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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.10.2026
DELIVERED ON : 15.10.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.29394 of 2026
CNR:{HCMA011695522026}
and W.M.P.Nos.32299, 32300
and 32303 of 2026

Case QR

1. Gimpex Private Limited
Rep by its Director, Binod Choudhury
Having its registered office at,
No.282, Old No.181, Linghi Chetty Street,
Parrys, Chennai
Tamilnadu - 600 001.

2. Binod Choudhury
Share Holder-cum-Director,
Having Office at, Gimpex Pvt Ltd,
No.282, Old No.181, Linghi Chetty Street,
Parrys, Chennai
Tamilnadu - 600 001.

Petitioner(s)

Vs

1. Union of India
Ministry of Commerce and Industry
Department of Commerce,
New Delhi – 110001.

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2.The Director General of Foreign Trade
Ministry of Commerce and Industry
Vanijya Bhawan, A Wing, 16 Akbar Road,
New Delhi – 110011.

3.The Commissioner of Customs,
Chennai-II, Commissionerate,
Customs House, 60 Rajaji Salai,
Chennai – 600 001.

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking (i) issuance of a writ of declaration or any other appropriate writ order or direction in the nature of the writ to declare Notification No.12/2026-27, dated 17.04.2026, issued by the 1st respondent herein, as illegal, manifestly arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India; and (ii) issuance of a writ of declaration or any other appropriate writ, order or direction in the nature of a writ to declare paragraph 1.5(b) of the Foreign Trade Policy, 2023, issued by the 1st respondent herein, to the extent it excludes export commitments without Irrevocable Commercial Letter of Credit from the benefits of transitional arrangements as discriminatory, manifestly arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India, and consequently declare that petitioner No.1 is eligible for transitional arrangement under para 1.5(b) of the Foreign Trade Policy 2023.

For Petitioner(s): Mr.Arvind Datar, Senior Counsel
for Mr.Rahul Unnikrishnan

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For Respondent(s): Mr.AR.L.Sundaresan,
Additional Solicitor General of India
Assisted by Mr.A.Kumaraguru,
Senior Panel Counsel,
for respondents 1 and 2

Mr.M.Sanathanaraman,
Senior Standing Counsel
for R3

ORDER

THE CHIEF JUSTICE

The first petitioner is a company that exports minerals. The second petitioner is its director and shareholder. The petitioners challenge a notification dated 17.04.2026, which moved two grades of Baryte (Natural Barium Sulphate), viz., Grade A and Grade B, from the "*Free*" to the "*Restricted*" export category. The petitioners also challenge Para 1.05(b) of the Foreign Trade Policy, 2023 that protects some exports from a change in policy, but only if the exporter holds an Irrevocable Commercial Letter of Credit (ICLC) issued before the change. In effect, petitioners seek the following reliefs:

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(i) A declaration that Notification No.12/2026-27, dated 17.04.2026 is illegal, manifestly arbitrary, and violates Articles 14 and 19(1)(g) of the Constitution of India.

(ii) A declaration that Para 1.05(b) of the Foreign Trade Policy, 2023 is discriminatory, arbitrary and violates Articles 14 and 19(1)(g), to the extent it excludes export commitments without an ICLC from transitional protection and for a consequential declaration that the first petitioner is eligible for that protection.

FACTS IN A NUTSHELL:

2.1. The first petitioner was incorporated in 1974 and it has exported Baryte, in lumps and powder, for over five decades. The first petitioner is a recognised Three Star Export House and until the issuance of the impugned notification, the export of Baryte was "*Free*" under the Policy.

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2.2. The Andhra Pradesh Mineral Development Corporation Limited (APMDCL) is a State Government undertaking and is the main source of Baryte in India. It sells export-grade Baryte through e-tenders and e-auctions and the first petitioner buys its export stock from it. APMDCL's tender notice dated 13.06.2023 offered 8,00,000 MT of Grade A and 3,00,000 MT of Grade B Baryte, only for export. Clause 4.1 allowed only exporters who had exported minerals in at least two of the last three financial years to bid.

