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

Date of decision: 9th September, 2026
Uploaded on: 15th September, 2026

\# **CNR No. DLHC010007412024**

\+ **W.P.(C) 432/2024 & CM APPL. 2006/2024, CM APPL. 70118/2025**

KUNDAN CARE PRODUCTS LIMITED .....Petitioner

Through: Mr. Prithu Garg, Mr. Ashutosh Arvind Kumar & Mr. Aryan Bhati Advocates

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr Balendu Shekhar, CGSC with Mr Krishna Chaitanya, Mr Divyansh Singh Dev and Mr Rajkumar Maurya, Advs. for UOI.
Mr. Shiva Lakshmi, Adv.

WITH

\# **CNR No. DLHC010007422024**

\+ **W.P.(C) 433/2024 & CM APPL. 2008/2024**

KUNDAN AND ZEYA LIMITED .....Petitioner

Through: Mr. Prithu Garg, Mr. Ashutosh Arvind Kumar & Mr. Aryan Bhati Advocates

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr Balendu Shekhar, CGSC with Mr Krishna Chaitanya, Mr Divyansh Singh Dev and Mr Rajkumar Maurya, Advs. for UOI.
Mr. Piyush Beriwal, Ms Ruchita Srivastava, Mr Sparsh Jain & Mr. Sachin Sachdev, Advs.
Mr. Shiva Lakshmi, Adv.

WITH

\# **CNR No. DLHC010007432024**

\+ **W.P.(C) 434/2024 & CM APPL. 2010/2024**

JB JEWELS AND METALS LLP .....Petitioner

Through: Mr. Prithu Garg, Mr. Ashutosh Arvind

Kumar & Mr. Aryan Bhati Advocates

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr Balendu Shekhar, CGSC with Mr Krishna Chaitanya, Mr Divyansh Singh Dev and Mr Rajkumar Maurya, Advs. for UOI.
Mr. Shiva Lakshmi, Adv.

AND

\# **CNR No. DLHC010007442024**

\+ **W.P.(C) 435/2024 & CM APPL. 2012/2024**

LAM N FAB METALS .....Petitioner

Through: Mr. Prithu Garg, Mr. Ashutosh Arvind Kumar & Mr. Aryan Bhati Advocates

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr Balendu Shekhar, CGSC with Mr Krishna Chaitanya, Mr Divyansh Singh Dev and Mr Rajkumar Maurya, Advs. for UOI.
Mr. Shiva Lakshmi, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. These are four writ petitions filed by the following entities:

   a. *W.P.(C) 432/2024-* This petition is filed by Kundan Care Products Ltd. now known as Absolute Herbs Exports Private Limited. The Petitioner is engaged in the business of import and trade of gold jewellery, gold dore bars and other precious metals. One of the objects of the Petitioner is to deal with the metal and ornaments, jewellery, stones, etc. The objects of the Petitioner as mentioned in the Memorandum of Association reads as under:

> *"III. The objects for -which the Company is established are: -*
> *(A) THE MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE: -*
> *To carry on the business of manufacture, Buy, sell, import, export, trade, retail, -wholesale. Refine, prepare, distribute, Fabricate, process, produce, grow, make, supply, Stock, commercialize, polish, design, display, examine, grind, grade, assort, develop, modify, build, encourage, alter, dismantle, provide, exchange, remove Set, convert, finish, cut, fit, trim. Contract, sub-contract, supply, turn to contract, supply, turn to account, let hire and to act as agent broker, merchants, agents, C & F agents, job worker consigner, contractor, vendor, collaborators, stockists, distributors or Otherwise to deal in all kind of products, goods, commodities and merchandise Of and for human & leaving creature care, use and consumption including but not restricted to a kinds of electrical, electronics, telecommunication products including' mobile phones and their accessories, wearing and fashion apparels, garments, handicrafts, engineering goods, machine tools, hand tools, gold, silver, platinum, copper. Zinc lead applications, combinations & designs of rough, raw, cut, uncut, polished or processed, natural& manmade precious, semiprecious stones such' as diamond ruby, pearls, gems stones, blue sapphires, topaz, opal, zircon, gold, stone & their Ornaments, jewelleries, articles,* ***goods or things made in the combination of gold, Silver, platinum Or other metals and alloys thereof, and other varieties of stones and material, gold and silver coins, bars or in any other***

forms, precious and semi-precious metals, stones and metal products, *tobacco (raw and manufactured) oils, Vanaspati, textile, fiber and -waste coir and jute and products thereof;' -wood and timber and their products, petrol and petroleum products, natural gas, bones, crushed and uncrushed, coal and charcoal, chemicals and chemical preparation, glass and glassware, drugs and medicines, soaps, paints, paper and stationery, paper products, rubber and plastic goods, fruits, nuts, cashewnuts, kernels, grains, pulses, flour, confectionery, provisions, spirits, alcohols, beverages, perfumed, sprits, spices and tea, coffee, sugar and molasses, vegetables products, processed foods and packed food products, medical and surgical equipment."*

b. *W.P.(C) 433/2024*- This petition is filed by Kundan & Zeva Limited. The Petitioner is engaged in the business of manufacturing of minted gold and silver coins, trading in precious metals, and dealing in gold frames, gold bars, and allied products The objects of the Petitioner as mentioned in the Memorandum of Association reads as under:

> *"**3.**(a) The objects to be pursued by the company on its incorporation are:*
> *1. To carry on the business of Manufacturing, trading,* ***import, export of all kinds of gold, silver, platinum, diamond Jewellery & ornament made of precious or semi-precious stones & metals*** *of any kind.*
> *2. To manufacture, trade & deal in, manage, purchase or otherwise acquire and sell, dispose of import, export, exchange, hold and deal in diamond, precious stone, gold and silver chains, bullion and jewellery, pearls, coins, cups, medals, shields, curious articles of virtue, art and antiques and to deal, trade and establish showroom, shop for trading of goods for the above business.*

3. To cut, saw, clean, polish, sort drill, string and set up lapidary of diamonds, precious and semi-precious stones and to buy, sell, import, export and otherwise deal in rough and polished diamonds, both industrial and gem quality and other precious and semi-precious gems, pearls and stones.
4. To carry on the business of testing, evaluation, appraisal and certification of gemstones, jewellery, minerals, curios, antiques and other works of art and to work as certified valuers.
5. To carry on in India or elsewhere the business to manufacture, produce, process, prepare, commercialise, cut, polish, set, design, display, exchange, examine, finish, grind, grade, assort, import, export, buy, sell, resale, demonstrate, market and to act as agent, broker, indentor, liasioner, adatias, representative, C & F agents, export house, valuer, sales promoter, supplier, provider, merchants, stockists, distributor, wholesaler, retailer or otherwise to deal in all shapes, sizes, varieties, description, specifications, applications & designs of rough, raw, cut, uncut, polished or processed, natural & man made precious semiprecious & natural stones such as diamonds, ruby, pearls, gemstones, blue sapphires, cat's eye stone, coral, topaz, opal, zircon, tourmaline, jade, spinel ruby, aquamarine, turquoise, peidot, agate, garnet, corundum, amethyst, malachite, citrine, alexendrite, smoky quartz, lapis lazuli, rock crystal, onyx, moon stone, jasper, blood stone, gold stone bismuth, jet, diopside, tiger eye, sunstone, spinal, jews stone, load stoner, sardonex, touch stone, amber and their ornaments, jewelleries, articles, goods, or things, made in the combination of gold, silver, platinum, or other metals, and alloys thereof and for the purpose to act as goldsmith, silversmith, jewelers, gem merchants, electroplaters, polishers, purifiers, and to do all incidental acts and things necessary for the attainment of above objects."

c. *W.P.(C) 435/2024*- This petition is filed by Lam and Fab Metal. The Petitioner is engaged in the business of import and trade of precious metals, including gold and has been dealing with various overseas suppliers and foreign sellers.

d. *W.P.(C) 434/2024*-This petition is filed by JB Jewels and Metals LLP. The Petitioner is engaged in the business of wholesale trade of precious metals, including gold. The primary imports of the Petitioner consist of gold jewellery along with allied products such as gold findings, silver jewellery and platinum alloy. The nature of business of the Petitioner as mentioned in the LLP Agreement reads as under:

> *"4. Nature of Business*
> *The nature or purpose of the business to be conducted or promoted by the LLP is to engage in the following:*
> *MAIN OBJECTS: -*
> *• Wholesale trade of precious metals and Jewelleries including gold, silver, diamond, pearls etc:*
> *•Wholesale trade of metals and metal ores"*

3. The Petitioners had filed the present writ petitions seeking similar reliefs. As can be seen from the above, one of the primary objects of the Petitioners as per their documents of incorporation is to deal with gold, silver and precious metals as also jewellery etc.,

4. The background of these petitions is that, a notification bearing ***Notification No. 19/2023*** was issued by the Directorate General of Foreign Trade (*hereinafter 'DGFT'*), Ministry of Commerce and Industry dated 12th July, 2023 wherein an amendment was introduced into the import policy and policy conditions for import of gold. The said notification reads as under:

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

(DIRECTORATE GENERAL OF FOREIGN TRADE)

NOTIFICATION

New Delhi, the 12th July, 2023

No. 19 /2023

Subject: Amendment in import policy and policy condition of Gold Covered under HS code 71131911, 71131919 & 71141910 of Chapter 71 of Schedule –I (Import Policy) of ITC (HS) 2022.

