



2025:CGHC:60517-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 228 of 2023

M/s Eastman International (A Partnership Concern) Through Its Partner Sh. Aman Singal, Son of Sh. Rakesh Singal, Aged About 45 Years, B-Xxx-2185/c-203/1, Phase 7, Focal Point, Ludhiana- 141010

... **Petitioner(s)**

versus

1 - Union of India Through Its Secretary, Ministry of Finance Department of Revenue North Block, New Delhi

2 - Commissioner of Customs Central Excise And Central Tax Office of Customs For MP And CG, Manik Bagh Palace, PB No. 10, Indore, Madhya Pradesh 452001

3 - Assistant Commissioner ICD CONCOR, Naya Raipur, Chhattisgarh

... **Respondent(s)**

(Cause Title Taken from Case Information System)

For Petitioner(s)	: Mr. Ajay Aggarwal, Mr. Naveen Bindal and Ms. Katyayani Vishnupriya, Advocates.
For Respondent No. 1 & 2	: Ms. Anmol Sharma, Standing Counsel and Mr. Anumeh Shrivastava, Advocate.
For Respondents No. 3	: Mr. Anumeh Shrivastava, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

12/12/2025

1 Heard Mr. Ajay Agrawal, Mr. Naveen Bindal and Ms. Katyayani Vishnupriya, learned counsel for the petitioner. Also heard Ms. Anmol

Sharma, learned counsel for the respondents No. 1 and 2 as well as Mr. Anumeh Shrivastava, learned counsel for the respondent No. 3.

- 2** By this petition under Article 226 of the Constitution of India, the petitioner seeks for the following relief(s):

“10.1 This Hon'ble Court may be pleased to issue a writ of prohibition or appropriate writ, order or direction in nature thereof, prohibiting Respondents from collecting any export duty on export of Rice, without insisting upon compliance of second condition of condition no. 6 of exemption Notification No. 50/2023-Customs dated 25.08.2023, in the circumstances so warranting; and

10.2 Direct return of deposit of Rs. 2,01,28,295/- already made by the Petitioner "under protest" and "without prejudice" with appropriate interest thereon, after holding the Petitioner having satisfied the condition for exemption being condition no. 6 under exemption Notification No. 50/2023-Customs dated 25.08.2023, in the circumstances so warranting; and

10.3 In the alternative, this Hon'ble Court may be pleased to issue a writ of certiorari appropriate writ, order or direction in nature thereof, quashing second condition of condition no. 6 of exemption Notification No. 50/2023-Customs dated 25.08.2023, in the circumstances so warranting, as being wholly arbitrary, unjust, invalid, irrational, capricious as being violative of Article 14, 21 and Article 19(1)(g) of the Constitution of India; and

10.4 For such further and other reliefs as the nature and circumstances of the case may require;”

- 3** The facts, as projected by the petitioner are that the petitioner is engaged, inter alia, in the trading of rice, cycle parts, ceramic tiles etc. The petitioner, inter alia, exports the rice out of India. It has been exporting rice out of India since the year 2012. The petitioner is Government of India recognized "3-star export house". The export of rice from India happens through various means, in which export proceeds are

realized through different methods. Some of the common known methods of realization of export proceeds are through "documentary collections", "open account", "escrow account", "credit cards", "consignment transfer", "wire transfer", "cash in advance", "cash upon delivery" etc., to name a few. The export can also be made through "Letter of Credit" (*for short, the LoC*). Each of the aforesaid method of realization of export proceeds are legitimate and valid in the eyes of law and there is no prohibition or restriction in this regard, on any of the methods employed. It is also possible that a mix of aforesaid methods of realization of sale proceeds are employed in the trade. The petitioner exports the rice and realizes the exports proceeds by the methods of "cash upon delivery", which it has been using since the year 2012. In between 14.08.2023 to 25.08.2023, the consignments of parboiled rice of the Petitioner, which is meant for export had entered the customs station of ICD CONCOR Naya Raipur, within the State of Chhattisgarh. In relation to the said consignments, no order permitting clearance for export, known as "Let Export Order" has been issued by the "Proper Officer appointed under the Customs Act, 1962. This is undisputed between the parties. The Central Government, Ministry of Finance (Department of Revenue) issued a Notification bearing No. 49/2023-Customs dated 25.08.2023 under Section 8(1) of the Customs Tariff Act, 1975 levying export duty of 20% on export of parboiled rice falling under Chapter Heading 1006 30 10 of the Customs Tariff Act, 1975. This was done by inserting an entry being SL No. 6C in the Second Schedule to the Customs Tariff Act, 1975, which schedules the item, which are subject to export duty. Aforesaid Notification came into force on 25.08.2023 (Annexure P-1). On the heels of the aforesaid Notification came another Notification of even date being Notification No. 50/2023-Customs dated 25.08.2023. By the said Notification, which was

