

IN THE SUPREME COURT OF INDIA
Pamidighantam Sri Narasimha and Alok Aradhe, JJ.

VIRAJ IMPEX PVT. LTD.

Versus

UNION OF INDIA

*Petition for Special Leave to Appeal (C) No. 1979 of 2019 with S.L.P. (C) Nos. 2297, 2778 & 1977 of 2019,
decided on 21-1-2026*

Foreign Trade Policy, 2015-2020 (FTP) - Powers to make provisions relating to imports and exports - Steel products import - Para 2 of Minimum Import Price (MIP) Notification No. 38/2015-20, dated 5-2-2016 stipulated that imports under Letter of Credit (LOC) already entered into before notification date were exempt from MIP subject to Para 1.05(b) of FTP which provides export/import permitted freely, subsequently subjected to restriction, ordinarily will be permitted, notwithstanding restriction - DGFT uploaded Notification on its website on 5-2-2016 with endorsement 'To be published in the Official Gazette of India' - Notification was published in Official Gazette on 11-2-2016 - Section 3 of Foreign Trade (Development and Regulation) Act, 1992 mandates that order regulating imports or exports must be published in Official Gazette - For contracts entered between 29-1-2016 and 4-2-2016, importer had opened irrevocable LOC on 5-2-2016, and applied on 8-2-2016 for their registration under Para 1.05(b) - Thereafter, importer approached High Court contending that Notification was not applicable to imports covered by LOC opened earlier - High Court dismissed writ petition, holding that (a) though Notification operates from 11-2-2016, but its uploading on 5-2-2016 was sufficient notice to bind importers whose LOC were not opened before 5-2-2016; and (b) Notification was not delegated legislation - Before Supreme Court, DGFT contended that (a) Para 1.05(b) was irrelevant to Para 2 of Notification as Para 1.05(b) only requires LOC registration with Regional Authority; and (b) Notification prevails over FTP in case of conflict between two - **HELD : Legislature has not left to executive discretion mode of promulgation of order regulating imports or exports - Once legislature prescribed specified mode of promulgation, executive could not introduce alternative mode and attribute legal consequences to it - Delegated legislation must be construed to advance object of parent statute to regulate foreign trade through transparent, predictable, and legally certain measures - Coupled with requirement in parent statute to publish in Official Gazette, it was manifest that Notification did not acquire force of law before its publication in Official Gazette on 11-2-2016 - Endorsement 'to be published in the Gazette of India' (a) acknowledged Notification's incompleteness; and (b) confession that till publication it had not crossed threshold from intention to obligation - 'Date of this Notification' meant date of publication in Official Gazette - Notification could not operate in fragmented manner - As Notification had incorporated Para 1.05(b), plea that Para 1.05(b) was irrelevant or in conflict with Notification, rejected - Importer having opened irrevocable LOC before 11-2-2016, complied with procedural requirements of Para 1.05(b), could not be denied its benefit as it would (a) defeat FTP's plain language; (b) undermine parent statutes' object; and (c) introduce uncertainty to field where certainty is indispensable - Fiscal/trade burden imposition based on unpublished Notification erodes commercial confidence and offend rule of law - Section 3 of Foreign Trade (Development and Regulation) Act, 1992. [paras 16, 19 to 23]**

Appeals allowed against department

CASE REVIEW

Vinayaga Marine Petro Ltd. v. Union of India — [2019 \(366\) E.L.T. 210](#) (Del.) — **Reversed**..... [Paras 2, 8]

