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**PANDEMIC STRIKES EXPORTERS: CAPPING MEIS
BENEFIT – CAN COURTS COME TO RESCUE?**

Introduction

The news of GDP falling by 23.9% and Finance Minister justifying contraction of economy by using the phrase 'Act of God' has stormed the financial world. To close the gap of major resource crunch, the agony has been shifted to exporters, by victimizing Merchandise Exports from India Scheme ('MEIS').

MEIS is granted in the form of Duty Credit Scrips to offset infrastructural inefficiencies and associated costs relating to export of goods. Since introduction, MEIS has substantially benefited exporters and helped boost export of goods.

MEIS has been held as non-compliant with WTO guidelines. The Government is proposing to replace it with a new Scheme [viz. for Remission of Duties and Taxes on Exported Products ('RoDTEP')] in due course. To everyone's surprise, the Government on September 1, 2020 capped MEIS benefit to Rs. 2 crore per Importer Exporter Code ('IEC') on exports made during September to December 2020. The benefit may further be reduced on the basis of the overall allocation of Rs. 5,000 crore for this MEIS scheme.



Contrary to popular expectation for favorable policy measures to promote exports, this announcement came as a jolt to exporting community. One facet of Government promotes 'Atmanirbhar Bharat' by promoting exports, and other facet makes such policy amendments which has a direct hit on exporter's profitability.

This article will examine whether the cap on MEIS benefit is valid and the remedy available to exporters whose MEIS benefit is likely to exceed Rs. 2 crore.

Whether action taken by Government to cap MEIS benefit can be challenged?

Firstly, it is important to discuss whether Government even has the power to cap MEIS benefit?

The answer is Yes. Chapter 3 of the Foreign Trade Policy, 2015-20 ('FTP') which deals with MEIS scheme, provides special powers to Government, under paragraph 3.13, to limit total reward per IEC holder.

Now that we have discussed that action taken by the Government is permitted by FTP, the next question is whether such action can still be challenged before Court of law? The answer again is Yes. The basis of challenge is discussed in succeeding paragraphs:

Restriction is discriminatory

Minister of Commerce and Industry, Mr. Piyush Goyal, in a Press Release justified ceiling by saying that cap will not affect 98% of the exporters. Notably, 2% impacted exporters are the biggest exporters of India. Re-stating Government's words, the Government is fine with entire loss being borne by biggest exporters, whom the Government so heavily relies on bringing foreign exchange in India, who are Star Export Houses and Status Holders, and who should in fact be rewarded.

It makes no sense that all burden of Government's limited budget be borne by few, specifically those few who have brought / kept India on global trade map. In our view, the cap is discriminatory and violative of Article 14 and Article 19 of the Constitution of India.



Breach of Legitimate Expectation

Doctrine of Legitimate Expectation is defined by Karnataka High Court in ***Mind Tree Limited v. Union of India, 2013 (295) ELT 641 (Kar.)*** as a representation or promise made by an administrative authority including an implied representation or from consistent past practice that he will be treated in certain way even though he has no legal right in private law to receive such treatment.

In March 2020, when FTP was extended to March 2021, Government never hinted on capping MEIS benefit. Covid-19 was already in place. In fact, the Trade Notice issued in April 2020 only provided that MEIS will cease in December 2020. The precipitous cap on MEIS benefit on September 1, 2020 for September to December 2020 has violated the doctrine of legitimate expectation.

All exporters would have considered MEIS benefit to be available till December 2020 while obtaining export orders and while planning finances, expenses and profitability. With benefit being restricted immediately, exporters have certainly been taken off-guard, with no time to make any adjustments.

Absence of Public Interest

As pronounced by various decisions, public interest is an anti-dote to doctrine of legitimate expectation. Thus, one needs to closely analyze whether there is any public interest in capping MEIS benefit.

In our view, there is no larger public interest per se in limiting the cap for meeting the allocation of Rs. 5,000 crore. In the case of ***UOI v. Himsheel International, 2011 (273) ELT 495 (Del.)***, Delhi High Court set aside value cap in DEFB. The Court held that Government has failed to show that the concession has been withdrawn in public interest. Hence, in absence of any public interest, the cap on MEIS benefit is clearly invalid.

Concluding remarks

The MEIS benefit for FY 2019-20 was Rs. 45,000 crores. Exports are reported to be nearing pre-Covid levels. On this basis, the Government is denying Rs. 10,000 crores to exporters. Denying 2/3rd benefits to exporters definitely calls for intervention by the Courts.

With global sentiments of shifting manufacturing base outside China, India should have portrayed itself as a stable and safe option for setting up export hubs. Presently, quantum of MEIS is unknown, there is no clarity on RoDTEP scheme and fate of Service Export from India Scheme (SEIS) is also in dark. India does not look a comforting place for exporters. Let's hope India brings some good news for exporter community soon enough to regain their confidence.



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