issued under Section 25(1) of the Customs Act, 1962, an exemption was immediately granted in respect of very same parboiled rice falling under Chapter Heading 1006 30 10 of the Customs Tariff Act, 1975, subject to condition(s) specified therein. This was done by amending the earlier mother exemption Notification No. 55/2022-Customs dated 31.10.2022 (Annexure P/2). By the aforesaid Notification No. 50/2023-Customs dated 25.08.2023 (Annexure P/3) an entry at SL No. 2B, *inter alia*, was inserted in the earlier mother exemption Notification No. 55/2022-Customs, prescribing NIL rate of duty subject to the satisfaction of Condition No. 6. This Condition No. 6 was only applicable for a brief period from 25.08.2023 to 15.10.2023 and was thereafter done away with. With effect from 16.10.2023, the aforesaid exemption was made unconditional, as evident from SL No. 2A, which prescribed NIL rate of duty subject to the satisfaction of Condition No. 5. Therefore, except for a brief period from 25.08.2023 to 15.10.2023, no export duty was leviable on export of parboiled rice. This is for the reason that prior to 25.08.2023 there was no export duty on export of parboiled rice and after 15.10.2023, even though there was an export duty on export of parboiled rice, the same was unconditionally exempted Notification under above exemption. In order to claim exemption from export duty in terms of aforesaid exemption Notification No. 50/2023, the Petitioner had to satisfy Condition No. 6. It is the case of the Petitioner that it had satisfied Condition No. 6 of the aforesaid exemption Notification and accordingly it was exempt from paying export duty on the export of parboiled rice from Notification No. 49/2023-Customs.

- 4 Mr. Aggarwal, learned counsel for the petitioner submits that the petitioner wrote a letter dated 13.09.2023 to the Customs Department, seeking export of parboiled rice, without payment of export duty, in terms

of aforesaid exemption Notification No. 50/2023-Customs dated 25.08.2023. Upon denial of the aforesaid exemption by the Customs Department and in the interest of saving time and to avoid the consignment being delayed for export, the Petitioner, bonafide and in good faith, paid the entire disputed export duty of 20% to the Customs Department on the full value of its consignment, which has already entered in the customs station ICD CONCOR Naya Raipur, prior to 25.08.2023. The petitioner deposited the export duty under protest and without prejudice to its rights and contentions in this regard. Insofar as the Customs Department is concerned, it has taken a view that in Condition No. 6 of the aforesaid exemption Notification No. 50/2023, two sub-conditions are mentioned and unless both the sub-conditions are concurrently satisfied by the Petitioner, it is not entitled to the benefit of aforesaid exemption Notification, which is being questioned by the petitioner in the present petition.

- 5** Mr. Aggarwal submits that only first sub-condition of Condition No. 6 appended to the exemption Notification No. 50/2023 is applicable to the Petitioner, which has been admittedly fully satisfied by the Petitioner, to which there is no dispute between the parties. Insofar as, the second sub-condition of Condition No. 6 appended to the exemption Notification No. 50/2023 is concerned, the same is not even applicable to the petitioner, therefore, question of satisfaction of said sub-condition by the petitioner does not arise. The petitioner has complied with first sub-condition of condition no. 6 of the exemption Notification No. 50/2023-Customs, which is the sole condition applicable to Petitioner, in the facts and circumstances of the present case. The second sub-condition of condition No. 6 of exemption Notification No. 50/2023-Customs is not even applicable to the Petitioner and therefore, question of satisfying the

same in the facts and circumstances of the present case, does not arise. The petitioner does not export the parboiled rice through backing of irrevocable LoC which being the gist of the said sub-condition, which is only applicable to those exporters, which exports the goods through the backing of irrevocable LoC. It may be worthwhile to mention that trading or export of goods happens both with and without LoC neither of which is compulsory or mandatory in law. In fact, substantial and majority trade including that in rice happens without opening a LoC, including that by the petitioner. It is nowhere required that export of goods whether rice or otherwise must happen only through LoC. It is not the case of the Customs Department (as it could not have been) that it is compulsory and mandatory to export rice via mechanism of LoC only and other mechanism of export of rice is prohibited in law. This is neither the case nor can be the case of the Customs Department. Export through LoC is only one way of export and export without LoC is another way of export, both of which are genuine, legitimate and recognized in eyes of law. No exception can be taken to this.

- 6** Mr. Aggarwal next submits that the petitioner is not even conducting its trade through the mechanism of LoC then question of imposition of a condition relating to LoC upon the petitioner as given in second sub-condition of Condition No. 6 of exemption Notification No. 50/2023 does not arise. It is only where export is conducted via mechanism of LoC then question of satisfaction of second sub-condition of Condition No. 6 may arise, which is not the case here. The whole purpose of export through LoC is to ensure that the export proceeds of the export of rice is realized in India. Being the only purpose, which purpose is fully satisfied in the present case, without there being any LoC in as much as, indisputably, the petitioner has fully recovered the export proceeds of export of

