IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO/667/2025

KAMLESH KUMAR AGARWAL
VS
PRINCIPAL COMMISSIONER OF CUSTOMS AND 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	:	04.09.2025 & 22.09.2025
Judgment on	**:**	**22nd September, 2025**.

RAJA BASU CHOWDHURY, J:

1. The present writ petition has been filed, inter alia, praying for a direction upon the respondents to release the goods covered under the bills of entry being no.457908 dated 12th July, 2024, bill of entry no.4456899 dated 11th July, 2024, bill of entry being no.8891255 dated 14th March, 2025 and bill of entry being no.8881313 dated 13th March, 2025 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. It is the petitioner's case that the petitioner is engaged in the business of import of tyres for the vehicles used in the mining and excavation area. 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 The Bureau and Indian Standards Act, 2016 (hereinafter referred to as 'BIS Act'). The petitioner contends that the road tyre is required to be in conformity with BIS standard 15636:2022 and should bear the BIS mark which is necessary under the Control Order.

3. Thus, according to the petitioner and having regard to the instruction being F. No.528/109/2011-STO(TU) dated 30th January, 2012 issued under the Control Order, certain types of tyres used for off the road (OTR) vehicles carrying Tyres Tread Code marking such as C (C1, C2), E (E1 to E4, E7), G (G1 to G4), L (L2 to L5, L3S to L5S), IND or NHS are treated to be off the road tyres. The petitioner would submit that the petitioner in usual course imported two consignments of "off the road" tyres and filed two self-assessed bill of entry bearing no.457908 dated 12th July 2024 and bill of entry no.4456899 dated 11th July 2024 for import of the tyres for off the road purposes. Subsequently, the petitioner also imported two other consignments under bills of entry nos.8891255 dated 14th March 2025 and 8881313 dated 13th March 2025 which are mining tyres for home consumption and accordingly self-assessed the bills of entry. According to the petitioner, the tyres imported were made of high ply rating 18 PR with widened tread grip having resistance to cut and puncture and are able to carry heavy load in mining area and over ore rocks. All the required markings for off road tyres (OTR) are found on the side wall of the imported tyres. It is the petitioner's case that notwithstanding the aforesaid goods were freely importable and the above markings made on the tyres were as per international norms, the above goods were seized on the ground of misdeclaration on 10th September, 2024, on the suspicion of being misused if permitted to run on road.

4. According to the petitioner, the bills of entry being nos.8268630 and 8268218 both dated 12th October, 2023 are also mining tyres for which the petitioner had filed self-assessed bills of entry. The same were, however, allowed to be cleared by the Directorate of Revenue Intelligence, Kolkata by a letter dated 6th November, 2023. In the light of the above, there is no reason for the respondents to withhold the release of the tyres unfortunately, the respondents have been withholding the tyres which has already resulted in demurrage charges of Rs.80 lakhs. Independent of the above, Mr. Mehta, learned senior advocate representing the petitioner 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 the 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, however, the petitioner cannot be penalized for the same.

5. Per contra, Mr. Banerjee, learned advocate appearing on behalf of the respondents would submit that it is clear case of misdeclaration. The petitioner has imported the aforesaid tyres, the same does not bear the marking of BIS. Admittedly, the test would show that the tyre is suitable for on road (normal highway service) applications upto speed category F (80 Kmph max.). A show cause has already been issued. As such no interference is called for.

6. Heard the learned Advocates appearing for the respective parties and considered the materials on record. From the case made out by the petitioner as noted hereinabove, it transpires that the petitioner seeks to claim the benefit of the instruction being F. No.528/109/2011-STO(TU) dated 30th January, 2012. Such instruction appears to have been issued by the Ministry of Finance (Department of Revenue), Central Board of Excise and Customs, New Delhi. Although, such instruction may not be binding on the Court, however, the Department cannot ignore such instruction. As such without going into the issue as to whether the petitioner is entitled to the benefit of the instruction for release of the goods, having regard to the petitioner's application filed on 3rd August, 2025, the same can be considered by the respondents. As such, I am of the view that the respondents should consider such application by taking note of the instruction being no. F. No.528/109/2011-STO(TU) dated 30th January, 2012.

7. Decision in this regard must be taken by the respondents within a period of four weeks from the date of communication of this order. So far as the claim for issuance of demurrage waiver certificate is concerned, I am of the view that such issue is also to be decided by the appropriate authority and the appropriate authority shall also take a decision on the same.

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

9. There will be no order as to costs.

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

(RAJA BASU CHOWDHURY, J.)

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