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

+ **Date of Decision: 28.08.2023**

% **LPA 607/2023 and CM APPL. 44164-44166/2023**

DIRECTOR GENERAL OF FOREIGN TRADE Appellant

Through: Mr. Ravi Prakash, CGSC with Mr. Aman Rewaria, Ms. Astu Khandelwal and Mr. Yasharth Shukla, Advocates.

versus

HORIZON AEROSPACE (INDIA) PVT LTD Respondent

Through: Mr. Rajshekar Rao, Senior Advocate with Mr. Aditya Chatterjee, Maj. Nirvikar Singh (Retd.), Mr. Abhyudaya Shishodia and Ms. Vishakha Gupta, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The present Letters Patent Appeal (the “LPA”) has been preferred by the Appellant Authority/Director General of Foreign Trade (the “DGFT”) against judgement dated 22.02.2023 passed by the learned Single Judge(the “**Impugned Judgement**”)in W.P.(C) No. 2575/2022 titled *Horizon Aerospace (India) Pvt. Ltd. vs. Union of India & Ors.* (the “**Writ Petition**”) whereby the Writ Petition filed by the Respondent Company was allowed.



2. The facts of the case reveal that the Respondent Company is engaged in the global supply of aircraft allied goods and products. On 07.06.2017, the Respondent Company received a purchase order from Dedienne Aerospace, France (“**DA**”) for the supply of certain goods. Thereafter, in lieu of their supply of goods to DA, the Respondent Company received a total consideration of EUR 2,655,372.20 by way of foreign remittances as evidenced by the foreign inward remittance certificates dated 12.12.2017, 19.04.2018, 14.09.2018, 10.12.2018 and 08.07.2019 issued by the Respondent Company’s bankers i.e., HDFC Bank Limited.

3. The Respondent Company was instructed by DA to deliver the goods purchased to Siddhartha Logistics Co. Private Limited (“**Siddhartha Logistics**”), a logistics company located in the Free Trade Warehousing Zone (“**FTWZ**”) in Sri City, Andhra Pradesh (“**FTWZ AP**”) for consolidation and storage prior to export. Accordingly, the Respondent Company raised an Export Invoice dated 17.07.2018 which reflected: (i) Respondent Company as the merchant exporter; (ii) DA as the buyer; (iii) country of destination as France; and (iv) place of receipt as FTWZ AP (the “**Export Invoice**”).

4. Thereafter, the Respondent Company also raised a Bill of Export dated 19.07.2018, which reflected: (i) Respondent Company as the exporter; (ii) Siddhartha Logistics as the consignee; (iii) country of destination as India; (iv) DA as the client; and (v) remarks noting that supply made to Siddhartha Logistics was on behalf of DA (the “**Bill of Export**”).



5. The Respondent Company then submitted its online application to receive the benefit of Credit Duty Scrips granted to exporters under the Merchandise Exports from India Scheme (“**MEIS**”) of the Foreign Trade Policy 2015-2020 (the “**FTP**”)(hereinafter, the benefit applied for by the Respondent Company is referred to as “**MEIS Scrips**”). The Respondent Company through its application dated 10.05.2021, sought MEIS Scrips amounting to INR 42, 18,906/- against the Bill of Export.

6. The Respondent Company was granted MEIS Scrips amounting to INR 42, 18,906/- by the Assistant Director General of Foreign Trade (the “**Asst. DGFT**”) *vide* letter dated 11.06.2021. However, the same was proposed to be cancelled *vide* show cause notice dated 14.07.2021 (“**Show Cause Notice**”) issued by the Asst. DGFT on grounds that the Respondent Company had misrepresented its supply destination as France in its application. The Show Cause Notice stated that the supply of goods by Respondent Company was ineligible for grant of MEIS Scrips as, according to the Bill of Export, it merely constituted supply from a Domestic Tariff Area unit (“**DTA**”) to a Special Economic Zone unit (“**SEZ**”)/FTWZ i.e., from Respondent Company to Siddhartha Logistics. In their reply to the Show Cause Notice, dated 20.07.2021, the Respondent Company clarified that Siddhartha Logistics was merely being used as a warehousing facility and that the Bill of Export was erroneously being misconstrued by the Asst. DGFT to deem Siddhartha Logistics as the actual consignee of the goods supplied.

