

WP.No.16643 of 2024 et., Batch

In the High Court of Judicature at Madras

Reserved on : 08.07.2025	Delivered on: 11.07.2025
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Coram :

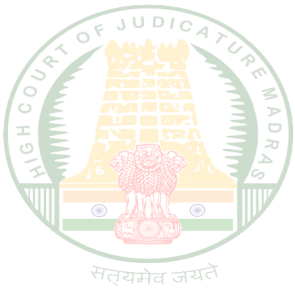
The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition Nos.16643, 16647, 16649, 16650, 16652, 18342, 18372, 18347, 18351, 18354, 18356, 18357, 18358, 18361, 18362, 18364, 18367, 18369, 18370, 18375, 23423, 23435, 23454, 23469, 23430, 23432, 23458, 23459, 23460, 23461, 23462, 23463, 23464, 23465, 23466, 23467, 23468, 23470, 23472, 23473, 30574, 30594, 30577, 30581, 30584, 30586, 30589, 30592, 30598, 32520, 32524, 32514, 32528, 32535, 32539, 32541, 16655, 16653, 32533 of 2024 And WP.Nos.13425, 13428, 14498, 14504, 14511, 15645, 15650, 15653, 15662, 16519, 16531, 16538, 16548, 17881, 17891, 17901, 17907, 17927, 17887, 19193, 19196, 19199, 19203, 19204, 19216, 19221, 19217, 19218, 19220, 19647, 19651, 19653, 19656, 19658, 19727, 19747, 19750, 19752, 19763, 19828, 19831, 19832, 19834, 19835, 19860, 19865, 19867, 19869, 19873, 19875, 19879, 19880, 20359, 20361, 20365, 20368, 20369, 6052, 6061, 6057, 6065, 6042, 6047, 6054, 13393, 13368, 13375, 13376, 13379, 13381, 13385, 13387, 13391, 13604, 13606, 13614, 13618, 13625 of 2025 ect batch

& All connected WMPs

Daimler India Commercial Vehicles Pvt.Ltd.,
Rep. by its General Manager-Taxation
Chandrasekhar Yaragani
No.8B/2, SIPCOT Industrial Growth Centre
Oragadam, Mathur Post
Kundrathur Taluk
Kancheepuram- 602 105.

...Petitioner



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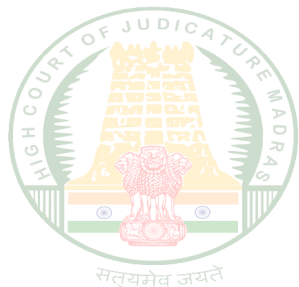
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.Vs.

- 1.Additional Director General of Foreign Trade
Office of the Additional Director General of
Foreign Trade, Chennai
4th Floor, Shastri Bhawan Annexe
26, Haddows Road
Chennai 600 006.
- 2.Deputy Director General of Foreign Trade
Office of the Additional Director General of
Foreign Trade, Chennai
4th Floor, Shastri Bhawan Annexe
26, Haddows Road
Chennai 600 006.
- 3.Commissioner of Customs, Chennai-II (Import)
Custom House, No.60, Rajaji Salai
Chennai 600 001.
- 4.Commissioner of Customs, Chennai-IV (Export)
Custom House, No.60, Rajaji Salai
Chennai 600 001.

...Respondents

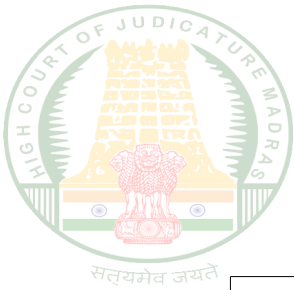
PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the Impugned Order-in-Appeal No.CHNECAAPPEAL0001883am24 dated 13.05.2025 passed by the 1st respondent and quash the same.



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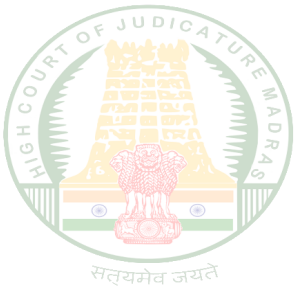
For Petitioner in all WPs	MR.Raghavan Ramabadran for M/S.Lakshmi Kumaran and Sridharan ATTORNEYS
DR.Babu, SCGPC for R1 & R2 MR.Rajinish Pathiyal, SPC, R3 & R4	WP.Nos.16643, 16647, 16649, 16650, 16652, 16653 and 16655 of 2024
MR.V.Chandrasekaran,SPC for R1 and R2	WP.Nos.6042,6047, 6052,6054, 6057, 6061 and 6065 of 2025
MR.R.Rajesh Vivekananthan, DSGOI for R1& R2 MR.Rajinish Pathiyal,SPC, for R3 & R4	WP.Nos.19216,19221,19217,19218, 19220 19647, 19651, 19653,19656, 19658,19647, 19727, 19750, 19752 and 19763, 19828, 19831, 19832, 19834 and 19835 of 2025
M/S. Sushma, SPC for R1 & R2	WP.Nos.13368, 13375, 13376, 13370, 13381, 13385, 13387, 13391 and 13393 of 2025
MR.T.Srikrishna Bhagavat for R1 & R2	WP.Nos.20359,20361,20635,20368, and 20369 of 2025
MR.AR.L.Sundaresan, ASGOI ASSTD.BY	WP.Nos.18342,13372, 18347, 18351, 18354, 18356,18357,



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MR.K.S.Jeyaganeshan, SPC for R1 & R2	18358,18361, 18362, 18364, 18367,18369,18370,18375/2025, 23423,23435, 23454, 23469, 23430, 23432, 23458, 23459, 23460, 23461,23462, 23463, 23464, 23465, 23466,23467, 23468, 23470, 23472, 23473, 30574,30594, 30577, 30581, 30584, 30586, 30589,30592, 30598, 32520, 32524, 32514, 32528, 32535, 32539, 32541, 19860, 19865, 19867, 19869, 19873, 19875, 19879,19880 and 32533 of 2024 WP.Nos. 13425, 13428,14498, 14504,14511, 15645,15650,15653, 15662,16519, 16531, 16538, 16548,17881, 17981,17901,17907, 17927, 17887,19193,19196,19199, 19203,19204 of 2025
MR.V.T. Balaji, SPC for R1 & R2	WP Nos.13604, 13606, 13614, 13618 and 13625 of 2025



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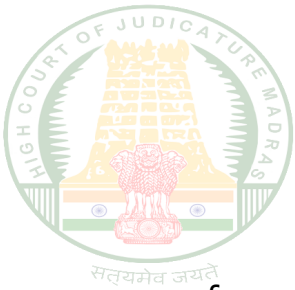
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COMMON ORDER

This batch of writ petitions assails the order passed by the Additional Director General of Foreign Trade, confirming the order in original passed by the Deputy Director General of Foreign Trade, partially canceling the Merchandise Exports Incentive Scheme (MEIS) scrip to the extent of excess amount availed by the licensee in all these writ petitions.

