IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA,

ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

WRIT PETITION No. 12727 of 2010

M/S INDIAN OIL CORPORATION LIMITED
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sumit Nema - Senior Advocate with Shri Ayush Gupta - Advocate for the petitioner.

Shri Rajvardhan Dutt Padraha - Govt. Advocate for the respondents/State.

WITH

WRIT PETITION No. 12733 of 2010

M/S INDIAN OIL CORPORATION LIMITED
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sumit Nema - Senior Advocate with Shri Ayush Gupta - Advocate for the petitioner.

Shri Rajvardhan Dutt Padraha - Govt. Advocate for the respondents/State.

WRIT PETITION No. 12749 of 2010

M/S. INDIAN OIL CORPORATION LIMITED
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sumit Nema - Senior Advocate with Shri Ayush Gupta - Advocate for the petitioner.

Shri Rajvardhan Dutt Padraha - Govt. Advocate for the respondents/State.

WRIT PETITION No. 5477 of 2011

M/S. INDIAN OIL CORPORATION LIMITED
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sumit Nema - Senior Advocate with Shri Ayush Gupta - Advocate for the petitioner.

Shri Rajvardhan Dutt Padraha - Govt. Advocate for the respondents/State.

WRIT PETITION No. 11527 of 2011

M/S INDIAN OIL CORPORATION
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sumit Nema - Senior Advocate with Shri Ayush Gupta - Advocate for the petitioner.

Shri Rajvardhan Dutt Padraha - Govt. Advocate for the respondents/State.

WRIT PETITION No. 8855 of 2013

M/S INDIAN OIL CORPORATION LIMITED
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sumit Nema - Senior Advocate with Shri Ayush Gupta - Advocate *for the petitioner.*

Shri Rajvardhan Dutt Padraha - Govt. Advocate for the respondents/State.

<u>VALUE ADDED TAX APPEAL No. 30 of 2019</u>

M/S INDIAN OIL CORPORATION LIMITED
Versus
THE COMMISSIONER OF COMMERCIAL TAX

<u>Appearance:</u>

Shri Sumit Nema - Senior Advocate with Shri Ayush Gupta - Advocate for the petitioner.

Shri Rajvardhan Dutt Padraha - Govt. Advocate for the respondents/State.

Reserved on: 12.08.2026

Pronounced on: 08.09.2026

<u>ORDER</u>

Per. Vivek Rusia, Acting Chief Justice

Since the issue involved in these Writ Petitions/Value Added Tax Appeal is common, they are being decided by this common order. For the sake of convenience, the facts of Writ Petition No.12727/2010 are being taken to decide the controversy involved therein.

2. The petitioner/M/s Indian Oil Corporation Limited (hereinafter referred to as the Corporation) has filed this petition challenging the constitutional validity of Section 61 (4-A) of the Madhya Pradesh Commercial Tax Act, 1994 (hereinafter referred to as 'Act of 1994') and constitutional validity of Section 46(5)(ii), 46(6) and Sub-Section (3) of Section 4-A of M.P. Value Added Tax, 2002 read with Section 13 of the Entry Tax Act, 1976 which provides that no

Second Appeal shall be admitted by the "Appellate Board" unless, out of the total balance due from the dealer after the order passed in First Appeal, 20% of such balance is paid and the memorandum of appeal is accompanied by a satisfactory prove of payment of such amount and thereupon the "Appellate Board" shall stay the recovery of the balance amount till the decision of the appeal.

3. The petitioner is also seeking quashing of the order dated 14.06.2006 passed by the respondent No.3 and also order dated 21.06.2010 passed by the respondent No.5 in Appeal No.21/2008. It has also challenged the show cause notice dated Nil issued in Appeal No.50/Bhopal/10-11 (Entry Tax) in respect of deposit of tax as per Section 46(5), failing which the appeal shall stand dismissed, and prays for direction to respondents to hear the appeal without insisting for pre-deposit.

