



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

Reserved on: 16th October, 2023
Pronounced on: 07th November, 2023

+ **W.P.(C) 14779/2021 & CM APPLs. 46500/2021, 47436/2021**

INDIAN FLEXIBLE INTERMEDIATE BULK CONTAINER
ASSOCIATION Petitioner

Through: Mr. Pramod Kumar and Mr. Jayant
Kumar, Advocates.

versus

DIRECTOR GENERAL OF FOREIGN TRADE Respondent

Through: Mr. Abhinav Dubey and Mr. Harender
Singh, Advocates. Mr. Vineet
Malhotra, Advocate for DGFT.
Mr. Rakesh Kumar, CGSC with Mr.
Sunil Kumar, Advocate for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J:

1. The Petitioner has approached this Court under Article 226 of the Constitution of India, challenging the notification dated 29th January, 2020,¹ published by Department of Commerce, Ministry of Commerce and Industry, Government of India [*hereinafter* “**impugned notification**”]. In the said

¹ Public Notice No. 58/2015-2020.



notification, Respondent No. 1–Directorate General of Foreign Trade [*hereinafter* “**DGFT**”], has retrospectively revoked the benefit under the Merchandise Exports from India Scheme [*hereinafter* “**MEIS**”] in respect of Flexible Intermediate Bulk Container [*hereinafter* “**FIBC**”] bags, with effect from 07th March, 2019.

2. The Petitioner argues that the impugned notification is both arbitrary and unlawful, primarily because of its retrospective application. The decision has resulted in significant financial setbacks for the Petitioner’s member-units and has adversely impacted the export potential of FIBC bags. In light of these concerns, the Petitioner seeks directions against the Respondents to ensure that the impugned notification is applied prospectively. Consequently, benefits under the MEIS scheme should be extended for the disputed period – from 07th March, 2019 till the date of the issuance of the impugned notification.

BACKGROUND AND PETITIONER’S SUBMISSIONS

3. Mr. Pramod Kumar, learned counsel for Petitioner, narrates the factual background and raises several contentions summarised as follows:

3.1 Petitioner-company is a nodal association in India dealing with manufacturers of FIBC, and leading bulk packaging companies in India engaged in manufacturing and exporting FIBC across the globe. The FIBC bags, commonly known as “Jumbo Bags”/ “Big Bags”, are made up of “Technical Textile” being “Warp and Weft Woven Polypropylene” and are designed to hold and carry loads upto 2000 kg – per the product classification of DGFT they are classified under the head ITC-HS 63053200.



3.2. Manufacturing of FIBC bags is a labour-intensive activity, which generates employment of 800 to 3000 people per manufacturing unit, and an equally large number in ancillary and downstream industries. Statistically, India represents more than 20% of the global trade in FIBC. The FIBC sector is a major export earner for India, contributing nearly USD 1 billion in trade annually.

3.3. By way of notification dated 01st April, 2015,² DGFT had notified tables relating to MEIS schedule of countries with ITC-HS code wise listing of product along with reward rates under Appendix 3B thereof, which provided for 2% benefit for FIBC bags for the period from 01st April, 2015 to 29th October, 2015. Thereafter, DGFT notified an amendment to the Table-2 of Appendix 3B *vide* notification dated 24th November, 2017,³ relating to ITC-HS Code 2017 for the period from 01st November, 2017 to 30th June, 2018, enhancing the MEIS benefit for FIBC bags under Serial No. 4311, ITC-HS Code 63053200, from 2% to 4%. The benefits were continued beyond the said period by way of notification dated 11th May, 2018⁴.

3.4. Leveraging the benefits provided under the MEIS, the Petitioner's member units proactively expanded their export operations concerning FIBC bags. As a result, India emerged as one of the leading global exporters of FIBC bags, even amidst intense international competition from countries such as China, Bangladesh, Turkey, Vietnam, and others. India was acknowledged as a global leader in the FIBC sector recording a market share of 30% in 2018 – being the top exporter to several countries with major market share *viz.*,

² Public Notice No. 2/2015-2020.

³ Public Notice No. 42/2015-2020.

⁴ Public Notice No.07/2015-2020.



United States (44%), Germany (35%), France (37%), Netherlands (38%), Spain (62%) and United Kingdom (63%), amongst others. The MEIS benefit was a major support for the industry.

