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W.P.No.6840 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10-10-2025
PRONOUNCED ON : 08.01.2026

CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.Nos. 6840, 2472, 6300, 6427 of 2022
W.P.Nos.24859, 24864 of 2021
W.P.Nos.5561, 22392, 25353, 25358, 25356, 26557, 26561, 26568, 26571,
26574, 34389 and 34391 of 2023
W.P.(MD) Nos.21206 and 21211 of 2021
W.P.(MD) Nos.5566, 24076, 5564, 2497, 5565 of 2022
and
W.M.P.Nos.26159, 26160, 26165, 26166 of 2021
W.M.P.Nos.2634, 2635, 6518, 6905, 6394, 6398, 6517, 6906 of 2022
W.M.P.Nos.5577, 24759, 24761, 25968, 25987, 25988, 34293, 34295, 25965,
25969, 25983, 25984, 25979, 34320, 34321, 24767, 24758, 5580, 21787,
24763, 25962, 25981, 24768 of 2023,
W.M.P.(MD) Nos.17790, 17793, 17795, 17787 of 2021
W.M.P.(MD) Nos.2198, 2199, 18182, 4501, 4502 and 4503 of 2022

W.P.No.6840 of 2022:

1. M/s.G.G.Steels
43, Kadapakkam Village,
Manali New Town Road,
Chennai- 600 103.
Rep by its Partner Rohit Goel.

Petitioner(s)

Vs

1. Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue (Central
Board of Indirect Taxes and Customs)
North Block, New Delhi- 110 001.



2. The Director General of Foreign Trade,
Udyog Bhavan, H-Wing, Gate No.2,
Moulana Azad Road, New Delhi- 110 011.

Respondent(s)

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Prayer in W.P.No.6840 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, calling for records of the 2nd Respondent in and connected with Notification No.38 / 2015 - 2020 dated 05.02.2016 issued under Section 3, Sub- Section (ii) of the Foreign Trade (Development and Regulations) Act, 1992 read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015- 2020, as amended from time to time, regarding the Minimum Import Price (MIP) of 173 HS Codes falling under Chapter 72 of ITC (HS) 2012 Schedule- 1 (Import Policy) for a period of Six Months, which stands extended till date read with the Trade Notice issued by the Directorate General of Foreign Trade vide Trade Notice No.17 / 2016 dated 10.02.2016 had clarified that the imports effect on or after 05.02.2016, below the USD unit value specified in the above mentioned Notification would be restricted for entry into India, and quash the same is arbitrary, illegal and contrary section 14 (2) of the customs Act, 1962.

W.P.Nos. 25353, 25356 and 25358 of 2023

1. M/s.Unik Traders,
No.140, Old Tharagupet Road,
Bangalore 560 053,
Rep. By Its Authorized Signatory
Asif H.Thara.

Petitioner(s)

Vs

1. Union Of India
Rep By Its Secretary,
Ministry Of Finance, North Block,
New Delhi 110 011.
2. The Director General Of Foreign Trade,
H Wing, Gate No.2, Udyog Bhavan,
Moulana Azad Road,
New Delhi 110 011.

Respondent(s)

Prayer in W.P.No.25353 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification 57/2015-2020 dated 14.02.2023 issued by the 2nd respondent, quash the same as it is arbitrary, illegal and contrary Section 14(2) of the Customs Act, 1962.



Prayer in W.P.No.25356 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification 109/(RE- 2013)/ 2009 -2014 dated 06.02.2015 issued by the 2nd respondent, quash the same as it is arbitrary, illegal and contrary Section 14(2) of the Customs Act, 1962.

Prayer in W.P.No.25358 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification 42/2015-2020 dated 06.12.2017 issued by the 2nd respondent, quash the same as it is arbitrary, illegal and contrary Section 14(2) of the Customs Act, 1962.

W.P.No.22392 of 2023:

1. N.C.Alexander
T/h-24, Anna Fruit Market,
Koyambedu, Chennai 600 092.
Represented By Its Proprietor
N.C. Alexander.

Petitioner(s)

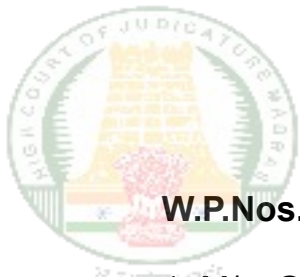
Vs

1. Union Of India,
Represented by its Secretary,
Ministry of Finance Department of Revenue
(Central Board Of Indirect Taxes And Customs),
North Block, New Delhi 110 001.

2. The Director General of Foreign Trade
Udyog Bhavan H-wing, Gate No. 2 ,
Moulana Azad Road, New Delhi 110 011.

Respondent(s)

Prayer in W.P.No.22392 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification No.05 / 2023 dated 08.05.2023 issued by the 2nd respondent, quash the same as it is arbitrary, illegal and contrary Section 14(2) of the Customs Act, 1962.



W.P.Nos. 26568, 26571 and 26574 of 2023:

1. M/s. G.T. India Private Limited
No. 81/ 83 , Dr. Alagappa Road,
Purasaiwakkam, Chennai 84 ,
Rep. by its Authorized Signatory

Petitioner(s)

Vs

1. Union Of India
Represented by its Secretary,
Ministry Of Finance, North Block,
New Delhi 110 011.

2. The Director General Of Foreign Trade,
H Wing, Gate No.2, Udyog Bhavan,
Moulana Azad Road ,
New Delhi 110 011.

Respondent(s)

Prayer in W.P.No.26568 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification No.42/2015-2020 dated 06.12.2017 issued by the 2nd respondent, quash the same as it is arbitrary, illegal and contrary Section 14(2) of the Customs Act, 1962.

Prayer in W.P.No.26571 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification No.57/2015-2020 dated 14.02.2023 issued by the 2nd respondent, quash the same as it is arbitrary, illegal and contrary Section 14(2) of the Customs Act, 1962.

Prayer in W.P.No.26574 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification No.109/(RE-2013)/2009-2014 dated 06.02.2015 issued by the 2nd respondent, quash the same as it is arbitrary, illegal and contrary Section 14(2) of the Customs Act, 1962.

W.P.No. 2472 of 2022

1. M/s. Empire Traders
Rep. by its Managing Partner,
Shri.Anzal V.A.
17/1261, Konukunnel Building,
Kattapana, Iduki District,
Kerala-PIN-685508.



Petitioner(s)

Vs

1. The Director General of Foreign Trade,
Ex-Officio Additional Secretary to the
Government of India,
Ministry of Commerce and Industry,
Department of Commerce,
Udyogabhavan, New Delhi-110 017.

2. The Joint Director
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
7, G.N. Chetty Road, T.Nagar,
Chennai - 600 017.

3. The Joint Commissioner of Customs,
Custom House, Harbour Estate,
Tuticorin-628 004, Tamil Nadu.

Respondent(s)

Prayer in W.P.No.2472 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Notifications Nos.42/2015-2020 dated 06.12.2017, 50/2015-2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018, and 21/2015-2020 dated 25.07.2018 issued by the 1st Respondent and quash the same

WP No. 5561 of 2023

1. M.R.J.Trading
Rep. by its Proprietor,
Mr.Abdulla Jasim M.P,
1/85-A, Kunnathkavu Temple,
Kollanur, Palakkad Ponnani Road,
Eravakkad Post, Kappur, Palakkad,
Kerala-679 552.

Petitioner(s)

Vs

1. The Director General of Foreign Trade,
Ministry of Commerce and Industry,
Department of Commerce, Udyogabhavan,
New Delhi-110 017.

2. The Commissioner of Customs,
Chennnai II Commissionerate,



Custom House, No.60, Rajaji Salai,
Chennai-600 001.

3. The Deputy Commissioner of Customs (Group 1)
Custom House, Port Area,
Vishakapatnam - 530 035.

Respondent(s)

Prayer in W.P.No.5561 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Notifications Nos.42/2015-2020 dated 06.12.2017, 50/2015-2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018 and 21/2015-2020 dated 25.07.2018 issued by the 1st respondent and quash the same.

W.P.No.24859 of 2021

P.Gunasekaran, Proprietor
M/s. Global Metro,
No.4, Poonamallee High Road,
Pallikuppam, Noombal,
Thiruverkadu, Chennai- 600 077.

Petitioner(s)

Vs

1. The Director General of Foreign Trade,
Ex- Officio Additional Secretary to the
Government of India,
Ministry of Commerce and Industry ,
Department of Commerce,
Udyogabhavan, New Delhi- 110017.
2. The Commissioner of Customs
Chennai- II, Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai- 600 001.

Respondent(s)

Prayer in W.P.No.24859 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Notifications Nos. 42/ 2015- 2020 dated 06.12.2017, 50/2015- 2020 dated 05.02.2018, 53/2015- 2020 dated 21.03.2018 and 21/2015- 2020 dated 25.07.2018 issued by the 1st



Respondent and quash the same and pass.

W.P.No.24864 of 2021:

M/s.Golden Spices

Rep by its Managing Partner, Sri,
Sameer Ibrahim C.H, 12/620 H,
Marthoma Nagar, Mysore Road,
Gudalur, Nilgiris,
Tamil Nadu- PIN- 643211.

Petitioner(s)

Vs

1. The Director General of Foreign Trade
Ex- Officio Additional Secretary to the
Government of India,
Ministry of Commerce and Industry,
Department of Commerce,
Udyogabhavan, New Delhi- 110017.
2. The Commissioner of Customs,
Chennai- II, Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai- 600 001.

