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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 2nd November 2022
Pronounced on : 4th November 2022

+ W.P.(C) 3072/2008

AJAY KUMAR MITTAL Petitioner
Through: Mr. Sunil K. Mittal with
Mr.Kshitij Mittal, Advs.

versus

UOI & ORS Respondents
Through: Mr. Vikram Jetly, CGSC with
Ms. Shreya Jetly, Adv. for R-1 to 3

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T

04.11.2022

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1. Are philatelic exhibits “antiquities” within the meaning of the Antiquities and Art Treasures Act, 1972? The parties before me have joined issue on this query which, therefore, this judgement attempts to answer.

Facts

2. The petitioner is a philatelist.
3. The philatelic materials which interest the petitioner include postage and fiscal stamps, envelopes, stamp papers and other such documents which, as per Mr. Sunil Mittal, learned Counsel for the

petitioner, may be of more than a century's vintage. The petitioner claims to own various philatelic collections and has, by way of examples, referred to exhibits, exhibited by the petitioner at various philatelic exhibitions, relating to the ancient postal system of the Indore Princely Estate, fiscals of the Indore Princely Estate, fiscals of the Kishangarh Princely State and fiscals of Khairagarh Princely State, among others. The petitioner is a member of the Philatelic Congress of India (PCI) which, as per the petition, is the apex body of philatelists in the country. The PCI, in turn, is a member of the Federation of International Asian Philately (FIAP) and the Federation of International Philately (FIP). The FIP, according to the petition, is an international body to which all national Philatelic Federations, including the PCI, are affiliated.

4. The FIP/FIAP organise international philatelic exhibitions. These international philatelic exhibits, according to the petition, follow a standard protocol. The host country which announces that it would be hosting the exhibition, intimates all members of the FIP and the FIAP in that regard. Each member country of the FIP and the FIAP is required to appoint a National Commissioner, representing that country at the exhibition. The National Commissioner is the intermediary between the National Federation and the Exhibition Management. The National Commissioner is, needless to say, required to be a philatelist of repute. The National Commissioner collates philatelic exhibits from philatelists across the country, which they desire to be exhibited, and carries them to the exhibition abroad. After exhibition, the exhibits are brought back by the National Commissioner and returned to the philatelists who own them.

5. With that preliminary background, one may come to the meat of the matter.

6. The petitioner, who had been appointed National Commissioner for representing India at international philatelic Events in the past as well, used, every year, to approach the Department of Posts in the first instance, seeking its clearance for carrying, with him, philatelic exhibits outside the country. The Department of Posts (“the DOP” hereinafter) would, then, write to the Department of Culture (“the DOC” hereinafter), for grant of no objection so that the petitioner could obtain a Temporary Export Permit (TEP) from the Archaeological Survey of India (ASI), which was required for the petitioner to export the philatelic exhibits outside the country.

7. The petitioner has placed, on record, approvals granted, in this regard, by the DOP, the DOC and the ASI, in the past, for carriage of philatelic exhibits abroad. With reference to philatelic exhibits which the petitioner desired to carry abroad for participation in the 10th Asian Philatelic Exhibition 1996, to be held in Taipei from 21st to 27th October 1996, the petition refers to the following documents:

- (i) The DOP, *vide* certificate dated 17th June 1996, certified that the petitioner had been appointed National Commissioner for philatelists from India, whose philatelic collections were to be entered in the 10th Asian International Philatelic Exhibition to be held at Taipei.

(ii) Following this, the DOC *vide* Office Memorandum (OM) dated 9th September 1996, forwarded, to the Department of Economic Affairs, the request of the petitioner for participation in the Taipei Exhibition, for necessary action for obtaining clearances from other respective departments/ministries. While doing so, the OM dated 9th September 1996 recorded the “no objection” of the DOC to the proposal for the petitioner to participate in the Taipei Exhibition exclusively from the cultural angle.

(iii) The petitioner, thereafter, applied to the ASI for grant of a TEP and informed the DOC accordingly, as some of the stamps which he desired to carry with him were of over 100 years’ vintage. The relevant instructions at the time – which, admittedly, applied to antiquities and art exhibits – required a cooling period of at least three years to have lapsed since the last export of the said exhibits outside the country, subject to relaxation of the said requirement being granted by the DOC. Inasmuch as some of the exhibits that the petitioner desired to carry to the Taipei Exhibition had been exported by the petitioner within the past three years, the petitioner applied to the DOC for a relaxation in respect of the said exhibits. The DOC, *vide* OM dated 8th December 1998 addressed to the Director (Antiquities), ASI, clarified that the cooling period of three years was not applicable in the case of philatelic objects, as philatelic exhibits could not be treated as art objects. The said OM may be reproduced, in full, thus:

“No.F.27-10/96-M.1
Government of India
Ministry of Human Resource Development
Department of Culture

New Delhi, dated the 8th October, 1996

OFFICE MEMORANDUM

Subject: - Reference from Shri Ajay Kumar Mittal, Philatelic Congress of India, for relaxation of cooling period for participation in TAIPEI, 1996 – from 21st to 27th October, 1996

The undersigned is directed to say that Shri Ajay Kumar Mittal, Member, Governing Council, Philatelic Congress of India, who has been appointed as National Commissioner for Philatelists by the Department of Posts, has applied for Temporary Export Permit from Archaeological Survey of India for sending stamps for exhibiting in the 10th Asia International Philatelic Exhibition, 1996 to be held in Taipei from 21.10.1996 to 27.10.1996.

Shri Mittal has informed this Department that he has applied for Temporary Export Permit from Archaeological Survey of India as some stamps are over 100 years old. The ASI vide their letter No.F.13-3/96-ANT dated nil has asked him to furnish the certificate that none of the exhibits falls within the cooling period of three years. Shri Mittal has also informed that out of 20 exhibits, only 9 require the Temporary Export Permit. Out of this, 5 exhibits do not fall under the cooling period and he has submitted the certificate to ASI on 30.9.1996. The remaining four exhibits have been displayed in exhibitions abroad within the last three years. As per Government of India, Department of Culture's instructions issued vide letter dated 13th May, 1996, final authority for relaxing the cooling period of three years etc. is Secretary, Department of Culture. As such, Shri Mittal has requested for relaxation by Secretary, Department of Culture, in respect of 4 postal stamps.

