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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2907 OF 2014
ALONG WITH
CHAMBER SUMMONS (L) NO.343 OF 2014
IN
WRIT PETITION (L)NO.3031 OF 2014

Global Tradex Limited,
a company incorporated under the
Companies Act, 1956, having its
Registered Office at 3rd floor,
Kanika Building, 14/1 New Palasia,
Indore. ..Petitioner

-*Versus*-

1 Union of India
through Joint Secretary,
Ministry of Law and Justice,
having its office at Aayakar Bhavan,
M. K. Road, Churchgate, Mumbai-400 20.

2 The Central Board of Excise & Customs
at statutory body constituted under
the provisions of the Central Board of
Revenues Act, 1963 having its office at
Central Block, New Delhi 110 001.

3 The Commissioner of Customs (Import),
having its office at New Customs House,
Ballard Pier, Mumbai-400 001.

4 The Secretary,
Ministry of Steel, Government of India,
Udyog Bhavan, New Delhi-110107.

5 The Secretary,
Ministry of Consumer Affairs, Food &
Public Distribution, Government of

India, having his office at Krishi Bhawan,
New Delhi-110114.

6 The Director General of Foreign Trade,
Udyog Bhavan, H-wing, Gate No.2,
Maulana Azad Road,
New Delhi-110011. ..Respondents

WITH
WRIT PETITION NO.2909 OF 2014
ALONG WITH
CHAMBER SUMMONS (L) NO.345 OF 2014
IN
WRIT PETITION (L)NO.2961 OF 2014

Magnum Steels,
a Partnership Firm having its office at
602, Simran Plaza, Corner of 3rd and
4th Road, Next to Hotel Regal Enclave
Khar (West), Mumbai-400052. ..Petitioner

-Versus-

1 Union of India
through Joint Secretary,
Ministry of Law and Justice,
having its office at Aayakar Bhavan,
M. K. Road, Churchgate, Mumbai-400 20.

2 The Central Board of Excise & Customs
at statutory body constituted under
the provisions of the Central Board of
Revenues Act, 1963 having its office at
Central Block, New Delhi 110 001.

3 The Commissioner of Customs (Import),
having its office at New Customs House,
Ballard Pier, Mumbai-400 001.

4 The Secretary,
Ministry of Steel, Government of India,

Udyog Bhavan, New Delhi-110107.

5 The Secretary,
Ministry of Consumer Affairs, Food &
Public Distribution, Government of
India, having his office at Krishi Bhawan,
New Delhi-110114.

6 The Director General of Foreign Trade,
Udyog Bhavan, H-wing, Gate No.2,
Maulana Azad Road,
New Delhi-110011.

7 Madras Steel Re Rollers Association
A Registered Society bearing No.97/1979,
Having its Registered Office at No.11,
Cross Road, Tondiarpet,
Chennai 600 081.

8 Steel Re-Rollers Association of Maharashtra
Having its registered office at
5th floor, Potia Industrial Estate,
Darukhana, Mumbai-400 010.

9 All India Steel Re-Rollers Association
6, Sagar Apartment, Tilak Marg,
New Delhi-100 001. ..Respondents

WITH
WRIT PETITION (L)NO.2962 OF 2014
ALONG WITH
CHAMBER SUMMONS (L) NO.344 OF 2014
IN
WRIT PETITION (L)NO.2962 OF 2014

Steel Mart India Private Limited
a company incorporated under the
Companies Act, 1956, having its
Registered Office at Onlooker Building
Sir Pherozeshah Mehta Road,
Mumbai-400 001. ..Petitioner

-Versus-

1 Union of India
through Joint Secretary,
Ministry of Law and Justice,
having its office at Aayakar Bhavan,
M. K. Road, Churchgate, Mumbai-400 20.

2 The Central Board of Excise & Customs
at statutory body constituted under
the provisions of the Central Board of
Revenues Act, 1963 having its office at
Central Block, New Delhi 110 001.

3 The Commissioner of Customs (Import),
having its office at New Customs House,
Ballard Pier, Mumbai-400 001.

4 The Secretary,
Ministry of Steel, Government of India,
Udyog Bhavan, New Delhi-110107.

5 The Secretary,
Ministry of Consumer Affairs, Food &
Public Distribution, Government of
India, having his office at Krishi Bhawan,
New Delhi-110114.

6 The Director General of Foreign Trade,
Udyog Bhavan, H-wing, Gate No.2,
Maulana Azad Road,
New Delhi-110011.

7 Madras Steel Re Rollers Association
A Registered Society bearing No.97/1979,
Having its Registered Office at No.11,
Cross Road, Tondiarpet,
Chennai 600 081.

8 Steel Re-Rollers Association of Maharashtra

Having its registered office at
5th floor, Potia Industrial Estate,
Darukhana, Mumbai-400 010.

9 All India Steel Re-Rollers Association
6, Sagar Apartment, Tilak Marg,
New Delhi-100 001. ..Respondents

WITH
WRIT PETITION (L)NO.2963 OF 2014

Sri Jagannath Steel Co.
a Partnership Firm having office at
35 and 25/26, Kapadia Chambers,
51 Devji Ratanshi Marg, Carnac Bunder,
Mumbai-400 009. ..Petitioner

-Versus-

1 Union of India
through Joint Secretary,
Ministry of Law and Justice,
having its office at Aayakar Bhavan,
M. K. Road, Churchgate, Mumbai-400 20.

2 The Central Board of Excise & Customs
at statutory body constituted under
the provisions of the Central Board of
Revenues Act, 1963 having its office at
Central Block, New Delhi 110 001.

