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

\+ LPA 138/2021 & CM APPL. 12740/2021

KANAK EXPORTS .....Appellant

Through: Mr. Arvind Nigam, Sr. Adv with Mr. Kishore Kunal, Ms. Ankita Prakash and Mr. Anuj Kumar, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC with Mr. Kushagra Kumar and Mr. Amit Kumar Rana, Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 05.02.2026

C. HARI SHANKAR, J.

1. We have heard Mr. Arvind Nigam, learned Senior Counsel for the appellant at great length.

2. The issue in controversy in this appeal is the entitlement, of the appellant to the benefit of the Duty Free Credit Entitlement Scheme[1], which has been issued under the EXIM Policy of 2002-2007. A learned Single Judge of this Court, by judgment dated 18.05.2020 in WP (C) 3059/2018, has held against the appellant.

[1] "DFCE Scheme", hereinafter

3. The question of entitlement of the appellant to the relief sought stands conclusively decided against the appellant by the judgment of the Supreme Court in ***Director General of Foreign Trade v. Kanak Exports***[2]. Acceptance of the submissions of Mr. Nigam would require this Court to rule, in favour of the appellant, contrary to the said decision**.**

4. The observations of the Supreme Court against the appellant are so trenchant that we need merely reproduce them verbatim:

> "**V. Whether, in the cases of these exporters, the exports shown by them can be treated as actual exports entitling them to avail the benefit of the Scheme?**
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> 115. This issue would be intertwined with other related issue, namely, whether the notification has retroactive operation or it is retrospective in nature. Both these aspects are to be dealt with simultaneously in order to provide suitable and right answer to the question posed. The case of the exporters, as noticed above, is that since they had already fulfilled the requirement of "incremental growth in exports" which they were required to fulfil between 1-4-2003 to 31-3-2004, a vested right accrued in their favour to get the special incentive in terms of the Scheme which, of course, was to be availed from 1-4-2004. The case of the Government, on the other hand, is that the benefit was to accrue to these exporters only from 1-4-2004 and before that it was withdrawn and, thus, no vested right accrued in their favour. It was also argued that in the Policy, which provides special incentives to status-holder, the term "incremental growth in export" was not defined/clarified at the time when the Policy was issued. By the impugned notification, the blanks/gaps were filled and the term "incremental growth in export" was defined and it was clarified as to how the incremental growth in export is to be actually worked out. This was also done before the question of actual working out of the incremental growth in exports arose and hence, no retrospective effect.
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> 116. *An astute and penetrative examination of the record, with reference to the results of the investigation, which had prompted the Central Government to issue these notifications, provides a*

[2] **(2016) 2 SCC 226**

very tidy answer to the question posed above is that the so-called targets achieved were only on paper through fraudulent means and, therefore, it cannot be said that any vested right accrued in favour of these exporters.

117. We have referred to such material in detail while upholding the contention of the Union that the notifications were issued in public interest to ensure that their misuse is not allowed. To recapitulate, the inquiry conducted by the Government revealed that there were exports of rough diamonds even though India is not a rough diamond producing country. These exports stopped the moment DFCE benefits in respect of rough diamonds were disallowed. It was also found that cut and polished diamonds were imported, stored inside a bond and re-exported with artificial value addition. Many of these exporters exported to their own counterparts in Dubai and Sharjah and when these consignments reached those destinations, they were declared as scrap to avoid import duty.

118. *Following statistics given by the Government in respect of the so-called exports by these exporters makes out startling revelations:*

Growth exceeding 2000% for two petitioners came from 100% export of gold coins and plain jewellery

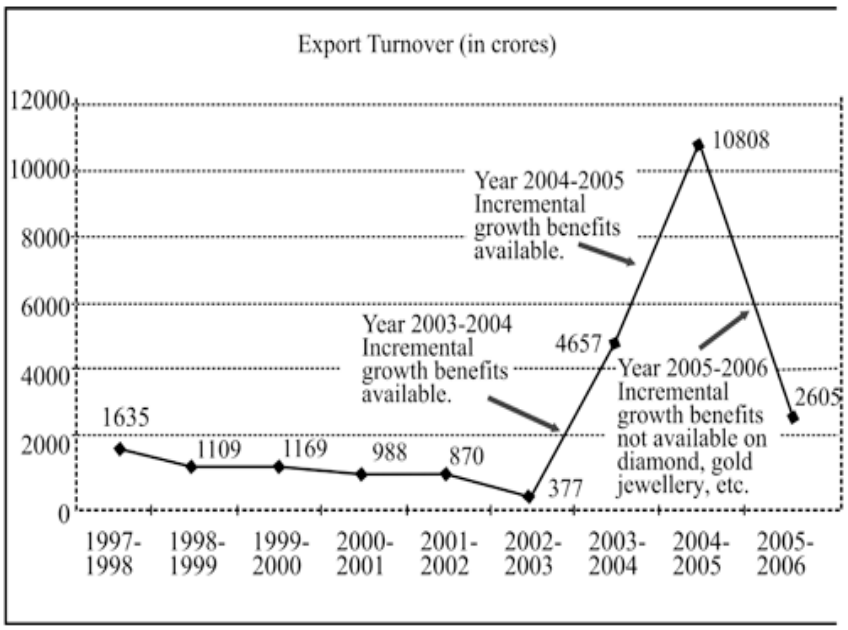
Firm	Turnover 2002-2003	Turnover 2003-2004	% growth	Share of gold coins and plain jewellery in total exports
Rajesh Exports, Banglore	112	2372	2017	100
Kanak Exports, Mumbai	*27*	*1070*	*3816*	*100*

