



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 21 September 2022**
Judgment pronounced on: 07 October 2022

+ **W.P.(C) 10143/2022, CM APPL.41728/2022 (Intervention)**

**SYNDICATE INNOVATIONS INTERNATIONAL LIMITED
THROUGH ITS DIRECTOR MR. ASHOK RAI Petitioner**

Through: Mr. Joy Basu, Senior Advocate with
Mr. Bhupesh Narula, Ms. Kanak
Bose, Mr. Anugrah Ekka, Mr.
Swetabh Sharma, Mr. Rishabh
Varshney and Ms. Rinku Narula,
Advocates.

versus

**THE OFFICE OF THE COMMISSIONER OF CUSTOMS
THROUGH JOINT SECRETARY & ORS. Respondents**

Through: Mr. Anuragh Ojha, Mr. Deepak
Somani, Advs. for R-1
Ms. Nidhi Raman, CGSC with Mr.
Zubin Singh, Adv. for DGFT
Mr. Shashi Pratap Singh, Ms.
Abhilasha, Ms. Garima Chauhan,
Advs. for R-3 with Insp. Vinay,
Licensing Unit., Delhi Police.
Mr. Kirtiman Singh, CGSC with Ms.
Kunjala Bhardwaj, Ms. Vidhi Jain,
Mr. Madhav Bajaj, Mr. Yash
Upadhyaya, Mr. Sujeet Kumar, Advs.
for R-4.
Mr. Jai Sahai Endlaw, Mr. Shashank
Khurana, Advs. for Intervenor.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T



1. The petitioner, a manufacturer of arms has approached this Court seeking release of “Frames” and “Slides” which had been imported under Bill of Entry No. 9037350 dated 09 June 2022 and Bill of Entry No. 9038081 of the same date, aggrieved by the fact that the said consignments had been withheld by the Customs authorities. When the writ petition was initially entertained the Court had noted that the petitioner had been duly granted the requisite import permission by the competent authority in the office of the **Directorate General of Foreign Trade**¹. During the course of consideration, it came to the fore that although the petitioner’s consignment had been duly inspected by the Delhi Police in terms of the statutory obligation placed by Rule 88(5) of the **Arms Rules 2016**², certain queries came to be raised and clarifications were sought from the DGFT. The DGFT in turn is stated to have approached the **Ministry of Home Affairs**³ for providing appropriate clarifications. When the matter was thereafter taken up on 26 July 2022, the Court was informed that MHA had apprised the DGFT that the petitioner had breached the terms and conditions of the import license. Those issues stand duly highlighted in the order of the Court dated 26 July 2022, which is extracted hereinbelow:

“1. Pursuant to the last order passed, Ms. Nidhi Raman, learned CGSC appearing for respondent Nos. 2 and 4, submitted that the Directorate General of Foreign Trade [DGFT], had sought appropriate clarifications from the Ministry of Home Affairs which has informed them that while the petitioner had a valid import license for frames of handguns, the

¹ DGFT

² the 2016 Rules

³ MHA



imported article was found to be fitted with other “licensable articles” including “hammers”, “slides”, “firing pin” and “extractor”. In view of the aforesaid clarification, Ms. Raman contends that the petitioner is in breach of the import license.

2. The aforesaid submission is countered by the learned counsel appearing for the petitioner who submits that a “hammer” “firing pin” or “extractor” is not classified separately for the purposes of import and as long as the petitioner had obtained a valid import license for import of a “frame”, the stand as taken by the respondent would not sustain.

3. Learned counsel for the Delhi Police has additionally, drawn the attention of the Court to Form-7 which is a license for manufacturing and which in terms of the Explanation appended to that form classifies “firing pins”, “frame”, “extractor” and “hammer/striker” separately and individually. In view of the above, it is their stand that the petitioner has not adhered to the license for the import which had been issued.

4. Bearing in mind the nature of issues which stand raised, let the noticed respondents file their replies to the writ petition within a period of one week from today.

5. List again on 05.08.2022.”

2. After exchange of pleadings, the matter was thereafter extensively heard on 30 August 2022. Since that order captures the essence of the dispute which has arisen, the same is extracted hereinbelow: -

“Having heard learned counsels for parties at some length, the Court notes that the present writ petition gives rise to the following issues. The petitioner had approached this Court aggrieved by the fact that arms and parts of arms which had been imported by him pursuant to permission granted by the respondents were not being released.

The Bills of Entry with which the present writ petition is concerned are as follows: -

- I. Bill of Entry no. 9037350 dated 09/06/2022 for 500 Frames.
- II. Bill of Entry no. 9038081 dated 09/06/2022 for 500 Slides and 1000 Magazines.

The petitioner had contended that as long as it held the requisite import permissions for import of Slides and Frames, there existed no legal impediment which would have justified the retention of those goods.



In accordance with the procedure prescribed under the **Arms Rules, 2016** [“the 2016 Rules”], the Delhi Police appears to have undertaken an inspection of the consignments which form subject matter of the present writ petition and addressed a communication of 21 June 2022 to the Directorate General of Foreign Trade [DGFT]. It referred to the fact that on inspection it found that the Frames which had been imported had the following additional parts already fitted thereto: -

- a. Hammer
- b. Catch magazine,
- c. Safety lock
- d. Safety lock support pin,
- e. Trigger Action Mechanism Part
- f. Trigger

Similarly, in respect of Slides, it pointed out that the said article also had the following parts already fitted in each Slide:-

- i Firing Pin
- ii. Spring of firing pin
- iii. Lock plate of firing Pin
- iv. Extractor

The case of the petitioner is that it holds a valid license FOR manufacture of a complete firearm in terms of Form VII which is held and possessed and that consequently it did not require any separate license or permission to manufacture or import components or parts of a firearm. It was pointed that even under the terms of the Foreign Trade Policy 2015-2020 and the ITC (HS) Classification, these parts and components are not separately classified and would all fall for within the compendious entry of “*Parts and accessories of articles of headings 93.01 to 93.04*”. Those entries pertain to military weapons and other firearms as specified therein.

It was additionally submitted that there is no justification for the respondents taking the position that a Slide or a Frame when imported should not be fitted with additional components of a firearm. Learned counsel for the petitioner contends that at least the **Arms Act, 1959** [“the Act”] and the Rules frame thereunder do not contemplate or envisage the import of a Frame or a Slide shorn of a component or part of firearm embedded in them.

Reverting then to the communication which was addressed by the Delhi Police, the DGFT appears to have sought the opinion and advice of the Ministry of Home Affairs [MHA]. The MHA has opined that the import permission which had been granted would not cover parts or



components of a firearm which were found fitted to the Frame and the Slide. It has additionally referred to the provisions contained in Rule 57(4) of the 2016 Rules. Both Ms. Raman and Mr. Singh, learned CGSCs have sought to justify the position as set out in the counter affidavit as well as the advice proffered by MHA. They would contend that the import permissions stood restricted to a Slide or the Frame alone and that consequently the import permission cannot be viewed as permitting the petitioner to import a Frame or a Slide with additional parts fitted to it.

It was also pointed out to the Court that the provisions contained in the 2016 Rules and more particularly Rule 88(2) thereof require an importer to obtain a requisite license in terms of Form X which stands placed and appended to those Rules. It was contended that no such license was obtained. Mr. Singh would contend that while the powers of the Licensing Authority under the Act may have been duly delegated to the DGFT in terms of the notification of 01 November 2018, that would not absolve the petitioner from the additional requirement of obtaining the requisite license for import under the 2016 Rules. Notwithstanding the above and since the import permission had been duly granted by the DGFT itself, Mr. Singh submits that the respondents shall consider the grant of that license ex-post facto in order to regularize the consignment which has been duly imported by the petitioner.

Mr. Singh has then relied upon the provisions made in Rule 57(4) of the 2016 Rules to contend that the moment parts of arms and ammunition which cannot possibly be manufactured locally are sought to be imported, the importer is duty bound to move the MHA by way of an application which would in turn obtain the opinion of the Department of Defense before granting an authorization for such import. According to Mr. Singh, this procedure too does not appear to have been followed or enforced by the respondents prior to the grant of import permission.

The Court notes that presently the question whether the components of arms which stand embedded to the Frame and Slides are of such a character or quality which cannot be manufactured locally is an issue which is yet to be examined by the respondents. This, the Court notes since the provisions of Rule 57(4) of the 2016 Rules would come into play only if it were found that those parts cannot be manufactured locally. The Court further notes that the Delhi Police while conducting the inspection had only raised a doubt with respect to the validity of the import on the ground that the Frames and Slide had other components of arms fitted to them. The issue of Rule 57(4) had been raised only by the MHA in its advisory to the DGFT. The Court also takes note of the submission of learned counsel for the petitioner who contended that while the aforesaid objections are being raised insofar as the consignment imported by the petitioner is concerned, various other importers have



been permitted to import parts and components of firearms without being required to either obtain an import license as envisaged under Rule 88(2) or any authorization by the MHA as contemplated under Rule 57(4) of the 2016 Rules.

The additional grievance which is raised is that apart from the consignment which forms subject matter of the present writ petition, thirteen other consignments of the petitioner have also been detained as a consequence of the controversy which has arisen here.

The Court also takes note of the contention of learned counsel for the petitioner who submits that the expression “*manufacturing*” as defined in Rule 2(31) would clearly indicate that it is permissible for a person to manufacture or produce either a complete firearm or a component thereof. Referring then to the provisions contained in Rules 2(29) and 2(37) of the 2016 Rules as well as the Explanation added to the statutory forms, it was submitted that the amendments to those forms in terms of which various of components of firearms have come to be inserted and added, is merely to meet the contingency where a person may choose to manufacture or import only a particular component or a part of a firearm rather than the complete firearm. Viewed in that backdrop, learned counsel for the petitioner would submit that the perceived requirement of a separate license or import permission being obtained for those components also cannot be countenanced.

Bearing in the mind the aforesaid facts, the Court in the interim passes the following directions.

In light of the suggestions mooted by Mr. Singh, learned CGSC, let the competent authorities in the MHA as well as the DGFT jointly consider the issues which stand flagged in this order and place their stand before the Court within a period of two weeks from today.

The Court further requests the competent authorities in the DGFT, Customs, the Delhi Police as well as the MHA to attend to the grievance of the petitioner with respect to the thirteen other consignments which are stated to have been detained. For the purposes of enabling the respondents to undertake the aforesaid exercise, the petitioner shall provide the details of the thirteen other consignments which are stated to have been detained forthwith.

List again on 15.09.2022.”

3. As would be evident from the issues which stood identified in that order, the principal objection which is taken is that the Frames and Slides



which have been imported by the petitioner are fitted and integrated with various independent components of a firearm such as trigger, trigger guard, hammer, threaded interfaces etc.. In view of the above and since according to the respondents, the import license stood restricted to a Slide and Frame only, a separate import permission should have been obtained for the additional operational components found fitted thereto. According to them, the aforesaid clearly amounts to a violation of the import permission which was granted to the petitioner.

