NEUTRAL CITATION
2026:GUJHC:38597-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15459 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 14518 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 14520 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 14521 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No
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M/S MAHASHAKTI COKE
Versus
UNION OF INDIA & ORS.

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Appearance:
MS. SANGEETA PAHWA, for THAKKAR AND PAHWA ADVOCATES(1357) for the Petitioner(s) No. 1
MS HARDIKA VYAS(11450) for the Respondent(s) No. 2,3
RULE SERVED for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 19/06/2026

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COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Special Civil Application No. 15459 of 2016 is taken-up as the lead matter.

2. Heard learned advocate Ms. Sangeeta Pahwa for Thakkar and Pahwa Advocates for the petitioner and learned Senior Standing Counsel Ms.Hardika Vyas for the respondents.

3. The facts are common in all the matters and only the quantity of the exported goods and the amount of rebate claim varies.

4. The brief facts are that, the petitioner is a company engaged in the business of manufacturing excisable goods, i.e. Metallurgical Coke (hereinafter referred as 'Coke' for short). The petitioner received an order for export of about 50,000 Metric Tons (hereinafter referred to as 'MT' for short) of coke from Noble Resources PTE Ltd., Singapore. Accordingly, the petitioner arranged for the export cargo for the purpose of shipment from its unit / warehouse, between 02.04.2011 and 13.05.2011. The petitioner transported about 51,294.800 MT of Coke towards Mundra Port for onward shipment.

4.1. It is the case of the petitioner that, the Surveyor was supervising the transportation measured the extent of moisture in

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respect of quantities loaded in each of the trucks and prepared a daily truck receiving report at Mundra Port. It appears that, thereafter the goods were measured at the port which weighed 51,177.110 MT, and hence there was a difference of 117.690 MT, on account of handling loss, between the stage of loading the cargo at the factory and at the time of cargo which is unloaded and stored at the port.

4.2. Accordingly, the petitioner prepared ARE-1 for removing the excisable goods from the unit for the purpose of export. The petitioner also raised the commercial invoice dated 17.05.2011 on Noble Resources PTE Ltd., and after obtaining requisite permission and approvals, the entire export cargo came to be loaded in the vessel-MV C Journey for the purpose of export, and accordingly, the shipping bill dated 10.05.2011 came to be prepared for the export cargo containing all requisite details.

4.3. The Customs authority processed the shipping bill and after considering all the relevant documents including the report of the Surveyor, determined the amount of duty as Rs.4,79,65,750/-. The petitioner paid the entire duty to the department along with educational cess.

4.4. Petitioner thereafter submitted an application dated 20.06.2011 to the Deputy Commissioner for claiming rebate of Rs.4,94,04,741/- under Rule-18 of the Central Excise Rules, 2002

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(for short 'the Rules'). After *inter se* exchange of the documents and on confirmation and verification of details contained in ARE-1, the respondent no.3 issued a show cause notice dated 12.09.2011 asking the petitioner to show cause as to why the rebate of claim on 51294.800 MT should not be restricted to the quantity of goods actually exported out of India being 49,499.997 MT under the provision of Section-11-B of the Central Excise Act, 1944 (for short 'the Act') explaining the loss of moisture, looking to the nature of the goods, which were exported, i.e. Coke and requested that the excess of moisture cannot frustrate the claim of rebate for the total quantity of goods, which were dispatched from the factory.

4.5. A detailed representation was also filed by the petitioner to the respondent no.3. However the respondent no.3 sanctioned the rebate only on the quantity of 49,499.994 MT of the goods, instead of the actual quantity which were dispatched from the warehouse / factory.

4.6. Being aggrieved by the order-in-original dated 30.09.2011 of rejecting the rebate claim in respect of quantity of 1794.806 MT of Coke, the petitioner filed an Appeal under Section-35 of the Act to the respondent no.2 on 26.12.2011. The respondent no.2 vide order dated 02.03.2012 dismissed the Appeal, confirming the order passed by the respondent no.3. Thereafter the petitioner

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preferred a Revision Application before the respondent no.1. The same was also rejected by the respondent no.1 vide order dated 12.05.2016, which has compelled the petitioner to file the present writ-petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

5. Learned advocate Ms.Sangeeta Pahwa has submitted that the impugned orders are required to be quashed and set aside, since the respondents have failed to notice the nature of the goods, which were metallurgical coke (coke), which has moisture in it and the petitioner is entitled to the rebate on the entire quantity of 51294.800 MT as per the provision of Rule-18 of the Rules.

