**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated : 04.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN**

**AND**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.A. Nos.275, 279, 285 and 288 of 2023**

**and C.M.P. Nos.1866, 1865, 1870 and 1864 of 2023**

The Additional Director General of Foreign Trade,
Nishta Bhavan,
48, Sir Vithaldas Thackersy Marg,
Mumbai-40.

...Appellant in all Writ Appeals

-Vs-

1.Jindal Drugs Private Limited,
a Company incorporated under the provisions,
of the Companies Act 1956 having its
Registered Office at
12A, Bhaktawar Nariman Point,
Mumbai-400 002.

2.The Union of India,
Through the Secretary, Ministry of Commerce,
Department of Commerce, Udyog Bhavan, North Block,
New Delhi- 110 001.

3.The Deputy Commissioner of Customs
Having its office at J.Matadee,
Free Trade Zone, Mannur Village,
Sriperumbudur (JM FTZ SEZ/ Mannur)
Kancheepuram - 602 105. ...Respondents in all Writ Appeals

**PRAYER in W.A.No.275 of 2023:** Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 30.06.2021 in W.P.No.28777 of 2019.

**PRAYER in W.A.No.279 of 2023:**Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 30.06.2021 in W.P.No.28783 of 2019.

**PRAYER in W.A.No.285 of 2023:** Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 30.06.2021 in W.P.No.28778 of 2019.

**PRAYER in W.A.No.288 of 2023:** Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 30.06.2021 in W.P.No.28784 of 2019.

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|---|---|
| For Appellant in all W.As. | : Mr.A.R.L.Sundaresan Additional Solicitor General assisted by Mr.V.Chandrasekaran |
| For Respondents in all W.As. | : Mr.Prakash Sha for Mr.S.Muthuvenkatraman |

**COMMON JUDGMENT**

The present Writ Appeals are filed by the revenue challenging the order of the learned judge insofar the impugned order / communication dated 09.07.2019 is set aside and issuance of a consequential direction to the appellant to re-validate scrips and issue Telegraphic Release Advice (hereinafter referred to as "TRA").

**2. Brief facts as recorded by the learned Judge, which remain undisputed herein are as follows:**

i. The 1st Respondent herein is an exporter of menthol and natural essential oils.

ii. The instant transactions form part of the supply of commodities to UTEXAM, who in turn supplies the same to Colgate Palmolive Global (CP Global) to various destination across the globe "*excluding India*".

iii. The 1st Respondent admittedly claimed benefits under the Customs Act, 1962 and allied policies, such as duty drawback as well as benefits under the Goods and Services Tax Act, 2017 (in short 'GST Act'), such as input tax credit and other available benefits in respect of such export.

iv. The 1st Respondent intended to avail the benefit under the Merchandise Exports from India Scheme (MEIS) in terms of the Foreign Trade Policy, effective 01.04.2015. They thus made an application to the appellant and was issued scrips 1, 2 and 3 by the appellant. These scrips were current for the period from 2018 to 2020 and have not been cancelled at anytime. The benefit under the MEIS Scheme is computed on the basis of 2% Free on Board (FOB) value of the transaction which is set-off against future imports. Thus, no cash refunds are contemplated.

v. A request was made for registration of scrip Nos.1 and 3 on 11.06.2018 and 19.06.2018 respectively. The original scrips and all required details were submitted. The 2nd Respondent was requested to issue a Telegraphic Release Advise (TRA) to the 1st Respondent.

vi. Certain other documents were called for in connection with the application and a personal hearing was also afforded to the 1st Respondent.

vii. The appellant, in the meanwhile, sought for details of supplies made against all bills of exports confirming those in respect of which MEIS benefit had been sought.

viii. Detailed responses were filed by the 1st Respondent to the effect that the supplies made were not covered under any of the ineligible categories of exports stipulated under the relevant provisions of the Foreign Trade Policy.

ix. There was a further exchange of communication *inter-se* the appellant and the 1st Respondent and detailed submissions were made in the course of personal hearing.

x. As there was no progress thereafter, the 1st Respondent sought return of the scrips sent for registration in order to ensure their safety. The scrips were returned without registration.

