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WP.Nos.15996 & 15998 to 16002
of 2024 & 6948 & 7290 of 2025

In the High Court of Judicature at Madras

Reserved on 18.6.2025	Delivered on : 25.6.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

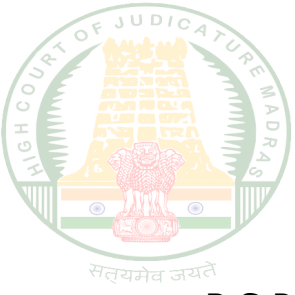
Writ Petition Nos.15996 & 15998 to 16002 of 2024
& 6948 & 7290 of 2025 &

WMP.Nos.17451, 17452, 17453, 17454, 17455, 17457
17458, 17459, 17460, 17462, 34530, 34531, 34533,
34536, 34538 & 34539 of 2024 & 7666, 7668, 8111 & 8112 of 2025

Shri Sameer B.S.Rao, Chief
Financial Officer, Xiaomi
Technology India Pvt. Ltd.
having regd. office at Orchid
(Block E), Ground to Fourth
Floor, Embassy Tech Village,
Marathahalli-Sarjapur Outer
Ring Road, Bengaluru-560103
Karnataka

...Petitioner in
WP.Nos.15996,
16000 & 16001
of 2024

Xiaomi Technology India Pvt.
Ltd. having regd. office at Orchid
(Block E), Ground to Fourth
Floor, Embassy Tech Village,
Marathahalli-Sarjapur Outer
Ring Road, Bengaluru-560103
Karnataka rep.by its Chief
Financial Officer Shri Sameer



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B.S.Rao

...Petitioner in
WP.Nos.15998,
15999 & 16002
of 2024

Xiaomi Technology India Pvt.
Ltd. having regd. office at Orchid
(Block E), Ground to Fourth
Floor, Embassy Tech Village,
Marathahalli-Sarjapur Outer
Ring Road, Bengaluru-560103
Karnataka rep.by its Associate
General Counsel Shri Aswin
Surendran

...Petitioner in
WP.No.6948 of
2025

Sameer B.S.Rao having regd.
office at Orchid (Block E),
Ground to Fourth Floor,
Embassy Tech Village,
Marathahalli-Sarjapur Outer
Ring Road, Bengaluru-560103
Karnataka

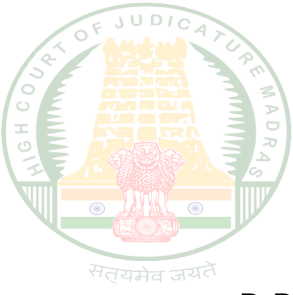
...Petitioner in
W.P.No.7290 of
2025

Vs

1.The Adjudicating Authority,
Special Director (Sr.), Directorate
of Enforcement, Southern
Regional Office, Chennai
Shastri Bhavan, III Floor,
III Block, 26, Haddows Road,
Chennai.

2.The Assistant Director,
Directorate of Enforcement,
Bangalore Zonal Office, III Floor,

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B Block, BMTC, Shanthi Nagar
TMC, KH Road, Shanthi Nagar,
Bengaluru-560027.

...Respondents in
all the WPs.

PETITIONS under Article 226 of The Constitution of India praying
for the issuance of

(i) a Writ of Certiorari to call for the records and quash the
impugned notice of hearing dated 04.4.2024 bearing F.No.T.4/SRO/
SDE/BGZO/09/2023 as well as the impugned opinion formed by
respondent No.1 under Rule 4(3) of the FEMA Adjudication Rules
(WP.No.15996 of 2024);

(ii) a Writ of Certiorari to quash the impugned notice of hearing
dated 04.4.2024 bearing F.No.T-4/SRO/SDE/BGZO/09/2023 as well as
the impugned opinion formed by respondent No.1 under Rule 4(3) of
the FEMA Adjudication Rules (WP.No.15998 of 2024);

(iii) a Writ of Certiorari to quash the impugned show cause notice
bearing F.No.T-4/SRO/SDE/BGZO/09/2023 dated 09.6.2023 (WP.No.
15999 of 2024);

(iv) a Writ of Certiorari to call for the records and quash the
impugned complaint dated 02.6.2023 bearing F.No.T-3/BGZO/01/
2022 (AD-DM) issued by the 2nd respondent (WP.No.16000 of 2024);

(v) a Writ of Certiorari to call for the records and quash the
impugned show cause notice bearing F.No.T.4/SRO/SDE/BGZO/09/
2023 dated 09.6.2023 issued by the 1st respondent (WP.No.16001 of
2024);

(vi) a Writ of Certiorari to quash the impugned complaint dated

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02.6.2023 bearing complaint F.No.T.3/BGZO/01/2022 (AD-DM) (WP. No.16002 of 2024); and

(vii) Writs of Certiorarified Mandamus to call for the impugned order of respondent No.1 in F.No.T-4/SRO/SDE/BGZO/09/2023 dated February 10, 2025, quash the same and further direct the respondents to facilitate inspection of the entire original records of investigation including the unrelid upon document in F.No.T-3/BGZO/01/2022(AD-DM) dated 02.6.2023, direct the respondents to provide the certified copies of the specified documents (tabulated in para 21 above) requested for by the petitioner and direct the respondents to expunge the remarks, which indicate that the petitioner is prolonging the matter (WP.Nos.6948 & 7290 of 2025).

For Petitioners : Mr.K.G.Raghavan, SC for
Mr.Harpreet Singh Ajmani
Ms.Radhika & Mr.Aadith

For R1 & R2 : Mr.AR.L.Sundaresan, ASG
assisted by
Mr.Rajnish Pathiyil, SPP (ED)

COMMON ORDER

The subject matters of challenge in all these writ petitions filed by (a) a corporate entity and (b) its Director and Chief Financial Officer are (i) the complaint dated 02.6.2023 given in writing by the second respondent under Section 16(3) of the Foreign Exchange Management

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Act, 1999 (for short, the FEMA) to the first respondent, (ii) the show cause notice dated 09.6.2023 issued by the first respondent under Rule 4(1) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (for brevity, the FEMA Rules), (iii) the opinion formed by the first respondent under Rule 4(3) of the FEMA Rules, (iv) the act of proceeding further with the inquiry by informing the petitioners about the contraventions of the provisions of the FEMA, the FEMA Rules and the Regulations, etc., under Rule 4(4) of the FEMA Rules and (v) the denial of inspection of the entire original record of investigation including the unrelayed documents and (vi) for a direction to provide the certified copies of the same.

2. Heard the learned Senior Counsel appearing on behalf of the petitioners and the learned Additional Solicitor General assisted by the Special Public Prosecutor appearing for the respondents.

FACTS :

3. The case of the petitioners is as follows :

(i) The petitioner company is engaged, inter alia, in the business of procurement, supply and distribution of Xiaomi branded products in

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India. It was incorporated on 07.10.2014 as a subsidiary of (a) M/s.Xiaomi Singapore PTE Limited, which holds 99.95% of shares and (b) M/s.Xiaomi HK Limited, which holds 0.05% of shares.

(ii) To facilitate its business, the petitioner company entered into royalty agreements with two companies based at United States of America namely (a) M/s.Qualcomm Incorporated and (b) M/s.Qualcomm Technologies Inc. (for short, the Qualcomm Entities) as well as its group company viz. M/s.Beijing Xiaomi Mobile Software Company Limited. The petitioners paid a total sum of Rs.5,551.27 Crores towards royalty agreements for the period from 2016 to 2022.

(iii) The petitioners relied upon the Subscriber Unit Licence Agreement (hereinafter referred to as the SULA) dated 27.10.2010, the Multi-product Patent Licence Agreement dated 01.10.2017 (for short, the MPLA-1), the Multi-product Patent Licence Agreement dated 01.1.2018 (for short, the MPLA-2), the Master Software Agreement (MSA) dated 19.11.2010 and the Licence and Royalty Arrangement Agreement (LRAA) dated 01.12.2017 made effective from 01.4.2017.

(iv) The second respondent commenced an investigation against the petitioners in the year 2022 and in exercise of the powers conferred under Section 36A of the FEMA, the second respondent

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provisionally attached certain sums of money totalling to approximately Rs.5,551 Crores being the aggregate amount of royalty paid during the period from 2016 to 2022 owing to an alleged contravention of the provisions of Section 4 of the FEMA. This seizure order was confirmed by the Competent Authority by order dated 19.9.2022 and the same was put to challenge before the High Court of Karnataka and it is pending.

(v) On 02.6.2023, the second respondent filed a complaint before the first respondent under Section 16 of the FEMA alleging that the petitioners had contravened the provisions of the FEMA by making the royalty payments for the benefit of their parent group companies. The further allegation is that such payment was made without the permission of the Reserve Bank of India (RBI) and that the petitioners have parked the foreign exchange with its group companies outside India.

(vi) A notice dated 09.6.2023 was issued by the first respondent to the petitioners and four others calling upon them to show cause in writing as to why an inquiry should not be held and as to why penalty should not be imposed in terms of Section 13(1) of the FEMA. In the impugned show cause notice issued by the first respondent, it has

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been alleged that the petitioners contravened the provisions of Section 3(b) of the FEMA by transferring the funds indirectly to one M/s.Xiaomi Communications Co. Ltd. and also contravened the provisions of Section 4 of the FEMA by acquiring and transferring the foreign exchange to their entities outside India.

(vii) The petitioners allege that though they made a request for inspection of the entire records of investigation, based on which, the complaint was given by the second respondent, the said request was rejected. A notice of hearing dated 11.9.2023 was received by the petitioners from the first respondent stating that they formed an opinion that an inquiry should be held in this case in terms of Rule 4(3) of the FEMA Rules and fixed the date of personal hearing on 06.10.2023.

(viii) On receipt of the notice of hearing, the petitioners submitted the preliminary objections in terms of Rule 4 of the FEMA Rules and also sought for recalling the notice dated 11.9.2023. Arguments were heard by the first respondent and by order dated 24.11.2023, the review petition was dismissed as not maintainable.

(ix) Earlier, the petitioner company filed 12 writ petitions in total in **W.P.Nos.35654, 35657, 35660, 35662, 35664, 35668, 35636,**

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35639, 35641, 35644, 35649 and 35652 of 2023 before this Court challenging the order passed by the first respondent dated 11.9.2023 initiating the inquiry against the petitioners and also the order dated 24.11.2023 rejecting the review petition. A learned Single Judge of this Court, by a common order dated **23.1.2024**, disposed of all the writ petitions in the following terms :

"21. The scope of notice under Rule 4(3) cannot be expanded so as to arrive at a conclusion that the Adjudicating Authority has determined the issues. It is only an opinion formed for the purpose of conducting an inquiry and on receipt of further explanations from the petitioners, further opinion may be formed by the Adjudicating Authority either to proceed or to drop further proceedings.

22. The opinion formed by the Adjudicating Authority may be based on the available material records. Even in the absence of those four relied upon documents supplied to the petitioners, there is a possibility of forming an opinion by the Adjudicating Authority that an inquiry is to be proceeded under Rule 4 of the Rules. The Adjudicating Authority is the empowered to take a decision based on the materials available.

23. Since an opinion has already been formed by the Adjudicating Authority to proceed



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with the inquiry under Rule 4 of the Rules and the additional relied upon documents sought for by the petitioners were supplied subsequently after the issuance of 4(3) notice, it would be suffice, if an opportunity is provided to the petitioners to submit their explanation in entirety once again before the Adjudicating Authority, who, in turn is bound to consider the explanations and form further opinion, whether to proceed to inquire or to drop the same as the case may be and accordingly communicate the same to the petitioners without causing undue delay. In order to comply with the above procedures, the petitioners are granted 30 days time from today i.e. 23.01.2024 to submit their explanations in entirety to the Adjudicating Authority and on receipt of the same, the Adjudicating Authority shall take a decision and communicate the same to the petitioner and thereafter, proceed in accordance with law and in the manner contemplated under the Act and Rules in force."

(x) The petitioners were aggrieved by the said common order since the learned Single Judge, after having found that the documents were supplied to the petitioners subsequently after the issuance of the notice under Rule 4(3) of the FEMA Rules, sustained the opinion arrived by the first respondent and directed him to provide an

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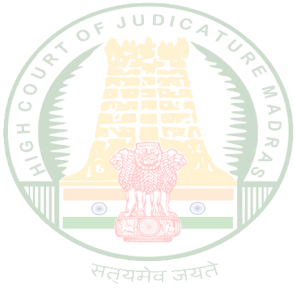
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opportunity to the petitioners and form a further opinion.

