2025:DHC:3270

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

% ***Judgment pronounced on : 22.04.2025***

\+ **W.P.(C) 7791/2023**

S.S. AUTOMOTIVE PVT. LTD .....Petitioner
Through: Mr. Vikrant Kackria, Advocate.

versus

UNION OF INDIA & ANR. .....Respondents
Through: Mr. Rakesh Kumar (CGSC) along with Mr. Sunil, Mr. Gokul Sharma (GP).

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. The present petition has been filed by the petitioner *inter alia*, seeking the following relief: -

> *"i) Issue an appropriate writ, order or direction, in favour of the Petitioner in the form of Mandamus, thereby directing the respondent DGFT for granting relaxation under para 2.58 of FTP and for granting extension of time for claiming MEIS benefit, in respect of the payments received by the petitioner, in respect of which, the bank realization certificates are placed on record."*

2. The present petition has been filed by the petitioner (exporter of Auto/Tractor parts for more than 2 decades) pursuant to an order dated 20.12.2022 passed by the Policy Relaxation Committee (hereinafter '*the PRC'*) of the respondents whereby the petitioner was held ineligible for availing benefits under the Merchandise Exports from India Scheme (hereinafter '*the MEIS*') benefits on the premise that the shipping bills submitted by the petitioner have become time barred.

3. It is submitted that *vide* Paragraph 3.01 and 3.02 of the Foreign Trade Policy 2015-20 (hereinafter referred as 'the *FTP'*), certain incentives were contemplated to be given to exporters in the form of 'MEIS' Scrip which could be used towards payment of customs duty at the time of import of goods. The MEIS scrip was to be freely tradable in terms of the relevant stipulation under the FTP.

4. The dispute between the parties have arisen in context of the petitioner's claim for entitlement to benefit of MEIS in respect of shipping bills which were issued against the goods exported by the petitioner to Egypt, Algeria, Libya and Romania between July 2015 to August 2016. It is the case of the petitioner that there was a delay on part of the foreign importers to release foreign exchange remittances in respect of the aforesaid shipping bills. It is stated that ultimately the petitioner managed to receive the aforesaid remittances in respect of 8 shipping bills in part during the period from 30.06.2017 to 13.10.2020.

5. It is conceded in the petition that in terms of the relevant provisions of the FTP, the petitioner was not eligible to apply for the benefit of MEIS since the foreign remittances were not received in a timely manner and was significantly delayed. It is submitted that in terms of the FTP, the normal period for applying MEIS benefit is one year under paragraph 3.15 of the Handbook of Procedures. However, with "late cut fee" as contemplated under paragraph 9.02 of the handbook of Procedures, it is permissible to apply for MEIS benefit upto another 2 years i.e. upto maximum of 3 years from the date of export shipment. However, in the present case, more than 3 years lapsed from the date of export without the petitioner claiming the benefit of MEIS. As such, *stricto sensu*, the petitioner was not eligible to

claim MEIS benefit in terms of the relevant provisions of the Scheme.

6. The petitioner, in the present case, has premised its case on paragraph 2.58 of the FTP, which reads as under :-

> ***"2.58 Exemption from Policy / Procedures***
> *DGFT may in public interest pass such orders or grant such exemption, relaxation or relief, as he may deem fit and proper, on grounds of genuine hardships and adverse impact on trade to any person or class or category of persons from any provision of FTP or any Procedures. While granting such exemption, DGFT may impose such conditions as he may deem fit after consulting the committees as under:*

Sl. No.	***Description***	***Committee***
(a)	*Fixation / modification of product norms*	*Norms Committees*
(b)	*Nexus with Capital Goods (CG) and benefits under EPCG Schemes*	*EPCG Committee*
(c)	*All other issues*	*Policy Relaxation Committee (PRC)*

7. It is noticed that the petitioner on an earlier occasion had filed a writ petition being W.P.(C) 6463/2022 seeking that the benefit of relaxation under the aforesaid paragraph 2.58 of the FTP be granted to it, in order to enable it to claim MEIS benefit in respect of the financial years 2015-16, 2016-17, 2017-18 and 2019-20. The said petition was disposed of *vide* order dated 05.08.2022. The aforesaid order reads as under :-

> *"1. By way of the instant petition, Petitioner seeks relaxation of rules under paragraph 2.58 of the FTP for grant of extension of time for claiming MEIS benefit in respect of financial years 2015-16, 2016-17, 2017-18 and 2019-20.*
>
> *2. Respondents, in their counter affidavit, have annexed an e-mail communication dated 20th October, 2020, which reads as follows:*
>
> > *"From: AS Lungreishang xx...xx...xx@nic.in Tue, Oct 20, 2020 03:25 PM*
> > *Subject: To allow MEIS benefit against 8 time barred shipping bills.*
> > *To : lotus impex xx...xx...xx@yahoo.com*
> > *Sir,*
> > *Please refer to your application on the above mentioned subject and to say*

that your request has been examined. It is observed that your request is not clear. (1) For S/Bill No. 7146122 dated 19.04.2016 realization happened on 05.11.2018, why did you not apply for MEIS? (ii) Similarly, for other S/Bills realization happened in January-May 2019, however you had applied only in September, 2020. You are requested to submit the reasons for delay, to process the case further.
This issues with the approval of Competent Authority.
Regards
A.S.Lungreishang
Dy.DGFT(PRC)"