Facts of the case, in short, are as under:-

4. The petitioner is a Public Sector Undertaking of the Government of India and is registered under the Indian Companies Act, 1956 and in view of Section 617 of the Indian Companies Act, 1956, it is a Government Company. It deals in the manufacturing and sale of various petroleum products, including Furnace Oil and Light Diesel Oil, which are the subject matter of this bunch of matters. The petitioner has 13 storage depots throughout the State, and the principal place of work is in Bhopal, and the same is registered under the Commercial Tax Act, 1994.

5. In respect of the assessment year 01.04.2007 to 31.03.2008, the respondent No.5 vide order dated 21.06.2010 (Annexure P/2) has created an additional demand of Rs.3,50,14,327/- due to imposition of M.P. Tax on Furnace Oil @ 1% and charging interest. The petitioner, against the order dated 21.06.2010, preferred an appeal before the respondent No.4/Additional

Commissioner, Commercial Tax, Bhopal, which is pending consideration. The respondent No. 4, vide impugned show cause dated Nil, raised an objection to show cause as to why the proof of pre-deposit has not been annexed alongwith the memo of appeal, failing which the appeal shall be dismissed in default.

6. The petitioner was directed to produce evidence of pre-deposit by 16.09.2010. The Assessing Authority passed the order dated 21.06.2010 by following the order dated 14.06.2006 passed by the respondent No.3 under Section 68 of the Commercial Tax Act (for short, Act, 1994), wherein the contention of the petitioner distinguishing Furnace Oil from Light Diesel Oil was ignored by observing that both are the same and their usage as fuel is also the same. Therefore, Furnace Oil is taxable at rates specified in Entry No.25 of Schedule-II, Part-III of the Act, 1994.

7. It is averred that this order did not prejudice the petitioner as it was applicable from assessment year 2006-2007 onwards. Since the assessment year 2007-2008 has now been completed, the order dated 21.06.2010 gave the petitioner cause of action to make a challenge. This order under Section 68 of the Act, 1994 is not appealable.

8. The petitioner further put-forth that Furnace Oil is different item than Light Diesel Oil, therefore same does not found place in Schedule-II of the M.P. Tax Act (for short Act, 1976) inasmuch as it being entered for the purpose of resale, no entry tax should be imposition on Furnace Oil like Kerosene and the Bitumen, which fall under the same category under Schedule-III of Act, 1976. It is also contended that order dated 14.06.2006 passed by the respondent No.3 is based on 5 characteristics and the fact that both products are being use as fuel such 5 characteristics are color, density, flash point, distillation range and aromatic content, whereas the petitioner has submitted a chart showing 14 characteristics for

distinguishing Furnace Oil and Light Diesel Oil, but the respondent No.3 considered only 5 characteristics to arrive at a conclusion that both the products are same.

9. In so far as the controversy regarding rate of tax, the same started with an order of respondent No.3 dated 06.05.1999 passed under Section 68 of Commercial Tax Act, 1994 in the case of ***M/S Sharatchand Tiwari***, wherein it has been decided that Reliance product marketed as C-9 Furnace Oil, treating it to be Light Diesel Oil. This view held the field for about twenty years, and there has been no material change in the entry of the schedule of the Entry Tax Act, from which it could be inferred that Furnace Oil was made part of Entry No.24 of Schedule-II of the Act. The petitioner applied for issuance of clarification before the respondent No.3 on the footing that C-9 Furnace Oil, Furnace Oil marketed by IOCL and Light Diesel Oil were different and hence, Furnace Oil be held as distinct from C-9 Furnace Oil and Light Diesel Oil.

10. The Authority nowhere stated that if certain properties in two products are common, then it will be the decisive property and the remaining properties, which are different, will have no part in such determination. The respondent No.3, who is not an expert in the fields of Chemistry and Physics, without any technical help of experts decided contrary to a finding of a specialist. The petitioner submitted a comparative chart based on the Bureau of Indian Standards and certificates from eminent scientists to show that Furnace Oil, Light Diesel Oil, and C-9 Furnace Oil are distinct from one another.

