

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON 25.06.2021
PRONOUNCED ON: 30.06.2021
CORAM:**

THE HON'BLE Dr.JUSTICE ANITA SUMANTH

**W.P. Nos.28777, 28778, 28783 and 28784 of 2019
and WMP.Nos.28525, 28531 and 28535 of 2019**

Jindal Drugs Private Limited

a Company incorporated under the provisions
of the Companies Act 1956 having its
registered office at
12A, Bhaktawar Nariman Point,
Mumbai 400 002.

.. Petitioner in the above WPs

Vs

1. The Union of India,
Through the Secretary,
Ministry of Commerce,
Department of Commerce,
Udyog Bhavan, North Block,
New Deli 110 001.

2. The Deputy Commissioner of Customs,
Having his office at J.Matadee,
Free Trade Zone, Mannur Village,
Sriperumbudur (JM FTZ SEZ / Mannur)
Kancheepuam 602 105.

3 The Additional Director General of
Foreign Trade, Nishta Bhavan,
48, Sir Vithaldas Thackersy Marg,
Mumbai-40.

(R3 Suo-Moto Impleaded as
per order dated 1/10/2019)

... Respondents in the above WPs

Prayer in W.P. No.28777 of 2019: The writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records in File No.MEIS / JINDAL Drugs / JMFTWZ/ 01/ 2018 comprising of the impugned communication dated 09/07/2019 and quash the same as illegal arbitrary and violative of principles of natural Justice.

Prayer in W.P. No.28778 of 2019: The writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the 2nd respondent to register the impugned scrips bearing No.0319167227 dated 28/05/2018 for Rs.45 03 800.00 and issue Telegraphic Release Advise under paragraph 3.08 of Hand Book of Procedure as requested by the petitioner.

Prayer in W.P. No.28783 of 2019: The writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the 2nd respondent to register the impugned scrips bearing No.0319191300 dated 10/10/2018 for Rs.4 41 870 and issue Telegraphic Release Advise under paragraph 3.08 of Hand Book of Procedure as requested by the petitioner.

Prayer in W.P. No.28784 of 2019: The writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the 2nd respondent to register the impugned scrips bearing No.0319170001 dated 13/06/2018 for Rs16 31 840 and issue Telegraphic

Release Advise under paragraph 3.08 of Hand Book of Procedure as requested by the petitioner.

For Petitioner : Mr.Prakash Shah
For Mr.Muthu Venkataraman
in the above WPs

For Respondents : Mr.G.Babu
Central Government Standing Counsel
- R1 & R2 in the above WPs
Mr.V.Chandrasekaran
Senior Panel Counsel
- R3 in the above WPs

COMMON ORDER

W.P.Nos.28778, 28783 and 28784 of 2019 pray for a direction to the Deputy Commissioner of Customs/R2 to register scrips bearing No.0319167227 dated 28/05/2018 for Rs.45,03,800.00 (scrip No.1), No.0319191300 dated 10/10/2018 for Rs.4,41,870/- (scrip No.2) and No.0319170001 dated 13/06/2018 for Rs.16,31,840/- (scrip No.3) and issue Telegraphic Release Advise under paragraph 3.08 of Hand Book of Procedure.

2. W.P.No.28777 of 2019 prays for issuance of Writ of Certiorari to quash communication dated 09.07.2019 passed by the Authorised Officer Free Trade Zone, Mannur Village, Sriperumbudur (JM FTZ SEZ/ Mannur) Kancheepuram - 602 105/R2.

3. Since the scrips in question were issued by the Additional Director General of Foreign Trade, Mumbai, the aforesaid authority has been impleaded as R3 by order of this Court dated 01.10.2019.

4. The brief facts that are germane to the disposal of the issues arising from these Writ Petitions are as follows:

- i) The petitioner is an exporter of menthol and natural essential oils.
- ii) The instant transactions form part of the supply of the commodities to various purchasers, who in turn supply the same to Colgate Palmolive.
- iii) The petitioner admittedly claims benefits under the Customs Act, 1962 and allied policies, such as duty drawback as well as benefits under the Goods and Services Tax Act, 2017 (in short 'GST Act'), such as input tax and other available benefits.
- iv) The petitioner, wishing to avail the benefit under the Merchandise Exports from India Scheme (MEIS) which was part of the Foreign Trade Policy, effective 01.04.2015, made an application to R3 and was issued scrips 1, 2 and 3 by R3. These scrips were current for the period 2018 to 2020 and have not been cancelled at any time. Benefit under the MEIS Scheme is computed on the basis of 2% Free on Board (FOB) of the value of the

transaction which is set-off against future imports. Thus, no cash refunds are contemplated.

