

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY**

WPO NO.258 OF 2025

**ABHIJEET AGARWAL
AND
PRINCIPAL COMMISSIONER OF CUSTOMS & ORS.**

For the petitioner : Mr. Sudhir Mehta, Senior Advocate
Mr. Anurag Bagari, Advocate

For the respondents : Mr. Bhaskar Prosad Banerjee, Advocate
Mr. Kaustav Kanti Maity, Advocate

Heard on : 10.07.2025

Judgment on : 10th July, 2025.

RAJA BASU CHOWDHURY, J:

1. The instant writ petition has been filed, inter alia, praying for a direction upon the respondents to release the goods covered under the four bills of entry being no.7567133, 7682317, 7958643 and 8100307 dated 01.01.2025, 08.01.2025, 23.01.2025 and 30.01.2025 respectively as also for a direction upon the respondents to forthwith issue demurrage waiver certificate under 6(1)(l) of Handling of Cargo in Customs Area Regulation, 2009 (hereinafter referred to as 'the said Regulation').

2. Records would reveal that the petitioner is engaged in the business of import of tyres for the vehicles used in the mining and excavation area as well as for normal road. According to the petitioner, the import of tyres is regulated by Pneumatic Tyre and Tubes for Automatic Vehicle (Quality Control Order), 2009 (hereinafter referred to as 'the Control Order') notified in exercise of powers conferred

under Bureau and Indian Standard Act (hereinafter referred to as 'BIS Act'). According to the petitioner, the road tyres are required to be in conformity with BIS standard 15636:2022 and should bear the BIS mark which is necessary under the Control Order.

3. The petitioner also contends that having regard to the BIS Clearance exemption vide CBEC instruction dated 30th January, 2002 issued under the Control Order, certain off-road tyres enumerated under paragraph 2(ii) are not covered by the Control Order. According to the petitioner, the tyres imported under the bills of entry as aforesaid are off the road (OTR) tyres and, as such, are exempted from BIS clearance.

4. Records would further reveal that upon importing the OTR tyres (in short "the said goods") under the aforesaid two bills of entry, the said goods had been detained by the respondent/department while awaiting a test report. On the basis of the test report obtained by the department dated 10th March, 2025 though it revealed that the tyres that were imported did not require BIS markings and though, the petitioner was under an impression that the same would be released, since the department did not release the tyres, the petitioner was compelled to issue a letter dated 31st March, 2025 demanding immediate release thereof. Upon the receipt of such letter, the petitioner was served with the seizure memo dated 7th April, 2025 wherefrom it would transpire that the same had been issued under Section 110(1) of the Customs Act, 1962 (hereinafter referred to as 'the said Act') on the ground that the same appears to be prohibited in nature and the same are liable to confiscation under the provisions of Section 111 of the said Act. Upon receipt of the said memorandum, the petitioner has approached this Court.

5. Mr. Mehta, learned senior advocate representing the petitioner by drawing attention of this Court to the subsequent test report and the correspondences exchanged between the department and the test laboratory, namely,

Gujarat Test House would submit that it is evident that the tyres imported by the petitioner are meant for mining purposes. However, in the said test report, the laboratory has also indicated that the tyres may be used in bus and trucks. In this context, Mr. Mehta by placing reliance on a judgment delivered by the Hon'ble Supreme Court in the case of Goodyear India Ltd. Vs. Union of India reported in 1997 (92) E.L.T. 14 (S.C.) would submit that what is relevant for consideration, to determine the nature of user, is the predominant user of tyres. According to him, tyres have been imported for mining purpose and are ordinarily meant for the same. Simply because the tyres can also be used on road, the same does not change the predominant user of the tyre. This apart, he submits that if a tyre meant for mining purpose is used on road, the same might invite consequence and may also constitute an offence within the meaning of Motor Vehicles Act, 1988. The petitioner cannot be penalized for the same. He has also brought to the notice of the Court the order passed by the Commissioner of Customs dated 2nd June, 2025 in response to an application filed by the petitioner in terms of leave granted by this Court on 22nd May, 2025 to apply for issuance of waiver certificate under 6(1)(l) of the said Regulation. Let a copy of the aforesaid communication dated 2nd June, 2025 be taken on record. In the facts as noted hereinabove, he would submit that the petitioner has suffered immensely as authorities have wrongfully withheld the goods covered under the two bills of entry and the respondents should be directed to release the goods on expeditious basis.

