$~19 to 24

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

\+ LPA 335/2015, CM APPLs. 10003/2015 & 10006/2015

UNION OF INDIA .....Appellant

Through: Mr. Piyush Beriwal, Ms Ruchita Srivastava, Ms Neha and Mr Dev Aaseri, Advs.

versus

M/S MALIK TANNING INDUSTRIES .....Respondent

Through: Mr. Naveen Malhotra, Mr. Ritvik Malhotra and Mr. Nilansh Malhotra, Advs.

\+ LPA 652/2018

DIRECTORATE GENERAL OF FOREIGN TRADE .…….Appellant

Through: Mr. Ripudaman Bharadwaj CGSC, with Mr. Amit Kumar Rana and Ms. Ananya Yadav, Advs.

versus

M/S HIGH VALUE EXIM PVT LTD .....Respondent

Through: Dr. G.K. Sarkar, Ms. Malabika Sarkar and Mr. Prashant Srivastav, Advs.

\+ LPA 657/2018

DIRECTORATE GENERAL OF FOREIGN TRADE .....Appellant

Through: Mr. Ripudaman Bharadwaj, CGSC with Mr. Amit Kumar Rana and Mr. Kushagra Kumar, Advs.

versus

M/S WELLDONE EXIM PVT LTD .....Respondent

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Through: Dr. G.K. Sarkar, Ms. Malabika Sarkar and Mr. Prashant Srivastav, Advs.

\+ LPA 659/2018

DIRECTORATE GENERAL OF FOREIGN TRADE .....Appellant

Through: Ms. Arti Bansal, CGSC with Ms. Shruti Goel, Adv.

versus

M/S RBD INTERNATIONAL .....Respondent

Through: Dr. G.K. Sarkar, Ms. Malabika Sarkar and Mr. Prashant Srivastav, Advs.

\+ LPA 660/2018

DIRECTORATE GENERAL OF FOREIGN TRADE .....Appellant

Through: Mr. Ripudaman Bharadwaj, CGSC with Mr. Amit Kumar Rana and Mr. Kushagra Kumar, Advs.

versus

M/S GOOD ONE TRADERS PVT LTD .....Respondent

Through:

\+ LPA 661/2018

DIRECTORATE GENERAL OF FOREIGN TRADE .Appellant

Through: Mr. Ripudaman Bharadwaj, CGSC with Mr. Amit Kumar Rana and Mr. Kushagra Kumar, Advs.

versus

M/S ATTIRE DESIGNERS PVT LTD .....Respondent

Through: Dr. G.K. Sarkar, Ms. Malabika Sarkar and Mr. Prashant Srivastav, Advs.

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CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **13.01.2026**

C. HARI SHANKAR, J.

1. By judgment dated 8 December 2014 in WP (C) 6387/2012, a learned Single Judge of this Court has upheld a challenge, by the petitioner in the said writ petition Malik Tanning Industries, to Circular No. 42 (RE-2010)/2009-14 dated 21 October 2011 issued by the Directorate General of Foreign Trade[1]. That judgment forms subject matter of challenge, at the instance of the DGFT, before us, in LPA 335/2015.

2. By a subsequent judgment dated 9 January 2018, the learned Single Judge sustained the challenge against the aforesaid DGFT Circular dated 21 October 2011, instituted by five other writ petitioners in WP (C) 222/2017[2], WP (C) 250/2017[3], WP (C) 257/2017[4], WP (C) 251/2017[5] and WP (C) 259/2017[6], following his earlier judgment dated 8 December 2014. This subsequent judgment dated 9 January 2018 forms subject of challenge, at the instance of the DGFT, in LPA 652/2018, LPA 657/2018, LPA 659/2018, LPA

[1] "DGFT", hereinafter
[2] **Good One Traders Pvt. Ltd. v. Directorate General of Foreign Trade**
[3] **BRD International v. Directorate General of Foreign Trade**
[4] **High Value Exim Pvt. Ltd. v. Directorate General of Foreign Trade**
[5] **Attire Designers Pvt. Ltd. v. Directorate General of Foreign Trade**
[6] **Welldone Exim Pvt. Ltd. v. Directorate General of Foreign Trade**

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660/2018 and LPA 661/2018.

