Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 02/09/2026

(2013) 05 GUJ CK 0041

In the Gujarat High Court

Case No : Special Civil Application No. 7228 of 2013

Shree Cement Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2014) 25 GSTR 580

Hon'ble Judges : Sonia Gokani, J;Akil Kureshi, J

Bench : Division Bench

Judgement

Akil Kureshi, J.—The petitioner is a cement company. For the purpose of its cement manufacturing plant, the petitioner regularly imports coal. The dispute between the petitioner and the Department is whether such coal should be classified as steam coal or bituminous coal. The petitioner contends that the imported coal is steam coal. The Department believes otherwise. In the present petition, though several prayers have been made, the learned counsel for the petitioner confined this petition to only following prayers:

(e) To issue a writ in the nature of mandamus commanding the respondent to restrain them from demanding any further differential duty for the bills of entry relating to past consignments, which have been provisionally assessed without finalising the same and restrain them from proceeding to recover any amount in respect of bills of entry deemed to have been finally assessed without following the due process of law.

(f) To issue a writ in the nature of mandamus for bearing the respondents from recovering the any amount on the basis of alleged differential duty without following the procedure established by law....

(h) To issue a writ of mandamus or any other appropriate writ, order or direction quashing the demand raised by the DRI officials and the demand notice issued by respondent No. 15 and also restraining them from illegally recovering any amount as alleged differential duty for import of steam coal from the petitioners.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/shree-cement-ltd-appellant-hash-...

(hh) To direct the respondents, pending the hearing and final disposal of the present special civil application, not to withhold clearance of 74,993 M.T. of coal forming part of the 1,64,993 of steam coal imported from South Africa in the vessel M. V. Great Song and presently at Mundra Port, Gujarat and further consignments thereafter, on the ground that the petitioner has not paid the duty on the past imported consignment of coal as per the demand of the Department/ respondents and without requiring change of classification and also to direct the respondents to clear the good on the basis of provisional assessment.

2. The learned counsel clarified that the rest of the prayers are not pressed without prejudice to rights and contentions of the petitioner. We grant petitioner such liberty.

3. The petitioner''s grievance is two-fold. First arises out of an allegation that the Department insists that the petitioner files necessary declaration classifying the imported coal as bituminous coal. The case of the petitioner is that, according to the petitioner, when the coal is steam coal, the Department cannot insist on the petitioner filing any other declaration.

4. The second grievance is that without following due process of law, the respondents are raising huge duty demand and are not clearing the petitioner''s imported consignments of coal.

5. With respect to the first grievance of the petitioner, the learned counsel Shri R.J. Oza and Shri H.C. Buch for the respondents clarified that the Department''s stand on the basis of the material available on record is that the imported coal is bituminous coal. It was only in order to point out these facts to the petitioner, such reference was made. They, however, could not point out any provision under which the Department could insist on an importer changing its self declaration against its own opinion.

6. With respect to the second part of the petitioner''s grievance, the learned counsel for the respondents stated that no pressure or coercion was exerted for collecting any customs duty without any final order of adjudication being passed. They clarified that without following due process of law, the customs duty demand shall not be raised for any past consignments or with respect to the present or future consignments. With respect to a communication dated February 19, 2013 issued by the Deputy Commissioner (Import), Mundra, a copy of which is produced at page 169 of the petition, in which a demand of Rs. 9,77,45,717 has been raised, they submitted that this is not a recovery notice but a mere request for payment of the duty on the basis of calculation adopted by the Department. They drew our attention to the affidavit-in-reply dated May 8, 2013 filed on behalf of respondents Nos. 3 to 5, in which it is stated as under:

4.6.1 I say that u/s 28(2) of the Act also, the customs officer can advise the petitioner to pay the short-levy which if paid with interest, can potentially save the petitioner from fine and penalty, even the show-cause notice. Also short-levy is payable with interest. Thus, making payment of short-levy on the past

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/shree-cement-ltd-appellant-hash-…

clearances is in their own interest as that cannot only save them from fine and penalty, and even a show-cause notice but will also contribute towards establishing their bona fide that there was no deliberate evasion of duty on their part and that they are willing to co-operate in the matter. Indeed, in the event of non-payment of duty and interest, the quasi judicial process involving issuance of show-cause notice invariably follows.

7. It is, thus, clarified that the said communication at page 169 of the petition was not in the nature of a demand notice.

8. In view of the above position, the petition can be disposed of. With respect to the alleged insistence on the part of the Department for the petitioner to make certain declaration, we do not find any support from statutory provisions. The respondents shall, therefore, process the bills of entry along with the petitioner''s declaration without any insistence on changing the same by the petitioner. It is clarified that this would not preclude the Department from either issuing show-cause notice for proper classification or proceeding in accordance with law on the basis of its opinion with respect to the nature of goods imported.

9. With respect to the petitioner''s second grievance, we record the statements and clarifications of the learned counsel for the respondents. We are sure that the respondents shall not demand duty without final adjudication if the past consignments have been cleared on provisional clearances and shall not raise demand without adjudication when the clearances have been made, otherwise than provisional basis and shall not detain the future consignments merely on the basis of past demands which have yet not been crystalised in law. It is clarified that it would be open for the Department to impose suitable conditions as may be permissible under the law, if the petitioner requests for provisional release. If as contended by the learned counsel for the petitioner, after March 1, 2013, the dispute with respect to classification whether steam coal or bituminous coal is one of revenue neutrality, we are sure that the respondents will bear this in mind while processing request for clearance for future. The petition stands disposed of in the above terms.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/shree-cement-ltd-appellant-hash-…