3.5 In an Office Memorandum dated 18th July 2019, the Central Board of Indirect Taxes and Customs, Drawback Division, Ministry of Finance, Government of India, cited a proposal from the DGFT to withdraw the additional 2% MEIS rates that had been enhanced in November/December 2017, effective from 01st August, 2019. The Petitioner had already submitted a representation opposing the DGFT's proposal. DGFT never officially announced the withdrawal of MEIS. As a consequence, manufacturer-exporters continued to price their export products while incorporating the MEIS benefit, ensuring they retained a competitive edge in the global market.

3.6. Petitioner submitted a representation on 18th March 2019 to the Secretary, Department of Commerce, Government of India. This representation sought to address concerns of potential unrest among FIBC manufacturers and exporters due to the abrupt withdrawal of the MEIS subsidy. Such a sudden change undermined their competitive advantage in the global market, negatively impacting exports from India without any justified rationale.

3.7. In absence of any positive response, the Petitioner sent a representation dated 30th October, 2019 to the Plastic Export Promotion Council [*hereinafter* "**Plexcouncil**"], the nodal agency for Plastic Exports in India, sponsored by the Ministry of Commerce of Industry, Government of India – seeking its urgent intervention in the matter in the wake of blocking of the application process for MEIS benefit on the DGFT website, for the FIBC industry, with



effect from 01st August, 2019. In addition, Petitioner also reached out to the Hon'ble Prime Minister of India, Hon'ble Minister of Textiles, and Hon'ble Minister of Commerce and Industry seeking their intervention. Even the Plexcouncil sent representations to the said authorities highlighting the plight and concerns of FIBC sector.

3.8. On 07th December, 2019, DGFT introduced amendments to the MEIS rates, offering an additional 2% benefit for exports. However, these adjustments did not encompass the FIBC sector. This oversight led the Petitioner to approach the DGFT again in December 2019. The concern was that the FIBC sector had neither received the standard 2% MEIS benefit nor the extra 2% benefit extended to the textile sector, from 01st August, 2019. Amidst these developments and in anticipation of a positive response from the DGFT and other authorities, the impugned notification was issued on 29th January, 2020. This notification amended Table-2, Appendix 3B, discontinuing the MEIS benefits for items within Chapters 61, 62, and 63 of ITC-HS 2017 (covering the apparel and made-ups sectors) for exports made with effect from 07th March 2019. In response to this adverse notification, the Petitioner made numerous representations to the DGFT, advocating for grant of MEIS benefit starting from 01st August, 2019. They also appealed to other relevant authorities for the reinstatement of the said benefit, but to no avail.

3.9. The abrupt termination of the MEIS benefit for FIBC sector through the impugned notification has inflicted significant financial harm. This is because FIBC exports were priced taking into account the MEIS benefits for the period spanning 07th March, 2019 to 29th January, 2020. The retrospective implementation of the impugned notification is unlawful and in violation of



established legal principles. The Foreign Trade (Development and Regulation) Act, 1992 [*hereinafter* “**FTDR Act, 1992**”] neither empowers the Central Government to introduce a policy with retrospective effect nor to amend it retrospectively. In this regard, reliance is placed on the judgments rendered by the Hon’ble Supreme Court in *Union of India v. Asian Food Industries*,⁵ and *Director General of Foreign Trade v. Kanak Exports*,⁶ the decision of this Court in *Malik Tanning Industries v. Union of India*,⁷ and of the Bombay High Court in *Noble Resources and Trading India Pvt. Ltd. v. Union of India*.⁸

3.10. Subsequently, Public Notification No. 26/25-2020 was issued on 16th September 2021. This notification set 31st December 2021 as the final date for submitting MEIS applications for exports conducted during the following periods: 01st July 2018 to 31st March 2019, 01st April, 2019 to 31st March 2020, and 01st April to 31st December 2020. However, the DGFT’s portal had barred submissions for the FIBC sector since 01st August 2019, and remained inaccessible despite numerous representations. Consequently, the Petitioner's member units were unable to lodge their MEIS applications for already completed exports. In light of these challenges, the Petitioner, on 14th October 2021, reached out to Plexcouncil, seeking their mediation to facilitate FIBC exporters in registering their claims on the DGFT portal.

