



W.P.No.30668 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE **V. LAKSHMINARAYANAN**

W.P.No.30668 of 2025 &
WMP.Nos.34370 & 34372 of 2025

M/s.Askar Sea Shell Merchant
3/473-1, Loorthamalpuram,
Tuticorin – 628 001

By its Proprietor Mr.Askar Ali Jinnah

... Petitioner

Vs.

1.The Principal Chief Conservator of Forests
and Chief Wild Life Warden, Forest Headquarters,
Guindy – Velacherry Main Road,
Guindy, Chennai – 600 032. ... Respondent

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records, pertaining to Proc.No.WL1/32448/2024 dated 03.07.2025, passed by the respondent herein and to quash the same, in so far as, the said order passed by the respondent is without jurisdiction, authority of law and in clear violation to principles of natural justice and to pass such other orders and a consequent direction to the respondent herein to grant the necessary NOC to the petitioner, for the clearance of the imported goods,covered under the Bill of Entry No.7095539 dated 07.12.2024.



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For Petitioner :Mr.S.Baskaran

For Respondent :Dr.T.Seenivasan,
Special Government Pleader

ORDER

The petitioner is an importer and trader of various goods. He is registered with the Joint Director General of Foreign Trade and possesses GST and Income Tax Registrations. The petitioner imported a particular variety of conch shells on 07.12.2024, classified as “Pleuroploca Trapezium” (hereinafter referred to as 'PT'). The goods were imported from the Democratic Socialist Republic of Sri Lanka (herein after referred to as 'Sri Lanka'), through the Indo-Sri Lanka Free Trade Agreement (hereinafter referred to as 'ISFTA'). The goods fall under the Customs Tariff Heading No.050-800-90.

2. The petitioner, in order to clear the goods, filed the following documents along with the bill of entry:-

(i) 'International Zoo Sanitary Certificate for products of Animal Origin Destined for use in Animal Feeding or for Industrial or Pharmaceutical use' issued by the Department of Animal Production and Health, Ministry of Animal Quarantine, Sri Lanka;



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(ii) Letter of No Objection issued by the Department of Fisheries and Aquatic Resources, Sri Lanka to the overseas exporter to transport and keep in possession of 'PT';

(iii) Identification Certificate of the Conch Shell issued by the Director General, National Aquatic Resources Research & Development Agency, Sri Lanka;

(iv) Fumigation Certificate dated 03.12.2024 issued by SML Eco Pest Control, Member of Pest Managers Association of Sri Lanka;

(v) ISFTA Certificate; and

(vi) Certificate of Origin

3. The Customs Department, after having performed their duty, assessed the goods and collected a duty of Rs.20,000/-. As the products were animal products, the customs referred the matter to the Wild Life Crime Control Bureau (hereinafter referred to as 'WCCB'), Government of India, Ministry of Environment, Forest and Climatic Change, Chennai, for approval and for issuance of No Objection Certificate for clearance of the goods.

4. The WCCB, in turn, addressed a letter to the Superintendent of Customs, Tuticorin, informing that 'PT' fell under Schedule II of the Wild Life



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5. The Chief Wild Life Warden passed an order on 24.01.2025 directing the District Forest Officer to ensure the return of the imported consignment to its country of origin/Sri Lanka and report the same to him. Aggrieved by this order, the petitioner approached this court by way of a writ petition in W.P.No.6549 of 2025.

6. After hearing both sides, this court came to a conclusion that the order was a non-speaking order, which was passed without any reference to the documents filed by the petitioner and without adherence to the



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principles of natural justice. Consequently, the order dated 24.01.2025 was set aside with a direction to the Principal Chief Conservator of Forests and Chief Wild Life Warden to afford an opportunity of personal hearing to the petitioner and consider the documents and pass final orders. Six weeks' time was granted to the Principal Chief Conservator of Forests to conclude the proceedings. Pursuant to the direction given by this court, the Principal Chief Conservator of Forests heard the petitioner on 19.06.2025, received the written arguments on 24.06.2025 and passed a detailed order. By virtue of this order, the petitioner's request for NOC stood rejected. Hence, the present writ petition.

7. Heard Mr.S.Baskaran for the petitioner and Dr.T.Seenivasan for the respondent.

8. Considering the fact that this matter involves the application of specialised knowledge of forest laws, Mr.Devaraj, IFS, Deputy Chief Conservator of Forests and Wild Life attached to the office of the Principal Chief Conservator of Forests, Chennai, was requested to assist the learned Government Pleader, as well as this Court in resolving this issue.