(xi) As against the said common order dated **23.1.2024 rendered in W.P.Nos.35660, 35662, 35664 & 35668 of 2023**, the petitioners filed **W.A.Nos.588 to 591 of 2024**, in which, the First Bench of this Court delivered a common judgment on **22.2.2024** in the following terms :

"6. In view of the fact that the learned Single Judge has observed that the principles of natural justice are violated in view of the fact that the documents were not supplied to the appellant, though was given an opportunity to inspect and directed to give an opportunity to the appellant to file its explanation in view of the four documents supplied later on, naturally the opinion to be formed would be based on the explanation given by the appellant upon the supply of all the documents. As such, instead of further opinion to be formed by the officer, the adjudicating authority would form a fresh opinion based on the explanation submitted by the appellant upon receipt of the four additional documents. The said opinion shall be uninfluenced by the earlier opinion formed. The earlier opinion would be non-est."

(xii) Further, the other writ appeals filed in **both W.A.No.756 of 2024 as well as W.A.Nos.785 to 787 of 2024 respectively as**



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**against the common order in W.P.Nos.35649, 35644, 35636
and 35652 of 2023 dated 23.1.2024 were disposed of on
05.3.2024 and 08.3.2024 in the same lines.**

(xiii) In the above common judgment, the First Bench of this Court directed the Adjudicating Authority to form a fresh opinion based on the explanation submitted by the petitioners upon receipt of the additional documents. Pursuant to the said common judgment of the First Bench of this Court, a notice of hearing dated 04.4.2024 was issued by the first respondent. This notice of hearing reflected the opinion that has been arrived at by the first respondent and the same has been now put to challenge. The petitioners have also challenged the complaint given by the second respondent and the refusal to furnish the entire original records of investigation, which were not relied upon by the second respondent.

4. The second respondent filed a common counter affidavit in all these writ petitions wherein he took the following stand :

(i) A show cause notice was issued by the first respondent to the petitioners and on receipt of the explanation, a notice of hearing was issued and thereafter, after recording the reasons in writing, an

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opinion has been arrived at and it was communicated to the petitioners. It was prima facie found that the payments made by the petitioners were not in compliance with the mandate of the FEMA and the FEMA Rules.

(ii) The first respondent has strictly gone by the complaint of the second respondent, the documents and the materials available on record and formed an opinion, which cannot be challenged by way of filing a writ petition. During forming of such an opinion, it is sufficient if the prima facie evidence and the materials point out the contravention of the provisions of the FEMA and the FEMA Rules. The formation of the opinion need not be on the basis of a final conclusion. But, it must be based on the material evidence available for forming such basis.

(iii) These writ petitions are frivolous and have been filed only to drag on the proceedings. Ultimately, the second respondent sought for dismissal of these writ petitions.

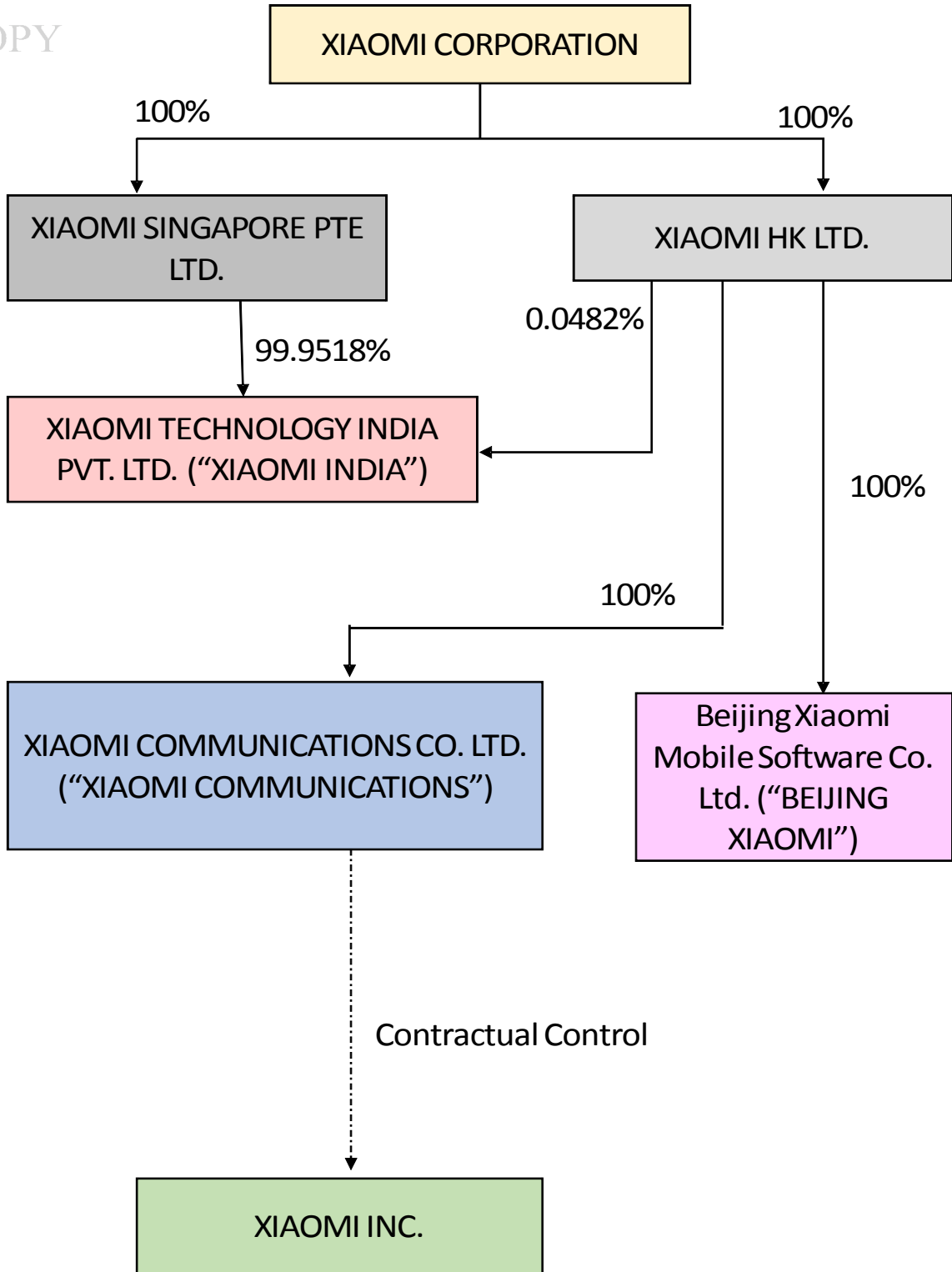
5. The learned Senior Counsel appearing on behalf of the petitioners made the following submissions :

(a) The corporate structure of the Xiaomi Group is as follows :



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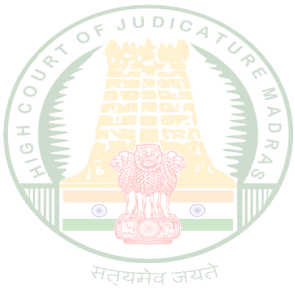
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(b) The SULA dated 27.10.2010 was entered into between the said M/s.Qualcomm Incorporated (a Delaware Corporation) and one M/s.Xiaomi Inc. (a company organized under the laws of the People's Republic of China) so as to enable the said M/s.Xiaomi Inc. to obtain a licence of M/s.Qualcomm Intellectual Property to manufacture and sell the subscriber units in exchange for the licence fees and royalties. The definition of the word "**affiliates**" is provided under the SULA and the petitioner company will directly fall under this definition since it comes within the same Xiaomi Group and is an indirect subsidiary.

(c) He pointed out to the assignment and amendment of the SULA dated 16.10.2023 entered into among the said M/s.Qualcomm Incorporated, one M/s.Xiaomi Technology Co.Ltd., the said M/s.Xiaomi Communications Co.Ltd. and one M/s.Xiaomi Corporation. By virtue of this agreement, the said M/s.Qualcomm Incorporated consented for the assignment of the licence agreement to the said M/s.Xiaomi Communications Co.Ltd. subject to various terms and conditions of this agreement.

(d) Thereafter, another assignment and amendment of the SULA dated 01.4.2015 was entered into among the said M/s.Qualcomm Incorporated, the said M/s.Xiaomi Communications Co.Ltd., and the

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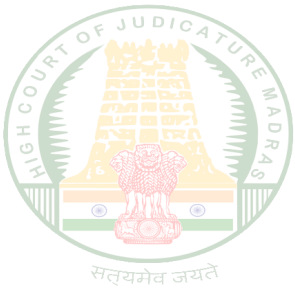
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said M/s.Xiaomi Corporation. By virtue of this agreement, the said M/s.Qualcomm Incorporated consented for further assignment of the licence agreement to the said M/s.Xiaomi Corporation subject to the terms and conditions of the agreement.

(e) In the meantime, the petitioner company was incorporated with effect from 07.10.2014 with its registered office at Bengaluru, Karnataka State, India. By a notice of sub-licence grant dated 01.7.2015, the said M/s.Qualcomm Incorporated consented for the grant of the sub-licence under the licence agreement to the petitioner company. Thus, the petitioner company became the sub-licensee and was entitled to carry on the business of procurement, supply and distribution of Xiaomi branded products in India. As per this agreement, the petitioners were bound to pay the royalty to the said M/s.Qualcomm Incorporated since it was providing the technology, which is governed by the Standard Essential Patents (SEPs). These patents are essential for the implementation of a particular industry standard such as those used in telecommunications, electronics and other technology sectors.

(f) When a patent covers a particular component/element/
device/method corresponding to a technical specification for a

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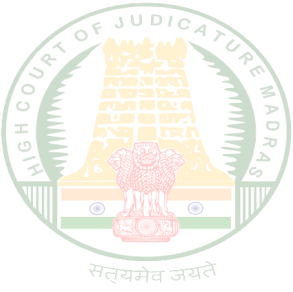
technology that forms part of a standard, such as when a patent is regarded as an SEP for such a standard, the licensee, who utilizes the same, has a royalty obligation.

(g) The MPLA-1, the MPLA-2 and the letter dated 18.5.2018 were relied upon and by virtue of the same, the petitioners were bound to pay the royalty to the said M/s.Qualcomm Incorporated and a total sum of Rs.4,450.21 Crores was paid as royalty through the authorized dealers.

(h) It is also brought to the notice of this Court the MSA dated 19.11.2010, the assignment and assumption agreement of Master Software Agreement dated 01.10.2012, the assignment and assumption agreement of Master Software Agreement dated 13.12.2013 in favour of the said M/s.Xiaomi Communications Co.Ltd. and the amendment to the Master Software Agreement dated 01.8.2016 entered into among the said M/s.Qualcomm Technologies Inc., the said M/s.Xiaomi Communications Co.Ltd. and the petitioner company.

(i) The further royalty of Rs.223.73 Crores was paid to the said M/s.Qualcomm Technologies Inc., in this regard. Apart from that, there is an agreement called as the LRAA dated 01.12.2017 entered into

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between the said M/s.Beijing Xiaomi Mobile Software Company Limited and the petitioner company and towards the same, the petitioners paid a sum of Rs.877.31 Crores.

(j) In the light of the above submissions, the learned Senior Counsel questioned the very complaint given by the second respondent under Section 16(3) of the FEMA, the show cause notice that was issued under Rule 4(1) of the FEMA Rules and also the opinion formed by the first respondent under Rule 4(3) of the FEMA Rules.

(k) The petitioners made repeated requests for the inspection of records of investigation and access to the relied upon documents (RUDs). The first respondent, without supplying the RUDs, proceeded to form an ex parte opinion under Rule 4(3) of the FEMA Rules. On 07.10.2024, the petitioners filed three applications before the first respondent for inspection of the entire record of investigation, for a direction to the second respondent to provide the copies of certain specified documents to the petitioners and for a direction to the other noticees to provide a copy of their reply given by them to the show cause notice and the documents submitted by them.



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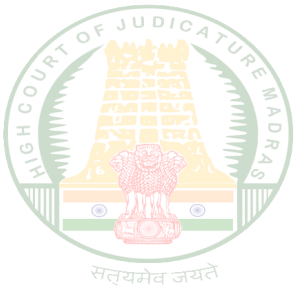
(l) The first respondent allowed two of the applications and directed the second respondent to facilitate inspection of the entire record of investigation and also directed that the specified documents sought for by the petitioners could be collected during inspection. However, no decision was taken regarding the copies of the reply given by the other noticees to the show cause notice and the documents submitted by them.

(m) When the authorized representative was present in the Zonal Office of the second respondent, he found that there were missing pages and that the specified documents were not made available citing administrative reasons. Even thereafter, several follow up correspondence were made. But, no answer was forthcoming.

6. After pointing out to the above facts, the learned Senior Counsel appearing on behalf of the petitioners made the following legal submissions :

- The payment made is a current account transaction as defined under Section 2(j) read with Section 5 of the FEMA.
- The royalty was paid by the petitioners to the Qualcomm entities and the said M/s.Beijing Xiaomi Mobile Software Company

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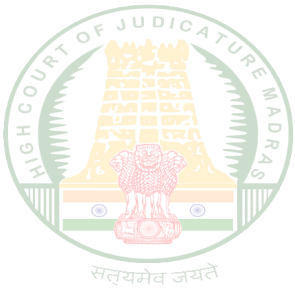
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Limited for the use of technology/IPR in the normal course of its business for selling mobile phones in India.

