HCUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 12023 of 2018

[Arising Out Of OIA-AHD-CUSTM-000-APP-028-18-19 Dated-25/04/2018Passed By Commissioner of CUSTOMS-AHMEDABAD]

Isgec Heavy Engineering Ltd **.....Appellant**
Plot -Z/89, Sez-Ii, DAHEJ,
GUJARAT

VERSUS

C.C.-Ahmedabad **.....Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri. Vishwanathan, Shri. Manish Jain & Ms. Shruti Khanna, Advocates for the Appellant
Shri. Rajesh Nathan, Assistant Commissioner (AR) for the respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO.A / 11897 /2023

DATE OF HEARING:17.08.2023
DATE OF DECISION: 11.09.2023

SOMESH ARORA

Brief facts of the case are that the appellant is engaged in manufacturing heavy machinery falling under Chapter 84 of Customs Tariff Act, 1985. It filed a bill of entry No.485 dated 30.7.2012 for import / procurement of imported capital goods viz. Plate Bending machine Model HDR-HY-3500-5000 consisting of three rollers, mobile control panel, air cooler. CNC control unit and all related complete items and accessories falling under Chapter heading 84622990 of CTA, 1985, to its sister concern

unit viz. M/s ISGEC Heavy Engineering Ltd Plot No. 13-B, GIDC, Dahej (DTA buyer) in terms of Rule 48(1) of the Special Economic Zone Rules, 2006, read with Section 30 of the SEZ Act, 2005 against Release Advice No.4 dated 6.7.2012 issued by Assistant Commissioner of Customs, New Customs House (EPCG Section) Mumbai against EPCG licence no.0530158560 dated 15.6.2012 issued in the name of M ISGEC Heavy Engg. Ltd., Plot No.13-B, GIDC, Dahej (DTA Buyer). The said bill of entry was provisionally assessed under which the subject capital goods/ machineries were removed to EPCG licensee (license no.0530158560/2/11/00 dated 15.6.2011 holder in DTA to their sister concern M/s ISGEC Hitachi Ltd, Dahej Unit. The subject capital goods were imported vide Bill of entry No.DSEZ/013/2011-12 dated 20.6.2011 in the SEZ unit from Switzerland by M/s Saraswati Industries Syndicate Ltd, Plot No.Z-89, SEZ, Dahej. The assessable value of said capital goods was taken as Rs.218083271/- and total duty forgone was amounting to Rs.52140999/- and Bill of entry was assessed on 20.6.2011.

2. The clearance of the said capital goods under EPCG scheme was allowed under provisional assessment as per provisions of SEZ Act/Rules. The department's case was that appellant has not exited from Special Economic Zone and they were not eligible for clearing the capital goods under the prevailing Export Promotion Capital Goods Scheme, as removal of capital goods from SEZ unit under EPCG is only available as per the Rule 74(4) of the SEZ Rules, 2006. Therefore, it is clear that there is no absolute bar on clearance of Capital goods from SEZ to DTA under EPCG, but following the condition that a Unit can opt for EPCG scheme only at the time of exit, as per SEZ Rules 2006 with one time permission from the Development Commissioner. Since the unit had not exited from the SEZ nor any such permission from the Development Commissioner was taken. Therefore, the capital goods cleared is in contravention to the provisions of

SEZ Act/Rules and hence liable to re-workout the value as per the provisions of the Section 30 of the Special Economic Zone Act, 2005 read with Rules 30, 34, 47(4) and 49(l) of the SEZ Rules, 2006. While finalizing the assessment of said provisionally assessed Bills if Entry the unit was asked to discharge the duty liabilities accordingly. Therefore, the appellant was required to pay full applicable Customs duty on the assessable value of Rs.218083271/- amounting to Rs.56379934/- in respect of the Capital goods cleared vide the said provisionally assessed BoE no.00485 dated 30.7.2012.