2.The petitioners are engaged in the activity of designing, manufacturing and selling Commercial Vehicles [trucks and buses] in India for domestic sales, as well as for exporting the said vehicles abroad. The petitioners exported the subject goods, which refer to commercial vehicles consisting of chassis, engine, driver cabin, wheel, fuel tank and obtained MEIS benefits from the year 2015 onwards.

3.The subject goods were classified under ITC(HS) code 87060042 in the shipping bills, and the petitioners had been classifying the subject goods under this code right from the inception of exports



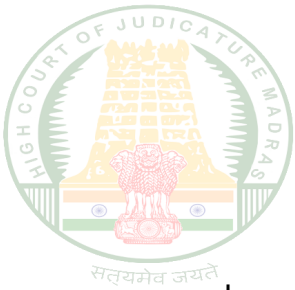
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from the year 2013. For the export of the said goods, the petitioners claimed MEIS benefits at the rate of 3%.

4.For the export of subject goods, made between March 2016 to October 2019, the Audit Commissionerate, Customs, Chennai had initiated an enquiry into the exports made by the petitioners, and they were prima facie of the view that the goods, as declared in the shipping bills are to be classified under ITC(HS) codes 87012090, 87042219 and 87054000 and not under ITC(HS)87060042.

5.Based on the inputs received from the Commissioner of Customs, Chennai, the DGFT, Chennai issued a show cause notice dated 25.08.2023 stating that the petitioners had obtained an excess amount of MEIS benefits by way of misclassification of commercial vehicles consisting of chassis, engine, driver cabin, wheel, fuel tank etc., under CTH 87060042 and hence the authority was proposing to take penal action under the Foreign Trade [Development and Regulation] Act, 1992 [for brevity referred to as "FTDR Act"]. In the



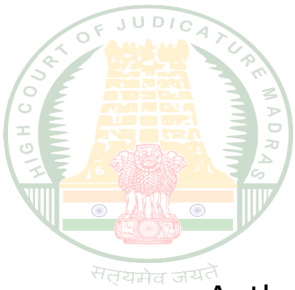
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show cause notice, it was informed to the petitioners that they had obtained MEIS incentives at the rate of 3% instead of 2% by way of misclassification of the subject goods under CTH 87060042.

6.The petitioners submitted their reply to the show cause notice, and thereafter, they were called for personal hearings and ultimately the Adjudicating Authority passed the order in original, retrospectively partially cancelling the MEIS scrips issued in excess of 1%. The Adjudicating Authority ordered the partial cancellation of MEIS scrip in each case which is equal to the excess amount availed by the petitioners and arrived at the revised value of the scrip. The order was passed on the ground that the licensee had claimed the MEIS benefits at 3% instead of 2% as per Appendix 3B of the MEIS Schedule during the period from 2016 to 2021 by misclassification of the subject goods.

7.Aggrieved by the order passed by the Adjudicating Authority, an appeal was filed before the Appellate Authority and the Appellate

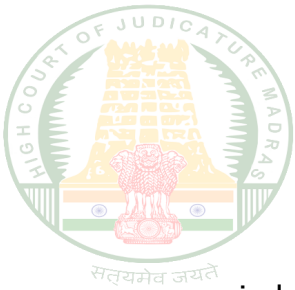


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Authority, viz., the first respondent, dismissed the appeal and confirmed the order passed by the Adjudicating Authority and also directed the petitioner to deposit the excess benefits availed by them to the exchequer. Aggrieved by the same, all these writ petitions have been filed before this Court.

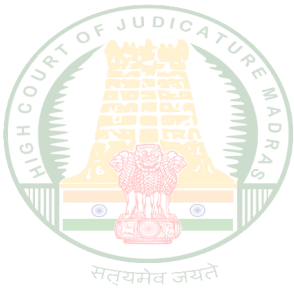
8.The 1st and 2nd respondents have filed counter affidavits and it has been adopted in all the writ petitions, since the issue involved is the same. They have taken a stand that initially, the MEIS incentives were provided based on both the product description and the ITC(HS) code. Later, the DGFT, through a public notice dated 16.02.2018, directed all the original authorities to process applications for MEIS claim only based on the ITC(HS) code specified on the shipping bill. Appendix 3(B) to the MEIS schedule provides for differential rates on MEIS incentives, based on the product exported and the country to which it is exported. Therefore, it is crucial that the product must be classified under the correct ITC(HS) classification. They have taken a further stand that the petitioners had exported the subject goods between March 2016 to October 2019, and that they have given a



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misdescription of the subject goods, as if it falls under ITC(HS) 87060042 instead of ITC(HS) codes 87012090, 87042219 and 87054000. Hence, the Customs Department raised objections and the Assistant Commissioner passed an order to the effect that the subject property falls under ITC(HS) code 87042219. Against the said order, the petitioners filed an appeal before the Commissioner (appeals) and the same was also dismissed. As against the order passed in the appeal, the petitioners have filed an appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT), Chennai, and the same is pending. When the said appeal was pending, proceedings were initiated by DGFT by issuing show cause notice, and after affording an opportunity to the petitioners, the Adjudicating Authority rendered a finding that there is a misclassification of the subject goods, and that the petitioners had obtained MEIS incentives at the rate of 3% instead of 2%. Hence the Adjudicating Authority retrospectively cancelled the MEIS scrips issued to the excess of 1%. The same was also confirmed in the appeal by the Appellate Authority, after affording opportunity. Accordingly, they have taken a stand that there are no merits in these writ petitions and have sought for the dismissal of the same.



