IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.11624 of 2024

M/s. Aditya Birla Global Trading (India) Pvt. Ltd. ..... **Petitioner**

Represented By Adv. -
Mr. Jagabandhu Sahoo,
Senior Advocate

Mrs. Kajal Sahoo,
Advocate

-versus-

Central Board of Indirect Taxes and Customs, New Delhi and others ..... **Opposite Parties**

Represented By Adv. –

Mr. T.K. Satapathy,
Sr. Standing Counsel

CORAM:

THE HON'BLE MR. JUSTICE ARINDAM SINHA

AND

THE HON'BLE MR. JUSTICE M.S. SAHOO

ORDER

24.09.2024

Order No.

03. 1. Mr. Sahoo, learned senior advocate appears on behalf of petitioner (importer). He submits, under challenge is, inter alia, order dated 27th February, 2024 made by the Assistant

Commissioner justifying imposition of charge and equal amount of fine.

2. Mr. Sahoo submits, the facts are his client imported goods. He draws attention to draft survey report, obtained by his client from the consignor. He points out, density of the goods was found and reported as 1.021, upon initial and final verification. On that basis his client self-assessed and paid duty to obtain bill of entry. In clearing the goods from assigned yard over a period of five months, the goods lay exposed. He draws attention to report dated 10th July, 2023 on assessment of goods in stack and demonstrates that the density had risen to 1.100. The increase was due to the exposure. This was his client's explanation for variation in the quantity of goods. His client paid the additional charge and fine on protest. Upon applying for refund, impugned order dated 27th February, 2024 was made.

3. Mr. Satapathy, learned advocate, Senior Standing Counsel appears on behalf of revenue and draws attention to said report on assessment of quantity in stack dated 10th July, 2023. He submits, this report stands disclosed by petitioner itself. Assessment quantity reflected is 894.086 Metric tons (MTS). He then draws attention to paragraph 21 in the counter. Revenue's case is, this was excess

quantity and hence joint survey leading to basis for additional charge and fine. There should not be interference.

4. We reproduce below paragraph 21 from the counter.

> *"21. That as regards to the averment made in Para 13(S) of the writ application it is humbly submitted that the contention of the petitioner that accumulation of excess imported South African Steam Coal is the result of moisture is bereft of any documentary evidences. The excess cargo i.e. 894.086 MT of South African Steam coal has been imported over and above the quantity mentioned in the Commercial Invoice, Bill of Lading and Bill of Entry No. 4483566 dated 03.02.2023. As per Bill of Entry No. 4483566 dated 03.02.2023, the petitioner imported 53,378 MT of South African Steam coal. The quantity of steam coal in question is over and above the declared quantity of South African steam coal in the Bill of Entry No. 4483566 dated 03.02.2023. The petitioner filed Bill of Entry No.8375988 dated 19.10.2023 for clearance of excess cargo of 894.086 MT only after arrival of the said excess quantity of steam coal in the Gopalpur Customs Station during the month of February, 2023. Thus, fine for late presentation of Bill of Entry has rightly been imposed on the petitioner under the provisions of Regulation 4(3) of Bill of Entry (EDI) Regulations, 2018."*

5. There appears to be dispute on facts. Clear case of revenue is that goods quantified and charge levied thereon were excess goods. As such, we do not want to be drawn to answer the dispute. Petitioner must find statutory remedy. We further observe, in event petitioner take steps to obtain such remedy within 15 days from date, the proper authority will deal with its grievance.

6. With above observations the writ petition is disposed of.

(Arindam Sinha)
Judge

(M.S. Sahoo)
Judge

Jyoti