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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.06.2026

PRONOUNCED ON: 21.09.2026

CORAM

THE HON'BLE MR JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

WP(MD) No. 1945 of 2019
&
W.M.P.(MD)No.1593 of 2019

M/s.Atc Tyres Private Ltd.,
Plot A2, Sipcot Industrial Growth Center,
Gangaikondan, Tirunelveli,
Tamilnadu-627 352.

..Petitioner(s)

Vs

1.The Secretary,
Department Of Commerce, Ministry Of Commerce
And Industry, Udyog Bhawan,
New Delhi-110 107.

2.The Director General Of
Foreign Trade, Udyog Bhawan, H-wing, Gate
No.2, Maulana Azad Road, New Delhi-110 011

3.The Chairman And Executive
Director, Rubber Board, P.B.No.1122,
Kottayam-686 002, Kerala.

4.The Development Commissioner
Madras Export Processing Zone, Tambaram,
Chennai-45

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5.The Commissioner Of Customs
Customs House, Harbour Road, Tuticorin,
Tamilnadu.

..Respondent(s)

Prayer : The Writ Petition is filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified mandamus to call for the records leading to issuance of letter F.No.01 / 89 / 180 / 209 / AM-02 / PC -2(A) Vo1.I.IV / P-9902 / 996 dated 18/12/2018, which letter was issued denying the request of the petitioner for exempting the Port Restrictions imposed for import of Natural Rubber vide Notification No.32/2015-2020 dated 20/01/2016 by the 2nd respondent and quash the same.

For Petitioner(s): Mr.Naresh Thackar
for Mr.Raguvaran Gopalan

For Respondent(s): Mr.AR.L.Sundaresan
Additional Solicitor General
for Mr.K.Govindarajan
DSGI for R1 to R4

Mr.R.Gowrishankar for R5

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JUDGMENT

(By **G.R.SWAMINATHAN, J.**)

The writ petitioner is a private limited company registered in the State of Maharashtra. They set up their unit in the Special Economic Zone at SIPCOT, Gangaikondan in Tirunelveli District in Tamil Nadu. One of the raw materials required by the writ petitioner for manufacturing their product is natural rubber. They have been importing the same from Tuticorin Port which is at a distance of 60 kilometers from their unit. While so, the Director General of Foreign Trade issued the notification dated 20.01.2016 allowing import of natural rubber only through sea ports of Chennai and Nhava Sheva. As a result, the petitioner was constrained to import only from the Chennai port which is at a distance of 600 kilometers from their factory. Since this increased their transportation and other costs, they represented to the second respondent to permit them to import through Tuticorin port. Several e-mails and communications were exchanged. Finally, vide communication dated

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18.12.2018, the second respondent rejected the petitioner's request. Challenging the same, the petitioner filed W.P.(MD)No.1945 of 2019 questioning not only the rejection letter dated 18.12.2018 but also the validity of the notification dated 20.01.2016 itself.

2.The respondents have filed a detailed counter affidavit. Their stand can be summarised as under :

A policy decision has been taken to permit import of natural rubber only through the aforementioned two ports keeping in view the interests of the domestic growers to ensure that they get remunerative price for their products. The Government had laid down the impugned restrictions after taking into account all the relevant aspects and in exercise of the powers conferred on it under the Foreign Trade (Development and Regulation) Act, 1992. The scope for judicial review is limited. Reliance was placed on ***State of Orissa vs Gopinath Dash (2005) 13 SCC 495.*** The writ petitioner has no fundamental right to insist that they must be permitted to import through Tuticorin Port. The

