

CWP-22284-2016

2025:PHHC:135358-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-22284-2016

Date of Decision: September 24, 2025

M/s Quarkcity India (Pvt.) Ltd.

..... Petitioner

Versus

Union of India and others

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Vishal Gupta, Advocate for the petitioner.

Mr. Sourabh Goel, Advocate for the respondents.

LISA GILL, J.

1. Prayer in this writ petition reads as under:-

“i) writ in the nature of certiorari or any other writ, order or direction for quashing the action of the respondents in levy of duty of Rs.47 lacs upon the petitioner company inconsonance with the minutes of meeting held on 22.5.2015 (Annexure P-18) and further for quashing of the order dated 18.8.2015 (Annexure P-21), whereby the petitioner has been asked to deposit the custom duty amounting to Rs.6,59,700/- for the purpose of permission to dispose of unutilized goods under Special Economic Zone Rules 2006, being illegal, arbitrary, unjust, against the settled principles of law.

CWP-22284-2016

- ii) Further a writ in the nature of mandamus directing the respondents to refund the amount of Rs.47,00,000/-, which has been deposited by the petitioner under protest on account of custom duties for seeking permission to dispose of unutilized goods under SEZ Rules, which was deposited vide challan No.01/2016-17, dated 20.4.2016 and Rs.6,59,700/- deposited vide challan No.05/2015-16, dated 29.7.2015 in the interest of justice.
- iii) Or any other writ, order or direction which this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case may kindly be issued.
- iv) Dispense with the filing of certified copies of Annexures and permission to place photo copies of Annexures.
- v) Dispense with issuance of advance notice to the respondents.
- vi) Award the cost of the petition to the petitioner.”

2. Brief facts necessary for adjudication of the matter are that petitioner claims to be a body incorporated under Companies Act, 1956, engaged in the business of developing industrial and urban townships, other infrastructural projects including development of First Operational Special Economic Zone (SEZ) in Punjab that is approved for IT and ITES sector. It is pleaded that petitioner was granted approval for setting up SEZ for an area of 13.75 hectares in plot No. A-40A, Focal Point, Industrial Area-VII Extension, District Mohali vide notification dated 02.11.2006 issued by Ministry of Commerce and Industry, Department of Commerce (Annexure P-1). This area was subsequently reduced to 10.12 hectares.

3. Petitioner, it is stated, receives goods from Domestic Tariff Area (for short – DTA) suppliers from all over the country. Notification dated 10.05.2008 was issued in exercise of powers conferred under Section 25(1) of Customs Act, 1962 exempting goods specified in column (3) of table annexed

CWP-22284-2016

and falling under Head of Second Schedule to Customs Tariff Act, 1975 specified in corresponding entry in column (2) of said table, when exported out of India, from so much of the duty of customs leviable thereon under Second Schedule as is in excess of the amount calculated at the rate specified in corresponding entry in column (4) of table. This notification was then amended vide subsequent notification dated 13.06.2008. It is pleaded that there was lack of clarity about the scope and coverage of these entries and customs formations had even sought to charge export duty on items such as forging of iron and steel structuring and articles. Government of India, Ministry of Finance, Department of Revenue, Tax Research Unit (SEZ Section), issued clarification that Second Schedule of Customs Tariff Act was not aligned with Harmonized System of Nomenclature (HSN) and in order to remove any ambiguity, coverage of these entries were reproduced in the table. Communication dated 30.06.2008 was issued by Government of India, Ministry of Commerce and Industry, Department of Commerce (SEZ Section) with regard to applicability of export duty on steel products supplied by units in DTA to SEZ. Issue regarding imposition of custom duty on steel was statedly raised by petitioner with respondent No. 3 vide communication in the year 2008 while requesting movement of steel to be permitted into SEZ without payment of export duty. Action of respondents regarding levy of custom duty on import of steel was challenged by petitioner by way of CWP-18122-2008 which was admitted on 29.03.2010. Respondent by way of interim order was restrained from levying export duty on movement of goods from Domestic Tariff Area to Special Economic Zone subject to petitioner maintaining its accounts relating to goods in question in accordance with provisions of law with rider that restraint order is subject to final decision of writ petition and in case writ petition is dismissed,

CWP-22284-2016

petitioner shall be liable to deposit requisite duties alongwith interest in accordance with law. Said writ petition and its pendency is not an impediment in adjudication of present matter.

