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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

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WRIT PETITION NO.3274 OF 2026

Heimerle Refinery Private Limited
a company incorporated under the
Companies Act, 2013, and
having its registered office at
FF-22, Shripad Residency,
Satyamev Vista Lane, Gota,
Ahmedabad, Gujarat – 382 481 … Petitioner

Versus

1. The Union of India
   Through the Secretary,
   Ministry of Finance,
   Department of Revenue,
   Government of India,
   New Delhi – 110 001

2. The Commissioner of Customs,
   Airport Special Cargo
   Commissionerate,
   Mumbai Customs Zone – III
   having his office at
   Ground Floor, G-Block,
   Bharat Diamond Bourse,
   Bandra Kurla Complex,
   Bandra (East), Mumbai – 400 051

3. The Deputy Commissioner
   of Customs, Airport Special Cargo
   Commissionerate, Precious Cargo
   Customs Clearance Centre,
   Having his office at
   Ground Floor, G-Block,
   Bharat Diamond Bourse,

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Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051

4. The Chief Commissioner of Customs,
Airport Special Cargo
Commissionerate,
Mumbai Customs Zone – III
having his office at
Ground Floor, G-Block,
Bharat Diamond Bourse,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051

5. The Director General of Foreign
Trade, having his office at
Vanijya Bhavan, 16 Akbar Road,
New Delhi – 110 011

6. The Union of India
Through the Secretary,
Ministry of Commerce and
Industry, Government of India
Vanijya Bhavan, 16 Akbar Road,
New Delhi – 110 011 .... Respondents

WITH
INTERIM APPLICATION (L) NO.22543 OF 2026
IN
WRIT PETITION NO.3274 OF 2026

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a company incorporated under the
Companies Act, 2013, and
having its registered office at
FF-22, Shripad Residency,
Satyamev Vista Lane, Gota,
Ahmedabad, Gujarat – 382 481 … Applicant

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IN THE MATTER OF :-

Heimerle Refinery Private Limited
a company incorporated under the
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having its registered office at
FF-22, Shripad Residency,
Satyamev Vista Lane, Gota,
Ahmedabad, Gujarat – 382 481 … Petitioner

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   Through the Secretary,
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   Through the Secretary,
   Ministry of Commerce and
   Industry, Government of India
   Vanijya Bhavan, 16 Akbar Road,
   New Delhi – 110 011 …. Respondents

****

Mr. Prakash Shah, Senior Advocate a/w Adv. Jas Sanghavi, Adv. Linzy Sharan i/b. PDS Legal, for the petitioner.

Adv. Maya Majumdar a/w Adv. Abhishek R. Mishra, for respondent Nos.1 to 4.

Adv. Jitendra B. Mishra a/w Adv. Ashutosh Misra, for Respondent Nos. 5 and 6 – UOI/DGFT.

****

CORAM : M. S. KARNIK &
SANDESH D. PATIL, JJ.

DATE : 19th OCTOBER 2026

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JUDGMENT (PER M. S. KARNIK, J.) :

1. The challenge in this writ petition filed under Article 226 of the Constitution of India is to the communications dated 15th April 2026 and 16th April 2026 issued by the respondent-authority.

2. The issue involved in this writ petition is already crystallised in the order dated 5th May 2026 passed by this Court. The issue involved in this writ petition is "Whether the imported goods which arrive within the territorial jurisdiction of India before the Notification No.02/2026-27 was published on 1st April 2026 shall be covered under the said notification." By interim order dated 5th May 2026, this Court granted interim relief to the petitioner on furnishing an ITC Bond for release of the consignments which arrived on 1st April 2026 in respect of which Bill of Entry Nos.8411463 and 8418268 were filed on 1st April 2026. Further, this Court directed the provisional release of the other two consignments vide Bill of Entry Nos.8590663 dated 10th April 2026 and 8735308 dated 17th April 2026, on furnishing 50% of the total value of the said two consignments through bank

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guarantee and supported by ITC Bond for the remaining 50% of the value.

3. Mr. Shah, learned Senior Advocate for the petitioner, pointed out that no order was passed in respect of the goods for which Bill of Entry No.8590666 dated 10th April 2026 was filed by the petitioner. In furtherance of the said order dated 5th May 2026, the goods covered under Bills of Entry Nos.8411463 and 8418268 dated 1st April 2026 are cleared by the respondents for home consumption upon acceptance of two bonds, both dated 21st May 2026, executed by the petitioner and accepted by the department. Thus, the dispute in the present writ petition is now restricted to goods not permitted to be cleared by the respondents in respect of Bill of Entry Nos.8590663 dated 10th April 2026, 8590666 dated 10th April 2026 and 8735308 dated 17th April 2026.