3. After due process of law, the lower authority ordered finalization of assessment and reassessed the duty vide BoE No.00485 dated 30.7.2012 and ordered to levy the duties amounting to Rs. 56379934 /-, in respect of the clearance of Capital goods from SEZ unit to DTA unit as per the provisions of SEZ Act/Rules along with applicable interest as per Section 18 of the Customs Act, 1962. The amount of Rs.6328957/- already paid against the BOE was appropriated and adjusted accordingly. On appeal the order of specified officer was upheld by Commissioner (Appeals). On appeal the order of specified officer was upheld by Commissioner (appeals)

4. Being aggrieved with the impugned order of Commissioner (Appeals) the appellant has filed the instant appeal on the below mentioned grounds and has contended, inter alia, that:

i. the order passed by the Commissioner (Appeals) is violative of the principles of natural justice as it is non-speaking order,

ii. the order has to set out reasons, and without reason the order is bad in eyes of law and relied on case laws:

a. ACCT, Kota vs Shukla Bros-2010(4)SC 785

b. Mangalore Ganesh Bedi Works vs CIT-2005(2)SC 329

C. Kranti Associates (P) Ltd vs Masood Ahmed Khan-2010(9)SC496

iii. the application of the Rules specifically to the facts of the case has been omitted in the impugned order and there is no finding against the submissions advanced by the appellant so violation of principles of natural justice and is liable to set aside;

iv the appellant is legally permitted to sell capital goods to a DTA buyer under an EPCG scheme;

v. there is agreement to the fact that the appellant had validly imported the Plate Bending machine for its authorized operations, however, there is no provisions under the SEZ Act, 2005 or SEZ Rules, 2006, which prohibits the sale of a capital goods held by an SEZ unit either to a buyer in the DTA or outside India:

vi that the department is incorrect in interpreting that the removal of capital goods under EPCG is only available as per Rule 74(4) of the SEZ Rules, 2004 i.e. only at the time of exit of a unit from SEZ and that there is a bar on otherwise claiming benefits under the EPCG scheme at the time of clearance of goods into the DTA; as none is specifically mentioned.

vii. `Sale of plate bending machine into the DTA is to be considered as an import of capital goods into India; Import of capital goods into India can avail the benefits of EPCG scheme provided at Chapter 5 of the FTP:

viii. liability to pay duty upon removal of such goods is on the DTA buyer as the Bill of Entry for Home consumption is to be filed by the buyer of the goods;

ix. bond cannot be enforced against the appellant SEZ unit as under the law it is not liable to pay any duty for clearance of goods to the DTA; appellant being seller of goods is not liable to pay duty as it is not the importer on record; it is DTA unit which has procured the EPCG authorization; so DTA unit has to pay duty and interest;

x. SEZ authorities erred in issuing SCN to the appellant, the impugned order confirmed the recovery of customs duty after denial of benefit to the DTA buyer under the EPCG authorization; the EPCG authorization issued to the appellant is perfectly valid and neither withdrawn nor cancelled by DGFT, there cannot be a demand of duty from the SEZ authorities:

xi. the EPCG authorization is valid and not cancelled by the appropriate authority, the customs authority cannot challenge the validity of the same under proceedings initiated under Section 28 of the Customs Act, therefore, the impugned order is liable to be set aside on this ground also.

5. During the course of hearing, Appellants emphasized the following grounds:-

THE SEZ UNIT OF THE APPELLANT IS LEGALLY PERMITTED TO SELL THE IMPUGNED GOODS TO THE DTA BUYER UNDER EPCG AUTHORIZATION.

A.1. SEZ law itself envisages the sale of capital goods from a SEZ Unit to DTA- Section 30 of SEZ Act read with Rules 47, 48 and 49 of SEZ Rules deals with provisions relating to domestic clearance of goods by SEZ units. The said provisions mention that any goods (including capital goods) can be removed from an SEZ to DTA, subject to the conditions specified in SEZ Rules and upon payment of applicable duties which were otherwise payable at the time of import. Thus, the statute, specifically the aforementioned Section and Rules, itself envisages sale of capital goods from a SEZ Unit to DTA. Hence, the Appellant is legally permitted to sell the impugned goods from its SEZ Unit to its DTA unit.