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9. Mr.S.Baskaran urges that Section 39 of the Wild Life (Protection) Act applies only to acts done within the four corners of this Country. Referring to Section 39(1)(c), he pointed out that this Section applies only to the ivory imported into the country and not to any other imports. He relied upon the Foreign Trade Policy released by the Ministry of Commerce and urged that 'PT' falls under "Free Import Category".

10. Taking me to Chapter V-B of the Wild Life (Protection) Act, Mr.S.Baskaran pointed out that under Section 49J, permission is necessary, only if the articles imported fell within Schedule IV of the Wild Life (Protection) Act and not otherwise. He stated that 'PT' is not a prohibited item in terms of Sections 11 and 111 of the Customs Act and therefore, the respondent ought not to have rejected the request made by him. He relied upon the judgment of the CESTAT Eastern Bench, Kolkata in **Commissioner of Customs (Port) Kolkata v. Kishan Kumar Kejriwal, 2011 (264) ELT 273** and the order of the Division Bench of the Calcutta High Court confirming the said order in **Commissioner of Customs v. Kishan Kumar Kejriwal, 2011 (263) ELT 357 (Cal)**.



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11. Dr.T.Seenivasan pointed out that as per Section 2(36) of the Wild Life (Protection) Act, 1972, “*wild animal*” means any animal specified in Schedule I or Schedule II and found wild in nature. He relied on sl.No.7 of Part F of Schedule II, and pointed out that 'PT' is found under the said category. He added that the WCCB, as well as, the petitioner's documents pointed out that 'PT' belongs to Schedule II.

12. Referring to the Import and Export Manual, Dr.T.Seenivasan urged that one of the policy condition is that, the import of wild animals, including their parts and products as defined in the Wild Life Protection Act, 1972 (as amended from time to time), is prohibited and those species, which are listed in CITES, are subject to the provisions of Chapter V-B of the Act. He argued that, for a fact that the goods had been imported under the ISFTA does not meant that the import of such goods is without any restriction or prohibition. The point being, while Foreign Trade Agreement provides for duty free access, trade in such imports is legal only if it complies with the requirements of the Wild Life (Protection) Act, as well as the CITES regulations.

13. Mr.Devaraj, IFS added that Section 44 of the Wild Life (Protection) Act, read with Wild Life (Protection) Licensing (Additional Matters for



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Consideration) Rules, 2024 bars import of Wild Life without a license from the Chief Wild Life Warden or authorised officer. He referred to Section 49 R of the Wild Life (Protection) Act and submitted that, as '*PT*' is found under Schedule II, the rules made with respect to species listed thereunder will also apply to imports.

14. Both, Dr.Seenivasan, as well as, Mr.Devaraj, IFS urged that the impugned order is perfectly justified and does not require any interference.

15. I have carefully considered the submissions and have gone through the records.

16. It is not in dispute that Conch Shell falls under the "free import category" as per ITC (HS) 2022. Section 1 of Schedule I of the import policy deals with Live Animals and Animal Products. Conch Shell falls under Chapter V. HS Code for '*PT*' is 0508-00-90 and the description being "other". The Import Policy classifies it as "free" and the policy condition being subject to Policy Condition 3 of the Chapter. Policy Condition 3 of Chapter V reads as follows:



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“Imports will be subject to the provisions of CITES (Convention of International Trade in Endangered Species of Wild Fauna and Flora).”

Policy Condition 3 does not refer to Wild Life (Protection) Act. This is referred to in Policy Condition 2, which reads as follows:

“Import of Wild Animals (including their parts and products) as defined in the Wild Life (Protection) Act, 1972 (as amended from time to time) is prohibited.”

17. A reading of the product description, together with the Policy Condition makes it abundantly clear that 'PT' does not fall under Policy Condition 2, but under Policy Condition 3. Import and Export Policy shows that certain products answering the following description, falls under Policy Condition 2. They are 05021010, 05021020, 05029010, 05029020, 05029090, 05079010. Certain products attract both Policy Condition 2, as well as, Policy Condition 3. These too, are classified as freely importable. They commence from HS Code 05079010 go upto 05079090. This makes it clear that 'PT' is not a product which attracts both, Policy Condition 2, as well as Policy Condition 3 but only attracts Policy Condition 3.



