

(1995) 10 AHC CK 0017

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 610 of 1992

U.P. State Cement Corporation Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-10-1995

Acts Referred:

Citation : (1996) 63 ECR 187 : (1996) 81 ELT 482

Hon'ble Judges : V.N. Khare, J;M. Katju, J

Bench : Division Bench

Advocate : Sudhir Chandra and Dilip Gupta, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

V.N. Khare, J.—This writ petition has been filed against impugned order dated 22-5-1991 (Annexure 5 to the writ petition). We have heard Sri Sudhir Chandra and Sri Dilip Gupta, learned counsel for the petitioner. None appears for the respondents, although the case was taken up in the revised list. However, we have perused the writ petition and counter affidavit. The petitioner is a U.P. Government undertaking and is engaged in the manufacture of Cement. The petitioner has plants at Churk and Dalla where clinker is manufactured which is the raw material used for manufacturing cement. From the factory at Churk and Dalla the petitioner transports this Clinker by Rail and Road to its Chunar factory which is 100 kilometre away for manufacturing Cement. In transit some of the Clinker is lost and the dispute in this case is regarding the quantum of loss of Clinker in transit. It may be mentioned that Clinker which is used for manufacture of cement is exempt from Central Excise duty by notification dated 1-3-1986. The petitioner claimed that its loss was from .43% to 5.4% in transit. However, by the impugned order the claim of the petitioner has been partially allowed only to the extent of .5% only. In the impugned order dated 22-8-1991 the reason for rejecting the balance amount is that the petitioner has not produced any evidence or literature of study to show the extent to which the loss

can be due to natural causes or [unavoidable] accidents. No doubt, in this very order the respondent-Government of India has held that it is not un-reasonable to believe that some loss occurs in the normal course during transportation by Railway wagons or by trucks. However, the quantum of loss claimed by the petitioner has not been entirely accepted.

2. After hearing the learned counsel for the petitioner we are of the view that the reasons for rejecting the entire claim of the petitioner that the petitioner has not produced evidence or literature of study to indicate the extent of loss cannot be sustained. In a case like the present it is obvious that there can be no literature of study regarding the extent of loss. Hence, the fact that the petitioner could not produce any literature can hardly be a relevant consideration for rejecting the claim of the petitioner. The claim of the petitioner should have been considered on the entirety of the circumstances and relevant considerations, and it should not have been rejected for not supplying of literature, as there obviously could not be any literature on this point. Hence, we set aside the impugned order dated 22-8-1991 and remand the case to the Central Government to re-examine the claim of the petitioner and to decide the same, within three months from the date of certified copy of this order is served upon it by a speaking order in accordance with law, taking into account relevant considerations.

3. In the result the writ petition is allowed. There shall be no order as to costs.