	प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा **OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH** **MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421** ई-मेल/ E-Mail: adj-mundra@gov.in	
A	फा /.सं .FILE NO.	GEN/ADJ/ADC/785/2026-Adjn-O/o Pr Commr-Cus-Mundra
B	मूल आदेश सं. ORDER-IN- ORIGINAL NO.	MCH/ADC/ZDC/209/2026-27
C	द्वारा पारित किया गया PASSED BY	**Dipak Zala,** Additional Commissioner of Customs, Custom House, Mundra
D	आदेश की तिथि DATE OF ORDER	01-07-2026
E	जारी करने की तिथि DATE OF ISSUE	01-07-2026
F	कारण बताओ नोटिस संएवं तिथि . SCN NO. & DATE	70/2026-27/ADC/ZDC/MCH dated 02.06.2026
G	नोटिसीपार्टी / आयातक/ NOTICEE/PARTY/ IMPORTER	M/s Himay Bizcon Agripetro LLP (IEC: AAPFH9483F)

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
   Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

   "सीमा शुल्क आयुक्त) अपील(, चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद 380009"

   "The Commissioner of Customs (Appeals), Mundra, 4TH Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009."

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
   Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए -
   Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं°-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।
   The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।
   While submitting the appeal, the Customs (Appeals) Rules, 1982 and the Customs Act, 1962 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (Appeals) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

1.1 M/s Himay Bizcon Agripetro LLP (IEC: AAPFH9483F), having its registered office/principal place located at Plot No. 258, Sector 1A, Gandhidham-370201(hereinafter referred to as the *"Importer")*, imported goods vide Bill of Entry No. 4855799 dated 01.10.2025 at Customs House Mundra**.**

1.2 Specific intelligence gathered by the Directorate of Revenue Intelligence (DRI) indicated that the aforesaid consignment imported by M/s. Himay Bizcon Agripetro LLP lying at Mundra Port and declared as **"**Industrial Oil" under CTH 27101990**,** were mis-declared with respect to their description and nature, with the deliberate intent to clear prohibited/restricted goods.

The details of the import consignment are as follows:

Table-I

	Details of Bill of Entry
Bill of Entry No.	4855799 dated 01.10.2025
Bill of Lading No.	RSTJEAMUN25000148
Declared Goods in BE	Industrial Oil
Declared Quantity	200450 (in KGS)
Customs Broker	M/s Airtrax Freight Logistics
Country of Origin	UAE
Supplier	M/s Prime Petroleum FZC, Sharjah, UAE

1 . 3 Based on the aforesaid intelligence, the consignment imported by M/s. Himay Bizcon Agripetro LLP lying at Mundra Port and declared as "Industrial Oil" under CTH 27101990 were put on hold by the DRI vide email dated 08.10.2025.

2. Examination and drawl of Samples:

The examination of aforesaid consignment was conducted by the DRI under panchnama dated 09.10.2025 at Mundra Port, in the presence of the authorized representative of the Customs Broker appointed by the importer. During the said examination proceedings, representative samples, in duplicate, were drawn from each of the 10 containers, for laboratory testing to ascertain the exact nature of the import goods in the said consignment.

3. Testing of the Samples:

3.1 The 10 samples drawn from the containers covered under Bill of Entry No. 4855799 dated 01.10.2025 were sent to Custom House Laboratory, Visakhapatnam for testing vide Test Memos No. 252/2025 to 261/2025 dated 16.10.2025.

3.2 The laboratory subsequently submitted their test reports reference Lab No. 180 to 189-DRI, vide report dated 21.11.2025 in respect of Bill of Entry No. 4855799 dated 01.10.2025.

3.3 The test reports in respect of all 10 samples pertaining to Bill of Entry No. 4855799 dated 01.10.2025, based on the parameters tested by the Custom House Laboratory, indicated that all the samples conform to the stringent parameters of Automotive Diesel Fuel. Since all the samples yielded similar findings, the report in respect of Lab No. 184-DRI is reproduced hereunder for illustration:

- ***The sample meets all the stringent parameter of Automotive diesel fuel as mentioned in IS:1460:2025 except flash point (which is 13°C Lower than required, decreased by means of using Lighter hydrocarbon) …..***

- ***The GCMS pattern of sample shows presence of lighter hydro carbons (below 2%), which cannot be part of Diesel fuels, as per standard refinery protocol & classification of petroleum fuels. Minor deviation from the required values of above 02 parameters, does not effects its application as diesel fuel for Automotive purpose).***

- ***The sample is adulterated diesel in respect of the definition of "adulteration" as mentioned in 5.1 of marketing discipline guideline published by PSU's***

- ***There is no specification available for industrial oil in National & International standards.***

- ***The sample also meets the specification of HFHSD (IS 16861) up to the extent of parameter tested above except, flash point which was lowered by using lighter hydrocarbons and distillation recovery at 370°C***

3.4 For parameters not covered in the Custom Laboratory's Vishakhapatnam testing, additional samples were forwarded to Mangalore Refinery and Petrochemicals Limited (MRPL) vide Test Memo No. 945/2025 dated 07.03.2026 in respect of Bill of of Entry No. 4855799 dated 01.10.2025 respectively, to ensure comprehensive testing of all specifications under IS 1460, as mandated by the Hon'ble Supreme Court in ***Gastrade International v. Commissioner of Customs, Kandla.***

3.5 The Mangalore Refinery and Petrochemicals Limited (MRPL) has submitted their reports vide letter dated 16.04.2026.

The findings of the aforementioned Test Reports are reproduced below:

Table-II

Sl. No.	Bill of Entry No. & Dated	Quantity	Declared Description	Sample Test Result	IS Standards
01.	4855799 dated 01.10.2025	200450 KGs	Industrial Oil	Conform to the parameters of Automotive Diesel Fuel (ADF)	IS 1460:2025

4. Search Proceedings:

4.1 The officers of DRI conducted a search on 11.02.2026 at the premises of the importer M/s. Himay Bizcon Agripetro LLP., situated at Plot No. 258, Sector 1A, Gandhidham-370201, under Panchnama dated 11.02.2026. During the proceedings, several email exchanges of Diesel imports were recovered, however the same pertained to past years and not directly linked to the current consignments.

5 . Whereas, detailed analysis of the MRPL Test Report indicates that the samples meets all parameters (*including Distillation recovery*) of Automotive Diesel Fuel (IS 1460:2025) except for two parameters, namely Flash Point and Sulphur. Therefore, the Test Reports highlighted in **Table-II** above suggested that the goods imported meets the requirements of Automotive Diesel Fuel (ADF) conforming to standard IS 1460:2025

5.1 Further, the specifications of Automotive Diesel Fuel (ADF) as per IS 1460 of the Bureau of Indian Standards (BIS) are reproduced below:

Table 1 Requirement for Automotive Diesel Fuel

(*Clauses* 3.1.4, 3.2 *and Foreword*)

Sl No.	Characteristic	Requirement	Method of Test, Ref to Parts of IS 1448 ISO/EN/Annex
(1)	(2)	(3)	(4)
i)	Appearance	Clear, bright and free from sediments, suspended matter and undissolved water at normal ambient fuel temperature	Visual
ii)	Total Acid Number (TAN), mg of KOH/g, *Max*	0.20	(Part 2)[8]
iii)	Ash, percent by mass, *Max*	0.01	(Part 4/Sec 1)[8]
iv)	Carbon residue, on 10 percent residue[1], percent by mass, *Max*	0.30	(Part 8)[8] /(Part 189)
v)	Cetane number, *Min*	51[2]	(Part 9)[8]
vi)	Cetane index, *Min*	46[2]	(Part 174)[8]
vii)	Pour point[3], °C, *Max*:		(Part 10/Sec 2)[8]
	a) Winter	3	
	b) Summer	15	
viii)	Copper strip corrosion for 3 h at 50 °C, *Max*	Class 1	(Part 15)[8]
ix)	Distillation, 95 percent *v/v* recovery, °C, *Max*	360	(Part 18)[8]/ISO 3405

Table 1 (*Concluded*)

Sl No.	Characteristic	Requirement	Method of Test, Ref to Parts of IS 1448 ISO/EN/Annex
(1)	(2)	(3)	(4)
x)	Flash point, Abel[4], °C, *Min*	35	(Part 20)[8]
xi)	Kinematic viscosity, mm^2/s, at 40 °C	2.0 to 4.5	(Part 25/Sec 1)[8]/(Part 186)
xii)	Total contamination, mg/kg, *Max*	24	EN 12662[8]
xiii)	Density at 15 °C, kg/m^3	810 to 845[5]	(Part 16)[8] /(Part 32)/(Part 167)
xiv)	Total sulphur, mg/kg, *Max*	10	(Part 160)[8]/(Part 34)/ (Part 161)/(Part 159)
xv)	Water content, mg/kg, *Max*	200	(Part 182)[8]
xvi)	Cold Filter Plugging Point (CFPP)[3], °C, *Max*:		(Part 110)[8]
	a) Winter	6	
	b) Summer	18	
xvii)	Oxidation stability[6], g/m^3, *Max*	25	(Part 154)[8]
	Oxidation stability[6], minutes, *Min*	60	EN 16091[12]
xviii)	Oxidation stability (for diesel fuel having FAME content of above 2 percent *v/v*), hours, *Min*	20	EN 15751[8]
	Oxidation stability (for diesel fuel having FAME content of above 2 percent *v/v*), minutes, *Min*	60	EN 16091
xix)	Polycyclic Aromatic Hydrocarbon (PAH), percent by mass, *Max*	8	EN 12916[8]
xx)	Lubricity, wear scar diameter (wsd) at 60 °C, µm, *Max*	460	(Part 149)[8]
xxi)	FAME content[7], percent *v/v*, Max	7.0	Annex B[8]

5.2 And whereas on analysis of the parameters detailed in the Test Reports vis-a-vis the parameters stipulated in the BIS standards of IS 1460, it appears in accordance with the intelligence, that goods being imported under aforesaid Bill of Entry appears to be mis-declared and following conclusion appears to flow from the analysis.

Table-III

Sr No	Bill of Entry No.	Quantity	Product description as per analysis of Test Report (CRCL+MRPL)
1	4855799 dated 01.10.2025	200450 KGs	Automotive Diesel Fuel (ADF) conforming to Standards IS 1460:2025

5.3 As per Customs Tariff Act, it appears that the goods found as Automotive Diesel Fuel (ADF))conforming to standard IS 1460:2025 are classifiable under CTH 27101944.The relevant descriptions of the above mentioned CTHs as per the Customs Tariff Act are as below:

HS CODE (1)	ITEM DESCRIPTION (2)	UNIT (3)	BASIC (4)	EFFECTIVE (5)	PRE. (6)	IGST (7)	SWS (8)	TOTAL (9)	POLICY (10)	REMARKS (11)
2710 19 43	---- Light diesel oil conforming to standard IS 15770	kg.	5.00	5.00	---	18.00	0.50	24.490	State Trading Enterprises	*Import as per Policy Condition (5) of Chapter 27*
2710 19 44	---- Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460	kg.	2.50	2.50	---	14% + Rs. 15 per litre	0.08		State Trading Enterprises	*Import as per Policy Condition (5) of Chapter 27 SWS - 3% by Ntfn 12/2018-Cus.*

Further, as per ITC(HS), 2022, Schedule 1: Import Policy, Section V: Mineral Products, Chapter 27: Mineral Fuels, Mineral Oils And Products Of Their Distillation; Bituminous Substances; Mineral Waxes: Goods falling under the description of "Automotive Diesel Fuel (ADF) conforming to standard IS 1460", the import policy makes the goods restricted by way of importation by State Trading Enterprises only by virtue of Policy Condition No. 5 which prescribes "Import allowed through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before this date". The screenshots of the relevant extracts:

Sl.No.	Notes	Notification No.	Notification Date
1	Import of naphtha is free.		
2	Import of SKO shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL and IBP for all purposes with STC being nominated as a State Trading Enterprise (STE) for supplies to Advance Licence holders. Advance Licence holders shall however, have the option to import SKO from the above mentioned STEs including STC		
3	Import is restricted in terms of Interim PIC Procedure of Rotterdam Convention on Prior Informed Consent procedure for hazardous chemicals and pesticides.		
4	Automobile industries, having RandD registration, are allowed to make free import of reference fuels (Petrol and Diesel) which are not manufactured in India, up to maximum of 5 KL per annum, subjects to the condition that the said imported reference fuels shall be used for RandD and emission testing purposes only		
5	Import allowed through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before this date.	08/2023	29/05/2023
6	Import of pet coke for fuel purpose is prohibited. However, import of Pet coke of the following categories shall be permitted, subject to conditions : a. Import of Pet coke is free for cement, lime kiln, calcium carbide, gasification industries and graphite electrodo industries for use as feed stock or in the manufacturing process only on Actual User basis. b. Total import of 1.9 Million MTs of Raw Petroleum Coke(RPC) for manufacturing Calcined Petroleum Coke(CPC) and 0.5 Million MTs of CPC for Aluminium Industry respectively shall be permissible during 2024-25, and 1.9 Million MTs of RPC for manufacturing CPC Manufacturing and 0.8 Million MTs of CPC for Aluminium Industry respectively shall be permissible from 2025-26 onwards, subject to the following conditions: i. Import of RPC & CPC shall be permitted only as a feedstock / raw material and under no circumstances shall be used as fuel. ii.Import of RPC and CPC shall be permitted to cater entirely to the domestic needs of aluminium	27/2024-25	04/09/2024

6 <u>Confiscation and Seizure</u>:

6.1 As per the test results above, it is evident that the importer had imported restricted petroleum products, by mis-declaring the same as “Industrial oil”. The Custom Laboratory reports confirmed that the goods imported vide Bill of Entry No. 4855799 dated 01.10.2025 was in fact Automotive Diesel Fuel, which is

restricted for import into India, and permissible only subject to Condition No. 5 of Chapter 27 of ITC(HS), 2022, Schedule 1 Import Policy issued by DGFT. Therefore, having a reasonable belief that the goods in **Table No-II** above, were liable to be confiscated under the provisions of the Section 111 of the Customs act, 1962, the same were placed under seizure as per the provisions of Section 110(1) of the Customs Act, 1962 vide seizure memo dated 24.11.2025**.**

7 . During investigation, statements of following person were recorded under Section 108 of the Customs Act, 1962, which are briefly discussed herein-below:

7.1 Statement of Shri Jain Surendra Fulchand, Partner of M/s. Himay Bizcon Agripetro LLP, Gandhidham was recorded on 17.12.2025, wherein he interalia stated that: *(English translation)*

- On being asked about the authorized signatory of the firm, he stated that he himself, Mr. Jain Surendra Fulchand, is the authorized signatory for issuing sales invoices and purchase orders, and that he alone is responsible for the firm's operations.

- On being asked about order placement and communication with foreign suppliers, he stated that he himself places all import orders and deals directly with foreign suppliers. He further stated that communication is generally through telephonic calls, and documents such as invoices, packing lists, certificates of origin, and analysis certificates are received via WhatsApp from Mr. Paramjit Singh of Dubai.

- On being asked to produce messages or emails relating to import consignments, he stated that he takes printouts of the messages and deletes them thereafter.

- On being asked about negotiations with foreign suppliers, he stated that he alone negotiates terms with suppliers, generally through telephone calls. He further stated that he visited Dubai once for a meeting, but thereafter all orders were placed telephonically.

- On being asked about remittances and payment terms, he stated that he alone is responsible for negotiating and making payments to foreign suppliers. He further stated that payments are made in instalments—at the time of order, at dispatch, and before final delivery at the port. He cited BE No. 4855799 dated 01.10.2025 as an example, where remittance was made through ICICI Bank.

- On being asked about classification of imported goods, he stated that goods are classified under customs tariff with guidance from the CHA, and the product was classified under CTH 27101990.

- On being asked about dealings with domestic buyers and advertisement of products, he stated that he alone is responsible for all activities including sales and purchases. He further stated that the sales team contacts trading partners by phone, takes purchase orders, and supplies goods under agreed payment terms.

- On being asked about contracts with domestic buyers, he stated that there are no written contracts and dealings are entirely through telephone communication.

- On being asked about specifications of imported industrial oil, he stated that purchase orders are received from buyers over the phone for hydrocarbon supplies, referred to as industrial oil. He further stated that he does not have detailed knowledge of the product composition, and that foreign suppliers provide commercial invoices with HSN 27101990 and analysis certificates, based on which Bills of Entry are filed. He added that there is no IS standard for "industrial oil," and in his understanding, any petroleum product outside Indian Standards is considered industrial oil.

- On being asked about classification of other hydrocarbon oils, he stated that in his understanding, hydrocarbon oils without IS standards can be classified under HSN 27101990.

- On being asked about specifications ordered from foreign suppliers, he stated that orders are based on buyers' demand, and that their buyers are limited/fixed.

- On being asked to provide literature supporting classification of goods under BE No. 4855799 dated 01.10.2025 as industrial oil, he stated that imports are based on buyer/market demand, and that no such supporting documents are available.

- On being asked how specifications were determined without IS standards, he stated that he has no knowledge about this.

- On being asked about CRCL lab report for BE No. 4855799 dated 01.10.2025, he stated that he had ordered industrial oil, but it appears the supplier shipped different goods, and he is discussing this with the supplier.

7.2 Further Statement of Shri Jain Surendra Fulchand, Partner of M/s. Himay Bizcon Agripetro LLP, Gandhidham was recorded on 27.04.2026, wherein he interalia stated that *(English translation):*

- On being asked about communication and exchange of documents with their

supplier M/s Prime Petroleum FZC, UAE, he stated that all communication and exchange of documents was done through WhatsApp. He further stated that after initiation of investigation by DRI, he deleted all such communications with the supplier.

- On being asked about specifications ordered from foreign suppliers in the absence of IS standards for industrial oil, he stated that they rely on the Certificate of Analysis (COA) provided by the supplier. If the COA specifications match the requirements of their domestic buyers, they place the order. He added that domestic buyers mainly consider density as the key parameter.

- On being asked about the difference between MHO and industrial oil, he stated that he does not know of any difference and reiterated that orders are placed solely on the basis of COA.

- On being shown the email dated 25.01.2025 from Mr. Prakash Jadhav received on his email id himaybizcon@gmail.com, he explained that Prime Petroleum FZC is their supplier and Elite Energy Tech LLC, Kuwait, is a broker firm where his acquaintance Mr. Prakash Jadhav works. He further stated that he was involved as an intermediary in the proposed EN590 diesel fuel transaction between Prime Petroleum FZC and Elite Energy Tech LLC, with the expectation of brokerage if the deal materialized. He clarified that no transaction took place and the proposed deal was entirely between two foreign entities, with no connection to supplies to India.

- On being shown the email dated 03.09.2024 received from email id info@elitefusion.co.in of Mr. Prakash Jadhav regarding EN590 diesel fuel and ICPO with Orbis Trading & Consultancy Service Ltd., he explained that he was again acting as an intermediary with the expectation of brokerage if the deal materialized. He clarified that the proposed deal was entirely between foreign entities and no transaction took place.

- On being shown the email dated 19.08.2024 sent from his own email ID himaybizcon@gmail.com to Gandhar Oil and others regarding EN590 diesel fuel, he explained that the proposed deal was entirely between foreign entities, with no connection to supplies to India, and that he was only acting as an intermediary. He further stated that no transaction took place.

- On being shown the CRCL Visakhapatnam test report dated 21.11.2025 relating to BE No. 4855799 dated 01.10.2025, he stated that he agreed with the report. He acknowledged that the sample met all parameters of automotive diesel fuel (ADF) under IS 1460:2025 except flash point and distillation recovery. He stated that although he had ordered industrial oil, it appeared that the supplier had supplied diesel fuel instead.

- On being shown the MRPL test report dated 16.04.2026 relating to BE No. 4855799 dated 01.10.2025, he stated that he acknowledged that except for flash point, the sample met all parameters of automotive diesel fuel under IS 1460:2025. He agreed that the imported industrial oil was in fact automotive diesel fuel with flash point lowered due to light hydrocarbons. He reiterated that he had ordered industrial oil but the supplier mistakenly exported diesel fuel.

- On being referred to the Gujarat High Court judgment dated 09.03.2026 in SCA No. 16799/2025 and connected matters, he stated that he respected the judgment but maintained that he had ordered industrial oil and the supplier mistakenly exported automotive diesel fuel.

- On being referred to the Gujarat High Court's dismissal of all writ petitions including his own, and it's finding that the imported goods were adulterated HFHSD/ADF, he stated that he respected the judgment but reiterated that he had no intention of importing restricted goods. He stated that orders were placed on the basis of COA and no adulteration was done at his end.

- On being referred to the High Court's observation distinguishing the case from *Gas Trade International*, he stated that he had understood the observation and reiterated that he had ordered industrial oil but the supplier mistakenly exported diesel fuel. He further stated that they were not appealing to the Supreme Court due to financial crisis caused by prolonged detention of goods.

8 . <u>Hon'ble High Court of Gujarat at Ahmedabad order and judgement dated 09.03.2026 R/Special Civil Application No. 16799 of 2025 and allied matters</u>:

8 . 1 During the course of investigation, the importer had filed **Special Civil Application No. 1357 of 2026** before the Hon'ble High Court of Gujarat at Ahmedabad, challenging the seizure memo dated 24.11.2025 and seeking provisional release of their consignment.

8.2 <u>The observations of the Hon'ble High Court on the test reports issued by the Customs Laboratory, Visakhapatnam (CRCL) and Mangalore Refinery and Petrochemicals Limited (MRPL) are reproduced below</u>:

> "46. *Keeping in mind the aforesaid principles enunciated by the Supreme Court, we have attempted to distinguish the case of the petitioners for the following reasons.*
>
> *47. Significantly, in the Test Reports in the case of* ***Gastrade International (supra),*** *the Apex Court has recorded that there was no opinion and finding expressed that the imported goods are "most akin" to HSD, which is not the issue in the Test Reports in question. In the first test report of CRCL, Visakhapatnam, out of 18 parameters tested, except for the parameters relating to flash point, distillation recovery and sulphur, the report categorically records that the sample is mainly*

composed of diesel fraction, is adulterated with lighter hydrocarbons, and is most "akin to HFHSD (IS 16861) / adulterated HFHSD". The diesel fraction is found to be between 95% to 98%). Thus, out of 21 parameters, the 18 parameters tested by CRCL, Visakhapatnam and MRPL, there is a clear opinion by the laboratory that the sample meets all characteristics of ADF and HFHSD, except the flash point, which is lowered by mixing lighter hydrocarbons. In this context, we may refer to the definition of 'adulteration' as supplied in the 'Malpractices Order,2005'. It reads thus:

> *"2(a) "adulteration" means [presence of marker in motor spirit and high speed diesel and/or] [Inserted by Notification No. G.S.R. 18(E) dated 12.1.2007 (w.e.f. 21.12.2005).] the introduction of any foreign substance into motor spirit or high speed diesel illegally or unauthorisedly with the result that the product does not conform to the requirements of the Bureau of Indian Standards specifications number IS 2796 and IS 1460 for motor spirit and high speed diesel respectively or any other requirement notified by the Central Government from time to time;"*

Thus, any foreign substance, which is blended in high-speed diesel illegally or unauthorizedly, which ultimate results into failure of requirements of BIS specifications IS 1460 is an adulteration.

48. In the instant case, there is a definite conclusion that the flash point, which is one of the most important parameters as emphasized by the Supreme Court, has been lowered by the use of lighter hydrocarbons and the product is therefore characterized as adulterated HFHSD. No such clear and unambiguous opinion was rendered by any of the three laboratories in the case of ***Gastrade International(supra)*** *and also by the expert, who was examined during the inquiry."*

8 . 3 <u>Application of the "Most Akin Test" by the Hon'ble Gujarat High Court</u>:

"50. Thus, if the rule of the "most akin test" is applied, the product declared by the petitioners as industrial oil is found to be Automotive Diesel Fuel / HFHSD, which is a restricted commodity. Hence, in view of the settled legal position laid down in the cases of ***Om Prakash Bhatia (supra)*** *and* ***Raj Grow Impex (supra)****, we are not inclined to set aside the action of seizure of goods in question."*

8.4 <u>Observations of the Hon'ble Gujarat High Court on Testing Conducted at Different Laboratories:</u>

"Hence, even if there are two or more Test Reports from different laboratories, so long as they conform to the directions of the Supreme Court in the case of ***Gastrade International (supra)*** *and test the parameters prescribed under the relevant Indian Standards, such test results cannot be discarded merely because they were undertaken by different laboratories."*

8.5 **<u>Emphasis by the Hon'ble Gujarat High Court on Environmental Impact</u>**:

"53. The product imported by the petitioners, if released, will have a direct environmental impact affecting society at large. In such circumstances, having regard to the nature of the product, the Test Reports cannot be discarded merely because different parameters were tested in two different laboratories."