- The invoices were raised by the Qualcomm Entities and the said M/s.Beijing Xiaomi Mobile Software Company Limited on the petitioner company and the payment was made directly to them through the authorized dealer banks. In view of the same, the permission as contemplated under Section 3 of the FEMA will not apply and the petitioners will fall under Section 5 of the FEMA read with the terms of Paragraph 3 of the Circular of the RBI read with Paragraph 4.9 of the RBI Master Directions whereby such royalty payment will be covered under 'automatic route'.
- The respondents exceeded in their jurisdiction by initiating a frivolous litigation, which misled the terms of the royalty agreement and it is outside the scope of powers vested with them under the FEMA. In the complaint, there is no clarity as to the actual contravention made since the second respondent was not sure of the allegations being made against the petitioners and conducted the investigation in haste.
- It is not the prerogative of the second respondent to determine the validity of the contracts or make assertions regarding the

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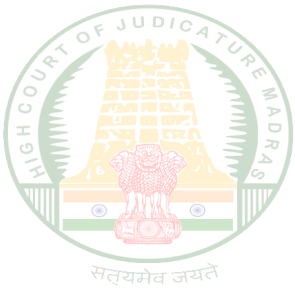
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non payment of taxes and both of them are not the subject matters within the jurisdiction of the second respondent under the FEMA. In short, the second respondent is incompetent to adjudicate or opine on the contractual rights under the Patent Law. The Authority does not have the domain to re-write the agreements, which have been entered into by the petitioner company with the other parties on the basis of commercial expediencies.

- The second respondent failed to see that the mobile phones sold by the petitioner company use SEPs/technology of the Qualcomm Entities and the said M/s.Beijing Xiaomi Mobile Software Company Limited. The petitioners made payments towards royalty and there is no complaint of any double payment of royalty. The royalty charged from the petitioners is on FRAND and is not excessive. Such payments were made through the authorized dealers and there is no loss of foreign exchange on account of payment of royalty by the petitioner company. In view of the same, the very complaint of the second respondent is liable to be quashed.
- If the petitioner company had not paid the royalty, it would have

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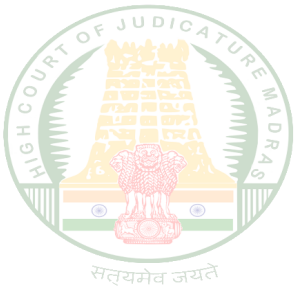


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resulted in infringement of the provisions of the Patent Act and such a payment is liable to be made for a seller of imported mobile phones in India for the SEPs. To substantiate this submission, reliance is placed on the judgment of the Delhi High Court in the case of **LAVA International Ltd. Vs. Telefonaktiebolaget LM Ericsson [reported in 2024 SCC OnLine Delhi 2497]**.

- The opinion formed by the first respondent under Rule 4(3) of the FEMA Rules suffers from illegality since the first respondent has proceeded on a fundamental misconception of law. To substantiate this submission, reliance is placed on the judgment of the Hon'ble Apex Court in the case of **Amarendra Kumar Pandey Vs. Union of India [reported in 2022 SCC OnLine SC 881]**.
- There is no alternative remedy available to the petitioners since the formation of opinion under Rule 4(3) of the FEMA Rules is not appealable under Section 19 of the FEMA and therefore, the above writ petitions are maintainable.
- A composite show cause notice has been issued since it dealt with the inquiry to be held and the penalty to be imposed and

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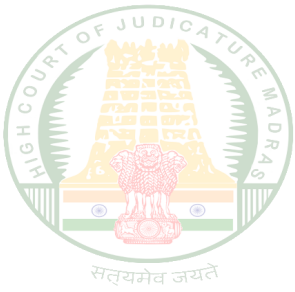
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also sought the seized amount to be confiscated. This would show that the show cause notice was issued with a pre-conceived mind and it is bad in law. To substantiate this submission, reliance is placed on the decision of the Gauhati High Court in the case of ***Sunita Agarwal Vs. SEBI [reported in 2022 SCC OnLine Gauhati 2325]***.

- The show cause notice also circumvent the two step process mandated by law and confirmed by the Hon'ble Apex Court in the case of ***Natwar Singh Vs. Director of Enforcement [reported in 2010 (13) SCC 255]***.
- A Statutory Authority can only act in the manner prescribed by the Statute and cannot go beyond its ambit. To substantiate this submission, reliance is placed on the decision judgment of the Apex Court in the case of ***L.Hirday Narain Vs. ITO [reported in 1970 (2) SCC 355]***.
- The opinion arrived at by the first respondent would show the non application of mind without considering the objections raised by the petitioners and it is in gross violation of the principles of natural justice. To substantiate this submission, reliance is placed upon the First Bench judgment of the Bombay High Court



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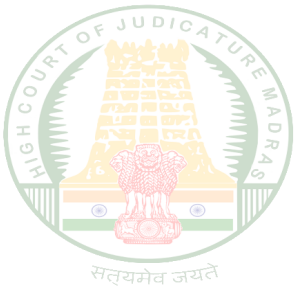


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in the case of ***Shashank Vyankatesh Manohar Vs. Union of India [reported in 2013 SCC OnLine Bombay 987 : 2014 (1) Maharashtra LJ 838].***

- The burden of proof to demonstrate the contravention under the FEMA is on the second respondent. However, this burden has not been discharged by the second respondent. Since this onus has not been satisfied, the very complaint itself is bad in law and Section 42 of the FEMA is not satisfied in so far as the proceedings against the Executive of the company is concerned.
- The proceedings initiated by the second respondent is vitiated by bias since he is under a pre-conceived notion that the petitioners have contravened the provisions of the FEMA only based on his interpretation and understanding of the various agreements entered into by the petitioner company with the other parties.
- The petitioners have the right to inspect the entire record of investigation in order to assess both the inculpatory and exculpatory documents whereas the second respondent has cherry picked selective documents and handed over to the petitioners. This is in violation of the judgment of the Hon'ble Apex Court in the case of ***Manish Sisodia Vs. Directorate of***

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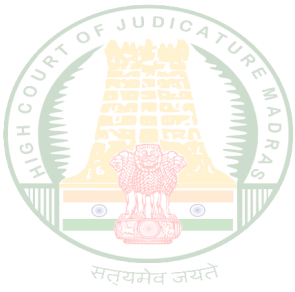
Enforcement [reported in 2024 SCC OnLine SC 1920].

- There were several missing pages in the record of investigation and the documents, which were referred to in the complaint, have not been made part of the RUDs. That apart, the petitioners are also entitled to the copies of the non RUDs and most of them are missing from the files. Out of 22 documents that were sought for by the petitioners, only 8 documents were furnished. Hence, the petitioners were not in a position to effectively defend themselves. Reliance is placed on the Division Bench judgment of the Bombay High Court in the case of **Milind Patel Vs. Union of India [reported in 2024 SCC OnLine Bombay 745]**.

7. Per contra, the learned Additional Solicitor General appearing on behalf of the respondents made the following submissions :

- The above case is now at the stage of forming the opinion under Rule 4(3) of the FEMA Rules and the first respondent applied his mind on the relevant documents and the stand taken by the petitioners and had given a prima facie opinion. Such opinion cannot become a subject matter of challenge in a writ petition.

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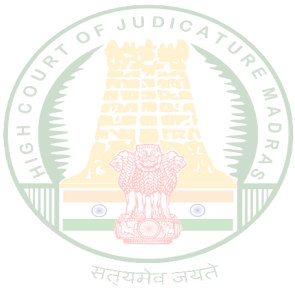
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To substantiate this submission, he relied upon the order passed by **V.Ramasubramanian,J (as he then was)** in the case of **Ramakrishna Setty Vs. Special Director, Directorate of Enforcement, Southern Region, Sastri Bhavan, Chennai-6 [W.P.No.20592 of 2014 dated 25.8.2014]**.

- He brought to the notice of this Court a judgment of the Division Bench of this Court in the case of **India Cements Ltd. Vs. Union of India [reported in 2018 (2) LW (Criminal) 64]**.
- Even though this Court held that the Authority is not even required to assign reasons in writing while forming the opinion, the respondents strictly followed the Circular dated 26.9.2014 that was issued after the First Bench judgment of the Bombay High Court in **Shashank Vyankatesh Manohar**, which was confirmed by the Hon'ble Apex Court by dismissing the delay condonation petition in the special leave petition filed at the instance of the Union of India vide order dated 04.7.2014.
- The entire proceedings under the FEMA and the FEMA Rules is structured in such a way that the inquiry against the noticee is yet to commence and that will start only after forming an opinion under Rule 4(3) of the FEMA Rules. At that stage, the



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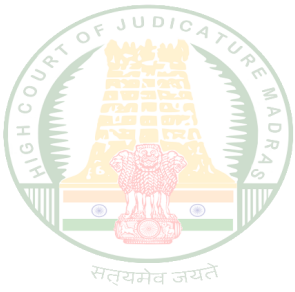


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Adjudicating Authority is required to given an opportunity to such a person to produce such documents as evidence as he may consider relevant to the inquiry. It is only at that stage, the disclosure of the reports and the evidence that are in possession of the Department will have to be furnished so as to enable the petitioners to effectively defend themselves. Without even reaching that stage, the petitioners cannot be allowed to make the submissions on merits and make this Court adorn the role of the Adjudicating Authority.

- The petitioners have sufficient alternative remedies in terms of a right of appeal under Section 19(1) of the FEMA and a further appeal is provided under Section 35 of the FEMA before this Court on questions of law. Thus, the Legislature itself has brought the High Court into the scene only at the stage of further appeal whereas the petitioners want this Court to enter the scene even at the stage of formation of opinion under Rule 4(3) of the FEMA Rules.
- It is the defence taken by the petitioners that Section 5 of the FEMA will apply and they are not covered under Sections 3 and 4 of the FEMA. This is a ground, which has to be established before

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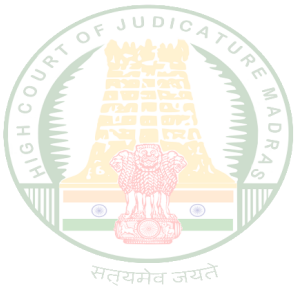
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the first respondent during inquiry and it cannot be raised in the above writ petitions. The first respondent has assigned reasons and given prima facie findings while forming the opinion on each of the issues and such formation of opinion is not final. But, it is only a beginning of the inquiry by the Adjudicating Authority. Whatever the defence that is now taken by the petitioners will have to be put forth before the first respondent and ultimately, the proceedings may be dropped or if it results in imposition of penalty, there are sufficient alternative remedies available to the petitioners.

- The letter of the said M/s.Qualcomm Incorporated to the said M/s.Xiaomi Communications Co. Ltd. and the petitioner dated 18.5.2018 is the basis, on which, the entire payment has been made by the petitioners to the said M/s.Qualcomm Incorporated and in this letter, the petitioner company has been identified only as a third party, which will be paying the royalty on behalf of one of the entities falling under the group. Therefore, such payments should have been made only after getting the prior approval under Section 3 of the FEMA.
- The FEMA is a complete Code in itself and it adequately provides



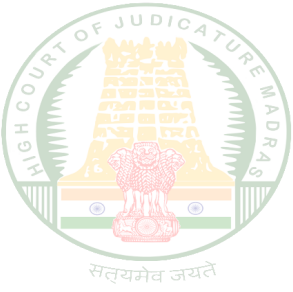
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for structuring the rights and remedies available to a person, who is aggrieved by any adjudication under the FEMA. In view of the same, this Court should not exercise its jurisdiction at the nascent stage of the proceedings. To support this submission, he relied upon the judgments of the Apex Court in the case of **Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement [reported in 2010 (4) SCC 772]** and in the case of **South Indian Bank Ltd. Vs. Naveen Mathew Philip [reported in 2023 SCC OnLine SC 435]**.

- The judgment of the Apex Court in **Amarendra Kumar Pandey**, which was relied upon on the side of the petitioners will not apply to the facts of the present case since that judgment arose out of disciplinary proceedings, which required recording of reasons while passing the order of discharge. According to the learned Additional Solicitor General, the ratio in a case has to be understood only based on the actual issue that is involved in the case based on facts. The ratio in that judgment cannot be applied in the proceedings under the FEMA where the language used under Rule 4(3) of the FEMA Rules does not contemplate assignment of reasons while forming the opinion.



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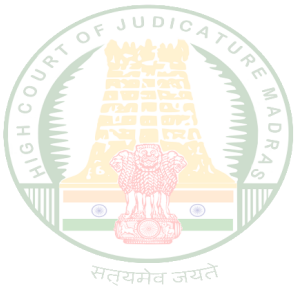


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- In so far as the documents sought for by the petitioners were concerned, that stage has not yet reached and while forming the opinion, the first respondent applies his mind only to those documents that have been relied upon by the second respondent and the copies of those documents are available with the petitioners. The question of calling for the non RUDs will arise only at the stage of defence.
- Reliance is also placed on a common judgment of the Three Judges' Bench of the Hon'ble Apex Court in the case of **Sarla Gupta Vs. Directorate of Enforcement [Criminal Appeal Nos.1622 of 2022 & 730 of 2024 dated 07.5.2025]**.
- The materials that have been collected prima facie reflected that the petitioners made huge payments on behalf of the entities outside India. That apart, the petitioners were not willing to share the accounts and kept them as a secret, which is evident from the statements recorded from the officers belonging to the authorized dealers.

