(2018) 07 DEL CK 0123

In the Delhi High Court

Case No : W.P.(C) 10544, 10558 OF 2017 & C.M. APPL.43171-43173, 43245-43247 OF 2017

M/S. Alstom Transport India Ltd @APPELLANT@Hash Union Of India And Ors

Date of Decision : 09-07-2018

Acts Referred:

Foreign Trade (Development & Regulations) Act,1992 — Section 5
Customs Tariff Act, 1975 — Section 3

Citation : (2018) 07 DEL CK 0123

Hon'ble Judges : S. RAVINDRA BHAT, J;A.K. CHAWLA, J

Bench : Division Bench

Final Decision : Allowed

Judgement

,,,

S. RAVINDRA BHAT, J",,,

1. The petitioner Alstom Transport India Ltd, holds excise registration number, and operated as a subcontractor with respect to the construction of the",,,

Chennai Metro Rail Project (hereinafter referred to as ""CMR Project"" or ""the said project""). The primary project authority for the same is Chennai",,,

Metro Rail Limited (hereinafter referred to ""CMRL""). CMRL followed the procedures of International Competitive Bidding and appointed Alstom",,,

Projects India Ltd. (""APIL"") as the main contractor. The Petitioner, in turn was appointed by APIL, as a sub-contractor to supply 33 train sets to",,,

CMRL.,,,

The Petitioner manufactured and supplied 6 Train sets between 26.02.2014 & 30.08.2014. It is aggrieved by and seeks appropriate directions to the,,,

respondents (officials of the Directorate General of Foreign trade, and the Central Excise department) to refund the amounts of terminal excise duty `",,, 12,42,18,219/- collected from it, and further seeks quashing of part of Para 7.05(ii)(a) of the Foreign Trade Policy 2015-2020 (""New FTP"") and",,,

quashing of limited portions of Para 8.3(c) and Para 8.4(d) of the New FTP.,,,

2. The relevant facts of this case are that the CMR project was funded by the Japan International Cooperation Agency (""JICA""), which was notified",,,

by the Department of Economic Affairs, Ministry of Finance, Government of India by Notification No. 1 (FT)/DEA/2010, New Delhi, dated",,,

05.05.2010 for the purpose of 'Deemed Export' benefits under the purview of para 8.2(d) of the old FTP. JICA's name also figured in Appendix 13 of,,,

the old FTP. JICA was removed from Appendix 13 after introduction of the new FTP with effect from 01.04.2015. Under Section 5 of the FTDR,,,

Act, the Central Government is empowered from time to time to formulate and announce by Notification in the Official Gazette, its export and import",,,

policy which it can also amend from time to time. Such policies are usually formulated by the Central Government for 5 years and amended by means,,,

of an Annual Supplement each year. The old FTP, under Chapter 8, provided for various benefits in relation to the goods supplied under various",,,

categories of 'Deemed Exports' specified therein. 'Deemed Exports' refer to those transactions in which the goods manufactured in India are supplied,",,,

which do not leave the country and the payment for such supplies is received either in Indian rupees or in free foreign exchange. By specifying some,,,

projects under the category of 'Deemed Exports', Parliament and the executive authorities intended to treat supplies to such projects as equivalent to",,,

actual physical exports and to grant fiscal benefits to such supplies, which are otherwise available only to actual physical exports. By their intrinsic",,,

nature, such projects are crucial to the national economy have, therefore, to be incentivized. Para 8.2 of the old FTP covers the categories of supplies",,,

that are classified as ""Deemed Exports"" and has been extracted as follows:",,,

â??Paragraph 8.2,,,

Categories of Supply,,,

Following categories of supply of goods by main/ subcontractors shall be regarded as ""Deemed Exports"" under FTP, provided goods are manufactured",,,

in India:,,,

(a) Supply of goods against Advance Authorisation /Advance Authorisation for annual requirement /DFIA;,,,

(b) Supply of goods to EOU/STP/EHTP/BTP;Â,,,

(c) Supply of capital goods to EPCG Authorisation holders;,,,

(d) Supply of goods to projects financed by multilateral or bilateral Agencies/ Funds as notified by Department of Economic Affairs(DEA), MoF under",,,