Respondent(s)

Prayer in W.P.No.24864 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Notifications Nos.42/2015- 2020 dated 06.12.2017, 50/2015- 2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018 and 21/2015- 2020 dated 25.07.2018 issued by the 1st Respondent and quash the same and pass.

W.P.No.34389 of 2023:

M/s. Maidan Trexim (OPC) Pvt. Ltd
No. 4/1A, Jagmohan Mullick Lane,
Kolkata - 700 007.
Rep. by its Director,
Shree Krishnan Goswami

Petitioner(s)

Vs

1. Union Of India,
Rep. by its Secretary To Government,
Ministry Of Commerce And Industry,



Government Of India,
Udyog Bhavan, New Delhi 110 001.

2.The Director General Of Foreign Trade,
Udyog Bhavan, H- Wing, Gate No. 2,
Moulana Azad Road, New Delhi 110 011.

Respondent(s)

Prayer in W.P.No.34389 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification No.42/ 2015-2020 dated 06.12.2017 as amended by Notification No.21/2015- 2020 dated 25.07.2018 issued by the 2nd respondent herein under Section 3 of the Foreign Trade (Development and Regulations) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015- 2020, as amended from time to time, regarding the Minimum Import Price (MIP) of goods falling under Chapter 09 of ITC (HS) 2017 Schedule-1 (Import Policy) fixing Minimum Import Price at CIF above Rs. 500 per kilogram and quash the same as being violative of the Foreign Trade (Development and Regulations) Act 1992 and contrary to Section 14(2) of the Customs Act 1962.

WP No. 34391 of 2023

M/s. Oliya Steel Pvt. Ltd.,
No. 4/1A, Jagmohan Mullick Lane,
Kolkata - 700 007.
Rep. By Its Director,
Shree Krishnan Goswami

Petitioner(s)

Vs

1. Union Of India
Rep. by its Secretary to Government,
Ministry Of Commerce And Industry,
Government Of India, Udyog Bhavan,
New Delhi 110 001.

2.The Director General Of Foreign Trade,
Udyog Bhavan, H- Wing, Gate No.2,
Moulana Azad Road,
New Delhi 110 011

Respondent(s)

Prayer in W.P.No.34391 of 2023: Writ Petition filed under Article 226 of the



Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification No.42/2015-2020 dated 06.12.2017 as amended by Notification No.21 /2015- 2020 dated 25.07.2018 issued by the 2nd respondent herein under Section 3 of the Foreign Trade (Development and Regulations) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020 as amended from time to time, regarding the Minimum Import Price (MIP) of goods falling under Chapter 09 of ITC (HS) 2017 Schedule 1 (Import Policy) fixing Minimum Import Price at CIF above Rs. 500 per kilogram and quash the same as being violative of the Foreign Trade (Development and Regulations) Act 1992 and contrary to Section 14(2) of the Customs Act 1962.

W.P.Nos.26557 and 26561 of 2023:

M/s.Isha Exim
P-586, Block N, New Alipore,
Kolkata-700 053.
Rep. by its Proprietor
Shri.Prabal Kumar Kundun

Petitioner(s)

Vs

1. Union Of India
Rep. by its Secretary,
Ministry Of Finance, North Block,
New Delhi-110 011.
2. The Director General Of Foreign Trade,
H Wing, Gate No.2, Udyog Bhavan,
Moulana Azad Road,
New Delhi-110 011.

Respondent(s)

Prayer in W.P.No.26557 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification No.42/2015-2020 dated 06.12.2017 issued by the 2nd respondent, quash the same as it is arbitrary, illegal and contrary section 14(2) of the Customs Act, 1962.

Prayer in W.P.No.26561 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification No.57/2015-2020 dated 14.02.2023 issued by the 2nd respondent, quash the same as it is arbitrary, illegal and contrary



Section 14(2) of the Customs Act, 1962

WP No. 6300 of 2022 :

M/s.Global Metro
No.395, 11th Block, Mogappair East,
Kannadasan Street, Chennai-600 037.
Rep. by its Proprietor P.Gunasekaran

Petitioner(s)

Vs

1. Union of India
Rep. by its Secretary,
Ministry of Finance,
Department of Revenue (Central Board of
Indirect Taxes and Customs),
North Block, New Delhi-110 001.

2. The Director General of Foreign Trade,
Udyog Bhavan, H-wing, Gate No.2,
Moulana Azad Road, New Delhi-110 011.

Respondent(s)

Prayer in W.P.No.6300 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for records in and connected with Notification No.21/2015-2020 dated 25.07.2018 issued under Section 3 of the Foreign Trade (Development and Regulations) Act,1992, read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, regarding the import of Black Pepper, attributable to the 2nd respondent and quash the same, as the same in arbitrary, Illegal and contrary Section 14(2) of the Customs Act, 1962.

W.P.No. 6427 of 2022:

1. M/s.Sri Arbuda Mart Private Limited,
No.14, Perumal Mudali Street,
Sowcarpet, Chennai-600 001,
by its Director Shri Virendrakumar.

Petitioner(s)

Vs

1. Union of India,



Rep. by its Secretary,
Ministry of Finance,
Department of Revenue (Central Board of
Indirect Taxes and Customs),
North Block, New Delhi-110 001.

2. The Director General of Foreign Trade,
Udyog Bhavan, H-wing, Gate No.2,
Moulana Azad Road, New Delhi-110 011.

Respondent(s)

Prayer in W.P.No.6427 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records in and connected with Notification No.2/2015-2020 dated 26.04.2021 issued under Section 3, sub-section (ii) of the Foreign Trade (Development and Regulations) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, regarding the import of Electrical or Electronic devices for repelling insects (for example, mosquitoes or other similar kind of insects), commonly known as Mosquitoes bat fixing a Minimum Import Price (MIP) of Rs.121/- per racquet attributable to the 2nd Respondent and quash the same, as the same is arbitrary, illegal and contrary Section 14(2) of the Customs Act, 1962.

WP(MD) No. 2497 of 2022

M/s. Sindhu Lakshmi Impex
Sl.No.15/8, Kasturi Rangan 1st Street,
Poes Garden, Teynampet,
Chennai 600 018.

Rep. by its Managing Partner,
Shri.Saravanan Palaniappan

Petitioner(s)

Vs

1. The Director General of Foreign Trade,
Ex-Officio Additional Secretary to the
Government of India,
Ministry of Commerce and Industry,
Department of Commerce, Udyogbhavan,
New Delhi 110 017.
2. The Commissioner of Customs
Custom House, New Harbour Estate,
Tuticorin 628 004.

Respondent(s)



Prayer in W.P.(MD) No.2497 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned notifications Nos.42/2015-2020 dated 06.12.2017, 50/2015-2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018 and 21/2015-2020 dated 25.07.2018 issued by the 1st respondent and quash the same.

WP(MD) No. 5564 of 2022:

M/s. Aabis International
Rep. by its Managing Partner,
Shri Shabu C.M.,
Door No.10/1286, BHIMA Tower ,
II Floor , Wadakkanchery, Thrissur ,
Kerala-680582.

Petitioner(s)

Vs

The Additional / Joint Commissioner
of Customs,
New Custom House,
New Harbour Estate,
Tuticorin - 628004.

Respondent(s)

Prayer in W.P.(MD) No.5564 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, forbearing the Respondent from adjudicating the show cause notice in F.No.DRI/CZU/TTN/VIII/48/07/INT-01/2021 dated 26.11.2021, issued under Section 124 of the Customs Act, 1962, as per the order of the Hon'ble High Court, Kerala, in WP(C).No.1119 of 2022 (L) dated 13.01.2022.

WP(MD) No. 5565 of 2022:

1. M/s Shabeer Enterprises
Rep by its the Proprietor,
Mr.A.H.Mohammed, No.7/299,
Kumaranellur, Wadakkanchery,
Thrissur, Kerala State, Pin - 680 590.

Petitioner(s)

Vs

1. The Additional / Joint Commissioner
of Customs,



New Custom House, New Harbour
Estate , Tuticorin - 628004.

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Respondent(s)

Prayer in W.P.(MD) No.5565 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, forbearing the Respondent from adjudicating the show cause notice in F.No.DRI/CZU/TTN/VIII/48/05/INT-01/2021 dated 17.11.2021, issued under Section 124 of the Customs Act, 1962, as per the order of the Hon'ble High Court, Kerala, in WP(C).No.1067 of 2022 (G) dated 13.01.2022.

WP(MD) No. 5566 of 2022:

M/s.Al Qahir International,
Rep. by its Managing Partner,
Shri Shihad,
13/489, Kumara Nellur, Thrissur,
Kerala State.

Petitioner(s)

Vs

1. The Additional / Joint Commissioner
of Customs,
New Custom House,
New Harbour Estate ,
Tuticorin - 628004.

Respondent(s)

Prayer in W.P.(MD) No.5566 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, forbearing the Respondent from adjudicating the show cause notice in F.No.DRI/CZU/TTN/VIII/48/05/INT-01/2021 dated 18.11.2021, issued under Section 124 of the Customs Act, 1962, as per the order of the Hon'ble High Court, Kerala, in WP(C).No.1128 of 2022 (G) dated 13.01.2022.