4. Petitioner was granted permission for procurement of goods to carry out authorised operations in SEZ at Mohali vide initial order dated 02.02.2007 for value of goods amounting to Rs. 32,40,81,567/-. This permission was renewed and extended from time to time and ultimately till 19.09.2014. In respect to request for further extension vide petitioner's letter dated 11.09.2014, it received reply from specified Officer to apply for extension under Rule 12(5) of The Special Economic Zones Rules, 2006 (for short – 'SEZ Rules') and sought information regarding complete list of goods procurement duty free in respect of which extension is sought and list of material/goods out of above duty free goods, which have become unfit for use. Such list of goods was submitted by petitioner after segregating goods into three categories.

5. Petitioner vide letter dated 01.10.2014 (Annexure P-11) sought extension for period of three years for utilization of goods under category A and B and for permission to dispose of/destroy goods under category C. Vide subsequent communication dated 31.10.2014 (Annexure P-12), petitioner stated that goods under category C had been further divided into two categories i.e.

“C-A - These items don't have saleable value and to be destroyed.

C-B - These items may have very small value depending upon in case we are able to get a buyer.”

6. Petitioner sought permission to destroy the goods made under category C-A and to hold the inventory of category C-B till it found a buyer for the same. Petitioner was granted extension vide order dated 12.11.2014

CWP-22284-2016

(Annexure P-14) till 31.03.2016 for utilization of goods mentioned in category A and B of list attached with its communication dated 31.10.2014. Petitioner was, however, called upon to refund the amount of benefit availed by it on goods which had become damaged or unfit for use after such procurement with reference to Rule 25 of SEZ Rules. Petitioner was again called upon vide letter dated 26.11.2014 to refund the concession availed by it in terms of Rule 25 of SEZ Rules.

7. Petitioner thereafter sought permission to dispose of scrap/unutilized goods vide its communication dated 23.01.2015 while relying on Rule 27 of SEZ Rules. Petitioner was afforded an opportunity to attend meeting of Union Approval Committee (UAC) held under Chairmanship of Development Commissioner Noida, SEZ Nodia. Duly authorized representative of petitioner – Company attended the meeting so held on 22.05.2015. UAC resolved on 22.05.2015 as under:-

“ The UAC heard the request of the SEZ Developer for Extension/Destruction of their goods imported by them for their authorized operations, which inter alia includes Boulder Stones. That representative of the Customs vehemently opposed the request of the SEZ Developer and asked for refund of applicable duties in terms of Rule 25 of the SEZ Rules rather the request of the SEZ Developer to destroy the goods in terms of Rule 27 (9) of SEZ Rules 2006. The disposal of Boulder Stones (Travertine) be allowed by Customs as per the policy in force for disposal of Boulder Stones (Travertine) in DTA.

After due deliberations UAC directed the Developer to refund the applicable duties on the left over goods in terms of Rule 25 of the SEZ Rules 2006.”

CWP-22284-2016

8. Petitioner then approached Chartered Engineer for evaluation of goods which were sought to be scrapped/destroyed. Certificate dated 27.07.2015 (Annexure P-19) was issued by Chartered Engineer and petitioner on this basis applied for extension for use of left over stock for a period of one year. Respondent No. 3 declined said request while stating that it has no power under the Statute to grant the relief as sought. Petitioner still persisted and submitted similar request again which was also rejected vide communication dated 26.10.2015. Sum of Rs.6,59,700/- was deposited by petitioner on 28.10.2015 under protest.

9. Petitioner was called upon vide letter dated 04.12.2015 to refund the applicable duty on unutilized goods as per decision of UAC in its meeting held on 22.05.2015. Petitioner again sought extension of time for utilization of left over stock vide letter dated 15.02.2016 (Annexure P-25). Same was yet again rejected on 18.02.2016 (Annexure P-26). Sum of Rs. 47 lakhs was deposited by petitioner on 20.04.2016 as refund of custom duty on account of goods which remained unutilized and for which extension had been denied, again under protest. Petitioner vide letter dated 06.06.2016 asked respondents to re-consider its case and sought copy of speaking order in this respect. This was met with response dated 20.06.2016 of respondents that decision had already been taken by UAC in its meeting held on 22.05.2015 and there is no question of a separate order being passed now. Aggrieved therefrom, present writ petition was filed in October, 2016. Same was admitted on 26.10.2016.

