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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1460/2019**

RAIN CII CARBON (VIZAG) LTD. & ANR. Petitioners

Through: Mr P. Chidambaram, Sr.
Advocate, Mr Sandeep Sethi,
Sr. Advocate with Mr Jafar
Alam, Mr Samsudha Majumdar
and Ms Shivani Khandekar,
Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr Jasmeet Singh, CGSC with
Mr Praveen Kumar Jain,
Advocate along with Mr Abdul
Sadiq Khan, TDO of
respondent no. 2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
21.02.2019

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VIBHU BAKHRU, J

1. With the consent of the learned counsel appearing for the parties, the petition is taken up for hearing and has been finally heard.
2. The petitioner has filed the present petition, *inter alia*, impugning the Minutes of the Meeting (impugned minutes) held on 12.12.2018, between the officials of the Directorate General of

Foreign Trade (DGFT); the Ministry of Environment, Forest and Climate Change; the Ministry of Petroleum and Natural Gas and; the Indian Oil Corporation. The petitioner also impugns a letter dated 01.02.2019 (bearing F No. 01/93/180/03-AM-10/PC-2A/Part-1/Vol-II/P-12495/1186) sent by the DGFT informing the petitioner that it was decided to adjust the eleven consignments of Raw Pet Coke (hereafter 'RPC') cleared by the customs against the quota as allotted to the petitioner no. 1 for the period between October, 2018 and March, 2019.

3. The petitioner is, *inter alia*, engaged in the manufacture of Calcined Pet Coke (CPC) and requires feed stock of RPC for manufacturing CPC. In terms of the order dated 09.10.2018, passed in certain applications filed in ***M.C. Mehta v. Union of India: W.P.(C)13029/1985***, the Supreme Court had accepted that RPC could be used as a feedstock for producing CPC, but had clarified that imported RPC for this purpose cannot exceed 1.4 Million Metric Tonnes (MT). The relevant extract of the said decision, is set out below:

“2. Use of anode grade pet coke in CPC manufacturing units

[IA NO. 109181/2018 (APPLN. FOR DIRECTIONS ON BEHALF OF RAIN CII CARBON (VIZAG LTD.), IA NO. 109742/2018 (APPLNS. FOR DIRECTIONS ON BEHALF OF GOA CARBON LTD.), IA NO. 109783/2018 (APPLNS. FOR DIRECTIONS ON BEHALF OF SANVIRA INDUSTRIES LTD.), IA NO.

109791/2018 (APPLNS. FOR DIRECTIONS ON BEAHFL OF KALINGA CALCINER LTD.), IA O. 109784/2018 (APPLNS. FOR DIRECTIONS ON BEHALF OF PETRO CARBON AND CHEMICALS PVT. LTD.), IA NOS. 125492 AND 125493/2018 (APPLNS. FOR IMPLEADMENT AND DIRECTIONS ON B/O INDIA CARBON LTD.)]”

These applications have been filed by several entities and the CPCB has given a Report dated 4th October, 2018 in which it is stated as follows:

- “i. Raw Petroleum Coke is feed stock for producing calcinated petroleum coke which is a raw material for anode making in aluminium industries. Therefore, calcinations of Raw Petroleum Coke is a pre-requisite to produce anode grade calcined pet coke having sulphur content less than 3.5%.
- ii. As per BIS guidelines, calciners are permitted to use high sulphur containing raw petroleum coke for making CPC having sulphur content less than 3.5%. There still be emission of SO₂ in high concentration (para 1 of results) which needs to be treated in Flue gas desulphurisation system having efficiency of sulphur removal more than 90%.

The views expressed by the CPCB have been considered by the Ministry of Environment, Forest and Climate Change which is in agreement with the CPCB.

It is stated by learned amicus curiae that the views expressed by the CPCB are also acceptable to EPCA.

Consequently, raw pet coke (domestic and imported) can be used as a feedstock for producing calcined pet coke.

We make it clear that the imported raw pet coke for this purpose cannot exceed 1.4 MT per annum in total.

Applications stand disposed of.”