2.3. The first petitioner won the tender. On 14.07.2023, it signed two agreements with APMDCL. One was for 2,40,000 MT of Grade A and the other for 60,000 MT of Grade B, both only for export. The petitioners plead that APMDCL later had more stock and sold to it further quantities against full payment, that too, only for export. In all, it bought 2,70,005.650 MT of Grade A (15.07.2023 to 28.02.2026) and 3,16,725.200 MT of Grade B (04.08.2023 to 29.09.2025).

2.4. The petitioners exported certain quantity of this in the ordinary course before 17.04.2026. On that date it still held

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1,89,500.16 MT, made up of 92,683.28 MT of Grade A and 96,816.88 MT of Grade B. The petitioners value it at about Rs.225 crore. The stock had been lying at Chennai Port since February, 2026. It was meant mainly for buyers in Saudi Arabia. The petitioners say exports stopped from 28.02.2026 because of the US–Iran conflict and the disruption of shipping through the Strait of Hormuz.

2.5. On 17.04.2026, the Director General of Foreign Trade issued Notification No.12/2026-27. It was issued under Sections 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992 ("the Act"), read with Paras 1.02 and 2.01 of the Foreign Trade Policy, 2023. It regulated Baryte grade-wise under ITC (HS) codes 25111010, 25111020 and 25111090:

(i) Grade A (specific gravity 4.2 and above): changed from Free to Restricted.

(ii) Grade B (specific gravity 4.10 to 4.20): changed from Free to Restricted.

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(iii) Grade CDW (specific gravity below 4.0): stays Free.

Further, export of Grades A and B now needs authorisation or a licence from the DGFT, under the procedure for "*Restricted*" items. The notification has no clause of its own on transition.

2.6. On 22.04.2026, the first petitioner applied online to the DGFT for a licence to export 2,50,000 MT of Grade A and B Baryte, as the application was needed to honour pre-existing orders and the stock in hand. It is stated that despite several reminders having been sent, the application is still pending.

2.7. It is stated that, by a letter dated 10.07.2026, the Chennai Port Authority told the first petitioner to export the cargo and vacate the port premises at the earliest and that the petitioner is also paying storage and handling charges.

2.8. In this factual backdrop, the present writ petition is filed for the relief stated supra.

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SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned Senior Counsel for the petitioner submitted that:

(i) The notification took away a long-standing free export regime overnight and it gave no grace period for exporters who had bought stock and taken export orders on the faith of the existing policy. This is unreasonable and manifestly arbitrary under Article 14 of the Constitution of India.

(ii) Before 17.04.2026, export of Grade A and B Baryte was free. The petitioners bought huge quantities at full price and committed to overseas buyers and, therefore, they have a vested right to export under the policy then in force. Delegated legislation cannot be retrospective unless the parent Act allows it, and Section 5 of the Act does not. In this regard, reliance is placed on the decision of the Supreme Court in *DGFT v. Kanak Exports*[1].

1 *(2016) 2 SCC 226*

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(iii) The petitioners had exported Baryte freely for decades. APMDCL invited export tenders as recently as January 2026. The petitioners having acted on the basis of the prevalent policy, the Government cannot withdraw it and defeat their expectation. Reliance is placed on the decision of the Supreme Court in *State of Jharkhand v. Brahmputra Metallics Ltd*[2].

(iv) The notification gives no reason and it hits concluded commercial transactions harshly and fails the proportionality test in *Modern Dental College v. State of Madhya Pradesh*[3].

(v) Para 1.05(b) of the Policy protects only exporters who hold an ICLC. An ICLC is only one of several accepted ways of getting paid. Others are cash in advance, documents against payment, documents against acceptance and open account. The Reserve Bank of India does not insist on an ICLC. Baryte exports customarily go forward without such ICLC, and the first petitioner has followed that practice for

2 *(2023) 10 SCC 634*
3 *(2016) 7 SCC 353*

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years. The classification between ICLC holders and others has no rational basis. It treats unequals alike and offends Article 14 of the Constitution of India. In this regard, reliance is placed on a decision of the Supreme Court in *K.T.Moopil Nair v. State of Kerala*[4].

(vi) ICLC is not statutorily mandated under Para 2.52 of FTP 2023. Denying transitional relief to non-ICLC contracts acts as an indirect, unreasonable restriction under Article 19(1)(g) of the Constitution of India and fails the test of manifest arbitrariness. Furthermore, the Court must consider the national economic impact, non-existence of a domestic market for Grade A and B Baryte lumps, and financial ruin resulting from stranded stock worth Rs.225 Crore.