xi. A similar request was made for registration of scrip No.2 on 04.07.2019 and again, all originals and annexures were enclosed. This scrip was also returned by the 2nd Respondent without registration, accompanied by the impugned order dated 09.07.2019, wherein the request of the first respondent for registration of the scrip has been rejected.

xii. Thus, in summary, scrips Nos.1 and 3 have been returned by the appellant without registration and scrip No.2 was also returned by the 2nd Respondent without registration with the impugned order rejecting the request for registration of scrip no.2.

xiii. Though no specific rejection has been made in regard to the applications for registration in regard to scrip Nos.1 and 3, it was found that there is no dispute on the question that the stand adopted by the 2nd Respondent for rejection of registration of scrip No.2 is equally applicable to the scrip Nos.1 and 3 as well.

**3. <u>Order dated 9.7.2019 impugned in the writ petition – Relevant Portions</u>**

To appreciate the controversy, it may be relevant to extract the impugned order dated 09.07.2019 passed by the appellant herein, which reads as under:

> *Sub: Registration of MEIS scrip No.0319191300 dt.10.10.2018 for Rs.4,41,870/-Reg.*
> *Please refer to your letter dt–04.07.2019 wherein this office was requested to register the above mentioned scrip. Also refer to the letter 4-7-19 wherein a request for issue of TRA was made.*
>
> *It is submitted that a para 3.06 of the Foreign Trade Policy, which deals with the Ineligible categories under MEIS,it is clearly mentioned that:*
>
> *"The following exports categories/ sectors shall be ineligible for Duty Credit scrip entitlement under MEIS*
>
> *(i)Supplies made from DTA units*
>
> *.....*
>
> *(vii)Exports made by units in FTWZ."*
>
> *In your case it is observed that Supplies have been made from M/s.Jindal Drugs P Ltd.a DTA unit to M/s.DHL Logistics P Ltd <u>on A/c of M/s.UTEXAM Logistics Limited, Ireland a foreign client. The exports have been made by DHL Logistics(P)Ltd which is in the FTWZ.</u>*
>
> *<u>Hence it appears that such exports are ineligible for Duty Credit scrip under MEIS and hence the Original scrip along with its enclosures is returned herewith,without being registered in the FTWZ."</u>*
>
> *(emphasis supplied)*

**4. Order of the learned Single Judge**

a. Documents considered by the Learned Single Judge – Findings thereon:

It was recorded by the learned judge that during the course of hearing, the writ petitioner/1st respondent herein was asked to produce documents in support of their claim to the benefit under MEIS which included purchase orders/commercial invoices etc., which were furnished and not objected to by the appellant herein/respondent in the writ petition for its admission or consideration in resolving the issue. The learned judge thereafter has proceeded to extract Purchase Order 84/85 and 93/94 dated 27.02.2019 and 10.04.2018 respectively. Tax invoices dated 03.04.2018, 08.05.2019 and 01.06.2019 were examined. These documents were found to be typical of the documents covering the transactions in respect of which the benefit was claimed under MEIS. The learned judge was pleased to render the following findings on examination of the said documents:

a. That *Jindal Drugs Private Limited*, the 1st respondent herein was the exporter.

b. The manufacturer has its manufacturing facility at Taloja, Maharashtra.

c. The invoice has been drawn on UTEXAM at Ireland.

d. Statements of Bank Realisation Certificate (BRC) dated 29.06.2018 of CitiBank NA, Mumbai ICG Branch were perused evidencing receipt of consideration by the 1st Respondent in US dollars in relation to the exports made from UTEXAM.

e. The goods sold to UTEXAM were consigned to DHL Logistics, which is a Free Trade Warehousing Zone (FTWZ) on instructions of UTEXAM.

f. The application filed under MEIS Scheme contains, among various other particulars, details of shipping bill which was set-out/tabulated in the order of the learned Judge.

g. It was found that the details contained in the bills of export of goods under which the 1st Respondent has claimed duty drawback on being compared/verified with the bills of the parties to the transaction, the numbers and date tally and that the export documents have been executed by the 1st Respondent.

h. It was also found that the FTWZ i.e., DHL has neither claimed nor been granted any benefit under MEIS in respect of the subject transactions.

b. Reasoning of the learned Single Judge:

The learned Judge after examining the facts, documents, provisions of the Foreign Trade Development and Regulation Act (FTDR), Foreign Trade Policy etc found the following:

a. That the export was by the 1st Respondent herein. The goods were consigned to DHL in FTWZ on instructions of the foreign buyer viz., UTEXAM to facilitate export to various countries on instructions of CP Global.

b. That the impugned order was made overlooking the scheme of the Act which would make it clear that the scrips are issued after due scrutiny. Issuance of scrips pre-supposes due application of mind by the appellant to all relevant stipulations and its approval that the transactions do not fall within the ineligible categories of transactions as enumerated under Clause 3.06 of the Handbook of Procedures.

c. Consideration in respect of the Supplies in this case flowed from the foreign buyer viz., UTEXAM and not DHL Logistics as evident from the Bank Realization Certificate (BRC).

d. Goods were consigned by the first respondent herein to FTWZ for onward shipment at the behest of the purchaser UTEXAM, to locations outside India as instructed by CP Global.

e. The above modus operandi was supported by the documentation placed on record by the 1st Respondent herein.

f. DHL logistics, a unit in FTWZ, merely offered the facility of warehousing its consignments that are to be exported to various destinations outside the territory of India by the foreign buyer viz., UTEXAM, which has paid the 1st Respondent in USD for the consignment.

g. The stipulation in clause 3.06(vii) of the FTP deals with exports made by a unit in the FTWZ. DHL, the FTWZ does not export the consignments, but only facilitates such exports. The contract is only between the 1st Respondent and UTEXAM and the export outside the territory of India is an integral part of the contract. The 1st Respondent is thus entitled to the benefit of MEIS having exported the merchandise.

Having held so, the learned Judge allowed the writ petitions by the impugned order, which was challenged by the appellant herein.

**5. Case of the Appellant:**

a. That the order of the learned judge is contrary and made in disregard to the restrictions/embargo under Paragraph 3.06 of Chapter 3 of the Foreign Trade Policy in particular clause 3.06(i) and (vii) of FTP which enumerate the categories/sectors ineligible for entitlement under MEIS.

b. That the learned judge failed to see that the 1st respondent herein supplied the goods to DHL Logistics in FTWZ and exports were made from FTWZ and the 1st respondent is thus ineligible to avail the benefit of MEIS particularly in view of sub-clause (i) and (vii) of Para 3.06 of the Policy.

c. That the learned judge ought to have seen that the modus operandi adopted by the 1st respondent avoiding the circuitous route of shipment by UTEXAM to its place of business at Ireland and then to various destinations in different countries as instructed by CP Global, is not to reduce cost, but to circumvent the Policy, provisions and the restrictions thereof.

d. The learned judge has by allowing the writ petition, pre-empted the appellant from taking appropriate action including cancellation of scrips.

e. Any provision/scheme of exemption / concession must be construed in favour of the revenue unlike a charging provision. Reliance was sought to be placed on the judgment of the Constitutional Bench of the Hon'ble Supreme Court in the case of *Commissioner. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1.*

**<u>6. Case of the 1st Respondent:</u>**

i. The order of the learned judge does not warrant interference inasmuch as it has been held that the first respondent herein is entitled to the benefit of MEIS, after taking into account the facts, documents relating to the relevant transactions and on consideration of the relevant provisions under the Foreign Trade (Development and Regulation) Act, Foreign Trade Policy and Handbook of Procedure.

ii. All three scrips have been validly issued after due application of mind and inquiry by the appellant. Thus, the rejection of the application for registration by the 2nd Respondent is not only contrary to law, but also amounts to review of the original order passed, for which there is no provision either under the policy or any regulation.

iii. In response to the argument put forth by appellant to the effect that the original document (two scrips) have been taken back, the 1st respondent herein would submit that it was done only for the purpose of ensuring its safety.

iv. The scrips have not been cancelled at any time till their expiry or even thereafter and hence in the absence of cancellation, for which a specific procedure is statutorily provided, the 2nd Respondent has no authority to either reject registration or refuse issuance of TRA.

v. Section 9(4) of the Foreign Trade (Development and Regulation) Act, 1992 (in short, "the FTDR Act"), provides for a procedure for cancellation of scrip. This procedure has not been followed. The scrips are valid and ought to have been registered as requested by the scrip-holder.

Thus, the order of the learned judge setting aside the impugned order does not warrant interference for the above reasons.

7. Heard both sides and perused the records.

**8. Relevant Provisions:**

a. Section 9 of Foreign Trade (Development & Regulation) Act, 1992

*"9. Issue, suspension and cancellation of licence*

*(1) The Central Government may levy fees, subject to such exceptions, in respect of such person or class of persons making an application for licence, certificate, scrip or any instrument bestowing financial or fiscal benefits of in respect of any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted or renewed in such manner as may be prescribed.*

*(2) The Director General or an officer authorised by him may, on an application and after making such inquiry as he may think fit, grant or renew or refuse to grant or renew a licence to import or export such class or classes of goods or services or technology as may be prescribed and, grant or renew or refuse to grant or renew a certificate, scrip or any instrument bestowing financial or fiscal benefit, after recording in writing his reasons for such refusal.*

*(3) A license, certificate, scrip or any instrument bestowing financial or fiscal benefits granted or renewed under this section shall - (a) be in such form as may be prescribed; (b) be valid for such period as may be specified therein; and (c) be subject to such terms, conditions and restrictions as may be prescribed or as specified in the licence, certificate, scrip or any instrument bestowing financial or fiscal benefits with reference to the terms, conditions and restrictions so prescribed.*

*(4) The Director General or the officer authorised under sub-section (2) may, subject to such conditions as may be prescribed, for good and sufficient reasons, to be recorded in writing, suspend or cancel any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted under this Act:*

*Provided that no such suspension or cancellation shall be made except after giving the holder of the licence, certificate, scrip or any instrument bestowing financial or fiscal benefits a reasonable opportunity of being heard.*

*(5) An appeal against an order refusing to grant, or renew or suspending or cancelling, a licence, certificate, scrip or any instrument bestowing financial or fiscal benefits shall lie in like manner as an appeal against an order would lie under section 15."*

b. Foreign Trade Policy (FTP):

*PART I*

*Foreign Trade Policy*

*"Chapter 3 - Exports from India Schemes*

*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).*

*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 realized 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.*

..

*3.06 Ineligible categories under MEIS*

*The following exports categories/sectors shall be ineligible for Duty Credit scrip entitlement under MEIS:*

*(i) Supplies made from DTA units to SEZ units.*

*(ii) Export of imported goods covered under paragraph 2.46 of FTP;*

*(iii) Exports through trans~shipment, meaning thereby exports that are originating in third country but trans~shipped through India;*

*(iv) Deemed Exports;*

*(v) SEZ/EOU/EHTP/BTP/FTWZ products exported through DTA units;*

*(vi) Export products which are subject to Minimum export price or export duty.*

*(vii) Exports made by units in FTWZ."*

**9. Analysis and Discussion:**

The issue which requires to be resolved is whether in the light of the above factual background Clause 3.06 (i) or (vii) of the FTP read with Hand Book of Procedure, would get attracted thereby rendering the 1st respondent ineligible to the benefit under MEIS. In this context, it may be relevant to extract the said clause, which reads as follows:

*"3.06 Ineligible categories under MEIS*

*The following exports categories/sectors shall be ineligible for Duty Credit scrip entitlement under MEIS:*

*(i). Supplies made from DTA units to SEZ units.*

*...*

*(vii). Exports made by units in FTWZ."*

**10. Inapplicability of Clause 3.06 (i) of FTP – Scope of the expression "supplies":**

We agree with the conclusion of the learned judge that clause 3.06 (i) of FTP would not get attracted to the transaction in issue for the following reasons:

a) What is intended to be covered under clause 3.06 (i) of FTP is "supplies" made from DTA units to SEZ units. Admittedly, there is no question of "supply" by the first respondent to DHL, for there is no contract between the 1st respondent and DHL much less any contract for supply of merchandise between the 1st Respondent and DHL, a unit in FTWZ. The expression "supply" must be understood keeping in view the context viz., MEIS in which the said expression is employed. MEIS is framed with a view to promote export by granting/extending various benefits in respect of export of merchandise by an entity in India to outside the territory of India. If we keep in mind the said contextual setting of the scheme, it would be clear that the expression "supplies" would relate to a transaction between two entities dealing at arm's length and independent of each other. In other words, the expression "supplies" employed in para 3.06 (i) of FTP contemplates a contract under which the merchandise/goods are transferred. Applying the said meaning of "supplies" to the facts of the present case, it is clear that clause 3.06(i) of FTP would not get attracted, since a Supply to be treated as one made by DTA unit to SEZ and it would require that there is a contract between DTA and SEZ and the consideration is paid for by the SEZ unit. However, in the instance case, admittedly, the consideration for the supply of merchandise by the 1st Respondent was received by the 1st Respondent from UTEXAM, Ireland in US Dollars, the BRC placed on record would evidence the same. Further, the delivery to DHL (FTWZ) was at the behest of the foreign buyer viz., UTEXAM which again was found to be supported by the documents placed on record and not disputed, which admittedly, was for the purpose of onward shipment to various destinations outside India.

b) The facility offered by DHL is only limited to warehousing the consignments, before ultimately exporting the consignments to various destinations as instructed by CP Global. DHL was acting on behalf the Foreign importer viz., UTEXAM as would be evident from a reading of the impugned order, wherein, it is stated that the supplies have been made by the 1st respondent to DHL *"on account"* of UTEXAM, at Ireland, a foreign client. Admittedly, there is no contractual relationship between the 1st respondent and DHL much less a contract for supply. The expression "on account of" would normally mean "for and on behalf of", which in the facts of the present case and on the basis of the findings rendered in the impugned order would mean on behalf of UTEXAM. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case *American Express Bank Ltd. v. Calcutta Steel Co.,* reported in *(1993) 2 SCC 199* to understand the scope of the expression "*on account of*", wherein, it was held as under:

*"17. The words '' have been defined in Chamber's 20th Century Dictionary, New Edition, page 8 thus: "On one's own account" means 'for one's own sake; on one's responsibility'. In the Random House Dictionary of the English Language, College Edition, page 10 "" means 'a. by reason of; because of; b. for the sake of'. In The Reader's Digest Great Encyclopaedic Dictionary, Volume 1, page 23 "" means 'in consideration of; because of'. In Concise Oxford Dictionary, 7th edn., page 7 "On one's own account" means 'for and at one's own purpose and risk'. In Shorter Oxford Dictionary, Vol. 1, page 13 "On one's account" means 'in his behalf and at his expenses'.*

10.1. It is thus clear that there is no contract between the 1st Respondent and the DHL much less a contract for supply of merchandise. As such, the submission of the learned Additional Solicitor General that the subject transactions are covered by clause 3.06 (i) of FTP and thus, not eligible for the benefit under MEIS, is misconceived and is liable to be rejected.

**<u>11. Applicability of Clause 3.06 (vi) of FTP – Scope of the expression "by":</u>**

11.1. It is submitted by the learned Additional Solicitor General that the very fact that the goods moved outside the territory of India from DHL in FTWZ by itself would result in the transaction being covered by clause 3.06 (vii) of FTP which covers "Exports made by units in FTWZ" thereby dis-entitling the 1st respondent to the benefit under MEIS.

11.2. Before examining the above submission, it must be borne in mind that there is no dispute as to the factum of export, which is admittedly found even in the impugned order. The controversy is, whether the export is by the 1st respondent, who is the owner of the merchandise/ goods and entered into contract with UTEXAM, Ireland for sale of merchandise containing/imposing an obligation on UTEXAM to take the outside the territory of India (or) the export is by DHL a unit in FTWZ which had merely offered facility to UTEXAM for warehousing the merchandise purchased by UTEXAM before taking/ exporting the merchandise so purchased from the 1st respondent to various destinations outside India as part of UTEXAM contractual obligation with the 1st Respondent.

11.3. To appreciate the above submissions, let us take a closer look at clause 3.06 (vii) - *Exports made by units in FTWZ.*

The learned Judge found that clause 3.06 (vii) of FTP would not get attracted to the subject export on the premise that the stipulation therein deals with exports made *"by" a* unit in FTWZ. DHL the unit in FTWZ does not export the consignment, but only facilitates export. The export is a result of the contract between the 1st respondent and its customer viz., UTEXAM. The contract between the 1st Respondent and UTEXAM imposed an obligation on the first respondent to export the merchandise outside the territory of India to UTEXAM, Ireland. The expression *"by"* employed in clause 3.06 (vii) of FTP qualifies export and exporter. It may be relevant to refer to the following dictionary meaning to understand the meaning and scope of the expression "by":

<u>*Cambridge Dictionary:*</u>

"used to show person or thing does something"

<u>*Norman Dictionary*</u> :

"who or what does something"

11.4. From the above, it is clear that the export must be *"by"* a unit in FTWZ to be covered under Clause 3.06 (vii) of FTP. On gleaning through the facts of the case, we find that the only entity which is in FTWZ is DHL and thus, for the export to be covered under Clause 3.06 (vii) of FTP the export, must be made by DHL. DHL plays a limited role of a logistics provider/facilitator. DHL admittedly has no title over the goods consigned. Its role is limited to providing logistic support for the limited duration from taking delivery from the 1st respondent on instruction and on behalf of UTEXAM until instructions are given by UTEXAM for further dispatch to various destinations of CP Global excluding India. The consideration that is received by DHL logistics is for provision of warehousing facility and has got nothing to do with the goods consigned/involved. On the other hand, the contract between the 1st Respondent and UTEXAM contemplates supply of merchandise by the 1st

Respondent to UTEXAM with an obligation being cast on UTEXAM to take the goods outside the territory of India. The title in the merchandise passes from the 1st respondent to UTEXAM. The consideration for the supply of goods flows from UTEXAM to the 1st Respondent. It is thus evident and clear that the export is by the 1st Respondent. The framers of the policy i.e., the Central Government has advisedly employed the expression "by" to qualify the entity, which exports. From the facts discussed above, it is clear that the export is by the 1st Respondent.

11.5. It may be relevant to note that the framers of the policy have employed the expression *"by"* advisedly in contradistinction to the expressions "from" and "through" employed in sub-clause (i) and clause (v) in Clause 3.06 of FTP, which read as under,

> "*.. (i) Supplies made from DTA units to SEZ units.*
> ...
> *(v) SEZ/EOU/EHTP/BTP/FTWZ products exported through DTA units; ..*"

11.6. If Clause 3.06 (vii) of FTP was intended to cover exports on the basis of the place "from" where the goods are moved to a territory outside India, the framers would have either used the expression "from" as in clause (i) or "through" as in clause (v) to 3.06 of FTP instead of using the expression "by". While the expression "from" is indicative of the place from where the merchandise is exported, the expression "through" is indicative of a conduit (or) third party being involved. However, what is covered under clause 3.06(vii) of FTP is exports made "by" units in FTWZ, thus for clause 3.06 (vii) of FTP to get attracted, exports must be made by DHL instead we have already found that the export is pursuant to and an integral part of a contract between the 1st Respondent and UTEXAM.

11.7. It is trite law that when words of different import are used in the same statute, more so, in the same clause/ section, a strong presumption would arise that they are not used in the same sense. In this regard, it may be useful to refer to the following judgments of the Hon'ble Supreme Court:

i. <u>*Member, Board of Revenue vs. Arthur Paul Benthall (1955) 2 SCR 842:*</u>

> *"When two words of different import are used in a statute, in two consecutive provisions, it would be difficult to maintain that they are used in the same sense....."*

ii. <u>*Polestar Electronic (P) Ltd. v. Addl. CST, (1978) 1 SCC 636:*</u>

> ***"8. ...*** <u>*It is a well-settled rule of interpretation that where there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that, if the legislature used that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all.*</u> *We may repeat what Pollack C.B. said in Attorney General v. Sillem (1864) 2 H & C 431, 526 that:*
>
> *"If this had been the object of our legislature, it might have been accomplished by the simplest possible piece of legislation; it might have been expressed in language so clear that no human being could entertain a doubt about it."*

11.8. Thus clause 3.06 (vii) of FTP is inapplicable inasmuch it looks to the entity which exports rather than the place i.e., FTWZ from where the goods are moved. The export is pursuant to and an integral part of the contract between the 1st Respondent and UTEXAM. Thus we see no merit in the submission made on the side of the appellant.

