Customs Case Law

2019-75-HC-DEL-NDPS

Harish Joshi Vs DRI (Dated: January 7, 2019)

NDPS - Appellant has filed the present appeal impugning judgment whereby he has been held guilty of an offence under Section 21 (c) and 29 of NDPS Act, 1985 has been sentenced to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs. One lakh for each of the offences and in default to further undergo Rigorous Imprisonment for a period of three months - As per prosecution, since the place where car was intercepted was not safe for conducting search and other proceedings, the Indica Car and the three persons were brought to DRI Office at CGO Complex Delhi - Search of Indica Car resulted into a recovery of one black colour zipper trolley suitcase and on removing the base fabric of the suitcase, a sun mica sheet was found affixed and in between the sun mica sheet, five packets wrapped in transparent tape were found - The packets were found to contain yellowish granules/ powder, on being tested, they tested positive for Opium Alkaloids - Appellant contended that the driver who was the most crucial witness of arrest, search and seizure has not been examined by prosecution, despite being cited as a witness - Further it is contended that the story of prosecution is completely implausible and does not seem to reason as to why the appellant who was not in TATA Indica Car when it was allegedly intercepted by DRI Officers would sit in the car so as to be apprehended later in the car - Appeal has already been admitted and there is no likelihood of the appeal being taken up for final disposal shortly - Without commenting on merits of the case, court is satisfied that the appellant has made out a case for grant of suspension of sentence pending consideration of the appeal - Accordingly, on appellant furnishing a bail bond in sum of Rs. 1,00,000/- with two sureties, each having immovable property in Delhi, of the like amount to the satisfaction of the trial court, the remaining sentence of appellant shall remain suspended during pendency of the present appeal: HC

2019-74-HC-DEL-NDPS

Rajesh Sharma Vs DRI (Dated: June 1, 2018)

NDPS- The petitioner in the present case, being charged for dealing in psychotropic substances, applied for interim bail- He claimed that his 70 year old mother was suffering from depression & he needed to take care of her- His mother's condition was also substantiated by the Doctor's report.

Held: On considering the facts and such dire circumstances, Petitioner's request for a two week period of interim bail on personal bond & two sureties of Rs 2 lakhs was accepted- Also, certain conditions were imposed wherein he was ordered to mark attendance twice a week before Police station & not to leave the country without trial court's permission: High Court

Customs Case Law

2019-71-HC-P&H-NDPS

Surinder Singh@Sunny Vs State Of U T Chandigarh (Dated: June 1, 2018)

NDPS - Car driven by accused was intercepted by a police party and a polythene bag was recovered which allegedly contained intoxicant substances weighing 44 grams; 12 injections of Pheneramine Mealeate and 12 injections (blue colour marka) - Accused was arrested and since regular bail was declined by Additional Sessions Judge, Chandigarh, petitioner/accused is before the High Court.

Held: Matter is left to the trial Court to come to the conclusion as to whether the recovery of contraband effected from the petitioner amounts to commercial quantity or otherwise -Even if it is taken that the recovery does not amount to commercial quantity, even then petitioner obviously dealt in drug trafficking which is a very serious matter and cannot be taken lightly - petitioner had also tried to run over the police officials performing their duties - Such type of persons need to be dealt with sternly and no leniency can be shown by granting them concession of bail lest that should send a wrong signal in the society that one can indulge in serious crimes and then can get away with that - There is reasonable apprehension of the petitioner/accused absconding and trying to tamper with prosecution evidence, if granted bail - Petition for regular bail is, therefore, dismissed: High Court

2019-67-HC-DEL-NDPS

Obiora Ikenna Sunday Vs State (Dated: May 28, 2018)

NDPS - the appellant was found in possession of 8 gms of cocaine without license - Further, he was also found to have overstayed in India after the expiry of his visa on 07.02.2010 - Therefore, the Trial court, sentenced him to rigorous imprisonment for three years with fine u/s 21(b) of NDPS Act and rigorous imprisonment for three years with fine u/s 14 of Foreigners Act, 1946, both the sentences were to operate concurrently - However, the appellant did not press the conviction but pleaded to modify the sentence.