WP(MD) Nos. 21206 and 21211 of 2021

Sri.Sujith T.A, Proprietor
M/s.Southern Trade Links, XVI/60E,
Parambukattil Buildings, Erattupetta,
Kottayam District. Kerala PIN 686122

Petitioner(s)

Vs



1. The Director General of Foreign Trade,
Ex-Officio Additional Secretary to the
Government of India,
Ministry of Commerce and Industry,
Department of Commerce,
Udyogabhavan, New Delhi 110017

2. The Joint Commissioner of Customs,
Custom House, Harbour Estate,
Tuticorin, Tamilnadu 628004

Respondent(s)

Prayer in W.P.(MD) No.21206 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Notifications Nos.42/2015-2020 dated 06.12.2017, 50/2015-2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018 and 21/2015-2020 dated 25.07.2018 issued by the Respondent and quash the same.

Prayer in W.P.(MD) No.21211 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned show cause notice no.32/2021 dated 17.09.2021 issued by the 2nd Respondent in C.No.VIII/10/25/2021-Adjn and quash the same .

W.P.(MD) No. 24076 of 2022

M/s. Empire Traders
Rep. by its Managing Partner,
17/1261, Konukunnel Building,
Kattapana, Iduki District,
Kerala 685 508

Petitioner(s)

Vs

1. The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin 628 004.
2. The Joint Commissioner of Customs
Customs House, New Harbour Estate,
Tuticorin 628 004.
3. The Assistant Commissioner of
Customs (SIIB),
Customs House, New Harbour Estate,



Tuticorin 628 004.

4. The Deputy Director
Directorate of Revenue Intelligence,
22/14, Celin Garden, Roche Colony,
South Beach Road, Tuticorin 628 001.

5. The Joint Director
Directorate of Revenue Intelligence,
Chennai Zonal Unit, 7,
G.N.Chetty Road, T.Nagar,
Chennai 628 004.

Respondent(s)

Prayer in W.P.(MD) No.24076 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd respondent Joint Commissioner of Customs in Order in Original No.23 of 2022 dated 22.07.2022 imposing penalty on the petitioner, quash the same as illegal and void, and pass such further or other suitable order / orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice.

In W.P.Nos.6840, 6300, 6427 of 2022, 22392, 25356, 25353 25358, 26557, 26561, 26568, 26571, 26574, 34389, 34391 of 2023 and In W.P.(MD)Nos.5564, 5565, 5566 of 2022

For Petitioner : Mr.B.Satish Sundar

In WP.Nos. 24859, 24864 of 2021, 2472 of 2022, 5561 of 2023 and W.P.(MD) Nos.21206, 21211 of 2021, 2497 of 2022

For Petitioner : Mr.Hari Radhakrishnan

In W.P.(MD) No.24076 of 2022

For Petitioner : Ms. H. Mary Sowmi Rexi
for M/s.Isaac Chambers

In W.P.No.6840 of 2022

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,



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W.P.No.6840 of 20



Assisted by Mr.A.R.Sakthivel,
Senior Panel Counsel

In W.P.Nos. 6300 of 2022, 26568, 26571, 26574, 26557, 26561 of 2023

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.R.Rajesh Vivekananthan
Deputy Solicitor General of India

In W.P.No.6427 of 2022

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.S.Diwakar,
Senior Panel Counsel

In W.P. Nos.22392, 25353, 25356, 23538 of 2023

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.V.Chandrasekaran,
Senior Panel Counsel

In W.P.(MD) Nos.21206, 21211 of 2021

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.P.Palaninathan,
Central Government Standing Counsel for R1
Mr.B.Vijay Karthikeyan
Senior Standing Counsel for R2

In WP.No. 5561 of 2023

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.A.R.Sakthivel,
Senior Panel Counsel for R1
Mr.Umesh Rao, K



Senior Standing Counsel for R2 & R3

In W.P.(MD) No.2497 of 2022

For Respondents

: Mr.AR.L.Sundaresan
Additional Solicitor General of India

In W.P.No.24864 of 2021

For Respondents

: : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by
Mr.M.Santhanaraman,
Senior Panel Counsel for R1 and R2

In W.P.No.24859 of 2021

For Respondents

: Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.P.Palaninathan,
Senior Panel Counsel for R1
Mr.M.Santhanaraman,
Senior Standing Counsel for R2

In W.P.Nos.34389, 34391 of 2023

For Respondents

: Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.B.Babu Manohar,
Senior Central Government Standing Counsel

In W.P.No.2472 of 2022

For Respondents

: Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.B.Babu Manohar,
Senior Central Government Standing Counsel
for R1
Mr.M.Santhanaraman,
Senior Standing Counsel for R2 & R3

In W.P.(MD) No.24076 of 2022

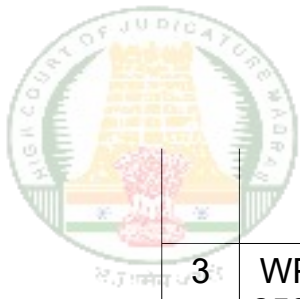


: Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.N.Dilip Kumar
Senior Standing Counsel

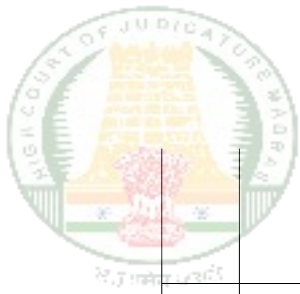
For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Assisted by Mr.B.Vijay Karthikeyan
Senior Standing Counsel for R1 an R2

This batch of Writ Petitions are filed challenging the following notifications, notices and orders issued pursuant thereto.

S. No	WP No.	Prayer	Challenged Notification	Product Description
1	WP No. 6840 of 2022	Writ of Certiorari to quash Notification imposing Minimum Import Price (MIP) under FTDR Act as arbitrary and contrary to Section 14(2) of Customs Act	Notification No. 38/2015-2020 dated 05.02.2016 read with Trade Notice No.17/2016 dated 10.02.2016	173 HS Codes under Chapter 72 – Iron & Steel Products
2	WP No. 25353 of 2023	Writ of Certiorari to quash notification as arbitrary and contrary to Section 14(2)	Notification No. 57/2015-2020 dated 14.02.2023	Areca Nut/Betel Nut



		of Customs Act		
3	WP No. 25356 of 2023	Writ of Certiorari to quash notification as arbitrary and contrary to Section 14(2) of Customs Act	Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015	Cardamoms Chapter 09 ITC (HS) 2012 Schedule - 1
4	WP No. 25358 of 2023	Writ of Certiorari to quash notification as arbitrary and contrary to Section 14(2) of Customs Act	Notification No. 42/2015-2020 dated 06.12.2017	Black Pepper
5	WP No. 22392 of 2023	Writ of Certiorari to quash notification as arbitrary and contrary to Section 14(2) of Customs Act	Notification No. 05/2023 dated 08.05.2023	Apples
6	WP No. 26568 of 2023	Writ of Certiorari to quash notification as arbitrary and contrary to Sec.14(2) of Customs act	Notification No. 42/2015-2020 dated 06.12.2017	Black Pepper
7	WP No. 26571 of 2023	Writ of Certiorari to quash notification as arbitrary and	Notification No. 57/2015-2020 dated 14.02.2023	Areca Nut



		contrary to Sec.14(2) of Customs act		
8	WP No. 26574 of 2023	Writ of Certiorari to quash notification as arbitrary and contrary to Sec.14(2) of Customs act	Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015	Cardomoms
9	WP No. 2472 of 2022	Writ of Certiorari to quash multiple DGFT notifications	Notifications Nos.42/2015- 2020 dated 06.12.2017, 50/2015-2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018, and 21/2015-2020 dated 25.07.2018	Black Pepper Garbled/ Ungarbled
10	WP No. 5561 of 2023	Writ of Certiorari to quash multiple DGFT notifications	Notification Nos. 42/2015- 2020 dated 06.12.2017, 50/2015-2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018 and 21/2015-2020 dated 25.07.2018	Black Pepper
11	WP No. 24859 of 2021	Writ of Certiorari to quash multiple DGFT notifications	Notifications Nos. 42/ 2015- 2020 dated 06.12.2017, 50/2015- 2020 dated 05.02.2018, 53/2015- 2020 dated 21.03.2018 and 21/2015- 2020 dated 25.07.2018	Black Pepper Garbled/Ungarb led
12	WP No. 24864 of 2021	Writ of Certiorari to quash multiple DGFT notifications	Notifications Nos.42/2015- 2020 dated 06.12.2017, 50/2015- 2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018 and 21/2015- 2020 dated 25.07.2018	Black Pepper Garbled/Ungarb led
13	WP No. 34389 of 2023	Writ of Certiorari to quash	Notification No. 42/2015- 2020 dated 06.12.2017 as amended by 21/2015-2020	Chapter 09 of ITC (HS) 2017 Schedule-I