parboiled rice in the present case, As such, the satisfaction of such non-germane and inapplicable sub-condition in the present case is hardly commendable in law. In support of his contentions, Mr. Aggarwal places reliance upon the decision of Hon'ble Supreme Court in the case of ***Mangalore Chemicals and Fertilizers Limited v. Deputy Commissioner of Commercial Taxes and Others*** {1992 Supp (1) SCC 21} wherein the Hon'ble Supreme Court, while dealing with conditions in an exemption notification in a taxing statute, held that there are conditions and conditions and the mere fact that they are statutory, does not matter, one way or the other. Some conditions may be substantive and mandatory and based on the consideration of the policy and some other may merely belong to the area of procedure. It was further held that it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purpose, they were intended to serve. In the said matter, the Hon'ble Supreme Court placed reliance upon the decision of House of Lords in the case of ***Wells v. Minister of Housing and Local Government***- (1967) 2 All ER 1041, wherein it was observed that a public authority can be estopped from relying upon on a technicality and this is a technicality. It is respectfully submitted that the aforesaid decision of Hon'ble Supreme Court applies with all force on the submissions made by the petitioner on the first proposition.

- 7 Mr. Aggarwal further submits that the matter can be looked at from another angle as well. The second sub-condition of Condition No. 6 of exemption Notification No. 50/2023-Customs only imposes the condition of requiring an irrevocable LoC to be opened before the cut-off date ie. 25.08.2023 which is the date of Notification in question. It can be reasonably inferred that the Notification presupposes that there may be a

LoC opened after the cut-off date and accordingly, puts a condition that the same must be opened before the cut-off date. Therefore, where there is no LoC to start with, the very idea of cut-off date is entirely meaningless and out of place. This incidentally, shows that the said second sub-condition was not designed to be applicable to the parties like the present Petitioner. This also shows that the stand of the respondent Department is against the doctrine of narrow interpretation. This also shows that their stand leads to absurdity and anomaly, which is constitutionally infirm.

- 8** In the alternative, without prejudice to the first proposition, Mr. Aggarwal submits that if a view is taken otherwise, then the very second sub-condition, in so far as, the parties, which conduct trade through methods other than LoC is concerned, it would be manifestly arbitrary, capricious, unjust, irrational and hence ultra vires Article 14 and Article 19(1)(g) and Article 21 of the Constitution of India, apart from Article 265 thereof. This is so, in as much as, laying down any condition of exemption, which has no nexus with the object sought to be achieved and is rather contrary to the object sought to be achieved (being realization of export proceeds by other methods), has no *intelligible differentia*, so to speak and therefore, such a condition qua parties like Petitioner is wholly irrational and manifestly arbitrary. Accordingly, the said condition qua Petitioner would be ultra vires the Constitution of India, more so, when seen in the light of the fact that there is no prohibition or restriction on conduct of the trade through other methods {which itself could not have been there, without falling foul of Article 19(1)(g)}. Any condition which warrants doing of trade or business in any particular fashion, without any valid legal bar or sanction, is violative of Article 14 and Article 19(1)(g) of the Constitution of India in as much as such a condition is manifestly arbitrary, capricious,

unjust, invalid and discriminatory and exclusionary in nature. Those people who are engaged in the trade, like petitioner, who are conducting their business without a LoC cannot be mandated to conduct their business only through a LoC. Such a condition by its very nature is restricting and curtailing the fundamental rights of the Petitioner and accordingly ought to be declared null and void and unconstitutional. Such a condition is against the doctrine of level playing field. There is no rational nexus and *intelligible differentia* between two sets of people created by the aforesaid second sub-condition of Condition No. 6 with the objects sought to be achieved, in as much as the object of the LoC is to ensure that the price of goods exported, is received in India, which can be secured otherwise also. It cannot be suggested that the payment of money against goods exported cannot be secured or ensured otherwise than by way of LoC. Therefore, this is a clear violation of Article 14 of the Constitution of India. The second sub-condition of Condition No. 6 in the aforementioned Notification is also in violation of Article 19(1)(g) of Constitution of India, in as much as it prohibits /restricts the fundamental rights of the Petitioner to carry on any trade or occupation or business, by putting a condition of doing the said trade or business only through the means of LoC. This is a clear infringement of Article 19(1)(g) of Constitution of India, being a condition which is neither reasonable nor in public interest in any manner, whatsoever, when in reality a large and substantial part of trade otherwise happens without the means of a LoC. Therefore, in any event, in the alternative scenario, the aforesaid second condition would be bad in law and required to be set aside qua the petitioner.

- 9** Mr. Aggarwal, in furtherance of the aforesaid second proposition of law, places his reliance on the decision of Supreme Court in the case of

Vinishma Technologies Pvt. Ltd. v. State of Chhattisgarh {2025 SCC OnLine SC 2119}, arising out of the State of Chhattisgarh itself, wherein the Supreme Court reversed the view of the Hon'ble Chhattisgarh High Court. In the said case, in order to obtain a tender to supply Sports Kits to the students of schools run by the State Government, condition to the effect that the bidder must have supplied sports goods to the State Government agencies in the past three years was held to be arbitrary and therefore bad in law. The Hon'ble Supreme Court held the relevant condition to be restrictive, exclusionary and discriminative. Therefore, the aforesaid recent decision of Hon'ble Supreme Court arising out of State of Chhattisgarh itself, fully supports the view on the Proposition No.2 advanced by the petitioner, which is canvased in the alternative and without prejudice to the first proposition.

