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Date: 25.07.2025

CESTAT Kolkata Upholds DGFT Clarification

In a landmark decision, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Eastern Zonal Bench, Kolkata, has dismissed the appeal filed by the Revenue against M/s India Carbon Ltd, affirming their right to import Raw Petroleum Coke (RPC) for manufacturing Calcined Petroleum Coke (CPC). This judgment highlights the importance of regulatory clarity and adherence to policy guidelines in the import-export domain.

Background of the Case

M/s India Carbon Ltd, a leading calciner, specializes in manufacturing CPC by processing RPC. CPC is a critical component used in anode making for the aluminum industry. Until October 2019, the import of RPC with any sulphur content was unrestricted. However, following a Supreme Court order, the Central Government amended the import policy, imposing conditions on RPC imports. Licenses for RPC imports were issued by the Directorate General of Foreign Trade (DGFT) based on recommendations from an Expert Committee.

In 2021, M/s India Carbon Ltd was granted a license to import 37,777 M.T. of RPC for anode making in the aluminum industry. However, a portion of the imported RPC was seized by Customs Authorities, citing alleged violations of the import policy due to sulphur content exceeding 3.5%. This led to a series of legal proceedings, culminating in the present appeal before the Tribunal.

Key Arguments

The Revenue argued that the imported RPC did not meet the sulphur content requirement specified in IS 17049, which mandates sulphur content below 3.5%. On the other hand, M/s India Carbon Ltd contended

that the DGFT, as the licensing authority, had clarified that the sulphur content requirement was not applicable to RPC at the point of import, as it is used as feedstock to produce CPC.

Tribunal's Observations

The Tribunal carefully examined the appeal documents and DGFT's clarification. It noted that the DGFT had explicitly stated that the sulphur content requirement was not relatable to RPC at the import stage, as it is processed into CPC for anode making in the aluminum industry. The Tribunal emphasized that the DGFT is the competent authority to issue licenses and clarify conditions related to imports.

Final Verdict

Based on the DGFT's clarification, the Tribunal held that M/s India Carbon Ltd was eligible to import RPC as permitted by the license. It dismissed the Revenue's appeal, reaffirming the respondent's compliance with the import policy and regulatory guidelines.

Implications of the Judgment

This decision underscores the importance of regulatory clarity and the role of competent authorities like the DGFT in resolving disputes related to import policies. It also highlights the need for Customs Authorities to align their actions with policy guidelines and expert clarifications to avoid unnecessary litigation.

Conclusion

The Tribunal's judgment is a significant win for M/s India Carbon Ltd and sets a precedent for similar cases in the future. It reinforces the principle that policy conditions must be interpreted in light of expert clarifications and the intended purpose of the imported goods. This case serves as a reminder of the critical role of regulatory bodies in ensuring smooth trade operations and fostering trust among stakeholders in the import-export ecosystem.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Kolkata

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**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76625 of 2024

(Arising out of Order-in-Appeal No. Kol/Cus(Port)/KS/255/2024 dated 16.4.2024 passed by the Commissioner of Customs(Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Commissioner of Customs(Port), Kolkata

Custom House, 15/1, Strand Road,
Kolkata-700001

: Appellant

VERSUS

M/s. India Carbon Ltd,

6, Old Post Office Street
Kolkata-700001

: Respondent

APPEARANCE:

Shri S. Debnath,
Shri Sameer Chitkara, Authorized Representative for the Appellant
Shri Sudhir Mehta, Sr. Advocate for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77015/ 2025

DATE OF HEARING: 09.07.2025

DATE OF PRONOUNCEMENT: 23.07.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Brief facts of the case are that M/s. India Carbon Ltd (herein after referred as the Respondent) is a calciner carrying on business for manufacturing of Calcined Petroleum Coke (CPC) which is made by processing Raw Petroleum Coke (RPC) where it is used as feed stock. RPC is used as feedstock for making CPC and it is processed for lowering sulphur content in the CPC upto the desired level and thereafter calcined and calcined product is called calcined CPC. Till October 2019, import of RPC with any sulphur content was free. The Central Government thereafter amended the policy on 23rd October, 2018 following the Supreme Court Order

and import was allowed to RPC wherein calciners were allowed to import the RPC subject to the conditions imposed therein in the Policy.

1.1. The DGFT was directed to issue licences on the basis of recommendation made by the Expert Committee. According to the sanctions so made by the Committee the licences were issued to the importers of RPC. In the meeting held on 10th May, 2021, the Expert Committee allotted 37,777.31 M.T. import of RPC for the year 2021-2022 for which a license was granted to the Respondent to import RPC for anode making in aluminum industry.