8. In reply to the above submissions, the learned Senior Counsel appearing on behalf of the petitioners, made the following

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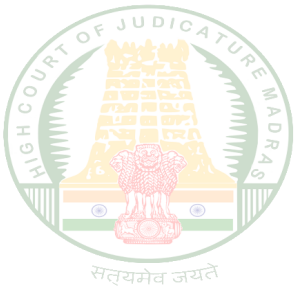
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submissions:

- The judgment of this Court to the effect that no reasons need to be assigned while arriving at an opinion pales into insignificance by virtue of the confirmation of the First Bench judgment of the Bombay High Court in the case of ***Shashank Vyankatesh Manohar***, which was also acted upon while issuing the Circular dated 26.9.2014.
- If such opinion is backed up with reasoning, automatically it can be tested if it falls foul of the guidelines issued by the Apex Court in the case of ***Amarendra Kumar Pandey***.
- Except for the opportunity of personal hearing, all the other requirements have to be satisfied even till the stage of forming an opinion under Rule 4(3) of the FEMA Rules. Even though the petitioner company was called as a third party in the letter dated 18.5.2018, there is a specific term used namely '***affiliate***'. The petitioner company is identified as an '***affiliate***'. The petitioner company has been referred to as a third party qua the MPLA-2 dated 01.1.2018 entered into between the said M/s.Xiaomi Communications Company Limited and the said M/s.Qualcomm Incorporated.

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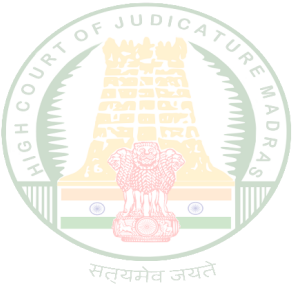
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- The non RUDs sought for by the petitioners would have to be furnished to them since, after forming the opinion, the case has reached the defence stage and therefore, the judgment of the Hon'ble Apex Court in **Sarla Gupta** will apply.

9. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

CASE HISTORY :

10. These writ petitions challenge various stages of the adjudication proceedings initiated under the FEMA against the petitioner namely M/s.Xiaomi Technology India Private Limited, a wholly-owned Indian subsidiary of the Xiaomi Group. It is alleged that the petitioners remitted royalty payments to their group entities and to the Qualcomm Entities without obtaining prior approval from the RBI, thereby contravening certain provisions of the FEMA. Pursuant to an investigation conducted by the Enforcement Directorate (ED), proceedings were commenced, which culminated in the filing of a complaint dated 02.6.2023 by the second respondent under Section 32/82



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16(3) of the FEMA before the first respondent and the issuance of a show cause notice dated 09.6.2023 by the first respondent.

11. The petitioners have assailed different stages of the adjudication proceedings through a series of writ petitions filed before this Court, specifically:

(i) the complaint dated 02.6.2023 filed by the second respondent has been challenged in W.P.Nos.16000 and 16002 of 2024;

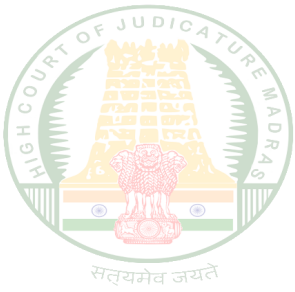
(ii) the notice of hearing dated 04.4.2024 and the formation of opinion by the first respondent under Rule 4(3) of the FEMA Rules have been challenged in W.P.Nos.15996 and 15998 of 2024;

(iii) the show cause notice dated 09.6.2023 issued by the first respondent has been challenged in W.P.Nos.15999 and 16001 of 2024; and

(iv) the order dated 10.2.2025 rejecting the petitioners' request for full disclosure of the records has been challenged in W.P.Nos.6948 and 7290 of 2025.

12. The petitioner company viz. M/s.Xiaomi Technology India

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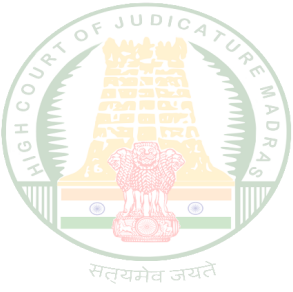
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Private Limited is a private limited company incorporated on 07.10.2014 under the Companies Act, 2013 with its registered office at Bengaluru, Karnataka State, India. It carries on the business of procurement, distribution and sale of Xiaomi-branded products within the Indian market. The petitioner company is a wholly-owned subsidiary of the said M/s.Xiaomi Singapore PTE Ltd. and the said M/s.Xiaomi HK Ltd., which are, in turn, a part of the Global Xiaomi Group, head-quartered in China.

13. The said M/s.Xiaomi Corporation, a Chinese multinational entity, is the parent company of the Xiaomi Group and holds 100% shareholding in both the said M/s.Xiaomi Singapore PTE Ltd. and the said M/s.Xiaomi HK Ltd. The petitioner is a step-down subsidiary of the said M/s.Xiaomi Corporation, with 99.9518% of its shares held by the said M/s.Xiaomi Singapore PTE Ltd. and the remaining 0.0482% held by the said M/s.Xiaomi HK Ltd. The other group entities relevant to the present proceedings include the said M/s.Xiaomi Communications Co. Ltd. and the said M/s.Beijing Xiaomi Mobile Software Company Limited, which are wholly owned companies of the said M/s.Xiaomi HK Ltd. The said M/s.Xiaomi Communications Co. Ltd. is contractually

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controlled by the said M/s.Xiaomi Inc.

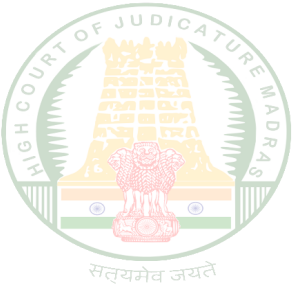
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14. It is evident from the record that even prior to the incorporation of the petitioner company, a series of commercial and licensing agreements had been executed between the entities of the Xiaomi Group and the Qualcomm Group. These agreements laid the foundational framework for the licensing of intellectual property rights and the consequent royalty payment structure that forms the subject matter of the present proceedings.

15. The SULA dated 27.10.2010 was executed between the said M/s.Qualcomm Incorporated and the said M/s.Xiaomi Inc. Under the said agreement, mutual rights were granted to use each other's intellectual properties, including by their respective affiliates, subject to certain conditions. This agreement stipulated that sub-licenses could be granted only to affiliates defined as wholly owned subsidiaries of the licensee. The said M/s.Qualcomm Incorporated was to manufacture and sell CDMA components, while the said M/s.Xiaomi Inc. provided subscriber units and components.

16. Pursuant to the execution of the SULA, the MSA dated

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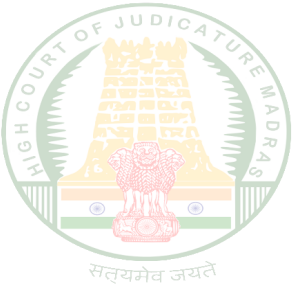
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19.11.2010 was executed between the said M/s.Qualcomm Incorporated and the said M/s.Xiaomi Inc., governing the development, manufacture and sale of wireless subscriber equipment. Thereafter, by way of an Assignment and Assumption Agreement dated 01.10.2012, the said M/s.Qualcomm Incorporated assigned its rights and obligations under the MSA to the said M/s.Qualcomm Technologies Inc., which is a wholly owned subsidiary, thereby effecting a transfer of the contractual relationship to the said M/s.Qualcomm Technologies Inc.

17. Subsequently, the rights under the SULA were further assigned by the said Xiaomi Technology Co.Ltd. to the said M/s.Xiaomi Communications Co.Ltd. through an Assignment and Amendment Agreement dated 16.10.2013. The said agreement was executed among the said M/s.Qualcomm Incorporated, the said M/s.Xiaomi Technology Co. Ltd., the said M/s.Xiaomi Communications Co.Ltd. and the said M/s.Xiaomi Corporation. Through this agreement, the said M/s.Xiaomi Corporation was recognised as the parent entity of the said M/s.Xiaomi Communications Co.Ltd. and its shareholders.

18. On 13.12.2013, a further Assignment and Assumption

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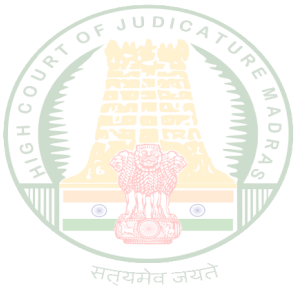
Agreement was executed among the said M/s.Qualcomm Technologies Inc., one M/s.Qualcomm CDMA Technologies Asia-Pacific Pte Ltd and one M/s.Qualcomm Innovation Center Inc., which were collectively called as M/s.Qualcomm along with the said M/s.Beijing Xiaomi Mobile Software Company Limited and the said M/s.Xiaomi Communications Co.Ltd. Under this agreement, the contractual rights held by the said M/s.Beijing Xiaomi Technology Company Limited were formally assigned to the said M/s.Xiaomi Communications Co.Ltd.

19. The SULA was further amended by an agreement dated 01.4.2015, executed between the said M/s.Qualcomm Incorporated, the said M/s.Xiaomi Communications Co.Ltd. and the said M/s.Xiaomi Corporation. By virtue of this amendment, the parties to the agreements acceded that the rights and obligations under the SULA would henceforth vest with the said M/s.Xiaomi Corporation.

20. Following the incorporation of the petitioner company, two categories of royalty payments came to be effected:

- (i) the first is to various Qualcomm Group Entities; and
- (ii) the second is to the said M/s.Beijing Xiaomi Mobile Software

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Company Limited.

These payments were made pursuant to separate sets of licensing agreements executed with the respective entities.

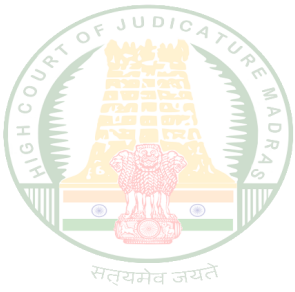
Category I – Payments to the Qualcomm Entities:

21. The agreements pertaining to the first category of payments made to the Qualcomm Entities are as under:

a) A Notice of Sub-license Grant dated 01.7.2015 was issued by the said M/s.Xiaomi Corporation notifying the said M/s.Qualcomm Incorporated whereby the petitioner company was recognised as a wholly owned subsidiary and granted a sublicense under the terms of the SULA. This document recorded that the petitioner company, as an affiliate of the said M/s.Xiaomi Corporation, was authorised to utilise the intellectual property licensed under the SULA framework.

b) An amendment to the MSA was executed on 01.8.2016 among the said M/s.Qualcomm Technologies Inc., the said M/s.Xiaomi Communications Co.Ltd. and the petitioner company. By this amendment, the petitioner company was formally included as a sub-licensee under the MSA and assumed joint and several liability along with the other parties for obligations arising thereunder.

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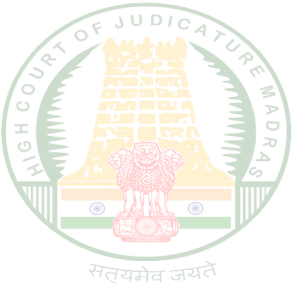
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c) The MPLA-1 dated 01.10.2017 was entered into among the said M/s.Qualcomm Incorporated, the said M/s.Xiaomi Corporation and the said M/s.Xiaomi Communications Co.Ltd. This agreement conferred upon the licensees the right to use the Qualcomm's intellectual property in connection with specific categories of products, including CDMA and LTE Semi Knockdown Kits ("SKDs") in consideration of royalty payments.

d) The MPLA-2 was executed on 01.1.2018 between the said M/s.Qualcomm Incorporated and the said M/s.Xiaomi Communications Co.Ltd. This agreement extended sublicensing rights to the licensee and its affiliates, including the petitioner company in respect of certain covered products. It was subsequently amended on 01.3.2019 to include branded CDMA and LTE single-mode complete terminals and further amended on 01.4.2020 to incorporate new definitions.

(e) It is also relevant to note that by way of a communication dated 18.5.2018, the said M/s.Qualcomm Incorporated expressly instructed the petitioner company to directly remit the royalty payments on behalf of the said M/s.Xiaomi Communications Co.Ltd. due under the SULA framework to them. This appears to be the only contemporaneous document on record wherein such an instruction was

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formally issued to the petitioner company .