(vii) The application submitted by the petitioners on 22.04.2026 has not been decided by the DGFT and this amounts to a rejection without hearing. It leaves them with no remedy except this petition.

4 *AIR 1961 SC 552*

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SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

4. Learned Additional Solicitor General of India appearing on behalf of respondent Nos.1 and 2 contended that:

(i) The notification was not issued in haste and it followed consultation with stakeholders, ministries and departments, including APMDC, in the larger public and national interest. The policy was changed after a reference from the National Security Council Secretariat (NSCS) about the rapid fall in the country's reserves of this strategic mineral. Baryte matters to the oil and gas and defence sectors. The aim is to stop continued exports from making India dependent on foreign sources for a mineral it now produces at home.

(ii) The impugned notification cannot be said to have imposed a prohibition. Export of Grade A and B Baryte has not been banned and is allowed with a Restricted Export authorisation from the DGFT.

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(iii) Para 1.05(b) of the Policy, read with the Handbook of Procedures, already provides the transition. It protects exports where the Bill of Lading or Mate's Receipt (whichever is later) came before the notification. It also protects exporters who held a duly registered ICLC before the notification. The petitioner satisfies neither condition. Goods merely arriving at the port or in stock, give no right to export to the petitioners and they ought to have obtained an ICLC before the restriction.

(iv) An ICLC is different in kind from other payment modes. It is a binding commitment that cannot be changed or cancelled without the consent of the issuing bank, the confirming bank (if any) and the exporter. It is verifiable and bank-backed. Purchase orders and advance payments can be altered without any third party's oversight. The ICLC condition, therefore, has a rational link to the aim of protecting only commitments that are shown to be irreversible. Extending it to commitments a party can unilaterally

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walk away from would make the exemption unworkable.

(v) No estoppel lies against the Government in the exercise of its sovereign and executive functions. Reliance is placed on the decisions of the Supreme Court in *Kasinka Trading v. Union of India*[5], and *Union of India v. International Trading Co.*[6]. It is added that the Bombay High Court rejected a similar plea on the same Para 1.05(b) in *Premium Sugars v. Union of India*, W.P.(L) No. 18701 of 2026, decided on 03.08.2026.

(vi) The DGFT's office is in "*continuous inter-ministerial deliberations*" for a comprehensive re-examination of the Baryte export policy. The NSCS raised the concerns. The review covers continued exports in Grades A and B under licence, and also the licence-free CDW grade. The matter will also be placed before the Committee of Secretaries and the Government of Andhra Pradesh has been asked for

5 *(1995) 1 SCC 274*
6 *(2003) 5 SCC 437*

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its views. Until the review ends, all pending Baryte export applications, including the application of the petitioners, are held in abeyance and no vested right to a licence arises meanwhile.

QUESTIONS FOR CONSIDERATION:

5. The following questions arise for consideration in the present writ petition:

(I) Whether the impugned notification operate retrospectively and do the petitioners have a vested right to export?

(II) Can the petitioners rely on legitimate expectation or promissory estoppel?

(III) Is the notification arbitrary, or an unreasonable restriction under Article 19(1)(g) of the Constitution of India, because it gave no transition period?

(IV) Is Para 1.05(b) of the Policy invalid for tying transitional protection to an ICLC?

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(V) Can the DGFT keep the petitioners' licence application undecided?

QUESTION (I): RETROSPECTIVITY AND VESTED RIGHTS:

6.1. A law is retrospective when it attaches new consequences to past events or completed transactions. The notification does not do that. It took effect on 17.04.2026. It applies to exports made on or after that date. Para 1.05(b) adumbrates the same in plain words. The export of an item is governed by the policy "*as on the date of import/export*". Where the policy changes from "*free*" to "*restricted*", exports already made are not affected. The Policy also says any change "*will be applicable prospectively (from the date of Notification) unless otherwise provided for*".

6.2. It is not the case of the petitioners that they had shipped any goods before 17.04.2026 and that a Bill of Lading or shipping bill existed before that date. It is the case of the petitioners that the goods were bought and stored for export. Therefore, the petitioners have stock in hand and did not complete the export. A rule that

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applies to future exports does not become retrospective because it hurts the petitioners who hold stock.