4. The respondents essentially hold that the parts of a firearm which stand integrated and fitted upon the Slides and Frames which have been imported by the petitioner are classified and envisaged as separate and independent components. The objection principally is that in the absence of separate permissions having been obtained for the import of those components, the consignment is not liable to be released. In the course of consideration of the present writ petition, the respondents had also adverted to the provisions contained in Rule 57(4) of the 2016 Rules and assert that it was incumbent upon the petitioner to have obtained the permission and approval of the MHA before effecting import. In view of the admitted failure of the petitioner to have obtained that permission, the respondents would contend that the consignment is not liable to be released.

5. For the completeness of the record, it may also be noted that initially when the matter was heard, the respondents had also alluded to the failure of the petitioner to have obtained an Import License as envisaged under Rule 88(2) under the 2016 Rules. It was their submission that the requirement of that license being obtained is in addition to and



notwithstanding the permission to import as accorded by DGFT to the petitioner. However, the respondents in the course of their submissions fairly conceded that since the same constituted an inadvertent lapse and a procedural lapse on their part, the petitioner may be called to apply for that license and an *ex-post facto* grant would be duly considered. That license has since been granted to the petitioner.

6. The question which therefore arises is whether the stand taken by the respondents that since the Frame and the Slide had various identifiable components of a firearm embedded to it, the terms of the import permission stood violated is sustainable in law. The second issue which arises for consideration is whether the petitioner was obliged to have obtained the prior permission of the MHA as contemplated under Rule 57(4). For the purposes of considering the aforesaid questions, it would be necessary to note the following salient facts.

7. The petitioner was granted a manufacturing license for firearms and ammunition by MHA on 12 March 2018. That license authorised the petitioner to manufacture shot guns, hand guns, bolt action rifles including double barrel rifle as well as shotgun cartridges and center fire cartridges. It is also stated to have been granted a manufacturing license for air weapons on 3 April 2018. Section 10 of **the Arms Act 1959**⁴ places a prohibition on the import and export of arms or parts thereof except in accordance with a license which may be issued in that respect by the competent authority. Undisputedly, the power to issue a license for import stood conferred on the

⁴ the Act



MHA. By a Notification of 22 May 2018, the MHA delegated its powers to the Secretary in the Government of India, Department of Commerce, Ministry of Commerce and Industries. The aforesaid Notification reads thus: -

"MINISTRY OF HOME AFFAIRS
NOTIFICATION
New Delhi, the 22nd May, 2018

S.O. 2049(E).- In exercise of the powers conferred by sub-section (1) of section 43 of the Arms Act, 1959 (54 of 1959), the Central Government hereby directs that the powers and functions exercisable and performed by it under section 10 of the Act and Chapter VI of the Arms Rules, 2016, shall also be exercised and performed by the Secretary to the Government of India in the Department of Commerce, Ministry of Commerce and Industry, subject to the following conditions, namely:-

that the Secretary, Department of Commerce, Ministry of Commerce and Industry shall,

(i) be subject to the supervision and control of the Central Government in the Ministry of Home Affairs;

(ii) observe the policies and instructions laid down by the Central Government in the Ministry of Home Affairs and shall not enunciate any new policy or issue instructions in relation thereto without the prior consent of the Central Government in the Ministry of Home Affairs;

(iii) issue the license under section 10 of the Act after obtaining security clearance of the applicant by the Centre Government in the Ministry of Home Affairs;

(2) The Central Government may revoke such delegation of powers and functions or may itself exercise or perform the powers or functions under the said section, if in its opinion such a course of action is necessary in the public interest.

[F.No. V-11026/12/2018-Arms]
MUKESH MITTAL, Jt Secy."

8. The said Notification was followed by another Notification which came to be issued on 01 November 2018 and which reads as follows:-

"MINISTRY OF HOME AFFAIRS



NEUTRAL CITATION NO: 2022/DHC/004067

NOTIFICATION

New Delhi, the 1st November, 2018

SO. 5607(E)-In exercise of the powers conferred by sub-section (1) of section 43 of the Arms Act, 1959 (54 of 1959), and in supersession of the notification of the Government of India, Extraordinary, Part-II, Section 3, Sub section (ii) vide S.O. 2049(E), dated the 22nd May, 2018 the Central Government hereby directs that, the powers and functions which are exercised and performed by it under section 10 of the said Act, shall also be exercised and performed by the following officers, namely:-

(a) the Secretary to the Government of India in the Department of Commerce, Ministry of Commerce and Industry or an officer authorised by him in this behalf for import of Arms and Ammunition as specified in Schedule I of Arms Rules, 2016;

(b) the Secretary to the Government of India in Department of Defence Production, Ministry of Defence or an officer authorised by him in this behalf for export of Arms and Ammunition as specified in Schedule I of the Arms Rules, 2016.

2. The powers and functions under this notification shall be exercised and performed by the said officers subject to following conditions, namely:-

(i) The Secretary to the Government of India in the Department of Commerce, Ministry of Commerce and Industry, and the Secretary to the Government of India in Department of Defence Production, Ministry of Defence shall observe the policies and instructions laid down by the Central Government in the Ministry of Home Affairs and shall not enunciate any new policy or issue instructions in relation thereto without the prior consent of the Central Government in the Ministry of Home Affairs; and

(ii) The Central Government may revoke such delegation of powers and functions or may itself exercise or perform the powers or functions under the said section, if in its opinion such a course of action is necessary in the public interest.

[F.No.V-11026/164/2018-Arms]
S.C.L. DAS, Jt. Secy."

9. A reading of the aforesaid Notifications would indicate that while the MHA retained its licensing powers insofar as the manufacture of arms and ammunition was concerned, the power to issue licenses for import of arms



and ammunition came to be transferred and delegated to the Secretary, Department of Commerce, Ministry of Commerce and Industries of the Union Government. On 23 October 2020 the petitioner came to be granted a license for import by the DGFT. Subsequently, and on 5 May 2021, 30 March 2022 and 24 June 2022, the petitioner was granted authorisations by the DGFT for the purposes of availing benefits under the Export Promotion Capital Goods Scheme⁵. The petitioner asserts that it entered into agreements with Kiehberg GmbH, Germany for obtaining technical consultancy services and an agreement for transfer of technology. It also asserts having invested Rs. 63.464 million up to 27 December 2021 in plant and machinery. It is stated to have made further investments of Rs.62.12 million in relation to technical services and technology transfers as well as investments towards import of equipment machinery and software.

10. Pursuant to the license granted by the DGFT under the EPCG Scheme, the petitioner on 06 June 2022 placed orders for the import of Frames and Slides from a supplier in Turkey. It thereafter imported 500 Frames of hand guns and 500 Slides in terms of the Bills of Entry, details whereof have been set out hereinabove. Upon the consignment arriving in the country, the petitioner is stated to have communicated a request to the Delhi Police to inspect the consignment on 13 June 2022. The consignment is stated to have been inspected by the Delhi Police on 15 June 2022 which thereafter and by a communication of 21 June 2022 sought clarification from the DGFT. That clarification was sought upon the third respondent

⁵ EPCG



finding that the 500 pieces of Frames were also found to be fitted with the following components: -

- a. Hammer
- b. Catch magazine,
- c. Safety lock
- d. Safety lock support pin,
- e. Trigger Action Mechanism Part
- f. Trigger

Insofar as Slides were concerned, a similar query was raised with the third respondent notifying DGFT that those were found to be fitted with the following components:

- i. Firing Pin
- ii. Spring of firing pin
- iii. Lock plate of firing Pin
- iv. Extractor

11. The third respondent thereafter framed the following query for the consideration of the DGFT-

"Armourer/licensing Unit observed that the item captioned parts of handgun-frame already installed with the operational parts mentioned at Sl. No. 1 (a to f) and the item captioned parts of handgun-slides are already installed with operational parts mentioned at Sl. No. 2 (i to iv). Since the import license indicates import item description only Parts of Handgun-Frame & Parts of Handgun-Slides but the actual item is fitted with the other operational mechanism/parts. It is, therefore, requested that it may please be clarified whether the licensee is entitled to import "frame & slide" with pre-installed operational parts as mentioned at Sl. No. 1 (a to f) and Sl. No. 2 (i to iv)."

12. The query essentially was whether the license to import Frames and Slides would also permit the petitioner to import pre-installed operational parts as noticed hereinabove. The petitioner is thereafter stated to have placed for the consideration of the respondents, a communication received from the Turkish exporter who confirmed that the Frames supplied



integrated necessary parts like trigger, trigger guard, hammer, threaded interfaces etc. Since the consignment was not being released, the petitioner on 30 June 2022 instituted the present writ petition. On 4 July 2022, the third respondent again approached the DGFT for appropriate clarifications. DGFT by its letter of 15 July 2022 informed the third respondent that Frames and Slides do not stand specifically defined either under the **Foreign Trade (Development and Regulation) Act, 1992⁶** or the **Foreign Trade Policy, 2015-2020⁷**. They are stated to have proceeded to seek appropriate clarifications from the MHA on 21 July 2022. The MHA in terms of its communication dated 03 August 2022 issued an advisory, and since the same would have a material bearing on the case, it is extracted hereinbelow: -

“No. V 11024/09/2022-Arms
Government of India
Ministry of Home Affairs
(IS-I Division/Arms Section)

MDCN Stadium, New Delhi
Dated: August, 2022

OFFICE MEMORANDUM

Sub: WP(C) No. 10143/2022 in the matter of M/s Syndicate Innovations International Ltd. Vs the Office of the Commissioner of Customs & Ors. filed before the Hon'ble High Court of Delhi-Comments/inputs reg.

The undersigned is directed to refer DGFT O.M. F No. 01/53/8/Court Case/S-2/AM-23/IC/P-32529 dated 29.07.2022 on the subject cited and to state that, Section 10 of the Arms Act, 1959 read with Rules 87, 88 and 89 of the Arms Rules, 2016 are related to provisions for the import of

⁶ 1992 Act

⁷ FTP



arms and ammunition. The powers of licensing authority under the Arms Act, 1959 are delegated as per the provisions of Section 43 of the Arms Act, 1959 upon the Secretary to the Government of India, Department of Commerce, Ministry of Commerce and Industry or an officer authorised by him in this behalf for the issuance of import licence for the arms and ammunitions as specified in the Arms Rules, 2016, and accordingly, DGF&T issues import authorisation in this behalf.

