

**IN RE: BEACH MINERAL PRODUCERS ASSOCIATION & ANR. V. DIRECTORATE GENERAL OF
FOREIGN TRADE (DGFT) & ORS.**

Decision date: 25/07/2019

Keywords: abuse of dominant position

Issue: Whether DGFT's policy of bringing the export of Beach sand minerals (BSMs) under State Trading Enterprise (STE) regime, and imposing allegedly onerous procedures for exporters amounts to an abuse of dominant position?

Rule: Sec. 4 of the Competition Act, 2002.

The Informant submitted that five coastal states, namely, Tamil Nadu, Kerala, Andhra Pradesh, Odisha and Maharashtra have beach sand deposits available on various beaches. Beach sand deposits, also called as placer deposits, contain associated Beach Sand Minerals (BSMs), which have multiple uses.

It was submitted that after two decades of gradual liberalisation of the sector, *vide* notification dated 21.08.2018 issued by the DGFT (OP-1), export of BSMs was brought under State Trading Enterprise (STE) and consequently, Indian Rear Earths Ltd. (OP-3) was designated as the canalising agent/ STE for export of all BSMs which places it in a dominant position and skews the level playing field.

It was also submitted that a Standard Operating Procedure (SOP) in respect of export of BSMs was published by OP-1, which has onerous conditions such as due diligence of foreign buyer by OP-3 and end-user certification by private exporter; fixing of 3 per cent of Free on Board (FOB) value as commission payable to OP-3; sharing of commercial secrets and knowledge (including contract details entered with the foreign buyer, financial health, letter of creditworthiness from banks); indemnity in favour of OP-3; contact details and passport details of exporters; details of cases against directors or partners or proprietors of exporters; information regarding ban, if any, on exporter's business by GOI or any Government Authority or PSU etc; As a result, it was argued that the Notification and SOP amount to abuse of dominant position in the form of unfair and discriminatory practices by OP-3.

The Commission observed that STEs deal with export/ import of products in pursuance of government policies in relation to products/ industries considered to have strategic importance.

Having considered the nature of allegations, the Commission held that the change in export policy by OP-1 in pursuance of its statutory duties and implementation thereof by OP-3 are not amenable for examination within the framework of Section 4 of the Act.