8 . 6 The High Court of Gujarat dismissed the SCA filed by the importer vide common oral judgment and order dated 09.03.2026, in R/Special Civil Application No. 16799 of 2025 and allied matters.

9. **<u>Extension under Section 110(2) of the Customs Act, 1962</u>**

Since the investigation could not be completed within the mandated six-month period, the competent authority granted a further extension of four months under Section 110(2) of the Customs Act, 1962, which was conveyed to the importer vide this office letter dated 06.04.2026**.**

10. Relevant Legal provisions:

10.1 The relevant portion of ITC(HS), 2022 Schedule 1 Import Policy Section V, MINERAL PRODUCTS Chapter 27 Mineral Fuels, Mineral Oils And Products Of Their Distillation; Bituminous Substances; Mineral Waxes is reproduced as under:

27101939	---	obtained from kerosene intermediate: ---- Aviation turbine fuels, kerosene type conforming to standard IS 1571	STE (State Trading Enterprise)	Import as per Policy Condition (5) of Chapter 27.
27101941	---	Gas oil and oils obtained from gas oil: ---- Gas oil	STE (State Trading Enterprise)	Import as per Policy Condition (5) of Chapter 27.
27101942	---	Gas oil and oils obtained from gas oil: ---- Vacuum gas oil	STE (State Trading Enterprise)	Import as per Policy Condition (5) of Chapter 27.
27101943	---	Gas oil and oils obtained from gas oil: ---- Light diesel oil conforming to standard IS 15770	STE (State Trading Enterprise)	Import as per Policy Condition (5) of Chapter 27.
27101944	---	Gas oil and oils obtained from gas oil: ---- Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460	STE (State Trading Enterprise)	Import as per Policy Condition (5) of Chapter 27.
27101949	---	Gas oil and oils obtained from gas oil: ---- High flash high speed diesel fuel conforming to standard IS 16861	STE (State Trading Enterprise)	Import as per Policy Condition (5) of Chapter 27.
27101951	---	Fuel oils conforming to standard IS 1593: ---- Grade LV	Free	

10.2 Further, Para 2.21 of the Foreign Trade Policy, 2023 reads as under:

*"**2.21 State Trading Enterprises (STEs)***

(a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to

State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.
(b) Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.
(c) DGFT may, however, grant an authorisation to any other entity to import or export any of the goods notified for exclusive trading through STEs."

10.3 Further, Policy Condition of Chapter 27 of the Customs Tariff is reproduced as below:

"(5) Import allowed through IOC subject to Para 2.21 of the Foreign Trade Policy, except for companies who have been granted rights for marking of transportation fuels in terms of MoP&NG Resolution No. P-23015/1/2001-MKT dated 08.03.2002 for products excluding gasoline conforming to standard IS 2796 (ITC HS Code: 27101241) and Automotive Diesel Fuel, not containing Bio Diesel conforming to standard IS 1460 (ITC HS Code 27101944) which would be allowed to be imported by entities in terms of MoPNG Resolution No. P-12029(11)/2/2018-OMC-PNG dated 08.11.2019.

(B) RELEVANT PROVISIONS OF CUSTOMS ACT, 1962:

10.4 Section 2(22)*: "goods" includes (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property;*

Section 2(23): *"import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;*

Section 2(25): *"imported goods", means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;*

Section 2(26): "*importer*", *in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] or any person holding himself out to be the importer;*

Section 2(39): *"smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.*

Section 11A: *"illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.*

10.5 Section 17 Assessment of duty :

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

..

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

10.6 Section 46 Entry of goods on importation:

(4) *The importer while presenting a bill of entry shall make and subscribe to a declaration*

as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(4A) *the importer who presents a bill of entry shall ensure the following, namely:*

(a) The accuracy and completeness of the information given therein;

(b) The authenticity and validity of any document supporting it; and

(c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

10.7 Section 111. Confiscation of improperly imported goods, etc.:

The following goods brought from a place outside India shall be liable to confiscation:-

--(d) *any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

(m) *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;*

Section 112 Penalty for improper importation of goods, etc.:

Any person,-

a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

b. who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,-

i. *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 5 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;*

ii. *in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:*

Section 114AA Penalty for use of false and incorrect material:

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

(C) Relevant Provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

*"**Rule 4. Transaction value of identical goods. -** (1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;*

……..

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

*"**Rule 5. Transaction value of similar goods . -** (1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:*

Provided that ……..

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Rule 7 of the CVR, 2007, stipulates that:-

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

Rule 8 of the CVR, 2007, stipulates that:-

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing

the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

Rule 9 of the CVR, 2007, stipulates that:-

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of –

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation; (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

***Rule 12. Rejection of declared value** . - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*

11. <u>Valuation:</u>

11.1 From the foregoing paras, it is evident that M/s. Himay Bizcon Agripetro L L P was involved in mis-declaration of goods in terms of description and classification and the declared value in the corresponding Bill of Entry appears to be not acceptable as true transaction value and merits rejection in terms of Section 14 of Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Since exact comparative data in respect of the import goods covered under the subject consignment are not available in absence of clear descriptions and mis-declaration on the part of the importer, the value of the subject import consignments cannot be determined as per the provisions of Rule 4 to Rule 8 to the Customs Valuation

(Determination of value of Imported goods) Rules, 2007. Since the goods cannot be fully compared with similar/identical imports as the same are restricted goods, their value appears to be determinable under Rule 9 (Residual method) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with sub-section (1) of Section 14 of Customs Act, 1962 and on the basis of objective and quantifiable data available in India. For valuation of the seized goods-ADF, the prevailing market rates of the goods in the 1st week of October-2025 were taken, such as invoices generated by M/s Nayara Energy Limited, ADF-**Rs 52,541.75/KL**. Accordingly, in terms of Rule 9 of the Customs Valuation Rules, 2007, the same value can be adopted for the offending goods in this case.

11.2 Further, import of "**Automotive Diesel Fuel *(ADF) as per IS 1460:2025***", is restricted into India, and the same can only be imported subject to Policy Condition No. 5 of Chapter 27 of Customs Tariff, which stipulates that only '*import is allowed through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002*' to import the same. It therefore appears that said importer mis-declared restricted goods i.e. "**Automotive Diesel Fuel *(ADF) as per IS 1460:2025***" as "Industrial Oil" in the consignment.

11.3 As discussed above, the consignment covered under Bill of Entry No. 4855799 dated 01.10.2025 was reported as "***Automotive Diesel Fuel (ADF) as per IS 1460:2025***" by the Custom Laboratory, Vishakhapatnam and MRPL.The outcome of the test reports indicate that the invoice value declared by the importer does not reflect the actual value of the goods. Since the goods were mis-declared in the Bill of Entry, the declared assessable value of Rs **82,74,413** in Bill of Entry cannot be accepted as the true "transaction value" under Section 14 of the Customs Act, 1962, and is liable to rejection under Rule 12 of the CVR, 2007.

11.4 Accordingly, for valuation purpose, to arrive at a fair and reasonable value within the framework of law and procedures under the Valuation Rules, ADF data dated 01.10.2025 from the M/s Nayara Energy Limited was referred. The base price was noted as **Rs 52,541.75/KL**. Based on this, the re-determined value of the consignment of "***Automotive Diesel Fuel (ADF) as per IS 1460:2025***", having a total quantity of **200450** KGs equivalent to 244.035 KL (using average density of 0.8214 g/ml as reported by Custom House Laboratory, Visakhapatnam), is **Rs. 1,28,22,003/-**, in terms of provisions of Rule 9 of the CVR, 2007.

Thus, the value of the goods, as per the test reports of the Custom Laboratory and MRPL, is determined accordingly, are as below:

Table-IV

Sl. No.	Bill of Entry No.	Sample Test Result	Declared Description	Quantity (in KGs)	Declared value as per BoE	Approx. Market Value (in Rs.)
01.	4855799	Automotive Diesel Fuel (ADF)	Industrial Oil	200450	82,74,413	1,28,22,003/-
Total					**82,74,413**	**1,28,22,003/-**

Therefore, the said goods having declared value of Rs. 82,74,413/- and re-determined value of Rs. 1,28,22,003/- as per Table-IV, appear to be liable for confiscation under Section 111(d) and 111 (m) of the Customs Act, 1962.

12. <u>Findings of the investigation</u>:

12.1 Specific intelligence gathered by the Directorate of Revenue Intelligence indicated that M/s. Himay Bizcon Agripetro LLP was indulged in import of restricted goods through mis-declaration. The importer had declared the consignment as Industrial Oil, whereas examination and sampling carried out by the DRI revealed otherwise. The representative samples drawn in respect of Bill of Entry No. 4855799 dated 01.10.2025 were forwarded to the Custom House Laboratory, Visakhapatnam which confirmed that the goods **met all stringent parameters of Automotive Diesel Fuel (ADF) under IS 1460:2025**

The Custom House Laboratory reports revealed that *"The sample meets all the stringent parameter of Automotive diesel fuel as mentioned in 1S: 1460:2025"*

To ensure comprehensive testing of all 21 parameters mandated by the Hon'ble Supreme Court in ***Gastrade International v. Commissioner of Customs, Kandla,*** additional samples were sent to Mangalore Refinery and Petrochemicals Limited (MRPL). The combined reports from CRCL and MRPL conclusively established that the imported goods were in fact Automotive Diesel Fuel conforming to IS 1460, and not Industrial Oil as declared.

12.2 The sample Test report (CRCL Visakhapatnam, Lab No. 184-DRI, Test Memo No. 252/2025) in respect of Bill of Entry No. 4855799 dated 01.10.2025 is reproduced below:

भारत सरकार
वित्त मन्त्रालय, राजस्व विभाग
सीमा शुल्क प्रयोगशाला
5वींमंजिल, सीमा शुल्ककार्यालय
पोर्टएरिया,विशाखापत्तनम– 530 001

Government of India
Ministry of Finance
Department of Revenue
CUSTOM HOUSE LABORATORY
5th FLOOR
CUSTOM HOUSE, PORT AREA
VISAKHAPATNAM – 530 001.
Tel/Fax: 0891-2562900
e-mail -:chemical_examiner@yahoo.com

TEST REPORT **Date: 21.11.2025**

Lab No:184-DRI **Date:** 22.10.2025
F.No.DRI/GRU/Int-26/2025 **Date:**16.10.2025
Test Memo No: 252/2025
B.E. No: 4855799 **Date:** 01.10.2025
Sample Received from: Senior Intelligence officer, (DRI), Gandhidham Regional Unit.
Description of Sample:Industrial Oil (CTH 27101990)
Date of Receipt: 22.10.2025
Sample Plan: Sample not Drawn by this laboratory
Report: The sample is in the form of pale yellow coloured oily liquid. It is mainly composed of Mineral Hydrocarbon Oils having mineral oil content more than 70 % by weight. It is having following characteristics:

1.	Appearance	= clear & bright, free from sediments, suspended matter &undissolved water
2.	Total Acid Number (mg of KOH/gr)	= Less than 0.20% by wt.
3.	Ash content	= Nil
4.	Carbon residue on 10% Residue	= Less than 0.30% by wt.
5.	Cetane Number	= To be done at Refinery end.
6.	Cetane Index	= 63.7
7.	Pour Point	= below 3°C.
8.	Flash Point(Abel), deg. C	= 22.0 °C
9.	Density at 15° C	= 0.8214 g/ml
10.	Kinematic viscosity at 40° C	= 2.88 cSt.
11.	Sulphur Content	= 6.036 ppm.
12.	Distillation: IBP	= 94°C
	50% distilled at, °C	= 293.0°C
	85% Recovery by vol., at °C	=344.0°C
	%Volume recovered at 360 deg. C	= 91% by vol.
	95% Recovery by vol., at °C	= 374°C
13.	Cold Filter Plugging Point	= Facilility available at Refinery end only
14.	Oxidation stability	= To be done at refinery end only.
15.	Lubricity wear scan at 60° C	= Facility available at Refinery end only
16.	Fame Content	= Absent
17.	PAH % by max	= not determined as it is not an characteristic parameter.
18.	Water	= Less than 200 PPM.

The sample has been tested for all the characteristics parameters tested above & which are stringent parameters also to characterize petroleum fuels.