CASES CITED

B.K. Srinivasan v. State of Karnataka — 1987 (1) SCC 658 — *Relied on* [Paras 9, 18]
Commissioner v. Dilip Kumar and Company — [2018 \(361\) E.L.T. 577](#) (S.C.) — *Referred* [Para 11]
Gulf Goans Hotels Co. Ltd. v. Union of India — (2014) 10 SCC 673 — *Relied on* [Para 18]
Harla v. State of Rajasthan — 1951 SCC 936 — *Relied on* [Para 17]
Johnson v. Sargant and Sons — (1918) 1 KB 101 — *Relied on* [Para 17]
Nabha Power Ltd. v. Punjab State Power Corporation Ltd. — [2025 \(391\) E.L.T. 434](#) (S.C.) = [\(2024\) 24 Centax 74](#) (S.C.) — *Relied on* [Para 18]
Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer — (1962) 1 SCR 676 — *Referred* [Para 9]
State of M.P. v. G.S. Dall and Flour Mills — 1992 Supp (1) SCC 150 — *Referred* [Para 11]
Union of India v. G.S. Chatha Rice Mills — [2020 \(374\) E.L.T. 289](#) (S.C.) — *Relied on* [Para 18]

NOTIFICATION CITED

D.G.F.T. Notification No. 38/2015-2020, dated 5-2-2016 [Paras 2, 5, 9, 11, 12, 14, 20]

REPRESENTED BY : S/Shri S. Ganesh, Sr. Advocate, Rajesh Rawal, Ms. Iti Sharma, Puneet Sharma, Anshay Dhatwalia, Aryan Jha, Advocates and Ashwani Kumar, AOR, for the Appellant.
S/Shri Raj Bahadur Yadav and G.S. Makker, AORs, for the Respondent.

[Judgment per : Alok Aradhe, J.] - Leave granted.

2. These appeals arise from Common Order and Judgment dated 21-12-2018 passed by the High Court of Delhi [[2019 \(366\) E.L.T. 210](#) (Del.)], in a batch of writ petitions, whereby the writ petitions filed by the appellants were dismissed. By the aforesaid order and judgment, the High Court dismissed the challenge laid by the appellants to a Notification issued by the Central Government imposing a Minimum Import Price on certain steel products. The controversy lies in narrow compass and turns primarily on the interpretation of the expression 'date of this Notification' occurring in Para 2 of Notification No. 38/2015-2020 (Notification), issued under the Foreign Trade (Development and Regulation) Act, 1992 (Act).

The factual background

3. The appellants are private limited companies incorporated under the Companies Act, 1956 and are engaged in the import and trading of mild steel items such as Hot Rolled Coils, Cold Rolled Coils, Hot Rolled Steel Plates and Pre Painted Steel Coils etc. Admittedly, prior to February, 2016, the said items were freely importable and fell under Chapter-72 of the Indian Trade Clarification (Harmonized System), 2012 (hereinafter, referred to as 'ITC-HS'), Schedule-I of the Foreign Trade Policy, 2015-2020 (FTP).

4. Between 29-1-2016 and 4-2-2016, the appellants entered into firm sale contracts with exporters from China and South Korea. The appellants on 5-2-2016 opened irrevocable letters of credit in favour of foreign suppliers.

5. On the same date *i.e.* 5-2-2016, the Directorate General of Foreign Trade (DGFT), uploaded Notification on its website, introducing Minimum Import Price (MIP) for specified steel products. The uploaded document itself contained an endorsement 'To be published in the Official Gazette of India'. Admittedly, the Notification was published in the Official Gazette on 11-2-2016.

6. Anticipating restriction, the appellants, on 8-2-2016, applied for registration of their Letters of Credit under transitional protection contemplated by Para 1.05(b) of the FTP.

7. The appellants thereafter approached the High Court, contending that the Notification having been published in the Official Gazette on 11-2-2016, could not be applied to imports covered by Letters of Credit opened earlier. The appellants sought relief to quash the Notification and in the alternative, a declaration was sought that the Notification does not apply to Letters of Credit opened by the appellants prior to publication of the Notification in the Official Gazette.

8. The High Court by a Common Order and Judgment dated 21-12-2018, though held that the Notification would operate from 11-2-2016 *i.e.*, the date of its publication, yet it held that uploading of the Notification on 5-2-2016, constituted sufficient notice to bind importers whose letters of credit were not opened before 5-2-2016. The High Court further held that the Notification is not an act of delegated legislation. Accordingly, the writ petitions were dismissed. Aggrieved thereby, the appellants are before this Court.