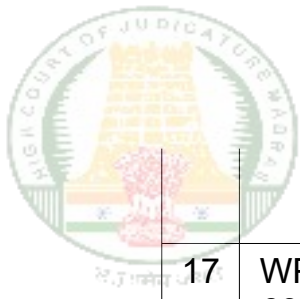


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		notification as being violative of the Foreign Trade (Development and Regulations) Act 1992 and contrary to Section 14(2) of Customs Act	dated 25.07.2018	(Import policy) (MIP Rs.500/kg)
14	WP No. 34391 of 2023	Writ of Certiorari to quash notification as being violative of the Foreign Trade (Development and Regulations) Act 1992 and contrary to Section 14(2) of Customs Act	Notification No. 42/2015-2020 dated 06.12.2017 as amended by 21/2015-2020 dated 25.07.2018	Chapter 09 of ITC (HS) 2017 Schedule-I (Import policy) (MIP Rs.500/kg)
15	WP No. 26557 of 2023	Writ of Certiorari to quash notification as arbitrary and contrary to Section 14(2) of Customs Act	Notification No. 42/2015-2020 dated 06.12.2017	Black Pepper
16	WP No. 26561 of 2023	Writ of Certiorari to quash notification as arbitrary and contrary to Section 14(2)	Notification No. 57/2015-2020 dated 14.02.2023	Areca nut/Betel Nut



		of Customs Act		
17	WP No. 6300 of 2022	Writ of Certiorari to quash notification as arbitrary and contrary to Section 14(2) of Customs Act	Notification No. 21/2015-2020 dated 25.07.2018	Black Pepper
18	WP No. 6427 of 2022	Writ of Certiorari to quash notification as arbitrary and contrary to Section 14(2) of Customs Act	Notification No. 2/2015-2020 dated 26.04.2021	Electronic Mosquito Bat – MIP Rs.121 per racquet
19	WP(MD) No. 2497 of 2022	Writ of Certiorari to quash multiple DGFT notifications	Notifications Nos.42/2015-2020 dated 06.12.2017, 50/2015-2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018 and 21/2015-2020 dated 25.07.2018	Black Pepper Garbled/ Ungarbled
20	WP(MD) No. 5564 of 2022	Writ of Mandamus forbearing the Respondent from adjudicating the SCN, in view of the order of the Kerala High Court in WP(C).1119/2022 dated 13.01.2022	Show cause notice in F.No.DRI/CZU/TTN/VIII/48/07/INT-01/2021 dated 26.11.2021	Black Pepper
21	WP(MD)	Writ of	Show Cause Notice No.	Black Pepper

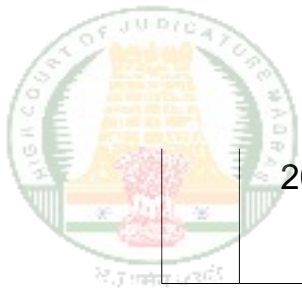


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	No. 5565 of 2022	Mandamus forbearing Customs/DRI from adjudicating SCN, based on Kerala High Court order	DRI/CZU/TTN/VIII/48/05/INT-01/2021 dated 17.11.2021, issued under Section 124 of the Customs Act, 1962	
22	WP(MD) No. 5566 of 2022	Writ of Mandamus forbearing respondents from adjudicating SCN issued by DRI, based on Kerala High Court order in WP(C).1128/2022	Show Cause Notice F.No. DRI/CZU/TTN/VIII/48/05/INT-01/2021 dated 18.11.2021 issued under Section 124, Customs Act, 1962	Black Pepper
23	WP(MD) No. 21206 of 2021	Writ of Certiorari to quash the show cause notice no. 32/2021 dated 17.09.2021 in C. No. VIII/10/25/2021-Adjn and multiple DGFT notifications	Notification Nos. 42/2015-2020 dated 06.12.2017, 50/2015-2020 dated 05.02.2018, 53/2015-2020 dated 21.03.2018, 21/2015-2020 dated 25.07.2018	Black Pepper Garbled/Ungarbled
24	WP(MD) No. 21211 of 2021	Writ of Certiorari to quash the impugned Show Cause Notice issued by Customs	Show Cause Notice No. 32/2021 dated 17.09.2021, issued in C.No.VIII/10/25/2021-Adjn	Black Pepper Garbled/Ungarbled
25	WP(MD) No. 24076 of	Writ of Certiorari to quash Order-	Order-in-Original No. 23/2022 dated 22.07.2022 passed by the Joint	Black Pepper



2022

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2. The above notifications have been challenged *inter alia* on the following grounds:

a) Imposition of condition of “Minimum Import Price” for Black Pepper, Areca-nuts, Apples, in purported exercise of power under Section 3 of Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as 'FTDR' Act), is *ultra vires* the enabling Act;

(b) That under sub-section (2) to Section 3 of FTDR Act, while Central Government is empowered to issue Orders prohibiting, restricting or otherwise, regulating import or export of goods or services or technology that would not take within its ambit power to impose “Minimum Import Price” . Thus, impugned notifications under sub-section (2) to Section 3 of FTDR Act fixing Minimum Import Price is *ultra vires* the enabling Act.

c) Impugned notifications are challenged on the premise that under sub-section (3) to Section 19, every order made by the Central Government ought to be laid before the Parliament. However, impugned notifications, even assuming to be Orders made in purported exercise of power under sub-section (2) to Section 3 of FTDR Act, has not been placed before Parliament, though more than seven years have lapsed since its issuance.

2.1. Since the grounds of challenge are common in all these Writ Petitions, we propose to pass a common order. We shall, for the purpose of



disposing of this batch of writ, deal with the facts obtaining in W.P.No.2472 of 2022 taking it as lead matter.

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3. Brief Facts and notifications:

a) Petitioner in W.P.No.2472 of 2022 was engaged in the business of import and trading of spices and other agricultural products. Petitioner imported Black Pepper garbled/ungarbled through Port of Tuticorin.

b) 1st respondent, i.e., Director General of Foreign Trade, vide Notification No.36/2015-2020 dated 17.01.2017, notified “Indian Trade Classification” (Harmonised System) of import items, 2017 [ITC (HS) 2017], {hereinafter referred to as “ITC (HS) 2017”}.

c) By virtue of ITC (HS) 2017, “Schedule-1-Import Policy”, (hereinafter referred to as “Import Policy”), was formulated in relation to import of schedule mentioned items. The import of the items mentioned in the Schedule to the Import Policy shall be subject to conditions, if any, contained in relation to such item in the Import Policy.

d) “Black Pepper, garbled/ungarbled” was covered under ITC (HS) 0904 1130 and 0904 1140 in Heading 0904 under Chapter 9 of ITC (HS) 2017 Schedule-1-Import Policy. At the time of issuance of ITC (HS) 2017, import of Black Pepper, garbled/ungarbled were “Free”. In other words, import of Black Pepper garbled/ungarbled, was not subject to any condition under Import Policy.



e) On 06.12.2017, 1st respondent vide Notification No.42/2015-2020 amended the Import Policy relating to “Pepper” falling under Chapter 09 of ITC

(HS), 2017 – Schedule – I. Revised Policy Conditions provided as follows:

“Free-provided CIF value is Rs.500/- and above per Kilogram”. Effect being that import of Black Pepper garbled/ungarbled was Free-provided CIF value was Rs.500/- and above per Kilogram.

f) On 05.02.2018, Notification No.50/2015-20 was issued by the 1st respondent, whereby, import of “Light Black Pepper” falling under ITC (HS) Code 0904 1120, was exempt if import was made under Advance Authorisation Scheme for the purpose of extraction of Oleoresin for re-export by the manufacturer/exporter.

g) On 21.03.2018, vide Notification No.53/2015-2020, ITC (HS) 2017 was further amended and goods falling under Heading 0904 was categorized as prohibited. The relevant portion of the amendment reads as under:

“Prohibited – However, import is free if CIF is above Rs.500/- per Kg”

h) On 25.07.2018, vide Notification No.21/2015-2020, there was a further amendment, whereby, 100% Export Oriented Units in Special Economic Zone was exempt from the ambit of “Minimum Import Price” (MIP). The relevant portion of the amendment reads as under:

“MIP, however, will not be applicable for the imports under Advance Authorisation Scheme, imports by 100% Export Oriented Units (EOUs) and Units in the SEZ.”



i) As a result of all these amendments, the policy condition of goods falling under Heading 0904 including Black Pepper garbled/ungarbled read as under:

“Prohibited - MIP, however, will not be applicable for the imports under Advance Authorisation Scheme, imports by 100% Export Oriented Units (EOUs) and Units in the SEZ.”

j) Petitioner was importing Black Pepper garbled/ungarbled through Chennai Customs, declaring the value as Rs.500/- per Kg, during the currency of impugned notifications. 2nd respondent at the time of assessment enhanced the value of the imported Black Pepper on the premise that its value should be equal or above the MIP fixed by the 1st respondent vide impugned notifications. Petitioner is stated to have paid the duty and levies as per the value arrived at by the 2nd respondent. Petitioner was permitted clearance of the goods on payment of customs duty on such enhanced value.

k) While so, Directorate of Revenue Intelligence, Chennai Zonal Unit/2nd respondent initiated an enquiry into imports made by the petitioner as it appeared that petitioner had imported Black Pepper with value lesser than Rs.500/- per Kg, in violation of the MIP condition contained in Notification No.53/2015-2020 dated 21.03.2018. 2nd respondent issued the impugned show cause notice dated 26.11.2021 alleging overvaluation to get over prohibition imposed on the basis of MIP vide impugned notifications.

4. Against this background, petitioners had filed the present batch of



Writ Petitions challenging the impugned notification.

