Diesel fraction.
c) Deliberate efforts have been made to lower the flash point, so that the product does not match the flash point requirements of HFHSD (IS:16861).

1.3 The Appellant filed a representation disputing the conclusion of the above-mentioned Test Reports and requested that the samples be referred to

CRCL, New Delhi. Vide letter dated 15.10.2025 and 04.11.2025, CRCL, New Delhi, stated as follows:

a) That GC- MS is used to identify the petroleum fractions when parameters do not fit a standard, and that it is not possible to ascertain whether deliberate mixing lowered the flash point.
b) Samples can be categorised as diesel fraction based on carbon chain and distillation range, and noted that whether the samples are more akin to HFHSD IS 16861 or Distillate Marine Fuel IS 16731 or any other middle distillate is of no consequence because all are diesel fractions
c) That the samples do not meet any one of the specific Indian Standards owing to deviations in one or more parameters.

1.4 On the basis of test reports issued by CRCL, Visakhapatnam, dated 07.10.2025 and 09.10.2025 the cargo containing the subject goods was seized under Section 110 of the Customs Act, 1962, by the Special Intelligence and Investigation Branch *("SIIB")*, Customs, Kandla, based on the suspicion that the subject goods are most akin to HFHSD IS 16861.

1.5 Aggrieved by the seizure, the Appellant filed an objection letter and sought provisional release of the subject goods. Commissioner of Customs, Kandla vide impugned Release Order dated 06.11.2025 has observed as follows:-

(i) That the sample reported by CRCL is not identical to HFHSD of IS 16861 for the limited purpose of considering provisional release u/s 110A.

(ii) That the CRCL Visakhapatnam finding that samples failed to meet IS 16731 requirements on cloud point and water content for DMX grade are not sustainable.

(iii) That for the tested parameters, both samples match fully with DMX-type Distillate Marine Fuel (IS 16731) under Customs TI 2710 19 61, and only partially with HFHSD (IS 16861) under Customs TI 2710 19 49 and therefore, **the balance of convenience lies in favour of the importer**. Ld. Commissioner of Customs, Kandla also observed that the sample reported by CRCL is not identical to HFHSD of IS 16861 for the limited purpose of considering provisional release u/s 110A. Despite the above observations, the Commissioner imposed arbitrary and unreasonable conditions for the provisional release of the subject goods. Commissioner has imposed few conditions for the provisional release of the subject goods which are as under:-

I. The importer shall furnish an End-use bond and undertaking to the effect that:-
    a. The goods shall not be used as Automotive Diesel (IS 1460) or HFHSD (IS 16861) or as a propulsion fuel on board vessels; use, if any, on board shall be limited to emergency generator/fire-pump engines, etc., consistent with SOLAS and as intended for DMX grade of IS 16731;
    b. In case the goods are sold to any other buyer, the responsibility to ensure that goods will be used in the same manner as specified in (a) above will be on importer and appropriate documents at the end of the buyer will be maintained demonstrating end use.
    c. The importer and the buyer shall maintain batch-wise accounts of storage, processing, and consumption of the provisionally released goods and shall produce the accounts on demand by the investigating officer.

II. Apart from the end-use condition, other conditions will be as follows
    a. Execution of the bond by the importer for 100% of the assessable value of the seized goods, securing production of the goods or their-value.

b. Bank guarantee for 10% of the assessable value to cover fine, penalty, and any differential duty that may arise upon adjudication in case of misclassification is proved. For now, the importer will be paying the duty applicable to Distillate Marine Oil before taking the provisional release. The guarantee shall be valid for 12 months and shall be renewable until the conclusion of adjudication.

c. Representative samples already drawn shall be preserved, and one more set of samples of sufficient quantity will be drawn and preserved before taking provisional release of the goods.

1.6 Appellants complied with conditions contained in provisional release order and *inter alia* furnished two bank guarantees no. 0022525BG044277 dated 10.11.2015 and 0022525FBG042895. However, appellants challenged the above conditions of provisional release by way of this appeal.

2 Learned Counsel for appellants submitted that the purported basis for seizure is an alleged deviation under a single parameter, i.e., Cloud Point (Maximum) which, as per IS 16731:2019, is not a determinative or mandatory specification for the classification of goods as "Distillate Marine Fuel." The reliance on one non-essential specification while ignoring compliance with all other mandatory parameters reflects clear non-application of mind and constitutes a legally impermissible basis for seizure under Section 110.