2. As per rule 2(37) of the Arms Rules, 2016, the term "parts and components" has been defined as

"parts and components" mean any element or replacement element specifically designed for a firearm and essential to its operation and includes barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing;"

3. As evident, the above is an inclusive definition, and each part and component of a firearm is a separate part or component unless so specified under the Arms Act, 1959 and the Arms Rules, 2016. The issue in contest is relating to the request/application of import filed by M/s Syndicate Innovations International Ltd. for the following items:

- (a) Parts of Handguns-Frame
- (b) Parts of Handguns-Slide, etc.

4. From the description of the items above, it is amply clear, by plain reading, that the parts of handgun which are intend to be imported are slides and frames of the handguns. It cannot be interpreted, in its remotest application that the slides will be fitted with other licensable parts, and the same thing applies for the frames. Because, hammer, extractor, slide and frame are stand alone separate parts and components of a handgun, and are licensable for the purpose of manufacturing as well as import under the Arms Rules, 2016.

5. The import authorisation issued by DGF&T as per the documents provided is limited to the import of frames, slides, etc. but does not include hammer, extractor and firing pin. Hence, the said authorisation cannot be interpreted to include the other parts and components which are found by the inspecting authority i.e. Licensing Authority Delhi Police, fitted with the slides and frames imported by the firm. Under the Arms Rules, 2016, hammer, firing pin and extractor are stand alone parts of the handgun, and are licensable for the purpose of manufacturing as well as import.

6. In addition to above the import of arms and ammunition is further subject to the provisions of the rule 57(4) of the Arms Rules, 2016, quote-"the Ministry of Home Affairs may, on an application containing



full technical details allow import of such parts of arms and ammunition which are not possible to be manufactured locally, after obtaining the opinion of the Department of Defence Production by grant of an authorisation for such import in accordance with the procedure for import under these rules"-unquote.

7. In view of above, it is amply clear that M/s Syndicate Innovations International Ltd. was allowed to import the parts and components as mentioned in para 2 above, whereas, they have imported:

- (a) Hammer
- (b) Firing Pin
- (c) Extractor

in addition to parts and components, they were authorised by the licensing authority, thereby the company has violated the provisions of the Arms Act, 1959 and the Arms Rules, 2016 read with the Foreign Trade (Development & Regulation) Act, 1992.

8. This issues with the approval of the competent authority.

Sd/-
3.8.2022
(Sujeet Kumar)
Second-in-Command (Arms)
Tel: 011-23075115

To
DG, DGFT, M/o Commerce & Industry, Udyog Bhawan, New Delhi"

13. As a consequence of the advisory issued by the MHA, the respondents refused to accede to the request of the petitioner for release of the import consignment. As was noticed by the Court in its order of 30 August 2022, the respondents had also raised the issue of the petitioner having not obtained the requisite license as contemplated under Rule 88(2). It had also noticed the stand of the MHA with Mr. Singh, learned CGSC, submitting that although the DGFT appeared to have granted permission for import without bearing in mind the aforesaid statutory requirement, it would consider the grant of that license *ex-post facto* in order to regularise the import. By the time this writ petition was taken up for final hearing, the



Court was informed that the aforesaid license had been duly granted in favour of the petitioner.

14. Post 30 August 2022 and when the matter was again taken up for consideration, the respondents contended that notwithstanding the grant of the import license in Form X as provisioned for under Rule 88(2), the petitioner would not stand absolved of its obligation to obtain the requisite permissions from MHA in terms of the provisions contained in Rule 57(4). It was on the applicability of the aforesaid provision that elaborate submissions were addressed by the respondents thereafter. However, before proceeding down this line, it would be appropriate to briefly notice the submissions which were addressed by respective parties.

15. The petitioner contends that once DGFT had accorded the requisite permission to import in accordance with the powers so conferred on it in terms of the notification of 01 November 2018, there was no additional requirement for the petitioner to have obtained a separate import license. It was submitted that the power of the MHA to regulate the import and export of arms which stands enshrined in Section 10 of the Act stood duly delegated and conferred upon the DGFT. In view of the above, it was submitted that the petitioner could not be faulted for the respondents having failed to consider the grant of a license additionally in Form X. On a more fundamental plane, it was vehemently argued that there is no justification for the respondents taking the view that the Slides and Frames as imported did not conform to the import permission that was granted. It was submitted that Slides and Frames would clearly fall within the ambit of *“Parts and accessories of articles of Heading 9301 to 9304”* as set forth in



the **Indian Trade Clarification based on Harmonized System Classification**⁸. Learned counsel would submit that once the respondents had accorded the permission for import of Slides and Frames, there existed no legal justification for the validity of those imports being questioned merely because those Slides and Frames came fitted with certain additional components of a firearm. It was urged on behalf of the petitioners that the Explanations which stand appended to Forms VII and X-A and which chronicle the various components of a firearm, is only to take care of the contingency where a manufacturer may be engaged either in the production of a complete firearm or merely a particular component thereof. Similarly, according to the petitioners the Explanation which stands set out in Form X-A also must necessarily be understood as covering the eventuality of an entity exporting any of the components or parts of a firearm that are mentioned therein.

16. The attention of the Court was also drawn to the definition of “*main fire arm component*” as set out in Rule 2(29) as well as “*parts and components*” as contained in Rule 2(37) of the 2016 Rules. It was pointed out that Frames and Slides stand duly mentioned in both Rules 2(29) and 2(37). The contention essentially was that as long as a Slide or Frame fell within the scope of the aforesaid definitions, the mere fact that it constituted an amalgam of more than one component of a firearm could not be said to be a violation of the import permission that was granted. The petitioners then submitted that Rule 57(4) can clearly have no application since it is not the case of the respondents that the imported articles could not be possibly

⁸ ITC (HS)



manufactured locally. It was urged that sub-rule (4) of Rule 57 would only apply and oblige an importer to approach the MHA only in case the import of parts of arms and ammunitions “*are not possible to be manufactured locally*”. In any case, learned Senior Counsel appearing for the petitioner would contend that once the import had been duly sanctioned by the DGFT, the refusal to release the consignment based upon a subsequent advisory which may have been issued by the MHA is wholly arbitrary and illegal.

17. Learned counsel appearing for the Delhi Police submitted that during the course of inspection it was noticed that Frames and Slides had been imported into the country fitted with various additional and identifiable components of firearms. According to learned counsel, it was in the aforesaid backdrop that further clarification was sought from the DGFT. Learned counsel further apprised the Court that Delhi Police had, in any case, fulfilled the obligations placed upon it in terms of Rule 88(5) of the 2016 Rules and thus it cannot be held liable for any delay in the release of the consignment that may have subsequently occurred. Learned counsel further argued that, in terms of Rule 88(5), the inspecting authority is statutorily obliged to examine whether the articles imported are found to be “*corresponding with the import license.*” According to the said respondent, the clarification which was sought from the DGFT, was justified in law and in discharge of the duty cast upon the inspecting authority.

18. Ms. Raman, learned CGSC appearing for the DGFT, has submitted that both, the Act as well as the 2016 Rules provision for parts and components of firearms distinctively. It was her submission that the definition of a “*main fire arm component*” as contained in Rule 2(29)



clearly indicates that a Slide or Frame must mean just that and not any other part or component of a firearm fitted to it. Ms. Raman would submit that the very same purpose is served by the Explanations which stand appended to Forms VII and X-A and which would clearly indicate that the petitioner was obliged to have fairly disclosed that it was not just Frames and Slides which were being imported but also various other components and parts of a firearm. It was the submission of Ms. Raman that the Delhi Police in its communication of 21 June 2022 had clearly recorded that the Slides and Frames which had been imported had been found to be installed with various additional operational parts of a firearm and thus in probable violation of the import permission which was granted. It was her submission that the pre-installed operational parts which were found fitted onto the Frames and Slides were, as per the advisory of the MHA, constituted a clear violation of the import permission which had been granted and thus the reliefs as prayed for in the writ petition are liable to be refused. Ms. Raman also submitted that the DGFT was justified in approaching the MHA for clarification bearing in mind the provisions made in Para 2(i) of the Notification dated 01 November 2018 and in terms of which the DGFT was obliged and duty bound to comply with instructions that may be issued by the MHA.

19. Mr. Singh, learned CGSC appearing for the MHA had argued that since various components of a firearm are separately and independently recognized, it was impermissible for the petitioner to have imported Frames and Slides with other additional operational parts and components. According to Mr. Singh, the Explanations as appended to Forms VII and X-



A clearly warranted the petitioner applying for permission for each component of a firearm which was ultimately imported. Mr. Singh also further vehemently urged that the petitioner before seeking to import parts of arms was clearly obliged by Rule 57(4) to apply to the MHA for grant of requisite permission and in having failed to do so the detention of the goods is clearly justified in law.

20. Having noticed the rival submissions that arise for consideration and before proceeding further, the Court deems it apposite to briefly notice the relevant provisions as made in the FTP as well as the Act and the 2016 Rules.

21. At the very outset, it may be noted that Chapter 9 of the FTP defines an “accessory” or an “attachment” in Para 9.01 to mean a part, sub assembly or assembly that contributes to efficiency or effectiveness of a piece of equipment without changing its basic functions. Under the ITC (HS) 2022, the subject of arms and ammunition, parts and accessories thereof are dealt with in Chapter 93. ITC (HS) Heading 9301 deals with military weapons other than revolvers and pistols. Revolvers and pistols other than those which are set out in ITC (HS) Headings 9303 and 9304 are covered by ITC(HS) Heading 9302. ITC(HS) Heading 9303 covers firearms and similar devices which operate by the firing of an explosive charge and include sporting shot guns, rifles and muzzle loading firearms, pistols and other devices designed to project signal flares, pistols and revolvers for firing blank ammunition and captive bolt humane killers. ITC(HS) Heading 9304 is the residuary entry and deals with other arms



such as spring air or gas guns and pistols and truncheons excluding those falling under Heading 9307.

22. Heading 9305 deals with parts and accessories of articles of headings 9301-9304. The petitioner had placed the articles intended to be imported under Heading 9305. It was further classified as falling under the Heading 93051000 and thus being “Parts and accessories” of revolvers or pistols. The import of these articles admittedly falls within the restricted category. The import of such articles was thus to comply with the provisions contained in Section 10 of the Act and the procedure thereof to be regulated by Rule 88 of the 2016 Rules.

23. Form X appended to the 2016 Rules spells out the general conditions on the basis of which import may be sanctioned. The format thereof is extracted herein below : -

“FORM X
Composite Import License for Arms and Ammunition
Import ☐ In Transit ☐ Import for Re-Export ☐ Transport for Re Export ☐

Category of Item as per Schedule I- (please specify).....			
Licence No.		UIN	
Port of Import		Port of Export	

1.	Name, description and address of the license	
2.	Name, description and address of agent (if any) authorized for the purpose of this consignment	
3.	Number of packages	
4.	ARMS	
	Description	
	Quantity	
5.	AMMUNITION	
	Description	



	Weight (In Kgs) or Number	
6.	Purpose for which required	
7.	In case of Import, place where articles ported imported stored or Deposited	
8.	Place of despatch and route	
9.	Place of destination	
10.	Name, description and address of the consignee	
11.	Period of validity of License	

The.... Of 20.... (SEAL)

(Signature)
Licensing Authority
Designation
Place

.....”