A.2. It is further noted that multiple judicial decisions have already held that Section 30 creates a deeming fiction whereby goods cleared into the DTA from an SEZ shall be chargeable to the same duty as in the situation of actual imports. This means that any clearance into the DTA shall be at the

same effective rate of duty as in the situation of import, meaning thereby that exemptions available at the time of import shall also be available to a DTA buyer. Reference is made to the following judicial decisions:

- ***Adinath Trade Link Vs. Commissioner of Customs, Kandla, [2013 (293) E.L.T. 746 (Tri. - Ahmd.)]*** Maintained by the Hon'ble Gujarat High Court in ***[2015 (315) ELT 359 (Gujarat High Court)]***

Adani Power Ltd. vs Union of India 2015 (330) ELT 883 (Guj) Maintained by

- the Hon'ble Supreme Court in ***[2016 (331) E.L.T. A129 (S.C.)].***

A.3. It is submitted that identical propositions relating to the payment of effective duty have also been discussed in the following judicial decisions and circulars:

- ***CBEC Circular issued vide F. No. 81/65/87-CX.3 dated 02.11.1989;***
- ***Plastics Processors Vs. Union of India, [2002 (143) E.L.T. 521 (Del.)];***
- ***Jain Irrigation Systems Ltd. Vs. Commissioner of Central Excise, Nasik, [2008 (221) E.L.T. 531 (Tri. - Mumbai)];***
- ***Premier Rubber Factory Vs. CCE, [1990 (47) E.L.T. 125 (Tribunal)].***

A.4. Further, it has been settled by the Hon'ble Supreme Court in the case of ***Government of Kerala Vs. Mother Superior Adoration Convent, [2021 (376) E.L.T. 242 (S.C.)]*** that beneficial exemptions or policies which have been introduced in order to promote or encourage certain activities should be liberally interpreted. In view of the judgment, it can be

inferred that no bar should be read into the beneficial policy in order to restrict the availment of such benefit. Further, in the case of ***K.R. Steel Union Ltd. Vs. Commissioner of Customs, Kandla [2001 (129) E.L.T. 273 (S.C.)]***, the Hon'ble Supreme Court has held that the language of a beneficial notification (or legislation in the present case) have to be construed keeping in view the said object and purpose of the exemption. Thus, as the SEZ law has been introduced with an aim to boost the country's economy and to encourage exports in order to bring in more foreign investment, in such a case, upon application of the above judgment it is clear that the scheme provided in SEZ Act read with SEZ Rules should be construed beneficially and no bar should be read into the language of the law in order to restrict the benefit available to it. Thus, when the SEZ law itself envisages sale of capital goods from SEZ into DTA, the Ld. Commissioner (Appeals) cannot question the same.

6. **Rule 74 does not provide that EPCG benefit is only available at the time of exit from the SEZ Scheme**- Rule 74 of SEZ Rules states that a unit exiting SEZ is liable to pay all applicable duties on imported goods. Further, Rule 74 (4) mentions that the Development Commissioner can give an option to the SEZ unit to avail of EPCG Scheme at time of clearance, provided the SEZ unit is otherwise eligible to avail the benefit of EPCG Scheme. Thus, it can be interpreted that the intention of the government for providing Rule 74 (4) was to extend the opportunity to an SEZ unit to avail benefit under EPCG scheme at the time of exiting SEZ scheme.

6.1. Further, nowhere in Rule 74 has it been stated that that the benefit of EPCG scheme is only available at the time of exit of the SEZ Unit from the SEZ scheme. It is a settled law that taxing statutes have to be strictly and literally construed and no condition absent therein can be read into it. Hence, the contention of the Ld. Commissioner (Appeals) at para 9.2 of the

impugned order that removal of capital goods under EPCG is only available at the time of exit of a unit from the SEZ is completely incorrect.

