

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09.10.2020

Date of decision: 18.11.2020

+ **W.P.(C) 5167/2020 & CM 18593/2020**

M/S. NAUTILUS METAL CRAFTS PVT. LTD.

.....Petitioner

**Through: Ms.Anjali J Manish &
Mr.Priyadarshi Manish, Advs.**

versus

JOINT DIRECTOR GENERAL OF FOREIGN TRADE & ANR.

..... Respondents

**Through: Ms.Nidhi Raman, CGSC for UOI,
with Mr.Ritesh Kumar, Adv.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner challenging the so-called order dated 10.01.2020 passed by the Joint Director General of Foreign Trade, placing the petitioner in the Denied Entity List (DEL). The petitioner further challenges the Show Cause Notice dated 08.11.2019 issued by the Assistant Director General of Foreign Trade, calling upon the petitioner to show cause as to why it be not placed in DEL.

2. It is the case of the petitioner that it deals mainly with readymade garments and made ups and for the same it procures orders from countries such as the USA, different companies of South America, Europe, Middle East, United Kingdom etc. and after procurement of an order, directly approaches the manufacturer in India, mainly situated at

Ludhiana, who manufactures the same and thereafter, these are supplied by the petitioner to the foreign buyers.

3. The petitioner further claims that its goods have also been examined by the Directorate of Revenue Intelligence (DRI) and were cleared as no discrepancy was found.

4. The petitioner further claims that pursuant to the Circular No. 16/2019-Customs dated 17.06.2019 issued by the Director, Customs, Central Board of Indirect Taxes and Customs with regard to IGST refund, the exports made by the petitioner were subjected to 100% examination and no discrepancy was found in the same. It is further claimed that even the export proceeds against these exports and other exports have been realised by the petitioner.

5. The petitioner further gives reference to the search conducted by the DRI, Ludhiana at the office of M/s Sadagati Clearing Services Pvt. Ltd., in which it is claimed that the Managing Director of the petitioner is one of the Directors. The petitioner thereafter goes on to make various averments regarding this search and proceedings thereafter, however, as this petition is not concerned with the proceedings initiated by the DRI but by the respondents herein, *albeit* at the instance of the DRI, and is to be adjudicated on questions of law referred to later in this judgment, detailed reference to the same is not being made in this judgment.

6. The respondent no. 2 issued the impugned Show Cause Notice dated 08.11.2019 to the petitioner stating that the DRI had informed it that an investigation is being carried out against the petitioner “for gross

overvaluation to fraudulently avail export benefits” and it had been requested not to issue any export incentives to the petitioner. The petitioner was asked to show cause as to why it be not placed in DEL so that benefit under Foreign Trade Policy (FTP) are stopped including future refusal of Authorisation/Scripts under Rule 7(c), 7(j) and 7(n) of the Foreign Trade (Regulation) Rules, 1993 (hereinafter referred to as the ‘Rules’). The petitioner was asked to appear on any working day before 13.11.2019 with all documentary evidence in support of its case, incase it desired to be heard in person.

7. As the challenge is to the Show Cause Notice itself, the same is quoted herein below:-

“Subject: - Show Cause Notice under section 9,11(2), 11(3) read with section 13,14 and 17 of the Foreign Trade (Development & Regulation) Act, 1992, as amended from time to time for availing Special MEIS benefits fraudulently by misdeclaration and forgery of documents.

1. *Whereas the Directorate of Revenue Intelligence has informed this office that an investigation is being carried out against your firm for gross over valuation to fraudulently avail export benefits.*
2. *Whereas they have requested this office not to issue any export incentives to your firm.*
3. *Now therefore, under section 9, 11(2), 11(3) read with section 13, 14 and 17 of the Foreign Trade (Development & Regulation) Act, 1992, as amended from time and in exercise of the powers vested in me under section 13 and 17 of Foreign Trade (Development & Regulation) Act, 1992, as amended*

from time to time, I hereby call upon you to show cause as to why.

(a) Keeping in view of above facts and in the interest of safeguarding government revenue. Why your company's name should not be placed in Denied Entity List (DEL) so that benefit under Foreign Trade Policy (FTP) are stopped including future refusal of Authorisation/Scrip under-Rule 7(c), 7(f) and 7(n) of the Foreign Trade (Regulation) Rules, 1993, as amended from time to time, and

4. In case you desired to be heard-in-person you may appear before the undersigned on any working day before 13.11.2019 with all documentary evidence in support of your reply to this show cause notice.

5. In case, nothing is heard from your end by 13.11.2019. In this regard, it will be presumed that you have nothing to say in the matter and action as per FTDR Act 1992 (as amended) and the rules in force shall be taken against you.