International Competitive Bidding (ICB) in accordance with procedures of those Agencies/Funds, where legal agreements provide for tender",,,

evaluation without including customs duty;,,,

Supply and installation of goods and equipment (single responsibility of turnkey contracts)to projects financed by multilateral or bilateral,,,

Agencies/Funds as notified by DEA, MoF under ICB, in accordance with procedures of those Agencies/Funds, which bids may have been invited and",,,

evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad;,,,

(e) Supply of capital goods, including in unassembled/disassembled condition as well as plants, machinery, accessories, tools, dies and such goods",,,

which are used for installation purposes till stage of commercial production, and spares to extent of 10% of FOR value to fertilizer plants;",,,

(f) Supply of goods to any project or purpose in respect of which the MoF, by a notification, permits import of such goods at zero customs duty;",,,

(g) Supply of goods to power projects and refineries not covered in (f) above;,,,

(h) Supply of marine freight containers by 100% EOU (Domestic freight containers-manufacturers) provided said containers are exported out of India,,,

within 6 months or such further period as permitted by customs;,,,

(i) Supply to projects funded by UN Agencies; andÂ,,,

(j) Supply of goods to nuclear power projects through competitive bidding as opposed to ICB.Â Benefits of deemed exports shall be available under,,,

paragraphs (d), (e), (f) and (g) only if the supply is made under procedure of ICB.â??",,,

3. Paras 8.3 and 8.4 of the old FTP, as were in force during the period when supplies were made (26.02.2014 to 30.08.2014) by the Petitioner cover",,,

the benefits to be extended to 'Deemed Exports' are extracted as follows:-,,,

â??Paragraph 8.3,,,

Benefits for Deemed Export,,,

Deemed exports shall be eligible for any/all of following Exports benefits in respect of manufacture and supply of goods qualifying as deemed exports,,,

subject to terms and conditions as in HBP vi:-,,,

(a) Advance Authorisation/Advance Authorisation for annual requirement IDFIA. (b) Deemed Export Drawback,,,

(c) ""Refund of terminal excise duty will be given if exemption is not available. Exemption from TED is available to the following categories of supplies:",,,

Relevant subpara of

8.2","Benefit available as given in para 8.3, whichever is applicable.",,

Â,(a),(b),(c)

(a),"Y e s (for

intermediate

supplies against an

invalidation

letter)","Yes (against ARO o

credit)","r Ba(cik) t o B Eacxke mleptttieorn oinf case

of invalidation.

(ii) Refund in case of

ARO or back to

back letter of

credit.

(b),Yes,Yes,Exemption

(c),Yes,Yes,Refund

(d),Yes,Yes,Exemption

(f),Yes,Yes,"(i) Exemption

(ii) Exemption, if

ICB. Refund, if

without ICB.

(h),No,Yes,Refund

(i),Yes,Yes,No

(j),Yes,Yes,Refund

Categories of supplies

as per

Para 7.02","Benefits on supplies, as given in para 7.03 above, whichever is

applicable.",,

,"Para 7.03 (a)

Advance

Authorization","Para 7.03 (b)

Duty

Drawback","Para 7.03 (c)

Terminal Excise Duty

(a),"Y e s (for

intermediate

supplies against an

invalidation

letter)","Yes

(against ARO or

Back to Back letter

of credit)","(i) Exemption in

case of Invalidation

Letter.

(ii) Refund in case

of ARO or back to

back letter of credit.

(iii) No

exemption/refund

against supply to DFIA

as CVD is no

exempted.

(b),Yes,Yes,Exemption

(c),Yes,Yes,Refund

(d),Yes,Yes,Refund

(e),Yes,Yes,Exemption

(f),YES,Yes,"Exemption, if supplies

under ICB. Refund, i

supplies under tariff

based competitive

bidding.

