



2026:DHC:934-DB



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

+ **LPA 233/2023**

ACCURATE AUCTIONEERS

.....Appellant

Through: Dr. Shashwat Bajpai, Mr.
Mrinal Singh and Mr. Mayank Chaturvedi,
Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Mukul Singh, CGSC with
Mr. Aryan Dhaka, Ms. Nandini Aggarwal
and Ms. Ira Singh, Advs. for R-1

Mr. Gibran Naushad, SSC with Mr. Suraj
Shekhar Singh and Mr. Harsh Singhal,
Advs. for R-2

Mr. Sanjoy Ghose, Sr. Adv. with Ms. Sonia
A. Menon, Mr. Rohan Mandal and Ms.
Varsha, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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03.02.2026

C. HARI SHANKAR, J.

The *lis*

1. A writ petition, instituted by the appellant Accurate Auctioneers, assailing Circular dated 3 December 2018 issued by the



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Central Board of Indirect Taxes and Customs¹, stands dismissed by judgment dated 5 September 2022 rendered by a learned Single Judge of this Court. The petitioner in the writ petition is in appeal before us.

Facts

2. The Impugned Circular

2.1 The Circular in question puts in place a revised procedure for expeditious disposal of unclaimed/uncleared cargo, lying with custodians, under Section 48² of the Customs Act, 1962³. Para 2 of the Circular notes the fact that, despite several earlier Circulars holding the field, satisfactory disposal of unclaimed/uncleared cargo at customs locations was not forthcoming. In these circumstances, the Central Vigilance Commission⁴ appointed a Committee of Chief Vigilance Officers to examine the reasons for delay in disposal of unclaimed/uncleared cargo. The Committee observed that owing to the said delay, there had been complete breakdown of the system resulting in substantial loss to government revenue. It was in these circumstances, that the CBIC reviewed the procedure for disposal of

¹ “CBIC”, hereinafter

² **48. Procedure in case of goods not cleared, warehoused, or transhipped within [thirty days] after unloading.**—If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped [within [thirty days]] from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer, be sold by the person having the custody thereof: Provided that—

(a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;

(b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

Explanation.—In this section, “arms” and “ammunition” have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959).

³ “the Act”, hereinafter

⁴ “CVC”, hereinafter



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uncleared/unclaimed cargo in consultation with the Container Corporation of India Ltd.⁵.

2.2 The procedure put in place by the Circular dated 3 December 2018 required (i) the custodian of the customs station to prepare a list of unclaimed/uncleared cargo lying in the bonded area of the customs station for more than 30 days from the date of its arrival and to send the list to the jurisdictional Commissioner of Customs, (ii) the jurisdictional Customs Commissioner to issue instructions to the concerned officers and staff posted at the customs station to ensure that details of the goods/shipments which are on hold for investigation or otherwise by any investigative agency such as the DRI⁶ or SIIB⁷, to be furnished to the disposal Branch at the customs station forthwith, so that, before disposal of such goods, no objection could be obtained from the concerned agency, (iii) shipments which were thus disputed to be segregated by the customs authorities, (iv) shipments containing motor vehicles or other goods requiring license/permission/certification from any other department to be similarly segregated, (v) from the remaining goods which could be auctioned, 10% of the shipments to be chosen by the customs authorities, for which a detailed inventory was required to be prepared and conveyed to the concerned custodian, (vi) notice to be issued by the custodian to the importer under Section 48 of the Act, advising him to clear the goods within ten days failing which the goods would be put to public auction, (vii) preparation of a detailed inventory, by the custodian, of shipments which were not required to be retained by

⁵ "CONCOR", hereinafter

⁶ Directorate of Revenue Intelligence

⁷ Special Intelligence and Investigation Branch



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the customs authorities for any purpose within the next 20 days and (viii) within seven days of drawing of the inventory, the custodian to approach the jurisdictional customs authorities seeking NOC in respect of all containers required to be taken up for auction through e-auction/tender.

2.3 Following the said procedure, para 3(viii) of the circular required as under:

“(viii) Customs shall examine the list and within 15 days of receipt of such request, intimate to the custodian, details of the listed shipments which can straightway be taken up for auction as they do not require any regulatory clearances (NOC from FSSAI, Drug Controller, BIS etc.),. or do not need any chemical analysis to identify the contents and fitness for consumption/usage. *The consignments for which such unconditional NOCs are issued by Customs, shall be taken up for auction by e-auction through MSTC to ensure maximum outreach and participation.* In order to ensure quick and regular turnover, the concerned custodian shall attempt to hold at least one auction each month. In case the list is incomplete and does not have the complete details for Customs to clearly pinpoint the regulatory requirements, Customs shall indicate the deficiencies in the list, within this period of 15 days.”

(Emphasis supplied)

2.4 Following the procedure envisaged in para 3(viii), the Circular primarily required (i) the value of the shipment/lot included in the auction list to be fixed in the next seven days by a panel of government approved valuers appointed by the custodian, which would form the reserve price for the auction, (ii) fixation of a date immediately thereafter by the custodian for holding the auction/tender and communication of the said date to the jurisdictional customs authorities and (iii) taking up of the shipments/lots in respect of which



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NOC have been received by the customs for auction.