- 10 Mr. Aggarwal further submits that the Notification No. 50/2023 is a time bound Notification, as evident from condition No. 5 appended to serial No. 2A, which comes into force with effect from 16.10.2023. This incidentally shows that the insisting upon LoC is irrational inasmuch as, no LoC is required after 16.10.2023 and was also not required prior to 25.08.2023. Any law ought to be interpreted, so as to bring it in accord with the constitution and avoid it being declared as unconstitutional, for this purpose, even if something is required to be read down, it ought to be done, lest it fall foul of the constitutional provisions. As such, the exemption Notification ought to be read as contended by the petitioner, failing which it would fall foul of Article 14, 21 as well as Article 19(1)(g). In addition to above, there is an element of discrimination even otherwise in the policy of the Central Government inasmuch as Central Government through its another wing i.e. Directorate General of Foreign Trade, while prohibiting export of broken rice, did not impose any such condition as in

the present case. Seen in the contrast that where the goods are prohibited yet such a condition as in the present case is absent. whereas in the present case, where the goods are neither prohibited nor restricted, such a condition is imposed, itself introduces an element of hostile discrimination, inviting wrath of Article 14 of the Constitution of India. The impugned condition being second condition of condition No. 6 of Notification No. 50/2023 Customs is otherwise also bad in law in the facts and circumstances of the present case.

- 11 Mr. Aggarwal submits that identical issue, as raised in the present Writ Petition is pending before Nagpur Bench of the Hon'ble Bombay High Court in Writ Petition No. 6058 of 2023, wherein Division Bench of Bombay High Court has granted an interim order dated 12.09.2023. Similar issue, as raised in the present Writ Petition is also pending before Hon'ble Gujarat Court in ***M/s. HRMM Agro Overseas Pvt. Ltd. v. Union of India***, {Special Civil Application No. 15113 of 2023}, wherein a Division Bench of Gujarat High Court has also granted an interim order dated 31.08.2023. Since the consignment meant for export is lying in the ICD CONCOR, Raipur, which is located in the State of Chhattisgarh and Respondent No. 2 is also territorially located within the territorial jurisdiction of this Hon'ble Court, this Hon'ble Court has jurisdiction in the matter.
- 12 Mr. Aggarwal lastly submits that this petition deserves to be allowed on the first proposition of law, canvassed above and failing which on the second proposition of law pleaded in the alternative.
- 13 On the other hand, Ms. Anmol Sharma and Mr. Anumeh Shrivastava, learned counsel appearing for the respondents No. 1 and 2 submits the allegation of the petitioner is that although goods got entered in the port,

'let export order' permitting clearance of export, was not issued by the proper officer. In this regard, it is submitted that order permitting clearance and loading of the goods under section 51(1) of the Customs Act, 1962 can be made by the proper officer, if the exporter presents the shipping bill to the proper officer electronically as required under section 50(1) of the Customs Act, 1962. In case of the petitioner, no shipping bill, in respect of goods under question, was presented and hence, no order regarding clearance of goods for exportation could be made. It also on record that shipping bills in respect of goods in question were filed by the petitioner on 12.09.2023, 15.09.2023 and 16.09.2023, the order for clearance of goods for exportation was granted on date 14.09.2023 and 18.09.2023. The contention of petitioner that they satisfied the condition No. 6 of the Notification No. 55/2022-Customs dated 31.10.2022 (Inserted vide Notification No. 50/2023-Cus dated 25.08.2023) is false. In case of goods, satisfying the condition 6 *ibid*, nil rate of duty was applicable even after date 25.08.2023 *i.e.* date on which 20% of export duty was introduced on export of parboiled rice falling under CTH 1006 30 10. Condition No. 6 *ibid* reads as under:-

(i) Goods meant for export shall have entered the customs station for the purpose of exportation before the 25th day of August, 2023, and an order permitting clearance has not been issued by the proper officer, and

(1) Goods meant for export shall be backed by irrevocable Letter(s) of Credit, wherein the said letter(s) of credit has been opened before the 25th day of August, 2023, and the message exchange date between the Indian and Foreign bank/swift date should be before the 25th day of August, 2023, and such Letter(s) of Credit should have been authenticated by the Recipient Bank."

- 14** The conjunction "and" at the end of clause (i) of the condition No. 6, clearly indicates that clause (i) and clause (ii) are part and parcel of each other and both need to be satisfied simultaneously. Whereas, in case of the petitioner, export goods were not backed by LoC. Hence, clause (ii) above or to say condition No. 6 of the Notification No. 55/2022-Customs dated 31.10.2022 was not satisfied in case of export goods of petitioner. Letters referred by the petitioner were produced to the office after 'Let Export Order' was issued on shipping bills filed by the petitioner and request was made not to insist for payment of duty on export of goods and if the office does not agree, to consider their payment of duty as under protest. Request made by the exporter in the said letters was made through wrong channel and at wrong time. The exporter has to file the shipping bills electronically on self-assessment basis on which they have to declare classification of goods, value of goods whether they are paying duty or taking exemption. In case of petitioner, while filing shipping bill electronically, the petitioner has chosen to export the goods on payment of duty, gets their shipping bill assessed, makes the payment of duty and once the order for let export is made, the petitioner comes up with letter with request to not to insist on payment of duty. If the petitioner had genuinely been interested in making exports under exemptions, they would have chosen that option at the time of filing of shipping bill itself and would have uploaded documents in support of their claim of exemption which they have not. Whereas, the petitioner have chosen to make request for exemption from duty via letter that too, after making payment of duty and securing let export order. To avail the benefit of nil rate of export duty on export of rice, clause (I) and (ii) of the condition No. 6 of the Notification No. 55/2022-Customs dated 31.10.2022 (Inserted vide Notification No. 50/2023-Cus dated 25.08.2023 1, should be