(g),Yes,Yes,Exemption

(h),Yes,Yes,Refund

7.05 Conditions for refund of terminal excise dutyÂ,,,

(i) Supply of goods will be eligible for refund of terminal excise duty as per Para 7.03 (c) of FTP, provided recipient of goods does not avail CENVAT",,,

credit/rebate on such goods.Â,,,

(ii) However, supply of goods which are exempted ab initio from payment of Terminal Excise Duty would be ineligible to get refund of TED.",,,

Exemption from TED is available to the following:Â,,,

(a) Supplies under ICB;Â,,,

(b) Supplies of intermediate goods, against invalidation letter, made by an Advance Authorisation holder to another Advance",,,

Authorisation holder;Â,,,

(c) Goods Procured by EOU/ EHTP/STP /BTP unit from a unit in DTA; andÂ,,,

(d) Supply of goods to UN/International Organisation or project funded by it.â??,,,

5. The Petitioner contends that contents of Para 8.3 of the old FTP are more or less identical to Para 7.05(ii) of the new FTP. It submits that in terms,,,

of the aforesaid provisions, being an eligible claimant under the old FTP (2009-2014), it moved an application, dated 29.10.2014, for refund of Terminal",,,

Excise Duty (hereinafter referred to as ""TED"") amounting to `12,42,18,219/- paid on the manufacture of the said Trains, before the third respondent. It",,,

is submitted that while the benefit of excise exemption is contemplated under the FTP in respect of supplies made under ICB, to debar TED refund,",,,

such excise exemption is applicable only if the said goods in respect of ICB supplies are also exempt from Customs Duties. Thus, all supplies against",,,

ICB are not automatically exempt from excise duty. Therefore, it is stated that in the present case, since there are no Customs Duties exemptions, the",,,

supplies are not exempt from Excise Duty, even though they were supplied under ICB. Therefore, the Petitioner claims it cannot be denied TED",,,

refund.Â,,,

6. Counsel for the Petitioner explained that attested copies of Central Excise invoices were not available because the Superintendent before whom the,,,

requisite application was made stated that such requirement was not in consonance with the prevailing guidelines for the purpose. Reliance is placed,,,

on the Superintendent's letter dated 22.04.2016 in that regard. The petitioner has relied on a copy of the payment certificate issued by the M/s Chennai,,,

Metro Rail Limited submitted along with the requisite Cenvat declaration. The petitioner was thereafter asked, by letter dated 06.02.2017 to submit",,,

documents including ANF-7 A (the format that comes under the purview of the new FTP), Payment Certificate as per Appendix-7D, Annexure -I,",,,

Annexure -III, ANF-I and a cancelled cheque. The letter also mentioned no refund of TED was admissible as the supply was under ICB which was",,,

abinitio exempt as per Para 7 .02-B(e)(i) & (ii) of FTP, 2015 read with Para 7.05 (ii) (a) of FTP, 2015-20-Supply of goodsÂ to projects. The",,,

abovementioned letter also directed the Petitioner to file the above said documents within 90 days from the date of issue of the letter, failing which the",,,

demand would be considered as withdrawn. The Petitioner responded by its letter dated 04.05.2017 and:,,,

(i)Reiterated its submissions on the non-applicability of ab initio exemptions after drawing references to excise and customs notifications.Â,,,

(ii)Refiled its application under the Format of ANF 7 A without prejudice to its submissions that the same did not apply to it given that the period of,,,

supplies in its case was covered by the FTP of 2009-14.Â,,,

(iii)Submitted form ANF-1 along with the attested bank statement along with the payment certificate in the form of Appendix 22-C. It also submitted,,,

that the Submission of Annexure I and Annexure III with respect to ANF-7A would be submitted as and when the same were issued.Â,,,

7. It is urged that despite the Petitionerâ??s compliance with the numerous requirements posed by the respondents, the refund application was",,,

rejected by the fourth respondent on 31st May, 2017 stating that no TED refund was admissible as the supply was under ICB, which was ab-initio",,,

exempted in terms of para 7.02-B(e)(i) & (ii) of the FTP, 2015-20 read with para 7.05(ii)(a) of the FTP, 2015-20.Â",,,

8. Mr. Sujit Ghosh, learned counsel for the petitioner, argues that there is no question of Paras 7.02-B(e)(i) and (ii) and Para 7.05 (ii) (a) of the FTP of",,,

