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

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**LPA 147/2024 & CM APPLs.10786-88/2024**

VI EXPORTS INDIA PRIVATE LIMITED

..... Appellant

Through: Mr. Ashish Batra, Advocate with  
Mr. Sarthak Sachdev, Advocate.

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Asheesh Jain, CGSC with  
Mr. Gaurav Kumar, Ms. Neha  
Narang, Advocates and Mr. Anirudh  
Shukla, GP.Reserved on: 20<sup>th</sup> March, 2024

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Date of Decision: 30<sup>th</sup> April, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:**

1. The present Letters Patent Appeal has been filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, challenging the impugned judgment dated 09<sup>th</sup> January, 2024, passed in W.P.(C) 11649/2023, whereby the learned Single Judge dismissed the said petition holding that the Appellant herein cannot be permitted to export 11,000 MT of banned non-basmati white rice, due to the non-fulfilment of the conditions entitling it to



an exemption from the ban on export of aforesaid commodity, imposed *vide* Notification bearing no. 20/2023 dated 20<sup>th</sup> July, 2023<sup>1</sup> ('the Notification') issued by the Department of Commerce, Government of India. The learned Single Judge, *inter alia*, rejected the Appellant's argument that the Appellant has substantially complied with the exemption conditions set out in the Notification and thus, on the basis of doctrine of substantial compliance, it should be permitted to export 11,000 MT of non-basmati white rice.

***Brief Facts***

2. The Appellant herein is an exporter of rice and other agricultural products. It is stated that the Appellant herein received an order from its overseas buyer, M/s Indi Sino Trade Pte Ltd. for purchase of 40,000 MT of rice ('the said order'), which was to be exported from Kandla Port in Gujarat. It is stated that in pursuance to the said order, the Appellant herein purchased 28,000 MT of rice and made an application before the port authority at Kandla seeking permission to store 28,000 MT of rice. It is stated that, however, due to lack of space at the port, the authority granted permission for storage only to the extent of 11,000 MT of rice. It is stated that the remaining quantity i.e., 17,000 MT of rice, was stored at various private warehouses at Kandla itself.

3. It is stated that, thereafter on 18<sup>th</sup> July, 2023, the Appellant was allotted Port VCN<sup>2</sup> [number] and Customs Rotation Number for the subject vessel MV SIBI, which was to carry the 28,000 MT of rice. It is stated that

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<sup>1</sup> As amended on 29<sup>th</sup> August, 2023 vide Notification no. 29/2023

<sup>2</sup> Vessel Call Number



in between 10<sup>th</sup> July, 2023 and 20<sup>th</sup> July, 2023 till around 12:07 hrs., the Appellant filed its 28 shipping bills on the Customs portal i.e., ICEGATE.

4. It is stated that in the interregnum, the Department of Commerce, Government of India, issued its Notification dated 20<sup>th</sup> July, 2023 and thereby prohibited the export of non-basmati white rice with immediate effect, i.e. 21:57:01 hours on 20<sup>th</sup> July, 2023. It is stated that, however, with a view to permit the exports which were in progress, conditional exemptions were granted and this formed four distinct categories.

5. The said Notification was further amended *vide* Notification dated 29<sup>th</sup> August, 2023, wherein the time by when the details had to be entered into the Customs system was mentioned. Further, an additional category for exemption was also introduced wherein if the custom duty is paid before 21:57:01 hrs on 20<sup>th</sup> July, 2023, then the consignment could be permitted for export. It is stated that since the Appellant had paid export duty for 17 shipping bills out of 28 within the stipulated time i.e., before 21:57:01 hrs on 20<sup>th</sup> July, 2023, the Appellant was permitted to export 17,000 MT of rice, covered under the said 17 bills. However, the export of the remaining 11,000 MT was not allowed as the custom duty had not been paid, though the bills had been duly submitted on the ICEGATE portal of the Customs.

