



WEB COPY

WP.No.23232 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.01.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.23232 of 2014 and
MP.No.1 of 2014

M/s Adyar Gate Hotels Ltd
Represented by its Managing Director
Mr.Bharath Bhushan Goyal
No 132 T.T.K. Road,
Chennai – 600018

... Petitioner

Vs

- 1.Union of India
Represented by its Secretary to
Government of India,
Ministry of Commerce and Industry,
Department of Commerce,
New Delhi.
- 2.Additional Director General of Foreign Trade
Ministry of Commerce and Industry
Sastri Bhavan (Southern Zone)
26 Haddows Road
Chennai 600006.
- 3.Joint Director General of foreign Trade,
Office of the Additional Director General of Foreign Trade
Ministry of Commerce and Industry,
Shastri Bhavan (Southern Zone)
26 Haddows Road
Chennai 600006.
- 4.Director General of Foreign Trade.
Ministry of Commerce and Industry



Department of Commerce
New Delhi – 110002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records, and proceedings culminating in the impugned order dated 02.04.2014 passed by the second Respondent bearing F.No.04/21/71/033/AM11 and quash the same and consequently, direct the Respondents to refund the Duty credit Scrips amounting to Rs.86,85,133/- illegally collected from the petitioner with consequential extension of period of utilization.

For Petitioner : Mr.Gautam S.Raman

For Respondents : Mr.T.V.Krishnamachari

ORDER

The petitioner is a hotel whose clientele includes foreigners. The Central Government has floated a scheme in the year 2007, entitled 'Served From India Scheme' (SFIS). The object of this scheme is to accelerate growth, promote and encourage export of services by awarding incentives in the form of monetary rewards on the foreign exchange earned by various service providers entitled to the benefits of this scheme.

2.The petitioner had applied on 15.10.2010 for the benefits of the scheme in regard to the foreign exchange earnings during the period 01.04.2009 to 31.03.2010. The petitioner was issued scrips for the period 01.04.2008 to 31.03.2009, amounting to a sum of Rs.2,66,51,000/-. The validity of the scrips was till 18.10.2011.



WEB COPY

3.The petitioner received a notice on 06.12.2013 that it had been granted excess duty credit in respect of the scrips issued between 01.04.2009 to 26.08.2009 amounting to a sum of Rs.86,81,454/-. The petitioner was called upon to refund the excess duty credit allegedly granted along with applicable interest within 15 days from the date of that letter under threat of coercive action under the provisions of the Foreign Trade (Development and Regulation) Act, 1992.

4.The petitioner bought some time to collate the particulars required, since the transactions were few years old. Thereafter a detailed reply was furnished on 10.01.2014. It is best that this reply is not referred to in detail for the reason that the petitioner has inter alia, intermingled the issue that arises for decision in this writ petition, with facts relating to applications and scrips for the prior periods, that would have no bearing on this writ petition. Instead of clarifying, the response confuses.

5.On 11.01.2014, the petitioner responded quantifying the amount of scrips surrendered by it at a sum of Rs.86,85,133/- as against a sum of Rs.86,81,454/-, which it had been called upon to surrender. Admittedly, the quantum of scrips surrendered is slightly in excess of what it was called upon to surrender and this is explained in letter dated 11.01.2014 as follows:



“Further to our letters dated 02.12.2013, 02.01.2014 and 10.01.2014, and explaining our contention on the above subject in person on 10.01.2014, we now surrender the following SFIS Scrips issued to us on 30.07.2013 for a total amount of Rs.86,85,133.00 to cover the above excess duty credit claimed to be given to us for the year 2009 and 2010.

Sr No	SCRIP NO; DATE OF ISSUE	DUTY CREDIT AMOUNT
1	0410148368/Dated 30.07.2013	Rs.50,00,000.00
2	0410148370/Dated 30.07.2013	Rs.36,85,133.00

We had made a representation to debit the expired unutilized licenses Nos.0410108648/22/00 Dt.19.10.2009(SEA), 0410108649/22/00 – Dt.19.10.2009 (AIR) and 0410108650/22/00 – Dt.19.10.2009 (SEA) for adjusting Rs.86,81,454.00.

In the event of the above is considered by DGFT – New Delhi, we would request you to reinstate the value in our Scrip Nos.0410148368 – dated 30.07.2013 and 0410148370 – dated 30.07.2013.

Your goodself also appreciated that we are in the midst two major projects are underway and thus the imports of the essential goods for the projects is required.

Hence we would request your goodself to issue necessary instructions to release the following EPCG applications pending at your office.



Sr. No.	Date of Submission	File No.	Items to be imported
1.	16.12.2013	04/21/021/00 891/AM14	Audio & Video Equipments
2.	23.12.2013	04/21/021/00 905/AM14	Laminated Glass
3.	30.12.2013	04/21/021/00 939/AM14	Water Cooled Condensing Units, Kitchen Equipments, Evaporators etc.,

In the above pending licenses, the goods for the file No.04/21/021/00939/AM14 dated 30.12.2013 has already reached the Chennai Port and hence to avoid demurrages, kindly arrange to issue the EPCG license immediately.”

6.The contents of letter dated 11.01.2014 are not really material except to understand the difference/variation in the quantum of scrips surrendered as against that it was called upon to surrender by the respondents.

7.On 07.03.2014 while acceding to the surrender of scrips for duty credit of Rs.86,85,133/-, the demand for interest was reiterated. This was refuted by the petitioner in subsequent letter dated 20.03.2014 culminating in the impugned order dated 02.04.2014. The respondent has, in the impugned order, reiterated the position that the petitioner is liable not just for the refund of excess duty credit, but also for interest.