2015-2020 being made applicable to the case of the Petitioner, because the FTP-2015-2020 was introduced only on 01.04.2015 and the supplies made",,,

by the Petitioner were during 26.02.2014 to 30.08.2014. Moreover,the Petitioner filed its application for deemed exports on 29.10.2014 for the said",,,

period. Therefore, the Petitioner was governed by FTP of 2009-2014 which was extended from 01.04.2014 to 31.03.2015 by Notification No. 69",,,

(RE2013)/2009-2014 dated 19.02.2014, specifically para 8.3(c) therein, which was operative during the period 27.08.2009 to 31.03.2015. The",,,

Petitioner had resubmitted its application dated 29.10.2014 on 04.05.2017 under the Format of Annexure 7A without prejudice to its submissions that,,,

the FTP of 2015-2020 had no application in its case. Moreover, this refiling was only done on the insistence of fourth respondent, who by letter dated",,,

06.02.2017, directed the petitioner to do so. Naturally the provisions, as they stood, at the time when deemed export supplies were actually made by",,,

Petitioner, would apply in determining its eligibility and not provisions that were introduced subsequently after 8 months. The impugned orders have",,,

missed out this fundamental principle and have applied Paras 7.02(b)(e)(i), 7.02(b)(e)(ii) and 7.05(ii)(a) instead of para 8.3(c) of the old FTP solely to",,,

non-suit the Petitioner. Hence they are liable to be set aside. A copy of the notification dated 19th February, 2014 extending the period of FTP beyond",,,

31st March, 2014 â??until further orders"" under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992, is relied on.",,,

9. Mr. Ghosh argues that arguendo para 7.05(ii)(a) of the new FTP is applicable to the case of the Petitioner, the restrictive covenant qua denial of",,,

TED refund prescribed under the same does not apply to it and consequently it could not have been denied its refund claim. This is for the reasons,,,

that firstly, Para 7.05(ii) of the new FTP provides ""however supply of goods which are exempted ab initio from payment of terminal excise duty would",,,

be ineligible to get refund of TED"". It is submitted that the present case squarely falls outside the restriction contained in the opening language of the",,, said para since the supplies made by the Petitioner to the Chennai Metro Rail Project were never exempted ""ab initio"" from the payment of Excise",,,

Duty for the reason that the Central Excise Notification, namely Notification No. 12/2012-CE dated 17.03.2012 at S.No. 336 (read with Condition No.",,,

41) provides an excise duty exemption to goods supplied against International Competitive Bidding, provided such goods are also exempt from various",,,

Customs Duties. The relevant Customs Notification namely, Notification No. 12/2012-Cus dated 17.03.2012 at S. No. 354 (subject to condition 40)",,,

only provides an exemption from Customs Duty to goods supplied to Delhi Metro Rail Corporation Ltd (""DMRC""). Condition 40 in turn prescribes for",,,

relevant certificates to be issued by the concerned personnel of DMRC certifying that the goods concerned were used in Phase-I and specific,,,

corridors of Phase-II. It is stated, therefore, that a plain reading of the said notifications indicate that no Customs Duty exemption to goods supplied to",,,

the Chennai Metro Rail Project. Consequently, there is no question of any ab initio excise exemption operating in the petitionerâ??s favor under",,,

Notification 12/2012 dated 17.03.2012 in respect of the supplies made by it. Therefore, the bar prescribed under Para 7.05(ii) is inapplicable.Â",,,

10. The respondents argue that the provisions of Chapter 8 of the FTP2009-14, titled as ""Deemed Exports"" are self-contained code in itself which",,,

defines what is meant by deemed export and which categories ofÂ supplies of goods shall be considered as exports,Â benefits derived there from",,,

and to whom they areÂ available as per the terms in vogue or Para 8.3 ofÂ FTP-200914. It is stated that the Department of Economic Affairs by,,,

Public Notice No. 1(FT)/DEA/2010 dated 05.05.2010 notified the organizations viz. International Bank of Reconstruction and development (IBRD),,,

and International Development Association (IDA), International Fund for Agricultural Development (IFAD), Asian Development Bank (ADB),",,,

