

FTP benefits cannot be denied even if IEC obtained post rendition of services - Bombay HC

16 August 2022



Summary

The Bombay High Court (HC) has held that a service provider is not required to hold a valid Importer Exporter Code (IEC) at the time of rendering the services, for which benefit under the Service Exports from India Scheme (SEIS) is claimed. The condition prescribed as eligibility criteria under the Foreign Trade Policy 2015-2020 (FTP) has imposed additional restrictions of having an IEC number at the time of rendering services, which was not the intent or purport of the statute. The said condition is contrary to the provisions of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act), which provides that in the case of import or export of services, the IEC shall be necessary only when the service provider is taking benefit under the FTP. Therefore, the said condition is against the principal legislation, and consequently, it cannot be termed as of mandatory nature for availing benefits under the scheme.

Facts of the case

- The petitioner¹ is engaged in providing high-quality data services, i.e., market research services. Accordingly, such services fall under the list of services as per Appendix 3D, which are eligible for claiming benefit under the SEIS as introduced under the FTP.
- The petitioner tried to submit SEIS application online, which was not accepted on account of not having a valid IEC. The petitioner filed the application manually, which was not entertained by the Directorate General of Foreign Trade (DGFT) authorities. Therefore, the petitioner dispatched the application along with documents through the post.
- The petitioner had approached the Policy Relaxation Committee of DGFT, which rejected the petitioner's application stating that it should have held a valid IEC number at the time of the rendition of export services.

- The petitioner filed a review application, which was also disposed on similar grounds. Being aggrieved by said rejection, the petitioner has filed present writ² before the Bombay HC.

Bombay HC observations and ruling³:

- **Requirement of an active IEC for claiming benefit under SEIS:** In terms of eligibility criteria under the FTP⁴, the condition is of having an active IEC number at the time of rendering services for claiming reward. FTP being delegated legislation, it should be in conformity with the principal statute. In other words, by way of delegated legislation, additional rights or obligations cannot be imposed.
- **Holding an active IEC number at the time of import of export of services or technology:** As per the provisions of FTDR Act⁵, it is mandatory to hold an IEC for making import or export of goods. However, in case of import or export of service or technology, IEC is

¹ M/s Smarte Solutions Private Limited.

² Writ Petition No. 503/2021

³ Vide order dated 27 July 2022

⁴ Clause 3.08(f) of the FTP

⁵ proviso to section 7 of the Foreign Trade (Development and Regulation) Act, 1992

necessary only while taking benefit under any schemes under the FTP.

- **FTP has imposed additional restrictions for eligibility:** The eligibility criteria of the FTP has imposed additional restrictions on having an IEC number at the time of rendering services, which was not the intent or purport of the statute. Therefore, the said condition is against the principal legislation and, consequently, it cannot be termed of mandatory nature for availing benefits under the scheme.
- **Petition allowed:** The HC allowed the petition and directed the authorities to consider the petitioner's application without insisting for an active IEC number at the time of rendering services.

Our comments

The Supreme Court⁶ had held that delegated power to legislate by making rules is for carrying out the Act's purposes as a general delegation without laying down any guidelines. It cannot be so exercised as to bring substantive rights or obligations, or disabilities not contemplated by the provisions of the Act itself. In another ruling, the SC⁷ has held that the rules must be consistent with the parent law under which power has been derived.

The present ruling is in line with the above rulings. It reiterates that condition prescribed should be consistent with the statute and should not exceed the authority under which delegation has been made. This is a welcoming ruling and is likely to set precedence in similar matters.

⁶ Kunj Behair Lal Butail and others

⁷ Supreme Court Employees Welfare Association

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