6. The Appellant herein being aggrieved by the non-grant of permission to export the remaining 11,000 MT of rice, filed a writ petition pleading that he had taken all steps within its control before the cut-off date and, therefore, invoking the doctrine of substantial compliance with the exemption conditions has sought permission to export the said consignment; this prayer has been declined and the writ petition has been dismissed by the



learned Single Judge *vide* impugned judgment.

***Arguments of the counsels for the parties***

7. Learned counsel for the Appellant stated that despite doing everything within its power and control to comply with the exemption conditions set out in the Notification dated 20<sup>th</sup> July, 2023, as amended by Notification dated 29<sup>th</sup> August 2023, the Appellant was not allowed to export 11,000 MT of rice.

7.1. He stated that with respect to condition no. (ii) set out in the Notification, all the shipping bills were filed prior to issuance of the Notification, the rotation number for the vessel was allotted on 18<sup>th</sup> July, 2023, however, the vessel had not berthed or arrived and anchored before the issuance of the Notification. It is stated after the issuance of the said rotation number on 18<sup>th</sup> July, 2023, the vessel could have anchored at the port only when the permission was granted by the port authority, which is beyond the Appellant's control.

7.2. He stated that with respect to condition no. (iii) of the Notification, the consignment had to be handed over to the Customs before the 21:57:01 hrs on 20<sup>th</sup> July, 2023. He stated that as is evident from the letter dated 2<sup>nd</sup> August, 2023<sup>3</sup>, the Appellant had applied to Customs for entrance and storage of the entire quantity of 28,000 MT on 15<sup>th</sup> July, 2023. He stated that however, due to lack of space at the port, permission was given to store only 10,525 MT of rice and the Appellant was constrained to store the remaining quantity at private warehouses near the port. He stated that the inability of the port authority to store the consignment should not prejudice the

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<sup>3</sup> Issued by the Deendayal Port Authority



Appellant. He stated that, therefore, since the Appellant had done everything in its power, as per the doctrine of substantial compliance, the Appellant ought to be permitted to export the 11,000 MT of rice and should not be penalized for the situation beyond its control.

7.3. He stated that various High Courts across the country in respect of the same Notification have permitted exports, though there was no strict compliance as is evident from the following judgments and orders:

- (i) Judgment dated 27<sup>th</sup> September, 2023, passed by Gujarat High Court in Special Civil Application No. 16017/2023;
- (ii) Order dated 12<sup>th</sup> October, 2022, passed by the Andhra Pradesh High Court in W.P. No. 32049/2022, 33016/2022 and 33156/2022;
- (iii) Order dated 30<sup>th</sup> September, 2022 passed by the Andhra Pradesh High Court in W.P. 32049/2022;
- (iv) Order dated 8<sup>th</sup> February, 2023 passed by the Andhra Pradesh High Court in W.P. 2844/2023;
- (v) Interim order dated 19<sup>th</sup> October, 2023, passed by the Andhra Pradesh High Court in W.P. 25933/2023;
- (vi) Final order dated 29<sup>th</sup> November, 2023 passed by the Andhra Pradesh High Court in W.P. 25933/2023;
- (vii) Order dated 6<sup>th</sup> December, 2023 passed by High Court of Chhattisgarh, Bilaspur, in W.P.(C) 5045/2023.

8. In reply, learned standing counsel for the Respondent stated that in 2022, due to a sudden spike in the global prices of rice, there was an increase in the export of rice out of India, resulting in a concern for the food security of India. It is stated that in these circumstances, the Notification (s)



were issued to manage domestic availability of rice and to avoid and avert any possible food crisis.

8.1. He stated that however, certain exemptions were granted in the Notification(s) for export of non-basmati white rice. He stated that as clarified by the Directorate General of Foreign Trade (DGFT) *vide* trade notice dated 18<sup>th</sup> August, 2023, the said exemption conditions are independent of each other and the export is to be allowed in case of fulfilment of any of the one such conditions [in entirety]. He stated that admittedly, the Appellant herein has failed to fulfil any one of the said conditions [in its entirety] and thus, was not permitted to carry out the export of 11,000 MT. He stated that the Appellant cannot rely upon the doctrine of substantial compliance, since the intention behind issuing the Notification was to put an immediate ban on the export of non-basmati rice, given the sudden increase in the export of rice and concern for food security in India. He stated that intent behind imposing the ban with immediate effect was the only effective means of achieving price control.