v) A request was made for registration of scrip Nos.1 and 3 on 11.06.2018 and 19.06.2018 respectively. The original scrips and all required details were submitted. R2 was requested to issue a Telegraphic Release Advise (TRA) to the petitioner.

vi) Certain other documents were called for in connection with the application and a personal hearing was also afforded to the petitioner.

vii) R3, in the meanwhile, sought the details of the supplies made against all bills of exports confirming those in respect of which MEIS benefit had been sought.

viii) Detailed responses were filed by the petitioner to the effect that the supplies made were not covered under any of the ineligible categories of exports stipulated under the relevant provisions of the Foreign Trade Policy.

ix) There was a further exchange of communication inter se R3 and the petitioner and detailed submissions made in the course of personal hearing.

x) As there was no progress thereafter, the petitioner sought return of the scrips sent for registration in order to ensure their safety. The scrips were returned without registration.

xi) A similar request was made for registration of scrip No.3 on 04.07.2019 and again all originals and annexures were enclosed. This scrip was also returned by R2 without registration, accompanied by the impugned order dated 09.07.2019, wherein the request of the petitioner for registration has been rejected.

xii) Thus, in summary, scrips Nos.1 and 3 have been returned by R3 without registration and scrip No.2 by R2 also without registration with the impugned order rejecting the request for registration of scrip No.2.

xiii) Though no specific rejection has been made in regard to the applications for registration in regard to scrip Nos.1 and 3, there is no dispute on the question that the stand adopted by R2 for rejection of registration of scrip No.2 applies on all fours to scrip Nos.1 and 3 as well.

5. The arguments of Mr.Prakash Shah, learned counsel appearing for Mr.S.Muthu Venkataraman, learned counsel for the petitioner are as follows:

i) All three scrips have been validly issued after due application of mind and enquiry by R3. Thus the rejection of the application for registration by R2 is not just contrary to law but amounts to review of the original order passed, for which there is no provision under either the policy or any regulation.

ii) The scrips have not been cancelled at any time till their expiry or even thereafter and hence in the absence of cancellation, for which a specific procedure is statutorily provided, R2 has no authority to have rejected registration and TRA.

iii) Reference is made to Section 9(4) of Foreign Trade (Development and Regulation) Act, 1992 (in short 'FTDR Act'), which provides for a procedure for cancellation of scrip. Admittedly, this procedure has not been invoked and hence the scrips, being valid, ought to have been registered as requested by the scrip holder.

iv) In response to the argument put forth by R2 to the effect that the original document (two scrips) have been taken back by the petitioner, the petitioner would state that it is only for the purpose of ensuring their safety. In any event it is not the case of the revenue that had they been allowed to be retained by the respondents, R2 would have registered the same. In fact, there is no dispute that the impugned order of rejection would apply in regard to all three scrips.

v) As regards the question of ineligibility to the benefit of MEIS Scheme, the petitioner relies on paragraphs 3.04/Chapter 3 of the Merchandise Exports from India Scheme, reading as follows:

PART –I

Foreign Trade Policy

Chapter 3

Exports from India Schemes

3.00 Objective

The objective of schemes under this chapter is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs.

3.01 Exports from India Schemes

There shall be following two schemes for exports of Merchandise and services respectively;

(i) Merchandise Exports from India Scheme (MEIS).

(ii) Service Exports from India scheme (SEIS).

Merchandise Exports from India Scheme (MEIS)

3.03 Objective

Objective of the Merchandise Exports from India Scheme (MEIS) is to promote the manufacture and export of notified goods/products.

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 realized FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign currencies, whichever is less, unless otherwise specified.

3.06. Ineligible categories under MEIS

The following exports categories/sectors shall be ineligible for Duty Credit scrip entitlement under MEIS:

(i) Supplies made from DTA units to SEZ units.

(ii) Export of imported goods covered under paragraph 2.46 of FTP;

(iii) Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India;

(iv) Deemed Exports;

(v) SEZ/EOU/EHTP/BTP/FTWZ products exported through DTA units;

(vi) Export products which are subject to Minimum export price or export duty.

(vii) Exports made by units in FTWZ.

According to the petitioner, the exports in question do not fall within the prohibited categories, as enumerated in clause 3.6 of the scheme.