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5. Case of the petitioner's:

a) Power under Section 3 of FTDR Act, is conferred on Central Government to issue Orders, Impugned notifications issued by 1st respondent, i.e., Director General of Foreign Trade is Contrary to and in excess of Section 3 of FTDR Act

b) That impugned notifications are in excess of the authority conferred on the Central Government under Section 3 of FTDR Act, inasmuch as the impugned notifications are issued by the 1st respondent, which results in amending the Import Policy.

c) That Section 5 of the FTDR Act provides for formulation, announcement and amendment of Foreign Trade Policy. However, 1st respondent has effectively amended the Policy by invoking his power under Section 3 of the FTDR Act. Thus, impugned notification stands vitiated.

d) That Central Government is conferred power under subsection (2) to Section 3 of the FTDR Act only to issue Orders and not notification.

e) That Orders issued by way of subordinate/delegated legislation have a specified structure, which *inter alia* would include Short Title, Commencement, Definition and Provisions governing Procedure. Impugned



notifications do not comply with the above structure, which has been followed by the Central Government while issuing Orders under FTDR and other enactments, some of them being, Destructive Insects and Pests Act, 1914, the Bureau of Indian Standards Act, 2016, the Essential Commodities Act, 1955, Plant Quarantine (Regulation of Import into India) Order, 2003, the Bureau of Indian Standards Kitchen Appliances (Quality Control) Order, 2018, the Toys (Quality Control) Order, 2020, the Seeds (Control) Order, 1983.

f) That Orders made under subsection (2) to Section 3 of FTDR Act ought to be laid before each house of Parliament in terms of subsection (3) to Section 19 of the FTDR Act. However, impugned notifications has not been laid before Parliament. Impugned notification stands vitiated for non-compliance with subsection (3) to Section 19 of FTDR Act.

g) Impugned notification having failed to comply with the requirement of laying under sub-section (3) to Section 19 of FTDR Act, is contrary to settled principle that if statute provides for a thing to be done in a particular manner, it has to be done in that manner and in no other manner.

6. Case of the Respondents:

a) That Minimum Import Price has been imposed with the object of protecting Indian farmers/domestic industries with a view to ensure that imports of goods for which MIP has been fixed are not imported at lesser



prices, thereby flooding Indian market with imported products. Fixation of MIP is a policy decision of Government in public interest.

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b) That impugned notification is issued by Government of India and 1st respondent had only performed the ministerial act of publication of the notifications.

c) That requirement of laying contained in subsection (3) to Section 19 of the FTDR Act is directory and not mandatory. Moreso, inasmuch as no negative consequences are provided for non-compliance of sub-section (3) to Section 19 of the FTDR Act.

d) That similar challenge to impugned notification, relating to fixation of MIP in relation to import of Black Pepper has been rejected by the Kerala High Court and validity of the impugned notification upheld.

7. Discussion:

7.1. On considering rival submissions, this Court is of the view that the challenge to the impugned notifications must fail for the following reasons:



7.2. Power under Section 3 of FTDR Act, is conferred on Central Government to issue Orders. Impugned notifications issued by 1st respondent, i.e., Director General of Foreign Trade - Contrary to and in excess of Section 3 of FTDR Act:

a) Though the above ground has been raised in the affidavit filed in support of the Writ Petition, however, not much emphasis was laid on the said aspect during the course of argument, which we would think advisedly. We say so, since the Apex Court in the case of ***Union of India v. Agricas LLP***¹, while dealing with similar if not identical contention, has rejected the same on finding that the impugned notifications itself records that it is published by the Ministry of Commerce and Industry, Department of Commerce, Directorate General of Foreign Trade and proceeded to hold that the Central Government in exercise of the power conferred under Section 3 of FTDR Act, 1992 issued the notification. The Apex Court relied upon the case in ***Delhi International Airport Ltd. v. International Lease Finance Corpn.***² to conclude that the above contention cannot be sustained. The relevant portion reads as under:

“15. At the outset, we must record that the importers, and in our opinion rightly, have not raised the contention that DGFT could not have notified the impugned notifications. The notifications themselves record that they were published by the Ministry of Commerce and Industry, Department of Commerce, Directorate General of Foreign Trade. The first paragraph of the notification states that they had been issued by the Central Government in exercise of powers

¹(2021) 14 SCC 341

² (2015) 8 SCC 446



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conferred under Article 77 of the Constitution. Clearly, the notifications were issued by the Central Government, and not DGFT that had performed the ministerial act of publication. The decision to amend and issue the notification was of the Central Government. Neither Section 3(2) nor Section 6(3) of the FTDR Act was violated. This Court in *Delhi International Airport Ltd. v. International Lease Finance Corpn.* [Delhi International Airport Ltd. v. International Lease Finance Corpn., (2015) 8 SCC 446], had referred to Articles 77 and 166 of the Constitution and held that the Constitution stipulates that whenever executive action is taken by way of an order or instrument it shall be expressed to be taken in the name of the President and Governor in whose name the executive power of the Union and the States, respectively, are vested. Article 77 does not provide for delegation of any power, albeit under sub-section (3) of Article 77, the President is to make Rules for more convenient transaction of business and allocation of same amongst Ministers. Under the Government of India (Transaction of Business) Rules, 1961, the Government business is divided amongst Ministers and specific functions are allocated to different Ministries. The Director General of Foreign Trade is an ex officio Additional Secretary in the Government of India and is appointed by the Central Government under sub-section (1) to Section 6 of the FTDR Act to advise the Central Government in formulation and carrying out the Foreign Trade Policy. Wherefore, even the website of the Ministry of Commerce and Industry, Department of Commerce, states that DGFT is an agent of the Central Government and attached office to it. Further, clause (2) of Article 77 provides that validity of an order or instrument made or executed in the name of the President, authenticated in the manner specified in the Rules made by the President, shall not be called in question on the ground that it is not an order or an instrument made or executed by the President. Therefore, the contention of issuance of the



impugned notification sans authority, cannot be sustained.”

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b) The impugned notification also records that it is published in the Gazette of India by Ministry of Commerce and Industry Department of Commerce, Directorate General of Foreign Trade. Preamble to the notification would state that impugned notifications are issued by the Central Government in exercise of power under Section 3 of FTDR Act. Thus, the contention that the impugned notification is issued by 1st respondent, i.e., Director General of Foreign Trade, is liable to be rejected.

8. Power under subsection (2) to Section 3 enables/empowers

Central Government to issue Orders and not notifications:

8.1. To answer the above issue, it may be relevant to refer to subsection (2) to Section 3 of the FTDR Act, which reads as under:

“(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology:

Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefits under the foreign trade policy or is dealing with specified services or specified technologies.”

8.2. A reading of the above provision would show that power is conferred on the Central Government to make provision for prohibiting,



restricting or otherwise regulating in all cases or in a specified classes of cases, import or export of goods or services or technology subject to exceptions. The contention that under sub-section (2) to Section 3, Central Government may only issue Orders and not notifications also appears to be impliedly/tacitly rejected by the Supreme Court in **Agricas LLP's** case (supra) as would be evident from the following portions:

*"64. ...The expression "order", as per clause (h) to Section 2 of the FTA means any Order made by the Central Government under Section 3. It is, therefore, clear to us that there is no violation of Section 3 of the FTDR Act in the issuance of the **impugned notifications or orders**, which are intra vires and not ultra vires.*

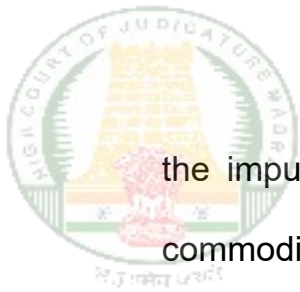
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*73. In other words, the **impugned notifications** would be valid as they have been issued in accordance with the power conferred in the Central Government in terms of sub-section (2) of Section 3 of the FTDR Act. The powers of the Central Government by an order imposing restriction on imports under sub-section (2) to Section 3 are, therefore, not entirely curtailed by Section 9-A of the FTDR Act. "*

(emphasis applied)

8.3. Validity of Order/notification – to be decided – By looking to substance not form:

8.3.1. This apart, we would think the above contention is devoid of merit for it is trite that while examining the validity or otherwise of a subordinate legislation, Courts would look to the substance and not the form. The effect of



the impugned notifications was to impose restriction on import of specified commodities by fixing MIP. Importantly, Section 3 of FTDR Act expressly provides that the Central Government may make provision for prohibiting, restricting or otherwise regulating import or export of goods or services. Impugned notification even if assumed to prohibit Black Pepper with a Minimum Import Price of less than Rs.500, power to impose/issue such prohibitory condition/restriction is traceable to subsection (2) to Section 3.

8.3.2. While exercising challenge to legislative instrument, be it Order (or) notification, enquiry ought to be whether power to make such Order/Notification is available to the delegatee (or) authority making subordinate legislation. If power is available under the statute, misquoting of provision or an employment of wrong nomenclature or that instrument does not confirm to particular form, may not have any bearing on the validity of such subordinate or delegated legislation, be it Order, Notification or Bye-law. In this regard, it may be relevant to refer to the following judgments of the Supreme Court:

(a) ***State of Sikkim v. Dorjee Tshering Bhutia***, reported in (1991) 4 SCC 243:

“16. The fact that the State Government purported to act under Rule 4(3) of the Rules in issuing the impugned notification is of no consequence. When the source of power can be validly traced then the State action in the exercise of such power cannot be struck



down on the ground that it was labelled under a different provision.”