Organization of the Petroleum Exporting CountriesÂ (OPEC), â??Yenâ?? credit channelized through Japan International Co-operation Agency",,,

(JICA) [development component only] and SwedishÂ International Development Agency (SIDA) for theÂ purpose of deemed export benefits under,,,

paraÂ 8.2(d) of FTP, 2009-14 subject to the condition that the supplies to projects were made under ICB procedure only. To give effect to the DEA's",,,

Public Notice, DGFT by Public Notice No.67 on 25th May, 2010 incorporated these agencies in the Appendix 13 of HBP Vol. I appearing in para",,, 8.2(d) of FTP 2009-14 (amended as on 5.6.2012) to be eligible for deemed export benefits under para 8.3 of FTP, 2009. However, the deemed export",,,

benefits for supplies made to the projects funded by these agencies were discontinued in the new FTP 2015-20 notified on 01.04.2015 and only two,,,

agencies, viz. International Bank of Reconstruction and Development (IBRD) and International Development Association (IDA).",,,

11. It is argued that under para 8.3 of FTP 2009-14, deemed export supplies were eligible for any/all of the following benefits in respect of",,,

manufacture and supply of goods qualifying as deemed exports subject to terms and conditions as in HBP Vol.l:,,,

(a) Advance Authorisation /Advance Authorization for annual requirement IDFIA.Â,,,

(b) Deemed Export Drawback.Â,,,

(c) Exemption from terminal excise duty where supplies are made against ICB. In other cases refund of terminal excise duty will be given. Exemption,,,

from TED shall also be available for supplies made by an Advance Authorization holder to a manufacturer holding another-Advance Authorization if,,,

such manufacturer, in turn, supplies the product(s) to an ultimate exporter.Â",,,

12. It is submitted that as the supplies to the projects funded by JICA notified by DGFT's Public Notice No.67 dated 25th May, 2010 were made",,,

against ICB and hence were eligible for ab-initio exemption from payment of terminal excise duty under para 8.3(c) of FTP, 2009-14. It is stated that",,,

to further clarify the matter, the respondents issued the Policy Circular No.16 dated 15.03.2013, with approval of the Director General of Foreign",,,

Trade (DGFT) which clarifies the provisions of the Policy which were already in existence. The circular did not introduce any amendment or new,,,

provisions or new conditions in the FTP. Any amendment made in the FTP, 2009-14, is duly done only through a Notification issued by the",,,

Government of India and not through a policy circular.Â,,,

13. It is further argued that Para 8.3 (c) of FTP-2009-14, provides for benefit of the Terminal Excise Duty (TED). This covers both-TED refund as",,,

well as TED exemption, applicable for different types of cases. TED refund is allowed where TED exemption is not available. The Respondents",,,

submit that these provisions have been clarified vide Policy Circular No.16 dated 15.03.2013 issued by the DGFT. The respondents also submit that,,, this policy circular has not introduced any new conditions/provisions; it has merely clarified the provisions of Para 8.3(c) of FTP-2009-14, which has",,,

already been in existence. It is also urged that no provision in the Handbook of the Procedure or the Foreign Trade policy permits an exporter to make,,,

a choice on the method of seeking benefit regarding the TED. It is no where mentioned that the exporter may first opt the benefit provided for in,,,

FTP2009-14, by reading various provisions of FTP-2009-14, in a harmonious manner.Â",,,

14. It is also admitted that Para 8.3(c) extends the benefits under deemed exports for the supplies which qualify as deemed exports. The qualified,,,

