



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17285 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 598 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 640 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 649 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 652 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Approved for Reporting	Yes	No
	√	

**GUJARAT AMBULA EXPORTS LIMITED THROUGH ITS CHIEF FINANCIAL
OFFICER NAGARAJ GIRDHAR**
Versus
UNION OF INDIA & ANR.

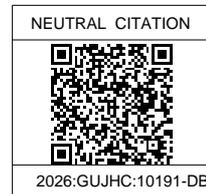
Appearance:

IN SPECIAL CIVIL APPLICATION NO. 17285 of 2025
MR. DHAVAL C. DAVE, SENIOR COUNSEL WITH UDIT N VYAS(9255) for
the Petitioner(s) No. 1
MR ANKIT SHAH(6371) for the Respondent(s) No. 1,2

IN SPECIAL CIVIL APPLICATION Nos. 598,640,649 and 652 of 2025
MR. MIHIR JOSHI, SENIOR COUNSEL WITH MR. MRUGEN PUROHIT,
ADVOCATE AND MR. ADITYA PARIKH for the Petitioner
MR.HARSHEEL SHUKLA, SENIOR STANDING COUNSEL for the
Respondent(s)

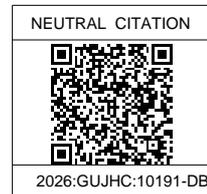
CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 05/02/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)



1. **RULE** returnable forthwith. Mr.Ankit Shah, and Mr.Harsheel Shukla, learned Senior Standing Counsels waives service of notice of rule in the respective petitions. It is submitted by learned advocates appearing for the respective parties that in Special Civil Application Nos. 598 of 2025, 640 of 2025, 649 of 2025 and 652 of 2025, the pleadings are over. Since short issue is involved in the present writ petitions, hence the matters are taken up for final hearing and final disposal today.

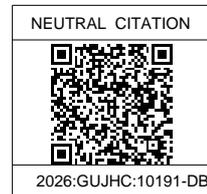
2. The petitioners, who are the beneficiaries of the Transport and Marketing Assistance Scheme (for short "TMA") for specified agricultural product scheme introduced vide Notification dated 27.02.2019 by the Ministry of Commerce and Industry(Department of Commerce), Government of India have challenged the Notification dated 25.03.2022 issued by the Ministry of Commerce discontinuing / withdrawing the Scheme retrospectively by withdrawing the Notification dated 09.09.2021. The Scheme was introduced with an aim to provide assistance for international component of freight and marketing of agricultural products which would mitigate the disadvantages of higher costs of transportation of export of specified agricultural products due to transshipments and for the purpose of promoting brand recognition of Indian agricultural products in the specified overseas market. The exporters were entitled to the reimbursement of expenses incurred towards freight for exporting notified agricultural produce. Due to the discontinuance of the Scheme vide impugned Notification retrospectively, the



petitioners are unable to file the claim of reimbursement, and their claims were not processed, which constrained them to file the captioned writ petitions challenging the Notification dated 25.03.2022.

3. At the outset, learned Senior Counsel Mr.Mihir Joshi, and Mr.Dhaval Dave while placing reliance on the judgement of the Hon'ble Supreme Court in the case of Union of India & Ors vs. Asian Food Industries , (2006) 13 SCC 542, and in the case of Viraj Impex Pvt Ltd Vs. Union of India & Anr., 2026 INSC 80_ as well as in the case of Director General of Foreign Trade and Anr.Vs. Kanak Exports & Anr., (2016) 2 SCC 226, have submitted that the statutory policy cannot be withdrawn with retrospective effect. They have also contended that the Scheme was introduced by the Ministry of Commerce vide Notification dated 27.02.2019 and was made part of the Foreign Trade Policy by issuing the Notification dated 29.03.2019 in exercise of powers under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (for short "the Act). Thus, it is urged that the impugned notification may be quashed and set aside.

4. *Per Contra*, learned Senior Standing Counsels Mr.Ankit Shah and Mr.Harsheel Shukla, have submitted that the Ministry of Commerce have precisely decided to withdraw the policy as the government intended to foreclose the Scheme to revamp, redesign and refocus. It is submitted that the subsidy is a matter of privilege of the Central Government and it cannot be enforced as a right and it can be withdrawn any



time. It is thus submitted that no fundamental right of the petitioner has been violated. Thus, it is urged that the writ petitions may not be entertained.