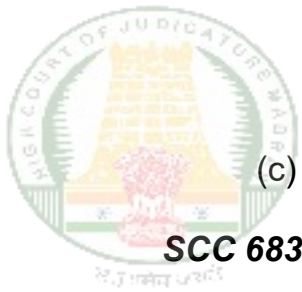
(emphasis supplied)

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(b) *B.S.E. Brokers' Forum v. SEBI* reported in (2001) 3 SCC 482:

“22. ..It is a well-established principle in law that so long as the impugned power is traceable to the statute concerned, mere omission or error in reciting the correct provision of law does not denude the power of the authority from taking statutory action so long as its action is legitimately traceable to a statutory power governing such action. In such cases, this Court will always rely upon Section 114 III. (e) of the Evidence Act to draw a statutory presumption that the official acts are regularly performed and if satisfied that the action in question is traceable to a statutory power, the courts will uphold such State action. See *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India* [(1992) 2 SCC 343] and *Union of India v. Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] . Applying the said principles to the facts of this case, we notice that the Board has the necessary competence to collect the fees for the purpose of carrying out the mandates under Section 11(2)(k) of the Act and also the power to collect the registration fee under Section 12(2) of the Act. Therefore, in our opinion, the Board has the necessary authority to collect a cumulative fee both for the purpose of regulating the activities contemplated under Section 11 of the Act as also for the purpose of registration under Section 12(2) of the Act, and the fee levied is both regulatory and registration fee leviable under Sections 11(2)(k) and 12(2) of the Act.”

(emphasis supplied)



(c) **Pine Chemicals Ltd. v. Assessing Authority**, reported in (1992) 2

SCC 683:

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"9. ...It is well settled that if power to do an act or pass an order can be traced to an enabling statutory provision, then even if that provision is not specifically referred to, the act or order shall be deemed to have been done or made under the enabling provision. Thus the government orders satisfy all the requirements of the provisions of Section 5 of the local Act."

(d) **Small Industries Development Bank of India v. SIBCO**

Investment (P) Ltd., reported in (2022) 3 SCC 56:

"20. On the omission to advert to the statutory provisions on the basis of which RBI acted, we can seek guidance from the ratio in Peerless General Finance and Investment Co. Ltd. v. RBI [Peerless General Finance and Investment Co. Ltd. v. RBI, (1992) 2 SCC 343] [hereinafter "Peerless General Finance (1)"] wherein this Court, speaking through N.M. Kasliwal, J., held that : (SCC p. 398, para 72)

"72. It is settled law that so long as the power is traceable to the statute, mere omission to recite the provision does not denude the power of the legislature or rule-making authority to make the regulations, nor considered without authority of law. Section 114(e) of the Evidence Act draws a statutory presumption that official acts are regularly performed and reached satisfactorily on consideration of relevant facts" "

(e) In **State of U.P. and others Vs. Pradhan Singh Kshettra Samiti and others**³, while dealing with the notification issued under the U.P.

³ 1995 Supp (2) SCC 305



Panchayat Raj (Amendment) Act, 1994, it was held that merely because the notifications contain inappropriate title, it would not affect the legality/validity or otherwise, which ought to be decided by looking at the substance and not the form. The relevant portion is extracted hereunder:

"39. ...The notification which was issued on 4-8-1994 further shows that the gram sabhas which are inappropriately titled as gram panchayats are established for villages within the meaning of Section 2(t) and they comprise the area either of one revenue village or of more revenue villages than one. Although, therefore, the criticism by the High Court with regard to both the notifications dated 9-5-1994 and 4-8-1994 delegating the power, and establishing gram sabhas and declaring panchayat areas may be justified in that they do not refer to Section 2(t) and the latter notification has given inappropriate titles in columns 2 and 3 thereof, according to us, for the reasons stated above, the said defects do not in any way affect the legality of the said notifications. All that can be said in that connection is that they could have been correctly and adequately worded. However, in construing legal documents, it is not their form but their substance which has to be taken into consideration. Thus construed, we are more than satisfied, that the two notifications are in substantial compliance with the provisions of the Act and have to be construed as such."

(emphasis supplied)



(f) In ***Central Information Commission Vs. DDA and another***⁴, while dealing with a challenge to 2007 Regulations framed by CIC under the Right to Information Act, 2005, it was found that whether the instrument, which is the subject matter of challenge is truly in the nature of Regulation or otherwise, ought to be determined not by looking at the nomenclature for nomenclature is not conclusive, as to the status of a legislative instrument. Relevant portion of the judgment reads as under:

"22. ... Focusing narrowly on the nomenclature and the absence of an explicit provision for regulation-making within the RTI Act would undermine the broader purpose and intent of the same. The nomenclature used to describe these Regulations should not detract from their necessity and their role in facilitating the Commission's functioning. A purposive interpretation of Section 12(4) of the RTI Act reveals that the powers of "superintendence, direction and management" are intended to be comprehensive, enabling the CIC to adopt measures, including the framing of Regulations, that ensure transparency, accountability, and efficient handling of its responsibilities."

(emphasis supplied)

⁴(2024) 8 SCC 812



(g) In ***State of Karnataka Vs. Drive-In Enterprises***⁵, it was held while examining challenge to the validity of Entertainment Tax, Courts would have to adjudge the validity by looking to the legislative instrument as a whole, its object, scope and effect and not by the nomenclature. Relevant portion of the judgment reads as under:

⁵(2001) 4 SCC 60



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"6. Whereas in the present case, the vires of an enactment is impugned on the ground that the State Legislature lacks power to enact such an enactment, what the court is required to ascertain is the true nature and character of such an enactment with reference to the power of the State Legislature to enact such a law. While adjudging the vires of such an enactment, the court must examine the whole enactment, its object, scope and effect of its provision. If on such adjudication it is found that the enactment falls substantially on a matter assigned to the State Legislature, in that event such an enactment must be held to be valid even though nomenclature of such an enactment shows that it is beyond the competence of the State Legislature. In other words, when a levy is challenged, its validity has to be adjudged with reference to the competency of the State Legislature to enact such a law, and while adjudging the matter what is required to be found out is the real character and nature of levy. In sum and substance, what is to be found out is the real nature of levy, its pith and substance and it is in this light the competency of the State Legislature is to be adjudged. The doctrine of pith and substance means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature, it cannot be held to be ultra vires merely because its nomenclature shows that it encroaches upon matters assigned to another heading of legislation. The nomenclature of a levy is not conclusive for determining its true character and nature. It is no longer res integra that the nomenclature of a levy is not a true test of nature of a levy."

(emphasis supplied)

8.3.3. Though the above judgment was in the context of challenge to validity of a levy by plenary legislation, we see no reason why the principle laid therein that validity ought to be decided not on the basis of nomenclature but by looking to the substance and effect, would not apply while examining a challenge to the vires of the subordinate legislation. Applying the above reasoning it would be clear that the impugned instrument though titled "notification" is in substance, restriction imposed on import on the basis of



Minimum Import Price, thus traceable to sub-section (2) to Section 3 of FTDR Act. We thus find challenge on the ground that nomenclature is not in conformity with sub-section (2) to section 3 of FTDR Act is devoid of merit.

8.4. Impugned Notification – Contrary to style of legislative instruments in the form of Order:



The next contention that has been urged by the petitioner is that Orders have a particular structure, which *inter alia* would include Short Title, Commencement, Definition and Provisions governing Procedure. However, the impugned notification cannot be treated as an Order since it is not in compliance with the above structure. We are afraid this contention only needs to be noticed to be rejected. Assuming the petitioners are correct that Orders normally have a particular style, however, departure thereof may not have any bearing on the validity. In this regard, it may be useful to rely on the decision of the Supreme Court in the case of **Dy. CST v. Aysha Hosiery Factory (P) Ltd.**⁶, wherein, while dealing with levy of Additional Sales Tax by way of a separate Act in addition to the General Sales Tax Act, which existed then, challenge on the premise that it would thus not constitute sales tax, was rejected by finding that it is merely a style of legislation and that cannot be a ground to challenge or decide validity of a legislation. The relevant portion is extracted as under:

"4. ...The question for consideration is as to whether the additional tax levied under Kerala Additional Sales Tax Act is also to be considered as sales tax under the 'sales tax law' of the State. The question could not have arisen but for the fact that this additional levy came to be imposed under a separate Act. Had the additional sales tax been imposed by simply amending the rates in the original Act the question would not have arisen. But we are of the view that this makes no difference and it is merely a matter of style of legislation. The additional sales tax levied under the Sales Tax Act is also sales tax of the same category as in the original Act. The Kerala Additional Sales Tax Act provides that "The tax payable under Kerala General Sales Tax Act, 1963 (15 of 1963) (hereinafter referred to as the State

⁶1992 Supp (2) SCC 178



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Act) for every financial year commencing from the financial year 1978-79 shall be increased by 10 per cent of such tax". Instead of increasing the rate of tax for each of the commodities which are covered by the Kerala General Sales Tax Act by one comprehensive provision the tax is increased by 10 per cent over the rate provided under the original Act in respect of all the commodities the sale or purchase of which are taxable. Both take the form of sales tax and in the case of assessment of local sales it makes no difference whether it is called tax and additional tax or one higher percentage of tax. In truth and effect it is a levy of tax on the sales or purchases of the dealers."