Deemed Exports are undoubtedly eligible for the corresponding benefits, as applicable under Para8.3(c), one of the benefits is the TED. Para 8.3 (c)",,,

of FTP-2009-14 covers both TED refund as well as exemption from TED for different types of cases. TED refund is allowed where TED exemption,,,

is not available.Â,,,

15. The respondents state that providing exemption from payment of duty, rather than paying duty first and then taking a refund, is a facilitating",,,

measure provided by the Government as it reduces paper work of Exporter/ Government Authorities, funds of the supplier are not blocked and",,,

reduces transaction cost. In spite of this the supplier in the present case had not chosen to avail exemption. Therefore, its claim in these proceedings is",,,

unjustified.Â,,,

Analysis and Findings,,,

16. The above facts show that Department of Economic Affairs by Public Notice No. 1(FT)/DEA/2010 dated 05.05.2010 notified the organizations,",,,

viz. IBRD, IDA, IFAD, ADB, OPEC, JICA, SIDA for theÂ purpose of deemed export benefits under para 8.2(d) of FTP, 2009-14 subject to the",,,

condition that the supplies to projects were made under ICB procedure only. To give effect to the DEA's Public Notice DGFT by Public Notice No.67,,,

on 25th May, 2010 incorporated these agencies in the Appendix 13 of HBP Vol. I appearing in para 8.2(d) of FTP 2009-14 (amended as on 5.6.2012)",,,

to be eligible for deemed export benefits under para 8.3 of FTP 2009. The deemed export benefits for supplies made to the projects funded by these,,,

agencies were discontinued in the new FTP 2015-20 notified on 01.04.2015 and benefits were only available in respect of two agencies, viz.",,, International Bank of Reconstruction and development (IBRD) and International Development Association (IDA).Â,,,

17. The relevant Central Excise Notification, namely Notification No. 12/2012-CE dated 17.03.2012 at S. No. 336 (read with Condition No. 41)",,,

provided an excise duty exemption in respect of goods in all chapters of the Central Excise Tariff Act goods supplied against International Competitive,,,

Bidding, provided such goods are also exempt from various Customs Duties. This precondition (exemption from payment of customs duties) was by",,,

virtue of Note 41 (to the tabular chart of Notification No. 12/2012 CE) i.e.,,,

â??If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the",,,

additional duty leviable under section 3 of the said Customs Tariff Act when imported into India.â??,,,

The relevant Customs Notification namely notification No.2/2012-Cus dated 17.03.2012 at S. No. 354 (subject to condition 40) only provides an,,,

exemption from Customs Duty to goods supplied to Delhi Metro Rail Corporation LtdÂ (""DMRC""). Condition 40 in turn prescribes for relevant",,,

certificates to be issued by the concerned personnel of DMRC certifying that the goods concerned were used in Phase-I and specific corridors of,,,

Phase II.Â,,,

18. It is quite clear therefore, that both the central excise and customs exemption notifications would spell out that no customs duty exemption to goods",,,

supplied to the Chennai Metro Rail Project was given to the petitioner; it cannot be said that such exemption was ever enjoyed by it. Therefore, the",,,

respondentsâ?? argument that excise duty was exempt â??ab initioâ? in respect of supplies made under the contracts funded by JICA, to the",,,

Chennai Metro, are factually incorrect. The exemption was not â??ab initioâ? (i.e. per se) exempt; it was conditional upon availability of customs duty",,,

exemption, by virtue of Note 41 to the Excise Duty exemption notification. However, the customs duty exemption notification restricted duty",,,

exemption only to supplies made to specified contracts relating to the Delhi Metro Rail Corporation. Thus, the respondent authorities, in the opinion of",,,

the court, proceeded on an entirely erroneous premise.Â",,,

19. There is no doubt that in terms of the Export Import Policy and Hand Book of

procedures, the primary power of interpretation is with the",,,

authorities specified in that instrument. In the light of these provisions which are a matter of record, the question which to be decided is whether the",,,

terminal excise duty refund, claimed by the petitioner was not available.",,,

20. The Supreme Courtâ??s ruling in Director General of Foreign Trade and Ors. v. Kanak Exports and Ors. (2016) 2 SCC 226 has now,,,

authoritatively settled the issue that provisions of the Export Import Policy and the related Handbook are statutory. Therefore, any clarification issued",,,

by any official: howsoever high in rank she or he might be, cannot override the policy. The benefit claimed is refund of TED on account of the supplies",,,

in question made under the internationally funded contract, which is described in Para 8.2 (d) of the FTP 2009-14. Para 8.3 stated that",,,

(c) ""Refund of terminal excise duty will be given if exemption is not available. Exemption from TED is available to the following categories of supplies:",,,