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validity of the impugned notification was upheld by the Kerala High Court in ***DGFT vs Mustafa Traders (W.A. No.480 of 2011)*** as well as the Gujarat High Court in M/s ***Mahansaria Tyres Pvt Ltd vs UOI (R/ Special Civil Application No. 2248 of 2021 vide order dated 21.02.2023)***. Keeping in view the doctrine of judicial comity, this Court ought to dismiss the writ petition.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. Relying on ***Pradip J.Mehta vs CIT (2008 (4) TMI 6 -SC),*** he submitted that the point focused before this Bench was not at all considered by the other High Courts ; in any event, these decisions have only a persuasive value and it is open to this Court to disagree on cogent grounds. His core contention was that the impugned notification cannot meet the test laid down in Article 14 of the Constitution of India. He added that when the advanced authorized holders are permitted to import through any sea port, to deprive the units operating in the Special Economic Zone would constitute invidious discrimination. He relied on the decision reported in ***2015 (322) ELT 353 (UOI vs N.S. Rathnam)*** to

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buttress his submission. He also pointed out that the Special Economic Zones were always kept out of such restrictions. The petitioner's unit was set up way back in 2008. From the very inception, they have been importing through Tuticorin Port. By virtue of the interim order granted by this Court, they continued to enjoy the facility of the Tuticorin Port. If the petitioner is forced to import through Chennai Port, it would result in increase of the product price, rendering it non-competitive in the world market. According to the learned counsel for the petitioner, the impugned notification has not at all taken into account these aspects. He submitted that the statistics placed by them before this Court would show that the interest of domestic growers would not be affected at all if the SEZ Units are kept free of port restrictions.

4.Per contra, the learned Additional Solicitor General of India submitted that the impugned notification has been issued in exercise of the power under Section 3 of the FD (D&R) Act, 1992 and that it was well within the jurisdiction of the authority concerned. He points out that by restricting import through ports at Chennai and Nhava Sheva, the cost of transport would get

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added to the import price. This measure would balance the price of imported rubber and domestically produced rubber. This policy decision was taken by the Government on the basis of the expert opinion. Since the issue has fiscal implications, the scope of judicial review under Article 226 of the Constitution of India is rather limited. Once it is seen that the Government has the power to impose port restrictions regarding import, the petitioner can at best seek relaxation from such restrictive conditions. However, there is no right to insist that the relaxation must be given to the writ petitioner. Merely because the petitioner is an SEZ Unit, the authorities under FD (D&R) Act cannot be compelled to grant any benefit sought for by them. In any event, this issue has already been decided and concluded in writ proceedings instituted before two different High Courts. There is no reason as to why this Court should dissent from those Courts. In support of his contentions, he placed reliance on the decision reported in ***(2021) 14 SCC 341 (Union of India Vs. Agricas LLP)*** and the order dated 27.04.2004 rendered by the Bombay High Court in ***CEAT Ltd vs. Union of India.*** He pressed for dismissal of the writ petition.

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5.We carefully considered the rival contentions and went through the materials on record.

6.The restriction in the matter of import of natural rubber is not something new. The Government had been adopting such a policy for the benefit of the domestic growers for a very long time. Vide Notification No.41 dated 19.12.2001, the Director General of Foreign Trade notified that the import of natural rubber shall be permitted only through customs ports of Kolkata and Vishakhapatnam. In other words, the import of natural rubber through the other sea ports was not allowed. In the impugned notification, there is only one difference. Sea ports of Chennai and Nhava Sheva have been substituted in the place of Kolkata and Vishakapattinam. The policy remains the same. The validity of the impugned notification has already been upheld by the Kerala High Court as well as the Gujarat High Court. No doubt, those decisions have only a persuasive value and it is open to us to differ. But we would be justified in striking a different note only for compelling reasons. In our view, there is no justifiable reason for departing from the view taken by

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those two High Courts. The grievance of the petitioner appears to be that when Advanced Authorisation holders have been exempted vide notification dated 12.06.2018 from the purview of the impugned notification, there is no reasonable cause for not extending the very same benefit to the SEZ unit set up by the petitioner. A provision or a notification will not become invalid merely because it is made applicable to entities that deserve to be exempted. If a notification is all encompassing or sweeping, the writ court will endeavour to read down the notification by earmarking the areas of exemption. Another approach will be to call upon the executive to take a call regarding the request for exemption. The writ court will not be justified in striking down a notification for the reason that the petitioner who challenges the same deserves to be exempted from its applicability. Respectfully endorsing the views taken by the Kerala High Court in ***DGFT vs Mustafa Traders (W.A. No.480 of 2011)*** as well as the Gujarat High Court in M/s ***Mahansaria Tyres Pvt Ltd vs UOI (R/Special Civil Application No. 2248 of 2021 vide order dated***

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21.02.2023), we also uphold the impugned notification dated 20.01.2016 as valid.