3 The Commissioner of Customs (Import),
having its office at New Customs House,
Ballard Pier, Mumbai-400 001.

4 The Secretary,
Ministry of Steel, Government of India,
Udyog Bhavan, New Delhi-110107.

5 The Secretary,
Ministry of Consumer Affairs, Food &
Public Distribution, Government of
India, having his office at Krishi Bhawan,
New Delhi-110114.

6 The Director General of Foreign Trade,
Udyog Bhavan, H-wing, Gate No.2,
Maulana Azad Road,
New Delhi-110011.

7 Madras Steel Re Rollers Association
A Registered Society bearing No.97/1979,
Having its Registered Office at No.11,
Cross Road, Tondiarpet,
Chennai 600 081.

8 Steel Re-Rollers Association of Maharashtra
Having its registered office at
5th floor, Potia Industrial Estate,
Darukhana, Mumbai-400 010.

9 All India Steel Re-Rollers Association
6, Sagar Apartment, Tilak Marg,
New Delhi-100 001. ..Respondents

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Mr. Vikram Nankani, Senior Counsel, a/w Mr. Aqbel Sheerazi, Sushanth Murthy, Sparsh Prasad i/b. Economic Laws Practice for the Petitioners.
Mr. Anil C. Singh, Additional Solicitor General of India, with Dr. G. R. Sharma with Mr. D.P. Singh, Dhanesh Shah, Ajay Patil and Dhiren Shah for the Respondent Nos.1, 4, 5 and 6.
Mr. Pradeep S. Jetly for the Respondent Nos.2 and 3.
Mr. Rafiq Dada, D. B. Shroff, Senior Counsels, a/w Mr. Vipin Jain, Vishal Agarwal and P. K. Shetty for the Respondent No.9 in WP/2909/14, WPL/2962/2014 and WPL/2963/2014.
Mr. Venkatesh Dhond, Senior Advocate, a/w Rashmin Khandekar, Prateek Pai i/b. Keystone Partners for Respondent No.7 in WP/2909/2014, WPL/2962/2014 and WLP/2963/2014.
Ms. Pooja Thorat a/w Mr. Sejal Yadav for Steel Authority of India, Intervenors in CHSWL/343/2014, 344/2014 and 345/2014.

Mr. Anjal Amin i/b. B. Amin & Co. for the Respondent No.8 in WP/2909/2014, WPL/2962/2014 and WPL/2963/2014.

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CORAM: S.C. DHARMADHIKARI AND A.A. SAYED, JJ.

RESERVED ON :11th DECEMBER, 2014
PRONOUNCED ON :24th DECEMBER, 2014

JUDGMENT (PER S. C. DHARMADHIKARI, J.)

Rule. The Respondents waive service. By consent, Rule made returnable forthwith.

2] By this Writ Petition under Article 226 of the Constitution of India, the Petitioners pray for the following reliefs:-

> "(a) that this Hon'ble Court be pleased to declare that the impugned Circular No.450/176/2014-Cust-IV dated 7th November, 2014 is unconstitutional and ultra vires Articles 14, 19(1)(g) and 300A of the Constitution of India and the provisions of the Bureau of Indian Standards Act, 1986.
>
> (b) that this Hon'ble Court be pleased to issue a Writ of Mandamus, or a Writ in the nature of Mandamus, or any other appropriate Writ, Order or direction, directing the Respondents;
>
> (i) to forthwith clear the goods covered by Commercial Invoice dated 18th September, 2014; and

(ii) to forthwith clear the consignments of Alloy Steel of Deformed Bars/Deformed Bars as per the practice prevalent prior to the impugned Circular dated 7^{th} November, 2014.

(c) that this Hon'ble Court be pleased to issue a Writ of Prohibition, or a Writ in the nature of Prohibition, or any other appropriate Writ, Order or prohibition, restraining the Respondents by themselves, their servants, agents, successors and/or subordinates from giving effect to the impugned Circular No.450/176/2014-Cus-IV dated 7^{th} November, 2014 (Exhibit “H” hereto) in assessment of consignments of alloy steel of deformed bars/deformed bars falling under Chapter Heading 72.28 of Chapter 72 of the CTA.”

3] The above reliefs are claimed on the basis that the Petitioners, a partnership firm is engaged, inter alia, in the business of import of Alloy Steel Deformed/Reinforcement Bar falling under Chapter Heading 72.28 of the First Schedule to the Customs Tariff Act, 1975 (for short 'CTA') read with corresponding Schedule-1 of the Indian Trade Classification (Harmonised Systems) [in short 'ITC (HS)'] classification of import and export items issued by the Central Government in exercise of the powers conferred by the Foreign Trade (Development and Regulation) Act, 1992 read with the Foreign Trade Policy announced from time to time.

4] The Petitioners placed an order for import of these goods by a contract Annexure-A. The manufacturer manufactures these goods in accordance with the British Standards. These goods were shipped under commercial invoice dated 20th September, 2014. The manufacturer also issued a product quality certificate known as Mill Test Certificate in respect of the said goods.

5] The Petitioners state that as per CTA, non-alloy steel is covered from Headings 7206 to 7217 whereas alloy steel, also defined as “other alloy steel” in Note 1(f) of Chapter 72 of the CTA, is covered by Headings 7224 to 7229. Chapter 72 is divided into 4 parts. Part-II covers non-alloy steel and Part-IV covers alloy steel. Admittedly, the said goods are alloy steel and classifiable under Heading 7228 of CTA. As per General Note 2A of ITC (HS), all quality conditions imposed under the BIS Act have to be complied with by the steel imported into India.

