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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1784/2019 & CM Nos. 8349/2019 & 8350/2019**

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

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

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr Praveen Kumar Jain with
Ms Rashmi Kumari, Advocates
and Mr Nirmal Kumar, DDG.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.03.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning the decision of the Directorate General of Foreign Trade (DGFT), as recorded in the minutes dated 08.02.2019 (hereafter 'the impugned minutes'), insofar as it relates to apportionment of unutilised quota of Raw Pet Coke (hereafter 'RPC') amongst various applicants including the petitioner.

2. Petitioner no.1 (hereafter 'the petitioner') is, *inter alia*, engaged in the manufacture of Clacined Pet Coke (hereafter 'CPC'). The petitioner requires RPC as a feed stock for manufacturing CPC.

3. The import of CPC has now been restricted to 1.4 million metric tonne in terms of the order dated 09.10.2018 passed by the Supreme Court in various applications filed in ***M.C. Mehta v. Union of India: W.P.(C) 13029/1985***. The relevant extract of the said order 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 DIRECTIOSN ON BEAHFL 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 S02 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. It is not disputed that prior to the aforesaid order, RPC could be freely imported by manufacturers in India. Since the restrictions were imposed in October 2018, the respondents have proportionately restricted the import of RPC at 0.7 million MT for the period October, 2018 to March, 2019.

5. The minutes of the meeting held on 08.02.2019 (impugned minutes) includes a tabular statement indicating the manner in which the allocation of RPC was made amongst various manufactures. The said table is set out below:-

S. No.	Name of the Firm	Capacity	Quantity applied for	Half of the Annual Productio	In MTs		
					Quantity Allocated	Quantity Surrendered	Request of the firm

			Import	n Capacity on or before 1 st October, 2018			
1.	Rain CII Carbon (Vizag) Ltd.	5,11,00 0	3,52,14 5	2,55,000	2,53,338.6 5	Nil	They are short by 99,461.35 MTs and due to adding the 92,482 MT of August imports, it has caused further shortfall for them of total 1,91,943.35 MTs
2.	Sanvira Industries Ltd.	2,00,00 0	1,83,74 6	1,00,000	99,154.07	Nil	Proportiona l share of any relinquishe d quota
3.	Goa Carbon Ltd.	3,08,00 0	2,07,90 0	1,54,000	1,52,697.2 7	Nil	Nil
4.	Kalinga Calciner Ltd.	46,200	42,000	23,100	22,904.59	2904.59	Nil
5.	India Carbon Ltd.	54,000	37,800	27,000	26,771.60	Nil	Nil
6.	Petro Carbon and Chemicals (P) Ltd.	93,744	1,40,61 6	46,872	46,757.49	Nil	10,000 to 11,000 MT
7.	Amritesh Industries (P) Ltd.	24,000	16,800	12,000	11898.48	4198.48	Nil
8.	Brahmaputr a Carbon Ltd.	1,00,00 0	50,000	50,000	49,577.03	49,577.030	Nil
9.	Neo Carbon (P) Ltd.	75,000	50,000	37,500	37,182.77	16836.561	Nil
Total Surrendered Quantity						73,516.661	

6. It is apparent from the above that 73,516.661 metric tonnes of RPC remained unutilised on account of certain manufacturers deciding to not import the said material.

7. In view of the further headroom available, the respondents decided to allocate the surrendered quantity to the three manufacturers (the petitioner, Sanvira Industries Ltd. and Petro Carbon and Chemicals Pvt. Ltd.) whose demand for allocation could not be fully satisfied.

8. The petitioner is, essentially, aggrieved with the manner in which the excess surrendered quantity has been allocated. The relevant extract of the impugned minutes, indicating the manner in which additional quantity has been allocated to the three manufacturers whose demands were not fully met, is set out below:-

“6. It accordingly decided to allocate the available quota amongst these three applicants not exceeding their half of the annual production capacity and made allocation to them as given below. The Committee also observed that since no request has been received for allocation of CPC, hence no allocation is to be made from the surrendered quantity of CPC.

S. No.	Name of the Firm	Capacity	Quantity applied for Import	Half of the Annual Production Capacity on or before 1 st October, 2018	In MTs	
					Quantity Allocated on 27.12.2018	Additional quantity allocated out of the Surrendered Quota MTs
1.	Rain CII Carbon (Vizag) Ltd.	5,11,000	3,52,145	2,55,000	2,53,338.65	2,55,000 - 2,53,338.65 = 1,661.35
2.	Sanvira Industries Ltd.	2,00,000	1,83,746	1,00,000	99,154.07	1,00,000 - 99,154.07 = 845.93
3.	Petro Carbon and Chemicals (P) Ltd.	93,744	1,40,616	46,872	46,475.49	46,872 - 46,475.49 = 396.51

9. Mr Chidambaram, learned senior counsel appearing for the petitioner submitted that the respondents have erred in pegging the additional quantity to half of the annual production capacity of various manufacturers without considering that the RPC, which is a raw material for producing CPC, is required in a larger quantity than the final product manufactured by the manufacturer. He submitted that there would be no rationale in limiting the allocated quantity to the output capacity (production capacity) of a manufacturing unit, as that would mean that there would still be sufficient unutilised capacity available with the manufacturers.

10. The aforesaid contention is merited.

11. It is apparent that the manner in which the distribution of the excess quantity has been distributed, is manifestly irrational. This is so because the respondents have allocated quantities for making up the shortfall with reference to the production capacity of the applicants and not their requirements to meet their production capacity. Admittedly, the production capacity of the manufacturers of CPC is significantly lower than the input (RPC) required to exhaust the said capacity.

12. It is also apparent that the manner in which the surrendered quantity is distributed also does not exhaust the surrendered quantity. A aggregate of 73,516.661 MT of RPC has been surrendered out of which only 2903.79 MT of RPC has been allocated to the three

applicants. As noticed above, RPC can be freely imported but its overall import has been restricted to 1.4 Million MT per annum (0.7 Million MT for the period October, 2018 to March, 2019) by virtue of the order of the Supreme Court. There is, thus, no reason not to permit manufacturers from importing RPC up to the aforesaid limit.

13. It is apparent from the impugned minutes that the respondents have made the allocation with the object to facilitate the manufacturers to produce CPC to the extent of their production capacity. However, this object is plainly not served since the input required for meeting the production capacity is much larger.

14. In this context, Mr Jain, learned counsel appearing for the respondents pointed out that there are different proportions of input and output for different manufacturers and, therefore, the respondents would not be able to apportionate the excess quantity in that ratio. In the present case, this situation could be easily addressed by examining the quantity applied for by each applicant and the quantity allocated. Plainly, if the quantity applied for is within the overall limit of the imports permitted by the Supreme Court, there could be no impediment in respondents allocating quantity to that level.

15. In this view, it would be apposite if the shortfall is determined on the basis of the quantity applied for and the quantity allocated and not the production capacity of each applicant. A tabular statement indicating the shortfall in respect of the three applicants is as under:-

S. No.	Name of the Firm	Quantity applied for Import	In MTs	
			Quantity Allocated on 27.12.2018	Shortfall
1.	Rain CII Carbon (Vizag) Ltd.	3,52,145	2,53,338.65	98806.35
2.	Sanvira Industries Ltd.	1,83,746	99,154.07	84591.93
3.	Petro Carbon and Chemicals (P) Ltd.	1,40,616	46,475.49	94140.51

16. In the present case, there are only three applicants who had applied for distribution of the utilised quantity and the shortfall in their cases.

17. Since, it is apparent that the endeavour of the respondents was to allocate the unutilised quantity on the basis of the shortfall, it would be apposite for the respondents to allocate the same on the basis of the shortfall, as indicated above, subject to the limit that the total allocated quantity does not exceed the half yearly input capacity. It is pointed out that the input output ratio in the case of the petitioner is approximately 1.5:1, as is apparent from the letter dated 13.11.2018 issued by the Andhra Pradesh Pollution Control Board. The said letter indicates that the petitioner's intake capacity has been determined as 7,05,600 MT, which is approximately one and a half times the annual production capacity of 5,11,000 MT. It is, thus, clear that even if the excess quantity is distributed in the ratio of shortfall as determined on

the basis of the quantity of RPC applied and allocated, the total quantity allocated would be below the quantum of RPC required by the petitioner to exhaust its half yearly production capacity. Similarly, the respondent may verify that quantity allocated to other two applicants also does not exceed their intake capacity to meet their half yearly production capacity.

18. This Court had considered remanding the matter to the respondents to consider a rational method of apportioning the surrendered quantity, but it would not be apposite to do, so as only fifteen days remain for the manufacturers to import the balance quantity. Further, the rationale for distributing the surrendered quantity based on the shortfall is evident from the impugned minutes.

19. In the circumstances, the allocation as made in the impugned minutes, is set aside and the respondents are directed to re-compute the allocation of the aforesaid basis; that is on the basis of shortfall between the quantity of RPC applied for and the quantity allocated.

20. The petition is disposed of in the aforesaid terms. All pending applications are also disposed of.

21. Order *dasti* under the signature of the Court Master.

VIBHU BAKHRU, J

MARCH 15, 2019
MK/RK