

# **Genuine and bonafide cases should not be denied the benefit of concessional duty – Madras HC**

**10 June 2021**



## Summary

The Hon'ble Madras High Court, in a recent case, has held that any benefit of concessional rate of duty accruing to the petitioner cannot be denied through a non-speaking order that has not adverted to the justification put forth by the petitioner. Further, the opportunity must be provided to the petitioner for proving the factum of export.

## Facts of the case

- The petitioner<sup>1</sup> is engaged in supply of components of cars/automobiles. The petitioner had obtained licenses under the EPCG Scheme<sup>2</sup>. The said authorisation entitled the petitioner to import the goods at a concessional rate of duty with a condition and obligation to export eight times of the duty saved under each licence.
- The export obligation was not complied with, and the petitioner sought an extension against which an extension of two years was granted.
- Since, the FTP provisions allow petitioner to export either on his own or through third-party exports, petitioner mentioned that it effected the supplies to the third party<sup>3</sup> who in turn made the required exports.
- The EPCG authorisation number<sup>4</sup> and date shall be endorsed on shipping bills, which are proposed to be presented towards discharge of export obligation. However, EPCG authorisation number of the petitioner was not mentioned by the third party in the shipping bills. In this regard, the petitioner mentioned that it was not viable for the third party, who was making export of supplies received from multiple vendors under the same consignment, to mention the

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<sup>1</sup> M/s YSI Automotive India Pvt. Ltd. Vs Commissioner of Customs & others

<sup>2</sup> in terms of Foreign Trade Policy 2009-14 (FTP)

<sup>3</sup> M/s.Glovis India Ltd.

<sup>4</sup> As per para 5.7.1 of EPCG Scheme

EPCG authorisation numbers of all the vendors in the same shipping bill.

- Therefore, the petitioner filed an application before the Commissioner of Customs to seek amendment in the shipping bill with a further justification that the licences have been obtained on the basis of anticipated order from automobile dealers and the petitioner effected supply through third-party dealer who assembles the component as Completely Knocked Down (CKD) and export the goods.
- Assessing authority rejected the request of petitioner for concessional duty. Aggrieved by the order of the authority, petitioner filed writ petition before Hon'ble Madras High Court to seek relief.

#### Madras HC observations and ruling<sup>5</sup>

- **Opportunity must be granted:** Though, the requirement of stating EPCG licence number on the shipping bill is mandatory but if the requirements are capable of being

satisfied constructively, non-mentioning of the same is not fatal to the claim of concessional rate of duty. Hence, an opportunity must be granted to the petitioner to prove the factum of export through the third party by way of contemporaneous records.

- **Benefit not to be denied to genuine cases:** The Hon'ble High court further stated that genuine and bonafide cases should not be denied the benefit of concessional duty. The HC mentioned that the impugned order passed by the Commissioner of Customs denying the benefit of concessional rate of duty is a non-speaking order and has not adverted to the justification put forth by the petitioner and is therefore set aside.
- **Matter remanded back:** The HC remanded back the matter and the petitioner was further directed to appear before the Commissioner of Customs who shall, after hearing the petitioner and considering any material furnished by the petitioner in

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<sup>5</sup> 2021-TIOL-1043-HC-MAD-CUS

**support of its stand, pass a speaking order on the application filed within four weeks. Also, it has been ordered that the bank guarantee should not be invoked till the time decision is taken by the Commissioner of Customs.**

#### **Our comments**

**This is a welcome judgement, which may provide relief in similar other cases wherein benefit of concessional duty may have not been granted to the importers on account of bonafide practical errors/lapses. The judgement laid down the burden on supporting manufacturer to prove the transaction however, it specifically mentioned that even the mandatory requirements are capable of being satisfied constructively by any number of methods, including confirmations, correspondences, and other documents/records.**

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