IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT
THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION Nos: 33148, 32183, 33149, 33153, 33163, 33164, 33171, 33172, 33179 of 2023 & 168 of 2024

WRIT PETITION NO: 33148 OF 2023

Between:

Sree Murali Mohana Boiled And Raw Rice Mill Private Limited, a Company incorporated under the provisions of the Companies Act, having its registered office at D.No.1-90, V Savaram Road, Komaripalem, Biccavolu Mandal, East Godavari District - 533 346, rep. by its Authorised Signatory Mr. A.Srinivas.

...Petitioner

AND

1. Union of India, Rep. by its Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Commissioner, Customs (Preventive) Commissionerate 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada - 50 007.
4. The Additional Commissioner of Customs, Customs House, Kakinada.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of

the 1st Respondent in issuing Notification No.20/2023 dated 20.07.2023 banning / prohibiting export of Non-Basmati white rice (semi-milled or wholly milled rice, whether or not polished or glazed Other) under HS Code 1006 30 90 with immediate effect, and the clarification issued in Trade Notice No.23/2023, dated 18.08.2023 of the 1st Respondent and the further action of the Respondents in not permitting export of consignments of the aforesaid non-basmati white rice that were contractually committed / promised and Letters of Credit issued in favour of the Petitioner in respect of the said contracts, before the date of imposition of the aforesaid ban / prohibition under the Notification dated 20.07.2023, as arbitrary, illegal, unjust, discriminatory, violative of the principles of natural justice, violative of the fundamental rights guaranteed under the Constitution of India, and contrary to law, and to consequently set aside the aforesaid Notification dated 20.07.2023 by directing the Respondents to permit the Petitioner to export 2,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under Purchase Contract No.P002704, dated 15.06.2023, entered into with Louis Dreyfus Company Asia Pvt. Ltd., Singapore.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to issue receive the documents marked as P15 to P20 viz., 1) Notification No.30/2023, dated 30.08.2023 (P15), issued by 1st respondent; 2) Notification No.32/2023, dated 25.09.2023 (P16) issued by 1st respondent; 3) Notification No.37/2023, dated 18.10.2023 (P17) issued by 1st respondent; 4) Notification No.48/2023, dated 07.12.2023 (PI8) issued by 1st respondent; 5) E-procurement contract Note No.2023-24/31, dated 24.01.2024 (P19); and 6) E-procurement contract Note No.2023-24/32, dated 24.01.2024 (P20), as additional material papers in W.P.No.33148 of 2023, further be pleased to consider the same at the time of hearing the said Writ Petitions.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to permit the Petitioner to export 2,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under Purchase Contract No.P002704, dated 15.06.2023, entered into with Louis Dreyfus Company Asia Pvt. Ltd., Singapore, pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI S.SRINIVASA REDDY, SENIOR COUNSEL ASSISTED BY SRI A.MUNEENDHAR REDDY

Counsel for the Respondents 1 & 2: SRI B.NARASIMHA SARMA, ADDITIONAL SOLICITOR GENERAL OF INDIA ALONG WITH SRI Y.V.ANIL KUMAR, (CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondents 3 & 4: SRI Y.N.VIVEKANANDA, SENIOR SC for CUSTOMS & GST

WRIT PETITION NO: 32183 OF 2023

Between:

M/s BEBO INTERNATIONAL, O/oD.No. 1-275,Chollangi,Tallarevu Mandal, Yanam Road,Kakinada, Andhra Pradesh. Rep by its Authorized Signatory Mr.U.Sivaram Prasad

...Petitioner

AND

1. The Government of India, Rep. by its Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Commissioner, Customs (Preventive) Commissionerate 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada - 521007.

4. The Additional Commissioner of Customs, Customs House, Kakinada.
5. The Chief Commissioner of Customs and Central Tax, Visakhapatnam Zone, GST Bhawan, Port Area,Visakhapatnam-530035.
6. The Commissioner of Customs, Custom House, Near Balaji Temple Kandla, Gujarat.
7. The Addl. Commissioner of Customs, Krishnapatnam Port, Krishnapatnam, S.P.S.R. Nellore District.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring action of the respondents in not permitting to export the Non-Basmathi white Rice which was procured by the petitioner from its vendors under various purchase orders to export the same under contractually committed/promised and Letters of Credit issued in favour of the Petitioner in respect of the said contracts, before the date of imposition of the aforesaid ban/prohibition under the Notification dated 20.07.2023 and the clarification issued in Trade Notice No.23/2023, dated 18.08.2023, as arbitrary, illegal, unjust, violative of the principles of natural justice, violative of the fundamental and constitutional rights guaranteed under the Constitution of India, and contrary to law, and consequently directing the Respondents to permit the Petitioner to export 35,600 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under Various Contracts and backed by Irrevocable Letter of Credits.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to permit the Petitioner to export 35,600 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as

obligated under Various Contracts and backed by Irrevocable Letter of Credits in the interest of justice.

Counsel for the Petitioner: SRI S.SRINIVASA REDDY, SENIOR COUNSEL ASSISTED BY SRI G L NAGESWAR RAO

Counsel for the Respondents 1 & 2: SRI B.NARASIMHA SARMA, ADDITIONAL SOLICITOR GENERAL OF INDIA ALONG WITH SRI Y.V.ANIL KUMAR, (CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondents 3 to 7: SRI Y.N.VIVEKANANDA, SENIOR SC for CUSTOMS & GST

WRIT PETITION NO: 33149 OF 2023

Between:

Sarala Foods Private Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at D.No. 1-361, Yanam Road, Uppalanka, Kakinada, East Godavari-533016, rep. by its Authorised Signatory Mr. Pitta Ashok.

...Petitioner

AND

1. Union of India, Rep. by its Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Commissioner, Customs (Preventive) Commissionerate, 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada - 50 007.
4. The Additional Commissioner of Customs, Customs House, Kakinada.
5. The Deputy Commissioner of Customs, Jawaharlal Nehru Customs House, Nhava Sheva, Mumbai.
6. The Principal Commissioner of Customs, Customs House, MPSEZ, Mundra, Gujarat.
7. The Deputy Commissioner of Customs, Customs House, Kandla, Gujarat.

8. The Additional Commissioner of Customs, Customs House, Visakhapatnam.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in issuing Notification No.20/2023 dated 20.07.2023 banning / prohibiting export of Non-basmati white rice (semi-milled or wholly milled rice, whether or not polished or glazed Other) under HS Code 1006 30 90 with immediate effect, and the clarification issued in Trade Notice No.23/2023, dated 18.08.2023 of the 1st Respondent and the further action of the Respondents in not permitting export of consignments of the aforesaid non-basmati white rice that were contractually committed / promised and Letters of Credit issued in favour of the Petitioner in respect of the said contracts, before the date of imposition of the aforesaid ban / prohibition under the Notification dated 20.07.2023, as arbitrary, illegal, unjust, discriminatory, violative of the principles of natural justice, violative of the fundamental rights guaranteed under the Constitution of India, and contrary to law, and to consequently set aside the aforesaid Notification dated 20.07.2023 by directing the Respondents to permit the Petitioner to export 78,500 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under 1) Purchase Contract No.PC004322 dated 11.07.2023 with amendment dated 13.07.2023, entered into with ADM Rice Inc., 10 Bank St. Suite 690, White Plains, NY 10606-4020, USA, 2) Purchase Contract No.RP1620, dated 13.07.2023 with amendment dated 20.10.2023, entered into with Ascend Commodities SA, RUE MICHELI- DU-CREST, 4 1205 Geneva - Switzerland, 3) Purchase Contract NO.RP1624, dated 19.07.2023 with amendment dated 20.10.2023, entered into with Ascend Commodities SA, RUE MICHELI-DU-CREST, 4 1205 Geneva - Switzerland, 4) Purchase Contract No.RP1625, dated 19.07.2023 with

amendment dated 20.10.2023, entered into with Ascend Commodities SA, RUE MICHELI-DU-CREST, 4 1205 Geneva - Switzerland, and 5) Purchase Contract No.SFPL/SME/JULY-05/2023-24, dated 10.07.2023 as amended by Addendum dated 20.10.2023, entered into with Sucden Middle East, Dubai.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to permit the Petitioner to export 78,500 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under I) Purchase Contract No.PC004322 dated 11.07.2023 with amendment dated 13.07.2023, entered into with ADM Rice Inc., 10 Bank St. Suite 690, White Plains, NY 10606-4020, USA, 2) Purchase Contract No.RP1620, dated 13.07.2023 with amendment dated 20.10.2023, entered into with Ascend Commodities SA, RUE MICHELI-DU- CRLST, 4 1205 Geneva - Switzerland, 3) Purchase Contract NO.RP1624, dated 19.07.2023 with amendment dated 20.10.2023, entered into with Ascend Commodities SA, RUE MICHELI-DU-CREST, 4 1205 Geneva - Switzerland, 4) Purchase Contract No.RP1625, dated 19.07.2023 with amendment dated 20.10.2023, entered into with Ascend Commodities SA, RUE MICHELI-DU-CREST, 4 1205 Geneva - switzerland and 3) purchase agreement No.SFPL/SME/JULY-05/2023-24, dated 10.07.2023 as amended by Addendum dated 20.10.2023, entered into with Sucden Middle East, Dubai, pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI S.SRINIVASA REDDY, SENIOR COUNSEL ASSISTED BY SRI A.MUNEENDHAR REDDY

