

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 1 -

Indore, dated 11/10/2018

Parties through their counsel.

The petitioner before this Court is a Partnership Firm registered under the Partnership Act, has filed present petition being aggrieved by the action of the respondents in denying the petitioner Duty Free Import under the Transferable Duty Free Import Authorization (DFIA) under similar circumstances even though the petitioners are entitled to the benefits under paragraph 4.2.2 of the Foreign Trade Policy (2009-14) and import Whey Powder, Whey Protein Concentrates, Whey Protein Isolates covered under the description of Milk and Milk Products as well as Walnuts covered under the description of Nuts and Nut Products, Dietary Fibre, Flavours described in the DFIA of the quantity and value mentioned in DFIA.

02- At the outset learned counsel for the petitioner has drawn the attention of this Court towards judgment delivered by the Division Bench of Punjab and Haryana High Court in the case of **Pushpanjali Floriculture Pvt. Ltd. Vs. Union of India and Others** decided on 01/07/2016 in CWP No12647/2016 reported in **2016 (340) ELT 32 (P & H)** and is his contention is that the controversy involved in the present case stands concluded by the aforesaid judgment. Paragraphs No.41 to 45 of the aforesaid judgment reads

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 2 -

as under:-

“41. The judgement of the Bombay High Court in Sevantilal (supra), on which the respondents place pointed reliance, is clearly distinguishable. That was a case in which the issue involved related to exemption from anti- dumping duty, and the amendment in this regard by Notification 24/2013 dated 18.04.2013, which limited the exemption earlier available under Notification 98/2009-Cus, dated 11.09.2009. These were, in turn, provoked by the amendment of the FTP, by introducing a provision to the effect that exemption from anti-dumping duty would be available on actual user basis only, before endorsement of transferability. It was in this context that the petitioner, in that case, contested its right to avail the benefit of exemption from anti-dumping duty. It specifically recorded in para 38 as follows-

"38. Equally, we are not required to consider whether any subordinate legislation is being amended retrospectively."

Unlike Sevantilal (supra), we are in the present case not only concerned with retrospective amendment of the FTP, and issuance of Notifications, Public notice and Circular which retrospectively divest the licence holder and the transferee of the rights available under such licences, but also as we have already pointed out hereinabove, with the said conditions which are either absurd on their face, or impossible of compliance by any holder, or transferee, of the DFIA licence issued on post-export basis. This would be contrary to the very ethos of the DFIA scheme itself, and not sanctioned by any of the provisions thereof.

42. Although we are of considered opinion that in absence of any power of amendment with retrospective operation, any subsequent issuance of any notification or instructions by Central Government or any other authority would not divest, the licence holder or the transferee, of the benefits promised on the date of issuance of DFIA, however, it is seen that the validity of the Customs Notifications which are issued by the Central Government to restrict exemption from anti-dumping duty are not under challenge in this writ petition. Therefore, we cannot direct the Commissioner of Customs at Ludhiana to grant exemption of anti-dumping duty. Consequently, the prayer in regard to exemption from anti-dumping duty is rejected. The exemption available to the petitioner under the DFIA would therefore be restricted only to the basic customs duty.

43. It is pointed out in the petition that despite absence of any power under section 5 of the FTDR Act, 1992 for any retrospective amendment, several such amendments /

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 3 -

instructions are being issued and are being arbitrarily applied in a retrospective manner. Some notifications of such nature are already struck down such as DGFT Notification No. 4 (RE:2013)/ 2009-14 : MANU/SNTN/0311/2013 dated 18.04.2013 withdrawing deemed benefits for supplies to Non-Mega Power Projects - Hon'ble High Court of Gujarat struck down the Notification in the case of Alstom (India) Ltd. Vs. Union of India - MANU/GJ/0210/2014MANU/GJ/0210/2014 : 2014 (301) ELT 446 (Guj. Regarding DGFT Notification No. 48(RE:2005)/ 2004-2009 dated 20.02.2016 adding new products ineligible for duty free benefits under Target Plus Scheme, the Hon'ble Supreme Court in DGFT Vs. Kanak Exports reported in MANU/SC/1258/2015MANU/SC/1258/2015 : 2015 (326) ELT 0026 (SC) held that the said notification cannot be applied retrospectively.