3. As such, all these LPAs involved the same issue, which is the legality of DGFT Circular dated 21 October 2011, and as to whether the learned Single Judge was correct in striking down the said circular.

4. We have heard Mr. Piyush Beriwal, learned Counsel for the DGFT in these appeals, Mr. Naveen Malhotra, learned Counsel for the respondent in LPA 335/2015 and Dr. G.K. Sarkar, learned Counsel for the respondents in the remaining LPAs.

Facts

5. The Foreign Trade Policy[7] is issued on a five yearly basis under Section 5[8] of the Foreign Trade (Development and Regulation) Act, 1992[9]. We are concerned, in these cases, with the FTP 2009-2014, notified *vide* Notification 1(RE-2012)/2009-2014 dated 5 June 2012 issued by the Department of Commerce, Government of India.

6. Paras 2.3 and 2.4 of the FTP provided thus:

> "**2.3 Interpretation of Policy**
>
> (a) The decision of DGFT shall be final and binding on all matters relating to interpretation of Policy, or provision

[7] "FTP", hereinafter

[8] **5. Foreign Trade Policy.** – The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:

Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette.

[9] "FTDR Act", hereinafter

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in HBP v1[10], HBP v2[11] or classification of any item for import/export policy in the ITC (HS).

(b) A Policy Interpretation Committee (PIC) may be constituted to aid and advice DGFT."

"**2.4 Procedure**

DGFT may, specify procedure to be followed by an exporter or importer or by any licensing/regional authority or by any other authority for purposes of implementing provisions of FT (D & R) Act, the Rules and Orders made thereunder and FTP. Such procedures, or amendments if any, shall be published by means of a Public Notice."

7. The Handbook of Procedures[12] was first notified, in terms of para 2.4 of the FTP 2009-2014, *vide* Public Notice 1/2009-2014 dated 27 August 2009 issued by the Department of Commerce, Government of India. It was again notified *vide* Public Notice 1 (RE-2010)/2009-2014 dated 23 August 2010 and, again, *vide* Public Notice 1 (RE-2012)/2009-2014 dated 5 June 2012. Apropos the interplay between the FTP and the HBP, the Supreme Court has clarified the legal position thus, in ***Union of India v. Asian Food Industries***[13]:

"30. The implementation of the said policy was to be made in terms of the procedures laid down in the Handbook. The provisions of the 1992 Act, the Foreign Trade Policy and the procedures laid down thereunder, thus, provide for a composite scheme. In implementing the said provisions of the scheme, in the event an order of prohibition, restriction or regulation is passed, the provisions of the 1962 Act[14] *mutatis mutandis* would apply."

8. Chapter 3 of the FTP dealt with "Promotional Measures". Para

[10] Handbook of Procedures Volume 1
[11] Handbook of Procedures Volume 2
[12] "HBP" hereinafter
[13] **(2006) 13 SCC 542**
[14] the Customs Act, 1962

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3.15, thereunder, dealt with the Focus Product Scheme[15], which was an Export Incentive Scheme aimed at augmenting of realisation of foreign exchange. Para 3.15.2 thereunder read thus:

> "3.15.2 **Entitlement –** Exports of notified products (as in Appendix 37D of HBPv1) to all countries (including SEZ units) shall be entitled for Duty Credit script equivalent to 2% of FOB value of exports (in free foreign exchange) for exports made from 27.08.2009 onwards.
>
> However Special Focus Product(s)/sector(s), covered Appendix 37D shall be granted Duty Credit equivalent to 5% of FOB value of exports (in free foreign exchange) for exports made from 27.08.2009 onwards."

9. Chapter 3 of the HBP deals with the FPS, and paras 3.9, 3.9.1, 3.9.2 thereof read as under:

> "3.9 Policy pertaining to FPS is given in Chapter 3 of FTP. Notified Products are listed in Appendix 37D.
>
> 3.9.1
>
> (a) An application for exports made from 27.8.2009 onwards shall be filed, with RA concerned in ANF3C along with documents prescribed therein.
>
> (b) Eligibility of Focus Product (as in Appendix 37D) shall be determined from date of export as per Para 9.12 of HBP vl.
>
> 3.9.2 The procedure for filing applications against export of Market Linked Focus Products under FPS (Para 3.15.3 of FTP) will be the same as laid down for Focus Product Scheme in Para 3.9.1 above. In case of applications for grant of benefit under Market Linked Focus Product scheme for proof of landing of export consignment in specified market, Para 3.8.2 for HBPVol.1 shall apply."

