



WEB COPY



W.P.Nos.15621 of 2018 etc. bail

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. Nos.15621, 15622 and 15623 of 2018
W.P Nos. 16126, 16131, 16137, 16133, 16206, 16215, 16208, 16212, 16782,
16788, 16790, 20803, 20809, 20848, 20910, 20982 and 21199 of 2019
and
W.M.P.Nos. 18551, 18550, 18555, 18552, 18553, 18554 of 2018**

W.P.No.15621 of 2018:

M/s.Asian Copiers

BG-6/54-A, Paschim Vihar,

New Delhi – 110 063.

Rep. by its Proprietor Akshay Khetterpal

... Petitioner

Vs.

1. The Commissioner of Customs
Chennai II Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai 600 001.
2. The Joint / Additional Commissioner of Customs (Gr.5)
No.60, Rajaji Salai, Customs House,
Chennai 600 001.
3. The Deputy / Assistant Commissioner of Customs (Gr.5)
No.60, Rajaji Salai, Customs House,
Chennai 600 001.



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4. The Director General of Foreign Trade and
Additional Secretary to the Govt. Of India
Department of Commerce, Ministry of Commerce
and Industry, Govt. Of India, New Delhi.

5. The Union of India,
through the Secretary, Ministry of Commerce,
New Delhi.

... Respondents

(R5- *Suo Moto impleaded*)

PRAYER in W.P.15621 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Declaration, to declare Para 2.31 of the Foreign Trade Policy (2015 – 2020) issued by the 4th Respondent as ultra vires, unconstitutional, excessive of authority and without jurisdiction, insofar as it requires an authorization for import clearance of second hand digital Multifunction Print & Copying Machines.

Case No.	Counsel for the petitioner	Counsel for the Respondents
W.P.No.15621 of 2018	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr. Venkataswamy Babu, Senior Panel Counsel for R4
W.P.No.15622 of 2018	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr. Venkataswamy Babu, Senior Panel Counsel for R4
W.P.No.15623 of 2018	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr. Venkataswamy Babu, Senior Panel Counsel for R4
W.P.No.16126 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.J.Madanagopal Rao, CGSCC for R4 & R5



W.P.Nos.15621 of 2018 etc. below

Case No.	Counsel for the petitioner	Counsel for the Respondents
W.P.No.16131 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.V.Chandrasekar, CGSCC for R4 & R5
W.P.No.16137 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.V.Chandrasekar, CGSCC for R4 & R5
W.P.No.16133 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.V.Chandrasekar, CGSCC for R4 & R5
W.P.No.16206 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.V.Chandrasekar, CGSCC for R4 & R5
W.P.No.16215 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.V.Chandrasekar, CGSCC for R4 & R5
W.P.No.16208 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.V.Chandrasekar, CGSCC for R4 & R5
W.P.No.16212 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.V.Chandrasekar, CGSCC for R4 & R5
W.P.No.16782 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.K.Srinivasa Murthy, CGSCC for R4 & R5
W.P.No.16788 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.K.Srinivasa Murthy, CGSCC for R4 & R5
W.P.No.16790 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr. K. Srinivasa Murthy, CGSCC for R4 & R5
W.P.No.20803 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.S.Janarthanam, CGSCC for R4 & R5



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Case No.	Counsel for the petitioner	Counsel for the Respondents
W.P.No.20809 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.N.Ramesh, CGSCC for R4 & R5
W.P.No.20848 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.Rajesh Vivekananthan, CGSCC for R4 & R5
W.P.No.20910 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.Rajesh Vivekananthan, CGSCC for R4 & R5
W.P.No.20982 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.Rajesh Vivekananthan, CGSCC for R4 & R5
W.P.No.21199 of 2019	Mr.N.Viswanathan	R.Hemalatha Standing Counsel for R1 to R3, Mr.A.P.Srinivas, CGSCC for R4 & R5

COMMON ORDER

The present batch of writ petitions is filed with a common prayer to declare Para 2.31 of the Foreign Trade Policy (2015-2020) (hereinafter shortly referred to as "FTP") issued by the 4th respondent as ultra vires, unconstitutional and without jurisdiction, insofar it requires an authorization for import clearance of Second Hand Digital Multifunction Print and Copying Machines.