44. It is seen that the DFIA is issued with a limited validity of 24 months. Due to the actions of the Respondents the DFIA's could not be utilised by the petitioner. The Hon'ble Supreme Court in the matter of Sandeep Exports Ltd., MANU/SC/0045/2004MANU/SC/0045/2004 : 2004 (9) SCC 128 had directed the Respondents to issue certificate for the purpose of revalidation of expired licenses due to disputes raised by the department. We are satisfied that due to the impugned invalid notifications / Public Notice / Circular, licenses could not be utilised by the petitioner. The petitioner cannot be expected to present licenses for debit in such circumstances. Therefore, a case for directing revalidation of the licence is also made out.

45. In view of the above discussion, the writ petition of the petitioner is partially allowed in the following terms:

(i) Clause 4 of Notification No. 31 (RE-2013)/2009-2014 : MANU/DGFT/0131/2013 dated 01/08/2013, Clause 2 of Public Notice No. 35 (RE-2013)/2009-2014 dated 30/10/2013, and Clause 3 of Notification No. 90 (RE-2013)/2009-2014 : MANU/DGFT/ 0061/2014 dated 21/08/2014 are struck down.

(ii) It is declared that the rest of the said impugned Notification No. 31 (RE-2013)/2009-2014 : MANU/DGFT/0131/2013 dated 01/08/2013, Public Notice No. 35 (RE-2013)/2009-2014 dated 30/10/2013, and Notification No. 90 (RE- 2013)/ 2009-2014 : MANU/DGFT/0061/2014 dated 21/08/2014, would not apply to DFIA's issued prior to 01/08/2013, whether they be in the hands of the holders or of transferees thereof, provided, of course, that the transfer of the DFIA's has been effected after securing necessary permission of the DGFT therefor.

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 4 -

The entitlement under the DFIA shall be as per the SION as it existed on the date of issuance of the DFIA's.

(iii) Respondents 1 to 3 are directed to revalidate the DFIA's dated 28/03/2012 and 13/04/2012 which are the subject matter of the present proceedings.

(iii) The Commissioner of Customs, ICD Ludhiana, is directed to allow exemption of basic customs duty in respect of the import of Soda Ash by the petitioner by debiting the DFIA licence under Bill of Entry no. 7080616 dated 16.10.2014.

(iv) The prayer for granting exemption, so far as anti-dumping duty is concerned, is rejected for the reasons recorded above."

03- Shri Prasanna Prasad, learned counsel appearing for the respondent has not disputed the aforesaid judgment, however, he has informed this Court that a Special Leave Petition is pending before the Hon'ble Supreme Court of India and no stay has been granted in the matter.

04- Learned counsel for the petitioner has also drawn the attention of this Court towards a judgment delivered by the Division Bench of this Court in **Writ Petition No.15132/2018** between the same parties i.e. **M/s. Global Exim and Another Vs. Union of India** and Others decided on **18/09/2018** and again it has been stated that the Division Bench of this Court in case of import of Bearings under the duty free import authorization has allowed the writ petition in similar circumstances.

05- Shri Prasanna Prasad has fairly stated before this Court that the aforesaid identical writ petition has been allowed and there

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 5 -

is no Special Leave Petition preferred till date in the matter. Not only this, in paragraph No.3 of the reply filed by the Union of India, it has been stated that so far no authority has denied any benefit to the petitioner.

06- After hearing learned counsel for the parties, this Court is of the opinion that the issue involved in the present case stands concluded by the judgment delivered by the Division Bench of this Court. This Court in the case of **M/s. Global Exim (Supra)** in paragraphs No.2 to 42 has held as under:-

“2. The petitioner No.1 is a partnership firm registered under the Indian Partnership Act, 1932, having its office and place of business at Indore.

3. The Foreign Trade Policy (FTP) for 2009-14 was notified by the respondent No.1 incorporating the provisions relating to the import and export of goods. The relevant provision of duty exemption / remission schemes are covered under Chapter 4 of the Foreign Trade Policy and Hand Book of procedures.

4. Clause 4.2.2 and 4.2.3 of DFIA reads as under:-

“**Scheme**

4.2.2 DFIA is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product. DGFT, by means of Public Notice, may exclude any product(s) from purview of DFIA. This scheme is in force from 1st May, 2006.

Entitlement

4.2.3

Provisions of paragraph 4.1.3 shall be applicable in case of DFIA. However, these Authorization shall be issued only for products for which Standard Input and Output Norms (SION) have been notified.”

