

# Vedanta Ltd. Rep By Its Authorised ... vs Union Of India on 20 February, 2024

**Author: D.Bharatha Chakravarthy**

**Bench: Sanjay V.Gangapurwala, D.Bharatha Chakravarthy**

2024:MHC:6443

W.P.Nos.3335, 3337

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 01.02.2024

Orders pronounced on : 20.02.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA ,  
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.3335, 3337 and 3339 of 2022

Vedanta Ltd. Rep by its Authorised Signatory,  
J.Janaki Raman

.. Petit  
(in all th

Versus

1. Union of India  
Through  
Secretary, Ministry of Commerce,  
Udyog Bhawan, New Delhi - 110 001.
2. Office of Director General of Foreign Trade,  
Udyog Bhawan, H-wing, Gate No.02,  
Maulana Azad Road, New Delhi - 110 011.
3. Joint Director General of Foreign Trade,  
Nishtha Bhavan, 48,

<https://www.mhc.tn.gov.in/judis>

Vithaldas Thackersey Marg, Churchgate,  
Mumbai - 400 020.

4. Additional Director General of Foreign Trade,  
Zonal DGFT Office, New CGO Building,  
New Marine Lines, Churchgate, Mumbai - 400 020.
5. Assistant Director General of Foreign Trade,  
Zonal DGFT Office, New CGO Building,  
New Marine Lines, Churchgate, Mumbai - 400 020.
6. Secretary, Ministry of Finance,  
Department of Revenue,  
Room No.46, North Block,  
New Delhi - 110 001.

.. Respo  
(in all

Prayer in W.P.No.3335 of 2022 : Writ Petition filed under Article 22  
the Constitution of India praying for a Writ of Declaration declarin  
56 of Notification No.26/2017-Cus. dated 29.06.2017 as an arbitrary  
exercise of power and arbitrary whittling of vested rights and there  
violative of Article 14 and Article 19(1)(g) of the Constitution.

Prayer in W.P.No.3337 of 2022 : Writ Petition filed under Article 22  
the Constitution of India praying for a Writ of Declaration declarin  
3.2.5 (VII) of the Handbook of Procedures (2004-2009) issued by the  
respondent No.2 to be ultra-vires provisions of Section 5 of the For  
<https://www.mhc.tn.gov.in/judis>

2/72

W.P.Nos.3335, 33

Trade Development and Regulation Act, 1992 read with Para 2.4 of the  
Foreign Trade Policy (2004-2009) and also being violative of Article  
and 19(1)(g) of the Constitution of India, to the extent it prescrib  
limit for utilization of the certificate and also arbitrarily debar

of the same.

Prayer in W.P.No.3339 of 2022 : Writ Petition filed under Article 22 of the Constitution of India praying for a Writ of Mandamus extending the validity period of Duty Credit Certificate No.03/98/072/00210/AM07/S dated 24.02.2021 by a period of 15 years (reflecting the entire period of delay caused by the respondents i.e., calculated from 23.12.2006 to 24.02.2021 i.e., date of issue of certificate) as well as directing the respondents to permit the use of the Duty Credit Certificate to defer the payment of GST Compensation Cess as well so as to effectively allow the petitioner to enjoy the full benefit of the same and compensate for the time lost by the petitioner from the date of filing of its application till grant of Duty Credit Certificate for balance amount and further grant costs to the petitioner on account of the present litigation since the petitioner was constrained to approach this Court wholly and solely on account of the delays caused by the respondents.

For Petitioner : Mr.P.S.Raman, Senior Counsel  
<https://www.mhc.tn.gov.in/judis>

3/72

W.P.Nos.3335

(in all the cases) for Mr.Adithya Reddy

For Respondents : Mr.AR.L.Sundaresan,  
(in all the cases) Additional Solicitor General of India  
Assisted by Mr.P.G.Santhosh Kumar,  
for RR-1 to 5

: Mr.Rajnish Pathiyil,  
Senior Central Government Standstill  
Counsel for R6

## COMMON ORDER

(Order made by the Hon'ble Mr. Justice D. Bharatha Chakravarthy) A. The Petitions:

All these three petitions are filed by the same petitioner and the reliefs prayed for are inter-connected and as such, are taken up and disposed of by this common order.

1.1. The petitioner Company was entitled to avail the set off in respect of the duty and additional duty payable on its imports on account of the benefit conferred under a scheme, namely Target Plus Scheme (hereinafter referred to as 'TPS'). It could only exercise its option of set off to the tune of <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 Rs.89,29,04,149.25 ps, even though the petitioner is entitled to adjust for a total sum of Rs.305,72,81,517.84 ps, thus, leaving a balance of Rs.216.38 crores. According to the petitioner, in view of the Entry 56 of notification No.26/2017-Cus. dated 29.06.2017; paragraph No.3.2.5 (VII) of the Handbook of Procedures (2004-2009) and in view of efflux of time, due to the previous litigations on account of the erroneous orders passed by the respondents, the same could not be achieved by the petitioner. Therefore, the petitioner has filed these three Writ Petitions, firstly, to declare the Entry 56 of notification No.26/2017-Cus. dated 29.06.2017 as violative of Articles 14 and 19(1)(g) of the Constitution of India inasmuch as it takes away the vested rights of the petitioner; to declare paragraph No.3.2.5 (VII) of the Handbook of Procedures (2004-2009) issued by the Director General of Foreign Trade (hereinafter referred to as 'D.G.F.T') to be ultra-vires the Section 5 of the Foreign Trade (Development and Regulation) Act, 1972 (hereinafter referred to as 'the Act') read with paragraph No.2.4 of the Foreign Trade Policy (2004-2009) and also being violative of Articles 14 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 and 19(1)(g) of the Constitution of India inasmuch as it prescribes 24 months time limit for utilisation of the certificate under the TPS; a Writ of Mandamus is also filed praying for a direction extending the validity period of Duty Credit Certificate No.03/98/072/00210/AM07/S, dated 24.02.2021 by a period of 15 years and also to direct the respondents to permit use of the Duty Credit Certificate to defray I.G.S.T and G.S.T Compensation Cess as well so as to utilise the benefit under the TPS.

B. The Case of the Petitioner:

2. The case of the petitioner is that it is engaged in extraction of metals like copper, zinc, aluminium, iron etc. Import and export of inputs and final products is part and parcel of its business activities. Under the Foreign Trade Policy (hereinafter referred to as 'FTP'), a scheme known as Target Plus Scheme is framed by the respondents. The objective is to boost the economy by providing duty benefits to Star Export Houses. The FTP is framed by the Central Government in exercise of its power under Section 5 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 of the Act. The above mentioned TPS is contained therein in paragraph No.3.7. The

scheme seeks to reward Star Export Houses detailed in paragraph No.3.5 of the FTP which achieved a certain quantum of growth in exports.

2.1. As per paragraph No.3.7.1, Star Export Houses will be entitled for a duty credit based on the percentage of the incremental exports achieved by them. As per paragraph No.3.7.2, a minimum export turnover of Rs.10 crores has to be achieved for eligibility. Paragraph No.3.7.3 prescribes the percentage of incremental growth to be achieved and the rate of duty credit entitlement. The three slabs mentioned therein are as follows :-

Percentage Incremental Growth Duty Credit Entitlement (As a % of the incremental growth) 20% and above but below 25% 5% 25% or above but below 100% 10% 100% and above 15% (of 100%) <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 Paragraph No.3.7.6 provides that the duty credit can be used for import of any inputs, capital goods including spares, office equipment, professional equipment and office furniture.

2.2. The Central Government, in exercise of its powers under Section 25(1) of the Customs Act, 1962, also issued notification No.73/2006-Cus., dated 10.07.2006 exempting the goods imported into India against the Duty Credit Certificate issued under the TPS from the whole of the duty of customs leviable thereon under the first schedule of the Customs Tariff Act, 1975 and the whole of the additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975. By virtue thereof, the petitioner could discharge the Duty Credit Certificate under the TPS without any curtailment.