3. Counsel for the Petitioner claims that the aforenoted e-mail communication was never received by it; nevertheless, all the necessary information and documents have been furnished by the Petitioner. Respondents, however, have not taken final view on the matter as is evident from an email communication dated 14th July, 2022, annexed with the rejoinder affidavit, which reads as under:

> *"Sir,*
> *I am directed to refer to your mail dated 13.07.2022 on the above mentioned subject. It is to inform that since you have already filed the court case and the matter is now subjudice.*
> *Hence, the outcome of court in the matter may be awaited.*
> *2.The issues with the approval of Competent Authority."*

4. It is thus borne out that the Respondents have not taken a view on Petitioner's request since the instant petition is pending.

5. In the above circumstances, the present petition is disposed of, with a direction to Respondents to decide Petitioner's representation which is submitted vide e-mail dated 13th July, 2022. In case Respondents require any other additional documents or information, they shall indicate the same to Petitioner, who shall provide the same within one week of receipt of request.

6. Respondents shall comply with the above direction in a period of four weeks from today.

7. In the event Petitioner is aggrieved by the decision of Respondents, it shall be free to take recourse to legal remedies as available under law.

8. It is clarified that the Court has not examined the merits of the case. All rights and contentions of the parties are left open."

8. Subsequently, in compliance of the aforesaid order passed by this Court, the matter was placed before the PRC on 20.12.2022 in Meeting No.23/AM23. The order of the PRC reads as under:-

"Sir/Madam,

It is to inform you that your case was placed before the PRC Committee Meeting No.23/AM23 dated 20.12.2022. The decision of the Committee is as under:

Case No. 32 M/s. S S Automotive Private Limited, New Delhi

F. no. 01/60/162/171/AM21/PRC

Meeting No.23/AM23 held on 20.12.2022

Subject: To allow MEIS benefit against 08 time barred Shipping Bill No.(1) 2043708 dated 27.07.2015, (2) 7146122 dated 19.04.2016, (3) 7147019 dated 19.04.2016, (4) 8040332 dated 02.06.2016, (5) 8040450 dated 02.06.2016, (6) 8042580 dated 02.06.2016, (7) 8043126 dates 02.06.2016, (8) 9431632 dated 12.08.2016.

This case in pursuant of Court Order dated 05.08.2022 passed by the Hon'ble High Court of Delhi in WP(C) No.6463/2022 filed by the applicant. The applicant stated that the matter is related to export proceeds which have not been realized because of which they have failed to file claims under MEIS within the stipulated deadlines (which is 3 years from the date of S/Bills) resulting into time barred Shipping Bills. They are not able to claim MEIS benefit against the above 8 shipping bills because DGFT shows zero benefit, online. They could not apply online for MEIS benefit within prescribed period of one year because they did not receive the foreign exchange remittances from the buyers of their goods in time due to some conflict with foreign buyer over issue of payment. They buyers of their goods were bacing down turn in their country due to which they suffered a lot in their own business activities, in addition to other issues in their country. Hence they could not make the payment in time. They struggled a lot and took various actions on foreign buyers towards recovered of payment and incurred significant amount towards travelling expenses also for settling the dispute. Now they have settled the payment issue with the buyers and realized their payment for the said shipping bills. They are recognized export house and leading exporter of automobile parts and accessories and doing will to contribute towards government revenue and foreign exchange reserve with increased export turnover over time. They are at the verge of bearing financial loss if the shipping bills remains unutilized due to negligence on the parts of foreign buyers. As there has been no shortfall on their part and the amount of MEIS benefit involved is also significant. Hence, they are requesting to allow them to claim MEIS benefit as export has already taken place and foreign exchange has been realized.

Decision: The Committee on the basis of justification furnished by the applicant along with the order of the Hon'ble Court dated 05.08.2022 discussed the matter at length. It observed that 6 Shipping Bill No.(1) 7146122 dated 19.04.2016, (2) 8040332 dated 02.06.2016, (3) 8040450 dated 02.06.2016, (4) 8042580 dated 02.06.2016, (5) 8043126 dates 02.06.2016, (6) 9431632 dated 12.08.2016, out of the 8 impugned shipping bills, payment was realized by the exporter within 3 years from the export date and the eBRCs were also uploaded by the bank before the expiry of the shipping bill. The exporter had the option of availing the benefits with applicable late cut, still no submissions were made by them. As these shipping bills have now become time barred, as per the policy and provisions, they are not eligible for benefits under MEIS.

