IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.12654 of 2021

M/s.ATC Tires Private Limited,
Rep. by its General Manager-Commercial
& the auth. Rep., Mr.Ramesh Kumar Balakrishnan,
Plot A2, SIPCOT Industrial Growth Center,
Gangaikondan,
Tamil Nadu – 627 352. ..Petitioner

Vs.

1.Union of India,
Rep. by its Secretary,
Department of Commerce,
Ministry of Commerce and Industry,
Udyog Bhawan,
New Delhi – 110 107.

2.The Director General of Foreign Trade,
Udyog Bhawan,
H-Wing, Gate No.2,
Maulana Azad Road,
New Delhi – 110 011.

3.The Development Commissioner,
Madras Export Processing Zone,
Tambaram, Chennai – 600 045.

4.The Development Commissioner,
KASEZ, Kandla,
Gujarat – 370 210.

5.The Specified officer,
Madras Export Processing Zone,
Tambaram,
Chennai – 600 045.

6.The Authorized Officer,
SIPCOT Special Economic Zone,
Gangaikondan,
Tirunelveli – 627 352. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Certiorari, calling upon the records regarding the Public Notice No.17/2015-20 dated 03.07.2018 issued by the 2nd respondent and quash the same and consequently call upon the records in O.C.No.80 of 2019 dated 27.11.2019 and reminder O.C.No.51 of 2021 dated 12.03.2021 on the file of the 6th respondent and quash the same.

For Petitioner : Mr.A.P.Ravi

For Respondents : Mr.Thirukumaran for R1 to R5

Ms.R.Revathi for R6

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O R D E R

The issue that arises for consideration in this Writ Petition is whether Section 28AA of the Customs Act, 1962 gets attracted for the purpose of levy of interest on the MEIS scrips surrendered by the petitioner.

2. The learned counsel for the petitioner submitted that only after discounts were given by the petitioner to their buyers, they surrendered un-utilized MEIS scrips to the respondents. According to the petitioner, having surrendered the MEIS scrips, they claim that they are not liable to pay any interest as claimed in the impugned demand.

3. The learned counsel for the petitioner also contends that only in a few instances when the petitioner had surrendered the MEIS scrips, the petitioner had paid interest, since the amount was negligible. According to the learned counsel for the petitioner, as per Section 28AA of the Customs Act, only in cases where there is a delay in payment of customs duty, interest can be claimed. He would submit that insofar as surrendering the un-utilized MEIS scrips is concerned, Section 28AA of the Customs Act does not get attracted and no interest can be demanded by the Customs Authorities.

4. In support of the said contention, the learned counsel for the petitioner also drew the attention of this Court to the decision of the Kerala High Court in the case of ***Braddock Infotech Private Ltd., Vs. Joint Director General of Foreign Trade, Ernakulam, Director General, Directorate General of Foreign Trade, New Delhi*** reported in ***2024 (12) TN 18***. He would submit that the Kerala High Court in the aforesaid decision by following the decision of the Hon'ble Supreme Court in the case of ***J.K.Synthethics Ltd., Vs. Commercial Tax Officer*** reported in ***(1994) 4 SCC 276*** has held that for charging interest, there must be a specific charging Section under the Customs Act.

5. The learned counsel for the petitioner would submit that in the case on hand, the petitioner has surrendered the un-utilized MEIS scrips and having surrendered the same and that too when the Customs Act does not empower the respondents to levy interest, the respondents by total non-application of mind has levied interest under Section 28AA of the Customs Act, which is erroneous and not in accordance with law.

6. The learned counsel for the petitioner would also submit that the petitioner is admittedly eligible to get the benefit of the MEIS Scheme. He would submit that the petitioner being an eligible person and having surrendered the un-utilized MEIS scrips for the un-utilized imports, the question of levying interest under Section 28AA of the Customs Act does not arise. He would also submit that Section 28AA of the Customs Act gets attracted only in cases where there is a delayed payment of the customs duty, in which event the interest will have to be paid. He would further submit that when the petitioner who is eligible to get the benefit of the MEIS scheme and having surrendered the un-utilized MEIS scrips, the claim for interest by applying Section 28AA of the Customs Act does not arise and is erroneous.

7. On the other hand, the learned Standing Counsel appearing for the respondent drew the attention of this Court to the relevant paragraphs in the counter affidavit filed by the respondents 3, 5 and 6 and would submit that only in accordance with Section 28AA of the Customs Act, 1962, the respondents have claimed interest from the petitioner under the impugned demand. In particular, the learned Standing Counsel appearing for the respondents drew the attention of this Court to paragraph 3.19 of the counter affidavit filed by the respondents 3, 5 and 6 and would submit that in case any discrepancies and / or over claim is found, on examination by the Customs Department, the petitioner shall be under the obligation to rectify such discrepancies and/or refund the over claim in cash along with interest at the rate prescribed under Section 28AA of the Customs Act, 1962, from the date of issue of MEIS scrip in the relevant Head of Account of Customs within one month. Therefore, the learned Standing Counsel appearing for the respondents would submit that only in accordance with Section 28AA of the Customs Act, 1962 the impugned demand has been made.