6] The Petitioners further state that in exercise of powers conferred by section 14 of the BIS Act, the Central Government issued the Steel Quality Control Order dated 12th March, 2012 which, inter alia, provides that no person shall by himself, or through any other person manufacture or store or sell or distribute any steel and steel products specified in the Schedule which do not conform to the specified standards and do not bear standard marks of the Bureau of Indian Standard on obtaining certification marks license as provided for in paragraph 4 thereof. The Schedule contains a list of steel products under mandatory Bureau of Indian Standards Certification and is divided into 3 columns. Column 1 covers the relevant Indian standard numbers. Column 2 refers to the corresponding heading/sub-heading of ITC (HS). The Schedule to this order was amended vide order dated 31st March, 2014. The said goods are covered by serial No.5 of the amended schedule which now also contains column 4 which relates to the date of coming into force of the product in the standard to the extent given therein. Serial No.5 of the amended schedule reads as under:-

Indian Standard Number	Title	ITC (HS)Code	Date of coming into force of the product in the standard to the extent given below	
1	2	3	4	
			(A)Product	(B)With effect from
1786	High Strength deformed steel bars and wires for concrete reinforcement(8 mm and above)	72131090 72142090	(a) High strength deformed steel bars and wires of diameter less than 12 mm	1st October, 2014
			(b) High strength deformed steel bars and wires of sizes between 12 mm and below 16 mm	31st March, 2013
			(c) for other products excluding (a) and (b) above	12th September, 2012

7] The Petitioners, then, state that it appears that the local manufacturers of steel and re-rollers of steel protested against the import of alloy steel and with a view to raise unwarranted and illegal barriers to the import of alloy steel products not covered by the Steel Quality Control Order, made false representations. During this period, in response to one such representation made by the Steel Re-Rollers Association of Maharashtra, Respondent No.3 vide letter dated 17th October, 2014 expressly confirmed that alloy steel products were not covered by Serial No.5 of the amended Schedule to the Steel Quality Control Order. By another email dated 30th September, 2014 addressed to the various manufacturers of steel and steel products in India, the Consultant to the Ministry of Steel also admitted that alloy steel was not covered by Serial No.5 of the amended schedule.

8] The Petitioners state that despite the above, one such Association had filed Writ Petition No.25958 of 2014 in the Hon'ble Kerala High Court against the Petitioners, but no orders therein have been passed against the Petitioners and the same is still pending. Accordingly, consignments imported by the Petitioners in Kerala have since been cleared. Notwithstanding the above, Respondent No.2 issued the impugned

Circular dated 7th November, 2014. In view of the impugned Circular, Respondent No.3 has held up the clearance of the consignments covered by Commercial Invoice dated 18th September, 2014.

9] It is this Circular which is challenged in the Writ Petition on several grounds. The Writ Petition was filed on 14th November, 2014. An affidavit in reply has been filed by the Respondent No.4 in which the Respondent No.4 has clarified in para 11 as under;

> *"I also say that the 4th Respondent has further issued Steel and Steel Product (Quality Control), Amendment Order, 2014 on 4th December, 2014 wherein it is clearly set out that ITC (HS) codes are generic and merely indicative in nature. It is not exhaustive. Thus ITC (HS) codes are not the guiding criteria for the BIS Act. The said ITC (HS) codes are only used as a point of reference. The said order clears all the confusion pertaining to inclusion of alloy and non-alloy steel in the Schedule. In view of the said order, the Petitioner cannot raise such allegations as the same are contrary to the statute.*

10] Mr. Nankani, learned Senior Counsel, submits that the controversy in the Writ Petition is now restricted to the position prevailing prior to 7th November, 2014. Though the Petitioner is partially satisfied with the above clarification issued in the affidavit in reply, yet, the amendment made vide page 165 of the paper book does not redress the grievance of the Petitioner completely. Now, in terms of the amendment the consignments prior thereto ought to be treated accordingly. However, since there is no such commitment forthcoming, the Petitioner is raising a restricted challenge. Mr. Nankani submits that the Circular at page 106 of the paper book has been issued without any authority of law. It is submitted by Mr. Nankani that the Respondent No.2 Board and Ministry of Steel, Government of India, both have no authority to issue such Circular. The ITC (HS) is a code by itself. Alloy and non-alloy are shown separately therein. The Board cannot disregard the binding decisions and, therefore, the attempt made by the impugned Circular is bad in law.

11] Mr. Nankani has submitted that admittedly, the goods in the present case are alloy steel. Hence, the said goods are not covered by column 3 of the amended schedule against serial No.5 hereunder. The mere fact that the corresponding BIS 1786 covers both alloy steel as well as non-alloy steel is not sufficient to attract the provisions of the Steel Quality Control Order. As such, the impugned Circular is arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

12] He further states that the impugned Circular is based on irrelevant, extraneous and non-germane consideration inasmuch as the headings/sub-headings of ITC (HS) are not indicative, but are definitive, conclusive and binding as a condition for applicability of the Steel Quality

Control Order to the goods mentioned in the Schedule thereto. This is clear from the fact that in some cases, like serial Nos.6 and 7, the amended schedule covers only alloy steel products. By reference to the relevant sub-headings/headings of ITC (HS) pertaining to alloy as well as non-alloy steel falling under Chapter 72, if the headings/sub-headings of ITC (HS) were indicative, such marked and expressed difference in the scope, ambit and content of column 3 in relation to each serial number of the amended Schedule would not be different. It is therefore, submitted that the heading/sub-heading of ITC (HS) is an integral part and condition of the Steel Quality Control Order which has to be mandatorily applied. This was also the view expressed in the letter dated 17th October, 2014 as well as the email dated 30th September, 2014 (Exhibits "F" and "G" respectively). It is, therefore, submitted that the impugned Circular, to the extent, it is based on irrelevant consideration, is without and/or in excess of jurisdiction and, therefore, violative of Article 14 of the Constitution of India. The impugned Circular has been issued with a malafide intention to favour some of the manufacturers and/or re-rollers of steel, who have vested interests and discriminate against persons like the Petitioners. The impugned Circular is a clear case of bias against the Petitioners and reveals the case of nepotism in relation to some of the manufacturers and/or re-rollers of steel. The impugned Circular, is therefore, arbitrary, unreasonable and violative of Article 14 and Article 19(1)(g) of the Constitution of India.

