IN THE HIGH COURT OF ANDHRA PRADESH

****

W.P.Nos.24863 of 2020 & 49 of 2021

W.P.No.24863 of 2020

Between:

Kerneos Indai Aluminate Technologies Private Limited
Plot No.1, IC Pudi, Rambilli Mandal
Atchutapuram, Visakhapatnam – 531 011

…. Petitioner

AND

Union of India
Through its Secretary
Ministry of Commerce and Industry (Department for Promotion of Industry and Internal Trade)
Udyog Bhawan, New Delhi – 110 011
and four others

…. Respondents

DATE OF JUDGMENT PRONOUNCED**: 17.06.2021**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
HON'BLE MS JUSTICE J. UMA DEVI

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes / No

2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes / No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes / No

_____

U. DURGA PRASAD RAO, J

_____

J. UMA DEVI, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**
AND
HON'BLE MS JUSTICE J. UMA DEVI

+ W.P. Nos.24863 of 2020 & 49 of 2021
W.P.No.24863 of 2020

% 17.06.2021

Between:

Kerneos Indai Aluminate Technologies Private Limited
Plot No.1, IC Pudi, Rambilli Mandal
Atchutapuram, Visakhapatnam – 531 011 …. Petitioner

AND

Union of India
through its Secretary
Ministry of Commerce and Industry (Department for Promotion of Industry and Internal Trade)
Udyog Bhawan, New Delhi – 110 011
and four others

…. Respondents

! Counsel for Petitioner **:** Sri S.Ravi, Senior Counsel representing Sri Asad Hussain

^ Counsel for Respondents **:** learned Assistant Solicitor General of India representing R1 & R2

Sri V.V.N.Narayana Rao, Standing Counsel for R3

Sri Suresh Kumar Routhu
Standing Counsel for R4 & R5

< Gist:

> Head Note:

? Cases referred:

MANU/SC/0470/2004 = 2005 (4) ALT 27 (SC)

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
HON'BLE MS JUSTICE J. UMA DEVI

Writ Petition Nos.24863 of 2020 & 49 of 2021

COMMON ORDER: (*Per Hon'ble Sri Justice U.Durga Prasad Rao*)

The challenge in both the writ petitions is to the refusal of the respondent/Customs officers of Customs House, Port Area, Visakhapatnam to issue customs clearance to the High Alumina Refractory Cement (for short, 'HARC') imported by the petitioners under the Bills of Entry and insisting for production of Bureau of Indian Standard certificate on the ground that HARC was incorporated as one of the products in Foreign Manufacturers Certificate Scheme (for short, 'FMCS') under the Bureau of Indian Standards Act, 2016 (for short, 'BIS Act, 2016') and Rules made there under along with Cement (Quality Control) Order, 2003 (for short, 'CQC Order, 2003') as illegal and without jurisdiction.

2. In W.P.No.24863/2020, the petitioner averred that in their ordinary course of business the petitioner imported HARC into India for their business operations. Earlier the respondents have never raised any requirement of compliance with the impugned CQC Order, 2003 qua the refractory cement imported. As usual the petitioner sought to import and clear the consignment of HARC vide Bill of Entry No.9002502 dated 30.09.2020 and 9815345 dated 04.12.2020 for stock and sale purposes. However, the respondent Customs authorities refused clearance of the aforesaid Bills of entry for the reason that the petitioner failed to produce proof of due compliance with the applicable Indian standards for the

impugned CQC Order, 2003. Through the letter correspondence, the petitioner explained that the CQC Order, 2003 does not apply to the imported HARC but of no avail. The petitioner's claim is that HARC does not fall within the definition of cement mentioned in clause 2(d) of CQC Order, 2003 and hence, it does not require BIS certification.