11. The petitioner pointed out that Furnace Oil and Light Diesel Oil are different in terms of density, viscosity, distillation range, composition, sediment content, pour point, water content and sulphur. The order has been passed without

the aforesaid distinguishing features not only at the time of assessment, but at the time of appeal also. The petitioner submits that the decision of respondent No.3 that Furnace Oil and Light Diesel Oil are same is ill-founded and the same are not performance characteristics of discrimination.

12. In this regard, referring to the distinguishing feature core point, it is stated that the core point is the lowest temperature at which oil ceases to flow. The core point of Furnace Oil is between 18-21 degrees, whereas that of Light Diesel Oil is between 12-18 degrees. Another factor is the distillation range, which pertains to the lowest temperature at which a product starts boiling and evaporating.

13. Such range in Furnace Oil begins from 360-500 degrees centigrade, whereas the same in respect of Light Diesel Oil, it is stated from 300-400 degrees centigrade. Further, referring to composition, which undertakes the number of carbon atoms present in the molecules of a petroleum product, it is stated that Furnace Oil Carbon ranges from 20 to 50, whereas in Light Diesel Oil, the same is from 16 to 30. So far as the sedimentation is concerned, which relates to the temperature of obtaining residual after filtration in respect of Furnace Oil, it is at 0.25% maximum, while for Light Diesel Oil, its maximum is 0.1%.

14. In so far as another factor, ash content, is concerned, it is the high temperature at which the petroleum product is heated till it totally evaporates and thereafter, the remains are ash content including Silica, Vanadium, Nickel and other material. In the case of Furnace Oil, ash content is 1%, whereas the same is 0.2% regarding Light Diesel Oil.

15. The next distinguishing feature referred to by the petitioner is water content, which is 1% in respect of Furnace Oil and it is 0.2% in the Light Diesel Oil because of which the Carbon chain in Furnace Oil is very complex and long;

water is trapped within the chains, and the same is unable to be drained out. So far as sulphur is concerned, it is an impurity in both the products. It is 4% in Furnace Oil and 1.8% in Light Diesel Oil.

16. This amounts to the furnishing of sulphur dioxide gas, which, when ignited and same becomes hazardous and pollutes the atmosphere. Further, referring to viscosity, which pertains to the measurement of a liquid's resistance to flow. It is between 80 to 180 at 50 degrees centigrade for Furnace Oil, whereas it is between 2.5 to 15.7 for Light Diesel Oil. Because of this peculiar character, the pumps, which are used in any engine are adjusted to avoid seizure.

17. According to the petitioner the above characteristics clearly establish that both the produces are difference, hence cannot be charged at the same rate. Further, contention for distinguishing the Furnace Oil is a process of Fractional Distillation of Crude Oil. In this, Crude Oil is subjected to heat and, according to the boiling point of Carbon numbers, various distillates are obtained like Gas, LPG, Naphtha, Motor Spirit, SKO, ATF, Diesel, Light Diesel Oil, Furnace Oil and Bitumen. The petitioner has filed an extract of the Central Excise Tariff notification to contend that the above phenomena are recognised by the Bureau of Indian Standards, Excise Laws and Sales Tax Legislation by various States to show that both are different products.

18. It is further contended that Furnace Oil cannot be used in place of Light Diesel Oil because Furnace Oil is used, where more heat and less energy are required, whereas it is vice versa in respect of Light Diesel Oil. The petitioner also pointed out that Light Diesel Oil is not taxed @ 1% because it is a fuel, but it is so taxed for the reasons that there is specific entry for this product. There is no entry of fuel, wherein all goods can be grouped together and taxed at a common rate.

19. It is further highlighted that Schedule II of the Entry Tax Act refers to

special entries, which are invariably used as fuel and have been placed in different entries and subjected to different tax. The petitioner refers to Aviation Fuel, Petrol and Diesel Oil, LPG, Lubricants, Kerosene, Coal, Firewood, etc., to show that different entries in M.P. Tax Act and different rates of taxation to contained that inference can be drawn that though, Furnace Oil as a fuel like Diesel Oil, but same cannot be qualified as there are so many goods, which are contained in Schedule-II of Entry Tax Act, which are fuels, but have not been taxed at the rate like Light Diesel Oil by the Assessing Authority. In this regard, he has referred to the relevant extract of Schedule of Entry Tax, which has been brought on record as Annexure P/7.