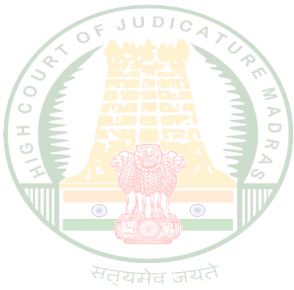
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9.The 3rd and 4th respondents, viz., the Customs Department, have filed a separate common counter affidavit, which has been adopted in all the writ petitions. The relevant portions are extracted hereunder:

8.I submit that subsequently three audit Consultative Letters were issued to the petitioner informing them to repay the excess MEIS benefits availed which for a sum of Rs.24,21,13,329/- along with applicable interest. The Details of the letters and the shipping bills are tabulated as follows:

S.No.	CL.No.	CL Date	Port Code	Period	No.of shipping bills	CL Amount
1	CHE/70/C-III/TBA-3/2021-Audit	12.03.2021	INMA A1 & INKAT 1	19.03.2016 to 22.10.2019	460	35059437
2	CHE/81/C-III/TBA-4/2021-Audit	15.03.2021	INEN R1 & INKAT 1	14.03.2016 to 27.08.2019	1712	1979250
3	CHE/208/C-III/TBA-12/2021-Audit	06.05.2021	INEN R1	22.04.2016 to 24.10.2019	130	9128827
				TOTAL	2302	2421133

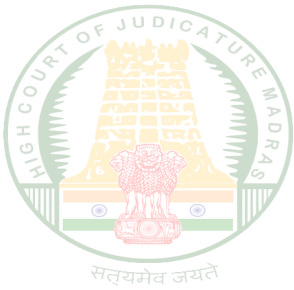


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9. I submit that in response to the audit Consultative Letter dated 12.03.2021, the Petitioner vide reply letter in Ref. No. DICV/096/2020-21 dated 16.03.2021 stated that they have been exporting chassis of Commercial vehicle fitted with cabin under HS code 87060042 ever since the inception of their exports. The Petitioner also stated that one shipping bill bearing no 9492296 dated 07.01.2020 ICD Irungattukottai was disputed with a proposal for re-classification of the export goods under ITC HS Code 8704. Later, the Assistant Commissioner, ICD Irungattukottai vide Order-in-Original No 6/2020 dated 30.01.2020 classified the export goods viz. "chassis of commercial vehicles fitted with cabin" under ITC HS Code 87042219. The Petitioner also vide its reply letter stated that they had filed an appeal with Commissioner (Appeals) against the order passed by the Assistant Commissioner and since the matter is sub judice, they requested not to initiate further proceedings until the matter attains finality and also to withdraw the audit consultative letter.

10. I submit that the Petitioner in response to the audit Consultative Letter dated 06.05 2021, sent a reply letter in Ref. No. DICV/012/2021-22 dated 10.05 2021, stating that the Commissioner (Appeals) vide Order-in-Appeal dated 23.03.2021 rejected their appeal and that they are in the process of filing further appeal with the Hon'ble CESTAT and again requested not to initiate any proceedings as the matter is sub judice. The

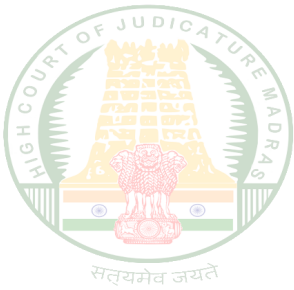


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Petitioner had also furnished copy of the Order-in-Appeal Seaport in C.Cus.II No. 147/2021 dated 23.03 2021 passed by the Commissioner of Customs (Appeals-II), Chennai. However, the Petitioner failed to justify their classification with any substantial material in both their replies as to how their goods intended for export were "chassis of commercial vehicles fitted with cabin and are classifiable under ITC HS Code 87060042.

11. I submit that the EDI reported that the Petitioner was issued with 137 MEIS Licenses by the 1st and the 2nd Respondents against the Shipping Bills filed by them in three ports in Chennai Customs Zone and had utilized all the MEIS licenses issued against their export shipments for payment of customs duty on various imports made by them at the following 4 ports viz., 779 Bills of Entry in ICD, Irungattukottai Port(INILP6), 106 Bills of Entry in Chennai Seaport(INMAA1), 1 Bill of Entry in Kamarajar Port/Ennore Port (INENR1)&1 Bill of Entry in Kattupalli Port(INKAT1). The Petitioner has paid import customs duties amounting to Rs. 100,43,51,482/- for the goods imported by them by the above mentioned Bills of Entry / Ports by debiting the MEIS Duty Crede Scrips containing undue excess MEIS rewards. The above said licenses were issued for the value which includes a total amount of Rs.23,21,28,714/- issues against 2167 subject shipping bills.



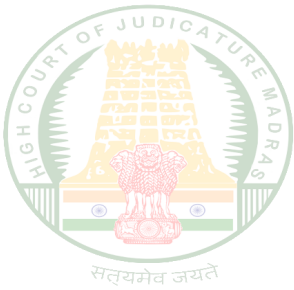
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12. I submit that though the Petitioner contested the audit classification proposed in the Consultative Letters, however, when it indicated that the vehicle models 'FUSO 4028T' and "FUSO 3340S exported by them vide & Shipping Bills are tractor models and are to be appropriately classified as "Road Tractors for semi Trailers of engine capacity more than 1800cc" under RITC/ITC HS Code 87012090 by the Officers of Audit Commissionerate, the Petitioner re-paid the excess MEIS of Rs. 11.04.260/- along with interest of Rs.5,15,544/- vide TR6 challan no. 0005123 dated 04.03.2022.

13. I submit that on detailed verification of the MEIS license data obtained from EDI, it was noticed that in respect of 2302 shipping bills covered in the three Consultative Letters, the Petitioner had availed excess MEIS benefit to the tune of Rs. 23,21,28,714/- under 137 MEIS licenses and the same has been utilised for payment of duty for the imports made by the Petitioner at Ports under the jurisdiction of Chennai Customs namely INILP6, INMAA1, INENR1 & INKAT1.

14. I submit that proceedings were initiated by the Audit Commissionerate culminated in the issuance of Show-Cause Notice. No. 12/2022 dated 15.09.2022 by the 3rd Respondent herein under Sec. 28AAA read with Sec. 28(4) seeking to demand the differential duty in respect of payments made using MEIS scrips to the extent of Rs. 23,21,28,714/- on the ground that the Petitioner is only eligible for MEIS benefit at 2% and not 3% on account of the proposed reclassification of



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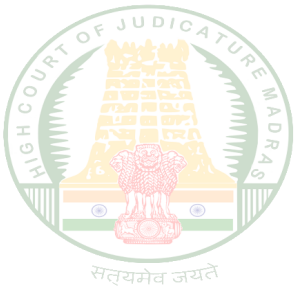
the subject goods under CTT 87012090, 8704239, 87042319, 87054000 appropriately instead of CTI 87060042 as adopted by the Petitioner.

