IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20730 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 16673 of 2021

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

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Approved for Reporting	Yes	No
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OXANE PARTNERS INDIA PRIVATE LIMITED
Versus
UNION OF INDIA & ORS.

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Appearance:
MR A V NAIR FOR MR. HARDEEP L MAHIDA(7112) for the Petitioner No. 1
MS. DEVANSHEE N KARIEL(20429) for the Petitioner(s) No. 1
PARITOSH R GUPTA for the Petitioner No. 1 (SCA No.16673/2021)

MR PARTH MEHTA FOR MR ANKIT SHAH for the Respondent No. 1,2,3,4
DELETED for the Respondent(s) No. 5

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 20/08/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present writ petitions, the petitioners have prayed for quashing and setting aside the notifications No.57/2015-20 dated 31.03.2020 and No.29/2015-20 dated 23.09.2021 notified by the respondents under the Foreign Trade Policy (for short "the FTP") 2015-20 framed under provision of section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (for short "the Foreign Act").

2. At the outset, learned advocates appearing for the respective parties have submitted that the issue is squarely covered by the judgment dated 05.02.2026 passed in Special Civil Application No.17285 of 2025 and allied matters, and it is prayed that the present writ petitions may be allowed in terms of the said judgment.

3. The facts are incorporated from Special Civil Application No.16673 of 2021. The petitioners are engaged in providing various support services for maritime transport at multiple ports, including but not limited to, towing services. The services provided are covered under entry numbers 9(e) and 9(f) of the Appendix 3D, as well as under Appendix 3E of the Foreign Trade Policy (FTP). The petitioners used to derive the benefits of Service Exports from India Scheme (SEIS) under Appendix 3(D) as per the Public Notice No.3/2015-20 dated 01.04.2015, issued by the Government of India, Ministry of Commerce and Industry. The said Public Notice has been issued under the paragraph No.2.04 of the Foreign Trade Policy 2015-20 however, by the impugned Notification No.29/2015-20 dated 23.09.2021, the benefits, which were conferred to the petitioners are sought to be withdrawn with retrospective effect. The respondent No.2-Department has indicated the intent to revise the rates of rewards as well as the list of eligible services rendered during

financial year 2019-20 retrospectively. The respondent No.2 did not allow the beneficiaries like the petitioners to file the applications for seeking the benefit of SEIS for Financial Year (FY) 2019-20 in view of the said notification, as the same is applied retrospectively.

4. By the Notification No.57/2015-20 dated 31.03.2020 issued by the Government of India, Ministry of Commerce and Industry, Department of Commerce, Directorate General of Foreign Trade, the amendments in the Foreign Trade Policy (FTP) 2015-20 were effected by observing thus:

> *"1. In para 1.01, the phrase "shall remain in force upto 31st March, 2020 unless otherwise specified" is substituted by the phrase "shall remain in force upto 31st March, 2021 unless otherwise specified."*
>
> *2. The following shall be added at the end of para 3.08(a):*
> *" However, the service categories eligible under the scheme and the rates of reward on such services as rendered w.e.f. 1st April, 2019 to 31st March, 2020 shall be notified separately in Appendix 3 X. for the services rendered w.e.f. 1st April, 2020, decision on continuation of the scheme will be taken subsequently and notified accordingly."*
>
> *xxx xxx xxx*
>
> *Effect of this Notification: The existing Foreign Trade Policy 2015-2020 which is valid upto 31.3.2020 is extended upto 31.03.2021. Various other changes are also made extending the date of exemptions by one year and extending validity of DFIA and EPCG Authorizations for import purposes."*

5. Thus, by this notification, the FTP 2015-2020, which was valid up to 31.03.2020, was extended till 31.03.2021, and the service categories mentioned therein at the end of paragraph No. 3.08(a) of the FTP 2015-2020 and the rates of reward on such services, as rendered with effect from 01.04.2019 to 31.03.2020, were ordered to be notified separately in Appendix 3X. It was further clarified that for the services rendered with effect from 01.04.2020, decision on continuation of the scheme will be taken subsequently and notified accordingly. Pertinently, the Appendix was notified vide Notification No.29/2015-20 on 23.09.2021, i.e. almost after one and half year. The relevant extract of the said notification dated 23.09.2021, which is issued under the provisions of section 5 of the Foreign Act read with paragraph 1.02 of the FTP 2015-2020 and enabling paragraph No.3.13 of the FTP, is as under:

"… … … 2. After the existing para 3.08 (a) of FTP 2015-20, the following para 3.08 (aa) is inserted:

"3.08 (aa) For SEIS claims on services rendered in the FY 2019-20, the notified services and rates are listed in Appendix 3X as per Annexure to this Notification."