satisfied concurrently. The contention of the petitioner that, clause (ii) the condition No. 6 is not applicable to them, is flawed and ill-conceived whereas fact of the matter is that benefit of Nil rate is duty is applicable to only those exporters who are covered under clause (i) and (ii) of the condition No. 6 *ibid*. Notification is issued by the Govt in exercise of power vested upon it under subsection (1) of the Section 25 of the Customs Act, 1962 which is well with in the powers of Government and same can not be regarded as Arbitrary, unjust or violative of the Constitution. Exemption would have been available to the petitioner, if it had satisfied clause (i) and (ii) of the condition No. 6 *ibid*.

- 15** Mr. Shrivastava next submits that to avail the benefit of nil rate of export duty on export of parboiled rice, clause (i) & (ii) of the condition No. 6 of the Notification No. 55/2022-Customs dated 31.10.2022 (Inserted vide Notification No. 50/2023-Cus dated 25.08.2023), should be satisfied concurrently, i.e., export goods of the exporter should have entered the port prior to 25.08.2023, and the export goods should be backed by LoC which have been opened on date prior to 25.08.2023. Whereas, in case of petitioner, export goods were not backed by any LoC and hence, they were not eligible to claim exemption from duty under Sr. No.2B of the Notification No. 55/2022- Customs dated 31.10.2022. The contention of petitioner that only clause (i) applicable to them is flawed. No mandatory condition has been imposed for exporting the goods only through LoC. If the export goods were not backed by LoC, same could have been exported on payment of export duty. In case of petitioner, their export goods were not backed by LoC, hence, they had the option to export goods on payment of export duty which has already been done by the petitioner under shipping bills filed on date 12.09.2023, 15.09.2023 & 16.09.2023. The petitioner has misunderstood the changes brought in

the rate of duty on export of parboiled rice under notification No. 49/2023-Customs dated 25.08.2023 and Notification No. 50/2023-Cus dated 25.08.2023. Contention of the petitioner that vide Notification No. 50/2023-Cus dated 25.08.2023, condition No. 6 has been imposed upon them to export the goods under LoC, is culmination of their misunderstanding and ignorance. Nowhere, in the above two notifications, any such condition regarding export of parboiled rice only through LoC has been imposed on any class of exporter. Vide Notification No. 49/2023-Customs dated 25.08.2023, an export duty @ 20% has been imposed on export of parboiled rice with effect from 25.08.2023. However, as per Notification No. 50/2023-Customs, any exporter who has opened LoC prior to 25.08.2023 and their goods have entered port prior to 25.08.2023, they had option to export goods taking exemption from export duty as imposed under notification No. 49/2023-Customs. As the petitioner had no LoC opened, they are not covered for benefit available under Notification No. 50/2023-Customs. Still the petitioner had option to export parboiled rice on payment of duty which they did under shipping bills filed on date 12.09.2023, 15.09.2023 & 16.09.2023.

- 16** Mr. Shrivastava further submits that the Notification is issued by the Government in exercise of power vested upon it under subsection (1) of the Section 25 of the Customs Act, 1962 which is well within the powers of Government and same cannot be regarded as violative of the Constitution. With respect to the decision rendered by the Nagpur Bench of the Bombay High Court in ***M/s. Saket Foods v. The Union of India & Others*** {WP No. 6058/2023}, as an interim measure, the Court had allowed the export of goods on submission of bond equivalent to value of duty which have been lying on port. The above order regarding interim

measure, is not applicable in case of petitioner as no goods of the petitioner is lying at port. In ***M/s. HRMM Agro Overseas Pvt. Ltd.*** (supra) the Gujarat High Court allowed the export of goods on submission of bond equivalent to value of goods. The said order of Gujarat High Court is applicable in respect of goods regarding which Let Export Order was issued by the proper officer on date 25.08.2023 but before 22.49 hrs. The said order is not applicable in case of petitioner, as petitioner had neither filed any shipping bill nor got issued any let export order in respect of goods lying at port on date 25.08.2023. The issue regarding applicability of export duty on goods exported on date 25.08.2023 regarding which Let Export Order was issued prior before 22.49 hrs, has already been clarified under letter F.No. 450/195/2022-CUS-IV dated 06.09.2023 issued by the CBIC.