S.O. 3111.—In exercise of powers conferred by Section 3 and Section 5 of Foreign Trade (Development &Regulation) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy 2023, as amended from time to time, the Central Government hereby amends the import policy and policy condition of specific ITC (HS) Codes under Chapter 71 of Schedule -I (Import Policy) - ITC (HS), 2022, as under:

HS codes	Item Description	Existing Import Policy	Existing Policy Condition	Revised Import Policy	Revised Policy Condition
71131911	--- Of gold:-Unstudded	Free	-	Restricted	However, import under a valid INDIA-UAE CEPA TRQ shall be permitted freely without any import license.
71131919	--- Of gold :----Other	Free	-	Restricted	-
71141910	--- Articles of gold	Free	-	Restricted	-

2. **Effect of the notification:** The Import Policy of ITC (HS) code 71131911, 71131919 and 71141910 has been amended from "Free" to "Restricted" with immediate effect. However, import under HS code 71131911 shall be permitted freely without any import license under a valid India-UAE CEPA TRQ.

This issues with the approval of Minister of Commerce & Industry.

[F. No. 01/89/180/36/AM-11/PC-2[A]/Part-VI/E-34691]

SANTOSH KUMAR SARANGI, Director General of Foreign Trade & Ex-officio Addl. Secy.

5. The above notification modified the import policy in respect of gold (un-studded) from being a freely importable commodity to a restricted commodity. In addition, the relevant Foreign Trade Policy was also modified and in terms of Clause 1.05, certain transitional arrangements were introduced. The same are extracted below:

> *"**1.05 Transitional Arrangements***
> *(a) 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 a policy change of a particular item, the change will be applicable prospectively (from the date of Notification) unless otherwise provided for."

6. As per the above Transitional Arrangements, while the import of gold was changed from free to restricted, an exemption was granted in respect of those importers and exporters who had commitments through Irrevocable Commercial Letters of Credit (*hereinafter 'ICLC'*) prior to the date of the notification.

7. The case of the Petitioners in these petitions is that there were orders that were placed by the Petitioner with their Indonesian supplier, resulting in raising of invoices on the following dates *i.e.,* 2nd June, 2023, 5th June, 2023, 6th June, 2023, 7th June, 2023 and 3rd July, 2023. Pursuant to the invoices

raised, advance payments were made of a substantial sum of money. The details of the invoices and the payments made by the Petitioners are as under: -

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TRANSACTION DETAILS

Kundan Care Products Limited (WP 432/2024)

S. No.	Invoice No.	Invoice Date	Quantity (KG)	Bank ref. no.	Date of remittance	Advance Payment (USD)
1.	19/SMM/2023	02.06.2023	54.5852	41840FIBC0021623	02.06.2023	3,200,000
2.	20/SMM/2023	05.06.2023	54.5852	41840FIBC0022023	05.06.2023	3,100,000
3.	21/SMM/2023	06.06.2023	84.0611	41840FIBC0022523	06.06.2023	4,800,000
4.	22/SMM/2023	07.06.2023	81.8777	41840FIBC0022923	07.06.2023	4,800,000
5.	28/SMM/2023	03.07.2023	86.1528	41840FIBC0027523	03.07.2023	4,850,000
	Total		**361.2620**			**20,750,000**

Kundan and Zeya Limited (WP 433/2024)

S. No.	Invoice No.	Invoice Date	Quantity (KG)	Bank ref. no.	Date of remittance	Advance Payment (USD)
1.	31/SMM/2023	10.07.2023	85.1528	41840FIBC0028823	10.07.2023	4,850,000

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JB Jewels and Metals LLP (WP 434/2024)

S. No.	Invoice No.	Invoice Date	Quantity (KG)	Bank ref. no.	Date of remittance	Advance Payment (USD)
1.	29/SMM/2023	05.07.2023	85.1528	41840FIBC0027623	05.07.2023	4,850,000
2.	30/SMM/2023	06.07.2023	27.2926	41840FIBC0028223	06.07.2023	1,500,000
	Total		**112.4454**			**6,350,000**

Lam N Fab Metals (WP 435/2024)

S. No.	Invoice No.	Invoice Date	Quantity (KG)	Bank ref. no.	Date of remittance	Advance Payment (USD)
1.	27/SMM/2023	03.07.2023	38.2096	41840FIBC0027423	03.07.2023	2,100,000

As can be seen from the above, the total value of the invoices raised against the Petitioners was to the tune of USD 3,49,57,970 and advance payment of USD 3,40,50,000 was made – constituting over 90% of the invoice value.