11.9. Secondly, it was submitted by the learned Additional Solicitor General appearing for the appellant / revenue that in the event of any ambiguity in construing exemptions/beneficial provisions/notification, Courts should lean in favour of the revenue. The said rule of interpretation is applicable only in the case/event of ambiguity in the provision. We find, there is no ambiguity in the language employed in Clause 3.06 of FTP. It is trite law that where the words are clear, plain and unambiguous, Courts are bound to give effect to the plain language and the question of applying any interpretive rule would not arise. In this regard, it may be useful to refer to the following judgments:

*i) Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC* ***1***

> *"21. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature.*
>
> *24. ...It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature.*
>
> *25. At the outset, we must clarify the position of "plain meaning rule or clear and unambiguous rule" with respect to tax law. "The plain meaning rule" suggests that when the language in the statute is plain and unambiguous, the court has to*

*read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum inverbis nulla ambiguitas est, non debet admitti voluntatis quaestio"......"*

*(emphasis supplied)*

*ii) Hansraj Gordhandas v. CCE and Customs, AIR 1970 SC 755:*

*"5. ... It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the taxpayer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. A.Salomon & Co. Ltd. 1897 AC 22 (HL)*

*'"Intention of the legislature" is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.'*

*It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner, 1846 SCC OnLine PC.*

*'... we cannot aid the Legislature's defective phrasing of the Act, we cannot add, and amend, by construction, make up deficiencies which are left there.'.."*

*(emphasis supplied)*

11.10. The language of clause 3.06 of FTP being unambiguous and clear, the question of applying any rule of interpretation including the principle of extending the benefit of doubt to the revenue in the case of ambiguity, does not arise.

11.11. Yet another reason which prompts us to reject the contention placed by the Revenue is that clause 3.06 (vii) of FTP would get attracted to export from

FTWZ irrespective of the fact that the unit in FTWZ may have a limited role of only providing logistic support, on the premise that the physical movement export outside the territory of India commenced from the unit in FTWZ is, in view of the fact that it would result in whittling down/ restricting the scope of the benefit by adding the condition of the place from where the movement for the purpose of export commences as a condition to claim the benefit of MEIS. It is impermissible to whittle down or curtail the scope of such benefit through an interpretative process which results in adding condition to the scheme of exemption/benefit. In this regard, it may be relevant to refer to the following judgment:

***Tata Teleservices Ltd., vs. Commissioner of Customs (2006) 1 SCC 746:***

> *"10. ... The Bombay Bench was also correct in its conclusion that the circular sought to impose a limitation on the exemption notification which the exemption notification itself did not provide. It was not open to the Board to whittle down the exemption notification in such a manner."*

12. It is trite law that notifications granting exemptions/benefits are provided with a purpose and policy behind such grant. The object behind the incentive schemes in the form of MEIS is to encourage export so as to earn more foreign exchange by providing rewards to exporters to offset infrastructural inefficiencies and associated costs as would be evident from Chapter 3 of FTP which set out the objective behind the MEIS and other schemes. Exports are important for a country's economic growth. They can influence a country's GDP, Exchange rate, Inflation and Interest rates. Exports strengthen the domestic economy, increase sales and revenue

for businesses, build strong economic relations across the world, increase job opportunities, enhance foreign currency reserves, boost manufacturing, increase government's revenue collection, boost per capita income, generate higher domestic income and demand. They are promoted in larger public interest through various incentives being extended. Whenever, provisions are framed to promote exports, Courts have consistently held that such provisions/schemes/notifications must be constructed liberally to ensure the objective is achieved rather than adopting a construction which would frustrate/defeat the object. In this regard, it may be useful to refer to the following judgments:

i) *CCE v. Himalayan Cooperative Milk Product Union Ltd. (2000) 8 SCC 642:*

> *"**8.** Such notifications by which exemption or other benefits are provided by the Government in exercise of its statutory power, normally have some purpose and policy decision behind it. Such benefits are meant to be provided to the investors and manufacturers. Therefore, such purpose is not to be defeated nor those who may be entitled to it are to be deprived by interpreting the notification which may give it some meaning other than what is clearly and plainly flowing from it."*

ii) In the case of *CIT vs. Punjab Stainless Steel Industries (2014) 15 SCC 129* while dealing with the object behind Section 80 HC of the Act, the provision under the IT Act meant to encourage export, it was held as under:

> *"19......The intention behind enactment of Section 80-HHC of the Act was to encourage export so as to earn more foreign exchange. For the said purpose the Government wanted to encourage businessmen, traders and manufacturers to increase the export so as to bring more foreign exchange in our country. If the purpose is to bring more foreign exchange and to encourage export, we are of the*

*view that the legislature would surely like to give more benefit to persons who are making an effort to help our nation in the process of bringing more foreign exchange. If a trader or a manufacturer is trying his best to increase his exports, even at the cost of his business in a local market, we are sure that the Government would like to encourage such a person. In our opinion, once the Government decides to give some benefit to someone who is helping the nation in bringing foreign exchange, the Revenue should also make all possible efforts to encourage such traders or manufacturers by giving such business units more benefits as contemplated under the provisions of law.*

13. Finally, the submission made on the side of the Revenue that the structure of the transaction whereby UTEXAM instead of exporting the goods to its place of business at Ireland and thereafter moving it to various destinations across the globe excluding India as instructed by CP Global is itself meant only to circumvent the policy and thus, the benefit under MEIS ought not to be extended also does not have any merit. The said submission overlooks commercial realities. Cross-border transactions ought to be understood keeping in mind the global trends on trade, which could be arranged in myriad ways apart from the fact that they evolve at a rapid pace dictated by commercial expediency/compulsions/realities. Courts would not sit in judgment over the commercial wisdom of the businessmen arranging its affairs in a manner which is commercially prudent and cost and time effective as long as it is legally permissible. The relevance of courts keeping in view the commercial realities, while looking at complex commercial transactions, has been explained by various courts on more than one occasion. In this regard, it may be useful to refer to the following judgment :

Zee Interactive Multimedia Ltd., In re, 2002 SCC OnLine Bom 1414:

> *"17. The court cannot lose sight of the commercial realities of today's world. Often, companies are formed as special purpose vehicles for different commercial reasons. The transferor-company appears to be such one special purpose vehicle which was created and at or before the commencement of the commercial business such special purpose vehicle is proposed to be merged with the parent, i.e., the holding company. It is not for the court to sit in judgment over the commercial wisdom of the businessmen in creating such special purpose vehicles as long as they do not infringe any law of the land. Courts do not have the access to the materials which necessitated creation of such special purpose vehicles and their eventual merger with the parent. Unless the scheme is shown to be contrary to any law or shocks the conscience of the court or is patently unfair to the members or creditors or any class of them, or is against public interest or against the public policy, the court should not come in the way of business by rejecting a bona fide scheme under section 391."*

Thus, it needs to be borne in mind that the commercial wisdom of the parties are seldom interfered with by Courts. The learned Judge had found that the role of DHL in this transaction is only to warehouse the goods for a limited duration and nothing more. The concept of 'ship to' and 'bill to', as used in this case, has been recognised under the GST regime, as commercial compulsions dictate, that transactions are to be structured in the most economical and least cumbersome manner in terms of time, procedure and expense involved. From the facts set-out above even applying the test of a reasonable/prudent businessmen arranging his affairs to insist, that UTEXAM must export the goods to its place of business at Ireland and thereafter export to various destinations on instructions of CP Global is unrealistic and commercially unviable. We agree with the reasoning of the learned Judge.

14. In view of the above discussion, we find no reason to interfere with the order of the learned Judge. The Writ Appeals are hence dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**[R.M.D., J.] [M.S.Q., J.]**
**04.09.2023**

Index: Yes/No
Speaking order / Non speaking order
Neutral Citation: Yes/No
mka

**R.MAHADEVAN, J.**
**AND**
**MOHAMMED SHAFFIQ, J.**

mka

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**W.A. Nos.275, 279, 285 and 288 of 2023**
**and C.M.P. Nos.1866, 1865, 1870 and 1864 of 2023**

**04.09.2023**