

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2019

Reserved on : 04.11.2019

Delivered on : 12.11.2019

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.11869 of 2019

AND

W.M.P.Nos..12086 AND 12087 OF 2019

M/s.Sri Amman Chemicals,
9/22, C.B.Complex, New Madurai By Pass Road,
L.N.S. (PO) Karur 639 002,
Rep. by its Partner P.Kumaresan

...Petitioner

vs

1.The Additional Secretary & Appellate Authority,
Ministry of Commerce & Industry,
Department of Industrial Policy & Promotion,
Udyog Bhawan, New Delhi 110 002.

2.The Chief Controller of Explosives,
Petroleum & Explosives Safety Organization,
"A" Block, 5th Floor, CGO Complex,
Seminary Hills, Nagpur,
Maharashtra 440 006.

3.The Commissioner of Customs,
Chennai III Customs Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai 600 001.

4.The Additional Commissioner of Customs (SIIB),
Custom House, 60, Rajaji Salai,
Chennai 600 001.

...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the first respondent connected with impugned order No.1 of 2018 dated 02.11.2018 and to quash the same in so far as, the said impugned order has been passed in total violation to the principles of natural justice, without jurisdiction and in excess of the authority conferred on the said respondent and contrary to the provisions of law and consequently direct the second respondent to issue the P5 license to the petitioner firm.

For petitioner : Mr.S.Baskaran

For Respondents : Ms.Sunitha Kumari for R1 and R2
Sr.Centr'l Govt.Standing Counsel

Mr.Rajnish Pathiyil for R3 and R4
Senior Central Govt.Standing Counsel

O R D E R

The petitioner is aggrieved against the order of the first respondent dated 02.11.2018, wherein and whereby the appeal preferred by the petitioner challenging the order of the second respondent in refusing to grant P5 license under Ammonium Nitrate Rules 2012 was rejected. Consequently, the petitioner seeks for a direction to the second respondent to issue the P5 license to the petitioner.

2. The case of the petitioner, in short, is as follows:

The petitioner firm has been in the business of trading in Ammonium Nitrate falling under Chapter 31 of both Customs and Central Excise Tariff Acts. Apart from sourcing the goods indigenously, the firm also imported the goods on payment of appropriate duties of customs duty. The petitioner sell the subject goods mostly to buyers who are basically engaged in agricultural operations/activities. The petitioner started importing the goods from the year 2012 both through the Port of Vishakhapatnam and Chennai. The goods were assessed and cleared by the customs by classifying the same under Customs Tariff Heading 3102 and extended the benefit of Nil rate of Basic Customs Duty and full exemption from payment of the Countervailing Duty in terms of Notification No.12/2012-CE dated 17.03.2012. The Government of India had introduced a new rule known as Ammonium Nitrate Rules. For storing and trading Ammonium Nitrate, one should possess a license in form P3. Accordingly, the petitioner made necessary application before the second respondent. The petitioner was granted P3 license dated 03.12.2014. For any import of Ammonium Nitrate, one should be in possession of P5 license granted by the second respondent. The petitioner was advised that they are entitled to get P5 license, since they are already holding P3 license. Accordingly, an application was made before the second respondent on 05.08.2015 with supportive documents for the grant of P5 license. The second respondent without putting the petitioner on notice or hearing them, passed an order on 19.08.2015 rejecting their application for grant of P5 license. Since the goods ordered by them viz., 740 Metric Tonnes of Ammonium Nitrate had already arrived at Chennai Airport, the petitioner filed the Bill of Entry bearing No.2704255 dated 24.09.2015 and also informed the authorities the fact of

rejection of their application for grant of P5 license by the second respondent. The Customs Authorities seized the goods and started conducting further investigation. The goods are still in the possession and custody of the customs stored in the port. The second respondent had advised for auctioning of the goods to the other P3 license holder. However, the goods were not released to the petitioner, when they are already holding a P3 license. The petitioner filed W.P.Nos.20826 and 20827 of 2016 challenging the order of rejection dated 19.08.2015 and the order of the Joint Controller of Explosives, Chennai dated 20.05.2016, suspending the P3 license issued to the petitioner. By common order dated 11.08.2016, the Writ Court dismissed both the writ petitions. Writ Appeal Nos. 1067 and 1068 of 2016 were filed by the petitioner challenging the order of the Writ Court. By order dated 19.10.2016, the Hon'ble Division Bench granted liberty to the petitioner to file an appeal against the order rejecting P5 license. Insofar as the suspension of P3 license is concerned, the Division Bench directed the petitioner to file application before the Chief Controller of Explosives, who in turn was directed to consider the said application after affording an opportunity to the petitioner. The Division Bench has also observed that the Appellate Authority, while hearing the appeal against the order rejecting P5 application, shall not be influenced by the view expressed by the Writ Court. Accordingly, the petitioner preferred an application before the second respondent in respect of the suspension of P3 license. The petitioner also preferred appeal before the first respondent as against the rejection of P5 license. On 30.03.2017, the second respondent revoked the suspension of P3 license and accordingly, allowed the petitioner to continue with P3 license. However, the appeal filed before the first respondent was dismissed on 08.02.2017 without considering any of the grounds raised by the petitioner. Thus, the petitioner filed another writ petition in W.P.No.28851 of 2017, challenging the order of the first respondent dated 08.02.2017. By order dated 05.09.2018, the Writ Court allowed the writ petition and set aside the order of the first respondent and remitted the matter back to him for considering the appeal once again on merits and pass orders in accordance with law after giving due opportunity of personal hearing to the petitioner. Accordingly, the first respondent heard the petitioner in person on 23.10.2018. However, the first respondent passed the present impugned order once again recording the same finding that the petitioner is a trader and not an actual user. Hence, the present writ petition.