7.We deem it appropriate to offer a suggestion in this regard. Whenever a notification of this nature having pan-India application is under challenge, the Registry of that Court where the challenge is mounted first may intimate the trade/industry concerned inviting them to intervene. Once the associations participate in the hearings, the members cannot file any individual petition before the respective High Courts within whose territorial limits they are situated. Not just associations but any stakeholder can be heard. When all the interested parties are before the Court concerned, the submissions would be comprehensive. A decision rendered after such hearing would be followed by the other High Courts also. Such an approach will save judicial time and also ensure that no conflicting decisions emanate from the various High Courts. Before us, the learned counsel submitted with considerable force that the contentions made before us were not advanced before the other High Courts.

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That is why, we thought we will place the above suggestion for the consideration of the other High Courts.

8.The next question that calls for consideration is whether the rejection order dated 18.12.2018 passed by the second respondent is justified. The petitioner's counsel argued at length that when relaxation has been granted in favor of the Advanced Authorization holders, it is inequitable to deny the same benefit to SEZ and EOU Units. According to him, this constitutes discrimination and violates Article 14 of the Constitution of India. We do not agree with this submission. Advanced Authorisation holders constitute a class of their own. Article 14 will be attracted only if equals are treated unequally. If SEZ units and Advanced Authorisation holders cannot be placed on the same footing, the question of invoking Article 14 will not arise at all.

9.Even though vide notification dated 19.12.2001, it was stipulated that natural rubber can be imported only through the sea ports of Kolkata and Vishakapattinam, it was clarified shortly thereafter vide Policy Circular No.25, dated 20.02.2002 that the aforesaid port restrictions on import of natural rubber

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would not be applicable to import of natural rubber made by the units in SEZ. This was reiterated vide Policy Circular No.28, dated 04.03.2002. The justification for issuing such clarificatory exemption is obvious. The Special Economic Zones were set up with the object of making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth. A need was felt for giving a long term and stable policy framework with minimum regulatory regime in order to lend enough confidence for the investors to commit substantial funds for development of infrastructure and for setting up of the Units in the zones for export of goods and services.

10.The Parliament subsequently enacted a special law in the year 2005 for Special Economic Zones. The said Act contains an overriding Clause in Section 51. Since the aforesaid clarificatory circular dated 20.02.2002 enabled import of natural rubber through Tuticorin Port, on that basis, the petitioner set

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up their unit for manufacturing off-highway tyres at SIPCOT High Growth Centre, Gangaikondan, Tirunelveli, which is at a distance of 60 kilometers from Tuticorin Port. The said exemption was enjoyed by the petitioner till the issuance of the impugned notification in the year 2016. On account of the restriction that natural rubber could be imported only through Chennai and Nhava Sheva Ports, the petitioner was constrained to import their raw materials only through Chennai port. The distance between petitioner's unit and the Chennai port is close to 600 kilometers i.e., 10 times the distance from the Tuticorin Port. The petitioner in their representation dated 22.01.2016 has set out a number of grounds to show that importing through Chennai port would considerably escalate the costs which would ultimately hike the cost of the final product also. This would adversely affect their business and render their product non-competitive in the export market. The very purpose of setting up the Special Economic Zone is to incentivise exports. Putting such an onerous restriction would definitely act as a discouraging factor. That is why, the

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petitioner sought exemption from the applicability of the impugned notification.