10. Para 3.9.1 of the HBP, therefore, provides that eligibility of

[15] "FPS", hereinafter

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products, whose exports would entitle the exporter to the benefit of the FPS, is to be determined according to Appendix 37D to the HBP. The products which are entitled to the benefit of the FPS are set out in Appendix 37D in tabular form, depending on various categories of products. The products are tabulated on the basis of their entries in the ITC (HS) Classification of products. Serial No. 33 of Table 4 in Appendix 37D entitles "Technical Textiles – Woven Fabrics of Synthetic Filament Yarn", classifiable under ITC (HS) 5407, to the benefit of the FPS.

11. Heading 5407 of the ITC (HS) covers "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404". *All* woven fabrics of synthetic filament yarn are, therefore, encompassed in Heading 5407.

12. Reproducing, *in extenso*, the several sub-entries under Heading 5407 would needlessly burden this judgement. Suffice it, therefore to note that Heading 5407 has, under it,

(i) Sub-Heading[16] 540710 covering "Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyesters", with sub-headings 54071011 to 54071099,

(ii) SH 540720 covering "Woven fabrics obtained from strip or the like", with further SHs 54072010 to 54072090,

(iii) SH 540730 covering "Fabrics specified in Note 9 to Section XI" with further SHs 54073010 to 54073090,

(iv) "Other woven fabrics, containing 85% or more by weight

[16] "SH" hereinafter

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of filaments of nylon or other polyamides" are covered under SHs 54074111 to 54074490,

(v) SH 540751 covers "Other woven fabrics, containing 85% or more by weight of textured polyester filaments: Unbleached or bleached" with further SHs 54075111 to 54075490,

(vi) SH 540761 covers "Other woven fabrics, containing 85% or more by weight of polyester filaments: Containing 85% or more by weight of non-textured polyester filaments" with further SHs 54076110 to 54076900,

(vii) SH 540771 covers "Other woven fabrics, containing 85% or more by weight of synthetic filaments: Unbleached or bleached", with further SHs 54077110 to 54077400,

(viii) SH 540781 covers "Other woven fabrics, containing less than 85% by weight of synthetic filaments, mixed mainly or solely with cotton: Unbleached or bleached" with further SHs 54078111 to 54078490 and

(ix) SH 540791 covers "Other woven fabrics" with further SHs 54079110 to 54979400.

13. On 5 May 2010, the Joint DGFT wrote to the DGFT as under:

"File No. Jt.DG/SRT/Policy/2010-770 Date: 05.05.2010

To

Director General of
Foreign Trade,
Udyog Bhawan, Maulana Azaad Road
New Delhi 110011.

Kind Attn.:- Shri Tapan Mazumder, Jt. DG (Policy).
Sub.:- Focus Product Scheme clarification for

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eligibility regarding.

Sir,

Exporters from Surat are engaged in the main business of exporting "Dyed or Printed fabrics, made from 100% Polyester Filament Yarn fabrics, made-ups, sarees etc. All these tems under ITC (HS) code series 5407 appearing at different Sr. Nos. of rate list are eligible for DEPB benefits.

Your kind attention is invited to Sr.No.33 FPS code 33 under heading Technical Textiles Products at page 297 of Hand Book Procedures Vol.-1 (Appendices and Aayat Niryat Forms) 2009-2014 according to which the item technical textile-Woven fabrics of synthetics filaments yarn against ITC (HS) code 5407 is eligible for benefits under FPS. Many exporters have approached this office contending that all the export products under ITC (HS) code 5407 against which they have obtained DEPB under different Sr. Nos of DEPR rate are also eligible for benefits under FPS. With this contention majority of the exporters who Have already obtained DEPB are queuing up for claims under FPS.

You are requested to kindly advise this office urgently as to whether all the items appearing at different DEPB rate Sr. Nos under ITC (HS) code 5407 series are eligible for benefits of FPS under the heading Technical Textiles-Woven fabrics of synthetics filament Yarn under ITC (HS) code 5407. We shall be obliged for your immediate advice/clarification and number of firms have applied for FPS benefits, which have, however, been kept pending for your decision.

