IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14375 OF 2016

Larsen & Toubro Limited,
a Company incorporated under the
Indian Companies Act, 1913 and
having its registered office at
L & T House, Ballard Estate,
Mumbai and having its EAIC,
Control and Automation Business
Unit, Automation Campus,
Navi Mumbai – 400 710. .... Petitioner

- Versus -

1. Union of India through
   (a) The Joint Secretary,
   Ministry of Commerce having its
   office at Udyog Bhavan,
   New Delhi – 110 001.

   (b) The Joint Secretary,
   Ministry of Law, Justice & Company
   Affairs, having his office at
   Ayakar Bhavan, M.K. Road,
   Churchgate, Mumbai-400 020.

2. Director General of Foreign Trade,
   having its office at Directorate
   General of Foreign Trade,
   Udyog Bhawan, New Delhi

3. Zonal Additional Director General
   of Foreign Trade, having its
   office at New CGO Building,
   Marine Lines, Mumbai-400 020.

4. Zonal Deputy Director General of
Foreign Trade, having its
office at New CGO Building,
Marine Lines, Mumbai-400 020. .... Respondents

Mr. Vikram Nankani, Senior Advocate with Mr. Prakash Shah, Mr. Ashish Chouhan, Mr. Prithviraj Choudhari & Mr. Jas Sanghavi i/by M/s. PDS Legal for the Petitioner.

Mr. R.V. Desai, Senior Advocate with Mr. Parag Vyas for the Respondents.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

DATE : SEPTEMBER 12, 2017

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. Rule. The respondents waive service. Since a short point is involved and the pleadings are complete, with the consent of both sides, we dispose of this writ petition finally by this Judgment and Order.

2. The writ petition challenges a Letter dated 1-12-2016 issued by the Foreign Trade Development Officer, and a Show Cause Notice dated 22-7-2016 issued by the Deputy

Director General of Foreign Trade, Mumbai.

3. The petitioner seeks a writ of certiorari or any other writ, order or direction praying for calling of the records and proceedings and after scrutiny and verification of the impugned Letter, same be quashed and set aside and thereafter the respondents be directed to forthwith redeem the Advance Authorisation Licence No.0310424318, dated 26-3-2007 by accepting ARE1s as proof of export under paragraph 4.25 of Handbook of Procedures 2009-14.

4. The petitioner is a company incorporated and registered under the Indian Companies Act, 1913. It has its registered office at the address mentioned in the cause title. It is primarily engaged in the business of manufacturing and supplying of automated engineering products, including but not limited to “Remote I/O Control Panel” (hereinafter referred to as “the said product”) from its Unit situated at Navi Mumbai, District Thane in Maharashtra State. The respondents are entrusted with the implementation of the Foreign Trade

(Development & Regulation) Act, 1992 (for short, "the FTDR Act").

5. The petitioner states that the Control & Automation Division of the petitioner was awarded a contract/Order dated 13-2-2007, copy of which is at Annexure "A", by Reliance SEZ Unit, Jamnagar. The contract was for manufacture and supply of the said product.

6. The petitioner applied for issuance of an advance authorisation for duty free import of goods into India against supplies to be made to the purchasers. Annexure "B" is a copy of the said application based on which the Joint Director General of Foreign Trade, Mumbai, issued Advance Authorisation Licence bearing No.0310424318, dated 26-3-2007. That has been amended once on 20-10-2009. Annexures "C1" and "C2" are the copies of the Licence and the amendment sheet.

7. In terms of the relevant provisions of the Foreign Trade Policy 2004-09 ("the FTP" for short), the petitioner was

required to export a prescribed quantity of the said products for validly redeeming the Licence. It is the specific case of the petitioner that this export criteria was met by supplying the requisite goods to the purchasers against the Order, copy of which is at Annexure “A”. However, due to an inadvertent error, while having issued all the other necessary supporting documents, the petitioner omitted to file the Bills of Export corresponding to the said supplies at that relevant point of time.

8. The petitioner claims that the said product had in fact been supplied to the purchaser and had been used and installed in the SEZ Unit at Jamnagar. This fact is proved by a letter dated 30-8-2010, issued by the purchaser as well as a certificate issued by the Development Commissioner, Jamnagar (Reliance) SEZ. This certificate is dated 9-11-2012 and Annexures “D1” and “D2” are copies of the letter issued by the purchaser and the certificate, respectively.

9. Therefore, the petitioner filed all the necessary documents along with application dated 19-1-2010 for

redemption of the said Licence. It claimed that it has fulfilled the necessary export criteria.

10. The Regional Authority raised an objection by letter dated 22-3-2010 that valid Bills of Export have not been forwarded and the petitioner duly replied this letter on 11-11-2010 wherein it attached a copy of the letter of the purchaser as proof of supply of the said product. It is claimed that the concerned Regional Authority, Mumbai, issued a Demand Notice dated 12-11-2010 to which the petitioner duly replied by its letter dated 1-12-2010 that the goods have been actually supplied to the purchaser and accordingly requested that the Licence be redeemed. Annexures “F1” to “F4” are the copies of these letters.

11. Thereafter, a Defect Memo dated 25-3-2013 was issued, copy of which is at Annexure “G”. The petitioner states that a perusal of this Memo would reveal that the deficiency is due to the reasons stated therein.

12. Since both sides have referred to this letter, copy of which is at page 96 of the paper-book, we deem it appropriate to reproduce its relevant portion, which reads as under:-

> *"Sub:- Deficiency Letter*
>
> *Reference No: Original*
> *File:03/95/040/01557/AM07/Dated: 13.03.2007*
> *and Authorisation No: 0310424318*
> *Dated: 26.03.2007*
>
> *Sir/Madam,*
>
> *Your Application is deficient due to following reasons:*
>
> *(1) submit original Bill of Exports as per Policy (guidelines of ANF4F a(ii) (2) submit Certificate from C Excise showing the F.No./Lic.No. against the supplies made, also show the exempted material with technical specification to fulfill net to net accountability clause. (3) Copies of ARE3 & Tax invoices does not indicate this authorisation No/File No. (4) BRC is returned back in order to mention the Bill of Export numbers (5) submit Appx33 duly certified by CA (6) Submit Cenvat declaration as per para 4.1.5 of FTP from CA/Jurisdictional Central Excise authority (7) Submit 4 copies of No Bond Certificate.*
>
> *You are requested to remove above deficiencies within a period of 30 days from the date of issue of this letter, otherwise your case will be treated as closed."*

13. The petitioner pointed out on 27-4-2013, in writing,

that the Bill of Export has not been filed and in lieu of the same the certificate issued by the Development Commissioner, Jamnagar and Superintendent of Central Excise, Belapur certifying that the resultant product, namely, 341 numbers Remote I/O Control Panels have been manufactured and supplied to M/s. Reliance Petroleum Limited, SEZ. The request was to accept this certificate. It is stated that the exports have in fact been effected and the condition in that behalf in the advance authorisation is fulfilled.