1.2. Under the ITC Tariff 2713 1110, RPC for anode making in aluminum industry confirming to IS 17049 was permitted as per policy condition no. 6 of chapter 27. RPC for other purposes were also mentioned in ITC 2713 1190 and it was permissible as per policy condition no. 6 of chapter 27.

1.3. As per the amended policy that import of pet coke is free for cement industry, calcium carbide related industries, graphite and electrode industries for use as feed stock or in the manufacturing process only on actual user basis. Further aluminum industries were allowed to import calcined petroleum coke not exceeding 0.5 M.T per annum and calcined pet coke manufacturing unit can import RPC not exceeding M.T. per annum.

1.4. From the Notification it becomes clear that since CPC manufacturer only converts RPC into CPC and no further, CPC which is used in anode making in aluminum industry, Calciners of RPC were allowed to import RPC irrespective of sulphur content. The Policy entitled the respondent to import as per the Ministry guideline and in terms of the policy which allowed it to use the quota allotted to it for making CPC.

1.5. The licence was issued to the Respondent by the DGFT subject to the condition as mentioned in the minutes of the meeting of the Committee. The licence issued to the Respondent mentions in description of goods "*Raw Petroleum Coke for Anode making in Aluminum Industry conforming to standard IS 17049*". Since the Respondent was making CPC for anode making where such RPC coke is to be converted into CPC and thereafter, it can be used for anode making in aluminum industry. The quota and licence were allotted to the Respondent for converting RPC for anode making in Aluminum Industry," which meant that it was to make the CPC which is to be used for anode making in aluminum industry. The condition applicable to the Respondent in the license was that calcined coke needs to be used for anode making in aluminum industry confirming to IS 17049. The IS 17049 was not relatable to RPC at the point of import. It was CPC which is to be related with anode making in aluminum industry as RPC is not used or usable for anode making in aluminium industry. Reading of the item description was required to be read in proper perspective considering the order of the Supreme Court and the allotment of quota by the Expert Committee on the basis of which the licence is being granted. The item description cannot be read in isolation of the order of the Supreme Court and minutes of the meeting of the expert committee which allowed import of RPC to the Respondent.

1.6. The Respondent was granted a licence to import 37,777 M.T. of RPC. Out of which, it imported 10,000 M.T. and filed a bill of entry bearing no. 4632598 The bill of entry was assessed to duty and duties were paid. On November, 2021-when about 46 M.T. of goods were lying at the Port and few goods were lying at its factory and rest were converted into CPC, part of the RPC which were lying

to be used was seized by the Customs Authorities on the ground that it is in violation of the import policy. The Respondent sought release of the goods on provisional basis inasmuch as goods stored at the Port were suffering demurrage charges which were more than the value of the goods. The Adjudicating Authority declined the provisional release by an Order dated 27th April, 2022. The Respondent preferred an appeal to the Commissioner of Customs (Appeals) who allowed the appeal and held that the goods were covered by the licence and were permissible to be imported. The department preferred an appeal to the Tribunal, which dismissed the appeal. The department preferred an appeal to the High Court which remanded the matter back to the Tribunal to reconsider the issue. The Tribunal fixed the hearing on 20th June, 2023 and the matter was adjourned by the Tribunal to 10th July, 2023. Before the date of the hearing by the Tribunal, the adjudicating authority passed the adjudication order making the appeal infructuous. The department preferred not to pursue the appeal at the Tribunal.

1.7. The Respondent sought clarification from the DGFT and Ministry of Environment who gave respective clarification that Respondent were entitled to use the RPC for CPC and percentage of sulphur content was not relatable to the respondent since it was used as feed stock converted to CPC.

1.8. Against the adjudication order dated 19th June, 2023, the Respondent filed appeal before the Commissioner of Customs (Appeals). The Ld. Commissioner (Appeals) allowed the appeal filed by the Respondent. The present appeal has been filed by the Revenue against the impugned order passed by the Commissioner (Appeals).