(i) Supplies against ICB;,,,

(ii)Supplies of intermediate goods, against invalidation letter, made by an Advance Authorisation holder to another Advance",,,

Authorisation holder; and,,,

(iii) Supplies of goods by DTA unit to EOU /HTP/STP/BTP unit,,,

Thus such categories of supply which are exempt ab initio will not be eligible to receive refund of TED"".",,,

21. For a fuller appreciation of the issue, it was necessary for the respondent authorities to determine whether under the relevant central excise",,,

notification, the goods were (or were not) exempt, or were exempt subject to any condition. Per se exemption, (or to put it, in the language of the",,,

respondentâ??s pleadings and notifications, ab initio exemption) could only mean unconditional exemption from payment of duty. In the present case,",,,

a combined reading of the central excise exemption notification and the customs duty exemption notification made it clear that such unconditional,,,

exemption was not extended to the goods. Rather, unconditional exemption was given only to goods supplied under contracts funded to the Delhi",,,

Metro Rail Corporation. This meant that the goods in question, supplied by the petitioner were dutiable. Clearly, therefore it was entitled to terminal",,,

excise duty refund, on a plain analysis of Para 8.3 of FTPÂ 2009-2014.",,,

22. This Court is of the opinion that so far as supplies made after the new FTP came into force are concerned, the goods would be covered by the",,,

provisions and the benefits extended by it. In the present case, the Petitioner manufactured and supplied 6 train sets between 26.02.2014 and",,,

30.08.2014 and claims benefit of the old policy in W.P.(C) 10544/2017. They were covered by the old foreign trade policy and consequently covered,,,

by the excise and customs duty notifications which did not grant ab initio exemption. Consequently, the Petitionersâ?? claims to TED refund could",,,

not have been rejected.Â,,,

23. As far as W.P.(C) 10558/2017 is concerned, the supplies were made to Chennai Metro during the period 31.10.2014 to 04-03-2015. Para 7.05(ii)",,,

(a) of the new FTP is applicable from the date FTP 2015-2010 came into force. The restrictive condition in regard to denial of TED refund is to be,,,

considered in the light of the new FTP. Para 7.05(ii) of the new FTP provides ""however supply ofÂ goods which are exempted ab initio from",,,

payment ofÂ terminal excise duty would be ineligible to get refund ofÂ TED"".",,,

Like in the case of the previous FTP, the petitionerâ??s case falls outside the restriction contained in the opening language of the said para since the",,,

supplies made to Chennai Metro Rail Project were never exempted ""ab initio"" from the payment of Excise Duty for the reason that the Central Excise",,,

Notification, namely Notification No. 12/2012-CE dated 17.03.2012 at SI No. 336 (read with Condition No. 41) provides an excise dutyÂ exemption",,,

to goods supplied against International Competitive Bidding, provided such goods are also exemptÂ from various Customs Duties. The relevant",,,

Customs Notification namely Notification No. 12/2012-Cus dated 17.03.2012 at S. No. 354 (subject to condition 40) only provides an exemption from,,,

customs duty to goods supplied to Delhi Metro Rail Corporation Ltd (""DMRC""). Condition 40 in turn prescribes for relevant certificates to be issued",,,

by the concerned personnel of DMRC certifying that the goods concerned were used in Phase-I and specific corridors of Phase-II. It is clear, here",,,

again that no customs Duty exemption to goods supplied to the Chennai Metro Rail Project was ever given. Such exemption is the basis for excise,,,

duty exemption. Consequently, there is no question of any ab initio excise exemption operating in the Petitionerâ??s favor under Notification 12/2012",,,

dated 17.03.2012 in respect of the supplies made by it. Therefore the bar prescribed under Para 7.05(ii) is inapplicable.,,,

24. Having regard to the above discussion, the impugned orders/letters denying refund of TED are hereby quashed. The Respondents are directed to",,,

process the petitionersâ?? claim for TED refund for the concerned period and release the amounts which they are entitled to in respect of supplies,,,

made under within eight weeks from today. The writ petitions are allowed in these terms.,,,