14. There are further compliances indicated in this letter, copy of which is at pages 97 & 98 of the paper-book. The same reads as under:-

> *"The Additional Director General of Foreign Trade*
> *Mumbai*
>
> *Dear Sir,*
>
> *Redemption of LUT against Advance Authorisation No.0310424318 dated 26.3.2007 Your File No.03/95/040/01557/AM07*
>
> *We refer to your letter dated 25.3.2013 and furnish the following information/documents on the queries raised therein.*

*1. **<u>Submit original Bill of Exports</u>**: As already informed to you vide our letters dated 11.11.2010 (Key No.2694260 dated 22.11.2010), 10.12.2012 (Key No.3239140 dated 14.12.2012) and 11.3.2013 (Key No.3300474 dated 26.3.2013), the Bill of Export has not been filed and in lieu of the same we have submitted original certificate (copy enclosed) certified by Development Commissioner, Jamnagar and Supt. Of Central Excise, Belapur certifying that the Resultant Product viz. 341 Nos. Remote I/O Control Panels have been manufactured and supplied to M/s. Reliance Petroleum Limited, SEZ. We request you to accept this certificate.*

Further, we enclose original certificate certified by Suptd of Central Excise, Belapur certifying the exempted material with specification used in the manufacture of the Resultant Product viz. 341 Nos Remote I/O Control, Panels.

From the above documents, it is evident that the exports have been effected towards fulfillment of export obligation in respect of the said Advance Authorisation. We, therefore, once again request you not to insist on furnishing the Bill of Exports, in this case.

*2. **<u>Certificate from Central Excise</u>**: We enclose certificate in original dated 18.4.2013 issued by Suptd of Central Excise, Belapur, certifying exempted material with specification imported against Advance Authorisation No.0310424318 have been used in the manufacture of the Resultant Product viz. 341 Nos. Remote I/O Control, Panels and supplied to M/s. Reliance Petroleum Limited, SEZ.*

*3. **<u>Copies of ARE3 and Tax Invoice</u>**: We had through an oversight not indicated the Authorisation*

Number/File no on the ARE1 and Tax Invoices. We, have therefore submitted certificate in original from Suptd of Central Excise, Belapur certifying that exempted material with specification imported against Advance Authorisation No.0310424318 have been used in the manufacture of the Resultant Product viz. 341 Nos. Remote I/O Control, Panels.

*4. **Bill of Export to be indicated on BRC**: As stated above since the Bill of Export has not been file, the same cannot be indicated on the BRC. We, therefore request you to accept the BRC as submitted.*

*5. **Submit Appendix 23**: The Appendix 23 (copy enclosed) was submitted with our application for redemption on 19.1.2010 (Key No.2498510 dated 22.3.2010).*

*6. **Cenvat Declaration**: We hereby declare that all the imported inputs have been used in the manufacture of the Resultant Product and NO CENVAT has been availed on these inputs.*

*7. **No Bond Certificate**: As required, we enclose NO Bond Certificate in four sets.*

We request you to kindly accept the above, redeem the LUT and issue us the Export Discharge Certificate, at an early date.

Thanking you,

Yours faithfully,
For LARSEN & TOUBRO LIMITED
Sd/-
(SHAILESH GAITONDE)
Dy. General Manager

Encl: CC & EC Authorisation"

15. Thereafter, the petitioner relied upon the documents which are referred to in this communication to submit that the Policy requires fulfilment of the condition of export. There is no mandate in terms of the Policy or the procedural provision therein that a Bill of Export has to bee necessarily submitted. The emphasis is on proof of export and that is available from the record.

16. However, it is the case of the petitioner that the concerned Regional Authority by a letter dated 20-5-2013 advised the petitioner to approach the Policy Relaxation Committee and obtain a clarification on this aspect, particularly about non-filing of Bills of Export.

17. A detailed representation, copy of which is at Annexure "H5", dated 29-8-2013, was addressed to the Policy Relaxation Committee. The Policy Relaxation Committee on 21-1-2014 informed the petitioner that the issue was considered in its meeting dated 7-1-2014 but due to discrepancies in the

concerned ARE1s, the request for condonation of the procedural lapse of non-filing of Bill of Export could not be accepted. Therefore, the Regional Authority requested the petitioner to regularise the default in payment of duties. The petitioner addressed a letter dated 28-1-2014, Annexure “H7”, clarifying that the discrepancies are no longer in existence.

18. A request was made to the Policy Relaxation Committee to review its decision and that request was also made in writing by making an application on 11-12-2015.

19. On 22-7-2016, though the matter was pending before the Policy Relaxation Committee, the fourth respondent issued a Show Cause Notice to the petitioner. A copy of this Show Cause Notice dated 22-7-2016 and the petitioner's reply thereto are annexed as “J1” and “J2” to the paper-book.

20. Thereafter, on 10-8-2016 the Policy Relaxation Committee once again considered the request of the petitioner but rejected it.

21. The allegation to be found in para 18 of the petition is that in case of similar nature, the procedural lapses have been condoned and on the premise that what is insisted is proof of export obligation being fulfilled. That proof being available in cases of other entities, the licences were redeemed.

22. On 1-12-2016, the petitioner was informed by the third respondent that the redemption application cannot be accepted in the light of the decision of the Policy Relaxation Committee.

23. On being served with a copy of this petition and the annexures thereto, the respondents have filed an affidavit in reply of the Deputy Director General of Foreign Trade.

24. Apart from the preliminary objections, the affidavit proceeds to state that it is a policy decision and unless it is found to be arbitrary or perverse, there is no interference permissible therewith in this Court's writ jurisdiction. Evidently, the framers of the policy are free to interpret the same. If the matter pertains

to a policy decision and that is sought to be reviewed by the petitioner but that review is refused by assigning cogent and satisfactory reasons, then, this Court cannot exercise the appellate powers in interfering with such a decision. Evidently, a condition in the Policy cannot be relaxed as a matter of right. The Committee has considered the request in the light of the applicable provisions and dispassionately. Once the Committee finds that there is no proof of export, then, it has rightly refused to review the earlier decision. Hence, the writ petition be dismissed.

25. Then, it is stated that the petitioner can approach the Competent Authority who is adjudicating the Show Cause Notice and if the petitioner raises all such pleas, including based on the grounds in the writ petition, those would be duly considered and the Competent Authority will pass a reasoned order. That can also be challenged under the FTDR Act. Hence, there is no need to interfere in writ jurisdiction.