2.3. Paragraph No.2.4 of the FTP empowers the D.G.F.T to specify the procedure to be followed by any exporter or importer for the purposes of implementing the provisions of the Act, Rules and the Orders made therein.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 It mandates that such procedures shall be included in the Handbook Volume

- I and Volume - II, Schedule of DEPB rate and ITC (HS) and published by means of a public notice. Such procedures can be amended from time to time. The Handbook Volume - I is a supplement to the FTP and contains the relevant procedures and other details. The procedure for availing benefits under various schemes of the policy are given in the Handbook Volume - I. While so, certain notifications in Notification No.28, dated 28.01.2004, Notification No.38, dated 21.04.2004 and Notification No.40, dated 23.04.2004 were all issued relating to Special Strategic Package by adding certain conditions and conditions of eligibility and entitlement etc. The notifications were challenged before the Bombay High Court and by the judgment, dated 04.07.2005 in M/s.Kanak Exports Vs. Union of India , the Bombay High Court upheld the validity of these notifications while reading down the prospective operation and granting partial relief. 1 2005 SCC OnLine Bom 1678 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 2.4. It is at this stage, vide notification No.08(RE 2006)/2004-2009, dated 12.06.2006, paragraph No.3.7.3 noted above was

amended to which reads as follows :-

" The entitlement under this scheme would be contingent on the minimum percentage incremental growth of 20% in FOB value of exports in the current licensing year over the previous licensing year, and the rate of entitlement shall be 5% of the incremental growth." Thus, the entitlement was capped at 5% irrespective the incremental growth beyond the threshold of 20%.

2.5. Another notification in Notification No.48(RE 2005)/2004-2009, dated 20.02.2006 was also issued by amending the list of goods which were sought to be taken into consideration for the purpose of calculation of incremental percentage growth of Star Export Houses for determining the benefits under the TPS. Both these notifications were to operate retrospectively. The said notifications were again challenged before the Bombay High Court by several star houses including the petitioner. All the <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 above petitions, which were pending before the Bombay High Court were transferred and tagged along with W.P.(C).No.27 of 2008 before the Hon'ble Supreme Court of India. Ultimately, the Hon'ble Supreme Court of India, in Director General of Foreign Trade and Anr. Vs. Kanak Exports and Anr. , by the judgment, dated 27.10.2015, held the vested rights accrued in favour of the beneficiaries who achieved the target stipulated in the TPS, thereby becoming eligible for grant of Duty Credit Entitlement, cannot be taken away by amending the FTP retrospectively. It held that the exporters got a vested right to avail Duty Credit Entitlement of 15%, 10% or 5% depending upon the quantum of growth achieved by them. It held that the notifications in question can only be effective from the dates on which they were issued.

2.6. As a matter of fact, as per the judgment of the Hon'ble Supreme Court of India, the petitioner claimed that it is entitled to utilise the duty credit for the balance sum of Rs.216.38 crores. The Central Government also issued two trade notices in Trade Notice Nos.06/2018 and 07/2018 for 2 (2016) 2 SCC 226 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 implementation of the judgment of the Hon'ble Supreme Court of India in Kanak Exports' case (cited supra). As a matter of fact, the authorities insisted upon No Due Certificates for implementation of the benefit under the judgment, but, however, by withholding the same, the benefits were not extended. Therefore, a Contempt Petition came to be filed and by the order dated 26.11.2019, the Hon'ble Supreme Court of India directed the concerned authorities to extend the benefit to the beneficiaries of TPS. All along by repeated representations including letters, dated 02.11.2015, 24.09.2020 and 08.02.2021, the petitioner has been requesting for release of the balance amount of Target Plus Scrips so as to claim the benefit. The D.G.F.T granted a personal hearing on 12.02.2021 and thereafter, on 24.02.2021, a certificate for the balance amount of Rs.216.38 crores was released to the petitioner in compliance of the decision of the Hon'ble Supreme Court of India in Kanak Exports' case (cited supra). <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 2.7. In the meanwhile, the G.S.T laws were promulgated with effect from 01.07.2017. Pursuant to the change in taxation regime, by Entry 56 of the notification No.26/2017-Customs, dated 29.06.2017, the earlier notification No.73/2006-Cus., dated 10.07.2006 was amended and the benefit of Duty Credit Certificate was limited only to the duties levied under the first schedule of the Customs Tariff Act, 1975 and sub-sections (1), (3), (5) of Section 3 of the Customs Tariff Act, 1975. Resultantly, I.G.S.T and G.S.T Compensation Cess cannot

be defrayed by using the TPS duty credit certificates. Originally, by Notification No.26/2017-Customs, dated 29.06.2017, a time period of 24 months was also prescribed under paragraph No.3.2.5(VII) of the Handbook of Procedures (2004-2009) which reads as follows :-

"3.2.5 Target Plus Scheme .

.  
. .

VII. The duty credit certificate shall be valid for a period of 24 months from the date of issue. Revalidation of duty credit entitlement certificate shall not be allowed."

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 Thus, the case of the petitioner is that only after a long drawn legal battle, the scrips under the TPS was issued to it only on 24.02.2021.

2.8. However, in the meanwhile, by fixing 24 months period outer limit to exhaust the duty credit and also by excluding the I.G.S.T and G.S.T Cess and it is virtually made impossible for the petitioner to exhaust the duty credit. Therefore, challenging the above notifications, by which, 24 months period is prescribed and Entry 56 is made excluding the I.G.S.T and G.S.T compensation Cess and also for a Mandamus to extend the validity of the duty credit for another period of 15 years, these three Writ Petitions are filed. The case of the petitioner is that once it has been held that it is the vested right of the petitioner, which accrued under the TPS, the same cannot be indirectly taken away by these amendments and time constraints. C. The Case of the Respondents:

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022

3. The Writ Petitions are resisted by the respondents by filing a counter-affidavit. It is the case of the respondents that the validity of the Duty Credit Scrips issued under the TPS shall be as per the paragraph No.3.2.5(VII) of the Handbook of Procedures. The contention of the petitioner is an afterthought. The aim and objective of the Handbook of Procedures is to aid the exercise of powers under the Act and FTP also by laying down the procedures therein. There is no illegality in prescribing the validity limit of 24 months. As far as the Notification No.26, dated 29.06.2017 is concerned, prior to the implementation of the G.S.T, Section 3 had sub-sections viz., (1), (3), (5) levying three different additional duties wherever applicable on the articles imported into India. With the introduction of G.S.T, new sub-sections (7), (8), (9) and (10) have been inserted to Section 3 of the Customs Tariff Act, 1975 for levy and collection of I.G.S.T and Compensation Cess respectively. I.G.S.T and Compensation Cess, collected on imported goods, have not been defined as additional duties under the Customs Tariff Act, 1975 and therefore, are not  
<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 exempted whenever there is an exemption from additional duty under Section 3 of the Customs Tariff Act, 1975. The impugned

notification was issued only to make the same explicit. Both prior to the impugned notification and after, the benefit of duty exemption, that is, the basic duty and additional duty, which were levied under sub-sections (1), (3) and (5) of Section 3 of the Customs Tariff Act, 1975 are available for adjustment against duty credit scrips. It is the contention of the respondents that having failed to promptly exhaust the benefit which is granted, it is a belated attempt made by the petitioner Company.

#### D. The Submissions:

4. We have heard Mr.P.S.Raman, learned Senior Counsel appearing on behalf of Mr.Adithya Reddy, learned Counsel for the petitioner in all the cases; Mr.AR.L.Sundaresan, learned Additional Solicitor General of India assisted by Mr.P.G.Santhosh Kumar, learned Counsel for the respondent <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 Nos.1 to 5 and Mr.Rajnish Pathiyil, learned Senior Central Government Standing Counsel for the sixth respondent in all the cases.

4.1. Mr.P.S.Raman, learned Senior Counsel appearing on behalf of the petitioner, would submit that even though the petitioner was duly eligible having achieved more than 100% progress and is entitled for 15% benefit under the TPS, despite the order of the Hon'ble Supreme Court of India in Kanak Exports' case (cited supra), there is an unexplained huge delay of six years attributable only to the respondents in issuing the duty scrips. The delay defeats of the right of the petitioner. He would rely upon the judgment of the Hon'ble Supreme Court of India in Tamil Nadu Electricity Board and Anr. Vs. Status Spinning Mills Ltd. and Anr. for the proposition that in matters, where there is a huge delay, even if provisions relating to time limit are contained in the scheme, by application of Doctrine of Promissory Estoppel, the rights accrued cannot be permitted to be whittled down by adopting a literal interpretation of the provisions. He would rely upon the 3 (2008) 7 SCC 353 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 judgment of the Hon'ble Supreme court of India in Commissioner of Central Excise Vs. M.P.V & Engg. Industries to contend that in matters of grant of exemption, a liberal approach should be adopted if it does not result in violence to the language of the notification.