3. The case of petitioners in W.P.No.49/2021 is also similar to the above writ petition. The petitioners' company is engaged in manufacture and export of variety of specialised refractories including those falling under Chapter 69 of the First Schedule to the Customs Tariff Act, 1975. One of the raw material used by the petitioners' company in the manufacture of its refractories is Aluminous Cement popularly known as HARC because alumina content therein is above 60%. The petitioners' company has been regularly importing HARC since more than two decades from Imerys Aluminates Asia Pacific Private Limited, Singapore and availing the benefit of customs notification No.50/2017, dated 30.06.2017. Previously the Customs authorities never insisted for production of BIS certificate. While so, recently the petitioners' company imported Aluminous Cement SECAR 68V and Aluminous Cement CMA-72 (HARC) from Imerys Aluminates Asia Pacific Private Limited, Singapore vide Bill of Entry No.9784277, dated 02.12.2020. However, the respondent Customs authorities insisted for mandatory compliance of BIS certificate. The correspondence made by the petitioners explaining that HARC is not a cement and it is only a refractory material used to withstand high temperature in furnaces in steel and iron factories and therefore, HARC does not fall within the definition of cement

given in Section 2(d) of CQC Order, 2003, did not find favour with the respondent authorities and they withheld the consignment.

Hence, the writ petitions.

4. The respondents 2 to 6 filed counter opposing the writ petitions and *inter alia* contending thus:

(a) It is submitted that the Custom Houses under the Central Board of Indirect Taxes & Customs (CBITC) is the implementing authority for the allied Acts, of which BIS Act, 2016 is a part. Therefore, refusal to admit the impugned goods into the country for non-production of certificate of BIS cannot be faulted in view of the safety and security of the public.

(b) It is true that till September 2020 the import of HARC by the petitioners was not obstructed and BIS certificate was not insisted. However, in October 2020 the BIS have specified the requirement of BIS certification vide their official website wherein the requirement of BIS certification under IS:15895:2018 for import of HARC was incorporated. The petitioners violated the import EXIM policy read with 2(A) of General Notes regarding Import Policy. After the update of the list of items with standards which includes the subject items in BIS website, the petitioners have imported the HARC. Since the BIS have already specified that BIS standards are applicable for import of HARC, in the month of October 2020, the same was insisted by the respondents from the importer as per the CQC Order, 2003. Besides the office of the Principal Commissioner of Customs, Visakhapatnam received a letter

from BIS dated 23.10.2020 regarding the applicability of the BIS standard to the HARC and the BIS requested the Department to take necessary action in that regard.

(c) It is further contended that the petitioners have incorrectly interpreted the definition of 'cement' found in the CQC Order, 2003. From the said definition, it is clear that the imported goods are nothing but cement of a different grade which is covered under the phrase 'any other variety of cement'. Further, the BIS have specified vide their website in October 2020 that IS:15895:2018 are applicable for import of HARC meant for refractory purpose. In that view, the 5th respondent vide letter dated 18.12.2020 insisted the importer to submit appropriate documentary evidence to show that the imported goods are compliant to the standards specified in BIS website. The petitioners are not admitting that HARC is specified by BIS and making misleading statements. The petitioners' contention that the EXIM policy only mentioned about 'High Alumina Cement for structural Use' and therefore, if the same is meant for 'refractory' purpose the CQC Order is not applicable is totally incorrect. The requirement of BIS approval for HARC was specified well in advance by the BIS in October 2020. As the present consignments were imported during December 2020, the importers got ample time to insist and obtain BIS certification. The aforesaid goods are not prohibited and freely importable and clearance is subject to production of BIS certification, failing which the goods cannot be cleared for home consumption and they are liable to be reexported back to the supplier.

(d) The contention of the petitioners that HARC is not a cement is totally incorrect. Though manufacturing procedure and raw materials are different, still the imported product is nothing but cement. It is submitted that the respondent Custom authorities are not the proper officers to decide which items are to be subjected to compulsory compliance under the BIS Act, but it is the Central Government through BIS which decides the items which are subjected to compulsory compliance keeping in view the health, safety, environment, prevention of deceptive practices, consumer security etc. The prerogative of the Government to include or exclude a specific variety of cement from the list that requires BIS certification cannot be questioned by the petitioners. There are no merits in the writ petitions and the same may be dismissed.

