

(2026) 03 DEL CK 0545

In the Delhi High Court

Case No : Letters Patent Appeal No. 314 Of 2019

Holoflex Ltd & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 23-03-2026

Acts Referred:

Customs Act, 1962 — Section 2(18), 50
Special Economic Zones Act, 2005 — Section 2(c), 2(g), 2(m)(ii), 2(zc), 3(10), 4(2),
8(1), 15(9), 51, 51(1), 53(1)
Special Economic Zones Rules, 2006 — Rule 23, 30, 30(1), 30(3) 30(6), 30(9)

Citation : (2026) 03 DEL CK 0545

Hon'ble Judges : C. Hari Shankar, J;Om Prakash Shukla, J.

Bench : Division Bench

Advocate : Kumarjit Banerjee, Gaurav Gupta, Rupal Gupta, Shiva Lakshmi,
Madhav Bajaj

Final Decision : Dismissed

Judgement

C. Hari Shankar, J

REVIEW PET. 160/2021

A. The lis

1. The Union of India "UOI" seeks, by means of this petition, review of judgment dated 28 February 2020, whereby we had allowed LPA 314/2019 and set aside the judgment dated 22 February 2019 passed by learned Single Judge in WP (C) 1816/2019.

2. We may note two features at the outset.

3. Firstly, as recorded in para 23 of the judgment under review, learned Counsel for the UOI had, at that stage, conceded to the position in law as advanced by learned Counsel for the appellant Holoflex Ltd "Holoflex". Today, it is being sought to be urged that an erroneous concession in law does not bind, and

review of the decision can legitimately be sought. Keeping in mind the fact that the issue involves an interpretation of certain provisions of the Foreign Trade Policy "FTP" and the Handbook of Procedures "HBP" 2004-2009, we agreed to entertain the review petition and reconsider the issue.

4. A second feature which requires to be noted is that the total revenue implication in this case is all of ₹ 2 lakhs. Again, as review was sought on a point of law, we have not been allowed ourselves to be swayed by the revenue involved.

5. We now proceed to advert to the judgment, of which review is sought. Allusion to facts, would be made only to the extent necessary for deciding this review petition.

B. The Judgment under Review

6. On 27 January 2005, Holoflex was issued a license under the EPCG "Exports Promotion Capital Goods" Scheme, contained in Chapter 5 of the FTP, which permitted Holoflex to import, duty free, capital goods valued at ₹ 2,17,317.25 against corresponding export obligation of ₹ 17,38,538. The export obligation was required to be discharged on or before 27 January 2013.

7. Using the EPCG license issued to it, Holoflex imported capital goods, saving customs duty of ₹ 2,11,237, vide Bill of Entry dated 5 February 2005. The corresponding export obligation which it was required to fulfil was ₹ 16,89,896.

8. On 13 December 2007, Holoflex entered into a Product Purchase Agreement with Nokia India Pvt Ltd "Nokia", a unit situated in the Nokia Telecom Special Economic Zone "SEZ", Tamil Nadu, for sale of ICA Holograms manufactured using the imported capital goods. It is not in dispute that, pursuant to the Product Purchase Agreement, holograms were in fact sold by Holoflex to Nokia, of a value greater than the export obligation which Holoflex was required to discharge under the EPCG license, and that payment, thereagainst, was received by Holoflex, as required by the EPCG license. By way of proof of fulfilment of export obligation, Holoflex filed, with the authorities in the office of the Director General of Foreign Trade "DGFT", the invoices under which the holograms were sold to Nokia, as well as Bank Realisation Certificates "BRCs" evidencing receipt of payment, against the supplies, from Nokia.

9. The DGFT, however, disputed the entitlement of Holoflex to duty exemption under the EPCG license on the ground that proof of fulfilment of export obligation was required to be tendered by Holoflex by producing Bills of Export "BOEs", and that invoices and BRCs were not sufficient for the purpose. Holoflex contended, per contra, that the supplies by Holoflex to Nokia constituted "deemed exports" under the FTP and that, in respect of deemed exports, Para 5.13(b)11 of the HBP, issued under the FTP, specified supply invoices accompanied by BRCs as the documents evidencing proof of

fulfilment of export obligation.