3. The respondents 1 and 2 filed counter affidavit, wherein it is stated as follows:

Initially Ammonium Nitrate or a combination thereof was notified as a "special category explosive substance" for the purpose of Explosives Substances Act 1908 (Act 6 of 1908); vide

Notification No.S.O.2899(E) dated 10th December 2008 by the Government of India. Later, Government of India issued Notification No.S.O.1678(E) dated 21st July, 2011 declaring Ammonium Nitrate (AN) having the chemical formula NH_4NO_3 or any combination containing more than 45% of AN by weight including emulsions, suspensions, melts or gels (with or without inorganic nitrates) shall be deemed to be an explosive within the meaning of Explosives Act, 1884. New set of Rules viz., Ammonium Nitrate Rules, 2012 were framed under Explosive Act, 1884 vide Government of India Notification No.GSR, 553 (E) dated 11th July 2012 to regulate manufacturing conversion, import, export, stevedoring, bagging, transport, possession, sale and use of the Ammonium Nitrate, which is administered jointly by Petroleum & Explosives Safety Organization (PESO) and State Governments through District Authorities. The aforesaid Ammonium Nitrate Rules, 2012 came into force with effect from its date of publication i.e. on 11th July, 2012. The license in Form P-3 under Ammonium Nitrate Rules, 2012 to possess for sale of Ammonium Nitrate from a store house for 1000 M.T. located at Survey No.35/1, 2 & 3, 36/1 & 2, 50/1 and 51/1, Anjakavundanpatti Village, Aravakurichi Taluk, Karur District, Tamilnadu bearing license No.A/HQ/TN/P3/18(A100) dated 03.12.2014 was issued in favour of the petitioner and was valid upto 31.03.2019. The Deputy Commissioner of Customs, Special Intelligence & Investigation Branch, Chennai posted in the O/o the 4th respondent, vide his letter No.Enq/56/2015-SIIB & INV/01/2016-SIIB dated 17.05.2016 informed the second respondent that the petitioner had cleared 694 MT of Ammonium Nitrate through Chennai Port and 500 MT through Vishakhapatnam Port without a valid license in Form P5 issued under Ammonium Nitrate Rules 2012. The investigation of the fourth respondent revealed that the petitioner had sold the entire imported Ammonium Nitrate to various individuals and to companies involved in stone quarrying, Construction & Mining activities. On further investigation on selected buyers, it was found that entire quantity of Ammonium Nitrate was ultimately used in the mines and quarries for blasting operations and not used for agricultural purpose. The investigation by the fourth respondent brought out the entire list of sale of imported Ammonium Nitrate made by the petitioner to various individuals and firms and not holding Form P3 license for possession and use/sale of Ammonium Nitrate under Ammonium Nitrate Rules, 2012. From these facts, it is clear that petitioner had imported Ammonium Nitrate but also indulged in sale of imported Ammonium Nitrate to unauthorized persons. The proposal on import of Ammonium Nitrate by the petitioner was not considered by this respondent for issuance of Form P-5 under Ammonium Nitrate Rules, 2012 and the same was conveyed vide letter No.P-5 (AN) Ports /2014 (A1743) Ammonium Nitrate Rules, 2012 dated 19.08.2015. Despite of this letter on a later date, the petitioner had imported 740

MT of Ammonium Nitrate through Chennai Port vide Bill of Entry No.2704255 dated 24.09.2015 as reported by the Principal Commissioner of Customs, Chennai vide letter No.ENQ/56/2015-SIIB dated 08.10.2015. Since inception of Ammonium Nitrate Rules, 2012, License for import of Ammonium Nitrate is being granted by PESO only to the bonafide users viz., Catridge & Bulk Explosives Manufacturers for their captive consumption, not for sale purpose, in the interest of national security, on the following grounds.

i) Explosives Manufacturers are only permitted to import Ammonium Nitrate for their captive consumptions, only to meet the gap between the demand for Ammonium Nitrate in the country and domestic production of Ammonium Nitrate, which ensures non-dumping of unwarranted Ammonium Nitrate in the country.

ii) Further, import of Ammonium Nitrate by Traders will not have such balancing mechanism and would lead to excess dumping of Ammonium Nitrate in the country and make it easily available for misuse by anti social elements. This situation would not only pose threat to public safety at large and national security but also lead to Trade Deficit.

iii) The pattern of import, transport, store and day-to-day use of Ammonium Nitrate by the Explosives Manufacturers for captive consumption is accountable, through each imported Ammonium Nitrate consignment is in several thousands of MT. Whereas, it becomes complex in case of import by Traders, since several, multiple & long supply chains are involved, which provide much scope for pilferage and diversion for the illegal activity at every point of transaction.

iv) Considering the quantum of Ammonium Nitrate being imported in the country to the tune of 3 lakh MT in a year, the national security concern becomes more crucial when Ammonium Nitrate allowed for import by traders for domestic sale, which would lead to excess dumping of Ammonium Nitrate in the country and freely available for any misuse.