5. In W.P.No.24863/2020, heard arguments of learned Senior Counsel Sri S.Ravi representing Sri Asad Hussain, counsel for the petitioner, and the learned Assistant Solicitor General of India representing the respondents 1 & 2, Sri V.V.N.Narayana Rao, Standing Counsel for 3rd respondent, and Sri Suresh Kumar Routhu, Standing Counsel for the respondents 4 & 5.

6. In W.P.No.49/2021, heard arguments of learned Senior counsel Sri S.Ravi representing Sri S.Mohammed Ismail, counsel for petitioners, and Sri V.V.N.Narayana Rao, Standing Counsel for 1st respondent, and Sri Suresh Kumar Routhu, Senior Standing Counsel for the respondents 2 to 6, and the learned Additional Solicitor General of India representing the respondents 7 & 8.

7. Severely fulminating the action of the respondent-Customs authorities in insisting the petitioners to produce BIS certificate against the goods imported on the ground that the BIS has notified IS:15895:2018 High Alumina Refractory Cement as one of the items requiring such certificate under the Foreign Manufacturers Certificate Scheme (FMCS), learned senior counsel Sri S.Ravi would argue that HARC is in fact not a cement and it is only a refractory material which has been imported by the petitioners since considerable time to prepare refractories and to sell to the steel and iron industries to use in their furnaces for resistance of high temperature. The raw material used and manufacturing process adopted by the ordinary cement factories and refractory cement factories are quite different and one factory cannot produce the other type of cement. In common parlance and in trade, the High Alumina Refractory material was never understood as cement as technically also it is not. The ordinary cement is meant for strength in ordinary temperature whereas the refractory is meant for refractoriness at high temperature. He cited **Associated Cement Co. Ltd. v. State of M.P**[1] wherein the difference between ordinary cement and refractory cement is explained. He argued, in view of this difference, perhaps the Central Government has not included the HARC in the definition of "Cement" under Section 2(d) of the CQC Order, 2003. Learned senior counsel strenuously argued that since the CQC Order, 2003 was issued by the Central Government in terms of Section 14 of the BIS Act, 2016 and as refractory material was

[1] MANU/SC/0470/2004 = 2005 (4) ALT 27 (SC)

not included in the definition of cement, it can be safely concluded that HARC does not require the BIS certification.

Learned senior counsel argued that the standards and products mentioned in FMCS are governed by the CQC Order, 2003. FMCS is a part of compulsory certification scheme of BIS. All the products and standards included in FMCS are mainly related to construction activity and structural items. That is why IS:6452-High Alumina Cement for structural use is specifically included therein. Since HARC is not notified as cement by the Central Government for the purpose of CQC Order, 2003, the question of mandating BIS certification for HARC does not arise.

Learned senior counsel while admitting that the Indian standard was declared for HARC way back in 2011 and the said standard was revised in the year 2018 by BIS and the new Standard was notified by way of Gazette notification dated 14.05.2018, however, sought to argue that mere notification of the standard of a particular good or article like HARC will not make BIS certification compulsory for such good or article, unless the Central Government makes a gazette notification specifying the requirement of the BIS certification. Even 2011 standard fixation for HARC did not make the BIS certification compulsory as the Central Government did not issue notification in terms of FMCS. Therefore, mere revision of the standard of HARC in 2018 by the BIS will not make the said good as a new one so as to compel the requirement of BIS certification. Referring to Rule 7(7)(b) of the Bureau of Indian Standards Rules, 1987, learned senior counsel argued that Indian

standards are only voluntary and they will attain binding force only if the parties stipulate it so in their contract or it was referred to in a legislation or made mandatory by specific orders of the Government. He asserted that since there is no such notification issued by the Central Government, the respondent authorities cannot insist the petitioners to produce BIS certification for the imported goods. He thus prayed to allow the writ petition.