5.1. She has submitted that it is not the case of the respondents that there was diversion of any quantity of the goods which were removed from the factory premises for the purpose of export and the entire quantity which was received at the Port is exported. However, the weight of the goods in question got reduced due to loss of moisture content from the factory premises till the goods were placed at the Port for the purpose of export.

5.2. She has submitted that the Surveyor, who was overseeing the transport of the goods issued a Certificate on 14.09.2011 mentioning that total quantity of Coke was of 51178.110 MT, during the period from 02.04.2011 to 13.05.2011 and the entire quantity is loaded into vessel MVC Journey, which sailed on

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13.05.2011. This certificate is issued on 14.09.2011.

5.3. Thus, it is urged that the impugned action of the respondents in allowing the rebate by deducting the quantity of 1794.806 MT of Coke on account of moisture loss is required to be interfered with and set aside.

5.4. In support of her submissions, she has placed reliance on the judgment of Bombay High Court in the case of *Commissioner of Central Excise v. Bharat Chemicals, 2015 (320) ELT 337 (Bom.)* which has confirmed the judgment of the Tribunal. Reliance is also placed on the order of the Tribunal. While referring to the Notification No. 19 of 2004 dated 06.09.2004, it is contended by her that the rebate of the goods which are exported is directly connected with the duty paid on excisable goods and not on the actual export of goods and since the petitioner has paid the duty on the entire quantity of goods, which were weighed and transported at the time of warehouse, the rebate claim is required to be processed on such quantity and not on the quantity which has been actually exported.

5.5. Thus, it is urged that the impugned orders may be quashed and set aside and the respondents may be directed to process and grant rebate on the entire quantity, on which the duty is paid by the petitioner.

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SUBMISSIONS ON BEHALF OF THE RESPONDENT:

6. Opposing the present writ-petition and the foregoing submissions, learned Senior Standing Counsel Ms. Hardika Vyas has urged that the impugned orders may not be interfered with. That the respondents have precisely fixed the rebate on the quantity of the actually exported goods which are shown in the shipping bills. It is submitted that, there is no provision which allows the process and grant of rebate, over and above the quantity of goods which were exported.

6.1. While referring to Rule-4 of the Rules, 2002, she has submitted that any person who produces or manufactures any excisable goods or stores such goods in a warehouse, is required to pay the duty leviable on such goods and as per Rule-18 of the Rules, 2002, which governs the 'rebate of duty', more particularly, the explanation under Rule- 18, which stipulates that the rebate is processed and paid only on the goods which are actually exported and since in the present case, the petitioner, has exported goods as per the weight which was declared in the shipping bills, the larger quantity or the weight of the goods which was recorded at the factory premises of the petitioner cannot be considered for processing the rebate.

6.2. In support of her submissions, she has placed reliance on the decision of the Supreme Court in the case of Union of India v.

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Rajindra Dyeing and Printing Mills Limited, (2004) 10 SCC 187. She has also placed reliance on the Division Bench judgment of this Court in the case of *Welspun Corporation Limited v. Union of India & Ors.*, *2013 SCC Online Guj 1692*. Thus, it is urged that the Petition may not be entertained.

ANALYSIS AND OPINION:

7. The established facts from the pleadings and records are that, petitioner is engaged in the business of export of metallurgical coke and it exported the same on various dates. The details of exported metallurgical coke as specified in all the four petitions from 10.08.2011 to 14.10.2011 is as below:

SCA No	OIO No.	Good Cleared from Factory	Good Exported	Difference	Rebate amount Not allowed
15459/2016	1261/2011-12 dated 15.11.2011 (Page No. 45)	25120.70 MT	24999.950 MT	120.75 MT	Rs.1,27,504/-
14518/2018	1726/2011-12 dated 09.03.2012 (Page No. 55)	49719.570 MT	49340.997 MT	378.573 MT	Rs.4,44,033/-
14520/2018	180/2012-13 dated 22.05.2012 (Page No. 58)	44510.36 MT	42000.10 MT	2510.26 MT	Rs.27,72,390/-
	249/2012-13 dated 11.06.2012 (Page No. 63)	50890.74 MT	49300.499 MT	1590.241 MT	Rs.17,10,009/-
	486/2012-13 dated 24.08.2013 (Page No. 68)	11499.860 MT	11000.000 MT	499.860 MT	Rs.6,09,950/-