4. In respect of the aforesaid three bills of entry, the petitioner filed Petition for Special Leave to Appeal (C) No.18946 of 2026 before the Hon'ble Supreme Court. By the order dated 29th May 2026, the Hon'ble Supreme Court, as and by way of an

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interim measure, permitted the petitioner to apply as per the Office Memorandum dated 13th May 2026 and directed the Competent Authority to consider and dispose of the said application. The import authorisations dated 9th July 2026 were issued in terms of the said directions of the Hon'ble Supreme Court. By the order dated 17th August 2026, the Hon'ble Supreme Court disposed of the SLP, clarifying that this Court will take up and dispose of the above writ petition on its own merits without being influenced by any of the observations or developments that have taken place subsequently.

5. Now let us refer to the relevant facts. The imported goods were dispatched from the country of export and had arrived in India on 1st April 2026 at 00:42 a.m. and 2nd April 2026 at 01:39 a.m., which is prior to the publication of Notification No.02/2026-27 dated 1st April 2026 ("Notification", for short) in the Official Gazette on 2nd April 2026 at 20:52:28 hours, amending CTH 7113 under Chapter 71 of ITC (HS) Schedule I to the Foreign Trade Policy ("FTP", for short) in respect of the goods from "free" to "restricted".

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6. The goods were sought to be released by the petitioner on a later date, which was refused by the respondent on the ground of it being restricted goods as per the notification. There is no dispute so far as the aforesaid facts are concerned. The issue involved for consideration is thus :-

(i) What is the relevant date of import for the purpose of restriction imposed under the FTP formulated under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 ? and

(ii) Whether the restriction imposed on the goods under ITC (HS) 7113 vide the notification and published in the e-official Gazette on 2nd April 2026 with a time stamp of 20:52:28 hours apply to the good arrived in India before the publication of the notification and for which bills of entry are filed after the publication?

7. Thus, there is no dispute that the goods arrived in India before the publication. There is also no dispute that the Bills of Entry are filed by the petitioner after the notification.

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8. There is no dispute about the rate of duty or the value of the imported jewellery in the present case. The petitioner is not disputing the power to amend the FTP or the validity of the notification. The only contention is that the restriction does not apply to goods already arrived in India before the change of FTP. Thus, the petitioner urged that the date of import would be relevant for applicability of restriction imposed under the FTP on the goods, which undisputedly arrived in India well before the publication of the notification amending the CTH 7113.

9. Learned Senior Advocate relied upon the following decisions in support of his submissions :-

(1) Enero Jewels Pvt. Ltd. & Anr. vs. The Union of India & Ors.[1].

(2) M/s. Bright Metal Refiners vs. Director General, Directorate General of Foreign Trade & Ors.[2].

(3) Order dated 19th June 2026 passed by the Hon'ble Delhi High Court in Cont. Cas(C) No.1059 of 2026 (M/s. Bright Metal Refiners vs. Dheeraj Rastogi & Ors.).

(4) Order dated 22nd June 2026 passed by the Hon'ble

1 2026 (4) TMI 1607 – Gujarat High Court
2 2026 (6) TMI 407 – Delhi High Court

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Delhi High Court in Cont. Cas(C) No.1059 of 2026 (M/s. Bright Metal Refiners vs. Dheeraj Rastogi & Ors.).

(5) Order dated 2nd July 2026 passed by the Hon'ble Delhi High Court in Review Pet. 269/2026 (M/s. Bright Metal Refiners vs. Dheeraj Rastogi & Ors.).

(6) Union of India & Others vs. M/s. GS Chatha Rice Mills & Another[3].

(7) Viraj Impex Pvt. Ltd. vs. Union of India[4].

(8) Colossustex Pvt. Ltd. and Anr. vs. Union of India[5].

(9) Commissioner of Income-Tax, Vidrarbha & Marathwada, Nagpur vs. Smt. Godavaridevi Saraf, Tumsar[6].

(10) Vidarbha Beverages vs. Union of India[7].

(11) Hindustan Equipment Craft vs. Assistant Commissioner of State Tax[8].

(12) M. D. Overseas Ltd. vs. Union of India[9].

(13) Collector of C. Ex., Ahmedabad vs. Orient Fabrics Pvt. Ltd.[10].

(14) Director General of Foreign Trade vs. Kanak

3 2020 (9) TMI 903 – Supreme Court
4 2026 (396) E.L.T. 113 (S.C.)
5 2024 (387) E.L.T. 277 (Bom.)
6 1978 (2) E.L.T. (J 624) (Bom.)
7 (2026) 41 Centax 61 (Bom.)
8 (2026) 40 Centax 83 (Bom.)
9 2020 (371) E.L.T. 359 (Del.)
10 2003 (158) E.L.T. 545 (S.C.)