8. Refuting the argument of the petitioners, learned Standing Counsel for the BIS Sri V.V.N.Narayana Rao argued that the goods imported by the petitioners in both the writ petitions would come under the definition 'cement' mentioned in Section 2(d) of the CQC Order, 2003 and therefore, in terms of FMCS, the importer shall obtain BIS certificate from the exporter and produce for customs clearance. Taking us through the definition 'cement' laid down in Section 2(d), learned counsel argued that cement means 'any variety of cement' and therefore, in the broad sweep of the said phrase, HARC is also subsumed in that definition and liable for production of BIS certificate while imported. He took severe objection of petitioners' argument that HARC is only a refractory material but not cement and emphasized that without production of BIS certificate the subject goods cannot get customs clearance.

For another reason also learned counsel persisted that the subject goods require BIS certificate. As and when BIS notifies the quality specifications for new product(s) as an Indian standard, the said Indian standard would be deemed to be part of appendix III from the date of

implementation of the said Indian standards and the import of that product(s) shall conform to the specified Indian standard in view of the para 2A of the General Notes regarding Import Policy. Since standards are prescribed for HARC by the BIS in 2018 and mentioned in the list of items at Sl.No.16 with the standard as IS:15898:2018, the exporter shall comply with the said standard by obtaining license from the BIS. He would argue that the BIS notified the HARC and later the petitioners imported the subject goods and therefore, they require BIS certification. Since the petitioners have not produced the said certificate, the respondent Customs authorities have rightly detained the subject goods. He thus prayed to dismiss the writ petition.

9. Learned Senior Standing Counsel for CBIC Sri Suresh Kumar Routhu while adopting the above arguments of the 1st respondent further argued that as the Customs authorities are the implementing agency, they follow the statutes and circulars issued under several enactments including the BIS Act, 2016. Further, the Customs office received a mail from BIS dated 23.10.2020 regarding the applicability of the BIS standards IS:15895:2018 to the imported goods and therefore, respondent-Customs officers detained the goods for want of BIS certification. He placed reliance on the following decisions to argue that in similar circumstances the act of concerned authorities in detaining the imported goods for lack of BIS certificate was upheld by the Courts:

(i) **The Commissioner of Customs v. M/s. City Office Equipment** of Madras High Court [25.04.2019]

(2) **Commissioner, Customs v. M/s. Aban Exim Pvt. Ltd.** of Allahabad High Court [04.08.2014]

He thus prayed to dismiss the writ petition.

10. The point for consideration is whether the respondent authorities are legally justified in demanding production of BIS certificate for the goods imported by the petitioners in both the writ petitions?

11. **Point**: As can be seen from the respective arguments, the bone of contention is the requirement or otherwise of BIS certification to HARC. While it is the contention of the petitioners that indeed HARC is not a cement but a refractory material and as such, it was not notified by the Central Government as cement under the CQC Order, 2003 and so BIS certification is not required, the respondents in turn argued that HARC is very much included in the definition of cement in view of the employment of phrase "any other variety of cement" in the definition of cement and thereby BIS certificate is must. In that view, it is apposite to look into some of the relevant provisions of the BIS Act, 2016, inasmuch as, the CQC Order, 2003 was issued by the Central Government in exercise of the powers conferred by Section 14 of the BIS Act, 1996.

Quality control is the method of standardization of quality of various mercantile and consumable goods for the health and safety of the consumable public. Since after the II World War, the World nations have plunged in rebuilding their economies by enhancing the internal and international trade. Hence, quality control became quintessential to meet the qualitative requirements of foreign purchases and to survive the cutthroat

competition. In that process, India too has taken several steps, one of which is the legislation of the enactment called the Bureau of Indian Standards Act, 2016.

12. As can be seen from the object of the BIS Act, 2016, Bureau of Indian Standards is like a Nodal Agency or a National Standards Body for the harmonious development of the activities of standardization, conformity assessment and quality assurance of goods, articles, processes, systems and services and for the matters connected therewith or incidental thereto.

(i) Section 3 of the Act says that the Central Government by notification in the official gazette establish a national body called Bureau of Indian Standards for the purpose of this Act. The members of the Governing Council constitute the Bureau, on which superintendence, direction and management of the affairs of the Bureau shall vest. As per Section 7, the Central Government shall appoint a Director General of the Bureau.