20. The petitioner also filed certificates from National Accreditation Board has also Maulana Azad Institute of Technology, Bhopal certifying that both the above products are different from each other specifying that C-9 Marketed by Reliance Petroleum is different from Furnace Oil of IOCL inasmuch as C-9 is a single Hydro Carbon product, whereas Furnace Oil is a mixture of Hydro-Carbons. The petitioner has also invited attention of this Court to the notification entry dated 01.04.2007 (Annexure P/7) issued under Section 4-A of the Entry Tax Act to contend that the Commercial Tax Department itself has been treating these two products as different commodities. The rate of Entry Tax on Light Diesel Oil, Furnace Oil and hexane was increased by 10%, when entered from outside Madhya Pradesh by a registered dealer. It is also stated that Bureau of India Standards recognized both the products separately.

21. The common name used for Furnace Oil is Fuel Oil. While fixing standards of fuel oil, the specifications has been issued by the committee and such specifications are numbered as IS:1593-1982, which are properties of fuel oil and

the same match with the Furnace Oil sold by the petitioner, as his evidence from Annexure P/10. Likewise, the petitioner filed Annexure P/11 to indicate the specification number of Light Diesel Oil as IS:1460:2000 and submitted that specifications of both the products are distinct from each other.

22. In essence, it is put forth that the respondent No.3, while exercising powers under Section 68 of the Act should have recognized the Bureau of Indian Standards and have held Furnace Oil and Light Diesel Oil are not same. By referring to Annexure P/12, relating to Chapter No.27 of the Central Excise and Customs Tariff Act, it is submitted that both the products are separately placed into Schedule of duties and contended that not only different duties, but different rates prescribed in respect of these two products. The petitioner has also filed Annexure P/13 to show that in States of Gujarat and Rajasthan, the Schedule of rates are find in separate entries.

23. It is stated that Furnace Oil and Light Diesel Oil are different not only by way of characteristics, but from their usage also. To buttress his aforesaid submission, the petitioner has placed reliance on the decision in the case of ***United offset Process Private Limited Vs. Assistant Collector of Customs,*** **reported in AIR (1989) SCC 622 (SC),** wherein the Apex Court has observed that in construing entries of goods in Excise, Customs, Octroi of Sales Tax Acts resort should normally be had not to the scientific or technical meaning, but to their popular meanings viz., the meaning attached to the expressions by those dealing in them. Reliance is also placed in the case of ***Sales Tax Vs. S.N. Brothers;*** **reported in (1973) 31 STC - 302 (S.C.)** to contend that the Apex Court, while dealing with the words "dyes and colours" and "scents and perfumes", they should have construed in their own context and in the sense, as ordinarily understood and attributed to these words by people usually conversant with and dealing in such

goods.

24. Referring to Annexure P/14 and P/15, which are assesment orders of M/s Bharat Petroleum Corporation Ltd. and Hindustan Petroleum Corporation Ltd., respectively, the petitioner pointed out that priniciple dealers have treated these two products as two different ones and paid the tax accordingly. It is also pointed out that they cannot use Furnace Oil, if they are using Light Diesel Oil and vice versa, in which, they are so using either Light Diesel Oil or Furnace Oil, which are not designed to use the other.

25. The petitioner has referred two orders passed by the respondent No.2 on 18.08.2008 in appeal No.A/2005/CTAB/07(State) to point out that order dated 14.06.2026 will only apply prospectively and, in this regard, as quoted in Para-4 of such order to show that order of the Commissioner relating to assessment made in the year 1989-2000. The petitioner further submitted that by order dated 18.08.2008, the respondent No.2 has affirmed the order passed by the respondent No.3 on 14.06.2006. Therefore, as the impugned order dated 21.06.2010 relates to the assessment year 01.04.2007 to 31.03.2008, the remedy of first appeal is an illusion.