6.3. The decision in *Kanak Exports* (supra) relied upon by learned Senior Counsel for the petitioners dealt with a change that reached back and cut benefits for exports already made. The Supreme Court held that Section 5 of the Act gives no power to amend the policy with retrospective effect. This Court has no quarrel with that principle, but the notification here does not reach back to any completed export. Therefore, the principle laid down in the said decision is not applicable to the case on hand.

6.4. Learned Senior Counsel placed reliance on a decision of the Supreme Court in *Union of India and others v. Asian Food Industries*[7], to argue that an administrative policy or prohibition cannot take away a vested or accrued right with retrospective effect.

7 *(2006) 13 SCC 542*

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6.5. We have considered the aforesaid decision. In *Asian Food Industries* (supra), the Supreme Court drew a clear distinction between cases where the statutory requirements under Section 51 of the Customs Act, 1962 had been fully complied with prior to the notification of the ban and cases where such compliance was lacking. Export permission was upheld only for the consignment where clearance and loading permission had already been granted prior to the prohibitory notification, thereby creating an accrued/vested right. In contrast, where Section 51 compliance was incomplete prior to the notification, export was rightly denied. In the present case, the petitioners have failed to demonstrate that they had completed all mandatory statutory procedures or obtained final regulatory clearances before the issuance of the impugned notification. Consequently, no accrued or vested right arose in their favor so as to attract the ratio of *Asian Food Industries* (supra)

6.6. The petitioners own the Baryte and nothing in the notification disturbs that ownership. They bought it from APMDCL and paid for it, and the notification does not undo those sales. What the petitioners claim is an expectation that they will be free to

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export the stock in the future. We are of view the same is not a vested right. The freedom to export is always subject to the law in force on the day of export. Para 1.05(b) in no uncertain terms says so. An exporter who buys stock for later shipment takes the risk that the policy may change before shipment.

6.7. The petitioners say exports to Saudi Arabia stopped from 28.02.2026 because of the conflict and the Hormuz disruption. The stock had thus been stranded for about seven weeks before the notification. Therefore, the stock was not trapped by the notification alone and the notification added a new difficulty to one that already existed.

6.8. It is also recorded that during the course of the hearing of the writ petition, learned Additional Solicitor General clarified that the impugned notification applies prospectively. In our considered view, merely bringing stock to a port area without filing shipping bills or commencing loading does not vest an indefeasible right to export contrary to prospective policy changes.

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QUESTION (II): LEGITIMATE EXPECTATION AND PROMISSORY ESTOPPEL

7.1. The Government may change its policy in the public interest. The courts will step in only if the change is arbitrary, mala fide or against the statute. Expectations based on an existing policy do not create a enforceable right against government modification or revocation. Promissory estoppel needs a clear promise, reliance on it, and loss caused by that reliance. Even then, it cannot be used to stop the Government from acting for an overriding public purpose.

7.2. The petitioners point to no promise by the Union or the DGFT that Baryte would stay free to export, or that any change would carry a grace period beyond what the Policy stipulates. The "*Free*" classification is the default rule under Para 2.01 of the Policy. It is not a promise or assurance. The Policy itself specifies that policy may change and how exports will be treated when such change takes place. Section 5 of the Act lets the Central Government amend the Policy. An exporter who trades under this Policy knows that the rules may change.

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7.3. APMDCL's tenders cannot fill this gap. The tender of 13.06.2023 and the one of January 2026 were issued by a State Government undertaking. APMDCL is not a party to this petition. Even if its tenders invited export bids, that is not an assurance given by the Union that export policy would stay unchanged.

7.4. Learned Senior Counsel appearing on behalf of the petitioners has placed reliance on the decision of the Supreme Court in *Brahmputra Metallics Limited* (supra), to contend that authorities are bound by the solemn promises held out in their policy documents and cannot act in an arbitrary manner to resile from or delay the implementation of such promises. There is no quarrel with the foundational proposition laid down therein that the doctrine of substantive legitimate expectation is an essential facet of non-arbitrariness under Article 14 of the Constitution of India, and that the State cannot act unfairly or selectively to defeat generated expectations without an overriding public interest.