For M/s Adani Exports, over 80% of export turnover came for diamonds and supplies from status-holders not meeting the minimum turnover and growth criteria

	Adani Exports Ltd., Ahmedabad	Exports(crores)
	Total exports for the year 2003-2004 of which	4657
1.	Rough, and re-exported polished	2475

	diamonds	
2.	Supplies taken from status-holder not meeting the minimum turnover and growth criteria	1316
	Share of the above 2 categories in the total exports	81.4%

Export surge of 1135% for M/S Adani Exports came in 2003-2004 while for the past six years their exports were declining



It is pertinent to note that except the abovementioned persons no other exporter in the country has challenged the said Notifications or the Public Notices dated 28-1-2004 and 21-4-2004 respectively.

119. It was also brought to the notice of DGFT that some of the exporters have procured rough diamonds from local firms and exported the same by a 5% loss as they were confident of covering up the loss by receiving the 10% DFCE incentives offered by the Government. All these aspects are discussed in much details earlier and need not be repeated. We would like to recapitulate the following stark features/practices which have surfaced on record as a result of investigation.

120. *Mr Adhyaru has successfully demonstrated that the following methods were found to be resorted to by these exporters to inflate their export turnovers:*

120.1. Export of rough diamonds even though India is not a rough diamond producing country. These exports stopped the moment DFCE benefits were disallowed. Export of such rough diamonds earlier has never been part of the normal commercial operations

and has taken place just to take advantage of the Scheme. According to the Gems and Jewellery Export Promotion Council, "India is not a rough exporting country. Rough diamonds which are unsustainable for cutting in India are re-exported." Such exports stopped the moment benefit was explicitly withdrawn.

120.2. In the present case also the respondent M/s Adani Exports Ltd. had stopped exporting the rough diamonds the moment the Notification was issued in January 2004 and according to the Gems and Jewellery Export Promotion Council, "Party has not exported rough diamonds during January/March 2004".

120.3. Cut and polished diamonds were imported, stored inside a bond and re-exported with artificial value addition. Few large firms including the petitioners exported these products to buyers directly related to them.

120.4. According to reliable information the same sets of diamonds were rotating and these never entered the Indian domestic territory or to the end consumers abroad. The value of such exports in the past two years may exceed Rs 15,000 crores. The Government has detailed report of the modus operandi of the firms involved.

120.5. *Most notorious misuse of the Scheme was carried out by few firms who exported gold medallion and studded jewellery. Key firms included M/s Kanak Exports, M/s Rajesh Exports Ltd. and M/s Adani Exports Ltd.*

120.6. Many of these exporters exported to their own counterparts in Dubai and Sharjah. Since the jewellery attracted 5% import duty at Dubai, the consignments which were declared as jewellery in India were declared as scrap in Dubai to avoid the import duty.

120.7. As it was difficult for them to achieve the value addition prescribed by the Policy through craftsmanship, they added extra gold to get the value addition. However, in this process strangely enough per unit price of the gold exported was less than per unit price of gold imported.

120.8. A few exporters including the petitioners have purchased exports of other firms to inflate their turnover. Contracts have been signed between the petitioners and other exporters that the petitioner will provide marketing and other services and act as third-party exporter. According to reports status holders were purchasing exports made by other parties at a premium with a view to show incremental growth of 25% or more in exports without having actually achieved such growth.