Submissions

9. Learned Senior Counsel for the appellants submitted that admittedly the Notification was published in the Official Gazette only on 11-2-2016 and, therefore, was *non est* prior to the aforesaid date. It is contended that on a plain reading of Para 2 of the Notification read with Para 1.05(b) of the FTP, it is evident that the importer should have opened the irrevocable Letters of Credit before the date of imposition of restriction *i.e.*, 11-2-2016. It is pointed out that, in the present cases, the appellants have opened the irrevocable Letters of Credit on 5-2-2016. It is further pointed out that Para 1.05(b) of the FTP is incorporated into and made an integral part of Para 2 of the Notification. It is contended that the date of the Notification cannot be read as 5-2-2016, as the Notification was admittedly published on 11-2-2016 and would be effective from the aforesaid date. In support of the aforesaid

submissions, reliance has been placed on the decisions of this Court [*B.K. Srinivasan & Ors. v. State of Karnataka & Ors.*, (1987) 1 SCC 658 and *Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer & Anr.*, (1962) 1 SCR 676].

10. On the other hand, Learned Counsel for the respondents submitted that even though the Notification comes into effect from 11-2-2016, yet the benefit of Para 2 of the Notification is restricted to Letters of Credit entered into before 5-2-2016. It is contended that the expression 'date of Notification' will remain static as 5-2-2016. It is pointed out that very often legislations get enacted on a particular date but either the Act, in its entirety, or some of the provisions in the Act are brought into force on a particular date. In this connection, our attention has been invited to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is pointed out that even though the aforesaid Act received the assent of the President on 27-9-2013, yet, the Act came into force on 1-1-2014. It is contended that legal consequence of Para 2 of the Notification is that the Notification would govern imports on and from 11-2-2016 but the benefit of Para 2 of the Notification would be extended only to the imports under the Letters of Credit entered into before 5-2-2016.

11. It is pointed out that the appellants have not opened the Letters of Credit before the date of the Notification i.e., 5-2-2016 and, therefore, Para 1.05(b) of the FTP has no application to the facts of the case. It is argued that even otherwise, reference to Para 1.05(b) of the FTP has no relevance to Para 2 of the Notification, as the condition mandated in Para 1.05(b) is only registration of Letter of Credit with Jurisdictional Regional Authority. Alternatively, it is contended that in case of a conflict between the Notification and the policy, the mandate of the statutory Notification will prevail over the policy of the Government. In support of the aforesaid submission, reliance has been placed on decisions of this Court [*State of M.P. & Anr. v. M/s. G.S. Dall and Flour Mills*, 1992 Supp (1) SCC 150, *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and Others*, AIR 2018 SC 3606 = [2018 \(361\) E.L.T. 577](#) (S.C.)]. Lastly, it is contended that the judgment and order passed by the High Court does not call for any interference in these appeals.

The Central issue

12. The pivotal issue that falls for our consideration is whether the expression 'date of Notification' mentioned in Para 2 of the Notification issued under the Act, can be interpreted to mean any date, other than the date of its publication in the Official Gazette.

Statutory framework

13. Before proceeding further, it is apposite to take note of the relevant statutory provisions. The Act was enacted to provide for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India, and matters connected therewith and incidental thereto. Section 3 of the Act empowers the Central Government to regulate imports and exports by an order published in the Official Gazette. The relevant extract of Section 3 is reproduced below for the facility of reference :-

“3. Powers to make provisions relating to imports and exports - (1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting, or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the [Import or export of goods or services and technology”

14. In exercise of powers under Section 3 of the Act read with Paras 1.02 and 2.01 of FTP, the Central Government amended the Import Policy Conditions *vide* Notification against 173 HS Codes under Chapter-72 of ITC (HS), 2012 - Schedule-I (Import Policy) subject to the conditions mentioned therein. The said Notification reads as under :

“To be Published in the Gazette of India Extraordinary Part-II,

Section-3, Sub-section (ii)

Government of India

Ministry of Commerce & Industry

Department of Commerce

Directorate General of Foreign Trade

Udyog Bhawan

Notification No. 38/2015-20

New Delhi, Dated : 5 February, 2016

Subject : Minimum Import Price (MIP) on Iron and Steel under Chapter 72 of ITC (HS), 2012 - Schedule-1 (Import Policy) : amendment in import Policy Conditions.