Held - it is observed that the appellant was not a previous convict and his overall jail conduct was satisfactory - Thus, the appellant had already served for two years and fifteen days - The appeal lent also submitted that, the time spent in the custody of FRRO for five months should be considered to modify the sentence - Further, submitted that he was not indicted in any other criminal case - Moreover, the appellant submitted that, he had a daughter back in Nigeria and that no one was there to take care of her - Therefore, the High court took into consideration the period served by the appellant as a substantive sentence and acquitted him of all charges - Further, the High court directed the FRRO to immediately deport the appellant on release.

2019-61-HC-AHM-CUS

Premium Pulses Products Vs UoI (Dated: December 19, 2018)

Foreign Trade (Development and Regulation) Act, 1992 [Act] - In SCA Nos.16765, 17290 and 17573 of 2018, the petitioners have challenged notification no.19/2015-2020 dated 5.8.2017 and seek a direction to the respondents to allow the petitioners to import the goods in terms of the contract - in SCA No.17664 of 2018, the petitioner has challenged notification no.19/2015-2020 dated 5.8.2017, notification no.22/2015-2020 dated 21.8.2017 and notification no.6/2015-2020 dated 4.5.2018 issued by the second respondent Director General of Foreign Trade [DGFT] as well as Trade Notice No.19/2018 dated 25.10.2017 and Trade Notice No.6/2018-19 dated 11.5.2017 and seek permission to clear 15000 MT of Green Moong imported from Gold Key Food Stuff Trading LIC Deira, Dubai, UAE in terms of Proforma Invoice dated 9.4.2018 and also seek permission to clear 40,000 MT of Yellow Peas and 18,500 MT Pigeon Peas imported from Shafaf Foodstuff Trading F.Z.E. Abu Dhabi in terms of Sales Contracts dated 10.4.2018 and 11.4.2018.

Held : On a perusal of the impugned notifications, it is crystal clear that the DGFT has not exercised powers under section 3 of the Act but has merely authenticated an order which relates to the Directorate General of Foreign Trade in accordance with the Authentication (Orders and other Instruments) Rules, 2002 - the contention that the impugned notifications have been issued by the DGFT in exercise of powers under section 3 of the Act, and is, therefore, ultra vires sub-section (3) of section 6 of the Act, does not merit acceptance - the contention that the authentication by the DGFT can be only in respect of administrative orders is not in consonance with the provisions of clause (2) of Article 77 of the Constitution - on a plain reading of sub-section (3) of section 19 of the Act, it is evident that the requirement as to the laying of the order before both Houses of Parliament is not a condition precedent but subsequent to the making of the order - in other words, there is no prohibition to the making of the orders without the approval of both Houses of Parliament - under the circumstances, apart from a bare

assertion, there is nothing to show that the provisions of sub-section (3) of section 19 of the Act have not been satisfied, even otherwise, the contention based upon non-compliance with the provisions of sub-section (3) of section 19 of the Act deserves to be rejected - the challenge to the validity of the impugned notifications, fails - consequently, the petitions also fail, and are, accordingly, dismissed : HIGH COURT [para 12, 13, 16, 18]

2019-60-HC-KERALA-CUS

Plus Max Duty Free Pvt Ltd Vs UoI (Dated: December 21, 2018)

Cus - (1) Balanced between the departmental necessity and public interest, is the business banishment the only just measure available pending the investigation? (2) Have the officials been biased - acted in bad faith (3) In an administrative set up, can an official in the lower rung ignore a directive from the higher rung, on any assumed notion - say, that he acted quasi-judicially but the directive is administrative.

Held - The Commissioner of Customs does have the statutory power to suspend the license - and it needs no notice to the affected person, much less an opportunity of hearing - the Chief Commissioner of Customs [Ext.P21] has not interdicted the order of the Commissioner of Customs [Ext.P18]; what he has interfered with is the order of the Superintendent of Customs [Ext.P19] restraining the Company from carrying on its operations in the duty-free shops at the Airport - it is a well-known proposition of law that a void order compels no compliance; its validity can be questioned even collaterally - this proposition has not been fossilized, thus remaining immune from decisional dilution - it is reckoned that, at least to the extent of the Duty Free Shops, the order of the Chief Commissioner binds the authorities - it is allegedly a matter of fudging accounts - and that fudging presumes illegal gains as the motive - and that motive translates into diverting foreign liquor clandestinely into open market - whether that would supply any departmental justification to employ, rather indiscriminately hurl, epithets like 'national security', indiscriminately, as if it were an unpierceable armour the Customs Department wears so none could question it - it is not - the suspension of licence cannot be an arm-twisting devise to compel somebody's presence or to extract what one desires - for securing any witness, the Department has provisions galore in the Customs Act and the Rules - the investigation seems to be in the throes of getting completed - so it is inadvisable for the Court to express any opinion-leave alone rule-on the issue of duty evasion - the Airport Authority's allegations are disturbing, casting a shadow on the investigative impartiality and the departmental detachment - neither seems to be present - going by, at least, the Airport Authority's repeated allegations and affidavit, this Court must conclude that the allegation of bias, vindictiveness, and abuse of power are not entirely baseless - for drawing conclusions at the