2.1 He further submitted that the present issue is squarely covered by the decisions of the Hon'ble Gujarat High Court in the case of **Noya Infrastructure LLP & Ors.** Vs. **Union of India & Ors**, 2025 (12) TMI 1026 – (GUJARAT HIGH COURT) and **Aparajita Energy Private Limited** Versus **Union of India**, 2025 (12) TMI 1025 – (GUJARAT HIGH COURT). He, therefore, submitted that the seizure of goods and harsh conditions for provisional release are bad in law.

2.2 He submitted that for purpose of seizure of goods, department has relied on Test Report by CRCL, Vishakhapatnam, which had concluded that the sample does not meet the parameter of IS 16731-Distillate Marine Fuel in respect of cloud point, which makes it unsuitable for application in Marine Fuels. Department alleged that Test Reports dated 07.10.2025 and 09.10.2025. indicate that the cloud point of the samples is -6°C and -10°C, and does not meet the parameter of IS 16731-Distillate Marine Fuel, which is above -16 °C.

2.3 He further submitted that the cloud point of the sample depends on the climatic conditions of the area in which the fuel has to be used. Thus, subject goods cannot be seized merely on the basis of the parameter of cloud point. In this regards he relied upon decision in case of ***Aparajita Energy Private Limited*** *Versus* ***Union of India,*** *2025 (12) TMI 1025 – (GUJARAT HIGH COURT) and* ***Noya Infrastructure LLP & Ors.*** *Vs.* ***Union of India & Ors****, 2025 (12) TMI 1026 – (GUJARAT HIGH COURT)* wherein Hon'ble Court held that 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.

2.4 He further submitted that in above decisions Hon'ble High Court of Gujarat held that Seizure Memos issued by the Intelligence Officer of the DRI are hereby quashed and set aside and it was clarified that, the traders shall file an end-use certificate before the Customs Authority. He further submitted that above decisions of Hon'ble Gujarat High Court are on identical issue and for identical products and are binding on CESTAT, Ahmedabad and based on the above decisions of Hon'ble Gujarat High Court, similarly placed importers have got release orders from Customs without furnishing bank guarantees and undertakings. Thus, similarly placed appellant cannot be discriminated.

2.5 He further submitted that Commissioner vide impugned order has observed that the sample of the subject goods is "most akin" to the DMX-type Distillate Marine Fuel (IS 16731) on the parameters tested by CRCL, Visakhapatnam. Thus Commissioner of Customs ought to have released goods without requiring Bank Guarantee and any End Use Undertaking. He further submitted that Test Reports of CRCL, Visakhapatnam, dated 07.10.2025 and 09.10.2025 do not cover all parameters, and their opinion is not definitive.

3. Learned Authorised Representative for the department at the very outset, submitted that the goods involved in this case are having value of more than Rs. 50 lacs, therefore, the matter may be heard by the Division Bench. On the other hand, the learned Counsel for the appellant cited the order passed by CESTAT Allahabad in M/s. **BP Wire Industry** vs. **Commissioner of Customs (Preventive), Lucknow** – 2025 (7) TMI 89 – CESTAT Allahabad in which this Tribunal has held that provisions of Section 110 A and 111 of the Customs Act, 1962 operates into different fields in as much as Section 110 mandates seizure of the goods for the reason that the goods are liable for confiscation and Section 110A mandates provisional release of the seized goods pending adjudication. A separate provision in Section 111 deals with confiscation of inappropriately imported goods for the conditions mentioned in the said Section. The Tribunal observed that present case is not a case under Section 111 instead is a case pertaining to Section 110A of the Customs Act, 1962. The Tribunal further held that in the present case, adjudication proceedings had not been concluded and the order of confiscation has not been passed yet. The Tribunal held that it is a case of provisional release of goods under Section 110A by imposing certain conditions, hence the matter can be heard by Single Member Bench. The learned Counsel for the appellant prays that in view of the order passed in **M/s. BP Wire Industry** vs. **Commissioner of Customs (Preventive), Lucknow** (supra), the matter may be heard by Single Member Bench. I agree with the

learned Counsel for the appellant and I am of the view that this matter may be heard by Single Member Bench.

3.1 The learned AR has reiterated the impugned order passed by the Commissioner. She further submitted that though the Commissioner has ordered provisional release of goods but imposed certain conditions as mentioned in para 7 and 8 of the impugned order. She further submitted that the Tribunal should uphold the conditions mentioned in the para 7 and 8 of the impugned order.