11.The authority vide letter dated 18.12.2018 rejected the said request. The only reason given by the authority is that they had kept in view the interests of the domestic growers. The authority has not negatived the contentions urged by the petitioner. One of the grounds raised by the petitioner is that there is no justification in denying the exemption from the said port restriction to an SEZ unit when in similar circumstances, exemption was granted in the year 2002. The petitioner further contended that they set up their unit in Gangaikondan with the hope that they would continue to enjoy the said exemption regime. The petitioner, thus, has essentially invoked the doctrine of legitimate expectation. Before we discuss the issue further, it is necessary to briefly deal with the doctrine of legitimate expectation to find out whether the writ petitioner is entitled to invoke the same.

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12.The concept of legitimate expectation gained entry into administrative law fifty five years ago ***(Schmidt v. Secretary of State for Home Affairs, [[1969] 2 Ch. 149].*** It is now an established ground of judicial review ***(Union of India v. Hindustan Development Corporation, (1993) 3 SCC 499 : AIR 1994 SC 988)***. There are two aspects to legitimate expectation, substantive and procedural. It has been held that one's legitimate expectation can be said to have been breached when the decision making body deviates from a set standard or established practice as held in ***Rajeev Suri v. DDA, (2022) 11 SCC 1.*** In ***Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381***, it was held that legitimate expectation ranks below the doctrine of promissory estoppel but above the principle of fairness. It was also held therein that the term "***established practice***" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision making authority. When in the hierarchy of values, legitimate expectation is placed above fairness, certainly, the unfair response of the official can be the foundation for laying a claim based on breach of legitimate expectation.

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13.The Hon'ble Supreme Court in ***State of Bihar v. Shyama Nandan Mishra, (2022) 17 SCC 420*** endorsed the proposition laid down in ***R. v. IRC, (1990) 1 WLR 1545*** wherein it was held that if a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed, it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. It was reiterated that the doctrine of legitimate expectation is rooted in fairness and that regularity, predictability, certainty and fairness are necessary concomitants of Government's action. The principles regarding the doctrine of legitimate expectation were summarised by the Hon'ble Supreme Court in ***Army Welfare Education Society v. Sunil Kumar Sharma, (2024) 16 SCC 598*** in the following terms :

> "63.1.First, legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation;
>
> 63.2.Secondly, legitimate expectation must arise either from an express or implied promise; or a consistent past practice or custom followed by an authority in its dealings;

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63.3.Thirdly, expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be treated as a legitimate expectation;

63.4.Fourthly, legitimate expectation operates in relation to both substantive and procedural matters;

63.5.Fifthly, legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from a consistent past practice, without any reasonable basis.

63.6.Sixthly, a plea of legitimate expectation based on past practice can only be taken by someone who has dealings, or negotiations with a public authority. It cannot be invoked by a total stranger to the authority merely on the ground that the authority has a duty to act fairly generally."

14.Coming to the case on hand, the writ petitioner has been enjoying the facility of importing through Tuticorin port right from the inception of setting up their Unit in the year 2008. The writ petitioner's case is not based upon any hope. On the other hand, the department after issuing certain port restrictions clarified that those restrictions will not apply to the units in the Special

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Economic Zones. This exemption has been holding the field from 2002 onwards till 2016 when the impugned notification was passed. This is undoubtedly a consistent past practice followed by the authority in its dealings. The writ petitioner is not opposing the port restrictions per se. On the other hand, they are only insisting that the exemption previously granted in their favour should continue. This expectation cannot be said to be unreasonable or illogical. The petitioner is justified in invoking the said doctrine as it is not a stranger to the authority. Thus, all the parameters laid down above for invoking the doctrine of legitimate expectation stand attracted. If the executive proposed to discontinue the practice of granting exemption to SEZ units, it was obliged to give reasons for shifting their policy. When the petitioner brought the relevant facts to the attention of the authority, the authority did not even deal with those submissions by passing a speaking order. Even though the impugned rejection order contains a reason that "it was in view of the current price situation of domestic natural rubber", we have to characterize it as a "namesake reason" and not a speaking order in the true sense of the term. We

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are of the view that the impugned order dated 18.12.2018 suffers from the vice of non-application of mind.