Counsel for the Respondents 1 & 2: SRI B.NARASIMHA SARMA, ADDITIONAL SOLICITOR GENERAL OF INDIA ALONG WITH SRI Y.V.ANIL KUMAR, (CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondents 3 to 8: SRI Y.N.VIVEKANANDA, SENIOR SC for CUSTOMS & GST

WRIT PETITION NO: 33153 OF 2023

Between:

LOUIS DREYFUS COMPANY INDIA PVT LTD, a Company incorporated under the provisions of the Companies Act, having its registered office at 68/2, RNM Centre, Janpath, New Delhi 110001, and Branch Office at H.No.145, Shri Lakshmi Nivasam, Door No.3-29-60/2, Opp. Swami Theater Lane, Beside NCC Building, 2nd Lane, Krishna Nagar, Guntur, Guntur District 522006, Andhra Pradesh, rep. by its Authorised Signatory Mr. Pradosh Mohanty.

...Petitioner

AND

1. Union of India, Rep. by its Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Commissioner, Customs (Preventive) Commissionerate 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada 50 007
4. The Additional Commissioner of Customs, Customs House, Kakinada.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in issuing Notification No.20/2023 dated 20.07.2023 banning / prohibiting export of Non-Basmati white rice (semi-milled or wholly milled rice, whether or not polished or glazed. Other) under HS Code 1006 30 90 with immediate effect, and the clarification issued in Trade Notice No.23/2023, dated 18.08.2023 of the 1st Respondent and the further action of the Respondents in not permitting export of consignments of the

aforesaid non-basmati white rice that were contractually committed / promised and Letters of Credit issued in favour of the Petitioner in respect of the said contracts, before the date of imposition of the aforesaid ban / prohibition under the Notification dated 20.07.2023, as arbitrary, illegal, unjust, discriminatory, violative of the principles of natural justice, violative of the fundamental rights guaranteed under the Constitution of India, and contrary to law, and to consequently set aside the aforesaid Notification dated 20.07.2023 by directing the Respondents to permit the Petitioner to export 47,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under Purchase Contract No.P002754 dated 13.07.2023, entered into with Louis Dreyfus Company Asia Pvt. Ltd., Singapore.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to permit the Petitioner to export 47,000 MTs of Non-Basmati Indian White Rice with HS Code 1006 30 .90, as obligated under Purchase Contract No.P002754 dated 13.07.2023, entered into with Louis Dreyfus Company Asia Pvt. Ltd., Singapore, pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI S.SRINIVASA REDDY, SENIOR COUNSEL ASSISTED BY SRI A.MUNEENDHAR REDDY

Counsel for the Respondents 1 & 2: SRI B.NARASIMHA SARMA, ADDITIONAL SOLICITOR GENERAL OF INDIA ALONG WITH SRI Y.V.ANIL KUMAR, (CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondents 3 & 4: SRI Y.N.VIVEKANANDA, SENIOR SC for CUSTOMS & GST

WRIT PETITION NO: 33163 OF 2023

Between:

Pattabhi Agro Foods Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, having its registered office at 2-153, Rice Mill Street, Velpur, Tanuku Mandal, West Godavari, rep. by its Authorised Signatory Mr. Shaik Abdul Sattar.

...Petitioner

AND

1. Union of India, Rep. by its Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Commissioner, Customs (Preventive) Commissionerate 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada - 50 007.
4. The Additional Commissioner of Customs, Customs House, Kakinada.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in issuing Notification No.20/2023 dated 20.07.2023 banning / prohibiting export of Non-basmati white rice (semi-milled or wholly milled rice, whether or not polished or glazed Other) under HS Code 1006 30 90 with immediate effect, and the clarification issued in Trade Notice No.23/2023, dated 18.08.2023 of the 1st Respondent and the further action of the Respondents in not permitting export of consignments of the aforesaid non-basmati white rice that were contractually committed / promised and Letters of Credit issued in favour of the Petitioner in respect of the said contracts, before the date of imposition of the aforesaid ban / prohibition under the Notification dated 20.07.2023, as arbitrary, illegal, unjust, discriminatory, violative of the principles of natural justice, violative

of the fundamental rights guaranteed under the Constitution of India, and contrary to law, and to consequently set aside the aforesaid Notification dated 20.07.2023 by directing the Respondents to permit the Petitioner to export 68,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under three Purchase Contracts i.e., 1) Purchase Contract No. 14023601, dated 10.07.2023, entered into with Aditya Birla Global Trading (Singapore) Pte. Ltd., Singapore (Addendum Dated 11.12.2023) 2) Purchase Contract NO.P002747, dated 11.07.2023, entered into with Louis Dreyfus Company Asia Pte. Ltd., Singapore (Addendum dated 11.12.2023) and 3) Purchase Contract No.P002759, dated 19.07.2023, entered into with Louis Dreyfus Company Asia Pte. Ltd., Singapore.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to permit the Petitioner to export 68,000 MTs of non- basmati Indian White Rice with HS Code 1006 30 90, as obligated under three Purchase Contracts i.e., 1) Purchase Contract No. 14023601, dated 10.07.2023, entered into with Aditya.Birla Global Trading (Singapore) Pte. Ltd., Singapore (Addendum Dated 11.12.2023); 2) Purchase Contract N0.POO2747, dated 11.07.2023, entered into with Louis Dreyfus Company Asia Pte. Ltd., Singapore (Addendum dated 11.12.2023); and 3) Purchase Contract No.P002759, dated 19.07.2023, entered into with Louis Dreyfus Company Asia Pte. Ltd., Singapore, pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI S.SRINIVASA REDDY, SENIOR COUNSEL ASSISTED BY SRI A.MUNEENDHAR REDDY

Counsel for the Respondents 1 & 2: SRI B.NARASIMHA SARMA, ADDITIONAL SOLICITOR GENERAL OF INDIA ALONG WITH SRI Y.V.ANIL KUMAR,

(CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondents 3 & 4: SRI Y.N.VIVEKANANDA, SENIOR SC for CUSTOMS & GST

WRIT PETITION NO: 33164 OF 2023

Between:

Manasa Quality Enterprises Limited, a Company incorporated under the provisions of the Companies Act, having its registered office at D.No.11-15-3, Achyutaramayya Street, Near Bala Tripura Sundari Temple, Ramaraopet, Kakinada, East Godavari District - 33 004, rep. by its Managing Director S.Venkata Reddy

...Petitioner

AND

1. Union of India, Rep. by its Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Principal Commissioner of Customs, Customs House, Visakhapatnam.
4. The Commissioner, Customs (Preventive) Commissionerate 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada - 50 007.
5. The Additional Commissioner of Customs, Customs House, Kakinada.
6. The Additional Commissioner of Customs, Customs House, Krishnapatnam.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in issuing Notification No.20/2023 dated 20.07.2023 banning / prohibiting export of Non-basmati white rice (semi-milled or wholly

milled rice, whether or not polished or glazed Other) under HS Code 1006 30 90 with immediate effect, and the clarification issued in Trade Notice No.23/2023, dated 18.08.2023 of the 1st Respondent and the further action of the Respondents in not permitting export of consignments of the aforesaid non-basmati white rice that were contractually committed / promised by the Petitioner in respect of the said contracts, before the date of imposition of the aforesaid ban / prohibition under the Notification dated 20.07.2023, as arbitrary, illegal, unjust. discriminatory, violative of the principles of natural justice, violative of the fundamental rights guaranteed under the Constitution of India, and contrary to law, and to consequently set aside the aforesaid Notification dated 20.07.2023 by directing the Respondents to permit the Petitioner to export remaining quantity of7,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under 1) Purchase Contract No.22/P/07332, dated 30.04.2022 (Addendums dated 20.07.2022, 18.08.2022 and 30.06.2023) entered into with 01am Global Agri Pte. Ltd., Singapore, and 2) Purchase Contract No.22/P/09706, dated 22.07.2022 (Addendums dated 18.08.2022,25.09.2022 and 30.06.2023) entered into with Olam Global Agri Pte. Ltd., Singapore.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to permit the Petitioner to export remaining 7,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under 1) Purchase Contract No.22/P/07332, dated 30.04.2022 (Addendums dated 20.07.2022, 18.08.2022 and 30.06.2023) entered into with 01am Global Agri Pte. Ltd., Singapore, and 2) Purchase Contract No.22/P/09706, dated 22.07.2022 (Addendums dated 18.08.2022, 25.09.2022 and 30.06.2023) entered into with 01am Global Agri Pte. Ltd., Singapore, pending disposal of the above Writ Petition.