DTA buyer can obtain an EPCG Authorization to indigenously procure capital goods- As per Rule 47 of the SEZ Rules, removal of goods (which have not been subjected to any manufacturing process) to DTA is governed by relevant Foreign Trade Policy ("**FTP**"). This rule creates a deeming fiction that such goods are being imported into India. Thus, it is established that the intention of the legislature vide SEZ law was to allow a SEZ unit to sell its goods to DTA, subject to compliance with FTP. Further, under Para 5.5 of Handbook of Procedure ("**HBP**") a DTA buyer can obtain an EPCG Authorization to indigenously procure capital goods. In the present case, the impugned goods have not undergone any manufacturing process, hence, the same can be sold to DTA unit of the Appellant having an EPCG Authorization. Thus, there has been no violation of SEZ law by the Appellant.

DEMAND FOR CUSTOMS DUTY AND INTEREST IS ILLEGAL AND IS LIABLE TO BE SET ASIDE

Duty and interest cannot be demanded by the SEZ Unit- Rule 48 (1) of SEZ Rules states that it is the duty of a DTA unit to file Bill of Entry for home consumption of goods being cleared from a SEZ unit. In the present case, SEZ Unit and DTA Unit of the Appellant operate as two separate entities in terms of Rule 22 of SEZ Rules. Further, the impugned goods the BoE was filed by the DTA Unit of the Appellant for clearance of the impugned goods. Hence, the importer on record was the DTA Unit and therefore the duty liability was on the DTA Unit. Thus, in such a case, no demand of duty could be made against the SEZ Unit. Therefore, findings of the Ld. Commissioner (Appeals) at para 10 of the impugned order that the SEZ Unit of the Appellant was liable to pay customs duty as it had entered a bond under Rule 22 to pay all duties on DTA clearances in terms of the SEZ Act, is

untenable.

7. Without prejudice, duty and interest cannot be demanded from the DTA Buyer- Section 30 of SEZ Act provides that goods which are cleared from SEZ unit to DTA, shall be *inter alia* chargeable to "duties of customs", as leviable on such goods when imported. Thus, Section 30 creates a legal fiction whereby DTA buyer of goods is liable to pay customs duty in a manner as if the goods are being imported into India. In such a case, a DTA Buyer can avail the benefit of all exemptions which would otherwise be available at the time of import.

8. In the present case, the impugned goods have been cleared by the DTA unit under EPCG Authorization, upon payment of concessional 3% customs duty under Customs Notification No. 103/2009 dated 11.09.2009[1] ("**Exemption Notification**"). This Exemption Notification is anyway applicable for import of capital goods by any EPCG Authorization holder. Hence, in such a case, no duty or interest can be demanded from the DTA Unit as it has paid the applicable customs duty under the Exemption Notification. In this regard, reliance is being placed on the following cases wherein benefit of an exemption notification is allowed to a DTA buyer in terms the deeming fiction created by Section 30 of the SEZ Act:

- ***Adinath Trade Link Vs. Commissioner of Customs, Kandla, [2013 (293) E.L.T. 746 (Tri. - Ahmd.)];*** Maintained by the Hon'ble Gujarat High Court in ***[2015 (315) ELT 359 (Gujarat High Court)]****and*;
- ***Precision Polyplast P. Ltd. Vs. Commissioner of Cus. (Port), Kolkata, [2016 (344) E.L.T. 977 (Tri. - Kolkata)].***

8.1 Further, the Supreme Court in the case of ***Commissioner of C.Ex., Daman Vs. Sahajanand Technologies Pvt. Ltd., [2015 (325) E.L.T.625 (S.C.)]*** has held that Section 3 of the Central Excise Act, 1944 creates a

legal fiction that clearances from 100% EOUs are to be treated at par with imports and therefore DTA clearance of capital goods to EPCG units by EOUs is permissible by payment of concessional rate of duty under the EPCG exemption notifications. Similar legal fiction is being created by Section 30 of SEZ Act. Similarly, in the case of ***Semco Electric Pvt. Ltd. Vs. CCE, Goa, [2019 (370) E.L.T. 1052 (Tri.-Mumbai)],*** the hon'ble tribunal has held that an EOU unit is authorized to sell capital goods in DTA after payment of applicable duties subject to compliance of Customs Procedures. Now, since EOUs and SEZs work essentially on similar principles, these judgments will be equally applicable in the present case. Hence, in view of the above, no duty can be demanded by the DTA buyer.