15.It is true that the doctrine of legitimate expectation cannot be invoked if it comes in the way of public interest since public interest always prevails over private interest (vide ***Union of India v. International Trading Co., (2003) 5 SCC 437).*** The onus would be on the authority to show that the impugned action/denial is in public interest. The second respondent was obliged to demonstrate to this Court that public interest would suffer if exemption is granted in favour of the petitioner. Such endeavor was not undertaken at all. On the other hand, the petitioner has placed materials to show that by granting exemption to them, the interest of the domestic growers will not be affected at all.

16.A critical question then arises as to whether this doctrine comes in the way of the executive changing its policy from time to time? ***M P Jain & S N Jain's Principles of Administrative Law (7th edition, volume 2, p.1559)*** discussed this point in the following terms :

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> "Here the judicial approach has not been consistent or uniform. On the one end of spectrum, there are cases where the courts have refused to put any fetter on the discretion of the executive to frame or reframe policy with a view to keep its discretion unfettered. Then, in the middle, there are cases which say that while the executive can change the policy, it should give an opportunity to the affected persons to raise objections to the proposed new policy. In this formulation, legitimate expectation is nothing more than a procedural safeguard.
>
> ….
>
> …on the other end of the spectrum, there are cases where legitimate expectation has been regarded not only as procedural but also as a substantive safeguard and, therefore, the court has insisted that while change in policy can take place from time to time, the policy-maker should, nevertheless, seek to accommodate legitimate expectations of the people arising out of the old policy. The law in this area is still in the developmental stage and is thus hazy at present."

17.The Hon'ble Supreme Court in ***Ashoka Smokeless Coal India (P) Ltd v. UOI (2007) 2 SCC 640*** held that any change in the policy decision for

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cogent and valid reasons is acceptable in law but such a change must take place only when it is necessary. While it is open to the authority to effect change in the policy, compelling reasons must be there more so when long-standing and settled practice is being departed from. In this case, such compelling reasons have not been set out. In fact, before the authority breaches legitimate expectations, it was obliged to give an opportunity of being heard to the affected party. This safeguard was also not observed in this case.

18.Following the representations made by the writ petitioner, the Ministry of Commerce and Industry issued office memorandum dated 09.10.2017 to the second respondent calling upon him to examine the request of SEZ Units and issue necessary clarifications exempting them from restrictions. The said memorandum reads as follows:-

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No. D-12/37/2016-SEZ
Government of India
Ministry of Commerce & Industry
Department of Commerce
(SEZ Section)

Udyog Bhawan, New Delhi
Dated: 09 October, 2017

Office Memorandum

Subject: Port Restrictions on import of natural rubber

The undersigned is directed to forward herewith a copy of an e-mail dated 18-8-2017 addressed to the Honble CIM received from M/s ATC Tires Pvt Ltd removal of restriction of import of Rubber into India through specified ports in respect of SEZs.

2. The Unit has pointed out that in the past when similar restriction for import of Rubber through specified ports was imposed, DGFT had issued clarification that the same would not be applicable for SEZ.

3. It is requested that the request may be examined and necessary clarification exempting SEZs from the restriction my please be issued at the earliest.

Encls. As above.

(G.Srinivasan)
Under Secretary to the Govt. of India.
Tel: 011-23062496
Email- srinivasan.g@nic.in

Directorate General, Directorate General of Foreign Trade
Udyog Bhawan, New Delhi.

Copy to:

Sh. BS Rama Murthy, Chief- Commercial and Logistics,
ATC Tires Pvt. Ltd., Plot No 53 & 27-C,
Second Floor, Empire Complex,
Senapati Bopat Marg, Lower Parel,
Mumbai-400013.

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The rejection order does not even refer to the aforesaid memorandum. It is yet another indicator that the authority has casually dealt with the petitioner's demand for exemption.

19.For the foregoing reasons, the impugned rejection order is set aside. We are, however, not resting our decision only on the doctrine of legitimate expectations and violation of principles of natural justice. The petitioner's unit is in a Special Economic Zone and comes under the purview of the Special Economic Zones Act, 2005. It is a special enactment. It will override other statutes if there is any repugnancy between them by virtue of Section 51 of the Act. Section 55 of the Act confers the rule-making power on the Central Government. The sixth proviso to Rule 26 of Special Economic Zones Rules, 2006 states that Special Economic Zone Units shall be permitted to import those items which are prohibited for import, if they export goods made out of the same but each such case shall be placed before Board of Approval for approval. It is seen that even a prohibited item can be imported by SEZ Unit

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after getting approval from the Board. The expression "prohibited item" will have to be meaningfully construed. It is true that the petitioner is not prohibited from importing natural rubber. Restriction is to the effect that natural rubber can be imported through Chennai and Nhava Sheva Port alone. This would mean that the petitioner is prohibited from importing the same through Tuticorin Port. Therefore, we are of the view that the aforesaid Rule is attracted. When the writ petitioner has the option of overcoming the restrictions imposed by the second respondent by approaching their Board, the impugned Notification No.32/2015-20, dated 20.01.2016 cannot be applied across the board (pun intended) and definitely not in the case of the writ petitioner.

20.In passing, we need to make a remark. There can be no dispute that as a result of the impugned notification, the transportation costs of the writ petitioner will go up humongously. India has been importing diesel and petrol. We take judicial notice of the fact that the Middle East conflicts have spiked their prices. The government has been encouraging measures to reduce

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transportation costs. The very purpose of laying ring roads and special corridors is only to ensure that there is no wastage of fuel. Therefore, there is considerable merit and force in the petitioner's submission that it is viable to bring their raw materials from the nearby port instead of forcing them to transport from the Chennai Port which is situated at a distance of 600 kms from the petitioner’s unit. This pertinent aspect was not even taken note of by the second respondent. When transportation costs should be kept the bare minimum, to claim that their increase would balance the price of imported natural rubber vis a vis the one grown domestically does not appear to be a reasonable stand.

21.We grant liberty to the petitioner to submit a fresh representation to the second respondent within eight weeks from the date of receipt of copy of this order. The second respondent is obliged to pass a speaking order meeting all the contentions of the writ petitioner. The law set out in this order will be borne in mind.

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22.This writ petition is partly allowed in the following terms :

a) The impugned notification No.32/2015-20 dated 20.01.2016 is upheld.

b)The rejection order bearing Lr.F.No. 01/89/180/209/AM-02/PC-2(A)/Vol.IV/P-9902, dated 18.12.2018 is set aside.

c) The petitioner is given liberty of availing remedy under Rule 26 of Special Economic Zones Rules, 2006.

d) The petitioner is also given liberty to submit a representation to the second respondent seeking exemption for their unit from the port restrictions set out in the impugned notifications. Till order is passed on the said representation, the petitioner can continue to import natural rubber from Tuticorin port as per the interim order dated 01.02.2019 which is now made absolute. It would abide by the order to be passed by the second respondent. This benefit will not be available to the petitioner if representation is not submitted within the time limit mentioned above.

No costs. Consequently, the connected miscellaneous petition is closed.

(G.R.S.,J.) (R.P.,J.)
21.09.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
rmi/skm

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To

1.The Secretary,
Department Of Commerce, Ministry Of Commerce
And Industry, Udyog Bhawan,
New Delhi-110 107.

2.The Director General Of
Foreign Trade, Udyog Bhawan, H-wing, Gate
No.2, Maulana Azad Road, New Delhi-110 011

3.The Chairman And Executive
Director, Rubber Board, P.B.No.1122,
Kottayam-686 002, Kerala.

4.The Development Commissioner
Madras Export Processing Zone, Tambaram,
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5.The Commissioner Of Customs
Customs House, Harbour Road, Tuticorin,
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AND
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