8.2. He stated that the Appellant has not challenged the vires of the Notification(s). He stated that in the facts of the case there has been no infringement of the fundamental rights of the Appellant and, therefore, the writ petition is not maintainable.

8.3. He stated that with respect to the judgments relied upon by the Appellant, the Respondent has not accepted the said judgements and had already filed Special Leave Petition(s) before the Supreme Court.



*Findings and analysis*

9. We have heard the learned counsels for the parties and perused the record.

10. It is stated<sup>4</sup> by the Respondent that in year 2022, due to a sudden spike in global prices of rice, there was a sudden increase in the export of rice out of India, which, in turn had put the food security in India, at risk. It is stated that to manage the domestic availability of rice and avert any food crisis, the Central Government after due consultation with the concerned Departments and Ministries, issued Notification No. 20/2023 dated 20<sup>th</sup> July, 2023, whereby export of 'Non-Basmati white rice' was changed from 'free' to 'prohibited' with immediate effect i.e., from 21:57:01 hours on 20<sup>th</sup> July, 2023. And, the provisions under Paragraph 1.05 of the Foreign Trade Policy, 2023 ('FTP') regarding the transitional arrangement was made inapplicable.

11. It is stated that, however, in order to protect the interest of the exporters who may have acted as per the previous policy, the Notification dated 20<sup>th</sup> July, 2023, allowed the export of non-basmati rice, provided such consignments of non-basmati rice complied with any one of the four [exemption] conditions set out in the said Notification.

12. It is stated that after the imposition of ban, various requests were received from traders, seeking clarification on the transitional arrangement as bulk shipments were stuck at the Kandla port. Accordingly, the matter was placed before the Inter-Ministerial Committee ('IMC') for review and on the recommendation of the IMC, the Central Government relaxed the export conditions prescribed in the Notification dated 20<sup>th</sup> July, 2023, by a

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<sup>4</sup> Para 1.1 of the written submissions dated 27<sup>th</sup> February 2024



subsequent Notification dated 29<sup>th</sup> August, 2023, thereby amending paragraph no. 2(iii) of the original Notification dated 20<sup>th</sup> July, 2023 and providing another independent exception for category of exporters who could still export non-basmati rice despite the product being in the prohibited category.

13. Accordingly, for convenience of reference the text of Notification No. 20/2023 dated 20<sup>th</sup> July, 2023 as amended by Notification dated 29<sup>th</sup> August, 2023 has been juxtaposed by this Court and the resultant Notification would read as follows:

**Notification No. 20/2023, dated 26<sup>th</sup> July, 2023 (as modified by Notification dated 28<sup>th</sup> August, 2023)**

Subject: - Amendment in Export Policy of Non-basmati rice under HS Code 1006 30 90

S.O. (E) The Central Government, in exercise of powers conferred by Section 3 read with section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2023, hereby amends the Export Policy of Non-basmati rice against ITC (HS) code 1006 30 90 of Chapter 10 of Schedule 2 of the ITC (HS) Export Policy, as under:

ITC HS Codes	Description	Export Policy	Revised Export Policy
1006 30 90	Non-basmati white rice (Semi-milled or wholly milled rice, whether or not polished or glazed: Other)	Free	Prohibited

2. The Notification will come into immediate effect. The provisions as under Para 1.05 of the Foreign Trade Policy, 2023 regarding transitional arrangement shall not be applicable under this Notification for export of Non-basmati rice. Consignments of Non-basmati rice will be allowed to be exported under following conditions:

- i. where loading of Non-basmati rice on the ship has commenced before this Notification;
- ii. where the shipping bill is filed and vessels have already berthed or arrived and anchored in Indian ports and their rotation number has been allocated





before this Notification; The approval of loading in such vessels will be issued only after confirmation by the concerned Port Authorities regarding anchoring/berthing of the ship for loading of Non-basmati rice prior to the Notification;

iii. where Non-basmati rice consignment has been handed over to the Customs before 21:57:01 on 20.07.2023 and is registered in Customs system or where Non-basmati rice consignment has entered the Customs Station for exportation before 21:57:01 hours on 20.07.2023 and is registered in the electronic systems of the concerned Custodian of the Customs Station with verifiable evidence of date and time stamping of these commodities having entered the Customs Station prior to 21:57:01 hours on 20.07.2023. The period of export shall be upto 31.10.2023.<sup>5</sup>

iv. Export will be allowed on the basis of permission granted by the Government of India to other countries to meet their food security needs and based on the request of their Government.

v. Export duty is paid before 21:57:01 hours on 20.07.2023.<sup>6</sup>

3. Export of Organic Non-basmati rice will be governed in accordance with Notification No.03/20 15-2020 dated 19th April, 2017 read with Notification No.45/2015-2020 dated 29<sup>th</sup> November, 2022.

**4. Effect of this Notification:**

Export Policy of Non-basmati white rice (Semi-milled or wholly milled rice, whether or not polished or glazed: Other) under HS code 1006 30 90 is amended from 'Free' to 'Prohibited'.

14. It is stated that on receiving various representations from the stakeholders as to whether the exemption conditions are independent of each other or not, the DGFT by way of the Trade Notice No. 23/2023 dated 18<sup>th</sup> August, 2023, has clarified that the conditions for exemption, as contained in Paragraph 2 of the Notification dated 20<sup>th</sup> July, 2023 are independent of each other and export is allowed in case of compliance of any one of the said conditions. It is pertinent to mention here that the Appellant has not challenged the clarification issued by the DGFT.

15. It is stated that the combined effect of the two Notifications dated 20<sup>th</sup> July, 2023 and 29<sup>th</sup> August, 2023 (as clarified by the Trade Notice 23/2023

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<sup>5</sup> Condition (iii) amended vide Notification no. 29/2023 dated 29<sup>th</sup> August, 2023.

<sup>6</sup> Condition (v) added vide Notification no. 29/2023 dated 29<sup>th</sup> August, 2023



dated 18<sup>th</sup> August, 2023) is that after the prohibition of export of non-basmati rice with effect from 21:57:01 hours on 20<sup>th</sup> July, 2023, there are only five independent categories of exporters who are exempted from this prohibition and are permitted to export non-basmati rice subject to the strict fulfilment of the specific condition mentioned therein.

16. It is admitted that the Appellant has neither challenged the validity of the Notifications dated 20<sup>th</sup> July, 2023 and 29<sup>th</sup> August, 2023, nor the constitutional vires of the said Notifications on the ground of it being violative of any fundamental rights of the Appellant. It is also admitted that the Appellant does not satisfy any independent condition of exemption in its entirety.

17. Therefore, in the present appeal the issue involved is whether the Appellant ought to be allowed to export 11,000 MT quantity of rice which is lying at private warehouses near the customs port at Kandla, Gujarat, on the test of substantial compliance of the conditions of exemption.

18. It is the case of the Appellant, that despite best of its efforts and due to no fault of it, the quantity of 11,000 MT could not be handed over to the Custodian at Deendayal Port Authority prior to 20<sup>th</sup> July, 2023, due to lack of storage space at the Port, as evidenced by letter dated 2<sup>nd</sup> August, 2023, issued by the Custodian. In addition, the Appellant contends that the vessel call number was allocated to it prior to the Notification and the non-berthing of the vessel before 20<sup>th</sup> July, 2023, was beyond its control. It is, thus, the case of the Appellant that in its facts though it could have otherwise fallen within the exception of Paragraphs 2(ii) and (iii) of the Notifications, entitling it to export 11,000 MT, it was unable to strictly complete the



conditions despite all actions taken at its end, due to the circumstances beyond its control. The Appellant has tabulated the action taken with cross reference of Paragraph Nos. 2(ii) and (iii) as under:

CONDITION (ii)	APPELLANT'S ACTION
<ul style="list-style-type: none"><li>Filing of Shipping Bill;</li><li>Berthing/Arrival and Anchoring of vessel;</li><li>Allotment of Rotation Number</li></ul>	<ul style="list-style-type: none"><li>All Shipping Bills filed prior to issuance of Notification;</li><li><u>After issuance of Rotation Number, the vessel through in Indian waters, could have anchored only when permission/ space is available at the Port, which is beyond the control of the appellant;</u></li><li>Rotation Number allotted on 18.07.2023</li></ul>

CONDITION (iii)	APPELLANT'S ACTION
<ul style="list-style-type: none"><li>Handing of consignment to customs before 21:57:01 hours on 20.07.2023 and registered in their System</li></ul> <p style="text-align: center;">OR</p> <ul style="list-style-type: none"><li>Entrance of consignment at the Customs Station for exportation before 21:57:01 hours on 20.07.2023 and is registered in the electronic systems of the concerned Custodian of the Customs Station</li></ul>	<ul style="list-style-type: none"><li>A perusal of the <b>Letter dated 02.08.2023</b> by the custodian – Deendayal Port Authority would show that while the appellant had applied for entrance and storage of the entire quantity of 28,000 MT on 15.07.2023, <u>however, due to lack of storage space at the Port, permission was given to store only 10,525 MT of rice.</u> The appellant was constrained to store the balance at adjoining private storage facilities</li></ul>

(Emphasis Supplied)

19. It is, therefore, the contention of the Appellant that in the admitted facts, on a purposeful interpretation of Paragraph Nos. 2(ii) and (iii), this Court must hold that said conditions stand fulfilled entitling the Appellant to export 11,000 MT.

20. The Respondent has contended that the Appellant is essentially seeking relaxation of the Export Policy, which cannot be granted by this Court as the relaxation has impact on the food security concerns of the Government. It is stated that the Appellant concedes that it does not strictly



comply with the conditions of exemption. It is stated by the Respondent that no writ of mandamus can be issued whereby the Government or its authorities can be directed to refrain from enforcing a provision of law or to act in contravention of the rules or to violate any law. It is stated that Respondent is obliged to enforce the said Notification(s) uniformly on all the exporters so as to ensure that there is no allegation of arbitrariness or bias.

21. It is stated that allowing the request of the Appellant herein under Paragraph 2 (iii) on the basis of the documents issued by private warehouses (as a proof of storage), would be difficult to verify and would give rise to mischief by applicant exporters. The relevant plea is set out by the Respondent in its pleadings at paragraph 27 of the counter affidavit filed in the writ petition.

22. It is stated that each of the exemption conditions is independent of each other and has to be complied with in its entirety by the applicant; and the Appellant's submissions showing compliance of part conditions in different categories do not entitle it to the exemption.

23. Before we proceed further, it is noted that the Appellant initially in the writ petition and in the present appeal pleaded that despite best efforts it was unable to comply with condition no. (v) of Paragraph 2 with respect to payment of export duty on ten shipping bills for 10,000 MT, despite filing the same on to the Portal (ICEGATE) of the Respondent. The Appellant's averment itself is vague. However, the Respondent in the counter affidavit at Paragraph 21 and 22 as well as in this appeal vehemently opposed the said allegation and asserted that the Appellant was making an incorrect



statement. The Appellant asserted that its Portal ICEGATE was fully functional and there was no hindrance to any exporter (including the Appellant) in making payments of export duty within the stipulated period. The Appellant herein has since abandoned the said plea and not relied upon the same in its written submissions dated 27<sup>th</sup> February, 2024.