6. As answering the question of entitlement of the petitioner to the benefit of the scheme requires some factual particulars, the petitioner was asked to produce purchase orders/commercial invoices containing the terms and conditions between the petitioner and the buyer, UTEXAM. These documents have been filed as part of document compilation dated 22.06.2021, also supplied to the respondents. No objection has been raised by learned counsel for the respondents for admission of the same and for being considered in the resolution of the issues arising in this matter.

7. The following documents have been filed.

Purchase Order 84/85

Dated 27.02.2018

Jindal Drugs Pvt. Ltd
 229 Nariman Point, Mumbai 400 021

Kind Attention: Mr.Ajay Jindal

Business Award –Cornmint Oil Redistilled M07595 & Cornmint Oil Tri-rectified M08377

1. Specifications:

Colgate Subsidiary	CP Global (Excluding India)	CP Global (Excluding India)
Delivery at	FIZW at Mannur/Vallarpuram Village, Sirperumbudur Taluka, District Kanchipuram, TN 602 105	FTZW at Mannur/Vallapuram Village, Sriperumbudur Taluka, District Kanchipuram, TN 602 105
Invoicing/Billing Entity	Utexam Logistics Limited	Utexam Logistics Limited
Product Name	Cornmint Oil Redistilled (M07595)	Cornmint Oil Tri-rectified M08377
Quantity in Kilogram	43,200 Kg	28,800 Kg
Inco Term	Delivered at FTZ Warehouse	Delivered at FTZ Warehous
Price	USD \$ 18.8 per Kg	USD \$ 20.4 per Kg
Payment Terms	Within 45 days from receipt of goods at FTZW	Within 45 days from receipt of goods at FTZW
Palletized Load	Yes (Please refer Pallet Specification attached)	Yes (Please refere Pallet Specification attached)
Lot Size	7,200 -14,400 Kg/8,000 – 16,000 Kg	7,200 -14,400 Kg/8,000 – 16,000 Kg
Packing	New GI Drum of 100 Kg/200Kg capacity each	New GI Drum of 100 Kg/200Kg capacity each
Delivery at FTZW	Delivered within 2 months from BAL Date	Delivered within 2 months from BAL Date
Name of the Commercial entity	Jindal Drugs Pvt. Ltd.	Jindal Drugs Pvt. Ltd.
Shelf Life	Minimum 3 years	Minimum 3 Years

8. The terms and conditions at clause 2 and 10 of the Purchase Order, require the manufacturing facility of the petitioner to be approved by the ultimate beneficiary, Colgate and to this effect, state as follows:

.....

2. Your Manufacturing location is Taloja, India.. Any change in Manufacturing Location will have to be approved by Colgate well in advance. GMP and Technical compliance is a must in order to maintain supply continuity.

.....

11. Colgate reserves the right to withdraw or terminate the award at any time in case of non-compliance to delivery schedules, quality issues on specifications, contamination and off-standard/damaged packaging.

9. Apart from Purchase Order Nos.84/85 dated 27.02.2019 and 93/94 dated 10.04.2018, Tax invoices dated 03.04.2018, 06.04.2018, 08.05.2019 and 01.06.2019 (filed as sample invoices) reveal that *Jindal Drugs Private Limited*, the petitioner herein, the exporter. The manufacturing location has its facility at Taloja, Maharashtra, the invoice has been drawn on UTEXAM at Ireland and supply of the consignment is to DHL Logistics, which is a Free Trade Warehousing Zone (FTWZ).

10. Statements of Bank Realisation Certificate (BRC) dated 29.06.2018 of Citi Bank NA, Mumbai ICG Branch have also been placed on record evidencing receipt of consideration in US dollars in relation to the exports made. The application filed under MEIS Scheme contains, among various other particulars, the shipping bill details as follows:

DIRECTORATE GENERAL OF FOREIGN TRADE 44

Merchandise Exports From India Scheme – E-COMMERCE VERSION ANF 3A

SB Number	Date	Port	EDI	LEO date	Export Date	FOB in Rs	M.F.	Custom file number	Remarks							
5001834	05.06.2018	IN CJI 6	N	05.06.2018	06.06.2018	8,837,400.00	1,000000		SB-Manually entered- EDI BRC							
BR C No	BR C date	e-BRC	Date of realization	Realised amount (1)	FC code	CBEC - Y/Non - CBEC -N	Realised amount (INR) (2)	USD Exch.r t (as per Realisation dt.) (3)	Realised amount (E q. vl. U	Com mission (5)	Insuranc e (6)	Freight (7)	F O B Net of	FOB net of commission for CBFC (8)= (1- (5=6=7) For Non-	Exch .rt.(a s perS Bdt.)	Realise d value in INR For CBEC Cur.(10)=(1*9) For Non-CBEC Cur.(10)+(4*3)

