

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(PIL) No.18/2022

Sri Subhankar Bhowmik, Son of Sri Swapan Bhowmik, permanent resident of Srinagar, P.O.-Srinagar, P.S.-Manu Bazar, District:-South Tripura, State: Tripura, PIN-799143, Presently residing at Lake Chowmuhani, Supari Bagan, Krishna Nagar, PIN-799001.

----- Petitioner(s)

Versus

1. Union of India, represented by its Secretary, Ministry of Finance, North Block, New Delhi-110001.
2. The Asstt. Commissioner of Customs, Agartala Customs Division, Bordowali, Milan Sangha, Near Mouchak Club, P.O.-A.D. Nagar, Agartala.
3. The Union of India, Its Secretary, Ministry of Commerce, Udyog Bhavan, New Delhi-110049.
4. The Additional Director General of Foreign Trade, 4, Esplanade East, Kolkata-700069 (WB).

-----Respondent(s)

For Petitioner(s)	: Mr. Angshuman Khound, Advocate, Ms. Sudipa Nath, Advocate.
For Respondent(s)	: Mr. Bidyut Majumder, Dy. S.G.I.

**HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

Date of hearing : 3rd November, 2022.

Date of judgment : 7th November, 2022.

Whether fit for reporting : YES.

JUDGMENT & ORDER

(Indrajit Mahanty, C.J.)

The PIL petitioner is seeking issuance of the following directions by claiming public interest-

“(a) This Hon’ble Court be pleased to issue in public interest such appropriate orders or direction as may deem just and expedient, directing the Respondents 1 and 3 to initiate appropriate action against their erring Officers who have failed to deny exemption from Basic Customs Duty to goods imported by the Transferees under Transferrable Duty Free Import Authorisation (DFIA) despite non-fulfilment of condition contained in first proviso to condition (iii) of the Custom Notification No.19 of 2015 and/or issued Transferrable DFIA’s contrary to the provisions and spirit of Foreign Trade Policy;

(b) This Hon’ble Court be pleased to issue in public interest such appropriate orders or direction as may deem just and expedient, directing the officers of the Respondent nos.1 and 3 to forthwith take steps-

(i) To deny exemption from payment of Basic Customs Duty under Custom Notification No.19 of 2015 in respect of the goods imported by a Transferee under a Transferrable Duty Free Import Authorisation (DFIA), for non-fulfilment of condition contained in first proviso to condition (iii) of the said Notification read with Paragraphs 4.12 (i), 4.12 (ii), 4.29 (iv) and 4.29 (v) of Foreign Trade Policy, if the imported goods are not of same quality, technical characteristics and specifications as the materials used in the shipping bills;

(ii) To issue any Transferrable DFIA or to strictly restrict duty free import entitlement under any Transferrable DFIA already issued as per any specific material actually used with quality,

technical characteristics and specifications declared by the exporter/original license holder under Appendix 4H notwithstanding Paragraph 4.27(i) of FTP and the Standard Input Output Norms;”

2. The petitioner seeks directions to initiate appropriate action against their erring Officers who have failed to deny exemption from Basic Customs Duty to goods imported by the Transferees under Transferrable Duty Free Import Authorisation (DFIA) despite non-fulfilment of condition contained in first proviso to condition (iii) of the Custom Notification No.19 of 2015 and/or issued Transferrable DFIA's contrary to the provisions and spirit of Foreign Trade Policy. He contends that the officers of the respondent-Union of India have failed in their constitutional and statutory obligation to confer exemption from duty under Custom Notification No.19 of 2015 to only those Transferees of DFIA's, who fully satisfy all the provisions of Foreign Trade Policy in its true spirit and also satisfy the conditions particularly condition (iii) of the said Notification. The petitioner contends that first proviso to condition (iii) is erroneously being construed to only require establishing broad nexus of the material to be imported and the material actually used in the export product, only for their specific name, description or quantity. He contends that in the first proviso to condition (iii) close nexus ought to be established even for the quality, technical characteristics and specifications of the material to be imported and the