2. The Ld. A.R. reiterated the findings in the impugned order. He further submitted that the

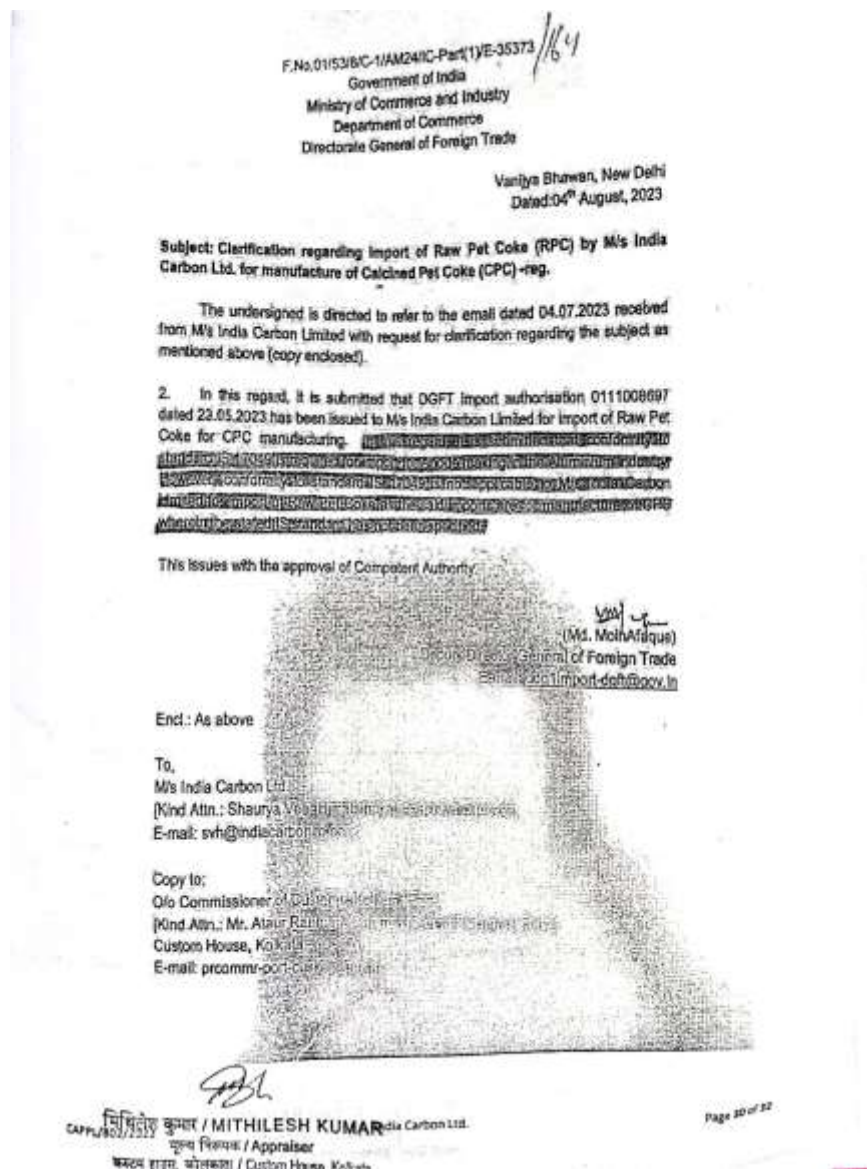
condition applicable to the Respondent in the license was that calcined coke needs to be used for anode making in aluminum industry confirming to IS 17049. As per IS 17049 sulphur content should be less than 3.5%. In the present case, as per the test reports the sulphur content of the goods imported was more than 3.5% and hence the goods do not satisfy the IS 17049. Hence, the Ld. A.R. submitted that the goods imported cannot be released the Respondent.

3. The Respondent submitted that DGFT is the authority who issued the License to the Respondent allowing them to import 37,777 M.T. of RPC., subject to fulfilment of condition as mentioned in IS 17049. They are the proper authority to clarify any issue related to such import as permitted in the license. In the present case, DGFT has already clarified that the Respondent were entitled to use the RPC for CPC and percentage of sulphur content was not relatable to the respondent since it was used as feed stock converted to CPC. Accordingly, the Respondent submits that there is no merit in the appeal filed by the Revenue and prayed for dismissing the appeal filed by the Revenue.

4. Heard both sides and perused the appeal documents.

5. We observe that DGFT issued the License to the Respondent allowing them to import 37,777 M.T. of RPC., subject to fulfilment of condition as mentioned in IS 17049. They are the proper authority to clarify any issue related to such import as permitted in the license. In the present case, we find that DGFT has clarified that the Respondent was entitled to use the RPC for CPC and percentage of sulphur content was not relatable to the respondent since it was used as feed stock converted

to CPC. The said clarification issued by DGFT is reproduced below for ready reference:



5.1. Accordingly, on the basis of the clarification issued by DGFT, we hold that the Respondent are eligible to import the said goods as permitted by DGFT and there is no merit in the appeal filed by the Revenue. Accordingly, we dismiss the appeal filed by the Revenue.

6. In view of the above findings, The appeal filed by Revenue is dismissed.

(Order Pronounced in Open court on 23.07.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)