

OD-03

WPO/158/2025
THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

India Carbon Ltd.
Versus
Principal Commissioner of Customs (Port) & Ors.

Before:
The Hon'ble JUSTICE RAJA BASU CHOWDHURY
Date: 1st September 2025

Appearance:
Mr. Sudhir Mehta, Sr. Advocate
Mr. Anurag Bagaria, Advocate
for the petitioner

Mr. Kaushik Dey, Advocate
Mr. Tapan Bhanja, Advocate
for the Customs

The Court: 1. The instant writ petition was not only filed seeking release of the goods being 45 MT of Raw Petroleum Coke (hereinafter referred to as “RPC”) which according to the petitioner had been wrongly retained by the respondents at Shama Prasad Mookherjee Port but also for a direction for demurrage charges suffered by the petitioner to be reimbursed.

2. It is the petitioner’s case that although, an initial adjudication order was passed, however, on an appeal being preferred, the Commissioner of Customs (Appeals), Kolkata by order dated 16th April 2024 while setting aside the order passed by the adjudicating authority had directed to release the impugned RPC. Despite the above, since the concerned respondent did not release the RPC, the instant writ petition was filed.

3. When the matter came up for consideration on 2nd April 2025, this Court noting the submissions of the parties inter alia, including that of Mr. Dey, learned advocate representing the respondents that an appeal had been preferred from an order dated 16th April 2024 and during pendency of the appeal the goods should not be released, this Court was of the prima facie view that the petitioner could not be made liable for making payment of demurrage charges any further especially when the petitioner seeks release of the said goods and in the event the respondents seek to retain such goods the same be at the risk and cost of the respondents subject to the orders that may be passed by the appellate authority. Subsequently, by an order dated 19th June, 2025, this Court while directing the petitioner to make payment of the demurrage charges and noting that the petitioner was unnecessarily being subjected to the demurrage charges, permitted the petitioner to remove 45MT of RPC to its factory on the condition that the petitioner shall not deal with the same and the aforesaid removal shall be under the supervision of the respondents. The other directions contained in the said order would more fully speak for itself.

4. Today, the parties would jointly submit by placing before this Court the order dated 23rd July 2025 that as per the order of the appellate tribunal the petitioner was eligible to import the said goods as the same was permitted by DGFT and that there was no merit in the appeal filed by the Revenue and, accordingly, dismissed the same. Since the appeal being Customs Appeal No.76625 of 2024, itself, has been dismissed and since, by the order dated 2nd April 2025 passed by this Court, it was made clear that further retention of the goods subsequent

to 16th April 2024 was to be at the risk and cost of the respondents, I am of the view that no useful purpose would be served in keeping the writ petition alive. Although Mr. Dey would submit that at this stage no direction for reimbursement of the demurrage charges should be made to the petitioner, since further remedy is available to the department in the form of appeal before the High Court, I am of the view that by affording adequate protection to the Revenue, the writ petition can be disposed of.

6. Accordingly, I direct that subject to the petitioner furnishing a bank guarantee from any scheduled nationalized bank to the satisfaction of the respondents for a sum equal to the amount of demurrage charges that had been paid by the petitioner for detention beyond 16th April 2024, the above amount shall be reimbursed to the petitioner by the respondents within 10 working days from the date of submission of the bank guarantee. The petitioner shall keep the bank guarantee alive for a minimum of 250 days.

7. In so far as the petitioner's claim for value of the goods is concerned, I am of the view that there is no scope to decide such issue in this writ petition. The petitioner shall be at liberty to enforce its claim in appropriate forum in accordance with law, if so advised.

8. Since no other issue survives, the writ petition, accordingly stands disposed of.

(RAJA BASU CHOWDHURY, J.)