$~93, 94, 95, 96, 97, 98

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1044/2025 and CM APPL.5146/2025 (Stay)

(93) INDIA COKE AND POWER PRIVATE LIMITED.....Petitioner

Through:

versus

UNION OF INDIA & ORS. .....Respondents

Through:

\+ W.P.(C) 1045/2025 and CM APPL.5148/2025 (Stay)

(94) INDIA COKE AND POWER PRIVATE LIMITED.....Petitioner

Through:

versus

UNION OF INDIA & ORS. .....Respondents

Through:

\+ W.P.(C) 1046/2025 and CM APPL.5150/2025 (Stay)

(95) INDIA COKE AND POWER PRIVATE LIMITED.....Petitioner

Through:

versus

UNION OF INDIA & ORS. .....Respondents

Through:

\+ W.P.(C) 1047/2025 and CM APPL.5152/2025 (Stay)

(96) INDIA COKE AND POWER PRIVATE LIMITED.....Petitioner

Through:

versus

UNION OF INDIA & ORS. .....Respondents

Through:

\+ W.P.(C) 1048/2025 and CM APPL.5154/2025 (Stay)

(97) INDIA COKE AND POWER PRIVATE LIMITED.....Petitioner

Through:

versus

UNION OF INDIA & ORS. .....Respondents

Through:

\+ W.P.(C) 1049/2025 and CM APPL.5160/2025 (Stay)

(98) INDIA COKE AND POWER PRIVATE LIMITED.....Petitioner

Through:

versus

UNION OF INDIA & ORS. .....Respondents

Through:

Presence:

Mr. Arvind Nayar, Sr. Adv., Mr. Vijay K. Singh, Ms. Smita Singh, Mr. Kr. Shashwat Singh Sawno, Mr. Tanmay Joshi and Mr. Shubham, Advs.
Ms. Nidhi Raman, CGCS, Mr. Arnav Mittal, Mr. Zubin Singh, Mr. Arnav Mittal, Advs. Mr. Ankur Yadav,GP for R-1 and 2/UOI.
Mr. Nikunj Arora, Adv. for R-3 in item nos.93, 94 and 97.
Mr. Nikunj Arora, Adv. for R-3 in item nos.93, 94 and 97.
Ms. Malvika Trivedi, Sr. Adv., Mr. Nipun Gupta and Ms. Sujal Gupta, Advs. for R-3 in item no.96.
Mr. Simrat Singh Pasay, Adv. for R-3 in item no.98 (through v/c)
Mr. PawasKulshreshta and Mr. K.S. Rekhi, Advs. for R-4 in item nos.96 and 98.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% **30.01.2025**

1. The petitioner (India Coke and Power Private Limited) in these batch of cases, is engaged in commodity trading, and specializes in the trading and supply of raw materials which are essential for the manufacturing process of steel manufacturing industries.

2. It is averred in the petitions that the petitioner is a group company of M/s IMR Metallurgical Resources AG (IMR) having both common shareholding as well as a common directorship.

3. The petitioner claims to be an aggregator of raw materials and commodities for the benefit of certain end users with whom the petitioner has a contractual arrangement.

4. IMR entered into separate contracts with certain entities in Indonesia

for import of certain quantities of Low Ash Metallurgical Coke (LAM Coke).

5. Thereafter, irrevocable commercial letter/s of credit (ICLCs) were opened for the purpose of the import shipment. The ICLCs were opened by IMR, a group company of the petitioner, to enable import of the concerned goods into India, and supplying the same to the entities with whom the petitioner has entered into a contractual arrangement. However, in the meantime, a Notification No. 44 / 2024-25 dated 26.12.2024 with the subject "Imposition of Quantitative Restriction on import of Low Ash Metallurgical Coke under Chapter 27 of ITC (HS) 2022, Schedule – I" (Import Policy) (hereinafter '*the notification dated 26.12.2024*') was issued by the respondent no.2 (Directorate General of Foreign Trade) imposing quantitative restrictions on import of LAM Coke having ash content below 18%, by way of an amendment to the extant import policy.

6. *Vide* the said notification, the following amendment was made by inserting a new Policy Condition at Sl. No.8 in Chapter 27 of ITC (HS), 2022, Schedule – I (Import Policy):-

> "*(a) Import of "Low Ash Metallurgical Coke (HS Codes 27040020, 27040030, 7040040, 27040090) having ash content below 18%, excluding coke fines / coke breeze and ultra-low phosphorous metallurgical coke with phosphorous content up to 0.030% with size upto 30 mm with 5% size tolerance for use ferroalloy manufacturing" shall be "Restricted".*
> *(b) Import shall be permitted only against an Import Authorization issued by DGFT for the specified country for imports during 01.01.2025 to 30.06.2025.*
> *(c) Metallurgical Coke with high ash content, that is, ash content above 18% is outside the scope of "Restriction".*

7. Consequently, a country-wise quantitative restriction has been in

place. The relevant country for the purpose of the present writ petitions is Indonesia. Pursuant to the notification dated 26.12.2024, the import of LAM Coke of Indonesian Origin was restricted to 33,182 MT in the period between January to March 2025 and 33,182 MT in the period between April to June 2025. The said quantitative restrictions were made effective from 01.01.2025 up to 30.06.2025.