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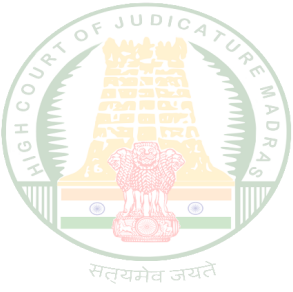
Category II – Payments to the said M/s.Beijing Xiaomi

Mobile Software Company Limited :

22. (a) The second category of royalty payments pertains to the amounts remitted by the petitioner company to the said M/s.Beijing Xiaomi Mobile Software Company Limited under the LRAA dated 01.12.2017, which was stated to have been given effect from 01.4.2017. Under the said agreement, the said M/s.Beijing Xiaomi Mobile Software Company Limited granted a license to its affiliates, including the petitioner company to utilise the proprietary software- such as the MIUI operating system-as well as the proprietary hardware technologies developed by it, in return for the agreed royalty payments/license fees.

(b) The LRAA was subsequently amended on 01.4.2020. In the amended agreement, it was recorded that both the said M/s.Beijing Xiaomi Mobile Software Company Limited and the petitioner company were 100% owned subsidiaries of the said M/s.Xiaomi Corporation. The revised terms prescribed a license fee at the rate of 2% of the revenue payable in respect of the use of licensed hardware and

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software technologies by the petitioner company.

23. Based on the agreements referred to above, the petitioner company effected royalty payments to three separate entities towards the use of the licensed intellectual property, the SEPs and the proprietary software embedded in mobile handsets sold within India. The aggregate amount remitted under these arrangements has been arrived at Rs.5,551,27,15,824/-, with the following break-up:

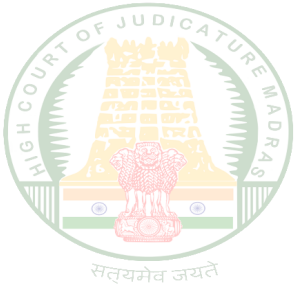
I. Rs.4,450,21,94,615/- to the said M/s.Qualcomm Incorporated;

II. Rs.223,73,79,727/- to the said M/s.Qualcomm Technologies Inc.; and

III. Rs.877,31,41,481/- to the said M/s.Beijing Xiaomi Mobile Software Company Limited.

24. In early 2022, the second respondent initiated an investigation into the petitioner company's foreign outward remittances. Pursuant to the said investigation, a provisional seizure order dated 29.4.2022 was issued under Section 37A of the FEMA, whereby an amount of Rs.5,551.27 Crores corresponding to the

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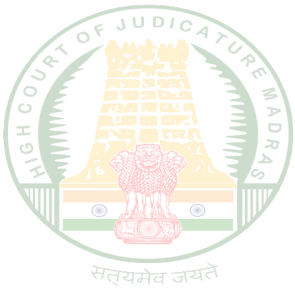
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royalty payments made during the period from 2016 to 2022 was provisionally attached. This seizure was thereafter confirmed by the Competent Authority under the FEMA by an order dated 19.9.2022. The said confirmation order is presently under challenge before the High Court of Karnataka.

25. On 02.6.2023, the second respondent filed a complaint before the first respondent under Section 16(3) of the FEMA alleging that the petitioner company had contravened the provisions of Sections 3(b), 4, and 42(1) of the FEMA. The complaint also relied on Paragraph 3 of the AP (Dir Series) Circular No.52 dated 13.5.2010 read with Paragraph 4.9 of the RBI FED Master Direction No.8/2015-16 dated 01.1.2016. Pursuant thereto, a show cause notice dated 09.6.2023 was issued by the first respondent under Rule 4 of the FEMA Rules calling upon the petitioners to show cause on or before 09.7.2023 as to:

- I. why an inquiry should not be held under the FEMA Rules;
- II. why penalty under Section 13(1) of THE FEMA should not be imposed; and
- III. why the seized amount should not be confiscated

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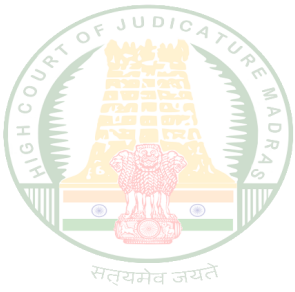
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under Section 13(1-A) of the FEMA.

26. The petitioners received the copies of the complaint, the show cause notice and the set of RUDs on 15.6.2023. It is the case of the petitioners that several documents referred to in the complaint were not furnished and that various materials submitted by the petitioners during the course of the investigation were neither included in the RUDs nor considered in the formation of the opinion against the petitioners. Between June and September 2023, the petitioners were stated to have made multiple representations seeking for inspection and for the issuance of certified copies of the entire record of investigation, including the non-RUDs. A request was also made for a personal hearing to explain the relevance and necessity of the documents sought for.

27. While the request of the petitioners for inspection and disclosure is still pending, the first respondent, by order dated 11.9.2023, proceeded to form an opinion under Rule 4(3) of the FEMA Rules and fixed a personal hearing on 06.10.2023. On 20.9.2023, the petitioners were granted access to certain documents. However,

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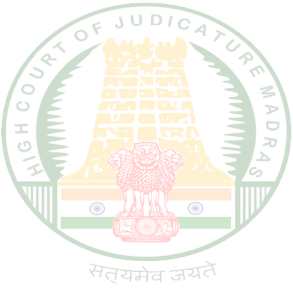
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according to the petitioners, several crucial records were continued to be withheld. A Review Petition was filed on 26.9.2023 wherein the petitioners raised preliminary objections under Rule 4(1) of the FEMA Rules questioning the maintainability of the complaint filed by the second respondent and the validity of the opinion formed by the first respondent in the absence of full disclosure of the documents on the ground of violation of the principles of natural justice. These objections were reiterated during the personal hearing held on 06.10.2023. But, the Review Petition was dismissed by order dated 24.11.2023 by the Special Director (Adjudicating Authority), ED, Government of India, Chennai-6 and a further hearing was scheduled for 22.12.2023.

28. Aggrieved by the formation of opinion and the denial of complete disclosure of documents, the petitioner company filed **W.P.No.35654 of 2023 etc. cases.** By a common order dated **23.1.2024**, a learned Single Judge of this Court directed the first respondent to form a fresh opinion under Rule 4(3) of the FEMA Rules after duly considering the objections raised by the petitioner company.

29. Aggrieved by that, the petitioner company preferred **W.A.Nos.588 to 591 of 2024, 756 of 2024 and 785 to 787 of**

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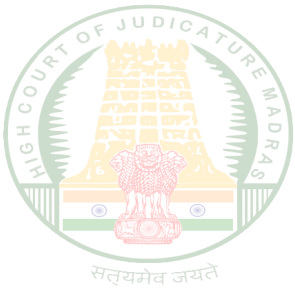
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2024 challenging the common order passed by the learned Single Judge. By separate judgments dated **22.2.2024, 05.3.2024 and 08.3.2024** respectively, the Hon'ble First Bench of this Court set aside the earlier opinion formed by the first respondent under Rule 4(3) of the FEMA Rules and directed that a fresh and independent opinion should be arrived at without being influenced by the previous exercise. This Court further held that the earlier opinion was non est in the eye of law.

30. In the interregnum, the petitioners submitted detailed preliminary objections on 21.2.2024 to the show cause notice. In purported compliance with the directions issued by the Hon'ble First Bench of this Court, the first respondent is stated to have formed a fresh opinion dated 04.4.2024. However, this opinion was not issued as a formal order and was merely conveyed to the petitioner company via email dated 18.4.2024 bearing the subject line as "Xiaomi Opinion" without disclosing the reasons or basis for the decision.

31. By letter dated 20.4.2024, the petitioners sent a reply to the first respondent through an advocate seeking a copy of the formal

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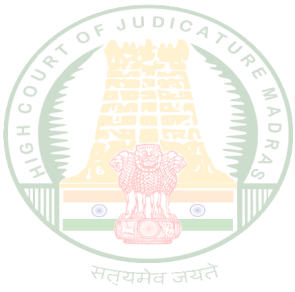
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order recording the opinion along with reasons after making a reference to Technical Circular No.11/2014. The first respondent, vide email dated 25.4.2024, responded stating that the opinion had been completed and formed part of the note sheet of adjudication.

32. During the personal hearing held on 07.10.2024, the petitioners reiterated their request for inspection of the entire record of investigation and for the issuance of certified copies of the complete case records, including documents not forming part of the RUDs. The first respondent is stated to have directed the second respondent to facilitate inspection. However, during the inspection conducted on 16.10.2024, the petitioner's representatives found that the case record made available was substantially incomplete. Despite issuance of repeated follow-up letters, full disclosure of the documents sought for including the certified copies was not furnished by the respondents.

33. Ultimately, on 10.2.2025, the first respondent rejected the petitioners' request for disclosure of the additional documents stating that on the basis of the report from the second respondent, only the copies of the complaint and the RUDs would be furnished. The

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discretion available under Rule 4(6) of the FEMA Rules to direct production of additional documents was not exercised. On 11.2.2025, the petitioners were granted access to only 8 out of the 22 RUDs referred to in the complaint. The further written request dated 14.2.2025 seeking disclosure of the remaining documents did not elicit any response from the respondents. It is in this backdrop that the present writ petitions have been instituted.

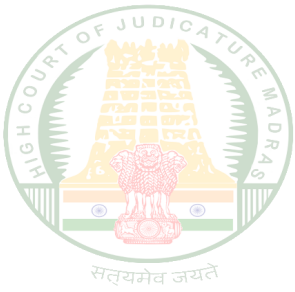
ISSUES :

34. The following issues arise for consideration in these writ petitions:

"(1) Whether the complaint of the second respondent dated 02.6.2023 under Section 16(3) of the FEMA and the show cause notice dated 09.6.2023 issued by the first respondent under Rule 4(1) of the FEMA Rules suffer from any illegality and are liable to be interfered by this Court ?

(2) Whether the formation of opinion under Rule 4(3) of the FEMA Rules by the first respondent suffers from any illegality and is liable to be interfered by this Court ?

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(3) Whether the entire adjudication proceedings till the stage of formation of opinion under Rule 4(3) of the FEMA Rules were as a result of improper understanding of the various contractual agreements entered into by the petitioner company with other parties ? and whether the respondents proceeded further on a fundamental misconception of law? and

(4) Whether the non furnishing/rejection of the request of the petitioners for full disclosure of the records has seriously prejudiced the rights of the petitioners in effectively defending themselves during the adjudication proceedings till the stage of formation of opinion?"

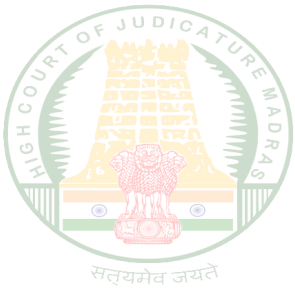
DISCUSSIONS :

Issue No.1 :

35. Before this Court ventures to deal with the issues that have been framed for consideration, it will be apposite to take a close look at the manner, in which, the FEMA and the FEMA Rules are structured.

36. The Hon'ble Apex Court, in the case of **Natwar Singh**, went into this aspect and ultimately held as follows :

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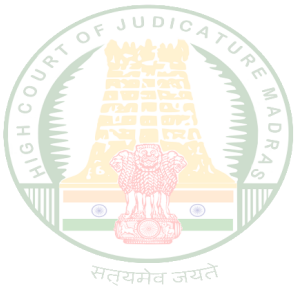
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"22. That a bare reading of the relevant provisions of the Act and the Rules makes it abundantly clear that the manner, method and procedure of adjudication are completely structured by the statute and the Rules. The Authority is bound to follow the prescribed procedure under the statute and the Rules and is not free and entitled to devise its own procedure for making inquiry while adjudicating under Section 13 of the Act since it is under legislative mandate to undertake adjudication and hold inquiry in the prescribed manner after giving the person alleged to have committed contravention against whom a complaint has been made, a reasonable opportunity of being heard for the purpose of imposing any penalty. The discretion of the Authority is so well structured by the statute and the Rules.

23. The Rules do not provide and empower the Adjudicating Authority to straight away make any inquiry into allegations of contravention against any person against whom a complaint has been received by it. Rule 4 of the Rules mandates that for the purpose of adjudication whether any person has committed any contravention, the Adjudicating Authority shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. It is clear



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from a bare reading of the rule that show cause notice to be so issued is not for the purposes of making any adjudication into alleged contravention but only for the purpose of deciding whether an inquiry should be held against him or not. Every such notice is required to indicate the nature of contravention alleged to have been committed by the person concerned. That after taking the cause, if any, shown by such person, the Adjudicating Authority is required to form an opinion as to whether an inquiry is required to be held into the allegations of contravention. It is only then the real and substantial inquiry into allegations of contravention begins.

24. While holding inquiry into allegations of contravention, every Adjudicating Authority shall have the powers of a Civil Court under the Code of Civil Procedure in respect of the matters, namely,

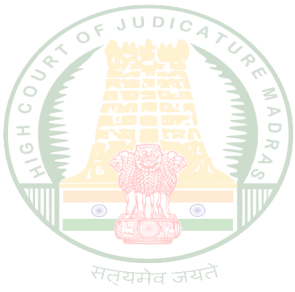
(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record, document or copy of such record or document from any office;

(e) issuing commissions for examination of



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witnesses or documents etc.

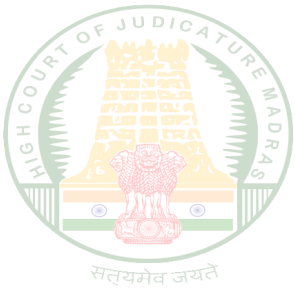
That all proceedings before the Adjudicating Authority shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code; shall be deemed to be a Civil Court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973."

37. It will also be relevant to take note of the judgment of the Hon'ble Apex Court in the case of **Raj Kumar Shivhare** wherein, at paragraph 15 of the judgment, after taking note of the provisions of the FEMA and the FEMA Rules, it was concluded that it provides for a complete network of provisions adequately structuring the rights and remedies available to a person, who is aggrieved by any adjudication under the FEMA.

38. Useful reference can also be made to the judgment of the Gauhati High Court in the case of **Sunita Agarwal** wherein the relevant portions read thus :

"106. Rule 4(1) of the FEMA Rules, 2000 provides that for the purpose of adjudicating under Section 13 of the Foreign Exchange Regulation Act, 1973, the Adjudicating Authority shall issue notice

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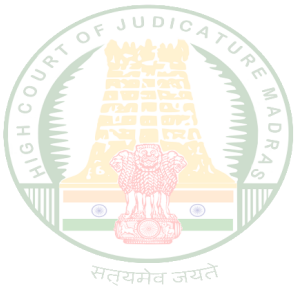
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to such person requiring him to show cause within such period as to why an enquiry should not be held against him. Rule 4(3) of the FEMA Rules, 2000 provides that after considering the cause if any shown by such person, the Adjudicating Authority is of the opinion that an enquiry should be held, a notice fixing a date for appearance of that person, either personally or through lawyer or authorised chartered accountant, be issued.

107. While interpreting of the provisions of Rule 4(1) and 4(3) of the FEMA Rules, 2000, the Supreme Court in Natwar Singh v. Directorate of Enforcement, [(2010) 13 SCC 255] arrived at its conclusion in paragraph 23 of its judgment that the Rules do not provide and empower the adjudicating officer to straight away make an enquiry into the allegations of contravention in respect of any person, against whom a complaint had been received. The Supreme Court was of the view that for the purpose of adjudication whether any person has committed any contravention, the adjudicating officer shall issue notice requiring him to show cause as to why an enquiry should not be held and the notice to be issued is not for the purposes of making any adjudication into the alleged contravention, but only for the purpose of deciding whether an enquiry should be held. After taking the cause shown by such person the adjudicating



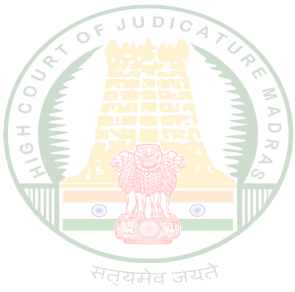
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officer is required to form an opinion as to whether any enquiry is required to be held and it is only then the real and substantial enquiry into the allegations of contravention begins. Paragraph 23 of Natwar Singh v. Directorate of Enforcement [(2010) 13 SCC 255] is extracted below (page 313 of 160 Comp Cas):

"The Rules do not provide and empower the Adjudicating Authority to straight away make any inquiry into allegations of contravention against any person against whom a complaint has been received by it. Rule 4 of the Rules mandates that for the purpose of adjudication whether any person has committed any contravention, the Adjudicating Authority shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. It is clear from a bare reading of the rule that show-cause notice to be so issued is not for the purpose of making any adjudication into alleged contravention but only for the purpose of deciding whether an inquiry should be held against him or not. Every such notice is required to indicate the nature of contravention alleged to have been committed by the person concerned. That after taking the cause, if any, shown by such person, the Adjudicating Authority is required to form an opinion as to whether any inquiry is required to be held into the allegations of



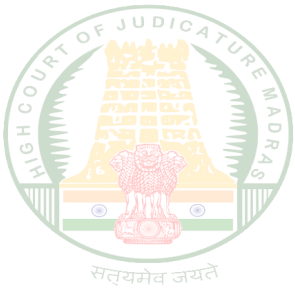
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contravention. It is only then the real and substantial inquiry into allegations of contravention begins.'

108. While examining the provisions of Rule 4(1) of the PR-1995, the Supreme Court in T.Takano v. Securities and Exchange Board of India, reported in (2022) 232 Comp Cas 136 (SC); 2022 SCC OnLine SC 210, had in paragraph 34 referred to the proposition laid down in paragraph 23 of Natwar Singh v. Directorate of Enforcement, [(2010) 13 SCC 255]. In paragraph 35, the conclusion arrived was that the notice under Rule 4 (1) of the PR-1995 is not for the purpose of making an adjudication into the alleged contravention, but only for deciding whether an enquiry must be conducted. It was also held that the stage when an enquiry is held is subsequent to the initial stage contemplated by Rule 4(1). In paragraph 36 of T.Takano v. Securities and Exchange Board of India, reported in (2022) 232 Comp Cas 136 (SC); 2022 SCC OnLine SC 210, it had been held that the Court distinguishes between the initial stage under Rule 4(1) which is only for the purpose of deciding whether an enquiry has to be held and the subsequent stage of adjudication into the allegations of contravention."



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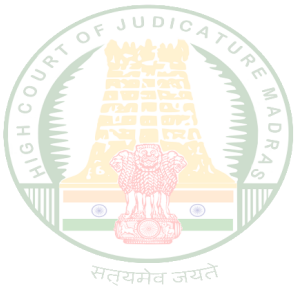
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39. The above judgment lucidly explains the scope of inquiry into the allegations of contravention against any person, against whom, a complaint has been received, at every stage, till an opinion is formed under Rule 4(3) of the FEMA Rules. The stage under Rule 4(1) of the FEMA Rules is structured only for deciding as to whether an inquiry must be conducted. This is not the stage for the purpose of making an adjudication into the alleged contravention and that stage is reached subsequently while forming an opinion under Rule 4(3) of the FEMA Rules.

40. The above said proposition of law was considered elaborately by the Hon'ble Apex Court in the case of ***T.Takano Vs. SEBI [reported in 2022 SCC OnLine SC 210]***.

41. At the stage of Rule 4(1) of the FEMA Rules, the Authority cannot embark into the actual adjudication being made, which ultimately results in imposition of penalties prescribed under the FEMA. Thus, broadly, three stages of inquiry can be deduced from Rule 4 of the FEMA Rules. The first stage under Rule 4(1) of the FEMA Rules is for the purpose of finding out as to whether an inquiry should be held

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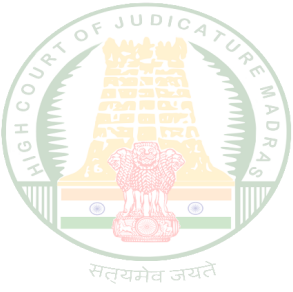
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and the Authority will not embark into an actual adjudication. The second stage is where the Adjudicating Authority is required to form an opinion after considering the cause shown and issue a notice fixing the date for appearance. On appearance, the Adjudicating Authority must explain to the noticee or the legal practitioner appearing for the noticee the alleged contravention of the provisions of the FEMA and the FEMA Rules. This is the stage under Rule 4(4) of the FEMA Rules. Thereafter, the Adjudicating Authority, after providing sufficient opportunity under Sub-Rules (5) and (6) of Rule 4 of the FEMA Rules, must proceed to embark into the actual adjudication, which will ultimately lead to imposition of any of the penalties provided under the FEMA. This is the stage under Rule 4(8) of the FEMA Rules read with Section 16(6) of the FEMA.

42. In the case in hand, the first respondent - Adjudicating Authority is at the stage of formation of opinion under Rule 4(3) of the FEMA Rules.

43. The petitioners have not only challenged the opinion formed by the first respondent under Rule 4(3) of the FEMA Rules, but also the initial complaint of the second respondent dated 02.6.2023 filed before

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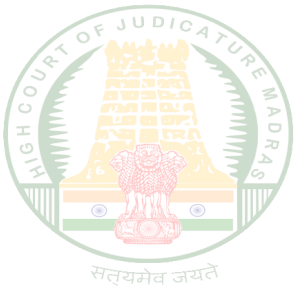


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the first respondent and the show cause notice dated 09.6.2023 issued by the first respondent.

44. The learned Senior Counsel appearing on behalf of the petitioners has questioned the complaint made by the second respondent under Section 16(3) of the FEMA dated 02.6.2023 on the ground that the complaint itself is misconceived owing to a skewed understanding of the commercial agreements entered into by the petitioner with the other companies. The show cause notice dated 09.6.2023 issued by the first respondent has also been challenged on the ground that it went beyond the scope of Rule 4(1) of the FEMA Rules, which confines itself only to decide as to whether an inquiry is to be held. According to him, the first respondent crossed that boundary and also called upon the petitioners to show cause as to why penalty should not be imposed under Section 13(1) of the FEMA.



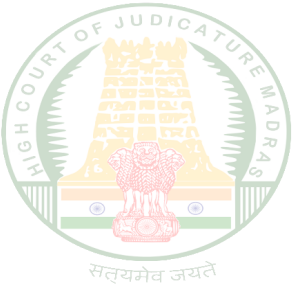
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45 In the considered view of this Court, it is not necessary for this Court to now venture at this stage into the legality or otherwise of both the complaint of the second respondent as well as the show cause notice issued by the first respondent since the petitioner company is now before this Court for the second time after the stage of formation of opinion by the first respondent under Rule 4(3) of the FEMA Rules.

46. In the first round, the petitioner company filed **W.P.Nos. 35654 of 2023 etc. cases** questioning the show cause notice issued under Rule 4(1) of the FEMA Rules and also the opinion formed under Rule 4(3) of the FEMA Rules. When the earlier writ petitions were disposed of on **23.1.2024** by a common order, this Court did not go into the legality of the show cause notice issued under Rule 4(1) of the FEMA Rules. Only in so far as the formation of opinion is concerned, this Court directed the first respondent to come up with the further opinion based on the further documents relied upon by the petitioner company. At the instance of the petitioner company, the First Bench of this Court, in the writ appeals filed against the said common order dated **23.1.2024** in **W.A.Nos.588 to 591 of 2024, W.A.Nos.756 of 2024 and W.A.Nos.785 to 787 of 2024 vide separate judgments**

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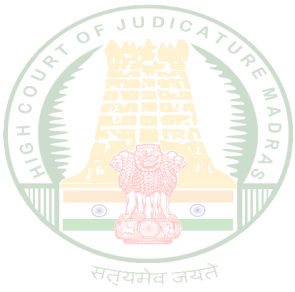
dated 22.2.2024, 05.3.2024 and 08.3.2024 respectively, did not go into the legality of the show cause notice and they confined themselves only to the stage of formation of opinion under Rule 4(3) of the FEMA Rules, set aside the common order dated 23.1.2024 passed by the learned Single Judge and directed the first respondent to form a fresh opinion based on the explanation submitted by the petitioner company.

47. In the light of the above, this Court is not inclined to go into the challenge made by the petitioners against both the complaint filed by the second respondent as well as the show cause notice issued by the first respondent at this stage. Considering the earlier orders passed by this Court, it will suffice to go into the legality or otherwise of the opinion formed under Rule 4(3) of the FEMA Rules. ***The first issue is answered accordingly.***

Issue Nos.2 and 3 :

48. Issue Nos.2 and 3 can be taken up together since they are interlinked. Rule 4(3) of the FEMA Rules is a two step process. The first step is where the Adjudicating Authority applies his mind to the show

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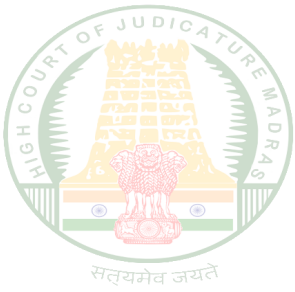
cause notice issued and the objections received to the show cause notice from the noticee. The second step is at the stage of forming an opinion to proceed further by issuing a show cause notice and conducting a personal hearing. It will be relevant to take note of the views expressed by this Court on the need for assigning reasons at the stage of forming an opinion.

49. The Hon'ble Apex Court, in the case of **Natwar Singh**, held that the Adjudicating Authority is required to form an opinion as to whether an inquiry is necessary to be held into the allegations of contravention and it is only then the real and substantial inquiry into the allegations of contravention begins.

50. **V.Ramasubramanian,J (as he then was)**, in the case of **Ramakrishna Setty**, held as follows :

"9. A careful look at the provisions of Sub-Rules (1) to (12) of Rule 4 would show that the enquiry by the respondent, comprises of five stages, which are as follows:-

'1. The issue of show cause notice of a duration of not less than ten days, calling upon the



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person to show cause as to why an enquiry should not be held for any contravention.

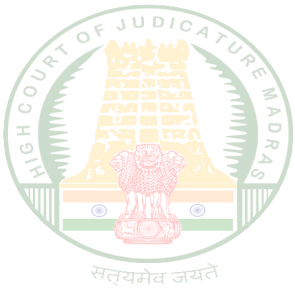
2. The issue of a notice fixing the date for the appearance of the person, if after considering the cause shown by the person to the show cause notice, the adjudicating authority is of the opinion that an enquiry should be held.

3. The explanation by the adjudicating authority in person, either to the noticee or to his authorised representative, the contravention committed by the noticee with reference to the provisions of the Act or the Rules or the Regulations.

4. Giving of an opportunity to the noticee to produce such documents or evidence and the summoning and enforcing of the attendance of any person.

5. Passing of the orders.'

10. Therefore, the scheme of Section 4 actually provides opportunities at the every stage to the noticee. The forming of an opinion at the stage of show cause notice and receipt of reply, as provided in Sub-Rule (3) of Rule 4, is almost akin to the forming of an opinion by a disciplinary authority to hold or not an enquiry, upon receipt of a reply to a charge memo in a disciplinary proceeding. Therefore, I do not think that there is any scope for expanding Rule 4(3) to mean that



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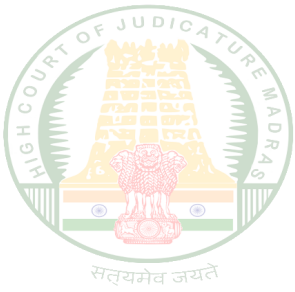
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the forming of the opinion as required in Rule 4(3) has to be reflected by an order in writing containing reasons. The interpretation given by the Division Bench of the Bombay High Court to the expression opinion appears to be very elastic.

11. Be that as it may, the petitioner had allowed several things to pass before he came up with the above writ petition. When the petitioner came up with the above writ petition, the stage of Rule 4(3) had already been passed. The enquiry had actually come, at the time when the petitioner moved this Court to the stage of Rule 4(8). Therefore, it is not possible now to put the clock back or rewind the proceedings back to the stage of Rule 4(3)."

51. The above judgment was once again considered by a Division Bench of this Court in the case of **India Cements Ltd.** wherein it has been held as follows :

"26. We find ourselves in complete agreement with the views of the learned Single Judge in Ramakrishna Settu Vs. The Special Director, Directorate of Enforcement, Southern Region, Sastri Bhavan, Chennai-600006 case cited supra. We are unable to persuade ourselves to agree with the decisions of the Bombay High Court



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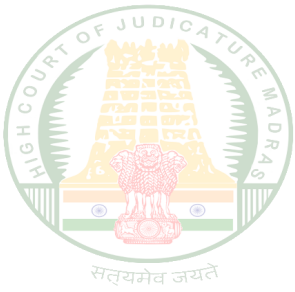


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inasmuch as they read into the provision, the requirement which is not contemplated under the Rules. We are therefore of the view that the adjudicating Authority is not under any statutory obligation to communicate his reasons for forming an opinion to conduct an enquiry under Sub-Rule 3 of Rule 4 of Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000. We may draw an analogy with the provisions of the Prevention of Money-Laundering Act, 2002. Section 5(1) of the said Act as amended by the Amendment Act, 2012 reads as follows:

'(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purpose of this Section, has reason to believe (the reason for such belief to be recorded in writing) on the basis of material in his possession, that'

27. Whenever a statute requires a particular thing to be done in a particular manner, it is a trite position of law that it should be done in that manner alone and not otherwise. The provisions of Sub-Rule 3 of Rule 4 in contra distinction to the provisions of the Section 5(1) of the Prevention of Money-Laundering Act, 2002, do not require the reasons to be recorded in writing. If we are to read into the provision, such a requirement, the same, in our considered opinion, would lead to disastrous



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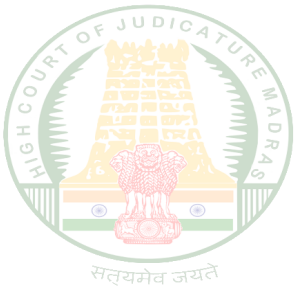


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results, where notices under various enactments which provide for enquiry on the basis of a subjective satisfaction of the adjudicating Authority or the enquiry officer or the Disciplinary Authority would take a stand that those Authorities should also record their reasons for forming an opinion and communicate the same."

52. It is also relevant to take note of another order passed by a learned Single Judge of this Court (**S.M.Subramaniam,J**) in the case of **Citi Bank N.A. Vs. Directorate of Enforcement [W.P.No.374 of 2024 dated 30.4.2024]**. The said case arose out of a challenge to the formation of opinion under Rule 4(3) of the FEMA Rules. While dealing with the same, the learned Single Judge took into account the above two decisions of this Court and held as follows :

"16. Let us examine the spirit and intent of Rule 4(3). On issuance of show cause notice by the adjudicating authority along with the materials relating to contraventions and on receipt of the explanations from the persons/addressee, the adjudicating authority under Rule 4(3) has to consider the cause if any shown by such person. That would indicate that the explanation submitted is to be considered. On such consideration, if the



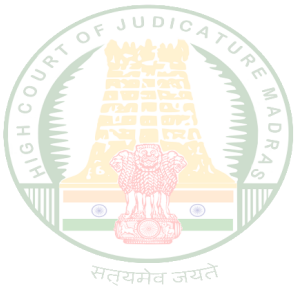
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adjudicating authority is of an opinion that an enquiry should be held, then he shall issue notice. Therefore, the opinion under Rule 4(3) is to be construed as personal satisfaction of the authority to proceed further and such personal opinion formed by the adjudicating authority must be recorded in the file so as to ensure that further proceedings are not continued without considering the explanations and the materials available on record. In other words, the show cause notice issued relating to contraventions explanations submitted by the addressee are considered together and an opinion is formed for the purpose of conducting an enquiry.

17. A question arises as to mere forming of an opinion would be a ground to penalize a person. It is an opinion which is to be construed as prima facie for the purpose of proceeding with the hearing opportunity and such an opinion formed, even as per the Bombay High Court judgement, is not appealable and would not provide any cause for challenging the said opinion. When such an opinion of the adjudicating authority is not appealable and not challengeable, then communicating the same would be a futile exercise because the persons were already intimated about the contraventions and they have submitted their explanations at the first instance and further



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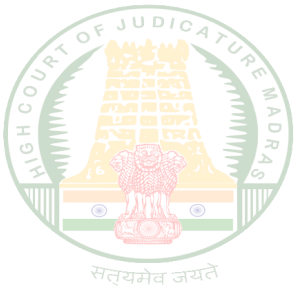


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defence would arise only on commencement of enquiry proceedings by the adjudicating authority. Therefore, the scope of Rule 4(3) cannot be expanded unnecessarily so as to provide an additional cause by intimating the opinion formed by the adjudicating authority to proceed with the personal hearing.

18. On forming of an opinion under Rule 4(3), the adjudicating authority shall issue a notice fixing a date for the appearance of the person, either personally or through his legal practitioner. Therefore, the opinion is the point, where the enquiry commences and such an opinion formed would not be a ground to penalize a person. The opinion is formed by the adjudicating authority to proceed with the personal hearing and not for any other purposes. Therefore, intimating such an opinion formed by the adjudicating authority to the persons are unnecessary and not contemplated under Rule 4(3). Therefore, Rule 4(3) cannot be interpreted beyond its scope and the procedures contemplated under Rule 4 in entirety are to be considered holistically to understand whether a fair opportunity has been provided to the persons or not.

19. Rule 4(4) stipulates that "on the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal



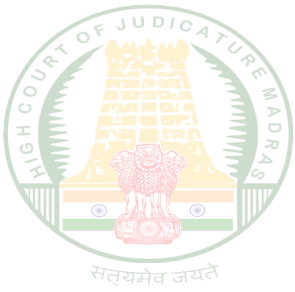
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practitioner or the chartered accountant, as the case may be, the contravention, allowed to have been committed by such person indicating the provisions of the Act or of Rules, Regulations, Notifications, directions or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place.” Therefore, the adjudicating authority is duty bound to explain to the person proceeded against or his legal practitioners about the contraventions alleged to have been committed. Communicating the formation of opinion and the reasons will be informed to the person or his legal representative by the adjudicating authority under Rule 4(4) of the Rule. On receipt of such materials from the adjudicating authority on the hearing date the person concerned is at liberty to defend his/her case by following the procedures as contemplated under Rule 4(5) to 4(12) of the Rules.

20. When Rule 4(4) unambiguously contemplates that the reason for proceeding with the adjudication must be informed to the persons or to the legal practitioners or to the Chartered Accountants and the such information should be provided along with the allegations and the provisions of the Act and Rules. The said Rules contemplates providing of information to the



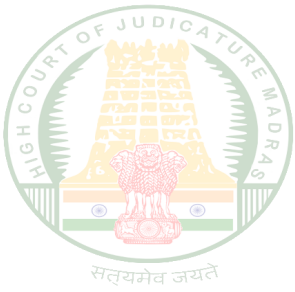
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persons and therefore, Rule 4(3) cannot be construed as violating the Rules of Natural Justice or contravening any of the provisions of law. Rule 4(3) and Rule 4(4) should be read constructively so as to understand that a fair opportunity has been provided. Communicating the opinion of the adjudicating authority under Rule 4(3) may not be required since the adjudicating authority is bound to provide all such information along with the provisions under Rule 4(4) of the Rules. Therefore, Rule 4(3) cannot be read in isolation and it is to be read along with Rule 4(4) for constructively interpreting the procedures so as to ensure that fair opportunity has been provided under the Rules and the Rules of Natural Justice has been complied with.

21. Though this Court had an opportunity to consider the Bombay High Court Judgement relied on by the Delhi High Court and the Kolkata High Court, the later judgement of the Division Bench of the Madras High Court is more relevant with reference to the spirit of Rule 4 in entirety including Rule 4(3). The scope of rules/procedures cannot be expanded by the High Court in exercise of the powers of the judicial review under Article 226 of the Constitution of India. The procedures, as contemplated under the Rules, are to be read as it is and any expansion providing additional



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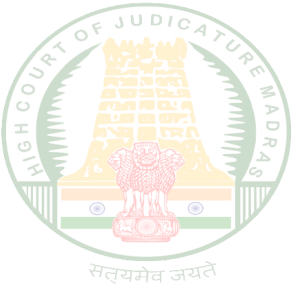


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opportunity, would undoubtedly cause prejudice to any one of the parties and would provide further cause for the purpose of prolonging and protracting the proceedings. The practice of prolonging and protracting the enquiry proceedings by approaching the High Court at each stage cannot be appreciated. Once the proceedings are commenced, the adjudicating authorities are expected to follow the procedures scrupulously and the persons concerned are bound to cooperate and defend their case by availing the opportunities to be provided in accordance with the Rules in force.

22. In view of the fact that the judgement of the Division Bench of the Madras High Court, in the case of India Cements Limited cited supra, is the latest judgement, wherein the interpretation of Rule 4(3) offered by the Bombay High Court was considered, this Court is bound by the decision of the Division Bench of High Court of Madras.

23. When the interpretation offered by the Bombay High Court in Shashank Vyankatesh Monohar case has not been followed by the Division Bench of Madras High Court, the validity of the circular lapses automatically. Therefore, the Enforcement Directorate has to issue suitable orders cancelling the circular."



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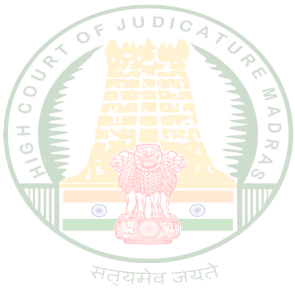
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53. A combined reading of the above three decisions of this Court on the scope of challenging an opinion arrived at under Rule 4(3) of the FEMA Rules is consistent and hence, it will be a binding precedent for this Court while dealing with the same issue in these writ petitions.

54. This Court, in no uncertain terms, held that the provisions of Sub-Rules (3) and (4) of Rule 4 of the FEMA Rules do not require reasons to be recorded in writing for forming an opinion. The only consequence that falls out of the decisions of this Court is that such forming of opinion under Rule 4(3) of the FEMA Rules is the starting stage for proceeding further with the adjudication and that the reason that impelled the Adjudicating Authority to form such an opinion cannot be a subject matter of challenge in a writ petition. All the above three decisions of this Court took note of the First Bench judgment of the Bombay High Court in the case of ***Shashank Vyankatesh Manohar***.

