
(2014) 09 MAD CK 0192
In the Madras High Court
Case No : W.P. (MD) No. 8457 of 2014

Muthukrishnan

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Constitution of India, 1950 — Article 19, 21
Explosive Substances Act, 1908 — Section 4(b), 5, 6
Explosives Act, 1884 — Section 9(B)(1)(a), 9(B)(1)(b)

Citation : (2015) 318 ELT 208

Hon'ble Judges : S. Vaidyanathan, J; N. Kirubakaran, J

Bench : Division Bench

Judgement

N. Kirubakaran, J

1. Fire work, instead of lighting up the sky darkens the bright sky of Virudhunagar. The culprit fire work is prohibited illegal Chinese crackers. The authorities have to foresee the problems in advance and to take necessary steps to prevent unwanted and dangerous consequences/results and at least to act swiftly in case of any danger. Our country is thickly populated one, coming next to China. We are facing security problems not only externally, but also internally. At a time, when our enemies are bent upon destabilizing our country economically as well as security wise, we should be very careful to allow any foreigner as well as foreign materials with great caution and after proper verification. Are we cautious enough? The facts of the case would reflect the reality.

2. By way of this Public Interest Litigation, the petitioner wants a writ of mandamus directing the respondents 1 to 12, to strictly enforce the third respondent's circular in No. 17 (10) 2007 - Explosives, dated 05.03.2010 and further direct the respondents 2 to 11, seize all illegally imported explosives items (particularly Chinese crackers) and destroy the same as per the Explosive Act. The petitioner claiming himself to be a member of the Executive Committee

of Adhi Thamilar Peravai states that he is involved in many social activities and also fighting for welfare of fire works employees. He would contend that out of 982 Fireworks Factories in India and 800 factories are running in and around Virudhunagar. About, 5 Lakhs of people are directly or indirectly depending upon the said industry for employment. Sivakasi is fulfilling 90% of all India demand and considerable portion of fireworks are also exported to foreign countries.

3. It is contended by the petitioner that on 14.05.2014, the Assistant District Magistrate (Tahsildar) Sivakasi inspected a sales Depot belonging to one Mr. Ganesh Babu, son of Soundara pandian, Periyandavar Colony, Sivakasi and found that he was possessing and selling the prohibited Chinese fireworks, which were said to have been purchased from a owner of fireworks, Sivakasi and the said fireworks were seized. However, the complaint was lodged only on 17.05.2014 and FIR was registered on the same date. Though police authorities were present there, they did not take any step as per Explosives Rules; The higher authorities, regarding the inspection and seizure of the Chinese crackers, should have been informed by the Assistant Magistrate (Tahsildar) and take necessary steps to lodge a complaint with the police; The Deputy Chief Controller of Explosives also did not take any action regarding the availability of Chinese crackers by having further search; Though the officials inspected the place on 14.05.2014, the case was registered only on 17.05.2014 belatedly. Complaining inaction on the part of the respondents-authorities regarding seizure of Chinese crackers and non-compliance of the Explosive Rules, the petitioner has approached this Court, seeking a direction to enforce the circular and hand over the investigation to CBI.

4. Mr. S.M. Anantha Murugan, learned counsel appearing for the petitioner would submit that prohibited Chinese crackers which were imported contrary to the rules were seized and no necessary action was taken by the respondents; seizure of Chinese crackers would show that the said crackers, without valid license are being smuggled into India in violations of various provisions of the Explosives Act and Explosives Substances Act and Rules. He demonstrated that if the Chinese crackers are allowed to be sold in India, it would pose a big threat to fire work industry and endanger the safety of the children. Relying upon the materials downloaded from internet, he pointed out that prohibited Chinese items are available in various parts of the country. Therefore, he seeks the case to be transferred to CBI.

5. Taking note of the seriousness of the issue and the situation, this Court directed the District Collector, the Superintendent of Police, the Deputy Chief Controller of Explosives to be present before this Court. The Inspector of Police, who is present before this Court filed a status report.