2.5 The circular required all bids, of a value upto or above 5% less than the reserve price to be treated as successful bids for sale of the goods and re-auction of the remaining shipments/lots. The auction was required to be repeated till a successful bid was obtained, up to a maximum of four auctions, with the shipments required to be sold to the highest bidder in the fourth auction irrespective of the fixed reserve price. Para 3(xiv) of the circular further provided thus:

“... Further, if these goods remain unsold and pass into the category of landed-more than one-year prior, the concerned custodian can sell the same following the independent procedure as detailed in para 3 of CBIC Circular No. 50/2005-Cus. dated 01.12.2005 without any reference to Customs, and adjusting the number of auctions/ tenders to which the lot was already subjected to against the prescribed number of four such auctions/ tender. However, even for such goods the requisite NOC from Customs will be obtained by the concerned custodian following the procedure laid down in paras above.

2.6 Following the aforesaid procedure, the auctioned goods were required to be handed over to the successful bidder after assessment and out of charge orders were given by the proper officer, on payment of dues on the goods, if any.

2.7 The procedure stipulated in the Circular was applicable to goods unloaded at customs stations or brought from outside India on or after 1 April 2018, which fell within the category of uncleared / unclaimed cargo in terms of Section 48 of the Act. Auction proceeds were required to be disbursed as per Section 150⁸ of the Act.



3. Submissions of appellant in the writ petition

3.1 The grievance of the appellant, as the petitioner in the writ petition, was essentially with respect to fixation of the Metal Scrap Trade Corporation Limited⁹ as the sole authority through whom the custodian was entitled to auction unclaimed/uncleared cargo.

3.2 It was submitted by the appellant, before the learned Single Judge, that, prior to issuance of the circular dated 3 December 2018, auction of uncleared/unclaimed goods by custodians could take place through any entity or agency identified by the custodian through public auction/e-auction/tender.

3.3 Reliance was placed, by the appellant, on para 3.1(ii) in Chapter 20 of the Customs Manual 2015, which dealt with disposal of unclaimed / uncleared cargo and read thus:

“(ii) Customs shall scrutinize the custodian's list with their own files/records and intimate the custodian the goods not to be

(1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.

(2) The proceeds of any such sale shall be applied—

(a) firstly to the payment of the expenses of the sale,

(b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,

(c) next to the payment of the duty, if any, on the goods sold,

(d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,

(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods:

Provided that where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the [Principal Commissioner of Customs or Commissioner of Customs] may allow, such balance of sale proceeds shall be paid to the Central Government.

Signature Not Verified⁹ “MSTC” hereinafter



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disposed viz. (a) disputed or stayed consignments or (b) consignments required to be retained for any investigation adjudication/court proceedings, (c) motor vehicles or (d) negative list items. If no such intimation is received from the Customs within 15 days, the custodian shall go ahead with the disposal of the goods.”

3.4 The appellant contended that the exclusion of private auctioneers, by the circular dated 3 December 2018, was illegal and entrenched on the fundamental right of such private auctioneers under Article 19(1)(g) of the Constitution of India.

4. Stand of Union of India¹⁰ in counter-affidavit

4.1 Consequent on issuance of notice in the writ petition, the UOI filed a counter affidavit in which it was stated that, owing to the unsatisfactory situation which was prevailing as a result of long delayed disposal of unclaimed/uncleared cargo unloaded at customs stations, it was felt necessary to have, in place, a transparent process for auction of such goods, which was what prompted the issuance of the circular dated 3 December 2018. With respect to the procedure of e-auction through MSTC, the counter affidavit averred thus:

“iv. With regard to Paragraph 12 (IV) of the Writ Petition it is denied that there is any unjust classification or that the impugned policy is discriminatory or in violation of Article 14 or 16. It is submitted that the decision to create a central portal for Customs, E-auction facility for disposal of seized/confiscated/time-expired bonded goods was taken by the Board based on the recommendation of task force especially set up to examine the various issues arising out of the audit review and to suggest effective measures to put in place a permanent mechanism for expeditious disposal of cargo including confiscated/seized goods. It was also highlighted in the meeting of the board held on



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18.10.2007 that M/s MSTC Ltd. is a PSU under the administrative control of Ministry of Steel and that they were engaged in e-auction of goods of more than Rs.1000 crore per year with over 3000 registered bidders. It was also mentioned that MSTC would be offering service at a commission of 1.75% of sale value plus service tax which is the same rate they offer presently to Ministry of Defense. Further, reason for setting up of centralized portal was that some field formations were not able to set up e-auction facility and some were not able to continue physical auction in view of Board's instruction vide Board Circular 12/2006-Customs dated 20.02.2006. Accordingly, the Board has streamlined the procedure for disposal of goods which in inter-alia included its approval for setting up of a centralized e-auction portal by engaging the services of M/s MSTC Ltd., Mumbai, a PSU under the Ministry of Steel.

Process of e-auction through M/s MSTC Ltd.

vii. The procedure for e-auction through M/s MSTC Ltd. is displayed on their Website: www.mstcauction.com. The customers are first required to directly register online on website www.mstcauction.com and then complete off-line registration formalities. Only registered customers are allowed to participate in the e-auctions. During live e-auction biddings, the identity of one bidder cannot be known to other bidders, sellers or even to M/s MSTC Ltd. and therefore, there will be no possibility of any cartel formation. Unregistered customers can also see all details of the auction notice, list of materials and Terms and Conditions of sale on their website www.mstcindia.com and then register with them to bid. After registration with M/s MSTC Ltd., the Principal/seller (like Customs/ CGST) should send the Disposal List/ Terms to them necessarily through e-mail (hard copies can be sent only as post confirmation copy, if felt necessary). M/s MSTC Ltd. shall publicize the sale on the website, along with details of Material List, e-auction Schedule (i.e., Opening & Closing Date & Time), Inspection Schedule, Terms & Conditions of Sale, etc. Actual display of Auction Notice on the website will commence under the heading "View Forthcoming Auctions", only after activation by MSTC. Once the e-auction starts, the Registered Customer may log on to the same and choose a particular lot/item for bidding. Once the bidding starts, the highest bid (hereinafter, referred to as H-1 bid) at any given point of time will always be displayed on the screen, without showing the name of the H-1 bidder. Any bidder, including the H-1 bidder, can go on revising his bid so as to improve upon the same. There will be no restriction on the number of such bids/revisions, till the e-auction closes. No downward revision or cancellation of bid can be done by any bidder. The bidder shall have the option to make each bid/ bid- improvement

