



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9705 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 9864 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 10144 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 10145 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 10233 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 10723 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 11637 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 13762 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 17601 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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APCOTEX INDUSTRIES LTD.

Versus

UNION OF INDIA & ORS.

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Appearance:

MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1

MR ANKIT SHAH(6371) for the Respondent(s) No. 1,2,7

MR CB GUPTA(1685) for the Respondent(s) No. 3

PRIYANK P LODHA(7852) for the Respondent(s) No. 4,5,6

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 19/11/2025

ORAL COMMON JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned advocate Mr.Anand Nainawati for the petitioner, learned advocate Mr.Ankit Shah for respondent nos. 1, 2 and 7 and learned advocate Mr.C.B.Gupta for respondent no. 3.

2. Rule returnable forthwith. Learned advocates waives service of notice of rule on behalf of the respective respondents. With the consent of the respective parties, the matters are taken up for final hearing today.

3. At the outset, learned advocate Mr. Anand Nainawati for the petitioner has submitted that the issue is squarely covered by the decision of the Kerala High Court in case of The Deputy Commissioner of Customs (Gr.VII), Cochin v. M. Chandrasekhar, Chennai, 2018 (10) TMI 1160, more particularly, observations made in paragraph Nos.12 and 13.

4. The captioned petition being Special Civil Application No.9705 of 2023 is taken as a lead matter since the prayers made in the writ petitions are analogues. The petitioner has prayed for the following reliefs :-

“36”(a) That this Hon’ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of mandamus or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the petitioners case and after going into the validity and legality thereof to direct the respondent no. 3, 4 and 5 to allow the petitioner to import Acrylonitrile without insisting on import permit; and

(b) That this Hon’ble Court be pleased to issue a Writ o Certiorari or a writ in the nature of mandamus or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the petitioners case and after going into the validity and legality thereof to quash and set aside the public notice having F. No. 04-01/2022-CIR-I dated 17.02.2022, and (Exhibit-2).”

4.1. Thus, the prayers would suggest that the petitioner is seeking direction on the respondent to allow import of Acrylonitrile without insisting on import permit as required under public notice dated 17.02.2022.

5. The brief facts of the case are that the petitioners are engaged in manufacturing and selling of synthetic rubbers like Nitrile Butadiene Rubber (NBR), High Styrene Rubber, NBR/SBR Lattices since 1986. For manufacture of their finished goods, one of the major raw materials used by the petitioners is Acrylonitrile (ACN) and out of the total quantity needed for manufacturing of finished goods, majority of Acrylonitrile is being imported by the petitioner.

6. It is the case of the petitioner that the petitioner is importing Acrylonitrile by classifying the same under Tariff Item 29261000 under Customs Tariff Act, 1975 which specifically covers Acrylonitrile and all imports/exports are governed by the provisions of the Foreign Trade Policy issued under the provisions of Foreign Trade (Development and Regulation) Act, 1992. Such policies are issued from time to time to allow imports either 'free' or 'prohibits' or allows subject to certain conditions.

6.1. It appears that as per the import policy of Acrylonitrile the same is freely importable i.e. without any restriction or conditions. However, on account of some difficulties faced by trade, respondent no.6 vide Circular F.No.401/101/2011-Cus-III dated 22.06.2011 clarified that the import of items listed under the Schedule to the Insecticides Act, 1968 (hereinafter referred to as the "Act of 1968") which are used for the purposes specified in Section 38 of the Act of 1968 would not be subject to the requirement of registration/import permit from respondent no. 7.

6.2. On the same issue, Standing Orders/Public Notices and Trade Notices have been issued from the office of the Customs Department.

The petitioners were asked for mandated registration in view of the Notification No.106/2013 dated 01.01.2015 issued by the Directorate General of Foreign Trade, under the Ministry of Trade and Commerce formulating the Foreign Trade Policy ITC-HS to the extent it amended Heading 38.08 and added Conditions No.3 and mandated the Import Export Policy of insecticides. It is the case of the petitioners, that they continued to import Acrylonitrile without any import permit from Registration Committee since Acrylonitrile was classified under the Heading 2926, and the said condition of registration was introduced in Chapter-38, and was not applicable and by the letter dated 24.10.2019 issued by respondent no.5 it was clarified that henceforth, Scheduled goods imported for non-insecticidal use will not be allowed to be cleared without import permit. However, after obtaining requisite clarification the Chief Commissioner of Customs, Gujarat Zone, i.e. respondent no.3 clarified that the clearances of Scheduled goods may be allowed on end use bond as it was being made before any contrary directions were issued from respondent no.7.

6.3. Vide Circular No.55/2020-customs dated 17.12.2020 and ICES Advisory No.04/2021 dated 26.01.2021 issued by the Directorate General of Systems and Data Management (DGOS) the import permit was introduced along with the certificate of analysis and batch release certificate. The petitioners vide letter dated 31.03.2021 represented to respondents that Acrylonitrile is imported for use in non-insecticidal purpose and as per Circular No.401/101/2011-Cus dated 22.06.2011 and Public Notice No.23/2014 dated 19.05.2014, the clearance of imported goods is allowed based on the end use bonds and import permit of the same is not required.



