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%OSLP(C) 15937/2014
  ITEM NO.9
                          COURT NO.3
                                                   SECTION III
                  SUPREME COURT OF INDIA
                          RECORD OF PROCEEDINGS
  Petition(s) for Special Leave to Appeal (C) No.15937/2014
  (Arising out of impugned final judgment and order dated 13/02/2014
                   11031/2013
                               passed
                                        by
                                                    High
  in SCA No.
                                              the
                                                           Court of
                                                                         Gujarat
  Ahmedabad)
  UNION OF INDIA AND ANR
                                                     Petitioner(s)
                                   VERSUS
 ALSTOM INDIA LTD
                                                     Respondent(s)
  (With appln.(s)
                     for permission to file
                                                     additional documents
                                                                               and
  permission to file lengthy list of dates and office report)
  WITH S.L.P.(C) No.14713/2014
  (With appln.(s) for permission to
                                             file synopsis
                                                                 and
                                                                      list
                                                                            of
                                                                                   dates
  and appln.(s)
                  for permission to file additional
                                                                documents
                                                                             and
  interim relief)
  T.P.(C) Nos.1363-1377/2014
                                                                for permission
  (With appln.(s) for ex-parte stay and
                                                   appln.(s)
  file lengthy list of dates and interim relief)
  T.C.(C) No.88/2014
  T.C.(C) No.89/2014
  T.C.(C) No.24/2015
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 T.C.(C) No.23/2015
 T.C.(C) No.27/2015
 T.C.(C) No.28/2015
  T.C.(C) No.26/2015
  T.C.(C) No.32/2015
  T.C.(C) No.30/2015
  T.C.(C) No.33/2015
  T.C.(C) No.31/2015
  T.C.(C) No.37/2015
  T.C.(C) No.36/2015
  T.C.(C) No.40/2015
  T.C.(C) No.61/2015
  T.C.(C) No.35/2015
 S.L.P.(C) Nos.17742-17743/2015
 (With interim relief and office report)
 T.C.(C) No.12/2016
 T.C.(C) No.32/2016
  T.C.(C) No.46/2016
  Date: 07/12/2016 These matters were called on for hearing today.
  SLP(C) 15937/2014
  CORAM :
            HON' BLE MR. JUSTICE DIPAK MISRA
            HON' BLE MR. JUSTICE AMITAVA ROY
  For Petitioner(s) Mr. P.S. Patwalia, ASG
 Mr. Yashank Adhyaru, Sr. Adv.
 Ms. Binu Tamta, Adv.
 Mr. G.S. Makker, Adv.
 Mr. R.K. Verma, Adv.
                   Mr. B. Krishna Prasad, AOR
                    Mr. R. Chandrachud, AOR
                    Ms. B. Vijayalakshmi Menon, AOR
  Mr. Ravindra Srivastava, Sr. Adv.
  Mr. Mahesh Agarwal, Adv.
  Mr. Sujit Ghose, Adv.
  Mr. Shashan Sekhar, Adv.
  Mr. Nakul Mohta, Adv.
  Ms. Parul Shukla, Adv.
                    Mr. E. C. Agrawala, AOR
Mr. Bina G
Mr. Sujit Ghosh, Adv.
Ms. Kanupriya Bhargava, Adv.
This is a True Copy of the court record
                    Ms. Bina Gupta, AOR
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Mr. Krishna Rao, Adv.
                        Mr. Nikhil Nayyar, AOR
  Mr. Maulik Nanavati, Adv.
                        Mr. Munawwar Naseem, AOR
  Ms. Ruchi Khurana, Adv.
  Mr. Sujit Ghosh, Adv.
  Ms. Kanupriya Bhargava, Adv.
  Mr. Krishna Rao, Adv.
  Mr. Harsh Makhija, Adv.
  Mr. Onkar, Adv.
Mr. Vikas Upadhyay, AOR For Respondent(s) Mr. S. Ganesh, Sr. Adv. Mr. Tushar Jarwal, Adv. Mr. Rahul Sateeja, Adv.
                         Mr. Vikas Upadhyay, AOR
Ms. Mr. Sujit Ghosh, Adv. SLP(C) 15937/2014
                         Ms. B. Vijayalakshmi Menon, AOR
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  Ms. Kanupriya Bhargava, Adv.
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  Mr. Ravindra Srivastava, Sr. Adv.
  Mr. Sujit Ghosh, Adv.
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  Mr. Nakul Mohta, Adv.
  Ms. Parul Shukla, Adv.
  Mr. E.C. Agrawala, AOR
  Mr. S.K. Bagaria, Sr. Adv.
  Mr. Tarun Gulati, Adv.
  Mr. Sparsh Bhargava, Adv.
  Mr. Shashi Mathews, Adv.
  Ms. Rachna Yadav, Adv.
  Mr. Neil Hildreth, Adv.
  Mr. Rony O John, Adv.
  Mr. Anupam Mishra, Adv.
  Mr. R. Chandrachud, AOR
Mr. Abhay A. Jena, Adv.
Ms. Bina Gupta, AOR
Mr. Gurukrishna Kumar, Sr. Adv.
Mr. Ananga Bh
                         Mr. Ananga Bhattacharyya, AOR
Mr. Mukund P.U., Adv. Mr. Devahuti T., Adv. Mr. B. Krishna Prasad
  Mr. B. Krishna Prasad, AOR
  Mr. Deepak Khurana, Adv.
  Mr. Umesh Kumar Khaitan, Adv.
                UPON hearing the counsel the Court made the following
                                       ORDER
  Heard Mr. P.S.
                          Patwalia, learned
                                                      Additional
  Solicitor General along with Ms. Binu Tamta,
                                                                             learned
  for the petitioner.
  Ιt
       is contended by Mr. Patwalia
                                                        that the High Court
  has
        erroneously recorded its conclusions. He has drawn
  attention to paragraphs 39, 39(1) and 39(2). In paragraph 39,
  the High Court has held that paragraph 2.3 of Policy (F.T.P.) is not to be given the interpr
                                                                                 Foreign Trade
        cy (F.T.P.) is not to be given the interpretation that been placed by the respondent No.2, Directorate General
  SLP(C) 15937/2014
constitutional courts, but only on the departmental authority in the absence of an interpretati given by the courts. Mr. Patwalia, learned Additional Solicitor General has submitted and we must say, with fairness at his command, that the said conclusion arrived at by the High Court is absolutely defensible and does warrant any interference.
  departmental authority in the absence of an interpretation
                                                                                             all
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paragraph 7 did not confer any kind of review jurisdiction on
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In paragraph 39.1, the High Court has opined that paragraph 8.3.6 of Handbook of Procedure (H.O.P.) by which the Customs and Central Excise Draw Back Rules 1995 has been adopted, is ultra vires the provisions of the Foreign Trade adopted, is ultra vires the provisions of the Foreign Trade (Development and Regulation) Act (for short, 'the FTDR Act), for the Act has not conferred any power on D.G.F.T. to make rules. According to the High Court, it is the Central Government that can exercise the power under Section 19 of the FTDR Act by issuing appropriate notification in the Official Gazette, that too after complying with the requirement of Section 19 of the FTDR Act for carrying out the provisions of the Act and in the process, may make similar rules like the Customs and Central Excise Draw Back Rules but not any other authority. In essence, the conclusion of the High Court is that it is the Central Government which alone has the authority to make rules within Government which alone has the authority to make rules within the framework of the Act, but not the D.G.F.T. Mr. Patwalia, learned Additional Solicitor General would submit that the High Court has fallen into error by opining that it is the Central Government alone that can make the rules. According to him, D.G.F.T. can also issue directions under the FTDR Act. In paragraph 39.2, the High Court has ruled that the paragraph 7 of the declaration attached with ANF-8 form read with the provision of H.O.P. cannot lawfully confer any power SLP(C) 15937/2014 upon the respondent No.2, that is, D.G.F.T. or its subordinates to recall any adjudication under the Act by taking aid of such declaration attached with ANF form. The said finding has been returned by the High Court on the bedrock that the exercise of review jurisdiction has to be specifically conferred under the Act and, therefore, the D.G.F.T. cannot exercise the power of review. It has