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(i) A licence in Form P-5 was required to import ammonium nitrate, which the petitioner did not possess and despite

refusal to grant import licence by CCE, Nagpur on 19th August 2015, the appellant had imported the aforesaid AN consignment of 740 MT through Chennai Port on a later date i.e. 24th September 2015, which amounts to violation of Rules 4 and 6(4)(a) of the Ammonium Nitrate Rules, 2012.

ii) Bill of Lading is prepared in advance and is not a valid document and explanation offered by the appellant is not satisfactory.

iii) Further the petitioner knowing his application for grant of P-5 license has been refused by the Chief Controller of Explosives, did not stop dispatch of consignment from Korea.

iv) Special Intelligence & Investigation Branch (SIIB), Principal Commissioner of Customs informed that appellant had earlier cleared 696 MT of Ammonium Nitrate through Chennai Port and 500 MT through Vishakapatnam Port without a valid license. It revealed that the appellant had sold the entire AN imported earlier by them to various individuals and to companies involved in stone quarrying, construction and mining activities and the same was not used for agricultural purpose.

4. The respondents 3 and 4 filed separate counter affidavit, wherein it is stated as follows:

The petitioner M/s.Sri Amman Chemicals, Karur, Tamilnadu holder of I E Code No.3209011940 (herein after referred to as the importer), had filed the Bill of Entry No.2704255 dated 24.09.2015, through their Customs Broker, M/s.M.S. & Co, Chennai for clearance of their import consignment, declared as Ammonium Nitrate (Prill Type) and the total declared quantity was 740 Metric Tonnes, which were packed in 37 containers weighing 742590 kgs (gross weight). The declared assessable value of the said consignment was Rs.1,80,40,741/- and the invoice was raised by M/s.Hyundai Corporation, Korea. The petitioner had declared the classification of the aforesaid goods under the Customs Tariff Heading 31023000, which is applicable, if goods are used for fertilizer purpose and the specific heading 28342990 applies if goods are used for other uses. Therefore, the misclassification has also resulted in evasion of duty. The Central Government vide Notification SO 1678 (E) dated 21.07.2011, has declared Ammonium Nitrate as an explosive being within the ambit of Explosive Act, 1884. Pursuant to which, the Central Board of Excise and Customs had issued instructions vide F.No.450/37/2014-Cus.IV dated 05.03.2014 wherein it is stipulated that the guidelines in Ammonium Nitrate Rules, 2012 for import/export of Ammonium Nitrate should be scrupulously followed by the field formations and as per the Notification No-34 (RE-2013)/2009-14 dated 14.08.2013 issued by Director General of Foreign Trade, import of Ammonium Nitrate having Chemical Formula $\text{NH}_4 \text{NO}_3$ or any combination containing more than 45% of Ammonium Nitrate by weight including emulsions, suspensions, melts or gels (with or without inorganic nitrates) and

classified under Explosives Act, 1884, is subject to license from Chief Controller of Explosives, under the Ammonium Nitrate Rules, 2012. The Chief Controller of Explosives, Nagpur, vide letter No.P-5 (AN) Ports dated 09.10.2015, addressed to the Principal Commissioner of Customs, Chennai-III, informed that the petitioner is holding license No.A/HQ/TN/P3/18(A1100) dated 03.12.2014 in Form P-3 under the Ammonium Nitrate Rules, 2012 for possession and sale of 1000 Metric Tonnes of Ammonium Nitrate at any one time at the approved store house and it was also mentioned in the said letter that the petitioner was not granted license for import of Ammonium Nitrate in Form P-5 as required under the Ammonium Nitrate Rules, 2012. Hence, the said consignments imported vide Bill of Entry No.2704255 dated 24.09.2015 was seized under a mahazar on 12.11.2015 as only holders of P-5 license are entitled to import and admittedly the petitioner do not possess such P-5 license. It is also pertinent to mention that upon investigation into the actual use of traders/firms to whom M/s.Sri Amman Chemicals, Karur sold Ammonium Nitrate, it was found that some of them were explosive dealers (S.No.1-9 below) and others are quarry owners (S.No 10-15 below):

1. R.Krishnan Explosives Dealers, Eriyodu
2. Matha Explosivests, Pudukottai
3. Sakthi Chemicals, Vadamadurai
4. Swamy Traders, Dharampuram
- 5.Srirajalakshmi Fertilizers and Chemicals, Paramathi Velur.
6. Srivinayaga Agencies, Koduvai Thirupur
- 7.Suthakar, Poramathi, Aravai
- 8.Vasan Chemicals, Uthkuli
- 9.Thriveni Earth Movers Pvt Ltd., Hosur
10. Balur Blue Metals, Pavithiram, Aravai, Karur
11. Pon Vinayaka Blue Metals, Karudaiyam Palayam, Aravai, Karur
12. Sree Navaladi Blue Metals, Karur
13. Sri Vetrivelan Blue Metals, Kodanthur, Karur
14. VRG Blue Metals, Kuppam (PO), Kaur
15. VST Blue Metals, Punnam Nadu Punnam, Karur.