3. At the end of para 3.08 (c) of FTP 2015-20, the following is added:

"However, there shall be no such specified services under Appendix 3E for exports made in the financial year 2019-20"

> *4. After the existing para 3.10 of FTP 2015-20, the following paras are inserted:*
>
> *"3.10A For SEIS claim for FY 2019-20, service providers of eligible services shall be entitled to Duty Credit Scrip at notified rates (as given in Appendix 3X) on net foreign exchange earned, with the total entitlement capped at Rs 5 Crore per IEC for FY 2019-20.*
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> *3.10B For SEIS claim for FY 2019-20, the deadline for filing the online application as per ANF 3B shall be 31.12.2021. Provision of late cut under para 9.02 of HBP 2015-20 shall not apply for SEIS applications for FY 2019-20 and such applications shall get time-barred after 31.12.2021… … … "*

6. The insertion made in the Appendix 3X has been made retrospectively in line with the notification dated 31.03.2020. Thus, the traders like the petitioners were aware that they will not be eligible after 31.03.2020,however they were not aware of the insertion of paragraphs in Appendix 3X. The petitioners have also not challenged the prospective effect of the notification dated 31.03.2020 read with notification dated 23.09.2021. However, they are aggrieved with its retrospective effect as the petitioners had already made the exports and earned foreign exchange.

7. A bare reading of the notification dated 23.09.2021 will clarify that it has been issued for the service providers of eligible services,

who are entitled to duty credit scrips at notified rates as given in Appendix 3X on net foreign exchange, with a total entitlement cap at Rs.5 crores for FY 2019–20 only. It is not in dispute that the petitioners, who are the service providers, have claimed the benefit under the existing scheme of 01.04.2015 till the issuance of the impugned notifications.

8. We may, at this stage, refer to the relevant paragraphs of the decision dated 05.02.2026 rendered in Special Civil Application No.17285 of 2025 and allied matters. This Court on analogous issue has observed thus:

> *"5. xxx xxx xxx*
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> *(E) Thus, the Scheme introduced vide Notification dated 26.02.2019 was made part of the Foreign Trade Policy, 2015- 2020, vide Notification dated 29.03.2019 by exercising the powers under Section 5 of the Act. We may, at this stage, refer to the provisions of Section 5 of the Act, the same is as under:*
>
> > *"5. Foreign Trade Policy.–*
> >
> > *The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:*
> >
> > *Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette."*
>
> *(F) The provision of Section 5 is self-explanatory. The same stipulates that the Central Government may*

from time to time formulate and announce the Foreign Trade Policy and may also, in like manner, amend that policy. Thus, TMA scheme is statutory in nature. It is evident from the intention of the impugned Notification that the Scheme has been foreclosed with retrospective effect on the withdrawal of Notification dated 9th September, 2021.

6. In the instant case, by the impugned Notification dated 25.03.20222, the Ministry of Commerce and Industry has withdrawn the Notification dated 09.09.2021, thus, has given a retrospective effect of withdrawing of such Scheme.

7. We find that though the Government has power to withdraw the Scheme, however, the question which falls for deliberation before this Court is as to whether the same could have been done retrospectively or not in wake of the fact that for all these years, the Scheme was in operation and was also amended from time to time, giving rise to claims of the petitioners. At this stage, we may refer to the judgement in the case of Asian Food Industries (supra), the relevant paragraph 48 read as under:

> *"48 The Delhi High Court, however, in our view correctly opined that the Notification dated 4-7-006 could not have been taken into consideration on the basis of the purportedly publicity made in the proposed change in the export policy in electronic or print media. Prohibition promulgated by a statutory order in terms of Section 5 read with the relevant provisions of the policy decision in the light of sub-section (2) of Section 3 of the 1992 Act can only have a prospective effect. By reason of a policy, a vested or accrued right cannot be taken away. Such a right, therefore, cannot a fortiori be taken away by an amendment thereof."*

8. We may also refer to the relevant paragraph No.22 of the judgement in the case of Viraj Impex (supra), which read as under:

> *"22. Once it is held that Notification became operative only on 11.02 2016, the expression 'date of this Notification' occurring in para 2 thereof, must necessarily be construed to mean the date of its publication in the Official Gazette. Accordingly, the issue is answered. The appellants*

having opened irrevocable Letters of Credit prior to 11.02 2016 and having complied with procedural requirements under para 1.05(b) of the FTP are clearly entitled to the benefit of transitional provision contained therein. The MIP introduced by the Notification with effect from 11.02.2016 cannot be applied to imports effected by the appellants pursuant to irrevocable Letters of Credit prior to 11.02.2016."