9. No duty can be demanded as the DTA buyer has fulfilled its Export Obligation under the EPCG Authorization: Under the EPCG Scheme, capital goods are allowed to be imported at concessional rate of duty. In lieu of the concessional rate of duty, the EPCG Authorization Holder has to fulfil its Export Obligation ("**EO**") fixed by the DGFT Authorities. In case where an EPCG Authorization holder fails to fulfil its EO after expiry of EO period, the Customs Authorities can demand differential duty saved and penalty from the Authorization holder. In the present case, it is pertinent to mention that the DTA Unit has fulfilled 100% of EO and received a Redemption Certificate from the jurisdictional DGFT authority on 12.10.2021. Thus, as the DTA buyer has fulfilled the EO in lieu of concessional duty during import, no differential duty can be demanded from the DTA Buyer.

MISCELLANEOUS SUBMISSIONS:

10. The impugned order is a non-speaking order – The impugned order does not provide any reasoning against various submissions made by the Appellant and is violative of principles of natural justice and thus the same is liable to be set aside.

Customs authorities cannot sit in judgment over the decision of DGFT to grant benefit under the Foreign Trade Policy- The EPCG Authorization is granted by DGFT authorities after due procedure and verification. The EPCG Authorization granted to the DTA Unit of Appellant has not been cancelled or withdrawn by DGFT Authorities. In such a case, the finding of Ld. Adjudicating authority (as confirmed by the impugned order) that clearance of goods from SEZ Unit to DTA unit of Appellant under EPCG Authorization was per se an illegal act and violative of SEZ law is erroneous and untenable.

11. The following provisions as found relevant were referred by the appellants:-

Section 30.- Subject to the conditions specified in the rules made by the Central Government in this behalf:-

(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

Section 51. -(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being

in force or in any instrument having effect by virtue of any law other than this Act.

Rule 25 of SEZ Rules, 2006 (Non-Utilization of Goods): Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise cess and concessions availed without prejudice to any other action under the relevant provisions of the Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulate Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the Fes Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.

Rule 34 of the SEZ Rules, 2006 (Utilization of goods)- The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption:

Provided that in case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the

same to other Unit or to an Export Oriented Unit or Election Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Une without payment of duty, or dispose off the same in the Domestic Tariff Area on payment of applicable duties on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable

Rule 47(4) of SEZ Rule, 2006 (Sales in Domestic Tariff Area) - Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder.

Rule 48 of SEZ Rules, 2006 (Procedure for Sale in Domestic Tariff Area)-

(1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or service namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers:

Provided that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.

Rule 49(1) of SEZ Rules, 2006. (Domestic Tariff Area removals - abatement of duties in certain cases)

(1) A Unit may remove capital goods to Domestic Tariff Area after use in Special Economic Zone payment of duty as under-

(a) duty shall be levied on such goods on the depreciated value thereof and at the rate in force at the date of removal of the goods;

(b) depreciation in value shall be allowed for the period from the date of commencement of production or where such capital goods have been received in the Unit after such commencement of production from the date such goods have been put to use for production till the date of presentation of Bill of Entry for home consumption;

Rule 74(4) of SEZ Rules, 2006 (Exit of Units)

(4) Development Commissioner may permit a Unit, as one time option, to exit from Special Economic Zone on payment of duty on capital goods under the prevailing Export Promotion Capital Good Scheme under the Foreign Trade Policy subject to the Unit satisfying the eligibility criteria under that Scheme.

12. In response to various submissions by the appellant AR submitted that Commissioner (Appeals) has correctly found that since the appellant has not exited from Special Economic Zone, they were not eligible for clearing the capital goods under the prevailing Export Promotion Capital Goods Scheme, as removal of capital goods from SEZ unit under EPCG is only available as per the Rule 74(4) of the SEZ Rules, 2006. On scrutiny of the relevant Sections and Rules of SEZ, it is explicitly clear that there is no bar on clearance of capital goods from SEZ to DTA under EPCG, but following the condition that a unit can opt for EPCG scheme only at the time of Exit, as per SEZ Rules, 2006 with one time permission from the Development Commissioner. Since the Unit had not exited from the SEZ nor any such permission from the Development Commissioner was taken therefore, the capital goods cleared are in contravention of the provisions of the SEZ Act/Rules and hence liable to re-workout the value as per provisions of

Section 30 of SEZ Act, 2005 read with Rules 30, 34, 47 (4) and 49 (1) of SEZ Rules, 2006.