S.O. (E). - In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992 read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the Import Policy Conditions against 173 HS Codes under Chapter 72 of ITC (HS), 2012 - Schedule-I (Import Policy) as per the Annex subject to the following conditions :

- (a) Imports under Advance Authorisation Scheme are exempted from Minimum Import Price (MIP) under this Notification;
- (b) MIP is also exempted for all API grade steel conforming to X-52 and higher API grades for

manufacturing pipes used for pipeline transportation systems in the petroleum and natural gas industries;

and

- (c) MIP conditions laid down in this Notification are valid for six months from the date of the notification or until further orders, whichever is earlier.

2. Further, imports/shipments under Letter of Credit already entered into before the date of this notification shall be exempted from the Minimum Import Price condition subject to Para 1.05(b) of Foreign Trade Policy, 2015-20.

3. *Effect of this Notification* : Minimum Import Price (MIP) is introduced against 173 HS Codes under Chapter 72 of ITC (HS), 2012 - Schedule-I (Import Policy) as detailed in the Annex.

(Anup Wadhawan)

Director General of Foreign Trade

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Issued from F.No. 01189/180/Moni-5852/AM-03Nol.-1/pC-2 (A)"

15. Para 1.05(b) of the FTP is extracted below for the facility of reference :

"In case an export or import that is permitted freely under FTP is subsequently subjected to any restriction or regulation, such export or import will ordinarily be permitted, notwithstanding such restriction or regulation, unless otherwise stipulated. This is subject to the condition that the shipment of export or import is made within the original validity period of an irrevocable commercial letter of credit, established before the date of imposition of such restriction and it shall be restricted to the balance value and quantity available and time period of such irrevocable letter of credit. For operationalising such irrevocable letter of credit, the applicant shall have to register the Letter of Credit with jurisdictional Regional Authority (RA) against computerized receipt, within 15 days of the imposition of any such restriction or regulation."

Analysis

16. We have given our thoughtful consideration to the rival submissions and have taken note of the relevant statutory provisions. Law, to bind, must first exist. And to exist, it must be made known in the manner ordained by the legislature. Delegated legislation, unlike plenary legislation enacted by the Parliament, is framed in the executive chambers without open legislative debate. The requirement of publication in the Gazette, therefore, serves a dual constitutional purpose *i.e.* (a) it ensures accessibility and notice to those governed by the law, and (b) it ensures accountability and solemnity in the exercise of delegated legislative power. The requirement of publication in the Gazette, is therefore not an empty formality. It is an act by which an executive decision is transformed into law. It is precisely for this reason that Courts have consistently insisted that strict compliance with the publication requirements is a condition precedent for the enforceability of delegated legislation.

17. The legal position in this regard stands crystalised by a long line of decisions of this Court. The true test of the effective commencement of a statutory order or subordinate legislation is whether it has been published in a manner reasonably calculated to bring it to the notice of all persons who may be affected by it, namely, through a mode which is ordinarily and generally accepted for that purpose [*Johnson v. Sargant and Sons*, (1918) 1 KB 101 : 87 LJ KB 122]. The aforesaid principle was referred to with approval by this Court [*Harla v. State of Rajasthan*, 1951 SCC 936] and it was held that natural justice requires that before a law can become operative, it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with exercise of due and reasonable diligence.