4. There is no controversy that the overall limit for import of RPC for the manufacture of CPC is now pegged at 1.4 Million MT per annum, which is required to be allocated to various manufacturers. The respondents herein have further decided that the said quota would be allocated between the manufacturers, in the ratio of their production capacity.

5. The relevant extract of the impugned minutes is set out below:-

“Allotment of Raw Pet Coke for CPC manufacturing:

5. The Committee noted that nine applications for import of Raw Pet Coke were received by the 7th of December, 2018 i.e the last date of application as per the Public Notice No 50 dated 26th November 2018. The Committee decided that the available quantity (7 Lakh MT) be divided proportionately in relationship to their production capacity. The production capacity for petitioners was taken from the record placed before the Hon’ble Supreme Court for Six petitioners and for other three applicants as per the Pollution Certificates issued by State Pollution Control Board.

6. It was also decided that principle of proportionality should govern the allocation. It was noted for all the 9 applicants, the total half yearly capacity is coming to 7.02.675 MT and total available quantity is 7,00,000 MT. Accordingly, the Committee decided to allot the quantum of 7 lakh MT amongst the 9 applicants as under:

1	2	3	4	5	6	7
S. No.	Name of the firm	Date of receipt of application	Quantity applied for import	Capacity	Half the Annual capacity (as indicated in Col.5) in MTs	Quantity of Petcoke allocated in MTs
1	Rain CII Carbon (Vizag) Ltd.	3.12.2018	3,52,145	5,00,000*	2,50,000	248871
2	Snvira Industries Ltd.	6.12.2018	1,83,746	2,00,000*	1,00,000	99548
3.	Goa Carbon Ltd.	06.12.2018	2,07,900	2,65,000*	1,32,500	131902
4.	Kalinga Calciner Ltd.	07.12.2018	42,000	60,000*	30,000	29865
5.	India Carbon Ltd.	07.12.2018	37,800	54,000*	27,000	26878
6.	Petro Carbon and Chemicals (P) Ltd.	05.12.2018	1,40,616	93,750*	46,875	46663
7.	Amritesh Industries (P) Ltd.	06.12.2018	16,800	2800 x 12 = ** 33,600	16,800	16724

8.	Brahmaputra Carbon Ltd.	07.12.2018	50,000	1,00,000**	50,000	49774
9.	Neo Carbons (P) Ltd.	07.12.2018	50,000	1,00,000**	50,000	49774
Total					703175	699999
*as indicated before the Hon'ble Supreme Court						
** Consumption capacity as indicated in the Pollution Certificate.						

7. The Committee was informed that consignment of raw pet coke of one of the applicants /s Rain CII Carbon (Vizag) Ltd. has already arrived in August 2018. The Committee decided that the consignment will be cleared subject to overall limit which is 0.7 million MT.

6. The petitioner is, essentially, aggrieved by the decision to restrict the import of RPC to 0.7 Million MT for the period between October, 2018 and March, 2019 and the further decision to adjust the RPC imported during the period between July, 2018 and August, 2018 against the aforesaid allocation (as noted in Paragraph 7 of the impugned minutes).

7. The petitioners had entered into contracts for the import of RPC, pursuant to which, eleven consignments were delivered in India on or before 26.07.2018. The said consignments were cleared for home consumption. In this regard, the petitioners had filed an application (being IA No. 109181/2018 in Writ Petition (Civil) No. 13029/1985) in the Supreme Court, seeking certain directions. The same was disposed of by an order dated 09.10.2018, with the

clarification that the said consignments may be cleared against the overall limit of 1.4 Million MT per annum. The relevant extract of the said order reads as under:

“IA NO. 109181/2018 (APPLN. FOR DIRECTIONS ON BEHALF OF RAIN CII CARBON (VIZAG LTD.)

Rain CII Carbon (Vizag) Ltd. Has filed an affidavit pursuant to our order dated 23rd August, 2018.

In the affidavit, it is stated that 11 contracts have been entered into on or before 26th July, 2018 for the import of Anode grade raw pet coke.

Vessels pertaining to these 11 contracts have already arrived sometime in August, 2018.

In view of the orders passed above today, the consignment may be cleared, subject to the overall limit which is 1.4 MT per annum, as mentioned above.

Application stands disposed of.”

8. In order to implement the directions passed by the Supreme Court, the DGFT issued a Public Notice (Public Notice NO. 50/2015-2020) dated 26.11.2018, in exercise of the powers under Section 5 of the Foreign Trade (Development & Regulation) Act 1992, notifying the procedure to implement the quantitative restrictions imposed on the import of RPC. The said procedure, *inter alia*, provided that the quantitative restrictions as directed would be implemented on a fiscal year basis, that is, the fiscal year from 01.04.2018 to 31.03.2019 would be considered to implement the overall annual import limit of 1.4 Million MT of RPC. Since more than six months of the Financial Year 2018-19 had already expired as on 09.10.2018, it was further decided to limit the import of RPC to 0.7 Million MT for the period

between October, 2018 and March, 2019. The relevant extract of the said Public Notice, indicating the above, is set out below:-

“The annual quantity limitation in import will be operated on fiscal year basis. Accordingly, of the total quantity permitted for import per annum by the Hon’ble Supreme Court, only half of it is available for import during the remaining period of this financial year {i.e. October-March (considering that the order was issued on 4th October, the total month of October is taken for calculating entitlement)}. Therefore, total quantity available for import of (i) Calcined Pet Coke for use as Calcined Pet coke in Aluminium industry is 0.25 Million MT and (ii) Raw Pet Coke for CPC manufacturing industry is .52 Million MT. This is available all industrial units in these two sectors including the petitioners.”

9. The quantitative limit for the import of RPC was incorrectly noted at 0.52 Million MT and the same was rectified by a Public Notice dated 06.12.2018.

10. The respondents are required to implement the quantitative restrictions on the import of RPC and the decision to implement the same on a fiscal year basis cannot be faulted. Since the said decision was rendered by the Supreme Court on 09.10.2018, the respondents in a meeting held on 12.12.2018, have decided to put an overall gap of 0.7 Million MT for the remaining year, namely, October, 2018 to March, 2019. Insofar as this decision is concerned, the same also cannot be interfered with as it was clearly within the jurisdiction of the respondents to determine as to how the overall limit of 1.4 Million MT

per annum ought to be implemented.

11. The petitioners' grievance, essentially, is that the goods that were imported prior to October, 2018, are now sought to be adjusted against the allocation for the half year that is, from October, 2018 to March, 2019.

12. Mr Chidambaram, learned senior counsel appearing for the petitioners, submitted that during the first half of the fiscal year, namely, from 01.04.2018 to 30.08.2019, a total of 0.664 Million MT of RPC had been imported. This also includes the eleven consignments of RPC imported by the petitioner, which arrived in the territory of India and were cleared for home consumption prior to 30.08.2018. The said figures are not disputed by the respondents. He submitted that there was no rationale for not including the said imports against the limits applicable for the relevant period. He further contended that, in any view, the same could not be adjusted against the limits fixed for the period between October, 2018 and March, 2019.

13. The aforesaid contention is merited. There is no reason for the respondents to adjust the RPC imported prior to 30.08.2018 against the allocation for the latter half of the Financial Year 2018-19. It is relevant to bear in mind that the respondents are only implementing the quantitative limit of 1.4 Million MT as directed by the Supreme Court. Admittedly, even if the RPC imported prior to 30.08.2018 is considered, and further import of 0.7 Million MT is fixed for the period between October, 2018 and March, 2019, the total quantity of

RPC imported during the Financial Year 2018-19 would be within the overall annual cap as fixed by the Supreme Court.

14. There is no rational basis in adjusting the goods that were imported prior to October, 2018 against the allocation for the remaining fiscal year that is, from October, 2018 to 31.03.2019. The said decision as recorded in Paragraph no. 7 of the impugned minutes is unsustainable and is, accordingly, set aside.

15. In view of the above, the present petition is allowed to the extent that the RPC already imported by the petitioner prior to 30.09.2018 shall not be considered against the allocation for the period October, 2018 to 31.03.2019.

16. Order *dasti* under signatures of the court Master.

FEBRUARY 21, 2019
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VIBHU BAKHRU, J