4.2. Mr.P.S.Raman, the learned Senior Counsel, would further rely upon the judgment of this Court in Ramsays Corporation Pvt. Ltd. Vs. Commissioner of Customs, Chennai - IV for the proposition that a condition which is dependent on an action of the public authorities over which if the importer has no control and if the condition could not be complied with on account of the delay on the part of the public authority, resultantly, the benefit cannot be denied to the importer. Referring to paragraph No.39 of the judgment of the Hon'ble Supreme Court of India in Priyanka Overseas Pvt. Ltd. and Anr. Vs. Union of India and Ors. , he would submit that even an obligation to pay higher duties which arise on 4 (2003) 5 SCC 333 5 (2022) 381 ELT 372 (Mad.) 6 1991 Supp (1) SCC 102 <https://www.mhc.tn.gov.in/judis>



W.P.Nos.3335, 3337 and 3339 of 2022 account of the omission of the customs authority was nullified. He would further place reliance on the judgment of the Punjab and Haryana High Court in Pushpanjali Floriculture Pvt. Ltd. Vs. Union of India , in respect of DFIA scrips, when the petitioner was unable to utilise on account of the invalid notifications, circulars etc., direction was given to revalidate.

Reliance is placed on the judgment of the Hon'ble Supreme Court of India in the case of Eicher Motors Limited and Anr. Vs. Union of India and Ors. . Therefore, in view of the delay, the very nature of duty regime has changed and as such, the delay on the part of the respondents cannot defeat the vested rights of the petitioner.

4.3. The learned Senior Counsel, would next advert to the prescribing of limitation period of 24 months for utilisation of the scrips in the Handbook of Procedures. He would submit that the same virtually introduces a limitation which is not there under the Act or the FTP. While it 7 MANU/PH/1257/2016 8 (1999) 2 SCC 361 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 is for the Central Government to exercise the power in terms of Section 5 and Section 6(3) of the Act, indirectly, the D.G.F.T, the second respondent, cannot exercise such a power. It is beyond his jurisdiction to alter or supplant or extinguish the rights created under the FTP. He would submit that there are specific provisions whenever the D.G.F.T is authorised to prescribe time limit which are as follows :-

Provision	Scheme	Timeline
Para 6.12(d) of the FTP	Realization of export proceeds relating to EOU/EHTP/STP/BTP	Export procees realized with
Para 4.2.4 of the FTP	Duty-Free Replenishment Certificate	The validity Authorisation governed by t stipulated in of Procedures
Para 4.3.3 of the FTP	Duty Entitlement Scheme	The validity pe DEPBB for import prescribed in H
Para 4.17 of the FTP	Advance Authorization	The validity advance Autho import shall in HBP v1.

<https://www.mhc.tn.gov.in/judis>

W.P.Nos.3335,

In the instant case, there is no express delegation of such a power and as such the D.G.F.T exceeded his jurisdiction in prescribing a time period.

4.4. The learned Senior Counsel would rely upon the following judgments :

Case Citation State of Orissa and Ors. Vs. Tata Sponge 2007 (9) VST 419 - Para No.13 Iron Limited Deepak Fertilizers Petrochem Vs. 2006 (203) ELT 370 (Del.) - Para No.19 Designated Authority Sales Tax Officer, Ponkunnam Vs. Kl (1967) 20 STC 367 (SC) - Para No.4 Abhram Narendra Udeshi Vs. Union of India MANU/MH/0578/2002 - Para Nos.14, 15.

4.5. Moving on to his next submission, Mr.P.S.Raman, learned Senior Counsel would contend that I.G.S.T and Compensation Cess are the additional duties of customs levied under Section 3(7) and 3(9) of the Customs Tariff Act, 1975 respectively. In the context of the framework, when I.G.S.T and G.S.T Compensation Cess are considered as additional duties and when the Customs Trade Notice No.80/2017, dated 27.06.2017 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 expressly refers them as additional duty, the very action of the respondents in excluding them from the purview of adjustment under the TPS alone is arbitrary. Adverting the decisions submitted by the respondents, Mr.P.S.Raman, learned Senior Counsel would submit that reliance placed by the respondents on the judgment of the Hon'ble Supreme Court of India in Union of India and Ors. Vs. Cosmo Films Ltd. is incorrect as in the present case, the very jurisdiction and power in laying down restriction is challenged. In the light of the above, he would pray that the Writ Petitions be allowed.

4.6. Per contra, Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing for the respondent Nos.1 to 5, would firstly contend that the benefits under the TPS in the form of Duty Credit Certificate is only a concession. In order to encourage business, the Government of India had thought fit to grant concession in the form of the TPS which is now contended as if creating an indefeasible right. Whenever 9 (2023) 9 SCC 244 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 exemptions and concessions are granted subject to conditions, if the conditions are not fulfilled, then, the petitioner cannot have any right to insist upon to avail the concession. Clause 2.4 of the FTP provides that the D.G.F.T may, in any case or class of cases, specify the procedure to be followed by an exporter or importer for the purposes of implementing the provisions of the Act, Rules and the Orders made thereunder and the FTP. Such procedure has to be included in the Handbook Volume - I. Thus, the Handbook Volume - I is a supplement to the FTP which contains the relevant procedures and other details. Clause 2.8 of the FTP provides that every license / certificate permission shall be valid for the period of validity specified in the license / certificate permission and shall contain such terms and conditions as may be specified by the Licensing Authority. In terms of Clause 2.4 of the FTP, the D.G.F.T, who is also the Ex-Officio Additional Secretary to the Government of India, Ministry of Commerce and Industry has published the Handbook of Procedure. Thus, Clause 3.2.5(VII) of the Handbook of Procedures provides the validity for a period of 24 months <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 from the date of issue and it expressly prohibits revalidation of Duty Credit Entitlement Certificate. Therefore, only as per the conditions, the petitioner can claim the concession.

4.7. It can be seen that the Duty Credit Certificate has been issued to the petitioner on 24.02.2021. The petitioner has also substantially used the same. While so, in the month of February, 2022, the Writ Petition is filed questioning the two years validity period. As a matter of fact, two years validity period was very much there even when the scheme was framed in the year 2004. Therefore, only because the petitioner's own business circumstances were so that it did not import sufficient quantity of the permissible goods, the petitioner has now approached Courts to challenge the very provision and scheme. The petitioner cannot approbate and reprobate.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 4.8. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India would submit that the alleged delays cannot in any way result in crystallisation of any right or extension of validity of the Duty Credit Certificate in violation of law. The Duty Credit Certifications are given for the period 2004-2009. The amendments to the criteria under the TPS was the subject matter of the challenge and were finally decided by the Hon'ble Supreme Court of India in Kanak Exports' case (cited supra). The judgment of the Hon'ble Supreme Court of India was rendered on 27.10.2015. Thereafter, in May, 2017, No Due Certificates were insisted upon in order to avail the benefits. Subsequently, the Hon'ble Supreme Court of India, by its order, dated 04.02.2020, directed the grant of benefits under the TPS. Accordingly, Duty Credit scrips were issued on 24.02.2021. The passage of time did not in any manner work out to the detriment of the petitioner since a Duty Credit Certificate is valid for a period of two years from the date of its issue. There was no alteration in the period of validity and the benefits which were available under the customs notification No.73/2006, dated <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 10.07.2006 which continued to be available even after the Notification No.26/2017, dated 29.06.2017 and there was no change. Therefore, the arguments based on the delay on the part of the respondents are without merits.

4.9. Adverting to the notification, dated 29.06.2017, the learned Additional Solicitor General of India would submit that all that is done by the above notification is instead of words "under Section 3" the words "sub- sections (1), (3) and (5) of Section 3" is substituted in condition No.6(iii) of the notification, dated 10.07.2006 bearing customs notification No.73/2006. The same does not alter the position prior to 29.06.2017 and subsequent to 29.06.2017.

4.10. By virtue of the G.S.T regime, the Customs Tariff Act, 1975 itself was amended. Under the original exemption notification No.73/2006, dated 10.07.2006, the whole of customs duty leviable under the first <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 schedule of the Customs Tariff Act, 1975 and the whole of additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975 was exempted against a Duty Credit Certificate. Thereby, the petitioner is entitled to use the Duty Credit Certificate as against the whole of the customs duty leviable under the first schedule of the Customs Tariff Act, 1975 and the additional duty which was leviable under Sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975. Since all the duties as it stood as on the date of the scheme / exemption i.e., Sections 3(1), 2(3) and 3(5) of the Customs Tariff Act, 1975 were exempted, the notification used the expression that the additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975 are also exempted. However, after amendment to the Customs Tariff Act, 1975, new levies are introduced under Sections 3(7) and 3(9) which were hitherto not there. The notification, by way of Entry 56, was issued by substituting the words as

stated above. The result is that there will be no exemption with regard to the levies which were introduced by way of Sections 3(7) and 3(9) of the Customs Tariff Act, 1975. No portion <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 of the benefit which was earlier available is taken away. Alternatively, he would submit that even if it results in any form of restriction, it is in the realm of a policy decision relating to a concession and therefore, cannot be questioned by the petitioner.