Counsel for the Petitioner: SRI S.SRINIVASA REDDY, SENIOR COUNSEL ASSISTED BY SRI A.MUNEENDHAR REDDY

Counsel for the Respondents 1 & 2: SRI B.NARASIMHA SARMA, ADDITIONAL SOLICITOR GENERAL OF INDIA ALONG WITH SRI Y.V.ANIL KUMAR, (CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondents 3 to 6: SRI Y.N.VIVEKANANDA, SENIOR SC for CUSTOMS & GST

WRIT PETITION NO: 33171 OF 2023

Between:

OLAM AGRI INDIA PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, having its registered office at DLF Building No.8, Tower-A, Ground Floor, Phase-II, Cyber City, Gurgaon 122002, Haryana rep. by its Authorised Signatory Mr. B.Venkateshwar Rao

...Petitioner

AND

1. Union of India, Rep. by its Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Commissioner, Customs (Preventive) Commissionerate 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada - 50 007.
4. The Additional Commissioner of Customs, Customs House, Kakinada.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd Respondent in issuing Notification No.20/2023 dated 20.07.2023 banning / prohibiting export of Non-basmati white rice (semi-milled or wholly

milled rice, whether or not polished or glazed Other) under HS Code 1006 30 90 with immediate effect, and the clarification issued in Trade Notice No.23/2023, dated 18.08.2023 of the 2nd Respondent and the furt.er action of the Respondents in not permitting export of consignments of the aforesaid non-basmati white rice that were contractually committed / promised and Letters of Credit issued in favour of the Petitioner in respect of the said contracts, before the date of imposition of the aforesaid ban / prohibition under the Notification dated 20.07.2023, as arbitrary, illegal, unjust, discriminatory, violative of the principles of natural justice, violative of the fundamental rights guaranteed under the Constitution of India, and contrary to law and consequently set aside the aforesaid Notification dated 20.07.2023 by directing the Respondents to permit the Petitioner to export 1,40,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under three Purchase Contracts i.e., 1) Purchase Contract No.23/P/10147, dated 05.07.2023, entered into with Olam Global Agri Pte. Ltd., Singapore 2) Purchase Contract No.23/P/10148, dated 16.05.2023, entered into with Olam Global Agri Pte. Ltd., Singapore and 3) Purchase Contract No.23/P/10149, dated 05.07.2023, entered into with Olarn Global Agri Pte. Ltd., Singapore.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to permit the Petitioner to export 1,40,000 MTs of Non-Basmati Indian White Rice with HS Code 1006 30 90, as obligated under three Purchase Contracts i.e., 1) Purchase Contract No.23/P/10147, dated 05.07 2023, entered into with Olam Global Agri Pte. Ltd., Singapore; 2) Purchase Contract No.23/P/10148, dated 16.05.2023, entered into with Olam Global Agri Pte. Ltd., Singapore; and 3) Purchase Contract No. 3/P/10149, dated 05.07.2023, entered into with Olam Global Agri Pte. Ltd., Singapore, pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI S.SRINIVASA REDDY, SENIOR COUNSEL ASSISTED BY SRI A.MUNEENDHAR REDDY

Counsel for the Respondents 1 & 2: SRI B.NARASIMHA SARMA, ADDITIONAL SOLICITOR GENERAL OF INDIA ALONG WITH SRI Y.V.ANIL KUMAR, (CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondents 3 & 4: SRI Y.N.VIVEKANANDA, SENIOR SC for CUSTOMS & GST

WRIT PETITION NO: 33172 OF 2023

Between:

Manasa Quality Enterprises Limited, a Company incorporated under the provisions of the Companies Act, having its registered office at D.No.11-15-3, Achyutaramayya Street, Near Bala Tripura Sundari Temple, Ramaraopet, Kakinada, East Godavari District - 33 004, rep. by its Managing Director S.Venkata Reddy.

...Petitioner

AND

1. Union of India, Rep. by its Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. . The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Principal Commissioner of Customs, Customs House, Visakhapatnam.
4. The Commissioner, Customs (Preventive) Commissionerate 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada - 50 007.
5. The Additional Commissioner of Customs, Customs House, Kakinada.
6. The Additional Commissioner of Customs, Customs House, Krishnapatnam.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may

be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in issuing Notification No.20/2023 dated 20.07.2023 banning / prohibiting export of Non-basmati white rice (semi-milled or wholly milled rice, whether or not polished or glazed Other) under HS Code 1006 30 90 with immediate effect, and the clarification issued in Trade Notice No.23/2023, dated 18.08.2023 of the 1st Respondent and the further action of the Respondents in not permitting export of consignments of the aforesaid non-basmati white rice that were contractually committed / promised and Letters of Credit issued in favour of the Petitioner in respect of the said contracts, before the date of imposition of the aforesaid ban / prohibition under the Notification dated 20.07.2023, as arbitrary, illegal, unjust, discriminatory, violative of the principles of natural justice, violative of the fundamental rights guaranteed under the Constitution of India, and contrary to law, and to consequently set aside the aforesaid Notification dated 20.07.2023 by directing the Respondents to permit the Petitioner to export 40,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under 1) Purchase Contract No.14023597, dated 10.07.2023 (Addendum dated 19.10.2023) entered into with Aditya Birla Global Trading (Singapore) Pte. Ltd., Singapore, and 2) Purchase Contract No.P002761, dated 19.07.2023, entered into with Louis Dreyfus Company Asia Pte. Ltd., Singapore.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to permit the Petitioner to export 40,000 MTs of Non-Basmati Indian White Rice with HS Code 1006 30 90, as obligated under 1) Purchase Contract No.14023597, dated 10.07.2023 (Addendum dated 19.10.2023) entered into with Aditya Birla Global Trading (Singapore) Pte. Ltd., Singapore, and 2) Purchase Contract No.P002761,

dated 19.07.2023, entered into with Louis Dreyfus Company Asia Pte. Ltd., Singapore, pending disposal of the above Writ Petition.

Counsel for the Petitioner: SRI S.SRINIVASA REDDY, SENIOR COUNSEL ASSISTED BY SRI A.MUNEENDHAR REDDY

Counsel for the Respondents 1 & 2: SRI B.NARASIMHA SARMA, ADDITIONAL SOLICITOR GENERAL OF INDIA ALONG WITH SRI Y.V.ANIL KUMAR, (CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondents 3 & 4: SRI Y.N.VIVEKANANDA, SENIOR SC for CUSTOMS & GST

WRIT PETITION NO: 33179 OF 2023

Between:

Crystalnova Foods Private Limited, a Company incorporated under the provisions of the Companies Act, having its registered office at D.No.11-15-3, 2nd Floor, Near Bala Tripura Sundari Temple, Ramaraopeta, Kakinada, East Godavari District, rep. by its Managing Director K.Rami Reddy.

...Petitioner

AND

1. Union of India, Rep. by its Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Principal Commissioner of Customs, Customs House, Visakhapatnam.
4. The Commissioner, Customs (Preventive) Commissionerate 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada 50 007
5. The Additional Commissioner of Customs, Customs House, Kakinada.
6. The Additional Commissioner of Customs, Customs House, Krishnapatnam.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in issuing Notification No.20/2023 dated 20.07.2023 banning / prohibiting export of Non-basmati white rice (semi-milled or wholly milled rice, whether or not, polished or glazed. Other) under HS Code 1006 30 90 with immediate effect, and the clarification issued in Trade Notice No.23/2023, dated 18.08.2023 of the 1st Respondent and the further action of the Respondents in not permitting export of consignments of the aforesaid non-basmati white rice that were contractually committed / promised by the Petitioner in respect of the said contracts, before the date of imposition of the aforesaid ban / prohibition under the Notification dated 20.07.2023, as arbitrary, illegal, unjust, discriminatory, violative of the principles of natural justice, violative of the fundamental rights guaranteed under the Constitution of India, and contrary to law and consequently set aside the aforesaid Notification dated 20.07.2023 by directing the Respondents to permit the Petitioner to export 3,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under Purchase Contract No.22/P/09823, dated 26.07.2022 (Addendums dated 18.08.2022, 25.09.2022 and 30.06.2023) entered into with Olam Global Agri Pte. Ltd., Singapore.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to permit the Petitioner to export 3,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under Purchase Contract No.22/P/09823, dated 26.07.2022 (Addendums dated 18.08.2022, 25.09.2022 and 30.06.2023) entered into

with Olam Global Agri Pte. Ltd., Singapore, pending disposal of the above Writ Petition.