3.11. While the retrospective withdrawal of the MEIS benefit results in significant direct financial setbacks, the added inability of the Petitioner's

⁵ 2006 SCC OnLine SC 1162.

⁶ 2015 SCC OnLine SC 1123.

⁷ 2014 SCC OnLine Del 6963.

⁸ 2011 SCC OnLine Bom 1341.



member units to apply for the MEIS benefit for previous periods, as specified in the 16th September, 2021 notification, further compounds their challenges. This situation places them in a position of double jeopardy without any justifiable rationale.

COURT PROCEEDINGS AND GRANT OF INTERIM RELIEF

4. The Court issued a notice to the Respondents, regarding the matter on 10th January, 2022. Subsequently, on 01st February, 2022, the Department of Commerce, Ministry of Commerce and Industry released a notification which extended the application submission deadline, as specified in the 16th September, 2021 notification concerning MEIS, until 28th February, 2022. Yet, the Petitioner's member units faced challenges in registering their claims on the DGFT portal. Addressing this issue, on 22nd February 2022, the Court granted interim relief allowing the member units to file their applications in hard-copy form, following the procedure in place before the impugned notification. The Union of India, specifically through the Ministry of Commerce and Industry's Department of Commerce, was enjoined as a party as Respondent No. 2. Additionally, the counsel representing DGFT informed the Court that the impugned notification stemmed from an earlier directive dated 14th January 2020 issued by the Ministry of Textiles. Consequently, the Ministry of Textiles was arrayed as Respondent No. 3 to the proceedings.

RESPONDENTS' SUBMISSIONS

5. The submissions advanced by counsel for DGFT, are summarised as under:



5.1. MEIS was introduced under the Foreign Trade Policy [*hereinafter* “**FTP**”] 2015-2020. Benefits under MEIS scheme are available only to notified products as listed in the MEIS schedule in Table-2 of Annexure-3B, notified under Public Notice 61 dated 07th March, 2017, as amended from time to time. The MEIS schedule is a part of the Handbook of Procedures [“**HBP**”] 2015-2020.

5.2. The FTP 2015-2020 and HBP 2015-2020 are issued under Section 5 of the FTDR Act, 1992. Section 3 of the FTDR Act, 1992 empowers the Central Government to make provisions relating to imports and exports for development and regulation of foreign trade. Further, Section 5 of the FTDR Act, 1992, categorically provides that the Central Government may from time to time formulate and announce, by notification in the official gazette, the export and import policy and may also, in like manner, amend that policy. Therefore, the power of the Central Government to amend the policy during the currency of the policy has statutory recognition.

5.3. Further, when the Government is satisfied that change in the policy is necessary in the public interest, it would be entitled to revise the policy and lay down new policy as specified in Paragraph 1.02 of the FTP 2015-2020. Thus, the Central Government reserves the right to make any amendment to the FTP, by means of a notification, in public interest.

5.4. By way of notification dated 14th January, 2020,⁹ Ministry of Textiles notified that MEIS for items under Chapter 61, 62 and 63 stand withdrawn with effect from 07th March, 2019 [*hereinafter* “**Ministry of Textiles’ January 2020 Notification**”]. It was also notified that MEIS claims already

⁹ Notification No. 58/ 2015-2020.



paid to exporters will be suitably adjusted against the benefits under the scheme of “Rebate of State and Central Taxes and Levies” [*hereinafter* “**RoSCTL**”] to be issued henceforth and recoveries would be made wherever due. Thus, in light of the said notification, the impugned notification was issued which also provided the procedure to avail benefits in the form of scrips under the RoSCTL scheme.

5.5. FIBC bags used for packing are classified under ITC-HS Code 63053200, which falls under Chapter 63 of the ITC HS. By way of the impugned notification, Chapter 63 was removed from coverage under MEIS, for exports made from 07th March, 2019 onwards. The impugned notification was published by the DGFT to give effect to the aforementioned Ministry of Textiles’ January 2020 Notification. Thus, the removal of MEIS for items under Chapter 61, 62 and 63 is not arbitrary and coercive. Furthermore, providing MEIS on exports from 07th March, 2019 is not feasible, since exports which are already made cannot be incentivized now.