10. We may note, here, that the FTP and the HBP form part of a composite scheme by which export incentives are made available under the Foreign Trade (Development and Regulation) Act, 1992 [(b) For Deemed Exports: (i) Copy of ARO/Back to back Inland letter of Credit or Advance Licence for Immediate Supplies Or Supply invoices or ARE-3 duly certified by the Bond Officer of EOU concerned showing that the supplies have been received; (ii) The licensee shall also furnish the evidence of having received the payment through normal banking channel in the form given in the Appendix-22B or a self-certified copy of payment certificate issued by the Project authority concerned in the form given in Appendix-22C], as held by the Supreme Court in *Union of India v. Asian Food Industries* (2006) 13 SCC 542.

11. The learned Single Judge had, in his judgment dated 22 February 2019, upheld the rejection, to Holoflex, of duty exemption under the EPCG scheme, agreeing with the contention of the DGFT that furnishing of a BOE as proof of exports was necessary in order to entitle Holoflex to the benefit of the EPCG license and that supply invoices accompanied by BRCs would not suffice. We, in our judgment under review, did not agree, and set aside the judgment of the learned Single Judge. We agreed with the contention of learned Counsel for Holoflex that para 5.13(b) of the HBP applies and that, therefore, supply invoices evidencing supply of holograms to Nokia, accompanied by BRCs evidencing receipt of payment, against such supply, in foreign exchange, sufficed as proof of fulfilment of export obligation.

12. The DGFT, in this Review Petition, contends that, in so holding, the judgment under review, rendered by us, suffers from an error apparent on the face of the record, meriting review.

13. We have heard Ms. Shiva Lakshmi, learned CGSC for the DGFT and Mr. Kumarjit Banerjee, learned Counsel for Holoflex, at length, and have considered the material on record.

C. Rival Contentions

I. Submissions of Ms. Shiva Lakshmi

14. Ms. Shiva Lakshmi submits that this Court erred in treating supplies, by a unit in the Domestic Tariff Area "DTA" to a unit in the SEZ, as "deemed exports". She submits that supplies to the SEZ constitute "exports", and not "deemed exports". Fulfilment of export obligation, via such supplies, she submits, is covered by paragraph 5.13(a) [5.13 Redemption (a) For Physical Exports: A consolidated statement of exports made in the form given in 'Aayaat Niryaat Form', duly certified by a Chartered Accountant and bank evidencing exports and realisation in freely convertible currency or statements of exports in the form given in 'Aayaat Niryaat Form' for individual banks duly certified by a Chartered Accountant. However, in case of exports made under irrevocable letter of credit

or bill of exchange is unconditionally Avalised/ Co-Accepted/ Guaranteed by a bank and the same is confirmed by the exporters bank , realisation of export proceeds would not be insisted upon. The EPCG license holder shall submit a copy of the irrevocable letter of credit or the bill of exchange unconditionally Avalised/ Co-Accepted/ Guaranteed by a bank and confirmed by the exporters bank for availing of the benefit of the EPCG.], which applies to physical exports, and not para 5.13(b) of the HBP, which applies to deemed exports. Para 5.13(a) requires a BOE to be furnished as proof of discharge of export obligation. The learned Single Judge was, therefore, she submits, correct in upholding the rejection, to Holoflex, of export incentive against the EPCG license held by it, and we were in error in setting aside the said decision.

15. Ms. Shiva Lakshmi submits that "deemed exports" were defined in Chapter 8 of the FTP, and that supply of goods from the DTA to the SEZ did not fall within the categories of export which were regarded as "deemed exports". She further places reliance on Section 2(m)(ii) ["export" means— (i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or (ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or (iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;] of the Special Economic Zones Act, 2005 "the SEZ Act", which includes "supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer" within the meaning of "export". "Unit", we may note, is defined in Section 2(zc) of the SEZ Act as meaning "a Unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre, whether established before or established after the commencement of the SEZ Act, and "Developer" is defined, in Section 2(g) as meaning "a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of Section 3 and includes an Authority and a Co-Developer". Ms. Shiva Lakshmi further relies on Section 53(1) [53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases. – (1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.] of the SEZ Act to contend that a SEZ is, per definition, deemed to be a territory outside India. Ergo, she submits, supply of goods from a unit in the DTA to a unit in the SEZ would be an "export" and not a "deemed export". It is for this reason, she submits, that customs duty is payable on supplies of goods to the SEZ, whereas no customs duty is payable on "deemed exports". Inasmuch as the supplies by Holoflex to Nokia took place in 2006- 2007, she submits that the SEZ Act, which was enacted in 2005, would apply, with the Special Economic Zones Rules, 2006 "the SEZ Rules" , framed thereunder. She also points out that Section 51(1) [51. Act to have overriding effect . – The provisions of this Act shall have effect

notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.] of the SEZ Act gave it overriding effect over any other law for the time being in force.

16. Rule 23[23. Supplies from the Domestic Tariff Area to a Unit or Developer for their authorized operations shall be eligible for export benefits as admissible under the Foreign Trade Policy] of the SEZ Rules makes supplies from the DTA to a Unit or Developer for their authorised operations eligible for export benefits under the FTP. This Rule, too, points out Ms. Shiva Lakshmi, clarifies the position that the SEZ Act and SEZ Rules would apply. Rule 30(3)[(3) The goods procured by a Unit or Developer under claim of export entitlements shall be allowed admission into the Special Economic Zone on the basis of documents referred to in sub-rule (1) of Rule 30] and a Bill of Export filed by the supplier or on his behalf by the Unit or Developer and which is assessed by the Authorised Officer before arrival of the goods: Provided that if the goods arrive before a Bill of Export has been filed and assessed, the same shall be kept in an area designated for this purpose by the Specified Officer and shall be released to the Unit or Developer only after completion of the assessment of the Bill of Export.] of the SEZ Rules allows admission of goods produced by a Unit or Developer under claim of export entitlements into the SEZ only on the basis of the documents referred to in Rule 30(1) [30. Procedure for procurements from the Domestic Tariff Area. – (1) The Domestic Tariff Area supplier supplying goods or services to a Unit or Developer shall clear the goods or services, as in the case of zero-rated supply as per provisions of Section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) either under bond or legal undertaking or under any other refund procedure permitted under Goods and Services Tax laws or Central Excise law, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by a manufacturer or supplier] and a BOE filed by the supplier, or on his behalf by the Unit or Developer, assessed by the Authorised Officer before the goods arrive. In the event that the goods arrive before the BOE is filed and assessed, in fact, the Rules do not allow entry of the goods in the SEZ, and the goods have to be retained in an area designated for this purpose. The release of the goods into the SEZ is permitted only after the BOE is completely assessed. Rule 30(6)[(6) The Bill of Export shall be assessed in accordance with the instructions and procedures, including examination norms, laid down by the Department of Revenue as applicable to export goods: Provided that at the time of assessment, it shall be specifically examined whether the goods are required for the authorized operations by the Unit or Developer, with reference to the Letter of Approval or the list of goods approved by the Approval Committee for the Developer.] requires the BOE to be assessed in accordance with the procedure laid down for assessment of export goods. Rule 30(9)[(9) A copy of the Bill of Export and ARE-1 with an endorsement of the Authorised Officer that the goods have been admitted in full

in the Special Economic Zone, shall be treated as proof of export.] –which was later omitted with effect from 19 September 2018–provided that an endorsed copy of the ARE-1 and BOE would be treated as proof of export. The requirement of a BOE as a necessary document as evidence of proof of export of goods to the SEZ, she submits, also finds place in Circular 29/06-Cus dated 27 December 2006.

17. Ms. Shiva Lakshmi submits, therefore, that, while rendering the judgment under review, this Court erred in regarding the supply of goods from Holoflex to Nokia as “deemed exports” and applying, thereto, para 5.13(b) of the HBP, instead of para 5.13(a) thereof.

II. Submissions of Mr. Banerjee

18. Arguing opposite Ms. Shiva Lakshmi, Mr. Banerjee submits that the supplies made by Holoflex to Nokia do constitute “deemed exports”. He refers us to the definition of “deemed exports” in Clause 8.1 of the FTP, which defines the expression as “those transactions in which the goods supplied do not leave the country”. Inasmuch as the Nokia SEZ is within India, and the goods have not left Indian territorial waters, Mr. Banerjee submits that the supplies constitute “deemed exports”.