It may only be clarified that the Explanation which specifies the various components of a firearm, and was referred to by learned counsels appearing for the respondents, in fact does not stand appended to Form X but to Form X-A which is the format for obtaining a “Composite Export license for Arms and Ammunition”.

24. Undisputedly, the petitioner holds a valid license in Form VII for manufacture of arms. Before proceeding to notice Form VII, it would be pertinent to note that a manufacturer has been defined in Rule 2(30) as follows: -

“(30) “**manufacturer**” means a person, who manufactures, sells, tests (other than proof-test), exports, imports or transfers or keeps for sale, or test (other than proof-test) firearms, their parts, components or ammunition or arms other than firearms”

As would be evident from the aforesaid definition, a manufacturer is defined to mean a person who manufactures and imports firearms, their



parts, components or ammunition or arms other than firearms. The expression “*manufacturing*” is defined in Rule 2(31) as under: -

“(31) “**manufacturing**” means making, producing or assembling: —

- (i) a complete firearm;
- (ii) a pressure-bearing part or component of a firearm (e.g. barrel, slide, cylinder, bolt, breech lock, firing pin, etc.);
- (iii) ammunition for firearm; or
- (iv) an arm other than a firearm, *and includes* —
 - (i) reactivating a deactivated firearm; and
 - (ii) substantially modifying the function of a firearm (e.g. conversion to fully automatic), *but does not include* —
 - (i) repair, restoration, maintenance or cosmetic enhancement or alteration of a firearm; nor
 - (ii) the non-commercial reloading of ammunition”

From the aforesaid definition of the aforesaid expression, it is evident that it would cover a range of activities stretching from the making, producing or assembling of a complete firearm to a pressure bearing part or component of a firearm. Those parts and components are explained by way of an example to include barrel, slide, cylinder, bolt, breech lock, firing pin, etc.

25. An intending manufacturer of a firearm is obliged to obtain the requisite license in accordance with the provisions contained in Chapter V. The aforesaid Chapter deals with the subject “*Manufacturers, Arms dealers and Gunsmiths*”. In terms of Rule 52, the Licensing Authority may grant a license in Form VII for small arms, light weapons or items configured for military use. The Proviso to Rule 52 then prescribes that if the license be sought for manufacture of the aforementioned three categories and which may include any prohibited arms and ammunition, the Licensing Authority would have to obtain the prior permission of the Union Government before



granting license in Form VII. The procedure for grant of a license under Form VII is then prescribed in Rule 54.

26. Rule 56 specifies the various obligations of licensees holding a license in Form VII. That provision reads thus: -

“56. Obligations of licensees having licensee Form VII.—(1) The validity of a licence granted in Form VII shall be subject to the manufacturer's compliance with the conditions contained in these rules and in the licence.

(2) The licensee having a licence in Form VII shall mark all firearms and ammunition that it manufactures in the manner as specified in Rule 58.

(3) The licensee company shall comply with the Foreign Direct Investment (FDI) policy of the Government of India and regulations framed under the Foreign Exchange Management Act, 1999 (42 of 1999) as notified by the Reserve Bank of India in the case of foreign direct investment in the said company.

(4) The licensee shall comply with the security guidelines as contained in the Security Manual prepared by the Ministry of Defence, department of defence production, for licensed defence industries.

(5) The licensee shall maintain records of all firearms, their parts, components and/or ammunition manufactured by it as specified in Rule 65 in addition to the conditions specified or forming part of the licence in Form VII.

(6) The licensee shall store all firearms, their parts, components and/or ammunition manufactured by it as specified in Form VII.

(7) The licensee shall permit, and shall cooperate fully with, inspections carried out by the licensing authority (or such other body as may be designated by it) of the licensee's facilities, particularly in respect to the safe and secure storage of firearms and ammunition.

(8) The licensee shall immediately notify the licensing authority on occurrence of any theft, loss or unintentional destruction of firearms or ammunition stored at its premises.

(9) The licensee shall notify the licensing authority within three working



days on occurrence of any of the following events, namely—

- (i) change of address of its registered office;
- (ii) change in the directors, in which case the licensee shall provide the licensing authority with the names and addresses of each new director, along with the particulars and documents specified in Rule 53 for directors.

(10) The licensee shall ensure that all employees who have access to completed manufactured firearms or ammunition within the manufacturing or proof testing facility are technically competent to handle the same.

(11) The work in progress and finished goods inventory for each type of firearm and ammunition at any given time shall not exceed two times of the total annual turnover in the last financial year or annual licensed capacity, whichever is lower:

Provided that in case of a company having multi-unit facility, total of the annual licensed capacity or total turnover of the company shall be considered.

(12) The licensee shall maintain complete database of inventory and distribution chain down to the dealer/end user for domestic distribution and end users in case of export.

(13) The licensee shall carry out only batch production in a manufacturing cycle.”

The Court has deemed it relevant to extract the aforesaid provision bearing in mind the provisions made in sub-rule (5) thereof which obliges the licensee to maintain a record of all firearms, their parts and components and / or ammunition manufactured by it and as specified in Rule 65.

27. Rule 57 on which much stress had been laid by the respondents reads as under: -

“57. Import of machinery for manufacturing arms and ammunition and other parts etc.— (1) The licensee having a licence in Form VII shall submit an application along with the complete list of machinery to be installed, to be procured locally or imported.



(2) The licence for acquisition, possession, import or transport of machinery shall be issued in Form I.

(3) Import of arms specified in category II of Schedule I and raw material in the form of metal, alloy, fiber, polymers, wood and other allied items, for manufacturing of such arms, shall be allowed subject to the provisions of the Foreign Trade Policy notified under the Foreign Trade (Development and Regulation) Act 1992 (22 of 1992) from time to time by the Directorate General of Foreign Trade (DGFT) and on the recommendations of the Ministry of External Affairs (MEA) taking into account international obligations and commitments.

(4) The Ministry of Home Affairs may, on an application containing full technical details allow import of such parts of arms and ammunition which are not possible to be manufactured locally, after obtaining the opinion of the Department of Defence Production by grant of an authorisation for such import in accordance with the procedure for import under these rules.

28. The Court then deems it appropriate to extract Form VII which is in the following format: -

“

FORM VII
Licence for

Manufacture ☐ **Proof Test** ☐ **Manufacture and Proof Test of Firearms/Ammunition** ☐

UIN..... License Number.....

Name, description and business address of licensee	Description of firearms allowed to be manufactured		Description of ammunition allowed to be manufactured		Categories of firearms allowed to be proof tested	Name of range or other place where allowed to test	Date on which the licence expires
	Category	Annual production (Number)	Category	Annual production (Number or Weight in Kgs)			
1	2	3	4	5	6	7	8

The.... Of.....20...

Date on which a copy is sent vide Rule 7(2) to –

The District Magistrate of district

The State Government of

The.....of.....20.....



(SEAL)

(Signature)
 Secretary/Joint Secretary
 To the Government of India
 Ministry of Home Affairs

or

Signature and designation of the officer specially
 empowered to sign the license under Rule 5

Form of renewal of license			
Date and year of renewal	Date on which the renewed licence expires	Signature and designation of renewing authority	SEAL
1	2	3	4

Explanation.— This Form shall apply to firearms and their following parts, namely:—

- (a) Barrel;
- (b) Cylinder;
- (c) Bolt;
- (d) Breech Block;
- (e) Slide;
- (f) Firing Pin;
- (g) Frame or Receiver;
- (h) Extractor;
- (i) Hammer/Striker.

.....”

29. Chapter VI and the provisions contained therein regulate the import and export of arms and ammunition. Since Rules 87 and 88 alone are relevant for the purposes of considering the issues which arise in the present writ petition, they are reproduced hereinbelow: -

“87. Licences for import and export of arms and ammunition.—The grant of licences for import and export of arms and ammunition under these rules shall be subject to the provisions of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992). The persons bringing into India the arms and ammunition as a part of their personal baggage shall be governed by the Customs Act, 1962 (52 of 1962) and the rules made there under:

Provided that a licence shall not be granted for the import or export for reimport of any arms or ammunition through the medium of post office.”

“88. Import of arms and ammunition.— (1) Arms or ammunition shall be deemed to have been brought into India by a person, when such arms or



ammunition are imported through an agent and are either consigned to such person direct, or consigned to the said agent, if the agent possesses a certificate from the said person that the arms or ammunition are bonafide his property and the agent only clears the arms or ammunition from the Indian customs and forwards the same.

(2) The dealer or manufacturer, who wants to import a firearm or parts of firearms or ammunition shall file an application for grant of a licence in Form X at least twenty-one days before the shipment of the firearm or ammunition to India or on good cause shown, such shorter period, as the licensing authority in his opinion deem fit and shall not arrange for the shipment of the firearm or ammunition prior to the issuance of the import licence.

(3) The licensing authority granting the licence shall forthwith send a copy of the licence to the licensing authority having jurisdiction at the port of import.

(4) The dealer or manufacturer shall immediately on the arrival of the shipment of firearms or parts of firearms or ammunition in India, notify the licensing authority as well as the licensing authority for the port of entry where the shipment has arrived, in writing of the arrival and provide the particulars of the container or consignment and place where the shipment can be inspected and the importer licensee shall not open the container or the consignment of firearms or ammunition before an inspection is conducted by the licensing authority of the port in presence of the Indian customs authority at the port of entry in India.

(5) The dealer or manufacturer shall within seventy-two hours of the arrival of the firearms or ammunition in India, —

(a) arrange with the licensing authority of the port of entry to physically inspect the firearms or ammunition; and

(b) on finalisation of the physical inspection, certify in writing to the licensing authority, who issued the import licence, that the imported firearms or ammunition corresponding with the import licence, have arrived in India.

(6) Any delay in carrying out the inspection referred to in sub-rule (5) within seventy-two hours resulting in any additional charges or demurrage shall be attributed to the licensing authority at the port of entry and the customs authority and not the importer licensee.”



30. Having noticed the salient provisions incorporated in the Act and the 2016 Rules, it would be apposite to also notice the relevant prescriptions contained in the **Foreign Trade Policy 2015-2020**⁹, the **ITC (HS)** as well as the **Harmonised Commodity Description and Coding System**¹⁰ which were referred to by learned counsels for parties and which would have some bearing on the question that stands raised. The FTP in Chapter 9 defines the words “accessory” or “attachment” as follows:

"Accessory" or "Attachment" means apart, sub-assembly or assembly that contributes to efficiency or effectiveness of a piece of equipment without changing its basic functions."