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	487/2012-13 dated 14.08.2012 (Page No.	52015.910 MT	49500.000 MT	2515.910 MT	Rs.29,51,143/-
14521/2018	1470/2011-12 Dated 06.01.2012 (Page No. 60)	49499.466 MT	47497.596 MT	2001.85 MT	Rs.18,29,693/-

7.1. It is not in dispute that when the goods were dispatched from the plant/factory of the petitioner, they weighed more than the goods which were actually exported, as per the shipping bills details of which are mentioned herein-above. For example, the petitioner had cleared total 25120.17 MT of coke, however, as per the shipping bill no.5197961 dated 29.08.2011, the quantity of exported goods was shown as 24999.950 MT. Thus, there was a short shipment of 120.75 MT from this quantity. Thus, as per the shipping bill no. 5197961, the petitioner exported only 24999.950 MT of coke out of 25120.70 MT which was cleared from his factory. This data relates to only one shipping bill. The overall loss of weight ranges from 120 MT to 2515 MT. We are fairly informed by learned advocate Ms.Pahwa that as per her calculation, the average weight loss for all the shipping bills will come to 9% (approx).

7.2. Thus, it is established that the petitioner, as required by the provision of Rule-4 of the Rules, 2002, paid the duty on the goods which it manufactured, however, the goods which were exported, were less in weight than the one which were loaded in

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the trucks at the factory premises.

7.3. It is the case of the petitioner that the loss in quantity / weight was due to evaporation of moisture contents found in the nature of the goods, after it was dispatched from the factory, and hence the petitioner is entitled to rebate on the duty which is paid on the quantity / weight of excisable goods loaded on trucks at the factory premises.

7.4. At this stage we may refer to Rule-18 of the Rules.

> ***"Rebate of duty – Rule 18.*** *Where any goods are exported, the Central Government may, be notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification."*

7.5. A plain and simple reading and ingredients of Rule-18 of the Rules, 2002 clarifies that the rebate of duty is intrinsically connected with the export of goods and the amount of rebate is to be fixed by the Notification issued by the Central Government. The Explanation under Rule-18 of the Rules, 2002 is relevant to fix the rebate of duty paid on the excisable goods. The explanation clarifies the term- 'export' and it categorically stipulates that for the purpose of Rule-18, 'export' means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going

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aircraft. Thus, the export of goods out of India to a place outside India is a quintessential feature for deciding the rebate of duty under Rule-18 of the Rules, 2002. Thus, a combined reading of the constituent of Rule-18 of the Rules, 2002 along with 'Explanation' exposits that the goods which are exported by a person by taking goods out of India to a place outside India including shipment of goods, the rebate of duty paid on such excisable goods is determined, if such goods are exported. The expression 'duty paid on such excisable goods' is required to be construed with the goods which are actually exported out of India to a place outside India, as mentioned in the explanation. The petitioner filled statutory FORM ARE-1 prescribed under Rule 18 of the Rules, 2002 giving details of manufacture/description, gross/Net weight, marks and Nos. on packages, quantity of goods and Duty paid. The undertaking in FORM ARE-1 specifically mentions that the goods are proposed for export. It is an admitted fact that the total quantity of goods cleared from the factory, as reflected in the ARE-1 forms and Central Excise Invoices, does not match the quantity exported under the Shipping Bills. The petitioner was required to declare the moisture content in both the invoice and the ARE-1 at the time of clearance and duty payment. Had such a declaration been made at the time of removal from the factory, the Customs authorities could have verified the actual loss in

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quantity against the stated moisture content. In the absence of any such declaration, the Customs authorities cannot be expected to presume that a substantial shortage in the quantity of goods was caused merely by moisture loss.