For the remaining two Shipping Bill No.(1) 2043708 dated 27.07.2015 and (2) 7147019 dated 19.04.2016, the payment was realized after the expiry of 3 years from the export date due to which they e-BRC was also uploaded at a later date. For these two shipping bills, the payments were realised after 3 years from the shipment date.

The Committee observed that where the exporters are denied benefits on the ground of delay in realization of payment, relaxation is granted when the payment is received within 3 years from shipment date but e-BRC is uploaded by bank after expiry of 3 years from the date of export. The Committee after thorough deliberation, found no merit in the case and hence, it decided to reject the request of the firm.

(Action: Applicant)
Regards.
(DDG-PRC)"

9. It is in the aforesaid background the present petition has been filed by the petitioner.

10. Learned counsel on behalf of the petitioner submits that the benefit of relaxation should have been afforded to the petitioner since there is no dispute as regards the factum of export, and as regards realization of export proceeds, *albeit* belatedly. It is submitted that in the circumstances, it is inequitable to disallow the benefit of MEIS to the petitioner.

11. It is further submitted that the petitioner could not have been made to suffer and be deprived of its legitimate entitlement when delay in realization

of export proceeds was beyond its control. It is further stated that the petitioner has suffered significantly on account of the delayed realization of payment during which period, the petitioner had to service the loans availed by it from its banks and as a consequence thereof had to suffer significant losses.

12. Having given my anxious consideration to the matter, I am unable to accept that the petitioner is entitled, as a matter of right, to the benefit of relaxation as contemplated under paragraph 2.58 of the FTP.

13. In the very nature of things, policy relaxation cannot be claimed by the petitioner as a matter of substantive right. The same lies within the realm of the discretion of the concerned authorities to be exercised in exceptional circumstances. It is for the PRC to consider whether the cited circumstances are such as to warrant grant of relaxation. A Division bench of this Court in ***NOCIL Ltd vs. The Policy Relaxation Committee***, 2017 165 DRJ 170 has reiterated the aforesaid view and held as under:

> ***"28.*** *<u>A mere perusal of the above reveals that the DGFT/PRC may grant an exemption in case of genuine hardship and adverse impact on trade or in public interest, and, while doing so, impose such conditions as it deems fit.</u>*
>
> ***29.*** *<u>Thus, the powers of the PRC, while making its recommendations are wide and are purely discretionary</u>. The PRC, in its order dated 24 April, 2015 has considered the relevant facts and permitted the clubbing of the three Advanced Authorizations and while permitting the said clubbing, conditions 'as it deemed fit' have been imposed by it which cannot be said to be perverse or arbitrary. The review order of the PRC dated 26 April, 2016 also clearly shows that the case of the Petitioner was discussed at length and it is only thereafter, that the decision dated 24 April, 2015 was reiterated. The submission of the Petitioner that the PRC does not have the power to impose such conditions does not appear to be correct inasmuch as the order of clubbing is by itself an exercise of power for granting an exemption.*
>
> ***30.*** *<u>No person is entitled to an exemption as a matter of right.</u>*

<u>Exemptions are granted by Authorities, which are purely discretionary orders. While exercising discretion, as per Para 2.5 of the Foreign Trade Policy 2009-14, if the PRC has imposed the conditions which it deemed fit, in public interest, unless it can be shown that the said conditions were completely perverse, arbitrary or illegal, the same cannot be interfered with. There is nothing that is being pointed out to show that the conditions imposed by the PRC are in any manner grossly unreasonable in order to call for any interference by us. The exercise of discretion to grant exemption is a delicate balance between balancing the hardship of the Petitioner and the adverse impact on trade. The PRC, in the background of the Petitioner's case, has imposed conditions which are neither illegal nor arbitrary</u>"

14. In the present case, the PRC has noticed that in respect of 6 out of the 8 shipping bills, the payment was realized by the petitioner within 3 years from the export date and it was possible for the petitioner to avail the benefits under the MEIS Scheme with applicable "late cut", however, the petitioner, for reasons best known to it, did not take the requisite steps.

15. Consequently, in due course, the said shipping bills became ineligible for benefits under the MEIS in terms of the Policy provisions.

16. For the remaining two shipping bills [no. 2043708 dated 27.07.2015 and no. 7147019 dated 19.04.2016], the payment was realized after the expiry of 3 years from the export date and consequently the e-BRC" (Electronic Bank Realization Certificate) was also uploaded at a later date. In this context, the Committee observed that policy relaxation is usually afforded in situation where the payment is received within a period of 3 years but the "e-BRC" (Electronic Bank Realization Certificate) was uploaded by the Bank after expiry of 3 years from the date of export.