8. For the purpose of obtaining an Import Authorization for import of LAM Coke, pursuant to and in terms of the Notification dated 26.12.2024, an application was filed by the petitioner on 08.01.2025. The same was decided *vide* minutes of a Special Exim Facilitation Committee (EFC) meeting held on 15.01.2025, in which, it was, *inter alia,* decided as under:

> "***6. Decision of the Committee***
> ....
> *(c) Quantity of 1,500 MT to be allotted to each traders/aggregator applicant or the applied quantity whichever is less.*
> *(d) In case any applicant wishes to import the allocated quantity through traders/aggregators, provisions have been made in the system to support the arrangement.*
> *(e) While considering such amendment applications from traders, it would be ensured that they are backed by authority letter(s) from actual user/allottees.*
> *(f) Further, the traders/aggregator shall also be required to give a firm commitment that they will import the allotted quantity on behalf of actual user(s) and will not divert the same for further trading in domestic market. The said condition would be imposed on the Authorisation issued for Traders.*"

9. The petitioner is aggrieved by the allocation of LAM Coke made to it.

10. Apart from seeking allocation of requisite quantities of LAM Coke pursuant to the notification dated 26.12.2024, which led to the above decision in the meeting held on 15.01.2025, the petitioner also submitted an application under the framework of Clause 1.05 of the Foreign Trade Policy,

2023 (FTP), in terms of which, essentially, pre-existing contract/s for import of certain quantities of LAM Coke, in respect of which irrevocable commercial letters of credit [ICLC] were already issued prior to the issuance of the notification imposing quantitive restrictions, are excluded [to the extent of the quantity, value and period available in the ICLC] from the purview of any quantitative restriction that may be imposed after opening of the concerned ICLC.

11. Clause 1.05of the FTP provides as follows:

> "***1.05 Transitional Arrangements***
>
> *(a) Any License/ Authorisation/ Certificate/ Scrip/ instrument bestowing financial or fiscal benefit issued before commencement of FTP 2023 shall continue to be valid for the purpose and duration for which it was issued, unless otherwise stipulated.*
>
> *(b) Item wise Import/Export Policy is delineated in the ITC (HS) Schedule I and Schedule II respectively. The importability/ exportability of a particular item is governed by the policy as on the date of import/ export. The date of import/ export is defined in para 2.17 of HBP 2023. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively. In case of change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made before the date of such regulation/restriction will not be affected. However, the import through High Sea sales will not be covered under this facility. Further, the import/export on or after the date of such regulation/restriction will be allowed for importer/exporter who has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be limited to the balance quantity, value and period available in the ICLC. For operational listing of such ICLC, the applicant shall have to register the ICLC with jurisdictional RA against computerized receipt within 15 days of imposition of any such restriction/regulation. Whenever, Government brings out a policy change of a particular item, the change will be applicable prospectively (from the date of Notification) unless otherwise provided for.*"

12. The petitioner has applied for operational listing of the concerned ICLCs so as to be able to import certain quantities of LAM Coke, for which, contracts were already entered into prior to the date of notification dated 26.12.2024 and in respect of which, subsisting ICLCs have already been opened.

13. It is stated that in five out of these six petitions, the said application was processed by the respondent no.2 and deficiency letter/s came to be issued. However, the petitioner is yet to respond to the said deficiency letters. The requisite application [for operational listing if ICLC] is yet to be made by the petitioner in W.P.(C) 1049/2025, although it is stated that in the context of the contract referred to in the said petition, the ICLCs were opened much prior to 26.12.2024, i.e. the date on which theNotification No. 44 / 2024-25 was issued.

14. In the above context, after some hearing, these petitions are disposed of with the following directions:

(i) India Coke and Power Private Limited (petitioner in this batch of cases) would be at liberty to apply for enhancement of the quantity of LAM Coke allocated *vide* minutes of EFC meeting dated 15.01.2025. Learned Standing Counsel for the respondent nos. 1 and 2 submits that any such request that may be made by the petitioner shall be considered within the framework of paras 5 and 6 of the minutes of the EFC meeting dated 15.01.2025. It is submitted by the learned standing counsel, on instructions, that if any such application is made by the petitioner, the same shall be decided expeditiously and in any event within a period of two weeks from the submission of the requisite documents by the petitioner.

(ii) As far as the request of the petitioner under the framework of Clause 1.05 of the FTP is concerned, the petitioner would respond to the deficiency letter/s issued by the respondent no.2. In the context of W.P.(C) 1049/2025, the petitioner would be at liberty to submit a fresh application for "operational listing" of the concerned ICLC.

(iii) In case any application under Clause 1.05 of the FTP has been summarily rejected [without issuing any deficiency letter], the petitioner will be at liberty to submit a fresh application within the framework of Clause 1.05 of the FTP, which shall be considered by the respondent no.2.

(iv) Since the petitioner is a trader/aggregator and is not an "end user", the details of the in-house consumption / utilization of LAM Coke and other similar details, as sought by the respondent no.2 in the deficiency letter/s, would be obtained by the petitioner from the entities for which the imported LAM Coke is intended and the same shall be provided to the respondent no.2 alongwith a copy of the pre-existing contract/s between the petitioner and the concerned 'end use' entity/ies.

(v) The petitioner in W.P.(C) 1049/2025 shall also be at liberty to apply for "operational listing" of the concerned ICLC, provided that the ICLC was opened prior to 26.12.2024. The same shall be duly considered by the respondent no.2 in accordance with the prescription contained in Clause 1.05 FTP.

(vi) In case the petitioner's application/s for operational listing of the

ICLCs under the framework of Clause 1.05 (b) is rejected, the same shall be done by way of a reasoned order. In such event, the petitioner shall be at liberty to avail appropriate remedies under law.

15. The petitions are disposed of with the aforesaid directions.

SACHIN DATTA, J

JANUARY 30, 2025/cl