



2024:DHC:6034



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06th AUGUST, 2024

IN THE MATTER OF:

+ **W.P.(C) 3121/2024 & CM APPLs. 12796/2024, 29652/2024, 35745/2024 & 35953/2024**

A R SALES PVT LTD.

..... Petitioner

Through Mr. R.K. Handoo and Mr. B. K. Singh, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Arjun Mahajan, SPC and Mr. Aakash Meena, GP, Mr. Apoorv Upamanyu, Mr. Rishab Bhalla, Ms. Neha Rai and Ms. Stuti Karwal, Advocates for R-1 to R-3.
Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Mr. Kumar Abhishek, Mr. Sunder Singh, Mr. Rajeev Seth and Ms. Meetali Chabra, Advocates for Respondent No.4/DRI.
Mr. Aditya Singla, SSC with Mr. Raghav Bakshi and Mr. Ritwik Saha, Advocates for R-5.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant writ petition under Article 226 and 227 of the Constitution of India has been filed with the following prayers:-

"(a) issue writ, order(s) or direction(s) in the nature of certiorari, or any other appropriate writ, order or



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direction to quash and set aside the impugned letter / order F. NO. 01/77/ 171/D86/AMQ24/EC(S), dated 02.02.2024, issued by Shri Ranjeet Kumar Roy, Deputy Director, Directorate General Foreign Trade Export Cell (SCOMET), New Delhi;

(b) Pass such further order / directions as the Hon'ble Court may deem fit in the facts and circumstances of the case."

2. The Petitioner company is engaged in the business of import and export of Civil/Commercial Aircraft Parts and has since been engaged in the said business, they received the Import code on, 21.11.2022. The Petitioner company entered into a Letter of Intent, dated 03.11.2023, with Siberian Airlines for export of Aircraft Engines. Subsequently, the Petitioner imported the said aircraft engines from the U.A.E. and started the process for exporting the engines to Siberian Airlines, under Airway Bill No. 7552481 on 15.02.2024. While the aforementioned consignment, Airway Bill No. 7552481, was under process and the Petitioner was waiting for the Let Export Order (LEO), the Petitioner Company received a letter/order F.No.01/77/171/D86/AMQ24/EC(S) on 02.02.2024 from the Director, DGFT Export Cell (SCOMET), informing the Petitioner Company that they had invoked the Catch-all provisions under Para 10.05 of the Foreign Trade Policy (FTP), 2023, against the export consignment and further directed the Petitioner company to obtain SCOMET authorization from the DGFT for exporting the consignment of aircraft parts as per the Catch-all provisions. This communication dated 02.02.2024 issued by the Respondents is under challenge in the present Writ Petition.



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3. After receiving the Impugned Letter, the LEO to export, the said Aircraft Engines, was denied to the Custom House Agent on the pretext of a DRI alert. It is pertinent to mention that, in the interim, the Petitioner made various representations to the Joint Director, DGFT and to the Customs Commissioner to release the consignment under Airway Bill No. 7552481, along with 3 other consignments, under Airway Bill Nos 7567057, 7567132, 7596729 also containing other aircraft spare parts, that were stopped from being exported and hence lying at the airport as a result of the impugned letter. Thereafter, on the advice of the Respondent, the Petitioner tried to apply for the SCOMET license on the DGFT Website but did not fall into any of the eight-criterion mentioned on the website, attached below:-

" 0. Nuclear materials, nuclear-related other materials, equipment and technology

1. Toxic chemical agents and other chemicals

2. Micro-organisms, toxins

3. Materials, Materials processing Equipment and related technologies

4. Nuclear-related other equipment and technology, not controlled under Category 0

5. Aerospace systems, equipment, including production and test equipment, related technology and specially designed components and accessories therefor.

6. Munitions List

7.



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8. Specially Materials and Related Equipment, Material Processing, Electronics, Computers, Telecommunications, Information Security, Sensors and lasers, Navigation and Avionics, Marine, Aerospace and Propulsion."