5. The petitioner is a transferee DFIA Holder and entitled to import the goods of the description, quality and within the overall value mentioned in the DFIA's and once this condition is satisfied the Respondents have no jurisdiction to deny the exemption.

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 6 -

6. The petitioners have imported Bearings vide Invoice No.1800466 dated 12.06.2018 for trading purpose under transferable Duty Free Import Authorizations, (DFIA's). The said goods are covered under the description of "Bearings" (All types other than Engine Bearing).

7. The petitioners sought duty free clearance of the imported consignment of "Bearing" by filing B/E No.6993518 dated 28.06.2018 against a transferable DFIA No.1210008284 dated 01.08.2012 issued to M/s. International Tractors Ltd., Hoshiarpur, and subsequently transferred in the Petitioners name in terms of the provisions of Para 4.36A of Hand Book of Procedures (FTP-009-14).

8. The imported Bearings are not Engine Bearings. Para 4.36A of Hand Book of procedures reads as under :-

4.36A Once export obligation is fulfilled and required documents as stipulated in Paragraph 4.36 above have been furnished, RA shall make authorisation transferable subject to conditions stipulated for this scheme including an endorsement on the authorisation itself as to liability of additional customs duty / excise duty in respect of imported / indigenously procured inputs, as the case may be, which have already been imported under Actual User DFIA and are sought to be transferred after fulfillment of E.O. DFIA holder shall deposit additional customs duty / excise duty alongwith applicable interest as per Customs Notification in relevant head of Account of Customs Revenue i.e., "Major Head 0037 – Customs and Minor Head 001 – Import Duties" in prescribed T.R. Challan and furnish a documentary evidence to RA alongwith the application for endorsement of transferability.

9. The respondent No.3 at the time of assessment of the said BE No.6993518 dated 28.06.2018, raised the following query which is reproduced as under :-

"Description of Goods does not cover in the Duty Free Import Authorisation (DFIA) under DFIA Pre-sheet for import item list and so the BE cannot be appraised under the Scheme / License. Authorisation for transfer of DFIA License 1210008284 to M/s. Global Exim do not contains the details of original license issued by the DGFT".

10. The petitioners thereafter replied to the respondent No.3 on 27.06.2018 by pointing out that the query is not clear and therefore needs to be clarified in order to make appropriate reply.

11. The respondent No.3 thereafter replied to the said letter by rejecting the benefits of customs notification No.98/2009-Cus

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 7 -

dated 11.09.2009. The same is reproduced below :-

“BE No.6993518 dated 28.06.2018

Description of the goods given in the BE does not cover in the DFIA Authorisation. Imported goods ie., bearings must be actually used in the export product in terms of DGFT Notification No.31 dated 01.08.2013. Moreover goods being specified under Para 4.32.2 of HBP, tecl. Specs., quality and characteristics of the goods imported must match with the inputs used in the exported. You have not produced any evidence of so benefit under Customs Notification no.98/2009 is denied. Further the authorization of DFIA from the transferee does not reflect your complete details.”

12. Clause 4.2.6 of the FTP reads as under :-

“4.2.6 (a) Once export obligation has been fulfilled, request for transferability of Authorisation or inputs imported against it may be made before concerned RA. Once transferability is endorsed, Authorization holder may transfer DFIA or duty free inputs, except fuel and any other item(s) notified by DGFT. However, for fuel, import entitlement may be transferred only to companies which have been granted authorisation to market fuel by Ministry of Petroleum and Natural Gas.

(b) Wherever SIONs prescribed actual user condition and in case of Acetic Anhydride, Ephedrine and Pseudo Ephedrine, DFLA shall be issued with actual user condition for these inputs and no transferability shall be issued with actual user condition for these inputs and no transferability shall be allowed for these inputs even after fulfillment of export obligation.

(c) After endorsement of transferability, imports / domestic procurement against authorisation or transfer of imported inputs / domestically procured inputs shall be subject to payment of applicable additional customs duty / excise duty. While endorsing transferability, authorisation would bear a note as to liability of such additional customs duty / excise duty.

However, in case where CENVAT facility has not been availed, exemption from additional customs duty / excise duty would be available even after endorsement of transferability on DFIA.”