24. The Appellant has fairly admitted that it is unable to fulfil all the stipulations contemplated in condition no. (ii) of Paragraph No.2 so as to entitle it to export the 11,000 MT. The stipulation which the Appellant failed to comply with is with respect to berthing/arriving and anchoring of the vessel at Kandla Port. The Appellant admits that the vessel had not been able to berth and anchor at the Port. The Appellant has not challenged the distinction carved out by the Respondent between (i) the vessels, which have anchored and berthed/arrived at the port; and (ii) vessels, which may have arrived in Indian waters, but are awaiting berthing and anchoring. The substratum of condition no. (ii) is the berthing/arriving and anchoring of the vessel prior to issuance of Notification as is evident from the plain language of the said condition which reads as follows:

*“2. The Notification will come into immediate effect. The provisions as under Para 1.05 of the Foreign Trade Policy, 2023 regarding transitional arrangement shall not be applicable under this Notification for export of Non-basmati rice. Consignments of Non-basmati rice will be allowed to be exported under following conditions:*

...

*ii. where the shipping bill is filed **and vessels have already berthed or arrived and anchored in Indian ports** and their rotation number has been allocated before this Notification; **The approval of loading in such vessels will be issued only after confirmation by the concerned Port Authorities regarding anchoring/berthing of the ship for loading of Non-basmati rice prior to the Notification.**”*

(Emphasis Supplied)



25. We are of the considered opinion that for an exporter seeking to invoke the said condition no. (ii); compliance of the stipulation of the vessel having anchored and berthed/arrived was an essential condition, which cannot be relaxed on the test of substantial compliance. It is the intent of this condition that the exception is being carved out for the vessels that have, both, anchored and berthed/arrived before the stipulated time.

26. Similarly, with respect to compliance of condition no. (iii) the Appellant has fairly admitted that it was unable to handover the consignment of 11,000 MT to the Customs before the appointed time nor the consignment had entered the Customs station for exportation before the appointed time. The Appellant has relied upon the letter dated 2<sup>nd</sup> August, 2023, issued by the Custodian of the Deendayal Port Authority to contend that while the Appellant had applied for storage of the entire quantity of 28,000 MT, however, due to lack of storage at the Port, permission was given to store only 10,525 MT of rice. The Appellant states that it was, therefore, constrained to store the balance consignment which includes 11,000 MT at adjoining storage facilities. It is the contention of the Appellant that in view of the letter dated 2<sup>nd</sup> August, 2023, the compliance of the stipulation in this condition ought to be tested on the doctrine of substantial compliance.

26.1. The Respondent has stated that the stipulation in condition no. (iii) that the consignment should have either been 'handed over' to the Customs or 'entered' the Customs station, before the appointed date has to be given a strict interpretation. It is stated that the compliance of this condition cannot be tested on the basis of unverifiable documents such as quantity certificates issued by private warehouses as a proof of storage of 11,000 MT. The



Respondent at paragraph 27 of its counter affidavit has pleaded the mischief which would arise in the event documents issued by private warehouses are relied upon for granting permission to the exporter as prayed for. The para 27 reads as under:

*“27. It is stated that allowing export of non-basmati rice after imposition of prohibition on its export, based on documents that are difficult to verify factually or intent wise may give a free hand to the exporters to export non-basmati rice that are stored in the godowns/storage facilities for the purpose of domestic sale / consumption. It is further stated that verification of such documents from Warehouses, especially private warehouses, would be very difficult to ascertain whether the rice was procured before or after imposition of the ban/prohibition on exports. Allowing export of non basmati rice on the basis of documents like contractual obligations or quantity certificate etc., would defeat the very purpose of the imposition of prohibition on export of non- basmati rice.”*

(Emphasis supplied)

26.2. In view of the explanation given by the Respondent with respect to the mischief in accepting quantity certificates issued by private warehouses as well as its inability to verify the correctness of the same, the stipulation in condition no. (iii) that the stock should have ‘entered’ the Customs station or ‘handed over’ to the Customs authority is reasonable as it precludes any mischief and is an essential stipulation to be complied with.