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manually, or he can choose the "Auto-Bid" mode to give "Standing Instructions" to the System to go on increasing his bid by a specified incremental value and up to a specified limit. The e-auction Closing-Time will be automatically extended by 8 minutes every time the last bid is received within 8 minutes of the pre-determined or extended Closing-Time. This process will continue till the last H-1 bid remains unimproved for a minimum period of 8 (eight) minutes, so as to give ample opportunity to all bidders and to generate the best competition.

viii. Immediately after closing of e-auction, the bidders can see the result online on the website by accessing the "Auction Lot Status" which will show them details of the Lots won by them on 'Confirmed' or 'STA' basis. Such display of "Auction Lot Status" will be available to the bidders for 3 (Three) days from the date of closing of Auction (excluding the date of closing). Although, after closing of auction, automatic Sale Intimation Letters will also be issued by email to the successful H-1 bidders (with copy to the Principal) advising them to pay the prescribed EMD/ SD, the successful H-1 bidders will be required to pay the EMD/ SD within 3 days from the date of closing of e-auction (irrespective of the date of issue of Sale Intimation Letter). It will be the responsibility of the bidders to personally see the e-auction result immediately after closing of e-auction and pay the SD within the said prescribed time."

ix. From the above, it is clear that the whole process of e-auction through MSTC is very much transparent.

4.2 The counter affidavit further stated that the Circular dated 3 December 2018 had been issued in exercise of the powers conferred by Sections 143AA¹¹ and 151A¹² of the Act. It was further pointed

¹¹ **143-AA. Power to simplify or provide different procedure, etc., to facilitate trade.**—Notwithstanding anything contained in any other provision of this Act, the Board may, for the purposes of facilitation of trade, take such measures or prescribe separate procedure or documentation for a class of importers or exporters [or any other persons,] or for categories of goods or on the basis of the modes of transport of goods, in order to,—

- (a) maintain transparency in the import and export documentation; or
- (b) expedite clearance or release of goods entered for import or export; or
- (c) reduce the transaction cost of clearance of importing or exporting goods; or
- (d) maintain balance between customs control and facilitation of legitimate trade.

¹² **151-A. Instructions to officers of customs.**—The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon or for the implementation of any other provisions of this Act or of any other law for the time being in force, insofar as they relate to any prohibition, restriction or procedure for import or export of goods, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:



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out, in the counter affidavit, that MSTC was a Public Sector Undertaking¹³ under the administrative control of the Ministry of Steel, which had been engaged in e-auction of goods worth more than ₹ 1000 crores per year with over 3000 registered bidders, and was offering its services at a commission of 1.75% of the sale value apart from service tax, which was the rate at which MSTC conducted auctions for the Ministry of Defence. The further advantage in conducting of e-auctions through the MSTC was that the auction could be carried out through a centralised portal, and would result in streamlining of the procedure for disposal of goods. These factors were repeatedly emphasised in the counter affidavit, *inter alia* in para 4 (xv) which read thus:

“xv. The contents of Para 12 (XI & XII) are denied. It is denied that the Impugned Circular is in violations of Articles 14,19 and 21. It is re-iterated that the decision to create a central portal for Customs, E-auction facility for disposal of seized/confiscated/time-expired bonded goods was taken by the Board based on the recommendation of task force especially set up to examine the various issues arising out of the audit review and to suggest effective measures to put in place a permanent mechanism for expeditious disposal of cargo including confiscated/seized goods. It was also highlighted in the meeting of the board held on 18.10.2007 that M/s MSTC Ltd. is a PSU under the administrative control of Ministry of Steel and that they were engaged in e-auction of goods of more than Rs.1000 crore per year with over 3000 registered bidders. It was also mentioned that MSTC would be offering service at a commission of 1.75% of sale value plus service tax which is the same rate they offer presently to Ministry of Defence. Further reason or setting up of centralized portal was that some field formations were not able to set up e-auction facility and some were not able to continue physical auction in view of Board’s instruction vide Board Circular 12/2006-Customs dated

Provided that no such orders, instructions or directions shall be issued—

- (a) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or
- (b) so as to interfere with the discretion of the Principal Commissioner of Customs or Commissioner of Customs (Appeals) in the exercise of his appellate functions.

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20.02.2006. Accordingly, the Board has streamlined the procedure for disposal of goods which in inter-alia included its approval for setting up of a centralized e-auction portal by engaging the services of M/s MSTC Ltd., Mumbai, a PSU under the Ministry of Steel.”