13. In terms of Clause 4.2.6 of the FTP, once transferability is endorsed, the authorization holder may transfer DFIA or duty free inputs except fuel and any other item(s) notified by DGFT. Meaning thereby, once the export obligation is discharged and

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 8 -

transferability endorsement is made by the officers of the respondent No.1, the license and goods imported there under without payment of duty become freely transferable except the fuel and any other goods notified by the DGFT.

14. The petitioners purchased the DFIA's for the purpose of importing various goods covered under the description, value and quantity specified therein for trading in India. The respondent No.1 amended the Foreign Trade Policy (2009-14) by inserting a new para 4.1.15 through notification No.31 dated 01.08.2013, which reads as under :-

“4.1.15 Wherever SION permits use of either (a) a generic input or (b) alternative inputs, unless the name of the specific input(s) [which has (have) been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorization will not be redeemed. In other words, the name / description of input used (or to be used) in the Authorisation must match exactly the name / description endorsed in the shipping bill. At the time of discharge of export obligation (EODC) or at the time of redemption, RA shall allow only those inputs which have been specifically indicated in the shipping bill.

3. Para 4.2.3 of FTP is being amended by adding the phrase “4.1.14 and 4.1.15” in place of “and 4.1.14”. The amended para would be as under : “Provisions of paragraphs 4.1.11, 4.1.12, 4.1.13, 4.1.14 and 4.1.15 of FTP shall be applicable for DFIA holder.”

4. Effect of this Notification : Inputs actually used in manufacture of the export product should only be imported under the authorization. Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorization / DFIA.”

15. On 2.8.2013, Circular No.3 (RE:2013) / 2009-14 was issued with the approval of respondent No.2, laying emphasis on para 4 which stipulates that “inputs actually used in manufacture of export product should only be imported under the authorization. Similarly, inputs actually imported must be used in export product”. The petitioners are aggrieved by the said policy Circular dated 2.8.2013 (Annexure P/11)

16. Thereafter, on 30.10.2013, a Public Notice No.35 (RE:2013)/200914 was issued by respondent No.1, wherein it specified the applicability of Para 4.1.15 of FTP introduced through Notification No.31 dated 01.08.2013. In para 2 of the

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 9 -

said notice, it was stated that in cases where export has been partially or fully completed by 1.08.2013, then the corresponding imports would be allowed subject to an undertaking that the inputs actually used in the export product shall only be imported. According to the petitioners, the said condition of an undertaking is patently illegal, perverse and nonest in law.

17. The respondents are denying the benefit of customs notification No.98/2009-cus dated 11.09.2009 solely on the basis of DGFT notification No.31 dated 01.08.2013 whereby para 4.1.15 was inserted stipulating only actually used inputs used in export product are eligible for import under DFIA Scheme. The said provision of para 4.1.15 shall be applicable to DFIA holder and not to DFIA Transferee.

18. It is submitted that the endorsement against bearing is mentioned as Bearing (all types other than Engine Bearings) such as ball bearing/Taper/Cylindrical/Needle Roller Bearing is the only requirement to be fulfilled. Once this is fulfilled DFIA benefit cannot be denied to the petitioners. The imported bearings are ball bearings and not Engine Bearings.

19. The petitioners submit that while import of **Internal Combustion Engine Complete** is provided separately against serial No.6, whereas import of **Bearings** (other than Engine bearings) such as ball bearings / Taper bearing / Cylindrical / Needle Roller bearings are mentioned against serial No.3 of SION C-969 against export of Agricultural Tractors.

20. The Engine Bearings are plain or sleeve bearings in contrast to roller, ball and needle bearings, called anti friction bearings, which are used where minimum lubrication is available. The goods imported are bearings (which are not Engine bearings).

21. It is pointed out that the Regional Licensing Authorities have endorsed the import item name specifically against serial No.2 to read as Bearing (all types other than Engine Bearings) such as Ball bearing/Taper/Cylindrical/Needle Roller Bearings. Apart from the above endorsement, the Regional Licensing Authorities have not made any additional endorsements. In the absence of any further endorsements, the Regional Licensing Authorities deemed to have permitted import of Bearings without any additional requirement with respect to technical specification, quality and characteristics of the inputs used in the export product. The DFIA transferee is not required to prove, afresh, whether the inputs are actually used in the export product.

22. Learned counsel has submitted that Custom Notification 98/2009 stipulates in respect of 'resultant products' specified under the sensitive list, whereas DGFT provision para 4.32.2 of HBP only stipulates declaration of technical specification,

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 10 -

quality and characteristics of the specified inputs in shipping bills.