referred to Section 16 of the FTDR Act. Mr. Patwalia criticizing the said conclusion, would contend that there was no adjudication, but Joint Director contend that there was no adjudication, but Joint Director General of Foreign Trade computed the amount under the duty draw back to be paid to the respondents which could be redetermined in terms of clause (7) of the H.O.P. It is also submitted by him that the said order was assailed in appeal before the D.G.F.T., which concurred with the view expressed by the Joint Director General of Foreign Trade. The said order was assailed before the High Court which remitted the matter to the D.G.F.T. on the foundation that the principles of natural justice in entirety were not followed and liberty was granted to the assesses to raise all contentions before the said appellate authority. Mr. Patwalia is quite vehement that the assessee-respondents availed the said proceedings and also the present one. Mr. S. Ganesh, learned senior counsel appearing for the respondents, per contra, would contend that in the present case, a writ petition was filed challenging the constitutional validity of the relevant provisions of the Act and paragraph 7 of the Hand Book of Procedure, therefore, the lis is quite different. According to Mr. Ganesh, before the D.G.F.T., the only point that could have been canvassed that the computation was wrong, but before the High Court in the writ petition the ground that was urged was that

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the D.G.F.T. Be it noted, according to Mr. Ganesh, Joint Director General of Foreign Trade had initially made a computation and, thereafter, relying on paragraph 7, he recomputed which is not permissible and contrary to the statute. In essence, the submission of Mr. Ganesh is that

once there has been adjudication, it cannot be reviewed by relying on paragraph 7, for the review jurisdiction is quite different.

We will be failing in our duty if we do not take on

record the submission in reply by Mr. Patwalia that the order passed by the Joint Director General of Foreign Trade at the first stage, does not amount to adjudication. Therefore, the second order does not amount to review. Additionally, it is submitted by him that this Court should interfere and set aside the order of the High Court as the respondents had not approached the writ court under Article 226 of the Constitution with clean hands.

We have recorded the contentions so that the learned counsel for the parties shall only address with regard to the said issues on the next date of hearing.

Let the matter be listed for further hearing on 8 th

February, 2017. As agreed to by the learned counsel for the parties, it shall be taken up at 2.00 p.m. (Chetan Kumar)

Court Master (H.S. Parasher) Court Master