13] Mr. Nankani has further submitted that the impugned Circular ignores relevant facts and provisions of law. The explanation to the amended schedule, on a plain reading, confirms that in order that the provisions of the Steel Quality Control Order are made applicable, the goods must fall under both the relevant BIS standards a well as ITC (HS) Code. The explanation to the amended schedule reads as under:

> *"**Explanation** : For the purposes of this Order, it is hereby clarified that while taking a decision on the levy of duty as per the Customs Tariff Heads, the provisions of this Order shall apply to the specific products described under corresponding entry under column (2), covered under the Indian Standard number mentioned under corresponding entry under column (1) and in such case this Order shall not apply to those products which falls under the ITC (HS) Codes mentioned in corresponding entry under column (3) but do not fall under the corresponding Indian Standards mentioned under column (1)."*

A plain reading of the above explanation indicates that any goods falling under ITC (HS) Codes notified under the Order shall not be restricted if they are not covered by the corresponding BIS Standard in Column (1). However, nothing in the said Explanation can be construed to mean that the Order shall be applicable to goods for which no ITC (HS) Codes have been notified at all.

To the same effect, General Note 2A also belies the basis of the impugned Circular. The impugned Circular has therefore, been issued without due and proper application of mind and in mechanical and colourable exercise of powers vested in Respondent No.2. The impugned Circular is, therefore, liable to be quashed and set aside. The impugned Circular has the effect of adding new conditions and/or amending the Steel Quality Control Order. The impugned Circular is administrative in nature. The Steel Quality Control Order is statutory in nature. To the extent, the impugned Circular has the effect of amending the Steel Quality Control Order, the same is illegal and bad in law and therefore, liable to be quashed and set aside.

14] Mr. Nankani has in support of his above contentions relied upon The Bureau of Indian Standards Act, 1986, The Foreign Trade (Development and Regulation) Act, 1992 and the Steel Quality Control Order, 2012 with the amendments made thereto. Mr. Nankani has also relied upon Chapter 72 of ITC (HS).

15] Mr. Nankani has relied on the two decisions of the Hon'ble Supreme Court in the case of ***(1) R. D. Goyal and Another V/s. Reliance Industries Ltd. reported in (2003) 1 Supreme Court Cases 81; and (2)***

C. Gupta V/s. Glaxo-Smithkline Pharmaceuticals Ltd. reported in (2007) 7 Supreme Court Cases 171.

16] On the other hand, the learned Additional Solicitor General, who has appeared on behalf of Respondent No.1, 4, 5 and 6 submitted that in the affidavit in reply the matter has been clarified amply. Mr. Singh submits that there are three different statutes and contemplating three different authorities. The standard and quality of goods (BIS) is for the purposes of safety and preserving and protecting public health. Those standards and qualities are evolved and every country is free to prescribe its own standards and qualities of goods. Mr. Singh has relied upon para 9 of the affidavit in reply to submit that the goods imported by the Petitioners are meant for consumption of construction industries that is for concrete reinforcement purposes. Further, it is not disputed that the manufacturer or exporter overseas/abroad has not applied for a BIS license and the goods imported do not bear the standard mark of BIS.

17] Mr. Singh has relied upon para 10, 11 and 15 of the affidavit in reply which read as under:-

> *"10. I say that the Schedule to the Steel and Steel Products Quality control in column 3 thereof gives ITC (HS) Code which has been defined in Clause 2(d) of the Order to mean*

'Indian Trade Classification' (Harmonised Systems) Codes as specified in the entries in column (3) of the Schedule. However, there is no reference to the ITC (HS) Codes at any other place other than column 3 of the Schedule and the Explanatory Note (in the) Steel and Steel Products Quality Control Order. Also clause 3 provides that a person is prohibited to manufacture, storage or sale or distribution of steel and steel products which do not confirm to BIS specifications. Clause 3 however does not circumscribe the scope of the said prohibition only in respect of ITC (HS) Codes as specified in column 3 of the Schedule. In fact clause 3 only provides that prohibition would apply to products specified/described in column 2 for which a BIS standard exists in column 1 of the Schedule.

11. *I also say that the 4th Respondent has further issued Steel and Steel Product (Quality Control), Amendment Order, 2014 on 4th December, 2014 wherein it is clearly set out that ITC (HS) codes are generic and merely indicative in nature. It is not exhaustive. Thus ITC (HS) codes are not the guiding criteria for the BIS Act. The said ITC (HS) codes are only used as a point of reference. The said order clears all the confusion pertaining to inclusion of alloy and non-alloy steel in the Schedule. In view of the said order, the Petitioner cannot raise such allegations as the same are contrary to the statute.*

15. *With reference to paragraph 3, I say that the impugned circular does not add or include any condition or enlarges conditions which did not exist in the Steel and Steel Product (Quality Control) Order, 2012 as amended by the Order dated 31st March, 2014 as alleged or at all. I say that as per the Indian Standards, the Boron containing TMT bars/rebars are already included in the Indian Standards IS 1786 and thus in turn covered under the 2012 order. Moreover, the 2012 order is issued under the provisions of BIS Act and thus the same is issued in conformity with the object and spirit of the said Act. I deny that the 2012 order covers only non-alloy steel insofar as Deformed Bars are concerned as alleged or at all and puts the Petitioner to strict proof thereof. I deny that*