19. Mr. Banerjee contests Ms. Shiva Lakshmi’s reliance on the SEZ Act and SEZ Rules. He submits that the legal fiction created by Section 53(1) of the SEZ Act applies only “for the purpose of undertaking authorised operations”. As a fiction created for a limited purpose, Mr. Banerjee submits that the fiction cannot be carried beyond that and applied to fulfilment of export obligation under the EPCG Scheme, which is exclusively governed by the FTP and the HBP.

20. Mr. Banerjee further submits that the words “customs territory” in Section 53(1) of the SEZ Act cannot be equated to the territory of India. He submits that there can be more than one customs territory within a country. He further submits that no customs duty is chargeable on supplies from the DTA to a unit in the SEZ.

21. Accordingly, submits Mr. Banerjee, Ms. Shiva Lakshmi is in error in seeking to interpose, into the FTP and HBP, the legal fiction created by Section 53(1) of the SEZ Act.

22. It is further submitted that the requirement of furnishing a BOE would arise only if an act of “export” within the meaning of Section 2(18) of the Customs Act, 1962, takes place as it is only in that circumstance that a BOE would be issued in terms of Section 50 of the Customs Act. Inasmuch as the supply of goods by Holoflex to Nokia does not constitute “export”, there is no question of any BOE.

23. In support of his submissions, Mr. Banerjee has placed reliance on paras 63 and 64 of the judgment of the Supreme Court in *Union of India v. Agricas LLP* (2021) 14 SCC 341 and para 26 of the judgment of the High Court of Andhra

D. Analysis

I. The Dispute – Para 5.13(a) or 5.13(b)?

24. If the supplies made by Holoflex to Nokia are physical exports, para 5.13(a) of the HBP would apply, and Holoflex would have to furnish a BOE as proof of fulfilment of export obligation in order to be entitled to EPCG benefits. If, on the other hand, they are “deemed exports”, para 5.13(b) would apply, and the supply invoices accompanied by BRCs would suffice as proof of discharge of export obligation by Holoflex.

25. On this, learned Counsel are ad idem.

II. Paras 8.1 and 8.2 of the FTP

26. Inasmuch as the entitlement to EPCG benefits arises under the FTP, there can be no manner of doubt that the issue of whether supplies would, or would not, constitute “deemed exports” has pre-eminently to be decided on the basis of Chapter 8 of the FTP, which is entirely devoted to “deemed exports”. Paras 8.1 and 8.2 of Chapter 8 read thus:

“8.1 Deemed Exports: “Deemed Exports” refers to those transactions in which the goods supplied do not leave the country and the payment for such supplies is received either in Indian rupees or in free foreign exchange.

8.2 Categories of Supply The following categories of supply of goods by the main/ sub-contractors shall be regarded as “Deemed Exports” under this Policy, provided the goods are manufactured in India:

(a) Supply of goods against Advance Licence / Advance Licence for annual requirement/DFRC under the Duty Exemption /Remission Scheme;

(b) Supply of goods to Export Oriented Units (EOUs) or Software Technology Parks (STPs) or Electronic Hardware Technology Parks (EHTPs) or Bio Technology Parks (BTP);

(c) Supply of capital goods to holders of licences under the Export Promotion Capital Goods (EPCG) scheme;

(d) Supply of goods to projects financed by multilateral or bilateral agencies/ funds as notified by the Department of Economic Affairs, Ministry of Finance under International Competitive Bidding in accordance with the procedures of those agencies/ funds, where the legal agreements provide for tender evaluation without including the customs duty;

(e) Supply of capital goods, including in unassembled/ disassembled condition as well as plants, machinery, accessories, tools, dies and such goods which are used for installation purposes till the stage of commercial production and spares to the extent of 10% of the FOR value to fertilizer plants;

- (f) Supply of goods to any project or purpose in respect of which the Ministry of Finance, by a notification, permits the import of such goods at zero customs duty;
- (g) Supply of goods to the power projects and refineries not covered in (f) above;
- (h) Supply of marine freight containers by 100% EOU (Domestic freight containers-manufacturers) provided the said containers are exported out of India within 6 months or such further period as permitted by the customs;
- (i) Supply to projects funded by UN agencies; and
- (j) Supply of goods to nuclear power projects through competitive bidding as opposed to International Competitive Bidding.