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7.5. While these principles are well-settled and beyond dispute, their applicability to the facts at hand must be evaluated against the specific statutory framework and the precise stage of execution in the present proceedings. A State action or policy change must be tested against the statutory criteria governing the field, and a party claiming a vested right or legitimate expectation must demonstrate complete compliance with all requisite statutory preconditions before such a right can be said to have accrued.

7.6. Upon careful examination of the decision in *Brahmputra Metallics Limited*, (supra), we find that, in that case, the State Government had held out an explicit representation in its Industrial Policy to grant an exemption from electricity duty for five years, but delayed issuing the implementing notification for nearly three years and thereafter made it prospective without providing any public interest rationale or justification. The Supreme Court held such unexplained bureaucratic delay to be arbitrary and violative of Article 14 of the Constitution of India.

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7.7. In the present case, however, the respondent-authorities have neither resiled from an explicit statutory promise nor delayed implementation without justification; rather, the action of the State is backed by valid policy considerations and public interest. The petitioners cannot claim a legitimate expectation contrary to statutory provisions or where overriding public interest justifies the regulatory posture adopted by the State.

7.8. The plea of legitimate expectation and promissory estoppel is rejected.

QUESTION (III): ARBITRARINESS AND ARTICLE 19(1)(G)

8.1. The petitioners say the impugned notification gives no reason. In our view, reasons need not appear on the face of a notification issued under Sections 3 and 5 of the Act. It is general in nature and does not decide a dispute between parties. What matters is whether there was a rational basis for it. The respondents have stated that the basis for issuance rests on the NSCS's reference about the fall in reserves of a strategic mineral,

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inter-ministerial discussion, and consultation with stakeholders. The petitioners' own pleadings support the strategic importance. They say about 80% of the world's Baryte goes to oil and gas drilling, and that the Ministry of Mines moved Baryte from minor to major minerals on 20.02.2025. Nothing is placed before this Court by the petitioners to show that the said reason assigned by the respondents is false or irrelevant.

8.2. The Courts are slow to second-guess economic and strategic policy. The decision as to how much of a scarce mineral may be permitted to be exported involves matters of national security, resource planning and trade. The Court has neither the expertise nor the material to substitute its own view. It will not strike a policy down merely because it is harsh on some traders, or because another approach might have been kinder.

8.3. The absence of a special grace period in the notification does not make it arbitrary. The Policy already provides a transition in Para 1.05(b) and that applies unless the notification says otherwise. The notification says nothing otherwise. So the

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petitioners' claim that the notification gave "*no transitional arrangement whatsoever*" is not correct.

8.4. On the plea of violation of Article 19(1)(g) of the Constitution of India, it needs to be noted that the notification does not ban Baryte exports. It subjects Grade A and Grade B to a licensing system and the respondents state a licence is available. Grade CDW stays free. The restriction aims to conserve a strategic resource and protect national security. This is in the general public interest within Article 19(6) of the Constitution of India. Applying the proportionality test in *Modern Dental College* (supra), the purpose is legitimate and there is a rational link to it. A licensing system offers a less restrictive regulatory alternative to an outright ban. The remaining hardship on exporters with stock in hand can, in our considered opinion, be met through the licensing system.

8.5. The challenge to the notification, therefore, fails.

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QUESTION (IV): PARA 1.05(B) AND THE ICLC CONDITION:

9.1. Para 1.05(b) of the Policy lays down a general rule and an exception. The general rule is that the policy on the date of export governs. The exception is that, when a change is made, exports already made are unaffected. Exports on or after the date of change are allowed for an exporter who has an ICLC commitment even prior to the bringing in of such change. This is limited to the balance quantity, value and period under the ICLC, and the ICLC must be registered with the jurisdictional authority within 15 days.

9.2. This transitional protection is a concession. The ordinary rule is that the new policy applies from its date. The Government chose to soften that rule for a defined class of exporters. A concession of this kind must have limits, and the Government must draw the line somewhere. Under Article 14 of the Constitution of India, the question is not whether the line is the best one or the fairest one. The question is whether such decision rests on an *intelligible differentia* with a rational link to the purpose. When it comes to economic policy, it is well settled that courts give the

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government broad leeway. A policy is not illegal solely because it applies to some situations while leaving out others it could have included.