4. I have heard both sides and perused the record. The appellant in the present case has challenged the conditions for provisional release of goods imposed by Commissioner of Customs vide impugned order. The issue to be decided in this appeal is whether the conditions imposed the Commissioner in the impugned provisional order are proper and sustainable or the conditions are not in consonance with the order / judgment of Hon'ble Gujarat High Court passed in similar matter.

4.1 It is pertinent to mention here that Ld. Commissioner vide impugned order has not agreed with the allegations of investigating agencies and he has observed that the finding of CRCL Visakhapatnam that samples failed to meet IS 16731 requirements on cloud point and water content for DMX grade are not sustainable. He further held that for the tested parameters, both samples match fully with DMX-type Distillate Marine Fuel (IS 16731) under Customs TI 2710 19 61, and only partially with HFHSD (IS 16861) under Customs TI 2710 19 49 and therefore, **the balance of convenience lies in favour of the importer.** Ld. Commissioner of customs also held that the sample of the subject goods is "most akin" to the DMX-type Distillate Marine Fuel (IS 16731) on the parameters tested by CRCL, Visakhapatnam.The relevant para of the Impugned order is extracted below:

> *"6. And now, it brings us back to the question whether the aforesaid diesel fraction is more akin to HFHSD of 16861 or Distillate Marine Oil of IS 16731. The Hon'ble Supreme Court judgment in* ***Gastrade International*** *case has laid down that when a product such as oil does not fully satisfy the named standard, the correct test is "most akin" test which must be based on appropriate scientific evidence."*
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> *…..*
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> *"Further, the Hon'ble Supreme Court in* ***Gastrade International*** *has held that when expert material does not cover all parameters and the opinion is not definitive, conclusions adverse to the importer cannot be sustained.* ***Furthermore, if by a stretch, one applies most akin test in respect of the parameters which have already been tested and clarified by CRCL Visakhapatnam and Delhi for the limited purpose of provisional release, I find that for the tested parameters, both samples match fully with DMX-type Distillate Marine Fuel (IS 16731) under Customs TI 2710 19 61 and only partially with HFHSD (IS 16861) under Customs TI 2710 19 49 - see Table- 1 under para 3.1 and Table-2 under para 5.4 - and therefore balance of convenience lies in favour of importer.*** *For the sake of clarity. I may add here that the balance of convenience needs to be ascertained for all such individual cases and it will depend upon then unique test results and other circumstances applicable to each such case."*

4.2 The only case of Investigating Agency for seizure of goods is that test reports dated 07.10.2025 and 09.10.2025, indicate that the cloud point of the samples is -6°C and -10°C, and does not meet the parameter of IS 16731-Distillate Marine Fuel, which is above -16 °C.I agree with submissions of the appellant that the purported basis for seizure is an alleged deviation under a single parameter, i.e., Cloud Point (Maximum) which, as per IS 16731:2019, is not a determinative or mandatory specification for the classification of goods as "Distillate Marine Fuel." The reliance on one non-essential specification while ignoring compliance with all other mandatory parameters appears improper.

4.3 I find that on this aspect issue is squarely covered in favour of appellant in case of ***Aparajita Energy Private Limited*** *Versus* **Union of India,** *2025 (12) TMI 1025 - GUJARAT HIGH COURT,* wherein it is held as under:

> *"17. **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 Degree Celsius, i. e. -11°C, whereas in the case of the petitioner it is -4. 6. 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 petitioner 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**. 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."***

(Emphasis Supplied*)*

4.4 In case of ***Noya Infrastructure LLP & Ors.*** *Vs.* ***Union of India & Ors,*** *2025 (12) TMI 1026 - GUJARAT HIGH COURT,* Hon'ble High court held as under:

> ***"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.***
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> ***....***
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> ***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.***
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> ***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."

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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.* ***<u>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,</u>*** *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.* ***<u>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.</u>***

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).

(Emphasis Supplied)

4.5 I have been informed that the Respondent have already followed the decision of Hon'ble High court of Gujarat and allowed provisional release of goods to other importers without requiring any bank guarantee or directing to follow any harsh conditions for provisional release of goods.

4.6 In view of above, I have arrived at the conclusion that the conditions imposed for provisional release of goods vide impugned order are not sustainable. Two bank guarantees, furnished by appellant are liable to be discharged. Other conditions of provisional release are liable to be modified as per above decision of Hon'ble Gujarat High Court passed in **Noya Infrastructure** case (supra).

5. The appeal is disposed in above terms.

(Order pronounced in the open Court on 19.01.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Dharmi