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Exports[11].

(15) Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and Others[12].

(16) Chowgule & Company Limited vs. Assistant Director General of Foreign Trade and Others[13].

(17) Union of India and Others vs. Ganesh Das Bhojraj[14].

(18) Kiran Spinning Mills vs. Collector of Customs[15].

10. Learned Senior Advocate laid much emphasis on the decision of the High Court of Gujarat in *Enero Jewels Pvt. Ltd. & Anr.* (supra) and that of the High Court of Delhi in *M/s. Bright Metal Refiners* (supra) which according to him are on identical facts. Learned Senior Advocate submitted that these two decisions have been accepted by the Revenue and their goods have been released. It is submitted that the Revenue having not challenged these decisions, even the petitioner would be entitled to the same relief in view of the reasoning.

11. Mr. Mishra, learned counsel for the Revenue vehemently

11 2015 (326) E.L.T. 26 (S.C.)
12 (2003) 2 SCC 111
13 (2023) 1 SCC 320
14 (2000) 9 SCC 461
15 1999 (113) EL.T. 753 (S.C.)

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opposed the writ petition. Our attention is invited to the affidavit-in-reply filed on behalf of the respondent No.5 - The Director General of Foreign Trade affirmed by Mr. Ashwin Golapkar, Deputy Director General of Foreign Trade. For convenience and to appreciate the stand of the respondent No.5 it would be apposite to extract the relevant portion of the detailed affidavit-in-reply filed which reads thus :-

> "2. At the outset it is submitted that Notification No. 02/2026-27 dated 01.04.2026 ("impugned Notification"), whereby the import policy of goods falling under CTH 71131922 of Chapter 71 of ITC (HS) 2022 was revised from "Free" to "Restricted", has been issued by Respondent No.5 in valid and lawful exercise of the powers conferred under Sections 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992 ("FTDR Act, 1992") read with paragraphs 1.02 and 2.01 of the Foreign Trade Policy, 2023 ("FTP 2023"). I say that the impugned Notification is neither illegal, arbitrary, unconstitutional, nor ultra vires the FTDR Act, 1992, and I deny each and every allegation to the contrary made in the Petition, as if the same were set out herein and traversed seriatim.
>
> 3. I say that, by way of clarification, Respondent No.5 issued an Office Memorandum dated 13.05.2026, clarifying that the impugned Notification stipulates immediate applicability and expressly excludes any transitional benefit under paragraph 1.05(b) of FTP 2023, irrespective of shipment status or prior filings, and that any import consignment not cleared before 01.04.2026 is governed by the revised "Restricted" policy, irrespective of the date of arrival of goods

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or filing of Bills of Entry. I say that the said Office Memorandum further clarified that importers may apply for Import Authorisation with a specific request for consideration under paragraph 2.12 of FTP 2023. Hereto annexed and marked as Exhibit A is copy of Office Memorandum dated 13.05.2026 issued by the Respondent No.5.

9. It is submitted that the Impugned Notification is prospective, and not retrospective, in its operation. It applies to all consignments of the specified tariff item (CTH 7113) that had not been cleared for home consumption as on the date/time it came into force. It does not, in law, take away any vested right of the Petitioner, since no vested right to clearance under the erstwhile "Free" import policy accrues merely upon the physical landing/arrival of goods at an Indian port or airport. It is well-settled by the Hon'ble Supreme Court that "import" is complete, and the taxable/regulatory event occurs, only when goods are cleared for home consumption / cross the customs barrier, and not on the date the conveyance lands or the goods enter Indian territorial limits and accordingly reliance is placed on Union of India v. Ganesh Das Bhojraj, (2000) 4 SCC 5 and Kiran Spinning Mills v. Collector of Customs, 1999 (113) ELT. 753 (SC). Thus, applying this settled principle, since the Petitioner's Bill of Entry No. 8410589 dated 31.03.2026 remained, admittedly, unassessed and uncleared (no Out of Charge order having been issued) as on the date the Impugned Notification came into force, the Petitioner cannot claim any vested or accrued right to clearance under the policy as it stood prior to the Impugned Notification. It is pertinent to note that the definition of "import" as provided under the provisions of the FTDR Act is analogous to the aforesaid meaning of import as laid down by the Hon'ble Supreme Court and congruent with the definition as provided under the Customs Act, 1962.

10. It is further respectfully submitted that the Impugned Notification does not violate Article 20 of the Constitution of India. Article 20(1) protects a person only against (i)

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conviction for an act which was not an offence at the time of its commission, and (ii) imposition of a penalty greater than what was prescribed under the law in force at the time of commission of the offence. It has no application to a prospective economic/trade-regulatory measure that merely governs future clearance of goods. The decision in Collector of C. Ex., Ahmedabad v. Orient Fabrics Pvt. Ltd., 2003 (158) E.L.T. 545 (S.C.), relied upon by the Petitioner, was rendered in the context of a penal provision ("offences and penalties") and is factually and legally distinguishable and inapplicable.

11. The exclusion, vide Paragraph 2 of the Impugned Notification, of the benefit of transitional arrangements otherwise available under Paragraph 1.05(b) of the FTP, 2023, and the stipulation, vide Paragraph 3 thereof, that the amended import policy shall operate "irrespective of any prior contract, irrevocable letter of credit, advance payment, or shipment status", are valid and lawful exercises of the very same statutory power under which the FTP itself, including Paragraph 1.05(b), has been framed. A subsequent, specific notification issued by the same delegate, in exercise of the same statutory power, validly carves out an exception to a general provision of the FTP/HBP on the settled principle generalia specialibus non derogant.

12. The decision of the Hon'ble Gujarat High Court in Enero Jewels Pvt. Ltd. & Anr. v. Union of India & Ors., 2026 (4) TMI 1607 (Exhibit "D" to the WP), relied upon by the Petitioner, is not binding on this Court, being the decision of a coordinate High Court. With the utmost respect, the said decision does not appear to have had the benefit of consideration of the binding Supreme Court authorities in Ganesh Das Bhojraj and Kiran Spinning Mills (supra), which directly bear upon, and are contrary to, the proposition that mere "landing" of goods (as opposed to clearance for home consumption) determines the applicability of a subsequently notified import restriction. The said decision, being per incuriam of binding Supreme Court precedent to the extent

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aforesaid, does not bind this Court, and this Court is not obliged to follow the same, the principle in Commissioner of Income-Tax, Vidarbha & Marathwada v. Smt. Godavaridevi Saraf, 1978 (2) E.LT. (J 624) (Bom.) being, in any event, always subject to binding Supreme Court law.

15. With reference to Para 2 of the Petition, I say that it is submitted that Respondent No.5 has, at all material times, acted strictly within the four corners of the powers conferred upon the Directorate General of Foreign Trade under Sections 3 and 5 of the FTDR Act, 1992 read with the Foreign Trade Policy, 2023 ('FTP 2023') framed thereunder.

16. With reference to Para 3 of the Petition, it is denied that Notification No. 02/2026-27 dated 01.04.2026 ('impugned Notification') is illegal, arbitrary or without authority of law. The impugned Notification has been issued by Respondent No.5 in valid and lawful exercise of powers conferred under Section 3 read with Section 5 of the FTDR Act, 1992 and paragraphs 1.02 and 2.01 of FTP 2023, amending the import policy of goods falling under CTH 71131922 of Chapter 71 of ITC (HS) 2022 from 'Free' to 'Restricted'. The impugned Notification is a piece of subordinate/delegated legislation validly notified in the Official Gazette and is neither ultra vires the FTDR Act, 1992 nor violative of any constitutional provision. It is denied that the action of Respondent No.5 is ex-facie arbitrary, unreasonable, illegal, perverse or without authority of law. The Respondent No.5 has no comments on the impugned communications dated 15.04.2026 and 16.04.2026 issued by Respondent Nos. 2 and 3, which fall within the domain of the Customs authorities.

18. With reference to Para 4 of the Petition, it is humbly submitted that the decision of the Hon'ble Gujarat High Court in Enero Jewels Pvt. Ltd. & Anr. vs. Union of India & Ors. (2026 (4) TMI 1607) was not rendered after considering the specific 'non-obstante'/exclusionary stipulation contained in the impugned Notification itself, whereby transitional benefit

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under para 1.05(b) of FTP 2023 has been expressly and specifically excluded 'irrespective of shipment status' and 'irrespective of prior filings', as clarified by the Office Memorandum dated 13.05.2026 issued by Respondent No.5. It is submitted that under para 1.04 of FTP 2023 ('Specific provision to prevail over the general'), a specific provision spelt out in the FTP prevails over a general provision. That the impugned Notification being a specific and later exercise of the very same rule-making power under Sections 3 and 5 of the FTDR Act, 1992, validly excludes/overrides the general transitional benefit otherwise available under para 1.05(b) of FTP 2023. In any event, the ratio in Enero Jewels (supra) was rendered in the context of the general principle recognized in Union of India v. G.S. Chatha Rice Mills, 2020 (374) E.L.T. 289 (SC) regarding the date/time of publication of a notification, and does not detract from the settled position in Union of India v. Ganesh Das Bhojraj, (2000) that the import policy applicable to a consignment is the policy in force on the date of its actual clearance, i.e. filing/assessment of the Bill of Entry, and not the date of shipment or arrival of goods.

19. It is pertinent to note that the exclusion, vide Paragraph 2 of the Impugned Notification, of the benefit of transitional arrangements otherwise available under Paragraph 1.05(b) of the FTP, 2023, and the stipulation, vide Paragraph 3 thereof, that the amended import policy shall operate "irrespective of any prior contract, irrevocable letter of credit, advance payment, or shipment status", are valid and lawful exercises of the very same statutory power under which the FTP itself, including Paragraph 1.05(b), has been framed. A subsequent, specific notification issued by the same delegate, in exercise of the same statutory power, validly carves out an exception to a general provision of the FTP/HBP on the settled principle generalia specialibus non derogant."

12. Mr. Mishra thus submitted that the FTP and the DGFT

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Notification have statutory force since both are issued by the Central Government by deriving authority from a common parent Act, i.e. Foreign Trade Regulation Act, 1992 ("FTDR"). The FTP on which the petitioner relies is formulated by the Central Government by exercising its power under Sections 3 and 5 of the FTDR, whereas the Notification dated 1st April 2026 has also been issued under Sections 3 and 5 of the FTDR Act, 1992, which amended the import policy of goods falling under CTH 7113 of ITC (HS) 2022, Schedule-I (Import Policy) to change from "Free" to "Restricted" with immediate effect.

13. The Notification which is later in time contains a specific non obstante clause, which clearly stipulates that the restriction shall apply irrespective of shipment status, prior contracts, or any other commitments, and that the benefit of transitional arrangements shall not be available. The reliance placed by the petitioner on paragraph 2.17(a) of FTP 2023 is misplaced, as the said Notification, having statutory force, overrides the general provisions of FTP 2023, and consequently, the benefit of transitional arrangements is not available. Also, the restriction

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placed through the said notification is of a later date; hence, the embargo placed through the notification will prevail over the previous one i.e. the FTP 2023.

14. Mr. Mishra submitted that the argument of the petitioner that the relevant date mentioned in this present matter, being the Airway Bill as per FTP will not be applicable since the notification clearly mentions *these restrictions shall apply notwithstanding para 1.05(b) of the FTP 2023 and shall operate irrespective of any prior contract … shipment status, or any other commitment whatsoever. Accordingly, the benefit of transitional arrangements shall not be available.* Mr. Mishra heavily relied on the decision of the Hon'ble Supreme Court in *Union of India and others vs. Ganesh Das Bhojraj* (supra) that the import policy applicable to a consignment is the policy in force on the date of its actual clearance, that is filing/assessment of the bill of entry, and not the date of shipment or arrival of goods.

15. We have heard learned counsel. We have perused the pleadings, the materials on record and the decisions relied upon in

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support.

16. The petitioner imported Studded Platinum Jewellery under 5 Airway Bills dated 30th March 2026 and 31st March 2026. There is no dispute that the goods arrived in India prior to the publication of the notification dated 2nd April 2026 under the FTP in respect of goods from “free” to “restricted”. There is also no dispute that the Bills of Entry for release of the goods were filed after the notification dated 2nd April 2026 was published in the Official Gazette. There is no dispute about the rate of duty or the value of the imported jewellery in the present case. The petitioner is neither disputing the power to amend the FTP nor the validity of the notification. The only contention is that the restriction does not apply to goods already arrived in India before change of FTP. Thus, the issue is the date of import for applicability of restriction imposed under the FTP on the goods, which undisputedly arrived in India well before the publication of the notification amending the CTH 7113.

17. The respondents contend that since the goods were

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pending clearance for home consumption, the restriction on their imports are covered by the notification and are seeking to apply the date of import under the Customs Act, 1962. Paragraph 1.05 (b) of the FTP defines the date of import for the purpose of policy. It reads thus :-

> "1.05(b) ..... The importability/ exportability of a particular item is governed by the policy as on the date of import/ export. The date of import/export is defined in para 2.17 of HBP 2023. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively. In case of change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made before the date of such regulation/restriction will not be affected. … ….. "

18. In the present case, admittedly the Bill of Lading and Shipping Bill are the key documents which indicate the date of import and export respectively which is well before the change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated'. Thus, the import/export was already made before the date of such regulation/restriction. In our view and as rightly submitted by Mr. Shah, learned Senior Advocate, once the date of import is defined under the FTP, it is not open for the

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respondents to take recourse to the date of import under the Customs Act. The goods were shipped in terms of the policy.

19. The issue involved in the present case is squarely covered by the decisions of the High Court of Gujarat in *Enero Jewels Pvt. Ltd. & Anr.* (supra) and of the High Court of Delhi in *M/s. Bright Metal Refiners* (supra). The goods were permitted to be cleared even though the bills of entry were filed post the publication of the notification and pending clearance with the Customs. The respondents have accepted the judgments of the High Court of Gujarat and the High Court of Delhi. Their Lordships have decisively concluded the applicability of the notification to the goods which arrived prior to the publication of the notification.

20. In *Enero Jewels Pvt. Ltd. & Anr.* (supra), the High Court of Gujarat directed clearance of the consignment without insisting on import authorisation. No bill of entry was filed by the petitioner before the date of the notification. IGM No.3020909 was filed by the Airline. It is only post the judgment, that the petitioner filed the bill of entry only on 22nd April 2026 and was permitted to clear

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the goods for home consumption without demur.

21. In *M/s. Bright Metal Refiners* (supra), all the goods arrived in India before the publication of Notification and some of the bills of entry were filed post the publication of notification on 3rd April 2026 and 7th April 2026. The High Court of Delhi held that the restriction did not apply to goods imported prior to the Notification coming into force and were permitted clearance in accordance with the conditions and legal position that prevailed before the issuance of the said notification. Even in *M/s. Bright Metal Refiners* (supra), the goods were allowed to be cleared for which the bills of entry were filed post the publication of the Notification and one of the respondents before the High Court of Delhi was the Commissioner of Customs, Air Special Cargo, Mumbai.

22. Thus, the judgments rendered in *Enero Jewels Pvt. Ltd. & Anr.* (supra) and *M/s. Bright Metal Refiners* (supra) have not only attained finality but have been acted upon. It is a settled principle of taxation jurisprudence that the Revenue is bound to maintain

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consistency in applying the law to similarly situated assesses. Mr. Shah, learned Senior Advocate for the petitioner, placed reliance on the decision of the Hon'ble Supreme Court in Pr. CIT, New Delhi vs. Maruti Suzuki (India) Limited[16], and that of the High Court of Allahabad in Samsung India Electronics Pvt. Ltd. vs. State of U.P.[17] in support.

23. It is pertinent to refer to paragraph 2.17(a) read with paragraph 11.11 of the Handbook of Procedure, 2023 ("HBP") for the purpose of FTP, which indicates that the date of reckoning of import is to be decided with reference to the date of shipment/dispatch of goods from the supplying country and not the date of arrival of goods at an Indian port or on the date of clearance for home consumption. Paragraph 2.17(a) of the HBP is extracted below for the facility of convenience :-

> "2.17(a) Date of reckoning of import is decided with reference to date of shipment/dispatch of goods from supplying country as given in Paragraph 11.11 of Handbook of Procedures and not the date of arrival of goods at an Indian port."

16 (2020) 18 SCC 331 (Para 37)
17 (2024) 17 Centax 131 (All.) (para 15)

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24. The petitioner is not claiming any benefit of transitory provisions contained in paragraph 1.05(b) of the FTP. The transitory provisions apply to goods not arrived in India before change of FTP. Paragraph 1.05(b) of the FTP is extracted below for the facility of convenience :-

> "1.05(b) Item wise Import/Export Policy is delineated in the ITC (HS) Schedule I and Schedule II respectively. The importability/exportability of a particular item is governed by the policy as on the date of import/export. The date of import/export is defined in para 2.17 of HBP 2023. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively. In case of change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made before the date of such regulation/restriction will not be affected. However, the import through High Sea sales will not be covered under this facility. Further, the import/export on or after the date of such regulation/restriction will be allowed for importer/exporter who has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be limited to the balance quantity, value and period available in the ICLC. For operational listing of such ICLC, the applicant shall have to register the ICLC with jurisdictional RA against computerized receipt within 15 days of imposition of any such restriction/regulation. Whenever, Government brings out a policy change of a particular item, the change will be applicable prospectively (from the date of Notification) unless otherwise provided for."

25. Further, paragraph 11.11 of the HBP specifically provides

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that, in the case of import by air, the date of shipment shall be the date of the relevant Airway Bill, provided it represents the date on which the goods left the last airport in the country of export. For facility of convenience paragraph 11.11 of the HBP is extracted which reads thus :-

"**11.11 Date of shipment/Dispatch in respect of Imports**

Date of shipment/dispatch for imports will be reckoned as under :-

S.No.	Mode of Transportation	Date of Shipment/Dispatch
(i)	By Sea	The date affixed on the Bill of Lading
(ii)	By Air	Date of relevant Airway Bill provided this represents date on which goods left last airport in the country from which the import is effected.
(iii)	From land-Locked Countries	Date of dispatch of goods by rail, road or other recognised mode of transport to consignee in India through consigrunent basis.
(iv)	By Post Parcel	Date stamp of office of dispatch on the packet or dispatch note
(v)	By Registered Courier Service	Date affixed on Courier Receipt/Waybill
(vi)	Multimodal Transport	Date of handing over goods to first carrier in a combined transport Bill of Lading

26. The Hon'ble Supreme Court in Viraj Impex Pvt. Ltd vs.

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Union of India[18] relying on its earlier decision in Union of India vs. G. S. Chatha Rice Mills[19] held that a notification cannot acquire the force of law prior to its publication in the Official Gazette and that in the era of e-Gazette, the precise hour and minute of digital upload is decisive; and that such a notification cannot operate retrospectively unless authorised by statute.

27. Thus in view of what has been held by Their Lordships, we have no hesitation in holding that the Notification acquired the force of law only on 2nd April 2026 at 20:52:58 hours, and it can be validly applied only to the goods dispatched from the country of export after its publication and not to goods already dispatched and arrived in India prior to its publication.

28. We may make a useful reference to the decision of the High Court of Delhi in *M. D. Overseas Limited* (supra) which holds that the date of import, for the purpose of application of the provisions of the FTP and HBP, would be the date of shipment/dispatch of goods from the supplying country of export. This date would ordinarily be the date of airway bill issued by the

18 2026 (396) E.L.T. 113 (SC) (para 16, 17, 19)
19 2020 (374) E.L.T. 289 (SC)

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last port from which the goods departed en route to India. *M. D. Overseas Limited* (supra) has been approved by the Hon'ble Supreme Court in *G. S. Chatha Rice Mills* (supra).

29. Let us now deal with the submission of Mr. Mishra, learned counsel for the respondent, that the date of filing of bills of entry is relevant for determining the applicability of the notification issued under the FTP. In our view, the date of filing bills of entry or its clearance/out-of-charge post the restriction is wholly irrelevant and alien to the applicability of a change in the FTP. In terms of Section 15 of the Customs Act, the date of filing of bills of entry is relevant for the rate of duty of customs and, in the present case, the rate of duty is the same prior to and post the Notification. The contention of Mr. Mishra, learned counsel for the respondent is that the decision in *Enero Jewels Pvt. Ltd. & Anr.* (supra) and *M/s. Bright Metal Refiners* (supra) are per incuriam having not considered and followed the ratio of the decisions of the Hon'ble Supreme Court in *Union of India and others vs. Ganesh Das Bhojraj* (supra) and *Kiran Spinning Mills* (supra). We are in agreement with Mr. Shah, learned Senior Advocate that the

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aforesaid decisions in *Union of India and others vs. Ganesh Das Bhojraj* (supra) and *Kiran Spinning Mills* (supra) are distinguishable. The issue before the Hon'ble Supreme Court was not the one in dispute in the present case, viz. which is the date to be reckoned for import under the FTP.

30. In *Union of India and others vs. Ganesh Das Bhojraj* (supra), the petitioner had imported the goods and filed bill of entry on 5th February 1987 and claimed clearance duty free. Vide notification issued one day prior to filing of the Bill of Entry, the Government had imposed 25 per cent duty. The petitioner therein contended that the said notification though published was not made available to the public at large and therefore customs duty cannot be levied. This Court allowed the writ petition and directed clearance of goods without payment of duty. The Hon'ble Supreme Court, on a reference, held that the notification came into force on the date of its publication in the official Gazette and negatived the contention that the since the notification was not made available to the public at large it did not come into force. Thus, *Union of India and others vs. Ganesh Das Bhojraj* (supra) dealt with a case

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regarding change of rate of duty and not applicability of the rate of duty under the Customs Act. Under Section 15(1)(a) of the Customs Act, the relevant date for the rate of customs duty is the date of filing of the bill of entry. Therefore, the rate of duty will be as applicable on the date of filing of bill of entry and not the arrival of the goods in India. Thus, the issue before the Hon'ble Supreme Court was in the context of Section 15 of the Customs Act.

31. Let us now look at the facts in *Kiran Spinning Mills* (supra). The importer deposited the goods in the bonded warehouse. Pending clearance of the goods for home consumption, additional duty of excise was imposed vide ordinance dated 3rd October 1978. The Importer contended that the said ordinance was not promulgated at the time of import into India. The Hon'ble Supreme Court negatived the contention holding that Section 3(6) of the Ordinance makes the provisions of the Customs Act applicable and this would bring into place Section 15 of the Customs act, which inter alia provides the rate of duty which will be payable on the date on which the goods are removed from the

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bonded warehouse.

32. It would therefore be clear that for the purpose of Customs Act, the import would be completed when the goods cross the customs barriers and not the day on which the goods had landed in India. On the other hand, for the purpose of reckoning the date of import for applicability of the provisions of FTP is specified in paragraph 1.05(b) of the FTP read with paragraph 2.17 read with paragraph 11.11 of HBP. Paragraph 1.5 (b) of FTP clearly provides that the date of import/export is defined in paragraph 2.17 of HBP. Bill of Lading or shipping bill are key documents for deciding the date of import and export respectively. Having defined the date of import under the FTP, the date of import under the Customs Act cannot be applied, otherwise the date of import defined in the Policy shall be redundant and meaningless. We are of the clear opinion that paragraphs 2 and 3 of the notification have no relevance to the goods imported by the petitioner as they have admittedly arrived in India before the Notification came into force. That the Notification is not made retrospective is admitted by the respondents.

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33. Mr. Mishra, learned counsel for the respondent relied on an Office Memorandum ("OM") dated 13th May 2026 issued by the DGFT after the filing of the present writ petition, in which the Joint Director General of Foreign Trade has, in paragraph 3 thereof, purportedly clarified that "any import consignment not cleared before 1st April 2026 would be governed by the revised 'Restricted' policy, irrespective of the date of arrival of goods or fling of Bills of Entry ….". We are in agreement with the submission of Mr. Shah, learned Senior Advocate that the said OM is not only contrary to the FTP but in the teeth of what has been held in *Enero Jewels Pvt. Ltd. & Anr.* (supra) and *M/s. Bright Metal Refiners* (supra). The said OM has no statutory force and cannot override the FTP. The OM is not even subordinate legislation and no authority of law is pointed out in exercise of which the said OM is issued. The Hon'ble Supreme Court in CCE, Bolpur vs. Ratan Melting and Wire Industries[20] has held that any clarification of the Board contrary to law declared by the Hon'ble Supreme Court and Hon'ble High Courts is not binding. It was

20 2008 (12) S.T.R. 416 (S.C.) (para 6, 7)

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further held that a clarification contrary to statutory provisions has no existence in law. It is well settled that FTP can be amended by the Central Government in exercise of powers under Section 5 of the FTDR Act. The purported clarification by the OM, would literally amount to amending the FTP, which cannot be issued in such a manner contrary to law. The purported clarification amounts to giving retrospective effect to the Notification, which is beyond the jurisdiction of the issuing authority (Officers of the DGFT in the present case) as held by the Hon'ble Supreme Court in Director General of Foreign Trade vs. Kanak Exports[21]. In these circumstances, the OM being a mere executive clarification, cannot rewrite/override the statutory definition of "date of import" defined in paragraph 2.17 and paragraph 11.11 of the HBP, and cannot make the impugned Notification retrospective.

34. We therefore have no hesitation in holding that the import authorisation cannot be treated as the redressal of the petitioner's grievance, in view of the decisions in *Enero Jewels Pvt. Ltd. & Anr.* (supra) and *M/s. Bright Metal Refiners* (supra). The

21 2015 (326) E.L.T. 26 (S.C.) (para 108)

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said authorisation-imposed conditions, which were beyond the jurisdiction and authority of the DGFT.

35. The Writ Petition therefore deserves to be allowed. The respondents are directed to release the goods/consignments covered under Bills of Entry Nos.8590663 dated 10th April 2026, 8590666 dated 10th April 2026 and 8735308 dated 17th April 2026 expeditiously.

36. It is declared that the notification dated 1st April 2026 is not applicable to the goods arrived in India before its publication on 2nd April 2026 at 20:46:52 hours (typographical mistake in the prayer clause which refers to the date of publication as 2nd April 2027 instead of 2nd April 2026).

37. Further, the writ petition is allowed in terms of prayer clauses (a), (c) and (d) which read thus :-

> "(a) That this Hon'ble Court be pleased to declare that the Notification No.02/2026-27 dated 01.04.2026 is not applicable to the goods arrived in India before its publication on 02.04.2027 at 20:46:52 hours.
>
> (c) That this Hon'ble Court be pleased to issue Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writs, orders or directions under Article 226 of the

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Constitution of India ordering and directing the Respondents and their officers, subordinates, servants and agents to forthwith permit clearance of the studded platinum jewelry for home consumption covered under Bills of Entry Nos.8411463 dated 01.04.2026, 8418268 dated 01.04.2026, 8590663 dated 10.04.2026, and 8735308 dated 17.04.2026 (Exhibits “E” to “H”);

(d) That this Hon’ble Court be pleased to issue Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writs, orders or directions under Article 226 of the Constitution of India ordering and directing the Respondents and their officers, subordinates, servants and agents to forthwith permit the Petitioner to submit the Bill of Entry No.8590666 dated 10.04.2026 without insisting upon the Import Authorisation/License.”

38. Interim Application (L) No.22543 of 2026 is also disposed of.

(SANDESH D. PATIL, J.) (M. S. KARNIK, J.)

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