6. The learned Additional Government Pleader would submit that there was no complaint by any third party about the Chinese crackers and only the Village Administrative Officer filed a complaint which was registered on 17.05.2014 and the investigation is being done according to law. However, Mr. Anantha Murugan, learned counsel appearing for the petitioner as well as Mr. Santharam Natarajan,

counsel appearing for the Tamil Nadu Fireworks & Amorce Manufactures Association, (R15) Sivakasi disputed the said contention. They would submit that the news about the seizure of Chinese crackers appeared in the media on 15.05.2014 itself and even thereafter, the police did not register a case immediately and only on 17.05.2014 registered the case under the Explosives Act.

7. The officer attached to the Deputy Chief Controller of Explosives, Virudhunagar, who was present in the Court informed that so far, no information had been received by his office. The Additional Government Pleader would submit that information was already given.

8. When the matter was called on 24.05.2014, respondents 9 to 13 were present. Mr. Gupta, the Deputy Chief Controller of Explosives, Virudhunagar would submit that so far, an intimation alone was received by them from the police about the seizure of Chinese crackers and the seized goods were not handed over for sending them to laboratory. The Superintendent of Police would inform that police seized the samples and identified the godowns where the crackers were stored, and appropriate action would be taken for sending them to Laboratory.

9. Mr. Gupta submitted that the Chief Controller of Explosives, Petroleum & Explosives Safety Organization on 15.04.2010, addressed the Commissioners of customs warning about clandestine import of fire crackers through out the country and asked them to be vigilant to prevent unauthorized import of fire crackers in the interest of public safety. Hence, this Court directed the Chief Commissioner of Customs, Chennai, to file a report about the actions taken by the custom authority after receipt of the above said communication dated 15.04.2010.

10. The police authorities, who were present before this Court, were informed about the need to alter the F.I.R. and the necessity to include the provisions under Explosives Substances Act also. Accordingly, police authority assured that they would alter FIR and produce the amended FIR, the very next day.

11. The learned counsel appearing for the petitioner produced a few crackers in the open Court. The official attached to Deputy Chief Controller of Explosives examined them and said they were of foreign origin. He shocked everybody stating that those crackers may explode at any time, as they were friction sensitive. Mr. Bharathvaj, the Assistant Commissioner of Customs, Tuticorin Port, who was present before the Court would reply to a query that only 10% containers are being verified before clearance and rest of them are not verified.

12. When the matter was called on 25.05.2014 the amended FIR incorporating Section 9(B)(1)(a), 9(B)(1)(b), Explosive Act r/w 10(2) Explosive Rules 2008 and Section 4(b), 5 and 6 of Explosive Substances Act 1908 was filed by the police authorities.

13. Mr. K. Chellapandian, learned Additional Advocate General appearing for the State would submit that excepting Sivakasi in no other place, the crackers were seized. He assured that proper investigation would be done.

14. Mr. Vijaya Karthikeyan, learned counsel appearing for Central Board of Excise and Customs, New Delhi and the Chief Commissioner of Customs (preventive) Trichy would submit that the Customs authorities have been alerted to be vigilant, in view of clandestine import of Chinese Firecracker.

15. Mr. Uthaman, learned counsel appearing for the Central Government submitted that the Chinese crackers were also seized in Ghaziabad in Uttar Pradesh, Chennai, Mumbai and Gautam Bhuddha Nagar and appropriate cases have been registered against the importers.

16. Heard the parties and perused the records. The Explosives Act enacted by Parliament and Explosives Rules 2008 are regulating the manufacture, import, export, transport and sale of explosives. Chief Controller of Explosives grants Explosives License. Section 6 of the Act prohibits the manufacture, possession, import of dangerous explosives without licence by issuance of a notification by the Central Government.

17. As per Rule 6, no person shall manufacture, import, export, transport, possess, sell or use any explosives unless it has been declared as an authorized explosive by an order of the Chief Controller of Explosives. As per Rule 10 (2), no person shall import or export explosives except in accordance with license and only through notified ports by the Central Government. As per Rule 10(4), no person shall deliver or despatch explosives without license. Hence if a person wants to import explosives from outside Indian territory, the Central Government must have authorized the said explosive items and the import is to be made in accordance with license conditions; no unauthorized explosives could be imported; the person who is holding the license to import Explosives should follow Rule 45 of Explosive Rules 2008 and the explosives cannot land in India without prior permission of the Chief Controller of Explosives and the Central Government. The Explosive Substances Act and the Rules have been framed only in the interest of the Country.