Yours faithfully

Sd/-
(BEG RAJ SINGH)
JT. DIRECTOR GENERAL OF FOREIGN TRADE"

14. A similar query was addressed by the Joint DGFT to the DGFT on 22 December 2010:

"OFFICE OF THE ZONAL JT. DIRECTOR GENERAL OF FOREIGN TRADE NEW C.G.O. BLDG. NEW MARINE LINES, CHURCHGATE, MUMBAI – 20.

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File No. 03/91/087/131/AM11/DES-XII/395

Date: 22nd December, 2010

To
The Director General of
Foreign Trade
Udyog Bhavan, M.A. Road
NEW DELHI-110 011.

Kind Attn: Shri A.K. Singh, JDG, Policy - 3

Sub: Request for clarification regarding description covered Under Appendix 37D, Table4 FP Code (33) ITC(HS) Code 5407

Sir,

This office had issued FPS (Focus Product Scheme) Licence to M/s. Riddhi Textiles, Mumbai for the items covered under ITC(HS) Code 5407 i.e. "Technical Textile Woven Fabrics of Synthetic Filament Yarn".

The Asstt. Commissioner of Customs, Moradabad while perusing the duplicate copies of the shipping bills from Customs record; observed that the party has actually exported "Dyed/Printed Fabrics made from 100% Polyester Filament/Texturised yarn with or without embroidery and/or without metallised yarn" and therefore, vide his letter no. C. No. VIII(30) Cust/ ICD/FPS/907/10/4136 dated 22/10/2010 requested this office to inform them whether the goods exported by the party are eligible for benefit of FPS under ITC (HS) code 5407 or not. A copy of letter received from Customs is enclosed herewith for your perusal.

However, since ITC (HS) Code No. 54023910 shows the specific entry of Dyed & Printed Fabrics and Appendix 37D i.e. list of notified products under FPS do not show specific entry for textile product & do not show itemwise classification as per Chapter 54 of ITC (HS), this office considered the case and issued licence as per Sr. No.33 of Technical Textile Products. This was also confirmed by Chartered Engineer.

You are requested to kindly clarify as to whether the goods exported by the party i.e. "Dyed/Printed Fabrics made from 100% Polyester Filament / Texturised yarn with or without embroidery and/or without metallised yarn" are eligible for benefit of FPS

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under ITC(HS) Code 5407 or not, so that further necessary action can be taken in the matter.

Yours faithfully

Sd/-
(U.K. SOLANKI)
JT. DIRECTOR GENERAL OF FOREIGN TRADE"

15. In response to these queries, the DGFT issued the Policy Circular dated 21 October 2021, which stands struck down by the learned Single Judge in the judgment under challenge. The circular read as under:

"Government of India
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi – 110011

Policy Circular No. 42 (RE-2010)/2009-14
Dated: 21 October, 2011

To

All Regional Authorities

Subject:- Eligibility of export product "Technical Textiles" listed at FPS Product Code 33, Table-4, Appendix 37D of HBPv1 - reg.

Sr. No. 33, Table-4, Appendix 37D of HBPv1 allows FPS benefit to products covered under ITC HS Code 5407 with description "Technical Textiles – Woven Fabrics of Synthetic Filament Yarn". References have been received from the Regional Authorities seeking clarification on coverage of products classified under ITC HS Code 5407 for FPS benefit.

2. The matter has been examined. It is decided that a technical textile is a textile product manufactured for non-aesthetic purposes, where function is the primary criterion. Technical textiles include textiles for automotive applications, medical textiles, geotextiles, agrotextiles and protective clothing like heat and radiation

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protection for fire fighter clothing, molten metal protection for welders, stab protection and bulletproof vests and spacesuits etc. Accordingly, only 33 items as listed in the Annexure are covered under technical textiles.

3. It has, therefore, been decided to allow FPS benefits to export products listed in the Annexure to this Policy Circular under category of "Technical Textiles". This list is applicable for exports made w.e.f. 1.4.2011 and any FPS benefit granted to products other than those listed in Annexure to this Circular for exports made w.e.f. 1.4.2011 would need to be recovered from the exporters.