During the investigation conducted, it was also found that the explosive dealers have explosive licence as well as shot firer certificate either in their own name or in the name of their company and that owners of quarry/mines enter into agreement with such dealers carrying out blasting operations in the quarries/mines. The explosive dealers purchased Ammonium Nitrate from M/s.Sri Amman Chemicals, Karur and used the same in their blasting operation at the quarries and they also sold small quantities to individuals and the end users of the same is not known. It is also important to state that the above mentioned quarry owners had entered into a contract with M/s.Palaniappan Explosives for conducting blasting of quarries and the said contract was signed by Shri Kumaresan of M/s.Sri Amman Chemicals for conducting blasting operations at their

quarries and the Ammonium Nitrate used in the mining operations were directly supplied from M/s.Palaniappan Explosives. Therefore, it is clear that the entire quantity of Ammonium Nitrate was ultimately used in the mines and quarries for blasting operations. Statements to this effect have also been recorded from authorized persons of the above mentioned firms.

5. Learned counsel for the petitioner submitted as follows:

The petitioner was already granted with P3 license. Therefore, the respondents 1 and 2 are not justified in rejecting P5 license for importing Ammonium Nitrate. No condition is prescribed for providing P5 license. The respondents 1 and 2 have chosen to reject P5 license by passing repeated orders with same reasons. The Ammonium Nitrate Rules came into force with effect on 01.11.2014 and therefore, earlier import cannot be faulted. The trader cannot be prevented from importing Ammonium Nitrate. Relevant protection is provided under the Ammonium Nitrate Rules 2012 under Rule 2(b)(j), 6(4), 6(6)(c) Rule 14, 18(3), 25(1), 27, 34 and 35 to regulate and check the import. Therefore, the apprehension of misuse is not well founded. If the Authorities are justified in their apprehension, there is no meaning in their action to sell the seized goods to P3 licensees by way of auction. Therefore, their apprehension is without any basis. Reliance of notification dated 21.07.2011 is not correct.

6. Per contra, learned counsel appearing for the respondents 1 and 2 submitted as follows:

While P3 license is for storing Ammonium Nitrate, P5 license is for import. A policy decision has been taken not to give P5 license to traders. Therefore, such policy decision cannot be questioned by the petitioner. In this case, the petitioner imported the subject matter goods even before getting P5 license. Therefore, his conduct is without any bonafide. While Section 6B of the Explosives Act, 1884 deals with grant of license, Section 6C deals with power of the Licensing Authority to refuse to issue license under the circumstances stated therein. In proceedings dated 16.09.2016, the Petroleum and Explosives Safety Organisation of Government of India has extensively discussed the reason for permitting the import of Ammonium Nitrate and granting license to such import only to users and not to traders. Granting of P5 license is not an automatic merely because the applicant is holding P3 license. Even the petitioner's P3 license had already expired on 31.03.2019 and thus as on date, the petitioner is not having the P3 license. The petitioner has sold Ammonium Nitrate to various third parties who are not agriculturist, as found in the counter affidavit filed by the customs and therefore, there is no bonafide on the part of the petitioner in seeking P5 license.

7. Learned counsel for the respondents 3 and 4 submitted as follows:

For importing the Ammonium Nitrate, possessing P5 license is mandatory. Without such license, if Ammonium Nitrate is imported, the same will be treated as prohibited goods as defined under Section 2(33) of the Customs Act. The Bill of Entry filed by the petitioner described the goods to be imported as if, fertilizer. The petitioner has sold the Ammonium Nitrate to various persons for quarrying purpose and not for agriculturist as fertilizers.

8. Heard both sides. Perused the materials placed before this Court.

9. The point for consideration in this writ petition is as to whether this Court while exercising the discretionary jurisdiction under Article 226 of the Constitution of India, needs to interfere with the orders passed by the respondents 1 and 2 in refusing to grant P5 license to the petitioner under the Ammonium Nitrate Rules, 2012.

10. The petitioner is in the business of trading in Ammonium Nitrate. It is true that the petitioner was issued with P3 license, which empowers the licensee to store and trade in Ammonium Nitrate. It is an admitted fact that P3 license issued to the petitioner got expired as on 31.03.2019 and thus as on date, the petitioner is not holding P3 license. P5 license is required for importing Ammonium Nitrate. Though the petitioner claims that the Ammonium Nitrate is also a fertilizer, it is seen that by virtue of the Notification dated 21.07.2011, issued by the Union of India through its Ministry of Commerce and Industry, Ammonium Nitrate is deemed to be an "explosive" within the meaning of the Explosives Act, 1884, when it has the chemical formula as stipulated in the said notification. For better appreciation, the said Notification is extracted as hereunder:

"MINISTRY OF COMMERCE AND INDUSTRY
(Department of Industrial Policy and Promotion)
NOTIFICATION

New Delhi, the 21st July, 2011

S.O.1678(E)- In exercise of the powers conferred by Section 17 of the Explosives Act, 1884 (IV of 1884), the Central Government hereby declares that Ammonium Nitrate having the chemical formula NH_4NO_3 or any combination containing more than 45 per cent of Ammonium Nitrate by weight including emulsions, suspensions, melts or gels (with or without inorganic nitrates) shall be deemed to be an explosive within the meaning of the said Act:

Provided that such Ammonium Nitrate or any

combination thereof shall not include those fertilizers from which Ammonium Nitrate cannot be extracted by any physical or chemical process.