7. Thereafter, the Respondent Company approached the DGFT *vide* representation dated 11.08.2021 seeking clarification on its eligibility for



MEIS Scrips against the Bill of Export. To make its case, the Respondent Company, in its representation, cited the judgement of the Madras High Court in *Jindal Drugs Private Ltd vs. The Union of India & Ors.*, 2022 (379) ELT59 (Mad.) wherein, while considering an identical exporting *modus operandi*, the Court, after an assessment of documents and payments on record, held that the FTWZ therein was merely a facilitator of export. As the principal transaction of export was between the Petitioner and the foreign buyer therein, the Petitioner was held to be eligible for the MEIS Scrips. *Vide* reply dated 16.08.2021, the DGFT directed the Respondent Company to approach the authority that issued the Show Cause Notice i.e., the Asst. DGFT.

8. In furtherance of the Show Cause Notice, the Respondent Company was granted a hearing by the Asst. DGFT on 22.07.2021 wherein the following additional documents were produced by the Respondent Company: (i) No Objection Certificate (“**NOC**”) issued by Siddhartha Logistics which records unconditional consent given to the Respondent Company to claim benefits against the Bill of Export, (ii) Shipping Bill dated 30.07.2018, raised by Siddhartha Logistics which reflects Siddhartha Logistics as the Exporter; DA as the Consignee and Respondent Company as the Client (the “**Shipping Bill**”) and lastly, e-Bank Realization Certificates (“**e-BRCs**”) of the Respondent Company which reflects the details of the Bill of Export and records the currency of realization as EUR.

9. After hearing the Respondent Company, the Asst. DGFT passed the Order-in-Original dated 17.09.2021 *vide* which the cancellation of the MEIS Scrips granted to the Respondent Company was confirmed; a penalty of INR



1, 00,000 (Indian Rupees One Lakh) was imposed on the Respondent Company and further, the Respondent Company was placed on the Denied Entry List which constituted a complete prohibition on availing any licenses and / or benefits from the DGFT (the “**Order-in-Original**”). Aggrieved by this order, the Respondent Company preferred W.P.(C) No. 10709/2021 before this Court. The same was disposed of *vide* order dated 28.09.2021, directing the Respondent Company to prefer a statutory appeal under the Foreign Trade (Development and Regulation) Act, 1992. Thereafter, the statutory appeal preferred by the Respondent Company was also rejected by the Additional Director General of Foreign Trade (the “**Addl. DGFT**”) *vide* Order-in-Appeal dated 31.01.2022 (the “**Order-in-Appeal**”).

10. Aggrieved by the Show Cause Notice, the Order-in-Original and the Order-in-Appeal (hereinafter collectively referred to as “**Impugned Actions**”), the Respondent Company approached this Court again in the Writ Petition praying for setting aside of the Impugned Actions. Before the learned Single Judge, the Respondent Company placed reliance on the decision in *Jindal Drugs* (supra) and the judgement of the Bombay High Court in *Ashwini Ashish Dighe vs. The Union of India & Ors.* 2022(2) BomCR272. In *Ashwini Dighe* (supra) the Court upheld the principle emerging from *Jindal Drugs* (supra) but on a factual assessment of the documents on record therein, held that the Petitioner therein was not entitled to MEIS Scrips as they failed to satisfy the burden of proving their export transaction.

11. In the Impugned Judgement, the Learned Single Judge held that the decisions in *Jindal Drugs* (supra) and *Ashwini Dighe* (supra) were squarely



applicable to the facts of the present case. On an assessment of the documents and payments on record, the Learned Single Judge concluded that mere misdescription in the Bill of Export would not disentitle the Respondent Company from MEIS Scrips as it does not change the actual factum of export by the respondent No.1 and the consideration received by them from a foreign company. Therefore, the Impugned Actions were set aside by the Learned Single Judge and the concerned authorities were directed to revalidate the MEIS Scrips previously issued to the Respondent Company.

12. The DGFT has filed the instant LPA challenging the Impugned Judgement on the ground that it employs an interpretation contrary to the law laid down in Clause 3.06(i) and Clause 3.06(vii) of the FTP. Clause 3.06 of the FTP provides as under:

“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.”