31. Chapter 93 of the ITC (HS) titled “**Arms and Ammunition; Parts and Accessories thereof**”, prescribes that the import of arms and ammunition classified in that Chapter is “restricted” except for muzzle loaded firearms, shotgun barrels and swords, bayonets specified under Heading 93070000. Headings 9301 to 9304 classify the various types of arms and ammunition covered under that Chapter. The generic entry pertaining to components of arms and ammunition are placed under Heading 9305 the relevant part whereof is extracted hereinbelow:-

“HS Code	Description	Import Policy	Policy Condition
9305	PARTS AND ACCESSORIES OF ARTICLES OF HEADINGS 9301 TO 9304		
93051000	Of revolvers or	Restricted	

⁹ FTP

¹⁰ HS



	pistols		
930520	Of shotguns or rifles of heading 9303		
93052010	Shotgun barrels	Free	Import subject to the condition that the requirements specified in the MHA Notification No. S.O. 667(E) dated 12.09.1985 and Notification No. S.O. 831 (E) dated 2.8.2002 are fulfilled and also that the purchaser/user of these items shall obtain requisite user license from the competent authority under the provisions of the existing Arms Act, 1959.
93052090	Other	Free	Import subject to the condition that the requirements specified in the MHA Notification No. S.O. 667(E) dated 12.09.1985 and Notification No. S.O. 831 (E) dated 2.8.2002 are fulfilled and also that the purchaser/user of these items shall obtain requisite user license from the competent authority under the provisions of the existing Arms Act, 1959.
93059100	Other : - Of military weapons of heading 9301	Restricted	
93059900	Other : -- Other	Restricted	

32. The Court also deems it apposite to notice Clause 3 of The **General Rules for the Interpretation of Import Tariff**¹¹ which reads thus: -

“3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

¹¹ Tariff Interpretation Rules



(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

33. The respondents had also placed for the consideration of the Court the provisions with respect to arms and ammunition under the HS for the purposes of their argument that each component of a firearm is liable to be recognised independently. In support of the aforesaid submission, they had placed for the consideration of the Court the HS 2016 Edition, the relevant parts whereof are reproduced hereinbelow: -

“93.05- Parts and accessories of articles of headings 93.01 to 93.04.

9305.10 - Of revolvers or pistols

9305.20 - Of shotguns or rifles of heading 93.03

- Other:

9305.91 - - Of military weapons of heading 93.01

9305.99 - - Other”

The parts and accessories of this heading include:

(1) **Parts for military weapons**, e.g. liners (tubes for barrels), recoil mechanisms and breeches for guns of all kinds; turrets, carriages, tripods and other special mountings for guns, machine-guns, sub-machine-guns, etc. whether or not with aiming and loading mechanisms.

(2) **Metal castings, stampings and forgings, for military small arms, sporting and target shooting guns, etc., revolvers and pistols**, e.g., barrels, breeches, locks, trigger guards, tumblers, levers, percussion hammers, cocking pieces, triggers, sears, extractors, ejectors, frames (of



pistols), plates, butt plates, safety catches, cylinders (for revolvers), front and back sights, magazines.

(3) **Protective covers and protective cases**, for butts, sights, barrels or breeches.

(4) **Morris tubes, etc.** (small bore tubes for insertion in heavier calibre guns and rifles for practice on miniature ranges).

(5) **Butt stocks and other wooden parts** for guns, rifles or carbines and **butts and plates** (of wood, metal, ebonite, etc.) for revolvers and pistols.

(6) **Slings, band, piling or stacking and butt swivels and swivel bands** for guns, rifles or carbines.

(7) **Silencers** (sound moderators).

(8) **Removable recoil absorbers** for sporting or target shooting guns.

The heading **excludes**:

- (a) Parts of general use as defined in Note 2 to Section XV (e.g., screws, rivets and springs), of base metal (**Section XV**), and similar goods of plastics (**Chapter 39**).
- (b) Gun cases (**heading 42.02**).
- (c) Gun cameras for aircraft (**heading 90.07**).
- (d) Telescopic sights and similar sights for arms (**heading 90.13**).

Accessories more specifically covered by other headings of the Nomenclature, such as pull-throughs, cleaning rods and other cleaning tools for arms (**headings 82.05, 96.03, etc.**)."

34. However, the Court notes that the HS 2016 Edition was amended twice thereafter in 2017 and 2020. The relevant part of Chapter 93 of HS as it stood in 2017 read as follows: -

"Heading 93.05	H.S. Code	Parts and accessories of articles of headings 93.01 to 93.04.
	9305.10	- Of revolvers or pistols
	9305.20	- Of shotguns or rifles of heading 93.03
		- Other:
	9305.91	-- Of military weapons of heading 93.01
	9305.99	-- Other



35. The aforesaid Chapter was again amended in 2022 and the relevant extracts of that Chapter as it presently stands is reproduced hereinbelow:-

Heading	H.S. Code	
93.05		Parts and accessories of articles of headings 93.01 to 93.04.
	9305.10	- Of revolvers or pistols
	9305.20	- Of shotguns or rifles of heading 93.03
		- Other:
	9305.91	-- Of military weapons of heading 93.01
	9305.99	-- Other"

36. It would also be pertinent to note that the principles of interpretation which would apply to classification entries contained in the HS have also been codified. The relevant parts of the **General Rules for the Interpretation of the Harmonised System**¹² are placed hereunder: -

“3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

¹² HS Interpretation Rules



(c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

37. Having noticed the relevant statutory provisions which apply as well as the prescriptions contained in the FTP, the ITC (HS) the Court then proceeds to deal with the submissions noticed hereinabove. On due consideration of the rival submissions which have been addressed, the principal issue which arises for determination is whether Slides and Frames as imported by the petitioner could be said to fall foul of the import permission which was granted by the DGFT. The principal objection which is taken by the respondents and which was firstly noticed in the communication of the Delhi Police dated 21 June 2022 was with respect to the imported Slides and Frames being fitted with pre-installed operational parts. The objection essentially was that the operational parts which were found to be fitted to the Slides and Frames were liable to be viewed as independent components of a firearm and for which a separate import permission was liable to be obtained. This submission was addressed in the backdrop of the definition of “*main firearm component*” set out in Rule 2(29) and the phrase “*parts and components*” as defined by Rule 2(37). The respondents also sought to draw sustenance from the Explanation appended to Form VII which, according to them, is an additional indicator of the petitioner being placed under an obligation to have made requisite declarations that additional parts and components of a firearm were also proposed to be imported.

38. In order to evaluate the correctness of the aforesaid objection, the Court deems it apposite to note that both Frames and Slides are included in



the definition of “*main firearm component*” as well as in “*parts and components*” in Rule 2(29) and 2(37). The said Rules are reproduced hereinbelow: -

“(29) “**main firearm component**” means the barrel, frame or receiver, slide, bolt or breech-block of a firearm;

(37) “**parts and components**” mean any element or replacement element specifically designed for a firearm and essential to its operation and includes barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing;”

39. Heading 9305 of the ITC (HS) compendiously classifies all parts and accessories of arms under one umbrella entry. The Court in the earlier parts of this decision had also noticed the provisions made in Chapter 9 of the FTP and which had defined the word “*Accessory*” and “*Attachment*” to mean a part or sub-assembly or assembly that contributes to efficiency or effectiveness of a piece of equipment. It would also be pertinent to highlight and underline the fact that Form X does not independently classify parts and components of a firearm in contradistinction to Form VII. In fact, the Explanation which stands inserted in Form VII is conspicuously absent from Form X. Regard must also be had to the fact that the Explanation which stood added to Form VII with effect from 01 November 2018 is identically placed in Form X-A which deals with a “**Composite Export License for Arms and Ammunition**”.

40. That therefore leaves the Court to consider whether Slides and Frames when sought to be imported and in respect of which a Form X import license may be issued are liable to be understood as being components of a firearm which are not additionally fitted with other parts or



components of a firearm. The contention as addressed by the respondents may firstly be adjudged on the anvil of the relevant provisions made in the Act and the 2016 Rules.

41. On a foundational level, this Court finds itself unable to interpret Rules 2(29) and 2(37), in a manner which may lend credence to the submission that a Frame or a Slide must, for the purposes of import, be understood to mean an article which does not have any other component or part of a firearm embedded in them. It must at the outset be noted that the expression “*main firearm component*” has been defined in Rule 2(29) to “*mean*” the barrel, frame or receiver, slide, bolt or breach block of a firearm. Rule 2(37) while defining the expression “*parts and components*” does not independently notice or classify any other part or component of a firearm other than the four components which are also spelt out in Rule 2(29). The Court also bears in mind that Rule 2(37) uses the both the words “*mean*” and “*includes*”. Both those Rules are therefore liable to be interpreted and understood as being exhaustive. Although it is by now well settled that where a statutory provision uses both the words “*means*” and “*includes*”, irrespective of whether the two are separated by additional words while attempting to define a word or phrase is liable to be viewed as exhaustive, the Court recalls the succinct enunciation of this principle in **P. Kasilingam v. P.S.G. College of Technology**¹³ where their Lordships of the Supreme Court observed thus:-

“19. We will first deal with the contention urged by Shri Rao based on the provisions of the Act and the Rules. It is no doubt true that in view of clause

¹³ 1995 Supp (2) SCC 348



(3) of Section 1 the Act applies to all private colleges. The expression 'college' is, however, not defined in the Act. The expression "private college" is defined in clause (8) of Section 2 which can, in the absence of any indication of a contrary intention, cover all colleges including professional and technical colleges. An indication about such an intention is, however, given in the Rules wherein the expression 'college' has been defined in Rule 2(b) to mean and include Arts and Science College, Teachers' Training College, Physical Education College, Oriental College, School of Institute of Social Work and Music College. While enumerating the various types of colleges in Rule 2(b) the rule-making authority has deliberately refrained from including professional and technical colleges in the said definition. It has been urged that in Rule 2(b) the expression "means and includes" has been used which indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. We are unable to agree. A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See : *Gough v. Gough* [(1891) 2 QB 665 : 60 LJ QB 726] ; *Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court* [(1990) 3 SCC 682, 717 : 1991 SCC (L&S) 71] .) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See : *Dilworth v. Commissioner of Stamps* [1899 AC 99, 105-106 : (1895-9) All ER Rep Ext 1576] (Lord Watson); *Mahalakshmi Oil Mills v. State of A.P.* [(1989) 1 SCC 164, 169 : 1989 SCC (Tax) 56] The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time. As noticed earlier the Grants-in-Aid Code contains provisions which, in many respects, cover the same field as is covered by the Act and the Rules. The Director of Technical Education has been entrusted with the functions of proper implementation of those provisions. There is nothing to show that the said arrangement was not working satisfactorily so as to be replaced by the



system sought to be introduced by the Act and the Rules. Rule 2(d), on the other hand, gives an indication that there was no intention to disturb the existing arrangement regarding private engineering colleges because in that rule the expression ‘Director’ is defined to mean the Director of Collegiate Education. The Director of Technical Education is not included in the said definition indicating that the institutions which are under the control of Directorate of College Education only are to be covered by the Act and the Rules and technical educational institutions in the State of Tamil Nadu which are controlled by the Director of Technical Education are not so covered.”