10. Respondents in their reply have controverted arguments as pleaded by petitioners. It is submitted that in a situation like the present where the goods had become defective and damaged etc. due to non-utilisation of same by the unit or Developer, it would fall under ambit of Rule 25 of SEZ Rules. Once

CWP-22284-2016

petitioner had failed to utilize the goods within the specified period and even the extended period, action has been correctly taken by authorities. Reference is also made to Rule 37 of SEZ Rules. It is stated that petitioner in the present case has:

- “(i) Not been utilizing in spite of extensions given for the same
- (ii) Never asked for disposal of the goods due to damage or being defective or being defective during the course of use of the same in terms of Rule 37(2) of the SEZ Rules, 2006.
- (iii) In the requests for extensions nowhere it has been submitted that the goods are defective or damaged. In fact, in the application for extension dated 20.09.2013 for one year, a certificate of the Chartered Engineer certifies the detail of unutilized goods and when this extension was again going to lapse, a further extension for 3 years was sought vide letter dated 08.09.2014. Vide all these applications, the extensions were sought stating that the goods are usable. It was only when the list of goods which are not fit for use was furnished, the petitioner has declared the goods as expired from the date mentioned in the last column of the list attached.”

11. Dismissal of writ petition was sought.
12. Learned counsel for petitioner vehemently argued that action of respondents in levy of custom duty of Rs.47 lakhs pursuant to meeting dated 22.05.2015 and direction to deposit sum of Rs.6,59,700/- vide order dated 18.08.2015, is absolutely illegal and arbitrary. Despite certificate by the expert, indicating unusability of certain goods, Custom Department opposed destruction under Rule 27(9) of SEZ and insisted on refund of duties under Rule 25 of SEZ without considering petitioner's submission or even its pending request for extension. It is submitted that it was due to economic slow down and other commercial exigencies that certain goods remained unutilized and it was only to avoid disruptions of SEZ operations that petitioner deposited amount in question

CWP-22284-2016

under protest reserving the right to challenge it. Impugned actions, it was submitted, are arbitrary, illegal and in breach of procedure established by the statute and contrary to object of SEZ Policy which aims to facilitate industrial development through exemptions and operational flexibility. Petitioner who has acted in a bonafide manner and strictly in accordance with applicable provisions should not be penalized for administrative lapses or non-application of mind by respondents. It was urged that State cannot be permitted to retract from statutory exemptions and benefits offered under SEZ Policy. Petitioner had acted in furtherance of said permissions and assurances granted by respondents. Therefore, any unilateral withdrawal or denial of benefit due to internal administrative lapse runs contrary to principle of promissory estoppel and legitimate expectations. It was, thus, prayed that this writ petition be allowed.

13. Learned counsel for respondents refuted the arguments as raised on behalf of petitioner while submitting that amount in question has been correctly demanded from petitioner. Averments in the reply to writ petition were reiterated by learned counsel for respondents. Reference was made to Rule 25 and 37(1) of SEZ Rules. It was submitted that petitioner had failed to utilize the goods in spite of extensions given for the same and at the relevant time, petitioner had never asked for disposal of goods or due to damage of goods being defective, thus, said goods do not fall under the ambit of Rule 27(9) of SEZ Rules. Refund from petitioner has been rightly claimed and it is correctly held liable to refund the amount equal to benefit of exemptions, drawbacks, cess and concessions availed by it under Rule 25 of SEZ Rules. Said amount so assessed has been correctly deposited by it. Dismissal of writ petition is sought.

14. We heard learned counsel for parties at length and have carefully perused the writ petition.

CWP-22284-2016

15. Factual matrix as has been detailed in the foregoing paras is not in dispute. At the outset, it is useful to refer to Rule 27 of SEZ Rules, which reads as under:-

“27. Import and procurement. - (1) A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park Unit or Electronic Hardware Technology Park Unit or Bio-technology Park Unit [or warehouse], all type of goods including capital goods (new or second hand), raw materials, semi-finished goods (including semi-finished jewellery), component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items:

[Provided that exemptions from payment of duty, taxes or cess, drawbacks and concessions on all types of goods and services, required for setting up and maintenance of the factory building, allowed to a Unit shall also be available to the contractors appointed by such Unit and all the documents in such cases shall bear the name of the Unit along with the contractor and these shall be filed jointly in the name of the Unit and the contractor:

Provided further that the unit shall be responsible and liable for proper utilization of such goods and services in all cases.]

(2) In case of any doubt as to whether any goods or services are required by a Unit or Developer for authorized operations or not, it shall be decided by the Development Commissioner.