5. The Impugned Judgment

5.1 The learned Single Judge noted the above facts as well as the justification provided by the UOI for putting the revised procedure for auction of unclaimed /uncleared goods in place by the Circular dated 3 December 2018. Following this, the learned Single Judge proceeds to observe, in para 6 of the impugned judgment, as under:

“6. Having heard learned counsels for parties, the principal question which arises is whether the petitioner can claim an indefeasible or a constitutional right to be empanelled by the respondents for the purposes of auctioning of unclaimed and uncleared goods. The Court notes that while it is true that the State when it seeks to enter into the contractual field must comply with the mandate of Article 14 of the Constitution, neither Article 19 nor any other provision of our Constitution recognizes a right inhering in an individual to compel the Government to enter into a contract. The body of precedent which has evolved on this question has duly recognized this basic precept and has proceeded to hold that it is only when the State choses to enter into a contract by inviting bids and offers that it must follow a fair and transparent process of selection and ensure that all eligible parties are placed on an even pedestal.”

5.2 The learned Single Judge has further placed reliance on the judgments of the Supreme Court in *M/s. Erusian Equipment & Chemicals Ltd v State of West Bengal*¹⁴, *Association of Registration Plates v UOI*¹⁵, of the Division Bench of this Court in *Jindal Steel &*

¹⁴ (1975) 1 SCC 70

¹⁵ (2005) 1 SCC 679



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*Power Ltd v Rail Vikas Nidam Ltd*¹⁶. and on the judgment rendered by the High Court of Allahabad in *All U.P. Stamp Vendors Association v UOI*¹⁷.

5.3 The learned Single Judge has further observed that the restrictions placed on auctioning of goods and the decision to canalize the auctions through MSTC constituted reasonable restrictions on the right to trade within the meaning of Article 19 (6) of the Constitution of India and were, therefore, legally sustainable. The learned Single Judge concludes his judgment thus:

“12. In light of the aforesaid legal position, this Court is of the considered opinion that the petitioner can claim no fundamental right which may compel the respondents to necessarily enlist the petitioner for the purposes of auctioning of uncleared or unclaimed goods. All that Articles 14 and 19 of the Constitution mandate is to place the respondents under an obligation to ensure that as and when they do decide to invite tenders or bids or invite persons to enter into a contract with an organ of the State, it adopts a fair and non-arbitrary criterion for award of contract. The Court thus finds that the challenge as raised in the instant writ petition is misconceived and consequently must fail.

13. Accordingly, and for all the aforesaid reasons, the writ petition shall stand dismissed.”

6. Aggrieved by the decision of the learned Single Judge, the appellant has filed the present appeal.

7. We have heard Dr. Shashwat Bajpai, learned counsel for the appellant, Mr. Gibran Naushad, learned SSC for the UOI and Mr. Sanjoy Ghose, learned Senior Counsel for MSTC, at length.

¹⁶ ILR (2013) 6 Del 4440

¹⁷ 2021 SCC OnLine All 266



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Rival Contentions

8. Submissions of Dr. Bajpai for the appellant

8.1 Dr. Bajpai, even while acknowledging, albeit hesitantly, that Section 143AA of the Act, did empower the CBIC to issue a Circular such as the Circular dated 3 December 2018 under challenge, submits that the CBIC could not, in the garb of exercising power under Section 143AA of the Act, confer monopoly on one entity such as the MSTC to carry out all auctions of unclaimed/uncleared cargo. Such conferment of authority on one entity would, he submits, infract, both Article 14¹⁸ as well as Article 19(1)(g)¹⁹ of the Constitution of India.

8.2 Dr. Bajpai has placed reliance on para 2 of Circular dated 20 February 2006 issued by the Central Board of Excise and Customs²⁰, (the CBIC, in its earlier *avatar*), which reads as under:

“Subject: Guidelines for the valuation and disposal by auction-cum-tender of seized confiscated and time – expired goods – Reg.

I am directed to invite your attention to the constitution by the Central Board of Excise and Customs of a Task Force vide Order F.No.442/12/2004-Cus IV dated 27.06.2005 to suggest effective measures to put in place a permanent mechanism for the expeditious disposal of unclaimed, uncleared, seized and confiscated cargo.

¹⁸ **14. Equality before law.**—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹⁹ **19. Protection of certain rights regarding freedom of speech, etc**
(1) All citizens shall have the right—

(g) to practise any profession, or to carry on any occupation, trade or business.

²⁰ “CBEC” hereinafter



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2. The Board has considered the findings / recommendations of the Task force. The Task Force has identified the unrealistic fixation of fair / reserve price as the single most important reason for the delay in the disposal of uncleared, unclaimed, seized and confiscated goods, including time – expired warehoused goods. Therefore, the procedure set out in the following paragraphs is prescribed for the valuation and disposal by auction-cum-tender of seized confiscated and time-expired warehoused goods.”

Dr. Bajpai submits that the afore-extracted para 2 of the CBEC Circular dated 20 February 2006 indicates that delay in disposal of unclaimed/uncleared goods was attributable to unrealistic fixation of fair/reserve price and not to any other factor. As such, he submits that the justification provided, in the counter affidavit filed by the UOI, for issuance of the Circular dated 3 December 2018 is not correct.

8.3 In this context, Dr. Bajpai also relies on the principle enunciated in *Mohinder Singh Gill v Chief Election Commissioner*²¹, following the earlier judgment of the Supreme Court in *Commissioner of Police v. Gordhandas Bhanji*²², that an order has to stand or fall on the basis of the reasons contained in the order and cannot be sought to be justified by assertions in the affidavits before the Court when the order is under challenge. The justification provided by the UOI in its counter affidavit to the writ petition, he submits, finds no place in the Circular dated 3 December 2018 and could not, therefore, be cited as a justification for its issuance.