18. As proved by various notifications and particulars submitted before this Court by various departments, fireworks in India is declared as "restricted items" under ITC (HS) 36.04.10 by DGFT. PESO has not granted any license for import of fire works till date. In the meeting held on 03.03.2010 by the Joint Secretary Department of Industrial Policy & Promotion, the issue of import of chinese crackers was discussed and it was decided not to support import of Chinese crackers, as the Chinese fire crackers contain chemical substances, which do not conform to statutory Indian Noise Level of 125 DB Standards and contain prohibited chemical substances. Prohibited chemicals, chlorides and penchlorides used in Chinese crackers give more colours and better display but they are highly volatile, friction sensitive, dangerous environmentally, hazardous and dangerous

for the users.

19. The Deputy Chief Controller of Explosives would contend that PESO has not granted any license for import of fireworks and that PESO also negated the recommendation regarding import of fireworks from China. The said contention is also proved by the letter issued by Petroleum and Explosive Safety Organization (PESO) dated 19.07.2013 by which the proposal to grant license for import of explosive fireworks/crackers from China was rejected stating that Chinese fireworks contain chlorate, Perchlorate and Sulphur in admixture with Chlorate of Potassium which are prohibited in India as per Government of India Notification No. GSR 64(E) : dated 27.01.1992.

20. It is seen from the counter affidavit filed by the Deputy Chief Controller of Explosives, 8th respondent herein, that illegal Chinese Fire Crackers were confiscated in Chennai in November 2012, in Mundra (Kutch) in March 2013 and ICD Dadri, Greater Noida District Gautam Budha Nagar UP in April 2014 and 460 cartons in May 2013, in Uran Raigad District and in Loni Ghaziabad and ICD Tughlakabad in 2013. Therefore strict and swift action is to be taken with iron hand to curtail this menace through out India by a single agency. In spite of the notifications right from 2010 to till date, the records would prove that there has been clandestine smuggling of prohibited Chinese crackers. It only proves the slackness in the verification at the entry level, viz., Ports or Airports or border check posts. As the prohibited crackers are able to creep inside India unauthorizedly, there is every likelihood of even dangerous explosive materials to come inside endangering lives, properties and most importantly the security of the nation. Every officer in the entry points should be duty conscious vigilant to prevent smuggling prohibited items in our Country. They should discharge their duties not only in according to law, but also with patriotism.

21. It is surprising to note that a serious issue has been dealt with very casually by the police officials. It is evident from the materials placed before this Court that prohibited Chinese crackers were seized in Sivakasi on 14.05.2014. However, a perusal of the FIR would show that the case was registered only on 17.05.2014. There is no explanation as to why F.I.R. was registered belatedly, in spite of the fact that the seizure was widely published in the newspapers on 15.05.2014, 16.05.2014 and 17.05.2014. Therefore, the contention of the Police that no one came forward to give information, is false. That apart, the Manufacture of Crackers Association, viz., Tamil Nadu Fire Works & Amorges Manufactures Association(R15), already gave a complaint to the local police on 15.05.2014, which is evident from the CSR dated 15.05.2014 given by the Sivakasi Town Police. It only proves the falsity of the contention of the police authorities.

22. Though the authorities seized the Chinese crackers on 14.05.2014, no steps were taken to get statement from the accused or to arrest him. No effort has been taken to find out the distributor, the importer and others involved in this case and find out the origin. Moreover, the case has been registered only under

Section 9(B)(1)(b) of the Explosives Act r/w 10(2) of Explosives Rules 2008. Though the case attracts offences under section 4(b), 5 and 6 of the Explosive Substances Act 1908 and Section 9(B)(1)(a) of the Explosives Act, the said Sections were not included in the FIR. Only when this Court pointed out, the police had chosen to alter the FIR, incorporating above Sections thereafter. Hence it is clear that there is a failure in the F.I.R. stage itself, by the police to include appropriate provisions and the police authorities are not investigating the matter properly by apprehending the culprits.