The sample meets all the stringent parameter of Automotive diesel fuel as mentioned in IS: 1460:2025 except flash point (whch is 13°C Lower than required, decreased by means of using lighter hydrocarbon) and distillation recovery at 360°C (which is 91% & 4% less than 95%).

The GCMS pattern of sample shows presence of lighter hydrocarbons (below 2%), which cannot be part of Diesel fuels, as per standard refinery protocol & classification of petroleum fuels. Minor deviation from the required values of above 02 parameter, does not effects its application as diesel fuel for automotive purpose.

The sample is adulterated diesel in respect of the definition of "adulteration" as mentioned in 5.1 of marketing discipline guideline published by PSU's.

There is no specification available for industrial oil in National & International standards.

The sample also meets the specification of HFHSD (IS 16861) up to the extent of parameter tested above except, flash point which was lowered by using lighter hydrocarbons & distillation recovery at 370°c

Sealed remnant sample returned herewith

21/11/25

प्रदीप मारू / PRADEEP MAROO
Chemical ... tory

End of the Report

The above test reports in respect of Bill of Entry No. 4855799 dated 01.10.2025 clearly establish, as the intelligence had suggested, that the importer had in fact imported restricted goods, namely Automotive Diesel Fuel (ADF), conforming to the parameters and specifications of **IS 1460.**

12.2.1 As per Schedule 1 Import Policy under ITC(HS), 2022 for Chapter-27 (Mineral Fuels, Mineral Oils, etc.), import of "***Automotive Diesel Fuel (ADF) as per IS 1460***" covered under CTH 27101944, is restricted into India, and the same can only be imported subject to Policy Condition No. 5 of Chapter 27. Accordingly, there being a reasonable belief that that the said goods are liable for confiscation under the provisions of Section 111 of the Customs Act, the same were placed under seizure under Section 110 of the Customs Act, 1962,

12.3 During the investigation, DRI ensured that all 21 parameters under IS 1460 were tested, as mandated by the Hon'ble Supreme Court in ***Gastrade International v. Commissioner of Customs, Kandla.***

On analyzing the comprehensive test reports of CRCL, Visakhapatnam and

MRPL, a combined parameter-wise assessment was carried out against all 21 parameters prescribed under IS 1460:2025 for Automotive Diesel Fuel. The consolidated findings are summarised in the Table below:

Table-V: Combined Parameter-wise Summary of Test Reports (CRCL + MRPL) vs. IS 1460:2025

Sr. No.	Parameter	IS 1460:2025 Limit	B.E. No. 4855799 (Result / Match) with IS 1460:2025	Remarks
1	Flash Point (°C)	Min. 35°C	20°C / NOT MATCHING	**Deliberately Lowered by addition of lighter hydrocarbons**
2	Sulphur Content (ppm)	Max. 10 ppm	12 ppm / NOT MATCHING	Addition of Sulphur/not undergone Desulfurization
3	Appearance (Visual)	Clear, bright, free from sediments	Clear & bright	Within range
4	Total Acid Number (mg KOH/g)	Max. 0.20	0.03	Within range
5	Ash Content (% by mass)	Max. 0.01	<0.001	Within range
6	Carbon Residue on 10% Residue (% by mass)	Max. 0.30	<0.1	Within range
7	Cetane Number	Min. 51	55.7	Within range
8	Cetane Index	Min. 46	62.1	Within range
9	Pour Point (°C)	Max. +3°C (Winter)	-12°C	Within range
10	Copper Strip Corrosion (3h at 50°C)	Max. Class 1	Class 1a	Within range
11	Distillation, 95% v/v Recovery (°C)	Max. 360	341.9	Within range
12	Kinematic Viscosity @40°C (mm^2/s)	2.0 – 4.5	2.935	Within range
13	Total Contamination (mg/kg)	Max. 24	10	Within range
14	Density @15°C (kg/m^3)	810 – 845	821.4	Within range
15	Water Content (mg/kg)	Max. 200	140	Within range
16	Cold Filter Plugging Point (CFPP) (°C)	Max. +6°C (Winter)	-7°C	Within range

17	Oxidation Stability (min)	Min. 60 min	>60 min	Within range
18	Polycyclic Aromatic Hydrocarbon (PAH) (% by mass)	Max. 8.0	1.1	Within range
19	Lubricity (WSD @60°C, µm)	Max. 460	420	Within range
20	FAME Content (% v/v)	Max. 7	Nil	Within range
21	Oxidation Stability (with FAME above/below 2%)	Required only if blended with biodiesel	Not applicable – FAME absent / Within range	Within range
TOTAL	**21 Parameters tested**	**—**	**19/21 Matching;**	**-**19/21 parameters found meeting IS 1460:2025; Flash Point and Sulphur outside limits

12.4 The Flash Point of the imported goods was found to be 20°C (MRPL) / approx. 22°C (CRCL) against the mandatory minimum of 35°C under IS 1460 for B.E. No. 4855799. The Custom House Laboratory, Visakhapatnam categorically concluded that the flash point was decreased by the adulteration of lighter hydrocarbons. This finding was explicitly upheld by the Hon'ble Gujarat High Court in its judgment dated 09.03.2026 in the matter of R/Special Civil Application No. 16799 of 2025 and allied matters (including Special Civil Application No. 1357 of 2026 filed by the importer). The Hon'ble High court categorically recorded the following finding:

"*Thus, out of 21 parameters, the 18 parameters tested by CRCL, Visakhapatnam and MRPL, there is a clear opinion by the laboratory that the sample meets all characteristics of ADF, except the flash point, which is lowered by mixing lighter hydrocarbons*."

The intentional lowering of the flash point is a clear indicator of adulteration, undertaken to pass off Automotive Diesel Fuel. The combined reports from CRCL and MRPL conclusively established that the imported goods were in fact Automotive Diesel Fuel conforming to IS 1460:2025 and not Industrial Oil as declared.

12.4.1 Sulphur Content and BS-VI (Euro VI) Standards: The sulphur parameter is a critical quality and environmental compliance marker for diesel fuel . It may be noted that in Automotive diesel, sulphur parameters are quality parameters only and their focus is on reducing emissions, as required by latest emission standards (BS-VI/Euro V-VI) requiring Ultra-Low Sulphur Diesel (ULSD) at less than 10 ppm ,introduced through e-Gazette Notification dated 16.09.2016 (Central Motor Vehicles (11th Amendment) Rules, 2016),issued by Ministry of Road Transport and Highways . This limit is designed to significantly reduce Sulphur Dioxide (SO2) and particulate emissions from vehicles, thereby safeguarding public health and meeting India's environmental commitments. The reduction of sulphur to these levels ordinarily requires a process known as Desulfurization (generally through hydro-desulfurization). In the present case, the sulphur content of the imported goods was found to be 12 ppm for against the maximum permissible 10 ppm

under IS 1460:2025. In the instant case, since lab reports have pointed out towards adulteration of diesel to make it fall out of IS standard parameters, the deviation of the said parameters by way of adulteration with Sulphur and lower hydrocarbons is expected to lead to these specious results in the aforesaid reports

12.4.2 In this regard, it is pertinent to refer to the definition of "adulteration" as contained in Section 2(a) of the Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 (hereinafter referred to as the "Malpractices Order, 2005"), issued by the Government of India in exercise of powers conferred by Section 3 of the Essential Commodities Act, 1955. The said provision defines "adulteration" as follows:

> *"2(a) 'adulteration' means [presence of marker in motor spirit and high speed diesel and/or] the introduction of any foreign substance into motor spirit or high speed diesel illegally or unauthorisedly with the result that the product does not conform to the requirements of the Bureau of Indian Standards specifications number IS 2796 and IS 1460 for motor spirit and high speed diesel respectively or any other requirement notified by the Central Government from time to time;*
> *"*

Thus, in terms of the aforesaid statutory definition, any introduction of a foreign substance into high speed diesel, illegally or without authorisation, which results in the product failing to conform to the BIS specification IS 1460, constitutes adulteration. The Hon'ble Gujarat High Court in its judgment dated 09.03.2026 expressly applied this definition and held that the lowering of the flash point through mixing of lighter hydrocarbons constituted adulteration of HFHSD within the meaning of Section 2(a) of the Malpractices Order, 2005.

12.4.3 In sum, viewed collectively, the deviations in sulphur content alongside the deviation in flash point are not independent anomalies but form a coherent pattern consistent with deliberate adulteration of Automotive Diesel Fuel. The selective parameter deviations serve only to confirm that an otherwise conforming diesel product was manipulated with lighter hydrocarbons and other substances, with the deliberate design to render it non-compliant with IS 1460 specifications, so as to facilitate its illegal import as "Industrial Oil."

12.5 The investigation establishes that Shri Jain Surendra Fulchand, Partner of M/s Himay Bizcon Agripetro LLP, was actively engaged as an intermediary in proposed EN590 diesel fuel transactions between foreign entities, namely Prime Petroleum FZC, UAE, Elite Energy Tech LLC, Kuwait, and Orbis Trading & Consultancy Service Ltd. He admitted that his role was limited to facilitating communication with the expectation of brokerage if the deals materialized. The emails dated 25.01.2025, 03.09.2024, and 19.08.2024, as discussed above, confirm his participation in such negotiations. Importantly, the supplier involved in these proposed diesel transactions M/s Prime Petroleum FZC, UAE, is the same supplier from whom the importer procured consignments declared as industrial oil under BE No. 4855799 dated 01.10.2025. This establishes a direct nexus between the supplier and the importer, linking the attempted facilitation of automotive diesel fuel with the actual imports, and goes to demonstrate the mens rea underlying the mis-declaration made in the aforementioned Bill of Entry.

12.6 From the above, it is evident that the importation made by the importer is in

violation of the Import Policy pertaining to CTH 27101944 and thereby it is in violation of Para 2.01 and 2.21 of the Foreign Trade Policy 2023 as extended. As per Para 2.01 of the FTP, the imports shall be free, except when regulated by way of prohibition, restriction or exclusive trading through State Trading Enterprises (STEs) as laid down in the Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. Looking to the aforesaid facts, since the goods falling under HS Code 27101944 not being freely importable, the same would fall in the exceptional character with importation through the STEs only. As per Para 2.21 of the FTP, any goods, import of which is governed through exclusive or special privilege granted to the STEs, may be imported by the concerned STEs as per the condition specified in the ITC (HS). DGFT has however been given authority to grant an authorization to any other person to import the goods notified for exclusive trading through the STEs.

12.6.1 As per Para 11.41 of the FTP,2023, "Prohibited" indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted. In the instant case, since the import of ADF classifiable under HS Code 27101944 is not permitted by the entities other than STEs, the import of said goods by the private entities is prohibited.

12.6.2 As per Section 3 (2) of the FTDR Act, 1992 empowers the Central Government to issue order, making provisions for prohibiting, restricting or otherwise regulating, the import of goods. As per Section 3(3) of the FTDR Act, 1992, all goods to which the order under Section 3(2) applies shall be deemed to be goods the imports of which has been prohibited under Section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly.

12.7 And whereas the provisions of Section 17(1) of the Customs Act, 1962 read with Section 2(2) of the Customs Act lay down onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. By furnishing incorrect and wrong information in the import documents, it appears that the importer has violated the provisions of the said Section 17(1) read with Section 2(2) of the Customs Act, 1962.

12.8 And whereas in terms of Section 46(4) of the Customs Act, 1962, the importer has to certify the truth of the contents of the Bill of Entry. Further, in terms of Section 46(4A) of the Customs Act, 1962, the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein; shall ensure the authenticity and validity of any document supporting it; and shall ensure compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force. In the instant case it appears that the importer was fully aware of the actual goods imported by them. Thus, in view of the facts discussed in the foregoing paras and material evidences available on records, it appears that M/s Himay Bizcon Agripetro LLP has contravened the provisions of Section 46(4) and 46(4A) of the Customs Act, 1962, in as much as they had intentionally mis-declared the description of the goods imported by them with a malafide intention to import restricted goods under the garb and guise of freely importable goods.