preliminary stage of investigation-and spreading that first blush opinion as if it were irrefutable-almost amounts to calumny - at this stage, this Court is prepared to believe the officials have not suffered from any bad faith - but they are biased, predetermined - in the minds of both the Company and the Airport Authority, the danger of official bias more than a mere ghost of doubt - under these circumstances, the investigation that has so far taken place need not be scuttled - but from now onwards, until the inquiry or investigation concludes, the Chief Commissioner of Customs will entrust the matter to some other official than Mr.Sumit Kumar, the Commissioner of Customs - because of the finding that it is only a case of bias rather than bad faith, this Court refrains from drawing an adverse inference against the 6th and 7th respondents for their not filing the counter affidavits, at an appropriate stage of the proceedings - the investigation, it seems, began in December 2017, and license suspension took place in April 2018 - besides a bald assertion, the Company officials have been uncooperative, this Court fails to see any other major compelling reason for the authorities to suspend the license - and that allegation of non-cooperation remains unconvincing, for the record presents a different picture - the Customs Department has an efficacious mechanism to impose sufficient checks on the Company to ensure that pending the inquiry, it accounts for every sale transaction - in fact, the Department has not alleged that the Company has been guilty of any malpractice - so it is a question of balancing the equities - pitted against an apprehension of the Company's fudging the account is the public interest: customer convenience and revenue earning - the public interest must prevail - the orders of the Commissioner of Customs and the Superintendent of Customs are set aside and the Customs Department is directed to allow forthwith the Company to carry on its business operations, of course under the strict supervision of the departmental officials, as the Chief Commissioner of Customs deems proper - then, in the interest of investigative fairness, the Chief Commissioner of Customs will entrust to some other officer than the 10th respondent the task of completing the investigation and taking all other consequential measures, but by using the same material so far the Department has gathered - the writ petition is accordingly, disposed of : HIGH COURT [para 54, 57, 59, 60, 62, 72, 77, 78, 97, 98, 101, 103, 105, 106, 107]

2019-59-HC-MAD-CUS

CC Vs PPN Power Generating Company Ltd (Dated: December 19, 2018)

Cus - Appellant is contending that the appeal filed by Department before Tribunal is maintainable de hors the monetary limit fixed in the Board's circular dated 17.12.2015, as the issue raised is a recurrent issue - Though the tax effect may be low, the circular has carved out exceptions in certain cases and one such exception pertains to classification dispute - The circular itself carves out certain exceptions, the Department should not be foreclosed from raising such a plea before Tribunal and if the Tribunal is satisfied that the case would fall within the exceptional circumstances, then the matter needs to be dealt with on merits or otherwise, the Tribunal will be well within its jurisdiction to close the appeal on the ground of low tax effect - The Department before Tribunal had not specifically pleaded the said

point and had it been done, the Tribunal would not have rejected the appeal - However, court do not wish to stand on technicalities - The matter should be remanded to the Tribunal for a fresh consideration - The Tribunal shall hear the Revenue regarding the contentions that the dispute raised by Revenue is a classification dispute and that they are entitled to contest the appeal irrespective of the monetary limit as per Sub-Clause (3) of paragraph 3 of the circular dated 17.12.2015 as reiterated in the instructions: HC

2019-27-HC-AHM-CUS

Meghmani Organics Ltd Vs UoI (Dated: December 27, 2018)