4.11. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India would rely upon the judgment of the Hon'ble Supreme Court of India in ALD Automotive Private Limited Vs. Commercial Tax Officer now upgraded as Assistant Commissioner (CT) and Ors. , more specifically to paragraph Nos.34 to 39 and for the proposition that time prescribed for availment for the benefit is mandatory and cannot be extended. Paragraph Nos.40 to 46 of the said judgment are relied upon. For the proposition that exemptions and concessions cannot result in vested rights, the judgment of the Hon'ble Supreme Court of India in Chowgule and Company Ltd., Vs. 10 (2019) 13 SCC 225 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 Assistant Director General of Foreign Trade and Ors. and Union of India and Ors. Vs. Agricas LLP and Ors. are relied upon.

4.12. Further adverting to the contention on the jurisdiction of the D.G.F.T, in respect of prescribing the two year period in the Handbook of Procedures, the learned Additional Solicitor General of India would submit that firstly, the arguments that it is only the Central Government and for the D.G.F.T, would lose its significance inasmuch as the D.G.F.T is also the Additional Secretary to the Government of India and the power of the D.G.F.T as an Additional Secretary to the Government of India has been recognised by the Hon'ble Supreme Court of India in Agricas LLP's case (cited supra). Further, Clause 2.4 of the FTP itself makes explicitly clear that the procedure will be published in the Handbook of Procedures. Therefore, the contention regarding the prescription of two year limitation is without any basis. The learned Additional Solicitor General of India would 11 (2023) 1 SCC 320 12 (2021) 14 SCC 341 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 submit that it is for the legislature to design proper classifications for the purpose of fiscal regime and such classifications cannot be challenged as discriminatory except if similarly placed persons are treated unequally. He would rely upon the judgment of the Hon'ble Supreme Court of India in Union of India and Ors. Vs. VKC Footsteps India Pvt. Ltd. for the said proposition. Further relying upon the judgment of the Hon'ble Supreme Court of India in Jain Exports Pvt. Ltd. and Anr. Vs. Union of India and Ors. , he would submit that even if the exemption is arbitrary or discriminatory, the Court can only strike down the exemption and cannot expand the ambit of exemption. In other words, he would submit that the power of the Courts is only to destroy and not reconstruct or make new exemptions, the said proposition has been categorically laid down in the judgment of the Hon'ble Supreme Court of India in State of Gujarat and Anr. Vs. Ambika Mills Ltd., Ahmedabad and Anr. . Mere hardship arising in the course of its business cannot be a ground to attack a fiscal legislation, 13 (2022) 2 SCC 603 14 (1996) 5 SCC 619 15 (1974) 4 SCC 656 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 as fiscal legislation is based on the fiscal intelligence of the State, which is ever evolving one as the society advances and it is difficult to obtain "perfect uniformity and perfect equality in matters of taxation" and the same has been recognised by the Hon'ble Supreme Court of India in Spences Hotel Pvt. Ltd. and Anr. Vs. State of West Bengal and Ors. . If there is rational and reasonableness in a classification, then, the

same has to be accepted and for this proposition, the judgment of the Hon'ble Supreme Court of India in Charanjit Lal Chowdhury Vs. Union of India and Ors. is relied upon. Further reliance is placed on the judgment of the Hon'ble Supreme Court of India in Union of India Vs. Aflon Engineering Corporation to contend that the Government can restrict an exemption / concession to a particular variety of goods.

4.13. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India would submit that these are matters of taxation, exemption and fiscal 16 (1991) 2 SCC 154 17 AIR 1951 SC 41 18 (2001) 10 SCC 677 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 policy. The Hon'ble Supreme Court of India in Federation of Hotel and Restaurant Association of India, etc. Vs. Union of India and Ors. had held that Courts would defer to the legislative judgment and would not enter upon the realm of legislative policy. He would also rely upon the judgment of the Hon'ble Supreme Court of India in Swiss Ribbons Pvt. Ltd. and Anr. Vs. Union of India and Ors. to contend that the Courts would adopt a hands off in the matters relating to economic practices and legislations. Finally, he would place reliance on the judgment of the Hon'ble Supreme Court of India in Shri Bakul Oil Industries and Anr. Vs. State of Gujarat and Anr. to contend that a concession can be withdrawn at any time and no time limit can be insisted upon before the concession is withdrawn. In the light of the above, he would pray that the Writ Petitions be dismissed. E. The Points for Consideration:

19 (1989) 3 SCC 634 20 (2019) 4 SCC 17 21 (1987) 1 SCC 31 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022

5. We have considered the rival submissions made on either side and perused the material records of the case. The following questions arise for our consideration :-

(i) Whether the period of validity for availing the Duty Credit Benefits under the TPS as 24 months from the date of issue of scrips is without jurisdiction and illegal ?

(ii) Whether the Entry 56 made vide notification, dated 01.07.2017 is illegal and amounts to taking away the vested rights of the petitioner ?

(iii) Whether the petitioner is entitled for extension of time to avail the Duty Credit in view of the delay on the part of the respondents in issuing the Duty Credit Scrips ?

F. Question No.(i) :

6. The Act is with an object to develop and regulate the Foreign Trade by facilitating imports into and augmenting exports from, India. It enables the Central Government to formulate and announce, by notification <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 in the Official Gazette, the foreign trade policy. Section 5 of the Act is extracted hereunder :-

" 5. Foreign Trade Policy.—The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade

policy and may also, in like manner, amend that policy:

Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette."

6.1. In exercise of the said power under Section 5, the FTP in question i.e., 2004-2009 was published Paragraph No.2.4 of the Foreign Trade Policy (2004-2009) reads as follows:-

" 2.4. Procedure.—The Director General of Foreign Trade may, in any case or class of cases, specify the procedure to be followed by an exporter or importer or by any licensing or any other competent authority for the purpose of implementing the provisions of the Act, the Rules and the Orders made thereunder and this Policy. Such procedures shall be included in the Handbook (Vol.

1), Handbook (Vol. 2), Schedule of DEPB Rate and in ITC (HS) and published by means of a public notice. Such procedures may, in like manner, be amended from time to time.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 The Handbook (Vol. 1) is a supplement to the EXIM Policy and contains relevant procedures and other details. The procedure of availing benefits under various schemes of the Policy are given in the Handbook (Vol.

1)."

6.2. Paragraph No.2.8 of the Policy reads as follows :-

" 2.8. Terms and conditions of a licence/certificate/permission.— Every licence/certificate/permission shall be valid for the period of validity specified in the licence/certificate/permission and shall contain such terms and conditions as may be specified by the licensing authority which may include—

(a) the quantity, description and value of the goods;

(b) actual user condition;

(c) export obligation;

(d) the value addition to be achieved; and

(e) the minimum export price."

6.3. Chapter - III of the FTP provides various promotional measures and paragraph No.3.7 consists the TPS which reads as follows :-

"3.7. Target Plus Scheme 3.7.1. Objective.—The objective of the Scheme is to accelerate growth in exports by rewarding star export houses who have achieved a quantum growth in exports. High performing star export houses shall be entitled for a duty credit based on incremental exports, substantially higher than the general annual export target fixed (since <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 the target fixed for 2005-2006 is 17%, the lower limit of performance for qualifying for rewards is pegged at 20% for the current year).

3.7.2. Eligibility Criteria.—All star export houses (including status-holders as defined in Para 3.7.2.1 of the EXIM Policy 2002-2007) which have achieved a minimum export turnover in free foreign exchange of Rs 10 crores in the previous licensing year are eligible for consideration under the Target Plus Scheme.

3.7.3. Entitlement.—The entitlement under this Scheme would be contingent on the percentage incremental growth in FOB value of exports in the current licensing year over the previous licensing year, as under:

Percentage incremental Duty Credit Entitlement (as growth a % of the incremental growth) 20% and above but below 5% 25% 25% or above but below 10% 100% 100% and above 15% (of 100%) Note.—(1) Incremental growth beyond 100% will not qualify for computation of duty credit entitlement.

(2) For the purpose of this Scheme, the export performance shall not be transferred to or transferred from any other exporter. In the case of third-party exports, the name of the supporting manufacturer/manufacturer exporter shall be declared.