Note: The Explosives Rules, 2008 shall not be applicable to Ammonium Nitrate or any combination thereof, as referred to in opening portion of this notification, except for the materials or mixtures classified as explosives under said Explosives rules, 2008 and there shall be framed separate rules for regulating the Ammonium Nitrate, or combination thereof under Section 5 and Section 7 of Explosives Act, 1884.

[F.No.17(19)/2010-Explosives]
CHAITANYA PRASAD, Jt. Secy."

11. Originally, the application filed by the petitioner for grant of P5 license for import of Ammonium Nitrate was rejected by an order dated 19.08.2015, on the ground that the issue of P5 license is considered only in favour of Ammonium Nitrate users in the interest of national security. The said order was put to challenge by the writ petitioner in W.P.No.20826 of 2016. The Writ Court, while dismissing the said writ petition by order dated 11.08.2016, has observed at paragraph Nos.31 to 38 as follows:

"31. The next issue is as to whether the order of rejection of the petitioner's application for issuance of licence in Form P-5, for import of Ammonium Nitrate is just and proper. The contention raised by the petitioner is that Rule 6 of the Rules, deals with 'general restrictions' and the 'restriction on import or export' is in terms of sub-rule (4) of Rule 6, which reads as follows:-

Rule 6(4):- Restriction on import or export:-

(a) No person shall import or export any Ammonium Nitrate except under and in accordance with the conditions of licence granted under these rules;

(b) No Ammonium Nitrate shall be imported or exported except at its ports notified by the Central Government;

(c) The Ammonium Nitrate shall not be imported into India by sea except through the ports which are duly approved for this purpose by the Ministry of Shipping and Transport, Government of India, in consultation with the Chief Controller and declared as Customs Ports by the Commissioner of Customs;

(d) The Ammonium Nitrate imported into India by sea shall not be stored in the port.

32. It is argued that the restrictions on import

or export of Ammonium Nitrate, can be only under the circumstances stated in clauses (a) to (d) in sub-rule (4) of Rule 6, and the reason assigned in the impugned order stating that application for licence in Form P-5 will be considered only in favour of Ammonium Nitrate users is not one of the restrictions, as contemplated under the Rules and the reasons stated in the impugned order is extraneous and contrary to the provisions contained in the Ammonium Nitrate Rules and hence, unsustainable.

33. Prior to July 2012, there was no specific Rule to regulate the use of Ammonium Nitrate and after the Rules came into force, Ammonium Nitrate or any combination containing more than 45% of the Ammonium Nitrate by weight including emulsions, suspensions, melts or gels was declared as an explosives substance within the meaning of Explosives Act.

34. This Court can take judicial notice of the fact from various news reports that the presence of Ammonium Nitrate in the bombs, which exploded in various parts of the country, raised a debate on the availability of the substance, primarily who used to make explosives and fertilisers. The report reveals that though the Government enacted the Rules to regulate the sale of Ammonium Nitrate, it was still easily available and is being used by terror groups to make bombs and a report of the Intelligence Bureau suggested that during 2012 alone, 4000Ts of Ammonium Nitrate had gone missing. It is further reported that in 2013, there were around 20000 consumers of Ammonium Nitrate and all these persons had applied for licence after the Ammonium Nitrate Rules were framed, the reason being classification of the Ammonium Nitrate changed from an innocuous fertiliser ingredients to the Explosive device. The report further states that it has been a matter of concern for investigating agencies, as they have found that Ammonium Nitrate has been used in every blast case in the recent past and although the police have arrested several persons they have not been able to trace the origin of the chemical in even a single case. It is further reported that the Police say that large quantity of Ammonium Nitrate has gone missing, since the past four years (2013) and at an average, there has been no account for nearly 16000Ts of Ammonium Nitrate in the past four years (2013). It is further reported that even if 20kgs of Ammonium Nitrate gets into the hand of the bomb maker he can easily make 20 bombs out of it. That apart, it

is stated that Ammonium Nitrate can be stored for two years without damage.

35. The Government of India taking note of the various doubts, which arose after the Ammonium Nitrate Rules were framed, published in their website, certain clarifications in the form of "frequently asked questions" (FAQ). The answer to two questions would be relevant to understand the impact of the substance:-

Q. What makes Ammonium Nitrate so explosive?

A. Ammonium Nitrate is not an explosive by itself. However, it is one of the ingredients used for manufacture of explosives. It is classified as an oxidizer (5.1) as per UN classification for Dangerous Goods. Other ingredients like fuel, etc., have to be added to make it an explosive. For such explosive mixtures to explode, initiators like detonators are required.

Q. Why is it necessary to regulate the use of ammonium nitrate?

A. Ammonium Nitrate is a necessary major ingredient for manufacture of explosives and it has been declared as a deemed explosives vide Notification No. G.S.R. S.O. 1678(E) dated 21/07/2011. It has the potential to form an explosive mixture on the addition of ingredients like fuel etc., Hence, it is necessary to regulate the use of Ammonium Nitrate for which the Ammonium Nitrate Rules, 2012 have been framed.