26. Finally it is urged that the Policy Relaxation

Committee is not obliged to grant a personal hearing so long as it has considered the representation within the framework of the Policy, but its decision being not to the liking of the petitioner does not mean that such decision should be quashed on the ground that principles of natural justice have not been followed. There is, therefore, no necessity of interfering in writ jurisdiction.

27. On merits it is submitted that though the petitioner relied upon Rule 30 of the Special Economic Zone Rules, 2006 (for short, "the SEZ Rules"), still, that does not take their case any further. The Rule 30 sets out the procedure for procurements from the Domestic Tariff Area. Even if the goods are stated to be dispatched from the Domestic Tariff Area to a SEZ and this is taken to be a case of deemed export, still, what has been stipulated by the Rule is that it should be followed by submission of documents and one of the documents is a copy of the Bill of Export with an endorsement by the authorised officer. In the present case, the petitioner has been informed that there is no compliance with this requirement or condition. In para 5 of

the reply, it is stated that although the goods have been supplied under the cover of ARE-1, which is more or less a self-declaration, the necessary scrutiny of documents and examination of goods is not carried out from the point of view of grant of export incentives. The certificate dated 9-11-2012, submitted by the petitioner along with its letter dated 29-8-2013, issued by the office of the Development Commissioner, Jamnagar (Reliance) SEZ does not mention the Advance Authorisation Number under which the supplies are made to the SEZ. It only mentions the ARE-1 numbers and their dates and it is important to note here that the AREs mentioned therein, also do not mention the Advance Authorisation Number. Hence, there is no correlation or nexus established and that is why the revised AREs submitted along with the letter dated 28-11-2013, purporting to mention the Advance Authorisation Number, is but an after-thought. It is meaningless because on the actual date of filing of the AREs, the Customs Officers in the SEZ were not made aware that the said supplies had anything to do with an advance authorisation. It is in these circumstances that the requirement of Bill of Export cannot be dispensed with. Hence, it is prayed that the writ petition be dismissed.

28. Mr. Vikram Nankani, learned Senior Advocate appearing in support of this petition, would submit that the only reason for not accepting the request of the petitioner is not forwarding of a Bill of Export. However, that is a pure procedural requirement. Once it is a pure procedural requirement, that cannot be elevated to the height of a mandatory prerequisite or precondition. The essential condition to be fulfilled is of forwarding the proof of export. Such proof of export is available on record. Once that proof is available, then, the Policy Relaxation Committee, consistent with the underlying object and purpose of encouraging foreign trade, should have accepted the petitioner's request. The petitioner with great hope approached this Policy Relaxation Committee but it has failed to carry out its duty in law. Further, it has failed to assign any reason as to why in cases of other advance authorisation holders such a condition, which is insisted upon in the case of the present petitioner, of furnishing of a Bill of Export, has not

been insisted or taken as a basis for not redeeming their licence earlier but later on it was redeemed. In other words, such a condition has been dispensed with in the case of similarly placed parties. That is how Mr. Nankani would invite our attention to pages 83, 99 and 102 to 104 of the paper-book and eventually, the decision of the Policy Relaxation Committee contained in the Minutes. He would submit that the petition, therefore, be allowed.

29. On the other hand, Mr. R.V. Desai, learned Senior Advocate, relying upon the contents of the affidavit in reply would submit that the condition as imposed cannot be relaxed and there are good reasons for not relaxing the same in the case of the petitioner. In that regard, Mr. Desai would invite our attention to the allegation in the Show Cause Notice to submit that the petitioner has not fulfilled the requirement of furnishing the proof of export. Therefore, the Show Cause Notice be allowed to be taken to its logical end. The writ petition be dismissed.

30. The respondents also relied on the Handbook of Procedures which sets out this condition.

31. The petitioner relies upon a Notice of Award ("NOA" for short), copy of which is at page 23. That is a Notice from Reliance Petroleum Limited, for short, Reliance. Reliance states that it is interested in obtaining supply of Remote I/O Package Panel and Automation Systems. This Notice confirms the Award to the petitioner to design, manufacture, supply, test, erect, field testing and commissioning of this Panel/said product in pursuance of its inquiry/NOA dated 13-2-2007. The description and schedule of quantities has been set out. The supply is of Data Concentrator for 36 sub-stations. Thereafter, the specifications have been set out. The quantities are indicative and they will be finalised during detailed engineering. The other terms and conditions would denote that stage-wise contractual delivery schedule for goods is contemplated by the parties. The Clause 4 sets out the delivery schedule and delivery and liquidated damages is dealt with by Clause 5. The schedule is based on the assumption that drawing shall be submitted within

fifteen days of the NOA and approval is done within fifteen days of the submission. Then the major milestones would have to be provided in a schedule within two weeks from the date of issue of the NOA. The effective date of the contract shall be the date of the NOA for all contractual purposes, including delivery. This document has some annexures but we shall not refer to them for the simple reason that we are concerned here with the application made on 22-6-2006 to the Joint Director General of Foreign Trade by the petitioner. The petitioner refers to an order dated 13-2-2007 from M/s. Reliance Petroleum Limited, Jamnagar for the manufacture/export of 425 numbers Remote I/O Control Panels for a total FOB value of US$ 32,00,000/- lakhs and Indian Rupees 14,40,00,000/-. This application with the relevant details reads as under:-

> *"In terms of Para 4.1, 4.1.3 and 4.1.3(i), of Chapter 4 of the Foreign Trade Policy read with Para 4.4.2 & 4.7 of the Hand Book of Procedures for 2004-2009, we submit herewith our application for issue of Advance Authorisation for a CIF value of US$ 21,50,936/- (Rs.9,67,92,120/-) in terms of* ***Customs Notification No.93/2004 dated 10.9.2004****.*
>
> *To enable you to issue the Advance Authorisation, we*

enclose application along with the following:

1. BID No.535996 dated 12.3.2007 for Rs.75000/- (Annexure A).
2. Appendix 2 in duplicate (Annexure B).
3. Copy of DEPB Enrollment No.03/DEPB/159/FAS-II dated 5.8.99 (Annexure C).
4. Authorisation of the Signatory to sign the application (Annexure D).
5. List of Directors (Annexure E).
6. Copy of Import-Export Code allotment letter No.0388024011 (Annexure F).
7. RCMC:B:M&M:6892:2005-2006 dated 13/1/06 valid upto 13/3/2009 (Annexure G).
8. Certificate from Chartered Engineer ref.IAS/L&T/55 dated 12.3.2007 (Annexure H).
9. Three Star Export House Certificate No.000018 dated 10.2.05 valid upto 31.3.09 (Annex I)
10. Copy of our Industrial Licence (Annexure K).
11. Copy of Order (Annexure L).
12. Copy of Flow Chart indicating the manufacturing process (Annexure M).
13. Details of Outstanding Licences under Duty Exemption Scheme (Annexure N).
14. Declaration as per Handbook of Procedures (Annexure O).
15. Declaration (Annexure P)
16. Declaration (Annexure Q)
17. Declaration (Annexure R)
18. Declaration (Annexure S)
19. Declaration (Annexure T)
20. Declaration (Annexure U)
21. Statement of Exports for the preceding three liccensing years (Annexure V).
22. List of Goods.