.....

.....

22. I further submit that the Assistant Commissioner, ICD Irungattukottai vide Order-in-original No.6/2020 dated 30.01.2020 rejected the classification (87060042) adopted by the Petitioner for the export goods viz., "chassis of commercial vehicles fitted with cabin" covered under SB no. 9492296 dated 07.01.2020 and re-classified them under ITC HS Code 87042219; Commissioner (Appeals) vide Order-in-Appeal dated 23.03.2021 rejected their appeal and an Appeal is pending before the Hon'ble CESTAT.

10.The Customs Department comes into the picture, since the petitioners while paying the import duty will set off the duty, to the extent of scrips given to them. Therefore, according to the Customs Department, there is a misclassification of the subject goods and to that extent, the petitioners are liable to pay the import duty. This is the reason why the Customs Department has independently initiated proceedings for the recovery of import duty, which is pending before the CESTAT.



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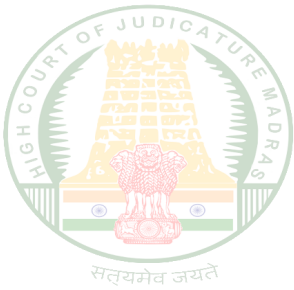
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11.Heard the learned counsel appearing on behalf of the petitioners and the learned counsel appearing on behalf of the respondents.

12.This Court has carefully considered the submissions made on either side and the materials available on record.

13.The following issues arise for consideration, in these writ petitions:

(a) Whether the MEIS scrips which was issued during the relevant period (first scrip on 22.08.2016 and the last scrip on 02.06.2021), which were already availed of and of whose validity period of 24 months has also expired, can be cancelled by exercising jurisdiction under Section 9(4) of FTDR Act r/2 Rule 10 of the Foreign Trade (Regulation) Rules 1993.



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(b) Whether the authorities satisfied themselves on the fulfillment of the requirements of the relevant provisions before the retrospective cancellation of the scrips.

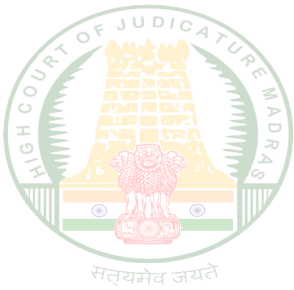
(c) Whether the Appellate Authority properly applied its mind on the grounds raised by the petitioners while rendering the findings by assigning proper reasons.

14. Before venturing to decide the above issues, certain important provisions and a schedule has to be taken note of, and they are extracted hereunder:

(a) Section 9 of the Foreign Trade (Development and Regulation) Act, 1992, is extracted hereunder;

Issue, suspension and cancellation of licence. —

9.(1) The Central Government may levy fees, subject to such exceptions, in respect of such person or class of persons making an application for licence, certificate, scrip or any instrument bestowing financial or fiscal benefits of in respect of any licence, certificate, scrip or any instrument bestowing financial or fiscal



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benefits granted or renewed in such manner as may be prescribed.

(2) The Director General or an officer authorised by him may, on an application and after making such inquiry as he may think fit, grant or renew or refuse to grant or renew a licence to import or export such class or classes of goods or services or technology as may be prescribed and, grant or renew or refuse to grant or renew a certificate, scrip or any instrument bestowing financial or fiscal benefit, after recording in writing his reasons for such refusal.

(3) A licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted or renewed under this section shall-

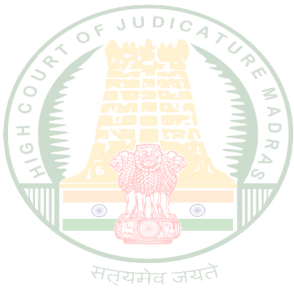
(a) be in such form as may be prescribed;

(b) be valid for such period as may be specified therein;

and

(c) be subject to such terms, conditions and restrictions as may be prescribed or as specified in the licence, certificate, scrip or any instrument bestowing financial or fiscal benefits with reference to the terms, conditions and restrictions so prescribed.

(4) The Director General or the officer authorised under sub-section (2) may, subject to such conditions as may be prescribed, for good and sufficient reasons, to be recorded in



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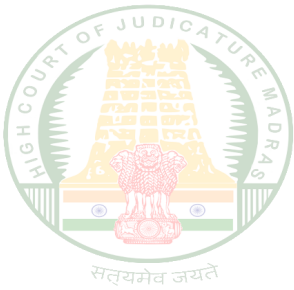
writing, suspend or cancel any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted under this Act:

Provided that no such suspension or cancellation shall be made except after giving the holder of the licence, certificate, scrip or any instrument bestowing financial or fiscal benefits a reasonable opportunity of being heard.

(5) An appeal against an order refusing to grant, or renew or suspending or cancelling, a licence, certificate, scrip or any instrument bestowing financial or fiscal benefits shall lie in like manner as an appeal against an order would lie under section 15.

(b). Rule 10 of the Foreign Trade (Regulation) Rules, 1993 is extracted hereunder;

10. Cancellation of a [licence, certificate, scrip or any instrument bestowing financial or fiscal benefits].—The Director-General or the licensing authority may by an order in writing cancel any [licence, certificate, scrip or any instrument bestowing financial or fiscal benefits] granted under these rules, if—



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(a) the [licence, certificate, scrip or any instrument bestowing financial or fiscal benefits] has been obtained by fraud, suppression of facts or misrepresentation; or

(b) the [licensee or transferee] has committed a breach of any of the conditions of the [licence, certificate, scrip or any instrument bestowing financial or fiscal benefits]; or

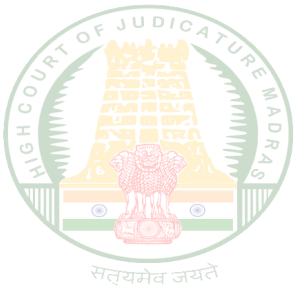
(c) the [licensee or transferee] has tampered with the [licence, certificate, scrip or any instrument bestowing financial or fiscal benefits] in any manner; or

(d) the [licensee or transferee] has contravened any law relating to customs or foreign exchange or the rules and regulations relating thereto.

(c) Clause 3.02 of the Foreign Trade Policy [2015-2020] is extracted hereunder:

3.02 Nature of Rewards

Duty Credit Scrips shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported



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/domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for :

(i) Payment of Customs Duties for import of inputs or goods, including capital goods, as per DOR notification, except items listed in Appendix 3A. (Amended vide Notification No 8/2015-20 dated 4th June, 2015)

(ii) Payment of excise duties on domestic procurement of inputs or goods, including capital goods as per DoR notification.