Counsel for the Petitioner: SRI S.SRINIVASA REDDY, SENIOR COUNSEL ASSISTED BY SRI A.MUNEENDHAR REDDY

Counsel for the Respondents 1 & 2: SRI B.NARASIMHA SARMA, ADDITIONAL SOLICITOR GENERAL OF INDIA ALONG WITH SRI Y.V.ANIL KUMAR, (CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondents 3 to 6: SRI Y.N.VIVEKANANDA, SENIOR SC for CUSTOMS & GST

WRIT PETITION NO: 168 OF 2024

Between:

K N Resources Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, having its registered office at B1-506, Marathon Nextgen Innova, Opp. Peninsula Corporate Park, Lower Parel, Mumbai 400013, Maharashtra, rep. by its C.O.O. Mr. Anant Shrishrimal.

...Petitioner

AND

1. Union of India, Rep. by its Secretary, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Commissioner, Customs (Preventive) Commissionerate 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada 50 007.
4. The Additional Commissioner of Customs, Customs House, Kakinada.
5. The Additional Commissioner of Customs, Custom House, Krishnapatnam.
6. The Principal Commissioner of Customs, Custom House, Port Area, Vishakhapatnam.
7. The Commissioner of Customs, Customs House, Kandla Kutch, Gujarat.
8. The Principal Commissioner of Customs, Mumbai (JNPT Port), Maharashtra.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in issuing Notification No.20/2023 dated 20.07.2023 banning / prohibiting export of Non-basmati white rice (semi-milled or wholly milled rice, whether or not polished or glazed. Other) under HS Code 1006 30 90 with immediate effect, and the clarification issued in Trade Notice No.23/2023, dated 18.08.2023 of the 1st Respondent and the further action of the Respondents in not permitting export of consignments of the aforesaid non-basmati white rice that were contractually committed / promised and Letters of Credit issued in favour of the Petitioner in respect of the said contracts, before the date of imposition of the aforesaid ban / prohibition under the Notification dated 20.07.2023, as arbitrary, illegal, unjust, discriminatory, violative of the principles of natural justice, violative of the fundamental rights guaranteed under the Constitution of India, and contrary to law, and to consequently set aside the aforesaid Notification dated 20.07.2023 by directing the Respondents to permit the Petitioner to export 40,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under Purchase Contract No.PC 004323, dated 11.07.2023, entered into with ADM Rice Inc., 10 Bank ST, Suite 790, White Plains, NY 10606-4020, United States of America.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to permit the Petitioner to export 40,000 MTs of non-basmati Indian White Rice with HS Code 1006 30 90, as obligated under Purchase Contract No.PC 004323, dated 11.07.2023, entered into with ADM Rice Inc., 10 Bank ST, Suite 790, White Plains, NY

10606-4020, United States of America, pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI S.SRINIVASA REDDY, SENIOR COUNSEL ASSISTED BY SRI A.MUNEENDHAR REDDY

Counsel for the Respondents 1 & 2: SRI B.NARASIMHA SARMA, ADDITIONAL SOLICITOR GENERAL OF INDIA ALONG WITH SRI Y.V.ANIL KUMAR, (CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondents 3 & 4: SRI Y.N.VIVEKANANDA, SENIOR SC for CUSTOMS & GST

The Court made the following common order:

APHC010639282023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3209]
(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION Nos. 33148, 32183, 33149, 33153, 33163, 33164, 33171, 33172, 33179 of 2023&168 of 2024

W.P.No.33148 of 2023:

Between:-

Sree Murali Mohana Boiled & Raw Rice Mill Pvt. Ltd.,

.....Petitioners

And

Union of India and others

..... Respondents

Counsel for the Petitioners : Mr. S.Srinivasa Reddy,
Learned Senior Counsel assisted by
Mr.A.Muneedhar Reddy
Mr.G.L.Nageswara Rao

Counsel for the Respondents : Mr.B.Narasimha Sarma, learned Addl.Solicitor General of India along with Mr.Y.V.Anil Kumar, learned counsel for Respondents 1 & 2

Mr.Y.N.Vivekananda, learned Senior Standing Counsel for Customs and CGST

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This Court made the following:

COMMON ORDER:

Challenging the action of the 1st respondent *inter alia* in issuing Notification No.20 of 2023 dated 20.07.2023 and the clarification in Trade Notice No.23/2023 dated 18.08.2023, the present batch of Writ Petitions are filed and disposed of by this Common Order.

2. All the petitioners are engaged in the business of procurement and export of Rice. They entered into supply contracts with their foreign buyers on different dates for export of the Non-Basmati India White Rice for the quantities mentioned in the respective contracts / agreements. The foreign buyers have issued irrevocable Letters of Credit in favour of the petitioners, who in turn and to fulfill the contractual obligations placed purchase orders on their local suppliers for procuring the Rice. The petitioners are required to supply the agreed quantities as per the schedule mentioned in the agreements / contracts.

3. On 20.07.2023, the 1st respondent issued Notification No.20 of 2023 in exercise of powers under Section 3 r/w Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 r/w Para 1.02 and 2.01 of the Foreign Trade Policy-2023 prohibiting export of Non-Basmati White Rice (semi milled or wholly milled rice, whether or not polished or glazed: other) with immediate effect. Subsequently, the 1st respondent issued

Trade Notice No.23 of 2023, dated 18.08.2023 clarifying certain conditions in Para No.2 of the Notification dated 20.07.2023. Aggrieved by the same, the petitioners invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

4. Heard Mr.S.Srinivasa Reddy, learned Senior Counsel and Mr.G.L.Nageswara Rao, Advocate appearing on behalf of the petitioners. Also heard Mr.B.Narasimha Sarma, learned Additional Solicitor General of India representing the respondents 1 & 2 along with Mr.Y.V.Anil Kumar, learned Central Government Counsel and Mr.Y.N.Vivekananda, learned Senior Standing Counsel for Customs & CGST for respondents 3 & 4. Perused the material on record.

5. Learned Senior Counsel for the petitioners made elaborate submissions with reference to the Notification dated 20.07.2023 and the relevant paras in the Foreign Trade Policy, 2023. He submits that by virtue of the impugned Notification dated 20.07.2023, temporary export of Non-Basmati White Rice is permitted only if anyone of the conditions mentioned in Para No.2 of the said Notification are satisfied, but export of the said Rice is not permitted in respect of the consignments pursuant to the contracts / agreements entered and irrevocable Letters of Credit thereto issued in favour of the petitioners, prior to the date of the impugned Notification. He submits that neither in the Notification dated

20.07.2023 nor in the subsequent Trade Notice No.23 of 2023 dated 18.08.2023, reasons as to why the export of Non-Basmati White Rice is prohibited have been assigned.

6. Referring to Para 1.05 of the Foreign Trade Policy-2023, the learned Senior Counsel would further contend that the impugned Notification is not in conformity with the said policy, which *inter alia* envisages that import / export on or after the date of imposition of restrictions will be allowed in respect of the importer / exporter who has commitment through irrevocable commercial Letter of Credit issued before the date of imposition of such restrictions. He contends that by virtue of the impugned Notification dated 20.07.2023, the petitioners who entered into contracts / agreements and obtained irrevocable Letters of Credit prior to the said Notification for exporting the Non-Basmati White Rice under Para 1.05 of Foreign Trade Policy, 2023 are disallowed, whereas the exporters who satisfy any of the conditions referred to in the Notification dated 20.07.2023 are allowed to export Non-Basmati Rice, that the same is arbitrary, discriminatory and without any rationale. Drawing the attention of this Court to the earlier Notifications / Trade Notices (Page Nos.55, 59 etc.,), the learned Senior Counsel contends that when there is a ban on the earlier occasions, shipments were allowed where irrevocable Letters of Credit were issued on or before the date of the Notifications imposing ban, that in respect of the present

Notification, no such benefit was extended and no reasons are forthcoming as to why the export policy in terms of Para 1.05 of the Foreign Trade Policy-2023 was deviated.