4. Notice was issued in the writ petition 01.03.2024. Pleadings are complete.
5. During the course of hearing, a report from the Ministry of Defence, Defence and R&D Organisation was received and a copy of the said report was also shared with the learned Counsel for the Petitioner. On a perusal of the report, efforts were made by this Court to resolve the issue. On 28.05.2024, it was suggested by Mr. Handoo, learned Counsel for the Petitioner, that the item in Shipping Bill No. 7552481 could be sent back to the same person from whom the goods were imported in the country and items in Shipping Bill Nos. 7567132, 7596729, 7567057 could be permitted for re-export. The Joint Directed General of Foreign Trade was present in Court and the Petitioner was directed to meet the said Officer to resolve the issue and the matter was adjourned to 05.06.2024. On 05.06.2024, Mr. Handoo, learned Counsel for the Petitioner, informed this Court that the permission sought for by the Petitioner for the goods covered under Shipping Bill No. 7552481 has been granted to the Petitioner to be sent back to the same person from whom it was imported and as far as the question of re-export of the goods covered under Shipping Bill Nos. 7567132, 7596729, 7567057 is concerned, the matter has been sent to the Inter-Ministerial Working Group (IMWG) for a decision to be taken. Mr. Handoo submitted that this exercise was unnecessary in view of the inspection report. Since the



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matter was not resolved, this Court decided to hear the arguments and the Judgment was reserved on 02.07.2024.

6. The description of goods in various shipping bills given in the Panchnama dated 28.03.2024 which was prepared when the goods were seized reads as under:

<i>S. No.</i>	<i>SB No.</i>	<i>SB Date</i>	<i>Item Description declared before Customs</i>
1	7552481	15.02.2024	<i>ENGINE: CFM34-8E5 SERIAL NO. ESN193864 (AIRCRAFT ENGINE WITH STAND)</i>
			<i>ENGINE: CFM34-8E5 SERIAL NO. ESN193865 (AIRCRAFT ENGINE WITH STAND)</i>
2	7567132	15.02.2024	<i>UPPER RH TRANSPARENT ASSY (PART NO.3G5610A00633R) (SPARE PARTS FOR CIVIL HELICOPTERS)</i>
3	7596729	16.02.2024	<i>(OIL-TANK (41F5102) (AIRCRAFT SPARE PARTS)</i>
			<i>GEARBOX ASSY-ACCESSORY (340-046-508-0) (AIRCRAFT SPARE PARTS)</i>
4	7567057	15.02.2024	<i>NEW AIRCRAFT TYRES 27X7.75-15 AIR/12/225 029-616 (FOR THIRD COUNTRY EXPORT)</i>
			<i>RETREADED AIRCRAFT TYERS H44.5X16.5-21 AIR/28/225 029 (FOR THIRD COUNTRY EXPORT)</i>

7. The learned Counsel for the Petitioner contends that import and export of goods from India is governed by the Foreign Trade (Development and Regulation) Act, 1992 wherein under Section 5 of the act, the Central Government may notify the Foreign Trade Policy from time to time. He further states that in terms of Chapter 2.01 of Foreign Trade Policy (FTP),



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2023, import and export shall be free except from certain prohibitions/restrictions, or exclusive trading through State Trading Enterprises. He adds that simple reading of the Export Import Policy 2023 clearly indicates that there is no restriction on export of any item unless it is expressly provided under the policy. The learned Counsel for the Petitioner further submits that the impugned order, issued by the DGFT, is contrary to the provisions of the Foreign Trade Policy (FTP), 2023 as formulated by the Central Government. He adds that the DGFT has no authority to modify the FTP as only the Central Government can do so. He further submits that the aircraft parts that are being exported are not the items specified under Chapter 10 of the FTP, hence do not figure in SCOMET nor the Catch-All provisions as defined in Para 10.05 of the FTP, thus import and export of such items should be allowed freely in compliance with the relevant regulations.

8. The learned Counsel for the Petitioner further contends that the company has been importing civil/commercial aircraft parts from various countries, such as the U.A.E. and has then further exported such aircraft parts to Russia and other CIS countries on numerous occasions in the past after complying all legal and procedural formalities provided under the FTP. He states that all these have been directly sold to Civil and Commercial Airlines which are publicly registered and he adds emphasis on the fact that they have also provided end user certifications for the aircraft parts that they are exporting to lend clarity as to the usage of the aircraft parts.

9. *Per contra*, the learned Counsel for the Respondent states that aircraft engines and certain other aircraft parts are components that can have the potential of both civil as well as military use, and hence may be



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controlled under the SCOMET list. This potential for dual use is the reason why an extra license for its export is required. He further adds that as per Para 10.05 of the FTP if the exporter has been notified in writing by the DGFT or has reason to believe that an item may not be covered under the SCOMET list but has potential of use as a Weapon of Mass Destruction or can be diverged to production of Weapons of Mass Destruction, or in missile system or military use, the exporter has to apply for SCOMET Authorization. He further adds that the product that is being imported in this case has the potential of being used for military purposes and hence it is essential that the Petitioner company should apply for the SCOMET Authorization before being allowed to export such products.