27. The Respondent stated that the Appellant is seeking to plead equity by showing compliance of partial stipulations of separate condition nos. (ii) and (iii) of the Notification(s), for seeking the relief of export, which is impermissible. The Respondent states that each exemption condition of Paragraph 2 of the Notifications is an independent exception and the exporter seeking to invoke the exception must satisfy the whole condition as clarified by DGFT on 18<sup>th</sup> August, 2023.

27.1. We find merit in the submission of the Respondent that each



condition at Paragraph 2 in the Notifications is an independent exception and the exporter seeking to invoke the said exception has to fulfil each of the stipulations set out in the said condition. This is for the reason that each condition in the Notifications is intended to independently carve out an exception for facilitating export of shipments, which were in transition and the test to determine if the shipment is in transition was identified separately as condition nos. (i) to (iv) in the Notifications.

27.2. Each of the conditions set down an objective criterion so as to enable the Respondent to determine eligibility of the exporter to claim exemption and complete its export. The stipulations set down in each of the conditions are unambiguous. The facts and documents forming basis of the conditions are all based on verifiable evidence.

27.3. On the other hand, the evaluation of contentions raised by the Appellant, if accepted, would require a subjective evaluation of the compliance of the conditions, by the Respondent, which in the opinion of this Court would indeed give rise to arbitrariness and bias by the deciding authority.

28. In the facts of this case, under the Notification, the Respondent has carved out five independent exemptions so as to entitle the exporters with transitional arrangements to comply with their export obligations. The Respondent admittedly was granted the benefit of the exemption for 17,000 MT as it complied with condition no. (v) in its entirety with respect to payment of export duty.

29. Each of the five independent exemptions have essential requirements which the applicant exporter must comply with for completing the export.





The Appellant fails to comply with the essential conditions in each of the exceptions. Therefore, the doctrine of substantial compliance relied upon by the Appellant is of no assistance as the Courts have held that latitude can be shown to the applicant only with respect to requirements which are directory in nature, the non-compliance of which would not affect the essence of the Notification granting exemption. The reliance placed by learned Single Judge on the landmark judgment of the Supreme Court in *CCE v. Hari Chand Shri Gopal*<sup>7</sup>, is apposite and we deem it appropriate to reproduce the same:

***“Exemption clause — Strict construction***

*29. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the Notification granting exemption.*

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***Doctrine of substantial compliance and “intended use”***

*32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the “essence” or the “substance” of the requirements. Like the concept of “reasonableness”, the acceptance or otherwise of a plea of “substantial compliance” depends upon the facts and circumstances of each case and the purpose and object to*

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<sup>7</sup> (2011) 1 SCC 236



*be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means “actual compliance in respect to the substance essential to every reasonable objective of the statute” and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.*

*33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.*

*34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the “substance” or “essence” of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the “essence” of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential.”*

30. The test of strict construction of an exemption clause laid down in *Hari Chand* (supra) and other judgments was elaborately considered and



approved by the Constitution Bench in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and Ors.*<sup>8</sup>, which conclusively held as under:

*“59. The above decision, which is also a decision of a two-Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. **The question whether a subject falls in the Notification or in the exemption clause, has to be strictly construed.** When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the Notification by giving full play bestowing wider and liberal construction. The ratio of Parle Exports case [CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345 : 1989 SCC (Tax) 84] deduced as follows : (Wood Papers Ltd. case [Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422] , SCC p. 262, para 6)*

*“6. ... Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally.”*

*60. We do not find any strong and compelling reasons to differ, taking a contra view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in Hari Chand case [CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236].*

xxx xxx xxx

*64. In Hari Chand case [CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236] , as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption Notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision.*

xxx xxx xxx

*66. To sum up, we answer the reference holding as under:*

***66.1. Exemption Notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his***

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<sup>8</sup> (2018) 9 SCC 1



**case comes within the parameters of the exemption clause or exemption Notification.**”

(Emphasis Supplied)

31. In the facts of this case, since the vires of the Notification(s) and reasonableness of exemption condition nos. (i) to (v) is not under challenge; and the Appellant admittedly fails to satisfy the essential conditions contained in each of the independent exemptions, we are unable to accept the contention of the Appellant that it can be permitted by Respondent to export 11,000 MT by taking an overall view of substantial compliance, which in the opinion of this Court is in essence a subjective evaluation, which is not the remit of the Notifications.