(emphasis supplied)

13. The case of the DGFT is that the Respondent Company misrepresented their destination as France in the Bill of Export and that the actual consignee of the supplied goods is Siddhartha Logistics. Therefore, the DGFT contends that the supply made by the Respondent Company constitutes an ineligible category of supply under Clause 3.06(i) of the FTP i.e., made from a DTA unit (Respondent Company) to a SEZ/FTWZ Unit (Siddhartha Logistics). It is further clarified by the DGFT that the benefit of MEIS Scrips also cannot be granted to Siddhartha Logistics against the consequent export undertaken by them as the supply therein constitutes export made by an FTWZ unit (Siddhartha Logistics) and is therefore ineligible under Clause 3.06(vii) of the FTP.

14. In the considered opinion of this Court, the contention advanced by the DGFT is contrary to the factual position evidenced by the documents and payments on record. The Respondent Company has produced its Export Invoice, Bill of Export, and e-Bank Realisation Certificates which clearly establish the relationship of buyer and seller between the Respondent Company and DA. Further, it has supplemented its case by producing documents of Siddhartha Logistics i.e., the NOC, the Shipping Bill as mentioned earlier, and the Cargo Receipt dated 20.07.2018 wherein



Siddhartha Logistics is clearly reflected as the intermediate consignee who is receiving the goods on behalf of DA for storage purposes. While it is an undisputed fact that the Respondent Company being a DTA unit supplied goods to Siddhartha Logistics – an SEZ/FTWZ unit, these documents establish beyond a doubt that the principal export transaction was between the Respondent Company and DA and, Siddhartha Logistics merely served as an intermediary who facilitated this export transaction.

15. At this stage, it is pertinent to detail the policy objectives behind the introduction of the MEIS Scrips. The MEIS Scrips are one among the numerous incentives offered to Indian exporters and importers under the FTP. The objective of the FTP, as stated under Clause 1.06 of the FTP, is as under:

“1.06 Objective

Trade facilitation is a priority of the Government for cutting down the transaction cost and time, thereby rendering Indian exports more competitive. The various provisions of FTP and measures taken by the Government in the direction of trade facilitation are consolidated under this chapter for the benefit of stakeholders of import and export trade.”

16. More specifically, the MEIS Scrips are offered under the MEIS which provides rewards to exporters to offset infrastructural inefficiencies and associated costs. The objective of the MEIS, as defined under Clause 3.03 of the FTP, is reproduced as under:

“3.03 Objective



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

17. A reading of the aforesaid clauses makes it clear that the MEIS and the benefits offered by the Government thereunder, including the MEIS Scrips have been introduced to make Indian exports more competitive. In light of the above, the interpretation preferred by the DGFT appears to defeat the purpose of the MEIS Scrips and consequently, the FTP, and therefore, cannot be accepted by this Court.

18. The Learned Single Judge, by placing reliance on *Jindal Drugs* (supra) and *Ashish Dighe* (supra) has correctly held that the actual factum of the transaction must be considered to determine eligibility for MEIS Scrips. In the present case, the Respondent Company is the actual exporter of the goods to DA and the arrangement with Siddhartha Logistics is only in pursuance of that principal export transaction. The initial supply of goods by the exporter to a logistics company is purely facilitative, for the purpose of convenience. Therefore, the relevant provisions of the FTP dealing with MEIS Scrips cannot be interpreted in a manner that permits secondary facilitative transactions to supplant the principal export transaction thus preventing actual exporters from obtaining the benefit of MEIS Scrips.

19. This Court is of the view that the successive orders passed by the Asst. DGFT and the Addl. DGFT display a lack of application of mind by the afore-noted authorities and their refusal to consider the decision delivered by the Madras High Court in *Jindal Drugs* (supra), which was



presented by the Respondent Company on two occasions, in their reply and their appeal, is erroneous.

20. This Court, therefore, finds no infirmity in the Impugned Judgement whereby the Learned Single Judge set aside the Impugned Actions and directed the concerned authorities to revalidate the MEIS Scrips previously issued to the Respondent Company. Accordingly, the Impugned Judgment is upheld.

21. With these observations, the letters patent appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

AUGUST 28, 2023