26. Likewise, after the decision of the first appeal, if a second appeal is preferred, then the effect of order dated 18.08.2008 will be binding on the respondent No.2. Hence, the remedies of first and second appeals are inefficacious one. On the basis of aforesaid contentions, it is stated that the order dated 14.06.2006 of the respondent No.3 and the ratio followed by the respondent No.5 in order dated 21.06.2010 ignoring distinguishable classifications and law laid down by the Apex Court are in violation of Articles 14 and 19(1)(g) of the Constitution of India. Therefore, the aforesaid orders deserves to be quashed.

27. Challenging the constitutional validity of Section 46(5)(ii), 46(6) and 4-

A(3) of Value Added Tax, 2002, it is submitted that Section 46(5)(ii) provides for First Appeal against the order of assesment, wherein it is provided that the same shall be admitted unless out of the total balance due from the dealer, payment of tax and other amounts admitted by the dealer is accompanies by a satisfactory proof of payment of such amount @ 5% in the case of appeal against an *ex-parte* order and in other cases, 10%. So far as Section 46(6) of the aforesaid Act is concerned, the same relates to Second Appeal, which shall be admitted by the Appellate Board unless 20% of the total balance after the order passed in First Appeal is deposited. It is provided therein, that Appellate Board may after considering metits of the application passed in order of stay for a period not exceeding 180 days from the date of such order and shall disposed of within said period of stay.

28. If it is not disposed of in such period, the period of stay may be up to 360-365 days within which period, the appeal shall be decided. The submissions of the petitioner are that the aforesaid provisions and imposing condition of pre-deposit is onerous since, being a creature of statute, a condition for filing an appeal may be imposed. It is well settled that if conditions imposed are onerous, then the statute would be arbitrary as the same amounts to denial of right of appeal even in a completely unjustified amount without granting discretion to the Appellate Authority to waive the amount of tax, penalty and interest.

29. It is urged that these impugned provisions seeks to club patently illegal demands and disputed demands in the same bracket. The same amounts to placing unequals as equals, which is in violation of Article 14 of the Constitution of India. It is also contended that failure in providing discretion to waive the pre-deposit of tax leads to an absurd situation.

30. The petitioner in order to express the essence of his contention as given an example, if Second Appeal is filed against the appeal order and in case, the Appellate Board remands the matter back to the Assessing Authority and thereafter, if the Assessing Authority after remand, reconfirms his earlier order, then the assessee being aggrieved by an illegal order raising additional demand would again have to deposit 10% tax on First Appeal and further 20% tax on Second Appeal. The net tax effect would end up in being 50% of the disputed demand. These complete lack of discretion to waiver the part payment therefore, resulted in unintended and onerous demand making the provision arbitrary.

31. It is further pointed out that in the present case, the issue of Furnace Oil can be treated as Light Diesel Oil is such an issue that arose earlier and therefore, the petitioner would have to pay a huge amount of tax, penalty and interest as part payment. With a view to illustrate, the petitioner indicates the status of demand and pre-deposit in First Appeal and Second Appeal from assessment year 1999-2000 to 2006-2007 to show that as against total demand of Rs.98.30 Crores, the petitioner has deposited Rs.17.59 Crores. By way of chart, which has been brought on record as Annexure P/20.

32. By way of amendment, the petitioner has brought on record, the orders passed by First Appellate Authority as well as Appellate Board in respect of assessmment years 1999-2000, 2001-2002, 2002-2003, 2003-2004 and 2004-2005 granting relief to the petitioner and stated that in aforesaid years, while benefit has been granted with regard to taxability on Furnace Oil matters have been remanded. Thus, the tax illegally collected on Furnace Oil is liable to be refunded.

33. In this regard, he has referred to the chart (Annexure P/20-B). The petitioner further averred that the amount of tax, which is refundable on the same issued, which is the subject matter of this petition, is more than the amount

requiring to deposit by way of pre-deposit.