7. The learned Senior Counsel further contends that in the light of the policy of the Government in vogue all these years and under a legitimate expectation of the same, petitioners procured polypropylene bags and the requisite quantities of Non-Basmati Indian White Rice by placing purchase orders with their local suppliers before issuance of the impugned Notification dated 20.07.2023. While submitting that most of the petitioners have stored substantial quantities of Non-Basmati Indian White Rice in different warehouses at different locations, he contends that as they were not permitted to export the agreed quantities of rice as per the contracts / agreements and Letters of Credit thereof which are much prior to the impugned Notification dated 20.07.2023, the petitioners will have to contest International Arbitration proceedings that may be initiated by the Foreign Buyers by incurring huge expenditure and suffer adverse awards with heavy damages. That apart, the learned counsel submits that the petitioners will also have to face the legal consequences for failure to comply with the obligations in respect of the purchase orders placed on the local suppliers. He also submits that no prior notice was issued to the petitioners / exporters before issuing the impugned Notification and had

such prior notices were issued, the petitioners would not have entered into contracts / agreements with the local suppliers or the foreign buyers and avoided the possible civil and penal consequences. He submits that the action of the 1st respondent prohibiting the exports as contemplated in the impugned Notification without affording opportunity to the petitioners is violative of principles of natural justice, amounts to arbitrary exercise of power and the impugned Notification is therefore liable to be set aside.

8. The learned counsel also submits that in similar circumstances, Writ Petitions challenging the Notifications imposing restriction on the exports of rice were filed and pursuant to the interim orders granted in the writ petitions, supplies / exports have been made and the said writ petitions were disposed of as the same were rendered infructuous. While contending that the petitioners would incur huge loss in Crores, if supplies / exports are not made pursuant to the contracts / agreements entered into with the respective foreign buyers, he submits that the petitioners cannot sell the Non-Basmati Indian White Rice, which is already procured in the open market. The learned counsel contends that the policy cannot be retrospective and cannot take away the vested rights and further that if the policy decision is found arbitrary or violative of Fundamental Rights, the same is liable to be set aside. He also contends that if the policy decision is against the Doctrine of Legitimate Expectation, the same can be interfered with. Learned Senior Counsel contends that in the light of

the decisions of the Hon'ble Supreme Court in 1) ***Centre for Public Interest Litigation v. Union of India***[1]***, 2) Director General of Foreign Trade and Another v. Kanak Exports and Another***[2]***, 3) Directorate of Film Festivals & Others v. Gaurav Ashwin Jain & Others***[3]***, 4) Navjyoti Coop.Group Housing Society & Others v. Union of India & Others***[4] and ***5) Indian Ex-Servicemen Movement and others v. Union of India & Others***[5]**,** the action of the respondents is not sustainable.

9. Mr.G.L.Nageswara Rao, learned counsel while adopting the arguments advanced by the learned Senior Counsel, contends that the action of the 1st respondent is not tenable in Law and the impugned Notification is liable to be set aside.

10. On the other hand, the learned Additional Solicitor General of India while opposing the submissions made on behalf of the petitioners, advanced arguments by drawing the attention of this Court to the relevant Sections of the Foreign Trade (Development and Regulation) Act, 1992. He submits that Sections 3 and 5 of the said Act-1992 empowers the Central Government to make provisions relating to imports and exports and formulate the Foreign Trade Policy by Notification in the Official Gazette and as per Section 6 of the said Act-1992, the Director General

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[1] (2016) 6 SCC 408
[2] (2016) 2 SCC 226
[3] (2007) 4 SCC 737
[4] (1992) 4 SCC 477
[5] (2022) 7 SCC 323

of Foreign Trade shall advise the Central Government in the formulation of the Foreign Trade Policy and shall be responsible for carrying out the same. Referring to the Foreign Trade Policy, 2023 he submits that Para 2.01 deals with the Policy regarding import / export of goods and as per Para 1.02 of the policy, a right has been conferred on the Central Government to make amendments to the Foreign Trade Policy in Public Interest by way of Notification. He submits that prior to the impugned Notification export of Non-Basmati White Rice is free, but considering the majority of population and in view of the escalation of prices, the Ministry of Consumer Affairs after elaborate discussions in the interest of public, thought it expedient to control the prices, therefore the Central Government in exercise of powers under Sections 3 and 5 of the Act, issued the Notification in question and strict implementation of the same is required. He submits that the inter-Ministerial Committee after deliberations further has taken a conscious decision to give concessions, as set out in the Notifications. The Additional Solicitor General further submits that considering the various representations, the Central Government issued the clarification *vide* Trade Notice No.23 of 2023 dated 18.08.2023 to the effect that Conditions (i)(ii) and (iii) of Para No.2 of the impugned Notification dated 20.07.2023 are independent of each other and export is allowed in case of compliance of anyone of the conditions of Para No.2 of the said Notification by the exporter.

11. Stating that further relaxation was issued through Notification dated 29.08.2023, the Additional Solicitor General submits that as there is an immediate / acute need to control the prices, a policy decision is taken with certain exceptions to protect the interest of the stakeholders. He submits that if export / supplies of Non-Basmati White Rice is permitted without any conditions, the very purpose of issuing the Notification for controlling the prices would be defeated. He also submits that under the guise of challenge to the Notification, the petitioners cannot seek enforcement of their contractual rights. Referring to the decision of the High Court of Delhi in W.P.(C).No.11649 of 2023 dated 09.01.2024 (***VI Exports Pvt. Ltd., v. Union of India***), he submits that challenging the very same Notification dated 20.07.2023, the said Writ Petition was filed and the learned Judge dismissed the same. He submits that the petitioners in the said case were on a better footing, having paid the Export Duty on 17 shipping bills prior to the issuance of the impugned Notification dated 20.07.2023, out of 28 shipping bills.

12. Referring to one of the purchase orders dated 15.06.2023 (Ex.P3, **Page 29**), he submits that as per Clause No.18 which deals with Force Majeure, the fulfillment of the contract is subject to the GAFTA force majeure clause. He submits that in view of the said provision, the contractual obligations between the petitioners and their foreign buyers are adequately protected and the apprehensions of the petitioners with

regard to damages / compensation / penal consequences etc., are not well founded. He submits that Para 1.02 of the Foreign Trade Policy is incorporated in Public Interest and the scope of Judicial Review in policy matters is very limited. While stating that the supply of Non-Basmati White Rice of specified quantities to the neighbouring friendly Countries is pursuant to a sovereign decision keeping in view the foreign relations with small countries and human needs in under developed countries, he submits that even such a decision is in accordance with the impugned Notification. He also submits that those exports are not by private exporters, but by National Cooperative Exports Limited (NCEL). He submits that the countries to which the Rice is supplied are in dire need of the same and the petitioners engaged in commercial activities cannot seek benefit of the Notification in respect of the supply of Non Basmati White Rice to the said countries. Relying on the decisions of the Hon'ble Supreme Court reported in ***Union of India & Others v. Unicorn Industries***[6], ***Parisons Agrotech Private Limited & another v. Union of India & Others***[7], ***Balco Employees Union v. Union of India***[8] and ***Shrijee Sales Corporation & Others v. Union of India***[9], the learned

[6] (2019) 10 SCC 575
[7] (2015) 9 SCC 657
[8] (2002) 2 SCC 333
[9] (1997) 3 SCC 398

Additional Solicitor General of India urges for dismissal of the Writ Petitions.

13. Supplementing the arguments advanced by the learned Additional Solicitor General of India, Mr.Y.V.Anil Kumar and Mr.Y.N.Vivekananda also made further submissions. Mr.Y.V.Anil Kumar submits that the contention with regard to legitimate expectations of the petitioners cannot be appreciated. He submits that it is not a legal right and even otherwise the same is subservient to public interest. He submits that in view of the overriding / overwhelming public interest, the Government to grapple with the Food Security took a policy decision, pursuant to which the impugned Notification has been issued. He submits that in the absence of any contention with regard to the jurisdiction or malafides and violation of Article 14 of the Constitution of India, the policy decision cannot be interfered with. The learned counsel while relying on the decisions of the Hon'ble Supreme Court in ***Sivanandan C.T. & another v. High Court of Kerala & Others***[10] and ***K.B. Tea Product Pvt. Ltd., and Another v Commercial Tax Officer, Siliguri and Others***[11] submits that the petitioners are not entitled for any reliefs and the Writ Petitions are liable to be dismissed.