- 17 Mr. Shrivastava, placing reliance on the additional return filed, submits that export duty is generally levied in few situations such as to augment domestic availability, cool domestic prices or on basic raw materials to ensure that only value added products are exported. Section 8(1) of the Customs Tariff Act, 1975 empowers the Central Government with emergency power to levy export duty. To augment domestic availability vide Notification No. 49/2023-Customs dated 25.08.2023, the Central Government in exercise of the Emergency Powers under Section 8(1) of the Customs Tariff Act levied 20% export duty on parboiled rice classified under CTH 10063010. All notifications are issued by the Government in exercise of powers of delegated legislation and therefore approval of the parliament is obtained. Further, whenever a notification is issued in exercise of emergency powers, a resolution is moved in both houses of parliament and the resolution was duly approved in both houses of the parliament. The decision to levy export duty and the decision is a policy

decision. It is a well settled principle that policy decisions are beyond the scope of judicial review unless the challenge is made on the ground that the decision is arbitrary or discriminatory. In this context, Mr. Shrivastava places reliance on the judgment of the Hon'ble Supreme Court in ***Union of India & Others v. VKC Footsteps India Pvt. Limited*** {2022} 2 SCC 603}. The petitioner has submitted before the Hon'ble Court that he has "indisputably complied with first condition which is the only condition which is applicable to the petitioner" and that "the second condition is not even applicable to the petitioner, and therefore the question of satisfying the same does not arise." According to the petitioner, he does not export the goods through backing of an irrevocable LoC and therefore there is no question of compliance and that it is violative of Article 19 (1) (g) if he has to do business in a particular manner alone. It is well settled that an exemption notification should be interpreted strictly and the burden of proving applicability would be on the taxpayer to show that his/her case comes within the parameters of the exemption notification. In the past also Government has given conditional exemptions based on fulfilment of certain conditions. In this case also, the policy decision was to grant exemption from export duty only if both conditions were fulfilled. With regards to the challenge based on violation of Article 19 (1) (g), reliance is placed on the decision of the Kerala High Court in ***Kerala Colour Lab. Association versus Union of India*** [2003 (156) E.L.T. 17 (Ker)].

- 18** In response to the above submissions, placing reliance on the rejoinder filed, Mr. Aggarwal submits that the only plea, taken by the respondents in their reply is that it is a policy matter, which plea is completely untenable and inapplicable in the present case in as much as, the petitioner has setup a case of inapplicability of second condition of the exemption being Notification No. 50/2023-Customs dated 25.08.2023,

which has not been answered by the respondents, besides the alternative case of the said condition being ultra vires, if held to be applicable. Further, this is not a case of policy but a case of statutory dispensation and consequently not beyond the realm of manifest arbitrariness and scope and mandate of Article 14, amongst other Articles of the Constitution of India. Prior to 25.08.2023, there was no export duty leviable on the export of parboiled rice. However, w.e.f. 25.08.2023, export duty was imposed upon the export of parboiled rice, vide Notification No. 49/2023 Customs dated 25.08.2023 to the extent of 20% vide Serial No.6C. However, the same was simultaneously exempted vide Notification No. 50/2023-Customs dated 25.08.2023 vide Serial No. 28, subject to conditions at Serial No.6. The petitioner has admittedly satisfied first condition of Serial No.6. The second condition of Serial No.6 is inapplicable to petitioner and consequently there is no occasion in law or otherwise to satisfy the same, as pleaded in the writ petition and not contested in the reply, except to the extent of saying that it is a policy matter. Again w.e.f. 16.10.2025, the export duty is completely exempt, unconditionally vide aforesaid exemption Notification No.50/2023 Customs dated 25.08.2023. vide Serial No. 2A thereof, which prescribes for 'Nil' rate of duty with condition No.5. Therefore, the position which thus emerges is that until 25.08.2023, there was no export duty leviable and w.e.f. 16.10.2023, the export duty was though leviable but completely and unconditionally exempted. In between for the period 25.08.2023 to 15.10.2023 *i.e.* for a brief period of less than even two months, the export duty was levied, which was also exempted, subject to condition prescribed and applicable. The idea behind non-levy of export duty is to encourage export from India and to earn valuable foreign exchange for the Country. The export duty is levied, briefly due to

scarcity in domestic market. However, if the export is otherwise capable being fructified, then the same is exempted from export duty. The petitioner in the present case has already received the entire consideration for the export of the goods. The very purpose of export being realization of export proceeds stands fully fulfilled in the present case, being the purpose of Condition No.(ii) of Condition No. 6 of the exemption Notification, which was not applicable to the petitioner, who does not do export business by LoC. Doing of the business by LoC is only one of the many ways of doing export business and neither it is compulsory nor it is mandatory, either under the policy or under the law. In fact, majority of the rice export from India is not through the mode of LoC but by other modes, across the trade spectrum. There is nothing special about LoC, which merely is one method of ensuring realization of export proceeds, which may be realized otherwise also.