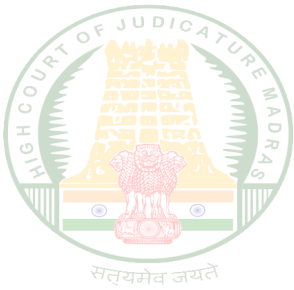
(iii) Payment of service tax on procurement of services as per DoR notification notification.

(iv) Payment of Customs Duty and fee as per paragraph 3.18 of this Policy.

(d) Clause 3.04 of the Foreign Trade Policy [2015-2020] is extracted hereunder:

3.04 Entitlement under MEIS

Exports of notified goods/products with ITC[HS] code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise). The basis of calculation of reward would be on realised FOB value of exports in free foreign exchange, or on



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FOB value of exports as given in the Shipping Bills in free foreign exchange, whichever is less, unless otherwise specified.

(e) Clause 3.13 of the Foreign Trade Policy [2015-2020] is extracted hereunder:

3.13 Validity period and Revalidation

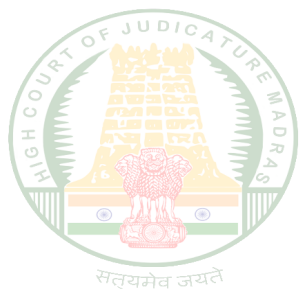
Duty Credit Scrip issued on or after 01.01.2016 under chapter 3 shall be valid for a period of 24 months from the date of issue and must be valid on the date on which actual debit of duty is made. Revalidation of Duty Credit Scrip shall not be permitted unless covered under paragraph 2.20(c) of HBP.

(f) Chapter 87 note 3 is extracted hereunder:

Chapter 87 Vehicles Other Than Railway Or Tramway Rolling-Stock, And Parts and Accessories Thereof

.....

(3) Motor chassis fitted with cabs fall in headings 8702 to 8704, and not in heading 8706



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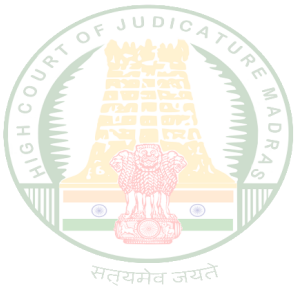
(g) Appendix 3B Sl.No.4527 is extracted hereunder:

Appendix 3B-MEIS Schedule**Table 2****ITC (HS) Code wise list of products with reward rates under Merchandise Exports from India Scheme (MEIS)**

S.No.	HS Code	ITC(HS) Code	Description of goods	MEIS-Reward Rate (in%)		
				Country Group Code A	Country Group Code B	Country Group Code C
4527		87042290	3-Wheeler Goods Vhcls, Wth Cmprsn Igntn Intrnl Cmbstn Pstn Engn Wth G.V.W.>5TonsBt<=20 Tons: Lorry and Trucks	2	2	0

(h).Sl.4540 is extracted hereunder:

S.No.	HS Code	ITC(HS) Code	Description of goods	MEIS-Reward Rate (in%)		
				Country Group Code A	Country Group Code B	Country Group Code C
4540		87060042	Chassis Fr Vhcls Hdng 8704 Excp Petrl Drvn	3	3	0

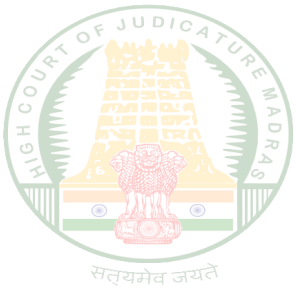


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15.The show cause notice was issued to the petitioners by the Assistant Director General of Foreign Trade for cancellation of the MEIS scrips, imposition of penalty in terms of Section 11 of the FTDR Act and suspension/cancellation of the importer exporter code number in terms of Section 8 of the FTDR Act. In the show cause notice, it is made clear that the proceedings are initiated based on the inputs received from the Commissioner of Customs, Chennai. It was informed to the petitioners that there is a misclassification of the subject goods under CTH 87060042, and based on that misclassification, the petitioners have claimed MEIS benefits at the rate of 3% instead of 2% and hence, the excess MEIS scrips for the period from 2016-2021 were sought to be recovered.

16.On receipt of the show cause notice, the petitioners gave a detailed reply.



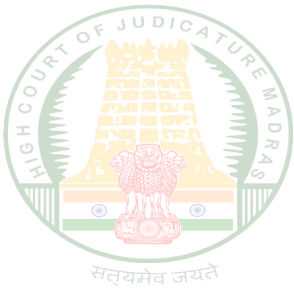
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17.The Adjudicating Authority, while passing the order in original, placed specific reliance upon Section 9 of the FTDR Act r/w Rule 8 of the FTDR Rules and partially cancelled the MEIS scrip.

18.Section 9 of the FTDR Act has been extracted supra. It will be more relevant to take note of Section 9(4) of the FTDR Act, which deals with suspension or cancellation of scrip by the Director General or the Officer authorised, subject to such conditions as may be prescribed for good and sufficient reasons to be recorded in writing. The "conditions as may be prescribed" is traceable to Rule 10 of the Foreign Trade [Regulations] Rules 1993 which has also been extracted supra. If at all any scrip is sought to be cancelled in exercise of Section 9(4) of the FTDR Act, it can only be done if the case falls within any of the requirements under Rule 10. The Appellate Authority, while passing the order, has rendered the following findings:

Findings by the Appellate Authority Section 9(4) provides powers to the Director General or any other officer authorized by him to cancel any scrip, license or certificate

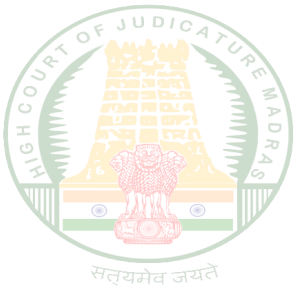


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issued under the Foreign Trade Development & Regulation Act, 1992. The only pre-requisite before initiating an action for cancellation of the license/scrip is that an opportunity of hearing in compliance with the principles of natural justice be provided. The same has been adhered to in the present case. A scrip/license can only be cancelled after it has been issued. In cases where it has been brought to the notice of this office that a license holder had obtained a license/scrip by mis-declaration or submission of false material particulars, the Competent Authority can always initiate action for cancellation of such a license obtained after verification of records on file. Hence, the appellant's contention is rejected.

