CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 10032 OF 2026

[Arising out of CUS/18054/2025-SIIB-O/o Commr-Cus-Kandla dated 12/01/2026 passed by the Assistant Commissioner SIIB CH. Kandla with the approval of Commissioner of Customs, Central Excise & Service Tax]

MAHARASHTRA OIL MILL **Appellant**
M-27 1st Floor Dana Bunder, Phase II APMC Marker,
Navi Mumbai, Maharashtra, 400703

Vs.

COMMISSIONER OF CUSTOMS-COMMISSIONER OF CUSTOMS-KANDLA **Respondent**
Customs House, Near Balaji Temple, Kandla,
Ahmedabad, Gujarat-370210

Appearance:
Shri Manish Jain, Advocates for the Appellant
Shri Himanshu Nachane, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 10062/2026

Date of Hearing : 27/01/2026
Date of Decision : 04/02/2026

Dr. AJAYA KRISHNA VISHVESHA

This appeal has been filed by the appellant against the impugned provisional release letter / order F. No. CUS/18054/2025-SIIB % Commr.-Cus-Kandla dated 12th January, 2026 issued by the Assistant Commissioner, SIIB, CH, Kandla with the approval of Commissioner of Customs, Kandla. Wherein, the learned Assistant Commissioner of Customs has allowed the provisional release of the seized goods under Section 110A of the Customs Act subject to certain conditions.

1.1 The facts of the case in brief are that as per CRCL, Vadodara vide Test reports dated 01.08.2025 subject goods meet the requirements of High Flash High Speed Diesel (HSD) as per ISI 16861:2018 based on test parameters such as Flash Point, Kinematic Viscosity, Distillation Range, Sulphur Content, Cetane Index etc. High Speed Diesel is a restricted/ regulated petroleum product as per the provisions of Foreign Trade Policy and other applicable laws. In view of the above, the subject goods were seized by the Department vide Seizure Memo dated 09.09.2025. On request of appellant for provisional release of goods under section 110A of the Customs Act, the Commissioner vide impugned order/ communication has permitted provisional release of goods subject to following conditions which are subject matter of challenge in the present case.

i. *Execution of bond equal to the value of the goods;*
ii. *Furnishing of bank guarantee equal to 50% of the value of the goods;*
iii. *Submission of an undertaking that the importer shall co-operate in investigation and adjudication proceedings;*
iv. *Re- export to be carried out under Customs supervision and within a stipulated time period;*

2. Learned Counsel for the appellant submitted that CRCL test reports are inconclusive and insufficient for determining the correct nature of the goods. It has tested only 6 parameters, which as per, IS: 1681: 2018, is not a determinative and mandatory specification for the classification of goods as "HSD". The reliance on some specification while ignoring compliance with other mandatory parameters constitute legally impermissible basis for seizure. In this regard, he placed reliance upon decision in **Gastrade International v. Commissioner of Customs, Kandla-** 2025 (392) ELT 529 (SC). He also placed reliance on the Provisional Release Order CUS/SIIB/MISC/1O23/2O25-

SIIB-O/O Commr-Cus-Kandla dated 06.11.2025 passed by the learned Commissioner of Customs, Kandla wherein it was held that 16 parameters mentioned in IS standards need to be tested.

2.1 He further submitted that in the present case, impugned Bills of Entry contain 54 containers under which goods were imported but only few samples were taken. Thus the samples are not representative and test reports based on non-representative samples are not reliable in the present case. In this regard reliance is placed on following decisions:

(a) **Tata Chemicals Ltd.** v. **Commissioner** — 2015 (320) E.L.T. 45 (S.C.)
(b) **Sandur Manganese and Iron Ores Ltd.** v. **Commissioner** — 2007 (218) E.L.T. 291 (Tribunal)
(c) **Sandur Manganeze and Iron Ores Ltd.** v. **Commissioner** — 2004 (177) E.L.T. 1094 (Tribunal)

2.2 Learned Counsel for the Appellant further submitted that penalty and redemption fine is not imposable in the present case as declaration of goods was based upon documents supplied by foreign suppliers i.e. Invoice, Analysis Certificate, Packing List etc. If the goods would have been HSD even then penalty and fine were not imposable in the present case. He relied upon following decisions in this context.

