

# TAX FLASH NEWS

7 January 2020



## Social Welfare Surcharge liability to be paid in cash and not by debiting the MEIS/SEIS scrips – Madras High Court

### Background

The High Court of Madras<sup>1</sup> has recently held that, Social Welfare Surcharge (SWS) is an independent levy and accordingly the same is required to be discharged in cash and cannot be discharged by debiting the MEIS / SIES scrips.

### Facts of the case

The Petitioner had imported certain goods against MEIS and SEIS scrips, wherein duty and SWS were debited to the scrips by the Customs Authorities.

### Contention of the Petitioner

By virtue of notification no. 24/2015-Customs and notification no. 25/2015 dated 8 April 2015, imports against MEIS and SEIS scrips are exempt from levy of Customs Duties<sup>2</sup> and additional duties<sup>3</sup> respectively.

It was contented by the petitioner that, deduction of the amounts pertaining to SWS from the petitioner's MEIS and SEIS licenses is incorrect and unwarranted. Only Customs Duties and additional duty can be debited from MEIS and SEIS scrips.

SWS is levied under section 110 of the Finance Act, 2018 and not under the Customs Tariff Act, 1975. The rate of SWS is not prescribed under the Customs Tariff Act. SWS is neither exempted nor it can be debited against the scrips. In light of the fact that both customs duty and CVD are exempt by virtue of the aforementioned exemption notifications, the effective import rate of duty works out to be NIL.

Accordingly, by virtue of section 110 (3) of the Finance Act, 2018, SWS would also be NIL, since the same is calculated at the rate of 10 per cent of the aggregate of duties, taxes and cesses which are levied and collected under the Customs Act. Thus, since imports made through MEIS and SEIS scrips are exempt, SWS cannot be levied.

### Order by the High Court

Relying on the decision by the Larger Bench of the Apex Court in case of M/s. Unicorn Industries, the Court held that SWS is an independent levy imposed and collected under the enactment.

The scheme of MEIS and SEIS is such that these scrips are loaded with money value and the same can be used for payment of customs and excise duties, when the import is made against those scrips. Therefore, it cannot be contented that duty paid is NIL. Neutralisation of duty does not mean that there was no duty levied and collected at all.

Further, the Court also held that if the liability to pay the customs duty element is discharged by effecting adjustment from the value of the scrips, the liability to pay the SWS is also to be discharged either by way of cash or by other mode, since the scrips cannot be used for discharging such liability; the court directs the revenue to re-credit the value of SWS so far debited from the scrips held by the petitioner, subject to a condition that the petitioner pays such SWS either in cash or in any other mode.

<sup>1</sup> TS-3-HC-2020(MAD)-CUST

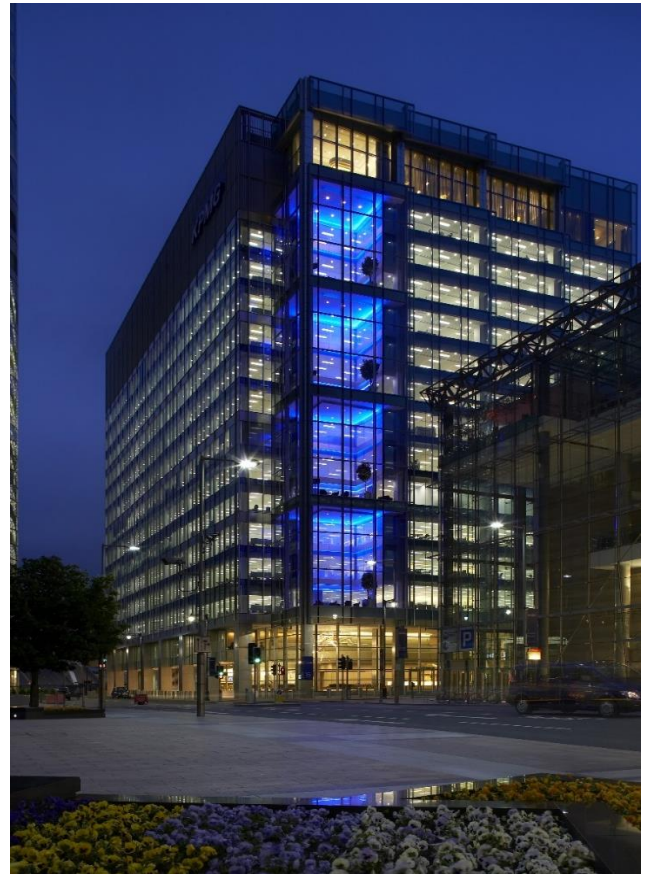
<sup>2</sup> First Schedule of the Customs Tariff Act, 1975

<sup>3</sup> Additional Duties levied under section 3 of the Customs Tariff Act, 1975

## Our comments

An important judgment considering the same would impact the businesses who are availing the benefit of the duty credit scrips at the time of imports. The Customs payment system will have to be now immediately updated to allow payment of SWS through cash for imports made under the aforesaid schemes.

Also, one needs to examine whether interest would be applicable for past periods where the liability of SWS has been discharged by debiting the scrips.



**Ahmedabad**

Commerce House V, 9th Floor,  
902, Near Vodafone House,  
Corporate Road,  
Pralhad Nagar,  
Ahmedabad – 380 051.  
Tel: +91 79 4040 2200

**Bengaluru**

Embassy Golf Links Business Park,  
Pebble Beach, 'B' Block,  
1st & 2nd Floor,  
Off Intermediate Ring Road,  
Bengaluru – 560071  
Tel: +91 80 6833 5000

**Chandigarh**

SCO 22-23 (1st Floor),  
Sector 8C, Madhya Marg,  
Chandigarh – 160 009.  
Tel: +91 172 664 4000

**Chennai**

KRM Towers, Ground Floor,  
1, 2 & 3 Floor, Harrington Road,  
Chetpet, Chennai – 600 031.  
Tel: +91 44 3914 5000

**Gurugram**

Building No.10, 8th Floor,  
DLF Cyber City, Phase II,  
Gurugram, Haryana – 122 002.  
Tel: +91 124 307 4000

**Hyderabad**

Salarpuria Knowledge City,  
6th Floor, Unit 3, Phase III,  
Sy No. 83/1, Plot No 2,  
Serilingampally Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081.  
Tel: +91 40 6111 6000

**Jaipur**

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road,  
Jaipur – 302 018.  
Tel: +91 141 - 7103224

**Kochi**

Syama Business Centre,  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682 019.  
Tel: +91 484 302 5600

**Kolkata**

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
Tel: +91 33 4403 4000

**Mumbai**

1st Floor, Lodha Excelus,  
Apollo Mills,  
N. M. Joshi Marg,  
Mahalaxmi,  
Mumbai – 400 011.  
Tel: +91 22 3989 6000

**Noida**

Unit No. 501, 5th Floor,  
Advant Navis Business Park,  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305.  
Tel: +91 0120 386 8000

**Pune**

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex,  
Mundhwa Road, Ghorpadi,  
Pune – 411 001.  
Tel: +91 20 6747 7000

**Vadodara**

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023.  
Tel: +91 265 619 4200

**Vijayawada**

Door No. 54-15-18E,  
Sai Odyssey,  
Gurunanak Nagar Road, NH 5,  
Opp. Executive Club, Vijayawada,  
Krishna District,  
Andhra Pradesh – 520 008.  
Tel: +91 0866 669 1000