6.4. Thereafter, Order-in-Original was issued by the Joint Commissioner of Customs, Hazira Port, on 21.09.2021 holding that any insecticide imported for non-insecticidal purposes will not be governed by any of the provisions of the Act of 1968.

6.5. The petitioners held meetings with the respondent nos. 4 and 5 and ultimately the petitioners filed representation before respondent no. 7 stating that that Public Notice dated 17.02.2022 is contrary to Section 38 of the Act of 1968 and they cannot be forced to apply for import permit. However, since no response is received till date from the respondent no. 7, the petitioners were constrained to file the present writ petitions.

7. Despite the aforesaid Order-in-Original, the respondent again re-surrected the issue based upon the clarification issued by respondent no.7 vide F.No.04-01/2022-CIR-I dated 17.02.2022 making it mandatory for import permit of CAN for non-insecticidal use.

8. Learned advocate Mr.Anand Nainawati for the petitioners has submitted that provisions of Section 38 of the Act of 1968 exempts the importer from such registration if such items, which are specified in the Schedule are imported or intended for other purposes. However, the respondent authority by applying Public Notice dated 17.02.2022 have made it mandatory as regard to import permit of ACN for non-insecticidal use. Learned advocate Mr.Nainawati submitted that once it is admitted that Acrylonitrile imported by the petitioners is for non-insecticidal use as per clause (b) of Section 38 of the Act of 1968, and none of the provisions of the Act of 1968 would apply and consequently, the requirement of registration as

per Section 9 of the Act of 1968 will not be mandatory. Therefore, the requirement of import permit from the respondent no. 7 does not arise.

8.1. It is submitted that on an identical issue the decision of the Kerala High Court in the case of **M. Chandrasekhar (supra)** in light of the provisions of the Act of 1968, allowed import of Ethylene Di-Chloruide, used for non-insecticidal purpose and held that it does not require any import permit. Thus, it is urged that the present writ petition may also be allowed by quashing and setting aside the Public Notice dated 17.02.2022. At this juncture, learned advocate Mr.Nainawati has submitted that the end use bond is already being submitted by the present petitioners before the respondent authorities.

9. In response to the aforesaid submissions made by the learned advocate for the petitioner, learned advocate Mr.Ankit Shah for respondent nos. 1, 2 and 7 and learned advocate Mr.C.B.Gupta for respondent no.3 submitted that the Public Notice dated 17.02.2022 does not require any interference and the same is appropriately passed looking to the nature of the import of the substance Acrylonitrile. It is submitted that though the petitioner may be using it as non-insecticidal purpose, however, the registration is mandatory under the provisions of Section 9 read with Section 38 of the Act of 1968. While referring to the decision of the Kerala High Court, in case of **M. Chandrasekhar (supra)** it is submitted that the same would not apply to the facts of the present case.

10. Having heard the learned advocates for the respective parties at length and having perused the material on record, the facts which

are established from the record are that the petitioner is importing substance Acrylonitrile (ACN) for manufacturing of synthetic rubbers. The subsequent Acrylonitrile is a major raw material used for manufacturing of synthetic rubbers of finished goods. Thus, unquestionably the same is used for non-insecticidal purpose. The predicament of the petitioner originated from the impugned Public Notice F. No. 04-01/2022-CIR-I dated 17.02.2022 issued by respondent no.7 wherein it is declared that the mandatory import permit is required for import of Acrylonitrile for non-insecticidal use. Thus, the issue which falls for deliberation is that whether the Public Notice issued by respondent no.7 dated 17.02.2022 runs contrary to the provisions of Section 38 read with Section 9 of Act of 1968 or not; and whether the petitioners can be forced to apply for import permit and thereafter also get them registered for importing the subsequent Acrylonitrile or not.

11. At this juncture, we may refer to the provisions of Section 3(e) (i) of the Act of 1968, which defines ‘insecticides’ and it means any substance specified in the Schedule to the said Act, and Acrylonitrile is one of the item which is specified in the said Schedule. Thus, as per the said provision, the raw material imported by the petitioners is an insecticide as per the Act of 1968. We may also refer to provisions of Section 9 and Section 38 of the Act, 1968, the same are as under :-

“9. Registration of insecticides.-(1) Any person desiring to import or manufacture any insecticide may apply to the Registration Committee for the registration of such insecticide and there shall be a separate application for each such insecticide:

Provided that any person engaged in the business of import or manufacture of any insecticide immediately before the commencement of this section shall make an application to the

Registration Committee within a period of [seventeen months] from the date of such commencement for the registration of any insecticide which he has been importing or manufacturing before that date:

Provided further that where any person referred to in the preceding proviso fails to make an application under that proviso within the period specified therein, he may make such application at any time thereafter on payment of a penalty of one hundred rupees for every month or part thereof after the expiry of such period for the registration of each such insecticide.