13 Role and Culpability:

13.1 Role played by M/s Himay Bizcon Agripetro LLP (IEC: AAPFH9483F), Plot No. 258, Sector 1A, Gandhidham-370201:

From the facts narrated in foregoing paras and evidences gathered during investigation, it appears that M/s Himay Bizcon Agripetro LLP, Gandhidham imported consignment covered under 4855799 dated 01.10.2025 filed at Mundra, by mis-declaring the import goods as "Industrial Oil" classified under CTH 27101990. The investigation conducted by DRI revealed that the actual goods were "***Automotive Diesel Fuel (ADF) as per IS 1460***", which is a '***Restricted***' commodity permitted for import only into India under Policy Condition No. 5 of the Customs Tariff. The inquiry further established that the importer deliberately adulterated the goods by mixing lighter hydrocarbons in order to manipulate certain parameters, thereby attempting to disguise the restricted product as Industrial Oil. This act of mis-declaration and adulteration was intended to circumvent import restrictions and facilitate the clearance of restricted goods for sale in the domestic market. Further during the investigation it established that Shri Jain Surendra Fulchand, Partner of M/s Himay Bizcon Agripetro LLP, played the role of an intermediary in proposed EN590 diesel fuel transactions, facilitating communication among foreign suppliers with the expectation of brokerage. His involvement is corroborated by multiple emails, confirming active participation in negotiations. Crucially, the same supplier M/s Prime Petroleum FZC, UAE from whom the importer imported the goods declared as industrial oil, thereby establishing a direct nexus. This demonstrates the importer's culpability in knowingly engaging with restricted petroleum products and attempting to conceal their true nature.Therefore, it appears that M/s. Himay Bizcon Agripetro LLP, by filing incorrect declarations and failing to ensure proper classification of the goods, knowingly violated the provisions of Section 17(1), Section 46(4) and 46(4A) of the Customs Act, 1962 by deliberately mis-declaring and mis-classifying the imported goods with intent to import restricted goods under the garb of freely importable goods, thereby contravening the import restrictions prescribed under the Foreign Trade Policy and rendering the goods liable to confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Therefore, M/s Himay Bizcon Agripetro LLP have made themselves liable for penalty under Section 112(a) and 112(b) of the Customs Act, 1962. Furthermore, M/s Himay Bizcon Agripetro LLP have deliberately filed false and incorrect documents with the Customs Authorities, suppressing the actual nature of the goods, in order to import restricted goods, therefore, M/s Himay Bizcon Agripetro LLP are also liable for penalty under Section 114AA of the Customs Act, 1962.

14. Accordingly, Show Cause Notice No. 70/2026-27/ADC/ZDC/MCH dated 02.06.2026 was issued to the importer M/s. Himay Bizcon Agripetro LLP (IEC: AAPFH9483F) calling upon it to show cause as to why:

i. The classification of goods covered under Bill of Entry No. 4855799 dated 01.10.2025 filed at Mundra Port, declared as 'Industrial Oil', under CTH 27101990, should not be rejected and the same should not be re-classified as 'Automotive Diesel Fuel (ADF) as per IS 1460:2025' under CTH 27101944;
ii. The declared value of the said goods declared as 'Industrial Oil', as Rs. 82,74,413/- should not be rejected in terms of Rule 12 of the CVR, 2007 and the same should not be re-determined as Rs 1,28,22,003/- , as discussed in

foregoing para;

iii. The goods declared as 'Industrial Oil', under the Bill of Entry No. 4855799 dated 01.10.2025 filed at Mundra Port having re-determined value of Rs 1,28,22,003/- as discussed in Table-IV, should not be held liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

iv. Penalty should not be imposed upon the importer under Sections 112(a), 112(b), and 114AA of the Customs Act, 1962, separately.

WRITTEN SUBMISSION

15. M/s. Himay Bizcon Agripetro LLP (IEC: AAPFH9483F) vide their letter dated 11.06.2026, submitted their written reply to the Show Cause Notice No. 70/2026-27/ADC/ZDC/MCH dated 02.06.2026. The substance of the submissions made by the Noticee, ground-wise, is as follows:

A. On the Test Reports being Inconclusive:

A.1 The Noticee submitted that the Test Report of the Custom House Laboratory, Visakhapatnam (Lab No. 180-DRI dated 21.11.2025) is neither conclusive nor reliable. Out of 21 parameters prescribed under IS 1460:2025 for Automotive Diesel Fuel, the said report tested only 17 parameters (though 18 were listed, PAH% was stated to be "not determined" as it is "not a characteristic"). Out of the 17 parameters tested, 4 parameters, namely Cetane Number, Cold Filter Plugging Point, Oxidation Stability and Lubricity Wear, were not tested on the ground that the test is to be done at the refinery end. Of the remaining 13 parameters tested, 2 parameters — Flash Point and Distillation Recovery at 360°C — did not conform to IS 1460:2025. The Noticee accordingly submitted that since not all parameters prescribed under IS 1460:2025 and IS 16861 have been tested, the test reports cannot be treated as conclusive. Reliance was placed on the Hon'ble Supreme Court's decision in *Commr. of Cus. v. Magus Metals Pvt. Ltd.* [2017 (355) E.L.T. 323 (S.C.)] to contend that inconclusive test reports cannot be relied upon to reject classification.

A.2 The Noticee further submitted that the Test Reports are in conflict with the test report bearing No. 6168/07102025 dated 09.10.2025 issued by the Central Revenues Control Laboratory (CRCL), Kandla, which had been obtained prior to the DRI's examination and which categorically stated that the subject goods do not meet the specifications for Automotive Diesel Fuel/HFHSD. The Noticee contended that the SCN has disregarded this favourable Kandla report without recording any reason, and that when two test reports give divergent findings, the view in favour of the assessee must prevail. Reliance was placed on the Hon'ble Supreme Court's decision in *Vegetable Products Ltd.* [1988 LTR 196 (SC)] and *Shri Lakshmi Cotsyn Ltd. v. Commissioner of Customs and C.Ex., Kanpur* [2011 (263) E.L.T. 299 (Tri. – Del.)].

A.3 As regards the MRPL Test Report, the Noticee submitted that even the MRPL report (Report No. 945/2025 dated 16.04.2026) is inconclusive, since out of 24 parameters tested by MRPL against IS 1460:2025 and IS 16861, 5 parameters — Cetane Number, Distillation Recovery, Sulphur, Flash Point and Lubricity — did not match the prescribed IS standards. The Noticee submitted that since multiple parameters do not conform, the MRPL report cannot support a conclusive finding that the goods are Automotive Diesel Fuel or HFHSD.

A.4 The Noticee further challenged the authority of the Customs department to rely on the MRPL Test Report on the ground that MRPL is not a notified outside

laboratory for testing Diesel Oil under the CBIC Circulars. The Noticee referred to CBIC Circular No. 43/2017-Cus. dated 16.11.2017 and Circular No. 15/2019-Cus. dated 07.06.2019, and submitted that after the issuance of Circular No. 15/2019, Customs authorities are required to send samples to their own revenue laboratory, and only if the revenue laboratory lacks testing facilities, they may send it to specified outside laboratories, which are only IOCL/HPCL/BPCL at Mumbai, Chennai, Kochi, Visakhapatnam, Kolkata and Kandla. MRPL does not figure among these notified outside laboratories. The Noticee also submitted that the said Circulars do not permit splitting of testing between two different laboratories — testing some parameters in the revenue laboratory and the remaining in an outside laboratory — and that if the revenue laboratory is not equipped to test all parameters, the sample should be sent entirely to the notified outside laboratory for testing of all parameters. Reliance was placed on *Paper Products Ltd. v. Commissioner of Central Excise* [1999 (8) TMI 70 (SC)] for the proposition that CBIC circulars are binding on the Department.

A.5 The Noticee additionally submitted that MRPL is a laboratory notified under Schedule III of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 issued under the Essential Commodities Act, 1955, which is a statute governing regulation of the domestic marketing chain — dealers, transporters, consumers and oil companies — and is not applicable to importers or to customs classification proceedings. The reliance on MRPL under this framework is therefore wholly misplaced. Reliance was placed on *M/s. Nestle India Limited v. Food Safety and Standards Authority of India* [2015 SCC OnLine Bom 4713].

A.6 The Noticee also submitted that the MRPL report suffers from inordinate delay — the imports were effected in October 2025, while the MRPL report is dated 16.04.2026, a gap of nearly six months — which undermines the reliability and relevance of the results. The Noticee submitted that the prescribed timelines under the Motor Spirit and High Speed Diesel Order, 2005 (10 days for forwarding sample after seizure; 20 days for report from laboratory; 5 days for communication to the party) have not been complied with, and that such non-compliance vitiates reliance on the MRPL report. Reliance was placed on the Madras High Court's decision in *Venkatesan @ Venkatesh v. State* [Crl.O.P. Nos. 17889 of 2021, Order dated 06.01.2023].

A.7 The Noticee also submitted that the conclusions of the same officer, Shri Pradeep Maroo, are demonstrably inconsistent — that in a prior case involving identical goods, the same officer had tested only 12 of 21 parameters and, despite noting non-conformities in flash point and distillation recovery, had concluded that the goods were not ADF/HFHSD, whereas in the present case, after testing 14 of 21 parameters with similar non-conformities, the same officer opined the goods to be ADF/HFHSD. The Noticee submitted that such diametrically opposite conclusions on materially identical facts undermine the credibility of the report and render it unreliable.

A.8 The Noticee relied on the decision of the Hon'ble Gujarat High Court dated 09.03.2026 in R/Special Civil Application No. 16799 of 2025 and submitted that the said judgment does not address or decide the specific submissions on conclusiveness of the test reports, and therefore amounts to a decision sub silentio that cannot be relied upon. Reliance was placed on *Collector of Central Excise, Rajkot v. Surgichem* [1987 (27) ELT 548] and *Collector of Central Excise, Meerut v. Maruthi*

Foam (P) Ltd. [1996 (85) ELT 157].

B. On the Allegation of Deliberate Adulteration:

B.1 The Noticee submitted that the allegation of deliberate adulteration with lighter hydrocarbons is wholly misconceived, speculative and unsupported by any legally admissible evidence. Neither CRCL Visakhapatnam nor MRPL has identified the precise composition, source, quantity or nature of any alleged adulterant. The reports contain only inferential observations that the flash point "appears" to have been lowered by lighter hydrocarbons, without any test to identify the foreign substance, the stage at which it was introduced, or the person responsible.

B.2 The Noticee further submitted that the statutory definition of "adulteration" under Section 2(a) of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 presupposes: (i) the pre-existing existence of motor spirit or high speed diesel, and (ii) subsequent unauthorised introduction of a foreign substance therein. In the present case, no evidence has been adduced that the imported goods were originally Automotive Diesel Fuel, that any blending activity was undertaken by the importer, that the importer had any access to or control over the overseas loading facility or vessel/containers, or that the importer had knowledge of any alleged adulteration.

C. On the Internal Contradiction in the SCN:

C.1 The Noticee submitted, without prejudice, that the SCN is internally self-contradictory. The SCN simultaneously alleges: (a) that the goods are adulterated Automotive Diesel Fuel, i.e., that foreign substances have been introduced resulting in failure to conform to IS 1460:2025; and (b) that the goods are classifiable as Automotive Diesel Fuel conforming to IS 1460:2025. The Noticee submitted that once adulteration is alleged and the product is held to have failed IS 1460 parameters as a result, the product cannot simultaneously be classified as ADF conforming to IS 1460. The statutory definition of adulteration itself proceeds on the basis that the product, post-adulteration, does not conform to IS 1460. Accordingly, the SCN's proposal to classify the goods as restricted ADF under IS 1460 is legally unsustainable on the Department's own case.

D. On the Reliance on the Gujarat High Court's Judgment:

D.1 The Noticee submitted that the reliance placed by the SCN on the Gujarat High Court's judgment dated 09.03.2026 in R/Special Civil Application No. 1357 of 2026 is misplaced. The proceedings before the Hon'ble Court arose in the context of a challenge to the seizure action and a request for provisional release; the limited issue was whether the seizure action was without jurisdiction or arbitrary at the threshold stage. The Hon'ble Court did not conduct a final adjudication on classification, confiscation, valuation, mens rea or penalty under the Customs Act, 1962, nor did it finally determine whether the goods satisfy all requirements of IS 1460 or whether actual adulteration attributable to the Noticee was established. The Noticee submitted that the "most akin" test applied by the Hon'ble Court was applied only for sustaining seizure at the prima facie stage, and the Hon'ble Court itself directed that any request for re-export may be considered in accordance with law. The issue of final tariff classification and confiscability was expressly left open for adjudication by the competent authority.