13. The D.R. also argued that Commissioner (Appeals) rightly rejected that bond can be enforced against the appellant if goods including capital goods are cleared for any purpose other than for which they were obtained till the time SEZ has not exited from Special Economic Zone, so they were not eligible for clearing the capital goods under the prevailing Export Promotion Capital Goods Scheme, as removal of capital goods from SEZ unit under EPCG is only available under Rule 74(4) of the SEZ Rules-2006. Learned Commissioner (Appeals) also found that the appellant had submitted a bond-cum- undertaking under Rule 22 of the SEZ. Rules- 2006 and have undertaken to fulfill the conditions of the bond-cum-undertaking and the condition no.9 of the bond-cum-undertaking is as under:

> *"9 We, the obligors shall pay the duties on the goods and services sold in Domestic Tariff Area In terms of Special Economic Zones Act, 2005 and the rules and orders made there under".*

13.1 In view of the above, it is found that the appellant had violated the conditions of the bond cum-undertaking in as much as they have cleared the capital goods under EPCG scheme, without paying appropriate Customs duty and have violated the provisions of the SEZ Rules, 2006, since the Unit had not exited from the SEZ nor any such permission from the Development Commissioner was taken before clearance, therefore, the capital goods cleared are in contravention to the provisions of the SEZ Act Rules. And that the appellant has bound themselves to pay the duties on the goods and services sold in Domestic Tariff Ares (DTA) in terms of Special Economic Zone Act, 2005 and the rules and order made there so the bond-cum-undertaking is enforceable.

14. As per Rule 34 of the SEZ Rules, 2006, the goods admitted to the SEZ unit or the developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operation of the developer fails to account for the goods as provided under these rules, duty shall be charge on such goods as if the goods have been cleared for home consumption. That the appellant had removed the capital goods viz. " *Plate bending machine model HDR-HY-3500-5000" consisting of three rollers, Mobile Control Panel, Air Cooler, CNC Contril WWIL all* related complete items and accessories" under EPCG scheme under licence no.0530158560/2/11/00 dated 15.6.2011, to their sister concern M/s ISGEC Hitachi Ltd which were cleared provisionally on payment of customs duty at concessional rate @ 3% only and appropriate Customs duty was not discharged. That Rule 49(1) of the SEZ Rules, 2006, stipulates that Development Commissioner may permit a Unit, as one time option, to exit from Special Economic Zone on payment of duty on capital goods under the prevailing Export Promotion Capital Goods Scheme under the Foreign Trade policy subject to the Unit satisfying the eligibility criteria under that Scheme. Since the SEZ unit has not exited from Special Economic Zone, they were not eligible for clearing the capital goods under the prevailing Export Promotion Capital Goods Scheme. That there is no bar on clearance of Capital goods from SEZ to DTA under EPCG, but following the condition that a unit can opt from the Development Commissioner. Since the Unit had not exited from the SEZ nor any such permission from the Development Commissioner was taken, therefore, the capital goods cleared are in contravention to the provisions of the SEZ Act/Rules and hence, liable to re-workout the value as per provisions of Section 30 of SEZ Act, 2005 read with Rules 30, 34, 47 (4) and 49 (1) of SEZ Rules, 2006.