8.1 We may also refer to the relevant paragraph No.135 of the judgement in the case of Kanak Exports & anr, (supra), which read as under:

"135. We have already discussed these aspects in detail. To recapitulate, it is held by us that Section 5 of the Act does not empower the Government to make amendments with retrospective effect, thereby taking away the rights which have already accrued in favour of the exporters under the Scheme. No doubt, the Government has, otherwise, power to amend, modify or withdraw a particular scheme which gives benefits to a particular category of persons under the said scheme. At the same time, if some vested right has accrued in favour of the beneficiaries who achieved the target stipulated in the scheme and thereby became eligible for grant of duty credit entitlement, that cannot be snatched from such persons/exporters by making the amendment retrospectively. In the present case, we find that Section 5 of the Act does not give any specific power to the Central Government to make the rules with retrospective effect. The Central Government is authorised to make rules/schemes under the said provision as a delegatee, which means that the EXIM Policy/Scheme framed under the said provision is by way of delegated legislation. There has to be specific power to make the amendments with retrospective effect, which are lacking in the instant case. Moreover, even if there is such a power, it cannot take away vested rights which have accrued in favour of particular persons/exporters. We have already enlisted number of judgments of this Court taking such a view. A few such cases laying down the aforesaid principle are:

(i) Regl. Transport Officer v. Associated Transport Madras (P) Ltd.
(ii) Accountant General v. S. Doraiswamy
(iii) A.A. Calton v. Director of Education
(iv) Railway Board v. C.R. Rangadhamalah."

9. Thus, the Supreme Court, by examining the provisions of Section 5 of the Act, has held that Section 5 of the Act neither permits/empowers the Government to make amendments with retrospective effect, nor it allows to close the Scheme retrospectively, thereby taking away the rights which have already accrued in favour of the exporters under the Scheme. Hence, the impugned Notification dated 25.03.2022 abolition/foreclosing the Scheme introduced vide Notification dated 09.09.2021 retrospectively is hereby quashed and set aside. The Notification dated 25.03.2022 shall become effective from the date it was issued. Accordingly, the respondents are directed to give the consequential effect of this order and process the applications filed by the petitioner in view of the Scheme. All the benefits accruing till the issuance of Notification dated 25.03.2022 shall be extended to the petitioners, including raising claims for the period prior to the issuance of impugned Notification, for which the petitioners were prevented from filing applications. The claims/applications shall be processed and the amount shall be paid within a period of 12 weeks from the date of receipt of copy of this order."

9. As mentioned previously, the respondents have in fact, admitted that the issue raised in the present petitions is covered by the aforesaid decision. The insertion of Para 3.08(a) and (c) in the Appendix 3E of FTP 2015-2020 has resulted in denial of accrued SEIS benefits for the services rendered during FY 2019-2020 retrospectively. During this period all the

exports were affected by the petitioners, and the petitioners have earned foreign exchange, and have been granted the SEIS benefits during 2015 to 2019.

10. Hence, we adopt the same view as held by us in the aforesaid judgment. We declare that the impugned notifications dated 23.09.2021 and 31.03.2020 shall become effective from the date they were issued, and their retrospective effect is quashed. Accordingly, the respondents are directed to give consequential effect to the present order and to process the applications filed by the petitioners in view of the scheme. All the benefits accruing till the issuance of the impugned notification shall be extended to the petitioners, including raising claims for the period prior to the issuance of the impugned notification, for which the petitioners were prevented from filing applications. The claims/applications shall be processed and the amount shall be paid within a period of 12 weeks from the date of receipt of a copy of this order.

11. The petitions stand allowed to the aforesaid extent. Direct service is permitted.

Registry to place a copy of this order in the connected matter(s).

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

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