2. In all these writ petitions, Para 2.31 of FTP (2015-2020) was challenged *inter alia* on the following grounds:

a) That the impugned para 2.31 issued by the 4th respondent / Director General of Foreign Trade (hereinafter shortly referred to as "DGFT"), insofar as it requires an authorization for import clearance of second hand digital Multifunction Print & Copying Machines, is ex-facie illegal as it is excessive of the powers conferred on him as a delegated authority, apart from being contrary to the provisions of law and the ratio laid down by the Hon'ble Supreme Court.

b) That the restriction imposed on the impugned goods by the DGFT, an authority created in terms of Section 5 of the Foreign Trade (Development & Regulations) Act, 1992 is contrary to the mandate contained under Section 6(3) of the FTDR Act, 1992, which does not authorize the DGFT to interfere with the policy provisions concerning import and export of goods, and therefore any prohibition, restriction or regulation of any goods for export or import, had to be notified by an order published in the official gazette in terms of Section 3 (2) of the FDTR Act, 1992, and in-fact, the said power had been reserved by the Central Government without being delegated to the DGFT in terms of Section 6(3) of the FTDR Act, 1992, which view is well settled by the



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decision of the Hon'ble Supreme Court in *Union of India v. Asian Food Industries* [2006 (204) ELT 8 (SC)].

c) That in terms of the amendment made to the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 dated 04.04.2016, wherein, it has been specifically provided that "*The policy for free trade for multifunction print and copying machines to be reviewed once the MFDs are domestically manufactured*", the policy of the government for free trade in second hand digital multifunction machines was further expanded by Notification No. 670 (E) dated 06.07.2016 permitting the import of the MFDs freely even by a trader independently as against the earlier stipulation of import by a trader on behalf of the actual user, thereby enabling any trader to import the MFDs into India freely.

3. Interim applications were also filed in all these writ petitions to provisionally assess and permit the clearance of Second hand Digital Multifunction Print & Copying Machines imported, upon payment of applicable duties of customs on the enhanced assessable value as appraised by the approved Chartered Engineer.



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4. This Court was pleased to pass orders in the interim applications directing the petitioners to pay the duty applicable on the enhanced value while directing the respondents to release the goods on such payment. The relevant portion of one such interim order passed in W.P.Nos.15621 to 15623 of 2018 is extracted below for ready reference:

"4. Petitioners are directed to pay the duty applicable on the enhanced value, as determined by the Chartered Engineer. On payment of the same, goods detained in the Custom Fleet Stations, licensed by the Customs, be released. demurrage charges be waived. petitions, would be decided. Till the date of release of goods, Other disputes raised in the writ petitions would be decided ."

5. It is submitted by the learned standing counsel appearing for the respondents that with the goods having been released, the respondents may be granted liberty to proceed with the adjudication, which has not been seriously objected to, by the learned counsel for the petitioners. It is further submitted by the learned counsel for the petitioners that the petitioners would participate in the adjudication proceedings; and they do not intend to press these writ petitions, challenging Para 2.31 of FTP for the present, but sought liberty to challenge the same at a later point of time, if need arises.

6. In the light of the submissions made by the learned counsel on either side, we are inclined to dispose of the writ petitions without expressing any



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opinion on the merits of the case, including the challenge to the validity of Para 2.31 of the Foreign Trade Policy (2015 – 2020). Accordingly, this batch of writ petitions stands disposed of, granting liberty to the respondents to proceed with the adjudication process, in accordance with law. The petitioners are also at liberty to raise all the contentions / grounds that may be available including challenge to Para 2.31 of FTP, before the authority concerned, if so advised. No Costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D.,J.] [M.S.Q.,J.]
30.01.2024

Speaking (or) Non Speaking Order

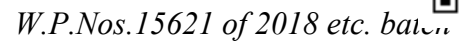
Index:Yes/No

Neutral Citation: Yes/No

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To

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Chennai II Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai 600 001.
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5. The Union of India,
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