



WEB COPY

WP No.32998 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-03-2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.32998 of 2016

and

WPMP Nos.28513 and 28514 of 2016

M/s.M.R.Impex, having his Office at
No.7, Kalmattu Street,
Nagapattinam District,
Nagoor,
Tamil Nadu-611 002 Represented by its
Proprietor Shri Bhava Bagurudeen Sahib.

... Petitioner

Vs.

1.The Union of India,
Represented by Secretary,
Department of Commerce,
Ministry of Commerce and Industry,
New Delhi-110 001.

2.The Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
North Block,
New Delhi-110 001.



3.The Director,
Directorate General of Foreign Trade (DGFT)
Udyog Bhawan, H-Wing, Gate No.02,
Maulana Azad Road,
New Delhi-110 011.

4.The Narcotics Commissioner,
Central Bureau of Narcotics,
19, The Mall,
Morar,
Gwalior-474 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the first respondent, leading to issuance of Notification No.17/2015-20 dated 29.07.2016, as the same is ultravires the Foreign Trade (Development and Regulation) Act, 1992, the judgment of the Hon'ble Apex Court in case of M/s.Kanak Exports reported in (2016) 1 SCC 226 and the judgment of this Court in WP No.5019 of 2016 dated 05.04.2016.

For Petitioner : Ms.M.Meena Rukmani for
Mr.A.Ramkumar.

For Respondents : Mr.K.Srinivasamurthy

ORDER

The Notification No.17/2015-20 dated 29.07.2016 issued by the Central Government under Section 3 of the Foreign Trade (Development



and Regulation) Act, 1992, is under challenge in the present writ petition.

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2. The petitioner M/s.M.R.Impex is a registered dealer under Tamil Nadu Value Added Tax Act. The petitioner is an Assessee under the Income Tax Act and conducting business of import of Poppy Seeds from China and Turkey. The import of Poppy Seeds from China and Turkey was being permitted in terms of the Foreign Trade Policy in force from time to time, which envisaged submission of import contracts for specified quantities to the Office of the fourth respondent, who on receipt of the same, would register the said contract, pursuant to which imports were permitted in respect of the quantity mentioned in the said contracts.

3. The grievance of the petitioner is that the impugned Amendment in the Import Policy Condition No.3 of Chapter 12 of ITC (HS) 2012 – Schedule I (Import Policy) has been issued in the Gazette of India Extraordinary Part II, Section 3, Sub Section (ii) dated 29.07.2016.

4. The petitioner states that the amendment Notification issued by the Director General of Foreign Trade is without jurisdiction and he



being not the Competent Authority, the amendment is to be set aside.

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5. It is reiterated that the Director General of Foreign Trade is not the Authority to send the Gazette Notification issued by the Central Government, which is impugned in the present writ petition.

6. The learned Central Government Standing Counsel made a submission that the Notification is always issued by the Central Government and not by Directorate General of Foreign Trade (DGFT) is only signing the Notification on behalf of the Central Government. Therefore, the grounds raised by the petitioner are untenable.

7. Let us consider the requirement of Section 3 (1) of the Foreign Trade (Development and Regulations) Act, 1992, which stipulates that “The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports”. Thus the Central Government is competent to issue regulations of foreign trade by facilitating imports and increasing exports.



8. In the present case, the amendment was made subject to Import Policy Condition No.3 of Chapter 12 of the ITC (HS), 2012 Schedule I (Import Policy). The Gazette Notification Extraordinary unambiguously stipulates that “In exercise of powers conferred by Section 3 of Foreign Trade (Development and Regulation) Act, 1992, read with paragraphs 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the Import Policy Condition No.3 of Chapter 12 of ITC (HS), 2012, Schedule I (Import Policy) which at present reads as under:

“2. (3) Import of Poppy Seeds (HS Code : 120791 00) shall be allowed subject to the following conditions:

(a) Import permitted only from Australia, Austria, France, China, Hungary, the Netherlands, Poland, Slovakia, Spain, Turkey and Czech Republic, United Kingdom, Democratic People's Republic of Korea, Macedonia, Germany and Ukraine;

(b) The importer shall produce an appropriate certificate from the Competent Authority of the exporting country that Opium



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Poppy have been grown licitly / legally in that country, and

(c) All import contracts for this item shall compulsorily be registered with the Narcotics Commissioner, Gwalior prior to import.”

9. Thus the amendment was issued by the Central Government in exercise of the powers conferred under Section 3 of the Foreign Trade (Development and Regulations) Act, 1992, the alleged signature of the Director General of Foreign Trade made pursuant to the application of powers under Administrative Law shall not invalidate the Notification, which is otherwise, issued pursuant to Section 3 of the Foreign Trade (Development and Regulations) Act, 1992.

10. Once the Central Government invoked the powers in the Act and issued Gazette Notification, the said Notification amounting to merit of policy of the Government cannot be challenged simply on the ground that the said Notification was signed by the Director General of Foreign Act.



11. The Directorate General of Foreign Trade (DGFT) was given delegation of powers for signing the Notification in view of the smooth functioning of the Central Government Administration.

12. This being the factum established, the very ground raised in this regard by the petitioner is untenable.

13. Thus, this Court do not find any infirmity in respect of the amendment issued to the Foreign Trade Policy.

14. Accordingly, the present writ petition is devoid of merits and it stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

23-03-2023

Index : Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



To

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Ministry of Commerce and Industry,
New Delhi-110 001.
2. The Secretary,
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S.M.SUBRAMANIAM, J.

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