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[10] 2023 SCC Online SC 994
[11] 20243SCC Online SC 615

14. In reply to the submissions made on behalf of the respondents, the learned Senior Counsel for the petitioners while stating that the power of the Government is not questioned, but the decision / Notification is not in conformity with the Foreign Trade Policy submits that even otherwise, the policy cannot take away the vested rights. He submits that most of the arguments advanced on behalf of the petitioners are not even met and the policy cannot be given retrospective effect and the respondents are silent about the effect of Letters of Credit and other aspects. He submits that nothing is stated as to what made the respondents to detract from the earlier policy and the rights vested on the petitioners pursuant to the existing policy cannot simply be taken away, that too without issuing any notice or assigning any reasons. He submits that the existing procedure cannot be done away without any notice and in fact, either in the impugned Notification or in the Trade Notice, was there any statement as to how the Public Interest would be effected by virtue of the supplies / export of Non Basmati Indian White Rice? He also submits that no material is placed to substantiate the stand of the respondents or justifying the exclusion of Para 1.05 of the Foreign Trade Policy without any reasons. The learned Senior Counsel submits that it is mere *ipse dixit* of the respondents. He submits that the counter-affidavit is silent as to why the contracts with the foreign buyers or shipments backed up with Letters of Credit are excluded. He submits that the action of the

respondents in allowing some of the exporters in terms of para 2 of the impugned Notification tantamounts to arbitrary exercise of powers, discriminative and violative of the rights of the petitioners guaranteed under Article 14 of the Constitution of India.

15. While contending that no public interest is involved, the learned Senior Counsel submits that as seen from the Notifications filed along with I.A.No.1 of 2024 in W.P.No.33148 of 2023 with regard to supply of Non Basmati Indian White Rice to the countries mentioned therein, the quantities are far more than the quantities agreed to be supplied by the petitioners to their foreign buyers. In reply to the contentions with reference to GAFTA and the arbitration proceedings etc., the learned Senior Counsel would reiterate that the petitioners have to incur huge expenditure, that they have already suffered huge loss and their exports business which is the main source of income would be seriously affected, causing irreparable loss and prejudice to the petitioners. Stating that there is no dispute with regard to the jurisdiction of the Courts in interfering with the matters concerning public policy, the learned Senior Counsel submits that it is not a thumb rule and there is no bar to exercise powers under Article 226 of the Constitution of India, if the action complained is arbitrary and violative of the rights guaranteed to the petitioners under the Constitution of India. He submits that no material is placed to establish that an exercise was undertaken before imposing

prohibition on export of Non-Basmati White Rice, in public interest. The learned Senior Counsel also made submissions distinguishing the judgments relied on by the respondents and contends that the said decisions are of no aid to the respondents. Making the said submissions, the learned Senior Counsel seeks directions as prayed for, by allowing the Writ Petitions.

16. On appreciation of the rival contentions, the following points arise for consideration of this Court:

1) Whether the impugned Notification is in conformity with the Foreign Trade Policy and if not, the same is liable to be set aside?

2) Whether the policy can be given retrospective effect and allowed to take away the vested rights?

3) Whether the policy decision can be set aside, if the same is found arbitrary or violative of Fundamental Rights?

4) Whether the policy decision can be interfered with, if the same is violative of principles of natural justice or Doctrine of Legitimate Expectation?

Point No.1:

17. Before dealing with the points under consideration, it may be appropriate to extract the relevant notifications issued by the 1st respondent for ready reference:

(To be Published in the Gazette of India Extraordinary Part-II, Section - 3, Sub-Section (ii))

Government of India
Department of Commerce
Directorate General of Foreign Trade
Vanijya Bhawan, New Delhi

Notification No. 20/2023
New Delhi, Dated 20th July, 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 this Notification and is registered in their system / where Non-basmati rice consignment has entered the Customs Station for exportation before this Notification 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 20.07.2023. The period of export shall be upto 31.08.2023.
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.

3. Export of Organic Non-basmati rice will be governed in accordance with Notification No.03/2013-2020 dated 19th April, 2017 read with Notification No.45/2015-2020 dated 29th November, 2022.

4. Effect of this Notification:

Expert 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'.

(Santosh Kumar Sarangi)
Director General of Foreign Trade
Ex-Officio Additional Secretary, Government of India
E-mail: dgft@nic.in

(Issued from F.No 01/91/171/010/AM23EC/e-33294)

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Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade

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Date: 18th August, 2023

Trade Notice No. 23/2023

To
1. All Regional Authorities of DGFT
2. All Customs Commissionerate
3. Members of Trade

Subject: Amendment of export policy of Non-basmati white rice (HS Code 1006 30 90)

Expert 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 has been amended from 'Free' to 'Prohibited vide Notification No. 20/2023 dated 20.07.2023.

2. The provisions as under Para 1.05 of the Foreign Trade Policy, 2023 regarding transitional arrangement was not made applicable however, consignments of Non-basmati rice was 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/custodian before this Notification and is registered in their systems / where Non-basmati rice consignment has entered the Customs station for exportation before this Notification 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 20.07.2023. The period of export shall be upto 31.08.2023.

3. This Directorate has received various representations from stakeholders including Customs Authorities seeking clarification with regard to condition (i), (i) & (iii) of Para- 2 of Notification dt.20.07.2023 that whether all the three conditions are independent of each other or exporter has to fulfill the conditions together.

4. In this regard, it is clarified that condition (i), (ii) & (iii) of Para -2 of the Notification dt.20.07.2023 are independent of each other and export is allowed in case of completion of anyone of the conditions of Para 2 of Notification dt.20.07.2023, by the exporter.

This issues with the approval of competent authority.

(SK. Mohapatra)
Joint Director General of Foreign Trade

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To be Published in the Cams of Part-1 Section 3. Sub-Section (ii)

Government of India
Department of Commerce
Directorate General of Foreign Trade
Vanijya Bhawan, New Delhi

Notification No. 29 / 2023

New Delhi, Dated 28 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 in relaxation of Notification No 20/2023 dated 20th July, 2023 allows export of non-basmati white rice under any of the following conditions:

i The Notification No.20/2023 [SO 3249(E)] dated 20th July, 2023 was published in the Gazette of India at 21:57:01 hours on 20.07.2023. Therefore, Pars 2 (iii) of Notification No. 20/2023 (S.O.3249(E)) dated 20th July, 2023 is amended as under:

"where Non-basmati rice consignment has been handed over to the Customs before 21:57:01 hours 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 30.10.2023.

ii. Export duty is paid before 21:57:01 hours on 20.07.2023

2. For removal of doubts, wherever the words/phrase "before this Notification" appears in the Notification No.20/2023 [S.O. 3249(E)] dated 20th July, 2023, the same shall mean "before 21:57:01 hours on 20.07.2023"

3. Effect of this Notification:
In relaxation of Notification No.20/2023 dated 20th July, 2023 export of non-basmati white rice is allowed when export duty is paid before 21:57:01 hours on 20.07.2023. Para 2 (iii) of Notification No.20/2023 dated 20th July, 2023 is amended to specify the date and time of effect of the Notification No.20/2023 dated 20th July, 2023.

(Santosh Kumar Sarangi)
Director General of Foreign Trade
Ex-Officio Additional Secretary, Government of India
E-mail: dgft@nic.in

(Issued from F.No 01/91/171/010/AM23EC/e-33294)

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18. The relevant paras in the Foreign Trade Policy, 2023 reads as follows:

"1.02 Amendment to FTP

Central Government, in exercise of powers conferred by Section 3 and Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

1.05 Transitional Arrangements

(c) Any License / Authorisation / Certificate / Scrip/ instrument bestowing financial or fiscal benefit issued before commencement of FTP 2023 shall continue to be valid for the purpose and duration for which it was issued, unless otherwise stipulated

(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 o policy change of a particular item, the change will be applicable prospectively (from the date of Notification) depe unless otherwise provided for.

2.01 Policy regarding import/Exports of goods

(a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at https://dgft. gov.in

(b) Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force."

19. Sections 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992 *inter alia* deals with powers to make provisions relating to exports & imports and Foreign Trade Policy respectively and the same reads as follows:

"3. Powers to make provisions relating to imports and exports.—(1) The Central Government may, by Order published in the Official Gazette,

make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

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

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

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

(4) Without prejudice to anything contained in any other law, rule, regulation, notification or order, no permit or licence shall be necessary for import or export of any goods, nor any goods shall be prohibited for import or export except, as may be required under this Act, or rules or orders made thereunder.

4. xxx

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, inlike 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."

20. Thus, a conjoint reading of the statutory provisions, the Notifications and the Foreign Trade Policy would go to show that the Central Government is empowered to formulate and announce the Foreign Trade Policy and amend the existing policy and the same is not in

dispute. However, the contention advanced on behalf of the petitioners is that the impugned Notification is not in conformity with the Foreign Trade Policy-2023. The said submission merits no appreciation in as much as the above referred statutory provision coupled with Para 1.02 of the Foreign Trade Policy-2023 empowers the Central Government to amend, change its Foreign Trade Policy from time to time. In the present case, as is evident from the impugned Notification, the existing policy with regard to export of Non-Basmati White Rice is changed in 'public interest' and the export of the same is prohibited by carving out certain exceptions. Therefore, the impugned Notification cannot be held to be contrary to the Foreign Trade Policy. Point No.1 is answered accordingly.