- 19** Apart from medium of LoC, the export proceeds can be realized through "documentary collections", "open account", "escrow account", "credit cards", "consignment transfer", "wire transfer", "cash in advance", to name a few. Each of the aforesaid method is distinct from the medium of LoC and can be legitimately employed to make export and realize the export proceeds. The fact that the petitioner has fully realized its exports proceeds, which is not in dispute, shows the authenticity and effectiveness of the method employed, having sole purpose of realization of export proceeds. In above background, to insist upon export through LoC and consequent exemption based thereon is nothing but stark unreasonableness, unjust, irrational and manifestly arbitrary and therefore, violative of petitioner's fundamental rights guaranteed under Articles 14, 19(1)(g) and Article 21 of the Constitution of India. This also shows violation of Article 265 of the Constitution of India, which

mandates that no tax shall be levied or collected, except by authority of law, which has been held to mean authority of valid law. 15. In so far as, the contention of the Respondents in their Reply regarding it being policy decision and reliance upon the case law in this regard is concerned, it is respectfully submitted that the same is wholly inapplicable in the present case and is not germane to the issue at hand. This is a matter of construction and interpretation of exemption Notification No. 50/2023 Customs dated 25.08.2023 and its validity in the alternative and it has nothing to do with mere matter of policy. Further, even if it were to do anything with policy also, still the same cannot be arbitrary and in conflict with the fundamental rights of the Petitioner. Further, in so far as, the reliance upon change of policy, the same has no application in the present case, as much as, the same is in the context of change of policy from 'free' to 'restricted / prohibited /state trading' or 'otherwise regulated'. In the present case, the petitioner is not concerned with any of above but concerned with levy of export duty, which is initially exempted conditionally and thereafter, unconditionally. Therefore, the said contention of the Respondents is not relevant to the instant matter.

20 Lastly, Mr. Aggarwal submits that the petitioner is entitled to consequential relief of refund of export duty already paid under protest and without prejudice to its rights and contentions, with interest thereon.

21 We have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

22 The relevant portion of the Notification dated 25.08.2023 (Annexure P/1) reads as under:

“Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 8 of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), the Central

Government, hereby directs that the second schedule to the Customs Tariff Act shall be amended in the following manner, namely:

In the Second Schedule to the Customs Tariff Act, after Sl. No. 6B and the entries relating thereto, the following Sl. No. and entries relating thereto shall be inserted, namely:

(1)	(2)	(3)	(4)
"6C	1006 30 10	Rice, Parboiled	20%

23 Thereafter, another Notification of even date being Notification No. 50/2023-Customs dated 25.08.2023 came to be issued. By the said notification, which was issued under Section 25(1) of the Customs Act, 1962, an exemption was granted in respect of parboiled rice falling under Chapter Heading 1006 30 10 of the Customs Tariff Act, 1975, subject to condition specified therein. This was done by amending the earlier exemption Notification No. 55/2022-Customs dated 31.10.2022. By the aforesaid Notification No. 50/2023-Customs an entry at serial No. 2B, inter alia, was inserted in the earlier exemption Notification No. 55/2022-Customs, prescribing NIL rate of duty subject to satisfaction of condition No. 6. The relevant part of the Notification No. 50/2023 reads as under:

“(1) in the Table, after S. No. 2 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely:

(1)	(2)	(3)	(4)	(5)
2A	1006 30 10	Rice, Parboiled	Nil	5
2B	1006 30 10	Rice, Parboiled	Nil	6

(ii) in the Annexure, after condition number 4 and the entries relating thereto, the following condition numbers and entries shall be inserted, namely:

“5	Rate of duty shall come into force on the 16 th day of October, 2023
6	(1) Goods meant for export shall have entered the customs station for the purpose of exportation on before the 25th day of

	<i>August, 2023, and an order permitting clearance has not been issued by the proper officer, and</i> <i>(ii) Goods meant for export shall be backed by irrevocable Letter(s) of Credit, wherein the said letter(s) of credit has been opened before the 25th date of August, 2023, and the message exchange date between the Indian and Foreign bank/swift date should be before the 25th day of August, 2023, and such Letter(s) of Credit should have been authenticated by the Recipient Bank."</i>
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- 24** Having given our anxious consideration to the rival submissions, the central question that arises for determination is whether clause (ii) of Condition No. 6 of Notification No. 50/2023-Customs dated 25.08.2023 is applicable to exporters who do not export goods through an irrevocable LoC, and consequently, whether non-fulfilment of such condition disentitles such exporters from the benefit of exemption, despite admitted fulfilment of clause (i) and realisation of export proceeds.
- 25** At the outset, it requires to be noted that export through LoC is neither compulsory nor statutorily mandated. Export transactions can lawfully be carried out through multiple recognised modes, including open account, documentary collection, advance remittance, wire transfer and cash-upon-delivery. This position is not disputed by the respondents. Therefore, clause (ii) of Condition No. 6 cannot be construed as prescribing a *mandatory mode of export*, but only as a conditional relaxation applicable to a specific class of exporters. Clause (ii) of Condition No. 6 is clearly predicated on the existence of an irrevocable LoC. The language employed—"goods meant for export shall be backed by irrevocable LoC, wherein the said letter(s) of credit has been opened before the 25th day of August, 2023"—presupposes a factual situation

where an LoC exists. Where no LoC exists at all, the question of compliance with such a condition does not arise. The law does not compel an exporter to first create an LoC merely to satisfy a condition meant to regulate those who already operate under that mechanism. To hold otherwise would amount to rewriting the notification and importing a requirement which the notification itself does not mandate.