This matter has been examined in this Department and this is to clarify here that the cooling period of three years etc. for sending exhibitions from India to abroad, is not applicable in case of postal stamps/Philatelic objects since these cannot be treated as art objects. In view of the above, you are requested not to apply the instructions

issued by this Department vide letter dated 13th May, 1996 regarding cooling period etc. in case of postal stamps/Philatelic objects and process the request of Shri A.K. Mittal for issue of Temporary Export Permit, as per normal rules and regulations of ASI.

This issue with the approval of JS(V), Department of Culture.

Under Secretary to the Govt. of India.”

(iv) Following the issuance of the aforesaid OM by the DOC, the Director (Antiquities) ASI, on behalf of the Director General (DG), ASI, granted, on 11th October 1996, TEP for the export, by the petitioner, of the philatelic exhibits to the Taipei Exhibition, comprising 1350 stamps, 370 covers/letters and 79 other exhibits. The TEP, as well as the letter dated 11th October 1996, issued by the ASI, read thus:

“No.F.13-3/96-Ant.
Govt. of India
Archaeological Survey of India

Janpath, New Delhi-110011.

To,

Shri, Ajay Kumar Mittal,
D-57, South Extension Part I,
New Delhi-110049

Subject: - Issue of TEP for export for Indian Participation of stamps in 10th Asian International Philatelists Exhibition 1996, Taipei'96.

Sir,

With reference to your letter no. nil dated 16.9.96 on the subject mentioned above, I have the honour to enclose herewith a Temporary Export Permit No. 13-3/96-Ant. dated 9.10.96 alongwith 1,350 stamps, 370 covers/letters and 79 others (1,XXX), and a list duly signed

and authenticated with the condition that the above antiquities will be brought back to India on or before the 30th November, 1996 and will be produced before the Director General Archaeological Survey of India, Janpath, New Delhi for verification.”

TEP

“TEMPORARY EXPORT PERMIT TO EXPORT ALL ANTIQUITY /ANTIQUITIES ART TREASURE/ ART TREASURES UNDER SECTION 3 OF ANTIQUITIES ART TREASURES ACT, 1972

1. Name and address of owners	Shri Ajay Kumar Mittal, Additional Commissioner for 10 th Asian International Philatelic Exhibition' 96 Taipei, D-57, South Extension Part-1, New Delhi-110 049
2. Name and address of the applicant	- do -
3. Name and address of the agent (if different from above)	- do -
4. Name and address of the cibsugbee	The Organizing Committee, Taipei 96, Taipei, Taiwan
5. Description of the antiquity/antiquities, art treasure/art treasures in respect of which this permit is granted	1,350 stamps, 370 covers/letters and 79 others
6. Registration number (s) (if registered)	As per list enclosed
7. Number of authenticated photographs of the antiquity/antiquities, art treasure/art treasures	1,350 stamps, 370 covers/letters and 79 others (as per list enclosed)

The export permit has been granted in terms of section 3 of Antiquities and Art Treasures Act, 72 and subject to the condition that the antiquities mentioned above and as per enclosed description list will be brought

back to India on or before 30th November, 96 and will be produced immediately thereafter before the Director General, Archaeological Survey of India for verification

(AJAI SHANKAR)
DIRECTOR GENERAL
ARCHAEOLOGICAL SURVEY OF INDIA
JANPATH, NEW DELHI
No.13-3/96-Ant.
Dated: 11.10.96”

(v) On 19th November 1996, the Superintending Archeologist (Antiquities), on behalf of the Director General, wrote to the Secretary General, ASI, conveying the decision of the DOC to waive off the cooling period of three years in the case of postal stamps/philatelic objects.

8. *Vide* OM dated 18th June 1999, the DOC issued revised “Guidelines for organizing exhibitions abroad for lending art objects to private and public museums and receiving exhibitions from abroad”. Though the titular reference, in these guidelines, is only to art objects, the Guidelines also embraced antiquities. These guidelines, admittedly, envisaged a detailed procedure to be followed before antiquities or art treasures were exported abroad, which include

(i) prior approval of the DOC before grant of any commitment or agreement with any foreign country or agency to send or receive exhibits,

(ii) processing of each case through an inter-ministerial committee under the chairmanship of the Secretary (Culture) within a month of receipt of the proposal, the prior approval of which would be a pre-requisite for holding of such exhibitions.

(iii) routing of antiquities and art treasures, to be sent abroad

for exhibition from private museums/societies/trusts/individuals, through the National Museum, New Delhi,

(iv) the expiry of a minimum cooling off period of three years in the case of antiquities and art treasures proposed to be exported for exhibitions abroad, after they had returned from a previous exhibition, subject to relaxation by the Minister for Human Resource Development in very exceptional cases,

(v) prohibition on sending, abroad, antiquities and art treasures to any private foreign agency unless the request came through the government of the concerned country, with the legal status of the host museum/institution being indicated in the letter, with an accompanying recommendation of the Indian Ambassador in that country.

(vi) insurance of antiquities and art treasures with a nationalized Indian insurance company on wall to wall basis,

(vii) screening and evaluation of all antiquities and art treasures, proposed to be sent for exhibitions abroad, by the National Screening and Evaluation Committee (NS & EC), which would take a view with respect to the category of the exhibits and the requirements of conservation and make specific recommendations in respect of the classification, conservation status and insurance value of each item,

(viii) approval of the draft agreement for sending or receiving exhibits by the DOC and the Department of Legal Affairs to be communicated to the nodal agency and the host agency/organization,

(ix) sending of the exhibition consignment in one lot,

accompanied by a technical person, with the approval of the Secretary (Culture) being required where the exhibits were to be sent in more than one lot,

(x) sending of a copy of the agreement, under which the antiquities and art objects were sent abroad to the Embassy/Mission of India in the concerned country, and

(xi) issuance of a TEP on request, to the nodal agency, by the DG, ASI as per the terms of the Antiquities and Art Treasures Act, 1972 (“the AATA”) and the Antiquities and Art Treasures Rules, 1973, covering the duration of the exhibition.