42. The aforesaid principle was reiterated and lucidly explained in a more recent decision in **Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India**¹⁴. In Pioneer Urban, their Lordships were considering the correctness of the view expressed in **Krishi Utpadan Mandi Samiti Vs. Shankar Industries**¹⁵ where their Lordships had taken the view that the definition of the expression ‘agricultural produce’ was not exhaustive even though it employed both the words means and includes. Disagreeing with the view expressed in the latter, their Lordships in **Pioneer Urban** held as under: -

“81. On the other hand, the learned Additional Solicitor General countered this submission by reference to *Krishi Utpadan Mandi Samiti v. Shankar Industries* [*Krishi Utpadan Mandi Samiti v. Shankar Industries*, 1993 Supp (3) SCC 361 (2)] , where, at paras 5 and 12, this Court held : (SCC pp. 363 & 364)

“5. Section 2(a) of the Act defines “agricultural produce” and reads as under:

‘2. (a) “agricultural produce” means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in

¹⁴ (2019) 8 SCC 416

¹⁵ 1993 Supp (3) SCC 361



processed form, and further includes gur, rab, shakkar, khandsari and jaggery.’

12. We have considered the arguments advanced on behalf of the parties and have perused the record. A perusal of the definition of “agricultural produce” under Section 2(a) of the Act shows that apart from items of produce of agriculture, horticulture, viticulture, piculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, the definition further “includes admixture of two or more such items” and thereafter it further “includes taking any such item in processed form” and again for the third time the words used are “and further includes gur, rab, shakkar, khandsari and jaggery”. It is a well-settled rule of interpretation that where the legislature uses the words “means” and “includes” such definition is to be given a wider meaning and is not exhaustive or restricted to the items contained or included in such definition. Thus the meaning of “agricultural produce” in the above definition is not restricted to any products of agriculture as specified in the Schedule but also includes such items which come into being in processed form and further includes such items which are called as gur, rab, shakkar, khandsari and jaggery.”

82. This statement of the law, as can be seen from the quotation hereinabove, is without citation of any authority. In fact, in *Jagir Singh v. State of Bihar* [*Jagir Singh v. State of Bihar*, (1976) 2 SCC 942 : 1976 SCC (Tax) 204], SCC paras 11 and 19 to 21 and *Mahalakshmi Oil Mills v. State of A.P.* [*Mahalakshmi Oil Mills v. State of A.P.*, (1989) 1 SCC 164 : 1989 SCC (Tax) 56], SCC paras 8 and 11 (which has been cited in *P. Kasilingam* [*P. Kasilingam v. PSG College of Technology*, 1995 Supp (2) SCC 348]), this Court set out definition sections where the expression “means” was followed by some words, after which came the expression “and includes” followed by other words, just as in *Krishi Utpadan Mandi Samiti case* [*Krishi Utpadan Mandi Samiti v. Shankar Industries*, 1993 Supp (3) SCC 361 (2)]. In two other recent judgments, *Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union* [*Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union*, (2007) 4 SCC 685 : (2007) 2 SCC (L&S) 82], SCC paras 12 and 23 and *State of W.B. v. Associated Contractors* [*State of W.B. v. Associated Contractors*, (2015) 1 SCC 32 : (2015) 1 SCC (Civ) 1], SCC para 14, this Court has held that wherever the expression “means” is followed by the expression “and includes” whether with or without additional words separating “means” from “includes”, these expressions indicate that the definition provision is exhaustive as a matter of statutory



interpretation. It has also been held that the expression “and includes” is an expression which extends the definition contained in words which follow the expression “means”. From this discussion, two things follow. *Krishi Utpadan Mandi Samiti* [*Krishi Utpadan Mandi Samiti v. Shankar Industries*, 1993 Supp (3) SCC 361 (2)] cannot be said to be good law insofar as its exposition on “means” and “includes” is concerned, as it ignores earlier precedents of larger and coordinate Benches and is out of sync with later decisions on the same point. Equally, Dr Singhvi's argument that clauses (a) to (i) of Section 5(8) of the Code must all necessarily reflect the fact that a financial debt can only be a debt which is disbursed against the consideration for the time value of money, and which permeates clauses (a) to (i), cannot be accepted as a matter of statutory interpretation, as the expression “and includes” speaks of subject-matters which may not necessarily be reflected in the main part of the definition.”

In view of the above enunciation of the principles which would govern the interpretation to be accorded to Rules 2(29) and 2(37), it would be incorrect to employ the precepts of liberal construction or attempt to expand the meaning assigned to the expressions “*main firearm component*” or “*parts and components*” as contained in the 2016 Rules. The Court for the aforesaid reasons also finds itself unable to sustain the view expressed by the MHA which had erroneously noted that the definition was “inclusive”.

43. Before proceeding further, it may be further noted that the Explanation to Form VII additionally notices a Firing Pin, Extractor and a Hammer/Striker as parts of a firearm. However, these components are neither specifically mentioned in Rules 2(29) and 2(37) nor are they liable to be interpreted as included therein in light of the exhaustive character of those two provisions. The additional components which are chronicled in Form VII could at best be said to fall in the definition of the word “*manufacturing*” as set out in Rule 2(31) which significantly while defining components of a firearm uses the expressions “*e.g.*” and “*etc.*”.



The submission of the respondents pivoting upon the Explanation to Form VII and on the basis whereof it was argued that since other components of a firearm are separately noted and classified alongside a Slide and Frame, it must consequently be held that the expression Frame or Slide would have to be understood to mean one which has no other pre-installed operational parts also lacks merit for the following reasons.

44. Firstly, the aforesaid submission must necessarily be considered and evaluated bearing in mind the fact that Form VII is the format on which a license for manufacture may come to be granted by the respondents. That Form is not meant for the purposes of import at all. In any case, the Court notes that the expressions “*manufacturer*” and “*manufacturing*” as set forth in Rules 2(30) and 2(31) clearly contemplate a person being engaged in the manufacture of either a complete firearm or one or more of its parts and components. The statute thus clearly envisages a situation where an entity may be engaged in the manufacture of either a complete firearm or merely a part or a component thereof. It is to take care of the aforesaid contingency alone that the Explanation appears to have been added in Form VII. Additionally, the use of the expressions “*eg.*” and “*etc.*” in Rule 2(31) appears to be indicative of the intention of the framers to refrain from exhaustively or comprehensively specifying the various parts and accessories of a firearm. This provision is indubitably distinct from the manner in which Rules 2(29) and 2(37) stand crafted. Ultimately, it is the meaning liable to be ascribed to “*main firearm component*” and “*parts and components*” thereof as contained in the aforenoted two statutory provisions which would govern.



45. This Court is thus of the considered opinion that merely because some of the sub-parts or components of a firearm are separately chronicled in the Explanation to Form VII, that would not lend credence to the contention that a Slide or a Frame when imported cannot be one which may come fitted with an additional component or part of a firearm. The Court also bears in mind that catch magazine, safety lock, safety lock support pin, trigger action mechanism part, trigger, spring of firing pin and lock plate of firing pin, the additional components which were noticed by the third respondent in its communication of 21 June 2022, are neither mentioned in Rules 2(29) and 2(31) nor are they specified in the Explanation forming part of Form VII. The Court thus finds itself unable to sustain the contention of the respondents that since those components were found fitted onto the Frames and Slides which were imported, the permission granted by the DGFT stood violated or flouted in any manner.

46. It would also be pertinent to recall that Form X does not contain an Explanation of the like as appended to Forms VII and XA. Rule 88(2) while dealing with the subject of import requires Form X to be obtained by a person who seeks to import into India a firearm or “*parts of firearms*”. The expression “*parts of firearms*” would necessarily have to draw colour from Rule 2(29) and 2(37). The Court is thus of the firm view that merely because some of the albeit well-recognised and accepted parts or components of a firearm are independently noticed in Rule 2(31) and which pertains to the activity of manufacture of firearms, it would be unsound to import its provisions for the purposes of interpreting the phrase “*parts of firearms*” when sought to be imported. In any case, as this Court views



Rules 2(29) and 2(37) read with the other relevant provisions of the Act and the 2016 Rules, it finds itself unable to countenance the submission that a Frame or a Slide must be understood to mean a component of a firearm which should not or cannot be pre-fitted with other parts thereof.

47. The correctness of the objection taken by the respondents may then be tested against the backdrop of the provisions made in the FTP, the ITC (HS) and the HS. It becomes relevant to note that the expression accessory or attachment has been defined in Clause 9.01 falling in Chapter 9 of the FTP to mean a part, sub-assembly or assembly that contributes to the efficiency of a piece of equipment without changing its basic functions. The phrase “*Parts and accessories of articles....*” in Heading 9305 of the ITC (HS) is liable to be interpreted in the aforesaid light. Viewed from this angle also the Court finds itself unable to countenance the submission that a Frame or Slide must not contain any other additional component or part of a firearm fitted onto it. It would also be apposite to recollect the provisions contained in Rule 3(b) of the Tariff Interpretation Rules which prescribes that in case of composite goods which may be made of different components, they shall be classified as if they consisted of the components which gives them their essential character. It was thus incumbent upon the respondents to have established that the additional components and operational parts found fixed to the Frames and Slides were liable to be separately classified and that the ITC (HS) did not envisage a Frame or a Slide being pre-fitted with any additional component. As this Court views the relevant provisions made in the FTP and ITC (HS), it finds itself unable to either appreciate or sustain the bifurcation of the product which was



imported as suggested by the respondents. The ITC(HS) in Heading 9305 compendiously classifies all parts and components of a firearm. No provision of the FTP or the ITC(HS) seems to suggest that the parts which were noticed in the communication of 21 June 2022 are either recognised as independent components under the statutory regime which governs or that the policy of import forbids parts and accessories being imported in a composite form.

48. Turning then to the relevant provisions contained in the HS, it is pertinent to note that while in the 2016 Edition, certain parts of firearms such as barrels, breaches extractors, frames etc. were specified under the sub heading of *“Metal castings, stamping, forging for military small arms, sporting and target shooting guns, etc., revolvers and pistols”* falling under the primary heading of *“Parts and accessories of articles of heading 93.01 to 93.04”*, that sub heading came to be deleted in the 2017 Edition. The entry which now survives and forms part of the 2022 Edition of the HS merely refers to parts and accessories of firearms and is in tune with the ITC(HS). Similarly, the HS Interpretation Rules embody principles identical to those contained in the Tariff Interpretation Rules and do not carry the case of the respondents any further.