material actually used in the export product. He contends that the officers of the respondent-Union of India have failed to apply these provisions and conditions with such restrictive meaning in the actual spirit of the Foreign Trade Policy, and that such failure is resulting in huge revenue leakage. The inputs referred in paragraphs 4.12 (i) and 4.12 (ii) of FTP can be either procured domestically or can be imported goods. In either event he contends that not only the specific name/description and quantity, but also quality, technical characteristics and specifications shall be declared for such material actually used in the export of the resultant product. In effect he contends that requirements applicable in second proviso to condition (iii) though appear to be construed as restricted to sensitive input items specified in Paragraph 4.30 of the Foreign Trade Policy, shall equally apply to all inputs under first proviso to condition (iii) which are referred in paragraphs 4.12 (i) and 4.12 (ii) of FTP even if they are other than sensitive items, and that the words "*the quality, technical characteristics and specifications*" shall be read even into the first proviso to condition (iii) and in Paragraphs 4.12 of the Foreign Trade Policy. He also submits that although the substantive condition (iii) of Notification No.19 of 2015 refers to the words "*of materials imported*", the words "*the material used*" in the first proviso would also include not only the *material imported* but also even the material which is domestically procured. The petitioner further submits that

irrespective of the fact that the words “*same quality, technical characteristics and specifications*” are used only in second proviso to condition (iii), the same shall also be necessarily read even in the first proviso to condition (ii). The petitioner further contends that to restrict duty exemption in public interest, the officers shall be directed to issue any Transferrable DFIA or to strictly restrict duty free import entitlement under any Transferrable DFIA already issued, only as per any specific material actually used with quality, technical characteristics and specifications declared by the exporter/original license holder under Appendix 4H, notwithstanding Paragraph 4.27(i) of FTP and the Standard Input Output Norms.

3. The petitioner also submits that Exporters, Traders and Importers are importing goods by availing exemption without showing the actual use in the export goods by contending that they are post export replenishments and, therefore, are not required to satisfy the actual user conditions under DFIA Scheme. In many of the input goods, though the input items in SION appears to be of ‘specific entries’, but they are actually ‘generic entries’. However, they are being imported as ‘specific entries’ under DFIA without establishing close nexus as stated above and cleared without payment of duty. He had also given examples that in the Automotive industry, ‘Automotive Spare Parts’ are considered as generic

entries and permitted goods specified under the SION are considered as specific entries. Similarly, in the Food category, it is claimed that 'Food Ingredients' are generic entries and items specified in the SION are specific. He has also placed on record certain judgments of different High Courts and Tribunal which have construed the DFIA Scheme contrary to what the petitioner is contending and he submits that such judgments are erroneous and the issue requires consideration. These judgments are-

- (i) Judgment of the Hon'ble Bombay High Court (Nagpur Bench) in the case of ***Shah Nanji Nagsi Exports Pvt. Ltd., Vs. UOI*** and Order of Hon'ble Supreme Court dismissing SLP thereagainst;
- (ii) Order of the Appellate Tribunal (CESTAT) in the case of ***M/s. Unicolloide Impex Pvt. Ltd. Vs. Commissioner of Customs, Nhavasheva***), and
- (iii) Judgment of Hon'ble Allahabad High Court in the case of ***Sachin Pandey v. UOI Through Secy. Ministry of Commerce & Industries & Ors.***

4. The contentions of the petitioner are without any merits.

5. The subject condition (iii) for exemption from Basic Customs Duty under Custom Notification No.19 of 2015 reads as under:-

“(iii) that the description and other specifications wherever applicable, value and quantity of materials imported are mentioned

in the said authorisation and the value and quantity thereof are within the limits specified in the said authorisation;

Provided that in respect of inputs referred in paragraphs 4.12 (i) and 4.12 (ii) of the Foreign Trade Policy, the material permitted to be imported in the said authorisation shall be of the specific name/description or quantity, respectively, as the material used in the export of resultant product. The exporter shall declare these particulars of materials used in the shipping bill or bill of export.

