BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)No.1030 of 2025
and
C.M.P.(MD)Nos.6506 and 6510 of 2025

M/s.Kwalitee Fabs,
Represented by its Managing Partner,
RA.Kamaraj,
Plot No. C 29, Door No. 1/190,
Tex City, Karur Textile Park,
Puthambur Village, Karur - 639 002. ... Appellant

Vs.

The Commissioner of Customs,
Office of the Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin 628 004. ... Respondent

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.8609 of 2025 dated 01.04.2025 on the file of this Court.

For Appellant : Mr.V.Raghavachari, Senior Counsel,
For Mr.N.Sundaresan.

For Respondent : Mr.R.Gowri Shankar,
Senior Standing Counsel.

JUDGMENT
(By G.R.SWAMINATHAN, J.)

The appellant is an exporter of textiles goods. They have been manufacturing both powerloom as well as handloom goods. The respondent initiated proceedings against the appellant on the ground that they had misdeclared their goods. In other words, powerloom goods were declared as handloom goods and on that basis, undue benefits were availed under MEIS scheme. After issuing show cause notice, the impugned assessment order dated 30.09.2024 was passed calling upon the appellant to pay a sum of Rs.1,92,88,594/- being the value of ineligible MEIS duty scrips and also redemption fine as well as penalty. Questioning the same, WP(MD)No.8609 of 2025 was filed. The writ petition was dismissed on the ground of availability of alternative remedy. Challenging the same, this writ appeal has been filed.

2.The issue raised in the writ appeal is regarding the power and jurisdiction of the customs authorities to take action under Section 28AAA of the Customs Act, 1961 without there being a prior determination by DGFT in terms of the relevant provisions of Foreign Trade Development and Regulation Act, 1992 and the Rules and the foreign Trade Policy framed thereunder. The Hon'ble Supreme Court had left the issue open in (2025) 29 Centax 2 (S.C) (Commissioner of Customs, NHAVA Sheva-II vs. Bharat Rasayan Ltd.).

3.A learned Judge of this Court in WP No.4005 of 2022 dated 29.11.2023 had held that until DGFT had taken action for cancellation, the customs authority cannot assume jurisdiction in terms of Section 28AAA of the Act. The Hon'ble Division Bench of the Delhi High Court in ***DESIGNO v. UOI (2024 SCC OnLine Del 8163***) held as follows :

> “**103.** Section 28AAA is principally concerned with the right vested in the respondents to initiate action for recovery of duty and interest where an instrument issued to a person is found to have been obtained by means of collusion, wilful misstatement, or suppression of facts. The word “*instrument*” is defined by Explanation 1 to Section 28AAA to include any scrip, authorization, license, certificate, or any other document by

whatever name called issued under the FTDR Act. We have already held that the MEIS certificate would clearly fall within the ambit of that expression in the preceding parts of this decision.

J. THE CUSTOMS AND THE DGFT CROSSROAD

104. As we read the various provisions enshrined in the FTDR Act alongside the FTP as well as the FTDR Rules, we find ourselves unable to recognize a right that may be said to inhere in the customs authorities to doubt the issuance of an instrument. We, in the preceding parts of this decision, had an occasion to notice the relevant provisions contained in the FTDR Act and which anoint the DGFT as the central authority for the purposes of administering the provisions of that statute and regulating the subject of import and exports. The FTP 2015-2020 in unequivocal terms provides in para 2.57 that it would be the decision of the DGFT on all matters pertaining to interpretation of policy, provisions in the Handbook of Procedures, Appendices, and more importantly, classification of any item for import/export in the ITC (HS) which would be final and binding. The FTP undoubtedly stands imbued with statutory authority by virtue of Section 5 of the FTDR Act.

105. of equal importance are the FTDR Rules and which too incorporate provisions conferring an authority on the Director General or the licensing authority to suspend or cancel a license, certificate, scrip or any instrument bestowing financial or fiscal benefits. Once it is held that the MEIS would clearly qualify as an instrument bestowing financial or fiscal benefits, the power to

cancel or suspend would be liable to be recognized as being exercisable by the Director General on the licensing authority alone. It would thus be wholly impermissible for the customs authorities to either ignore the MEIS certificate or deprive a holder thereof of benefits that could be claimed under that scheme absent any adjudication or declaration of invalidity being rendered by the DGFT in exercise of powers conferred by either Rules 8, 9 or 10 of the FTDR Rules. The customs authorities cannot be recognised to have the power or the authority to either question or go behind an instrument issued under the FTDR in law.

106. Taking any other view would result in us recognizing a parallel or a contemporaneous power inhering in two separate sets of authorities with respect to the same subject. That clearly is not the position which emerges from a reading of Section 28AAA. Quite apart from the deleterious effect which may ensue if such a position were countenanced, in our considered opinion, if the validity of an instrument issued under the FTDR Act were to be doubted on the basis of it having been obtained by collusion, wilful misstatement or concealment of facts, any action under Section 28AAA would have to be preceded by the competent authority under the FTDR Act having come to the conclusion that the instrument had come to be incorrectly issued or illegally obtained. The procedure for recovery of duties and interest would have to be preceded by the competent authority under the FTDR Act having so found and the power to recover duty being liable to be exercised only thereafter.

107. Section 28AAA would thus have to be interpreted as contemplating a prior determination on the issue of collusion, wilful misstatement or suppression of facts tainting an instrument issued under the FTDR Act before action relating to recovery of duty could be possibly initiated. A harmonious interpretation of the two statutes, namely, the Customs and the FTDR Acts leads us to the inescapable conclusion that the law neither envisages nor sanctions a duality of authority inhering in a separate set of officers and agents simultaneously evaluating and adjudging the validity of an instrument which owes its origin to the FTDR Act alone. It is these factors, as well as the role assigned to the DGFT which perhaps weighed upon courts to acknowledge its position of primacy when it come to the interpretation of policy measures referable to the FTDR Act as well as issues of classification emanating therefrom.

108....We are thus of the firm opinion that it would be impermissible for the customs authorities to either doubt the validity of an instrument issued under the FTDR Act or go behind benefits availed pursuant thereto absent any adjudication having been undertaken by the DGFT. An action for recovery of benefits claimed and availed would have to necessarily be preceded by the competent authority under the FTDR Act having found that the certificate or scrip had been illegally obtained. We have already held that the reference to a proper officer in Section 28AAA is for the limited purpose of ensuring that a certificate wrongly obtained under the Customs Act could also be evaluated on parameters specified in that provision. However, the said stipulation cannot be construed as conferring authority on the proper officer to question the validity of a certificate or scrip referable to the FTDR Act."

The Commissioner of Customs, Tuticorin was also present before us through Video Conferencing. The standing counsel as well as the official concerned admitted before us that the impugned order was issued by invoking Section 28AAA of the Act. The Madras High Court as well as the Delhi High Court have held that without a prior determination by DGFT, the customs authority cannot take action under the aforesaid provision. The said legal position will hold good till the Hon'ble Supreme Court pronounces on the issue.

4.Once we come to the conclusion that the order passed by the respondent is without jurisdiction, we have to hold that this writ is maintainable.

5.In this view of the matter, the order impugned in the writ petition is set aside. It is always open to the respondent to take up the matter with the Directorate General of Foreign Trade and bring it to their attention so that the competent authority under DGFT can take appropriate action as per law.

6.With the aforesaid liberty to the respondent herein, this writ appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.,) & (K.R.S. J.,)
25.06.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias/SKM

G.R.SWAMINATHAN, J.
and
K.RAJASEKAR, J.

ias/SKM

W.A.(MD)No.1030 of 2025

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