49. The Court then deems it relevant to observe that the respondents failed to place for its consideration any material or industry literature which may have indicated or lent credence to their submission that a Frame or a Slide of a firearm is normally or popularly understood to be components which are otherwise not fitted with a sub-part or a popularly identifiable component of a firearm. The Court has already found that neither the



provisions contained in the FTP, the ITC (HS) nor the 2016 Rules ordain or can be interpreted to mean that a Frame or Slide should not contain an additional component or part of a firearm. The Court recalls the well-established principle of interpretation that where a doubt arises with respect to tariff entries, words and entries appearing therein are to be understood in the sense that the trade, public or consumer construes them. Entries in a tariff schedule, as per the aforesaid principle, which has now come to be popularly termed as the “*common parlance test*” bids us to interpret and understand entries as construed in their commercial or trade understanding. The aforesaid principles and the body of precedent which has evolved on the subject was elaborately noticed in **CCE Vs. Connaught Plaza Restaurants (P) Ltd.**¹⁶ as under: -

“20. Time and again, the principle of common parlance as the standard for interpreting terms in the taxing statutes, albeit subject to certain exceptions, where the statutory context runs to the contrary, has been reiterated. The application of the common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker;

“[i]t is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts.” (See *Oswal Agro Mills Ltd.* [1993 Supp (3) SCC 716] , SCC p. 721, para 4.)

21. A classic example on the concept of common parlance is the decision of the Exchequer Court of Canada in *R. v. Planters Nut and Chocolate Co. Ltd.* [1951 CLR 122 (Can)] The question involved in the said decision was whether salted peanuts and cashew nuts could be considered to be “fruit” or “vegetable” within the meaning of the Excise Tax Act. Cameron, J., delivering the judgment, posed the question as follows:

“... Would a householder when asked to bring home fruits or vegetables for the evening meal bring home salted peanuts, cashew or nuts of any sort? The answer is obviously ‘no’.”

¹⁶ (2012) 13 SCC 639



Applying the test, the Court held that the words “fruit” and “vegetable” are not defined in the Act or any of the Acts in pari materia. They are ordinary words in everyday use and are therefore, to be construed according to their popular sense.

22. In *Ramavatar Budhaiprasad v. STO* [AIR 1961 SC 1325 : (1962) 1 SCR 279] the issue before this Court was whether betel leaves could be considered as “vegetables” in the Schedule of the C.P. & Berar Sales Tax Act, 1947 for availing the benefit of exemption. While construing the import of the word “vegetables” and holding that betel leaves could not be held to be “vegetables”, the Court observed thus: (AIR p. 1326, para 4)

“4. ... But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of everyday use it must be construed in its popular sense meaning ‘that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it’.”

23. In *CST v. Jaswant Singh Charan Singh* [AIR 1967 SC 1454 : (1967) 2 SCR 720] , the Court had to decide whether “charcoal” could be classified as “coal” under Schedule II Part III Entry I of the Madhya Pradesh General Sales Tax Act, 1958. Answering the question in the affirmative, it was observed as follows: (AIR pp. 1456-57, paras 4 & 6)

“4. Now, there can be no dispute that while coal is technically understood as a mineral product, charcoal is manufactured by human agency from products like wood and other things. But it is now well settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.

...

6. The result emerging from these decisions is that while construing the word ‘coal’ in Schedule II Part III Entry I, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute is being one levying a tax on goods must in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include ‘charcoal’ in the term ‘coal’. It is



only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken as coal.”

24. In *Dunlop India Ltd. v. Union of India* [(1976) 2 SCC 241] , at p. 251, while holding that VP Latex was to be classified as “raw rubber” under Item 39 of the Indian Tariff Act, 1934, this Court observed: (SCC pp. 252-54, paras 29 & 34)

“29. It is well established that in interpreting the meaning of words in a taxing statute, the acceptance of a particular word by the trade and its popular meaning should commend itself to the authority.

34. We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.”

26. In *Indian Aluminium Cables Ltd. v. Union of India* [(1985) 3 SCC 284 : 1985 SCC (Tax) 383] this Court observed the following: (SCC p. 290, para 12)

“12. ... This Court has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade, by the dealer and the consumer. The reason is that it is they who are concerned with it and, it is the sense in which they understand it which constitutes the definitive index of the legislative intention.”

27. In *CCE v. Krishna Carbon Paper Co.* [(1989) 1 SCC 150 : 1989 SCC (Tax) 42] this Court has opined thus: (SCC pp. 158-59, para 12)

“12. It is a well-settled principle of construction, as mentioned before, that where the word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary



intention is clearly expressed by the legislature. ... But there is a word of caution that has to be borne in mind in this connection, the words must be understood in popular sense, that is to say, these must be confined to the words used in a particular statute and then if in respect of that particular items, as artificial definition is given in the sense that a special meaning is attached to particular words in the statute then the ordinary sense or dictionary meaning would not be applicable but the meaning of that type of goods dealt with by that type of goods in that type of market, should be searched.”

33. Therefore, what flows from a reading of the aforementioned decisions is that in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances. This, however, is by no means an absolute rule. When the legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding.”

50. Tested on the aforesaid principles, it was incumbent upon the respondents to have placed material on the record to establish that a Frame or a Slide is, in an industrial or commercial sense, not recognised to be an article fitted with any other component of a firearm. In order to sustain the submission that the terms of the import permission were violated, it was imperative for the respondents to have proven that Frames and Slides are not understood or envisaged to be fitted with other operational parts of a firearm. Since the burden to prove a violation of the import permit lay squarely on their shoulders, it was necessary for them to establish that Frames and Slides when referred to in industrial or trade circles relating to firearms, are never envisaged to be pre-fitted with a safety lock, trigger



action mechanism, firing pin or extractor. This they have not only woefully failed to establish, in fact, no submissions along these lines were in fact addressed.

51. On an overall consideration of the above, the Court reaches the conclusion that the objection that is taken by the respondents is untenable. In summation it may only be noted that the components which are mentioned in the letter of 21 June 2022 of the third respondent and are described as “operational parts” are neither classified as a main firearm component nor as parts and components under Rules 2(29) and 2(37) of the 2016 Rules. Both the aforementioned provisions, exhaustively specify the components which are to be recognised as parts of firearms for the purposes of the Act and the 2016 Rules. While Rule 2(31) mentions certain parts of firearms by way of exemplars and stops short of comprehensively specifying all possible components of a firearm, that clearly has no role to play in case of imports and stands confined to the activity of manufacture of firearms.

52. The submissions based on Forms VII and X would also not sustain the impugned action since the former again relates to the manufacture of firearms. The Court has already noticed that under the scheme of the Act and the 2016 Rules, it is permissible for a manufacturer to either produce a complete firearm or any part or component thereof. It is in the aforesaid light that relevant provisions have been incorporated in Form VII and thus call upon a prospective licensee to disclose whether it proposes to manufacture a complete firearm or merely a component thereof. The Court has also found that Form X does not embody an Explanation as found in



Form VII. Additionally, all that Rule 88(2) refers to is parts of firearms. That Rule and the expression embodied therein would necessarily have to be interpreted and understood in light of the interpretation accorded to Rules 2(29) and 2(37) hereinabove.

53. Furthermore, neither the provisions made in the FTP nor those contained in the ITC (HS) or the HS lend support to the objection raised at the behest of the respondents. They do not appear to prohibit the import of a composite part of a firearm in the sense of the imported article bearing more than one component embedded and fitted as a combined product. The respondents have also failed to establish that under the prevalent import policy, the “operational parts” which were found fitted to the Frames and Slides required permissions being obtained separately and independently. The Court also bears in mind that the respondents have at no stage of these proceedings questioned the value declarations which were made by the petitioner. It also bears in consideration the certification issued by the exporter who had asserted that the Frames and Slides had been supplied with other integrated necessary parts of the aforesaid articles.

54. The respondents have failed to prove that Frames and Slides as commonly understood or construed in industry or trade circles are not envisaged to be pre-fitted with additional components of a firearm. The respondents have thus failed to establish that the imported items would fall foul of the common parlance or the functionality tests as commonly deployed in such situations.

55. That takes the Court then to the advisory which was issued by the MHA and which apart from expressing the opinion that the Frames and



Slides which were imported were in violation of the import permission which was granted, had also alluded to the provisions made in Rule 57(4). The Court notes that the MHA has while construing Rule 2(37) taken the view that since the same is an inclusive definition, each part and component of a firearm is liable to be viewed as a separate part or component “*unless so specified under the Arms Act 1959 and the Arms Rules 2016*”. The Court fails to find any justification for the aforesaid interpretation as accorded since the view as expressed could have been sustained, provided the Act and the 2016 Rules did envisage each part or component being entitled to be viewed as a separate and distinct component for the purposes of interpretation and understanding its provisions. The view as taken, in any case, clearly falters in light of the provisions made in Rules 2(30) and 2(31) which, as was noticed above, clearly contemplate a contingency where a manufacturer may be engaged in the making or producing a complete firearm or merely a component thereof. In any case the MHA has clearly failed to notice that both Rules 2(29) and 2(37) are exhaustive and must be interpreted and understood accordingly.

56. The MHA then proceeds to record that the declarations which were made by the petitioner here while seeking permission to import Slides and Frames cannot be said to encompass the import of other licensable parts. The aforesaid opinion as expressed is also clearly rendered unsustainable since the petitioner did hold a license for manufacture of a complete firearm. Before this Court it was conceded on behalf of the respondents that if the manufacturer had been granted a license to manufacture a complete firearm it was not placed under any additional statutory obligation



to obtain separate licenses for manufacturing parts or components of a firearm. In fact such an interpretation cannot also be sustained upon a reading of the various conditions which stand imposed and attached to the grant of a license to manufacture in terms of Form VII. The Form and the Explanation clarifies that it would apply to firearms and its various parts such as barrel, cylinder, bolt, breech block, slide, firing pin, frame or receiver, extractor and hammer/striker. The sub categorisation of the various components of a firearm appears to have been introduced to deal with a contingency where a manufacturer may, as distinct from making a complete firearm, choose to apply for the grant of a license to manufacture any of its individual components as specified in clauses (a) to (i) of the Explanation to Form VII. The further conclusions which are recorded in the advisory of the MHA and more particularly in Para 5 thereof again proceed on the premise that the import of Frames and Slides must necessarily be understood to mean that they would not be embedded with any additional parts and components of a firearm. That contention, for reasons aforementioned, the Court has been unable to countenance or accept.

