*THE HON’BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

*THE HON’BLE SMT JUSTICE ANIS

+WRIT PETITION No. 15148 of 2016

% 20-07-2016

M/s. Jindal Steel & Power Limited,
rep. by its Authorised Signatory, Sri R.P.
Agarwal, Raigarh (Chattisgarh)-496001. ..
Petitioner

Vs.

$ The Principal Commissioner of Customs,
Customs House, Port Area,
Visakhapatnam-530 035 and two others ..
Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Mr. Lakshmi Kumaran

^ Counsel for respondents : Mr. Swaroop Oorilla

? CASES REFERRED :

1) 2001 (132) E.L.T. 257 (S.C.)

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Between:

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DATE OF JUDGMENT PRONOUNCED: 20.07.2016

SUBMITTED FOR APPROVAL:

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1. Whether Reporters of Local newspapers Yes/No
   may be allowed to see the Judgments?

2. Whether the copies of judgment may be Yes/No
   marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to Yes/No
   see the fair copy of the Judgment?

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ORDER: ***(Per VRS,J)***

The petitioner, whose imported goods are detained at Gangavaram Port, has come up with the above writ petition seeking a Mandamus to direct the 1st respondent to release the goods upon payment of redemption fine of Rs.2,50,00,000/-, together with proportionate duty amount of Rs.1,74,36,865/- along with interest of Rs.61,13,890/-.

2. Heard Mr. Lakshmi Kumaran, learned counsel for the petitioner, and Mr. Swaroop Oorilla, learned standing counsel for the respondents.

3. The petitioner imported two consignments of Coke Breeze, under two Bills of Entry dated 21.12.2013 and 30.01.2014 respectively. The goods landed up at Gangavaram Port. The petitioner claimed exemption from payment of basic customs duty,
in terms of the notification No.12/2012, dated 17.03.2012. As per the said notification, Metallurgical Coke was exempted from payment of basic customs duty.

4. Accepting the claim for exemption, the petitioner was allowed to clear about 69848.48 metric tons, out of the total imported quantity of about 84365 metric tons. But, before the balance of goods totalling to about 14801.52 metric tons could be cleared, the Department of Customs woke up and claimed that Coke Breeze is not entitled to exemption under the notification No.12/2012, as it was not Metallurgical Coke. Therefore, an order of detention of the goods was passed on 02.12.2014 under Section 110 of the Customs Act, 1962 (for brevity "the Act"), which was followed by a show-cause-notice bearing

No.16/2014, dated 30.12.2014, under which the 1st respondent demanded differential duty amounting to Rs.10,22,68,148/-.

5. The petitioner submitted their application, contending that the goods imported by them are, in fact, Metallurgical Coke, and that the exemption was lawfully claimed and accepted partially, before the issue of the detention order.

6. After granting a personal hearing to the petitioner on 07.05.2015 and after allowing the petitioner to cross-examine the concerned official, the 1st respondent passed an order of adjudication, dated 20.11.2015. The operative portion of the said order is required to be extracted and, hence, it is extracted as follows:

> *" I deny the BCD exemption under Sl.No.125 of CN 12/2012 Cus. Dated 17.3.2012 in the Bills of Entry No.4147311 dt.21.12.2013 and 4500504 dt.30.01.2014 as the exemption is available only for Metallurgical Coke and not for the imported Coke Breeze.*
>
> *I confirm and demand the differential duty amounting to Rs.10,22,68,148/- (Rupees ten crores twenty two lakhs sixty eight thousand one hundred and forty eight only) against the two Bills of Entry Nos.4147311 dt.21.12.2013 and 4500504 dt.30.01.2014 under Section 28(8) of the Customs Act, 1962 and order recovery of the same along with the applicable interest under Section 28AA of*

the Customs Act, 1962.

I hold that the goods totally valued Rs.77,81,03,468.86 which were earlier cleared are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. Since the goods are not physically available for confiscation, the question of imposing redemption fine does not arise and hence I refrain from imposing any redemption fine.