8.4 Dr. Bajpai has also drawn our attention to the representations made by various custodians to the Custom Authorities, complaining

²¹ (1978) 1 SCC 405

²² AIR 1952 SC 16



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that e-auction through MSTC has various disadvantages. Thus, he submits that the decision to canalize all auctions of unclaimed/uncleared goods through MSTC was not taken with appropriate application of mind.

8.5 Dr. Bajpai has also placed reliance on Circular No.06/07/18 dated 11 July 2018 issued by the CVC, which reads thus:

“Circular No.06/07/18

Subject: Transparency in Works / Purchases / Consultancy contracts awarded on nomination basis – regd.

Reference:

- (i) Commission’s Circular No.15/5/06 dated 09.05.2006
- (ii) Commission’s Office Order No.23/7/07 dated 05.07.2007
- (iii) Commission’s Office Order No.19/05/10 dated 19.05.2010

Reference is invited to Commission's Circulars cited above wherein the need for award of contracts in a transparent and open manner has been emphasized. The Commission is still receiving representations reporting instances of award of contracts and procurements in a non-transparent manner on nomination basis by several Departments/CPSUS.

2. The award of contracts/procurements/projects on nomination basis without adequate justification amounts to a restrictive practice eliminating competition, fairness and equity. The Commission would reiterate its earlier instructions, that award of contracts on nomination basis can be resorted to only in exceptional circumstances as laid down in Commission's Office Order No.23/7/07 dated 05.07.2007.

3. All Ministries/Departments/CPSUs are therefore advised to apprise the afore-mentioned guidelines to the concerned officers for strict compliance.”

8.6 Dr. Bajpai further submits that the learned Single Judge has

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erroneously presumed that the appellant was seeking a vested right to have goods auctioned through its agency. Rather, submits Dr Bajpai, the appellant was aggrieved by the patently illegal nature of the Circular dated 3 December 2018, in so far as it allowed auction of unclaimed/uncleared cargos only through MSTC.

8.7 Dr. Bajpai further submits that the learned Single Judge has erred in his finding that no right vested in any person or authority to enter into a contract with the Government and that the legal requirement in that regard was only that the contract executed by the Government should not be arbitrary. This principle, submits Dr. Bajpai, does not call for any application at all, as the Circular dated 3 December 2018 compelled the custodian, who could not be equated with the Government, to contract only with one particular party i.e. MSTC, for auctioning unclaimed/uncleared goods. He submits that CBIC did not possess the authority to monitor private contracts between custodians and the auctioneers and compelled the custodian only to effect auction of unclaimed/uncleared goods through any particular entity or entities.

8.8 For all these reasons, Dr. Bajpai submits that the impugned judgment of the learned Single Judge deserves to be set aside and the prayers in the writ petition granted.

9. Submissions of Mr. Gibran Naushad for the UOI

9.1 Responding to Dr. Bajpai's submissions, Mr. Naushad, submits that the decision to canalize auctions of unclaimed/uncleared goods



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lying at Custom Stations through MSTC was, as para 3(viii) of the impugned Circular itself states, to ensure that the auction was conducted electronically and that there was maximum outreach and participation. He submits that no individual could claim a right to empanelment as an agency through whom unclaimed/uncleared goods could be auctioned. The reasons adduced by the learned Single Judge in para 5 of the impugned order, he submits, are unexceptionable and do not call for any interference in appeal. He further places reliance on paras 4 to 6, 9 and 12 of the judgment of a Division Bench of this Court in *Nex Tenders (India) Pvt. Ltd. v. Ministry of Communication and Information Technology*²³, paras 2 and 43 of the judgment of a three-Judge Bench of the Supreme Court in *Association of Registration Plates* and para 17 of the judgment of a Division Bench of this Court in *Jindal Steel and Power Ltd.*

9.2 Mr. Naushad submits in conclusion that the appellant cannot hold a brief for custodians and that no custodian was before this Court, aggrieved by the Circular dated 3 December 2018.

10. Submissions of Mr. Sanjoy Ghose for the MSTC

Supplementing the submissions of Mr. Naushad, Mr. Ghose points out that MSTC is essentially an arm of the Government and, therefore, the decision to canalize auction of any unclaimed/uncleared goods through MSTC cannot be said to be arbitrary or compelling interference by Court.



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11. Submissions of Dr. Bajpai in rejoinder

In rejoinder, Dr. Bajpai has merely placed reliance on para 90 of the judgment of a three-Judge Bench of the Supreme Court in *Manohar Lal Sharma v. Principal Secretary*²⁴, and paras 16 and 17 of the judgment of the Supreme Court in *Nagar Nigam v. Al Faheem Meat Exports*²⁵.

Analysis

12. Interference with economic policy

12.1 Economic policy is thorny and involved and, into areas of economic policy, Courts, therefore, tread with great caution. Matters of economic policy affect many more than those who petition the Court – at times, the entire nation – and, therefore, judicial circumspection is of the essence when examining challenges to measures which fall within that hallowed realm. It is practically axiomatic that a Court cannot disapprove an economic policy measure merely because it feels that another would be better, or more appropriate. Subjectivity, on the part of the Court, has no place to play when dealing with challenges to economic policy.²⁶ In *R.K. Garg v. Union of India*²⁷, the Supreme Court observed that it was settled that Courts would show a higher degree of deference to matters concerning economic policy, compared to other matters of civil and

²⁴ (2014) 9 SCC 516

²⁵ (2006) 13 SCC 382

²⁶ Refer *Reliance Telecom Ltd v. Union of India*, (2017) 4 SCC 269, *State of Tamil Nadu v. National South Indian River Interlinking Agriculturist Association*, (2021) 15 SCC 534

²⁷ (1981) 4 SCC 675



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political rights.