(ii) As per Section 4, the Governing Council with the prior approval of the Central Government, constitute an Executive Committee which shall perform, exercise and discharge such functions, powers and duties of the Bureau, as may be delegated to it by the Governing Council.

(iii) As per Section 9, the Governing Council may establish branches, offices or agencies in India or outside. The Bureau shall publish Indian standards and sell such publications and publications of international bodies. Section 9(2) lays down that the Bureau shall take necessary steps for promotion, monitoring and management of quality of goods, articles, processes, systems and services, as may be necessary, to protect the interests of consumers and various other stakeholders.

(iv) Section 10 postulates that the Bureau may establish, publish, review and promote the Indian standard in relation to any goods, article, process, systems or service in such manner as may be prescribed. The Indian standard shall be notified and remain valid till withdrawn by the Bureau. As per Section 13, a person may apply for grant of license or certificate of conformity if the goods, article, process, system or service confirms to an Indian standard. The Director General upon payment of such fees and on such conditions may grant license after making conformity assessment and quality assurance.

13. Thus, a conjunctive study of Sections 10 and 13 would show that the Bureau may establish, publish, review and promote the Indian standards in relation to the goods, article, process, system or service which shall be notified in the Official Gazette. This notification is only to show that standards are prescribed for certain goods, article, process, system or service, but not for the purpose of compulsorily maintaining such standard in the trade. However, as per Section 13, a manufacturer may apply for grant of license or certificate of conformity for his goods, article, process, system or service so as to use the Standard Mark for his goods or articles and the Director General may grant such license.

14.

Then Section 14 says that the Central Government after consulting the Bureau may notify precious metals or other goods or articles as it may consider necessary to be marked with a Hallmark or Standard mark and such goods or articles so notified may be sold through retail outlets certified by the Bureau after they have been assessed for conformity. Section 15 says that no person shall import, distribute, sell, store or exhibit for sale, any goods or article notified under sub-section (1) of Section 14, except under certification of the Bureau.

15. While Section 14 says that the Central Government for the purpose of trade may notify certain goods, Section 16 lays down for a different and avowed purpose the Central Government may notify certain goods.

(vii) Section 16 depicts that if the Central Government is of the opinion that it is necessary or expedient to do in the public interest or for protection of human, animal or plant health, safety of the environment, or prevention of unfair trade practices, or national security, if may, after consulting the Bureau, by an order published in the Official Gazette, notify

(a) goods or articles of any scheduled industry, process, system or service; or

(b) essential requirements to which such goods, article, process, system or service,

which shall conform to a standard and direct the use of the Standard Mark under a license or certificate of conformity as compulsory on such goods, article, process, system or service.

(viii) Section 17 says that no person shall manufacture, import, distribute, sell, hire, lease, store or exhibit for sale any such goods, article, process, system or service under Section 16(1)-

(a) without a Standard Mark, except under a valid license; or

(b) notwithstanding that he has been granted a license, apply a Standard Mark, unless such goods, article, process, system or service conforms to the relevant standard or prescribed essential requirements.

16. It should be noted that Rules are framed for the BIS Act called "The Bureau of Indian Standards Rules, 1987". Chapter III of the Rules deals with power and functions of the Bureau.

Rule 7 which is germane for our purpose says that the Bureau shall establish Indian standards in relation to any article or process and shall amend, revise or cancel the standards so established as may be necessary by a process of consultation with consumers, manufacturers, technologists,

scientists and officials through duly constituted committees. All standards, their revisions, amendments and cancellations shall be established by notification in the Official Gazette.

Rule 7(7) deals with the status of Indian standards. Rule 7(7)(b) reads thus:

(b) Indian Standards are voluntary and available to the public. Their implementation depends on adoption by concerned parties. However, an Indian standard becomes binding if it is stipulated in a contract or referred to in a legislation or made mandatory by specific orders of the Government (emphasis supplied).