Cus - The petitioner submitted that by virtue of notification dated 13.4.2017 issued in exercise of power under sub-section (2) of section 68 of Finance Act, 1994, it has been provided that services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India, person liable for paying service tax other than the service provider shall be the importer as defined under section 26 (2) of the Customs Act, 1962 of such goods - The attention of the court was invited to section 94 of Finance Act which provides for "Power to make rules" - It was submitted that in none of the items enumerated thereunder, is the Central Government empowered to fix the tariff value of any service - It was submitted that the impugned notification which provides for an option to pay the amount calculated at the rate of 1.4% by way of sum of cost, insurance and freight value of imported goods is de hors the powers conferred on Central Government under sub-section (2) of section 94 of the Act - Referring to section 67 of the Act which provides for "Valuation of taxable services for charging service tax", it was submitted that there is no such power to fix tariff as has been done by virtue of the notification which is beyond the machinery provision also - Having regard to the submissions advanced by petitioners, issue Notice returnable on 6th February, 2019 - By way of ad-interim relief, the respondents may proceed further pursuant to the inquiry and the investigation, however, no coercive recovery shall be made: HC

2019-26-HC-AHM-CUS

Azure Power Thirty Three Pvt Ltd Vs UoI (Dated: December 28, 2018)

Customs Case Law

Cus - The application under rule 5 of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 was made by in all five parties claiming to be domestic industries - It was submitted that out of the five, three were situated in SEZ and therefore, the Director General has accepted the contention that those three are not eligible to move such application and has restricted the application to two such domestic industries - The attention of the court was invited to paragraph 27(j)(iv) of impugned order to point out that the Director General has recorded that the scope of DI is restricted only to the producers i.e. M/s. Indosolar Limited and M/s. Jupiter Solar Power Limited - It was submitted that he has thereafter found that these two companies collectively account for 38% of total domestic production in DTA - Reference was made to the table to point out that the calculation is based on the basis that the total Indian production is 842 MW whereas total Indian production exceeds 2000 MW - It was submitted that, therefore, the calculation of 38% is incorrect - Reference was also made to paragraph 49(iv) of impugned order which shows the capacity utilisation, to point out that the capacity utilisation of the applicant is 85% - Therefore, they cannot claim to be injured on account of the imports - Having regard to the submissions advanced by petitioner, Issue Notice returnable on 23rd January, 2019 - By way of ad-interim relief, the sixth respondent is directed to assess the provisional safeguard duty payable by the petitioner relating to bills of entries referred to at Annexure-P-14 to the petition, and further import of solar cells and modules in accordance with section 18 of the Customs Act and release the goods without insisting upon payment of safeguard duty on executing a bond: HC

2019-13-HC-DEL-CUS

Vedanta Ltd Vs Directorate General of Foreign Trade (Dated: November 28, 2018)

Foreign Trade (Development and Regulation) Act, 1992 - Appeal impugns the findings and judgment of a Single Judge, rejecting a writ petition preferred by the appellants seeking a direction to the Director General, Foreign Trade [DGFT] to itself regarding the necessary permissions/approvals/authorisations for direct export - or in the alternative, permission/facilitation for canalised export through the third respondent [IOL] of its share of crude oil extracted from the Rajasthan Block to the extent not lifted by the second respondent Union Petroleum Ministry [UOI] or its nominee Public Sector Undertakings

Held: The right to export, contemplated under Article 18.7 of the Production Sharing Contract [PSC] is only where the UOI "has elected not to purchase pursuant to Article 18 - it visualizes a situation where the consequence of declaration of sufficiency leads to the exercise of conscious option by the UOI (under Article 18.4) pursuant to its choice "whether or not it intends to exercise its said option to purchase, in writing, not later than 90 days prior to the commencement of the year in respect of which the sale is to be made - thus, if the UOI, upon declaration of self-sufficiency of crude oil, elects not to

purchase it, the contractor can be said to have an entitlement to export it - that eventuality did not arise in the facts of this case - on this count, the appellants' argument is insubstantial and has to fail: High Court [para 32]

Held: There is no right to export crude oil, per se - what the FTP enables is that if a case for export of crude oil is to be made, the canalizing agency, the IOL has to give the "no objection certificate - the appellants' position, therefore, that 'crude oil' is mentioned as State Trading Enterprises [STE] Export through IOL, supports that no entitlement for anyone else to export crude oil is created - the relevant chapter in FTP provides that if STE itself wants to export/import, it can do so and if 'any other person' intends to import/export, it will have to apply to the STE, which can enable exports - the Central Government, in this case, states that permission to export cannot be given, because the Empowered Committee of Secretaries [ECS] in its letter dated 27.1.2016 rejected the appellants' request for export of crude oil - the reasons given by the Central Government cannot be characterized as arbitrary or unreasonable - since the appellant was permitted to sell quantities of crude oil to private refineries in India by the decision of the ECS, dated 17.8.2009, subject to certain conditions, it is evident that unutilised crude oil would be sold to domestic private refineries - a further condition that crude oil would be sold at international price, was also imposed - the petitioner's argument about unreasonableness is premised upon the fact that it would be unable to make the level of profit that it otherwise would (if permitted to export), if it sells the crude oil to private refineries - however, while the right to trade and carry on a profession is a fundamental right, that right does not contain the further right to earn profit - this appeal has no merit - it is, therefore, dismissed: High Court [para 39, 40, 41, 42]

2019-12-HC-MAD-CUS

CC Vs Hindustan Petroleum Corporation Ltd (Dated: October 26, 2018)

Cus - (a) Whether the appellant could question the classification of the case in a refund application, without challenging the assessment order - in other words, can the refund application go behind an assessment, which has attained finality (b) Whether the revenue could pursue the R.C.P. after participating in the proceedings consequent to the remand order, dated 24.4.2003, passed by the CESTAT (c) Whether the Tribunal could apply the Doctrine of Merger for dismissing the appeal of the revenue:

Held: A perusal of the order in the case of Karnataka Power Corporation Ltd. - 2002-567-SC-CUS-LB would show that the Supreme Court has not over ruled the judgment rendered in the case of Flock

(India) Pvt. Ltd.- 2002-208-SC-CX - this judgment also cannot be an authority for the proposition that, when the order which is appealable order is not challenged at all, even then, the same order can be questioned, in a refund application - once an assessee choses not to file an appeal, then, he cannot challenge the same in a collateral proceeding - in this view, order dated 4.7.2013 dismissing the RCP No.2 of 2012 needs to be reviewed - the question as to whether the issue of classification could have been raised by the assessee, in a refund application, without filing an appeal against the order of assessment, is squarely covered against the assessee in the case of Flock (India) Pvt. Ltd. and Priya Blue Industries Limited - 2004-78-SC-CUS - the RCP No.2/2012, therefore, has to be allowed and the order dated 24.4.2003 passed by CESTAT, Chennai in FlO.No.291/2003, has to be set aside - the conclusion of CESTAT that the order of the Appellate Authority had merged with the order of the Tribunal passed earlier, is not correct - the order, dated 24.4.2003, has been set aside by this Court - it cannot be said that there was a fusion of the order dated 29.10.2003 passed by the Adjudicating Authority with the order dated 31.3.2004 passed by the Appellate Authority, and the Doctrine of Merger is applicable - in fact, it was only a remand order - no finality can be said to have been reached for applying the Doctrine of Merger - similarly, it cannot be said that the order dated 30.12.2000 and the order dated 27.9.2001, passed by the original authority, and the appellate authority have merged into the order dated 24.4.2003 passed by the Tribunal, which was again, only an order of remand - the contention of the respondent that the revenue after participating in a proceeding, pursuant to a remand order, dated 24.4.2003, cannot be permitted to turn around and challenge the matter, cannot be sustained - it is a well accepted principle that there is no estoppel against law - in the result, Civil Miscellaneous Appeal is allowed : HIGH COURT [para 16, 17, 26, 27, 30]

2019-10-HC-MAD-CUS

Kalyan Jewellers Vs Assistant Commissioner (ST) (Dated: December 19, 2018)

Cus - The grievance of petitioner against the orders of assessment is in respect of two issues only viz, ITC reversal as per annual scrutiny cross verification report and ITC reversal on exempted sales - Though the Assessing Officer extracted the whole reply in assessment orders, has however, not dealt with in detail with his independent reasoning and finding as to how those objections raised by petitioner are not sustainable - On the other hand, Assessing Officer, simply rejected the objections by stating that copies of purchase invoices were not filed by petitioner - Moreover, as it is claimed by petitioner that they cannot be faulted, if the other end dealers have not reported part of the sale effected to them and paid the tax thereon, especially, when the petitioners are having the purchase invoices, the Assessing Officer can consider the matter afresh, more particularly, under the circumstances that assessment orders came to be passed, without hearing the petitioner, by new Assessing Officer, since the earlier personal hearing given was by the previous Officer - The impugned orders of assessment in so far as those two issues are concerned, are set aside: HC

Customs Case Law

2019-158-HC-DEL-CUS

Vinayaga Marine Petro Ltd Vs UoI (Dated: December 21, 2018)