5.6. The RoSCTL scheme stands notified by the Ministry of Textiles and DGFT is only the implementing agency. The withdrawal of the MEIS was not sudden. All exporters were aware of the new scheme RoSCTL which was in operation since 07th March, 2019. FIBC bags used for packing, falling under Chapter 63 were removed from 07th March, 2019 onwards because the same item was present in the list of RoSCTL. Therefore, Petitioner is not eligible for benefits for the same item/ product under MEIS as per the notification dated 14th January, 2020, issued by the Ministry of Textiles. Although the FIBC bags were notified in the schedules of rates for RoSCTL, with the rate “Nil”, however, it is not clear why no steps were taken by the Petitioner to



have a rate determined for their product under RoSCTL. The Petitioner should have made a representation to the Ministry of Textiles for a rate under RoSCTL, given the product was listed eligible under the RoSCTL scheme.

5.7. After 07th March, 2019, exporters of items falling under Chapter 61, 62 and 63 were entitled to higher benefits under RoSCTL, as compared to earlier available RoSL. As per the Ministry of Textiles' January 2020 Notification, the claims already paid to exporters under MEIS will be suitably adjusted against RoSCTL and recoveries would be made, where due. This measure was, in fact, a hassle free and less tedious mechanism – thus, recovery of benefit under MEIS and then issuance of same amount under RoSCTL was avoided by DGFT.

5.8. The DGFT portal, an automated portal for disbursement of benefits under MEIS, only accepted applications under MEIS for HS Codes which are eligible for claims. The item in-question with ITC-HS Code 63053200 is not covered under MEIS for exports made from 07th March, 2019, therefore the online module did not accept the claim for MEIS of the Petitioner's member units. The extension of timeline for filing applications till 28th February, 2022 extended *vide* notification dated 01st February, 2022 is not relevant for the Petitioner because its member-units are not eligible for benefits under MEIS for exports from 07th March, 2019. For exports made prior to 07th March, 2019, the Petitioner can apply and avail MEIS for their item.

5.9. The MEIS scheme in-question, formulated by the Government, is in the nature of a concession/ incentive – the grant of which is privilege and is decided after taking into account various factors including availability of funds. Thus, the Government has the right to grant, withdraw, modify such



incentives and concessions, as necessary, to adhere to fiscal discipline in utilisation of funds for any incentive scheme, including MEIS. In this regard, reliance is also placed on a catena of judgments rendered by the Hon'ble Supreme Court in *Directorate General of Foreign Trade & Anr. v. Kanak Exports & Anr.*,¹⁰ *S.B. International Ltd. v. Asst. Director General of Foreign Trade & Ors.*,¹¹ and *P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India*,¹² as well as a decision of the High Court of Karnataka in *Rajesh Exports Ltd. v. Union of India*.¹³

6. In addition to the above, the submissions advanced by the Ministry of Textiles are as under:

6.1. The MEIS scheme was challenged before the World Trade Organisation [*hereinafter* “WTO”], and the possibility of the withdrawal of the same was prevalent in the news, media and trade discussions for a considerable period of time. Ultimately, in compliance of WTO obligations, the Government decided to withdraw the MEIS scheme. The withdrawal was approved by the Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, *vide* Office Memorandum dated 30th December, 2019, for items under Chapters 61 to 63, effective on exports made from 07th March, 2019. Further, the DGFT through Office Memorandum dated 31st December, 2019 requested the Ministry of Textile to issue the notification urgently enabling the additional ad-hoc incentive under RoSCTL Scheme – so that the notice for withdrawing MEIS benefit from 07th March,

¹⁰ [(2016) 2 SCC 226].

¹¹ AIR 1996 SC 2921.

¹² 1996 5 SCC 268.

¹³ 2005 SCC OnLine Kar 566.



2019 can be notified by DGFT.

6.2. On 07th March, 2019, the Cabinet approved the scheme for RoSCTL to provide a rebate to embedded State and Central taxes/ levies, to provide support and enhance competition in exports. The RoSCTL scheme replaced the Rebate on State Levies Scheme [*hereinafter* “**RoSL**”]. Benefits under MEIS (for Chapter 61, 62 and 63) were discontinued w.e.f. 07th March, 2019 because all embedded taxes and levies are covered under RoSCTL. All exporters who were earlier availing benefits under RoSL scheme were aware of the new scheme RoSCTL. The RoSL scheme was terminated on 06th March, 2019 and from the next day i.e., 07th March, 2019 – RoSCTL was implemented.