6. Per contra, Mr. Banerjee, learned advocate appears on behalf of the respondents. He submits that the petitioner as an importer, has misclassified the goods under HSN Code 40118000 (New Pneumatic Tyres of Rubber of a kind used on construction, mining or industrial handling vehicles and machines), which attracts Basic Customs Duty (BCD) at the rate of 10% and minimum IGST. However, since the impugned goods can be used in commercial vehicles i.e. bus and truck, the same

ought to have been classified under HSN Code 40112010 which attracts BCD at the rate of 15%. This apart, in order to import the goods which are classified under HSN Code 40112010, the petitioner would require DGFT license/authorization which is not available with the petitioner. Further, the investigation is in an advance stage and, as such, in the event the goods are released, the vital evidence for investigation will be lost. While distinguishing the judgment delivered in the case of Goodyear India Ltd. (Supra), he would submit that the said judgment was delivered in different set of facts and does not assist the petitioner.

7. Heard the learned Advocates appearing for the parties and considered the materials on record. From the case of the petitioner as noted hereinabove, it is apparent and clear that the petitioner seeks to claim the benefit of exemption memorandum. According to the petitioner since tyres have been imported for mining purpose, the same stands exempted from the purview of BIS clearance. It is also not in dispute from the test reports that the tyres are meant for mining purpose, though from such test reports it would also appear that the user of tyres for other commercial purposes cannot be ruled out.

8. The question still remains as to whether the respondents can be permitted to continue with the seizure for a prolonged period on the pretext of claiming that an investigation is in progress. I find that more than 8 months have elapsed since the goods had arrived in India. Investigation report including the clarification issued by the Gujarat Tyre House is already available with the respondents. It is not the case of the respondent that any further test of the tyre is in progress, at least Mr. Banerjee is not aware of the same. From the documents on record, a decision can be arrived at by the authorities as to whether the exemption memorandum dated 30th January, 2012 can be made applicable in this case. Although, Mr. Banerjee submits that the judgment delivered in the case of Goodyear India Ltd. (Supra) is not applicable, I find the issues involved in the present case and

in the case of Goodyear India Ltd. (Supra) are not entirely different. In the said case, the question that fell for consideration was whether the tyres of a particular size for fitment to heavy moving vehicles such as dumpers and earth movers mainly are eligible to excise duty as tyres for motor vehicles. It is in that context, the Hon'ble Supreme Court in paragraphs 9 and 10 thereof while noting the provisions of the Motor Vehicles Act and the scope of the words 'motor vehicle' had recorded as under:-

"9. Similarly, with the addition of the Explanation the position was only clarified that when a motor vehicle is fitted with any weight-lifting equipment, such motor vehicle shall be counted de hors those fitments made thereto. That apart, the use of the Explanation arises only in cases whether a motor vehicle is fitted with such equipment. Hence the Explanation by itself is not of use to determine what is a motor vehicle envisaged in Item No.16.

10. A close reading of the definition "motor vehicle" in Item 34 reveals that the striking ingredient thereof is that it should have been "adapted for the use upon roads". Merely because the areas on which such heavy movers traverse might sometimes include roads also is not enough to hold that they were "adapted for use upon roads". Such use of the heavy mover on the road may only be ancillary or incidental to the main use of it. Emphasis in the definition must be on the words "use upon road" as those words would denote the principal or dominant use and not where it may move incidentally."

9. From the above, it will be amply clear that merely because the areas on which such heavy movers traverse might sometimes include roads also is not enough to hold that they were "adapted for use upon roads". According to the Hon'ble Supreme Court such use of heavy movers may only be ancillary and incidental to the main use. In view thereof, the respondent must ascertain the primary use of the tyres in question while deciding on the applicability of the exemption memorandum. As rightly pointed out by Mr. Mehta that the petitioner cannot be held responsible for wrongful user of the tyres for which they are not meant, they may invite consequences but cannot be a ground to withhold the goods. Having regard thereto

and taking note of the fact that the investigation is pending at the end of the respondents for a considerable period, though as reinvestigation has been sought for by the petitioner, I am of the view that the investigation should be brought to a logical conclusion end as expeditiously as possible. Unless the respondents choose to drop the proceedings, show cause, if any, must be issued within two weeks from the date of conclusion of the investigation/reinvestigation. The petitioner shall, in the event of issuance of show cause or in the alternative of non-issuance of the show cause, if the goods are not released, be entitled to apply for provisional release of the goods. If there are no other impediments, the application for the provisional release will be considered subject to petitioner agreeing and undertaking to pay highest rate of duty and penalty and providing an undertaking that the goods would only be used on off-road basis.

10. I have also taken note of the direction issued by the Deputy Commissioner dated 2nd June, 2025 as regards the petitioner's case for issuance of the waiver certificate under 6(1)(l) of the said Regulation.

11. In view of the above, I am of the view that the appropriate authority should act on the basis of the direction issued by the Deputy Commissioner of Customs as noted above.

12. With the above observation, the writ petition stands disposed of.

13. There will be no order as to costs.

All parties are to act on the basis of a server copy of the order duly downloaded from the official website of this Court.

(RAJA BASU CHOWDHURY, J.)