Foreign Trade (Development and Regulation) Act, 1992 [FT Act] - Petitioners are engaged in import and trading of various items including mild steel items - on 5.2.2016, notification no.38/2015-2020 [notification] was issued by the DGFT by way of trade notice fixing Minimum Import Price [MIP] by amending Import Policy conditions against Codes under Chapter 72 of the ITC (HS)-2012, Schedule-I - this notification was subsequently published in the Gazette of India on 11.2.2016 - petitioners have challenged the stipulation at paragraph no.2 of the notification to the effect that import/shipments under Letter of Credit [LoC] already entered into before the date of the notification i.e. 5.2.2016 shall be exempted from MIP condition subject to paragraph 1.05 (b) of the Foreign Trade Policy, 2015-2020 -as per the petitioners, the date of notification should be read as 11.2.2016 -in support of the said contention, the petitioners submitted that the respondents could not have imposed duties and restrictions retrospectively by way of subordinate legislation -further, the DGFT is not authorized to issue any notification, as this power under the FT Act vests exclusively with the Central Government.

HELD - In terms of the various decisions, the notification, though made public by way of trade notice on 5.2.2016 fixing MIP against 173 HS Codes under Chapter-72 of the ITC (HS)-2012, Schedule-I (Import Policy) would be effective and applicable from 11.2.2016 -the notification published in the Official Gazette on 11.2.2016 was in force on the date of 'import' of goods by the petitioners as the 'import' was post publication in the Official Gazette on 11.2.2016 -this Court would not be giving retrospective effect to the notification when this Court holds that it would apply to all 'imports' on or after 11.2.2016 - in fact, this Court would be following the ratio and mandate in Asian Food Industries - 2006-147-SC-CUS and Mangalore Refinery and Petrochemicals Limited - 2015-199-SC-CUS - consequently, the argument that the respondents have given retrospective effect to the notification, which can be only prospective, falters and is rejected -paragraph 2 of the notification refers to the 'date of the notification' and not the date on which it was published in the Official Gazette -in the present case, the LoCs were opened between 5.2.2016 till 11.2.2016, when the notification was uploaded on the web-site of the Respondents on 5.2.2016 and was published in the Official Gazette on 11.2.2016 -no doubt, paragraph 2 refers to paragraph 1.05 of the FTP 2015-2020, but in the context that the importers would comply with the conditions stated therein, i.e., the condition for registration -conditions regarding opening of LoCs before 5.2.2016 would over-ride and prevail over paragraph 1.05(b) of the FTP 2015-2020, as provided and stated in the clause itself -expression "unless otherwise stipulated" in paragraph 1.05(b) would apply as paragraph 2 of the notification stipulates to the contrary -the factual position in the present writ petitions is identical in facts in the case of M/s.Agri Trade India Services (P) Ltd. decided by the Supreme Court in Asian Food Industries (supra), in favour of the Revenue.[para 14, 21, 25]

Conclusions :-

Notification dated 5.2.2016 would be effective and applicable to 'imports' made on or after 11.2.2016, i.e., the date on which it was published in the Official Gazette -it would not apply to any 'imports' as made on 10.2.2016 or before.

In terms of paragraph 2 of the notification effective from date of publication in the Official Gazette on 11.2.2016, an exemption has been granted for import/shipments under the irrevocable LoCs entered into before the date of the notification, i.e., 5.2.2016 - for the purpose of paragraph 2 of the notification, the date of publication in the Official Gazette is not prescribed and is not relevant -the date 5.2.2016 is a valid date in respect of shipments/imports made under the irrevocable LoCs for this was the date on which the decision of the Central Government to impose MIP was put on the web-site and made known to public, though it was not gazetted. [para 26]

Whether the Gazette Notification quoted above is invalid as it was not an order of the Central Government under Section 3 read with Section 5 of the FT Act .

Held: Website of the Ministry of Commerce and Industry, Department of Commerce, states that Director General of Foreign Trade is an agent of the Central Government and attached office to it - On plain reading of the notification, it is apparent that the notification was issued by the Central Government, for the Notification states that Central Government hereby amends the import policy -the decision taken to amend and issue the notification was of the Central Government -the notification is a notification of the Central Government under section 3 read with section 5 of the FT Act as stated in the notification itself - it is not a notification published by Director General of Foreign Trade as a delegatee of the Central Government performing any act traceable to delegation under sub-section (3) to section 6 of the FT Act - this being the position, the second contention of the petitioners is rejected -the writ petitions are dismissed: High Court[para27, 28, 31, 32]