34. Referring to Section 4-A(3) of the aforesaid Act came into force w.e.f., 10.08.2010. The petitioner further submitted that it is violative of Article 14 by contending that even though the assessee may not be at fault and its appeal may not be heard because of reasons other than any default by the assessee, the Appellate Board would be disabled from granting an extension of stay. It is further submitted that judicial notice of the fact that there are huge arrears of cases pending in every Court, and if a case is not heard beyond 180 days and thereafter, another 185 days, the stay order granted would automatically get vacated; then assessee would suffer and it is well settled that no litigant can be made to suffer on account of any fault by a Court.

35. Thus, in essence, the petitioner submitted that the aforesaid provisions are discriminatory and onerous and failed to set forth a rational nexus with the object of pre-deposit and admission of appeal and therefore, deserves to be declared ultra vires and unconstitutional. So far as the submissions on merit of the case is concerned, it is submitted that for the assessment year 01.04.2005 to 31.03.2006, the liability of tax under the Act of 1994 comes to 9.2 % as Furnace Oil is taxable under Entry 39, Schedule II of Part IV, whereas the Assessing Authority has imposed tax @ 13.8% under Entry 25 of Schedule II of Part III. It is the case of the petitioner that the Furnace Oil and Light Diesel Oil are two different commodities and, therefore, unless the Furnace Oil specifically included in a particular Entry, the same would fall under residuary entry.

REPLY OF THE RESPONDENTS

36. In order to controvert above material the respondent department has filed returns to justify the order passed by the Taxing Authority. The writ petitions

and value added tax appeal are required to be dismissed on the ground of availability of an alternative remedy as no substantial ground has been made out by the petitioner so as to sustain the challenge regarding pre-deposit condition for filing appeal. It is submitted that so far as the ingredients of Light Diesel Oil and Furnace Oil are concerned, they are same and similar. The material produced by the petitioner cannot be examined by this Court. The same is to be examined by the experts and, in the absence of any expert's report or examination by the Appropriate Authority, no conclusion can be drawn to assume that Light Diesel Oil and Furnace Oil are different commodities. Under different statutes, the legislation is free to place the commodity at an appropriate place. The dealer has no right to claim that, if, under one statute, the commodity is described as the same, then, under the other statute, the same cannot be considered different.

37. It is submitted that the order dated 14.06.2006 is passed on proper appreciation of the facts and the ingredients of Light Diesel Oil and Furnace Oil. The learned Commissioner has considered the relevant aspects and, after application of mind, has decided that the Light Diesel Oil and Furnace Oil both are used as fuel and hence, there is nothing wrong in not considering Furnace Oil under the residuary entry.

38. It is respectfully submitted that since the petitioner has an alternative remedy and the Appellate Board can consider and examine this aspect, therefore, no detailed para-wise return regarding the distinguishing feature of Light Diesel Oil and Furnace Oil is being filed. Learned counsel for the State prayed for dismissal of the writ petitions and value added tax appeal.

Appreciation & Conclusions

39. The case of the petitioner is that for the assessment year 01.04.2005 to 31.03.2006, the liability of tax under the Act of 1994 comes to 9.2% as Furnace

Oil is taxable under Entry 39 Schedule II of Part IV, whereas the Assessing Authority has imposed tax @ 13.8% under Entry 25 of Schedule II Part III. It is the case of the petitioner that the Furnace Oil and the Light Diesel Oil are two distinct commodities and, therefore, unless the Furnace Oil is specifically included in a particular Entry, it would fall under the residuary entry.

40. The challenge to the provisions of Section 46 (5) (ii), 46 (6) and Sub-Section 3 of Section 4-A of the VAT Act, 2002 read with Section 13 of the Act of 1976 on the ground that the First Appeal and the Second Appeal requires pre-deposit of the amount, which is onerous condition and, therefore, the same being arbitrary is violative of the fundamental rights of the petitioner is not liable to be considered after lapse of 16 years. The petitioner has challenged the constitutional validity of the above provision in order to avoid pre-deposit for filing first and second appeal. Since this petition is pending since 2010, after a period of 16 years, the constitutional validity is not liable to be decided; the petitioner is relegated back to the Appellate Authority for adjudication of the issue on merit. Even otherwise, for one of the subsequent financial years, the matter has travelled upto the Appellate Authority and Tribunal, and now the VAT Appeal is pending and being decided along with these writ petitions.

41. The petitioner has distinguished Furnace Oil and Light Diesel Oil by giving various reasons, but the respondents have conveniently avoided to controvert or dispute in their reply. The respondents were required to explain how the Authority came to the conclusion that Furnace Oil and Light Diesel Oil are in the same category for charging under the same rate of tax.

42. A comparative analysis of the technical specifications, physical characteristics, and legal arguments set out by the petitioner demonstrates that **Furnace Oil (FO)** and **Light Diesel Oil (LDO)** are distinct commercial and

chemical commodities, which the respondents have not controverted.

Technical & Characteristic Comparison

Parameter / Feature	**Scientific / Functional Definition**	**Furnace Oil (FO)**	**Light Diesel Oil (LDO)**
Pour Point ("Core Point")	Lowest temperature at which oil ceases to flow freely.	18°C – 21°C	12°C – 18°C
Distillation Range	Temperature at which the product begins to boil and evaporate.	360°C – 500°C	300°C – 400°C
Carbon Chain (C_n)	Number of carbon atoms present per molecule.	$C_{20} - C_{50}$ (Heavier, complex)	$C_{16} - C_{30}$ (Lighter)
Sedimentation	Maximum residual matter obtained after filtration.	Max 0.25%	Max 0.10%
Ash Content	Inorganic residue (silica, vanadium, nickel, etc.) remaining after complete combustion/evaporation.	1.0%	0.2%
Water Content	Moisture trapped within hydrocarbon chains, unable to be naturally drained.	1.0%	0.2%
Sulphur Content	Hazardous impurity leading to sulphur dioxide (SO_2) emissions upon ignition.	4.0%	1.8%
Kinematic Viscosity	Measurement of a liquid's internal resistance to flow (tested at 50°C).	80 – 180 cSt	2.5 – 15.7 cSt
Combustion / End-Use	Energy transfer profile and functional application.	High heat generation, lower kinetic energy output.	Lower heat, higher energy output; used in high-speed compression/engines.

43. Apart from the above, crude oil undergoes fractional distillation, yielding fractions based on escalating boiling points and carbon chain lengths. LDO distils at an intermediate middle-distillate phase, whereas FO is a heavier, bottom-fraction residual fuel oil. Due to significant variance in viscosity (80–180 Vs 2.5–15.7) and combustion profile, FO cannot substitute for LDO without causing mechanical failure or fuel-pump seizure in engines designed for lighter

fuels. In view of the above, uncontroverted material tax liability cannot be imposed on FO at par with LDO under an omnibus concept of "fuel", where the legislature provides a specific, distinct tariff heading for LDO, an identical rate cannot be extended to FO in the absence of a shared, uniform entry.

44. The writ petitions are finally allowed; the impugned orders dated 14.06.2006 passed by the respondent No.3 and also the order dated 21.06.2010 passed by the respondent No.5 in Appeal No.21/2008 are hereby quashed.

V.A.T.A. No.30/2019

45. The appellant has filed the present appeal under Section 53 of the Madhya Pradesh Value Added Tax Act for the assessment period 01.04.2003 to 31.03.2004 challenging the order dated 18.10.2018 passed by the Commissioner of Commercial Tax Appellate Board, Bhopal remanded the matter back to the Assessing Officer for imposition of tax at the rate applicable to LDO on the sale of FO treating the same as LDO.

46. In W.P. No.12727/2010 and connected petitions, a similar issue came up for consideration, in which, this Court has held that LDO and FO are two separate commodities. Therefore, now the Assessing Officer shall pass a fresh order treating LDO and FO as different commodities.

47. Accordingly, the appeal is **disposed of.**

(VIVEK RUSIA)
ACTING CHIEF JUSTICE

(PRADEEP MITTAL)
JUDGE

Shruti

SHRUTI JHA