The above protocol was subject to strict time limits. The guidelines concluded with the recital that the decisions of the Government of India on all matters relating to export of antiquities and art treasures with regard to exhibitions abroad would be final.

9. The petitioner has also placed on record communications with respect to the Stamp Show 2000 held at London and the PHILANIPPON 2001 exhibition at Tokyo, in the latter of which the petitioner was once again the National Commissioner.

10. In reply to a query from the National Commissioner appointed for the Stamp Show 2000 to be held at London, the MOC, *vide* OM dated 20th April 2000 addressed to the Director (Antiquities), ASI, clarified thus:

“The undersigned in directed to forward herewith a copy of the letter dated 17.4.2000 received from Shri Yogesh Kumar, National Commissioner, The Stamp Show – 2000 which is self-explanatory.

In this connection, the attention of Archaeological Survey of India is invited to this Department's O.M. No.27-40/96-M.I. dated 6th October, 1996 (copy enclosed). This Department have clarified therein that the guidelines issued by this Department are not applicable in case postal stamps / philatelic objects since these cannot be treated as art objects. Similarly, the new guidelines issued by this Department relate to sending exhibits/art objects abroad and receiving them from abroad. Since, it has already been clarified that the postal stamps /philatelic objects cannot be treated as art objects, the new procedure issued by this Department is also not applicable in their case.

The Archaeological survey of India (ASI) is therefore, requested to consider the issue of TEP as per the normal rules and regulations of ASI.

This issues with the approval of the JS (S).”

11. In the context of the Tokyo PHILANIPPON Exhibition, the petitioner has referred to the following developments:

(i) On 9th January 2001, the DOP informed the DOC that the petitioner had been nominated as the National Commissioner for the PHILANIPPON 2001 International Philatelic Exhibition to be held from 1st to 7th August 2001 at Tokyo. The communication acknowledged that, as some of the exhibits that the petitioner intended to carry with him were more than 99 years old, they required TEP from the ASI, which, in turn, required an NOC from the cultural angle from the DOC. As such, the DOC was requested by the said communication dated 9th January 2001, to issue an NOC in the name of the National Commissioner, PHILANIPPON 2001 from the cultural angle.

(ii) The DOC, *vide* OM dated 14th July, 2001 addressed to

the ADG, ASI, communicated its “no objection”, purely from the cultural angle, to the appointment and participation of the petitioner as the National Commissioner for the PHILANIPPON 2001 to be held at Tokyo, and also to the issuance of TEP for the said exhibition. The relevant passages from the said OM dated 14th July 2001 read thus:

“The undersigned is directed to forward letter number 3-18/2000-Phil (in original), dated the 9th January, 2001, received from the Department of Posts, regarding issue of 'No Objection Certificate' in favour of Shri Ajay K.Mittal, who has been appointed as National Commissioner for PHILANIPPON 2001, to participate in the International Philatelic Exhibition to be held from 01-07 August, 2001 in Tokyo. The participant also require temporary export/reimport permit for the said exhibition.

In this connection it is stated that this Department has no objection purely from cultural angle at no Central Government's cost whatsoever to the release, the said permit, subject to admissibility of the said participation/temporary permit under the rules.”

12. Thus, contends the petitioner, for several years in the past, the DOP and the DOC were granting clearance to the participation, by the petitioner, as the National Commissioner in Philatelic Exhibitions held abroad, as well as to the export, by the petitioner, of philatelic exhibits to be exhibited in the said exhibition. They had also opined, *prima facie*, that the 1999 guidelines issued by the DOC were not applicable to philatelic exhibits.

13. Problems arose with respect to the participation, by the petitioner, as National Commissioner for the World Stamp Championship Israel 2008, which was held at Tel Aviv from 14th to

21st May 2008. The petitioner applied, on 8th February 2008, to the DOP, for approval and clearance and for communication, to the DOC for granting the petitioner a no objection so that the petitioner could obtain the requisite TEP from the ASI, as some of the exhibits were over 99 years old. The DOP, accordingly, addressed the following communication, to the DOC on 15th February 2008:

“No.3-5/2008-Phil.
Government of India
Ministry of Communications
Department of Posts
Dak Bhawan, Sansad Marg,
New Delhi-110 001

Dated 15.2.2008

To,

The Secretary
Department of Culture
Ministry of H.R.D.
Shastri Bhawan,
New Delhi -110 001

Subject : Issue of ‘No objection certificate’ from cultural angle for participation in World Stamp Championship ISRAEL-2008 to be held in Tel aviv, Israel from 14-21 May, 2008.

Sir,

Mr. Ajay Kumar Mittal is nominated National Commissioner for World Stamp Championship Israelo-2008 to be held in Telaviv, Israel from 14-21 May, 2008.

You are requested to kindly issue a ‘No objection certificate’ in the name of Shri Ajay Kumar Mittal at the earliest to facilitate him to obtain, Temporary Export Permit’ from Archaeological Survey of India.

This is urgent please.

Yours Sincerely,

(Jagannath Srinivasan)
Asstt. Director General (Phil.)

Copy to :- Mr.Ajay Kumar Mittal, D-57 South Extension -110049
for information. He is requested to kindly liaise with the Ministry
of HRD for issue of a 'No objection certificate'

(Jagannath Srinivasan)
Asstt. Director General (Phil.)”

Additionally, the DOP wrote to the Director (Antiquities) ASI, on the
same day i.e. 15th February 2008 as under:

**“No.3-5/2008-Phil.
Government of India
Ministry of Communications
Department of Posts
Dak Bhawan, Sansad Marg,
New Delhi-110 001**

Dated 15.2.2008

To,

The Director (Antiquities)
Archaeological Survey of India,
Government of India
Janpath, New Delhi -110 001

**Subject : Grant of Temporary Export Permit to Mr.Ajay
Kumar Mittal, nominated National Commissioner for World
Stamp Championship ISRAEL-2008 to be held in Telaviv,
Israel from 14-21 May, 2008.**

Sir,

Every year many international philatelic exhibitions are held in
different parts of the world. A nominee of Philatelic Congress of
India is appointed as National Commissioner for these exhibitions
to take charge of exhibits from Indian participants. Some of the

exhibits contain stamps and covers, which are more than 99 years old and require temporary export permit from ASI. Participating in such exhibitions as well as putting up such exhibits are part of international exchange in philately and takes place frequently. Getting the best / most famous exhibits from different parts of the world adds to the success of the exhibition. Similarly, putting up of some of the celebrated exhibits by Indian Philatelists adds to the image of the country at the exhibition, World Stamp Championship Isreal-2008 to be held in Telaviv, Israel from 14-21 May 2008.

Mr.Ajay Kumar Mittal, D-57 South Extension Part-1, New Delhi -110049 has been nominated as a National Commissioner for this exhibition.

Keeping in view the above facts, it is requested to kindly grant the TEP to Mr.Ajay Kumar Mittal at the earliest after observing the necessary formalities at your end.

(Jagannath Srinivasan)
Asstt. Director General (Phil.)”

14. The DOC, this time, did not grant the NOC with as much alacrity as it had exhibited on earlier occasions. Instead, the DOC wrote to the Assistant Director General (Philately), DOP, on 25th February 2008, requiring the DOP to send the checklist for the Tel Aviv Exhibition duly signed by the head of the Division of the nodal ministry, so that a TEP could be obtained from the ASI. The concerned checklist was forwarded by the DOP to the DOC under cover of letter dated 23rd July 2007.

15. Despite lapse of time, no objection from the DOC was not forthcoming. On inquiry, the petitioner was informed that the DOC was applying, to the philatelic exhibits that the petitioner desired to export, the 1999 Guidelines which, as already noted, envisaged a detailed and exhaustive procedure to be followed before antiquities or art exhibits could be exported abroad.

16. Aggrieved by the aforesaid inaction, the petitioner has approached this Court by way of the present writ petition, invoking the extraordinary jurisdiction vested in it by Article 226 of the Constitution of India. The unrelenting passage of time has, however rendered most of the prayers in the writ petition infructuous. The prayer clause in the writ petition reads thus:

“In the aforesaid facts and circumstances it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

- a) Issue a Writ of Prohibition or any other appropriate Writ, order or direction thereby prohibiting Respondents Nos. 1 to 4 from taking any step whereby the Petitioner is prevented from taking exhibits of various Indian participants to Tel Aviv for World Stamp Championship Israel 2008;
- b) Issue a Writ of Mandamus or any other appropriate Writ, order or direction thereby directing the 2nd Respondent to issue Temporary Export Permit [TEP] at the earliest to the Petitioner;
- c) Issue any appropriate Writ, order or direction thereby declaring that the philatelic material sought to be taken abroad temporarily for the World Stamp Championship Israel 2008 which is more than 75/100 years are not the 'Art Objects' and are not 'Antiquity' under the definition in Sec. 2 [1][a] & [b] of the AAT Act, 1972;
- d) Issue any appropriate Writ, order or direction thereby declaring that the office memorandum dated 18.6.1999 cannot be applied to philately and other related subjects declaring that stamps etc. as also earlier determined by respondent no 1 vide Office Memorandum dated 20.4.2000;
- e) Issue any appropriate Writ, order or direction thereby directing the 4th Respondent to accept the TEP issued by the 2nd Respondent and allow the petitioner to take with him the philatelic material of exhibitors as the National Commissioner for the World Stamp Championship Israel 2008 which is going to be held from

May 14-21, 2008 at Tel Aviv, Israel;

- f) Issue any appropriate Writ, order or direction thereby declaring that no NOC is required from the 1st & 2nd Respondent under cultural angle or otherwise in respect of the such private exhibits;
- g) Pass necessary orders directing the respondents to pay the cost of the present proceedings to the petitioner; and
- h) Pass such further and other orders as the facts and circumstances of the case may require.”

17. Mr. Sunil Mittal, learned Counsel for the petitioner submits that, though the prayers in the petition which deal with the Tel Aviv Exhibition, have, needless to say, been rendered infructuous, the issue of coverage, of the philatelic exhibits that the petitioner desired to export, by the AATA and the 1999 Guidelines, still survives for consideration and is a matter of recurring importance as such exhibitions are held every year, and are of considerable repute. He submits that, if carriage of philatelic exhibits abroad, for participation in such exhibitions, is to be subjected to the rigour of the 1999 guidelines and the provisions of the AATA, participation in such exhibitions would become a near impossibility, and would also disincentivize, to a large degree, philatelists from pursuing their hobby, which has an international following. Mr. Mittal has, therefore, while principally arguing that the AATA and the 1999 Guidelines would not cover philatelic exhibits, argued, in the alternative, that, if this Court were to hold that export of philatelic exhibits would also be subject to the AATA and the 1999 Guidelines, directions be issued to the respondents to simplify the procedure for obtaining the requisite clearances and the TEP for carrying philatelic

exhibits abroad.

18. During the course of the present proceedings, this Court, *vide* order dated 23rd January 2014, directed the respondent-Union of India to file an affidavit indicating the stand of the Government as to whether stamps and other philatelic materials were, or were not, covered within the definition of “antiquity” or “art treasure” under the AATA and also to indicate, in the affidavit, the simplified procedure for grant of TEP with respect to postage stamps and philatelic material. Pursuant to the said directions, a “short supplementary affidavit” was filed by the Director (Antiquities), ASI. In the affidavit, it has been stated that, on 24th April 2014, a meeting took place under the chairmanship of the ADG, ASI, the proceedings of which were reduced into minutes. Paras 4 to 7 of the said affidavit may be reproduced thus:

“4. It would transpire from the said minutes of the meeting that it was unanimously decided by the members present in the meeting that philatelic objects and genuine postage stamps more than 75 (seventy Five) years of age are to be considered as antiquities as the same is covered under the definition of "antiquity" as provided in section 2 (II) of The Antiquities and Art Treasures Act, 1972, by way of a residuary clause to the effect that any manuscript, record or other document which is of scientific, historical, literary or aesthetic value and which has been in existence for not less than seventy five years, can be considered to be antiquity.