10. The learned Counsel further submits that Catch-All conditions are an international practice followed by countries as part of the export control regimes to regulate the export of items not otherwise controlled in their national control lists, the purpose being to regulate export of items that have a risk of proliferation or being diverted for military end-use. He further contests that as per Para 10.05 of the FTP mentions that export of items not in the SCOMET list may also be regulated under provisions of the Weapons of Mass Destruction and their Delivery System (Prohibition of Unlawful Activities) Act, 2005 and it is on this ground that the impugned letter was issued asking the Petitioner to apply for SCOMET Authorization for the export of such items.

11. Heard learned Counsel appearing for the Parties and perused the material on record.

12. At this stage it is pertinent to reproduce the following paras of the FTP, 2023, below:-



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"2.01 Policy regarding import /Exports of goods

(a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at <https://dgft.gov.in>

(b) Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force

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10.02 SCOMET List

Export of dual-use items, including software and technologies, having potential civilian / industrial applications as well as use in weapons of mass destruction is regulated. It is either prohibited or is permitted under an Authorization unless specifically exempted.

SCOMET is an acronym for Special Chemicals, Organisms, Materials, Equipment and Technologies. Accordingly, the SCOMET list is our National Export Control List of dual use items munitions and nuclear related items, including software and technology and is aligned to the control list of the all the multilateral export control regime and conventions. The SCOMET List has been notified under Appendix 3 to Schedule 2 of ITC (HS) Classification of Export and Import items, which is available on the whole DGFT.

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10.05 Additional control on Non-SCOMET Items for dual use (Catch-all Controls)

Export of items not in the SCOMET list may also be regulated under provisions of Weapons of Mass Destruction and their delivery System Prohibition of Unlawful Activities) Act, 2005. If the exporter has been notified in writing by DGFT or he knows or has reason to believe that an item not covered in the SCOMET list has a potential risk of use in or diversion to weapons of mass destruction (WMD) or in their missile system or military end (in their missile system or military end use (including by terrorists and non-state actors), the export of such on item may be denied or permitted subject to the grant of license, as per the procedure provided for SCOMET items in Para 10.05 and 10.06 of the HBP."

13. It is pertinent to mention that *vide* Order dated 01.05.2024, this Court had directed the DRDO to conduct an on-site physical inspection of the goods, contained in the four shipments under Airway Bill Nos. 7552481, 7567057, 7567132, 7596729, to determine the nature of products being exported. Particulars of the DRDO report are also attached below:-

Sl. No.	Item Description, as declared before Customs	Finding	Our Opinion
i.	Engine CFM34- 8E5 Serial no: ESN193864 (Aircraft engine with Stand)	The item (Qty 1) is CF34-8E5 engine which is a high bypass turbofan aircraft engine used only in Civil Aircrafts.	Applicable Sl. Nos in SCOMET list a) 6A010d;- item does not fall under this category b) 8A901a;- The engine may be incorporating all or some of the technologies specified by 8E903.a, 8E903.h or SE903.i But this engine is used for



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			<i>civil application and therefore this clause do not apply provided civil type certificate under 8A901a Note-1 a & b are In support which shall be obtained from the exporter.</i>
ii.	<i>Engine CFM34- . SE5 Serial no: ESN193865 (Aircraft engine with Stand),</i>	<i>The item (Qty 1) is CF34-3E5 engine which is a high bypass turbofan aircraft engine used only in Civil Aircrafts.</i>	<i>Applicable Sl. Nos in SCOMET list</i> <i>a) 6A1010d;- Item does not fall under this category</i> <i>b) 8A901a:- The engine may be incorporating all or some of the technologies specified by 8E903.a, 8E903.h or SE903.i. But this engine is used only for civil application and therefore this clause do not apply provided civil type certificate under 8A901a Note-i a & b are in support which shall be obtained from the exporter.</i>
iii.	<i>Upper RH Transparent Assy (Part no 3G5610A0633R) (Spare Parts for Civil Helicopters)</i>	<i>The item(Qty 1) Is a single piece transparent fiber glass part Based on the markings, geometry and features, the item closely matches declared description as a spare part (windshield) of some helicopter.</i>	<i>Applicable SI. Nos in SCOMET list</i> <i>a) 6A010a:- Item does not fail under this category if used in civil application. Since end use Is not verifiable, a certificate/proof shall be obtained from the exporter to ascertain civil use.</i>
iv.	<i>Oil Tank (41F5102) (Aircraft Spare parts)</i>	<i>The item (Qty 1) is a used oil tank of some aircraft engine for</i>	<i>Applicable SI. Nos in SCOMET list</i>