Provided further that in respect of resultant products requiring inputs specified in paragraph 4.30 of the Foreign Trade Policy, the materials permitted in the said authorisation shall be of the same quality, technical characteristics and specifications as the materials used in the said resultant product. The exporter shall declare these particulars of materials used in the shipping bill or bill of export;”

6. The first and second proviso refer to Paragraphs 4.12(i), 4.12(ii) and 4.30 of Foreign Trade Policy, which read as under:-

“4.12 Accounting of Input

- (i) *Wherever SION permits use of either (a) a generic input or (b) alternative input, unless the name of the specific input together with quantity which has been used in manufacturing the export product gets indicated/endorsed in the relevant shipping bill and these inputs, so endorsed, within quantity specified and match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly with the name/description endorsed in the shipping bill.*

- (ii) *In addition, if in any SION, a single quantity has been indicated against a number of inputs (more than one input) then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such group of inputs. Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in shipping bills.”*

“4.30 Sensitive Items under Duty Free Import Authorisation

- (a) *In respect of following inputs, exporter shall be required to provide declaration with regard to technical characteristics, quality and specification in Shipping Bill: “Alloy steel including Stainless Steel, Copper Alloy, Synthetic Rubber, Bearings, Solvent, Perfumes/Essential Oil/Aromatic Chemicals, Surfactants, Relevant Fabrics, Marble, Articles made of Polypropylene, Articles made of Paper and Paper Board, Insecticides, Lead Ingots, Zinc Ingots, Citric Acid, Relevant Glass fibre reinforcement (Glass fibre, Chopped/Stranded Mat, Roving Woven Surfacing Mat), Relevant Synthetic Resin (unsaturated Polyester Resin, Epoxy Resin, Vinyl Ester Resin, Hydroxy Ethyl Cellulose), Lining Material”.*
- (b) *While issuing Duty Free Import Authorisation, Regional Authority shall mention technical characteristics, quality and specification in respect of above inputs in the Authorisation.”*

7. The petitioner cannot seek any action against the officers of the respondents who have reasonably construed the provisions of the FTP or the

conditions of the Notification as per the plain language thereof. What petitioner seeks is to read into the provisions of FTP namely in Paragraphs 4.12(i) and 4.12(ii) and also in the first proviso to Condition (iii) of the Customs exemption notification, further words *namely “the same quality, technical characteristics and specification”*, which are specifically omitted. Such beneficial DFIA scheme which is intended for export promotion, cannot be construed in such manner as suggested by the petitioner. Such recourse would be ex facie erroneous and illegal.

8. It is amply clear that whereas these further words i.e. *“same quality, technical characteristics and specification”* are categorically used in Paragraph 4.30 of FTP and also in the second proviso to the condition (iii) of the Customs Notification No.19 of 2015, however they are absent in Paragraph 4.12 of FTP and also in first proviso to condition (iii) of the said Customs Notification. These further words i.e. *“same quality, technical characteristics and specification”* cannot be read in Paragraph 4.12 and also in first proviso to condition (iii). These further words would apply only while making declaration in shipping bills in respect of sensitive inputs specified in Paragraph 4.30 of FTP, while issuing DFIA in respect of such specified sensitive inputs, or while duty free import of such specified sensitive items under such DFIA to establish close nexus with the specified sensitive inputs used.

9. Paragraph 4.27 (i) of the FTP stipulates the eligibility criteria for issuance of DFIA as follows:-

“4.27 Eligibility:

- (i) *Duty Free Import Authorisation shall be issued on post export basis for products for which Standard Input Output Norms have been notified.”*

10. It is clear that Paragraph 4.30 is an exception to the above Paragraph 4.27(i) of FTP regarding eligibility for issuance of DFIA. Therefore, wherever sensitive inputs specified in Paragraph 4.30 are used, the DFIA would be issued to permit import of only those material which shall not only be of the specific name/description or quantity, but also having close nexus having “*the same quality, technical characteristics and specification*”, as the material used in the export of resultant product. The exporter would also require to declare *all these particulars of materials used* in the shipping bill.