> *by the impugned circular the 2012 order has arbitrarily extended to allow steel. I deny that the 2012 order has not been amended or that it has disregarded past practice or clearance of allowing import of alloy steel as alleged or at all."*

18] He, therefore, submits that by Steel and Steel Product (Quality Control) Amendment Order, 2014 passed by the 4th Respondent on 4th December, 2014, it is re-affirmed that ITC (HS) Codes are merely indicative and not exhaustive. That is not a guiding criteria for the BIS Act. For all these reasons, it is submitted that there is no violation of the mandate of Article 14 or 21 of the Constitution of India. He submits that there is no merit in the Writ Petition particularly when the allegations of malafide and discrimination are patently false.

19] Mr. Rafiq Dada and Mr. D. B. Shroff, learned Senior Counsel, appearing for some of the Associations have supported the stand taken by Mr. Singh.

20] For properly appreciating the rival contentions, a reference is necessary to the statutes in the field. The Bureau of Indian Standards Act, 1986 is an Act to provide for the establishment of a Bureau for the harmonious development of the activities of standardisation, marking and quality certification of goods and for matters connected therewith or incidental thereto. Section 2 contains the definitions. The term Indian Standard is defined in section 2(g) which reads as under:-

> *"2(g) 'Indian Standard' means the standard (including any tentative or provisional standard) established and published by the Bureau, in relation to any article or process indicative of the quality and specification of such article or process and includes –*
>
> *(i) any standard recognized by the Bureau under clause (b) of section 10; and*
>
> *(ii) any standard established and published, or recognized, by the Indian Standards Institution and which is in force immediately before the date of establishment of the Bureau."*

21] A perusal thereof would reveal that it is a standard established and published by the Bureau of Indian Standards, in relation to any article or process indicative of the quality and specification of such article or process and includes any standard recognized by the Bureau under clause (b) of section 10 or any standard established and published, or recognized, by the Indian Standards Institution (ISI) and which is in force immediately before the date of establishment of the Bureau.

22] The statement of objects and reasons to the BIS Act reveals as to how a national strategy for according appropriate recognition and importance of standards is to be evolved and integrated with the growth and development of production and export in various sectors of the national economy. That is why all the sectors have to intensify efforts to produce more and more standard and quality goods so as to help in inducing faster growth, increasing exports and making available goods to the satisfaction of the consumers. Towards this end, the Act has been enacted and the terms have been defined. The further definitions and which we are required to notice are of the terms "specification" under section 2(s) and "standard mark" in section 2(t). These definitions would demonstrate as to how the Bureau which has been established in terms of Chapter II and III will exercise its functions and perform the duties as may be assigned to it by or under the Act. Mr. Nankani has relied upon the definitions of the term process, specification and standard mark. They are to be found in section 2(o), 2(s) and 2(t) of the BIS Act. These clauses read as under:-

> *"2(o) "Process" includes any practice, treatment and mode of manufacture of any article;*
>
> *2(s) "Specification" means a description of an article or process as far as practicable by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, material, mode of manufacture or other characteristics to distinguish it from any other article or process;*
>
> *2(t) "Standard Mark" means the Bureau of Indian Standards Certification Mark specified by the Bureau to represent a particular Indian Standard and also includes any Indian Standards Institution Certification Mark specified by the Indian Standards Institution."*

23] Then, Mr. Nankani has relied upon section 11 and to urge that no person shall use, in relation to any article or process, or in the title of any patent, or any trade mark or design the Standard Mark or any colourable imitation thereof, except under a licence.

24] Mr. Nankani has also invited our attention to section 14 of this Act which reads as under:-

> *"14. **Compulsory use of Standard Mark for articles and processes to certain scheduled industries.**– If the Central Government, after consulting the Bureau, is of the opinion that it is necessary or expedient so to do, in the public interest, it may, by order published in the Official Gazette, –*
>
> *a. notify any article or process of any scheduled industry which shall conform to the Indian Standard; and*
>
> *b. direct the use of the Standard Mark under a licence as compulsory on such article or process.*
>
> *Explanation – For the purposes of this section, the expression "schedule industry" shall have the meaning assigned to it in the Industries (Development and Regulation) Act, 1951(65 of 1951)."*

25] Then, we are required to refer to the Industries (Development and Regulation)Act, 1951 only for the purposes of the definition of the term "scheduled industry". That word has been defined in section 3(i) to mean any of the industries specified in the first schedule to the Industries (Development and Regulation)Act, 1951. This schedule enlists various types of industries engaged in the manufacture or production of any of the articles mentioned under the headings or sub-headings mentioned therein. The Bureau can be consulted by the Central Government and if it is necessary or expedient so to do in the public interest, it may, by order published in the official Gazette notify any Article or process of any scheduled industry which shall conform to the Indian Standard.

26] The other statute is the Foreign Trade (Development and Regulation) Act, 1992 and Mr. Nankani has relied upon that Act as it enables the Central Government to exercise powers to make provisions relating to imports and exports. Chapter II of the Act deals with the power of Central Government to make provision for the development and regulation of foreign trade by facilitating imports and increasing exports. It can formulate and announce the Foreign Trade Policy(see section 5). Section 3 and 6 of the Act reads as under:-

> *"3. **Powers to make provisions relating to imports and exports.** – (1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.*
> *(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.]
(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.
[(4) without prejudice to anything contained in any other law, rule, regulation, notification or order, no permit or licence shall be necessary for import or export of any goods, nor any goods shall be prohibited for import or export except, as may be required under this Act, or rules or orders made thereunder.]