These supplies could not be effected due to the sudden change in the categorisation of gold as `Restricted'. Petitioner was informed that it would not be given benefit of the transitional arrangements and hence, these writ petitions seeking the following reliefs:

> *"i. Issue an appropriate writ, order or direction declaring and striking down the Notification No. 19/2023 dated 12.07.2023 issued by the Respondents as being unconstitutional and ultra vires the provisions of Foreign Trade (Development and Regulation) Act, 1992 in view of its retrospective application / operation affecting pre-existing / subsisting contracts where advance payments have been made by Indian importers such as the Petitioner prior to the issuance of the Notification;*
> *ii. Issue an appropriate writ, order or direction declaring and striking down the provisions of Para 1.05(b) of Chapter-1 of the Foreign Trade Policy as being unconstitutional and violative of Article 14 of the Constitution of India;*
> *iii. Issue an appropriate writ, order or direction reading into Para 1.05(b) of Chapter-1 of the Foreign Trade Policy the requirement to extend the benefit of transitional provisions to cases where advance payments have been made by Indian Importers prior to the restriction/regulation/amendment of the Import Policy;*
> *iv. Issue an appropriate writ, order or direction to the Respondents to take urgent and requisite steps as per law to extend the benefit of transitional provisions to cases where advance payments have been made by Indian Importers, such as the Petitioner, prior to the restriction/regulation/amendment of the Import Policy;*
> *v. Issue an appropriate writ, order or direction for quashing / setting aside the Impugned Order dated 29.12.2023 passed by the Policy Relaxation Committee of Respondent No. 2;*

vi. Issue an appropriate writ, order or direction to the Respondents to allow the Petitioner to import Gold Jewellery into India under its preexisting/ subsisting contracts with the foreign supplier/seller namely PT Swarnim Murni Mulla, against which substantial advance payments have been made by the Petitioner prior to the issuance of the Impugned Notification dated 12.07.2023, under the pre-notification regime ;
vii. Pass such other or further order(s) as may be deemed fit and proper in the facts and circumstances of the case."

8. The submission of Mr. Garg, ld. Counsel appearing for the Petitioners is that the position of the Petitioners is better than those importers and exporters who may have issued Letters of Credit inasmuch as in the case of these shipments, advance payments have been made to the tune of more than 90%. Under such circumstances, the benefit of the policy which existed on the date when the invoices were raised and the advance payments were made, ought to be extended for the Petitioners.

9. Reliance is placed upon the ***Policy Circular bearing No. 4(RE-2007)/2004-2009*** dated 16th August, 2007 which records the reasons as to why Irrevocable Letters of Credit are recognized in this manner. Paragraphs 2 and 3 of the said Circular are relevant and are set out below:

"2. Your attention is invited to Para 1.5 of Foreign Trade Policy, 2004-2009 as amended by Notification No. 20 (RE-2007)/2004-2009, dated 13.08.2007, whereby the earlier words 'irrevocable letter of credit' in the first sentence of Para 1.5 of FTP have been substituted by words 'irrevocable commercial letter of credit'. (available on website www.dgft.gov.in).
3. Under the Transitional Arrangements (as amended), the reference is to 'irrevocable commercial letter of credit established before the date of imposition of such

> *restriction'. Clearly, the intention of Transitional Arrangements is that the principal mode of payment should be through an irrevocable commercial letter of credit, so that there is greater sanctity and assurance regarding the contract and that exporter may not be able to submit any back dated contracted documents under the Transitional Arrangement."*

10. On the basis of Clause 1.05 of the Foreign Trade Policy which records the transitional arrangements, ld. Counsel prays that the benefit of the same be extended to the Petitioners. Insofar as the challenge to the Notification dated 12th July, 2023 or to the policy *i.e.*, Paragraph 1.05(b) is concerned, the reliefs are not pressed by the Petitioners.

11. Ms. Shiva Lakshmi, ld. Counsel along with Mr. Balendu Shekhar, Advocate appearing for the Government vehemently urge that the purpose of the policy is to ensure that a balance is properly struck between countries with whom India has entered into various trade arrangements. As per the affidavit which has been placed by the Government, the DGFT had to issue this notification in order to ensure that any spike from a particular territory does not create an imbalance in the overall trade arrangements which India has entered into.

12. As per paragraph 5 of the affidavit filed by the Respondents, it is was found that the imports between March, 2023 to May, 2023 had surged to Rs.947 crores which took away a benefit to the tune of Rs.236 crores under the Association of Southeast Asian Nations Free Trade Agreement (hereinafter, *'AFTA'*). The Government found the surge in import of gold jewellery as being unusual and since the same could have ramifications on balance of payments and financial security, the impugned notification was

issued. The relevant portion of the counter affidavit filed by the Respondents is set out below:

> *"4. It is submitted that the central government may change the import policy of any item in public interest keeping various factors in mind. It is brought to the attention of the Hon'ble Court that principles of restrictions have been indicated in para 2.07 of the Foreign Trade Policy. In the present case, there was an unusual surge noticed in the import of gold jewellery and articles of gold whereby the imports increased from Rs. 7 Crore in 2018-19 to Rs 435 Crore within a month and a half between April 2023 and May 2023 from a particular country. The alarming increase/spike in imports was bought to the notice of the Respondents by the Department of Revenue. There were apprehensions that some unscrupulous importers were diverting imports through the country with which India had free trade area agreements to get the concessional duty benefit even though prima facie these countries did not even have sufficient gold production to justify such huge exports to India.*
>
> *5. It is submitted that Department of Revenue has been investigating the issue of compliance of such imports with provisions of rules of origin & value addition norms of particular Free Trade Area agreement.* ***<u>The imports between March 2023 to May 2023 were recorded at Rs. 947 Crores entailing revenue foregone on account of ASEAN Free Trade Agreement (FTA) benefit to the tune of Rs.236 crores. The surge in import of gold jewellery was very unusual, and since the gold is a sensitive item having ramifications for countries' balance of payment and financial security, there was need for immediate action. It is submitted that there was a clear need to keep a closer vigil on import of the item and accordingly import policy has been changed from free to restricted. It is reiterated</u>***

> ***<u>that imports have not been completely stopped or prohibited and an importer intending to import the item can do so under an authorisation issued by DGFT.</u>***"

13. It is also the stand of the Government that dispatches which have been made prior to the date of the policy would not be affected. Further, insofar as Clause 1.05 of the Foreign Trade Policy is concerned, the stand of the Government is as under:

> *"7. It is submitted that limiting the transitional benefit to cases of Irrevocable Commercial Letter of Credit is a conscious decision of the Government in the form of para 1.05 of Foreign Trade Policy. The Irrevocable Commercial Letter of Credit is an elaborate procedure generally involving multiple Banks in exporting and importing countries and has greater sanctity and assurance regarding the contract. It is submitted that over the years provisions regarding sending remittance abroad have been liberalized in India, and it is easy for an importer to park a large sum of money just before the issue of a notification to circumvent the import policy measure brought out by the Government. <u>It is submitted that any extension of transitional benefit to cases other than Irrevocable Commercial Letter of Credit is likely to erode the effectiveness of import policy measures and may deteriorate the very situation, import policy measure has aimed to correct</u>.*
>
> *8. It is submitted that the authority that has the power to amend the import policy, it also has the power to decide that the restriction will not be applicable to certain class of cases in public interest. The benefit was earlier extended to cases of advance payment in Notification No. 4 dated 25.04.2018 itself wherein the Central Government allowed the cases of advance payment in view of public interest involved, among others due to*

peas being a food item, abrupt changes in its demand and supply situation can have potential implications for millions of consumers and farmers of the country.

9. It is submitted that in the past Trade Notice No. 15 (2015-2020) dated 31.08.2017 and Trade Notice No. 19/2018 dated 25.10.2017 allowed imports against advance payments in relaxation of the policy provisions. Such relaxation has been allowed as per para 2 .59 of Foreign Trade Policy dealing with exemption from policy/procedures. As per para 2.59 of the Foreign Trade Policy, 2023, DGFT may pass such orders or grant such relaxation – or/Procedure relief, as it may deem fit and proper, on grounds of genuine hardship and adverse impact on trade. DGFT may, in public interest, exempt any person or class or category of persons from any provision of the Foreign Trade Policy or any procedure and may, while granting such exemption, impose such condition as it may deem fit after consulting the Policy Relaxation Committee. It is submitted that the relaxation pursuant to Para 1.05 is within the discretion of the Policy Relaxation Committee. The Policy Relaxation Committee while granting exemption deals with the substantial merits on case to case basis and after having ascertained the balance between hardship and adverse impact on trade, make its recommendations and decisions in public interest. The Hon'ble Division Bench, High Court of Delhi in Nocil Ltd. Vs. The Policy Relaxation Committee & Ors., W.P. (C) 8324/2016 & CM No. 34511/2016 held that the powers of the Policy Relaxation Committee, while making its recommendations are wide and are purely discretionary. The Hon'ble Court goes on to observe that"

> *"No person is entitled to an exemption as a matter of right. Exemptions are granted by Authorities, which are purely discretionary orders. While exercising discretion, as per Para*

> *2.5 of the Foreign Trade Policy 2009-14, if the PRC has imposed the conditions which it deemed fit, in public interest. unless it can he shown that the said conditions were completely perverse. arbitrary or illegal, the same cannot he interfered with. There is nothing that is being pointed out to show that the conditions imposed by the PRC are in any manner grossly unreasonable in order to call for any interference by us. The exercise of discretion to grant exemption is a delicate balance between balancing the hardship of the Petitioner and the adverse impact on trade. "*