6. This is without prejudice to any other action that may be taken against you as per law in force.”

8. The petitioner sent a response dated 14.11.2019 to the Show Cause Notice *inter alia* contending that it had received the same only on 14.11.2019 and hence, could not avail of the opportunity of hearing. It was further contended that the petitioner had not claimed any benefit under the Merchandise Exports from India Scheme (MEIS). The petitioner also asked for being supplied a copy of the communication received from the DRI. For sake of completeness, the reply is quoted below:-

“Please refer to your letter File No. 5/MISC-3/AM20/EPS-II/CLA/1375006 Dt.8-11-19. On the above mentioned subject and calling us to appear in person on or before 13/11/2019 if so desired by us.

At the outset we put it on record that we have received your letter only today on 14-11-2019 at 11:37 am (Copy of the Tracking record of speed post of your letter attached). Hence your provided opportunity could not be availed by us.

We want to make it clear that till date we have not claimed or submitted any documents for granting us Special MEIS benefits. Hence to our dismay we are not able to appreciate as to how it came to be judged at your end that we have claimed Special MEIS benefits leave alone on fraudulent documents.

We are also at loss to learn about some communication addressed to you from Directorate of Revenue and Intelligence (DRI). No copy of the said DRI communication has been enclosed with your subject letter to enable us to understand the background of your proposed action.

In absence of the copy of DRI letter or filling any claim for grant of Special MEIS benefits to us. We are not able to appreciate as to what reasoned in writing the above mentioned letter from your office.

In the light of above mentioned facts we request your kind honor to revisit the issue holistically and may address us further it need arises or to rest the matter for good.”

9. In response to the above, the respondent no. 2, vide letter dated 02.12.2019, called upon the petitioner to submit its reply and, incase the

petitioner desired to be heard in person, appear before the respondent no. 2 within seven days of receipt of the letter.

10. The petitioner replied to the above notice vide its letter dated 06.12.2019, reiterating that it had never claimed any MEIS benefit and also requesting for copy of the DRI letter on the basis of which the Show Cause Notice has been issued.

11. The learned counsel for the petitioner claims that no further correspondence, including any order passed by the respondents, was received from the respondents and the petitioner in July, 2020, was shocked to see on the website of the respondent no. 1 that the petitioner had been placed in the category of DEL. The same referred to an order dated 10.01.2020 passed by the Joint DGFT, CLA, New Delhi, however, copy of such order had not been supplied to the petitioner.

12. The respondents do not deny and, in fact, submit that there is no separate order dated 10.01.2020 and therefore, the occasion of separately supplying the same to the petitioner did not arise.

13. The petitioner has challenged the Show Cause Notice dated 08.11.2019 on the ground that it is vague as it does not spell out the exact nature of violation for which the petitioner is sought to be proceeded against.

14. The petitioner challenges the Impugned Order dated 10.01.2020 on the ground that the same has been passed without supplying the petitioner the documents sought to be relied upon for proceeding against the petitioner and without affording an opportunity of hearing to the

petitioner. The petitioner further asserts that the respondents have failed to supply a copy of the Impugned Order to the petitioner and now, with the admission of the respondents that there is no separate order, the Impugned Order is also liable to be set aside on the ground of it being unreasoned.

15. On the other hand, the learned counsel for the respondents asserts that the respondents had received a communication/letter dated 04.09.2019 from the DRI with respect to the petitioner, stating as under:-

“This office is conducting investigations in respect of the exports made by the subject export concerns. Information received in this Directorate indicates that the subject export concerns have been indulging in gross over-valuation of their exports to fraudulently avail higher export incentive.

Hence it is requested that the subject exporters may not be issued any MEIS/other export scrips without NOC from this office.”

16. The learned counsel for the respondents submits that based on the above communication, the respondent no. 2 issued the Impugned Show Cause Notice dated 08.11.2019 to the petitioner. The petitioner submitted its reply dated 14.11.2019 to the Show Cause Notice contending that it could not avail of the opportunity of personal hearing as the Show Cause Notice had been received late, therefore, a fresh Show Cause Notice dated 02.12.2019 was issued to the petitioner, which was replied to by the petitioner by way of its reply dated 06.12.2019. The petitioner, however, neither availed the opportunity of personal hearing given to it nor

produced necessary and/or requisite documents to establish that it had fulfilled the export obligations and had not been indulging in the alleged activities. As the petitioner failed to avail of the opportunity given to it, the Impugned Order dated 10.01.2020 was passed by the respondent thereby placing the petitioner in the DEL.

