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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: 24th October 2024*

+ **W.P.(C) 10336/2019, CM APPL. 42651/2019 & CM APPL. 51962/2019**

M/S NEW HORIZONS ASPHALT PRIVATE LIMITED .....Petitioner

Through: Mr. Praveen Agarwal, Mr. Deepak Agarwal, Mr. Dinkar, Mr. Ravi and Mr. Rishabh Sharma, Advocates

V

THE CHIEF COMMISSIONER OF CUSTOM AND ANR. .....Respondents

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur and Mr. Jatin Gaur, Advocates
Mr. Vaibhav Sharma, ICT Import, Customs Department

CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T ***(oral)***

1. The present writ petition is filed under Article 226 of the Constitution of India to challenge the holding/impounding/detaining of the rubber process oil stated to have been imported by the petitioner vide bill of entry no. 7699865 dated 15.12.2014 vide invoice no.

EXP/INV/5774/14 dated 21.11.2014 and the direction to the respondents to release the said goods and also to pay the compensation.

2. The counsel for the petitioner stated that the petitioner had purchased/imported the rubber process oil vide invoice no. EXP/INV/5774/14 from UAE and after being purchased, it was imported in India as per the law of the land and the petitioner has prepaid of the required documents for imputing the same. The net weight of the goods i.e., the rubber process oil was 422.980 MT and gross weight of the goods imported along with the drums was 4634800 MT and the said oil was imported into 25 containers, 2000 drums.

3. The petitioner was also required to pay the applicable import duty to the respondents. The petitioner had deposited the applicable import duty and all the required documents through its CHA. The petitioner waited for the release of the goods on 26.12.2014 and on 27.12.2014 and thereafter, contacted the concerned department and officer through its CHA whereby he came to know that the process of releasing the goods was under process and the goods would be released within two or three days.

4. The petitioner, in the first week of January 2015, had asked the CHA to confirm the status of releasing of the said containers as it had taken much time. The petitioner was informed by the CHA that the respondent no.1 had taken the sample of the goods/rubber process oil for the live test, which were imported by the petitioner and sent the same vide registration/serial no. m-36/CUS/CRCL/2014/CL-3546-/V before the Regional Revenues Control Laboratory New Delhi-110012, controlled by the Department of Revenue, Ministry of Finance, Government of India.

5. The petitioner stated that the imported rubber process oil was not falling under the category of Hazardous Waste. The petitioner was informed by the CHA that the sample was reported as "Hazardous Waste" in the live test which were done by Mr. Arun Kumar Maurya, Chemical Examiner GR-2, from the office of the Regional Revenues Control Laboratory, New Delhi-110012, controlled by the Department of Revenue, Ministry of Finance, Government of India.

6. The petitioner being aggrieved filed the present petition and made the following prayer:

In view of the submissions made hereinabove in the present Writ Petition & facts and circumstances of the case it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

a. Issue an appropriate writ by way of mandamus, order or directions to the respondent no. 1 and 2 to release the goods of the petitioner which was arbitrary, wrongful & illegal with holding/impounding/detaining of the petitioner's goods/containers of rubber process oil imported by the petitioner vide bill of enter no. 7699865 dated 15/12/2014 vide invoice no. exp/inv//5774/14 dated 21/11/2014 with-out insisting for any permission.

b) Such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case in favour of the Petitioner and against the Respondent to meet the ends of the justice.

7. The respondent no.1 filed the counter-affidavit wherein besides mentioning factual position as stated hereinabove, stated that the petitioner has misdeclared the goods by declaring the same to be the rubber process oil where as the imported goods were actually prohibited goods falling under the category of Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008.

8. The petitioner has imported the goods in contravention of the provisions of Customs Act, 1962.

9. The respondents have also filed counter-affidavit to the CM APPL. 51962/2019 wherein it is mentioned as under:

The petitioner was well aware about the fact based on the Test Reports dated 23.12.2014 and 31.12.2014 received from the Central Revenues Control Laboratory, Delhi that the goods covered under said Bill of Entry are off specification/waste product as per Basel No. A4140 under Schedule III, Part A of Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008, due to the PAI-I content in the sample was more than 50mg/kg and the same cannot be allowed for clearance. The importer did not pursue the matter which is evident from the fact that the said Bill of Entry is still pending for query reply at petitioner level. Moreover, the claim of the petitioner made in the said petition that applicable Customs Duties have been paid by him on the impugned goods is completely incorrect as the said Bill of Entry is pending for assessment after first check and the duty is yet to be paid.

That in reply to the content of para under reference it is submitted that the content of the corresponding para is wrong and the same is denied as incorrect. It is submitted that since the Test Report from the Govt. Laboratory is received, the petitioner did not apply for re-testing within the reasonable time after receipt of Test Reports on 23.12.2014 & 31.12.2014 as is evident from the letter dated 17.03.2015 of the petitioner which is after three months. Further, the permission for re-testing of goods is the discretion of the competent authority.