23. When this Court questioned about the steps taken to secure the accused, the police authorities would submit that the accused filed Anticipatory Bail application on 22.05.2014. It would only show that there was no threat of arrest by the police till 21.05.2014 and that was the reason as to why the accused did not file any anticipatory bail petition till this Court took serious note on 21.05.2014 and the bail petition was filed by the accused very next day. There is every reason to believe that leaking of information by the police to the accused proving collusion.

24. Although, the crackers were seized on 15.05.2014 till 23.05.2014, no information was given to the Deputy Chief Controller of Explosives, Virudhunagar and the seized goods were not sent to them. Only when the matter was continuously heard by this Court from 21.05.2014 onwards and was called on 24.05.2014, the Deputy Chief Controller of Explosives was informed about the seizure only in the morning on 24.05.2014. Even thereafter, the police did not show interest to send the seized crackers to the Deputy Chief Controller of Explosives till 25.05.2014. The above lapses are evident by the conduct of the police.

25. Moreover the crime involves not only offences under the Explosive Substances Act, the Explosives Act and Rules but also the Customs Act. Similar prohibited goods were already seized from Mumbai, Ghaziabad, Mundra (kutch) Gujarat and Chennai on various dates and the clandestine import of Chinese crackers has become an all India racket by organized groups and the State Police Authorities may not be in a position and have jurisdiction to conduct the investigation. Therefore, only a central agency would be in a position to conduct the investigation properly throughout the nation. As safety, security and economy of our Country is involved in this matter, a central agency viz., C.B.I-R15 alone is competent to investigate the offences which are said to have been committed in various parts of India.

26. Be that as it may, the counter affidavit filed by the respondents 16 and 17 would reveal that during October and November 2012, the Directorate of Revenue Intelligence (DRI), seized illicit imported firecrackers at Kurukshetra, Hariyana and Ranipet in Tamil Nadu. Moreover the DRI alert Circular No. 5 of 2014 dated 24.04.2014 has been issued warning about smuggling of fire works/ fire crackers from China by way of mis-declaration and concealment right from 2010 onwards. Though the Chief Controller of Explosives through communication dated 13.05.2012 addressed all the Commissioners of customs, viz., New Delhi,

Chennai, Mumbai and Kolkata, informed about the clandestine import of prohibited Chinese crackers by mis-declaration, the Chief Commissioner of Customs, Trichy represented by learned counsel Mr. Vijaya Karthikeyan, Senior Standing Counsel would submit that the said letter did not reach Trichy Commissioner of Customs. He would further state that the said letter was addressed only to Commissioner of Customs, Chennai (16th respondent herein) and the Trichy Office got separated from Chennai office. It only denotes that even a national important communication issued by the Deputy Chief Controller of Explosives did not reach the appropriate authorities properly and it further proves lack of co-ordination among various government agencies. There is a lack of co-ordination and cooperation even in the matter concerning the security of our Country. Therefore, this Court expects proper co-ordination and co-operation among various government agencies and departments in the matters of national importance and implementation of programmes.

27. Regarding verification of consignments, the Assistant Commissioner of Customs of Tuticorin shocked everybody by giving the details about the process by which the checking is being done regarding imports and exports made through in Tuticorin port. In paragraph 3 of the Affidavit filed by the 17th respondent, it is stated that they are following 5% examination norms, as per the instructions stipulated in customs appraising manual, i.e. only 5% of the total consignments imported and exported are opened and examined. To a query, the Assistant Commissioner, who was present before this Court, would submit that 500 containers are being received at Tuticorin port and an average of 20 to 25 containers are selected by risk management system (RMS) for scanning and the selection was on the basis of risk parameters, viz., description of commodity, country of origin and any defaulters. If 20 to 25 containers alone are randomly selected and checked, it will not be a fool proof system and that is the reason why the prohibited items like Chinese crackers are making silent entry in to our Country threatening our fire work industries.