121. In such a scenario, a sagacious approach with practical sense leads us to conclude that *these writ petitioner exporters had (sic not) actually achieved the targets set down in the original Scheme and thereby acquired any "vested right". It was pernicious and blatant misuse of the provisions of the Scheme and periscopic viewing thereof establishes the same. Thus, the impugned decision reflected in the Notifications dated 21-4-2004 and 23-4-2004, did not take away any vested right of these exporters and amendments were necessitated by overwhelming public interest/considerations to prevent the misuse of the Scheme. Therefore, we are of the opinion that even when the impugned Notification issued under Section 5 could not be retrospective in nature, such retrospectivity has not deprived the writ petitioner exporters of their right inasmuch as no right had accrued in favour of such persons under the Scheme. This Court, or for that matter the High Court in exercise of its writ jurisdiction, cannot come to the aid of such petitioner exporters who, without making actual exports, play with the provisions of the Scheme and try to take undue advantage thereof. To this extent, the direction of the Bombay High Court granting these exporters benefit of the Scheme for the past period is set aside.*

122. One incidental issue remains to be discussed. This pertains to imposition of fee sought to be levied by Public Notice No. 18 dated 24-7-2003. The exporters are right in their submission that fee could not be imposed by a public notice and it was necessary to have recourse to Section 5 of the Act to impose such a fee. The Notification dated 24-7-2003 insofar as it relates to imposition of fee is, therefore, set aside.

123. Thus, appeals and transfer cases stand disposed of in terms of the aforesaid answers provided by this Court to the various questions formulated. To put it precisely, the effect of the aforesaid discussion would be to uphold the decision of the Gujarat High Court, though on different grounds, thereby *dismissing the appeals of the exporters against the said judgment except to the extent indicated in para 121 above while the appeals of the Government are allowed.* Likewise, the appeals of the Union of India against the judgment of the Bombay High Court are allowed to the aforesaid extent and the appeals of the exporter writ petitioners are dismissed."

5. We may, even at the cost of repetition, note that, in para 120.5 of the judgment of the Supreme Court, the appellant is named as one

of the exporters who had resorted to most notorious misuse of the DFCE Scheme.

6. Mr. Nigam seeks to contend that these observations of the Supreme Court are contrary to the submissions filed by the respondents before the Supreme Court, the pleadings of the parties before the Supreme Court and were returned behind the back of the appellant.

7. It goes without saying that it would be completely destructive of judicial discipline for this Court to even countenance such submissions, in view of Articles 141 and 144 of the Constitution of India.

8. We, therefore, have merely recorded the submissions advanced before the Court. Needless to say, they are rejected.

9. Mr. Nigam further submits that the judgment of the Supreme Court obligated the respondents to re-examine the entitlement of the appellant to export incentives under the DFCE Scheme.

10. A reading of para 121 of the report from the judgment of the Supreme Court reproduced *supra* makes it clear that the submissions cannot be accepted. The Supreme Court has clearly held, in so many words, that the appellant was one of those exporters who resorted to pernicious and blatant misuse of the provisions of the DFCE Scheme and that, therefore, no vested right of the appellant and other such exporters had been divested by the notification dated 21 April 2004

and 23 April 2004.

11. The Supreme Court has gone on, in the same paragraph, to state that in such circumstances, it could not be said that the appellant's right had been deprived in any way as no right had in the first place accrued in their favour, their export themselves being fraudulent in nature.

12. We may note that the appellant filed a review petition before the Supreme Court, seeking review of the aforesaid judgment to the extent it was adverse to the appellant. That review petition was also dismissed.

13. In these circumstances, we are of the view that no occasion arose for the respondents for any re-examination of the entitlement of the appellant to the benefits of DFCE Scheme either by the respondents or by any other authority executive or judicial, hierarchically lower to the Supreme Court.

14. We, therefore, are in no position to grant any relief to the petitioner. We may note, incidentally, that this aspect of the matter was also noted by this Court in its order dated 20 August 2024 which reads thus:

> "1. Mr Arvind Nigam, learned senior counsel, who appears on behalf of P the appellant, has drawn our attention to the affidavit filed on behalf of the official respondent, which, inter alia, establishes that the DRI has m material to establish misuse of Duty Free Credit Entitlement Scheme (DFCES).
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> 1.1 *It is, however, not disputed by Mr Nigam that this and*

other issues have been considered by the Supreme. Court not once but twice, i.e., in the main appeal as well as in the review petition.

2. Mr Nigam says that he will return with instructions as to how to best proceed further in the matter.

3. Mr Nigam says that the material which is now being brought on record was not placed before the Supreme Court.

4. List the matter on 26.09.2024."

15. In view of the judgment of the Supreme Court in ***Kanak Exports*** which is clearly holds the appellant not to be entitled to the benefit sought by it, we are in no position to come to the aid of the appellant.

16. The appeal is accordingly dismissed with no order as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

FEBRUARY 5, 2026/*AT*