

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Customs Appeal No. 85721 of 2020

(Arising out of Order-in-Original No. 06/2020-21/CAC/CCIMP-II/LL dated 05.06.2020 passed by the Commissioner of Customs (Imp-II), Mumbai)

Wellknown Polyester Ltd.

.....Appellant

210/3, 213/2-4, 214/1-3, 215, 216/1-7, 216/4B

Dabhel Inds. Coop Soc Ltd.

Dabhel, Daman

VERSUS

Commissioner of Customs (Imp-II),

.....Respondent

New Custom House,

Ballard Estate, Mumbai

APPEARANCE:

Shri Suyog Bhawe, Advocate for the appellant

Shri S.K. Hatangadi, (AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/85968/2023

DATE OF HEARING : 02.01.2023

DATE OF DECISION : 19.06.2023

Per: AJAY SHARMA

These appeals have been filed from the impugned Order-in-Original dated 5.6.2020 passed by the Commissioner of Customs confirming the duty demanded in the show cause notice towards Education Cess and Secondary Higher Education cess alongwith applicable interest.

2. The issue involved herein is whether the Education Cess and Secondary Higher Education cess can be debited through MEIS/SEIS scrips in view of clarification issued vide Board's Circular No.02/2020-Cus. dated 10.01.2020?

3. The facts leading to the filing of the instant appeal are stated in brief as follows. The appellant is engaged in manufacture of polyester filament yarn and for the purpose of manufacturing they import MEG and other trading items. In respect of the Bills of Entry filed they discharged the basic customs duty (BCD), Social Welfare Surcharge (SWS), Education Cess and Secondary & Higher Education Cess through duty credit scrips issued under the *Merchandise Export from India Scheme (MEIS)* in terms of notification No. 24/2015-Cus. dated 8.4.2015. During the period December, 2017 to October, 2019 they debited MEIS scrips for discharging Social Welfare Surcharge amount of Rs.48,42,471/- and also for discharging Education Cess and Secondary & Higher Education Cess amount of Rs.5,59,278/- for the period December, 2017 to February, 2018. According to revenue, notification No. 24/2015 which has been relied upon by the appellant for discharging through MEIS scrips permits utilization of those scrips only for payment of BCD and accordingly a show cause notice dated 21.11.2019 was issued to the appellant demanding the amounts of Rs.48,42,471/- towards Social Welfare Charge and Rs. 5,59,278/- towards Education Cess and Secondary & Higher Education Cess which has been paid by the appellant by utilizing

the MEIS scrips alongwith applicable interest. Learned Commissioner vide impugned Order-in-Original dated 5.6.2020 dropped the demand of Rs.48,42,471/- qua Social Welfare Charge by relying upon the clarification issued vide C.B.I.&C. circular No. 02/2020-Cus.dtd. 10.01.2020 but confirmed the demand of Rs.5,59,279/- towards Education Cess and Secondary & Higher Education Cess alongwith applicable interest as the same has not been paid in cash but debited through MEIS/SEIS scrips.

4. I have heard learned counsel for the appellant and learned authorised representative on behalf of revenue and perused the written submissions alongwith case laws placed on record by the learned counsel. Payment of Social Welfare Charge through debiting MEIS/ SEIS scrips has been accepted by the learned Commissioner by relying upon the Board's Circular (surpa) but for Education Cess and Secondary & Higher Education Cess it has been held that these are not covered by the aforesaid clarification and have to be paid in cash only, whereas according to learned counsel the Hon'ble High Court of Judicature at Madras on identical issue in the matter of *KTV Health Food Pvt. Ltd. vs. Commr. of Cus. (Preventive), Tiruchirapalli; 2022 (381) ELT 66 (Mad.)* while extending the benefit of the Board's clarification dated 10.1.2020 (supra) has held that the benefit of the Board's circular cannot be denied to the importer on the ground that Education Cess is different component from BCD. I have also gone through the aforesaid decision of the Hon'ble

High Court and the relevant paragraphs of it are reproduced as under:-

"25. When that being the statutory declaration made by the Act of Parliament i.e., the Finance Act, 2004 and 2007, we cannot have any different view to state that there were different components. What is the duty to be imposed on the imported goods first be calculated and accordingly, 2% of education cess and 1% of secondary and higher education cess shall be levied and imposed. Hence, when the importer pay the duty, he shall also pay the cess which become part and parcel of the duty of customs. That is the reason why the total amount of Rs. 22,88,86,212/- were paid by the petitioner as duty of customs as well as education cess through the scrips of MEIS. Having accepted the same, though subsequently, in view of the notifications, if the Customs Department come forward to take a stand that the mode of payment of the education cess even though being part of the customs duty, shall not be on the same line by using the scrip, such kind of payment can be insisted upon, provided only in future cases and not in the cases where it has already been paid and where the goods have been cleared. This was exactly been made in execution by Circular No. 2/2020, dated 10-1-2020.

26. When such a circular was issued by the Customs Department and the same having been implemented in respect of various people like the petitioner, the benefit of the said circular cannot be denied to the petitioner on the alleged reason that, the education cess or the higher and secondary education cess being a different component cannot be treated as customs duty or additional customs duty and therefore, the benefit conferred under Clause 11 of the said circular cannot be made available to the petitioner. The said view taken by the respondent/Customs Department, in the considered opinion of this Court, in view of the aforestated legal position, is untenable and unacceptable.

27. *The quoting of the Hon'ble Supreme Court judgment in Unicorn Industries case is a wrong fitment of the citation, as the issue decided in the said case, in fact the principle enunciated in that case if it is culled out, certainly would support the case of the petitioner and not the respondent. Therefore, this Court has no hesitation to state that, the reasons stated in the impugned order rejecting to give the benefit under Circular No. 2/2020 is not supported by any legal basis. Therefore, the said reasons are unsustainable and therefore, based on such reason, since the rejection has been made through the impugned order, it is also equally unsustainable. Hence, it is liable to be interfered with.*

28. *In view of the aforesaid discussions, this Court is inclined to pass the following orders :*

"The impugned order is hereby quashed. As a sequel, there shall be a direction to the respondent to give the benefit of Clause 11 of Circular No. 2/2020, dated 10-1-2020 to the petitioner."

29. *With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed."*

In the aforesaid decision the Hon'ble High Court made it clear that benefit of the Board's circular dated 10.1.2020, which permits the payment of *basic customs duty or additional customs duty* through MEIS scrips by virtue of its clause 11, cannot be denied for education cess or higher and secondary education cess being a different component. The Hon'ble High Court while arriving at the conclusion has also taken note of the decision of the Hon'ble Supreme Court in the matter of *M/s. Unicorn Industries vs. UOI; 2019(370) ELT 3 (SC)* which has been relied upon herein by the learned Commissioner while

confirming the demand of Rs. 5,59,278/-. One more thing, the judgments of the Hon'ble Supreme Court as have been relied upon by the learned commissioner in the impugned order are of the period prior to issuance of Board's circular of 2020 and that circular was not in issue therein whereas the appeal herein mainly rests on the said circular.

5. Therefore according to me the issue involved herein is no more *res judicata* and in view of clause 11 of the Board's circular dated 10.1.2020, which permits the payment made through debit in duty credit scrips for past cases, there is no justification for insisting in cash payment towards education cess and secondary & higher education cess and accordingly the issue is decided in favour of the appellant herein. Resultantly the impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any.

(Pronounced in open Court on 19.06.2023)

(Ajay Sharma)
Member (Judicial)

//SR