11. However, in other cases, i.e. wherever sensitive inputs specified in Paragraph 4.30 are not used, as per Paragraph 4.27(i) of FTP, DFIA would be issued for products for which SION have been notified and broad nexus to be established would be limited to specific name/description or quantity, without requirement of establishing close nexus of having “*the*

same quality, technical characteristics and specification” as the material used in the export of resultant product. The exporter would also require to declare only these limited particulars as per SION, without any requirement of declaring the *quality, technical characteristics and specification of materials used* in the shipping bill.

12. There is also no merit in the contention of the petitioner that although the substantive condition (iii) of Notification No.19 of 2015 concerns mentioning in Transferrable DFIA the details “*of materials imported*”, in the first proviso the words “*as the material used*” for the purpose of ascertaining the “*material permitted to be imported*” would include not only the “*material imported*” but also even such material used which is “*domestically procured*”.

13. Further, the Appendix 4H is “*Register for accounting the consumption and stocks of duty free imported or domestically procured raw materials, components, etc., allowed under Advance Authorisation/DFIA*”. The said Appendix 4H is prescribed in terms of Paragraph 4.57 of Handbook of Procedure to ascertain from the exporter/original licence holder accounting of consumption and stock of duty free goods allowed under DFIA, whether imported or domestically procured. The said Appendix 4H is in consonance with Paragraph 4.27(i) of FTP and not in derogation thereof.

It nowhere stipulates requirement of declaration of quality, technical characteristics and specifications either of the inputs used for the exported product or of the duty-free goods imported or domestically procured.

14. Neither the officers nor any Transferee of a transferrable DFIA issued by the office of DGFT can be subjected to any of the impediments as suggested by the petitioner in the garb of public interest.

15. Vide a Judgment dated 18.10.2019, the Hon'ble Allahabad High Court was pleased to dismiss a similar PIL Civil No.28695 of 2019 in ***Sachin Pandey vs. UOI thru Secy. Ministry of Commerce & Industries & Ors.***, while inter alia relying upon judgment of Hon'ble Bombay High Court in ***Shah Nanji Nagsi Exports Pvt. Ltd. Vs. Union of India*** reported in **2019 (367) E.L.T. 335 (Bom)**, with the following observations:-

“4. A new Foreign Trade Policy 2015-20 was announced on 01.04.2015 incorporating various changes under DFIA Scheme. The FTP for the year 2015-20 provides a frame work and mechanism for increasing export of Indian goods. In order to increase the foreign trade, certain concessions have been accorded to Indian traders.

5. FTP 2015-20 floated a Duty Free Import Authorization Scheme (DFIA) to regulate export viz-a-viz import of the goods. It is a post export scheme which gave exemption from basic custom duty while importing specified inputs. The design of the scheme is like, the merchant/export trader, has to file on-line

application to the concerned regional authority before exporting the goods under DFIA scheme. It is stipulated that export shall be completed within the span of twelve months from the date of generation of particular file number. On completion of export and realization of proceeds, one has to apply for issuance of DFIA with the concerned authority. On each transaction, separate DFIA is issued as per the Standard Input Output Norms (SION). On issuance of authorization the trader will get exemption from paying basic custom duty on the goods allowed to be imported under scheme.

6. *In order to give effect to the DFIA Scheme contained in Foreign Trade Policy 2015-20, the Government of India, Ministry of Finance, issued Notification dated 1st April, 2015 in exercise of powers conferred upon it under Sub-section (1) of Section 25 of Customs Act, 1962. The said notification exempts material imported into India against a valid DFIA Scheme in terms of paragraph 4.25 and 4.27 of the Foreign Trade Policy, 2015-20, subject to the conditions contained therein.....”*

.....

“11. Sri S.B. Pandey, learned ASG for the respondent no.1 (Union of India) and respondent no.2 (DGFT) and Sri Dipak Seth, learned counsel appearing for the respondent no.3 (Commissioner of Customs, Lucknow), opposed the admission of the PIL and submitted that the PIL is misconceived and the claims made therein are erroneous.”

.....