19. There is total lack of reasoning on the part of the Appellate Authority and the findings of the Appellate Authority does not reflect any application of mind. The Appellate Authority does not even render a finding as to which requirement under Rule 10 has been satisfied.



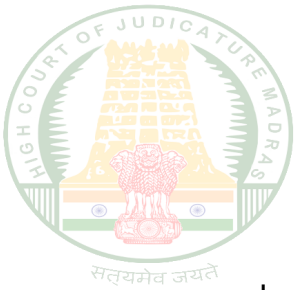
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20. Insofar as the first requirement under Rule 10, it deals with scrips obtained by fraud, suppression of facts or misrepresentation. It is nobody's case that the petitioners indulged in any of this conduct. In fact, the authority passed an order in original, that gave a finding stating that the subject goods were bonafidely misclassified under CTH 87060042 and therefore the proceedings for imposing penalty was dropped. Hence, Rule 10(a) is not satisfied.

21. Rule 10(b) and (c) will not apply to the facts of the present case. The only other Clause to be taken into consideration is Rule 10(d). This Clause speaks about contravention of any law relating to customs or foreign exchange or the Rules and Regulations relating thereto. It only means that those rules must pertain to the customs or foreign exchange. This Clause is completely silent regarding contravention of the Foreign Trade Policy.

22. The authority who exercises the jurisdiction is a creature of the statute, and therefore the power has to be necessarily traced

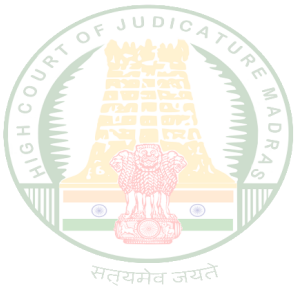


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under that statute. The relevant statute is the FTDR Act, and the relevant provision is Section 9(4) which deals with the cancellation of scrips. The authority can cancel the scrips only subject to such conditions as may be prescribed and which is relatable to Rule 10. If the authority does not state in the order as to which condition under Rule 10 of the Foreign Trade [Regulation] Rules 1993 is satisfied, the very order passed will become illegal since it will be construed as without jurisdiction.

23.It is an admitted case that the first scrip was issued on 28.02.2016 and the last scrip was issued on 02.06.2021 for exports made upto October 2019. These scrips are valid for a period of 24 months and the same is evident from para 3.13 of the handbook of procedures. Even the last scrip issued during the relevant period had expired on 01.06.2023. However, the action for cancellation of scrips was initiated by the Deputy Director General of Foreign Trade only on 25.08.2023 when the show cause notice was issued. Hence, an attempt was made to retrospectively cancel the scrips.

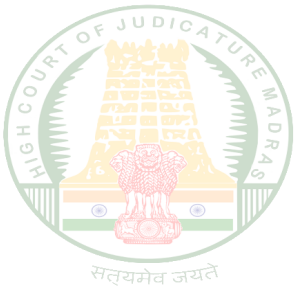


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24.The learned counsel for the petitioners placed reliance upon the judgment of the Punjab and Haryana High Court in **M/s. Supreme Castings Ltd., Vs. Joint Director General of Foreign Trade** reported in **2016 (342) ELT 176**. In that case, an attempt was made to cancel the Duty Entitlement Passbook [DEPB] Scheme under the export import policy. This DEPB was valid upto 24.08.2001 and whereas, by order dated 30.11.2004, it was sought to be cancelled with retrospective effect. The High Court took into consideration the fact that the DEPB is valid only for 12 months, and after the expiry of its validity, it was contended that the same is a mere piece of paper of no worth and therefore it cannot be cancelled. In dealing with this issue it was held as follows:

21. The DEPB whether considered as 'goods' or as 'a scrip' (which is defined in Black's Law Dictionary 9th Edition as - A document that entitles the holder to receive something of value), has worth or value only during its period of validity. On the expiry of that period it loses all value and becomes nothing more 9 of 16 than a piece of waste paper.



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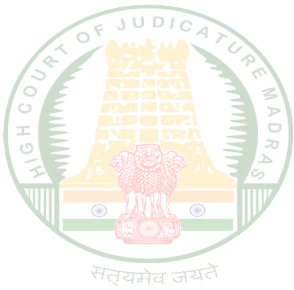
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22. Section 9(4) enables the Director General or officer authorised by him to cancel or suspend the licence.

23. The terms 'cancel' and 'suspend' are defined in Black's Law Dictionary- 9th Edition as under:

"Cancel, vb. 1. To destroy a written instrument by defacing or obliterating it<she canceled her will by marking through it>. 2. To terminate a promise, obligation, or right <the parties canceled the contract>. {Cases: Contracts 251.} suspend vb. (14c) 1. To interrupt; postpone; defer< the fire alarm suspended the prosecutor's opening statement>. 2. To temporarily keep (a person) from performing a function, occupying an office, holding a job, or exercise a right or privilege<the attorney's law licence was suspended for violating the Model Rules of Professional Conduct>. {Cases: Licenses 38; Officers and Public Employees 65.}"

24. Obviously for something (in this case the DEPB) to be cancelled or suspended it should be existing or subsisting. It is incongruous to cancel or suspend something that has ceased to exist. Obviously there is nothing subsisting to suspend or cancel,



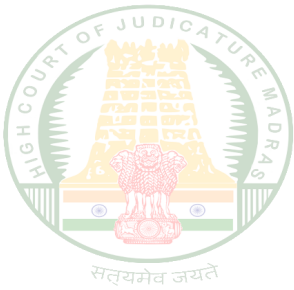
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about a DEPB which has lost its validity, for it is no longer a DEPB but a piece of paper of no worth.

25. In *M/s Stella Industries (P) Ltd. Vs. State of Haryana* (2009) 20 VST 62 (P&H) a Division Bench of this Court was considering the question as to whether an eligibility certificate granted under Rule 28-A of the Haryana General Sales Tax Rules, 1975 could be withdrawn or cancelled after the benefit thereunder has been availed of or the currency of the eligibility certificate had expired. With reference to Rule 8(a) of the Rules, as per which, the eligibility certificate granted to an industrial unit was liable to be withdrawn at any time during its currency under 10 of 16 specified circumstances, the learned Court held that the eligibility certificate could be withdrawn only during its currency and not after the maximum period for its validity had expired. The relevant extract from the judgment is as under:

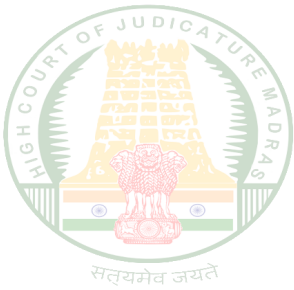
"A perusal of the conditions of eligibility certificate granted to the petitioner shows that the maximum amount of benefit available to the petitioner was fixed and also maximum period during which the benefit could be availed of that is Rs.1,63,66,999/- for the period from 28.3.1998 to 27.3.2005 respectively. It is further evident from condition No.4 of the



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eligibility certificate, as extracted above, that the eligibility certificate shall cease to be operative with effect from the date the unit reaches the ceiling of deferred/exempted amount of tax prescribed in the eligibility certificate, meaning thereby, the eligibility certificate will become inoperative on two conditions, firstly, when the maximum period provided for its validity, has expired or the maximum amount of benefit available thereunder has been availed of, whichever is earlier. In the present case, it is not in dispute that the benefit available to the petitioner was availed of by it by the year ending March 31, 2002. Meaning thereby, in terms of the conditions of eligibility certificate, the same ceased to be operative thereafter. Once it is so, no action possibly could be taken under Sub Rule 8 of Rule 28A of the Rules, which enables the withdrawal of an eligibility certificate at any time during its currency. Once the currency of the eligibility certificate is over, power under Sub rule 8 of Rule 28A of the Rules cannot be exercised on the ground it is sought to be exercised by the respondents that is mis-statement or concealment of facts by the petitioner. The plea of the respondents that proceedings for withdrawal of eligibility certificate had been initiated during the currency of the same, have just, to be noticed and rejected, being without any merit.



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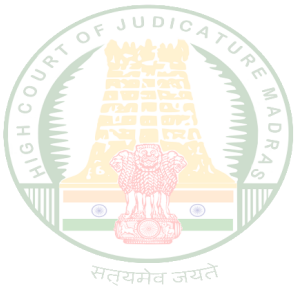
Plan language of Sub Rule 8 of Rule 28A of the Rules provides that it is the withdrawal of the eligibility certificate, which has to

11 of 16 take place during its currency and not that the process of withdrawal is to start during that period. Any order passed for withdrawal of eligibility certificate after its currency is over, would be clearly beyond the enabling provisions of Sub Rule 8 of Rule 28A of the Rules."

SLP (Civil) No.11053 of 2007 challenging the aforesaid decision was dismissed by Hon'ble the Supreme Court on 13.12.2007.

Though there is no Rule comparable to Rule 28 A, in the Export Import Policy, but the judgment supports the conclusion that once the period of validity of the DEPB has expired no action to cancel or withdraw it can be taken because then there is no 'DEPB' in existence to be cancelled and on which the cancellation order can operate. Cancellation of DEPB in such a situation is a meaningless order and can have no consequence.

26. Moreover, in [Section 9\(4\)](#) there is no power to cancel or suspend the licence retrospectively.



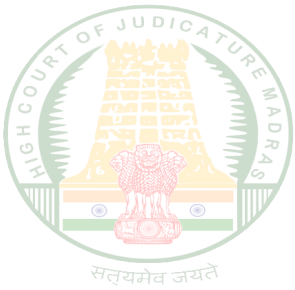
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27. It is well settled that no action taken under a statute can have retrospective effect in the absence of a specific provision in the statute conferring such power .

25.The learned Additional Solicitor General appearing on behalf of the 1st and 2nd respondents, submitted that the above judgment only serves as a persuasive value and it does not have a binding effect. Therefore this Court, can independently deal with the issue of cancelling the license retrospectively.

26.Section 9(4) of the FTDR Act speaks about the suspension or cancellation of a scrip. There is no doubt that a license or a scrip can be suspended only during its period of validity. The question that arises is whether such a license/scrip can be cancelled after its lifetime. In other words, what remains to be cancelled after the validity period of the license/scrip which has already come to an end.

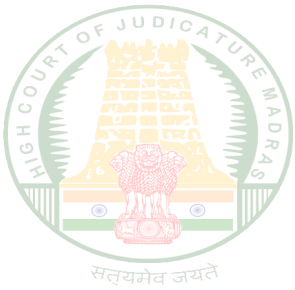


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27. Punjab and Haryana High Court, relying upon the Black's Law Dictionary, understood the term "cancel" and came to the conclusion that to cancel a license, it should be existing or subsisting and something cannot be cancelled when it has already ceased to exist.

28. In P. Ramanatha Aiyar's Advanced Law Lexicon, the word 'cancel' has been explained as **"To blot out or obliterate ; to cross and deface the lines of a writing ; to annul or destroy; doing away with"**. The difference between cancel and suspend has also been explained as follows: **Cancel : Suspend**. "Cancel and "suspend" are conceptually different. At the same time there could not have been cancellation and suspension. "Cancel" means to destroy the force, effectiveness or validity of an order, a decision, to bring to nothingness. "Suspend" means to debar temporarily a privilege or make temporary ineffective. To "suspend" is to make a temporary measure while to "Cancel" has an element of permanency.

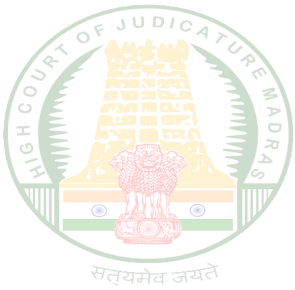


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29.A careful reading of the above explanation given in the Law Lexicon makes it clear that cancel means to blot out or obliterate or to destroy the force, effectiveness or validity of an order or the validity of a decision to bring it to nothingness.

30.In the case in hand, the petitioners have taken advantage of the scrip/license, which according to the respondents is only 2% of the Free On Board (FOB) value and which according to the petitioner, is 3% of the FOB value. The cancellation of a license/scrip is not a mere cancellation of a document per se, but it cancels the effectiveness of a decision that was taken by the authority. Therefore, even if the validity period of scrips has come to an end, that does not tie the hands of the authority to recall a decision, if such a decision requires reconsideration. Hence, cancellation of a scrip as contemplated under Section 9(4) of the FTDR Act must be given a wider meaning to enable an authority to recall an order or a decision which resulted in the issuance of scrip, when it is ultimately found that such order or decision requires reconsideration. In view of the same, I am in

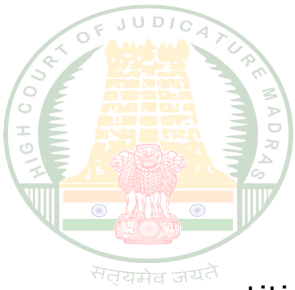


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respectful disagreement with the judgment of the Punjab and Haryana High Court referred supra. In the light of the above discussion, this Court holds that the MEIS scrips which were issued during the relevant period (first scrip on 22.08.2016 and the last scrip on 02.06.2021) can be cancelled even if the scrips are availed off and the validity period of 24 months has expired.