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18. Having come to this conclusion, let me now turn to the Wild Life (Protection) Act, 1973. I am referring to the Act as updated on 01.04.2023. This Act has VII chapters. Chapter I deals with Preliminary Matters and Chapter II deals with Authorities to be Appointed or Constituted under the Act. Chapter III deals Hunting of Wild Animals, except under certain circumstances. Chapter IIIA deals with Protection of Specified Plants. Chapter IV enumerates on the protected areas such as Sanctuaries, National Parks & Sanctuaries or National Parks declared by Central Government. Chapter IV-A deals with Central Zoo Authority and Recognition of Zoos. Chapter IV-B is exclusively reserved for the National Animal, the Tiger. Chapter IV-C constitutes, and deals with the powers and functions of the WCCB. Chapter V deals with Trade or Commerce in Wild Animals, Animals Articles and Trophies. Chapter V-A deals with prohibition of trade or Commerce in Trophies, Animal Articles etc., derived from Certain Animals. Chapter V-B is exclusively reserved for regulation of International Trade in Endangered Species of Wild Fauna and Flora as per the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as 'CITES'). Chapter VI deals with Prevention and Detection of Offences. Chapter VI-A deals with Forfeiture of Property Derived from Illegal Hunting and Trade. Chapter VII deals with miscellaneous issues.



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19. Originally, the Wild Life (Protection) Act contained six schedules, running from Schedule I to VI. Subsequently, the Wild Life (Protection) Act, 2022 was introduced as Act 18 of 2022, with effect from 01.04.2023. This amendment was brought into force to align the original 1972 Act with the Articles prescribed under CITES. Chapter V-B, as discussed above, lays down the regulation of protected species under CITES. What was originally six schedules, post amendment, has been reduced to four schedules, which substitutes for Schedule I to VI of the 1972 Act.

20. At this juncture it is pertinent to point out how the various schedules read and their relevant sections connected therewith. The tabular column extracted below explains how the amendment has structured the legislation:-

Schedule No.	Relevant Sections to be read with the Schedule BEFORE Act 18 of 2022 (w.e.f. 01.04.2023)	Relevant Sections to be read with the Schedule AFTER Act 18 of 2022 (w.e.f. 01.04.2023)
I	Sections 2, 8, 9, 11, 40, 41, 43, 48, 51, 61 and 62	Sections 9, 11, 12, 38-I, 39, 40, 40-A, 41, 42, 42-A, 43, 48, 48-A, 50, 51, 51-A and 67 and Chapter V-A
II	Sections 2, 8, 9, 11, 40, 41, 43, 48, 51, 61 and 62	Sections 9, 11, 12, 38-I, 39, 44, 45, 46, 47, 48, 48-A, 49, 50, 51, 54 and 57



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III	Sections 2, 8, 9, 11 and 61	Chapter III-A & Sections 50, 51, 54 and 57
IV	Sections 2, 8, 9, 11 and 61	Chapter V-B & Sections 39, 50, 51, 54 and 57
V	Sections 2, 8, 9, 11, 40, 41, 43, 48, 51, 61 and 62	Omitted by Act 18 of 2022, S.41 (w.e.f. 1-4-2023)
VI	Sections 2, 8, 9, 11, 40, 41, 43, 48, 51, 61 and 62	Omitted by Act 18 of 2022, S.41 (w.e.f. 1-4-2023)

21. As pointed out above, the plea of the State is that, as 'PT' is covered under Schedule II, hence, the impugned order is valid. A perusal of the Schedules show the varying degrees in which it has been arranged. Schedule I covers endangered species that require rigorous protection. This is clear from the inclusion of animals like Blackbuck, Snow Leopard, Asiatic Cheetah, Himalayan Deer etc. Under Schedule II, the animals are accorded high protection, together with a prohibition on their hunting and trade. Examples which may be given are Assamese Macaque, Himalayan Black Bear and Indian Cobras. Species, that are not endangered and cover protected species with progressively low penalties are found under Schedules III. Hunting of these protected species are prohibited, but the penalties levied for violation under the Act are not as severe as those found under the first two schedules. Schedule IV as it stands now, has three appendices. They corresponds to the list of animals under CITES.