*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."

27] Chapter III of this Act deals with the importer and exporter Code number and licence. That is to enable allotment and grant of a code number by the Director General or the officer authorised by him in accordance with the procedure specified in this behalf by the Director

General so as to facilitate import or export. That is in terms of the policy, namely, export and import policy formulated and announced by the Central Government under section 5. Mr. Nankani placed heavy reliance on the Foreign Trade Policy and Handbook of Procedures with forms, circulars and public notices.

28] Mr. Nankani has also placed reliance upon Chapter 72 of the ITC (HS). Prior thereto we must also refer to General Note 2(A) of Part-1 Schedule 1- Import Policy.

29] However, before that we must note that the Foreign Trade Policy 2009-2014 and Part 1 thereof contains general provisions regarding imports and exports. That Chapter 2 has some pertinent provisions which read as under:-

> *"(a)Exports and Imports shall be 'Free', except when regulated. Such regulation would be as per FTP and /or ITC (HS).*
> *(b) ITC (HS) contains the item wise export and import policy regimes. The ITC (HS) is aligned with international Harmonized System goods nomenclature maintained by World Customs Organization (http://www.wcoomd.org).*
> *(c) Schedule 1 of ITC (HS) gives the Import Policy Regime and Schedule 2 of ITC (HS) gives the Export Policy Regime.*
> *(d) Except where it is clearly specified in Schedule 1 of ITC (HS), Import Policy is for new goods and not for*

Second Hand goods. For Second Hand goods, the Import Policy Regime is given in Para 2.17 on this FTP."

30] Thus, the exports and imports shall be 'free' except when regulated. The ITC (HS) contains the item wise export and import policy regimes. The ITC (HS) is aligned with international Harmonized System goods nomenclature maintained by World Customs Organization. In this case, the classification of export and import items with effective rates of customs duty for each item has been relied upon. Para 2.2 of the Foreign Trade Policy indicates as to how all imported goods shall also be subject to domestic laws, acts, rules, orders, regulations, technical specifications, environmental and safety norms as applicable to domestically produced goods. The general notes laid down in Part 1 Schedule 1 – Import Policy ITC (HS) Classification for Imports apply to imported goods. Note 2 is important and reads as under:-

*"**2. Indian Quality Standards** :*
(A) Mandatory Indian Standards of Bureau of Indian Standards (BIS) :

Quality of the products that are subject to mandatory Indian Standards, as applicable to domestic goods, shall be required to comply with quality specified for the product as per same Indian Standards. For compliance of this requirement, all manufactures/exporters of these products to India, shall be required to obtain BIS license for using Standards mark on their product. The present list of 'Items under mandatory BIS certification' is given in Appendix-III of this Schedule. As and when BIS notifies the quality specifications for new product(s)

> *as an Indian Standards, the said Indian Standards would deemed to be part of Appendix-III from the date of implementation of the said Indian Standards for the said product(s) and the import of that product(s) shall conform to that specified Indian Standard from the date of implementation as specified for the said product(s) by BIS."*

31] It is in this context that the ITC (HS) classification of export and import items with customs tariff rates and exemptions have to be seen. Chapter 72 is entitled "Iron and Steel". Steel, stainless steel, other alloy steel and with EXIM Code, item description, policy, basic duty, effective duty, etc. is set out after the Supplementary Notes and in relation thereto iron and non-alloy steel is relied upon by the Petitioners and similarly EXIM Code 7213 entitled "Bars and rods, hot-rolled, in irregularly wound coils, or iron or non-alloy steel." EXIM Code 7218 is entitled "stainless steel". Stainless steel in ingots or other primary forms; semi-finished products of stainless steel and EXIM Code 7224 dealing with other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel and EXIM Code 7228 is relied upon.

32] The Indian Standard high strength deformed steel bars and wires for concrete reinforcement Specification and the British Standards in relation to steel for the reinforcement of concrete - weldable reinforcing steel – Bar, coil and decoiled product, specification are both referred to.

33] The whole attempt of the Petitioners appears to be to demonstrate as to how the product or article or goods imported by them comply with British Standards and Quality (BIS) Standards and, therefore, there is no further requirement of such imported goods complying with Indian Standards.

34] It is submitted that in relation to the goods which have been brought in, the twin tests which are laid down in the schedule to the Steel Quality Control Order are not satisfied. The serial numbers in Chapter 72 of ITC (HS) and heading/sub-heading 72131090 and 72142090 relate to non-alloy steel. The Petitioners are bringing in alloy steel. They are not covered by column No.3 of the amended schedule against serial No.5. The mere fact that the corresponding BIS 1786 covers both alloy steel as well as non-alloy steel is not sufficient to attract the provisions of the Steel Quality Control Order is the essential argument. We are of the opinion that this argument is entirely misconceived.

35] The, impugned circular dated 7th November, 2013 Annexure-H to the Writ Petition No.2909 of 2014 reads as under:-

> *"The matter has been examined by the Board. It is seen*

that in few imports at Chennai the imported goods contained more than 0.0008% and fell under CTH 7228 while said Steel Products Quality Control Order, 2012 mentions goods falling under CTH 72131090 and 72142090 (Sr. No.5 of the said Order refers). Sine CTH 7228 was not mentioned in the said Steel Products Quality Control Order, 2012 the Commissioner of Customs (Imports), Chennai referred the matter to Bureau of Indian Standards for clarification. The Board also made a reference to Ministry of Steel to align the Steel Products Quality Control Order, 2012 with the correct CTH.