F.No: MEIS/jindal drugs/JMFTWZ/01/2018

Date: 09.07.2019

To

M/s.Jindal Drugs P. Ltd.,
12-A, 12th floor, Baktawar,
229, Nriman Point, Mumbai – 400 021.

Gentlemen,

Sub: Registration of MEIS scrip No.0319191300 dt.10.10.2018 for
Rs.4,41,870/- Reg.

Please refer to your letter dt – 04.07.2019 wherein this office was requested to register the abovementioned scrip. Also refer to the letter 4-7-19 wherein a request for issue of TRA was made.

It is submitted that a para 3.06 of the Foreign Trade Policy, which deals with the Ineligible categories under MEIS, it is clearly mentioned that:

“The following exports categories/sectors shall be ineligible for Duty Credit scrip entitlement under MEIS

(i) Supplied made from DTA units

.....

(vii) Exports made by units in FTWZ.”

In your case it is observed that Supplies have been made from M/s.Jindal Drugs P Ltd. a DTA unit to M/s.DHL Logistics P Ltd on A/c of M/s.Utexam Logistics Limited, Ireland a foreign client. The exports have been made by DHL Logistics (P) Ltd which is in the FTWZ.

Hence it appears that such exports are ineligible for Duty Credit scrip under MEIS and hence the Original scrip along with its enclosures is returned herewith, without being registered in the FTWZ.

Yours faithfully,

XXXX

(N.S.Rajagopal)

AUTHORISED OFFICER

13. Part II of Handbook of procedures, specifically paragraph 3.01 dealing with MEIS Scheme and clause (h) thereof, read as follows:

PART – II

Handbook of Procedures

(Vol.1)

Chapter 3

Exports from India Schemes

(h) RA shall process the electronically acknowledged bills files and scrip shall be issued after due scrutiny of electronic documents. After scrutiny, if the officer has reasonable suspicion of wrong classification/mis-declaration in any application, in such cases officer may, after approval of this senior officer/Head of the Office, seek physical documents for scrutiny. On receipt of such documents, the officer must decide the claim within 7 working days. In cases, where the claim is rejected, a speaking order shall be issued.

14. The procedure set out for issuance of scrips is deemed to have been scrupulously adhered to by R3 and this is clear from a reading of clause (h) above. The presumption in Clause (h) is that the scrips should be issued only after due scrutiny and, upon the slightest suspicion that the claim may be unacceptable, the Officer has to call for physical documents and decide the fate of the claim by way of a speaking order, if rejected. The issuance of the scrip thus pre-supposes due application of mind by R3 to all relevant stipulations. Clause 3.06 which sets out ineligible categories must thus be assumed, not just to have caught the attention of R3 but to have been thoroughly examined, prior to issuance of the scrip.

15. Moreover, the provisions of Section 9(4) of the FTDR Act reads as follows:

9. Issue, suspension and cancellation of licence. –

.....

(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 writing, suspend or cancel any licence granted under this Act: Provided that no such suspension or cancellation shall be made except after giving the holder of the licence a reasonable opportunity of being heard.

(5) An appeal against an order refusing to grant, or renew or suspending or cancelling, a licence shall lie in like manner as an appeal against an order would lie under section 15.

16. A detailed procedure for cancellation of the scrips has been set out under Section 9(4) of the FTDR Act, extracted above. In the absence of this procedure having been invoked, the categorical presumption is that R3 continues to hold the view that the scrips are valid. Though R3 has been impleaded in the matter as early as on 1st October, 2019, it is only in the counter filed in May, 2021 that R3 has, toeing the line of the customs authorities, stated that the transaction is ineligible. The explanation put forth for non-cancellation by Mr.Chandrasekaran is that the matter was subjudice. Though this is hardly a convincing argument, I leave that at that.

17. The question of eligibility to the Scheme is fundamental to the prayer sought by the petitioner. Para 3.06 of the Scheme sets out seven categories of transactions/entities that would be ineligible for the benefits of MEIS. I have

extracted the same at paragraph 5 of this order and do not repeat it again for the sake of brevity.