In terms of Public Notice No.9 dated 2.12.2004, the following information/documents are attached:

> *1. Weight of the Equipment.*
> *2. Detailed drawing of the Resultant Product.*
>
> *We also request you to indicate class of Importer as "TRADING HOUSE" on the licence. Further, the addresses of Powai and Navi Mumbai may please be indicated on the Condition Sheet attached to the Authorisation as indicated by us in Aayaat Niryaat Form.*
>
> *We now request that our application be processed expeditiously and the Advance Authorisation be issued to us at an early date."*

On such an application made, the petitioner was issued the licence in the prescribed form on fulfilment of the conditions, including forwarding of a declaration/undertaking. The petitioner also relied upon a certificate from Chartered Engineer dated 12-3-2007, confirming the order. Thereafter, the petitioner relied on the advance authorisation, copy of which is at page 65 of the paper-book together with the condition sheet.

32. The condition sheet, which is attached to the advance authorisation states that the authorisation holder shall export/supply the products of quantities and values specified in the said condition sheet within a period of 24 months from the

date of issue of authorisation or as otherwise specified under the relevant provisions of the Foreign Trade Policy and Handbook of Procedures (Vol-I), 2004-09. The export obligation shall be fulfilled by the authorisation holder as per the terms and conditions specified in this FTP and Handbook of Procedures and other guidelines issued by the Director General of Foreign Trade from time to time.

33. The authorisation holder shall deliver or cause to be delivered to the office of the Joint Director General of Foreign Trade, Mumbai, within two month from the date of expiry of the export obligation period stated above, documents as prescribed under Para 4.25 of the Handbook (Vol-I), 2004-09 as amended from time to time as evidence of fulfilment of export obligation imposed on this authorisation. Failure to fulfil the export obligation in the manner as prescribed in the Handbook of Procedures shall attract penal proceedings under the provisions of FTDR Act and as per the provisions of para 4.24.1 of the Handbook of Procedures, as amended from time to time.

34. It is, therefore, evident that the petitioner made an application, invited the said advance authorisation and which is conditional. The conditions have been understood by the petitioner as not only fulfilling all the export obligations but also fulfilling them as per the terms and conditions specified in the FTP and the Handbook of Procedures and other guidelines. Therefore, the documents, as prescribed in para 4.25 of the Handbook of Procedures and amended from time to time shall be determined as evidence of fulfilment of export obligation imposed on the authorisation holder.

35. The name and address of the supporting manufacturer has also been indicated.

36. The import of the items mentioned in the Item List was permitted and duty free. It is common ground that there was an additional condition sheet attached, copy of which is at page 69 of the paper-book. That the import has been carried out is thus not in dispute. The petitioner relied upon what is styled as summary of consumption of inputs used in the exported

goods and copies of which are from pages 72 up till page 82 of the paper-book.

37. The petitioner relied upon a communication dated 9-11-2012 from the office of the Development Commissioner, Jamnagar (Reliance) SEZ, that is pursuant to letter dated 30-10-2012. That letter was addressed to the petitioner on the subject of supply of the said product to the purchaser/Reliance and at the SEZ, Jamnagar. Then, the petitioner relied upon a certificate, copy of which is at page 84, dated 9-11-2012. This certificate was issued as per request of Manager – Commercial Control & Automation of the petitioner. This certificate shows, according to the petitioner, that there are 21 invoices bearing the numbers specified in column 2 and issued on the date specified in column 3. There are dates of ARE1 as well. Thereafter, the quantity and price are mentioned. Then there is an invoice value mentioned together with date of receipt of the goods. The petitioner states that on 19-1-2010 it informed the Joint Director General of Foreign Trade that it has fulfilled the export obligation and therefore there should be redemption of

the advance authorisation. What the petitioner relied upon is para 4.26 of the Handbook of Procedures. This communication dated 19-1-2010 reads as under:-

> *"As evidence of fulfillment of the Export Obligation Rs.14,40,00,000/- (US$ 32,00,000/-) in terms of Para 4.26 of the Hand Book of Procedures, we enclose herewith documents for redemption of LUT:-*
>
> *1. ANF-4F Form filled in and signed.*
> *2. One Original Bank Certificate of Payment for supplies to SEZ.*
> *3. Self Certified Part H duly filled in and signed.*
> *4. Chartered Engineer Certificate indicating details of import items imported and used in the Export Product.*
> *5. Bill of Export (ARE-1 along with Tax Invoice).*
> *6. Information in terms of Public Notice No.8 dated 13.05.2005.*
> *7. Photocopy of Authorisation and Export documents.*
> *8. Customs & Exchange copy of the above Authorization.*
>
> *Now that we have produced evidence of fulfillment of Export Obligation, we request you to redeem the LUT and issue us the redemption letter, at an early date."*

Thus, the petitioner states that they have a Bill of Export but they equate it with AER1 along with tax invoice. The petitioner also purported to rely upon the annexures to this letter. The petitioner was specifically informed at page 92 of the paper-book by the Foreign Trade Development Officer on 22-3-2010 that there are deficiencies and the petitioner must submit the original Bill of Export giving relevant licence number or file number along with revised statement of export giving the relevant Bills of Export details and net content of import and export, since licence was based on net to net basis. The petitioner should also submit duly filled in and attested certificate of the Chartered Engineer for all licences redeemed during the period for record purpose. That is how these deficiencies were informed and the petitioner states that it replied to this letter. In the reply dated 11-11-2010, copy of which is at page 93, the petitioner admits that inadvertently the Bill of Export has not been filed and in lieu of the same, the petitioner enclosed certification from M/s. Reliance Industries Limited, Unit of Reliance SEZ, confirming receipt of 341 numbers of Remote I/O Control Panels, namely, the resultant export product. This fact, according to the petitioner, can also be ascertained from ARE1 (copies attached) wherein the SEZ Preventive Officer has certified that the goods have been received. The petitioner relied on the summary of consumption of inputs used in the resultant product certified by M/s. Reliance Industries Limited. That is how it claims that the imported inputs have been used on net to net basis. Then it says that it has already fulfilled the condition of submission of certificate of Chartered Accountant. The originals are already available in the office of the Joint Director General of Foreign Trade and therefore once again request was made to redeem the licence.