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		civil application.	a) SA010d:- Item does not fall under this category b) 8A901a:- Item does not fall under this category
v.	Gearbox Assy - Accessory (340 046-508-0) (Aircraft Spare Parts)	The item (Qty 1) is a main gearbox of a Large bypass Turbofan engine commonly used for civil application.	Applicable Sl. Nos in SCOMET list a) SA010d :- Item does not fall under . this category b) 8A901a:- Item does not fall under this category
vi.	New Aircraft Tyres 27x7.75-15 / AIR/12/225 029- 616 (For third country export)	These items (Qty 15) are aircraft tyres of Michelin make. Based on information available in open domain, the size and part number refer to application in Boeing 737 aircraft	Applicable Sl. Nos In SCOMET list a) SA010a:- Item does not fall under this category since it is found to be for civil application. However, a certificate/proof may be obtained from exporter to ascertain civil use.
vii.	Retreaded aircraft tyres H44.5X16.5 -21 AIR/28/225 029 P/N: 029-894-O (For third country export)	These items (Qty 9) are aircraft lyres of Michelin make. Based on information available in open domain, the size and part number refer to application In Boeing 737 aircraft	Applicable Sl. Nos in SCOMET list a) SA010a:- Item does not fall under this category since it Is found to be for civil application. However, a certificate/proof may be obtained from exporter to ascertain civil use.

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Appendix 3 – SCOMET List

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8A9 AEROSPACE AND PROPULSION (SYSTEMS, EQUIPMENT AND COMPONENTS)

N.B. For propulsion systems designed or rated against neutron or transient ionizing radiation, see Category 6.

8A901 Aero gas turbine engines having any of the following:

a. Incorporating any of the "technologies" specified by 8E903.a, 8E903.h or 8E903.i; or

Note 1 8A901.1.a does not apply to aero gas turbine engines which meet all of the following:

- Certified by civil aviation authorities of India; and
- Intended to power non-military manned "aircraft" for which any of the following has been issued by civil aviation authorities of India for the "aircraft" with this specific engine type:
 - A civil type certificate; or
 - An equivalent document recognised by the International Civil Aviation Organisation (ICAO).

Note 2 8A901.1.a does not apply to aero gas turbine engines designed for Auxiliary Power Units (APUs) approved by the civil aviation authority of India.

8A901 b. Designed to power an "aircraft" designed to cruise at Mach 1 or higher, for more than 30 minutes.

8A902 'Marine gas turbine engines' designed to use liquid fuel and having all of the following, and specially designed assemblies and components therefor:

- Maximum continuous power when operating in "steady state mode" at standard reference conditions specified by ISO 3977-2:1997 (or national equivalent) of 24,245 kW or more; and
- 'Corrected specific fuel consumption' not exceeding 0.219 kg/kWh at 35% of the maximum continuous power when using liquid fuel.

Note: The term 'marine gas turbine engines' includes those industrial, or aero-derivative, gas turbine engines adapted for a ship's electric power generation or propulsion.

Technical Note

For the purposes of 8A902, 'corrected specific fuel consumption' is the specific fuel consumption of the engine corrected to a marine distillate liquid fuel having a net specific energy (i.e., net heating value) of 42MJ/kg (ISO 3977-2:1997).

8A903 Specially designed assemblies or components, incorporating any of the "technologies" specified by 8E903.a, 8E903.h, or 8E903.i, for any of the following aero gas turbine engines:

- Specified by 8A901.1 or;
- Whose design or production origins are either not from India or unknown to the manufacturer.

