



- A.** The Delhi High Court has recently imposed a cost of Rs. 1,00,000 on an exporter for
- The blatant violation of the Duty-Free Credit Entitlement Scheme (DFCE) and ;
 - Directed them to deposit the same in the 'PM CARES' Fund.

Background

- B.** The petitioner, challenged the order passed by the respondent-authority holding the petitioner as ineligible for receiving any benefit under the 'Duty-Free Credit Entitlement' Scheme (DFCE).
- C.** While considering the petition, Hon'ble Delhi High Court noticed the decision of the Gujarat High Court in a similar case of **Adani Exports Ltd.** Wherein the High Court concluded that:
- The main purpose of the **Notification No. 28 dated 28.01.2004**, was to prevent the transfer of the export orders from one group company to

another company belonging to the same group in order to show the enhanced export performance of such another company and, **therefore, it was clarificatory in nature.**

- It further held that the DGFT had no power to exclude exports of certain products as done by the Public Notice dated 28.01.2004, however, as the same effect was given by the Notification dated 21.04.2004 read with the Notification dated 23.04.2004, the same being retrospective in nature, were applicable for all exports made from April 01, 2003, and such exclusion was therefore, valid. The High Court, however, held the exclusion of the following exports from the benefits of the duty-free import entitlement for the exports Status Holder to be neither clarificatory nor in the public interest and therefore, bad in law;
 - I. items exported under Free Shipping Bills; and
 - II. Gold, silver in any form including plain jewelry thereof, in so far as the import of capital goods and office equipment for the factory of the associate/supporting manufacturer/job worker shall be working.
- D. The Single bench also noticed the fact that in a similar petition before the Bombay High Court filed the petitioner, the Court upheld the validity of the Notification dated 28.01.2004 holding it to be clarificatory in nature, and set aside the **Public Notice dated 28.01.2004** as being ultra vires.
- E. Both the above decisions were challenged before the Supreme Court where the Court found them to have resorted to blatant misuse of the provisions of the Scheme and set aside the direction of the Bombay High Court granting relief to the petitioner under the said Scheme.
- F. Considering as stated above, the High Court rejected the submission of the petitioner therein that:-
 - The Notification or the Public Notice had the effect of the taking away of the vested right of the petitioner, stating that they merely sought to exclude exports which were never intended in the first place to be covered by the Special Scheme; misuse of the said scheme by mere paper growth in exports is not to be countenanced.
 - The petitioner certainly could not have been allowed to re-agitate its eligibility under the Scheme in the guise of a fresh/revised application after the judgment of the Supreme Court and subsequent dismissal of its Review Petition," the bench said while dismissing the plea of the Petitioner.
 - As far as seeking parity with M/s Adani Export Ltd. is concerned, there can be no equality achieved in the violation of the law.
 - There is no right stipulated under Article 14 of the Constitution of India in the negative. Therefore, merely because the respondents have granted some relief to M/s Adani Export Ltd. or have not made any recoveries from it, cannot entitle the petitioner, by itself, to claim benefit under the DFCE Scheme in spite of the clear and categorical judgment of the Supreme Court holding it to be not entitled to the same," the bench said.
(In my personal opinion, one should refer full judgment as well at <https://indiankanoon.org/doc/11496665/>)

CA Udit Swami