38. Pertinently, the defects were notified on 22-3-2010 and this communication is dated 22-11-2010. Thereafter, the petitioner was also informed that there is already a demand notice issued because there is no proof of discharge of export obligation.

39. Once again, on 27-9-2011, the petitioner was informed by the Zonal Joint Director General of Foreign Trade, Ministry of Commerce that it has obtained a licence under duty exemption scheme for import of capital goods/raw material/packing materials, etc.. The petitioner has not

submitted documents evidencing fulfilment of the export obligation. Thus, the authorities insisted that the petitioner must fulfil the condition of production of proof and evidence regarding export obligation being discharged. The due discharge of this export obligation would, according to the respondents, be proved and original Duty Exemption Entitlement Certificate (DEEC) (Export) duly audited by Customs along with a photocopy of the same (that is for advance licence issued prior to 1-4-2002), original shipping bills (EP copy), original Bank Realisation Certificate as per Appendix 22 of Handbook (2002-2007), original DEEC (Import) and its photocopy along with the original licences, self-certified statement of exports and imports, shipment wise, with the item of import and export along with their values indicated therein. The petitioner was informed that it has failed to submit proof of completing the export obligation pro-rata to the duty free imports made under the licence. That is why this was taken as a violation of the condition of licence and the letter of undertaking/Bank Guarantee executed, it is contravening the provisions of the Export Import Policy making the petitioner liable for action under the FTDR Act and the Rules framed thereunder. That is why this was taken to be a show cause and the petitioner is relying upon what is styled as a communication from it dated 1-12-2010, that is referring to demand notice dated 23-11-2010. The petitioner informed that the original redemption documents have been already submitted and therefore the demand notice be withdrawn. However, the petitioner was again informed by a deficiency letter dated b14-12-2012 that the petitioner has not submitted the original Bill of Export as per the Policy guidelines, certificate from Central Excise showing the licence number against the supplies made and also the exempted material with technical specification to fulfil net to net accountability clause, copies of ARE3 and tax invoices does not indicate the authorisation number and that is why the BRC was returned back in order to mention the Bill of Export numbers and submit appendix 23 duly certified by Chartered Accountant, Cenvat declaration as per para 4.1.5 of FTP and also other documents. The petitioner stated that this letter dated 14-12-2012/25-3-2013 was duly replied.

40. That reply is at page 97 of the paper-book. That states or purports to inform the Additional Director General of Foreign Trade that the Bill of Export has not been filed and in lieu of the same the petitioner has submitted original certificate (copy enclosed) certified by Development Commissioner, Jamnagar and Superintendent of Central Excise, Belapur certifying clearly that the resultant product has been manufactured and supplied to M/s. Reliance Petroleum Limited, SEZ and this be accepted as a proof of export in lieu of original Bill of Export. The petitioner also enclosed original certification certified by the Superintendent of Central Excise, Belapur certifying the exempted material with specification used in the manufacture of the resultant product. Thus, the petitioner claims that it is evident that the exports have been effected towards fulfilment of export obligation in respect of the said advance authorisation and therefore the petitioner requests not to insist on furnishing the Bill of Export.

41. Then the certificate from the Central Excise in original dated 18-4-2013 issued by Superintendent of Central Excise, Belapur, certifying exempted material with specification imported against advance authorisation and used in the manufacture of the resultant product was enclosed.

42. The petitioner admit that through oversight it has not indicated the authorisation number on the ARE1. They have, therefore, submitted certificate in original from the Superintendent of Central Excise, Belapur certifying that exempted materials with specification imported against advance authorisation number have been used in the manufacture of the resultant product. The Bill of Export has not been filed and therefore there are no details of the same available. The appendix 23 was submitted already with the application for redemption on 19-1-2010. The petitioner claims that no Cenvat has been availed on the inputs as the imported inputs have been used in the manufacture of resultant product. They also submitted a No Bond Certificate in four sets. The petitioner was informed that these documents though on record, the

deficiencies cannot be held to be removed and they must move the Policy Relaxation Committee.

43. That is how the petitioner made the application at page 109 of the paper-book on 29-8-2013. The petitioner states in this application that it was under the bona fide belief that filing of Bill of Export for the supply of SEZ units is mandatory only in cases of claiming of benefit under the duty drawback scheme. Hence, inadvertently it has not filed the Bill of Export for the supplies made to Reliance Petroleum Industries Limited, SEZ, Jamnagar. However, all the supplies were effected with valid ARE1 forms, which were subsequently duly certified by SEZ Customs authorities as proof of evidence for the goods having been supplied to the SEZ unit. That is how they annexed copies of ARE1 forms for the reference of the Policy Relaxation Committee. The petitioner also proceeded to inform the Committee that they have fulfilled the export obligation by utilising the duty free inputs against the advance authorisation and there is no shortfall. They have realised the export proceeds from the customer and that is evident from the certificate of the

Bankers. The petitioner, therefore, stated that there is an inadvertent and unintentional error which occurred due to supply pressure towards committed delivery, project completion, etc.. It is a procedural lapse.

44. The petitioner was informed on 21-1-2014 that the Policy Relaxation Committee has considered this issue. It observed that there is no mention of advance authorisation number on the copy of the AREs1 submitted by the petitioner. Some of AREs1 are submitted by the petitioner vide their letter dated 28-11-2013 but they bear the details of advance authorisation number. Thus, it is evident that an endorsement regarding authorisation details was made on AREs subsequently. The Committee, therefore, rejected the request. In other words, when the petitioner earlier supplied copies of the AREs1 along with its letter of August, 2013, those copies did not mention the details of the advance authorisation numbers, whereas the copies forwarded in November, 2013 of the same documents contains the advance authorisation number and these were, therefore, subsequent insertions.

45. The petitioner purported to inform the Policy Relaxation Committee on 28-1-2014 that all the supplies to SEZ were effected with valid ARE1 forms and certificate from jurisdictional Excise authorities was also issued and the ARE1 being part of this certificate confirming that the resultant products have been supplied to the SEZ and also certified consumption of exempted inputs against the said advance authorisation, but as the advance authorisation number was not specifically endorsed in ARE1 forms, they were in touch with the Central Excise Authorities. Therefore, they subsequently certified these forms with the advance authorisation number and the revised ARE1 forms were submitted with the request to accept the same as a special case. Therefore, non-filing of Bill of Export is a lapse which should be condoned and therefore the Policy Relaxation Committee's decision should be recalled.

