$~64 to 74 & 86

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

\+ W.P.(C) 17498/2024, CM APPL. 74445-74447/2024

M/S KARAN KOTHARI AABHUSHAN JEWELLERS PVT LTD

.....Petitioner

versus

DIRECTOR GENERAL OF FOREIGN TRADE & ORS.

.....Respondent

With

W.P.(C) 17499/2024, W.P.(C) 17500/2024, W.P.(C) 17501/2024, W.P.(C) 17502/2024, W.P.(C) 17503/2024, W.P.(C) 17504/2024, W.P.(C) 17505/2024, W.P.(C) 17506/2024, W.P.(C) 17507/2024, W.P.(C) 17508/2024 & W.P.(C) 17566/2024

For Petitioners: Mr. Dharan Gandhi, Mr. Rajat Mittal, Mr. Suprateek Neogi, Mr. Priyanshu, Advocates in items no. 64 to 66, 68 to 74 & 86
Mr. Rajat Mittal, Mr. Suprateek Neogi, Mr. Priyanshu, Mr. Dharan Gandhi, Mr. Gautam Swaroop, Advocates in item no. 67

For Respondents: Ms. Radhika Bishwajit Dubey, CGSC with Ms. Gurleen Kaur Waraich, Advocate for R-1 & 3 in items no. 64, 65, 66
Mr. Aditya Singh, SSC, CBIC with Mr. Ritvik Saha, Mr. Inderjeet, Advocates for R-2 in items no. 64 to 74 and 86
Mr. Nishant Gautam, CGSC with Ms. Sanjana Mehrotra, Mr. Mayank Sharma, Mr. Vipul Kumar, Mr. Vipul Verma, Ms. Akriti, Advocates for UOI in item no. 70, 71 & 86
Ms. Shiva Lakshmi, CGSC with Mr. Govind

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Sharma, Advocate for DGFT in items no. 67 to 74, 86

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **19.12.2024**

1. All the Petitioners are engaged in the business of importing gold bullion, which is used for the manufacturing of gold ornaments. Pursuant to a Comprehensive Economic Partnership Agreement,[1] between India and UAE, the Petitioners have been allotted certain Tariff Rate Quota[2] by the Respondents for the import of bullion. The said TRQs have now been reviewed and revised as per the Minutes of Meeting held on 08th November, 2024, which is the subject of challenge in the present petition. Since all the Petitioners impugn the same Minutes of Meeting, raising similar grounds of challenge, it is considered apposite to dispose of the petitions by way of a common order. The distinct facts of each case will be noted to the extent required.

2. The factual background to the instant cases is as follows:

2.1 The governments of India and United Arab Emirates executed the CEPA on 18th February, 2022, which included specific tariff commitments in relation to trade of goods. As per Article 2.4 (2) of the CEPA, the Indian Government agreed to eliminate custom duties on import of goods originating from UAE, in accordance with Annexure 2A.

2.2 It was *inter alia* agreed between the governments that tariff

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[1] "CEPA"
[2] "TRQ"

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concession/relief of 1% will be provided to the Indian gold importers in a phased manner, prescribing the quantity of gold bullion available for allotment for each year. For the Financial Year 2024-25, gold TRQ of 160 tonnes was decided.

2.3 Thereafter, the Handbook of Procedure, 2023[3] was notified through public notice dated 01st April, 2023 in exercise of powers conferred under Paragraph Nos. 1.03 and 2.04 of the Foreign Trade Policy, 2023. Paragraph No. 2.16 of the Handbook specifies the validity period of license/ certificate from the date of issuance. The table following Paragraph No. 2.16 prescribes different validity periods, the minimum being 12 months, with the exception of Serial No. 7. Further, Paragraph No. 2.20 of the Handbook provides for re-validation of license/ certificate, allowing for an extension for a further period of 6 months.

2.4 The Petitioners applied for TRQ in CEPA for import of gold bars. Subsequently, a meeting was held on 15th April, 2024 at the DGFT (HQ) for consideration of the allocation of bullion TRQs under CEPA for FY 2024-25. The relevant part of the Minutes of the said Meeting are as follows:

> *"6. The Committee decided to allocate the said TRQs based on the said Modalities -*
> *i. Notwithstanding the subsequent conditionalities, the allocation shall be subject to a maximum of the quantity as applied.*
> *ii. Applicants who had utilised more than 95% of their previous TRQ quantities shall be allocated 3 times their previous TRQ imports (as per Bills of Entry records received by DGFT)*
> *iii. Applicants who had utilised less than 95% of their previous TRQ quantities shall be allocated 2.5 times their previous TRQ imports (as per Bills of Entry records received by DGFT)*
> *iv. Notwithstanding conditionalities (i) and (ii), Qualified Jewellers as notified by IFSCA till March'2024 shall be allocated a minimum of 200 Kgs.*

[3] "Handbook"

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v. Applicants who are not QJs and have no prior imports shall be allocated 80 kgs.
7. Details of allocation made are submitted at Annexure. Further, the Committee decided to review the utilisations of given TRQs in the October'2024. The Committee may thereafter choose to revise the extant TRQ allocations based on the TRQ imports made till September'2024."