8A904 Space launch vehicles, "spacecraft", "spacecraft buses", "spacecraft payloads", "spacecraft" on-board systems or equipment, terrestrial equipment, and air-launch platforms, as under:-

- Space launch vehicles;
- "Spacecraft";
- "Spacecraft buses";
- "Spacecraft payloads" incorporating items specified by 8A301.b.1.a.4., 8A302.g., 8A501.a.1., 8A501.b.3., 8A502.c., 8A502.e., 8A602.a.1., 8A602.a.2., 8A602.2.b., 8A602.2.d., 8A603.b., 8A604.a.c., 8A604.c., 8A608.d., 8A608.e., 8A608.k., 8A608.l. or 8A910.c.;
- On-board systems or equipment, specially designed for "spacecraft" and having any of the following functions:
 - Command and telemetry data handling;

Note For the purpose of 8A904.e.1., 'command and telemetry data handling' includes bus data

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14. It is also pertinent to mention that the type rated certificates for the engines, as certified by the DGCA, have been submitted by the Respondent are being exported below:-



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6.	<i>General Electric Company engine model CF-34- 8E5</i>	<i>AED, HQ- 2022- 0959</i>	<i>16.12.2022</i>	<i>FAA TCDS No. FAA TCDS E00063EN Rev 8 and Revision/issued dated 22.11.2016</i>
7.	<i>GE90-115B</i>	<i>IN23ETA018</i>	<i>11.04.2023</i>	<i>FAA TCDS No. E00049EN Revision 20 dated 12.01.2016</i>
8.	<i>GE90-110B1</i>	<i>IN23ETA029</i>	<i>21.04.2023</i>	<i>FAA TCDS No. E00049EN Revision 20 dated 12.01.2016</i>
9.	<i>GE Passport 20-19BB1A</i>	<i>IN23ETA031</i>	<i>28.04.2023</i>	<i>FAA TCDS No. E00091EN Rev. 3 dated 10.03.2023</i>
<i>GE Honda Aero Engines, LLC</i>				
1.	<i>GE Honda Aero engine model HF-120</i>	<i>07-21/2018-AED</i>	<i>10.09.2018</i>	<i>FAA TCDS E00085EN, Rev. 1 dated 13.12.2013</i>
<i>Honeywell International Inc</i>				
1.	<i>1. Honeywell engine model AS 907-3-1E</i>	<i>7-12/2015-AED</i>	<i>07.06.2016</i>	<i>FAA TCDS E00010LA, Rev 6, dated 15.09.2014</i>
2.	<i>Honeywell engine model TPE 331-10GP</i>	<i>07-12/2017-AED</i>	<i>26.05.2017</i>	<i>FAA TCDS E4WE, Revision 3 dated 22.05.2014</i>
3.	<i>CFE engine model</i>	<i>07-32/2018-</i>	<i>19.02.2019</i>	<i>FAA TCDS</i>



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	<i>CFE 738-1-1B</i>	<i>AED</i>		<i>E44NE, Revision 5 dated 01.02.2008</i>
4.	<i>Honeywell engine model AS907-2-1A</i>	<i>27014/11/2019-AED</i>	<i>04.03.2020</i>	<i>FAA TCDS No. E00010LA, Revision 08, dated 25 August 2017</i>

15. Material on record indicates that the on-site physical inspection of the goods that were being exported were purely for civil application and therefore would not attract any of the restrictions that were mentioned in the SCOMET list or Catch-All provisions. A perusal of Appendix 3 of the SCOMET lists shows the exception that has been carved out under Clause 8A901.1.A, i.e. Catch-all or SCOMET provisions do not apply to any of those aero gas turbine engines that are certified by civil aviation authorities of India and have a type rated certificate. Perusal of the DRDO report and the type certificate issued by the DGCA was that the GE CF-34-8E5 model of engines is a recognized type of civil engine and has also been further cleared by the DRDO as having civilian application. Further the Petitioner in this case has also provided end user certificates, from the party they are exporting the product, to help verify the civil nature of the end use of these products.

16. The contention of the Respondent that these products have dual use and can potentially be used for military purposes, and hence should not be exported without further clearance of the DGFT finds no footing with this court. Almost everything can have a dual use, like soap being manipulated into a bomb, but rationality must guide the implementation of export



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regulations. Import and export regulation must be rational to effectively balance economic interests with national and global security concerns. Items that have been certified by subject matter experts as having civil use and are allowed within the ambit of the export policy, cannot be stopped from being exported to countries with which India has established export ties, with no restrictions in the realm of economic policy, on the pretext that the products may have a potential military use.

17. In view of the fact that the products which the Petitioner company is trying to export are of civil nature and do not attract any of the restrictions established in the SCOMET list or Catch-All provisions, the impugned notification is quashed.

18. The writ petition is allowed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

AUGUST 06, 2024

hsk/vsk