E. On the Precedent — Gastrade International and Related Decisions:

E.1 The Noticee placed reliance on the Hon'ble Supreme Court's decision in *Gastrade International v. Commissioner of Customs, Kandla* [SLP (Civil) No. 6470 of 2022] to submit that where all 21 parameters prescribed under IS 1460 are not tested, and where non-conformity in flash point and distillation recovery is recorded, the goods cannot be classified as Automotive Diesel Fuel. The Noticee submitted that the facts of the present case are on all fours with *Gastrade International* — only a subset of characteristic parameters was tested, flash point and distillation recovery both fail to conform, and no conclusive expert opinion has been rendered that the goods are ADF. The Noticee also relied on the Gujarat High Court's judgment dated 09.12.2025 in *Rajattam Sarbottam Ganguly & Ors. v. Union of India & Ors.* (identical facts), wherein the seizure based on inconclusive test reports was set aside and release of seized cargo was directed.

F. On Rejection of Declared Value:

F.1 The Noticee submitted that the declared transaction value is the true and correct transaction value under Section 14 of the Customs Act, 1962 read with Rule 3(1) of the CVR, 2007, as the buyer and seller are unrelated, the price is the sole consideration, and the price was actually paid. Reliance was placed on *Eicher Tractors Limited v. Commissioner* [2000 (122) ELT 321 (SC)] and allied judgments.

F.2 The Noticee submitted that the invocation of Rule 9 (Residual Method) of the CVR, 2007 is impermissible, as the SCN does not demonstrate proper sequential exhaustion of Rules 4 to 8 with reasons. Merely making a bald assertion that comparable import data is unavailable does not satisfy the legal requirement of sequential elimination. The Noticee also submitted that the Nayara Energy invoices relied upon in the SCN are domestic commercial invoices relating to sale of petroleum products within India, and cannot be adopted as assessable value under Rule 9 without making the mandatory statutory deductions required under Rule 7 — including customs duties and taxes, domestic freight and insurance, terminal and depot charges, marketing margins and other post-import elements embedded in such domestic prices.

G. On Confiscation and Penalty:

G.1 The Noticee submitted that since the goods are not established to be restricted goods on the basis of the inconclusive test reports, no prohibition under Section 111(d) applies and no mis-correspondence under Section 111(m) is made out, as the declarations were made in good faith on the basis of supplier documents.

G.2 As regards penalty, the Noticee submitted that no mens rea for imposition of penalty under Section 112(a) or 112(b) of the Customs Act, 1962 is established. The goods were imported openly through valid Bills of Entry with complete documentation, without any clandestine importation or concealment. The order was placed for Industrial Oil on the basis of supplier's commercial invoice, packing list, certificate of origin and certificate of analysis, and there was no occasion to physically examine or chemically test the cargo before shipment. Multiple decisions of the Hon'ble Supreme Court and Tribunals were cited in support of the proposition that mens rea is a prerequisite for penalty under Section 112.

G.3 As regards penalty under Section 114AA, the Noticee submitted that the provision requires that the person knowingly or intentionally make or cause to be made a false or incorrect declaration. In the present case, the Bills of Entry were filed on the basis of supplier documents and there was no knowing or intentional

false declaration. The condition of deliberate mens rea required by the words "knowingly or intentionally" is not satisfied. Reliance was placed on *Sree Ayyanar Spinning & Weaving Mills Ltd. v. Commissioner of Customs* [2019 (370) ELT 1681 (Tri. – Chennai)] and *Sameer Santhosh Kumar Jaiswal v. Commissioner of Customs (Import-II)* [2018 (362) ELT 348 (Tri. – Mumbai)].

H. On Re-Export:

H.1 The Noticee submitted that, without admitting any of the allegations in the SCN, even if the Department's case on restricted nature of the goods is accepted, the appropriate course of action on the facts of the present case would be to permit re-export of the goods rather than ordering outright confiscation with harsh penal consequences. The Noticee submitted that the goods are not absolutely prohibited but are merely regulated through specified channels. The Noticee cooperated throughout the investigation, the goods remain under Customs control, and there is no allegation of unauthorized clearance. Re-export is the most proportionate remedy in the circumstances.

I. Prayer:

I.1 The Noticee prayed that the Show Cause Notice be dropped in its entirety and that in the alternative, re-export of the goods be permitted. The Noticee also reserved the right to file further submissions and adduce additional evidence if required.

PERSONAL HEARING

16. The Importer, M/s. Himay Bizcon Agripetro LLP (IEC: AAPFH9483F) vide their letter dated 19.06.2026, submitted that they don't wish to avail the opportunity of personal hearing in the matter and requested to decide the matter on merit.

DISCUSSION AND FINDINGS

17. I have carefully gone through the Show Cause Notice No. 70/2026-27/ADC/ZDC/MCH dated 02.06.2026, the relied upon documents, the written submissions made by the Noticee vide letter dated 11.06.2026, and all documentary evidence available on record. The Noticee vide their letter dated 19.06.2026 has waived their right to Personal Hearing and has requested that the matter be decided on merit on the basis of written submissions already on record. Thus, the principles of natural justice as provided in Section 122A of the Customs Act, 1962 have been duly complied with. I accordingly proceed to decide the case on the basis of facts, evidence on record and the written submissions made by the Noticee. On a careful perusal of the Show Cause Notice and case records, I find that the following main issues are involved in this case, which are required to be decided at the stage of adjudication:

(i) Whether the classification of goods covered under Bill of Entry No. 4855799 dated 01.10.2025 filed at Mundra Port, declared as 'Industrial Oil' under CTH 27101990, should be rejected and re-classified as 'Automotive Diesel Fuel (ADF) as per IS 1460:2025' under CTH 27101944;

(ii) Whether the declared value of **Rs. 82,74,413/-** should be rejected in terms of

Rule 12 of the CVR, 2007 and re-determined as **Rs. 1,28,22,003/-**;

(iii) Whether the impugned goods having re-determined value of **Rs. 1,28,22,003/-** are liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962;

(iv) Whether penalties are imposable on the Noticee under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962.

18. CLASSIFICATION

18.1 Regarding the first issue, I find that M/s. Himay Bizcon Agripetro LLP filed Bill of Entry No. 4855799 dated 01.10.2025 at Mundra Port declaring the goods as 'Industrial Oil' and classifying the same under Customs Tariff Item 27101990 ('Others' — import policy: Free). The said Bill of Entry covered a consignment of 2,00,450 KGs with declared assessable value of **Rs. 82,74,413/-** imported from M/s. Prime Petroleum FZC, Sharjah, UAE.

18.2 I find it pertinent to note that the classification of goods under the Customs Tariff Act, 1975 is governed by the General Rules for the Interpretation of the Import Tariff (GIR). The relevant Rules read as under:

GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM

Classification of goods in the Nomenclature shall be governed by the following principles :

1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions :

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

   (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows :

   (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

   (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

   (c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

In terms of GIR Rule 1, Supplementary Note (e) to Chapter 27 of the

Customs Tariff Act, 1975 defines "Automotive Diesel Fuel (ADF)" as any hydrocarbon oil conforming to the Indian Standards Specification IS 1460. CTH 27101944 specifically covers "Gas oil and oils obtained from bituminous minerals — Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460." Since the imported goods have been found, upon comprehensive testing by CRCL, Visakhapatnam and MRPL, to conform to the parameters of IS 1460:2025 in 19 out of 21 parameters — with the 2 non-conforming parameters (Flash Point and Sulphur) being directly attributable to deliberate adulteration with lighter hydrocarbons — the goods are correctly classifiable under CTH 27101944 in terms of GIR Rule 1 read with the Supplementary Note to Chapter 27. Further, even applying GIR Rule 4, the goods are most akin to Automotive Diesel Fuel under CTH 27101944, as has been specifically held by the Hon'ble Gujarat High Court in R/SCA No. 16799 of 2025 (order dated 09.03.2026, which disposed of the Noticee's own SCA No. 1357 of 2026) applying the "most akin test" laid down by the Hon'ble Supreme Court in *Gastrade International v. Commissioner of Customs, Kandla*.

18.3 Further, I find that DRI, Gandhidham put the consignment on hold on 08.10.2025 and drew a panchnama on 09.10.2025 at Mundra Port. Representative samples were drawn in triplicate under proper panchnama procedure from each of the 10 containers and sent to Custom House Laboratory, Visakhapatnam for testing vide Test Memos 252/2025 to 261/2025 dated 16.10.2025. CRCL, Visakhapatnam issued test reports vide Lab No. 180-DRI to 189-DRI dated 21.11.2025. Additional samples were sent to MRPL, Mangalore vide Test Memo No. 945/2025 dated 07.03.2026 for testing of remaining parameters, to ensure comprehensive testing of all 21 parameters as mandated by the Hon'ble Supreme Court in *Gastrade International v. Commissioner of Customs, Kandla*. MRPL submitted its test report vide letter dated 16.04.2026.

18.4 I find that the CRCL, Visakhapatnam and MRPL, Mangalore test reports, read conjunctively, establish that the impugned goods conform to the specifications of Automotive Diesel Fuel (ADF) as per IS 1460:2025 in 19 out of 21 parameters tested. The Flash Point was found to be 20°C (MRPL) / approximately 22°C (CRCL) against the mandatory minimum of 35°C under IS 1460:2025, and the Sulphur content was found to be 12 ppm against the maximum permissible 10 ppm. Both CRCL, Visakhapatnam and MRPL have specifically noted that there is no specification available for 'Industrial Oil' in any National or International Standard. CRCL, Visakhapatnam has categorically recorded that the sample is adulterated diesel with the flash point lowered by the use of lighter hydrocarbons. The goods are therefore correctly classifiable under CTH 27101944.

18.5 I have carefully considered the submissions of the Noticee and find the same not tenable, for the following reasons:

(a) On the conclusiveness of the CRCL, Visakhapatnam test reports: The Noticee has submitted that the CRCL, Visakhapatnam test reports are inconclusive as only 17 out of 21 parameters were tested and Flash Point and Distillation Recovery did not conform to IS 1460:2025. This submission is not tenable. The said test reports, being issued by a Government of India accredited laboratory, carry significant evidentiary value. The Noticee's contention conflates conformity with completeness. The object of the *Gastrade International* direction is to ensure that all 21 parameters are covered by the testing process taken as a whole — not that each of the two parameters must be tested by a single laboratory. CRCL,

Visakhapatnam tested 17 parameters; the remaining parameters (including Cetane Number, CFPP, Oxidation Stability and Lubricity) were thereafter tested by MRPL. Together, CRCL, Visakhapatnam and MRPL cover all 21 parameters prescribed under IS 1460:2025, fulfilling the requirement of *Gastrade International* in its letter and spirit. Moreover, the report of CRCL, Visakhapatnam does not merely state that certain parameters "conform to" ADF; it has recorded the categorical positive opinion that the goods are adulterated diesel with lighter hydrocarbons and that there is no specification available for Industrial Oil in any National or International Standard — which is precisely the kind of qualitative opinion that was missing in the *Gastrade International* reports. The non-conformity of flash point and distillation recovery is itself explained by CRCL, Visakhapatnam as a product of deliberate adulteration with lighter hydrocarbons, and not as any indicator that the goods are something other than diesel. The contention of inconclusive test reports is accordingly rejected.

(b) On the admissibility of the MRPL test report: The Noticee has contended that MRPL is not a notified laboratory under Customs Law and that combined reliance on two laboratories for different parameters is contrary to CBIC Circulars No. 43/2017-Cus and 15/2019-Cus, and that MRPL's status as a laboratory under the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 renders it inapplicable to customs classification proceedings. I find these submissions not tenable. The Hon'ble Gujarat High Court in R/SCA No. 16799 of 2025 (order dated 09.03.2026), in the very matter concerning the present Noticee's SCA No. 1357 of 2026, has expressly held that laboratory test results cannot be discarded merely because samples are tested in two different laboratories, particularly when one laboratory may not be fully equipped to test all 21 parameters mandated by the Supreme Court in *Gastrade International*, and that such combined test results from different laboratories cannot be discarded so long as they conform to the directions in *Gastrade International* and cover the parameters prescribed under the relevant Indian Standards. This question of law is accordingly settled conclusively against the Noticee by a Division Bench of the Hon'ble Gujarat High Court. The Noticee's argument regarding CBIC Circulars 43/2017 and 15/2019 is similarly not tenable — those circulars govern administrative routing of samples to laboratory facilities and cannot be read as imposing a bar on the admissibility of test results obtained from a technically competent and government-recognized laboratory. No court has held that MRPL reports are inadmissible in customs proceedings; to the contrary, the Hon'ble Gujarat High Court has explicitly upheld their reliability and admissibility in the present category of cases.

