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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8976/2020

KIRAN JUNEJA

..... Petitioner

Through: Mr. D.S. Chadha & Ms. Riya
Sharma, Advs

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vikrant N. Goyal & Mr.
Nitin Chandra, Advs for R-1.
Mr. Satish Aggarwala, Senior
Standing Counsel along with
Mr.Gagan Vaswani, Adv for
R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

23.11.2023

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1. This writ petition impugns the order dated 01 January 2020 passed by the Additional Secretary acting as the Revisional Authority and negating a challenge to orders of confiscation of gold bars that were made by the respondents.

2. The order is assailed firstly on the ground of violation of principles of natural justice. The learned counsel contended that opportunity of hearing was only accorded on two occasions whereas the respondents were bound to grant the petitioner one further additional opportunity of hearing before the concerned Authority.

3. We find ourselves unable to sustain that submission since the record would reflect that despite notice having been given on two occasions, none appeared on behalf of the petitioner, as a consequence of which the competent authority decided to proceed ex parte. While



learned counsel sought to overcome this hurdle by seeking to rely on certain applications moved by the petitioner seeking further time to reply to the notice issued, we find that ultimately the issue would have to be decided on the principle of prejudice as evolved by our courts. As has been repeatedly observed, the principles of natural justice are not *mantras* but foundational precepts concerned with fairness of procedure and the right of a person to respond to the allegations made. Ultimately, whether the asserted violation of some facet of natural justice has tainted the procedure adopted by the respondent is an issue of fact and which would ultimately guide courts to consider whether interference is warranted. Tested on the aforesaid anvil, we find that the petitioner has abjectly failed to have proven or established prejudice.

4. That then takes us to the merits of the order of confiscation. We note that the importation of gold and carriage of bars by passengers even if they be foreigners has been duly considered by the Court in **Nidhi Kapoor v. Principal Commissioner and Additional Secretary to the Government of India & Ors.** [2023 SCC OnLine Del 5099]. While dealing with the issue of importation of gold into the country, we had an occasion to extensively review the statutory regime as well as the judgments which had been rendered by different High Courts on the subject.

5. On a due consideration of the aforesaid, we had held as follows:

“144. In summation, we note that Section 2(33) of the Act while defining prohibited goods firstly brings within its dragnet all goods in respect of which a prohibitory notification or order may have been issued. That order could be one promulgated either under Section 11 of the Act, Section 3(2) of the FTDR or any other law for the time being in force. However, a reading of the latter part of Section 2(33) clearly leads us to conclude that goods which have been imported in violation of a condition for import would also fall



within its ambit. If Section 2(33) were envisaged to extend only to goods the import of which were explicitly proscribed alone, there would have been no occasion for the authors of the statute to have spoken of goods imported in compliance with import conditions falling outside the scope of “prohibited goods”.

145. Our conclusion is further fortified when we move on to Section 11 and which while principally dealing with the power to prohibit again speaks of an absolute prohibition or import being subject to conditions that may be prescribed. It is thus manifest that a prohibition could be either in absolutist terms or subject to a regime of restriction or regulation. It is this theme which stands reiterated in Section 3(2) of the FTDR which again speaks of a power to prohibit, restrict or regulate. It becomes pertinent to bear in mind that in terms of the said provision, all orders whether prohibiting, restricting or regulating are deemed, by way of a legal fiction, to fall within the ambit of Section 11 of the Act. This in fact reaffirms our conclusion that Section 2(33) would not only cover situations where an import may be prohibited but also those where the import of goods is either restricted or regulated. A fortiori and in terms of the plain language and intent of Section 2(33), an import which is effected in violation of a restrictive or regulatory condition would also fall within the net of “prohibited goods”.

146. We are further of the considered opinion that the absence of a notification issued under Section 11 of the Act or Section 3(2) of the FTDR would have no material bearing since a restriction on import of gold stands constructed in terms of the FTP and the specific prescriptions forming part of the ITC (HS). Those restrictions which are clearly referable to Section 5 of the FTDR and the relevant provisions of that enactment would clearly be a restriction imposed under a law for the time being in force. Once the concept of prohibited goods is understood to extend to a restrictive or regulatory measure of control, there would exist no justification to discern or discover an embargo erected either in terms of Section 11 of the Act or Section 3(2) of the FTDR. This more so since, for reasons aforementioned, we have already found that the power to prohibit as embodied in those two provisions itself envisages a notification or order which may stop short of a complete proscription and merely introduce a restriction or condition for import.

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153. The submission addressed by the learned amicus does not commend acceptance when one bears in mind the admitted position that the stipulation with respect to the import of gold being subject to RBI regulatory control is a prescription which stands incorporated in and introduced by the FTP itself. It is the FTP formulated in terms of Section 5 of the FTDR which makes the import of gold subject to RBI regulation. This stipulation thus clearly evidences the intent of the Union Government to confer



RBI with the authority to formulate regulatory provisions in relation to the import of gold. Since this power stands bestowed upon the RBI by the Union Government and forms an integral part of the FTP itself, one need not look for or undertake an expedition to discern a power independently vested in the RBI to issue appropriate directives and circulars regulating the import of gold.”

6. Bearing in mind the aforesaid, we find no justification to interfere with the order impugned. We also find ourselves unable to sustain the submission of learned counsel who had alluded to certain other orders passed by Revisional authorities permitting the re-export of gold bars which had been carried by passengers of foreign origin. We note that none of those orders deal with the Baggage Rules, 2016 which too would govern the issue of importation of gold.

7. On an overall consideration of the aforesaid, the challenge to the impugned order fails. The writ petition shall consequently stand dismissed.

YASHWANT VARMA, J.

SHALINDER KAUR, J.

NOVEMBER 23, 2023/RW