(emphasis supplied)

8.5. Failure to lay impugned notification/order before Parliament:

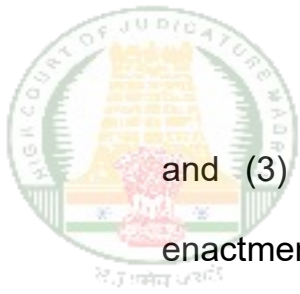
a) Great deal of emphasis was laid on the fact that impugned notification was not laid before Parliament thereby requirement provided under Section 19(3) of FTDR Act is not complied. Failure to comply with the requirement of laying in terms of Section 19(3) of FTDR Act would prove fatal. Before proceeding further, it is necessary to bear in mind that it is trite that object of any requirement of laying provided in enabling Acts is to subject the subordinate law making authority to the vigilance and control of the Legislature.⁷ Laying clauses may be expressed in different forms depending upon the degree of control which the Legislature wants to keep in its hands. Broadly, these clauses are of three varieties⁸ providing (1) laying which requires no further procedure⁹ (2) laying allied with an affirmative procedure¹⁰,

⁷ Hukamchand v. Union of India, AIR 1972 SC 2427, (1972) 2 SCC 601 : Kerala State Electricity Board v. Indian Aluminium Co., AIR 1976 SC 1031. (14th Edition of Principles of Statutory Interpretation by Justice G.P.Singh)

⁸ The Quarry Owners Association v. The State of Bihar, AIR 2000 SC 2870, (2000) 8 SCC 655

⁹ Section 3(6), Essential Commodities Act, 1955; 'Every order made shall be laid before both Houses of Parliament.

¹⁰ Section 28(2), Mines and Minerals (Regulation and Development) Act, 1957; 'No rules made – shall come into force until they have been approved, whether with or without modification, by each House of Parliament'.



and (3) laying allied with negative procedure.¹¹ When a Parliamentary enactment confers power to make rules in respect of certain matters, it may provide that the rules so made be laid before Parliament.¹² All the varieties of laying clauses are a check upon the rule making authority and negative the objection of excessive delegation.¹³

b)It may be relevant to refer to the following passages with regard to the different kind of laying described and dealt with in Craies on Statute law, referred with approval by Apex Court. The relevant portion of which is extracted hereunder:

*“21. ...“(i) Laying without further procedure,
(ii) Laying subject to negative resolution,
(iii) Laying subject to affirmative resolution.
(i) Simple laying.—The most obvious example is in Section 10(2) of the 1946 Act. In earlier days, before the idea of laying in draft had been introduced, there was a provision for laying rules etc. for a period during which time they were not in operation and could be thrown out without ever having come into operation (compare Merchant Shipping Act, 1894, Section 417; Inebriates Act, 1898, Section 21) but this is not used now.*

¹¹ Section 3(2), All India Services Act, 1951.

¹² The Quarry Owners Association v. The State of Bihar, AIR 2000 SC 2870, (2000) 8 SCC 655; the Delegated Legislation Provision (Amendment) Act, 2004 (Act No.4 of 2005) which inserts laying requirement for rules to be made by the State Government under different Central Acts.

¹³ Andhra Bank v. S. Satyanarayana, AIR 2004 SC 4007 , (2004) 2 SCC 657.



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(ii) *Negative resolution.*—Instruments so laid have immediate operative effect but are subject to annulment within forty days without prejudice to a new instrument being made. The phraseology generally used is “subject to annulment in pursuance of a resolution of either House of Parliament”. This is by far the commonest form of laying. It acts mostly as a deterrent and sometimes forces a Minister (in Sir Cecil Carr's phrase) to “buy off opposition” by promising some modification.

(iii) *Affirmative resolution.*—The phraseology here is normally no order shall be made unless a draft has been laid before Parliament and has been approved by a resolution of each House of Parliament. Normally, no time limit is fixed for obtaining approval — none is necessary because the Government will naturally take the earliest opportunity of bringing it up for approval — but Section 16(3) of the Housing (Financial and Miscellaneous Provisions) Act, 1946 did impose a limit of forty days. An old form (not much used nowadays) provided for an order to be made but not to become operative until a resolution of both Houses of Parliament had been obtained. This form was used in Section 10(4) of the Road Traffic Act, 1930 [cf. Road Traffic Act, 1960, Section 19(3)] The affirmative resolution procedure necessitates a debate in every case. This means that one object of delegation of legislation (viz. saving the time of Parliament) is to some extent defeated. The procedure therefore is sparingly used and is more or less reserved to cases where the order almost amounts to an Act, by effecting changes which approximate to true legislation (e.g. where the order is the meat of the matter, the enabling Act merely outlining the general purpose) or where the order replaces local Acts or provisional orders and, most important of all, where the spending, etc. of public money is affected.

Sometimes where speedy or secret action is required (e.g. the imposition of import duties), the order is laid with immediate operation but has to be confirmed within a certain period [cf. Import Duties Act, 1958, Section 13(4)]. This process of acting first and getting approval after has also been adopted in the Emergency Powers Act, 1920 under which a state of emergency can be proclaimed and regulations made. The proclamation must be immediately communicated to Parliament and does not have effect for longer than a month; but it can be replaced by another proclamation. Any regulations made under the proclamation are to be laid before Parliament immediately and do not continue in force after the expiration of seven days from the time when they



are so laid unless a resolution is passed by both Houses providing for their continuance.”

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c) Having examined the legal principles relating to laying clause broadly, let us take a closer look at sub-section (3) to Section 19 of FTDR Act, which reads as under:

“(3) Every rule and every Order made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the Order or both Houses agree that the rule or the Order should not be made, the rule or the Order, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or the Order.

d) On a reading of Section 19(3) of the FTDR Act, the following position would emerge:-

(a) Parliament in Section 19(3) of FTDR Act, consciously provided no consequence for failure to comply with the laying clause.

(b) Secondly, it also provided that while Parliament may amend or alter the Order laid before each House of Parliament and if both Houses agree to make any modification or that Order should not be made, the Order shall thereafter have effect only in such modified form or be of no effect. Importantly, it provides that any modification or annulment shall be without



prejudice to the validity of anything previously done under that Order. This would suggest that laying under sub-section (3) to Section 19 of FTDR Act is not a condition precedent for the Order to be made effective, thus challenge to validity of impugned notification on the ground of failure to comply with laying by itself may not prove fatal to validity of impugned notification.

(c) Our view stands fortified by the following judgments of the Supreme Court, wherein, similar if not identical provisions were considered.

i) In **State Bank of India and others Vs. O.P. Swarnakar and others**¹⁴, while considering Section 19 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, which provided for similar laying clause, held the above was directory while rejecting the argument that non-compliance with which requirement of laying would prove fatal. The relevant provision considered by the Apex Court is extracted hereunder:

(4) Every regulation shall, as soon as may be after it is made under this Act by the Board of Directors of a corresponding new bank, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.”

¹⁴ 4(2003) 2 SCC 721



The Supreme Court referred to the judgment in Jan Mohammad Noor Mohammad Bagban Vs. State of Gujarat and another [AIR 1966 SC 385 :

(1966) 1 SCR 505], wherein, the law on laying clauses was explained in the following terms: (AIR pp. 394-95, para 18):

"18. ...The rules are valid from the date on which they are made under Section 26(1). It is true that the Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of sub-section (5) of Section 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that sub-section (5) of Section 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. The rules have been in operation since the year 1941 and by virtue of Section 64 of Gujarat Act 20 of 1964 they continue to remain in operation."

8.6. It was then held by the Supreme Court that laying down rule is directory and not mandatory.

"125. Secondly, even if the same was a regulation, the laying-down rule is merely a directory one and not mandatory."

(emphasis supplied)

(ii) The judgment in O.P.Swarnakar's case was followed by the Supreme Court in the case of **Veneet Agrawal v. Union of India**¹⁵, wherein, while considering laying clause under Section 31 of Securities and Exchange Board

¹⁵ (2017) 3 SCC 116



of India Act, 1992, it was held to be directory, relevant portion of which reads as under:

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“3. Principal challenge to the Rules and Regulations of 1992 is based on the contention that the Rules and Regulations were not laid before each House of Parliament as mandated by Section 31 of the Securities and Exchange Board of India Act, 1992 (for short “the Securities and Exchange Act”). It will therefore be essential to reproduce Section 31 of the said Act as the entire argument is placed on the requirement of the said section. Section 31 reads as under:

“31. Rules and regulations to be laid before Parliament.—Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”

15. This apart the issue relating to the laying down of rules/regulations on the table of the Houses for the period provided under the statute under which they are so framed has been dealt with by this Court in various cases. Some of these cases are Jan Mohammad Noor Mohammad Bagban v. State of Gujarat [AIR 1966 SC 385 : (1966) 1 SCR 505] , Atlas Cycle Industries Ltd. v. State of Haryana [(1979) 2 SCC 196 : 1979 SCC (Cri) 422] , Hukam Chand v. Union of India [(1972) 2 SCC 601] and Bank of India v. O.P. Swarnakar [(2003) 2 SCC 721 : 2003 SCC (L&S) 200] . In a recent judgment, this Court followed the



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view taken in *Atlas Cycle Industries Ltd. case* [(1979) 2 SCC 196 : 1979 SCC (Cri) 422] and *Prohibition & Excise Suptd., A.P. v. Toddy Tappers Coop. Society* [(2003) 12 SCC 738] .