9.3. The respondents say that an ICLC is a bank-backed instrument. It is irrevocable and cannot be altered or cancelled without the consent of the issuing bank, any confirming bank and the exporter. A third party, the bank, verifies it independently. Purchase orders, advance payments and open-account arrangements are made between two private parties. They can be changed, backdated or created after the fact. The registration step in the policy gives the authority a record to check against any violation. The reason for bringing in such procedure, in our considered opinion, has rational basis.

9.4. The argument advanced on behalf of the petitioners that unequals are treated as equals cuts no ice with us. Exporters with an ICLC and exporters without one stand differently. The first group has a commitment that a bank has accepted and that is hard to

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undo. The second group does not have such commitment. It is not unreasonable to treat them differently.

9.5. In paras 8 and 9 of the counter affidavit, the respondents asserted that the petitioners "*ought to have obtained an ICLC*" before the restriction and they "*failed to obtain*" one. In our considered view, that reasoning cannot stand. An exporter is not required to anticipate regulatory changes and proactively alter its commercial operations. The policy hinges not on foresight, but on whether an exporter held a valid ICLC on the effective date of the restriction. As the petitioner lacked this requisite document at that time, they fail to meet the standard for eligibility, independent of any question of fault. We, therefore, uphold Para 1.05(b) on its own reasons, not on the respondents' argument that the petitioner failed to anticipate the notification.

9.6. We accept that the ICLC condition is strict one and it leaves out exporters who, like the petitioners, trade on other terms. This may cause real hardship, but that alone does not make a classification unconstitutional. To decide whether a broader, equally

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dependable standard should be used is a matter of policy for the Government to consider perhaps during the review mentioned by the respondents. The Court cannot rewrite the policy.

9.7. We have also carefully considered the decisions relied upon by the petitioners, namely *Eastman International v. Union of India*[8] and *Matraco (India) Limited v. Union of India*[9]. While those decisions struck down or diluted the rigid requirement of an Irrevocable Letter of Credit (LoC) in the context of customs duty exemptions and import/export relaxations, we find that both decisions are clearly distinguishable on facts as well as on applicable regulatory frameworks.

9.8. In *Eastman International* (supra), the High Court of Chhattisgarh was dealing with Exemption Notification No.50/2023-Customs issued under Section 25(1) of the Customs Act, 1962, which granted a temporary exemption from a newly imposed 20% export duty on parboiled rice. The Court held that insistence on an LoC was merely procedural/technical in the context of a fiscal

8 *2025 SCC OnLine Chh 13575*
9 *2003 SCC OnLine Bom 929*

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exemption where export proceeds had already been fully realized. In stark contrast, Notification No.12/2026-27 in the present case is not a fiscal measure under the Customs Act aimed at tax collection. It is a non-fiscal regulatory measure issued under Sections 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992, enacted specifically to protect depleted strategic mineral reserves (Baryte) vital to national security and defence. While fiscal exemptions under tax statutes may allow liberal interpretation to avoid form over substance, qualitative restrictions placed on strategic raw materials involving sovereign security concerns demand strict regulatory adherence and exact evidentiary thresholds, such as an ICLC under Para 1.05(b) of the Foreign Trade Policy.

9.9. Similarly, in *Matraco (India) Limited* (supra), the High Court of Bombay interfered with a redemption fine where the imported goods had already been handed over to the shipper prior to the deletion of the item from the Open General Licence (OGL) list, and physical movement/bills of lading had been initiated prior to the cut-off date. Here, the petitioners have neither generated

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Bills of Lading nor initiated actual shipment prior to 17.04.2026. The stock merely remains stored in port warehouses. Mere procurement or warehousing of stock in anticipation of export, without a bank-confirmed ICLC or completed loading/bills of lading under Para 1.05(b), does not create an irreversible, indefeasible transactional commitment that overrides a prospective statutory policy restriction.

9.10. The challenge to Para 1.05(b) is rejected. The petitioners do not hold an ICLC and are, therefore, not entitled to the declaration they seek on eligibility.

QUESTION (V): THE PENDING LICENCE APPLICATION

10.1. It is seen from the impugned notification that it places Grade A and Grade B in the "*Restricted*" category. Under that category, export is lawful with a licence. The respondents' counter affidavit says the same. It states that export "*continues to remain permissible upon grant of a Restricted Export (RE) Authorisation*". A licensing regime works only if applications are decided.

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10.2. The petitioners applied on 22.04.2026 and they have placed on record that the stock was bought and paid for before the notification. Nearly six months lapsed and the application had not been decided. By the respondents' own account, it will not be decided until the policy review ends. The said review involves the NSCS, a Committee of Secretaries and the views of the Andhra Pradesh Government. No timeline has been given. All Baryte export applications are said to be frozen in the same way.

10.3. Section 3(2) of the Act lets the Central Government prohibit, restrict or regulate exports by an Order published in the Official Gazette. The Government chose to restrict, not to prohibit. If every application is held back for an open-ended period, the restriction turns into a prohibition in practice. Neither the notification nor the Act allows that. A licensing authority is bound to decide applications within a reasonable time with reasons.

10.4. In exercising its discretion, the DGFT must take into account the economic reality of the transaction. Economic impact

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and avoiding severe revenue loss or stranded assets are relevant considerations where statutory discretion exists. The fact that the stock worth Rs.225 Crore was mined, tendered, and fully paid for prior to 17.04.2026, and that Grade A and B lumps have no domestic market, distinguishes this stock from future fresh mining. While economic hardship cannot override public/national security interest, it mandates that the DGFT considers the application with due urgency and fairness.

10.5. The Court cannot grant the licence itself. Whether, and to what extent, Baryte should be exported is for the Government to decide. We, therefore, can only direct the authorities to decide the application, after a hearing, by a reasoned order, within a fixed time.

10.6. The petitioners also seek a direction to the third respondent to clear shipping bills without a licence. We are unable to accept such a plea as it would let the petitioners ignore a valid restriction. We have already upheld the notification and any direction to this effect would defeat it.

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11. To sum up:

(a) Notification No.12/2026-27 dated 17.04.2026 is not retrospective. It does not defeat any vested right. It is not hit by legitimate expectation or promissory estoppel. It is not arbitrary and it is a reasonable restriction under Article 19(6) of the Constitution of India.

(b) Para 1.05(b) of the Foreign Trade Policy, 2023 is not unconstitutional. The ICLC condition rests on a rational difference and has a rational link to its purpose.

(c) The DGFT may not leave the petitioners' application undecided for an open-ended period on the ground that the policy review is pending.

12. Accordingly, the writ petition is disposed of on the following terms:

(i) The prayers for a declaration that Notification No. 12/2026-27 dated 17.04.2026 and Para 1.05(b) of

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the Foreign Trade Policy, 2023 are unconstitutional, and for a declaration that the first petitioner is eligible for transitional protection under that paragraph, are rejected.

(ii) The prayer for a direction to the third respondent to clear shipping bills without a licence is rejected.

(iii) The second respondent shall decide the first petitioner's application dated 22.04.2026 for a Restricted export authorisation within four weeks from the date of receipt of a copy of this order. The second respondent shall give the petitioners a personal hearing before deciding. The second respondent shall pass a reasoned order and communicate it to the petitioners.

(iv) While deciding the application, the second respondent shall consider the following aspects: (a) that the stock was procured through an APMDCL tender exclusively for export and paid in full prior to 17.04.2026; (b) the absence of an alternative domestic market for Grade A & B Baryte in lump

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form; (c) the shipping delay caused by the Strait of Hormuz conflict; (d) the economic hardship and mounting port fees; and (e) the national security considerations raised by the NSCS regarding strategic reserves.

(v) The pendency of the policy review shall not, by itself, be a ground to leave the application undecided. If the policy changes before the decision, the second respondent may take the changed policy into account, however must still decide the application within the time frame stipulated above.

There shall be no order as to costs. Consequently, connected interim applications stand closed.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)
15.10.2026

Index : Yes
Neutral Citation : Yes
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1. Th Secretary, Union of India
   Ministry of Commerce and Industry
   Department of Commerce,
   New Delhi – 110001.

2. The Director General of Foreign Trade
   Ministry of Commerce and Industry
   Vanijya Bhawan, A Wing, 16 Akbar Road,
   New Delhi – 110011.

3. The Commissioner of Customs,
   Chennai-II, Commissionerate,
   Customs House, 60 Rajaji Salai,
   Chennai – 600 001.

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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

W.P.No.29394 of 2026

15.10.2026

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