2.5 On the basis of the aforenoted decision, the Petitioners were issued certificates/licenses with validity up to 31st March, 2025.

2.6 Subsequently, in terms of Paragraph No. 7 of the Minutes of the aforesaid Meeting, the Committee held a mid-year review of allocation of bullion TRQ under CEPA for FY 2024-25. In the said Minutes, the following decision has been taken:

"In Chair: Shri Santosh Kumar Sarangi, DG (DGFT)

2. The following officers attended the meeting:
• Ms. Shubhra, Additional DGFT
• Smt. Priya Nair, Economic Advisor, FT(WANA), Dept. of Commerce
• Shri Gaurav Pundir, Director, FT(WANA), Dept. of Commerce
• Shri Satya Rajasekhar G, Dy. DGFT, DGFT(HQ)
• Shri Deepak Jhalani, Dy. DGFT, DGFT(HQ)

3. In compliance of the Committee Decision vide EFC Meeting held on
15.04.2024, the EFC is reconvened to review the utilization of allocated Bullion TRQs (falling under ITC HS Codes 71081100, 71081200 & 71081300) for India-UAE CEPA for the FY 2024-25.
4. The Committee noted that the information on the utilization up to 30th September 2024 has been
compiled based on the information available on DGFT's Bills of Entry Repository and submissions
made by the importers. The summary of the requests received are as under

Table - Summary Table of Requests

Sr. No.	***Requests***	***Count of Requests***	***Quantity (In KG)***
1	*Surrender/Part-Surrender*	*11*	*630*
2	*Retain*	*179*	*NA*
3	*Enhancement*	*260*	*2,18,372.5*

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The Committee noted that the requests received for additional allocations are way above the quantity available.

5. The Committee also took note of the Delhi High Court Order dated 06.09.2024 in matters of Writ Petition (C) No. 9503 of 2024 and Writ Petition (C) No. 9503 of 2024 and accordingly, decided to consider the request of allocation in compliance of the Court Order.

6. The Committee decided to re-allocate the TRQs of the balance quantity based on the following Modalities -

i. Applicants who had utilised 25% or less than 25% allocated TRQ quantities in 6 months i.e. upto 30th September, 2024, their allocations shall be revised to half (50%) of their original allocations.

ii. Applicants who had utilised 75% or more (& less than 95%) of their allocated TRQ quantities in 6 months i.e. upto 30th September, 2024, shall be eligible for additional allocation of 1 time of their original TRQ allocations.

iii. Applicants who had utilised 95% or more of their allocated TRQ quantities in 6 months i.e. upto 30th September, 2024, shall be eligible for additional allocation of 1.5 times of their original TRQ allocations.

iv. Notwithstanding the above conditionalities, the additional allocation shall be subject to a maximum of the quantity requested.

7. The authorisation holders receiving additional allocations will be required to file applications for amendments for availing enhancements.

8. The revised reduced quantities for the authorisation holders as decided by the Committee will be transmitted to Customs online and intimated to the authorisation holders. Such authorisation holders shall not make imports beyond the revised reduced quantity and shall be required to ensure that revised reduced allocations are suitably registered at Customs Ports after amendment."

2.7 In terms of the above decision, the originally allocated TRQ has been revised based on the extent of the utilisation of the previously allocated TRQs. In so far as the Petitioners are concerned, some had utilised ≤ 25% of the allocated TRQ quantities up to 30th September, 2024, while others had utilised 25%- 75% of their TRQs. Pursuant to Paragraph No. 6 of the Minutes of Meeting dated 8th November, 2024, the allocated quantity for the former set of Petitioners was reduced to half, whereas for the latter group, no upward/ downward revision was made. The impugned revision in all the

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petitions is delineated as follows:

Item No. (19.12.2024)	**W.P.(C) No.**	**Originally allotted**	**Revision**
64	17498/2024	80	Allocation reduced by half
65	17499/2024	80	Allocation reduced by half
66	17500/2024	400	Allocation reduced by half
67	17501/2024	87.5	No revision
68	17502/2024	80	Allocation reduced by half
69	17503/2024	80	Allocation reduced by half
70	17504/2024	80	Allocation reduced by half
71	17505/2024	150	Allocation reduced by half
72	17506/2024	80	Allocation reduced by half
73	17507/2024	200	Allocation reduced by half
74	17508/2024	80	Allocation reduced by half
86	17566/2024	200	Allocation reduced by half

3. Counsel for the Petitioners, argues that the review decision is unreasonable and arbitrary, on the following grounds:

3.1 The Petitioners have not been afforded any opportunity of hearing, and without sufficient prior notice, a mid-year review of the TRQ allocations has been conducted by the Respondents. As a result, the TRQ allocations have been reduced by half in some of the cases, and the Petitioners' requests for enhancement of allocation have not been accepted.