It should be further noted that 1987 Rules were superceded by the BIS Rules, 2017 and later those rules were superceded by the BIS Rules, 2018. Rules 15 & 24 of the BIS Rules, 2017 and 2018 are in *pari materia* with Rule 7 of the BIS Rules, 1987.

17. So, according to the scheme of the BIS Act and its Rules, the Bureau of Indian Standards is a National Standard Body having technical expertise to establish national standards for goods or articles, process, system or service etc. and it by itself has no power to enforce the implementation. On the other hand, the standards fixed under Section 10 by the Bureau, have to be notified by the Central Government and thereafter, if it considers that the standards established in respect of goods and articles mentioned in Section 14 or Section 16 shall require compulsory conformity, the Central Government shall make a legislation or issue specific order in that regard.

With the above jurisprudence the case on hand has to be tested.

18. Both the learned Standing Counsel for the respondents referred the definition of "cement" mentioned in the CQC Order, 2003 to contend that HARC is also included in the said definition, meaning thereby, it requires BIS certification. Hence, we perused the said order. The CQC Order, 2003 was passed by the Central Government in exercise of the powers conferred by Section 14 of the BIS Act, 1986. Section 2(d) defines the term 'cement' thus:

> **"**(d) 'cement' means any variety of cement manufactured or sold in India and includes blast furnace slag cement, portland pozzolana cement, rapid hardening Portland cement, white portland cement, hydrophobic portland cement, ordinary portland cement, low heat portland cement, high strength ordinary portland cement, cement used for the manufacture of railway sleepers, masonry cement, oil well cement, super sulphated cement or any other variety of cement which the Central Government may, by notification in the Official Gazette, specify for the purposes of this Order.**"**

Be that it may, Section 3 says that No person shall himself or by any person on his behalf, manufacture or store for sale, sell or distribute cement which does not conform to the Specified Standard and which do not bear the Standard Mark.

19. Needless to emphasize that stipulation in Section 3 applies to HARC only if it falls within the definition of 'cement'. So when the definition is scanned, it is an inclusive one wherein certain varieties of cements are included and it further says that the definition includes any other variety of cement which the Central Government may by notification in the Official Gazette specify for the purposes of CQC Order, 2003. As rightly argued by learned Senior Counsel for petitioners, HARC is not specifically mentioned

in the inclusive varieties of cement. So far as the term 'any other variety of cement' is concerned, HARC is not specifically notified in the Official Gazette by the Central Government. In that view, it is difficult to accept the contention of learned Standing Counsel for the respondents that HARC falls within the ambit of "any other variety of cement". Notification in Official Gazette is the *sine qua non* for bringing HARC or any other material within the scope of aforesaid phrase. In **Associated Cement Co. Ltd.** (1 supra) before the Apex Court, the issue was whether refractory cement and Acco Proof are cement and exigible to export tax. It was argued that refractory cement and Acco Proof are in commercial parlance known as refractory material and they are entirely different from cement or material made out of cement. The refractory materials are used in furnaces and kilns to withstand the high temperature, corrosion and abrasion and they are not usable as a substitute of cement for construction activities and vice versa. The Apex Court agreeing with the above arguments, held thus:

> **"**The word 'cement' has not been defined in the relevant notification. Therefore it has to be understood in the same way as is understood in common parlance. Cement is exclusively used as a building material and is a commodity of everyday use. Therefore, we have to go only by the popular or commercial meaning of the term. The main property of the refractory is that it can withstand very high temperature, corrosion and abrasion. Cement is used for building roads, bridges and dams etc. and also by common people for building residential or commercial buildings. Anyone buying cement for building purpose would under no circumstance buy refractory. Similarly a mason or a supervisor would under no circumstance use refractory material in making a normal construction. The refractory is used for entirely different purpose namely for furnaces, linings and for insulation. A dealer would not supply refractory to anyone wanting to buy cement. In Cemento Corporation Ltd. Vs. Collector of Central Excise MANU/SC/0881/2002 : 2002 ECR 551 (SC) it has been held that it is axiomatic that if the product is not cement but can be used for some purposes like cement, such product is not cement. We are, therefore, of the opinion that refractory material produced by the appellant does not fall within the Entry "all types of cement" and consequently it is not exigible to levy of export tax.**"**

Though the above judgment was rendered in the context of export tax, still reliance can be placed on it to distinguish between the refractory material and cement. For this and due to lack of Gazette Notification, including the HARC in definition of 'cement' for the purpose of the CQC Order, 2003, the prohibition specified in that order cannot be made applicable to the imported goods in this case.

