

**HIGH COURT OF GUJARAT (D.B.)****ESSAR STEEL LTD*****Versus*****UNION OF INDIA****Date of Decision:** 25 July 2008**Citation:** 2008 LawSuit(Guj) 2787**Hon'ble Judges:** [K A Puj](#), [Bankim N Mehta](#)**Eq. Citations:** 2008 232 ELT 617**Case Type:** Special Civil Application**Case No:** 9656 of 2008**Subject:** Constitution, Customs**Acts Referred:**[Constitution Of India Art 226](#)[Customs Act, 1962 Sec 2\(19\), Sec 2\(18\), Sec 2\(27\), Sec 12](#)[Special Economic Zones Act, 2005 Sec 2, Sec 2\(i\), Sec 2\(c\), Sec 51](#)[Special Economic Zones Rules, 2006 R 27\(1\), R 27](#)**Advocates:** [K S Nanavati](#), [Mihir Joshi](#), [Keyur Gandhi](#), [Nanavati Associates](#), [Harin P Raval](#)**Cases Referred in (+): 5****K.A.Puj, J.****[1]** These two matters were originally placed before the Division Bench (Coram :-

Hon ble Mr. Justice D.A. Mehta and Ms. Justice H.N. Devani). However, the said Division Bench has passed an order on 25-7-2008 that the said matters were not taken up by the Court consisting of Hon ble Mr. Justice D.A. Mehta. Hence, after the permission of Hon ble the Acting Chief Justice, it was mentioned before this Court at about 12.00 O clock to take up these matters. Since this Court was taking up other matters allotted to them and in second sitting, the Bench is not available, the Court decided to reassemble at about 16.00 O clock and accordingly, both the matters were taken up for hearing. The hearing lasted up to 17.45 p.m. and after

hearing the learned advocates appearing for the respective parties, the Court has issued rule and notice as to interim relief was issued making it returnable on 1-8-2008. This Court has also granted ad-interim relief in terms of paragraph 28 (C)(ii) till then. However, for paucity of time, reasons were not given and the reasons were to be given later on. The Court has also rejected the request made by the learned Assistant Solicitor General to stay the operation of the order of interim relief granted by the Court because of the fact that the matter was kept on 1-8-2008. Since the learned advocates appearing for the petitioners have submitted that the petitioners would continue the arrangement regarding supply of iron Ore Pellets and Calibrated Iron Ore into the Special Economic Zone as contained in the letter dated 1-2-2008 at Annexure F, the said submission was recorded by the Court in the order dated 25-7-2008.

**[2]** The reasons for granting the ad-interim relief are as under :-

**[3]** The petitioners in both these petitions have prayed for writ of mandamus restraining the respondents from levying and demanding export duty for supplies of Iron Ore Pellets made by the Vizag Pellet Unit of the petitioner in Special Civil Application No. 9656 of 2008 to the Special Economic Zone unit of the Company located at Essar Special Economic Zone, Hazira, Surat and for supplies of Iron Ore Pellets and Calibrated Lump Ore by the petitioner of Special Civil Application No. 9713 of 2008 to the SEZ unit of the Company located at Essar Special Economic Zone, Hazira, Surat. The petitioners have also prayed for quashing and setting aside letter dated 30-6-2008 of the respondent No. 3 at Annexure O, letter dated 8-7-2008 of the respondent No.4 at Annexure P and letter dated 9-7-2008 at Annexure R, in each of these petitions. By way of an interim relief, the petitioners have prayed for suspension of the operation and implementation of letters dated 30-6-2008, 8-7-2008 and 9-7-2008 of the respondents and directing them to continue the arrangement regarding supply of goods to the SEZ unit as contained in the letter dated 1-2-2008 at Annexure F to the petition. Alternatively, the petitioners have prayed for stay against respondent No. 4 restraining him from refusing admission/entry of goods supplied by the petitioner being a Domestic Tariff Area Unit, to the SEZ unit of Essar Steel Limited only on the ground of non-payment of export duty.

**[4]** Mr. Harin P. Rawal, learned Assistant Solicitor General appearing for the respondents, on advance copy being served on him, has raised a preliminary objection regarding maintainability of the petitions. He invited the Court's attention to some of the provisions and definition given in Section 2 of the Special Economic Zones Act, 2005 (for short SEZ Act ). Section 2(m) defines export and sub-clause (ii) thereof says that export means supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer. According to him, the petitioners are supplying the goods

from Domestic Tariff Area to a Unit in SEZ limits. He also refers to sub-section (i) of Section 2 which defines Domestic Tariff Area . It means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones. He further invites the Court s attention to Section 2(zc) of the Act which defines Unit . Under this sub-section, Unit means a unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Center, whether established before or established after the commencement of this Act. Lastly, he invited the Court s attention to the provisions of Section 51 of the Act which gives an overriding effect of the Act. It says that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Based on these provisions of the Act, Mr. Raval has submitted that supply of goods by a Unit in the Domestic Tariff Area to a Unit in the Special Economic Zone attracts levy of duty of customs being export duty specified in the Export Tariff in the Special schedule to the Customs Tariff Act, 1975 read with Section 12 of the Customs Act, 1962. Such a levy cannot be challenged in petitions filed under Article 226 of the Constitution of India and hence, the petitions are not maintainable.

**[5]** Mr. Raval further submitted that even if it is argued that the petitions are maintainable, no stay can be granted against levy of tax. In support of this submission, he relied on the decision of the Hon ble Supreme Court in the case of Assistant Collector of [Central Excise, Chandan Nagar, West Bengal V/s. Dunlop India Limited and others](#), 1985 19 ELT 22, [Empire Industries Limited and others V/s. Union of India and others](#), 1985 20 ELT 179.