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22. India is a party to the CITES, upon its ratification, since 1976. CITES was conceptualised in 1963 in the meeting of International Union for Conservation of Nature. It came into force in 1975 and as on today, there are 183 member countries that abide by CITES regulations. India, being one such country, has extensively amended the Wild Life (Protection) Act in order to enforce the regulation. Though CITES is binding on its parties, it cannot take the place of domestic law. It merely provides a framework, which is respected by each of the parties to the Convention. At the national level, each member State brings about legislations in order to ensure that CITES are implemented.

23. CITES too, has several appendices. The Appendix I deals with species, which are in the danger of extinction. There are 931 species in this list. International trade in these species or their parts or derivatives are strictly prohibited. Appendix II to CITES specifies species that do not face imminent extinction, but need constant monitoring so that any trade in these animals does not become a threat to their very existence and to prevent over-exploitations. If an animal is found under Appendix II to the CITES, licenses have to be obtained and it is the duty of the origin country to ensure that trade and harvesting of these animals do not harm the



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species' chance of survival. Under this category, there are 34,419 species. Appendix III deals with species that are protected in one country, which includes the species at the request of a party that already regulates the trade in them and needs cooperation of other countries, to prevent unsustainable or illegal exploitation. The country, which seeks to list a species under Appendix III, is entitled to issue an export permit, together with the Certificate of Origin. Under this category, there are totally 147 species.

24. The 2022 Amendment Act rationalised the Schedules down to 4, retaining Schedules I to III from the parent Act, where species continue to be protected with existing penalty regimes. The Act now expressly contains Schedule IV to hold CITES listed specimen from the convention's appendices. The “vermin” schedule has been effectively removed, leaving the State Governments to retain their powers from domestic control over them. Plant protection under Schedule VI has been reclassified under new Schedule III to continue their protection, with enhanced regulation on captive breeding and propagations.

25. The purpose of CITES is to prohibit in certain cases and to regulate in other international trade in species. Wild Life (Protection) Act



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has incorporated the legal framework necessary for implementation of CITES. India has continually amended the said Act in order to align its laws with the CITES convention. Schedule IV is one such amendment. It contains species listed in the appendices under CITES.

26. The Supreme Court, in ***Union of India, v. Zavaray S. Poonawala, (2015) 7 SCC 347***, had dealt with, in great detail, regarding the objectives and functions of CITES, along with the necessary permissions from the respective authorities for importing animals and trophies which fall under Appendices I or II of the Convention. This was an appeal against the decision of Bombay High Court, which held that the competent authorities to grant permissions were the DGFT and the Chief Wildlife Warden. Reversing this decision, the Supreme Court observed that permissions from the aforementioned authorities were merely conditional, and for any specimen falling under the purview of CITES, permissions were subject to the approval of CITES authorities. It also made note of the fact that, in order to perform its task in regulation of trade in species listed, scientific as well as management authority are contemplated in the Convention, which are mandated to perform their designated functions in accordance with Article IX of CITES. Hence, the prior permit of import has to be given by both, scientific and management authority, only with respect to species that fall



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under CITES. Applying this judgment to the Act post 2022 Amendment, permission to import Wild Life/species is necessary only when it falls under Schedule IV, Appendices I to III. As 'PT' does not fall under any of the category, prior permission is not necessary. Further, Indian laws relating to hunting cannot be applied in this case, as 'PT' has been certified as legally procured by the Sri Lankan Government.

27. Having analysed the legislation and the international convention, let us now look at the Section itself.

28. Section 49-D sets out the definitions for the terms used under that Chapter. Section 49-H(1) prohibits any person from engaging in trade of scheduled specimens, except as provided under Chapter V-B. As to what is a 'scheduled specimen' is defined under Section 49-D(k). Scheduled specimen means any specimen of a species listed in Appendices I, II or III of CITES, and incorporated as such in Schedule IV. It is not in dispute that 'PT' is not found under Schedule IV.

29. Section 49-J itself is divided into 4 parts. Section 49-J(1) deals with the import of any specimen of a species included in Appendix I of Schedule IV. The manner in which, an import permit is to be obtained for a



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specimen listed in Appendix I is set forth under Section 49-J(2). Section 49-J(3) deals with the import of any specimen of a species included in Appendix II of Schedule IV. Section 49-J(4) deals with the import of specimen included in Appendix III of Schedule IV.