46. On 28-1-2014, this letter was addressed and thereafter what the petitioner has done is to inform the Policy Relaxation Committee on 28-8-1015 by a further

communication. In this communication, they admit that advanced authorisation was inadvertently not mentioned initially on ARE1, however, immediately taking cognizance of the omission, they had obtained the endorsement from the jurisdictional Central Excise Superintendent. They purported to give an explanation that the supplies in the instant case were effected to a SEZ unit and being the first time from the manufacturing facility at Mahape, Navi Mumbai, the concerned execution team there had inadvertently omitted to generate the Bill of Export. They were of the bona fide belief that Shipping Bill/Bill of Export are required only for physical exports where goods are leaving the country. There is a standard practice followed in all cases of advance authorisation, the consumption and utilisation of materials imported against aforesaid authorisation were duly verified by the jurisdictional Central Excise Superintendent and a certificate in that regard was issued. They also obtained the endorsement from the jurisdictional SEZ Officer of M/s. Reliance Industries Limited, SEZ Unit, Jamnagar, regarding receipt of the goods. A certificate from the customer was also obtained towards receipt of materials and certifying the Bill of Materials required for manufacturing such supplies. Therefore, the procedural lapse under the SEZ Rules occurred.

47. What we find thereafter is a Show Cause Notice and the copy of this is at Annexure "J", page 118 of the paper-book. The petitioner was specifically informed in this that it obtained a licence and with the conditions made clearly known to it. There was a condition to export the resultant product mentioned in the licence of given FOB value within a period of export obligation from the date of issue of the licence. The petitioner executed a legal undertaking/Bank Guarantee to the licencing authority undertaking therein that they would fulfil the corresponding export obligation within the prescribed period and would submit the document within one month from the date of expiry of export obligation period towards discharge of the said export obligation. They failed to furnish the documents evidencing completion of export obligation during the period specified by the authority and/or extended from time to time. They were

advised to submit documents showing fulfilment of export obligation by the licencing authority. Therefore, a Show Cause Notice was issued to produce the documents showing discharge of export obligation. The petitioner did not respond. Thereafter, the licencing authority declared the petitioner as defaulter, and subsequently forfeited the legal undertaking and Bank Guarantee. Thus, the authority has reason to believe that the goods imported against this licence were not utilised for the purpose for which they were imported and the licence was also obtained on the basis of misrepresentation and misdeclaration of facts. The petitioner has also not submitted documentary proof towards discharge of export obligation which tantamounts to violation of the condition against which the licence was issued, and therefore, the Show Cause Notice called upon them to show cause as to why action under the relevant provisions of law be not taken.

48. The petitioner appeared in pursuance of the Show Cause Notice for a personal hearing on 24-8-2016. The petitioner canvassed the arguments and which are reiterated in

the note of written arguments, running into 13 pages.

49. The petitioner at the same time seeks to question the decision of the Policy Relaxation Committee dated 10-8-2016, though they have already proceeded to contest the Show Cause Notice.

50. Today, the argument is that in the light of the decision of the Policy Relaxation Committee, no useful purpose will be served by contesting the allegations in the Show Cause Notice and its outcome is a foregone conclusion. The petitioner has been informed once again by this Policy Relaxation Committee that there are specific guidelines and Para (a)(ii) of the guidelines for application (Handbook of Procedures, 2009-2014, Vol-I). These state that the exporter shall submit Bill of Export along with other prescribed documents, and in terms of Para 4.12 of the FTP, the exporter shall indicate consumption of inputs in the export documents. Apart therefrom, the petitioner must, for getting incentive on supply of goods to SEZ, comply with Rule 30 of SEZ. It has been informed that once the Policy

Relaxation Committee has no power to relax the requirement of the Act and the Rules, it is of the view that the requirement of Bill of Export cannot be dispensed with.

51. What we have noted is that the petitioner seeks to term the lapse on its part as procedural lapse of generating Bill of Export and as per Policy Relaxation Committee what is demanded is proof of export obligation being fulfilled. This is a clear case where on one hand the petitioner accepts its lapse but terms it as procedural and on the other hand despite this lapse there is adequate proof of fulfilment of export obligation available on record.

52. In that regard, we have perused all the documents. Mr. R.V. Desai relies upon para 4.25 of the Handbook of Procedures. Though this is termed as a procedural handbook, what it contemplates is the fulfilment of export obligation. The licence holder has to furnish the documents enlisted therein in support of having fulfilled the export obligation. There is a requirement to be fulfilled as far as the petitioner's export is

concerned and for deemed export what is required is a copy of the invoice or a statement of invoice duly signed by the unit receiving the material and the jurisdictional excise authorities certifying the item of supply, its quantity, value and date of such supply. Thereafter, there are further requirements, including payment certificate, statement of supplies, giving details of supply invoices and indicating the invoice number, date, FOR value and it is only when the export obligation has been fulfilled that the licencing authority can redeem the licence. The Policy Relaxation Committee is constituted to aid and advise the DGFT. What the petitioner is insisting upon and as a proof of fulfilment of the export obligation, though aware of this paragraph of the FTP and the Handbook of Procedures, is acceptance of documents which would enable them to urge that the conditions in the Condition Sheet of the advance authorisation have been fulfilled. The conditions to which we had made a reference and to be found at page 65 of the paper-book mention specifically these two, namely, the FTP and the Handbook of Procedures, 2004-09. The petitioner is relying upon, as proof of fulfilment of the export obligation, a communication of 30-8-2010 from Reliance Industries Limited. The communication relevant portion of the communication reads thus:-

> *"With reference to your request vide your letter referred to above, we hereby confirm that we have received 341 Nos. of Remote I/O Control Panels against our PO No 2519-JGZ-EU0L03-MA dated 11.05.2007. The supplies have been effected into our SEZ Unit, in Reliance Jamnagar SEZ, Jamnagar, Gujarat.*
>
> *We are also enclosing a statement showing the details of the item wise requirement of inputs as per our Bill of Materials for the said supply of 341 Nos. of Remote I/O Control Panels."*

What is enclosed therewith is a summary of consumption of inputs used in the exported goods. The quantity which is exported by Reliance would indicate that they are mentioning their item-wise requirement of inputs as per their Bill of Materials. The 341 numbers of Remote I/O Control Panels were received by Reliance against their purchase order dated 11-5-2007. The supplies have been effected into their SEZ Unit, in Reliance Jamnagar SEZ, Gujarat. What then is placed on record is a communication dated 9-11-2012. That is from the office of the Development Commissioner, Jamnagar (Reliance) SEZ. Enclosed therewith is a certificate of 9-11-2012. This certificate says that there are certain invoices bearing the dates from 14-6-2007 to 15-3-2008. There are certain AREs1 of 14-6-2007 to 15-3-2008 with quantities mentioned. Then there is invoice value as against different quantity numbers and date of receipt of goods. However, it says that this certificate has been issued as per request of Manager, Commercial Control & Automation of the petitioner dated 30-10-2012.