I confiscate the imported Chinese Coke Breeze and detained under Section 110 of Customs Act, 1962 valued at Rs.15,85,89,590.13 under Section 111(m) of the Customs Act, 1962. However, I give an option to redeem the goods on payment of redemption fine of Rs.2,50,00,000/- (Rupees two crores and fifty lakhs) under Section 125 of the Customs Act, 1962.

I impose a penalty of Rs.1,00,00,000/- (Rupees one crore only) on M/s. JSPL under Section 112(a) of the Customs Act, 1962."

7. It appears that as against the order in original, the petitioner has already filed a statutory appeal before the CESTAT. The same is said to be pending.

8. In the meantime, the petitioner made an application to the

1st respondent on 13.01.2016 praying for the release of the remaining goods, by offering to pay a sum of Rs.2.50 crores towards redemption fine, a sum of Rs.1,74,36,865/- towards proportionate differential duty, and a sum of Rs.61,13,890/- towards interest. In response to the said letter, the 1st respondent informed the petitioner that the goods now lying in the Port, cannot be released, unless the entire differential duty is paid along with the redemption fine and interest. Therefore, the petitioner has come up with the present writ petition.

9. The only question that arises for consideration in this writ petition is as to whether for the release of 14801.52 metric tons of material lying in Port, the petitioner should be directed to pay the differential duty relating to the total consignment of about 84365 metric tons or whether the goods can be released upon payment of the proportionate differential duty representing the duty payable for the goods, of which release is now sought.

10. The main contention of the learned counsel for the petitioner is that under Section 125(2) of the Act, where any fine in lieu of confiscation is imposed under Sub-Section (1), the owner of such goods will be liable to pay the duty and charges payable in respect of such goods, in addition to fine. The expression "such goods" would naturally correlate only to the goods that are detained at the Port and cannot relate to the goods, which had

already been released.

11. To buttress the above submission, the learned counsel for the petitioner also relies upon Section 28, which provides for recovery of duties not levied or short levied or erroneously refunded. Since the proceedings in question are under Section 125, the contention of the learned counsel is that the collection of the duty payable in respect of the entire stock, part of which had already been released, cannot be the objective of the proceedings under Section 125.

12. Though the object of the proceedings under Sections 28 and 125 of the Act are different from each other, they overlap. This is the reason why the Supreme Court held in ***Commissioner of Customs (Import), Mumbai Vs. Jagdish Cancer & Research Centre***[1] that the order for payment of duty under Section 125(2) would be an integral part of the proceedings relating to confiscation and consequential orders thereon.

13. But, unfortunately for the petitioner, the tenor of the order in original passed by the 1st respondent is to the effect that the clearance of a major portion of the imported

goods, as though they were exempted goods, was erroneous, and that, therefore, the goods in entirety should be deemed to have been confiscated. In other words, the stand taken in the order in original passed by the 1st respondent is to the effect that all the goods, including those already cleared, were liable for confiscation under Section 111(m), and that since a major portion of the goods had already been cleared, it was not possible physically to confiscate or detain them. Since such a deeming fiction is created, even in respect of the goods already released, the expression “such goods” appearing in Section 125(2), has to be construed as referring to all the goods that were liable for confiscation, but which escaped confiscation for whatever reasons. Otherwise, the appeal filed by the petitioner before the CESTAT as against the order in original, will itself turn out to be an exercise confined only to the goods now detained.

14. As a matter of fact, the entire order in original is on appeal before the CESTAT. What the petitioner is now seeking in this writ petition is to order the release of the goods, by accepting a portion of the order, without prejudice to their rights in the appeal. If the petitioner had

raised such a plea before the Tribunal, the Tribunal may probably take a holistic view of the entire matter. For the purpose of seeking an interim relief, we do not think that an interpretation of the nature made by the petitioner can be accepted by this Court. Therefore, we are unable to agree with the contentions of the learned counsel for the petitioner. Hence, the Writ Petition is dismissed.
It will be open to the petitioner to seek appropriate orders from the CESTAT.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

20th July, 2016

Note: LR copy be marked.
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