Q. Where does AN find its maximum usage?

A. Ammonium Nitrate find its maximum usage in Explosives Industry.

36. Thus, the use of Ammonium Nitrate having been regulated, the petitioner cannot, as a matter of right, claim that except for the circumstances set out in Rule 6(4), there can be no restriction on import or export of Ammonium Nitrate, and it cannot be a ground to interfere with the impugned order, as the Rule 6 only postulates general restrictions. Thus, while rejecting the application submitted by the petitioner for grant of licence in Form P-5, bearing in mind the interest of the National Security, thought fit to restrict issuance of licence in favour of the Ammonium Nitrate users and the petitioner being a trader, rejected their application.

37. In my view, the restriction imposed is a reasonable restriction in the light of the fact,

separate Rules were framed for regulation of the use of Ammonium Nitrate, which has been specifically brought within the definition of an explosive substance. In such circumstances, this Court is not inclined to interfere with the impugned order.

38. The learned Additional Solicitor General submitted that as against the impugned order refusing to grant licence, the petitioner has an alternate remedy of preferring an appeal before the Appellate Authority. The reason for rejection of the licence for import is on the ground that the same will be considered only for Ammonium Nitrate users and such decision has been taken in the interest of national security. The bonafides of the reason assigned in the impugned order, as being in the interest of national security cannot be doubted. The right to trade in explosives is subject to the reasonable restrictions and the petitioner cannot contend that he has a fundamental right to trade in explosives. national security is of paramount importance and an individual interest shall be subservient to the interest of the Nation. Therefore, this Court finds that even if an appeal is filed by the petitioner as against the impugned order, decision having been taken considering the interest of the country, such appeal itself would be a futile exercise. Thus, this Court upholds the reason assigned for rejection of the petitioner's application for issue of licence in form P-5 for import of Ammonium Nitrate as being just and proper and the reason cited in the order, is neither arbitrary nor whimsical, but a reasonable restriction."

12. Perusal of the above findings rendered by the Writ Court would amply establish that the petitioner is not entitled to seek P5 license either as a matter of routine or right, when national security is projected by the respondents 1 and 2 for refusing to grant the P5 license to persons other than the user of the same.

13. No doubt, the above said order of the Writ Court was put to challenge in W.A.Nos.1067 and 1068 of 2016. It is also true that the Division Bench of this Court granted liberty to the writ petitioner to file appeal against the order of rejection with further observation that the said appeal shall be decided without being influenced by the view expressed by the learned Single Judge.

14. A careful perusal of the order passed by the Division Bench would show that the above findings rendered by the Writ Court have not been set aside. Of course, the Appellate

Authority was directed to dispose the appeal uninfluenced by the view expressed by the Writ Court. Therefore, insofar as this Court is concerned, such findings rendered by the Writ Court having not been set aside in the writ appeal, cannot be brushed aside as the one without substance. On the other hand, a detailed analysis made by the Writ Court in the above extracted paragraphs would show that granting import license for Ammonium Nitrate will certainly have a direct bearing on the national security if the importer is not the user himself and therefore, such reasons and findings touching upon the very security of the nation cannot be ignored or considered as irrelevant, while considering the very same issue once again by this Court. At the same time, it is to be noted at this juncture that the Appellate Authority, while passing the present impugned order, has applied his mind and given independent reasons, certainly not influenced by the above observations made by the Writ Court.

15. It is true that the Appellate Authority previously passed an order on 08.02.2017, rejecting the appeal and this court in W.P.No.28851 of 2017 set aside the said order and remitted the matter back to the Appellate Authority. The said remittal was for the reason that the Appellate Authority had not dealt with the merits of the facts and circumstances and that he has to give his independent reasons and findings for rejecting the appeal. This Court while remitting the matter back to the Appellate Authority also made it very clear that it was not expressing any view on the merits of the matter and that the appeal should be reconsidered once again on merits and in accordance with law. Thereafter, the First Appellate Authority passed the present impugned order dated 02.11.2018.

16. Perusal of the order of the Original Authority in refusing to grant license and the order of the Appellate Authority in rejecting the appeal would undoubtedly indicate that there is no scope for the writ petitioner to seek indulgence of this Court to interfere with those orders, more particularly, when the rejection was made in the interest of national security and based on a policy decision. It is seen from the order of the Original Authority, issuance of license in Form P5 for import of Ammonium Nitrate will be considered only in favour of Ammonium Nitrate user and not to a person, who is a trader of the same. It is not the case of the petitioner that it is the user of Ammonium Nitrate. On the other hand, admittedly, it is only a trader. Certainly, this Court finds justification on the part of the Authorities in holding that P5 license for import of Ammonium Nitrate will be considered only in favour of Ammonium Nitrate users. In other words, the importer should be a user of the Ammonium Nitrate by himself so that the checks and balances provided under the relevant Rules can be effectively implemented. On the other hand, if import of

Ammonium Nitrate is permitted by issuing P5 license to any person, including a trader, it would certainly cause great danger and pose threat to national security, since if the Ammonium Nitrate reaches in the hands of a person, who is not actually going to use and on the other hand, entitle to sell to any third party, there is every possibility for a reasonable apprehension that it would reach in the hands of anti social elements and terrorists, who pose danger to the national security.