10. It is appearing from the report that the petitioner had purchased/imported the rubber process oil vide invoice no. EXP/INV/5774/14 from UAE which after being purchased came to India. The total net weight of the rubber process oil was 422.980 MT and gross weight of the goods imported along with drums was

4634800 MT.

11. A sample of the imported rubber process oil was taken and put to live test. The test report is reproduced as under:

SNo.m-36/CUS/CRCL/2014/CL-3546-V-

dt.23.12.2014 dated 31.12.2014

MB No. 7699865dated 15.12.2014

The sample is in the form of brown coloured vascious liquid having green fluorescence with following constants:

Acidity(+by mass) = NIL
Ash content(+mass) = NIL
Sediment (+mass) =NIL
Water content ((+mass) = NIL
Flash Point (coc) Above 22 dc
Density (gm/mg) RH5C =1.0143 (one dot Zero, one, four, three)

.... Viscosity RHWC = 35.1 (Thirty five dot one) Aromatic content (+by mass) =76.2 (seventy six dot two)

Amilneporte less than 55 degree Celsius

Pour Point =12 (Twelve)

PAHS content (mg/kg) =130.71 (one hundred thirty dot seven one)

It does not meet the requirement of petroleum based Rubber process oil as per IS-1507 and respect of the kenotic viscosity at 100 degree Celsius and density at 15 degree Celsius hence it is off specification........
Based rubber process oil it falls under the category of

hazardous waste as waste constants in the sample is more than prescribed limit.
Sealed remnant returned

12. Mr. Praveen Agarwal, the Counsel for the petitioner stated that the petitioner was never informed about the test report dated 31.12.2014 and due to this reason, he never had any opportunity to be supplied with the copy of the test report. But, when he came to know about the test report, he applied on two occasions i.e., on 13.01.2015 and on 17.03.2015. It is also stated that the sample was never re-tested. He further argued that on the earlier occasion, the petitioner had imported the rubber process oil which was never found falling under the category of Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008. Mr. Agarwal prayed that the petition be allowed and the rubber process oil, which is already lying in the custody of the respondent no.1, be ordered to be released.

13. Mr. Harpreet Singh, Standing Counsel for the respondent no. 1 stated that the present petition is barred by the delay and latches as has been filed after a gap of five years. It is further argued that as per the test report 31.12.2014, the process rubber oil was found in contravention of IS 15078 : 2001. Mr. Harpreet Singh also stated that as per the detailed guidelines for these testing of the samples dated 18.07.2017, the re-testing has to be applied within a period of ten days from the receipt of communication of the test result. He also referred the paragraph 'G' of the petition wherein it is admitted by the petitioner that the result of the test report was communicated to the petitioner by CHA.

14. Mr. Agarwal, during the course of the arguments, referred Circular bearing no. 9/2009-Customs dated 23.02.2009 related to the subject testing of samples of hazardous wastes from the laboratories recognised under the Environment (Protection) Act, 1986. The relevant para nos. 2 and 4 are reproduced as under:

> **2. Now, it has been informed by Ministry of Environment and Forests (MoEF) that if Customs authorities need assistance for undertaking sampling and analysis of the h hazardous waste consignments, they could utilise the facilities of the recognised laboratories. These laboratories are recognised from time-to-time by the Ministry of Environment and Forests under Section 12(1) (b) and Section 13 of the Environment (Protection) Act, 1986 (EPA) read with Rule 10 of the Environment (Protection) Rules, 1986. The labs notified by MoEF are authorised to test all kinds of samples of hazardous wastes. The details of these laboratories are available at the website of the Ministry at: http://envfor.nic.in/**
>
> **4. Accordingly; it is requested that the field formations may consider utilizing the services of these laboratories for**

getting the consignments of hazardous wastes and substances tested and seek assistance from SPCBs/PCCs in dealing with the Import/export consignments of hazardous wastes as and when required.

15. The record produced by Mr. Vaibhav Sharma, Appraiser, ICT Import, Customs Department, who brought the relevant record reflects that the sample was only tested by Mr. Arun Kumar Maurya, Chemical Examiner GR-2, from the office of the Regional Revenues Control Laboratory, New Delhi-110012, controlled by the Department of Revenue, Ministry of Finance, Government of India but it does not reflect that the said Chemical Examiner GR-2 was recognised in terms of Circular dated 23.02.2009. It is also not reflecting that the test report dated 31.12.2014 was ever supplied to the petitioner. Although, Mr. Harpreet Singh argued whether the information was given to the CHA of the petitioner, who intends to inform about the test report to the petitioner.

16. It is appearing from the averments made in the petition that the CHA was informed about the test report but it is not reflecting that the test report dated 31.12.2014 was actually supplied to the petitioner to oppose the detention /unclearing of goods i.e. rubber process oil which was not done in accordance with the rules and regulations as discussed hereinabove.

17. Accordingly, the present petition is allowed along with other pending applications.

18. The respondent no. 1 is directed to release the detained/uncleared goods within a period of four weeks from today. However, the petitioner is directed to pay the customs duty and other charges applicable, if not paid already.

DR. SUDHIR KUMAR JAIN
(JUDGE)

OCTOBER 24, 2024
AS/ak/abk