**[6]** Mr. K.S. Nanavati and Mr. Mihir Joshi, learned Senior Counsels appearing with Mr. Keyur Gandhi for the petitioners in both these petitions have submitted that there is no provision under the SEZ Act to levy customs duty. Levy of duty under the Customs Act is governed by the provisions of the Customs Act. Section 2(18) of the Act defines export with its grammatical variations and cognate expressions, means taking out of India to a place outside India . Admittedly, goods are not taken out of India to a place outside India . Section 2(19) defines export goods means any goods which are to be taken out of India to a place outside India . Admittedly, goods in question are not taken out of India to a place outside India . Section 2(27) defines India includes the territorial waters of India . He has, therefore, submitted that the goods are moved from one place to another place in India and not taken outside India or outside the territorial waters of India . The Court s attention is further invited to the provisions of Section 12 of the Customs Act which talks about dutiable goods. It says that except as otherwise provided in this Act, or any other law for the time being in force, duties of

customs shall be levied at such rates as may be specified under [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India. It is, therefore, submitted that no goods are imported into or exported from India . The Court s attention is further invited to the provisions of Rule 27 of the Special Economic Zones Rules, 2006. Sub-rule (1) of Rule 27 says that Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess.....

**[7]** Based on the aforesaid provisions of the Customs Act and since there is no specific provision under the SEZ Act to levy customs duty and since there is no corresponding amendment in Section 12 of the Customs Act, it is submitted that the duty is not leviable on the goods which are imported from any place in India or exported to any place in India. In support of their submissions, they relied on the decision of the Hon ble Supreme Court in the case of [Collector of Customs , Calcutta V/s. Sun Industries](#), 1988 35 ELT 241 and decision of this Court in the case of [Rajindra Dyeing and Printing Mills V/s. Union of India](#), 1993 67 ELT 217.

**[8]** It is further submitted that the words export or import or Domestic Tariff Area are defined under the SEZ Act for a specific purpose and the scope thereof would not automatically be extended in other Acts, namely, Customs Act. On that basis, it cannot be argued that the duty is leviable on such goods under the Customs Act. Reliance is placed on the decision of the Hon ble Supreme Court in the case of [State of Karnataka V/s. K. Gopalkrishna Shenoy and another](#), 1987 3 SCC 655 wherein it is held that the deeming provision in Section 38(1) of the Motor Vehicles Act cannot be extended to Section 3(1) and the Explanation thereto of the Taxation Act.

8 Reliance is also placed on the interim order passed by the Madras High Court in the case of M/s. Advait Steel Rolling Mills Private Limited V/s. Union of India and others , M.P. No. 2 of 2008 in W.P. No. 16990 of 2008 wherein the petitioner has prayed for an order of injunction from levying duties of customs being export duties on removal of goods from any place in India (outside a Special Economic Zone) to a Special Economic Zone inside India and on perusing of the petition and the affidavit filed in support thereof and upon hearing the arguments of the learned counsel appearing for the petitioner, the Court granted interim injunction for two weeks on 17-7-2008. The case of the petitioners is also identical with the case of M/s. Advait Steel Rolling Mills Private Limited and similar levy of customs duty is challenged in the present petitions. Based on this interim order, the learned Senior Counsels appearing for the petitioners have requested the Court to grant the interim relief as prayed for in the petitions.

10 One more submission is made on behalf of the petitioners that the petitioners are not asking for a blanket stay. Uptill now, they have provided Bank Guarantee and also furnished Bond to the satisfaction of the authorities. They are prepared to continue the same arrangement till the petitions are finally heard by the Court. As a matter of fact, this arrangement was continued till 30-6-2008 and only after rejection of their representation by the concerned Ministry, the petitioners were directed to pay the export duty involved on all the goods iron Ore Pellets and Calibrated Iron Ore supplied by the petitioners to the Special Economic Zone against Bond and Bank Guarantee. The petitioners were informed that the goods would be supplied only after the payment of applicable export duty.

11 In the above background, the parties were heard at length for about one hour and 45 minutes. The Court is prima facie satisfied that in absence of any specific provision under the SEZ Act, to levy customs duty or in absence of any corresponding amendment in the Customs Act, the petitioners are not liable to pay customs duty on the goods supplied from a Domestic Tariff Area to SEZ Unit or on removal of goods from any place in India i.e. outside a Special Economic Zone to a Special Economic Zone in India . The issue requires consideration by the Court. One more reason to grant the interim stay is that though SEZ Act has come into force w.e.f. 23-6-2005, the arrangement was continued by the authorities upto 30-6-2008. The petitioners have been furnishing Bank Guarantee and/or executing bond in favour of the authorities and they are prepared to continue the same arrangement for a couple of weeks till the Court hears the matter after the pleadings are completed. One Court has already granted interim stay and this being an all India Statute, there is no reason for this Court not to grant interim stay to the petitioners. The Court is mindful of the fact that normally, stay cannot be granted against the tax demand and the Government cannot run on Bank Guarantee or Bonds. However, in appropriate cases and when the duty itself is under challenge, the Court will be failing in its duty if the limited indulgence is not shown, especially when the petitioners have shown their willingness to furnish Bank Guarantee and to execute the Bonds.

12 Though the matters were heard at length, the Court has thought it fit to grant ad-interim relief only upto 1-8-2008 so that the respondents can file their affidavit-in-reply and place the appropriate material before the Court indicating as to how the levy of duty is justifiable.

13 It is in the above background of the matter, the Court has admitted both the petitions and ad-interim relief was granted in terms of paragraph 28 (C) (ii) till 1-8-2008.