32. Keeping in view the objective of the Central Government in imposing this ban with immediate effect was to avert a food crisis in the country, a strict compliance of the exemption conditions would further the said intent of the Notification(s).

33. The reliance placed by the Appellant on the orders dated 19<sup>th</sup> October, 2023 and 29<sup>th</sup> November, 2023 passed by the Andhra Pradesh High Court in W.P. No. 25933/2023 is misplaced as to its knowledge the same have been set aside by the Division Bench of the said High Court in Writ Appeal No. 147/2024. In addition, the said orders have been challenged by the Respondent in S.L.P.(C) filed *vide* diary No. 4915/2024 and the exporter therein has been restrained by the Supreme Court *vide* order dated 20<sup>th</sup> February, 2024, from undertaking any export.

34. The Appellant had also placed reliance upon the interim order dated 06<sup>th</sup> December, 2023 passed by the High Court of Chhattisgarh in I.A. No. 01/2023 filed in W.P.(C) 5045/2023 permitting the exporter therein to



export non-basmati rice. In this regard, we may note that the learned Single Judge of the High Court has referred and relied upon the order dated 19<sup>th</sup> October, 2023 passed by High Court of Andhra Pradesh while passing the interim order. The Respondent has stated that it is in the process of filing a SLP against the order passed by High Court of Chhattisgarh. The High Court of Chhattisgarh has considered the fact that the exporter therein has a pre-existing contract with the foreign importer along with letter of credit for granting ad-interim permission for export. We are of the considered opinion that in view of the express suspension of Paragraph 1.05(b)<sup>9</sup> of the FTP, 2023, the said fact stands expressly excluded from the scope of the Notification(s) and therefore, could not have formed the basis for granting relief.

35. The Appellant has also relied upon the judgment of High Court of Gujarat in writ petition numbered as Special Civil Application No. 16017/2023 which was decided *vide* judgment dated 27<sup>th</sup> September, 2023. The High Court in the said judgment has returned a finding at Paragraph 22 therein that condition no. (ii) of Paragraph 2 of the Notification No. 20/2023

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<sup>9</sup> **1.05 Transitional Arrangements**

(b) Item wise Import/Export Policy is delineated in the ITC (HS) Schedule I and Schedule II respectively. The importability/ exportability of a particular item is governed by the policy as on the date of import/ export. The date of import/ export is defined in para 2.17 of HBP 2023. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively. In case of change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made before the date of such regulation/restriction will not be affected. However, the import through High Sea sales will not be covered under this facility. Further, the import/export on or after the date of such regulation/restriction will be allowed for importer/exporter who has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be limited to the balance quantity, value and period available in the ICLC. For operational listing of such ICLC, the applicant shall have to register the ICLC with jurisdictional RA against computerized receipt within 15 days of imposition of any such restriction/ regulation. Whenever, Government brings out a policy change of a particular item, the change will be applicable prospectively (from the date of Notification) unless otherwise provided for.



stands fulfilled, in favour of the Indian Exporter in the facts of that case. However, we have been unable to satisfy ourselves in the present appeal that the Appellant herein has satisfied the exemption conditions of the Notification(s).

36. In view of the above, we find that there is no merit in the appeal. Accordingly, the same is dismissed. Pending applications are disposed of.

**MANMEET PRITAM SINGH ARORA, J**

**ACTING CHIEF JUSTICE**

**APRIL 30, 2024/msh/aa/sk**