

WP(C)No. 126 of 2014
 WP(C)NO. 127 OF 2014
 WP(C)NO. 130 OF 2014
 WP(C)NO. 131 OF 2014
 WP(C)NO. 132 OF 2014
 WP(C)NO. 134 OF 2014
 WP(C)NO. 135 OF 2014
 WP(C)NO. 136 OF 2014

BEFORE

HON'BLE MR JUSTICE UMA NATH SINGH,
 CHIEF JUSTICE (ACTING)
 HON'BLE MR JUSTICE SR SEN

17.12.2014

During course of dictation of judgment, it was noticed vide Order No. A-11013/1/92-E.III dated 24.03.1993 issued by Government of India, (Ministry of Commerce), that President of India accorded sanction to grant status of ex-officio Addl. Secretary to Govt. of India to Director General of Foreign Trade so as to enable him to authenticate orders/notifications/other instruments in the name of Central Government under provisions of Foreign Trade (Development and Regulation) Act, 1992. It was also noticed that Ministry of Home Affairs, Government of India, vide Notification dated 16.02.2002 has passed an order informing that in exercise of powers conferred by Clause 2 of Article 77 of Constitution and in supersession of authentication (Orders and other Instruments) Rules, 1958, President of India issued Rules for authentication (Orders and other Instruments) Rules, 2002 whereby authentication can be done by signature of a Secretary, Special Secretary, Addl. Secretary, Joint Secretary, Director, Deputy Secretary or Under Secretary to Government of India. Vide Clause 12 of aforesaid Rules of 2002, in case of orders and other Instruments relating to DGFT, authentication is to be done by DGFT or Addl. DGFT or Export Commissioner or Joint DGFT. In that view of the matter, a clarification is required as to whether DGFT has issued Notifications in question only by way of authentication or he has issued these notifications in

exercise of powers under Section 5 of Foreign Trade (Development and Regulation) Act, 1992. It is also not clear as to whether judgments of Madras High Court, (S. Mira Commodities Pvt. Ltd v Union of India & Ors., reported in 2009(235) ELT 423 (Mad)); Kerala High Court, (Global Industries v. Union of India, reported in 2011(263) ELT 517 (Ker)) and Calcutta High Court, (M/S Empire Exports vrs Union of India, dated 11.04.2014 in WP No. 26409(W) of 2013), were challenged in Hon'ble the Supreme Court in further proceedings, and if questioned, what is their status. We would like to direct learned counsel for parties to furnish the said informations for a just decision in this batch of writ petitions. We also direct Central Government, Ministry of Commerce and Industries and DGFT to produce office files connected with issuance of impugned notifications, namely, Notification No.10(RE-2012)/2009-2014 dated 14.08.2012 and Notification No. 12 (RE-2013)/2009-2014 dated 13.05.2013 to find out as to whether these notifications where under as per challenge, restrictions on free import of betel nuts by fixing, CIF value at Rs. 75 and 110 per KG have been imposed, were issued by way of authentication process followed in Central Government upon decision taken by Central Government under Section 5 of FTDR Act, 1992 or DGFT himself has taken decisions and issued notifications. Hence, we release these matters from being reserved with direction to list with information as required herein above.

Let this order be issued to learned counsel for parties, in addition to parties, to furnish information on or before next date of hearing.

List on 04.02.2015.

JUDGE

CHIEF JUSTICE
(ACTING)