(3) The import of duty free material for setting up educational institutions, hospitals, hotels, residential and/or business complex, leisure and entertainment facilities or any other facilities in the non-processing area of the Special Economic Zone shall be as approved

CWP-22284-2016

by the Board and import of no duty free material shall be permitted for operation and maintenance of such facilities:

Provided further that any goods for the personal use of, or consumption by officials, workmen, staff, owners or any other person in relation to a Unit or Developer, shall not be eligible for exemptions, drawbacks and concessions or any other benefit in accordance with the provisions of sections 7 or 26.

(4) A Unit or Developer may also source capital goods, without payment of duty, taxes or cess from a domestic or foreign leasing company, under a valid lease agreement and in such cases the Unit or Developer and the domestic or foreign leasing company shall jointly file documents for import or domestic procurement, as the case may be.

(5) A Unit may import or procure from Domestic Tariff Area, all types of goods and services, without payment of duty, taxes or cess for creating a central facility for use by Units in Special Economic Zone and where such facility is created for software development, the same may also be accessed by software exporters of Domestic Tariff Area.

(6) A gem and jewellery Unit may also source on outright purchase basis or loan basis, gold or silver or platinum through the Nominated Agencies and where such sourcing is on loan basis, the same shall be subjected to the conditions applicable to such transactions under the provisions of the Foreign Trade Policy in force:

Provided that the conditions applicable to loan transaction shall not apply where the Unit converts such loan into outright purchase by paying the outstanding loan amount and interest within the period for export prescribed under the Foreign Trade Policy applicable to the loan transaction.

(7) The goods already imported or shipped or arrived before the issue of Letter of Approval shall be eligible for duty free clearance provided customs duty has not been paid and goods have not been

CWP-22284-2016

cleared from Customs or cleared and placed in the Bonded Warehouses.

(8) No import or export of rough diamonds shall be permitted unless the shipment parcel is accompanied by Kimberley Process Certificate issued by the Development Commissioner.

(9) Where goods or parts thereof, imported or procured from Domestic Tariff Area are found to be defective or otherwise unfit for use or which have been damaged or become defective after such import or procurement, may be sent outside the Special Economic Zone without payment of duty for repairs or replacement, to the supplier or his authorized dealer or be destroyed:

Provided that where overseas supplier or the Domestic Tariff Area supplier of goods does not insist for re-export or for supply back to the Domestic Tariff Area of goods, the same shall not be insisted upon and such goods shall be destroyed with the permission of the Specified Officer:

Provided further that the goods which are sent outside the Special Economic Zone for repairs are returned to the Special Economic Zone, within 180 days from the date of removal from the Special Economic Zone, under intimation to the specified officer. In case goods are sent out for replacement then on replaced goods, no Duty Entitlement Passbook Scheme, duty drawback or other export incentives shall be claimed for this purpose.

Provided further that destruction shall not be permitted in case of precious and semi-precious stones and precious metals:

Provided also that in case of return of goods procured from the Domestic Tariff Area, the same shall be allowed on refund of the export entitlement which have been received or availed or claimed by the Domestic Tariff Area supplier or the Unit or the Developer, as the case may be.

(10) The assessment of imports and domestic procurement by a Developer or a Unit, shall be on the basis of self-declaration and shall not be subjected to routine examination except in case of

CWP-22284-2016

procurement from the Domestic Tariff Area under the claim of export entitlements:

Provided that where based on a prior intelligence the examination becomes necessary the same shall be carried out by the Authorized Officer(s) after obtaining written permission from the Development Commissioner or the Specified Officer.

(11) If examination of any import or export of goods or goods procured from the Domestic Tariff Area is required, the same shall be carried out at the Special Economic Zone gate or if the same is not possible, in an area so notified by the Specified Officer for this purpose, and no examination shall be carried out in the premises of the Unit unless requested by the unit and specifically permitted in writing by the Specified Officer.”

16. Rule 25 and Rule 37 of SEZ Rules read as under:-

“25. Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be:

Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made thereunder.”

“37. Duration of goods or services in a Special Economic Zone.

CWP-22284-2016

- (1) The goods admitted to a Special Economic Zone shall be utilized, exported or disposed off in accordance with the Act and rules within the validity period of the Letter of Approval issued to the Unit or in the case of a Developer within a period of one year or such extended period as may be allowed by the Specific Officer under sub-rule (5) of rule 12.
- (2) On failure to utilize or dispose off goods as provided such goods shall be liable for payment of duty as if the goods have been removed to Domestic Tariff Area on the date of expiry of the said validity period under sub-rule (1).”