In this regard, Ministry of Steel has informed that the Steel Products Quality Control Order, 2012 is strictly based on the relevant Indian Standard though ITC (HS) Code has been provided for reference purposes. This is also clarified in the "Explanation" to the said Steel Products Quality Control Order, 2012. Ministry of Steel has concluded that all products covered by the relevant Indian Standard fall under the said Steel Products Quality Control Order, 2012 and import of such products without BIS certification is in circumvention of the said Order. It is categorically confirmed that re-bar/TMT bar containing 0.0008% or more Boron falling under alloy steel category is covered by Indian Standard IS 1786 regardless of the ITC(HS) Code given in the said Steel Products Quality Control Order, 2012. Ministry of Steel has urged that imports circumventing the said Steel Products Quality Control Order, 2012 should stopped in view of their damage to the interest of the Indian Steel industry as well as from the angle of safety of infrastructure and housing projects in the country.

Bureau of Indian Standards has confirmed that as per Amendment No.1 to IS 1786:2008, the addition of micro-alloying strengthening elements such as Niobium, Vanadlum. Boron and Titanium are permitted when used individually or in combination provided the total contents shall not exceed 0.30%. Bureau of Indian Standards has recommended that its clearance should be sought in case importers declare that there-bars/alloy grade bars/high strength deformed steel bars and wires for concrete reinforcement are not covered under mandatory BIS certification.

The Board notes that Ministry of Steel and the Bureau of

> *Indian Standards are mandated to give a ruling on the applicability of BIS certification on the said imported items. Therefore, in view of the categorical confirmation received from both Ministry of Steel and Bureau of Indian Standards, the relevant factor in determining the applicability of BIS Standard would be the description of the product in the Indian Standard and not the indicated ITC (HS)code. Further, IS 1786:2008 permits the use of Boron and other specified elements individually or in combination upto a limit of 0.30%. Hence, imports of said imported items that are covered by the description of the product in the Indian Standard would require BIS certification. In case of doubt, a clarification may be sought from Bureau of Indian Standards. The Board is separately requesting Ministry of Steel to include all relevant ITC (HS) Codes in the Steel Products Quality Control Order, 2012."*

36] A perusal thereof and in entirety would reveal that the Board has examined the matter, namely, the Central Board of Excise and Customs, Government of India, Ministry of Finance, Department of Revenue and it also made a reference to the Ministry of steel to align the Steel Products Quality Control Order, 2012 with the correct CTH and we do not find that the import of the goods being permitted strictly in accordance with the legal provisions mentioned in this circular including that of BIS certification is in any way contrary to law. The reference made therein to the Board of Indian Standards and to ITC (HS) Code and, inter alia, to the goods brought in by parties like the Petitioner in India confirming to the standards and quality devised by the Board is to caution that no violation of the quality standards is permissible. We do not see how such a stand taken in the circular can be said to be violating the mandate of Article 14 of the Constitution of India. Chapter 72 of the ITC (HS) is dealing with Iron and Steel and contains Notes and Supplementary Notes. That is classification of Export and Import items with Customs Tariff Rates and Exemptions. The code is to facilitate Import-Export and referable to section 7 of the Foreign Trade (Development and Regulation) Act, 1992.

37] We are in agreement with Mr. Singh, learned Additional Solicitor General of India, that even imported goods and which are to be used in this case for construction industries should meet the standards of quality. Mr. Singh and Mr. Dada were right in contending that larger public interest is subserved by insisting on the imported goods complying with all the domestic laws.

38] We have perused all the relevant material. It is referred by us extensively hereinabove. It is brought on record by the Petitioners. We have not found anything either in the Foreign Trade (Development and Regulation) Act, 1992 or in the Import Policy or the Iron and Steel Quality Control Order, 2012 which would enable us to hold that the quality standards devised are not applicable to the imported goods or that they would not apply to the Petitioners at all.

39] In the affidavit in reply, it has been pointed out as to how the Bureau of Indian Standards has issued Indian Standard 1786:2008 for high strength deformed bars and wires which are used for the purpose of concrete reinforcement in construction of buildings and infrastructure. The said standard also applies to other alloy as well as non-alloy variety of high strength deformed bars and wires. We have perused a copy of the Indian Standard 1786:2008 which is at Annexure-A to the affidavit in reply. We have also found that the Bureau was consulted by the Respondent No.4 to this Writ Petition, namely, Department of Steel, Government of India and thereafter issued the Steel and Steel Products (Quality Control) Second Order, 2012. This order prohibits the manufacture or storage for sale or distribution of any steel product specified in the schedule to the 2012 order which does not conform to the BIS standard IS:1786 specifications. Serial No.5 of the amended schedule to the 2012 order covers high strength deformed steel bars and wires for concrete reinforcement (8mm and above). They have to necessarily meet with the specifications set out in the standards and have to bear the standard mark of the BIS. This is apparent from reading of Foreign Trade Policy, 2009-2014, ITC (HS), 2012. The Import Policy and General Notes regarding import policy, whereunder it is stipulated that all goods imported into India are subject to mandatory Indian Standards as notified. They have to comply with the domestic laws. It is not the case of the Petitioners that the domestic law or any provision thereunder is ultra vires the Constitution of India and particularly Article 14 thereof. They are not contending that every single act on their part after the goods reach India cannot be subjected to the domestic laws. In such circumstances and when all the laws and dealing with different matters and covering separate areas and field have to be interpreted and construed in harmony with each other that we are of the opinion that there is no merit in the contentions of Mr. Nankani. He would rely upon section 40 of the Bureau of Indian Standards Act, 1986 to urge that this Act shall not affect operation of certain Acts. However, a perusal of section 40 would indicate that the operation of the Agricultural Produce (Grading and Marketing) Act, 1937 or the Drugs and Cosmetics Act, 1940 or any other law for the time being in force, and which deals with any standard or quality control of any article or process alone is not affected by the Bureau of Standard Acts, 1986.