12.2 The Indian Constitution envisages a quasi-federal structure, in which the three limbs of administration – the legislature, executive and judiciary – enjoy co-equal status, and have to work in harmonious unity to achieve our preambular goals. While interference by one, with the functions of the other, is not entirely proscribed, it has to be limited to well-delineated parameters. The following passages from the recent decision in *State of West Bengal v. Confederation of State Government Employees*²⁸ contain an authoritative exposition of the law on the issue:

“53. The judicial review of a fiscal policy is a limited but important domain. The various facets of fiscal policy such as taxation, subsidies, public expenditure etc., are primarily concerns of the Executive and Legislature, but are not beyond the pale of judicial scrutiny. The brief that is entrusted to the Judiciary is to ascertain that such a policy flows from the Constitution, is procedurally lawful and non-arbitrary. Article 265, for example mandates that no tax shall be levied in the absence of the authority of law. Here, it would be the domain of the Courts to examine that fiscal measures are not imposed by executive fiat. Discipline in matters of fiscal policy is not only judicially enforced but provided for in the Constitution itself by virtue of Article(s) such as 266 and 283 by regulating the custody, appropriation and withdrawal of public funds.

54. Separation of powers which is a feature of the basic structure of the Indian Constitution²⁹ postulates that the complex assessment of economic conditions, social priorities etc., are evaluated and assessed by those institutions possessing democratic legitimacy. Herefrom arises the consistently articulated judicial position that Courts do not adjudicate upon the wisdom/adequacy or desirability of a chosen economic policy. At the same time, it is unquestionably the role of the judicial institutions to check fiscal policy that transgresses constitutional limitations. While reasonable classification and intelligible differentia are permitted,

²⁸ 2026 SCC OnLine SC 155

²⁹ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225



such classifications cannot be discriminatory or devoid of rational nexus to the avowed objectives thereof. That apart, Courts are also the arbiter of federal balance that is between the Centre and the State ensuring that the two powers stay within their own lanes as prescribed by Article 246. In essence, the role is to ascertain constitutional compliance and is, thus, a position of calibrated deference but most certainly not of abdication or no authority. In the context of the above, the following judgments spell out the well-recognised position:

(a) A bench of three Judges in ***BALCO Employees' Union v. Union of India***³⁰, observed:

“92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot *per se* be interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. ...”

(Emphasis Supplied)

(b) In ***State of T.N. v. National South Indian River Interlinking Agriculturist Assn.***:

“10... An examination of this issue must begin with the primary question of the meaning of the phrase “policy”. A policy is the reasoning and object that guides the decision of the authority, which in our case is the State of Tamil Nadu. Statutes, notifications, Ordinances, or government orders are means for the implementation of the policy of the State. Therefore, it is not possible to completely appreciate the law without reference to the policy



behind the law. The judicially evolved two-pronged test to determine the validity of the law vis-à-vis Article 14 of the Indian Constitution, refers to the objective of the law because the “policy” behind the law is never completely insulated from judicial attention.

11. However, it is settled law that the Court cannot interfere with the soundness and wisdom of a policy. A policy is subject to judicial review on the limited grounds of compliance with the fundamental rights and other provisions of the Constitution. ...It is also settled that the Courts would show a higher degree of deference to matters concerning economic policy, compared to other matters of civil and political rights. In **R.K. Garg v. Union of India** ...

“8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in **Morey v. Doud**³¹, where Frankfurter, J., said in his inimitable style:

‘In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if



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not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.’ ”

(Emphasis in original)

12.3 Equally instructive, in their own way, are the following passages from *Akola Municipal Corporation v. Zishan Hussain Azhar Hussain*³²:

“20. This Court in a catena of decisions has held that the Court cannot substitute its judgment for that of the legislature or its agents as to matters within the province of either. In this respect, we may gainfully refer to the observations of a Constitution Bench of this Court in the case of *Shri Sitaram Sugar Co. Ltd. v. Union of India*³³:—

“57. Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the “feel of the expert” by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the laws of the land. As stated by

³² 2025 SCC OnLine SC 2729

³³ (1990) 3 SCC 223



Jagannatha Shetty, J. in *Gupta Sugar Works*³⁴:

“... the court does not act like a chartered accountant nor acts like an income tax officer. The court is not concerned with any individual case or any particular problem. The court only examines whether the price determined was with due regard to considerations provided by the statute. And whether extraneous matters have been excluded from determination.”

58. **Price fixation is not within the province of the courts. Judicial function in respect of such matters is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority.**
.....”

22. Recently, in the case of *Kirloskar Ferrous Industries Ltd. v. Union of India*³⁵, this Court held as below:—

“54. The doctrine of judicial restraint, which is central to this discussion, emphasizes that courts should exercise caution and avoid involvement in policy decisions, as these are complex judgments that require a balancing of diverse and often competing interests. Policies are crafted based on thorough analysis of social, economic, and political factors, considerations beyond the court's purview. **The court is tasked with ensuring that policies do not breach constitutional provisions or statutory limits; however, they should not replace policymakers' judgments with their own unless absolutely necessary.**

55. Policy decisions often require the expertise of professionals and specialists in fields such as economics, public health, national security, and environmental science. These domains involve specialized knowledge that judges, as generalists in legal matters, may lack. For instance, in economic policy, the executive may decide on trade tariffs or subsidies based on extensive data and projections that aim to balance domestic industry support with global trade commitments. The courts, lacking the same level of economic expertise and without the authority to make trade-offs among competing policy objectives, is typically not equipped to second-guess these kinds of decisions.