(c) On the CRCL, Kandla report: The Noticee has placed reliance on Test Report No. 6168/07102025 dated 09.10.2025 issued by CRCL, Kandla, which the Noticee claims recorded that the goods do not meet specifications for restricted goods. I find this submission not tenable. The Hon'ble Gujarat High Court in R/Special Civil Application No. 16799 of 2025 (order dated 09.03.2026) — which specifically covered and dismissed the Noticee's own Special Civil Application No. 1357 of 2026 challenging the very seizure under adjudication — has specifically addressed this contention regarding the CRCL, Kandla report and held that in view of the categorical findings of CRCL, Visakhapatnam and MRPL, such an earlier report cannot come to the rescue of importers. I respectfully adopt and apply these findings. Further, it is to be noted that there is no recognized National or International Standard defining 'Industrial Oil' as a product with specific and

identifiable parameters. A laboratory report merely recording that certain goods do not meet the specifications of ADF/HFHSD does not, by that fact alone, establish the positive identity of such goods as 'Industrial Oil'. The CRCL, Kandla report accordingly does not displace the positive and categorical findings of CRCL, Visakhapatnam and MRPL obtained under proper panchnama procedure during official investigation.

(d) On the distinction from Gastrade International: The Noticee has relied upon the decision of the Hon'ble Supreme Court in *Gastrade International vs. Commissioner of Customs, Kandla* [(2025) 392 ELT 529 (SC)] to submit that the test reports are inconclusive and classification as ADF is not sustainable. I find that the said decision is clearly distinguishable on facts from the present case. In *Gastrade International*, the three laboratories tested only 8, 10 and 14 parameters respectively out of 21, none of the reports gave a categorical opinion that the goods were "most akin" to HSD, and the reports merely stated that the samples had "characteristics of" HSD without a qualitative positive determination. The Supreme Court found this insufficient. In the present case, these two critical distinguishing features are entirely absent: (i) CRCL, Visakhapatnam and MRPL together cover all 21 parameters as directed by the Supreme Court itself, and (ii) CRCL, Visakhapatnam has not merely stated that the goods have "characteristics of" ADF but has rendered a categorical qualitative opinion that the goods are adulterated diesel fuel with lighter hydrocarbons, that they are most akin to HFHSD/adulterated HFHSD, and that there is no specification available for Industrial Oil in any National or International Standard. The Hon'ble Gujarat High Court in its common order dated 09.03.2026 in R/SCA No. 16799 of 2025 — which disposed of the Noticee's own SCA No. 1357 of 2026 — has expressly distinguished *Gastrade International* on precisely these grounds. The ratio of *Gastrade International* is accordingly not applicable to the present case and the Noticee's reliance thereon is misplaced.

(e) On the Gujarat High Court judgment dated 09.12.2025 in Rajattam Sarbottam Ganguly: The Noticee has also placed reliance on the Hon'ble Gujarat High Court's judgment dated 09.12.2025 in *Rajattam Sarbottam Ganguly & Ors. v. Union of India & Ors.* [being the judgment in *Noya Infrastructure LLP vs. Union of India*, R/SCA Nos. 12943, 14559, 14552 and 14562 of 2025, reported as (2025) 37 Centax 338 (Guj.)]. I find that this reliance is misplaced. The said judgment was rendered on 09.12.2025, i.e., prior to the common judgment dated 09.03.2026 in R/SCA No. 16799 of 2025, in which a Division Bench of the same court reached the opposite conclusion on the very same category of imports and upheld the seizure. The judgment dated 09.03.2026 is the later and binding pronouncement of the Court directly applicable to the present matter, and it is the judgment that specifically governs the Noticee's own SCA No. 1357 of 2026. Accordingly, the Noticee's reliance on the said judgment is not tenable.

(f) On the Gujarat High Court judgment being limited to seizure proceedings: The Noticee has submitted that the judgment dated 09.03.2026 of the Hon'ble Gujarat High Court was rendered in the context of a challenge to seizure action and cannot be treated as a conclusive determination for purposes of adjudication proceedings. I find this submission not tenable. While it is correct that the Hon'ble Court was not conducting a final adjudication on classification or penalty under the Customs Act, 1962, the factual findings recorded by the Hon'ble Court regarding the nature of the goods, the categorical opinion of the laboratories, the admissibility and reliability of CRCL, Visakhapatnam and MRPL test reports, the

applicability of the "most akin test", the distinction from *Gastrade International*, and the inapplicability of the Kandla report are all findings on the very same evidence that is before me in these proceedings. These findings carry significant evidential weight and I see no reason to depart from them. More importantly, the Hon'ble Court dismissed the Noticee's own SCA No. 1357 of 2026, which had challenged the seizure of this very consignment — thereby holding that the seizure was legally valid. The Noticee cannot simultaneously argue that the judgment is irrelevant for adjudication purposes while having itself invoked the jurisdiction of the High Court to seek the release of the very goods under adjudication. The submission is accordingly rejected.

(g) On the alleged internal contradiction in the SCN: The Noticee has submitted, without prejudice, that the SCN is self-contradictory in simultaneously alleging that the goods are adulterated ADF (and therefore fail IS 1460 parameters) and also classifying them as ADF conforming to IS 1460. I find this submission is a technically sophisticated but ultimately unpersuasive argument. The correct legal position — as authoritatively settled by the Hon'ble Gujarat High Court in its order dated 09.03.2026 applying the statutory definition of "adulteration" under Section 2(a) of the Malpractices Order, 2005 — is as follows: adulteration means the introduction of a foreign substance into diesel illegally or without authorisation which results in non-conformance to IS 1460. The product so adulterated remains, in its essential character, diesel fuel — characterised as adulterated diesel. Adulteration of a product does not change its essential character but only confirms that the base product was diesel fuel, into which foreign substances were introduced. Classification of petroleum products under the Customs Tariff is governed by the "most akin test" based on the essential character of the goods, not by whether the goods satisfy all parameters of a particular IS standard. A product that meets 19 out of 21 parameters of IS 1460:2025, with the 2 non-conforming parameters being directly attributable to deliberate adulteration with lighter hydrocarbons, is — in terms of its essential character — most akin to Automotive Diesel Fuel. The Hon'ble Gujarat High Court has expressly so held in the present category of cases. The alleged contradiction is therefore not a legal contradiction but a misunderstanding of the applicable classification methodology. The submission is accordingly rejected.

18.6 In view of the above discussion and the findings of CRCL, Visakhapatnam and MRPL read conjunctively as set out in **Table-V** above, I find that the goods imported by M/s. Himay Bizcon Agripetro LLP under Bill of Entry No. 4855799 dated 01.10.2025 are **Automotive Diesel Fuel (ADF) conforming to IS 1460:2025**, correctly classifiable under **CTH 27101944**. The declared classification under CTH 27101990 as 'Industrial Oil' is rejected. The submissions of the Noticee challenging the test reports and classification are rejected for the reasons detailed above.

18.7 I find that the provisions of Section 17(1) of the Customs Act, 1962 read with Section 2(2) of the Customs Act, 1962 lay down the onus on the importer to determine duty, classification etc. by way of self-assessment. By furnishing incorrect and false information in the import documents, I find that M/s. Himay Bizcon Agripetro LLP has violated the provisions of Section 17(1) read with Section 2(2) of the Customs Act, 1962. Further, in terms of Section 46(4) and 46(4A) of the Customs Act, 1962, the importer is required to certify the truth of the contents of the Bill of Entry and to ensure accuracy, authenticity and compliance with restrictions. In the instant case, Shri Jain Surendra Fulchand, Partner of M/s. Himay Bizcon Agripetro LLP, in his statements dated 17.12.2025 and 27.04.2026,

acknowledged having perused and agreed with the findings of the CRCL, Visakhapatnam test reports and the MRPL test report, accepting that the goods conform to the parameters of Automotive Diesel Fuel under IS 1460:2025 except for flash point and sulphur. I find that the importer has accordingly contravened the provisions of Sections 46(4) and 46(4A) of the Customs Act, 1962.

19. VALUATION

19.1 Regarding the second issue, I find that as the goods have been found to be mis-declared in respect of their description and classification, the value declared by the Noticee in Bill of Entry No. 4855799 dated 01.10.2025 and the accompanying invoice of the overseas supplier M/s. Prime Petroleum FZC, Sharjah, UAE cannot be accepted as the true transaction value under Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Since the declared description of the goods is itself false, the invoice price premised on such false description cannot represent the authentic transaction value of the goods. Accordingly, I find that the declared value of **Rs. 82,74,413/-** is liable to be rejected under Rule 12 of the CVR, 2007.

19.2 I have carefully considered the Noticee's submissions on valuation — that the declared value is a genuine transaction value satisfying all conditions of Rule 3(1) of CVR 2007 read with Section 14, that Rule 9 has been prematurely invoked without sequential exhaustion of Rules 4 through 8, and that the Nayara Energy domestic price is not a permissible benchmark under Rule 9. I find these submissions not tenable. Since the invoice itself is based on a false description of the goods as 'Industrial Oil', the invoice price cannot represent the authentic transaction value of ADF (CTH 27101944). A transaction value premised on a fictitious description is not a valid transaction value for the purposes of Rule 3 of CVR 2007. Further, as regards sequential exhaustion of Rules 4 to 8: Automotive Diesel Fuel is a restricted commodity importable only through State Trading Enterprises under Policy Condition No. 5 of Chapter 27. Since exact comparative data in respect of the imported goods are not available in the absence of clear descriptions and mis-declaration on the part of the importer, the value cannot be determined as per the provisions of Rules 4 to 8 of the CVR, 2007. Since the goods cannot be fully compared with similar/identical imports as the same are restricted goods, their value is determinable under Rule 9 (Residual method) of the CVR, 2007 read with sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of objective and quantifiable data available in India. As regards the Noticee's submission that the Nayara Energy price is a domestic price that cannot be used without Rule 7 deductions, I find that Rule 9 permits determination of value by reasonable means consistent with the principles of CVR 2007 and on the basis of data available in India. ADF being a canalized commodity not freely traded in the import market, no comparable import price data is available. The Nayara Energy ADF price with appropriate density conversion represents the most reasonable and proximate available benchmark for re-determination of assessable value under Rule 9 of CVR 2007.

For re-determination of assessable value under Rule 9 of CVR 2007, the

methodology adopted is as follows:

Particulars	**Details**
ADF Market Price (Nayara Energy, Oct 2025)	Rs. 52,541.75 per KL
Imported Quantity	2,00,450 KGs
Average Density (as per CRCL Visakhapatnam)	0.8214 g/ml
Volume equivalent	244.035 KL
Re-determined Assessable Value	**Rs. 1,28,22,003/-**

The prevailing market price of ADF as per invoice of M/s Nayara Energy Limited for the 1st week of October 2025 has been taken as the benchmark at **Rs. 52,541.75 per KL**. The imported quantity of **2,00,450 KGs**, using the average density of **0.8214 g/ml** as reported by CRCL, Visakhapatnam, works out to **244.035 KL** in volume terms. The re-determined assessable value, computed on this basis, accordingly works out to **Rs. 1,28,22,003/-**. The Noticee's valuation submissions are accordingly rejected.

19.3 I accordingly hold that the declared value of **Rs. 82,74,413/- (Rupees Eighty Two Lakh Seventy Four Thousand Four Hundred and Thirteen Only)** is rejected under Rule 12 of the CVR, 2007, and the assessable value is re-determined at **Rs. 1,28,22,003/- (Rupees One Crore Twenty Eight Lakh Twenty Two Thousand and Three Only)** under Rule 9 of CVR, 2007, as discussed in the foregoing paras.

20. CONFISCATION

20.1 Regarding the third issue, I find that the Show Cause Notice has proposed confiscation of the impugned goods under Sections 111(d) and 111(m) of the Customs Act, 1962. The relevant provisions read as under:

> "*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*"
>
> "*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.*"

20.2 I find that M/s. Himay Bizcon Agripetro LLP declared the goods as 'Industrial Oil' under CTH 27101990 in Bill of Entry No. 4855799 dated 01.10.2025. Upon testing by CRCL, Visakhapatnam and MRPL, Mangalore, the goods were found to be Automotive Diesel Fuel (ADF) conforming to IS 1460:2025, classifiable under CTH 27101944, a restricted commodity importable only by State Trading Enterprises under Policy Condition No. 5 of Chapter 27 of ITC(HS) 2022. The said Policy Condition No. 5 reads as under:

> "*Import allowed through IOC subject to Para 2.21 of the Foreign Trade Policy, except for companies who have been granted rights for marketing of transportation*

fuels in terms of MoP&NG Resolution No. P-23015/1/2001-MKT dated 08.03.2002."

From above, it is seen that import of restricted goods is allowed subject to Para 2.21 of Foreign Trade Policy and the same is reproduced below:

"2.21 State Trading Enterprises (STEs)

(a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and/or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.

(b) Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

(c) DGFT may, however, grant an authorisation to any other entity to import or export any of the goods notified for exclusive trading through STEs."

20.3 M/s. Himay Bizcon Agripetro LLP (IEC: AAPFH9483F), Gandhidham, is neither a State Trading Enterprise nor does it possess any authorisation from DGFT for import of ADF. The import of ADF by a non-STE entity in violation of Policy Condition No. 5 of Chapter 27 of ITC(HS) 2022 renders the goods liable for confiscation under Section 111(d) of the Customs Act, 1962.

20.4 Further, the goods declared as 'Industrial Oil' under CTH 27101990 in the Bill of Entry do not correspond with the actual goods found on testing i.e. ADF conforming to IS 1460:2025 (CTH 27101944). The description, classification, import policy status and value in the Bill of Entry are completely at variance with the actual nature of the goods. The declared value of Rs. 82,74,413/- also does not correspond to the re-determined value of Rs. 1,28,22,003/-. The goods are therefore also liable for confiscation under Section 111(m) of the Customs Act, 1962.

20.5 Accordingly, in the manner discussed above and in contravention of Sections 17(1), 46(4) and 46(4A) of the Customs Act, 1962, I find that the imported goods covered under Bill of Entry No. 4855799 dated 01.10.2025, namely 2,00,450 Kgs of Automotive Diesel Fuel (ADF) conforming to IS 1460:2025, having re-determined assessable value of Rs. 1,28,22,003/- (Rupees One Crore Twenty Eight Lakh Twenty Two Thousand and Three Only), seized vide Seizure Memo dated 24.11.2025, are liable for confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962.

20.6 As I have already held the goods liable for confiscation under Section 111 of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 of the Customs Act, 1962 should be imposed in lieu of

confiscation. Section 125 ibid reads as under:

> "*Section 125. Option to pay fine in lieu of confiscation. – (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit.*"

20.7 A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. In the present case, M/s. Himay Bizcon Agripetro LLP vide their written submission dated 11.06.2026 have specifically prayed for permission to re-export the goods to the overseas supplier. The goods have remained under Customs control at Mundra Port and have not been cleared for home consumption.

20.8 I find that import of Automotive Diesel Fuel (CTH 27101944) is canalized through State Trading Enterprises and requires authorisation under Policy Condition No. 5 of Chapter 27 of the ITC(HS), which the Noticee admittedly does not possess. The infirmity in the present case lies in the Noticee's failure to comply with the prescribed statutory conditions. In the absence of fulfilment of these conditions, the goods cannot be permitted to be cleared into the domestic market.

20.9 I further observe that ordering confiscation without allowance for re-export would not serve any meaningful revenue purpose. Such a course would only result in unnecessary litigation and prolonged detention of containers at the port without yielding any revenue to the Government. The goods in question are not per se banned items; rather, their import is regulated and conditional. The confiscation ordered herein is a legal consequence of non-fulfilment of statutory conditions and absence of requisite authorisation. I also note that the Hon'ble Gujarat High Court, in its order dated 09.03.2026 in R/SCA No. 16799 of 2025 and connected matters — which disposed of the Noticee's own Special Civil Application No. 1357 of 2026 — clarified (para 56) that "*in case the petitioners file an application for re-export of goods, the DRI shall consider the same, and pass appropriate orders on such application*", thus recognising the option of re-export as a legitimate course of action.

20.10 In view of the above, I am of the considered view that the ends of justice would be met by allowing redemption of the subject goods for the limited purpose of re-export. Imposition of redemption fine along with penalty is sufficient to address the violation and convey a clear deterrent message to similarly placed importers. Therefore, exercising powers under Section 125 of the Customs Act, 1962, I deem it appropriate to allow the Noticee an option to redeem the goods for the limited purpose of re-export on payment of redemption fine under Section 125 of the Customs Act, 1962.

21. <u>Penalty on M/s. Himay Bizcon Agripetro LLP</u>:

21.1 Regarding the **fourth** issue, I find that Section 112(a) of the Customs Act, 1962 provides for imposition of penalty upon any person who, in relation to any

goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, in the case of goods in respect of which any prohibition is in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is greater. I have held above that the goods are liable for confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962. M/s. Himay Bizcon Agripetro LLP, by filing a Bill of Entry with incorrect description and classification of restricted goods as freely importable 'Industrial Oil', has clearly rendered the goods liable to confiscation under Section 111 and has thereby rendered itself liable to penalty under **Section 112(a)(i)** of the Customs Act, 1962.

I further find that imposition of penalty simultaneously under both Section 112(a) and Section 112(b) of the Act would amount to double penalty for the same act, which is not warranted. I therefore refrain from imposing penalty under Section 112(b) of the Act.

21.2 The Noticee has submitted that no mens rea has been established and that the goods were bonafidely imported on the basis of supplier documents, and that since the classification is disputed on the basis of inconclusive reports, no act of deliberate mis-declaration is made out. I find these submissions not tenable in the facts of the present case, for the following reasons:

(i) 'Industrial Oil' is not a recognised product under any Indian or International Standard, as categorically noted by CRCL, Visakhapatnam. There is no IS/ASTM/ISO/EN specification for 'Industrial Oil'. Shri Jain Surendra Fulchand, Partner of M/s. Himay Bizcon Agripetro LLP, has himself admitted in his statement dated 17.12.2025 that he personally negotiates and finalises all import orders directly with the overseas supplier, and that in his own understanding, any petroleum product falling outside defined Indian Standards is treated by him as 'Industrial Oil'. A trader who personally deals with an overseas petroleum supplier and places orders on the basis of the supplier's Certificate of Analysis cannot credibly claim ignorance of the basic classification requirements and import policy restrictions applicable to diesel fuel.

(ii) The investigation has established a direct and incriminating nexus between the Noticee and diesel fuel transactions. During the search proceedings on 11.02.2026 at the importer's premises, email communications were recovered establishing that Shri Jain Surendra Fulchand, Partner of M/s. Himay Bizcon Agripetro LLP, was actively engaged as an intermediary in proposed EN590 diesel fuel transactions between M/s. Prime Petroleum FZC, UAE (the very same supplier of the impugned consignment), Elite Energy Tech LLC, Kuwait and Orbis Trading & Consultancy Service Ltd. through emails dated 25.01.2025, 03.09.2024 and 19.08.2024. EN590 is a European standard specification for diesel fuel. A person who is actively involved in brokering and facilitating international diesel fuel transactions, and who imports goods from the very same overseas supplier in those diesel transactions, cannot be heard to claim complete ignorance that the goods imported from that supplier are diesel fuel. The identity of M/s. Prime Petroleum FZC, UAE as both the diesel transaction counterparty and the supplier in the impugned import establishes a direct nexus that goes to demonstrate the Noticee's knowledge of the actual nature of the goods.

(iii) Shri Jain Surendra Fulchand, Partner of M/s. Himay Bizcon Agripetro LLP, in his statement dated 27.04.2026, admitted that after initiation of investigation by DRI, he deleted all WhatsApp communications with the supplier M/s. Prime Petroleum FZC, UAE. The deliberate deletion of documentary evidence linking the

Noticee to the supplier, at the precise time when the DRI investigation was underway, is not the conduct of an innocent trader who received wrong goods by a supplier's mistake. It is conduct consistent with a conscious awareness that such communications would be incriminating.

(iv) Shri Jain Surendra Fulchand, in his statement dated 17.12.2025, admitted that he has no detailed knowledge of the product composition of the imported goods, that orders are placed solely on buyer demand, that no IS standard exists for 'Industrial Oil', and that he interprets any petroleum product outside Indian Standards as 'Industrial Oil'. This is precisely the modus operandi of importing restricted petroleum products under a residual category that has no defined specification, to evade the import restrictions applicable to the actual goods. The Noticee cannot derive any benefit from his own stated ignorance about the specifications of the goods he is importing and trading.

21.3 As regards penalty under Section 114AA of the Customs Act, 1962, I find that the said provision provides for penalty upon any person who knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business for the purposes of this Act. In the present case, the Bill of Entry filed under Section 46 of the Customs Act, 1962 declared the goods as 'Industrial Oil' under CTH 27101990, whereas the actual goods are Automotive Diesel Fuel (ADF) conforming to IS 1460:2025 under CTH 27101944, as conclusively established by CRCL, Visakhapatnam and MRPL. The documents submitted by the Noticee — commercial invoice, packing list, and certificate of analysis of the overseas supplier M/s. Prime Petroleum FZC — all described the goods as 'Industrial Oil', whereas the actual goods were ADF, a restricted commodity. These declarations and documents are false and incorrect in material particulars. In view of the established nexus between the Noticee and EN590 diesel fuel transactions through the same supplier, the deletion of supplier communications after DRI intervention, the Noticee's own admission that 'Industrial Oil' was used by him as an undefined, residual category for any petroleum product falling outside recognised Indian Standards, and the categorical laboratory findings, I find that the false declarations were made knowingly and intentionally with the deliberate design to import restricted ADF under the guise of freely importable Industrial Oil. I accordingly reject the Noticee's submissions on mens rea and find that M/s. Himay Bizcon Agripetro LLP is liable for penalty under **Section 114AA** of the Customs Act, 1962.

ORDER

22. In view of the aforesaid discussions and findings, I pass the following order:

(i) I reject the classification of goods covered under Bill of Entry No. 4855799 dated 01.10.2025, declared as 'Industrial Oil' under Customs Tariff Item 27101990, and re-classify the same as 'Automotive Diesel Fuel (ADF) conforming to IS 1460:2025' under Customs Tariff Item 27101944.

(ii) I reject the declared assessable value of **Rs. 82,74,413/-** (Rupees Eighty Two Lakh Seventy Four Thousand Four Hundred and Thirteen Only) under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine as **Rs. 1,28,22,003/-** (Rupees One Crore Twenty Eight Lakh Twenty Two Thousand and Three Only) under Rule 9 of CVR, 2007, read with Section 14 of the Customs Act, 1962.

(iii) I order to confiscate the impugned goods i.e. 2,00,450 Kgs of Automotive Diesel Fuel (ADF) conforming to IS 1460:2025, imported by M/s. Himay Bizcon Agripetro LLP under Bill of Entry No. 4855799 dated 01.10.2025 in 10 containers, having re-determined assessable value of **Rs. 1,28,22,003/-** (Rupees One Crore Twenty Eight Lakh Twenty Two Thousand and Three Only), under Sections 111(d) and 111(m) of the Customs Act, 1962. However, I give an option to M/s. Himay Bizcon Agripetro LLP to redeem the said goods for **re-export** purpose only under Section 125(1) of the Customs Act, 1962, on payment of Redemption Fine of **Rs. 10,00,000/-** (Rupees Ten Lakhs Only).

(iv) I impose a penalty of **Rs. 5,00,000/-** (Rupees Five Lakhs Only) on M/s. Himay Bizcon Agripetro LLP under Section 112(a)(i) of the Customs Act, 1962. I do not impose any penalty under Section 112(b) of the Customs Act, 1962 for the reasons discussed above.

(v) I impose a penalty of **Rs. 1,00,000/-** (Rupees One Lakh Only) on M/s. Himay Bizcon Agripetro LLP under Section 114AA of the Customs Act, 1962.

23. This order is issued without prejudice to any other action that may be taken against the Noticee or any other person under the provisions of the Customs Act, 1962 or rules made thereunder, or under the Foreign Trade (Development and Regulation) Act, 1992 or any other law for the time being in force.

24. Show Cause Notice No. 70/2026-27/ADC/ZDC/MCH dated 02.06.2026 stands disposed of on the above terms.

Digitally signed by Dipakbhai Zala
Date: 01-07-2026 18:12:20

(Dipak Zala)
Additional Commissioner of Customs,
Custom House, Mundra.

To,

M/s. Himay Bizcon Agripetro LLP (IEC No. AAPFH9483F),
Plot No. 258, Sector 1A,
Gandhidham – 370 201
(Email- himay.agripetro@gmail.com)

Copy to:

1. The Deputy Director, DRI, Gandhidham Regional Unit, Gandhidham
2. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra
3. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra
4. The Deputy/Assistant Commissioner of Customs, Group-I, Custom House, Mundra
5. Guard File