7.6. At this stage, we may refer to the decision of the Supreme Court in the case of **Rajindra Dyeing and Printing Mills (supra)**, where the Supreme Court, while examining the provision of Section 75 of the Customs Act, 1962 in relation to drawback under the Customs and Central Excise Duties Drawback Rules, 1971, which is defined under Rule-2(a) of the Rules, is available to the goods manufactured in India and exported and which is also having a *pari materia* definition, "taking out of India to a place outside India", the Supreme Court has held thus:

> *"2. The respondents contended, even so, that they had exported the said cargo and were entitled to duty drawback thereon under the Customs and Central Excise Duties Drawback Rules, 1971. The claim and the appeal therefrom having been rejected, the respondents filed a writ petition before the High Court of Gujarat. The writ petition was allowed and the appellants are in appeal.*
>
> *3. "Drawback" is defined by Rule 2(a) of the said Rules. Drawback is available to "goods manufactured in India and exported". For the purposes of the Rules, "export" is defined to mean, "taking out of India to a place outside India …".*
>
> *4. Learned counsel for the appellants contends that, in the instant case, there was no export as contemplated by the said Rules inasmuch as the said cargo had not been taken out of India to a place out of India; in fact, the vessel had sunk and the said cargo was destroyed within the territorial waters of India. Our attention was drawn to the judgment of this Court*

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in Collector Of Customs, Calcutta v. Sun Industries . 1988 Supp SCC 342, (1988) 35 ELT 241. This was a case where goods had been loaded on to a vessel in India and the vessel had sunk after it moved out of the territorial waters. This Court said: (ELT pp. 243-44, para 6)

> *"When the ship got clearance and moved out of the territorial waters the export was complete. … But the expression 'taking out to a place outside India' would also mean a place in high seas. It is beyond the territorial waters of India. High seas would also mean a place outside India, if it is beyond the territorial waters of India. Therefore, if the goods were taken out to the high seas outside territorial waters of India, they will come within the ambit of expression 'taking out to a place outside India'. Indubitably the goods had been taken out of India."*

5. The emphasis in the judgment aforementioned is on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have taken place. In the instant case, the said cargo was destroyed when the vessel sunk within the territorial waters of India. There was, therefore, no export of the said cargo. Accordingly, no duty drawback was available in respect of the said cargo."

7.7. The Supreme Court while referring to the judgment rendered in the case of *Collector of Customs vs. Sun Industries 1988 Supp. SCC 342,* where goods had been loaded on to a vessel in India and the vessel had sunk after it moved out of territorial waters, has clarified that the export would be complete, if the goods are cleared and loaded on a vessel which leaves the territorial waters of India and once the goods are taken out to the high seas outside the territorial waters of India, they will come within the ambit of the expression 'taking out to a place outside India', and

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it is then that an export may be said to have taken place. The Supreme Court had refused the grant of drawback, since, in that case, the cargo was destroyed when the vessel sank within the territorial waters of India and thus there was no export of the cargo and accordingly, no duty drawback was available in respect of the said cargo. Thus, on an overall appreciation of the scheme of the Rules governing rebate, the petitioner would be entitled to rebate only on such quantity which finds place in the shipping bills. The actual quantity of coke which is exported, as mentioned in the shipping bills, is required to be considered for the purpose of process and fixation of the amount of rebate under Rule-18 of the Rules. The decision of Bombay High Court in case of ***Bharat Chemicals (supra)*** does not remotely apply to the issue raised in the instant case.

7.8. The Notification dated 06.09.2004, which is issued under Rule-18 of the Central Excise Rules, 2002 further specifies the procedure for the grant of rebate. The Paragraph-2 of the Notification stipulates about conditions and limitations governing the rebate. Condition No.2(a) is as under:

> **"(2) Conditions and limitation:-**
> **(a)** that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;".

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7.9. The Notification mandatorily mentions that the excisable goods shall be exported after payment of duty directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by general or special order. The mandatory condition is that the goods must be exported and the rebate has to be processed and calculated on the quantity of the goods, which are actually exported. The petitioner was supposed to determine and declare the loss of moisture contents resulting into loss of weight.

7.10. Thus, in wake of the fact that since the petitioner has failed to declare the moisture content in the goods at the relevant point while paying the duty, and clearance from the factory for export, we do not find any error in the decision of the respondent authorities, which have precisely determined the rebate on the actual quantity of goods which was exported as per the shipping bills. Thus, rebate cannot be processed on the quantity of the goods which was reduced on account of moisture, as the petitioner has failed to calculate the moisture contents, while loading the goods from his warehouse till they were brought to the Dock to be exported, pertinently, when the loss of weight in the goods is huge ranging from120 MT to 2515 MT.

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8. We do not find any infirmity in the orders of the respondent authorities. Hence, all the writ-petitions fail and the same are ***dismissed***. Rule is discharged with no order as to cost.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI,J)

Pradhyuman/1/