3.2 The criteria for the revision of the TRQ allocation were never communicated to the Petitioners and therefore, they had no basis to anticipate that their imports would need to align with the criteria subsequently notified in the meeting held on 8th November, 2024.

3.3 The licenses of all the Petitioners are valid up to 31st March, 2025 and therefore, the allocation of the TRQs could not have been revised before the expiry of the said period.

3.4 The mid-term review of the quota also contravenes the provisions of

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the Handbook. Paragraph 2.16 of the Handbook specifies a minimum validity period of 12 months, with the exception of the items listed in Serial No. 7, which does not apply to the present case. Therefore, the impugned action of revised allocation is in violation of the Handbook.

3.5 Without prejudice to the above, counsel for the Petitioners submits that the Petitioners should, at the very least, be given an opportunity to present their grounds to the Respondents before the impugned Minutes of Meeting are implemented. He emphasizes that each case must be assessed on its individual merits, as there may be several critical factors that could have prevented the Petitioners from submitting the reports, as per the criteria notified in the Minutes of the Meeting dated 8th November, 2024.

3.6. Counsel for the Petitioners further submits that as of now, no rights have crystallised amongst any of the license holders. Therefore, he contends that the Respondents should be directed to reconsider the matter and take a fresh decision after providing all the Petitioners with an opportunity to be heard.

3.7. As per the Minutes of Meeting dated 8th November, 2024, certain importers have made requests to surrender as much as 630 KG of bullion and accordingly, the Petitioners can be benefited pursuant to such surrender.

3.8. There is still a four-month period remaining before the licenses of the Petitioners expire. Therefore, if the Respondents were to reconsider their decision, they could impose strict terms, which could be accepted by the agreeable Petitioners, in order to ensure that the prescribed TRQ allocation for the CEPA is achieved.

4. Ms. Radhika Bishwajit Dubey and Ms. Shiva Lakshmi, CGSC for the Respondents, on the other hand, oppose the petitions on following grounds:

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4.1 The Petitioners were all throughout aware of the conditions, which form the basis of the impugned decision. In this regard, reliance is placed on Public Notice No. 12/2023 dated 28th April, 2024 pertaining to the CEPA for FY 2023-24. The public notice specifically provided that TRQ allocation shall be subject to a 6-monthly review. The notice stipulates that in cases where TRQ utilization is found to be ≤ 25%, 50% of the balance TRQ quantities shall be deemed to be considered as surrendered, and shall be considered for re-allocation to other TRQ allottees.

4.2 The Petitioners have directly filed the present petitions without first approaching the Director General of Foreign Trade.[4] In case they had any grievances, they should have sought recourse to the DGFT before approaching this Court.

5. The Court has noted the aforenoted contentions. The Court has considered a similar batch of petitions in W.P.(C) 16809/2024 and other connected matters, and issued directions in favour of the Petitioners in order dated 05th December, 2024.

6. In the opinion of the Court, there is significant merit in the contentions raised by the Petitioners. While Paragraph No. 7 of the Minutes of Meeting dated 15th April, 2024 does indicate that a review exercise would be conducted based on the imports up to September 2024, however, as correctly pointed out by counsel for the Petitioners, this review can be deemed a 'blind' review, given that no criteria were specified in the said Minutes with respect to the potential allocation. Furthermore, the public notice referred to by the Respondents only addresses cases where TRQ utilization, in the review process, is ≤ 25%, without providing further details

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regarding other quantities of utilisation. Moreover, this public notice pertains to FY 2023-24, and there is no such public notice informing the Petitioners or the general public about such a criteria for FY 2024-25.

7. That being said, the Court understands that the intent behind the review exercise is to ensure that the TRQ allocations are specifically adhered to. Therefore, the Respondents' objective in conducting the review appears to be solely to ensure that the TRQ imports under the India-UAE CEPA are fully met. However, in light of the aforementioned circumstances, since the review decision was made without affording the Petitioners an opportunity to be heard, and Ms. Shiva Lakshmi has also indicated that the Petitioners should have first approached the DGFT with their concerns, the Court is of the opinion that it would be more appropriate at this stage, without delving deep into the merits of the case, to direct the DGFT to examine all the issues raised by the Petitioners in the present petitions and issue a fresh decision on the basis thereof.

8 Furthermore, it is undisputed that as of today, no re-allocations have been made pursuant to the impugned Minutes of Meeting in the present proceedings. Therefore, it is directed that the current allocations be maintained until a decision is made following the review process. The above exercise shall be carried out within three weeks from today.

9. It is clarified that the views expressed by this Court are of a *prima facie* nature. Therefore, the Respondents, while taking the same into consideration, shall also examine each case on its own merits and take a fresh decision, in accordance with law.

10. In the event that the Respondents are inclined to accept the

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[4] "DGFT"

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Petitioners' requests, the DGFT may introduce additional conditions to ensure that the Petitioners comply with the TRQ allocation and carry out the imports, in accordance with law.

11. With the above directions, the present petitions are disposed of, along with pending applications.

SANJEEV NARULA, J

DECEMBER 19, 2024/ab

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