(3) Exporters shall have the option to apply for benefit either under the Target Plus Scheme or under the <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 Vishesh Krishi Upaj Yojana, but not both in respect of the same exported product(s). Provided that in calculating the entitlement under Para 3.7.3 the total eligible exports shall be taken into account for computing the percentage incremental growth but the duty credit entitlement shall be arrived at on the eligible exports reduced by the amount on which the benefit is claimed under Para 3.8.2.

(4) All exports including exports under free shipping bill verified and authenticated by Customs and gems and jewellery shipping bills but excluding exports specified under Para 3.7.5, shall be eligible for benefits under the Target Plus Scheme.

(5) In respect of export of cut and polished diamonds only those shipments would be taken into account for computation of eligible exports under the Scheme where a minimum of 10% value addition has been achieved.

3.7.4. Applicant companies.—Companies which are star export houses as well as part of a group company shall have an option to either apply as an individual company or as a group based on the growth in the group's turnover as a whole. (For the purpose of this Scheme the definition of group company as given in Chapter 9 will be applicable. Furthermore, only such companies of the group as are star export houses will be considered.) If a group company chooses to apply based on the export of one or more of its individual Star Export House companies, the entitlement would be calculated considering the export performance of the applicant company during the previous licensing year and current licensing year. It shall be necessary that the adjusted export performance of all the Star Export House companies of the group during the current licensing year <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 does not fall below the combined performance of all Star Export House companies of the group in the previous licensing year.

In case the group chooses to apply based on the overall growth in group's turnover (i.e. the turnover of all the Star Export House companies), any one of the Star Export House companies of the group may file an application on behalf of all the Star Export House companies of the group.

3.7.5. The following exports shall not be taken into account for calculation of export performance or for computation of entitlement under the Scheme:

- (a) Export of imported goods covered under Para 2.35 of the Foreign Trade Policy or exports made through transshipment.
- (b) Export turnover of units operating under SEZ/EOU/EHTP/STPI/BTP Schemes or products manufactured by them and exported through DTA units.
- (c) Deemed exports (even when payments are received in free foreign exchange and payment is made from EEFC account).
- (d) Service exports.
- (e) Rough, uncut and semi-polished diamonds and other precious stones.
- (f) Gold, silver, platinum and other precious metals in any form, including plain and studded jewellery.
- (g) Export performance made by one exporter on behalf of another exporter.

3.7.6. Imports allowed.—The duty credit may be used for import of any inputs, capital goods including spares, office equipment, professional equipment and office furniture provided the same is freely importable under ITC (HS) Classification of Export and Import Items, <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 for their own use or that of supporting manufacturers as declared in 'Aayat Niryaat Form'.



Import of agricultural products listed in Chapters 1 to 24 of ITC (HS) Classification of Export and Import Items except the following shall be allowed:

- (i) Garlic, peas and all other vegetables with a duty of more than 30% under Chapter 7 of ITC (HS) Classification of Export and Import Items.
- (ii) Coconut, areca nut, oranges, lemon, fresh grapes, apple and pears and all other fruits with a duty of more than 30% under Chapter 8 of ITC (HS) Classification of Export and Import Items.
- (iii) All spices with a duty of more than 30% under Chapter 9 of ITC (HS) Classification of Export and Import Items (except cloves).
- (iv) Tea, coffee and pepper as per Chapter 9 of ITC (HS) Classification of Export and Import Items.
- (v) All oilseeds under Chapter 12 of ITC (HS) Classification of Export and Import Items.

Further, natural rubber as per Chapter 40 of ITC (HS) Classification of Export and Import Items shall also not be allowed for import under the Scheme.

Import of all edible oils classified under Chapter 15, shall be allowed under the Scheme only through STC and MMTC.

3.7.7. Cenvat/Drawback.—Additional customs duty/excise duty paid in cash or through debit under Target Plus shall be adjusted as Cenvat Credit or Duty Drawback as per rules framed by the Department of Revenue.

3.7.8. Special provision.—Government reserves the right in public interest, to specify from time to time the category of exports and export products, which shall not be eligible for calculation of incremental growth/entitlement.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 Further, the Government shall have the right to change the eligibility criteria and rate of entitlement under the Scheme effective from the date of notification of this policy.

Similarly, the Government may from time to time also notify the list of goods, which shall not be allowed for import under the duty credit entitlement certificate issued under the Scheme.” 6.4. Thereafter, in exercise of the powers conferred under paragraph No.2.4 of the FTP, the Handbook of Procedures Volume - I was notified by the Ministry of Commerce and Industry vide public notice No.1, dated 07.04.2006 incorporating the annual supplement. In the said notification, the following procedure was laid down in the paragraph No.3.2.5 with respect to the TPS and the same is extracted hereunder :-

"3.2.5 Target Plus Scheme The Policy for the Target Plus Scheme is given at Chapter 3 of the Foreign Trade Policy I. For direct as well as third party exports, the Export documents viz Export Order, Invoice, GR form, Bank Realization Certificate should be in the name of applicant only.

However for the third party exports, where goods have been procured from a manufacturer, the shipping bill <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 should contain the name of the exporter as well as the supporting manufacturer.

II. Goods allowed to be imported under this scheme shall have a broad nexus with the products exported. For the purpose of import entitlements under this scheme, 'broad nexus' would mean goods imported with reference to any of the product groups of the exported goods within the overall value of the entitlement certificate.

III. The licensing authority shall at the time of issuance of the duty credit entitlement certificate endorse the name of the associate manufacturer/supporting manufacturer/job worker on the certificate as declared by the applicant. Goods imported against such entitlement certificate shall be used by the applicant or his supporting manufacturer/job worker.

Further in order to enable supporting manufacturers, whose names appear in the shipping bills, to import directly, Licensing Authority concerned shall endorse the names of such supporting manufacturers on the certificate as co-licensees.

IV. The last date for filing of such applications shall be 31st December.

V. For each duty credit certificate, split certificates subject to a minimum of Rs.5 lakh each and multiples thereof may also be issued. A fee of Rs. 1000/- each shall be paid for each split certificate. However, a request for issuance of split certificate(s) shall be made at the time of application only and shall not be considered at a later stage.

VI. The duty credit certificate shall normally be issued with a single port of registration. However the applicant may choose for different ports of registration for each split certificate.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 VII. The duty credit certificate shall be valid for a period of 24 months from the date of issue.

Revalidation of duty credit entitlement certificate shall not be allowed.

VIII. The applicants shall within one month of the last imports made under this certificate or within one month of expiry of the certificate whichever ever is earlier, submit a statement of imports/utilization made under the certificate as per 'Aayaat

Niryaat Form', to the jurisdictional Regional Licensing Authority who have issued the Certificate with a copy to the jurisdictional Excise authorities."

Thus, it can be seen that by the paragraph No.3.2.5(VII), above 24 months validity period is prescribed in the Handbook of Procedures.

6.5. The submission of the petitioner, in this regard, is twofold. Firstly, it is submitted that unless it is expressly delegated by a delegated legislation, provision of period of limitation is illegal and secondly, on a reading of Sections 5 and 6 of the Act, the D.G.F.T of Foreign Trade will not have the jurisdiction to amend or alter the policy. <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 6.6. In the case of State of Orissa and Ors. Vs. Tata Sponge Iron Limited (cited supra), while considering the action of the respondents in prescribing a validity period of five years for availing deferment of payment of tax upon expansion / modernisation of its unit, the Hon'ble Supreme Court of India held that when the original scheme framed by the Government did not prescribe a limitation period and when the petitioner's right had accrued to claim exemption, subsequently, in a consequential order, it cannot make any new stipulation or conditions alien to the original policy. It held that such a stipulation would frustrate the very objective sought to be achieved in the policy.

6.7. In the case of Deepak Fertilizers and Petrochem Vs. Designated Authority (cited supra), in the context of an imposition of three months time limit for the Central Government to impose Anti Dumping Duty, the Delhi High Court held as follows and paragraph No.19 is extracted as hereunder :-

" 19. Moreover, Section 9A of the Act does not provide for any limitation. When the parent Act does not <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 provide for a limitation for doing some act, then obviously such limitation cannot be prescribed by the Rules because the Rules are subordinate to the Act. Full play of Section 9A of the Act cannot be controlled by Rules as Rules are only a piece of delegated legislation and the delegated legislation cannot circumscribe the powers of the Act."