23. Per contra, Shri Rawal, learned ASG for respondents No.1 and 2 has drawn our attention to para 10 of the decision of the Bombay High Court in the case of **Sevantilal & Sons & Ors. V/s. Union of India & Ors.**, LAWS(BOM)-2015- -124. His contention is that the petitioner No.1 is seeking duty free import under the duty free import authorization whereas, he has not importing the identical goods which were used in the resultant export products exported by the exporter who obtained DFIA. It is a violation of para 4.1.15 of the FTP and Para 4.32.2 of HBP. He further submitted that the petitioners being transferee can import the identical items of same specification, which were declared by exporter in the export documents while making shipments. The provisions of notifications and Public Notice, which are applicable for original DFIA holder shall also be applicable for transferee. Transferee cannot have different treatment than original authorisation holder.

24. He lastly submitted that against the judgment in the case of **Pushpanjali Floriculture Ltd. , V/s. Union of India, 2016 ELT 32 (P&H)** , the leave has been granted by the Hon'ble Supreme Court and therefore, at this stage, no such prayer as prayed in the writ petition can be granted and prayed for the dismissal of the writ petition.

25. Shri Prasanna Prasad, learned counsel for the respondent No.3 has drawn our attention to Annexure P/9, dated 1.4.2015 and relief claimed in the writ petition and submitted that the denial / acceptance can only be done after assessment and order, which has not been done till the date, as the reply to query is pending on the petitioner's part and therefore, the petition is liable to be dismissed being premature.

26. He further submitted that the DFIA license was issued to M/s. International Tractors Ltd., Hoshiarpur, which was subsequently transferred to the petitioners by M/s. Pushpanjali Floriculture Ltd. and not by M/s. International Tractors Ltd., Hoshiarpur, transfer letter does not provide any description of earlier transferee (Annexure P/2). The petitioners on the basis of transfer letter dated 18.6.2018 by M/s. Pushpanjali Floriculture Ltd., Mumbai for import of items as per import item list (3) Bearing ie., Ball Bearing under net to net ITCHS – 84822011 / 84825012 / 84824000 filed the bill of entry for import of items other than those which are not covered under Serial No.3 of the list of items submitted by the petitioners, for which “Query” has been raised to the petitioners to file their reply based on which only assessment and order thereof would be processed.

27. Both sides were heard at length. We have carefully perused the records before us. Our attention was drawn by both

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 11 -

sides towards various Notifications, Circulars, Public Notices and precedents which we have taken into consideration.

28. In the case in hand, the resultant product is 'Agricultural Tractors' which is not specified under para 4.32.2 of HBP and therefore, the petitioners are not required to correlate the technical specification, quality and characteristics of the imported goods.

29. The Transfer Letter issued by Pushpanjali Floriculture Ltd to Global Exim clearly indicates that transfer of DFIA which is permitted as per the provision of Para 4.2.6 of the FTP-(2009-14). The DFILA licenses are freely transferable and accordingly, the DFIA holder transferred the DFIA to Pushpanjali Floriculture Ltd., who inturn retransferred the said DFIA to Global Exim as per Annexures P/2 and P/3.

30. In any event, insistence of actual use in the export product is contrary to the provision of Para 4.2.6 of Foreign Trade Policy – (2009-14). The said para stipulates that once transferability is endorsed, authorization holder may transfer the DFIA or duty free inputs, except fuel and any other items notified by DGFT.

31. The Punjab and Haryana High Court in the case of **Pushpanjali Floriculture Ltd. V/s. Union of India** (supra) has inter alia struck down Clause 4 of Notification No.31 (RE:2013)/2009-14 dated 01.08.2013, Clause 2 of PN35 (RE:2013)/2009-14 dated 30.10.2013 and Clause 3 of Notification No.90 (RE:2013)/2009-14 dated 21.08.2014. The judgment dated 1.07.2016 of the Punjab and Haryana High Court, which has not been yet set aside and is a binding precedent even an undertaking under the said PN35 is not warranted. The said judgment is carried in appeal by both the parties to the judgment and the Civil Appeal No.5808/2011 and Petition (s) for Special Leave to Appeal (C).....CC No (s) . 22162/2016 are pending before the Apex Court.

32. It is not in dispute that the terms 'general inputs' and 'alternative inputs' stipulated in para 4.1.15 of FTP are not even defined under Chapter 9 of the Foreign Trade Policy).