55. The First Bench of the Bombay High Court, in the case of ***Shashank Vyankatesh Manohar***, held as follows :

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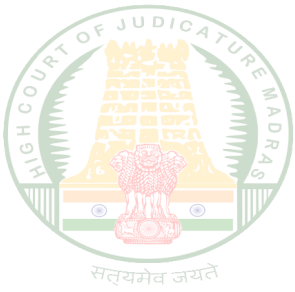


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"21. Thus, in view of the above discussion, we are of the view that Adjudicating Authority after issuing show cause notice and receiving objections to the notice from the noticee, is required to apply his mind to the objections by recording his reasons for forming an opinion on the file. This exercise need not be preceded by personal hearing and the order to be passed on the objections is not required to be detailed order, but it must disclose some link with the objections raised by the noticee and the opinion formed by the Adjudicating Authority. This recording of the opinion of the Adjudicating Authority would be given to the noticee when the proceedings are dropped in the form of an order. However, in cases where the opinion is formed to proceed further with the show cause notice, then a notice for personal hearing is required to be given to the party in terms of Rule 4 of the Adjudication Rules. However, if on receipt of the notice for personal hearing, the recorded reasons are sought for by the noticee, the same should be given. However, this recording of reasons is not an appealable order but it would give the noticee a chance during adjudication proceedings to meet the reasons which led the Adjudicating Authority to form an opinion that he must proceed further with the inquiry against noticee. This would only result in fair procedure



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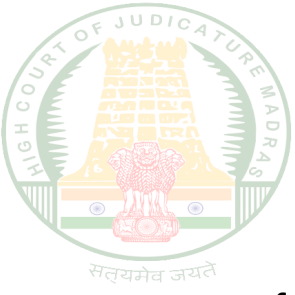
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which would be in consonance not only with Rule 4 of the Adjudication Rules but with principles of natural justice."

56. The First Bench of the Bombay High Court has taken a different view and it was held that the Adjudicating Authority must apply his mind to the objections given by the noticee to the show cause notice and record his reasons to proceed further and such recorded reasons should be furnished to the noticee. The First Bench also made it clear that such recording of reasons will give the noticee a chance during the adjudication proceedings to meet the reasons, which led the Adjudicating Authority to form an opinion that he must proceed further with the inquiry against the noticee.

57. It is brought to the notice of this Court that the appeal filed against the First Bench judgment of the Bombay High Court in the case of ***Shashank Vyankatesh Manohar*** was dismissed on **04.7.2014** at the stage of admission of the special leave petition and thereby it became final. Pursuant to the above development, a technical circular in Circular No.11/2014 dated 26.9.2014 came to be issued. On

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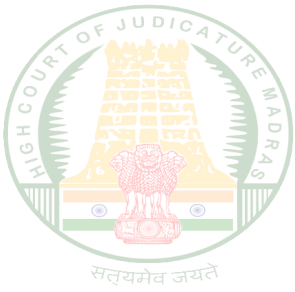
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carefully reading this circular, it is seen that a decision was taken by the Directorate of Enforcement to comply with the First Bench judgment of the Bombay High Court. It is in compliance of this circular, in the instant case, the first respondent assigned reasons while forming an opinion and the same were also furnished to the petitioners.

58. The learned Single Judge of this Court (**S.M.Subramaniam,J**), in the order dated **30.4.2024** passed in **W.P.No.374 of 2024**, directed the Enforcement Directorate to cancel the circular as lapsed in view of the judgment of the Division Bench of this Court taking a contrary view from the First Bench judgment of the Bombay High Court in the case of **Shashank Vyankatesh Manohar**. It is not necessary for this Court to go into the controversy as to whether such a direction could have been issued to the Enforcement Directorate to cancel the circular only on the ground that the Division Bench of this Court had taken a contrary view from the First Bench judgment of the Bombay High Court as confirmed by the Hon'ble Apex Court.

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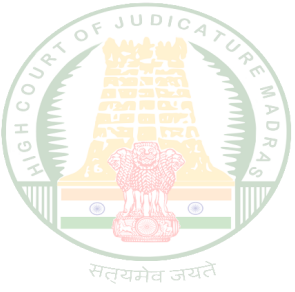
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59. The Enactment in question is a Central Enactment and as on date, there are conflicting views of two High Courts. Until the issue is ultimately settled by the Hon'ble Apex Court, the Enforcement Directorate faces a delicate position in so far as complying with the circular in the State of Tamil Nadu is concerned despite complying with the same in the other States.

60. While exercising jurisdiction as a Single Judge, this Court is bound by the consistent view that has been taken both by the Division Bench as well as the learned Single Judges of this Court. This Court believes that the Courts must speak in a univocal voice. As a Single Judge, I cannot disregard the consistent view taken by this Court since the First Bench judgment of the Bombay High Court in the case of **Shashank Vyankatesh Manohar** was considered by the Division Bench of this Court and a different view was taken.

61. In the light of the above discussions, the reasons assigned by the first respondent before forming an opinion and the same being furnished to the petitioners, by itself, will not create a cause of action to question the opinion formed by the first respondent under Rule 4(3)

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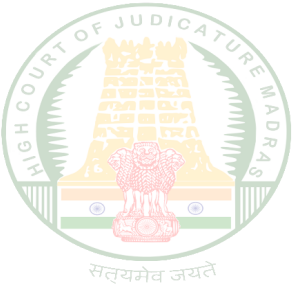
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of the FEMA Rules. This is in view of the fact that even if reasons had not been assigned by the first respondent, the same could not have been questioned by the petitioners. The petitioners cannot be in a better footing just because reasons have been assigned and informed to them. This Court has consistently held that formation of opinion under Rule 4(3) of the FEMA Rules does not, per se, penalise a person and that is only the starting point for proceeding with the adjudication after affording an opportunity to the parties concerned.

62. The impugned notice of hearing dated 04.4.2024 contains reasons for the first respondent to form an opinion to proceed further with the adjudication. Since those reasons are available, this Court thought it fit to apply its mind on the reasons available in the notice of hearing. Apart from going through the terms of various agreements, the first respondent has also considered the statements recorded from the officers belonging to the authorized dealers and has, prima facie, satisfied himself to proceed further with the adjudication after affording an opportunity to the petitioners.

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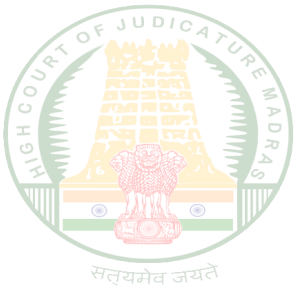
63. Two major issues that loomed large in the mind of the first respondent are as follows :

(i) The outflow of nearly Rs.5,551 Crores that went out of the country in terms of payment of royalty, out of which, nearly Rs.877 Crores went into the account of one of the companies that formed part of the Xiaomi Group and the first respondent has formed an opinion that such payments were made without getting prior approval under Section 3 of the FEMA and that such huge payments were made on behalf of the entities operating outside India, which formed part of the Xiaomi Group; and

(ii) The other issue is regarding the statements made by the officers belonging to the authorized dealers stating that the petitioners were not willing to share the books of accounts and they were kept secret.

64. It is not necessary for this Court to go deep into the reasons arrived at by the first respondent while forming an opinion. This Court only wanted to satisfy itself as to whether the first respondent had applied his mind and formed an opinion. Prima facie, there is application of mind on the part of the first respondent and at that

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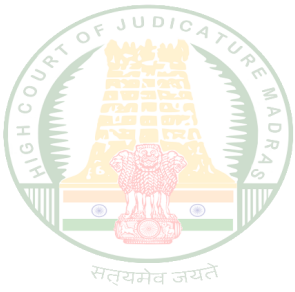
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stage, since it is the commencement of the proceedings towards actual adjudication, even a strong suspicion is enough to form an opinion. To understand it from the stand point of view of Criminal Jurisprudence, it is more in the nature of taking cognizance of a complaint or a police report where strong suspicion is enough to proceed further with the trial. In cases of this nature, the Courts must be wary while interfering with the further proceedings since the adjudication proceedings is at the nascent stage and only after formation of the opinion, the noticees are provided with an opportunity of personal hearing to defend themselves.

65. In the light of the above findings, the reliance placed by the learned Senior Counsel appearing on behalf of the petitioners on the judgment of the Hon'ble Apex Court in the case of **Amarendra Kumar Pandey**, which talks about the scope of formation of an opinion and the interference thereto, cannot be applied in this case. Similarly, the reliance placed by him on the scope and the meaning of the word '**affiliate**', the understanding of the concept of group of companies doctrine, the interpretation of commercial contracts and the decisions taken on commercial expediencies, the extent, to which, an

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Adjudicating Authority can tinker upon the same and the scope of mandatory requirement of payment of royalty even for entities outside India under the Patents Act, need not be dealt with by this Court since those are matters, which have to be agitated before the first respondent during the adjudication proceedings by way of defence.

66. The upshot of the above discussions is that this Court is not inclined to interfere with the opinion formed by the first respondent under Rule 4(3) of the FEMA Rules. It is not necessary for this Court to render a finding on the related issues covered under Issue No.3.

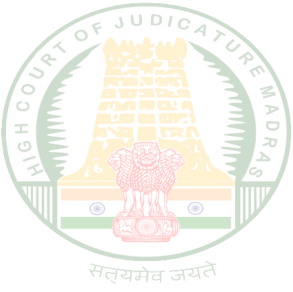
Issue Nos.2 and 3 are answered accordingly.

Issue No.4 :

67. This Court will now move on to the last issue on the request made by the petitioners for furnishing copies of all the documents including the non RUDs.

68. At the time of forming an opinion, what is required for the first respondent is to apply his mind on the show cause notice issued, the documents relied upon therein and the reply given by the other

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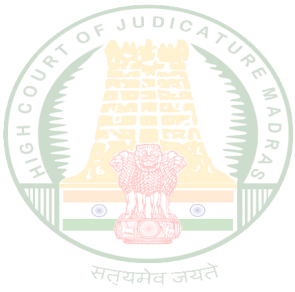
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noticees to the show cause notice. At this stage, the first respondent does not apply his mind on all conceivable documents falling under the category of the RUDs and the non RUDs. Therefore, no prejudice will be caused to the petitioners if all the documents sought for by them are not furnished at this stage. This is in view of the fact that the petitioners have not entered the defence stage till the proceedings reach the stage under Rule 4(4) of the FEMA Rules.

69. All the judgments pointed out by the learned Senior Counsel appearing on behalf of the petitioners including the judgments of the Hon'ble Apex Court in **Manish Sisodia** and **Sarla Gupta** talk about the stage, at which, even the documents, which are not relied upon, must be furnished to the accused person. This is because of the reason that there may be exculpatory materials, which are in favour of the accused persons and the same will enable the accused persons to defend themselves in the case effectively. In none of the judgments, there is insistence for furnishing of the documents, even those, which were not relied upon at the stage under Section 207 of the Criminal Procedure Code. Hence, the petitioners have the right of receiving even those materials, which were not relied upon, but not at the stage

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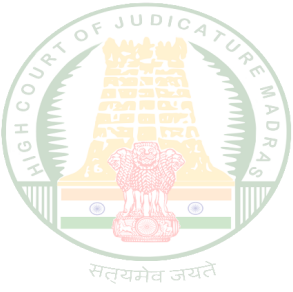
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of forming an opinion and they will reach that stage only after they receive the notice of hearing and they are heard by the first respondent in the proceedings under the FEMA. That is where the noticee enters upon the defence.

70. On 07.10.2024, the petitioners filed three applications before the first respondent for inspection of the entire record of investigation and to provide copies of all documents. Out of those three applications, two were allowed and the second respondent was directed to facilitate inspection of the entire record of investigation. He was also directed to furnish the specified documents sought for by the petitioners. However, no decision was taken regarding the copies of the reply given by the other noticees to the show cause notice and the documents submitted by them. The further grievance on the side of the petitioners is that many pages were missing and that the specified documents were not available citing administrative reasons.

71. In the considered view of this Court, the case has now reached the stage under Rule 4(4) of the FEMA Rules, which is the stage of defence and therefore, the petitioners will be entitled to all the

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documents sought for by them including the non RUDs. Only if those documents are furnished to the petitioners, they will be able to effectively defend themselves during the adjudication proceedings. Hence, the missing documents from the entire record of investigation shall also be traced and furnished to the petitioners. **Issue No.4 is answered accordingly.**

RESULT :

72. For the foregoing reasons,

(i) W.P.Nos.6498 and 7290 of 2025 are disposed of in the above terms. Consequently, all connected pending WMPs are closed.

(ii) W.P.Nos.15996 and 15998 to 16002 of 2024 are dismissed. Consequently, all connected pending WMPs are dismissed.

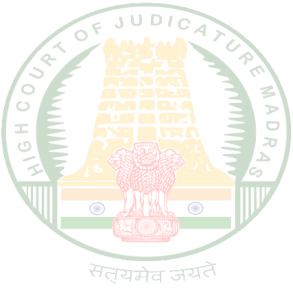
No costs.

25.6.2025

Index : Yes
Neutral Citation : Yes

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N.ANAND VENKATESH,J

RS

To

- 1.The Adjudicating Authority,
Special Director (SR), Directorate
of Enforcement, Southern
Regional Office, Chennai
Shastri Bhavan, III Floor,
III Block, 26, Haddows Road,
Chennai.
- 2.The Assistant Director,
Directorate of Enforcement,
Bangalore Zonal Office, III Floor,
B Block, BMTC, Shanthi Nagar
TTMC, KH Road, Shanthi Nagar,
Bengaluru-560027.

WP.Nos.15996 & 15998
to 16002 of 2024 &
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all connected pending WMPs

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