30. Section 49-R applies to the provisions of the Act, when the same species are listed in Schedule I or Schedule II **and** Schedule IV. In such cases, the provisions of the Act made applicable to species specified in Schedule I or Schedule II and the Rules made thereunder, are also applicable to such species. Similarly, under Section 49-R(2), if the same species is included in Schedule I or Schedule II and Schedule IV, then the possession, transfer and breeding, application of license by breeders, and grant of license contemplated under Sections 49-M, 49-N and 49-O stand excluded. Section 49-R(3) makes it clear that Chapter V-B is subject to the provisions of Chapters III, III-A, IV-A, V, V-A and VI-A.

31. The customs authorities are primarily concerned with the Customs Act and the import and export policy. They are bound to refer the Wild Life (Protection) Act 1972, when the species imported is governed by Chapter V-B. This is clear from Section 49-J of the Act. The said Section uses the words “prior grant and presentation of an import permit”. Chapter



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V-B applies only if the Wild Life or its parts etc., are covered under CITES.

The species found under CITES have all been included in Appendices I, II and III of schedule IV and at the risk of repetition, 'PT' is not one such species.

32. If the argument of Dr.Seenivasan and Mr.Devaraj, IFS have to be accepted, then even a species not covered by any of the aforesaid three Appendices of schedule IV, would require prior clearance from the forest department. My reading of the section does not lead to that conclusion. This is because the Parliament has made it very clear as to the nature of the species covered under Chapter V-B, and has included a separate schedule to that effect.

33. It is trite that a schedule and a section have to be read together. A Schedule may be effectively used in construing provisions in the body of the Act. It must be read together with the statute for all purposes of constructions, and is as much an act of the Parliament as the Act itself. (See ***Aphali Pharmaceuticals Ltd., v. State of Maharashtra, (1989) 4 SCC 378***).



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34. During the analysis, we have already seen that schedule IV corresponds to Chapter V-B and sections 39, 50, 51, 54 and 57. It is interesting to note that when the Parliament has given the powers of entry, search, seizure and detention, even in respect of Wild Life, which are imported. This is because, if the Wild Life so imported is covered under any of the Appendices I to III and no license has been obtained as required under Section 49-J, then Section 51 immediately comes into operation. It is not only treated as a violation of the Act, but penalties are imposed under Section 51 with an option to compound the offence under Section 54.

35. Why the references to these sections under Chapter V-B, are essential is because, prior to the Amendment Act of 18 of 2022, the Parliament had consciously included Sections 2, 8, 9, 11 and 61 to be read along with the Schedules. Post the amendment, the Schedules have totally excluded these Sections. This begs the question of what is the effect of Sections 2, 8, 9, 11 and 61 in the parent Act. Section 9 prohibits hunting. Section 11 permits hunting in certain cases and that Section 61 enables the Government to alter the entries in the Schedule.

36. By virtue of Section 49-D(k), if a species is incorporated in the CITES, the same gets incorporated in Schedule IV. Hence, the view taken in



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the impugned order that prior permission is necessary for import of Wild Life not found in Schedule IV but found in Appendix II is erroneous.

37. Insofar as the Wild Life (Protection) International Trade of Specimens Rule of 2023 is concerned, it only deals with wild animals found under Schedule IV, and not with respect to the animals found under Schedule II, with which we are presently concerned.

38. The aforesaid finding does not put an end to the case. This is because, a Wild Life might be brought into the country legally by resorting to import and export policy. However, there are several provisions under the Act, which have to be complied with before the petitioner can proceed with storing, processing and trading of the same.

39. A reference must necessarily be made to Section 44 of the Act. Under Section 44, no person, except with a license, is entitled to commence or carry on the business as a dealer in trophy or uncured trophy [see section 44(1)(a)(iii)]. As to what is a trophy is defined under Section 2(31). It states that trophy means the whole or any part of any captive animal or wild animal, other than a vermin, which has been kept or preserved by any means. As to what is an uncured trophy, is covered under Section 2(32). It



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means the whole or any part of any captive or wild animal, other than a vermin, which has not undergone a process of taxidermy and includes a freshly killed wild animal, ambergris, musk and other animal products.

40. The purpose of the legislature is to protect Wild Life. Hence, the term 'uncured trophy' would cover 'PT' also, since 'PT' is a wild animal in terms of Section 2(36) read with Schedule II. Therefore, if the petitioner wants to trade or do business with 'PT', he necessarily has to apply for a license under Section 44.