6.8. In the case of Sales Tax Officer, Ponkunnam and Anr. Vs. K.I.Abraham (cited supra), when in Rule 6 of the Central Sales Tax (Kerala) Rules, 1957 prescribed an outer date for submission of declaration forms by the dealers, the Hon'ble Supreme Court of India held :-

" In our opinion, the phrase "in the prescribed manner" occurring in section 8(4) of the Act only confers power on the rulemaking authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. But the phrase "in the prescribed manner" in section 8(4) does not take in the time-element. In other words, the section does not authorise the rule-making authority to prescribe a time- limit within which the declaration is to be filed by the registered dealer. The view that we have taken is supported by the

language of section 13(4)(g) of the Act which states that the State Government may make rules for "the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished". This makes it clear that the Legislature was conscious of the fact that the <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 expression "in the manner" would denote only the mode in which an act was to be done, and if any time-limit was to be prescribed for the doing of the act, specific words such as "the time within which" were also necessary to be put in the statute."

6.9. A Division Bench of the Bombay High Court, in the case of Narendra Udeshi Vs. Union of India and Ors. (cited supra), while considering the amendment to the Handbook of Procedures under the very Act, whereby, the D.G.F.T of Foreign Trade issued a public notice to amend Handbook of Procedures so as to prohibit duty free import of natural rubber, held as follows :-

" 14. The Apex Court in the case of University of Kashmir and Ors, v. Mohammad Yasin and Ors., MANU/SC/0406/1973 : (1974)ILLJ109SC has laid down the following proposition of law :--

"When a statute creates a body and vests it with authority and circumscribes its powers by specifying limitations, the doctrine of implied engagement de hors the provisions and powers under the Act would be subversive of the statutory scheme regarding appointments of officers and cannot be countenanced by the Court. Power in this case has been vested in the University Council only and the manner of its exercise has been carefully regulated. Therefore, the appointment of the . respondent <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 could be made only by the Council and only in the mode prescribed by the statute."

Respectfully following the aforesaid ratio of the Apex Court, we hold that the impugned circulars and the public notice amending the Hand Book of Procedures in fact, amount to amend the policy by an authority other than the Central Government which is not permissible in law. Hence the impugned circulars and the public notice issued by the DGFT being without authority of law, are liable to be quashed and set aside.

15. The procedures to be prescribed by an authority in implementing the policy must be in consonance with the policy. If the procedural norms are in conflict with the policy, then the policy will prevail and the procedural norms to the extent they are in conflict with the policy, are liable to be held to be bad in law. In the instant case, since the impugned circulars and the public notice issued by DGFT are in conflict with the policy, the same are liable to be quashed and set aside."

6.10. In Agricas LLP's case (cited supra), while considering the role and authority of the D.G.F.T, in the context of issuing a notification on the total quantity of goods as mentioned in the import policy, the Hon'ble Supreme Court of India held as follows :-

" B. Discussion on the challenge to the role and authority of DGFT to issue the notifications and trade notice and interpretation of the words "total quantity"  
<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022

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 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 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 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.

16. The FTDR Act vide Section 3(2), as elucidated and examined below, authorises the Central Government to prohibit, restrict or otherwise regulate the import or export of goods, by an order published in the Official Gazette. The FTDR Act vide Section 11(1) prohibits imports or exports of goods in contravention of the FTDR Act, the rules and orders made thereunder and the EXIM Policy. Section 5 of the FTDR Act authorises the Central Government to formulate and announce the EXIM Policy

by notification in the Official Gazette. Under Section 11(2) of the FTDR Act, when a person makes or abets or attempts to make any import or export in contravention of the FTDR Act, any rule or order made thereunder or the EXIM policy, he is liable to pay penalty up to Rs 10,000 or five times the value of the goods, services or technology, whichever is greater. Section 11 of the Customs Act, 1962 provides that the Central Government may by a notification in the Official Gazette prohibit, absolutely or subject to conditions as specified, import or export of any good. The listed purposes are wide and range from conservation of foreign exchange and safeguarding of balance of payments, avoiding shortage of goods, prevention of surplus of any agricultural or fisheries product, prevention of serious injury to domestic production, establishment of any industry and lastly compendiously includes "any other purpose conducive to <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 the interest of the general public". Under clause (d) of Section 11 of the Customs Act, goods imported or exported (or attempted to be imported or exported) contrary to any prohibition are liable to confiscation."

Thus, the above survey of relevant decisions cited by both the sides, it would be clear that (i) When any benefit is governed by a statute, it cannot be restricted or taken away by a subordinate legislation; (ii) Even if it is provided by the parent legislation that the procedures can be laid down in the subordinate legislation, that cannot be interfered to mean a right to prescribe limitation period; (iii) If the scheme itself is framed in a subordinate legislation and if the decision is deemed to be made by the self-same authority to amend or vary the notification, then, the same would not be illegal.

6.11. Adverting to the present case, Section 5 of the Act empowers the Central Government to announce the export and import policy and also to amend the policy from time to time. Section 6 of the Act empowers the <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 Central Government to appoint any person as D.G.F.T to advice the Government in formulation of the policy to carry out the policy and to exercise such powers as is conferred upon him by the Central Government in implementing the EXIM policy. Section 6(3) of the Act provides power to amend that policy cannot be delegated to D.G.F.T and it would be prerogative to the Central Government.

6.12. It is in this background, the Central Government has chosen to designate the D.G.F.T as the Ex Officio Additional Secretary to the Government of India. Because the substantial part of the scheme is contained in the FTP and the procedural part of it has to be laid down in the Handbook of Procedures, it is expressly authorised under the paragraph No.2.4 of the FTP, the Handbook of Procedures is also notified by the Ministry of Commerce and Industry, Government of India and the public notice is signed by the person in the capacity both as the D.G.F.T and Ex Officio Additional Secretary to the Government of India. Thus, the ruling of <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 the Hon'ble Supreme Court of India in Agricas LLP's case (cited supra) would be squarely applicable to the facts of the case and the very same authority being both the D.G.F.T and the Additional Secretary to the Government of India and the notification being issued by the Ministry of Commerce and Industry, Government of India, it cannot be said that

period of 24 months has been prescribed by the delegatee.

6.13. Secondly, a reading of Clauses 2.4 and 2.8 of the FTP it can be seen that not only the laying down the procedure is ordered to be made in the Handbook of Procedures, it is also stated that the Certificates are valid only for the period mentioned therein. Therefore, it cannot be said that there is no express delegation of power to prescribe the validity period of 24 months.

6.14. Thirdly, the 24 months period of validity was prescribed by the notification mentioned above on 07.04.2006. As a matter of fact, when in the earlier round of litigation, the retrospective amendment of EXIM policy <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 affecting the rights under the TPS was challenged before the Hon'ble Supreme Court of India in Kanak Exports' case (cited supra), none of the petitioners thereunder including the present petitioner complained about the prescription of 24 months period of validity of the Duty Certificate. Suffice it to say that when the TPS was introduced in the FTP, simultaneously, the Handbook of Procedures in Volume - I also prescribed the said validity period of 24 months. Having availed the benefit with the said period prescribed and just because now in the year 2021, due to its business reasons, wherein, the petitioner is unable to exhaust the entire duty credit it cannot now belatedly challenge the prescription of 24 months and therefore, we hold that there is no infirmity or illegality in Clause 3.2.5(VII) of the Handbook of Procedures. Accordingly, we answer this question. G. Question No.(ii ):

7. Section 3 of the Customs Tariff Act, 1975 is extracted hereunder :-

Before the amendment in the year 2017 After the amendment in the year 2017  
<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 SECTION 3.  
Levy of additional duty 3. Levy of additional duty equal to excise equal to excise duty,  
sales tax, local taxes duty, sales tax, local taxes and other and other charges. -- (1) Any  
article charges--(1) Any article which is imported which is imported into India shall,  
in into India shall, in addition, be liable to a addition, be liable to a duty (hereafter in  
duty (hereafter in this section referred to as this section referred to as the additional  
the additional duty) equal to the excise duty duty) equal to the excise duty for the  
time for the time being leviable on a like article being leviable on a like article if  
produced if produced or manufactured in India and if or manufactured in India and  
if such excise such excise duty on a like article is leviable duty on a like article is  
leviable at any at any percentage of its value, the percentage of its value, the  
additional duty additional duty to which the imported to which the imported article  
shall be so article shall be so liable shall be calculated liable shall be calculated at that  
percentage at that percentage of the value of the of the value of the imported article :  
imported article:

Provided that in case of any Provided that in case of any alcoholic alcoholic liquor for  
human consumption liquor for human consumption imported imported into India,  
the Central into India, the Central Government may, by Government may, by  
notification in the notification in the Official Gazette, specify Official Gazette, specify

the rate of the rate of additional duty having regard to additional duty having regard to the excise the excise duty for the time being leviable duty for the time being leviable on a like on a like alcoholic liquor produced or alcoholic liquor produced or manufactured manufactured in different States or, if a like in different States or, if a like alcoholic alcoholic liquor is not produced or liquor is not produced or manufactured in manufactured in any State, then, having any State, then, having regard to the excise regard to the excise duty which would be duty which would be leviable for the time leviable for the time being in different being in different States on the class or States on the class or description of description of alcoholic liquor to which alcoholic liquor to which such imported such imported alcoholic liquor belongs. alcoholic liquor belongs.