28. The Central authorities would contend that mobile gamma ray scanners are used for checking and the scanning is a non-intrusive method of inspection and an average of 20 to 25 containers are selected by risk management system (RMS) for scanning every day based on description of commodity, Country of Origin. If there is a specific information, Containers are examined in the presence of Special Intelligence and Investigation Branch. The Respondents 16 and 17 explained about the above procedure in para 6 and 7 of their Counter which are usefully extracted as follows:

"6. I submit that presently the Customs Department is working on the basis of Risk Management System (RMS) where by suspected import containers are targeted, based on the risk parameters, which is a dynamic target/instructions in the computerized Electronic Data Interchange (EDI) environment from Risk Management Division based at Mumbai. Based on the risk parameters, import consignments are assessed and examined or are facilitated without assessment

and examination. This is due to the fact that more than nine thousand Bills of Entries are filed across the Country every day and almost 50% of them are facilitated i.e., neither assessed nor examined. Further, in case of majority of consignments that are examined, only 10% of the goods are subjected to examination.

7. I submit that on an All India Basis, the Customs Department has already installed state of art Mobile Gamma Ray Scanners and fixed X ray Scanners at Jawaharlal Nehru Port Trust, Navasheva, Raigad, Maharashtra. Recently, the Mobile Gamma Ray Scanner was launched at Tuticorin Port on 04.04.2014. The Department is in the process of installing Mobile and Fixed X ray scanners at Chennai, Mumbai, Kandla, Tuticorin and at various other ports, which will curb the illicit imports through concealment or mis-declaration.

Therefore, more mobile Gamma Ray Scanner and fixed Ray Scanner, which will help to detect prohibited items like Arms, Ammunition, Weapons, Chinese fire works and other contraband can be detected, shall be installed in all ports.

29. The Customs authorities submitted that there has been technological advancement in containers scanners which can scan about 100 containers per hour. Under drive through mode, the driver of the vehicle is not required to get down when the scanning takes place and when the vehicle is in motion. Drive through container scanners are available for scanning rail and road mounted containers. As the Atomic Energy Regulatory Board (AERB) gave clearance for installation of drive through container scanner (Road) the concerned respondents shall take all necessary steps to install drive through containers (Road and rail) at every port to expedite the verification and clearance of containers.

30. We do not know what the unchecked containers carry. If those containers contain only the declared goods, then there would not be any problem. By false and misdeclaration, if arms, ammunitions and other dangerous weapons enter into our country, what will happen, to our great nation? It is a fact that many extremist organizations/outfits are active in almost every part of our country and many explosions are taking place, killing innocent lives causing very huge destructions like what happened in Budh Gaya temple in Gaya, Bihar, in the Central Railway Station in Chennai on 1st May 2014 etc., It is reported in the media that 145 kgms explosives was recovered from an abandoned car in Varanasi on 14.06.2014. In many places very dangerous explosives like RDX are said to be used for causing explosion. Therefore, it is need of the hour to take emergent steps to install proper mechanism/safeguards in all the Ports and Airports to scan most of the containers to rule out any contraband goods in the entry itself. Instead of taking appropriate safeguards to verify/check of the goods in the entry itself, there is no point in conducting investigation after allowing the prohibited contrabands items after facing dangerous consequences. Even an explosion can take away thousands of precious lives in this Country. Therefore, it is obligatory on the part of the Government to allocate more funds for providing safety infrastructures. This Court expects the Government to take all possible

efforts to install fool proof systems to verify/check the materials which are coming into our country so that no post-mortem is needed thereafter by investigation.

31. It is pointed out by the learned counsel for the petitioner that advertisements have been issued about the availability of prohibited imported fireworks. It is seen from the Internet materials produced that the following persons advertised themselves as importers of crackers, viz.,

32. When the crackers are prohibited to be imported, in utter violation of law and with boldness, some elements even advertised about the selling of illegal crackers. It would only show that there is no supervision or collective action by the authorities. The agencies should independently take note of these advertisements. It is not necessary that only based on specific complaints, cases have to be registered. Our country is a vast country with a population of more than 130 Crores and the authorities cannot expect complaints from ordinary citizens after noticing commission of offences. Therefore, there should be a separate wing in every department to get information from various source including Internet, and other media and suo motu, take note of commission of offences and register the case. It is evident from the materials downloaded from the Internet, that prohibited items are being sold. This Court expects the CBI and other Central agencies shall look into the materials also and take action as per law.