The benefits of deemed exports shall be available under paragraph (d), (e), (f) and (g) only if the supply is made under the procedure of International Competitive Bidding (ICB)."

27. We are not inclined to accept Ms. Shiva Lakshmi's submission that, because supplies to an SEZ are not covered under any of the clauses of Para 8.2 of the FTP, such supplies are not deemed exports. There is nothing, in Clause 8.2, to indicate that it is exhaustive of the categories of supplies which would qualify as deemed exports. Indeed, if that were so, Clause 8.1 would be rendered superfluous.

28. We, therefore, are of the view that, while the categories of supplies enumerated in clauses (a) to (j) of Para 8.2 would unquestionably qualify as deemed exports, any other supply, which conforms to Para 8.1, would also so qualify.

29. Besides, Para 8.2 deals with supply of goods by contractors or sub-contractors. There is no allegation, by the DGFT, that Holoflex is either a contractor or a sub-contractor. Even on that ground, therefore, Para 8.2 of the FTP would, prima facie, not apply to the supply of goods by Holoflex to Nokia.

30. An SEZ is not located outside the country even if, for certain purposes, supplies to the SEZ are treated as "exports" under the SEZ Act. Mr. Banerjee is, therefore, correct in his submission that the supply of holograms by Holoflex to Nokia satisfy the description of "deemed exports", as contained in para 8.1 of the FTP.

31. Ms. Shiva Lakshmi's submission to the contrary is, therefore, rejected.

III. The SEZ Act and SEZ Rules

32. We still have to examine, however, whether the effect of para- 8.1 of the FTP would in any way be diluted or eliminated by the SEZ Act or SEZ Rules.

33. Ms. Shiva Lakshmi has cited Section 2(m)(ii), 51(1) and 53(1) of the SEZ Act and Rules 23, 30(3), 30(6) and 30(9) of the SEZ Rules.

III.A Re. Section 2(m)(ii) of the SEZ Act

34. Section 2(m)(ii) merely defines "export" for the purposes of the SEZ Act. A definition clause has no independent existence of its own, and has meaning only when read in conjunction with a substantive provision in the statute which employs the defined expression.

35. Besides, the definition of "export" in Section 2(m)(ii) is exclusively for the purposes of the SEZ Act, and cannot be read into the FTP.

III.B Re. Section 51 of the SEZ Act

36. Section 51 states that the SEZ Act would have overriding effect over anything to the contrary contained in any other law for the time being in force. There can therefore be no doubt about the fact that if, by operation of the SEZ Act, the petitioner were not to be entitled to export incentives under the EPCG license, that dispensation would override any entitlement to such benefits which may flow from the provisions of the FTP.

37. We, therefore, have to ascertain whether the SEZ Act disentitles Holoflex from EPCG benefits. If they do, Holoflex would not be able to fall back on the FTP or the HBP to press its claim.

III.C Re. Section 53(1) of the SEZ Act

38. The third, and last, provision of the SEZ Act, cited by Ms. Shiva Lakshmi, is Section 53(1).

39. Section 53(1) deems a SEZ to be a territory outside the customs territory of India for the purposes of undertaking authorised operations.

40. Mr. Banerjee has sought to submit that there is a distinction between the "customs territory of India" and "India" per se. He submits that Section 53(1) only deems the SEZ to be a territory outside the customs territory of India, and not outside India.

41. In the first place, Section 53(1) does not deem a SEZ to be a territory outside India, but only a territory outside the customs territory of India. The SEZ, therefore, remains in India, despite Section 53(1).