Explanation. -- In this sub-section, Explanation--In this sub-section, the the expression "the excise duty for the time expression the excise duty for the time being leviable on a like article if produced being leviable on a like article if produced or manufactured in India" means the excise or manufactured in India means the excise duty for the time being in force which duty for the time being in force which would be leviable on a like article if would be leviable on a like article if produced or manufactured in India or, if a produced or manufactured in India or, if a like article is not so produced or like article is not so produced or <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 manufactured, which would be leviable on manufactured, which would be leviable on the class or description of articles to which the class or description of articles to which the imported article belongs, and where the imported article belongs, and where such duty is leviable at different rates, the such duty is leviable at different rates, the highest duty. highest duty.

(2) For the purpose of calculating (2) For the purpose of calculating under under sub-sections (1) and (3), the sub-sections (1) and (3), the additional duty additional duty on any imported article, on any imported article, where such duty is where such duty is leviable at any leviable at any percentage of its value, the percentage of its value, the value of the value of the imported article shall, imported article shall, notwithstanding notwithstanding anything contained in anything contained in section 14 of the section 14 of the Customs Act, 1962 (52 of Customs Act, 1962 (52 of 1962), be the 1962), be the aggregate of -- aggregate of -- (i) the value of the imported article

(i) the value of the imported article determined under sub-section (1) of section determined under sub section (1) of section 14 of the Customs Act, 1962 (52 of 1962) 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed or the tariff value of such article fixed under sub-section (2) of that section, as the under sub-section (2) of that section, as the case may be; and case may be; and (ii) any duty of customs chargeable



(ii) any duty of customs chargeable on that article under section 12 of the on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any sum chargeable on that article under any law for the time being in force as an law for the time being in force as an addition to, and in the same manner as, a addition to, and in the same manner as, a duty of customs, but does not include--

duty of customs, but does not include -- (a) the duty referred to in sub-

(a) the duty referred in in sub- sections (1), (3), (5), (7) and (9); sections (1), (3) and (5); (b) the safeguard duty referred to in

(b) the safeguard duty referred to in sections 8B and 8C; sections 85 and 8C; (c) the countervailing duty referred

(c) the countervailing duty referred to in section 9; and to in section 9, and (d) the anti-dumping duty referred

(d) the anti-dumping duty referred to in section 9A:

to in section 9A : Provided that in case of an article Provided that in case of an article imported into India,-- imported into India,-- (a) in relation to which it is <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022

(a) in relation to which it is required, under the provisions of the Legal required, under the provisions of the Legal Metrology Act, 2009 or the rules made Metrology Act, 2009 (1 of 2010) or the thereunder or under any other law for the rules made thereunder or under any other time being in force, to declare on the law for the time being in force, to declare package thereof the retail sale price of such on the package thereof the retail sale price article; and of such article; and (b) where the like article produced or

(b) where the like article produced manufactured in India, or in case where or manufactured in India, or in case where such like article is not so produced or such like article is not so produced or manufactured, then, the class or description manufactured, then, the class or description of articles to which the imported article of articles to which the imported article belongs, is--

belongs, is -- (i) the goods specified by

(i) the goods specified by notification in the Official Gazette under notification in the Official Gazette under subsection (1) of section 4A of the Central sub-section (1) of section 4A of the Central Excise Act, 1944, the value of the imported Excise Act, 1944 (1 of 1944), the value of article shall be deemed to be the retail sale the imported

article shall be deemed to be price declared on the imported article less the retail sale price declared on the such amount of abatement, if any, from imported article less such amount of such retail sale price as the Central abatement, if any, from such retail sale Government may, by notification in the price as the Central Government may, by Official Gazette, allow in respect of such notification in the Official Gazette, allow in like article under sub-section (2) of section respect of such like article under sub- 4A of that Act; or section (2) of section 4A of that Act; or (ii) the goods specified by

(ii) the goods specified by notification in the Official Gazette under notification in the Official Gazette under section 3 read with clause (1) of section 3 read with clause (1) of Explanation III of the Schedule to the Explanation III of the Schedule to the medicinal and Toilet Preparations (Excise Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1995), the value Duties) Act, 1955 (16 of 1955), the value of the imported article shall be deemed to of the imported article shall be deemed to be the retail sale price declared on the be the retail sale price declared on the imported article less such amount of imported article less such amount of abatement, if any, from such retail sale abatement, if any, from such retail sale price as the Central Government may, by price as the Central Government may, by notification in the Official Gazette, allow in notification in the Official Gazette, allow in respect of such like article under clause (2) <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 respect of such like article under clause (2) of the said Explanation.

of the said Explanation. Explanation--Where on any Explanation. --Where on any imported article more than one retail sale imported article more than one retail sale price is declared, the maximum of such price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price shall be deemed to be the retail sale price for the purposes of this retail sale price for the purposes of this section.

section. Provided further that in the case of Provided further that in the case of an article imported into India, where the an article imported into India, where the Central Government has fixed a tariff value Central Government has fixed a tariff for for the like article produced or the like article produced or manufactured manufactured in India under sub-section in India under sub-section (2) of section 3 (2) of section 3 of the Central Excise Act, of the Central Excise Act, 1944 (1 of 1944, the value of the imported article shall 1944), the value of the imported article be deemed to be such tariff value. shall be deemed to be such tariff value. Explanation--Where on any Explanation. --Where on any imported article more than one retail sale imported article more than one retail sale price is declared, the maximum of such price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price shall be deemed to be the retail sale price for the purposes of this retail sale price for the purposes of this section.

section. (3) If the Central Government is (3) If the Central Government is satisfied that it is necessary in the public satisfied that it is necessary in the public interest to levy on any imported article interest to levy on any imported article [whether on such article duty is leviable whether on

such article duty is leviable under sub-section (1) or not such additional under sub-section (1) or not such additional duty as would counter-balance the excise duty as would counter-balance the excise duty leviable on any raw materials, duty leviable on any raw materials, components and ingredients of the same components and ingredients of the same nature as, or similar to those, used in the nature as, or similar to those, used in the production or manufacture of such article, production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf. (4) In making any rules for the purposes of sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article. (5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not such additional duty as would counter-balance the sales duty as would counter-balance the sales tax, value added tax, local tax or any other tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent of the value of the imported article as specified in that notification. Explanation--In this sub-section, the expression "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or, as the case may be, such charges taxes, or, as the case may be,

such charges are leviable at different rates, the highest are leviable at different rates the highest such tax or, as the case may be, such such tax or, as the case may be, such charge.

charge. (6) For the purpose of calculating (6) For the purpose of calculating under sub-section (5), the additional duty under sub-section (5), the additional duty on any imported article, the value of the on any imported article, the value of the imported article shall, notwithstanding imported article shall, notwithstanding anything contained in sub-section (2), or anything contained in sub-section (2), or section 14 of the Customs Act, 1962 (52 of section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of-- 1962), be the aggregate of -- (i) the value of the imported article

(i) the value of the imported article determined under sub-section (1) of section determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed or the tariff value of such article fixed under sub-section (2) of that section, as the under sub-section (2) of that section, as the case may be; and case may be; and (ii) any duty of customs chargeable

(ii) any duty of customs chargeable on that article under section 12 of the on that article under section 12 of the Customs Act, 1962, (52 of 1962), and any Customs Act, 1962, (52 of 1962), and any sum chargeable on that article under any sum chargeable on that article under any law for the time being in force as an law for the time being in force as an addition to, and in the same manner as, a addition to, and in the same manner as, a duty of customs, but does not include-- duty of customs, but does not include -- (a) the duty referred to in sub-

(a) the duty referred to in sub-section sections (5), (7) and (9);

(5); (b) the safeguard duty referred to in

(b) the safeguard duty referred to in sections 8B and 8C; sections 8B and 8C; (c) the countervailing duty referred

(c) the countervailing duty referred to to in section 9; and in section 9; and (d) the anti-dumping duty referred

(d) the anti-dumping duty referred to in to in section 9A.

section 9A. (7) Any article which is imported (7) The duty chargeable under this into India shall, in addition, be liable to section shall be in addition to any other integrated tax at such rate, not exceeding <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 duty imposed under this Act or under any forty per cent as is leviable under section 5 other law for the time being in force. of the Integrated Goods and Services Tax (8) The provisions of the Customs Act, 2017 on a like article on its supply in Act, 1962 (52 of 1962) and the rules and India, on the value of the imported article regulations made thereunder, including as determined under sub-section (8) or sub- those relating to drawbacks, refunds and section (8A), as the case may be. exemption from duties shall, so far as may (8) For the purposes of calculating be, apply to the duty chargeable under

this the integrated tax under sub-section (7) on section as they apply in relation to the any imported article where such tax is duties leviable under that act. leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of--

(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

(8A) Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 (52 of 1962) are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under sub-

section (7) shall be,--

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022

(a) where the whole of the goods are sold, the value determined under sub-

section (8) or the transaction value of such goods, whichever is higher; or

(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8) or the transaction value of such goods, whichever is higher:

Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b):

Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b):

Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8).