33. The Official respondents stated that the import of fireworks falling under Tariff item No. 36.04 of the Customs Tariff is restricted. The Director General of Foreign Trade, Ministry of Commerce, Government of India, New Delhi, till date has not issued any licence for the import of such firecracker into India. It is the contention of the 15th respondent that about 500 containers of Chinese crackers entered India. Therefore, the respondents are directed forthwith conduct raids throughout India and seize under Rule 128 all the Chinese crackers wherever they are found and destroy them as per Rule 129 of the Explosive Rules. The Central Government by notification vide G.S.R. No. 64(E) dated 27.01.1992 prohibited the manufacture, possession and importation of any Explosives containing Sulphur or Sulphurate in admixture with Chlorate, Perchlorate of Potassium or and other Chlorate, which are friction sensitive can ignite and explode spontaneously with combustible materials. Hence they are not acceptable under Indian noise level standards as per the notification No. GSR 682(E) : dated. 05.10.1999. It is reported in the Chinese newspaper itself that half of all Chinese fire works do not meet basic quality standards and 36.7 percent Fire works failed the inspection due to too short or too long blasting fuses which could potentially explode and cause injury to the persons. It was found that banned inflammable or explosive chemicals are used in making the fire works. It is also reported in The Guardian dated 01.02.2013 that a truck carrying Chinese fire works got exploded destroying an express bridge in Central China killing many people.

34. It is stated by the R17 that Chinese crackers were imported through genuine consignments of "Toys". Therefore, the customs authorities, DRI are directed to take all possible actions to check, detect the illegal and prevent imports causing danger to our economy and safety of the children.

35. About 800 Fireworks factories are in Virudhunagar area and about 5,00,000 peoples are directly and indirectly depending upon the firework employment and the arrival of banned Chinese crackers will destroy their employment and affect their livelihood seriously violating rights guaranteed under Article 19 and 21 of the Constitution of India. Valuable foreign exchange is lost. Hence, this issue has to be seriously viewed and swift actions are to be taken on war footing by the official respondents.

36. It is informed by the Government that 6 cases in 2011-2012, 9 cases in 2012-2013, 6 cases in 2013-2014 and 2 cases in 2014-2015 were registered regarding Chinese fire works. It is reported in the media on 18.09.2014, DRI seized Chinese fire crackers worth about Rs. 3.61 Crores in Navi Mumbai.

It is very shocking to note from the newspaper reports that 50% fire work orders have come down, due to illegal Chinese Firecrackers which has allegedly taken away 25 % of Sivakasi market and if it is not curtailed and prevented, many Industries have to be closed down. Fire works Industry is valued at Rs. 2,000 Crores and it should not be allowed to be destroyed by banned fireworks. Illegal entry of prohibited Chinese Fireworks is nothing but an assault on our fireworks industry and our economy and security of the nation and health of our children.

37. As stated above, the facts of the case would reveal that there is a prohibition for import of Chinese crackers.

a) As evident from various notifications, so far the Government has not issued any license for import of Chinese crackers.

b) In spite of that, the prohibited Chinese crackers are making their entry illegally, as proved by the facts of the case.

(c) Government should publicise that Chinese crackers are banned items and are illegal as they contain prohibited dangerous chemicals as per Central Government notification G.S.R. No. 64(E) dated 27.01.1992 and Notification No. G.S.R. No. 682(E) dated 05.10.1999.

(d) All the importers, stockists, distributors, retailers of Chinese Crackers have to be forthwith identified; raid their places, seize the crackers, destroy them as per the procedure and initiate criminal proceedings by registering F.I. Rs. and arrest them forthwith.

e) There is no co-ordination among the various departments and agencies of the Central Government and State Governments even in preventing the smuggling or illegal import of prohibited items including Chinese crackers.

f) Even after seizure of the Chinese Crackers, the State Police has not acted by

promptly registering the case, informing about the same Deputy Chief Controller of Explosives in time and sending the samples to them forthwith for laboratory test.

g) Lack of facilities in the ports and airports are revealed as per the admissions made by the Central Government.

h) The need of the hour is installation of drive through containers, scanners or any other advanced scanners so that most of containers could be scanned to rule out arms ammunition, weapons, drugs and any other contrabands/dangerous/prohibited items.

i) If the above systems are installed, it would avoid seizure, registration of case, investigation, arrest, filing of case before this Court and waste of judicial time and save the local industries.

j) Consequently commission of offences can be prevented at the initial stage itself, instead of spending Crores of money after commission of offences. It is appropriate to prevent the commission of offenses in the initial stage itself, which will be in the interest of nation.

k) it is obligatory for the Central Government to allocate more funds for providing safety infrastructures at ports.