4. All RAs are advised to consider claims accordingly.

5. This issues with approval of DGFT.

Effect of this Policy Circular:

Only 33 items are eligible to get FPS benefit under heading "Technical Textiles" as per Sr.No.33, of Table 4, Appendix 37D of HBPv1. The list of 33 items, so eligible, is in the Annexure to this Policy Circular and this list is applicable for export made with effect from 01.04.2011.

(Hardeep Singh)
Joint Director General of Foreign Trade
hardeep.singh@nic.in

(Issued from F. No.01/91/180/547/AM11/PC-3)

Annexure to Policy Circular No.42 (RE-2010)/2009-14

dated 21 October, 2011.

ITC HS Codes	Woven fabrics obtained from high tenacity yarn of nylon or other polyamides of polysters:
	Unbleached:
5407 10 11	Parachute fabric
5407 10 12	Tent fabrics
5407 10 13	Nylon furnishing fabrics
5407 10 14	Umbrella cloth panel fabrics
5407 10 15	Other nylon and polyamide fabrics (filament)
	Bleached:
5407 10 21	Parachute fabric
5407 10 22	Tent fabrics
5407 10 23	Nylon furnishing fabrics

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5407 10 24	Umbrella cloth panel fabrics
5407 10 25	Other nylon and polyamide fabrics of filament yarn
	Dyed:
5407 10 31	Parachute Fabrics
5407 10 32	Tent fabrics
5407 10 33	Nylon furnishing fabrics
5407 10 34	Umbrella cloth panel fabrics
5407 10 35	Other nylon and polyamide fabrics (filament)
	Printed:
5407 10 41	Parachute fabric
5407 10 42	Tent fabrics
5407 10 43	Nylon furnishing fabrics
5407 10 44	Umbrella cloth panel fabrics
5407 10 45	Other nylon and polyamide fabrics (filament)
	Other:
5407 10 91	Parachute fabrics
5407 10 92	Tent fabrics
5407 10 93	Nylon furnishing fabrics
5407 10 94	Umbrella cloth panel fabrics
	Woven fabrics obtained from strip or the like:
5407 20 10	Unbleached
5407 20 20	Bleached
5407 20 30	Dyed
5407 20 40	Printed
5407 20 90	Other
	Fabrics specified in Note 9 to Section XI:(of man-made fabrics, impregnated, coated, covered or laminated with plastics)
5407 30 10	Unbleached
5407 30 20	Bleached
5407 30 30	Dyed
5407 30 40	Printed

Sd/-
[Hardeep Singh]
Joint Director General of Foreign Trade"

16. The respondents in these appeals exported goods which were described in the export documents as "polyester printed-dyed texturized fabrics". Mr. Beriwal, to a query from the Court acknowledges the fact that there was no error in the description of the

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exported goods as polyester printed-dyed texturized fabrics, and further acknowledges that the fabric exported by the respondents would fall within the description "woven fabrics of synthetics filament yarn".

17. Mr. Beriwal submits that the case of the DGFT is, however, that the fabric does not qualify as "technical textiles", as the expression stands clarified in para 2 of the DGFT Policy Circular dated 21 October 2011. He points out that the goods exported by the respondent do not figure in the list of 33 items in the Table annexed to the Policy Circular dated 21 October 2011.

18. The restriction of FPS benefits to exports of 33 items which were enlisted in the table annexed to the Policy Circular dated 21 October 2011 hurt the respondents as, the fabric exported by them does not, admittedly, fall within the said entries. The respondents contended that their product fell within the description of "woven fabrics of synthetics filament yarn", which were entitled to FPS benefits, as per S. No. 33 of Table 4 in Appendix 37D to the HBP. That benefit, according to the respondents, could not have been restricted by the Policy Circular dated 21 October 2011 issued by the DGFT.

19. Moreover, submitted the respondents, the DGFT, in any case, did not have the power to make the circular retrospectively applicable from 1 April 2011, thereby disentitling the exporters who, on the basis of S. No. 33 in Table 4 in Appendix 37D to the HBP, had exported

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fabrics which fell within the description of "woven fabrics of synthetic filament yarn", in the expectation that they would be entitled to export incentives under the FPS.