41. In the aforesaid paragraphs, I have analysed that insofar as the import of Wildlife species is concerned, the special chapter inserted by the parliament in 2023 applies. Now, let me turn my attention to the impugned order. The impugned order runs into several pages and paragraphs. Paragraph no. 1-16 is narration of the facts, submissions of the counsel, as well as extracts of the written arguments. Paragraph 17 is general in nature. The gist of the order is from paragraph no 19-25. The first respondent has come to the following conclusions:

(i) As 'PT' is included in Schedule II of the Wildlife (Protection) Act of 1972, neither individual, nor businesses can legally bring, or send them out of the country for commercial or personal purposes. The authority adds that



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permission is rarely granted by the authorities;

(ii) DGFT has directed that seashells included in the Schedules are not permitted to be exported or imported. He adds that only those species not listed in the Schedules or under CITES, maybe traded freely. As Conch Shell falls under the category of “Prohibited/Not permitted to be exported” under ITC (HS)-2021 Schedule 2 – Export Policy, it cannot be permitted to be exported;

(iii) Paragraph 21 is a mere extract of the sections under the Wildlife (Protection) Act;

(iv) Paragraph 22 extracts policy condition 2 in ITC (HS), 2022 Schedule I – Import Policy, and holds that 'PT' is covered under Schedule II of the Act;

(v) In Paragraph 23, the authority rightly comes to a conclusion that trade in Wildlife should be in conformity with the Wildlife (Protection) Act and CITES regulations; and finally,

(vi) in Paragraph 24 and 25, he distinguishes the judgement of CESTAT Calcutta and the High Court of Calcutta, on the ground that the goods classified under 0307 of the Tariff headings are imported for human consumption, and that it does not cover 'PT'.

42. In my view, the impugned order is a mismatch of several



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provisions of Wildlife Act and the DGFT regulations as is explained hereunder:

- i. ITC (HS) 2021 Schedule II export policy relates to regulations of export from India and not to import of products from outside of India into this country. This shows the first respondent has confused himself between export and import without making a differentiation between the two, and has applied export policies in matters of import.
- ii. The authority has come to the conclusion that, no license can be granted for trade in wildlife. Such a conclusion directly attracts the administrative law vice of fettering one's discretion. I have pointed out that under section 44, an authority has to consider the grant of license in a case-by-case basis. The authorities under the Wildlife Act certainly possess the discretion to refuse the license, if the application does not comply with the requirements of section 44. This discretion mandates an individualized assessment of each application to determine compliance with the statutory requirements. Imposing a rigid standard or a uniform pattern throughout all applications seriously undermines the purpose for which the Parliament has vested the authority with such discretionary power.



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iii. To apply a prescribed pattern, stating that license will be granted only for scientific or educational purposes, and not for commercial purposes, without addressing the merits of each application is an improper exercise of discretion. Discretionary powers are vested with authorities to make decisions based on their judgement within the framework of law. The Parliament, despite having the power to prohibit the import or export of Wildlife, has been selective in its approach. It has called upon persons interested in dealing with the imports of Wildlife trade to apply for license, only if they are covered under Section 49J of the Act. Insofar as the remaining are concerned, section 44 applies. A reading of paragraph no 19 of the impugned order shows that the authority has placed the cart before the horse, and has decided that a license will not be granted for commercial purposes.

43. This runs contrary to the framework of the Act. Fettering one's discretion has been considered ultra vires, at least a century and a half ago (***See, Gell v Taja Noora, (1903) ILR XXVII BOM 307 (DB).***)

44. The facts of that case become relevant. Taja Noora was an owner of 'Hack Victorias', a horse drawn public conveyance vehicle. He earned his



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living by plying the same for hire in Bombay. Under Section 6 of Bombay Act VI of 1863, the Commissioner of Police in Bombay had the power to grant licenses for public conveyances.

45. Taja Noora applied for a license. Mr. Gell, who was the then acting Commissioner of Police, referred to a decision taken by his predecessor in office, one Mr. H.Kennedy that the model of Victorias should conform to a particular pattern and if they do not conform to the said pattern, the application would be rejected. The Victorias used by Mr. Taja Noora did not conform to the pattern which had been prescribed by Mr.H.Kennedy. Hence, following the prescription of his predecessor, the license was rejected. This was put in challenge by way of a Writ invoking S.45 of the Specific Relief Act of 1877, before the Bombay High Court.