53. The petitioner has not relied upon this earlier at all for they claim to have discharged the export obligation much prior and the above documents corroborate their assertion. This certificate is of 9-11-2012 and even the communication from M/s. Reliance Industries Limited is subsequent to the petitioner's letter dated 19-1-2010, addressed to the Joint Director General of Foreign Trade, Mumbai. The petitioner in that letter says very clearly that they are forwarding the documents for redemption of LUT and one Bill of Export (ARE-1 along with Tax Invoice). There petitioner also enclosed therewith CC & EC of

authorisation, namely, the advance authorisation. Thus, along with this redemption application they claimed to have forwarded relevant documents evidencing discharge of export obligation. They mentioned the advance authorisation number and the date of its issue. They mentioned the details of physical export/deemed export made, the relevant details of ARE1s, but what they have been informed throughout is that these ARE1s have not mentioned specifically the advance authorisation number. The petitioner, therefore, were informed on 22-3-2010 that they must submit the original Bill of Export giving relevant licence number or file number, along with revised statement of export giving relevant bill of export details and net content of import in export, since the licence was based on net to net basis. (see page 92). This is a communication of 22-3-2010. Till this date the petitioners do not say that they had neither any communication much less from M/s. Reliance Petroleum Limited, nor they had any proof as per their understanding of discharge of export obligation. All that they had with them are the documents annexed to the request in writing for redemption of LUT.

54. Therefore, on 11-11-2010 the petitioner admitted that the Bill of Export has not been filed and in lieu of the same they enclosed with their communication of the above date, certification from M/s. Reliance Industries Limited, Unit of Reliance SEZ, confirming receipt of 341 numbers of Remote I/O Control Panels of the resultant export product. This fact can also be ascertained, according to them, from the ARE1 copies attached, wherein the SEZ Preventive Officer has certified that the goods have been received. Then, they also rely upon a summary of consumption of inputs used in the resultant product certified by M/s. RIL from which the authorities, namely, the Joint Director General of Foreign Trade can conclude that the imported inputs have been used on net to net basis. Therefore, they say, the proof is already forwarded.

55. The petitioner was once again informed that they have not forwarded the documents evidencing the export obligation, as is evident from page 94. It is, therefore, clear that

the self-certificate statement apart, the petitioner was required to forward proof. The petitioner relying on their communication of November, 2010, and on the deficiencies being notified again, had the certification from M/s. Reliance Industries Limited and that of the Development Commissioner, SEZ. Yet, the petitioner was specifically informed that the copies of ARE3 and tax invoices do not indicate the authorisation number/file number. Then, they were informed that there has to be a certificate from Central Excise showing the file number/licence number against the supplies made, and also must indicate the exempted material with technical specification to fulfil net to net accountability clause.

56. We are of the view that the petitioner was not being denied the benefit or relief only on the ground that they have failed to forward the Bill of Export. They have been specifically informed that the request for redemption of the advance authorisation cannot be granted because there is no proof of fulfilment of the export obligation.

57. The petitioner has understood this very well. Else they would not have replied on 27-4-2013 and admitted that they have not filed the Bill of Export but in lieu thereof they are submitting the original certificate of the Development Commissioner, Jamnagar and Superintendent of Central Excise, Belapur, certifying that the resultant product have been manufactured and supplied to M/s. Reliance Petroleum Limited, SEZ.

58. Therefore, these are original certificates and certificates by statutory authorities, according to the petitioner. It is in these circumstances that they would urge that the exports have been effected towards fulfilment of export obligation in respect of the said advance authorisation.

59. Then, they rely upon a certificate dated 18-4-2013, issued by the Superintendent, Central Excise, Range-IV, Belapur-III Division certifying that the exempted material, with specific advance authorisation number, as having been used in the manufacture of the resultant product.

60. They also rely on the fact that through oversight they had not indicated the authorisation number/file number on the ARE1 and tax invoices. They are, therefore, submitting a certificate in original from the Superintendent of Central Excise, Belapur certifying that exempted material with specification imported against advance authorisation have been used in the manufacture of the resultant product. On 27-4-2013, this was the stand taken by them and that is why they requested that Bill of Export having not been filed, this should be taken as proof of export in lieu thereof.

61. We have perused this certificate, copy of which is at page 99 of the paper-book. It is issued on 18-4-2013. It says, this is to certify that the petitioner holding Excise Registration Number, details of which are mentioned, have imported the inputs (details as per Annexure-A) under advance authorisation No.0310424318, dated 26-3-2007, and used the same in the manufacture of Remote I/O Control Panels (341 Nos.) supplied to M/s. Reliance Petroleum Industries Ltd., Special Economic

Zone, Jamnagar (details as per Annexure-B) as verified from the records of the Company. This Annexure-A is the list of inputs imported under the advance authorisation number and used in the final product. The description of the inputs has been set out with the quantity numbers. The items as per the advance authorisation number are mentioned in column 2 and quantities have been set out in the last column. The Annexure-B contains details of Remote I/O Control Panels supplied against this advance authorisation number. There again the ARE1 numbers and date, invoice number and date and quantities are mentioned along with value. The petitioner also relied upon the form ARE1, copy of which is at page 102 of the paper-book, which is an application for removal of excisable goods for export and equally export under quantity against balance value licence/others. This also mentions the particulars of manufacturers of goods and their central excise registration number, number and description of packages, gross weight/net weight, marks and numbers on packages, quantity of goods, description of goods, value, rate, amount, number and date of invoice under which duty was paid, amount of rebate claimed and other remarks. This also contains a stamp "supply against advance authorisation number". The certified copy thereof is dated 28-10-2013, duly attested by the Superintendent, Central Excise, Range-IV, Belapur-III Division. There is also a certification filed by the Customs Officer. The consignment is stated to be received in full at Reliance, SEZ, Jamnagar. The consignment was received in full and for Reliance Petroleum Limited. There is signature of the authorised signatory. Equally, the Preventive Officer has signed against the date 20-06-07. The petitioner has thus got the authorisation number and details endorsed.

