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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5156 OF 2021

Ashwini Ashish Dighe, Indian inhabitant,
 carrying on business in the name and style of
 Sunteck Telecommunications and having
 her office at 2437/B, Pune-Nagar Road,
 Opp. Hotel Parijat Dhaba, Wagholi,
 Pune 412 207.

.. Petitioner

Versus

1. The Union of India, through the
 Secretary, Department of Commerce,
 Ministry of Commerce & Industry,
 Udyog Bhavan, New Delhi 110 107.
2. The Additional Secretary, SEZ Division,
 Department of Commerce,
 Ministry of Commerce & Industry,
 Room No. 35, Udyog Bhawan,
 New Delhi 110 011.
3. The Director General of Foreign Trade,
 Department of Commerce,
 Ministry of Commerce & Industry,
 Udyog Bhawan, New Delhi 110 107.
4. The Joint Director General of Foreign Trade,
 having his office at C. Block, PMT
 Commercial Complex, Shankersheth Road,
 PB No. 1623, Pune 411 037

.. Respondents

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- Mr. Prasad Paranjape a/w. Mr. Sanjeev Nair i/by PDS Legal for the
 Petitioner
 - Mr. Pradeep S. Jetly, Senior Counsel a/w. Mr. J.B. Mishra for the
 Respondents
-

**CORAM : DIPANKAR DATTA &
MILIND N. JADHAV, JJ.**

**RESERVED ON : 17th DECEMBER 2021.
PRONOUNCED ON : 20th JANUARY, 2022.
(Through Video Conferencing)**

JUDGMENT (PER : MILIND N. JADHAV, J.)

1. Rule. By consent of parties heard finally. Heard Mr. Prasad Paranjape along with Mr. Sanjeev Nair, learned counsel appearing on behalf of the Petitioner, and Mr. Pradeep S. Jetly, learned senior counsel along with Mr. J. B. Mishra on behalf of the Respondents.

2. Petitioner is the proprietor of Sunteck Telecommunications carrying on business of manufacturing optical fibres and having its registered office at GAT No. 2347/B, Pune-Nagar Road, Opp. Hotel Parijat Dhabha, Wagholi, Taluka Haveli, District Pune – 411 207.

3. By the present Writ Petition, the Petitioner has prayed for the following reliefs:

"a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari and/or any other appropriate writ, order or direction under Article 226 and Article 227 of the Constitution of India calling for the records and papers of the Petitioner's case and after examining the legality and validity thereof be pleased to quash and set aside the order dated 03.06.2020 passed by the Respondent No.3;

b) that this Hon'ble Court be pleased to issue a mandamus or a writ in the nature of mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India ordering and directing the Respondents themselves, their officers and subordinates to forthwith:

(i) withdraw and/or cancel impugned order dated 03.06.2020 passed by the Respondent No.3;

(ii) allow the Application File Nos: (i) 31/21/090/83127/AM18 dated 06.10.2017 for Rs.13,79,489, (ii) 31/21/090/83130/AM18 dated 06.10.2017 for Rs.24,30,571, (iii) 31/21/090/83131/AM18 dated 06.10.2017 for Rs.26,31,313 and (iv) 31/21/090/83133/AM18 dated 06.10.2017 for Rs.2,83,604 of the Petitioner and issue the Duty Credit Scrip under MEIS under FTP 2015-20 as applied by the Petitioner for exports effected by him."

4. Petitioner has challenged the order dated 03.06.2020 passed by the Respondent No. 3 – the Director General of Foreign Trade, Department of Commerce, Ministry of Commerce and Industry, New Delhi – by which the Petitioner's applications for issuance of Duty Credit Scrips under the Merchandise Export from India Scheme (for short: "MEIS") have been rejected. Petitioner has further prayed for considering the Petitioner's case for seeking Duty Credit Scrips under the MEIS in accordance with law.

5. Before we advert to the submissions made by the respective counsel, it will be apposite to refer to the relevant facts briefly:

5.1. Respondent No.1 - The Union of India, through the Secretary, Department of Commerce, Ministry of Commerce & Industry, New Delhi – announced MEIS as part of the Foreign Trade Policy (FTP) 2015-20 in order to accelerate growth in export of goods from India in exercise of powers conferred upon it under the provisions of the Foreign Trade (Development and Regulation) Act, 1992 (for short: "**FTDR Act**").

5.2. Petitioner, in the regular course of business, purportedly supplied Single Mode Optical Fibers G642D - Natural (for short "**the export goods**") to an Overseas Buyer, Technocraft Engineering LLC, Dubai, UAE, (for short "**the Overseas Buyer**"). As per instructions of the Overseas Buyer, Petitioner delivered the export goods to Siddhartha Logistics Co. Pvt. Ltd., a unit located in the Free Trade and Warehousing Zone (FTWZ) in Sri City Multi-Product SEZ/FTWZ, Chittor District, Satyavedu Mandal, Andhra Pradesh (for short "**the FTWZ unit**"), under four bills of export bearing no. 0000004 dated 08.01.2016, no. 0000016 dated 08.02.2016, no. 0000027 dated 02.03.2016 and no. 0000028 dated 03.03.2016.

5.3. According to the Petitioner, the export goods were warehoused in the FTWZ unit on instructions of the Overseas Buyer and were later exported by the FTWZ unit to Taiwan.

5.4. Petitioner made an application dated 15.06.2017 to the Respondent No. 4 – the Joint Director General of Foreign Trade – for issuance of Duty Credit Scrip under MEIS as envisaged under the FTP 2015-20 in respect of some of the export goods which were delivered to the Overseas Buyer through the FTWZ and were subsequently exported.

5.5. Respondent No. 4 issued Duty Credit Scrip no. 3119015316 dated 28.07.2017 to the Petitioner under which the Petitioner was entitled to import goods / raw materials free of customs duties to the extent of Rs.10,58,375.00, subject to the conditions specified therein.

5.6. Thereafter, Petitioner made four further applications in October 2017 to the Respondent No. 4 for grant of Duty Credit Scrips under MEIS in respect of the remaining export goods that were delivered to the Overseas Buyer through the FTWZ and which were subsequently exported to Taiwan. The details of the applications are as under:

Sr. No.	MEIS Application File No.	Date of Application	Application Amount (Rs.) of Duty Credit claimed
1.	File No. 31/21/090/83127/AM 18	06.10.2017	13,79,489

2.	File No. 31/21/090/ 83130/AM 18	06.10.2017	24,30,571
3.	File No. 31/21/090/ 83131/AM 18	06.10.2017	26,31,313
4.	File No. 31/21/090/ 83133/AM 18	06.10.2017	2,83,604

5.7. Respondent No. 4 rejected the applications of the Petitioner by issuing separate letters dated 25.10.2017, *inter alia*, stating that the transaction was between the Petitioner and the FTWZ unit in an SEZ and thus ineligible for claiming benefit under MEIS.

5.8. By letter dated 20.11.2017, Petitioner requested the Respondent No. 4 to revisit the decision of rejecting the MEIS applications and process the same in accordance with Office Memorandum No. D/12/53/2016-SEZ dated 09.05.2017 issued by the Respondent No. 2 – Additional Secretary, SEZ Division, Department of Commerce, Ministry of Commerce & Industry, New Delhi.

5.9. Thereafter by notice dated 17.01.2018 Respondent No.4, called upon the Petitioner to surrender Duty Credit Scrip No. 3119015316 dated 28.07.2017 which was already issued to the Petitioner on the ground that the said scrip was wrongly issued to the Petitioner as the Petitioner's case was ineligible for receiving MEIS benefit. In respect of this notice, Petitioner attended a personal

hearing before the Respondent No. 4 and, *inter alia*, submitted that the export goods were supplied to the FTWZ unit by the Petitioner on instructions of its Overseas Buyer in the UAE; that the FTWZ unit was merely the custodian of the goods trust and ownership of the export goods vested in the Overseas Buyer in the UAE.

5.10. By letter dated 05.04.2018, Respondent No. 4 cancelled the Duty Credit Scrip no. 3119015316 dated 28.07.2017, *inter alia*, holding that the duty amount under the Duty Credit Scrip is recoverable along with interest from the Petitioner, and imposed a penalty of Rs.21,16,750.00 under Section 11 (2) of the FTDR Act. Petitioner filed the statutory appeal before the Additional Director General of Foreign Trade, Mumbai, which is pending.

5.11. In the meanwhile, Respondent No. 4 suspended the IEC License no. 3115905611 of the Petitioner without giving any notice or assigning / stipulating any reason therefor.

5.12. By letters dated 28.03.2019 and 15.04.2019, Petitioner requested the Respondent No. 4 to revoke suspension of the IEC License and also reconsider the decision regarding rejection of the applications filed by the Petitioner seeking MEIS benefit.

5.13. Being aggrieved, Petitioner filed Writ Petition no. 6713 of 2019 before this Court challenging the arbitrary, illegal and *mala fide* exercise of power in suspending the IEC License, being in gross violation of the principles of natural justice and/or otherwise without any authority of law, contrary to the express provisions of the FTP 2015-20 and on other grounds mentioned in the said Writ Petition.

5.14. During pendency of the Writ Petition, the Deputy Director General of Foreign Trade by letter dated 18.07.2019 informed the Petitioner that the Petitioner would not be entitled to benefit under MEIS for the reasons mentioned in said letter. Petitioner therefore amended the Writ Petition and also challenged the letter dated 18.07.2019 issued by the Deputy Director General of Foreign Trade.

5.15. When the said Writ Petition was taken up for hearing, Respondents informed this Court that suspension of the Petitioner's IEC License no. 3115905611 was withdrawn. By order dated 07.08.2019, this Court therefore disposed of the Writ Petition by setting aside the impugned communication dated 18.07.2019 and directed the Respondent No. 3 to examine the issue in the context of the Petitioner's claim; Petitioner was directed to make a fresh representation for seeking MEIS benefit under the FTP 2015-20 and the Respondents were directed to dispose of the Petitioner's

representation in accordance with law.

5.16. Petitioner filed a fresh representation seeking MEIS benefit. Respondent No. 3 granted personal hearing to the Petitioner on 14.02.2020 pursuant to which the impugned order dated 03.06.2020, rejecting the representation of the Petitioner, is passed.

5.17. Hence the challenge.

6. Mr. Prasad Paranjape, learned counsel appearing for the Petitioner, submits that the impugned order dated 03.06.2020 rejecting the application of the Petitioner for claiming MEIS benefit under FTP 2015-20 is untenable, unsustainable in law, erroneous and contrary to the relevant legal provisions as well as various office memoranda issued by the Respondents.

6.1. Mr. Paranjape has asserted that the impugned order proceeds on an erroneous assumption that the export goods delivered by the Petitioner to the FTWZ unit fall within the ambit of Paragraph 3.06 (i) of the FTP 2015-20 which enumerates categories of export goods deemed ineligible for seeking MEIS benefit.

6.2. He submits that the Petitioner has merely delivered the

export goods to the FTWZ unit (Siddhartha Logistics Co. Pvt. Ltd.) on the instructions of its overseas buyer in the UAE (Technocraft Engineering LLC, Dubai) and the principal transaction of the Petitioner in respect of the export goods is with the Overseas Buyer and not with the FTWZ unit; hence, such delivery of export goods to the FTWZ unit falls within the definition of 'export' in terms of Section 2 (m) of the Special Economic Zones (SEZ) Act, 2005 (for short "**SEZ Act**"), which has an overriding effect over all provisions of all other Acts as per Section 51 of the said Act.

6.3. He submits that the export goods, having passed over to the Overseas Buyer through the FTWZ unit, were held by the FTWZ unit merely in trust on behalf of the Overseas Buyer and were subsequently exported to Taiwan on the instructions of the Overseas Buyer; therefore, the transaction of the Petitioner in respect of the export goods is not covered in the list of ineligible categories under Paragraph 3.06 of the FTP 2015-20. He asserted that there is no privity of contract with the FTWZ unit and therefore Paragraph 3.06 does not apply to the Petitioner's case.

6.4. He has relied on two office memoranda dated 09.05.17 and 24.04.19 issued by the office of the Respondent No. 2 – Additional Secretary, SEZ Division, Department of Commerce, Ministry of

Commerce and Industry, New Delhi – which state that benefits under the MEIS can be granted to DTA goods that are kept in the FTWZ unit and are to be exported. Applying the contents of these memoranda to the Petitioner's transaction, it is pleaded that the Petitioner (a DTA unit) entered into a transaction with its overseas buyer in UAE; received consideration in US Dollars in its Indian bank account; the transaction of delivery and supply of export goods was not with the FTWZ unit but with the Overseas Buyer and hence the Petitioner is eligible to claim MEIS benefit under the extant policy.

6.5. Mr. Paranjape has thereafter referred to a compilation of documents, running into forty-six pages, that has been tendered across the bar. At page nos. 41 to 46 of the said compilation, a sample set of documents pertaining to the transaction in question is placed on record. He submits that perusal of the said documents show that the Petitioner's transaction was with its overseas buyer in the UAE from whom the Petitioner had received the relevant foreign exchange in its bank account in India, making the Petitioner eligible for seeking MEIS benefit under the extant policy. He has therefore prayed for setting aside the impugned order dated 03.06.2020 passed by the Respondent No. 3 and sought grant of the MEIS applications.

7. *PER CONTRA*, Mr. P. S. Jetly, learned senior counsel appearing for the Respondents, has drawn our attention to the impugned order dated 03.06.2020 and contended that the Petitioner has submitted twenty-seven bills of exports that have been considered by the competent authority. The said bills mention the name of the Petitioner as exporter, the name of the consignee as Siddhartha Logistics Co. Pvt. Ltd. and the place of delivery as Sri City (Multi-Product) SEZ, India. He submits that the delivery of the export goods thus is from a Domestic Tariff Area unit (the Petitioner) to an FTWZ unit (Siddhartha Logistics Co. Pvt. Ltd.), both of which are located in India. It is therefore asserted that the transaction cannot be considered as an export under the FTP 2015-20 read with the FTDR Act, 1992. He has drawn our attention to Paragraph 7, 8 and 9 of the impugned order which read thus:

"7. From the above it comes out that the firm is seeking MEIS for supplies made from a DTA unit to FTWZ unit. Such supplies cannot be termed as "Exports" in terms of para 3.04 and 9.20 of the FTP read with FT(D&R) Act. Further, such supplies are also not entitled for MEIS in terms of FTP provisions 3.06(i), read with section 2, sub clause (n) of the SEZ act, as such supplies are from a DTA unit to FTWZ unit.

8. From the representation filed by the firm it is noted that the firm has contested that the goods which the firm has supplied to the FTWZ unit, have been ultimately exported to the consignee in Taiwan from the FTWZ and for this transaction, they have submitted "shipping bill for export of duty free goods" corresponding to each of the Bill of export. It may be noted that these "Shipping bill for export of Duty free goods" are the documents which evidence that certain goods have been shipped to a place outside India. The "Shipping bill for export of duty free goods" mention Exporter as "M/s Siddhartha Logistics Co. Pvt. Ltd." and

there is no mention of the applicant firm i.e. M/s Sunteck Telecommunications, in these shipping bills.

9. The supplies by "M/s Siddhartha Logistics Co. Pvt. Ltd. (FTWZ) can be considered as "Exports" under FTP provisions, since the goods have been shipped outside India. However, these supplies are exports made by a FTWZ unit (since the exporter mentioned in the documents is M/s Siddhartha Logistics Co. Pvt. Ltd. which is a unit in FTWZ, Sri City). The impugned supplies are "exports" made by the FTWZ unit i.e. – M/s Siddhartha Logistics Co. Pvt. Ltd. However such 'Exports' cannot be considered as an export by the petitioner firm, M/s Sunteck Telecommunications Pvt Ltd. Such exports are also not eligible, as per the provisions of the para 3.06(vii) of FTP which states *"Exports made by units in FTWZ" as an ineligible category.*"

7.1. From reading of the above paragraphs, he submits that the shipping bills submitted by the Petitioner for export of duty-free goods mention the name of the exporter as 'Siddhartha Logistics Co. Pvt. Ltd.' which is an FTWZ unit. He asserts that such export cannot be considered as an export by the Petitioner as the shipping bills do not mention the name of the Petitioner; the proof of export transaction is the shipping bill evidencing that a shipment has gone outside India and that the proof of the realization of consideration is the electronic Bank Realization Certificate (BRC). He submits that there is no mention of the name of the Petitioner in the shipping bills as well as the documents evidencing receipt of proceeds for the supply of the export goods.

7.2. He vehemently submits that the transaction before the

authority is of supply of goods by the Petitioner (DTA unit) to Siddhartha Logistics Co. Pvt. Ltd. (an FTWZ unit), which has thereafter exported the goods to Taiwan; hence Petitioner is not eligible for claiming MEIS benefit in terms of the FTP 2015-20, namely Paragraph 3.06 read with Section 2 (m) of the SEZ Act.

7.3. Mr. Jetly submits that the Petitioner has not produced the contractual documents evidencing the transaction with its Overseas Buyer (Technocraft Engineering LLC) situated in Dubai, UAE, in order to substantiate its case that it was at the behest and instructions of the Overseas Buyer that the Petitioner delivered the export goods to Siddhartha Logistics Co. Pvt. Ltd. (the FTWZ unit) in India. Our attention is also drawn to page no. 51 of the Petition being the authorization referred to and relied upon by the Petitioner in respect of the export goods under four shipping bills to the country of export, that is the United Arab Emirates. He submits that in the MEIS applications filed by the Petitioner, annexed as Exhibit G1 to G4 (at page nos. 53 to 70) to the Petition, the address of the consignee is shown as United Arab Emirates only; the name of the Overseas Buyer (Technocraft Engineering LLC, Dubai, UAE) is not reflected either in the applications, or in the authorization form or in any other document produced by the Petitioner before the competent authority for claiming MEIS benefit, thus rendering the Petitioner's case

ineligible for consideration of granting MEIS benefit. He supports the impugned order as having been correctly passed on the basis of the facts and circumstances of the present case before the Competent Authority.

8. Mr. Paranjape, in his rejoinder submission, has referred to and relied on the decision of *Jindal Drugs Private Limited Vs. Union of India and Ors. and Portescap India Pvt. Ltd. Vs. Union of India and Ors.*¹ and contented that the facts in issue in the Jindal Drugs case are identical with the facts in the present case and the said decision covers the case of the Petitioner at hand.

8.1. He submits that, in the Jindal Drugs case, MEIS benefit was denied to the Petitioner by the competent authority without ascribing any reason even though the transaction was between a DTA unit (Jindal Drugs Private Limited) and its overseas buyer (Utexam Logistics Ltd., Ireland) through an FTWZ unit (DHL Logistics Pvt. Ltd.). He submits that the Madras High Court, after scrutinizing the entire documentary evidence – namely the purchase order, tax invoices, statements of bank realization certificate (BRC) evidencing receipt of consideration in US Dollars in relation to the exports made, shipping bills, etc. – came to the conclusion that the export documents

¹ 2021 (7) TMI 1034 - Madras High Court

were executed by the Petitioner in the said case with its overseas buyer; hence, the Petitioner was found to be entitled to MEIS benefits as the exports were made by the Petitioner to the SEZ / FTWZ unit on the specific instructions of its overseas buyer for onward shipment to a location of the overseas buyer's choice. He submits that, in the present case, once the Petitioner (Sunteck Telecommunications Pvt. Ltd.) placed on record the sample set of documents evidencing the transaction between the Petitioner and its overseas buyer (in the United Arab Emirates) through the FTWZ unit (Siddhartha Logistics Co. Pvt. Ltd.), the Petitioner is eligible for receiving MEIS benefit and the Petitioner's case of export of goods is not covered by any of the ineligible categories under Paragraph 3.06 of the FTP 2015-20.

9. We have heard the learned counsel appearing for the respective parties at length, perused the material on record and the relevant statutory provisions as applicable and considered the judicial decision relied upon by the Petitioner.

10. Before we proceed to adjudicate the rival contentions and the issue, it would be beneficial to refer to the Foreign Trade Policy (01.04.2015 to 31.03.2020) [updated as on 05.12.2017], with which we are concerned in the present case. FTP-2015-20 was launched on 01.04.2015 and introduced a slew of measures to provide a framework

for increasing exports of goods and services, generation of employment and increasing value-addition in keeping with the 'Make in India' vision. The Policy was far-reaching in nature and incorporated various export-friendly innovations and simplifications. These included simplifications and merger of reward schemes, introducing new schemes for promotion of merchandise exports, incentivizing e-commerce exports, encouraging procurement of capital goods from indigenous manufactures under the EPCG scheme and so on.

10.1. Chapter 3 of the FTP 2015-20 relates to Exports from India Schemes. Insofar as MEIS is concerned, the relevant provisions are contained in Paragraphs 3.00 to 3.06 which read thus:

"3.00 Objective

The objective of schemes under this chapter is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs.

3.01 Exports from India Schemes

There shall be following two schemes for exports of Merchandise and Services respectively:

- (i) Merchandise Exports from India Scheme (MEIS).
- (ii) Service Exports from India Scheme (SEIS).

3.02 Nature of Rewards

Duty Credit Scrips shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported / domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for :

- (i) Payment of Basic Customs Duty and Additional Customs Duty specified under sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act, 1975 for import of inputs or goods, including capital goods, as per

DoR Notification, except items listed in Appendix 3A.

(ii) Payment of Central excise duties on domestic procurement of inputs or goods,

(iii) Deleted

(iv) Payment of Basic Customs Duty and Additional Customs Duty specified under Sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act, 1975 and fee as per paragraph 3.18 of this Policy.

Merchandise Exports from India Scheme (MEIS)

3.03 Objective

Objective of the Merchandise Exports from India Scheme (MEIS) is to promote the manufacture and export of notified goods/ products.

3.04 Entitlement under MEIS

Exports of notified goods/products with ITC[HS] code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise]. The basis of calculation of reward would be on realised FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign currencies, whichever is less, unless otherwise specified.

3.05 Entitlement under MEIS for export of goods through Courier or Foreign Post Offices

Export of goods through courier or foreign post offices as notified in Appendix 3C, of FOB value upto Rs. 5,00,000 per consignment shall be entitled for rewards under MEIS. If the value of exports is more than Rs. 5,00,000 per consignment then MEIS reward would be calculated on the basis of FOB value of Rs. 5,00,000 only.

3.06 Ineligible categories under MEIS

The following exports categories/sectors shall be ineligible for Duty Credit Scrip entitlement under MEIS

- (i) EOUs/EHTPs/BPTs/STPs who are availing direct tax benefits / exemption;
- (ii) Supplies made from DTA units to SEZ units;
- (iii) Export of imported goods covered under paragraph 2.46 of FTP;
- (iv) Exports through trans-shipment, meaning thereby exports that are originating in third country but transshipped through India;

- (v) Deemed Exports;
- (vi) SEZ/EOU/EHTP/BTP/FTWZ products exported through DTA units;
- (vii) Items, which are restricted for export under Schedule-2 of Export Policy in ITC (HS), unless specifically notified in Appendix 3B;
- (viii) Service Export;
- (ix) Red sanders and beach sand;
- (x) Export products which are subject to Minimum export price or export duty;
- (xi) Diamond Gold, Silver, Platinum, other precious metal in any form including plain and studded jewellery and other precious and semi-precious stones;
- (xii) Ores and concentrates of all types and in all formations;
- (xiii) Cereals of all types;
- (xiv) Sugar of all types and all forms, unless specifically notified in Appendix 3B;
- (xv) Crude/petroleum oil and crude/primary and base products of all types and all formulations;
- (xvi) Export of milk and milk products, unless specifically notified in Appendix 3B;
- (xvii) Export of Meat and Meat Products, unless specifically notified in Appendix 3B;
- (xviii) Products wherein precious metal/diamond are used or Articles which are studded with precious stones;
- (xix) Exports made by units in FTWZ;
- (xx) Items, which are prohibited for export under Schedule-2 of Export Policy in ITC (HS)"

10.2. Paragraph 3.06 of the FTP 2015-20 refers to exported goods which shall be ineligible for Duty Credit Scrips under MEIS. Clause (vi) of paragraph 3.06 states that SEZ/FTWZ products exported through DTA units shall be ineligible for benefit under MEIS. Similarly clause (xix) states that the exports made by units in FTWZ shall be ineligible for benefit under MEIS. The Competent Authority / Respondents have denied benefit to the Petitioner under the aforesaid two clauses on the premise that the transaction of the Petitioner is

with the FTWZ unit (Siddhartha Logistics Co. Pvt. Ltd.). On the other hand, it is the Petitioner's case that its transaction is with its foreign Overseas Buyer and not with the FTWZ unit to which the export goods are delivered. Hence, according to the Petitioner, the aforementioned two clauses do not apply to the case in hand and the Petitioner is eligible for Duty Credit Scrip under MEIS for the exported goods for which the Petitioner has received consideration in US Dollars (foreign exchange).

10.3. Section 2(e) of the FTDR Act, 1992, read with paragraph 9.20 of Chapter 9 and paragraph 3.04 of Chapter 3 of the FTP 2015-20 are relevant in the present case and read thus :

"(e) "import" and "export" means,-

(1) in relation to goods, bringing into or taking out of India any goods by land, sea or air....."

"Provided that "import" and "export" in relation to the goods, services and technology regarding Special Economic Zone or between two Special Economic Zones shall be governed in accordance with the provisions contained in the Special Economic Zones Act, 2005 (28 of 2005)."

9.20. "Export" is as defined in FT (D&R) Act, 1992, as amended from time to time.

"**Exports** of notified goods/products with ITC[HS] code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise]. The basis of calculation of reward would be on realised FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign currencies, whichever is less, unless otherwise specified."

10.4. The SEZ Act was enacted to provide for the establishment, development and management of special economic zones for the promotion of exports and for matters connected therewith or incidental thereto. Section 3 (1) of Chapter II of the SEZ Act refers to establishment of Special Economic Zone either for manufacture of goods, or rendering services, or for both as an FTWZ. The said Section 3(1) reads thus :

" **CHAPTER II**
ESTABLISHMENT OF SPECIAL ECONOMIC ZONE

3. Procedure for making proposal to establish Special Economic Zone.

(1) A Special Economic Zone may be established under this Act, either jointly or severally by the Central Government, State Government, or any person for manufacture of goods or rendering services or for both as a Free Trade and Warehousing Zone.

(2)"

11. In the present case, Petitioner has pleaded that the transaction in question for supply of export goods (Single Mode Optical Fibers G642D) is with its foreign overseas buyer (Technocraft Engineering LLC, Dubai, UAE), and that it is on the instructions of the overseas buyer the Petitioner delivered the export goods to the FTWZ unit (Siddhartha Logistics Co. Pvt. Ltd.) in India. We find this pleading in Paragraph 7 of the Petition and the same is reproduced below:

"7. In the regular course of business, the Petitioner supplied Single Mode Optical Fibers G652D - Natural (hereinafter referred to as "**the exported goods**") to an

overseas buyer, Technocraft Engineering LLC, Dubai, UAE (hereinafter referred to as "**the Overseas Buyer**"). As per the instructions of the Overseas Buyer, the Petitioner was required to deliver the export goods to Siddhartha Logistics Co. Pvt. Ltd. (hereinafter referred to as "**the FTWZ Unit**"), a unit located in Free Trade and Warehousing Zone at Sri City Multi-product SEZ/FTWZ, Chittoor District, Satyavedu Mandal, Andhra Pradesh. The goods were delivered to the FTWZ Unit under four Bills of Export bearing Nos. 0000004 dated 08.01.2016, 0000016 dated 08.02.2016, 0000027 dated 02.03.2016 and 0000028 dated 03.02.2016. Such supplies are treated as Export of goods in terms of Section 2(m) read with Section 51 of the Special Economic Zone Act, 2005 (hereinafter referred to as "**the SEZ Act**")."

11.1. When the Petition was argued before us, the Petitioner has submitted written propositions (six pages) along with a compilation of documents (forty-six pages). In Paragraph 3 of the written propositions, it is stated as under:

"3. The transaction relevant for the purpose of this petition is that the Petitioner received an order for export of impugned goods from its customer Ashtech Global FZE located in UAE. The said Ashtech Global FZE instructed the Petitioner to deliver the consignment of the impugned goods to Siddhartha Logistics Company Private Limited, a unit in a Free Trade and Warehousing Zone (FTWZ), located in Sri City SEZ at Andhra Pradesh. Thereafter, the said Ashtech Global FZE directed Siddhartha Logistics Company Private Limited to consign the goods to its customer Success Prime Corporation located in Taiwan and the goods were accordingly physically exported. The consideration was received by the Petitioner from the said Ashtech Global FZE, located in UAE, in convertible foreign exchange. These facts are undisputed."

11.2. From the above, it is seen that in Paragraph 3, the reference to the Overseas Buyer is to a company called "Ashtech Global FZE", which on scrutiny shows that it is located in Ajman, UAE. There is no reference to Technocraft Engineering LLC, Dubai, UAE in the

written propositions and annexures to the Petition, the written propositions as well as the compilation of documents tendered across the bar. A deeper scrutiny and analysis of the sample set of documents at page nos. 41 to 46 of the compilation reveals the following :

(i) At page no. 41 is a Bill of Export claiming Duty Drawback under the extant scheme. This document gives the name of the Petitioner in the consignor column and the name of the FTWZ unit (Siddhartha Logistics Co. Pvt. Ltd.) in the consignee column along with the name of Ashteck Global FZE, Ajman, UAE;

(ii) At page no. 42, the export invoice issued by the Petitioner is in the name of Ashteck Global FZE, Ajman, UAE, as the consignee of the export goods;

(iii) At page no. 43, the packing list mentions the name of Ashteck Global FZE, Ajman, UAE, as the consignee;

(iv) At page no. 44, the statement of bank realization (BRC) mentions the shipping bill no. 0000082 dated 05.05.17, which corresponds to the bill of export number in the first document (i.e. Bill of Export); the BRC does not bear any reference to the name or transaction with the overseas buyer;

(v) At page Nos. 45 and 46, the Shipping Bill for export and Airway Bill mentions the name of the FTWZ unit (Siddhartha Logistics Co. Pvt. Ltd.) on behalf of Ashteck Global FZE, Ajman, UAE, as consignor and the name of Success Prime Corporation,

Taiwan, as the consignee to whom the export goods are shipped.

11.3. In none of the annexures referred to and relied upon by the Petitioner, nor the above documents, does the name of "Technocraft Engineering LLC, Dubai, UAE", appear. Hence, if it is the Petitioner's case that under the transaction with its overseas buyer (Technocraft Engineering LLC, Dubai, UAE), the Petitioner supplied the goods to the FTWZ unit and therefore the Petitioner is eligible for MEIS benefit, then the Petitioner is required to furnish the following documentary evidence to the Competent Authority for seeking benefit under the MEIS Scheme.

- (i) Bills of Receipt;
- (ii) Bills of Export of Goods;
- (iii) Export Invoices;
- (iv) Authorization/Transaction with the Overseas Buyer to deliver the goods to the FTWZ unit;
- (v) Statements of Bank Realization (BRC) for the amount received in US Dollars;
- (vi) Confirmation that the FTWZ unit has neither claimed nor been granted benefit under MEIS in regard to the instant transaction;
- (vii) Shipping Bills;
- (viii) Purchase Orders;
- (ix) Tax Invoices.

11.4. None of the aforementioned documents have been produced before the Competent Authority nor before us save and

except pleading that the Petitioner's transaction with its overseas buyer (Technocraft Engineering LLC, Dubai, UAE) needs to be acknowledged by the Court for enabling the Petitioner to claim MEIS benefit. The Petitioner has not produced a single document authorizing the Petitioner to deliver the export goods to the FTWZ unit (Siddhartha Logistics Co. Pvt. Ltd.). We cannot accept the Petitioner's case merely on pleadings and in the absence of relevant documentary evidence.

11.5. That apart, the discrepancy in the name of the Overseas Buyer is evident on the face of record. The name of "Technocraft Engineering LLC Dubai, UAE", does not appear in any of the documentary evidence referred to or relied upon by the Petitioner, including the Authorization and MEIS applications relied upon by the Petitioner. Furthermore, in the written propositions given to the Court and the documentary evidence, the reference to the Overseas Buyer is to a company called "Ashtek Global FZE" situated in Ajman, UAE, and not "Technocraft Engineering LLC" situated in Dubai, UAE. This raises a serious doubt as to the veracity of the Petitioner's claim for seeking MEIS benefit.

11.6. The Petitioner has placed on record only one bill of export bearing no. 0000082 dated 05.05.2017 at page no. 41 of the

compilation of documents which reflects the name of Ashtek Global FZE, Ajman, UAE, as the overseas buyer. Incidentally, in the Petition, the same Bill of Export is also claimed by the Petitioner in the case of its purported transaction with Technocraft Engineering LLC, Dubai, UAE, and that too for the same amount – 216241.35 US Dollars. The Petitioner has not produced bill of export nos. 0000060 dated 04.04.2017, 0000080 dated 03.05.2017, 0000081 dated 03.05.2017, and 0000083 dated 08.05.2017 pertaining to the transaction with Technocraft Engineering LLC, Dubai, UAE, either before the Competent Authority or before us. Hence, to consider the Petitioner's case as being outside the purview of the ineligible categories under Paragraph 3.06 (vi) and/or 3.06 (xix), the documentary evidence is required to be placed on record.

11.7. We have carefully perused the decision in the case of *Jindal Drugs Private Limited (supra)* relied upon by the Petitioner. Paragraph 11 of the said decision is relevant and is reproduced below:

“11. Upon a comparison of the above details contained in the bills of export of goods under which the petitioner has claimed duty drawback, with the bills of the parties to the transaction, I find that the numbers and date tally. It is thus clear that the export documents have been executed by the petitioner. The petitioner also confirms that the FTWZ has neither claimed not been granted any benefit under MEIS Scheme in regard to the instant transactions. If at all such claims had been advanced, they would have been barred under the provisions of 3.06(vii) of the policy note.”

11.8. Applying the ratio of the above decision, in the absence of necessary documentary evidence as alluded to hereinabove, the Petitioner cannot claim MEIS benefit merely on the basis of pleadings. If the Petitioner claims that the export goods are delivered to the FTWZ unit and thereafter exported to Taiwan on the instructions of its Overseas Buyer, the burden of proof is on the Petitioner to produce the contractual agreement / authorization / transaction details with the Overseas Buyer to substantiate the same. It is the Petitioner's case that the FTWZ unit has merely held the goods in trust on the instructions of the Overseas Buyer as a warehousing unit and hence the Petitioner cannot be deemed ineligible for benefit under Paragraph 3.06 (vi) and 3.06(xix) of the FTP 2015-20. This fact is not substantiated with any confirmation from the FTWZ unit (Siddhartha Logistics Co. Pvt. Ltd.) that it held the goods merely in trust for the Overseas Buyer and that it has neither claimed nor been granted benefit in regard to the export goods which were subsequently shipped to Taiwan. In the Jindal Drugs case, though the facts are similar to the case in hand, the Madras High Court therein looked into the principal transaction between the parties to ascertain the role of the parties, it confirmed receipt of foreign exchange from Ireland and the BRC evidencing this position, it referred to the supporting documentation pertaining to onward shipment by the FTWZ unit therein to the location of choice of the overseas buyer and then concluded that the FTWZ unit therein

merely offered a facility of warehousing to the Petitioner therein to facilitate the export. None of the above issues have been pleaded, and effectively proved by the Petitioner, save and except one shipping bill which does not evidence the aforesaid position in the case of the Petitioner.

11.9. It is a settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition. In the absence of the same, the Court need not entertain the pleadings and submissions so made. The Hon'ble Supreme Court in ***Bharat Singh & Ors. Vs. State of Haryana & Ors.***² at Paragraph 13, has held as under:

" 13. ... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the court will not entertain the point. In this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

A similar view has been reiterated by the Apex Court in ***Larsen & Toubro Ltd. Vs. State of Gujarat***,³ ***National Buildings Construction***

² 1988 4 SCC 534 : AIR 1988 SC 2181

³ (1998) 4 SCC 387 : AIR 1998 SC 1608

Corpn. Vs. S. Raghunathan,⁴ *Ram Narain Arora Vs. Asha Rani*,⁵ *Chitra Kumari Vs. Union of India*,⁶ *State of U.P. v. Chandra Prakash Pandey*,⁷ *Rajasthan Pradesh Vaidya Samiti Vs. Union of India*,⁸ and *Indian Young Lawyers Assn. Vs. State of Kerela*.⁹

11.10. In the case at hand, the Petitioner has pleaded in the Petition about its transaction for export of goods with the Overseas Buyer but has not produced a single document evidencing the said transaction / authorization from the Overseas Buyer.

12. In view of absence of documentary evidence, and the findings and discussion hereinabove, the Petitioner cannot be granted MEIS benefit merely on the basis of pleadings which are *prima facie* insufficient on the face of record. Hence the Petition must fail.

12.1. The impugned order dated 03.06.2020 deserves to be upheld. However, since it is the Petitioner's case that it has received consideration in foreign exchange from its overseas buyer against the export goods and is eligible for MEIS benefit, the Petitioner is given one more final opportunity to approach the Respondents by filing a

⁴ (1998) 7 SCC 66 : 1998 SCC (L&S) 1770

⁵ (1999) 1 SCC 141

⁶ (2001) 3 SCC 208

⁷ (2001) 4 SCC 78 : 2001 SCC (L&S) 661

⁸ (2010) 12 SCC 609

⁹ (2019) 11 SCC 1

fresh application for seeking MEIS benefit along with the entire documentary evidence pertaining to the Petitioner's transaction with Technocraft Engineering LLC, that is the Petitioner's purported overseas buyer, located in Dubai, UAE, along with: (i) Bills of Receipt; (ii) Bills of Export of Goods; (iii) Export Invoices; (iv) Authorization/Transaction with the Overseas Buyer to deliver the goods to the FTWZ unit; (v) Statements of Bank Realization (BRC) evidencing the receipt of monies in US Dollars in the Petitioner's bank account in India; (vi) Confirmation that the FTWZ unit has neither claimed nor been granted benefit under MEIS in regard to the instant transaction; (vii) Shipping Bills; (viii) Purchase Orders; and, (ix) Tax Invoices. Petitioner shall make the application within two weeks from the uploading of the copy of this judgement and order. In the event such an application is made, the same shall be considered strictly in accordance with law by the Competent Authority / Respondents by according an opportunity of personal hearing to the Petitioner and a speaking order shall be passed.

12.2. The Writ Petition stands disposed of with the above directions.

[MILIND N. JADHAV, J.]

[CHIEF JUSTICE]