42. Secondly, the deeming fiction created by Section 53(1) is for a specific purpose, which is for undertaking authorised operations. "Authorised operations" are defined in Section 2(c) as operations authorised under Section 4(2) [4. Establishment of Special Economic Zone and approval and authorisation to operate to, Developer.***** (2) After the appointed day, the Board may, authorise the Developer to undertake in a Special Economic Zone, such operations which the Central Government may authorise] and Section 15(9) [15. Setting up of Unit. ***** (9) The Development Commissioner may, after approval of the proposal referred to in subsection (3), grant a letter of approval to the person concerned to set up a Unit and undertake such operations which

the Development Commissioner may authorise and every such operation so authorised shall be mentioned in the letter of approval. Provided that the Administrator (IFSCA) may, after approval of the proposal referred to in sub-section (3), grant the letter of approval to the person concerned to set up any Unit and undertake such operations, requiring recognition, registration, license or authorisation by the International Financial Services Centres Authority: Provided further that relevant information regarding such Units shall be shared by the Administrator (IFSCA) with the Development Commissioner of the SEZ on a monthly basis or as may be required from time to time.]. Sections 4(2) and 15(9) refers to operations which a Developer is authorised to undertake in a SEZ, by the Board of Approval constituted under Section 8(1) of the SEZ Act and the Central Government.

43. It is settled, in law, that a deeming fiction has to be restricted to the purposes for which it is created, especially by the purpose is clearly spelt out in the statute. Inasmuch as Section 53(1) specifically deems a SEZ to be a territory outside the customs territory of India only for purposes of undertaking authorised operations, it is clear that this fiction would not extend to determining whether supplies by a DTA Unit to a unit in the SEZ would constitute "export" or "deemed export". Had the legislature intended to deem the SEZ to be a territory outside the customs territory of India for all purposes, it could clearly have said so.

44. The provisions of the SEZ Act, on which Ms. Shiva Lakshmi relies do not, therefore, advance the case of the DGFT.

III.D Re. Rule 23 of the SEZ Rules

45. Proceeding, now, to the SEZ Rules, Rule 23 clearly states that supplies from a DTA to a Unit or Developer for their authorised operations would be eligible for export benefits under the FTP. In the absence of any material to discredit the supply invoices, or the BRCs produced by Holoflex, the fact that holograms were, in fact, supplied by Holoflex to Nokia, and that payment against such supplies was received from Nokia against such supplies, cannot be disputed. Rule 23 would, therefore, ipso facto entitle Holoflex to export benefits, consequent on receipt of remittance from Nokia, rather than the contrary.

III.E Re. Rule 30 of the SEZ Rules

46. Though the link between the sub-Rules of Rule 30 of the SEZ Rules, to which Ms. Shiva Lakshmi alludes, and the issue before us, is more proximate, Rule 30, too, does not directly deal with the documents which would entitle an EPCG licence holder to the benefits of the licence. Rule 30(3) deals with the documents which are required to be furnished for goods, under claim of export entitlement, to enter the SEZ and Rule 30(6) refers to the manner in which the BOE would be assessed. Rule 30(9)—as it then existed—stipulated that endorsed copies of the BOE and ARE-1 would be treated as proof of export.

47. That said, so long as the supplies by Holoflex to Nokia satisfy the definition of "deemed export" as contained in para 8.1 of the FTP, we are not prepared to uphold the denial, to Holoflex, of the benefit of EPCG export benefits on the basis of Rule 30 of the SEZ Rules, on the ground that they did not furnish a BOE, when there is otherwise ample proof of their having effected supplies to Nokia, and received remittance thereagainst.

48. Rule 30 would not be entitled to the coverage, provided in Section 51(1) of the SEZ Act, over all other laws for the time being in force. That coverage, by Section 51(1), extends only to the provisions of "this Act"—meaning, the SEZ Act. The SEZ Rules cannot enjoy that privilege.

49. Besides, the Supreme Court, as we have already noticed, clearly held, in Asian Food Industries, that the aspect of export entitlements and incentives was governed by the FT (D & R) Act, the FTP, and the HBP. Disallowing export incentives which are otherwise available as per the provisions of the FTP and HBP by reference to provisions contained in the SEZ Rules would, therefore, be unjustified. Besides, the SEZ Act and SEZ Rules essentially govern the functioning of SEZs, and are not primarily concerned with export incentives available to DTA units.