17. The learned counsel for the respondents raises preliminary objection on the maintainability of the present petition on the ground that the petitioner had earlier filed a petition, being WP(C) 4748/2020, titled ***M/s. Nautilus Metal Crafts Pvt. Ltd. vs. Joint Director General of Foreign Trade & Anr.***, concealing the second Show Cause Notice dated 02.12.2019 issued to it. On the respondents pointing out such concealment, the petitioner withdrew the said petition on 05.08.2020 and has thereafter filed the present petition. She asserts that the petitioner is, therefore, abusing the process of the Court and this petition is liable to be dismissed.

18. I have considered the submissions made by the learned counsel for the respondents, however, I am unable to agree with the same. While it is true that the petitioner had withdrawn the earlier petition on being confronted with the concealment of the second Show Cause Notice dated 02.12.2019, however, it had obtained leave to file a fresh petition with complete disclosures. The present petition cannot therefore, be dismissed on this ground alone.

19. The learned counsel for the respondents further asserts that the present petition is liable to be dismissed as the petitioner has an equally efficacious remedy in form of an Appeal under Section 15 of the Foreign

Trade (Development and Regulation) Act, 1992 (hereinafter referred to as the Act).

20. In my opinion, this preliminary objection must also fail as the petitioner has premised the present petition on the grounds of violation of Principles of Natural Justice. In ***Whirlpool Corporation v. Registrar of Trade Marks & Ors.***, (1998) 8 SCC 1, the Supreme Court has held that the availability of an alternative remedy cannot operate as a bar to the maintainability of a petition under Article 226 *inter alia* where there has been a violation of the Principles of Natural Justice. In the present case, as would be explained later, in fact, there is no order which can be challenged in appeal.

21. On the merits of the petition, reference needs to be first made to the 'Guidelines for Maintaining the Denied Entities List (DEL)' dated 31st December, 2003, which provides *inter-alia* as under:-

The Denied Entities List (earlier called 'Black List') is drawn under the provision of Rule 7 of Foreign Trade(Regulation) Rules 1993(hereinafter referred to as 'the Rules'). A total of 14 conditions have been described for invocation under sub-Rule 7 (1) before a firm can be refused a license. The licensing authorities may deny license to a person if any one or more of the above referred conditions are satisfied. Besides under sub Rule 7(2) of the Rules, the refusal of a license under sub-Rule 7(1) shall be without prejudice to any action that may be taken against an applicant by the licensing authority under the Foreign Trade(Development & Regulation) Act, 1992(hereinafter referred to as 'the Act'). The word 'license' has been defined under sub-Section 2(g) of the Act.

A. General instances leading to refusal of license.

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2. Instances have come to notice when external agencies such as DRI, CBI, ED etc. request for information in connection with some investigations or sometimes recommend licensing authorities to withhold further licensing facilities to the firms under investigation. In such cases if routine information has been called for, the same should be provided. If recommendations to suspend/cancel licenses are also contained in the communication then the information supplied should be adequately examined from the point of view denial of benefits under the Rules/Act. If evidence is found to be insufficient, agencies may be informed that more evidence will be needed before denial of the benefits can be pronounced under the Rules/Acts and will mention the reasons why the licensing authority thinks that there is no sufficient evidence to invoke rules relating to the refusal of license. If external agencies have supplied evidence to the satisfaction of the licensing authority, he shall place the firm in the DEL after issuing a speaking order against the erring firm without disclosing the source of information in the denial order.

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B. Suspension, cancellation of a license

The procedure and policy leading to suspension and cancellation of licenses shall be governed by Section 9 of the Act read with Rule 9 (suspension) and Rule 10 (cancellation) of the Rules.

C. Right to be heard before passing an order

The powers related to refusal, suspension or cancellation of licenses will also require, as is the case while exercising any executive authority under the

statutes, strict adherence to the principle of natural justice. Implying thereby that licensing authority will refuse, suspend or cancel any license after giving the holder of license a reasonable opportunity of being heard and thereafter by passing a reasoned order to be recorded in writing.

D. DEL management procedures:

- 1. The DEL order will explicitly mention that an appeal against the refusal of license will lie under Section 15 of the Act.*
- 2. The DEL maintained by port offices will contain names of the firms, their registered office address including those of branch offices, names of their partners, proprietor, directors and their residential addresses along with IEC No. of the firm and will be maintained as a computerized database. Licensing benefits will not only be denied to the firms as legal entities but also to the individuals/persons owning/controlling these entities.”*

22. A reading of the above Guidelines clearly indicates that where a recommendation to suspend/cancel licenses of a firm is received by the respondent from *inter-alia* the DRI, the same is to be examined by the respondent “from the point of view denial of benefits under the Rules/Act.” If the evidence is found to be insufficient, further evidence is to be called from the authorities, including the DRI. Where the authorities have supplied sufficient evidence to the satisfaction of the respondent, the respondent shall place the firm in the DEL “after issuing a speaking order” against the firm.

