IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 6599 of 2014

Date	Order with Signature of Judge

Before:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Mahmood A. Khan

M/s Lucky Cement Limited, petitioner through:	Mr. Ali Almani, advocate along with M/s Sami-ur-Rehman Khan and Aitzaz Manzoor, advocates
Federation of Pakistan, respondent No.1 through:	Mr. Kafeel Ahmed Abbasi, DAG along with Mr. Hussain Bohra, Assistant Attorney General
Collector of Customs, Respondent No.2 through:	Mr. Khaleeq Ahmed, advocate along with Mr. Muhammad Ahmed, PA from the Department
Date of hearing:	14.12.2021
Date of decision:	20.12.2021

JUDGMENT

Muhammad Shafi Siddiqui, J. – Petitioner invoked the jurisdiction of this Court to re-include the shredded tyre scrap in the manufacturing bond license of the petitioner bearing No.PWL-01/2014 for the purpose of seeking tax exemption with direction to respondent No.2 to withdraw the show cause notice dated 28.11.2014 issued to the petitioner.

2. Brief facts of the case are that the petitioner claimed to be a leading exporter of cement products and enjoys the reputation of one of the largest manufacturer in Pakistan. For the purpose of controversy, in hand, the petitioner was issued a manufacturing bond license No.01/2014-MFG.BOND/EXP(PMBQ) on 01.4.2014 which was valid till 31.3.2015, which allowed and permitted shredded tyre as being input goods in terms of the provisions of SRO 450(I)/2001 dated 18.6.2001 primarily considered as Customs Rules, 2001. They claimed to have obtained no objection certificate from the Sindh Environmental Protection Agency (SEPA) for the use of shredded tyre scrap in the process of manufacturing cement.

3. In lieu of such manufacturing bond license, the petitioner imported shredded tyre scrap as being input goods and avail the concession as per the manufacturing bond rules, disclosed in SRO 450(I)/2001 referred above. At some point of time, the goods were being released by the concerned Collectorate of Customs, however, shredded tyre were deleted from the manufacturing bond license in terms of the letter of 02.9.2014 on the proposition that the shredded tyre are being used as a fuel, which does not qualify as raw material in terms of the aforesaid SRO / Customs Rules. The petitioner first invoked the jurisdiction of the Federal Tax Ombudsman in terms of their complaint dated 08.9.2014. A representation was also made to the concerned Collectorate for restoring the deleted item of shredded tyre in the manufacturing bond, which was declined on 13.9.2014. The Federal Tax Ombudsman vide order dated 17.9.2014 suspended the operation of the letter for thirty days where after the complaint was ultimately decided wherein matter was recommended to the respondents in terms of Rules 344 and 345 of the Customs Rules, 2001 after affording an opportunity of hearing. In consequence whereof, a show cause notice was issued dated 28.4.2014, which is impugned here.

4. It is the case of the petitioner that in essence the shredded tyres are being used in the manufacture of cement once they are consumed as a fuel. The left over ashes (residual after burning tyres as fuel) were then allowed to be mixed with clinker completely which (ashes) then constitute one of the raw material as far as the end product i.e. cement is concerned. Learned counsel has relied upon the definition of input goods as defined under Rule 342(f) contained in Chapter XV of the Customs Rules, 2001 which is notified vide SRO 450(I)/2001 and it is urged that a liberal and broad meaning be provided to the input goods while interpreting the definition of input goods as contained therein. It is urged that the definition to be construed in the above terms allows the benefit of duty concession to all input goods. They have relied upon the letter of the Pakistan Cement Manufacturing Association dated 11.8.2014 to disclose that the ashes of the burnt tyre are being used in the manufacture of cement. Learned counsel for the petitioner has further relied upon that Input Output Co-Efficient Organization (IOCO) vide their letter dated 21.3.2012 confirmed that shredded tyres scarp were input goods for the manufacture of cement. Their recent observation, however, is in conflict with their earlier one. In the recent one they have stated that the shredded tyre scrap is not input goods, hence their input output ratios and wastages could not be determined in the case of manufacturing bond.

5. Learned DAG Mr. Kafeel Ahmed Abbasi and Mr. Khaleeq Ahmed, advocate for the Department appeared and vehemently opposed. The case of the respondents is that the shredded tyres are being used primarily for the fuel

purpose and hence it cannot be regarded as a raw material to be imported free of duties and taxes.

6. We have heard the learned counsel and perused the material available on record.

7. A private manufacturing bonded warehouse license was issued to the petitioner in terms of Rules 342-363 Chapter XV of the ibid SRO, the premises being property of the petitioner was licensed under the ibid rules read with Section 13 of the Customs Act, 1969 as a private manufacturing bonded warehouse for the import / storage of the input goods required for the manufacture of finished goods i.e. cement meant for export in accordance with the analysis certificate to be obtained within fifteen days of issuance of manufacturing bond license or sixty days before the first export of finished goods. Those input goods include (i) PP Sling Bags (Packing material) and (ii) Shredded Tyre Scrap (Cut into pieces) along with their respective tariff heads. They were allowed to be imported without payment of customs duty, federal excise duty and sales tax after declaring them on the goods declaration that such input goods are being imported under manufacturing bond license for manufacture of goods to be exported, which were further subjected to the conditions mentioned therein.

8. Chapter XV of the SRO 450(I)/2001 is in relation to warehousing. Rule 342 of this Chapter provides a definition of input goods as 342(f). Initially when the license was issued the definition was somehow different then it is now. It was without coal, coke of coal, carbon blocks, diesel, gas and furnace oil. For the purposes of the license in hand the definition of input goods as it stood at the relevant time is as under: -

> *"input goods means all goods, required for the manufacture of goods meant for export, such as raw materials, accessories, sub components, components, sub-assemblies, assemblies and includes unrecorded media for development of software and recorded software used as tools for development of software as approved by the Regulatory Authority in the Analysis Certificate."*

9. Shredded tyres in its forms as imported were never the raw material of cement. This fact is not even denied by Mr. Almani that in the form as it was imported, it could not be used as a raw material unless it is burnt and ashes are obtained which then only may be mixed up with clinker to achieve the end product i.e. cement. We have inquired from Mr. Almani as to whether these tyres are being burnt in open air to obtain ashes, to which he disclosed that primarily they are being used as a fuel to achieve the required temperature of 1400 to 1500 degree in the cement kiln, and goods (shredded tyre) are sufficient to achieve the required temperature. The ash contents of burnt tyres were then mixed up with clinker completely to achieve the end product. We have further inquired as to

whether if the ashes are inevitable as raw material for the cement product, why can't ashes be conveniently imported, Mr. Almani replied that they have taken the advantage of these shredded tyres primarily to achieve the required temperature by using it as a fuel and then the residual is mixed up along with clinker as raw material to achieve the end product.

10. The reliance of Mr. Almani on the letter of Council for Works and Housing Research of the Ministry of Science & Technology is not impressive rather misleading. Initially Pakistan Council of Scientific and Industrial Research Laboratories (PCSIR) have made an excuse that the required testing facilities are not available with PCSIR and they recommended the Council for Works and Housing Research of the Ministry of Science & Technology, who could undertake this research. Perhaps a letter was issued to the Council for Works and Housing Research by the petitioner, who claimed to have examined the shredded tyres and cement provided to them and they came out with their answer that the shredded tyres scrap consumed by the petitioner is an integral part of the cement. There is no cavil that the residual of a burnt tyre "could" form a part of a cement component, but this perhaps is not a precise question before us.

11. The question before us is whether the shredded tyres in its form as imported could be utilized as raw material, and the simple answer is no. It undergoes a process of "burning", which process is primarily utilized by the petitioner through shredded tyres instead of other energies as an alternate of fuel; (other fuel such as diesel, petrol, coal etc. were subsequently added and were not available at the relevant time). Hence these lab reports of Council for Works and Housing Research would not turn anything. Had it been a direct import of tyre ashes as raw material, consequences would have been different. The ultimate suggestion of Mr. Almani that a team of IOCO be directed to assess as to whether the ashes of a tyre were being utilized for the manufacture of cement is also of no help as we are facing a primary question as to whether shredded tyres could come within the definition as provided in the aforesaid SRO to form a raw material, which answer may not be available with IOCO as it requires interpretation of Rule 342(f) of the aforesaid SRO / Rules 2001. Section 342(f) of the Customs Rules, 2001 as it stands today is reproduced as under which still doesn't include shredded tyre as fuel.

> *"input goods [including coal, diesel , gas and furnace oil]" means all goods, required for the manufacture of goods meant for export, such as raw materials, accessories, sub components, components, sub-assemblies, assemblies and includes unrecorded media for development of software and recorded software used as tools for development of software as approved by the [Regulatory Authority] in the Analysis Certificate."*

12. The availability of analysis certificate for goods manufactured in the manufacturing bond is also of no consequence as there is no cavil that the leftover of the burnt tyres i.e. ashes were being used by the petitioner and the issuance of such certificate would serve no purpose for the purpose of above interpretation. Rule 351 of the Customs Rules, 2001 is reproduced as under: -

> ***351. Analysis Certificate for goods to be manufactured in a manufacturing bond****.- (1) The licensee shall apply to the Regulatory Authority, within fifteen days of issuance of manufacturing bond license, or sixty days before the first export of finished goods, for issuance of an Analysis Certificate as set out in Appendix-III showing the input and output ratio of input goods vis–a–vis finished goods along with wastages. The licensee shall also submit samples of product and its input material.*
>
> *(2) The Regulatory Authority or the officer authorized by him, in his behalf, shall, after getting input from the Input Output Coefficient Organization (IOCO) or Engineering Development Board (EDB), or any other agency, in this regard, issue an Analysis Certificate within thirty days on receipt of such application, showing the actual quantity of input goods used and wastage occurred in manufacture of one unit of output goods:*
>
> *Provided that the Regulatory Authority may issue a provisional analysis certificate till the determination of Input to Output Ratio and wastage by IOCO or EDB, as the case may be:*
>
> *Provided further that if there is no change in previously determined input and output ratio, then the Regulatory Authority may uphold the previously determined input-output ratios without sending it to IOCO or EDB.*
>
> *(3) ……..*
> *(4) ……..*
> *(5) ……..*

These certificates may not be relevant for the purpose of interpreting Rule 342(f) at it stood at the relevant time.

13. As a result of the above discussion, this petition is dismissed along with pending applications

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