- 26** The contention of the respondents that clauses (i) and (ii) must be read conjunctively merely because of the use of the word “and” is oversimplistic and legally untenable. While it is true that exemption notifications are to be strictly construed, it is equally well-settled that conditions must be construed contextually and purposively, and not in a manner that leads to absurdity or impossibility. The use of the conjunctive “and” does not ipso facto mean that a condition becomes applicable even where its very factual foundation is absent. Strict interpretation does not mean mechanical interpretation divorced from legislative intent.
- 27** The Supreme Court in ***Mangalore Chemicals and Fertilizers Ltd.*** (*supra*) has held that not all conditions in an exemption notification are of equal importance and that technical or procedural conditions should not defeat substantive entitlement. It would be beneficial to extract the relevant portion of the said decision, which reads as under:

"22. Such is not the scope or intendment of the provisions concerned here. The main exemption is under the 1969 notification. The subsequent notification which contains condition of prior permission clearly envisages a procedure to give effect to the exemption. A distinction between the provisions of statute which are of substantive character and were built in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must

be kept clearly distinguished. What we have here is a pure technicality. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he "will grant". There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told, "We are sorry. We should have given you the permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denning: [See Wells v. Minister of Housing and Local Government, (1967) 1 WLR 1000, 1007: (1967) 2 All ER 1041] "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality."

23. Francis Bennion in his *Statutory Interpretation*, (1984 edn.) says at page 683:

"Unnecessary technicality: Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation."

- 28** The respondents' interpretation would also offend the settled maxim *lex non cogit ad impossibilia*—the law does not compel a person to do what is impossible. An exporter who does not transact through LoC cannot be compelled, retrospectively, to have opened one prior to 25.08.2023. Such an interpretation would render the exemption illusory for a substantial segment of the export community, including those who lawfully conduct trade without LoCs.
- 29** Further, the interpretation canvassed by the respondents results in an unreasonable and hostile classification between exporters using LoCs and those using other lawful modes, despite both classes being identically situated with respect to the object sought to be achieved, namely, realisation of export proceeds. Such classification lacks

intelligible differentia and has no rational nexus with the stated objective, thereby falling foul of Article 14 of the Constitution of India.

- 30** Indirectly compelling exporters to adopt a particular mode of trade by attaching fiscal consequences also constitutes an unreasonable restriction on the freedom to carry on trade and business under Article 19(1)(g). While fiscal statutes may regulate trade, they cannot, in the absence of statutory mandate, coerce economic behaviour through exclusionary conditions, especially when the chosen mode of trade is otherwise lawful and effective.
- 31** It is also significant that the impugned condition operated only for a brief interregnum between 25.08.2023 and 15.10.2023, and thereafter the exemption was made unconditional. This fortifies the conclusion that the insistence on LoC was situational and protective, not punitive or exclusionary. A construction that renders the condition constitutionally suspect ought to be avoided, particularly when a constitutionally compliant interpretation is reasonably possible.
- 32** The purpose underlying Condition No. 6 is manifest, to protect exporters who had already committed export transactions prior to 25.08.2023, when export duty was suddenly imposed, and whose exports were already in the pipeline. Clause (i) addresses the physical movement of goods into the customs station prior to the cut-off date, whereas clause (ii) addresses financial commitment through irrevocable LoCs opened prior to that date. Both clauses are designed to identify exporters who had irrevocably committed themselves to export before the levy of duty. Where such commitment is demonstrably established through other legally recognised modes and the export proceeds have in fact been realised, the substantive object of the exemption stands fulfilled. Denial

of exemption merely because the petitioner did not adopt the LoC route would elevate form over substance, which is impermissible in fiscal jurisprudence.

33 In view of the foregoing analysis, we are of the considered opinion that clause (ii) of Condition No. 6 is applicable only to those exporters who export goods backed by irrevocable Letters of Credit, and is inapplicable to exporters who do not transact through such mechanism. The petitioner having fulfilled clause (i) and having realised the export proceeds, is entitled to the benefit of exemption under Notification No. 50/2023-Customs.

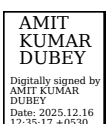
34 The writ petition is **allowed**. The respondents are directed to refund the amount of Rs. 2,01,28,295/- deposited by the petitioner towards export duty, along with interest in accordance with law, within a period of eight (8) weeks from the date of receipt of a certified copy of this judgment. Since we have already considered and allowed the prayer clause 10.1 and 10.2, we do not wish to venture into prayer clause No. 10.3 and leave it open, at this stage.

35 No order as to costs.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Amit



HEAD NOTE

Fiscal provisions must, where reasonably possible, be interpreted in a manner consistent with constitutional guarantees.

A statutory condition, though couched in mandatory language, cannot be enforced where compliance is factually impossible or where the very premise on which the condition operates does not exist.