46. Justice Russell allowed the Writ Petition holding that Act VI of 1863 refers to a conveyance only. It does not refer in anyway to the horse which was to draw the conveyance. Nor did the section authorize the Commissioner of Police to reject the grant of the license, unless and until the model of Victorias is painted yellow and complies with the other details specified by Mr.H.Kennedy. Referring to the judgement in **Wood v Widnes Corporation 1898 1 QB 463**, the judge came to a conclusion that the



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Commissioner had fettered the discretion imposed on him by the Act and hence, quashed the Order and ordered the commissioner to grant the license forthwith.

47. Aggrieved by the said judgement, the Commissioner of Police preferred an appeal. After a detailed analysis of the law, the Division Bench held that the ground of refusal to grant license on the basis of a pre-concluded pattern of vehicle is ultra vires, and consequently dismissed the appeal. It observed as follows: -

“In this case, the power given is to refuse a license only when the Commissioner considers that the conveyance for which it is required is insufficiently found or otherwise unfit for the conveyance of the public, or that the applicant is open to certain objections. This clearly calls for the exercise of discretion in each particular case, and “an exercise of power in the fetters of self-imposed rules, purporting to bind the authorities in all cases would not be within the Act”

48. The view taken by the bench was accepted and followed in **Devareddy Peddayah v Commissioner of Police, Rangoon and anr. AIR 1933 Rangoon 37**, and approved in **Moti Lal v. Government of the State of Uttar Pradesh, AIR 1951 All 257** (5 Judge Bench).



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49. It is necessary to point out here that the purpose of S.44(1)(a) was to enable the persons to commence and carry on business. The condition precedent that a person has to satisfy before securing a license has been set forth by the Parliament in Section 44(4)(b). When the Parliament has declared that a person can commence or carry on business, albeit under license, the conclusion by the authority that license can be granted only for the purposes of research or education defeats the tenor of the legislation.

50. This judgement lays down the necessity for individualized assessments in licensing decisions. Such a proposition ensures that the authorities remain flexible and responsive to the unique circumstances of each case and thereby, ensuring fairness and justice. An authority cannot force something or someone to fit into a rigid and arbitrary standard regardless of consequences. The view taken by the authority reminds me of Fyodor Dostoevsky's *"The Grand Inquisitor"*, a story within a story in his famous book *"The Brothers Karamazov"*. The author describes a system that sought to force humanity into a predetermined notion of happiness and conformity, suppressing individual freedom and conscience to fit a rigid doctrine. The notion of The Grand Inquisitor is anathematic to the Constitution of India, as freedom of trade should be free from arbitrariness



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or administrative vices, like fettering one's discretion. The noble intention of the first respondent can be appreciated, yet, it is not for him to rewrite the Parliamentary statute, which can be done only by the Parliament. It is his duty to go through the applications on a case-by-case basis, instead of shutting out the operation of the section 44 in its entirety.

51. The reason given by him in paragraph no. 20 of the impugned order is an utter contradiction to paragraph no 23. In paragraph 20, the authority holds that DGFT does not permit import or export. However, in paragraph no. 23, he concludes that import is free, but would become legal only if it complies with the provisions under the Wildlife (Protection) Act and CITES.

52. I have already pointed out that chapter V-B deals with Appendices I to III of Schedule IV and 'PT' is not a species covered under any of these Schedules. I have also pointed out that under the foreign trade policy, 'PT' falls under other category covered under policy condition no. 3, and not under Policy condition no.2, as found in paragraph no. 23 of the impugned order. Hence, the authority should have concluded that 'PT' is freely importable, without requiring a license for such import, but requires such license for trade/commerce, when dealt within the four corners of this



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country. Instead, he construed as if he has the authority to refuse a 'No Objection' certificate, when he has no such powers.

53. Finally, I have to point out to the vain attempt to distinguish between the judgements of CESTAT, Calcutta, as confirmed by the Division Bench of the High Court of Calcutta. The CESTAT, Calcutta was moved by the Commissioner of Customs, against the order setting aside the confiscation of seashells imported by Mr.Kejriwal. CESTAT came to a conclusion that Import-Export Policy governs the condition of import and export of goods, and once the goods are classified as not restricted or prohibited, they cannot be confiscated. The view taken by the CESTAT was confirmed by the Division Bench of Calcutta High Court on appeal by the Revenue. These two judgements are authorities for the proposition that, if there are no restrictions under the Import-Export policy, and the goods are not restricted or prohibited, then they cannot be confiscated under the Customs Act. They are applicable to the facts of the present case, because 'PT' is covered under policy condition III and is freely importable. It is not a restricted or prohibited good. This shows that the authority has not taken into consideration specific matters, but has taken into consideration irrelevant matters and hence, this too, attracts the vice of administrative indiscretion.