40] We do not find anything in the provisions and which are relied upon as indicative of the fact that the standards and which are devised so as to take care of the quality and specification of the article or process, do not facilitate foreign trade. The Foreign Trade (Development and Regulation) Act, 1992 or the Customs Act, 1962 cannot be construed so as to override the BIS Act, 1986 insofar as the prescription and devising of standards. If the Petitioners have imported goods which are of the description BIS 1786:2008, then, such goods meant for construction industries not having the BIS license and the imported goods not bearing the standard mark–BIS, that the circular cautioning the customs officers and adjudicating authorities has been rightly issued by the Central Board of Excise and Customs(CBEC). Pertinently, the power of the CBEC to issue such circular has not been questioned or challenged. We do not find that the stand taken by the Respondents and reflected in para 9 to 11 and 15 of the affidavit in reply can be said to be unreasonable, unfair, illegal, arbitrary or discriminatory. We do not find that the mandate of article 14 of the Constitution of India is in any way violated. We are also satisfied that the clarification issued by the Steel and Steel Product (Quality Control) Amendment Order, 2014 is not contrary to the legal position noted above. We have found that the order, copy of which is appearing at page 167 of the paper book, issued in exercise of the power conferred by section 14 of the BIS Act and upon consultation with the Bureau of Indian Standards, by the Central Government so as to make amendment to the Steel and Steel Products (Quality Control) order indicates that the products or goods imported are covered by the standards referred above.

41] We are also not in agreement with Mr. Nankani that the impugned circular is issued without authority of law. This argument is premised on the fact that the Central Board of Excise and Customs and Ministry of Steel have no authority in matters covered by the Bureau of Indian Standards Act, 1986. This argument overlooks the fact that the Board in exercise of the powers conferred by the Customs Act, 1962 can issue these circulars. These circulars are being issued in public interest and to caution the officers exercising their powers under the Customs Act, 1962 that import of goods which is not permissible both under the Customs Act, 1962 and under the Domestic laws should not be facilitated much less permitted. Chapter IV in which section 11 of the Customs Act, 1962 appears, confers power in the Central Government to prohibit importation or exportation of goods and for achieving the purpose set out in sub section(2). The power under sub-section(1) can be exercised to prohibit importation or exportation of goods so as to maintain the standards for the classification, grading or marketing of goods in international trade. The prohibition can also extend for the purpose of protection of human, animal or plant life or health and for compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India. Last but not the least, the power can also be exercised to prevent the contravention of any law for the time being in force or any other purpose conducive to the interest of the general public. In such circumstances, we are not in agreement with Mr. Nankani that the Board lacked the power to issue the impugned circular.

42] Similarly, we are not in agreement with Mr. Nankani that the ITC (HS) is code by itself. His argument overlooks the fact that the same is only to identify the goods which are permitted to be imported or exported. That is a code devised in terms of the Foreign Trade (Development and Regulation)Act, 1992 so as to identify the goods which are imported or exported. It is an importer or exporter code number which is essential. However, the act under which all this is devised itself clarifies that the Central Government may make a 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. In relation to this aspect section 3 of the Foreign Trade (Development and Regulation) Act, 1992 needs to be noticed. That reads as under:-

> *"3. Powers to make provisions relating to imports and exports. – (1) The Central Government may, by Order published in the*

> *Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.*
> *(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.]*
> *(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.*
> *[(4) without prejudice to anything contained in any other law, rule, regulation, notification or order, no permit or licence shall be necessary for import or export of any goods, nor any goods shall be prohibited for import or export except, as may be required under this Act, or rules or orders made thereunder.]*

43] A bare perusal thereof would denote that foreign trade ought to be developed and regulated. The act contains both facilitating and regulatory measures. It is in terms of such an act that import is facilitated. For facilitation of import and export and regulation of foreign trade, that the products, articles and goods are identified. Beyond that, the ITC (HS) codes will not serve any purpose.

44] Rather, the standard devised for high strength deformed steel bars and wires for concrete reinforcement - specification will have to be complied with. Mr. Nankani could not dispute that the schedule and which is styled as the Steel and Steel Products (Quality Control) Second (Amendment) Order, 2014 made by the Central Government under section 14 of the BIS Act, 1986 sets out the Indian standard number, the title of the goods and date of coming into force of the product standard to the extent set out therein. The ITC (HS) Code is for reference purposes. It also indicates as to how the title listing the steel products has to be construed and with reference to the ITC (HS)Code. The standards have to be complied with and from the dates mentioned therein.

45] In the above circumstances we do not find any basis to hold that the Circular issued on 7th November, 2014 is ultra vires Article 14 of the Constitution of India. We are of the opinion that the Circular in no way prohibits the Petitioners from importing the goods. The same does not hold up unnecessarily the consignments. We are also not in agreement with the Petitioners that the Circular is based on irrelevant, extraneous and non-germane considerations. The circular is also not discriminatory or malafide. It is not ignoring any of the provisions of law. The Circular does not violate the mandate of Article 19(1)(g) of the Constitution of

India or 300A of the Constitution of India. As a result of this conclusion, the Writ Petitions fail. Rule is discharged in each of these Writ Petitions. There will be no orders as to costs.

(A. A. SAYED, J.) **(S.C. DHARMADHIKARI, J.)**

wadhwa