17. At this juncture, it is relevant to note that Section 6C of the Explosives Act, 1884 specifically contemplates that the Licensing Authority shall refuse to grant license, where he deems it necessary for the security of the public peace or public safety, notwithstanding anything contained in Section 6B, which deals with grant of license. In other words, though Section 6B mandates the Licensing Authority to grant license under the circumstances stated therein, Section 6C mandates such Licensing Authority also to refuse to grant a license under the circumstances stated therein.

18. For brevity, Section 6B and 6C of the Explosives Act, 1884 are extracted hereunder:

6-B. Grant of licenses:

"(1) Where a person makes an application for licence under section 5, the authority prescribed in the rules made under that section for grant of licences (hereinafter referred to in this Act as the licensing authority), after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing either grant the licence or refuse to grant the same.

(2) The licensing authority shall grant a licence--

(a) where it is required for the purpose of manufacture of explosives if the licensing authority is satisfied that the person by whom licence is required--

(i) possesses technical know-how and experience in the manufacture of explosives; or

(ii) has in his employment or undertakes to employ a person or persons possessing such technical know-how and experience; or

(b) where it is required for any other purpose, if the licensing authority is satisfied that the person by whom licence is required has a good reason for obtaining the same.

6-C. Refusal of licenses:-

(1) Notwithstanding anything contained in section 6B, the licensing authority shall refuse to grant a licence--

(a) where such licence is required in respect of any prohibited explosives; or

(b) where such licence is required by a person whom the licensing authority has reason to believe-

(i) to be prohibited by this Act or by any other law for the time being in force to manufacture, possess, sell, transport, import or export any explosive, or

(ii) to be of unsound mind, or

(iii) to be for any reason unfit for a licence under this Act; or

c) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such license.

(2) Where the licensing authority refuses to grant a license to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of opinion that it will not be in the public interest to furnish such statement."

19. Further, under Rule 16 of the Ammonium Nitrate Rules, 2012, it is stated that no license for import or export of Ammonium Nitrate by land shall be granted without the previous sanction of the Central Government in each case, wherein the Central Government may impose conditions and restrictions in consultation with the Chief Controller. Therefore, it is evident that even for issuing the license for import by the Licensing Authority, previous sanction from the Central Government in each case is necessary and that the Central Government may impose conditions and restrictions while granting such sanction. Now, it is stated that the Government has taken a policy decision not to permit import of Ammonium Nitrate to a person, who is not a user. Therefore, I find that in view of the above Rule 16 position as well, the petitioner's claim was rightly rejected.

20. It is further seen that the Petroleum and Explosives Safety Organisation, Government of India, through its proceedings dated 16.09.2016, addressed to the Ministry of Commerce and Industry, has discussed in detail as to why the Ammonium Nitrate license should be granted only to the users and not to traders. The relevant conclusions arrived therein is

extracted as hereunder:

"Conclusions:-

At present, Licenses for import of Ammonium Nitrate is being granted by PESO only to the bonafide users viz., Cartridge & Bulk Explosives Manufacturers for their captive consumption, and not to the Traders; though there is no specific provision for such restriction under Ammonium Nitrate Rules, 2012.

Owing to the reported misuse of Ammonium Nitrate in the country, the new set of Rules viz., Ammonium Nitrate Rules 2012 were framed under Explosive Act, 1884 and brought into force, vide Govt. of India Notification No.GSR 553 (E) dated 11th July, 2012.

1. Being a new set of Rules came into force in the year 2012, certain minute regulatory measures pertaining to export/import of AN could not be envisaged, while the Ammonium Nitrate Rules, 2012 were framed. When the rules were implemented, based on the experience gained by PESO, such missed out regulatory measures were identified and addressed now by way of amending the rules and incorporating new provisions and that is how every new set of Rules getting evolved, over a period of time.
2. In the year 2016-17, Explosives manufacturers imported 3.17 MT (28.7% of their requirement) of AN for their captive consumption, which was only to meet the gap between the demand & supply of AN in the country. When the AN demand & supply gap increases with the increase in the explosives production, the explosives manufacturers are at ease to meet the gap by way of import of AN by themselves. This practice ensures non-dumping of unwarranted AN in the country. This is in line with the directives of the Hon'ble Commerce and Industry Minister in the meeting held on 03/07/2017 on "Strengthening Regulatory Framework for Global Leadership".
3. Import of AN by Traders will not have such balancing mechanism and would lead to excess dumping of AN in the country and make it easily available for misuse by anti social elements. This situation would pose threat to the public safety at large & national security.
4. Further, such enormous availability for imported AN with Traders may lead to unhealthy competition among them and this situation will certainly bring back the unsafe & illegal practice of supplying AN to mining & quarrying industry, which prevailed prior to the notification of

Ammonium Nitrate Rules, 2012.

5. The grounds on which, PESO has brought in such restrictions is established by Data Matrix on AN manufactured, used, exported and imported in the country during the year 2016-2017 and the inference drawn out of the Data Matrix analysis.
6. All stakeholders under Ammonium Nitrate Rules, 2012 have expressed their consensus in the meeting held with PESO at Nagpur on 15.12.2017; towards the amendment proposed for "Restricting import of Ammonium Nitrate only for bonafide own use by the importer and not for sale" in Rule 6 of the Draft Ammonium Nitrate Rules, 2017 notified vide Notification No.G.S.R.127(E) dated 13.10.2017.

As such, the practice of issuing AN import license only to Users and not to Traders by PESO is not hampering the business or commercial interest of the country, other than the business interest of a very few traders.

Dropping the above discussed provision on 'Restricting import of Ammonium Nitrate only for bonafide own use by the importer and not for sale' proposed for amendment of Ammonium Nitrate Rules 2012, would not only become impediment in the Rules implementation, but also defeat the very purpose of the Ammonium Nitrate Rules, 2012, compromising the National Security.

Section 6C of Explosives Act, 1884, empowers the licensing authority to refuse grant of license; where the licensing authority deems it necessary for the security of the public peace or for public safety."

21. Further, in this case, the Licensing Authority has found that for the security of the nation, grant of import license in Form P5 cannot be granted to the petitioner, who is not the user. The Appellate Authority has further found that Special Intelligence in investigation branch of customs informed that the appellant had earlier cleared 696 Metric Tonnes of Ammonium Nitrate through Chennai Port and 500 Metric Tonnes at Vishakapatnam Port without a valid license in Form P5 under Ammonium Nitrate Rules 2012 and investigation of the Special Intelligence and Investigation Branch of Customs revealed that the appellant had sold the entire Ammonium Nitrate imported to various individuals and to Companies involved in stone quarrying, construction and mining activities and the same was not used for agricultural purpose. The Appellate Authority also found that the writ petitioner/appellant has sold Ammonium Nitrate to various individual firms not holding P3 license for possession, use/sale of Ammonium Nitrate. Therefore, it is

evident that the petitioner has earlier imported huge quantity of Ammonium Nitrate and sold it to various third parties, who are not possessing P3 license and the usage by such third parties was also not for agricultural purpose. Therefore, the petitioner has evidently dealt with the imported Ammonium Nitrate by selling to various third parties, who are not having the valid P3 license to possess the same.

22. No doubt, under Article 19(1)(g) of the Constitution of India, right to trade is a fundamental right. However such right is not an unfettered right and on the other hand, it is always subject to reasonable restriction. Therefore, right to trade in Ammonium Nitrate and import the same is always subject to the statutory prescriptions and restrictions as provided under the Explosives Act, 1884 and Ammonium Nitrate Rules, 2012. Ammonium Nitrate is declared as explosive as found supra. Therefore, an explosive material sought to be imported by the petitioner by obtaining P5 license cannot be permitted as a matter of routine and therefore, it is the bounden duty and responsibility of the Authorities concerned to look into all perspectives and decide as to whether such license is to be granted or not. If the Authorities found that, in the interest of national security, such import license cannot be granted to a non user, scope for this Court to interfere with such policy decision is very limited. I do not find any arbitrariness or unreasonableness or discrimination in taking such decision by the authorities.

23. In this case, the very act of the petitioner in disposing the earlier imported Ammonium Nitrate to various third parties, who are not possessing valid P3 license, would clearly indicate that the petitioner is undoubtedly not the user of Ammonium Nitrate and on the other hand, it is only interested in trading the same, that too, by selling it to several individuals, who are stated to be the persons without P3 license. The counter affidavit filed by the Customs also states that explosive dealers purchased Ammonium Nitrate from the petitioner and used the same in their blasting operations at the quarries and they also sold small quantities to individuals and that the end users of the same is not known. It is further stated that statements have been recorded to that effect from authorized person of the firms mentioned in the counter affidavit. Therefore, it is seen that end users of the small quantities of the Ammonium Nitrate is unidentifiable. Needless to say that accumulating small quantities of Ammonium Nitrate periodically would result in gathering larger quantity in the hands of unknown and unidentifiable persons and hence allowing such trade to go on will not be the interest of national security. Therefore, the Authorities have rightly rejected the claim of the petitioner for P5 license, with which, this Court

finds no reasons or grounds to interfere, more particularly, while exercising its discretionary jurisdiction under Article 226 of the Constitution of India. Accordingly, the writ petition fails and the same is dismissed. No costs. The connected miscellaneous petitions are closed.

vri

Sd/--
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Secretary & Appellate Authority,
Ministry of Commerce & Industry,
Department of Industrial Policy & Promotion,
Udyog Bhawan, New Delhi 110 002.
- 2.The Chief Controller of Explosives,
Petroleum & Explosives Safety Organization,
"A" Block, 5th Floor, CGO Complex,
Seminary Hills, Nagpur,
Maharashtra 440 006.
- 3.The Commissioner of Customs,
Chennai III Customs Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai 600 001.
- 4.The Additional Commissioner of Customs (SIIB),
Custom House, 60, Rajaji Salai,
Chennai 600 001.

+1cc to M/s.Sunita Kumari, Advocate, SR.No.93572
+1cc to Mr.S.Baskaran, Advocate, SR.No.94354
+1cc to Mr.Rajnish Pathiyil, Advocate, SR.No.93720

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W.P.No.11869 of 2019and
WMP Nos.12086 and 12087 of 2019

Kak(18/11/2019)