(l) As per the alert Circular No. 5/2014 dated 24.04.2014, the Customs Officials have to be sensitized to prevent the illicit import of crackers from China.

(m) The illegal Chinese crackers which contain Chlorate Perchlorate and Sulphur in admixture with Chlorate of Potassium, are volatile, friction sensitive, dangerous environmentally, hazardous and threat to the safety of the users especially Children where as Indian crackers which are manufactured using standard costly chemicals, are safe as dangerous Chemicals are not allowed to be used. In view of that, Indian crackers are costly than Chinese crackers which are manufactured with cheap chemicals.

(n) The Executive Magistrate and Police Officials shall carryout inspection as per Rule 128(4) of the Explosive Rules periodically.

38. At the same time, this Court takes judicial note of various fire accidents occurring in Sivakasi during manufacture of fire crackers resulting in death of many person and damage of property continuously. It is reported for the past ten years about 300 persons died. Therefore, the concerned authorities especially respondents 8 to 10 should strictly oversee as to whether safety procedures to be adopted in the Industry are followed by the Companies by periodical inspection to avoid any fire accident. In the manufacture, the workers have to deal with Chemicals and they are continuously exposed to the Chemicals which may cause many deceases including skin and respiratory diseases. Hence, the respondents 5, 8, 9 and 10 are directed to give appropriate directions to the 15th respondents Association to follow the Rules strictly. Consequently, the 15th

respondent is also directed to follow the Rules. This direction is issued to do complete justice taking into consideration of the condition of the Fire Works Industry and the problems of the workers in toto.

39. Our Country is facing threats from extremists, fundamentalists and other outfits/organizations endangering safety and security of the nation and lives of the people. We don't know in which way, form, shape, method danger would appear and destroy. Therefore, we should not give any room or avenue or loophole for dangerous things to happen. Unless our borders/entry points are made fool proof by installation of advanced mechanism, there is no respect for the patriotism exhibited by our brothers, viz., Army men, who are fighting not only against enemies but also against odd weather in Kargil, Siachine and in other borders.

40. Considering the lapse of the police even in this type of important and serious case and seizure of illegal Chinese crackers in various states, it is desirable and appropriate to transfer the case to CBI. Even if the investigation is over, the case shall transferred to CBI, which shall re-investigate the case and proceed in accordance with law. The above decision is supported by Apex Court judgment in Rubabbuddin Sheikh Vs. State of Gujarat and Others, and in Gudalure M.J. Cherian and Others Vs. Union of India (UOI) and Others, in Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others, : Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others, , in Union of India (UOI) Vs. B.S. Agarwal and Others, and in Inder Singh Vs. State of Punjab and Others, . The Honourable Supreme Court already held in State of Punjab Vs. Central Bureau of Investigation and Others, held that the Court can direct fresh investigation even after filing of the charge sheet.

41. As stated above, the case involves offences under various Acts including Customs Act and many cases have already been registered by the Central Agencies in various places. Moreover the security of the nation is involved.

42. Therefore, the writ petition is allowed with the following directions :

(a) There shall be a direction to transfer the case in Crime No. 212 of 2014 on the file of Sivakasi Town Police Station to the file of Central Bureau of Investigation, fourteenth respondent herein, which shall take over the investigation and proceed further according to law. Even if investigation is over and charge sheet is filed, the case shall be transferred to CBI and it shall do re-investigation and proceed in accordance with law,

(b) The authorities shall conduct periodical inspections and seize Chinese crackers wherever they are found in the Country and destroy as per the Explosives Rules and file reports periodically before this Court;

(c) The official respondents especially respondents 5, 8, 9 and 10 are directed to oversee the 15th respondent (Manufacturers Association) to follow the Rules and

Regulations so as to prevent the accidents and to protect the life and health of the workers. No costs.