14. It is further urged on behalf of the Respondents by the ld. Counsels that the payments which are made by the Petitioners have to be in compliance with provisions of Foreign Exchange Management Act (FEMA), 1999 as also the rules, regulations, directions and circulars issued by the Reserve Bank of India (hereinafter, *'RBI'*). Ld. Counsels for the Respondents submit that in respect of these transactions and in terms of RBI's ***Circular No.4*** dated 22nd May, 2022, only qualified jewellers are permitted to remit advance payments. The relevant portions of the submissions handed over by Ms. Shivalaxmi, ld. Counsel is set out below:

> *"4. In terms of the Foreign Exchange Management Import of Goods and Services) Regulations read with the RBI Master Direction on Import of Goods and Services and various A.P. (DIR Series) Circulars issued from time to time, Authorised Dealer ("AD") Banks are required to undertake strict due diligence before permitting import remittances, particularly in cases involving advance payment arrangements.*
>
> *5. The RBI framework governing imports against advance remittance specifically provides that:*
> *a. AD Banks must satisfy themselves regarding the bona*

fides of the transaction and the credibility of the overseas supplier;
b. import of goods must be completed within the prescribed timeline and documentary evidence thereof must be furnished to the AD Bank;
c. AD Banks are required to monitor cases involving non-import or delayed import after remittance of foreign exchange;
d. advance remittances beyond prescribed thresholds are permitted only subject to additional safeguards such as unconditional and irrevocable standby Letters of Credit or guarantees issued/counter-guaranteed by internationally reputed banks; and
e. sensitive and high-value transactions are subject to enhanced scrutiny from the standpoint of foreign exchange monitoring and financial compliance.
6. It is submitted that the aforesaid RBI framework itself recognises that advance payment transactions inherently involve comparatively greater financial and regulatory risks, including risk of non-supply of goods, diversion of foreign exchange, speculative transactions, valuation concerns and difficulty in post-remittance verification.
7. In contrast, an irrevocable commercial Letter of Credit operates as a secure documentary credit mechanism under banking supervision, wherein payment is released only upon presentation and verification of compliant shipping and commercial documents. The LC mechanism therefore ensures:
a. authenticated banking oversight and monitoring;
b. documentary assurance prior to remittance of foreign exchange;
c. traceability and auditability of foreign exchange outflows;
d. mitigation of risks relating to non-supply, speculative imports and financial irregularities; and"

15. Heard ld. Counsels for the parties.

16. The short issue that has to be considered by this Court is whether the

Petitioners are entitled to the benefit of Clause 1.05(b) of the Foreign Trade Policy or not. Clearly, the said clause of the policy records that imports and exports made prior to the date of the impugned notification would not be affected by the impugned notification dated 12th July, 2023.

17. A further exception that has been given is in the case of commitments which have been made through ICLC. A Commercial Letter of Credit in international banking norms is nothing more than a promise given by the issuing bank to honour the commitment of payment upon production of documents such Bill of Trading, invoices, insurance documents, etc.

18. The ICLC is a mode or mechanism to ensure that payments are duly made by purchasers to the sellers, through an independent banking mechanism wherein the issuing bank assures the beneficiary bank of the payment which would be made upon the dispatch and the receipt of the concerned shipments.

19. The purpose of these ICLCs is nothing but to provide a security to ensure that the buyer is duly paid the agreed amount upon the dispatch being made of the goods – proved by furnishing of documents.

20. In the opinion of this Court, an Irrevocable Letter of Credit is a recognized mode of transaction which is honoured by banks and traders. However, in the present case, the advance payments made by the Petitioners clearly stand on a higher footing than even an ICLC inasmuch as when more than 90% of the payment has already been made by the Petitioners, the same is a higher security for the seller than an ICLC.

21. There cannot be any doubt that the grounds which have been given in the counter affidavit justify the change in the import policy which is purely in the domain of the Government itself. The Court would be hesitant to interfere

in such policy decisions. However, the question whether the policy announced entitles the Petitioners to any benefit, is within the domain of the Court's scrutiny.

22. The invoices and advance payments done by the Petitioners are prior to the date of the notification, namely, dated 12th July, 2022. Under such circumstances, this Court would have to go behind the intention of Clause 1.05(b) and not merely a mechanical implementation of the policy. The intention in the Import policy, of giving an exception to ICLCs is to extend protection to those transactions which have been bonafidely entered into prior to the Notification being issued. One category of transactions which are exempted are those in which the shipments have been dispatched prior to the Notification, though they may not have arrived in India. The second category of transactions are those which are already covered by even though shipments may not have been sent prior to the Notification.