18. The first is, supplies effected by a Domestic Tariff Area (DTA) to a unit situated in a Special Economic Zone (SEZ), the second, export of imported goods covered under paragraph 2.46 of the Free Trade Policy, third, exports through trans-shipment, i.e., exports originating from elsewhere and routed to another destination through India, fourth, deemed exports, fifth, products of SEZ/EOU/EHTP/BTP/FTWZ exported through the DTA, sixth, exports which are subject to Minimum Export price or export duty and lastly, the seventh, exports made by units in SEZ. The first and last prohibitions are held against the petitioner.

19. Supplies made by a DTA unit to a SEZ unit would be paid for by the SEZ unit. In this case, admittedly, the consideration received is from Ireland, in US dollars. The BRC dated 29.06.2018 evidences this position.

20. Moreover, in this case, supply has been made by the petitioner to FTWZ for onward shipment at the behest of the purchaser, UTEXAM, to a location of its choice. This modus operandi is supported by the documentation placed on record by the petitioner.

21. Thus, DHL logistics, the FTWZ, merely offers a facility to the petitioner to warehouse its consignments that are to be exported. The destination is decided by UTEXAM, which is the ultimate purchaser, which has paid the petitioner in USD for the consignment. The stipulation in Clause (vii) deals with exports made *by* a unit in the FTWZ. DHL, the FTWZ does not export the consignments but only facilitates such exports. The exports are thus, *by* the petitioner *through* DHL to a destination abroad.

22. To a query as to why the transaction was so structured, the petitioner explains stating that the consignments in question were, purchases by UTEXAM on behalf of Colgate Palmolive for supply at any number of the units of the latter. As and when the destination is decided, DHL is intimated of the same and the consignments shipped to that destination.

23. The exports in this case have already taken place at the point when the petitioner executes the relevant documents and the consignments are stored in the FTWZ, awaiting confirmation of the destination. This would avoid the circuitous route of shipment to UTEXAM at Ireland, and then onward to a final destination accompanied by multiple transportation costs and logistical complications. The role of DHL in this transaction is that of a warehouse and nothing more. The concept of 'ship to' and 'bill to', as used in this case, has been recognised under the GST regime, as commercial compulsions dictate,

that transactions are to be structured in the most economical and least cumbersome manner in terms of time, procedure and expense involved.

24. Dr.Babu, raises an objection to the maintainability of the Writ Petition stating that the impugned order is appealable. I, however, find no statutory redress provided as against the impugned order though there is one provided as against an order cancelling the scrips under the FTDR Act had such order been passed. This submission is thus rejected.

25. The interpretation put forth by the petitioner is accepted, the impugned order is set aside and this Writ Petition allowed. No costs. Connected Miscellaneous Petitions are closed.

26. The scrips are for the months of May, October and June, 2018 with a validity of two years expiring on 27.05.2020, 09.10.2020 and 12.06.2020. These Writ Petitions have been filed on 19.06.2019 when the scrips were alive and current. Thus, in order to effectuate the relief granted now, there is a consequential direction to R3 to re-validate scrips bearing No.0319167227 dated 28/05/2018 for Rs.45,03,800.00 (scrip No.1), No.0319191300 dated 10/10/2018 for Rs.4,41,870/- (scrip No.2) and No.0319170001 dated 13/06/2018 for Rs.16,31,840/- (scrip No.3) and extend the same for the duration of the pendency of these Writ Petitions. The TRAs will be issued

immediately thereafter and the aforesaid exercise will be carried out within a period of four (4) weeks from today.

30.06.2021

Internet: Yes/No

Index: Yes/No

Speaking order/Non speaking order
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To

1. The Union of India,
Through the Secretary,
Ministry of Commerce,
Department of Commerce,
Udyog Bhavan, North Block,
New Delhi 110 001.
2. The Deputy Commissioner of Customs,
Having his office at J.Matadee,
Free Trade Zone, Mannur Village,
Sriperumbudur (JM FTZ SEZ / Mannur)
Kancheepuram 602 105.
- 3 The Additional Director General of
Foreign Trade, Nishta Bhavan,
48, Sir Vithaldas Thackersy Marg,
Mumbai-40.

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Dr.ANITA SUMANTH.J.,

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Pre-delivery order in

W.P. Nos.28777, 28778, 28783 and 28784 of 2019
and WMP.Nos.28525, 28531 and 28535 of 2019

30.06.2021

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