6.3. The Ministry of Textiles’ January 2020 Notification was issued to bridge the gap between the RoSCTL benefit effective from 07th March, 2019 and the combined 4% benefit from RoSL and MEIS. Providing benefits under both RoSCTL and MEIS would inadvertently result in a windfall gain for the exporter. As a corrective measure, MEIS benefits were withdrawn to prevent this double benefit for the apparel and made-ups sector. Furthermore, the Expenditure Finance Committee (EFC) of the Ministry of Finance, in its meeting on 30th December 2019, sanctioned a special one-time additional ad-hoc incentive amounting to up to 1% of the FoB value. This decision was formally announced on 14th January 2020.

6.4 The Ministry of Textiles’ January 2020 Notification explicitly stated that any benefits granted to exporters under MEIS would be adjusted appropriately against RoSCTL, with recoveries being made where necessary. Following this, the procedure to avail benefits in scrip form under the



RoSCTL scheme was outlined in the contested notification.

6.5 It is essential to note that decisions concerning MEIS fall outside the jurisdiction of the Ministry of Textiles. The MEIS scheme is overseen by the DGFT. In fact, both the MEIS and RoSCTL schemes were implemented by the DGFT. Given this, there is a strong case for removing the Ministry of Textiles from the list of involved parties.

ANALYSIS, FINDINGS AND DIRECTIONS

7. Member units of the Petitioner, exporters in the FIBC sector, relied heavily on the benefits offered by the MEIS scheme which was initiated to offset infrastructural inefficiencies and related export costs of products manufactured in India, and played a significant role in augmenting nation's global market presence in the FIBC sector.

8. While the MEIS was in operation from 1st April 2015 to 31st December 2020, its retrospective discontinuation for the FIBC sector has become a point of contention and distress for the Petitioner and its member units. Upon learning about the prospective withdrawal of the MEIS benefit, the Petitioner promptly voiced concerns to the relevant authorities. Despite this, the DGFT portal ceased accepting MEIS benefit applications as of 01st August 2019. Despite subsequent representations, the contested notification was issued on 29th January 2020, retracting the MEIS benefits for the FIBC sector from 07th March 2019. Although the initial grievances highlighted in the petition spanned a broader spectrum, during the hearing, the Petitioner narrowed their challenge to two specific reliefs: (i) The controversial notification should have a prospective, not retrospective, effect and (ii) immediate approval of the



claims made by the Petitioner's member units under the MEIS scheme for the disputed period. Given these revisions, our analysis is confined to addressing these specific contentions and reliefs.

(A) **Retrospective Effect of Impugned Notification**

9. Retrospective withdrawals of benefits and incentives by their nature, risk inflicting irreversible harm, in this case – the Petitioner's member units. While prospective amendments or alterations are within the Central Government's purview and typically beyond reproach, retrospective changes that could devastate an entire sector raise serious concerns. Such actions risk breaching the fundamental tenets of natural justice, equity, and fair play, potentially undermining the legitimacy of administrative decisions.

10. The Supreme Court's verdict in the case of *Kanak Exports* emerges as a cornerstone when discussing the retrospective application of the impugned notification. The crux of this case centred on challenging multiple notifications relating to the Export Import Policy 2002-2007 and Exim Import Policy 2004-2009 [**“EXIM Policies”**]. Notably, some of the notifications retrospectively, removed certain items which were earlier eligible for incentives/ scaled down the incentive, under the EXIM Policies. Although the Apex Court observed that the power to grant or retract benefits, exemptions, and incentives, squarely sits with the Government as a matter of policy decision, it also underscored a significant limitation. The Court clarified that even if a benefit is rescinded in the broader public interest, it does not necessarily legitimize a retrospective withdrawal without clear legislative backing. Diving deeper into the statutory framework, it was unequivocally stated that Section 5 of the FTDR Act, 1992, lacks any provision that permits



the Central Government to promulgate rules with a retrospective effect. Consequently, the scope to “amend” any policy under Section 5 does not imply a *carte blanche* authority to make retrospective changes. This judgment is not an isolated stand; it derives its strength from the foundational legal principle that secondary or delegated legislation, by default, is prospective. Retrospective application is an exception and can only be permitted if explicitly provided by the parent statute. Supporting this line of thought, the Supreme Court, in *Asian Food Industries*, reiterated that prohibitive measures encapsulated in any statutory order under the FTDR Act, 1992, read with relevant provisions of the policy decision under Section 3(2) of the FTDR Act, 1992, should inherently be prospective. Additionally, reinforcing this stance, in *Malik Tanning*, adjudicated by a Single Judge of this Court, ruled that neither the Central Government nor the DGFT possesses the authority to retrospectively, modify the Foreign Trade Policy or rescind any export benefit. In sum, the jurisprudential trend, backed by these landmark judgments, establishes a formidable legal argument against the validity of retrospective amendments unless expressly permitted by the governing statute.

11. The DGFT’s issuance of the impugned notification to retrospectively withdraw MEIS Benefits is premised on powers granted by the FTP, namely paragraph 1.02, as under:

“1.02 Amendment to FTP

Central Government, in exercise of powers conferred by Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.”

12. We find that paragraph 1.02 of the FTP 2015-20 recognizes the Central



Government's discretion to amend the FTP in the public interest. However, it does not suggest that these amendments can retrospectively reshape prior understandings or actions. In such a scenario, the FTP certainly does not authorize the DGFT to rescind substantive benefits retrospectively.

13. The *Kanak Exports* ruling, though anchored in the context of an earlier iteration of Section 5 of the FTDR Act, 1992, still holds relevance. A close examination reveals that the 2010 Amendment has not altered the statute's stance on retrospective provisions. Furthermore, the Respondents have not indicated any provision that would counter this interpretation. Further, disentangling the Respondents' case law references, the decisions in *S.B. International*, *P.T.R Exports*, and the Karnataka High Court's verdict in *Rajesh Exports*, alluded to by the DGFT, to highlight the Government's policy discretion in the public interest, do not align with the present case. This is primarily because in those case there was no retrospective amendment to policy or such a finding by the Court although urged, as opposed to the clear retrospective withdrawal of a benefit herein. Guided by the precedents previously discussed, we conclude that the retrospective withdrawal of the MEIS benefits through the impugned notification does not stand.

14. Consequently, the judicial precedents cited by DGFT do not lend weight to their argument. DGFT's decision to repeal the scheme with a retrospective effect, combined with their refusal to honor claims for the valid period, is arbitrary and indefensible, both in principle and law.

(B) Respondents' Assertions of Prior Publicity and RoSCTL Scheme

15 At this juncture, we must emphasize that while the Respondents assert the Petitioner's awareness of the MEIS withdrawal, they have not elucidated



when or how the Petitioner's member units were apprised of the impending MEIS cessation as on 07th March 2019, or any time before the impugned notification which was issued much later on 29th January, 2020. The introduction of MEIS benefits was not a mere act of state generosity or a mere incentive. Its primary objective was to counterbalance infrastructural inefficiencies and the affiliated expenses associated with Indian exports. Pertinently, the MEIS benefit was discontinued retrospectively by a period of almost one year. Throughout this interlude, the Petitioner's member units engaged in extensive export contracts, having incorporated the expected MEIS benefit into their export cost structures.

16. Respondents' argument, emphasizing the widespread publicity of the MEIS scheme's discontinuation prior to the actual notification, is incongruous with the Supreme Court's determination in *Asian Food Industries*. The Apex court clarified that advance publicity of an impending shift in export policy does not legitimize its retrospective implementation.

17. The decision to rescind the MEIS scheme seemingly originated from deliberations at the WTO, and subsequently, the RoSCTL scheme came to be notified on 07th March, 2019. The Respondents, highlighting the aforementioned context, vehemently argue that the simultaneous availability of both MEIS and RoSCTL schemes would result in an undue double benefit for the Petitioner. This argument, however, lacks substance. The RoSCTL rate for FIBC bags was stipulated as "Nil", rendering the Petitioner's member units incapable of claiming benefits under either the MEIS or the RoSCTL scheme. It is also imprudent for the Respondents to suggest that the Petitioner ought to have lobbied for an RoSCTL rate instead. Moreover, we are informed



from the Petitioner's submissions that recognizing this oversight, they have proactively raised the issue with the competent authorities, including both the Ministry of Finance and Ministry of Textile.