23. The applicability of a notification of this nature was examined by a Co-ordinate Bench of this Court in the decision in ***M/S Bright Metal Refiners v. Directorate General of Foreign Trade, 2026: DHC: 5068-DB*** wherein it is observed as under:

> *"**24. As regards the point of time at which a notification takes effect after its publication, this issue was examined by the Supreme Court in Union of India v. G.S. Chatha Rice Mills, (2021) 2 SCC 209 : (2020) 14 GSTR-OL 1 : (2020) 374 ELT 289 (S.C.), wherein the Court emphasized that the exact date and time of publication assume significance, especially having regard to the manner in which the gazettes are being published, has shifted from analog to digital. The same reads as under**:*
>
> *"58. With the change in the manner of publishing*

gazette notifications from analog to digital, the precise time when the gazette is published in the electronic mode assumes significance. Notification No. 5/2019, which is akin to the exercise of delegated legislative power, under the emergency power to notify and revise tariff duty under Section 8A of the Customs Tariff Act, 1975, cannot operate retrospectively, unless authorized by statute. In the era of the electronic publication of gazette notifications and electronic filing of bills of entry, the revised rate of import duty under the Notification No. 5/2019 applies to bills of entry presented for home consumption after the notification was uploaded in the e-Gazette at 20:46:58 hours on 16-2-2019."

25. The effect of giving a notification retrospective effect was also examined by the Apex Court in the case of Director General of Foreign Trade vs Kanak Exports 2015 (326) ELT 26, wherein it was held as under:

> *"108. We may, in the first instance, make this legal position clear that a delegated or subordinate legislation can only be prospective and not retrospective, unless rule making authority has been vested with power under a statute to make rules with retrospective effect. In the present case, Section 5 of the Act does not give any such power specifically to the Central Government to make rules retrospective. No doubt, this section confer powers upon the Central Government to 'amend' the policy which has been framed under the aforesaid provisions. However, that by itself would not mean that such a provision empowers the Government to do so retrospective. This legal position is rightly discussed by the Bombay High Court in the impugned judgment in the following words:*

"We are unable to accept the submissions of learned Additional Solicitor General. The word "amend" does not give power to make amendment retrospectively if it is used in relation to the power to make a piece of delegated legislation. The connotation of the word "amend" when it is used for the exercise of power by a legislature cannot be pressed to construe the word "amend" in relation to the power to make delegated legislation. In this regard the following observations of the Supreme Court in Accountant General v. Doraiswamy - (1981) 4 SCC 93 are pertinent:

"The next question is whether clause (5) of Article 148 permits the enactment of rules having retrospective operation. It is settled law that unless a statute conferring the power to make rules provides for the making of rules with retrospective operation, the rules made pursuant to that power can have prospective operation only. An exception, however, is the proviso to Article 309. In B.S. Vadera v. Union of India - 1968 SCC OnLine SC 39 : AIR 1969 SC 118, this Court held that the rules framed under the proviso to Article 309 of the Constitution could have retrospective operation. The conclusion followed from the circumstance that the power conferred under the proviso to Article 309 was intended to fill a hiatus, that is to say, until Parliament or a State legislature enacted a law on the subject-matter of Article 309. The rules framed under the proviso to Article 309 were transient in character and were to do duty only until legislation was enacted. As interim substitutes for such legislation it was clearly intended that the rules should have the same range of

operation as an Act of Parliament or of the State legislature. The intent was reinforced by the declaration in the proviso to Article 309 that "any rules so made shall have effect subject to the provisions of any such Act". Those features are absent in clause (5) of Article 148. There is nothing in the language of that clause to indicate that the rules framed therein were intended to serve until parliamentary legislation was enacted. All that the clause says is that the rules framed would be subject to the provisions of the Constitution and of any law made by Parliament. We are satisfied that clause (5) of Article 148 confers power on the President to frame rules operating prospectively only. Clearly then, the Rules of 1974 cannot have retrospective operation, and therefore, sub-rule (2) of Rule 1, which declares that they will be deemed to have come into force on 27-7-1956 must be held ultra vires."

The reliance placed on the power to regulate under Section 3 of the Act is equally misconceived. Section 5 gives express power to formulate the policy and to amend it. This is specific power. The power to regulate therefore, cannot be read as a power to amend when a specific power to amend is given. If the power to regulate does not include the power to amend retrospectively such a power cannot be read into Section 3 of the Act.

Section 21 of the General Clauses Act on which reliance is placed by learned Additional Solicitor General is also of no assistance to sustain the retrospective operation of the notification. Section 21 of the General Clauses Act embodies a rule of construction, nature and extent of application of which must inevitably *be governed by the relevant provisions of the statute which confers power to issue the notification. The said power must be exercised within the limits prescribed by the provisions conferring the said power. (See Gopichand v. Delhi administration, 1959 SCC OnLine SC 29 : AIR 1959 SC 609, Lachmi Narayan v. Union of India, (1976) 2 SCC 953 : 1976 SCC (Tax) 213 : (1976) 37 STC 267 and State of Kerala v. K.G. Madhavan Pillai - (1988) 4 SCC 669. The ratio in H.C. Suman's case also cannot be applied because in that case it was found that Section 88 of the Delhi Cooperative societies Act, 1972 contained the power to exempt and if the provisions of Section 12 of the said Act were to be exempted the provisions which provided that bye-laws are effective from the date of registration. The notification issued under Section 88 would exempt it and Section 88 would contain the power to exempt retrospectively. Similarly, Section 14 of the General Clauses Act has no application as it merely provides that where any power is conferred on the Government, then that power can be exercised from time to time as occasion requires.*

