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Ct.5.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 24973 of 2024

M/s Carbon Resources Private Limited & Anr.
Versus
The Assistant Commissioner of Customs (Port) & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
... For the petitioners.

Mr. Vipul Kundalia, Sr. Advocate
Mr. Abhradip Maity
... For the respondents.

1. Challenging imposition of late fine in respect of bills of entry for home consumption concerning manganese ore and anthracite coal, the instant writ petition has been filed.

2. It is the petitioners' case that the petitioner no.1 is an importer of manganese ore and anthracite coal which the petitioners intended to use in the metallurgy industry, chemical industry. In usual course the petitioners had imported diverse quantities of manganese ore and anthracite coal following the due procedure. The relevant bills of entry were filed with the Customs authorities under Section 46 of the Customs Act, 1962 (hereinafter referred to as the "said Act"), for warehousing at the first instance. There appears to be no delay in filing of such bills of entry. Subsequently, the petitioners had filed

relevant bills of entry for home consumption. It is the petitioners' case that on such subsequent bills of entry for home consumption, the petitioners have been saddled with late fine.

3. According to the petitioners since they were in immediate requirement of the goods, the petitioners had made payment of such late fine and subsequently had applied for a clarification from the respondents whereupon the respondent no.1 by a communication in writing dated 12th June, 2024 had clarified that the imposition on account of late fine under Section 46 of the said Act, was for delayed filing of bills of entry. According to Mr. Kanoria learned advocate for the petitioners, the aforesaid imposition is bad. By relying on the third proviso to Section 46(3) of the said Act, he would submit that the conditions for levy of late fine does not stand attracted. Further there is no decision or speaking order to support the levy of late fine.

4. Heard Mr. Kanodia, learned advocate appearing for the petitioners and Mr. Kundalia, learned senior advocate appearing for the respondents.

5. I find that though, late fine can be imposed under Section 46(3), third proviso of the said Act, it would, however, transpire that the original bills of entry were filed in time and as such there was no reason for the proper officer to invoke the third proviso to sub-section (3) of Section 46 of the said Act. In this context, I, however, note that Mr. Kundalia, learned advocate for the

respondents would insist that since, there is a difference in the quantity of goods as reflected in the bills of entry for warehousing than with the bills of entry for home consumption that the import duty with the late fine has been imposed on the additional quantity. On the above issue, in my view, the clarification issued by the respondents dated 12th June, 2024, which forms the subject matter of challenge in the writ petition does not give clear a picture. There is also no finding that in this case the petitioner had not been able to show sufficient cause for the delay.

6. Having regard thereto, in my view it shall be prudent at this stage to remand the matter to the respondent no.1, who shall appropriately decide the same in accordance with law by passing a reasoned order in respect whereof, the clarification was afforded by communication dated 12th June, 2024 i.e. the bills of entry dated 2nd November, 2023.

7. The aforesaid order shall not stand in the way of the petitioners from taking recourse insofar as the other bills of entry are concerned, if so advised, in accordance with law.

8. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)