62. It is in these circumstances, the petitioner was requested to approach the Policy Relaxation Committee.

63. The petitioner accordingly approached the Policy Relaxation Committee on 29-8-2013. The petitioner gave all the details of the purchase order, the goods which were to be supplied against the purchase order, the advance authorisation number and they gave the file number as well from the office of

the Joint Director General of Foreign Trade. The Annexure-A of this communication refers to all these details. They claim that the advance authorisation and imported inputs on duty free basis were utilised in the manufacture of the resultant export product. They, therefore, claim that the supplies have been made to the named entity and at SEZ, Jamnagar. That was under the bona fide belief that filing of Bill of Export for the supply of SEZ units is mandatory only in cases of claiming of benefit under the duty drawback scheme. Hence, this procedural lapse of not filing the Bill of Export occurred. That is how they reiterated that the said supplies were effected with valid ARE1 forms, which were subsequently duly certified by SEZ Customs Authorities as proof of evidence for the goods having been supplied. All these documents have been duly endorsed and stamped. What we find is that the Policy Relaxation Committee still maintains that there is no mention of advance authorisation number on the copy of the ARE1, submitted vide letter dated 29-8-2013. The same copies of AREs, submitted on 28-11-2013, however bears the details of the advance authorisation number.

Thus, it is evident that the endorsement regarding authorisation details were made subsequently.

64. The petitioner has not disputed this position. They have clearly stated in their letter dated 29-8-2013 that the advance authorisation number or whatever certificates obtained by SEZ Customs Authorities as proof of the export obligation being fulfilled were obtained subsequently. In that regard, what we find is that there is a signature appearing at page 102 of the paper-book on Form A.R.E.1, certified copy of 28-10-2013, therefore the Policy Relaxation Committee was of the view that on 29-8-2013, when the copy of the document was forwarded, it did not contain the advance authorisation number but it was subsequently put and therefore in November, 2013, the copies were forwarded bearing such numbers.

65. The petitioner had clarified that they were in touch with the Central Excise Authorities and they subsequently certified this form with the advance authorisation number. They requested for intervention by the Committee, as a special case.

66. We are of the view that in the facts and circumstances of this case, the petitioner having duly supplied the copies of the ARE1 forms, it is only a further technical objection, of the said form not mentioning the advance authorisation number in the initial copies of the same but supplied later on, could have been condoned. It is not as if ARE1s have not been filed. It is not as if there is a doubt about the copy of ARE1s or the authenticity or genuineness thereof. It is not anybody's case that there are no ARE1 forms on record. Therefore, these forms were available. Therefore, the stand that there is no proof of export obligation being discharged, could not have been maintained once the petitioner was told to approach the Policy Relaxation Committee and it was empowered to relax any of the technical requirements or procedural matters. Equally, it was empowered to clarify in the facts of this case at least that the documents forwarded by the petitioner can be accepted as proof of export.

67. We do not see how the authorities then maintained

that the petitioner's request for condonation of procedural lapse by not generating the Bill of Export cannot be accepted. What the Policy Relaxation Committee has done in its subsequent meeting, and which at page 153 purports to indicate its decision, is that guidelines insisting on Bill of Export being known, that Bill of Export not having been forwarded, the requirement in that behalf cannot be dispensed with.

68. We do not see how this subsequent decision can be reconciled with the earlier stand where the Policy Relaxation Committee was ready and willing to consider the dispensation provided there is proof of fulfilment of export obligation.

69. We were required to give this detailed reasoning only because somewhere down the line the authorities forgot that they were throughout insisting on proof of discharge of the export obligation and the petitioner was continuously maintaining that it had such proof in the form of documents in its possession and which has been duly forwarded. Once this was the issue and there was a doubt as to how the ARE1s, copies

of which were earlier supplied, did not contain the advance authorisation number and its date, that subsequently even that aspect was clarified by the petitioner. The petitioner clarified that it took the very same copies to the authorities and obtained their endorsement. It is not just a self-generated version or a self-certification but that there was an endorsement by the statutory authorities. The statutory authorities, namely, the Range Superintendent of Central Excise and the Development Commissioner, SEZ would not have appended their signatures on these copies and allowed the endorsement or the affixation of a stamp bearing the date of the advance authorisation and its number, unless they were satisfied that these are the very ARE1 forms and issued at the relevant time, of which the petitioner has brought the copies. That is how the copies have been certified by them. Even if one were to be hyper-technical and insist on absolute fulfilment of the procedural requirement, to our mind, in the facts and circumstances of this case, the authorities could have concluded that this requirement is duly fulfilled.

70. Once we have held on facts that the requirement is duly fulfilled, then, we do not think that it is necessary to advert to the provisions of the SEZ Rules and particularly Rule 30 thereof. All the more when supplying goods from the domestic tariff area to SEZ is taken as equivalent to an export of goods physically from this country to abroad. Once such an act of the petitioner is taken to be an export, entitling them to the benefits of the advance authorisation and the scheme in respect thereof, then, all the conditions stipulated in that authorisation ought to be taken as fulfilled. Therefore, the Policy Relaxation Committee, as an after-thought, could not have directed the petitioner to get the case regularised as per provisions of the Handbook of Procedures 2009-2014, Vol-I or the SEZ Rules. We are considering the FTP of 2004-09 and the Handbook of Procedures in relation to this Policy. Unmindful of the same, in its subsequent decision, the Committee refers to FTP of 2009-14.

71. As a result of the above discussion, we do not think that the petitioner was required to be visited with any adverse

consequences, including issuance of Show Cause Notice. We are not in agreement with Mr. Desai that the Policy Relaxation Committee empowered by the Policy itself, namely, the FTP to relax the policy condition has acted within the four corners thereof. We have pointed out its flip-flop and twists elaborately. We find that it has acted not in accordance with the Policy and the FTDR to insist on absolute satisfaction of the procedural requirement. Though it was agreeable to accept any proof of fulfilment of export obligation, by relaxing the requirement of Bill of Export, it then picked the alleged inadequacies in the documents evidencing fulfilment of export obligation forwarded by the petitioner. These documents were duly certified and stamped/endorsed by the statutory authorities and still the Policy Relaxation Committee failed to grant the necessary relaxation. This decision, therefore, can be termed as wholly arbitrary, unfair, unreasonable and violative of the Mandate of Article 14 of the Constitution of India. It is this conclusion which enables us to interfere in writ jurisdiction with the impugned decision and equally the Show Cause Notice.

72. As a result of the above discussion, the writ petition succeeds. Rule is made absolute in terms of prayer clauses (a) and (c). There shall be no order as to costs.

(PRAKASH D. NAIK, J.) (S.C. DHARMADHIKARI, J.)