Under that Scheme the status holder is eligible for benefits upon achieving the incremental growth of 25% of the FOB value of exports in the current year over the previous year. It therefore follows that no sooner the status holder achieves 25% incremental growth, the status holder would be entitled to the benefits under the Scheme. Immediately upon attaining the prescribed incremental growth, the status holder becomes eligible to certificate for duty free import and thereby a right vests in the *exporter to receive the same."*

26. The effect of the decisions in *Viraj Impex (supra)* and *G.S. Chatha Rice Mills (supra)* was examined by a Division Bench of Gujarat High Court in *Enero jewels Pvt. Ltd. (supra)*. The effect of the very same notification as in the present petition was before it. The Division Bench held as follows:

> *"15. Hence, in our considered opinion, since the intention of the Notification was to come into force with immediate effect which in fact would be when the same has been digitally signed at 22:46:52 Hrs on 2-4-2026. Thus, the Notification came into effect after the goods already landed at the Ahmedabad Airport at 00:15 Hrs on 2-4-2026. Hence, the effect of the Notification cannot travel retrospectively to such goods, more particularly, when it is published/promulgated nearly 22 Hrs after the arrival of the goods. Therefore, Respondents 4 and 5 fall in error in applying the Notification issued on 2-4-2026 to the goods of the petitioner.*
> *16. Accordingly, the writ petition partly succeeds. Respondents 4 & 5 are directed to immediately assess, clear and grant out-of-charge to the petitioner's consignment covered under IGM No. 3020909 dated 2-4-2026, without insisting upon any import authorization/license under the impugned Notification No. 2/2026-27 dated 1-4-2026 subject to fulfillment of other official procedure. Rule is made absolute to the aforesaid extent."*

27. In view of the aforementioned judgments of the Supreme Court, we find ourselves in agreement with the view taken by the Gujarat High Court. The factual position in the present case does not differ from what was before the Gujarat High Court. In the present case the imported goods were dispatched from the country of export on 31-3-2026 and 1-4-2026 respectively, and *arrived at the Indian ports of import on 1-4-2026 and 2-4-2026, the tabular chart of which has been reproduced herein above. The last consignment imported by the Petitioner arrived at the Indian port of import on 2-4-2026 at 01.39 a.m., which is prior to the time when the Notification was published. The said fact has not been disputed by the respondents. Also, admittedly before the said notification the goods sought to be imported were under the "free" category.*

***28.** Thus, in such an eventuality, the goods in question were imported prior to the notification coming into force and are liable to be cleared in accordance with the conditions and legal position that prevailed before the issuance of the said notification."*

The legal position is therefore clear to the effect that Notifications like the present one fall in the category of delegated legislation. Such notifications cannot usually operate retrospectively – unless the Statute empowers otherwise.

24. In this regard, *vide* order dated 28th January, 2026, this Court had directed affidavits to be filed by the Petitioners to ensure that the transactions are *bonafide* and are not one off transactions entered into in order to circumvent the policy.

25. The Petitioners in compliance with the said order have placed on record affidavits of duly authorized persons who have deposed that the Petitioner concerns are in the business of import and export of gold. In order to establish the *bonafides,* various transactions going back at least three months prior to the transactions in question have been tabulated by the Petitioners. A perusal of the same would show that shipments have been booked regularly by the Petitioners.

26. The Court after examining the said affidavits is convinced that owing to the nature of the business of the companies as reflected in the formation documents such as Memorandum and Articles of Association or the LLP agreements, the Petitioners are *bonafide* traders of precious metals including gold. Insofar as the transactions themselves are concerned, details of several transactions have been placed on record which would show that they are regularly engaged in the business of import and export trade.

27. Having been satisfied with the *bonafide* nature of the transactions, this Court has no doubt that advance payments stand on a higher pedestal than Letters of Credit. The benefit of Clause 1.05(b) of the Foreign Trade Policy thus deserves to be extended to the Petitioners.

28. This Court, accordingly, directs that the benefit under Clause 1.05(b) of the Foreign Trade Policy be extended to the transactions of the Petitioners which are tabulated in paragraph no. 7 above.

29. The writ petitions are disposed of in these terms. All pending applications, if any, are also disposed of.

30. This order shall not be treated as precedent as this has been passed under the peculiar facts of this case.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

SEPTEMBER 9, 2026/*Rahul/ck*