IV. DGFT Policy Circular 04/2024 dated 3 June 2024

50. Incidentally, the DGFT, on 3 June 2024, issued Policy Circular 04/2024, relaxing the requirement of submission of the BOE as evidence of discharge of export obligation for supplies made to SEZ units in case of Advance Authorizations. The Circular read thus:

"Government of India

Ministry of Commerce and Industry

Department of Commerce Directorate General of Foreign Trade Vanijya Bhawan,
Akbar Road, New Delhi

Policy-4 Division

Policy Circular No. 04/2024

Dated: 3rd June 2024

To

All Regional Authorities of DGFT All Exporters/Members of Trade All Custom
Authorities

Subject: Relaxation in the provision of submission of 'Bill of Export' as evidence
of export obligation discharge for supplies made to SEZ units in case of Advance
Authorisation.

Para 4.21 (iv) of FTP specifies that the authorisation holder needs to file Bill of Export for export to SEZ unit/developer/co- developer in accordance with the procedures given in SEZ Rules. As per Para 4.24 (b) of FTP the above Para 4.21 shall apply to DFIA also.

2. In line with above FTP provision, in case of supplies made to SEZ units under Advance Authorisation/DFIA, Sl. No.2(a)(ii) of 'Guidelines for Applicants' in ANF-4F (Application for Redemption) and Sl. No.5(b) of 'Guidelines for Applicants' in ANF-4G (Application for Transferable DFIA) prescribe the following documents:

"...EP copy of the shipping bill(s) containing details of shipment effected or bill of export in case of export to SEZ..."

3. This Directorate is in receipt of representations from Industry highlighting hardships to Exporters in complying with this requirement. This issue has been examined. In exercise of powers vested with the Competent Authority in terms of Para 2.59 of the FTP, it has been decided to relax this requirement of submission of 'Bill of Export' in case of exports made to SEZ unit/ developer /co- developer under Advance Authorisation/DFIA, for all such supplies made prior to 01.07.2017.

4. Accordingly, for the purpose of fulfillment of export obligation, under Advance Authorizations/DFIA Schemes, in case of supplies made to SEZ unit/developer/co-developer prior to 01.07.2017, the exporter may submit the following corroborative evidence in lieu of 'Bill of Exports':

a. ARE-1 (showing the Advance Authorisation No/DFIA file No. and) duly attested by jurisdictional Central Excise/GST Authorities of AA holder/DFIA Exporter

b. Evidence of receipt of supplies by the recipient in SEZ

c. Evidence of payment made by the SEZ unit to the AA/DFIA exporter as per para 4.21 of FTP.

5. This Policy Circular is issued with the approval of DGFT.

Sd/-03.06.2024

(KM Harilal)

Joint. Director General of Foreign Trade"

The Advance Authorization scheme is similar to other export incentive schemes and is, in a sense, a successor thereto. The DGFT having noticed the difficulty in obtaining BOEs for availing Advance Authorization benefit and having, therefore, relaxed the requirement retrospectively for all exports made prior to 1 July 2017, we are of the view that it would be unreasonable to deny EPCG benefit to Holoflex merely because it did not submit BOEs as proof of discharge of export obligation.

V. Larsen & Toubro and Phoenix Industries

51. The entitlement of an Advance Authorization holder to the benefits thereof against supplies made to an SEZ, absent any BOEs, came up for consideration before a Division Bench of the High Court of Bombay in *Larsen & Toubro Ltd v. Union of India* 2018 (360) ELT 289 (Bom). The High Court held that, so long as there was collateral evidence of discharge of export obligation, failure to furnish BOEs could not be cited as a sole basis to deny export entitlements. The Special Leave Petition preferred against the judgment was dismissed by the Supreme Court. Subsequently, in *Phoenix Industries Ltd v. Union of India* 2024 SCC OnLine Bom 2704, another Division Bench of the High Court of Bombay reiterated the same position noting, additionally, the issuance of Policy Circular No. 04/2024 dated 3 June 2024 by the DGFT.

E. Conclusion

52. No ground, except for failure, on Holoflex's part, to submit BOEs, was raised by Ms. Shiva Lakshmi to seek review of our judgment.

53. We are not satisfied that a case for review is made out.

54. The Review Petition is dismissed.