17. It is apparent that fields of operation of Rule 27(9) and Rule 25 of SEZ Rules are different. Rule 27 (9) of SEZ Rules provides that goods and parts thereof imported or procured from Domestic Tariff Area [Domestic Tariff Area as per Section 2(i) means the whole of India (including territorial waters and continental shelf) but does not include area of Special Economic Zones] when found to be defective or otherwise unfit for use or which may have been damaged or become defective after such import or procurement may be sent outside SEZ without payment of duty for repairs and replacement to the supplier or its authorized dealers or be destroyed.

18. It is apparent that goods referred to in this provision would be those which when received in SEZ are found to be defective or otherwise found to be unfit and those which may have damaged or become defective after such import or procurement i.e. during use in SEZ. There is merit in the argument raised by learned counsel for respondents that in the present case, what is involved are goods which have become defective or damaged due to their non-utilisation by Unit or Developer within the stipulated period, thus, such goods would fall within the ambit of Rule 25 of SEZ Rules. It is clearly provided in Rule 25 that

CWP-22284-2016

in the event of Entrepreneur or Developer not utilizing the goods or services on which exemptions, drawbacks, cess and concession have been availed for authorized operations, it shall refund the amount equal thereto without prejudice to any other action under relevant provisions of Statutes as are mentioned therein. Rule 37 of SEZ Rules clearly provides that goods admitted to SEZ shall be utilized, exported or disposed of in accordance with the Act and Rules within the validity period of Letter of Approval issued to such Unit or in case of development within one year or such extended period as may be allowed under Rule 12(5) of SEZ Rules and upon failure to utilize or dispose of goods as above, it shall be liable to pay duty as if the goods have been removed to Domestic Tariff Area on expiry of validity period under sub Rule 1.

19. In the present case, petitioner – Company on 20.09.2013 had sought permission for extension of unutilized goods under Rule 12(5) of SEZ Rules. Extension was granted to petitioner for utilization of these goods upto 19.09.2014. Petitioner again submitted a request on 08.09.2014, for an extension of three years. It is upon query of respondent (Specified Officer) that goods in question were categorized by petitioner into three categories and thereafter the third category was further divided into another two sub-categories. Petitioner was granted extension till 31.03.2016 for utilization of goods mentioned in category A and B and insofar as the third category is concerned petitioner was asked to refund the amount of benefit availed by it on such goods which had become damaged and unfit for use after such procurement with reference to Rule 25 of SEZ Rules. Communication 26.11.2025 is crystal clear and categoric. Relevant portion thereof reads as under:

CWP-22284-2016

“ In this regard it was informed vide this office letter of even C. No. dated 05.11.2014 that since you have not utilized the goods for the authorized operations, the provisions of Rule 25 of the said Rules are applicable.

In the letter under reference you have only given the reasons as to how the goods have become scrap, but no justification for non applicability of Rule 25 of the SEZ Rules, 2006 has been given. Further, these goods were procured more than a year ago and in some cases more than 3 to 4 years and vide your letter dated 08.09.2014, you had sought extension for use of goods under Rule 12 (5) and Rule 37 of the Rules, taking these goods as useable and with the request for extension for their use for further 3 years. It was only when office asked you to list out the material which is not fit for use, you had started requesting for clearance under Rule 27 (9) of the Rules.

From the above it is clear that you had not utilised the goods and hence are required to refund the concessions availed as per the provision of Rule 25 of the Rules.”

20. In the given factual matrix, learned counsel for petitioner was unable to point out any illegality or infirmity in the impugned action. Argument raised by learned counsel for petitioner that its application for further extension was still pending, therefore, respondent has incorrectly and arbitrarily sought refund in question from petitioner is devoid of any merit. This is so for the reason that respondent had admittedly taken a decision in this respect at an earlier point of time, therefore, submission of fresh application/representation by petitioner in this scenario cannot be of any avail whatsoever to petitioner.

21. No other argument was addressed.

CWP-22284-2016

22. Keeping in view the facts and circumstances as above, we do not find any ground whatsoever which calls for interference in this matter in exercise of jurisdiction under Article 226 of Constitution of India.

23. Writ petition is, accordingly, dismissed.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

September 24, 2025

Rts

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No