18. The MEIS, falling under Chapter-3 Exports from India Schemes of the FTP 2015-20, serves as an incentive, while the RoSCTL merely rebates state and central embedded taxes and levies. They operate under separate governance: DGFT for MEIS and the Ministry of Textile for RoSCTL, emphasizing their distinct purposes and mechanisms. Therefore, equating the two schemes is erroneous. RoSCTL, in its very nature, cannot compensate for claims associated with exports executed or committed before the release of the impugned notification, for which the Petitioner was rightfully eligible. The claims under each scheme are distinct, separate, and cannot be juxtaposed or adjusted against one another.

19. DGFT's stand seems to be mired in contradiction. On one hand, it contends that the FIBC was listed under the RoSCTL Scheme to adjust claims against MEIS. Yet, paradoxically, it also concedes that the RoSCTL allots a "Nil" benefit to the FIBC Sector. The crux of our discussion revolves around the MEIS and not RoSCTL. In attempting to intertwine the RoSCTL scheme—which incidentally offers no benefits to the FIBC sector—into the discourse, the DGFT appears to be deliberately muddying the waters. Even if the DGFT were merely implementing directives from the Ministry of Textile, their submissions come across as tangential and irrelevant. The Office Memorandum dated 18th July 2019 from the Department of Revenue, Ministry of Finance, referencing the withdrawal of MEIS under Chapters 61, 62, and 63, stipulated that the MEIS benefit be rescinded effective 01st August 2019.



However, the DGFT, exercising its discretion, opted to retrospectively repeal the MEIS benefit from 07th March 2019, as evident from the impugned notification dated 29th January 2020. This policy decision—ostensibly influenced by the RoSCTL scheme’s introduction—was, in an ironic twist, not extended to the FIBC sector. In this vein, Ministry of Textiles’ similar assertion—that exporters would unjustly benefit twice from both MEIS and RoSCTL, thus necessitating a retrospective withdrawal of MEIS benefits for the FIBC sector—stands on shaky ground. The Ministry of Textiles, intriguingly, has not elucidated the rationale behind excluding these goods from the RoSCTL scheme benefits.

20. Notably, given that the entire MEIS scheme faced scrutiny at the WTO - singling out FIBCs from export incentives retrospectively, while retaining benefits for other products, especially those under Chapters 61 to 63, exhibits arbitrariness and discrimination. In our considered opinion, no valid justification has been brought forth, for such selective retrospective withdrawal of benefits. Such an action arguably violates Article 14 of the Constitution of India. Therefore, selectively withdrawing the scheme with retrospective effect for specific categories not only appears arbitrary but also compounds the deprivation felt by the FIBC sector, which was already excluded from the RoSCTL benefit.

(C) Blocking of DGFT’s Portal for Submission of Claims

21. By way of the notification dated 01st February, 2022, the deadline for submissions of claims under the MEIS scheme was extended to 28th February, 2022. However, the Petitioner’s member units were unable to submit their application for claims pertaining to the period for which the claims stood



allowed i.e., 01st July, 2018 to 31st March, 2019; 01st April, 2019 to 31st March, 2020, and; 01st April to 31st December, 2020 – on account of closure of the portal for members of the FIBC sector from 01st August, 2019. By way of interim relief granted by this Court on 22nd February, 2022, the member units of the Petitioner were permitted to file their claims and the same have been taken on record by the DGFT. In our opinion, for exports having already been carried out for the period from 07th March, 2019 till the date of the impugned notification was notified – exporters would have already factored in and priced exports in line with MEIS benefits. Now, given that we have held that impugned notification could not have been given effect retrospectively, it follows that the benefit should be disbursed to all *bona fide* applicants, who have applied in terms of the orders of this Court – subject to fulfilment of other applicable conditions.

DIRECTIONS

22. As mentioned above, the Petitioner has restricted the reliefs to seeking the prospective application of the impugned notification and the processing of claims submitted for MEIS benefits. Considering the same, the following directions are issued:

- (i) The impugned notification dated 29th January, 2020, insofar as it withdraws the MEIS benefit on FIBC bags classified under HS-ITC 6305 3200, shall apply prospectively.
- (ii) Respondents shall forthwith process the applications for the MEIS benefit on FIBC bags classified under HS-ITC 63053200, submitted in terms of the interim order of this Court dated 22nd February, 2022 – in respect of the



exports made during the period from 07th March, 2019 till the date of the issuance of the impugned notification.

23. With the aforesaid directions, disposed of, along with pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

NOVEMBER 07, 2023

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