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38. Exemption.—(1) Nothing in this Act shall apply to—

(a) the use of any insecticide by any person for his own household purposes or for kitchen garden or in respect of any land under his cultivation;

(b) any substance specified or included in the Schedule or any preparation containing any one or more such substances, if such substance or preparation is intended for purposes other than preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds and other forms of plant or animal life not useful to human beings.

(2) The Central Government may, by notification in the Official Gazette, and subject to such conditions, if any, as it may specify therein, exempt from all or any of the provisions of this Act or the rules made thereunder, any educational, scientific or research organisation engaged in carrying out experiments with insecticides.”

12. The provisions of Section 38 of the Act of 1968 exempts the application filed under the said provisions of law in respect of use of any insecticide by any person for his own household purposes or for kitchen garden, or in respect of any land under the cultivation. It further exempts the import of any substance specified or included in the Schedule if it is intended for purpose other than preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds and any other forms of plant or animal life not useful to human beings. Thus, the Acrylonitrile imported by the petitioner is used by

them in manufacturing of goods like rubber items which would not fall in any of the purposes mentioned in Section 38 of the Act of 1968. Hence the petitioners did not apply to the Registration Committee for import of such items.

13. The respondents have not doubted that the substance Acrylonitrile is used by the petitioners for non-insecticidal use and hence a bare reading of the provisions of Section 38 read with Section 9 of the Act of 1968 would indicate that the same will come to the rescue of the petitioners as the provisions of Section 38 of the Act of 1968 begins with the expression (non-obstante) clause 'Nothing in this Act shall apply'. Thus, the provisions of Section 38 of the Act of 1968 introduces an exemption for attracting the provisions of the Act of 1968 to the substance which are used for non-insecticidal purpose. Having not denied by the respondents that Acrylonitrile imported by the petitioner is for non-insecticidal use as per clause (b) of Section 38 of the Act of 1968, none of the provisions of the Act of 1968 would apply and as a consequence thereof, the requirement of registration as per Section 9 of the Act would not be mandatory and as a sequel the requirement of any import permit from respondent no.7 does not arise. It appears that respondent no.7 without application of mind to the provisions of the Act, more particularly provisions of Section 38 of the Act of 1968 had issued Public Notice which runs contrary to the intention of the Act as promulgated in Section 38 of the Act of 1968.

14. The Kerala High Court on an identical issue of import of EDC i.e. Ethylene Di-Chloride used for the purpose of manufacturing of Poly Vinyl Chloride (PVC) has held as under :

"12. At the outset we have to express our helplessness in not being able to place our hands on or put our eyes to, any requirement for import permit for import of EDC, either in the Insecticides Act, the Rules framed or even the extracted decision of the RC, constituted under the Act. The appellants also do not have a contention that there is any such requirement made under the Foreign Trade Act for import of EDC, as is made in the case of Boric Acid, which requirement was dealt with in Maliakkal Industrial Enterprises. At best we can only understand the prescription made of the proforma of import permit for non-insecticidal purposes, in Exhibit P-10, to be applicable to Boric Acid wherein by a notification under the Foreign Trade Act, there was mandated an import permit by the RC, constituted under the Insecticides Act.

13. Be that as it may, there is no dispute that EDC, the substance imported by the 1st respondent exempted for reason of the purported use of the substance to which it is put by the respondent. The respondent has also been importing the goods for very many years for the manufacturing activity carried on by him. The end of non-insecticidal purpose is ensured by obtaining undertaking from the respondent at the time of clearance of the goods from the Port of entry and then a certificate of end use issued by the Central Excise authorities. The respondent has been scrupulously complying with the same and the said procedure is stipulated in a trade notice issued by the Customs authorities which has application across the board to all Ports of entry. Apart from this there is no other requirement and the Circular of the Central Board also approves the procedure and clarifies the exemption from registration or requirement of import permit under the Insecticides Act. As was noticed, the non-insecticidal purposes has been specifically exempted under the Insecticides Act and the provisions of the Act or the Rules would not have any application."

15. Though the Kerala High Court did not consider the Public Notice, it specifically held in light of the provisions of Section 38 of the Act of 1968, that in view of the exemptions, the requirement for import permit of import of EDC is not required either under the Act of 1968 or the Rules framed. In view of the order dated 14.11.2025 passed by us, directing respondent no.3 to verify that as to whether



any other notification is issued or not barring the use of Acrylonitrile, it is submitted that no such notification has been issued by the Central Government and on the contrary as per the latest notification dated 15.10.2025 being Notification No.44/2025-26 issued by Ministry of Commerce and Industry it does not in any manner mandates the requirement of registration as well as import permit for importing the substance Acrylonitrile. Hence Public Notice F.No.04-01/2022/CIR-I dated 17.02.2022 will not apply to the substance Acrylonitrile imported by the petitioners.

16. Hence, all the petitions succeed. The impugned Public Notice F. No.04-01/2022/CIR-I dated 17.02.2022 is hereby quashed and set aside to the extent it applies to the Acrylonitrile. Rule is made absolute to the aforesaid extent. No order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

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