“13. We are unable to agree with the petitioner. Directions are being sought by the petitioner against the respondents without any justifiable grounds. The DFIA Scheme as also the earlier Transferable DEEC Schemes are based on the Standard Input Output Norms. In any event, there is no need to go into the issue of

applicability or otherwise of the various judgments referred by the petitioner.

.....

15. In *Shah Nanji Nagsi Exports Pvt. Ltd. Vs. Union of India* reported in 2019 (367) E.L.T. 335 (Bom), a Division Bench of the Bombay High Court has also considered the DFIA Scheme and has observed as under:

25. It is not denied that popcorn maize has also similar starch contents as other varieties of maize, indicating that popcorn maize can be used to manufacture maize starch powder. The scheme never conveys that there is actual user condition attached to the import against the export obligation. It amounts to adding some conditions in the FTP when they never exist. Moreover, when the authorisation is made transferable under the scheme there is no question of actual user condition.

27. As per SION export item at serial No.E-75 is maize starch powder against which exporter is permitted to import “maize” without putting any condition or restriction as regards to variety, quality or characteristic in the said entry. Moreover, there is no such corresponding condition in licence. In its absence, any addition of words cannot be imported to change the equation. Precisely, import of popcorn maize is not excluded from the scope of term “maize”.

16. We see no reason to take a different view to take away the benefits otherwise available under the DFIA Scheme under the Foreign Trade Policy, whether of 2009-14 or 2015-20, merely to satisfy the petitioner. According to us the aforesaid judgments of the Punjab and Haryana High Court and Bombay High Court still hold the field, so far as permitting duty-free imports under DFIA are concerned. The contention of the petitioner that duty free import of

any goods under DFIA cannot be permitted unless each of the abovementioned “three essential conditions” are satisfied, clearly runs counter to the above judgments which are binding on the authorities. Neither the officers of the respondents can be proceeded against for following such binding precedents nor can the exporters or importers be subjected to any onerous conditions, declaration, bond or undertaking contrary to these binding precedents, which if taken would be non-est.

17. In that view of the matter there is no merit in any of the prayers of the petitioner. Neither any prima facie case is made out for grant of writ of prohibition as sought nor for any direction to initiate departmental or other proceedings against the officers of the respondents. Similarly, no prima facie case is made out to issue any direction to prosecute the exporters/importers or to take any action of recovery against them.

18. Accordingly, the PIL is dismissed. No order as to costs.”

16. These observations of Hon'ble Allahabad High Court are apt and in accordance with law. None of the decisions of Courts and Tribunal referred by the petitioner as erroneous actually suffer from any infirmity for taking a contrary view. The officers of the respondents are rightly complying with these binding precedents. Neither the officers of the respondents can be proceeded against for complying with the provisions and notification while following such binding precedents, nor can a Original Licence Holder or a Transferee can be denied issuance of any DFIA or exemption under a

Transferrable DFIA by subjecting them to any such unintended onerous condition or declaration, direction for which are sought in the petition.

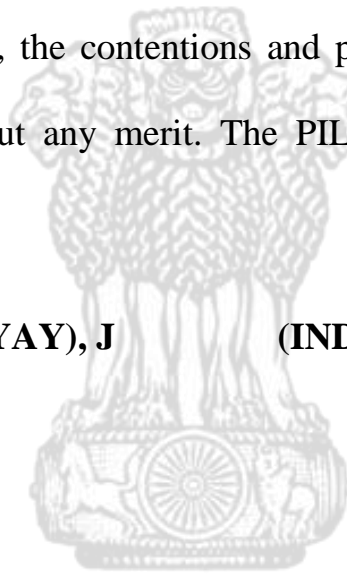
17. In view of the above, no action is warranted against the officers of the respondent-Union of India even on *prima facie* basis. On the contrary the contentions of the petitioner and interpretation put forth by him to seek action against the officers and to seek further directions in alleged public interest are *ex facie* erroneous.

18. Accordingly, the contentions and prayers of the petitioner are misconceived and without any merit. The PIL is liable to be dismissed.

(S.G. CHATTOPADHYAY), J

(INDRAJIT MAHANTY), CJ

Pulak



सत्यमेव जयते