5. It is most humbly stated and submitted that the aforesaid definition of "antiquity" In The Antiquities and Art Treasures Act, 1972, is wide enough to include postage stamps whose age is 75 (seventy five) years and above.

6. It is respectfully stated and submitted that the issue of grant of Temporary Export Permit (TEP) for such postage stamps was also discussed and taken up in the aforesaid meeting as would be reflected from the aforesaid minutes of the meeting as annexed hereto. It was concluded by the members present regarding such issue that the existing procedure for grant of such permit is simple

and cannot, perhaps, be further simplified. It is recorded in the said minutes of the meeting that the guidelines issued in 1999 for grant/issue of TEP have been already substituted by the recent guidelines issued on 25.2.2014, which has already resulted in simplification of the said process. Copy of the aforesaid Guidelines on the subject of 1999 and 2014 are annexed hereto and collectively marked as **Annexure R-2 (Colly.)**

7. It is most humbly stated and submitted that since philatelic objects and postage stamps older than 75 years would be covered by the definition of "antiquity" under the aforesaid provisions of The Antiquities and Art Treasures Act, 1972, the existing procedure requiring the obtainment of NOC is necessary for the safety and security of such antiquity. Under the existing process, the applicant has to apply to the Department of Posts and Telegraph with a request to appoint the Commissioner and the Department of Posts and Telegraph thereafter approaches the Ministry of Culture. The Archaeological Survey of India thereafter conducts a meeting for the purpose to take a decision on issuing the TEP."

The minutes of the meeting which took place on 24th April 2014 were annexed to the affidavit. The following passages, from the said minutes merit reproduction:

"At the outset, Chairman welcomed all the member of the committee and briefed about the matter. As directed by Hon'ble court the issue of philatelic object defined as antiquity was discussed in detail under the provisions of the AAT Act,1972. ADG ASI was of the view that the philatelic objects are covered as antiquity under Section 2 (a) (II) of Antiquities and Art Treasures Act, 1972 from the date the Act came in to force and no objection has ever been raised as these objects not being an antiquities. He further intimated that section 24 of the act gave an opportunity to any citizen of the country to present, such objects, before Director General ASI if any question arises as to whether any article or object is an antiquity and the decision of the DG ASI shall be final. Director Antiquity has further intimated that article i of UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970, Paris, define postage, revenue and similar stamp, singly or in collections as cultural property. Hence, it was felt by the members of the committee that there should not be any question as to the philatelic objects not being antiquities. Ms. Aditi Mohan, Advocate expressed that a certificate from Director General, Archaeological Survey of India could be annexed in the affidavit to be submitted to

the Hon'ble Court stating that genuine postage stamps older than 75 years are to be considered antiquities.

The issue of simplification of the existing procedure for granting TEP by ASI was also discussed. Joint Secretary, MOC desired to know the entire process of granting of TEP by ASI. SA, Antiquity described the process in detail stating that after appointing Commissioner for philatelic exhibition abroad by D/o P&T, the request of applicant is forwarded to Ministry of Culture for grant of NOC from cultural angle. Once NOC is received from Ministry of Culture, the ASI convene the meeting of National Screening & Evaluation Committee (NS&EC) for screening and evaluation for the purpose of insurance and accordingly TEP is issued by DG, ASI.

Joint Secretary (Culture), wanted to know the procedure of appointing philatelic commissioner for exhibition abroad by D/p P&T. ADG (Philatelic) D/o P&T informed that since the Deptt. of Post and Telegraph is the sole custodian for the philatelic material, hence they appoint the Commissioner for said purpose and forward, any request for a exhibition of the same to Ministry of Culture (MOC) for grant of NOC.

While briefing the fact of the case Ms. Aditi Advocate, Delhi High Court on behalf of the Govt. counsel defending the case on behalf of ASI expressed that the Hon'ble Court is of the view that a philatelic collector who has the hobby of collection of the postage stamp and subsequently taking abroad for exhibition has to go to several organization for granting NOC hence, existing system need to be reviewed and make it more easy to avoid any problem to philatelic collector.

Jt. Secretary, MOC intimated that the existing procedure is not at all complicated. Infact the guidelines issued in 1991 for issuing TEP have been replaced by the recent guidelines issued on 25.2.2014 and the procedure has been made more simple. He was of the view that since the philatelic object are covered under the definition of antiquity, the existing process for obtaining the NOC is mandatory for the safety and security of antiquity, and art treasure. The existing system is so simple that the applicant has to apply only to D/o P&T with a request to appoint the commissioner: It is the D/o P&T who approaches to the Ministry of Culture and thereafter ASI issues the TEP after conducting NS&EC meeting, The members of the committee were of the view that existing guidelines are well within the preview of the act and cannot be simplified further. It was also pointed out in the meeting that MEA in not involved while philatelic exhibition is being taken abroad.

Finally, it was unanimously decided by the members present in the meeting that the philatelic objects fall under the category of the antiquity. Similarly the existing procedure of, granting TEP is well within the preview of the act and It is not possible to make it simpler for taking any antiquity and art treasures abroad for exhibition.”

19. There is, therefore, no consistency of approach, on the part of the respondents, regarding the applicability, to export of philatelic exhibits, of the provisions of the AATA and the 1999 Guidelines. We are, therefore, back to the proverbial Square One. The court is required to consider, essentially, whether philatelic exhibits, such as stamps, stamp papers and envelopes of more than a century’s vintage, are “antiquities” within the meaning of the Antiquities Act.

Submissions and analysis

Are philatelic exhibits “art treasures”?