33. The stipulation under Para 4.1.15 inserted vide notification No.31 dated 30.10.2013 to the extent that only those actually used inputs in the export product only shall be imported is not applicable to a DFIA transferee. Once the imported goods are covered under the description, quantity as mentioned within the overall CIF value allowed in the DFIA, irrespective of the ITC (HS) Nos, there is no necessity to satisfy the requirement of Para 4.1.15 of FTP- (2009-14) and notification No.90 dated 21.08.2014.

34. On a plain reading of para 4.1.15 abundantly makes it clear that the provisions has no application after the discharge of export obligation and endorsement of transferability. It can be

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 12 -

applicable only when the DFIA holder import first and use in the resultant product for export. There is no provision of redemption of DFIA License after the discharge of export obligation. Once the import goods are covered under the description, quantity as mentioned within the overall CIF value allowed in the DFIA, (as amended upon competition of export), there is no necessity to satisfy the requirements of Para 4.1.15 of FTP. It is impossible to comply the condition which states that those inputs which are actually used in export product for availing DFIA exemption.

35. The Division bench of Punjab & Haryana High Court in the case of **Pushpanjali Floriculture Ltd., V/s. Union of India**, 2016 (340) ELT 0032 (P&H) held that, “from the product which already stands exported, the inputs used in the manufacture of thereof should somehow be extracted, and only such inputs be allowed to be subsequently imported into India. To say the least, such requirement is manifestly absurd, and it's very incorporation, in the impugned Notification and Public Notice, reflective, as the learned Senior Counsel has correctly emphasized, of total non-application of mind, on the part of the authorities issuing the said Notification/Public Notice.”

36. The Regional Licensing Authorities after examining the relevant export documents, has endorsed transferability permitting inputs as specified in the said DFIA. Therefore, DFIA transferee is not required to prove, afresh, whether the inputs are actually used in the export product.

37. The Bombay High Court in the case of **A.V. Industries Ltd., V/s. UOI**, 2007 (187) ELT 9 (Bom) held that :-

“When the import is in accordance with the import licence issued to the petitioner, the respondents cannot take shelter under the import policy and purport to take action against the petitioner.”

38. The ITC (HS) is not a criterion once the DFIA is endorsed with Transferability as held by CESTAT (Mumbai) in the case of **USMS Saffron C., Inc V/s. Commissioner of Customs (Export)**, Mumbai Order No.3267/15/CB dated 30.09.2013 and approved by Bombay High court vide order dated 15.02.2016.

39. The petitioner is a bona-fide transferee of the said transferable DFIA cannot be denied exemption from payment of duties on the goods on the ground that only those actually used as inputs in the export product shall only be permitted for import which is applicable to a DFIA holder. Once the DFIA is made transferable by the licensing authorities, the Petitioner is not bound to show the actual use of the imported goods in the export product and is free to import any goods covered under the description and quantity mentioned within the overall CIF value allowed in the DFIA, (as amended upon competition of export), there is no necessity to satisfy the requirements of para 4.1.15 of

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.17023/2018

(Global Exim & Another Vs. The Union of India & Others)

- 13 -

FTP- (2009-14).

40. The terms 'generic inputs' and 'alternative inputs' stipulated in Para 4.1.15 of FTP are not even defined under Chapter 9 of the Foreign Trade Policy.

41. The petitioner No.1 is a DIFA transferee is entitled to import Alloy Steel Rods/Rounds/Billets and Hot Rolled/Cold Rolled Sheet/Wide Coils) covered under the DFIA's without showing actual use in the export product”.

42. In view of the above discussions, the writ petition of the petitioners are allowed in part in terms of the law laid down by the Punjab & Haryana High Court in the case of **Pushpanjali Floriculture Ltd. (supra)** and is accordingly, disposed of. No costs.”

07- In light of the aforesaid judgment, as the respondents have not disputed the applicability of the aforesaid judgment and this Court has also carefully gone through the aforesaid judgment and the issue stands concluded, the judgment delivered in the case of M/s. Global Exim (Supra) shall be applicable *mutatis-mutandis* in the present case also. The writ petition is allowed in terms of the law laid down by the Punjab and Haryana High Court in the case of **Pushpanjali Floriculture Pvt. Ltd. (Supra)**.

No order as to costs.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

(VIRENDER SINGH)
J U D G E

Tej