18. Another two-Judge Bench of this Court [*B.K. Srinivasan and Ors. v. State of Karnataka and Ors.*, 1987 (1) SCC 658] undertook a comprehensive survey of law relating to publication of subordinate legislation. The Court recognised the modern reality that delegated legislation pervades almost every sphere of governance, often framed unobtrusively and without the visibility that attends Parliamentary enactments. It was, therefore, held that publication of promulgation is indispensable to enforceability of subordinate legislation. It was further held that when the parent statute prescribes a particular mode of publication, that mode must be strictly followed. The aforesaid position was reiterated, in subsequent decisions, [*Gulf Goans Hotels Co. Ltd. v. Union of India and Ors.*, (2014) 10 SCC 673, *Union of India and Others v. G.S. Chatha Rice Mills and Another*, (2021) 2 SCC 209 = [2020 \(374\) E.L.T. 289](#) (S.C.) and *Nabha Power Ltd. and Anr. v. Punjab State Power Corporation Ltd. and Anr.*, (2025) 5 SCC 353 = [2025 \(391\) E.L.T. 434](#) (S.C.) = [\(2024\) 24 Centax 74](#) (S.C.)].

19. In the backdrop of aforesaid well-settled legal position, we may advert to the facts of the case in hand. The parent statute, namely the Act expressly mandates that any order regulating imports or exports shall be made by an order published in the Official Gazette. The legislature in its wisdom, has not left the mode of promulgation to executive discretion. Delegated legislation is an instrument to give effect to the policy and purpose of the parent statute. It, therefore, has to be construed in the manner that advances the object of the Act, namely to regulate foreign trade through transparent, predictable and legally certain measures. Tested on the aforesaid legal principles, coupled with requirement of publication in the Official Gazette, contained in parent statute, it is manifest that the Notification could not have acquired the force of law prior to its publication in the Official Gazette on 11-2-2016. Indeed, the Notification itself acknowledges its incompleteness by declaring that it is 'to be published in the Gazette of India'. The acknowledgement is a confession that, until such publication, the Notification had not crossed the threshold from intention to obligation. Once the legislature has prescribed the specified mode of promulgation, the executive cannot introduce an alternative mode and attribute legal consequences to it. A Notification cannot operate in a fragmented manner. In law, it is born only upon publication in the Official Gazette, and it is from that

date alone that rights may be curtailed or obligations imposed. To hold otherwise, would permit unpublished delegated legislation to burden citizens, a proposition expressly rejected by this Court in long line of decisions referred to supra.

20. Paragraph 2 of the Notification dated 5-2-2016 provides that imports/shipments under Letter of Credit already entered into before the date of this Notification shall be exempt from MIP condition subject to Para 1.05(b) of the FTP. Thus, Notification incorporates Para 1.05(b) of the FTP, which provides that in case an export or import *i.e.* permitted freely under FTP is subsequently subjected to any restriction or regulation, such export or import will ordinarily be permitted, notwithstanding such a restriction or regulation, otherwise stipulated. We do not, therefore, find any force in the submission that Para 1.05(b) of the FTP has either no relevance or the same is in conflict with the Notification.

21. For yet another reason, the benefit of transitional provision contained in Para 1.05(b) of the FTP cannot be denied to the appellants, as the same would defeat the plain language of the FTP and would undermine the object of the parent Act, and would introduce uncertainty to a field where certainty is indispensable. The imposition of fiscal or trade burdens on the basis of an unpublished Notification would erode commercial confidence and offend the Rule of Law, the result which the Court must steadfastly guard against.

22. Once it is held that Notification became operative only on 11-2-2016, the expression 'date of this Notification' occurring in Para 2 thereof, must necessarily be construed to mean the date of its publication in the Official Gazette. Accordingly, the issue is answered. The appellants having opened irrevocable Letters of Credit prior to 11-2-2016 and having complied with procedural requirements under Para 1.05(b) of the FTP are clearly entitled to the benefit of transitional provision contained therein. The MIP introduced by the Notification with effect from 11-2-2016 cannot be applied to imports effected by the appellants pursuant to irrevocable Letters of Credit prior to 11-2-2016.

Conclusion

23. We accordingly hold that the Notification issued under Section 3 of the Act acquires the force of law only upon its publication in the Official Gazette. The expression 'date of this Notification' must necessarily mean the date of such publication.

Order

24. For the foregoing reasons, the impugned order and judgment dated 21-12-2018 of the High Court is quashed and set aside. The appellants are held entitled to protection of Para 1.05(b) of the FTP.

25. The appeals are allowed. There shall be no order as to costs.