20. I may note, here, that Mr. Vikram Jetly, learned Standing Counsel for the UOI did not seek to contend that philatelic exhibits were “art treasures”. Indeed, *prima facie*, philatelic exhibits cannot be regarded as “art treasures”, the expression being defined in Section 2(1)(b) of the AATA thus:

“(b) “art treasure” means any human work of art, *not being an antiquity, declared by the Central Government by notification in the Official Gazette, to be an art treasure* for the purposes of this Act having regard to its artistic or aesthetic value:

Provided that no declaration under this clause shall be made in respect of any such work of art so long as the author thereof is alive;”

21. Antiquities are, therefore, per definition, excluded from the ambit of the expression “art treasures”. An item is, therefore, either, an art treasure or an antiquity. It cannot be both.

22. Unlike antiquities, art treasures require, therefore, per definition, to be declared, by notification issued by the Central Government in the Official Gazette, as such. It is nobody’s case that philatelic exhibits have been notified as art treasures by the Central Government. Ergo, philatelic exhibits cannot be regarded as “art treasures”.

Are philatelic exhibits “antiquities”?

23. What remains to be seen is whether such philatelic exhibits are, “antiquities” within the meaning of Section 2(1)(a) of the AATA.

24. “Antiquity” is defined in Section 2(1)(a) of the AATA thus:

“(a) antiquity” includes –

- (I) (i) any coin, sculpture, painting, epigraph or other work of art or craftsmanship;
- (ii) any article, object or thing detached from a building or cave;
- (iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages;
- (iv) any article, object or thing of historical interest;
- (v) any article, object or thing declared by the Central Government, by notification in the Official Gazette, to be an antiquity for the purposes of this

Act,

which has been in existence for not less than one hundred years;

(II) any manuscript, record or other document which is of scientific historical, literary or aesthetic value and which has been in existence for not less than seventy-five years;”

25. Section 24 of the AATA reads as under:

“24. Power to determine whether or not an article, etc., is antiquity or art treasure.—If any question arises whether any article, object or thing or manuscript, record or other document is or is not an antiquity or is or is not an art treasure for the purposes of this Act, it shall be referred to the Director General, Archaeological Survey of India, or to an officer not below the rank of a Director in the Archaeological Survey of India authorized by the Director General, Archaeological Survey of India and the decision of the Director General, Archaeological Survey of India or such officer, as the case may be, on such question shall be final.”

Mr. Jetly sought to contend that overarching discretion vested with the DG, ASI to decide whether a particular article, object or thing, or manuscript, record or other document was, or was not, an antiquity. Inasmuch as, consequent to the order dated 23rd January 2014 passed by this Court, the DG had, in the minutes dated 24th April 2014, arrived at the view that philatelic exhibits were antiquities within the meaning of the AATA, Mr. Jetly would seek to contend that the matter must rest there.

26. The contention has only to be recorded to be rejected. No administrative decision can ever oust the jurisdiction of a court to decide a legal issue which comes before it. The question of whether an item is, or is not, an “antiquity” is essentially a question of law, based on the interpretation of Section 2(1)(a) of the AATA. With

respect to the DG, ASI, therefore, his decision cannot oust the jurisdiction of this Court to examine the issue that has been squarely posed before it, i.e., whether philatelic exhibits are, or are not, “antiquities” within the meaning of the AATA.

27. I may also advert, at this juncture, to a submission of Mr. Sunil Mittal, on behalf of the petitioner. Mr. Mittal sought to contend that though, initially in these proceedings, the respondents were relying on Clause (iv) of Section 2(1)(a)(I) of the AATA, which includes, within the definition of “antiquity”, “any article, object or thing of historical interest”, in the minutes of the meeting which took place on 24th April 2014 under the directions issued by this Court in its order dated 23rd January 2014, and in the affidavit filed by the DG ASI before this Court pursuant thereto, the respondents had sought to rely on Section 2(1)(a)(II) of the AATA. As such, according to Mr. Mittal, the respondents have given up their reliance on Section 2(1)(a)(I)(iv) and have restricted their case to Section 2(1)(a)(II). This Court, therefore, according to Mr Mittal, is only required to examine Section 2(1)(a)(II), and need not concern itself with Section 2(1)(a)(I)(iv).

28. This submission, too, needs merely to be recorded to be rejected. The Court, while examining whether philatelic exhibits are, or are not, “antiquities” within the meaning of the AATA, cannot be bound by the view that the departmental authorities may be taking. The Court cannot, therefore, exclude, from the scope of its consideration, Section 2(1)(a)(I)(iv). Once the Court is seized with the issue of whether the AATA embraces, within the definition of “antiquity” as contained in it, philatelic exhibits, it goes without

saying that the entire definition of “antiquity”, as contained in the AATA, has to be taken into account. All clauses of the definition have, therefore, to be seen.

29. On its face, sub-clauses (i), (ii), (iii) and (v) of Section 2(1)(a)(I) do not apply.

Section 2(1)(a)(I)(iv)

30. Section 2(1)(a)(I)(iv), however, includes, within the ambit of the expression “antiquity”, “any article, object or thing of historical interest”.

31. *Ex facie*, the expression is wide and compendious. Mr. Mittal sought to contend that Section 2(1)(a)(I)(iv) has to be interpreted *ejusdem generis* the remaining clauses of Section 2(1)(a)(I).

32. I cannot agree. The *ejusdem generis* doctrine has, in my considered opinion, no application whatsoever to interpretation of Section 2(1)(a)(I)(iv) of the AATA.

33. In *Amar Chandra v. Collector of Excise, Tripura*¹, the Supreme Court held that the *ejusdem generis* principle applied where “(i) the statute contains an enumeration of specific words; (ii) the subjects of enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general terms follow the enumeration; and (v) there is no indication of a different

¹ (1972) 2 SCC 442

legislative intent.” In *U.P.S.E.B. v. Hari Shanker Jain*², the Supreme Court clarified that “if the subjects of enumeration belong to a broad based genus as also to a narrower genus, there is no principle that the general words should be confined to the narrower genus.”

34. In any event, the *ejusdem generis* principle applies where a number of words, which belong to one genus, are used together, and are followed by a word of broader import. In such a case, if the word which follows is found, in its normal etymological connotation, to be broad in its scope, the *ejusdem generis* principle can be invoked to restrict the scope of that word to the peripheries of the genus to which the preceding words belong. The principle has no application whatsoever to a case where, as in the present, the categories of items coming within the words encompassed by the definition are enumerated under different heads. The head “any article, object or thing of historical interest” is a distinct head, distinct from the heads of definition under sub-clauses (i), (ii), (iii) and (v) in Section 2(1)(a)(I) of the AATA. Words of general import, consciously so employed by the legislature, cannot, by applying the *ejusdem generis* principle, be narrowed in their scope and effect³.

35. Moreover, for application of the *ejusdem generis* principle, it is necessary that the enumerated words or expressions, preceding the broad general word that follows, constitute a category or a genus or a family which admits of a number of species or members, as held by the Supreme Court in *State of Bombay v. Ali Gulshan*⁴. The

² (1978) 4 SCC 16

³ UPSEB *ibid*

⁴ AIR 1955 SC 810

existence of a distinct genus, comprising more than one species is the *sine qua non* for the application of the principle.⁵ Where the narrower words preceding the broad word belong to different categories, the *ejusdem generis* principle has no application.⁶ In the present case, it cannot be said that clauses (i), (ii), (iii), and (v) of Section 2(1)(a)(I) of the AATA constitute a distinct genus so as to narrow the ambit of the expression used in Section 2(1)(a)(iv) to conform to that genus.

36. The reliance, by Mr. Mittal, on the *ejusdem generis* doctrine is, therefore, *ex facie* misconceived.

37. Any “article, object or thing of historical interest” which has been in existence for not less than 100 years, is, per definition, an antiquity. The reference to “historical interest” and the age of the article, object or thing as being not less than 100 years are, clearly sufficient to restrict the ambit of the otherwise wide expression “any article, object or thing”. No further narrowing of the expression, by application of the principle of *ejusdem generis* or otherwise, would, therefore, be justified; else, it may violate the legislative intent.

38. No discussion is required to conclude that postage stamps and the other philatelic exhibits that the petitioner desired/desires to export are “articles, objects or things”. Where they have been in existence for over 100 years, Section 2(1)(a)(I) would apply. That would not, however, render them “antiquities”. They must be, additionally, of historical interest.

⁵ Ali Gulshan *ibid*

⁶ Dr. Indramani Pyarelal Gupta v. W.R. Natu, AIR 1963 SC 274

39. Mr. Mittal sought to contend, somewhat surprisingly as Counsel appearing for a leading philatelist, that the philatelic exhibits that he sought to export were of no real historical value or national importance. According to him, postal stamps and stamp papers and other such documents were merely used and then thrown away. He claims to have procured the material in question as scrap.

40. The submissions do not merit acceptance, even at face value, either on facts or in law.

41. In the first place, Section 2(1)(a)(I)(iv) does not refer either to “national importance” or even to “historical value”. It requires the “article, object or thing”, covered by the clause, to be of “historical *interest*”.

42. The expressions “historical interest” and “historical value” are neither synonymous nor, when used in parliamentary legislation, capable of being regarded even as analogous. There is an inherent difference between the words “interest” and “value”, insofar as the element of subjectivity or objectivity inbuilt in the expressions are concerned. “Interest”, used as a noun, is fundamentally subjective. What may be of interest to one person, or to a few, may be of no interest to the vast multitude of their fellow beings. If, however, an item is of interest even to a niche segment of the populace to whom it appeals, it is an item “of interest”.

43. Most vintage items, per se, are items of “historical interest”. History is but a hark back to posterity, and an effort to appreciate and assimilate, years, decades or centuries later, the lives, trials and

tribulations of past times. Items which date back to such past times are, therefore, intrinsically of “historical interest”. Indeed, the very expression “historical interest” would encompass, within its wide scope, all items which serve as indicia and indicators of the times that have gone, never to return.

44. A diamond, at heart, is but carbon. Terming any submission that philatelic exhibits, including postages and revenue stamps and stamp papers and other such documents of over a century’s vintage are not items of “historical interest” as preposterous cannot, in the opinion of this Court, be regarded as an exaggeration. Such exhibits are of immense historical and, to an extent, even of scientific, interest – and, for that matter, even of historical value. Philately is a hobby of the discerning connoisseur, who appreciates the intrinsic value of vintage stamps and other such documents. The very fact that international exhibitions are held for such connoisseurs of the art, indicates, clearly, that philatelic exhibits are of great value. A postage stamp of 1900 vintage which, at that time, may have been used and thrown away would, if found a hundred years later, have increased its value a thousand-fold. The historical importance of such exhibits cannot, either, be undermined in any manner. They are an indispensable indicia of the times in which they were issued, and the manner in which transactions were transacted at that time. The very paper on which such exhibits are printed has its own fascination, for the discerning aficionado. Such philatelic exhibits are, therefore, obviously articles, objections or things of historical interest. In fact, though a select group of collectors may take the trouble to collect such exhibits, their inherent and intrinsic historical value far transcends the

covers of the albums that such collectors may maintain. They are, therefore, *ex facie* “antiquities” within the meaning of Section 2(1)(a)(I)(iv).

Section 2(1)(a)(II)

45. In fact, in my opinion, such philatelic exhibits would be antiquities even within the meaning of Section 2(1)(a)(II). Section 2(1)(a)(II) covers “any manuscript, record or other documents which is of scientific, historical, literary or aesthetic value and which has been in existence for not less than 75 years”. While the word “manuscript” refers, etymologically and legally, to a written document, the expression “record” is of wider amplitude. It stands defined, in P. Ramanatha Aiyar’s *Advanced Law Lexicon* thus:

“A memorial or remembrance; an authentic testimony in writing. A memorial of a thing done; a writing preserved as evidence; a transcription into something permanent for preservation as a memorial.

A ‘record’ is a memorial of what has been done; authentic written evidence, considered as either public or private but usually public.