Explanation-- For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.

(9) Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10) or sub-section (10A), as the case may be.

(10) For the purposes of calculating the goods and services tax compensation cess under sub-section (9) on any imported article where such cess is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of--

(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-

section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

(10A) Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 (52 of 1962) are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 calculating the goods and services tax compensation cess under sub-section (9) shall be,--

(a) where the whole of the goods are sold, the value determined under sub-

section (10) or the transaction value of such goods, whichever is higher; or

(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (10) or the transaction value of such goods, whichever is higher:

Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last of such transaction shall be the transaction value for the purposes of clause (a) or clause (b):

Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (10).

Explanation--For the purposes of this sub-section, the expression transaction value, in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.

(11) The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.

(12) The provisions of the Customs <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."

7.1. Before the amendment, the additional duties were levied under sub-sections 1, 3, 5 of the Section 3. Sections 3(2), (4), (6)-(8) prescribe the procedure for carrying out the levy of additional duties. By the amendment of the year 2017, Section 3(7) is amended to provide for an additional levy equivalent to I.G.S.T. Similarly, Section 3(9) is inserted providing for a levy equivalent to the GS.T Compensation Cess. According to the Central Government, these additional duties which are brought in by the amendment need not be given exemption by adjustment of duty credit under the TPS. Accordingly, the impugned notification, dated 29.06.2017 was issued, whereunder by Entry 56, it was made clear limiting the exemption on imports availed under Duty Credit Certificates to the levy of additional <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 duties under Sections 3(1), 3(3) and 3(5). Thereby, it was ensured that there was no change in the scope of exemption that has been originally granted by the notification, dated 10.07.2006. Thus, it cannot be said that the Entry 56 takes away any vested right.

7.2. Section 3 of the Customs Tariff Act, 1975 has already been extracted supra. A careful perusal of the newly inserted sub-sections namely, sub-sections 7, 8, 9 and 10 relating to the I.G.S.T and Compensation Cess, it would be clear that they are not referred to as 'additional duties'. As a matter of fact, the concession given under the TPS is only in respect of duty and additional duty and therefore, the challenge of the petitioner with respect to the impugned notification bound to fail. The Trade Notice No.80/2017, dated 27.06.2017 reads as follows :-

"Levy and Collection of IGST:

(i) The Taxable Value for the calculation of IGST value is outlined as per Section 3(8) of the Customs Tariff Act.

The IGST and GST Compensation Cess would be collected as Additional Duty of Customs under sections 3(7) and 3(9) of the Customs Tariff Act."

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 7.3. A reading of Sections 3(7) and 3(9) would show that the legislature consciously did not employ the term as 'additional duty'. It is only the trade notice which mentions the manner of collection as if they would be collected as additional duty. Thus, mentioning as such in the trade notice will not make the I.G.S.T or G.S.T Compensation Cess as additional duty. Accordingly, we answer this question that the impugned Entry 56 merely clarifies and makes the existing position abundantly clear and does not in any manner take away any vested right and as such, is not illegal or ultravires.

H. Question No.(iii) :

8. It is true that pursuant to the various amendments which were the subject matter of the earlier round, even though the TPS was introduced in the FTP of 2004-2009, ultimately, the retrospective amendments were held <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 to be invalid and the Central Government and the D.G.F.T were directed to confer the benefits on the Star Trading Agencies as per the scheme by the judgment dated 27.10.2015. Even thereafter, no due certificates from the departments were insisted upon and only after the order of the Hon'ble Supreme Court of India in the Contempt Petition, dated 26.11.2019, ultimately, the Target Plus Scrips were issued on 19/04/2021. However, that by itself does not cause prejudice to the petitioner because the 24 months period starts running from the date of issue of the scrips and therefore, no vested right of the petitioner is defeated.

8.1. It is another thing due to change of circumstances, the petitioner is unable to exhaust the entire duty credit which it is entitled to. As rightly pointed out by the learned Additional Solicitor General of India and held by the Hon'ble Supreme Court of India in Jain Exports Pvt. Ltd.'s case and Ambika Mills Ltd., Ahmedabad's case (cited supra), this Court cannot widen or enlarge the scheme by extending the period by another 15 years as <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 that would amount to laying down of the scheme by the Court itself. There cannot be equitable considerations in these kind of matters as the concession has to be availed as per the scheme in force. It is not for the beneficiaries to claim in what manner and to what extent the exemption or concession would be appropriate. Reference can be made to the judgment of the Hon'ble Supreme Court of India in Union of India vs. Aflon Engineering Corporation . In matters of levy, classification and exemption, a fair amount of discretion and free play is vested in the State and in matters relating to economic legislation, mere crudility or inequality in the complicated experimental economic legislation cannot result in striking down of the very action. Useful reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in Spences Hotel Pvt. Ltd.'s case and Swiss Ribbons Pvt. Ltd.'s case (cited supra). Thus, the Court cannot come to the aid of the petitioner by granting the relief of extending time by 15 years as the same is not based on any concomitant right. However, during the course of the arguments, it was brought to the notice of 22 (2001) 10 SCC 677 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 this Court that by citing the time lag and the varied circumstances, the petitioner has moved the Policy Relaxation Committee under Clause 2.5 of the Policy and pending the hearing, by an order, dated



12.01.2024, we held that pendency of the Writ Petitions would not be an impediment for the Committee to take a decision on its own merits dehors the pendency of the Writ Petitions. We once again reiterate that the consideration of the Policy Relaxation Committee can be on its own merits dehors the dismissal of the Writ Petitions.

I. The Result:

9. In the result,

(i) The Writ Petitions in W.P.Nos.3335 and 3337 of 2022 shall stand dismissed;

(ii) W.P.No.3339 of 2022 is disposed of rejecting the prayer of the petitioner to extend the validity period of Duty Credit Certificate No.03/98/072/00210/AM07/S, dated 24.02.2021 by a period of 15 years and <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 to use the Duty Credit Certificate to defray I.G.S.T and G.S.T Compensation Cess, however with the observations that it would be open for the respondents or the Policy Relaxation Committee under Clause 2.5 of the Policy to consider extension of time etc., on the petitioner's request on its own merits as per the law and policy.

(iii) There shall be no order as to costs. Consequently, W.M.P.No.3458 of 2022 is closed.

(S.V.G., C.J.) (D.B.C., J.) 20.02.2024 Index : yes Speaking order Neutral Citation : yes grs To

1. The Secretary, Ministry of Commerce, Udyog Bhawan, New Delhi - 110 001.

2. The Director General of Foreign Trade, Udyog Bhawan, H-wing, Gate No.02, Maulana Azad Road, New Delhi - 110 011.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022

3. The Joint Director General of Foreign Trade, Nishtha Bhavan, 48, Vithaldas Thackersey Marg, Churchgate, Mumbai - 400 020.

4. The Additional Director General of Foreign Trade, Zonal DGFT Office, New CGO Building, New Marine Lines, Churchgate, Mumbai - 400 020.

5. The Assistant Director General of Foreign Trade, Zonal DGFT Office, New CGO Building, New Marine Lines, Churchgate, Mumbai - 400 020.

6. The Secretary, Ministry of Finance, Department of Revenue, Room No.46, North Block, New Delhi - 110 001.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 THE HON'BLE CHIEF JUSTICE AND D.BHARATHA CHAKRAVARTHY, J.

grs W.P.No.3335, 3337 and 3339 of 2022 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3335, 3337 and 3339 of 2022 20.02.2024 <https://www.mhc.tn.gov.in/judis>