



Customs proceedings without jurisdiction

*Jeena & Company v. Union of India*¹

The Madras High Court held that the customs authorities can initiate recovery proceedings under Section 28AAA of the Customs Act ('the Act') only in the event action is initiated by the Directorate General of Foreign Trade ('DGFT') to invalidate the Service Exports from India Scheme ('SEIS') scrips issued by them.

Facts of the case

- The Petitioner is engaged in the business of international freight forwarding and allied activities and was issued the SEIS scrips by the DGFT, for the foreign exchange earned by them by providing service exports.
- The officers of the Directorate of Revenue Intelligence, Chennai ('DRI') alleged that the Petitioner had incorrectly claimed SEIS benefit by misclassifying their services.
- The DRI subsequently issued a show cause notice ('SCN') proposing confiscation of goods under Section 111(o) of the Act that were imported by use of SEIS scrips and recovery of the duty exempted, under Section 28AAA of the Act.

- The Petitioner was also issued notices by the DGFT proposing cancellation of Import Export Code and SEIS scrips, as also it was placed in the Denied Entity List. However, these notices and order were later withdrawn by the DGFT.
- The Petitioner in these circumstances filed a writ petition before the Madras High Court ('the Court') challenging the SCN issued by the DRI.

Contentions of the Petitioner

- Circular No. DOF No. 334/1/2012-TRU ('Circular') provides that action for recovery of duty can be initiated under Section 28AAA of the Act only if DGFT / concerned regional authorities initiates action for cancellation of an instrument (scrips in the present case). However, the SCN's issued by the DGFT were subsequently withdrawn and effectively no such proceedings have been initiated for cancellation of scrips by the DGFT, therefore the SCN of the DRI is without jurisdiction.
- The provisions contained in Section 28AAA of the Act provide for recovery of duties only in case of collusion; or wilful misstatement; or suppression of facts. The SEIS scrips were issued to the Petitioner after due verification of the application form and supporting documents, and there were no valid

¹TS-679-HC-2023(MAD)-CUST



proceedings by the DGFT challenging the legality of the SEIS scrips. Thus it was considered that the actions of the DRI and its SCN was legally not maintainable.

Contentions made by the Revenue Department

- The Petitioner obtained the SEIS scrips by wilfully mis-stating the foreign exchange remittances as received against freight transport agency services.
- Section 28AAA of the Act is enabled to make recovery of Customs Duty, since the Customs Notification grants the exemption qua SEIS Scrips. If Section 28AAA of the Act can be invoked only pursuant to the actions of the license issuing authority, then the very purpose of the said section will become redundant.
- Reliance was placed on the decision of Apex Court in the case of **Commissioner of Customs, Hyderabad v. Pennar Industries Limited**² wherein it was held that the Customs department will assume jurisdiction, as the responsibility of the DGFT was limited to the issuance of the advance license, however it was the customs authority that was responsible to verify whether the imported goods met the actual user condition, in terms of the advance license.
- Accordingly goods are liable for confiscation under section 111(o) of the Act since SEIS scrips are used for the payment of customs duty at the time of import of goods.

Judgment

The Court held that the SCN is not in accordance with the Circular read with Section 28AAA of the Act and so, by quashing and setting aside the SCN issued by the DRI, the court allowed the writ petition, and directed refund of the amount paid during investigations.

In the judgment the Court observed as follows:

- DGFT is the proper authority to issue the SEIS scrips and has issued the present scrips after

considering the eligibility and fulfilment of conditions.

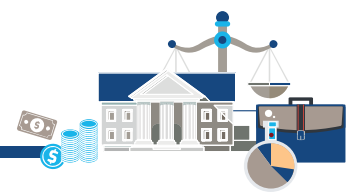
- Referring to the Circular, the Court observed that proceedings can be initiated by the DRI in the event action is initiated by the DGFT, but the DRI cannot pass any final order until the cancellation of the scrips by the DGFT.
- The SCN is issued in contradiction to the Circular, since there are no proceedings, at present, by the DGFT for cancellation of the scrips (the notices of the DGFT were withdrawn and as on date there is no action for cancellation of the issued scrips by the DGFT).
- The principle laid down in the case of **Pennar Industries Ltd (Supra)** would not be applicable to the present case, as the facts of the case in **Pennar (Supra)** concern the violation of exemption notification that explicitly distinguishes the duties of DGFT and customs authority, whereas the present case is concerned with Section 28AAA of the Act.
- The court relied on the decision of Hon'ble Supreme Court in the case of **Titan Medical Systems Pvt. Ltd. v. Collector of Customs, New Delhi**³ which declared the law that once an advance license was issued and not questioned by the licensing authority, the customs authorities cannot refuse exemption, and if there was any misrepresentation, it was for the licensing authority (DGFT in the present case) to take steps in that behalf and, not the customs authorities.
- The Court ordered for refund of the amount paid by the Petitioner, during investigation and otherwise, along with appropriate interest, within eight (8) weeks from the date of the order.

Dhruva Comments

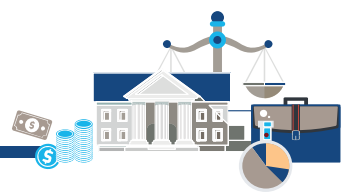
Considering the investigations initiated by the DRI for scrips issued in the past, across different sectors/industries, this order clarifies the law and is a relief to parties to whom the SEIS was issued.

²(2015) 10 SCC 581

³ 2003 (151) E.L.T. 254 (S.C.)



The Court has reinforced the view that unless and until the issuing authority (in this case the DGFT) initiates proceedings to cancel the license/scrips, the custom authorities cannot initiate recovery of customs duty. In other words, the customs authorities cannot determine the validity of the license and scrips issued by the DGFT, since it is not within their jurisdiction.





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