Information that is written on a tangible medium (a document) or stored in an electronic or other medium and retrievable in perceivable form.”

46. In *H v. Schering Chemicals Ltd.*⁷, the expression “records” has been defined as “documents which a historian would regard as original or primary sources, that is documents which either give effect to a transaction itself or which contain a contemporaneous register or

⁷ 1983 (1) All ER 849

information supplied by those with direct knowledge of the facts”.

47. The words “manuscript” and “record” do not constitute a genus. The words “other document” which follow the words “manuscript” and “record” in Section 2(1)(a)(II) cannot, therefore, be read *ejusdem generis* with the words “manuscript” and “record”. Inasmuch as there is no similarity between the words “manuscript” and “record” except that they are both documentary, it would be futile to seek to interpret the words “other document” which follows the words “manuscript” and “record” in Section 2(1)(a)(I) by applying the *noscitur a sociis* principle either, which basically advocates judging the meaning of a word by the company it keeps⁸.

48. The only commonality between “manuscript” and “record”, which are the words with which the expression “other document” in Section 2(1)(a)(II) keeps company, is that they are both documents.

49. The expression “other documents”, as employed in Section 2(1)(a)(II) has, therefore, to be accorded full scope, and its ambit cannot be narrowed by applying interpretative calisthenics. In this context, it is worthwhile to refer to the judgment of the Supreme Court in *Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd.*⁹, which held that, in the expression “newspapers or other documents”, the words “other documents” would include documents of any kind and would not take their colour from the word “newspaper”.

50. The word “document”, obviously, is a word of wide and

⁸ *Rohit Pulp and Paper Mills v. Collector of Central Excise*, (1990) 3 SCC 447.

⁹ AIR 1964 SC 1882

comprehensive import. In *Aparna Trading Corporation (I) Pvt. Ltd. v. CCT*¹⁰, the following explanation of the expression “document” is to be found:

“ “Document” is something that furnishes evidence, Especially legal deed or other piece of writing. “Documents” shall also include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter. “Document” will also include summons, notice, requisition, order, other legal process and registers. Any decipherable information, which is set down in a lasting form would be a document; “Document” is a written paper or something similar, which may be put forward in evidence. The term “document” means a document legally enforceable. The expression “document” would also mean something, on which things are written, printed or inscribed, and which gives information and would also include any other material thing affording information, proof or evidence of anything— “Document” would also mean and include something to provide with factual or substantial support for statements, made on a hypothesis proposed and also to equip with exact references to authoritative supporting information.”

51. The Queens Bench, in *Huddleston v. Controlled Risks Information Services Ltd.*¹¹ interpreted the expression “document” even more widely by including, within its ambit, “a written instruction or any other object carrying information such as photographs, tape recording or computer disk”.

52. Given the amplitude of the expressions “record” and “other document” as employed in Section 2(1)(a)(II), it is possible to hold that stamps, stamp papers, envelopes and other such material, if they contain information, hand-written or otherwise, come within the ambit of the expression “manuscript, record or other document”. For that reason, too, they would also qualify as “antiquities” within the

¹⁰ (1982) 51 STC 199

meaning of Section 2(1)(a)(II) of the AATA.

53. Mr. Mittal also sought to place reliance on the preamble of AATA, which reads thus:

“An Act to regulate the export trade in antiquities and art treasures, to provide for the prevention of smuggling of, and fraudulent dealings in, antiquities, to provide for the compulsory acquisition of antiquities and art treasures for preservation in public places and to provide for certain other matters connected therewith or incidental or ancillary thereto.”

54. To my mind, the preamble to the AATA really does not assist in resolving the controversy before this Court in the present case. It merely states that AATA is an act to regulate export trade in antiquities and art treasures and to provide for the prevention of the smuggling of, and fraudulent dealings in antiquities to provide compulsory acquisition of antiquities and art treasures for preservation in public places, among other things. No substantial assistance, regarding the scope and ambit of the expression “antiquity” as defined in the AATA can, therefore, be derived from the preamble thereto.

55. As against this, the statement of objects and reasons to the Antiquities and Art Treasures Bill which preceded the AATA identifies the items forming subject matter of the AATA as “objects of antiquarian or historical interest or significance”. Philatelic exhibits, of near or more than a century’s vintage, in my opinion, are clearly “objects of antiquarian or historical interest or significance”.

56. Viewed any which way, therefore, it is not possible to accept

¹¹ (1987) 1 WLR 702

the submission of Mr. Mittal that philatelic exhibits in the nature of postage and revenue stamps, stamp papers, envelopes and other such material are not “antiquities” within the meaning of the AATA.

57. But for contending that philatelic exhibits do not come within the ambit of the AATA, the petitioner does not seek to challenge the 1999 Guidelines, or their applicability on any other ground. As a result, the sequitur to the decision, hereinabove, that philatelic exhibits are “antiquities” within the meaning of the AATA, would be that the 1999 Guidelines would also apply to such exhibits.

Alternative prayer

58. Mr. Mittal also advanced an alternative prayer, in the event that this Court was of the view that philatelic exhibits were covered by the AATA. He prayed that the respondents be directed to simplify the procedure for grant of NOC and TEP for export of philatelic exhibits, if possible by resorting to a one window procedure. That is entirely a matter of administrative discretion, and this Court, in exercise of its jurisdiction under Article 226, cannot direct framing of any such guidelines. The demographics of export of antiquities and art treasures may involve several competing considerations and a ratiocination of issues which this Court lacks the expertise to deliberate upon. Apropos this prayer of Mr Mittal, therefore, the Court can only permit the petitioner to represent to the respondent for simplification of the procedure for obtaining NOC from the DOP, the DOC and obtaining a TEP from the ASI, for export of philatelic exhibits. In the event, any such request is made, the Court is sanguine that it would meet with the

degree of attention that it deserves.

59. This Court is, therefore, not in a position to grant the reliefs in this petition.

60. Subject to the liberty granted by para 58 *supra*, therefore, the petition is dismissed with no orders as to costs.

C.HARI SHANKAR, J

NOVEMBER 4, 2022/kr



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