17. In the present case, the Committee found that the payment was received much beyond the period stipulated under the Policy. As such, the PRC, after due consideration of the matter, rejected the application of the

petitioner, thereby, denying the benefits under the MEIS to the petitioner.

18. The view taken by the PRC neither suffers from any apparent jurisdictional error nor is afflicted on account of perversity / non-consideration of relevant aspects.

19. In the circumstances, this Court finds no justification in seeking to exercise jurisdiction under Article 226 of the Constitution of India to displace / upset a considered view taken by the PRC. A coordinate Bench of this Court in ***Shashi Cables Ltd. vs Directorate General of Foreign Trade and Anr***. 29018 SCC OnLine Del 11563 by relying upon ***NOCIL Ltd vs. The Policy Relaxation Committee*** *(supra)* held as under:

> ***"13.*** *It is apparent from the above that revalidation of import authorization is not as a matter of routine but has to be considered on merits. The petitioner had sought for such validation and his request was accepted. It is not in dispute that in terms of the prevailing FTP and HBP, the petitioner is not entitled for extension of the validity of the term of the import authorization beyond the period of six months. It is in this context that the petitioner had applied for relaxation of the said condition in terms of Paragraph 2.58 of the FTP. As is apparent from the plain language of the Paragraph 2.58 of the FTP, the DGFT is empowered to grant exemption, relaxation or relief from the provisions of FTP or any procedure if he so deems fit. However, it is important to note that such exemption, relaxation or relief can be only granted if it is in public interest and on the grounds of genuine hardship and adverse impact on trade.*
>
> ***14.*** *In the present case, the PRC had considered the petitioner's request and had concluded that the petitioner had not established a case of genuine hardship.*
>
> ***15.*** *In view of the above, the only question that falls for consideration is whether, in the facts of the present case, the decision of the PRC is arbitrary or unreasonable and warrants interference in these proceedings.*
>
> ***16.*** *At this stage, it will be relevant to bear in mind that the discretion to relax the conditions of the FTP/HBP rests with the PRC and not this Court. Therefore, the scope of judicial review of the decisions of the PRC*

<u>is limited. Unless the petitioner is able to establish that the decision of the PRC was perverse, arbitrary, capricious or unreasonable or otherwise contrary to the statutory framework, no interference with such decision would be permissible.</u>

xxx xxx xxx

***19.** This Court is unable to accept that the said decision is arbitrary, unreasonable or otherwise falls foul of Article 14 of the Constitution of India.*

***<u>20.</u>** <u>The Division bench of this Court in NOCIL Ltd. v. The Policy Relaxation Committee, (2017) 165 DRJ 170 had observed that "the powers of the PRC, while making its recommendations are wide and are purely discretionary".</u>*

20. The aforesaid view has also been affirmed by a coordinate Bench in ***M/s Wadpack Pvt. Ltd vs Directorate General of Foreign Trade***, 2020 SCC OnLine Del 2962 and held as under:

***"21.** <u>As is evident from the reading of the Paragraph 2.5 of the FTP, exemption from following policy/procedure can be granted only in cases of genuine hardship or adverse impact on trade or in public interest. In my opinion, it is not applicable for cases where the exporters, even bona fide, are not vigilant or are lax in compliance with the mandatory conditions.</u> The onus cannot be shifted to the Authorities in such cases to retrospectively determine if the petitioner had otherwise complied with all conditions of Advance Authorization.*

xxx xxx xxx

***23.** The PRC had earlier rejected the claim of the petitioner vide its communication dated 17-12-2013 stating that the Committee was not satisfied about the corroborating evidence produced by the petitioner. On challenge made by the petitioner, this Court by an order dated 16-12-2014, passed in WP(C) 8924/2014, titled Wadpack Private Limited v. The Director General of Foreign Trade, granted opportunity to the petitioner to make a fresh representation along with all documents and further directed the DGFT to consider the same after affording an opportunity of hearing to the petitioner. The PRC has again rejected the claim of the petitioner by the Impugned Decision taken in the meeting held on 2-2-2016, observing that the certificate issued by the Superintendent, Central Excise cannot substitute documents prescribed in ANF-4F as it does not prove that duty free imported goods were consumed in the resultant* *products supplied to the SEZ Unit. As held by this Court in Shashi Cables Ltd. (supra), unless such decision of the PRC is found to be perverse, arbitrary, capricious or unreasonable or otherwise contrary to the statutory framework, no interference with the such decision is permissible in exercise of power of judicial review. In the present case, no such infirmity is found with the decision of the PRC.*

***24.** In view of the above, I find no merit in the present petition and same is dismissed. There shall be no order as to cost."*

21. In the circumstances, this Court finds no merit in the present petition; the same is, accordingly, dismissed.

SACHIN DATTA, J

APRIL 22, 2025/r,sl