POINT No.2:

21. Though the impugned Notification is held to be in conformity with the Foreign Trade Policy, this Court is required to examine whether the said Policy can be given retrospective effect and rights stated to have been accrued to the petitioners can be taken away. In this regard, the contention advanced by the learned Senior Counsel for the petitioners is that acting on the policy, which was in force, the petitioners have entered into contracts / agreements with the foreign buyers, secured Letters of Credit and placed orders / procured the Non-Basmati White Rice from the local dealers. He contended that the vested rights accrued to the petitioners by virtue of the policy that is in existence prior to the issuance

of the impugned notification cannot be taken away under the guise of change in the policy, that too without any notice or opportunity to the petitioners. In opposition, placing strong reliance on the various decisions of the Hon'ble Apex Court referred to hereunder, it is contended on behalf of the respondents that the Notification in question was issued in public interest, that the legal position with regard to the interference of the Courts in policy matters is well settled and no reliefs as sought for can be granted.

22. In ***Parisons Agrotech Private Limited (7 supra),*** the Hon'ble Supreme Court of India *inter alia* opined as follows:

> "14. No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the executive as the policy making is the domain of the executive and the decision in question has passed the test of the judicial review."

23. In ***Shrijee Sales Corporation case (9 supra),*** the Hon'ble Supreme Court of India was dealing with an Appeal filed against the judgment of the High Court of Delhi challenging the Notification granting exemption to imports of Polyvinyl resins (PVC) falling within Chapter 39 of

the First Schedule to the Customs Tariff Act, 1975. In the light of the provisions of the Customs Tariff Act under Section 25, the Hon'ble Supreme Court of India *inter alia,* held as follows:

> "43. Estoppel cannot be invoked where the result will be to compel the Government to continue the exemption which a competent enactment has validly authorised the executive to withdraw in the public interest at any time. In public interest exemption can be granted. In public interest exemption can be rescinded. In other words, the rights of individuals are subordinated to the paramount interest of the public good. Section 25 underlines the importance of the common good. 'Public interest' dominates the economic scene. If in public interest the Central Government finds that it is necessary to protect its own industry by putting up a tariff wall it will be futile to say that it cannot do so because it is bound by its promise to continue the exemption up to a particular time. The traders may feel incensed at the behaviour of the executive at its imposition, exemption, reimposition and re-exemption of taxes and levies. But when to exempt and when to impose duty is left to the executive by the legislature. It will depend on the economic climate. New times require new measures. In a world of growing interdependence the first thing every country wants is protection for its domestic industry.
>
> 44. Governed by the market forces and the laws of supply and demand, if the Government finds that it must withdraw the exemption notification at once it can do so. What actuated the Government to take the step of exemption and reimposition was enlightened self-interest, such self-interest as would subserve the common good. The imposition and exemption of customs duty are the chief vehicles of the Government to protect a domestic market and to steady the level of prices. The tariffs are its chosen instruments to shield domestic production from foreign competition."

24. In ***Balco Employees Union case (8 supra),*** the Hon'ble Apex Court was *inter alia,* dealing with the issue whether the decision regarding disinvestments in a public company by the Union Government can be challenged in public interest by way of PIL. The Hon'ble Apex Court after

detailed analysis of the matter with reference to various legal precedents including ***Narmada Bachao Andolan v Union of India and Ors.,***[12] case *inter alia,* concluded as follows:

> "92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot *per se* be interfered with by the court.
>
> **93.** Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001."

25. In ***Unicorn Industries case (6 supra),*** the Hon'ble Apex Court was dealing with exemption from payment of Excise Duty on the manufacture of pan masala and at para 37 held that "*The State could not be compelled to continue the exemption, though it was satisfied that it was not in the public interest to do so. The larger public interest would outweigh an individual loss, if any.*"

26. A conspectus of the above referred decisions of the Hon'ble Supreme Court of India would undoubtedly make it clear that the Courts

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[12] (2000) 10 SSC 664

should be loath to interfere in the policy matters. However, the issue as to whether the policy can take away the vested rights, more particularly with reference to the provisions of Foreign Trade (Development Regularization) Act, 1992, was dealt with by the Hon'ble Supreme Court of India in ***Union of India and Others v Asian Food Industries***[13]. In the said case, the Hon'ble Supreme Court of India was dealing with a Notification issued by the Central Government banning export of pulses in purported exercise of its powers under Section 5 of the said Act. The Notification was issued in public interest on 27.06.2006. An irrevocable Letter of Credit was opened in favour of the exporter on 24.06.2006 on the basis of which shipping invoices and bills were submitted to the Customs Authorities for export of chickpeas. Thereafter, a notification dated 04.07.2006 was also issued. Challenging the same, a Writ Petition was filed before the High Court of Gujarat and another Writ Petition was filed before the High Court of Delhi. The Hon'ble Supreme Court of India after referring to the provisions of Customs Act as also Foreign Trade (Development and Regulation) Act-1992, at para No.48 held as follows:

> "48. .... Prohibition promulgated by a statutory order in terms of Section 5 read with the relevant provisions of the policy decision in the light of sub-section (2) of Section 3 of the 1992 Act can only have a prospective effect. By reason of a policy, a vested or accrued right cannot be taken away. Such a right, therefore, cannot a *fortiori* be taken away by an amendment thereof."

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[13] (2006) 13 SCC 542

27. In ***Director General of Foreign Trade case (2 supra)*** the Hon'ble Supreme Court dealt with a batch of appeals against the judgments of High Court of Judicature at Bombay and High Court of Gujarat at Ahmedabad in respect of Export Import (EXIM) Policy 2002-07 framed by the Central Government under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992. The Central Government by issuing a Notification dated 28.01.2004 sought to amend certain provisions of EXIM policy and the same was challenged by some exporters of the Goods on the premise that under the guise of the said Notification some benefits, which had already accrued to the exporters under the EXIM policy, were taken away. The Hon'ble Supreme Court of India after setting out the salient features of the Judgment of the High Court of Gujarat and Bombay High Court formulated the questions for consideration. While holding that the Notifications by the Central Government were issued in public interest, the Hon'ble Supreme Court of India, *inter alia,* examined the issue as to whether the Notification dated 21.04.2004 r/w Notification dated 28.04.2004 seeking to exclude the export performance related to class of goods covered by Para 2 of the Public Notice dated 28.04.2004 would relate to public notice dated 28.01.2004 or is to be given prospective effect from the date of issuance of Notifications on 21.04.2004 and 23.04.2004. The Hon'ble Supreme

Court of India after referring to the earlier decisions at Para No.109 opined as follows:

> **"109.** Therefore, it cannot be denied that the Government has a right to amend, modify or even rescind a particular scheme. It is well settled that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call trial and error method and therefore, its validity cannot be tested on any rigid prior considerations or on the application of any straitjacket formula. In *Balco Employees' Union* v. *Union of India* [*Balco Employees' Union* v. *Union of India*, (2002) 2 SCC 333] , the Supreme Court held that laws, including executive action relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrine or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where having regard to the nature of the problems greater latitude require to be allowed to the legislature. The question, however, is as to whether it can be done retrospectively, thereby taking away some right that had accrued in favour of another person?"

28. Further, the Hon'ble Apex Court after referring to a catena of decisions and thorough analysis of the matter at Para 121 *inter alia* held that the impugned decision reflected in the Notifications dated 21.04.2004 and 23.04.2004, did not take away any vested right of the exporters and amendments were necessitated by overwhelming public interest / considerations to prevent the misuse of the scheme.

29. In the present case, the petitioners claim that Letters of Credit were issued in their favour by the foreign buyers prior to the issuance of the impugned Notification and the same is not in dispute. It is also their case

that pursuant to the agreement / contracts entered with the foreign buyers they have procured the Non-Basmati White Rice and therefore vested rights accrued to them in terms of the Foreign Trade Policy 2023, which provides import / export on or after the date of the regulation / restriction will be allowed for importer / exporter, who has a commitment through an irrevocable Commercial Letter of Credit before the date of imposition of such restriction / regulation. Clause 1.05 of the Foreign Trade Policy which was in force prior to 20.07.2023 provides that wherever 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. Thus, in the light of the Foreign Trade Policy and the decision of the Hon'ble Supreme Court of India in ***Asian Food Industry (13 supra)***, this Court is of the view that the impugned Notification cannot have the retrospective effect. Further the Foreign Trade (Development and Regulation) Act-1992 does not confer any right to the authorities or enable them to issue any Notification which has the effect of imposing prohibition with retrospective effect or take away the vested rights accrued to the petitioners by virtue of the Foreign Trade Policy, 2023 prior to the issuance of the impugned Notification. Point No.2 is answered accordingly.