³⁴ *Gupta Sugar Works v. State of U.P.*, 1987 Supp SCC 476

³⁵ (2025) 1 SCC 695



56. While courts have the power of judicial review to ensure that executive actions and legislative enactments comply with the Constitution, this power is not absolute. Judicial review is meant to act as a safeguard against actions that overstep legal boundaries or infringe on fundamental rights, but it does not entail a comprehensive re-evaluation of the policy's wisdom. The judicial review of policy decisions is limited to assessing the legality of the decision making process rather than the substantive merits of the policy itself. For example, if a government policy infringes on fundamental rights or discriminates against a particular group, the courts have a duty to strike down such policies. However, in the absence of constitutional or legal violations, the courts should respect the policy choices made by the executive or legislature.

57. The duty of the court in policy-related cases is primarily to determine whether the policy falls within the scope of the authority granted to the relevant body. If the policy decision is within the executive's legal authority and has been made following proper procedures, the courts should defer to the expertise and discretion of the policy-makers, even if the policy appears unwise or imprudent. This restraint ensures that the courts do not impose its own perspective on policy matters that are rightly the responsibility of other branches.

58. Economic and social policies often involve significant redistribution of resources, prioritization of interests, and balancing of public needs, which requires careful consideration by those with specialized knowledge and broad perspectives. In the realm of economic policy, for instance, questions regarding the allocation of subsidies, fiscal deficits, or budget allocations are best managed by the executive, which has access to economic data and is accountable to the public for its financial management. Judicial interference in such areas risks creating disruptions in the economic balance that policymakers are trying to achieve.

59. Courts should assume that policy-makers act in good faith unless there is clear evidence to the contrary. As long as the policy does not contravene the Constitution or violate statutory provisions, it is not the role of the courts to question the wisdom or fairness of such policy.

60. While judicial restraint is essential in respecting the boundaries of each branch of government, it does not mean



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that courts abdicate their responsibility to protect constitutional rights. The courts must still intervene if a policy infringes on fundamental rights, discriminates unfairly, or breaches statutory provisions. The role of the court in such instances is to protect individuals and groups from unlawful actions while maintaining the overall integrity of the policy-making process. This balance ensures that while courts do not interfere in matters of policy wisdom, they remain vigilant guardians of constitutional rights.”

(Emphasis in the original)

12.4 Judicial overreach into the domain of the executive also gives rise to the live possibility of the executive being lulled into a sense of complacency, which can be disastrous to national interest. Each wing of the federal structure has, therefore, to remain constantly alive to the fact that it functions within its sphere of domain expertise, within which it enjoys pre-eminent status.

12.5 So long as the executive acts within the peripheries of its jurisdiction, delineated by statute or otherwise, Courts should, therefore, be slow in interfering, unless the action is arbitrary, capricious, or entrenches on fundamental or constitutional rights. The Court cannot police the executive.

12.6 It is also settled that implementation of policy decisions may, on occasion, result in perceived hardship to some, and that the possibility of such hardship cannot be a reason to invalidate, or even interfere with, the policy decision.³⁶

12.7 The challenge, raised by the appellant to the validity of the

³⁶ Refer **Laxmi Khandsari v. State of U.P.**, (1981) 2 SCC 600, **Noel Harper v. Union of India**, (2023) 3 SCC 544



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CBIC Circular dated 3 December 2018 has, therefore, to be examined in the above backdrop.

13. Re. reliance on *Mohinder Singh Gill*

13.1 Dr Bajpai's reliance on the judgement in *Mohinder Singh Gill*, for the proposition that the respondent could not seek to provide justifications, for the issuance of the impugned Circular dated 3 December 2018, has to be merely stated to be rejected. That proposition applies to cases in which the order in question is required to contain reasons, generally in the case of orders which partake of an element of decision-making, though the order be quasi-judicial or administrative. The principle is that reasons for the *decision* must be contained in the order itself, which must, therefore, stand, or fall, on the basis of the reasons that it contains. The order or decision cannot be sought to be justified on the basis of reasons which find no place therein. This is essentially because such orders, or decisions, have to be examined in the light of the considerations which prompted their taking, and, as it is not possible to psychoanalyze the authors of such orders or decisions, they must speak for themselves. We may reproduce, for ready reference, the relevant passage from *Mohinder Singh Gill* which, in turn, places reliance on *Gordhandas Bhanji*, thus:

“8. The second equally relevant matter is that *when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned* and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, *get validated by additional grounds later brought out*. We may here draw attention



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to the observations of Bose, J. in ***Gordhandas Bhanji***:

“Public orders, publicly made, *in exercise of a statutory authority* cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

Clearly, these passages, and the law enunciated therein, apply to orders which are required to be predicated on specific grounds.

13.2 Administrative Circulars such as the Circular dated 3 December 2018 cannot be expected to contain detailed reasons for their issuance, and insistence on every such administrative or executive circular having to contain such reasons may well paralyze administrative functioning. In the case of such circulars, therefore, the only requirement is for the authority issuing the circulars to set out the reasons for their issuance before the Court in the event of a challenge, which would, in ordinary course, be in counter-affidavit. It is, thereafter, for the Court to satisfy itself that the reasons cited are germane, and dispel any possibility of arbitrariness or caprice in the issuance of the circular.

13.3 We, therefore, reject Dr. Bajpai’s submission that the reasons for issuance of the Circular dated 3 December 2018 cannot be seen by the Court, predicated on the law declared in ***Mohinder Singh Gill***.