8.The reasoning set forth is an objection by the Director General of Audit (Central) (CRAP-II) under the Comptroller and Auditor General, to the effect that Star Hotels and other service providers in the tourism sector were entitled to SFIS benefits of only 5% duty credit upto 26.08.2009. It is only on and from 27.08.2009 that the eligibility stood enhanced to 10%. The impugned order thus states that the credits scrips that were issued to the petitioner on 21.02.2011 had inadvertently computed the credit at 10% instead of 5% to which the petitioner was entitled. The petitioner has admittedly complied with the surrender of scrips though no interest has been remitted.

9.Post receipt of the impugned order, the petitioner claims to have become wise to the position that its duty entitlement was infact 10% and not 5% as contended by the respondent and vide communication dated 10.04.2014 pointed this aspect of the matter to the respondents. They reiterate that though the policy for the period 2009-2014 came into effect only on 27.08.2009, the contents of the policy itself and the spirit in which the scheme had itself being floated, must support the petitioner's entitlement to 10% duty credit.

10.The respondents have filed a counter as well as additional counter wherein they defend the impugned order reiterating the position that the Foreign Trade Policy for the period 2009-2014 had taken effect only on 27.08.2009.



11. My attention is specifically drawn to the duration of the policy at Clause- 1.2 which states that not just did the policy come into force on 27.08.2009, *'all exports and imports upto 27.08.2009 shall be accordingly governed by the FTP 2004-2009'*.

12. Per contra, the petitioner points out that the qualification as aforesaid is only in situations where there was no other stipulation to the contrary. That apart, the entitlement of service providers to duty credit scrips was qua the 'current financial year' which itself, admittedly refers to the period commencing 1st of April of the relevant year. That apart, licencing year has been defined under Clause 9.34 as a period beginning on 1st of April of a year and ending on 31st of March of the following year.

13. Having heard the rival contentions of Mr. Gautam S. Raman, learned counsel for the petitioner and Mr. T. V. Krishnamachari, learned counsel for the respondents, I am of the considered view that the petitioner must succeed.

14. The interpretation of the policy itself must be in tune with the avowed objectives of the various schemes that have been formulated under the policy. The Served from India Scheme has been outlined from Clause 3.12 of the Foreign Trade Policy and the avowed objective is *'to accelerate growth in export of services so as to create a powerful and unique 'Served From India' brand, instantly recognized and respected world over.'*



15. Clause 3.12.2 touches upon the eligibility of Indian Service Providers and it is undisputed that the petitioner is indeed, generally, entitled to the benefits of the scheme. Entitlement is set out under Clause 3.12.4 to read as follows:

'Entitlement 3.12.4 All service Providers shall be entitled to Duty Credit Scrip equivalent to 10% of free foreign exchange earned during current financial year.'

16. Needless to say financial year qua a revenue enactment/policy is always understood to mean the 1st of April of the relevant year till the 31st of March of the year to follow. In the present case, no doubt the Foreign Trade Policy for the period 2009 to 2014 has come into effect only on 27.08.2009, and there is also a categorical stipulation in Clause 1.2 which deals with duration of the policy, that all exports and imports upto 26.08.2009 shall be governed only by the terms of the previous policy which prescribes the rate of 5% only.

17. However, in my considered view, what is set out under Clause 1.2 extracted below only refers to general exports and imports and not specified exports/imports under a special scheme:

' 1.2. The Foreign Trade Policy, 2009-2014 (FTP), incorporating provisions relating to export and import of goods and services, shall come into force with effect from 27th August, 2009 and shall remain in force upto 31st March, 2014 unless otherwise specified. All exports and imports upto 26th August 2009 shall be accordingly governed by the FTP 2004-2009.



WEB COPY



The Foreign Trade Policy, 2009-2014, incorporating the Annual Supplement as updated on 23rd August, 2010 shall come into force with effect from 23rd August, 2010, unless otherwise specified.'

18. In this case, we are concerned with specified imports under the Served From India scheme which must stand on a separate pedestal. As far as the entitlement to the imports/exports under this scheme are concerned, the entitlement is categoric to the effect that the service provider is entitled to duty credit scrips equivalent to 10% earned during current financial year.

19. Needless to say that the policy must not just be seen in the context of the spirit in which was floated but also bearing in mind the letter of the policy itself. In this case, both interpretation, in letter as well as spirit supports the stand of the petitioner.

20. The impugned order is set aside and as a consequence the surrendered scrips of a value of Rs.86,81,454/- shall be refunded to the petitioner within a period of eight (8) weeks from date of receipt of this order. Mr.T.V.Krishnamachari, on behalf of the respondents suggests that the amount quantified for refund may be adjusted against future imports and the petitioner accedes to this suggestion. Accordingly, this Court directs so.



21.This writ petition is allowed in the above terms. No costs. Connected

miscellaneous petition is closed.

WEB COPY

25.01.2023

vs

Index : Yes

Speaking Order

To

1.The Secretary to Government of India,
Union of India,
Ministry of Commerce and Industry,
Department of Commerce,
New Delhi.

2.Additional Director General of Foreign Trade
Ministry of Commerce and Industry
Sastri Bhavan (Southern Zone)
26 Haddows Road
Chennai 600006

3.Joint Director General of foreign Trade,
Office of the Additional Director General of Foreign Trade
Ministry of Commerce and Industry,
Shastri Bhavan (Southern Zone)
26 Haddows Road
Chennai 600006.

4.Director General of Foreign Trade.
Ministry of Commerce and Industry
Department of Commerce
New Delhi – 110002.



WP.No.23232 of 2



Dr.ANITA SUMANTH,J.

VS

W.P.No.23232 of 2014 and
MP.No.1 of 2014

25.01.2023