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54. I will quote a few precedents to support this view. The first of them is the view of Wills.J., in **Queen v Cotham 1898 1 QB 802**, the learned Judge observed as follows:

“When it appears that they (Justices) have taken into consideration matters which are absolutely outside the ambit of their jurisdiction and absolutely apart from the matters, which, by law ought to be taken into consideration, then they have not heard according to law”

55. It was classically expressed in **The Queen on the Prosecution of Richard Westbrook vs. The Vestry of St. Pancras, (1890) 24 QBD 371** by the redoubtable Lord Esher M.R., speaking for himself Fry, L.J., in the following manner:

“if people, who have to exercise a public duty by exercising their discretion take into account matters which the court consider not to be proper for the guidance of their discretion, then in the eye of the law, they have not exercised their discretion. The legislative has entrusted the sole discretion to them and no mandamus can alter. But they must fairly consider and exercise their discretion fairly, and not take into account any reason for their decision which is not a legal one. Public bodies must exercise their statutory discretion properly in



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good faith and legally. They cannot operate on a mistaken understanding of law or apply rigid self-imposed rules that prevent genuine consideration of individual cases.”

This view has been approved by the Supreme Court in **S.R.Venkatesh v. Union of India, AIR 1979 SC 49.**

56. In the light of the above discussion, I have to conclude that the impugned order suffers from more than one administrative vice, namely, taking into consideration of irrelevant materials, overlooking relevant materials, fettering one's discretion, and abject non-application of mind to the facts of the cases as against applicable laws, and hence, requires to be quashed, and accordingly, is quashed.

57. The plea of Dr.Seenivasan that if 'PT' is permitted to be imported, it will affect the Gulf of Mannar's marine biosphere, in my view, is not a test that has to be applied at the time of import. It is a test which would have to be applied, when an application is made under Section 44(3) and it is taken up for consideration under section 44(4)(b). I am sure that the robust manner in which the Wild Life are being protected by the Forest Department, both at the State and National level, the Chief Wild Life Warden or the Officer authorised by him would certainly look into the



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implications of the license as directed by the Parliament, when an application is so made. There cannot be an anticipatory rejection even before the petitioner makes an application under section 44(3).

58. In fact, in **Poonawala**'s case cited *supra*, though the court came to a conclusion that the import required prior permission from the scientific authority, it balanced the interests of the petitioner and the State. The Supreme Court held that as the species has been handed over to the writ petitioner, it permitted him to apply to the scientific authority for obtaining the necessary permission, and till the time, the writ petitioner was allowed to retain the stuffed Leopard. Law is a balancing act between the rights of a businessman to do trade in wild life and the necessity to protect the wild life. I intend to perform a similar balancing act.

59. In the light of the above discussion, the writ petition is ordered in the following terms:

(i) The impugned proceedings in Proc.No.WL1/32448/2024 dated 03.07.2025 is quashed.

(ii) The import of 'PT' is not covered under Chapter V-B or under policy condition 2 of the import and export policy. Hence, it cannot be said to be prohibited by the Wild



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(iii) For the mere fact that the impugned proceeding is quashed, it does not mean that the petitioner is entitled to do business or deal with the animal articles in cured or uncured form;

(iv) The petitioner will necessarily have to apply for a license under Section 44(3) of the Wild Life (Protection) Act, 1972 and if the license is so granted, he can thereafter deal with the same in accordance with the Wild Life (Protection) Act and the conditions of license;

(v) As the goods have already reached the shores of this Country, it will result in a wasteful expenditure, in case the petitioner is called upon to destroy them or if it is confiscated by the Department. Hence, 'PT' shall be cleared from the Customs Warehouse where it is currently kept and shall be kept in a Godown under a double lock system. One key shall be with the forest department, while the other shall be with the petitioner. The cost of such storage shall be borne by the petitioner. After securing the license, the petitioner shall deal with the same.



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No costs. Consequently, the connected miscellaneous petitions are closed.

05.11.2025

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Internet:Yes

Index:Yes/No

Speaking/Non speaking order



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To

- 1.The Principal Chief Conservator of Forests
and Chief Wild Life Warden, Forest Headquarters,
Guindy – Velacherry Main Road,
Guindy, Chennai – 600 032.



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V. LAKSHMINARAYANAN. J,

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