57. That takes the Court finally to the question of whether Rule 57(4) of the 2016 Rules would have any application to the facts of the present case. As was argued by learned senior counsel appearing for the petitioner, and in the opinion of this Court correctly, the obligation to approach the MHA in terms of Rule 57(4) would arise only if a person were contemplating importing parts of arms and ammunition which are not possible to be manufactured locally. Rule 57(4) thus stands confined to those cases where the part or component which is sought to be imported is not being



manufactured or cannot possibly be manufactured in the country. However, in the present case it was not the contention of the respondents that the nature and character of Slides and Frames which were being imported by the petitioner could not be manufactured locally. In fact, the Court notes that the Intervener in these proceedings has in its affidavit clearly stated that the Frames and Slides which have been imported by the petitioner are in fact being manufactured in the country.

58. It is pertinent to observe that neither the MHA nor the DGFT have asserted that the import of firearms is prohibited. It was also not their case that the Act and the 2016 Rules permit the import of only such arms or parts thereof which cannot be manufactured locally. Although the MHA in its advisory has alluded to Rule 57(4), it has not taken the stand that the Act and the 2016 permit import of only such parts of arms which are not being manufactured locally. As this Court views Rule 57(4) it appears to place an obligation upon an importer to obtain the requisite permission of the MHA only in a case where the article proposed to be imported is one which is either not being manufactured or possible to be manufactured locally. The Court thus finds itself unable to conversely read or interpret Rule 57(4) as prohibiting the import of arms or parts thereof which can be manufactured locally, a view which was commended for acceptance by Mr. Endlaw, learned counsel for the Intervener only.

59. The acceptance of the interpretation to Rule 57(4) as advocated by Mr. Endlaw would not only run contrary to the scheme of the Act but also the FTP as would be clear from the reasons which are recorded hereinafter. Firstly, and when tested on the anvil of the Act and the 2016 Rules, the



Court notes that Section 10 of the Act read with Rule 88 of the 2016 Rules only introduces a stipulation of a license being obtained for the purposes of import. Neither those provisions nor the various applications and forms connected with the subject of import, incorporate a prohibition against parts of arms which can be manufactured locally. The MHA while delegating its powers comprised in Section 10 of the Act to the DGFT also does not introduce any such prohibition. In fact, if Rule 57(4) were to be read in the manner as suggested by and on behalf of the Intervener, there would exist no justification for the MHA delegating its powers of licensing comprised in Section 10 read with Rule 88. This since if the parts of arms were such as were not being manufactured locally, the importer would still be obliged to follow the route of Rule 57(4). Quite apart from the fact that the aforesaid view was neither advocated by the MHA nor the DGFT and is not the stand reflected in their orders or the affidavits filed in these proceedings, the acceptance of this line of argument would give rise to an irreconcilable conflict between Rule 57(4) and Rule 88 of the 2016 Rules and be contrary to the letter of the delegation notifications issued by the MHA. In any case the act of the respondents in granting the Form X license subsequently and during the pendency of the writ petition is clear evidence that they do not view the import in question being prohibited on lines as suggested by and on behalf of the Intervener.

60. The conclusion of the Court that it would be wholly erroneous to read or interpret Rule 57(4) in the manner as suggested by the Intervener is further fortified when tested in light of the provisions of the 1992 Act. Section 3(2) of the said enactment confers a power on the Union



Government to “*prohibit*”, “*restrict*” or “*regulate*” the import or export of goods, services or technology. That provision reads thus: -

“(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology:

Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefits under the foreign trade policy or is dealing with specified services or specified technologies.”

61. Turning then to the provisions contained in Chapter 9 of the FTP, the Court notes that the expressions “*free*”, “*prohibited*” and “*restricted*” are defined as under: -

9.23. “Free” as appearing in context of import/export policy for items means goods which do not need any ‘Authorisation’/ License or permission for being imported into the country or exported out.

9.41. “Prohibited” indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted.

9.47. “Restricted” is a term indicating the import or export policy of an item, which can be imported into the country or exported outside, only after obtaining an Authorisation from the offices of DGFT.

62. As would be evident from the definition of the word “*restricted*” as extracted above, it is a term used to indicate that the import or export of an item is permitted subject only to an authorisation being obtained from the offices of the DGFT. The ITC(HS) and more particularly Heading 9305 in unequivocal terms prescribes that the import of parts or components of firearms falls in the restricted category. However, none of those provisions postulate a prohibition or restrict the import of parts of arms which can be or are being manufactured locally. The scope of the words “prohibition”,



“restriction” and “regulation” was succinctly explained by the Supreme Court in **Union of India Vs. Asian Food Industries**¹⁷ as follows: -

25. Would the terms “restriction” and “regulation” used in Clause 1.5 of the Foreign Trade Policy include prohibition also, is one of the principal questions involved herein.

41. Reliance has also been placed on *Union of India v. C. Damani & Co.* [1980 Supp SCC 707] wherein the vires of Exports (Control) Fifteenth Amendment Order, 1979 prohibiting pre-ban commitments was in question. It was held that there was no ground to discredit the policy. The question raised therein viz. the effect of failure to honour foreign contracts owing to change in law imposing ban on goods covered thereby whether would attract the plea of frustration of contract was not decided stating: (SCC p. 710, para 9)

“This contention may have to be considered here or elsewhere, but, if we may anticipate our conclusion even here, this question is being skirted by us because the *kismet* of this case can be settled on other principles. The discipline of the judicial process forbids decisional adventures not necessary, even if desirable.”

42. We may, however, notice that *C. Damani* [1980 Supp SCC 707] was explained by this Court in *State Trading Corpn. of India Ltd. v. Union of India* [1994 Supp (3) SCC 40] . It is not necessary for us to advert thereto as the said judgment has no application in the instant case.

43. We are, however, not oblivious of the fact that in certain circumstances regulation may amount to prohibition. But, ordinarily the word “regulate” would mean to control or to adjust by rule or to subject to governing principles (see *U.P. Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn.* [(2004) 5 SCC 430]) whereas the word “prohibit” would mean to forbid by authority or command. The expressions “regulate” and “prohibit” inhere in them elements of restriction but it varies in degree. The element of restriction is inherent both in regulative measures as well as in prohibitive or preventive measures.

44. We may, however, notice that this Court in *State of U.P. v. Hindustan Aluminium Corpn.* [(1979) 3 SCC 229 : AIR 1979 SC 1459] stated the law thus: (SCC p. 243, para 34)

“34. It appears that a distinction between ‘regulation’ and ‘restriction’ or ‘prohibition’ has always been drawn, ever

¹⁷ (2006) 13 SCC 542



since *Municipal Corpn. of the City of Toronto v. Virgo* [1896 AC 88 : 65 LJPC 4 : 73 LT 449 (PC)] . ‘Regulation’ promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas ‘prohibition’ obstructs or shuts off, or denies it to those to whom it is applied. *Oxford English Dictionary* does not define ‘regulate’ to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the legislature would not have contended itself with the use of the word ‘regulating’ without using the word ‘prohibiting’ or some such word, to bring out that effect.”

45. However, in *Talcher Municipality v. Talcher Regulated Market Committee* [(2004) 6 SCC 178] it was opined that regulation is a term which is capable of being interpreted broadly and it may amount to prohibition. (See also *K. Ramanathan v. State of T.N.* [(1985) 2 SCC 116 : 1985 SCC (Cri) 162 : AIR 1985 SC 660])

46. The terms, however, indisputably would be construed having regard to the text and context in which they have been used. Section 3(2) of the 1992 Act uses prohibition, restriction and regulation. They are, thus, meant to be applied differently. Section 51 of the 1962 Act also speaks of prohibition. Thus, in terms of the 1992 Act as also the policy and the procedure laid down thereunder, the terms are required to be applied in different situations wherefor different orders have to be made or different provisions in the same order are required therefor.

Viewed in the context of the relevant statutory provisions governing the import of parts of firearms, the 1992 Act, the FTP and the ITC(HS), this Court finds itself unable to hold that the restrictive regime relating to import of firearms comprehends a prohibition in respect of items which are being manufactured locally.

63. Before concluding, the Court also deems it necessary to dispose of two minor issues which came to be raised. The respondents had urged that the requirement of obtaining a license under Form X is a stipulation which continues to apply notwithstanding the import permission granted by the DGFT. This submission was made in light of the contention addressed on



behalf of the petitioner that once the power to issue an import permission stood delegated to the DGFT, there is no legal obligation on an importer to apply for and obtain a license under Form X. The Court notes that Section 10 of the Act specifically deals with the power to issue licenses in connection with import of arms and parts thereof. It is that power which stands delegated and transferred to the DGFT. The DGFT has thus for all practical purposes stepped into the shoes of the MHA which was prior to the delegation acting as the licensing authority. While this issue no longer survives in this petition in light of the respondents having subsequently granted the license, it may only be observed that the DGFT while dealing with the subject of import of arms would have to ensure that compliances are affected not just with reference to the 1992 Act but also the Act and the 2016 Rules.

64. The writ petitioner has also sought reliefs with respect to the liability of demurrage which has come to be foisted upon it on account of the controversy which arose in respect of the shipment in question and formed subject matter of the instant writ petition. However the Court notes that the liability to bear demurrage charges shifts from the importer to the licensing and the customs authorities if any delay be caused in inspecting the consignment as per Rule 88(6) of the 2016 Rules. The third respondent however in the facts of the present case cannot be called upon to shoulder that liability since it had dutifully inspected the consignment within the time specified in Rule 88(6). That authority has thus not caused any delay so as to warrant any directions being framed against it and as claimed in the writ petition. More fundamentally and bearing in mind the contentious

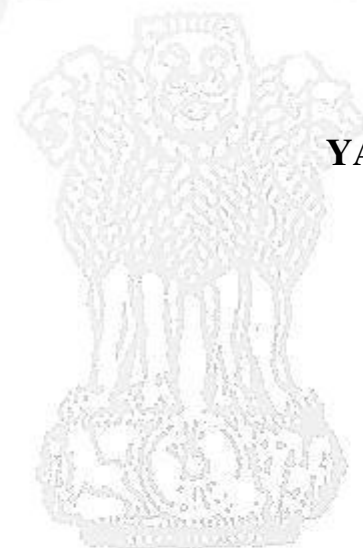


questions which came to be raised, the facts of the present case would not warrant the grant of relief (d) as claimed in the writ petition.

65. Accordingly, and for all the aforesaid reasons, the writ petition is allowed. The respondents are consequently directed to release the consignments imported under Bills of Entry Nos. 9037350 and 9038081 dated 09 June 2022. The aforesaid would be subject to the petitioner complying with other statutory formalities and depositing demurrage charges as due and payable.

YASHWANT VARMA, J.

OCTOBER 07, 2022
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