5. We have heard the learned advocates appearing for the respective parties and perused the relevant notifications as pointed out by them. Following facts are established from the pleadings and facts:

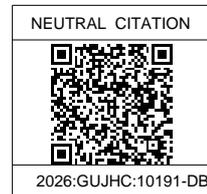
(A) The Ministry of Commerce and Industries (Department of Commerce), Directorate General of Foreign Trade, vide Notification dated 27.02.2019, introduced the Transport and Marketing Assistance (TMA) for specified agricultural products. The relevant clause of such scheme is as under:

*“2 Introduction and Objective:
XXX XXX XXX
(ii) The Scheme would be suitably included in the Foreign Trade Policy (2015-20).”*

(B) Thus, the Notification intended to include the Scheme in Foreign Trade Policy (2015-20). Accordingly, vide Notification dated 29.03.2019, the Ministry of Commerce and Industries, in exercise of powers under Section 5 of the Act, issued a Notification. The relevant part is as under:

*“MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)
(Directorate General of Foreign Trade)
NOTIFICATION
New Delhi, the 29th March, 2019
No. 58/2015-2020*

Subject: Transport and Marketing Assistance (TMA) for Specified Agriculture Products-regd.



S.O. 1483(E). In exercise of powers conferred by Section 5 of Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992 as amended from time to time, read with Department of Commerce Notification No. 17/3/2018-EP (Agri. IV) dated 27.2.2019 the Central Government hereby add Chapter 7(A) in the Foreign Trade Policy, 2015-2020, as amended, and incorporate the scheme titled as Transport and Marketing Assistance (TMA) for Specified Agriculture Products therein.

2. The new chapter 7(A) of Foreign Trade Policy, 2015-2020 is annexed to this Notification

Effect of this Notification: *a new chapter 7(A) is added in Foreign Trade Policy 2015-2020 and the scheme titled "Transport and Marketing Assistance (TMA) for Specified Agriculture Products as notified vide DoC's Notification No. 17/3/2018-EP (Agri.IV) dated 27.2.2019 is incorporated therein.*

[F No 01/92/180/56/AM-19/PC-VI]
ALOK VARDHAN CHATURVEDI, Director General of Foreign Trade"

(C) It appears that, thereafter, subsequently, some amendments were carried out in the column vide notification dated 06.06.2019, 09.09.2021 and 20.09.2021. Ultimately, vide notification dated 29.09.2022, issued by the Ministry of Commerce and Industries, it was promulgated that the Scheme shall remain in force up to 31.03.2023. The relevant extract of Notification is as under:

"NOTIFICATION

New Delhi, 29th September, 2022

No. 37/2015-2020

S.O. 4578(E)-In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 read with paragraph 1.02 of the Foreign Trade Policy (FTP) 2015-2020, as amended, the Central Government hereby makes, with immediate effect, the following amendments in the FTP 2015-2020

In para 101, the phrase shall remain in force upto 30th September, 2022 unless otherwise specified is substituted by the phrase 'shall remain in force up to 31.03.2023 unless otherwise specified.'

Effect of this Notification: The existing Foreign Trade Policy 2015-2020 which is valid up to 30 September, 2022 is extended upto 31



March, 2023.”

(D) Thereafter, by the impugned Notification dated 25.03.2022, the Ministry of Commerce and Industry, foreclosed the Scheme by withdrawing the Notification dated 09.09.2021 by declaring thus:

“MINISTRY OF COMMERCE

(Department of Commerce)

NOTIFICATION

New Delhi, the 25th March, 2022

No. 17/2/2021-EP (Agri. IV). The Central Government had introduced a Scheme titled 'Revised Transport and Marketing Assistance (TMA) for Specified Agriculture Products Scheme for the exports effected on or after 01.04.2021 vide notification no 17/2/2021-EP (Agri IV) dated 9th September 2021. The Government has now decided to foreclose the scheme to revamp, redesign and refocus it better for better outcomes As such, the notification dated 9 September 2021 stands withdrawn

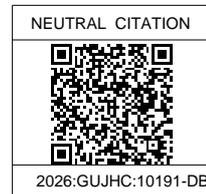
DIWAKAR NATH MISRA, Jt. Secy”

(E) Thus, the Scheme introduced vide Notification dated 26.02.2019 was made part of the Foreign Trade Policy, 2015-2020, vide Notification dated 29.03.2019 by exercising the powers under Section 5 of the Act. We may, at this stage, refer to the provisions of Section 5 of the Act, the same is as under:

“5. Foreign Trade Policy.—

The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:

Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette.”

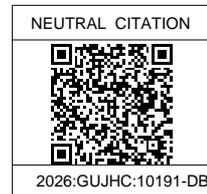


(F) The provision of Section 5 is self-explanatory. The same stipulates that the Central Government may from time to time formulate and announce the Foreign Trade Policy and may also, in like manner, amend that policy. Thus, TMA scheme is statutory in nature. It is evident from the intention of the impugned Notification that the Scheme has been foreclosed with retrospective effect on the withdrawal of Notification dated 9th September, 2021.

6. In the instant case, by the impugned Notification dated 25.03.2022, the Ministry of Commerce and Industry has withdrawn the Notification dated 09.09.2021, thus, has given a retrospective effect of withdrawing of such Scheme.

7. We find that though the Government has power to withdraw the Scheme, however, the question which falls for deliberation before this Court is as to whether the same could have been done retrospectively or not in wake of the fact that for all these years, the Scheme was in operation and was also amended from time to time, giving rise to claims of the petitioners. At this stage, we may refer to the judgement in the case of **Asian Food Industries (supra)**, the relevant paragraph 48 read as under:

“48 The Delhi High Court, however, in our view correctly opined that the Notification dated 4-7-2006 could not have been taken into consideration on the basis of the purportedly publicity made in the proposed change in the export policy in electronic or print media. Prohibition promulgated by a statutory order in terms of Section 5 read with the relevant provisions of the policy decision in the light of sub-section (2) of Section 3 of the 1992 Act can only have a prospective effect. By reason of a policy, a vested or accrued right



cannot be taken away. Such a right, therefore, cannot a fortiori be taken away by an amendment thereof.”

8. We may also refer to the relevant paragraph No.22 of the judgement in the case of **Viraj Impex (supra)**, which read as under:

“22. Once it is held that Notification became operative only on 11.02 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 11.02 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 11.02.2016 cannot be applied to imports effected by the appellants pursuant to irrevocable Letters of Credit prior to 11.02.2016.”

8.1 We may also refer to the relevant paragraph No.135 of the judgement in the case of **Kanak Exports & anr, (supra)**, which read as under:

“135. We have already discussed these aspects in detail. To recapitulate, it is held by us that Section 5 of the Act does not empower the Government to make amendments with retrospective effect, thereby taking away the rights which have already accrued in favour of the exporters under the Scheme. No doubt, the Government has, otherwise, power to amend, modify or withdraw a particular scheme which gives benefits to a particular category of persons under the said scheme. At the same time, if some vested right has accrued in favour of the beneficiaries who achieved the target stipulated in the scheme and thereby became eligible for grant of duty credit entitlement, that cannot be snatched from such persons/exporters by making the amendment retrospectively. In the present case, we find that Section 5 of the Act does not give any specific power to the Central Government to make the rules with retrospective effect. The Central Government is authorised to make rules/schemes under the said provision as a delegatee, which means that the EXIM Policy/Scheme framed under the said provision is by way of delegated legislation. There has to be specific power to make the amendments with retrospective effect,



which are lacking in the instant case. Moreover, even if there is such a power, it cannot take away vested rights which have accrued in favour of particular persons/exporters. We have already enlisted number of judgments of this Court taking such a view. A few such cases laying down the aforesaid principle are:

- (i) Regl. Transport Officer v. Associated Transport Madras (P) Ltd.*
- (ii) Accountant General v. S. Doraiswamy*
- (iii) A.A. Calton v. Director of Education*
- (iv) Railway Board v. C.R. Rangadhamalah."*

9. Thus, the Supreme Court, by examining the provisions of Section 5 of the Act, has held that Section 5 of the Act neither permits/empowers the Government to make amendments with retrospective effect, nor it allows to close the Scheme retrospectively, thereby taking away the rights which have already accrued in favour of the exporters under the Scheme. Hence, the impugned Notification dated 25.03.2022 abolition/foreclosing the Scheme introduced vide Notification dated 09.09.2021 retrospectively is hereby quashed and set aside. The Notification dated 25.03.2022 shall become effective from the date it was issued. Accordingly, the respondents are directed to give the consequential effect of this order and process the applications filed by the petitioner in view of the Scheme. All the benefits accruing till the issuance of Notification dated 25.03.2022 shall be extended to the petitioners, including raising claims for the period prior to the issuance of impugned Notification, for which the petitioners were prevented from filing applications. The claims/applications shall be processed and the amount shall be paid within a period of 12 weeks from the date of receipt of copy of this order.



10. In light of the foregoing observations, the present writ petitions stand allowed. Rule made absolute to the aforesaid extent. No order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

BIMAL /56, 119 to 122