a) **Reha Impex** vs. **CC** – 2016 (332) ELT 835 (Tri)
b) **HCL Comnet System & Services Ltd.** Vs **CC** - 2003 (158) ELT 349 (Tri)
c) **CCE** vs. **Met Trade (India) Ltd.**- 2015 (318) ELT 131

2.3 Learned Counsel for the appellant further submitted that since there is order for re-export of imported goods, redemption fine is not imposable. In this regard, he relied upon following decisions:

a) **Siemens Limited** vs. **CC** - 1999 (113) ELT 776 (SC)

b) **Selvam Industries Ltd.** vs. **CC** - 2021 (377) ELT 392

c) **Sankar Pandi** vs. **UOI** – 2002 (141) ELT 635 (Mad)

2.4 Learned Counsel for the appellant further submitted that imposing condition of furnishing bank guarantee to the tune of 50% of the value of goods is a heavy financial burden, particularly when the liability of fine and penalty itself is disputed. He has further submitted that on the identical issue, in the case of **Prajakta Agro Industries Pvt. Ltd**, the Commissioner vide Provisional Release Order No. CUS/SIIB/MISC/1O23/2O25-SIIB-O/O Commr-Cus-Kandla dated 06.11.2025, imposed condition of furnishing bank guarantee to the tune of 10% of the assessable value of the goods for provisional release of the goods. He has further relied upon decision in case of **SPA Vet-Min Pvt Ltd** vs. **UOI** - 2015 (318) ELT 394 (Guj HC).

3. Learned Authorized Representative for the department submitted that since the test report is not reliable, as only six parameters are tested, goods may be sent for retesting. He further submitted that conditions imposed in impugned Provisional Release Order are legally valid.

4. I have heard arguments from both the sides. At this stage, issue pertains to legality of the conditions imposed under Provisional Release Order of goods under Section 110A of the Customs Act. I find that on the similar issue, Commissioner of customs, Kandla has permitted release of goods in domestic market on furnishing of Bank Guarantee of 10% of the value of goods and on furnishing bond of 100% value of goods. In view of the above facts, I am of the view that department cannot have discriminatory approach and it should have consistent and uniform approach while imposing conditions on provisional release of goods under Section 110A of the Customs Act. In the present case,

imported goods are being re-exported and are not to be cleared in domestic market and appellant has submitted Analysis Report furnished by the foreign supplier. Hon'ble Gujarat high court in **SPA Vet-Min Pvt Ltd** vs. **UOI** - 2015 (318) ELT 394 (Guj HC) has held as under; which is relevant here.

> ***"The need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievance of discriminating treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is assurance of consistency, uniformity, predictability and certainty of judicial approach*******

In view of the above observations of the Hon'ble Court, I am of the view that when the learned Commissioner of Customs, Kandla has in similar circumstances relating to similar subject goods on the identical issue vide provisional release order no. CUS/SIIB/MISC/1023/2025-SIIB-O/O Commr-Cus-Kandla dated 06.11.2025, imposed conditions of furnishing bank guarantee to the tune of 10% of the assessable value of the goods for provisional release of the goods then, imposition of condition of furnishing of bank guarantee equal to 50% of the value of goods for provisional release does not appear to be just and proper and for ensuring consistency, uniformity, predictability and certainty of approach, it appears proper that instead of imposition of condition for furnishing of bank guarantee equal to 50% of the value of the goods, the appellant be directed to furnish bank guarantee equal to 10% of the value of the goods.

4.1 In view of the above discussion, the appeal deserves to be allowed and the impugned order for provisional release must be modified. Thus, Provisional release of the seized goods for re-export is allowed subject to the following conditions:-

a) Execution of bond equal to the value of the goods;

b) Furnishing of bank guarantee equal to 10% of the value of the goods;

c) Submission of an undertaking that the importer shall co-operate in investigation and adjudication proceedings;

d) Re- export to be carried out under Customs supervision and within a stipulated time period;

5. Consequently, the appeal is partly allowed in above terms and impugned order is modified to the above extent.

(Order pronounced in the open Court on 04.02.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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