20. Nextly, learned Standing Counsel placed reliance on the notification dated 14.05.2018 to argue that HARC was notified by the Central Government for the purpose of complying the BIS certification. We have carefully gone through the notification. It reads as under:

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLICATION DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

NOTIFICATION

New Delhi, the 14 May, 2018

S.O.1966 (E). – In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the second column of schedule hereto annexed has been established on the date indicated against it in third column. The particulars of the standards, if any, which are given in the fourth column shall also remain in force concurrently till they are cancelled on the date indicated against them in the fifth column.

Sl. No.	No. Year & Title of the Indian Standards Established	Date of Establishment	No. Year & Title of the Indian Standards to be Cancelled, if any	Date of Cancellation
(1)	(2)	(3)	(4)	(5)
1	xxx	xxx	xxx	xxx
2	xxx	xxx	xxx	xxx
18	IS 15895:2018 High Alumina Refractory Cement – Specification (First Revision)	9 May 2018	IS 15895:2011 High Alumina Refractory Cement – Specification	9 May 2018

21. As can be seen, the said notification was issued in terms of Rule 7(1)(b) of the Bureau of Indian Standards Rules, 1987. As already discussed, under Rule 7(1)(a), the Bureau is obligated to establish Indian standards in relation to any article or process and it can amend, revise or cancel the standards so established. As per Rule 7(1)(b), all standards, their revisions, amendments and cancellations shall be established by notification in the Official Gazette. So, in terms of Rule 7(1)(b), the standard earlier established in the year 2011 for IS:15895:2011 HARC was revised on 09.05.2018 and the same was notified in the Official Gazette by the Central Government. As per Rule 7(7)(b), this establishment of standard is only voluntary to make it available to the public, but its conformity is not mandatory unless it is referred to in a legislation or so pronounced by a specific order of the Government. As rightly contended by the learned senior counsel for the petitioners, the respondents have not produced such a legislation or Gazette notification issued by the Central Government mandating that the standard established by BIS for IS:15895:2018 shall be compulsorily followed. Hence, the notification dated 14.05.2018 will not advance the contention of the respondents. For the same reason, another contention of the respondents that the standard specification notification issued by BIS should be deemed to be part of Appendix III of Import Policy and thereby, the import of HARC shall be supported by BIS certification cannot be accepted. The citations in **The Commissioner of Customs v. M/s. City Office Equipment** of Madras High Court [25.04.2019] and **The Commissioner, Customs v. M/s. Aban Exim Pvt. Ltd.** of Allahabad High

Court [04.08.2014] relied upon by the Standing Counsel for CBIC also will not help his cause.

22. Thus, on a conspectus of facts and law, the respondent authorities are not legally justified in demanding production of BIS certificate for the goods imported by the petitioners in both the writ petitions.

23. In the result, W.P.No.24863/2020 & W.P.No.49/2021 are allowed and the act of the respondent authorities in demanding production of BIS certification for the imported consignments in the above writ petitions is declared as illegal and without jurisdiction and consequently, the respondent authorities are directed not to demand the petitioners for production of BIS certification as notified by BIS vide IS:15895:2018 in respect of the imported consignments in the above writ petitions and effect the Customs clearance to the aforesaid consignments forthwith.

However, this order will not preclude the Central Government from issuing a Gazette notification in future, specifying the requirement of mandatory compliance of BIS certificate for manufacture, store, sale, import, export and other related acts concerning to High Alumina Refractory Cement.

No order as to costs. As a sequel, interlocutory applications, if any, pending for consideration shall stand closed.

U. DURGA PRASAD RAO, J

J. UMA DEVI, J

17.06.2021
Krk/mva