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14. Re. Section 143-AA and scope for interference

14.1 Following the above discussion, it is obvious that the CBIC is entitled to assert that the Circular dated 3 December 2018 was issued in exercise of the power conferred by Section 143-AA of the Act. It goes without saying that the mere fact that the Circular may not make specific reference to Section 143-AA does not estop the CBIC from tracing the power for its issuance to the said provision. If the power to issue the Circular is to be found in Section 143-AA, the fact that Section 143-AA does not find especial mention in the Circular cannot invalidate it.

14.2 Dr. Bajpai contends, however, that the power vested in the CBIC by Section 143-AA cannot extend to directing that all auction of unclaimed/uncleared cargo must be through one agency or entity alone.

14.3 We do not see why not.

14.4 Court cannot, by executive fiat, ordinarily reduce the amplitude of power statutorily conferred on an authority, unless conferment of the power in the terms in which it is conferred by statute is pregnant with the possibility of misuse. The power that Section 143-AA confers is on the CBIC, the highest authority in the indirect tax hierarchy, and there is no reason for us to expect that it would be misused. Of course, in a given case, if the Court finds misuse to have occurred, it would unquestionably step in and put corrective measures in place.



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14.5 We, however, do not see any reason for narrowing the scope of Section 143-AA or of limiting its applicability. Section 143-AA empowers the CBIC to *take such measures or prescribe separate procedures for, inter alia, any categories of goods*, in order to expedite clearance or release of goods entered for import or export.

14.6 We, therefore, cannot agree with Dr. Bajpai in his submission that the power conferred on the CBIC by Section 143AA does not include the power to direct auction of uncleared goods, which have entered the Customs station, through the MSTC. The paragraphs from the counter-affidavit filed by the CBIC before the learned Single Judge, extracted *supra*, clearly indicate that the issuance of the Circular dated 3 December 2018, which includes the decision to allow auctioning of imported uncleared goods only through the MSTC, was a well considered decision, taken in view of the delay in clearance of imported and unclaimed goods, which would also include escalating demurrage charges, among others. MSTC was selected as it was a PSU, under the Ministry of Steel, which had e-auctioned goods of more than ₹ 1000 crore per year, with 3000 registered bidders. The selection of MSTC was, therefore, wholesome, and in sync with the objective of ensuring swift and efficient disposal of uncleared cargo.

14.7 We are unable to see any basis for us to interfere with such a well-considered policy decision. The fact that hardship may ensue to some auctioneers cannot, to our mind, at all constitute a ground for us to discredit the Circular dated 3 December 2018.

14.8 Moreover, and perhaps most significantly, para 3 (xiv) of the

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Circular restricts its applicability to one year from the date of unloading of the goods in the Customs area. Goods which remain uncleared for over a year can still be sold by the custodian in accordance with the pre-existing procedure under CBIC Circular 50/2005-Cus. The discomfort, if at all, that the Circular causes to auctioneers would only be in their inability to auction goods within a year of their importation, if they remain uncleared.

14.9 It is not, therefore, as if the Circular dated 3 December 2018 permanently throttles the trade or vocation of auctioneers. As it stands, in our view, the Circular more than amply constitutes a reasonable restriction, within the meaning of Article 19(2) of the Constitution of India, engrafted in economic and public interest, and is, therefore, also constitutionally valid. The plea of infraction of Article 19(1)(g) of the Constitution, therefore, also fails.

15. Re. other submissions of Dr. Bajpai

15.1 The reliance, by Dr. Bajpai, on CBEC Circular dated 20 February 2006, to our mind, is misplaced. That Circular merely identifies factors which were resulting in delay in clearance of unclaimed cargo, 12 years prior to the issuance of the Circular dated 3 December 2018. They are, to our mind, totally extraneous to the issue in controversy.

15.2 CVC Circular No. 06/07/18, dated 11 July 2018 is, again, equally extraneous to the controversy at hand. The CVC has, by the said Circular, disapproved award of contracts on nomination basis



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without adequate justification. The Circular dated 3 December 2018 does not award any contract on nomination basis. Besides, we have already held the measures, that the Circular puts in place, including the requirement of e-auction of uncleared goods through the MSTC, to be adequately justified.

15.3 We also agree with the learned Single Judge that the appellant was effectively aggrieved, not by any detriment to public interest caused by the Circular dated 3 December 2018, but by the fact that private auctioneers lost the opportunity of auctioning uncleared and unclaimed goods within a year of their importation. Clearly, the writ petition was not prompted by any desire to safeguard public interest, but to preserve the right of the petitioner, which, according to the petitioner, the Circular dated 3 December 2018 illegally violated. Of course, there cannot be any embargo on such a right being asserted in a Court of law, as the right to freedom of trade, guaranteed by Article 19(1)(g) of the Constitution, is precious and inviolable. Like all fundamental rights, however, it is not absolute, but is subject to reasonable restrictions under Article 19(2). The Circular dated 3 December 2018, to our mind, eminently satisfies the requirements of Article 19(2).

15.4 In view of the law on the subject, to which we have already referred earlier, we do not deem it necessary to advert to each of the authorities cited by Dr. Bajpai.

Conclusion



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16. We, therefore, are unable to find any infirmity either in the Circular dated 3 December 2018 issued by the CBIC or the impugned judgment dated 5 September 2022 of the learned Single Judge.

17. The appeal is accordingly dismissed, without costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

FEBRUARY 3, 2026/aky/yg/ar