15. Considered the rival submissions. In this context, it needs to be appreciated that under the provisions in which SEZ Scheme operates, under Section 30 of the SEZ Act, 2005, terms of removal of goods from SEZ to DTA on payment of Customs duties on the rate of duty and tariff valuation on the date of removal has been provided. Further, under Rules made to carry out the provisions of SEZ Act, 2005 i.e. S.E.Z Rules, 2006, under Rule 34 there is a prescription available that goods admitted in SEZ shall be used only for approved operations i.e. which is permitted through LOP by the Unit Approval Committee under Rule 49(1) of the SEZ Rules, 2006. Capital goods are allowed to be removed in DTA after use in a Special Economic Zone on payment of duty and depreciated value counted from the date commencement of production Rule 74 (4) SEZ rule,2006 . This is a special provision for the exiting units through which Dev. Commissioner has been allowed to permit the unit as one time option to exit from SEZ on payment of duty on capital goods into prevailing EPCG Scheme under the Foreign Trade Policy subject to eligibility criteria under the EPCG Scheme. The process of exiting is commonly known as de-bonding. The appellants are seeking to rely upon this provision relating to de-bonding to plead, that they can at any time on payment of duty under Rule 34 clear the goods under EPCG Scheme and not necessarily at the time of exit or de-bonding. We are unable to agree with such proposition and if the same is accepted, it will render the expression "as one time option, to exit from Special Economic Zone on payment of duty on capital goods under the prevailing export motion capital good scheme" in Rule 74 (4) redundant or otiose, we have therefore to make every word operative rather than making any null, while interpreting the statute. Maxim 'ut res magis valeat quam pereat' will apply as aid to interpretation. It is thus, clear that the SEZ rules have made exiting of capital goods under the EPCG Scheme as one time option. Therefore, during the currency of the operations of an SEZ, while it is

allowed to remove goods including capital goods to the DTA area, the same can normally be on applicable customs duty and not under EPCG Scheme. When the legislature has made a special provision by mentioning a particular export promotion Scheme to be availed only at the time of exit, same cannot be allowed to be freely availed at any time under a provision in which there is no prescription of capital goods to be cleared under EPCG Scheme is available. In this context, we are fortified in interpreting the provision of statute by the trite law that when a method has been laid down, , it necessarily prohibits the doing of the act in any other manner than that which has been prescribed, and thus, the prohibition in other provision not being mentioned specifically will not apply. In Taylor v. Taylor ((1875) 1 Ch D 426), as notably followed in Nazir Ahmed v. King Emperor [AIR 1936 PC 523] and a plethora of judgments of the Supreme Court, the most well-known being, perhaps, State of Uttar Pradesh v. Singhara Singh [AIR 1064 SC 358], conclude the issue, in law, in favour of the department. The legal principle, fossilised over a period of time, is thus enunciated, in Singhara Singh [AIR 1964 SC 358]

> *"8. In Nazir Ahmed's case [AIR 1936 PC 523] the Judicial Committee observed that the principle applied in Taylor v. Taylor [(1875) 1 ChD 426) a Court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that or nor at all and that other methods of performance are necessarily forbidden, applied to judicial officers making records under s. 164 and, therefore, held that magistrate could not give oral evidence of the confession made to him which he had purported to record under s. 164 of the Code. It was said that otherwise all the precautions and safe guards laid down in Sections 164 and 364, both which had to be read together, would become of such trifling value as to be almost idle and that it would be an unnatural construction to hold that any other procedure was permitted than which is laid down with such minute particulanty in the section themselves."*
>
> *9. The rule adopted in Taylor v. Taylor (1875) 1 Ch D 426] is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The*

principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted."

Therefore in the present instance, stipulation of one time availment of EPCG Scheme at the time of exit cannot be read as permitting availment of EPCG Scheme under Rule 34 of SEZ Rules, 2006. Particularly under expression "on license" appearing in that Rule.

16. Further the Export Promotion schemes since 1994 after existence of W.T.O are being made by member countries as compliant to the W.T.O provisions requiring no element of subsidy to be allowed even entering through procedural mechanism. Switchover thus from one scheme to another of capital goods needs to be construed strictly through specific mandate of the legislature and not liberally. We find that E.P.C.G. till exit from SEZ unit is not available, nor has appellant produced any such mandate or opinion from administrative authorities like Dev. Commissioners approving such availment by customs. We are, therefore inclined to uphold the order of Commissioner (Appeals), which we find has dealt correctly with the issue.

17. In view of foregoing, we find that no merit in this appeal, accordingly dismissed the same.

(Pronounced in the open Court on 11.09.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi