BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P(MD)Nos.24396 and 22615 of 2019

and

WMP(MD)Nos.21021, 19371, 20457, 21286 of 2019

& 535 of 2020

W.P(MD)No.24396/2019:

V.V.Titanium Pigments Private Ltd.,
rep.by its General Manager
A.81, SIPCOT Industrial Complex,
South Veerapandiapuram post,
Tuticorin - 628 002. ... Petitioner

vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Commissioner of Customs,
Customs House, Beach Road,
Thoothukudi.

3.The Union of India,
rep.by its Secretary,
Ministry of Mines,
Shastri Bhawan,
New Delhi.

4.Union of India
rep.by its Secretary,
Department of Atomic Energy,
C.S.M. Marg, Mumbai.

5.Union of India,
rep.by its Secretary,
Ministry of Commerce and Industries,
Udyog Bhavan,
New Delhi - 110 107.

6.Union of India
rep.by its Secretary,
Ministry of Finance (customs),
New Delhi - 110 001. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to forbear the

1st respondent from interfering either directly or through his subordinates with respect to import of Ilmenite from other countries by the petitioner in any manner including discharge transportation storage and usage thereof and for consequential orders and thereby render justice.

For Petitioner	:	Mr.Lakshmi Narasimhan for M/s.Kingsly Soloman
For R1 & R2	:	M/s.Narmadha Sampath Additional Advocate General assisted by Mrs.J.Padmavathi Devi Special Government Pleader
For R3 to R6	:	Mr.V.Kathirvelu assisted by Mr.H.Lakshmi Shankar Additional Solicitor General

W.P(MD)No.22615/2019:

D.Gnanaraj
Managing Partner,
Raja Agencies,
A registered Partnership Firm
opposite Bharat Petroleum Byepass road,
Madathur, Korampallam P.O.
Tuticorin. ... Petitioner in WP(MD)No.22615/2019

Vs.

1.The Traffif Manager,
V.O.Chidambaranar Port Trust,
Administrative Office,
Harbour Estate,
Tuticorin - 628 004.

2.The Commissioner of Customs,
Customs House, Beach Road,
Thoothukudi.

3.The Assistant Commissioner of Customs
Office of the Commissioner of Customs,
Customs House, near Harbour Estate,
Tuticorin - 628 004.

4.The District Collector,
Tirunelveli District,
Tirunelveli.

5.The District Collector,
Thoothukudi District,
Thoothukudi.

6.V.V.Titanium Pigments Private Ltd.,
rep.by its General Manager
A.81, SIPCOT Industrial Complex,
South Veerapandiapuram post,
Tuticorin - 628 002.

7.The Secretary to Government of India,
Ministry of Atomic Energy,
Department of Atomic Energy,
Anushakti Bhavan,
Chatrapathi Shivaji Maharaj Marg,
Mumbai - 400 001.

8.The Secretary to Government of India,
Ministry of Commerce and Industry,
Udyog Bhawan,
New Delhi - 110 107.

9.The Secretary to the Government of India,
Ministry of Finance,
Department of Revenue (Customs)
Room No.46, North Block,
New Delhi - 110 001.
(R7 to R9 suo motu impleaded vide order dated 15.11.2019) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent file TRA-OPNAB-CRG-DISCH-VI-19 (46025) dated 22.10.2019 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents not to interfere with the import of ilmenite when supported by relevant import document.

For Petitioner	:	Mr.Lakshmi Narasimhan for M/s.Kingsly Soloman
For R1	:	Mr.A.Arivuchandran Standing Counsel
For R2 & R3	:	Mr.R.Aravindan Standing Counsel
For R4 & R5	:	M/s.Narmadha Sampath Additional Advocate General assisted by Mrs.J.Padmavathi Devi Special Government Pleader
For R6	:	Mr.Karthick Seshathiri for Mr.P.Alwin Balan

COMMON ORDER

WP(MD)No.24396 of 2019 is filed for the direction forbearing the first respondent from interfering with respect to import of Ilmenite from other countries by the petitioner in any manner including discharge, transportation, storage and usage thereof.

2.The petitioner is a manufacturer of Titanium Dioxide and other allied products. The basic material for the manufacture of Titanium Dioxide is ilmenite, which is a major mineral falling within the control and domain of the Central Government under the Mines and Minerals (Development and Regulation) Act, 1957 [hereinafter referred to as 'MMDR Act']. It is stated that the said mineral is a freely importable mineral as per the Union of India's Foreign Trade Policy. Admittedly, it is not mined in India. It has been purchased from other countries. For the import of the same, the documents namely commercial invoice, bill of lading, bill of entry have to be produced to the customs authorities as notified under the Foreign Trade (Development and Regulation) Act, 1992. The petitioner has been importing the minerals into the Country and used it for the purpose of 'home consumption'.

3.The petitioner had imported the ilmenite from Norway and shipped through the material mined by M/s.Titania AS of Joessingfjord, Norway. The petitioner had availed the services of M/s.Raja Agencies who is the petitioner in WP(MD)No.22615 of 2019 as his Customs House Agent. The purpose of engaging agent was to clear the import of ilmenite from the ship and clear it through customs authority and transport the same to the factory premises. The port of discharge was V.O.Chidambaranar Port Trust, Tuticorin.

4.The Customs House Agent sent the documents mentioned above and they were checked and verified by the customs department. After the payment of the customs duty, customs department also issued pass to remove the same out of the port. While so, it was understood that the first respondent has written a letter to the traffic manager of the V.O.C.Port trust stating that the berthing of the vessel should not be allowed and passed an order on 22.10.2019. Challenging the same, WP(MD)No.22615 of 2019 is filed. It is stated that prior to this, the District Collector, Tirunelveli had written a letter on 18.07.2019 to the District Collector, Tuticorin to stop the import, because of which, the petitioner was kept in dark, and the Customs House Agent was also not even put on notice. Though the petitioner has been importing ilmenite from 2017, for the first time, there has been such objection for import. The first respondent had taken a stand that the Rules framed by the State of Tamil Nadu by exercising its power under the MMDR Act will be applicable to imports also. Though only the export of beach sand minerals is restricted by the Director General of Foreign Trade (DGFT), for the import of ilmenite which is major mineral, there is no restriction. The respondents 3 to 6 have never so far issued any notification to control the import of a substance, which is classified as an atomic mineral. The respondents had applied the MMDR Act and Rules for the import made by the petitioner.

5.As mentioned earlier, berthing was refused to the petitioner/Customs House Agent on 22.10.2019, which prompted the Customs House Agent to file WP(MD)No.22615 of 2019 on 23.10.2019 and an order of interim stay was passed against the order of traffic manager. Based on which, the V.O.C.Port Trust was permitted to discharge. Even thereafter, the first respondent had directed that the imported minerals should not be transported from the Port. Therefore, the Customs House Agent filed a petition seeking injunction against the respondents as the materials to be moved from the Port to the godown of the writ petitioner and thus, the materials were offloaded in the premises on 03.11.2019. After which, the first respondent caused an inspection of the same through the Assistant Director (Mines), the Tahsildar and the Village Administrative Officer. The above act of the respondents, according to the petitioner, was based on the presumption that the MMDR Act and Rules are applicable to the imports of atomic mineral. Therefore, the petitioner has moved this Court with respect to the import of ilmenite from the other countries by the petitioner.

6.The question that arises for consideration is whether the MMDR Act applies to imports. The MMDR Act is the Central Act which governs development and regulation of mines and minerals in terms of the powers vested in the Central Government. 'Reconnaissance Operation' and 'Reconnaissance Permit' are defined under Section 3 of the MMDR Act. The prospecting/mining operations to be under lease as defined under Section 4 of the said Act. However, Section 4 does not apply to import of minerals, if mining of which takes place outside India. Section 4(1A) reads that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the Rules made thereunder. But the above provisions are all relating to the prospecting, reconnaissance and mining operations within the Union of India. The said act does not deal with imported minerals and the import is governed by the Customs Department or authorities. The scheme of the MMDR Act deals with the mining within the country.

7.The first respondent represented by the learned Additional Advocate General urged that the petitioner, who is the purchaser of the imported mineral, had not obtained the dealer licence under the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011. Therefore, he is not entitled to transport the imported minerals.

8.Secondly, it was contended that Section 4 of the MMDR Act prevents the transportation of minerals and since during the mining operations inside the State of Tamil Nadu, there is possibility of getting mixed up with the frozen stocks, the import should not be permitted.

8(a).It is the specific plea of the writ petitioner that the first respondent has no jurisdiction over the imports.

(b)The MMDR Act applies only for mining or prospecting within India and the Rules framed under Sections 15 and 23C of the MMDR Act cannot be given extra territorial application. Further, they do not apply to minerals freely importable under the Foreign Trade Policy.

9.The control and check imposed on the mining operation within India cannot be made applicable to the mineral, that are imported. As the petitioner is only importing the minerals which is mined outside the Country, the mining lease is unnecessary. Though the petitioner is carrying on with the said business, there were no allegations earlier with respect to mixing of minerals of those mined in India.

10.The Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, was published in exercise of the powers conferred under Section 23C(1) of the MMDR Act. Section 23C(1) provides power to State Government to make Rules for preventing illegal mining, transportation and storage of minerals. Admittedly, Section 15 of the MMDR Act, which applies to minor minerals, is inapplicable to the case on hand. In so far Section 23 is concerned, the principal Act itself is not applicable to imported mineral. Therefore, the said Section is also inapplicable. In this regard, the learned counsel for the petitioner relied on the decision reported in ***2019 SCC OnLine SC 298 [State Of Gujarat vs. Jayeshbhai Kanjibhai Kalathiya]***, in which, paragraphs 41 to 43 read as follows:

> *"41)Insofar as Section 23-C of the MMDR Act is concerned, it was inserted by the Amendment Act of 1999 with the objective to prevent illegal mining. That is clearly spelled out in the Statement of Objects and Reasons. We may reproduce a portion thereof again:*
>
> *"(iii) A new provision is proposed to be inserted in the Act prohibiting transportation or storage or anything causing transportation or storage of any mineral except under the due provisions of the Act, with a view to preventing illegal mining. Further, the Act is proposed to be amended to cover the breach of the provisions of the proposed new provision of the Act to be punishable. It is also proposed to insert a new provision to provide for anything seized under the Act as liable for confiscation under court orders. A new section is proposed to be inserted to empower the State Governments to make rules for preventing illegal mining, transportation and storage of minerals and for purposes connected therewith.(emphasis supplied)"*

42) It is in this context the words 'transportation' and 'storage' in Section 23-C are to be interpreted. Here the two words are used in the context of 'illegal mining'. It is clear that it is the transportation and storage of illegal mining and not the mining of minor minerals like sand which is legal and backed by duly granted license, which can be regulated under this provision. Therefore, no power flows from this provision to make rule for regulating transportation of the legally excavated minerals.

43) As far as Issue No. (b) above is concerned, we are also of the considered opinion that the impugned rules violate Part XIII of the Constitution as the effect thereof is to fetter the freedom of trade, commerce and intercourse under Article 301 of the Constitution. Under this Article, the expression 'freedom' must be read with the expression 'throughout the territory of India'. Under Article 302, Parliament may impose restrictions on the freedom of trade, commerce or intercourse between one State and another as may be required in the public interest. The expression 'public interest' may include a regional interest as well. However, Article 302 is qualified by Article 303 which prohibits Parliament and the State Legislatures from making any law that gives preference to one State over another or discriminates between one State and another. Situations of scarcity are to be dealt with by Parliament under Article 302(2). The power of State Legislature to impose reasonable restrictions on the freedom of trade, commerce or intercourse, as may be required in the public interest, requires such a Bill or amendment to be moved in the State Legislature only after receiving previous sanction from the President. The President, being the head of the State and the guardian of the federation, must be satisfied that such a law is indeed required and, thus, acts as a check on the promotion of provincial interests over national interest. Going by the aforesaid scheme of this Chapter, it becomes apparent that when there are such restrictions on a State Legislature, then the State Government could not have imposed such a prohibition under a statute whose object is to regulate mines and mineral development, and not trade and commerce per se."

11.A reading of the above decision makes it very clear that Section 23C applies only to minerals illegally mined and does not apply to regulate the transportation of legally excavated minerals. Admittedly, the mineral ilmenite was excavated from Norway and was shifted from that country to India. The relevant documents have been filed and on payment of the customs duty the minerals can be permitted to be taken.

12. In the case of **The District Collector** Vs. ***M/S.M.R.M. Ramaiya Enterprises*** [W.A(MD)No.1454 of 2017] it is held as follows:

> "*28. As rightly contended by the Learned Senior Counsels appearing for the 1st and 7th respondents and upon perusal of the preamble and the entire provisions of MMDR Act, this Court can only come to the conclusion that the parent Act, from which the rule making power is derived by the State Governments itself does not deal with imported sand from another country and is applicable only for the development and regulation of mines and minerals under the control of the Union. Though it could be contended that once the sand is imported, the same would fall under the control of the union, the provisions of the Act do not contemplate such a situation. Further, this court is in complete consonance with the findings of the Learned Single Judge that the provisions of Sections 15 and 23C do not empower the States to deal with imported sand. Also, the Judgments of the Division Bench upholding the validity of Rules 38A and 38C will in no way affect the contentions of the writ petitioner as held by the Learned Single Judge.*
>
> *31. A careful consideration of the above judgments would reveal that when the language used in the statue is clear and unambiguous and when the object of the enactments are different, there cannot be any reference or incorporation. In fact, in both the judgments relied upon by the appellants, the Apex Court has ultimately rejected the contention holding that when the parent act was not applicable, reading into the same is not permissible. In the case on hand, the Rules 2011 under definition of Minerals in Rule 2 (xiii) specifically excludes? sand?. While so, when there is a specific exclusion, the definition in other rules cannot be referred or relied upon, more so, when the Parent Act itself does not deal with imported sand. A plea was made on behalf of the appellants that Sections 4 and 4 (1A) have to be read disjointly. This Court is not agreeing with the said contention, as the provisions have to be read harmoniously with the object of the enactment. Section 4 deals with reconnaissance permit, prospecting or mining operations. Sub section 1A was introduced with effect from 18-12-1999. When a sub section is introduced under a particular section, it has to be read in conjunction with the object of the section. Section 4 states that no operations shall be permitted in any area except under and in accordance with the terms and conditions of permit or licence or lease*

granted under the Act. Therefore, the transportation and storage referred in the Sub-section 1A can only apply to the mined or quarried mineral under the reconnaissance permit or prospecting licence or mining lease. Further, as rightly held by the Learned Single Judge that Section 15 empowers the State to make rules for regulating the grant of quarrying lease and Section 23C deals with measures to prevent illegal mining, transportation and storage of minerals, it does not deal with import from another country.

32. Insofar as the Kerala and Goa Rules and the Foreign Trade Policy are concerned, the same are not applicable as the Tamil Nadu Rules do not contain such specific provisions regarding import from foreign country and more so in the light of the fact that the Act, itself does not deal with imported minerals from another country. What is not available in the statute, cannot be created by drawing inference from another statute.

34. There is no quarrel over the ratio laid down in the above judgments. The answer to this contention is found in paragraphs 33 and 38 of the judgment of the Learned Single Judge, wherein the right of the State to bring in an enactment under Article 304 has been accepted. We agree with the said findings. The State is empowered to bring in an enactment subject to legal scrutiny. The rules framed, as rightly held by the Learned Single Judge, are in derivation of powers under Sections 15 and 23C and not under Article 304 of the Constitution of India."

13. Yet another contention raised by the learned Additional Advocate General is that though the Foreign Trade Policy allows import, the petitioner has to comply with the local laws. She also pointed out that para - 9 of the counter affidavit filed by the respondents 3 to 6 also reiterated the same.

"9.It is further submitted that though the import of ilmenite as per the Foreign Trade Policy regime is free, the Chapter 2 of the Foreign Trade Policy document dealing with general provisions regarding imports and exports at para 2.03 states as follows:

"2.03.Compliance of imports with Domestic Laws:
a)Domestic Laws/Rules/Orders/Regulations/technical specifications/environmental/safety and health norms applicable to domestically produced goods shall apply, mutatis mutandis, to imports, unless specifically exempted.

(b)However, goods to be utilized/consumed in manufacture of export products, as notified by DFT, may be exempted from domestic standards/quality specifications."

14.In reply to the same, the learned counsel for the petitioner contended that any minerals even if legally mined, the State Government has got powers, but Section 23C is inapplicable to the present case as has been held in the decision of the Hon'ble Supreme Court, cited supra. In this regard, it is pertinent to advert to paragraph - 28 of the counter affidavit filed by the first respondent/District Collector, Tuticorin :

"28.With regard to the averments made in para 22 of the affidavit, it is submitted that as per sub-section 4(1A) of the Act, no person shall transport or store or cause to be transported or store any mineral otherwise than in accordance with the provisions of the Act and the Rules made thereunder. Apart from that as per sub rule(2) of Rule 3 of the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, no person other than the mineral dealer shall store or cause to be stored any mineral at any place for the purpose of sale or consumption. As the petitioner had been engaged in the mineral trade from the year 2017 onwards, without registering themselves as a mineral dealer, the District Authorities, having jurisdiction over the area had inspected the plant site of the petitioner company and seized the unlawfully stored mineral under the powers vested with them under Section 21(4) of the Act, 1957 for contravening the provisions of Section 4(1A) of the Act and Rule 3 of the said rules and FIR was also registered against the petitioner company for the said offence."

15.Though in the above para it is stated that the District Authorities inspected the petitioner company and seized the unlawfully stored mineral under the powers vested with them, so far, no seizure or confiscation order passed or served on the petitioner. The learned counsel for the petitioner also invited the attention of this Court to Section 45(6)(a) of the Mineral Conservation and Development Rules, 2017, which reads as follows:

"45. Monthly and annual returns-

(6) Any person or company engaged in trading or storage or end-use or export of minerals, shall submit to the Indian Bureau of Mines and concerned State Government, where the said person or company is sourcing the minerals, the returns in the following manner, namely:-

(i) a monthly return which shall be submitted before the 10th of every month in respect of preceding month in Form N; "

16.If the above Rules are not complied with, it is open to the authority to invoke Rule 45(7) of the said Rules. But, however, there is no such action taken by the respondents. It is further stated that as the petitioner has been complying with the provisions of the Rules explicitly till date, none of the authorities under the said Rules can invoke the provisions of Rule 45(7). The District Collector is not an authority as contemplated under the Mineral Conservation and Development Rules, 2017 and the authority empowered to take action is only the Regional Controller of Mines. Therefore, invocation of the said Rules is also only a futile exercise.

17. The MMDR Act itself is a legislation made for the purpose of granting prospecting or mining leases within the territory of India. When the ilmenite is imported, which is mined outside the territory of India, the said Act cannot be applicable. The Mineral Conservation and Development Rules 2017 traced their origins to the Sections 15, 18 and 23C of MMDR Act, 1957. When the Act itself does not apply to the imports, by no stretch of imagination it could be stated that the said rules applies to the imports. As the ilmenite is freely importable, the first respondent has no authority to interfere with the imports nor exercise the powers of Central Government and thus, exceeded its jurisdiction.

18. In the light of the above, as the prima facie case is made out by the petitioner, which is supported by Bill of Lading, Bill of Entry, customs assessments and consequential payment of custom duty, the petitioner is the owner of the minerals and it is entitled to use it in its factory. There is no prejudice caused to the respondents in allowing the writ petition forbearing the 1st respondent from interfering with the import of the ilmenite by the petitioner from other countries in any manner including discharge, transportation, storage and usage thereof.

19. In fine, the writ petition in W.P.(MD)No.24396 of 2019 is ordered as prayed for. As narrated above, the prayer sought for in W.P.(MD)No.22615 of 2019 becomes infructuous, pursuant to the compliance of the interim orders of this Court. Hence, the said writ petition is dismissed as infructuous. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mj/gg

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Commissioner of Customs,
Customs House, Beach Road,
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3.The Union of India,
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+1 CC to Mr.S.PALANI VELAYUTHAM, Advocate (SR-8935[F] dated 27/02/2020)

+2 CC to Mr.KINGLY SALOMON, Advocate (SR-8693,8694[F] dated 27/02/2020)

+1 CC to Mr.H,LAKSHMI SHANKAR, Advocate (SR-9044[F] dated 28/02/2020)

+1 CC to SPL.GP (SR-9103,9104[F] dated 28/02/2020)

+1cc to Mr.R.Aravindan, Advocate Sr.No.8957

+1cc to Mr.P.P.Alwin Balan, Advocate Sr.No.8695

+1cc to Mr.A.Arivuchandran, Advocate Sr.No.8813

W.P(MD)Nos.24396 and 22615 of 2019
27.02.2020

VB(03.03.2020) 13P 22C