The impugned judgment

20. The learned Single Judge has, in the impugned judgment, upheld the challenge set up by the respondents, and has struck down the DGFT Policy Circular dated 21 October 2011. In doing so, the learned Single Judge has reasoned as under:

> (i) The power to frame the FTP, under the FTDR Act, vested with the Central Government. The role of the DGFT was to specify the procedure to be followed by importers and exporters for implementing the FTP and to clarify doubts in interpreting any provisions of the FTP, classification of items under the ITC (HS) Code or the HBP.
>
> (ii) The HBP had been framed by the DGFT in exercise of powers conferred by para 2.4 of the FTP. Para 3.15.2 of the FTP clearly referred to export of products notified in Appendix 37D to the HBP. The DGFT was empowered with the power to specify and update the eligible products in Appendix 37D.
>
> (iii) The fabric exported by the respondents clearly fell within the omnibus description of "woven fabrics of synthetics filament yarn". There was also no dispute about the fact that the

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fabric exported by the respondents fell within ITC (HS) Code 5407. That position, we may note, has not been disputed before us, either, by Mr. Beriwal.

(iv) The entry at S. No. 33 in Table 4 in Appendix 37D had to be read by understanding the reference to "woven fabrics of synthetics filament yarn" as explaining the expression "technical textiles". In any event, polyester dyed fabrics were covered under ITC (HS) Code 5407. The DGFT was empowered by para 2.3 of the FTP only to provide clarifications in the event of any doubt. The entry at S. No. 33 in Table 4 in Appendix 37D to the HBP being unambiguous, no doubt existed, as would justify any clarification by the DGFT.

(v) Further, the DGFT Policy Circular dated 21 October 2011 was, in effect, not clarificatory in nature, but restricted the number of products which would be entitled to the benefit of the FPS in terms of Appendix 37D to the HBP. 124 items, which were enlisted in the ITC (HS) Code and fell within the broad description in S. No. 33 of Table 4 in Appendix 37D were entitled to the benefit of the FPS on their export. The Policy Circular dated 21 October 2011 curtailed this benefit to 33 items alone. The DGFT was not empowered, in the garb of providing a clarification, to curtail the number of products which, as per the provision of the FTP read with the HBP, were entitled to export incentive benefits.

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(vi) This was also apparent form the fact that the Policy Circular dated 21 October 2011 was made effective from 1 April 2011. In other words, the products exported by the respondent, had they been exported prior to 1 April 2011, would, in any case, be entitled to the benefit of the FPS. This also indicated that the Policy Circular dated 21 October 2011 effectively brought about a change in the products, which would be entitled to FPS benefits, with effect from 1 April 2011, rendering many of them ineligible.

(vii) Sections 5 and 6[17] of the FTDR Act did not empower even the Central Government to frame a policy with retrospective effect. This position also stood clarified in para 48 of the judgment of the Supreme Court in ***Asian Food Industries***, which read thus:

> "48. The Delhi High Court, however, in our view correctly opined that the Notification dated 4-7-2006 could not have been taken into consideration on the basis of the purported publicity made in the proposed change in the export policy in electronic or print media. Prohibition promulgated by a statutory order in terms of Section 5 read with the relevant provisions of the policy decision in the light of sub-section (2) of Section 3 of the 1992 Act can only have a prospective effect. By reason of a policy, a vested or accrued right cannot be taken away. Such a right, therefore, cannot a fortiori be taken away by an amendment thereof."

[17] **6. Appointment of Director General and his functions**. –
(1) The Central Government may appoint any person to be the Director General of Foreign Trade for the purposes of this Act.
(2) The Director General shall advise the Central Government in the formulation of the foreign trade policy and shall be responsible for carrying out that policy.
(3) The Central Government may, by Order published in the Official Gazette, direct that any power exercisable by it under this Act (other than the powers under Sections 3, 5, 15, 16 and 19) may also be exercised, in such cases and subject to such conditions, by the Director General or such other officer subordinate to the Director General, as may be specified in the Order.

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(viii) Where the Central Government itself did not have the power to amend the provisions of the FTP with retrospective effect, no such power, needless to say, could be conceded to the DGFT. It was only entrusted with the task of implementing the FTP. The position that retrospective or retro-active legislation was not permissible in the absence of any power in that regard conferred by the Statute also stood recognized by the judgments of the Supreme Court in ***Mahabir Vegetable Oil (P) Ltd. v. State of Haryana***[18]***, Vice Chancellor, MD University, Rohtak v. Jahan Singh***[19] and judgment of the Division Bench of the High Court of Bombay in ***Nobel Resources and Trading India Pvt. Ltd. v. UOI***[20]. In fact, ***Noble Resources and Trading India Pvt. Ltd.*** dealt with a similar challenge to withdrawal of benefits under the Duty Entitlement Passbook Scheme[21] retrospectively. The High Court of Bombay held that this was not permissible.