<u>Discussion:</u>

8. As seen from the counter filed by the respondents 3, 5 and 6 they themselves have admitted in paragraph 3.19 that the original holder of scrip may refund the over claim by surrendering the scrip whether partially utilized or fully un-utilized without interest. In the case on hand, the petitioner has surrendered the un-utilized MEIS scrips with the respondents. The petitioner is also an eligible person to avail the benefit of the MEIS scheme. Having surrendered the un-utilized MEIS scrips with the respondents, the question of payment of interest as claimed in the impugned demand does not arise. Even according to the respondents, as seen from their counter, interest is not payable by the petitioner. The relevant portion is reproduced hereunder:

> *"The original holder of scrip, however, may refund such over claim by surrendering the same scrips whether partially utilized or fully un-utilized, without interest."*

9. Section 28AA of the Customs Act, 1962 reads as follows:-

> ***28AA. Interest on delayed payment of duty—***
>
> *(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*
>
> *(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the*

Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

10. As seen from Section 28AA of the Customs Act, it is clear that the said Section will come into operation only in cases where there is a delay in the payment of duty as per Section 28 of the Customs Act, 1962. Section 28 of the Customs Act, 1962 deals with recovery of duties not levied or not paid or short levied or short paid or erroneously refunded. Section 28 of the Customs Act, 1962 is reproduced hereunder:-

28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(1) Where any 5 [duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, —

(a) the proper officer shall, within 6 [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the the person chargeable with duty or interest in such manner as may be prescribed;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, —

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable *thereon under section 28AA or the amount of interest which has not been so paid or part-paid.*

Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:

Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls

short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts, by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of

collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion —

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub- section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of

such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).

(7) In computing the period of two years referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

(7A) Save as otherwise provided in clause (a) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed, and the provisions of this section shall apply to such supplementary notice as if it was issued under the said sub-section (1) or sub-section (4).

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),—

(a) within six months from the date of notice, in respect of cases falling under clause (a) of sub- section (1);

(b) within one year from the date of notice, in

respect of cases falling under sub-section (4).

Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:

Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued;] 2

(9A) Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for the reason that—

(a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or

(b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or

(c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or

(d) the Settlement Commission has admitted an

application made by the person concerned, the proper officer shall inform the person concerned the reason for non-determination of the amount of duty or interest under sub-section (8) and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist.

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

(10A) Notwithstanding anything contained in this Act, where an order for refund under sub-section (2) of section 27 is modified in any appeal and the amount of refund so determined is less than the amount refunded under said sub-section, the excess amount so refunded shall be recovered along with interest thereon at the rate fixed by the Central Government under section 28AA, from the date of refund up to the date of recovery, as a sum due to the Government.

(10B) A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful

mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.

(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.

11. Section 28AA of the Customs Act, 1962 makes it clear that only in cases, where the person, who is labile to pay duty in accordance with the provisions of Section 28, shall in addition to such duty, be liable to pay interest, if any. The case of the petitioner will not fall under Section 28 or Section 28AA of the Customs Act, 1962. In the case on hand, the petitioner has surrendered the MEIS scrips with the respondents and it is not a case involving duties not levied, or not paid or short levied or short paid or erroneously refunded. Only in those cases, Section 28AA of the Customs Act gets attracted.

12. In ***Braddock Infotech Private Ltd., Vs. Joint Director General of Foreign Trade, Ernakulam, Director General, Directorate General of Foreign Trade, New Delhi*** reported in ***2024 (12) TN 18*** decision rendered by the Kerala High Court by following the decision of the Hon'ble Supreme Court in the case of ***J.K.Synthethics Ltd., Vs. Commercial Tax Officer*** reported in ***(1994) 4 SCC 276***, it is has been held that for charging interest, there must be a specific charging Section, under the Customs Act.

13. As seen from the provisions of the Customs Act, the levy of interest on account of surrendering the un-utilized MEIS scrips is not specifically provided. Though the petitioner may have paid interest earlier for certain shipments on account of surrendering the MEIS scrips, the learned counsel for the petitioner has clarified to this Court that the said interest was paid since the amounts were negligible. But the petitioner has never agreed that they are liable to pay interest, on account of surrender of un-utilized MEIS scrips.

14. When the respondents themselves have admitted in their counter that the original holder of the MEIS scrips, however may refund such claims by surrendering the same scrips whether partially utilized or fully un-utilized, without interest, the question of levy of interest on the petitioner for surrendered MEIS scrips does not arise. As observed earlier, Section 28AA of the Customs Act also does not get attracted for claiming interest on account of the surrender of the un-utilized MEIS scrips. As the said Section will get attracted only to the cases falling under Section 28 of the Customs Act, the petitioner's case does not fall under section 28 of the Customs Act.

15. Therefore, by total non-application of mind to the fact that Section 28AA does not get attracted for the cases where an eligible exporter has surrendered the un-utilized MEIS scrips, the impugned demand has been issued, calling upon the petitioner to pay interest on account of the surrender of the MEIS scrips. The public notice dated 03.07.2018, based on which the impugned demand has been made also does not stipulate payment of interest for surrendering of the un-utilized MEIS scrips. Para 3.24(b)(ii) of the public notice dated 03.07.2018 issued by the Ministry of Commerce & Industry, Department of Commerce, Directorate General of Foreign Trade is reproduced hereunder:-

ii) Wherever, MEIS has been issued to the *applicant for the relevant shipping bill(s) but the MEIS scrip has not been utilised, the applicant should surrender the MEIS scrip to the RA. The RA would then issue the certificate and simultaneously inform the NIC to block the relevant shipping bill(s).*

16. As seen from the above, it is clear that the respondents cannot claim interest on the petitioner for the un-utilized MEIS scrips surrendered by the petitioner.

17. For the foregoing reasons, the impugned letters of demand issued by the 6th respondent dated 27.11.2019 and 12.03.2021 are hereby quashed and this Writ Petition is **allowed**. However, it is made clear that this Court is not quashing the Public Notice No.17/2015-2020 issued by the 2nd respondent dated 03.07.2018.

25.07.2025

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Index : Yes/No
Internet : Yes/ No
Neutral Citation : Yes/No
Speaking order/ Non-speaking order

To:-

1.The Secretary,
Union of India,
Department of Commerce,
Ministry of Commerce and Industry,
Udyog Bhawan,
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2.The Director General of Foreign Trade,
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