16. *In all these cases, the issue relating to laying down and interpretation of the said regulation was examined. It has been held in all these cases that the laying of the rule before both the Houses of Parliament is merely a directory rule and not mandatory. In O.P. Swarnakar*[(2003) 2 SCC 721 : 2003 SCC (L&S) 200] the provision providing for laying the rules before the legislature was exactly similar to Section 31 of the SEBI Act. It was also held by this Court that the said provision was directory and not mandatory. The non-compliance with the laying of the rule before Parliament was not a sufficient ground to declare the rules/regulations framed under the statute as to be ultra vires. In *Toddy Tappers Coop. Society case* [(2003) 12 SCC 738] Hon'ble Mr Justice Sinha in his concurring judgment following the decision in *Atlas Cycle Industries Ltd. case* [(1979) 2 SCC 196 : 1979 SCC (Cri) 422] and *Quarry Owners' Assn. v. State of Bihar* [(2000) 8 SCC 655] and various other judgments, distinguishing the judgment in *Union of India v. National Hydroelectric Power Corpn. Ltd.* [(2001) 6 SCC 307] (which has been relied upon by counsel for the appellant before us as well) has held as under: (SCC p. 756, para 32)

17. It was observed that provision was merely directory and not mandatory and even if the rules were not laid before the House at all even then the non-compliance with the laying down of the rules before Parliament could not be a ground to declare the rules/regulations framed under the statute as ultra vires."

(iii) It may also be relevant to refer to the decision of the Supreme Court



in **Atlas Cycle Industries** case¹⁶ to show that since the laying clause did not envisage the Order to be void for non-compliance, the laying clause must be understood to be directory. Relevant portion of the said judgment reads as under:

“32. From the foregoing discussion, it inevitably follows that the Legislature never intended that non-compliance with the requirement of laying as envisaged by sub-section (6) of Section 3 of the Act should render the order void. Consequently non-laying of the aforesaid notification fixing the maximum selling prices of various categories of iron and steel including the commodity in question before both Houses of Parliament cannot result in nullification of the notification.”

9. From the above discussion, it is evident that the laying clause in sub-section (3) to section 19 of the FTDR Act is directory and not mandatory. The contention of the petitioners that non-compliance with the laying clause would prove fatal to its validity is thus, liable to be rejected.

10. Before parting, it may be relevant to note that Parliament in its wisdom has provided for laying clause which enabled it to exercise greater control. One such provision is Section 16 of the **Water (Prevention and Control of Pollution) Cess Act, 1977**, which provided for seeking approval of Parliament for issuance of notification, the relevant provision reads as under:

“(2) Every such notification shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the

¹⁶ (1979) 2 SCC 196



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notification, and if it is not sitting, within seven days of its reassembly and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People, and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.”

11. The above provision was considered by the Hon'ble Supreme Court¹⁸

and it was held as under:

“8. Sub-section (1) gives power to the Central Government to add to Schedule I any industry, but the procedure which is to be followed is provided by sub-section (2). When a notification is issued with a view to making an addition to Schedule I, the same is required to be laid before each House of Parliament if it is sitting and if Parliament is not in session then a time-limit of seven days is prescribed from the reassembly of Parliament within which the notification must be so placed. Sub-section (2) further requires that after the notification has been so placed, then within fifteen days of the placing of the notification, the Central Government has to seek approval of Parliament to the issuance of the notification. Mere perusal of sub-section (2) shows that there has to be a positive act of approval by Parliament to the issuance of the notification before it can be held that Schedule I has been amended. Merely laying the notification before each House of Parliament is not sufficient compliance within the provisions of Section 16(2). There is of course no time-limit within which the Houses of Parliament are required to pass a resolution once the Central Government has sought approval as contemplated by sub-section (2), but in the present case the pleadings disclose that no such approval was in fact sought for.”
(emphasis supplied)

12. The above view expressed by the Hon'ble Supreme Court in ***Union of India Vs. National Hydroelectric Power Corporation*** was however,

¹⁸ Union of India V. National Hydroelectric Power Corporation Ltd., and Others, (2001) 6 SCC 307



distinguished by the Hon'ble Supreme Court in **Veneet Agarwal's** case referred to supra, by finding that the Hon'ble Supreme Court in **National Hydroelectric Power Corporation's** case, did not notice the difference between “approval” and “permission”, and the expression used was not “prior approval”. Referring to the judgment of **Prohibition and Excise Supdt., A.P. And others Vs. Toddy Tappers Coop. Society, Marredpally and others, (2003) 12 SCC 738** Supreme Court further held that the observations made in National Hydroelectric Power Corporation's case have to be held to be confined to the facts of the matter obtaining therein. The relevant portion is extracted hereunder:

“32. The said observations, thus, must be held to be confined to the fact of the matter obtaining therein. In that case it was found as of fact that the rule had never been placed before the legislature and, thus, there was even no substantial compliance with the law. The Bench, however, did not consider the effect of the directory nature of such a provision, in the light of the decision of this Court in Atlas Cycle Industries [(1979) 2 SCC 196 : 1979 SCC (Cri) 422] and Quarry Owners' Assn. [(2000) 8 SCC 655] The Court further did not notice the difference between the expressions ‘approval’ and ‘permission’. Section 16 of the Water Act, construction whereof was in question did not use the expression ‘prior approval’. The word ‘approval’ indicates an Act which has already been made and is required to be approved whereas in the case of ‘permission’, the situation would be different. This aspect of the matter has been considered by this Court in High Court of Judicature for Rajasthan v. P.P. Singh [(2003) 4 SCC 239 : 2003 SCC (L&S) 424] stating: (SCC p. 255, para 40)

‘40. When an approval is required, an action holds good. Only if it is disapproved it loses its force. Only when a permission is required, the decision does not



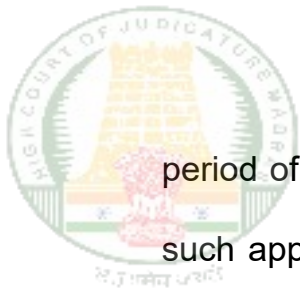
become effective till permission is obtained. (See U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd. [1995 Supp (3) SCC 456]) In the instant case both the aforementioned requirements have been fulfilled.’ ”

(emphasis supplied)

13. When a laying clause which mandates seeking approval by Parliament, has been explained to be directory, we find no merit in the contention urged by the petitioner that non-laying of the impugned order / notification in terms of Section 19(3) would prove fatal to its validity.

14. The impugned notification / order issued by the Central Government are valid, notwithstanding failure to comply with the laying cause in terms of Section 19(3) of the FTDR Act. If the impugned notifications are still in vogue and if the laying clause has not been complied with till date, the Central Government shall now place the impugned notification before each House of Parliament the impugned order / notification at the earliest.

15. In view of the fact that the impugned notifications have been upheld, wherever, the challenge is to the notice, the petitioners are at liberty to file their objections within a period of two (2) weeks from the date of receipt of a copy of this order and if any such reply is filed, the same shall be considered and appropriate orders shall be passed in accordance with law, after affording the petitioners an opportunity of hearing. In cases where the challenge is to order of adjudication, the petitioners are at liberty to file an appeal within a



period of two (2) weeks from the date of receipt of a copy of this order. If any such appeal is filed subject to complying with all the conditions including the condition relating to pre-deposit, if any, the same shall be entertained without reference to limitation and appropriate orders shall be passed in accordance with law.

16. The Writ Petitions are disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

(S.M.S.,J) (M.S.Q., J.)
08-01-2026

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
mka/Lm



To:

1. Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue (Central
Board of Indirect Taxes and Customs)
North Block, New Delhi- 110 001.
2. The Director General of Foreign Trade,
Udyog Bhavan, H-Wing, Gate No.2,
Moulana Azad Road, New Delhi- 110 011.
3. Union Of India
Rep By Its Secretary,
Ministry Of Finance, North Block,
New Delhi 110 011.
4. The Director General of Foreign Trade,
Ex-Officio Additional Secretary to the
Government of India,
Ministry of Commerce and Industry,
Department of Commerce,
Udyogabhavan, New Delhi-110 017.
5. The Joint Director
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
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Chennai - 600 017.
6. The Joint Commissioner of Customs,
Custom House, Harbour Estate,
Tuticorin-628 004, Tamil Nadu.
7. The Director General of Foreign Trade,
Ministry of Commerce and Industry,
Department of Commerce, Udyogabhavan,
New Delhi-110 017.
8. The Commissioner of Customs,
Chennnai II Commissionerate,
Custom House, No.60, Rajaji Salai,
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9. The Deputy Commissioner of Customs (Group 1)
Custom House, Port Area,
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10. Union Of India,
Rep. by its Secretary To Government,
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11. The Commissioner of Customs
Custom House, New Harbour Estate,
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12. The Additional / Joint Commissioner
of Customs,
New Custom House,
New Harbour Estate,
Tuticorin - 628004.

13. The Assistant Commissioner of
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14. The Deputy Director
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W.P.No.6840 of 20



**S.M.SUBRAMANIAM J.
AND
MOHAMMED SHAFFIQ J.**

mka/Lm

**Pre-Delivery Order made in
W.P.Nos. 6840, 2472, 6300, 6427 of 2022
W.P.Nos.24859, 24864 of 2021
W.P.Nos.5561, 22392, 25353, 25358, 25356, 26557, 26561, 26568, 26571,
26574, 34389 and 34391 of 2023
W.P.(MD) Nos.21206 and 21211 of 2021
W.P.(MD) Nos.5566, 24076, 5564, 2497, 5565 of 2022**

08.01.2026