Analysis

21. The impugned judgment of the learned Single Judge has analyzed every aspect of the matter. We can hardly do better than to express our entire and complete concurrence with the view expressed by the learned Single Judge.

22. While any reiteration thereof would amount to an exercise in

[18] **(2006) 3 SCC 620**
[19] **(2007) 5 SCC 77**
[20] **2012 (276) ELT 3 (Bom)**
[21] "DEPB Scheme", hereinafter

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repetition, we may only note that the DGFT in the garb of a clarification could not have restricted the number of items, which were entitled to FPS benefit as per Appendix 37 D to the HBP v1, and that no occasion arose for any clarification from the DGFT, as Serial No. 33 in Table 4 in Appendix 37D was clear and categorical.

23. Mr. Beriwal sought to submit that the products exported by the respondents were not "technical textiles" and that they were not, therefore, entitled to FPS benefit.

24. There are two reasons why we cannot accept this argument.

25. Firstly, we are in agreement with the learned Single Judge that S. No. 33 in Table 4 in Appendix 37D to the HBP has to be read as an entire entry and not merely as "technical textiles". This, in fact, appears to be the primary error into which the DGFT has fallen while issuing the Circular dated 21 October 2011. A bare reading of the Policy Circular makes it clear that it adverts only to the words "technical textiles" and entirely overlooks the word "woven fabrics of synthetics filament yarn".

26. Even on this ground, the Policy Circular dated 21 October 2011, inasmuch as it proceeds on a misreading of S. No. 33 in Table 4 in Appendix 37D to the HBP, cannot sustain.

27. The second reason why we cannot accept Mr Beriwal's submission is that there is no definition, in the FTP, the HOP, or the

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ITC (HS), of the expression "technical textiles". The restrictive interpretation that the Policy Circular dated 21 October 2011 accords, to the expression "technical textiles", would have to find place in Appendix 37D to the HOP itself, for it to apply. The scope of a broad entry provided in the HOP, with respect to the products covered by an export incentive scheme, cannot be reduced by way of a clarificatory circular.

28. Though the learned Single Judge has, in para 17, has interpreted the dash (–) between the words "technical textiles" and "woven fabrics of synthetics filament yarn", we do not think it is necessary to enter into any such syntactical exercise. It is clear to us that the use of the words "woven fabrics of synthetics filament yarn" is deliberate. In fact, the manner in which the DGFT Policy Circular dated 21 October 2011, as well as Mr. Beriwal before us, seeks to interpret S. No. 33 in Table 4 in Appendix 37D to the HBP, would render the words "woven fabrics of synthetics filament yarn" entirely redundant and would result in re-writing the entry as reading "technical textiles" alone. This is not an exercise that DGFT, or for that matter, even this Court can undertake.

29. It is perfectly clear to us that "woven fabrics of synthetics filament yarn" which fall within ITC (HS) Classification 5407 are fully entitled to the benefit of the FPS in terms of S. No. 33 in Table 4 in Appendix 37D to the HBP.

30. There is no dispute about the fact that the fabrics exported by

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the respondents fell within the broad description "woven fabrics of synthetics filament yarn". To our mind, the matter should have ended there, and this has been an entirely unnecessary exercise. Once the respondents' export products fell within the description of "woven fabrics of synthetics filament yarn", they were entitled *ipso facto* to the benefit of the FPS in terms of S. No. 33 in Table 4 in Appendix 37D to the HBP.

31. Restriction of the items, the export of which would entitle the exporter to incentive, is certainly permissible. That, however, has to be by amendment of the HOP, and not by way of a clarificatory Policy Circular. Further, any such amendment could not be permitted to operate retrospectively, in view of para 48 of ***Asian Food Industries***, on which the learned Single Judge has rightly placed reliance.

Conclusion

32. For the aforesaid reasons, we find no case to interfere with the impugned judgment of the learned Single Judge.

33. The appeals are accordingly dismissed, albeit without costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JANUARY 13, 2026
Dsn/aky/yg

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