Point No.3:

30. Learned Senior Counsel for the petitioners, as noted earlier, had *inter alia* contended that the impugned Notification is discriminatory in as much as the authorities, despite the petitioners having the Letters of Credit in their favour, are prohibiting them from exporting the Non-Basmati White Rice, whereas the exporters, who fulfilled the conditions are permitted to export the same. He submitted that such a classification is without any rationale or the object sought to be achieved i.e., prohibition of export of Non-Basmati White Rice in public interest. Though the said argument appears to be attractive at the first blush, this Court is not inclined to accept the same. The conditions imposed in the impugned Notification are clearly distinctive and enables the exporters who have already made arrangements for shipment of Non-Basmati White Rice in fulfillment of their contractual obligations. In the present set of cases, the petitioners are still at the stage of procurement of the Non-Basmati White Rice and they cannot be equated with those of exporters who made all arrangements for shipment. Therefore, the contention that the action of the respondents is arbitrary and hit by Article 14 of the Constitution of India cannot be accepted. The Point No.3 is accordingly answered.

Pont No.4:

31. One of the contentions advanced by the learned Senior Counsel for the petitioners is that under legitimate expectation the contracts / agreements with the foreign buyers have been entered into and the impugned Notification pursuant to the policy decision is contrary to the doctrine of legitimate expectation and the Court can interfere in the facts and circumstances of the case. In the counters, the respondents have taken a plea that the petitioners are claiming their rights based on a policy decision taken almost five years ago and the respondents have now changed the same based on the changed facts and circumstances and that the interference by the Court would amount to setting a precedent where a right can be claimed on the basis of policy decision taken almost five years ago which will thereby hinder the authority of the respondents to change the policy decisions in the larger public interest. Be that as it may.

32. In ***K.B. Tea Product Pvt. Ltd., (11 supra)*** the Hon'ble Apex Court was dealing with the appeals filed against the judgments of the High Court of Calcutta wherein the provisions of Bengal Finance (Sales Tax) Act-1941, replaced by the West Bengal Sales Tax Act-1994, fell for consideration. The Hon'ble Court dealt with the aspect of the Doctrine of Legitimate expectation and after referring to a catena of cases,

formulated the principles for application of legitimate expectation. In Para 79 the Hon'ble Supreme Court of India opined as follows:

> "79. To justify such a shift in policy, and snatch away the legitimate expectation created in favour of the appellants, the public authority must demonstrate the reasons for such a shift, and while giving its justifications, must take into consideration the rights of the affected persons, and why the snatching away of such rights is essential for the state to advance public interest."

33. The Hon'ble Supreme Court of India while allowing the batch of appeals, recorded its conclusions as follows:

> **"82.** The doctrine of legitimate expectation, as has been mentioned above, is a facet of Article 14, and is essential to maintain the rule of law. Such a doctrine, which ensures predictability in the application of law, in its very essence, fights against the corrosion of the rule of law, and prevents arbitrary state action.
>
> **83.** For a democratic state to function on the principles of equality and justice, the state must be ruled, not by its ruler, but by the law. In such a circumstance, to prevent such a contamination of the rule of law, the application of the doctrine of legitimate expectation becomes most important. If a state is allowed to make promises, and rescind the same without justification or explanation, it would lead to a situation wherein every action of the state would be bereft of accountability, and every person governed by the laws of this country would live in a state of fear and unrest, causing a chilling effect on the civil liberties of the people.
>
> **84.** Hence, I am of the opinion that in the present case at hand, the Authority must be held accountable to the legitimate expectation created by it, and therefore, a direction is liable to be issued to the respondents herein to extend the benefits of the original amendment to the appellants herein, till the expiry of such a benefit as per the original amendment. In light of the same, the present batch of civil appeals are allowed."

34. In the present case the petitioners / exporters had acted upon the existing Foreign Trade Policy-2023, entered into agreement / contracts with foreign buyers, pursuant to which the Letters of Credit were issued in their favour and therefore justified in raising the contention based on doctrine of legitimate expectation. However, in the light of the Constitutional Bench decision of the Hon'ble Supreme Court in ***Sivananda C.T. case (10 supra)*** the contentions with reference to Doctrine of Legitimate Expectation cannot be upheld. In the said decision, the Hon'ble Apex Court referring to a fleet of earlier precedents held as follows:

> "37. This Court has consistently held that a legitimate expectation must always yield to the larger public interest. In *Sethi Auto Service Station v. DDA*, this Court clarified that legitimate expectation will not be applicable where the decision of the public authority is based on a public policy or is in the public interest, unless the action amounts to an abuse of power, the doctrine of legitimate expectation cannot be invoked to fetter valid exercise of administrative discretion.
>
> xxx
>
> xxx
>
> **41.** The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a

> decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation."

35. In the light of the expression of the Hon'ble Supreme Court that the legitimate expectation is not a legal right and that shall yield to the public interest, the point No.4 is answered against the petitioners and no prior notice need be issued.

36. In so far as the contentions advanced by the learned Senior Counsel for the petitioners with reference to exports of Non-Basmati White Rice to the other countries pursuant to the Notifications dated 30.08.2023 etc., filed along with I.A.No.1 of 2024 in W.P.No.33148 of 2023, this Court is of the considered opinion that the said exports are permitted by the State in exercise of its powers and well within the policy of the Government of India. In so far as the contention advanced by the learned Additional Solicitor General and Mr. Y.V.Anil Kumar, with reference to the GAFTA 120 and the clause / conditions contained therein dealing with the event of force majeure, this Court is of the opinion that the petitioners / exporters cannot be driven to face the international arbitration proceedings by incurring huge expenditure. Such course of

action not only cause serious prejudice and hardship to the petitioners, but also have an adverse impact on the Foreign Trade Policy of the country.

37. On an overall consideration of the matter and in view of the conclusions arrived at supra, the Writ Petitions are disposed of holding that the impugned Notification shall have prospective effect only, in so far as the Writ petitioners herein are concerned, and the same shall not impede the petitioners' exports of Non-Basmati White Rice in fulfillment of their contractual obligations with the foreign buyers, provided the Letters of Credit are issued in their favour prior to 20.07.2023. Needless to observe that it would be open to the concerned authorities to verify the genuineness of such letters of credit, in a given case. No order as to costs.

33. Consequently, the Miscellaneous Applications pending, if any, shall stand closed.

Sd/-K.SRINIVASA RAJU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary, Union of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
2. The Director General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi.
3. The Commissioner, Customs (Preventive) Commissionerate 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada 50 007.

4. The Additional Commissioner of Customs, Customs House, Kakinada.
5. The Additional Commissioner of Customs, Custom House, Krishnapatnam.
6. The Principal Commissioner of Customs, Custom House, Port Area, Vishakhapatnam.
7. The Commissioner of Customs, Customs House, Kandla Kutch, Gujarat.
8. The Principal Commissioner of Customs, Mumbai (JNPT Port), Maharashtra.
9. The Deputy Commissioner of Customs, Jawaharlal Nehru Customs House, Nhava Sheva, Mumbai.
10. The Principal Commissioner of Customs, Customs House, MPSEZ, Mundra, Gujarat.
11. The Deputy Commissioner of Customs, Customs House, Kandla, Gujarat.
12. The Chief Commissioner of Customs and Central Tax, Visakhapatnam Zone, GST Bhawan, Port Area,Visakhapatnam-530035.
13. The Commissioner of Customs, Custom House, Near Balaji Temple Kandla, Gujarat.
14. The Addl. Commissioner of Customs, Krishnapatnam Port, Krishnapatnam, S.P.S.R. Nellore District.
15. One CC to Sri G L Nageswar Rao, Advocate [OPUC]
16. ~~One~~ CC to Sri A Muneendhar Reddy, Advocate [OPUC]
17. One CC to Sri Y V Anil Kumar, (Central Government Counsel) [OPUC]
18. One CC to Sri B.Narasimha Sarma, Additional Solicitor General of India [OPUC]
19. One CC to Sri Y.N. Vivekananda, Senior SC for Customs & GST [OPUC]
20. Two CD Copies

RAM

HIGH COURT

DATED:11/07/2024

COMMON ORDER

WP.Nos.33148, 32183, 33149, 33153, 33163, 33164, 33171, 33172, 33179 of 2023 & 168 of 2024

DISPOSING ALLTHE WPs
WITHOUT COSTS