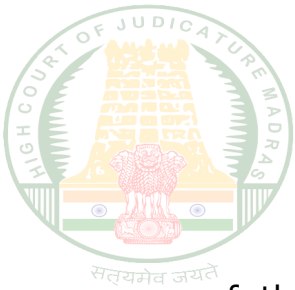
31.The dispute between the parties pertains to the description of the subject property, which was sought to be brought by the petitioners under ITC(HS) code 8706 and whereas the authorities have brought it under CTH 8704. On carefully going through the application that was submitted by the petitioners, it is seen that they have properly described the subject goods and also mentioned the relevant code as provided under Appendix 3(B). The authorities are of the view that what was exported was not merely chassis but it also included engine, driver cabin, wheel, fuel tank, etc, and therefore it has to fall within the descriptions under headings 8702-8704. Consequently, the



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petitioner is only entitled for 2% and not 3% as claimed by the petitioners.

32.The proceedings that have been initiated by the Customs Department on the very same issue are now pending before the Customs Excise and Service Tax Appellate Tribunal [CESTAT] Chennai. If for the sake of arguments, if this Court is inclined to accept the classification made by the respondents, it must be seen as to whether it can result in the cancellation of the license/scrip under Section 9(4) of FTDR Act r/w Rule 10 of the Foreign Trade (Regulation) Rules 1993. The scope of the above rule has already been discussed supra. The alleged contravention against the petitioners does not pertain to the law relating to customs or foreign exchange or the rules and regulations made thereto. It is a clear case of contravention of a foreign trade policy. The question is whether it will come within the scope of Rule 10 (d). This is in view of the fact that this Court has already concluded that Rule 10(a)/(b)/(c) has not been satisfied in this case. This Court has also extracted the findings



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of the Appellate Authority, which is bereft of reasons and clearly reflects non-application of mind.

33.The core issue that was missed out by both the Adjudicating Authority as well as the Appellate Authority is to trace the relevant Clause under Rule 10 and reason it out in the order to justify the retrospective cancellation of the scrips partially to an extent of 1% [3%-2%]. If ultimately the order passed by the authorities does not satisfy the requirement under Section 9(4) of the FTDR Act r/w Rule 10 of the Foreign Trade (Regulation) Rules, 1993, the order becomes illegal and it has to be necessarily interfered with by this Court.

34.As stated supra, since the Appellate Authority has not applied its mind and stated the reasons as to how the order is sought to be justified in line with Section 9(4) of the FTDR Act r/w Rule 10 of the Foreign Trade (Regulation) Rules, 1993, this Court does not want to substitute its mind and assign reasons in the place of the Appellate Authority. Hence, this Court is inclined to remand the matter back to the file of the 1st respondent, to enable the authority to apply its



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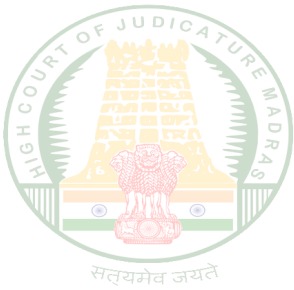
mind, based on the findings/observations made supra. The second and third issues are answered accordingly.

35.In the result, the impugned order passed by the Appellate Authority viz., the 1st respondent in all these writ petitions is hereby quashed and the matter is remanded back to the file of the 1st respondent to deal with the appeal on its own merits and in accordance with law, and also take note of the observations/findings rendered by this Court and pass orders within a period of three months from the date of receipt of copy of the order.

36.All these writ petitions are accordingly allowed. No costs. Consequently, all the connected WMPs are closed.

11.07.2025

Index : Yes
Neutral Citation : Yes
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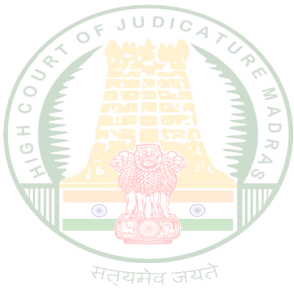


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To

1. Additional Director General of Foreign Trade
Office of the Additional Director General of
Foreign Trade, Chennai
4th Floor, Shastri Bhawan Annexe
26, Haddows Road
Chennai 600 006.
2. Deputy Director General of Foreign Trade
Office of the Additional Director General of
Foreign Trade, Chennai
4th Floor, Shastri Bhawan Annexe
26, Haddows Road
Chennai 600 006.
3. Commissioner of Customs, Chennai-II (Import)
Custom House, No.60, Rajaji Salai
Chennai 600 001.
4. Commissioner of Customs, Chennai-IV (Import)
Custom House, No.60, Rajaji Salai
Chennai 600 001.



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N.ANAND VENKATESH,J

KP

P.D.ORDER IN

Writ Petition Nos.16643, 16647, 16649, 16650, 16652,18342,18347, 18351,18354,18356,18357,18358,18361,18362,18364,18367,18369,18370, 18375,23423,23435,23454,23469,23430,23432,23458,23459,23460,23461, 23462,23463,23464,23465,23466,23467,23468,23470,23472,23473,30574, 30594,30577,30581,30584,30586,30589,30592,30598,32520,32524,32514, 32528, 32535, 32539, 32541, 16655,16653,32533 of 2024 And WP.Nos. 13425,13428, 14498, 14504, 14511, 15645, 15650, 15653, 15662, 16519, 16531,16538,16548,17881,17891, 17901, 17907, 17927, 17887, 19193, 19196, 19199, 19203, 19204, 19216, 19221, 19217, 19218, 19220,19647, 19651,19653,19656,19658,19727,19747,19750,19752,19763,19828, 19831,19832, 19834, 19835, 19860, 19865, 19867, 19869,19873,19875, 19879,19880, 20359, 20361, 20365, 20368, 20369, 6052, 6061,6057, 6065, 6042, 6047, 6054, 13393, 13368, 13375, 13376, 13379,13381, 13385, 13387,13391, 13604, 13606, 13614, 13618,13625 of 2025 ect., batch

& All connected WMPs

11.07.2025