23. In the present case, the respondent had received the communication dated 04.09.2019 from DRI, which has been quoted hereinabove. The same does not refer to any material/evidence of wrongdoing by the petitioner being done to the respondent. Further, as noted above, barring uploading the factum of placing the petitioner on DEL vide so-called order dated 10.01.2020, there is actually no such order recording any reason for the same. The order, in fact, in terms of Clause D(1) of the Guidelines is supposed to inform the firm that it has a remedy of filing an Appeal against the same. Even this mandatory requirement is also not complied with. Therefore, there is a clear violation of the Guidelines on more than one count.

24. The learned counsel for the respondents has tried to justify the impugned action by contending that the Merchandise Exports from India Scheme (MEIS) has been designed to provide rewards to exporters to offset infrastructural inefficiencies and associated costs. The Duty Credit Scrips and goods imported/domestically procured against them are freely transferrable. In terms of Clause 3.04 of the Foreign Trade Policy – Exports of notified goods/products with ITC (HS) code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of rewards on various notified products [ITS (HS) code-wise]. The basis of calculation of reward would be on realised FOB (Free on Board) value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign currencies, whichever is less, unless otherwise

specified. Therefore, the entire basis for the reward under MEIS is a valid and genuine export.

25. She further submits that Chapter 3 of the Handbook of Procedure outlines the procedure for claiming rewards under MEIS on exports, which entails filing of an online application using digital signature, on the DGFT website. The relevant shipping bills and e-BRC have to be linked with the on-line application. Further, to simplify the process of implementation of the 'Foreign Trade Policy' Schemes, Trade Notices No.30/2018-19 dated 11.09.2018 and No.03/2015-2020 dated 03.04.2019 were issued. In terms of Clause 2 (ii) (a) of Trade Notice dated 11.09.2018, online module would not accept the submission of the MEIS application, if the applicant firm is in the Denied Entry List/Suspended IEC/Cancelled IEC and in terms of Trade Notice dated 03.04.2019, even the issue of physical copy of MEIS scrips has been discontinued w.e.f. 10.04.2019 and therefore, as of today, the entire system from 'end to end' under MEIS operates digitally, online and without any human intervention.

26. She submits that the petitioner having allegedly realised the export proceeds, would just need to log in online on the DGFT website and claim the digital scrips under the MEIS and the only way to stop the petitioner from claiming the said benefit is to place it under the 'Denied Entry List' till a final order is passed, which is done vide the Impugned Order dated 10.01.2020. The said order has placed the petitioner in the DEL temporarily and as an ad-interim measure, so that petitioner can be prevented from availing the MEIS benefits digitally till the passing of a

final order of suspension/cancellation under section 9 of the Foreign Trade (Development and Regulation) Act, 1992 read with rule 9 and 10 of the Foreign Trade (Regulation) Rules, 1993, for the reason stated therein, that is, for the firm/petitioner being under the DRI Ludhiana investigation.

27. Relying upon the judgment of the Supreme Court in **Ashok Kumar Lingala & Ors. vs. State of Karnataka & Ors.**, (2012) 1 SCC 321, he submits that the power to pass an interim order, like the Impugned Order, is implicit in Section 9 of the Act read with Rules 9 and 10 of the Rules.

28. She submits that when an entity is placed under the Denied Entity List (DEL) it becomes ineligible to receive any Foreign Trade Policy benefits only during the time period of being placed under DEL. It does not, in any manner, affect the import/export activities of the entity. Therefore, no prejudice as such has been caused to the petitioner. On the other hand, not placing the petitioner under DEL would not only enable it to withdraw the export incentives such as MEIS despite the gross violations but would also prejudice the outcome of the DRI investigation pending against the petitioner. She submits that the Principles of Natural Justice would not be applicable to such interim orders, which are prior to final order of suspension/cancellation. Relying upon the judgment of this Court in **M/s J.K. Impex & Anr. vs. UOI & Ors.**, (2003) 1 DELHI 523, she submits that in such cases, even post-decisional hearing would meet the requirements of natural justice. She submits that the petitioner was granted adequate opportunity of hearing by way of two notices, dated 08.11.2019 and 02.12.2019. The petitioner submitted its reply to the

Show Cause Notices, however, did not avail of the opportunity of personal hearing. The petitioner has also not made any representation against the order dated 10.01.2020 and therefore, the Principles of Natural Justice have been duly complied with. She submits that even otherwise, the petitioner has not shown any prejudice being caused to it by the alleged non-compliance with the Principles of Natural Justice. She places reliance on the judgment of the Supreme Court in ***Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati & Ors.***, (2015) 8 SCC 519, in support of her submissions.

29. Placing reliance on ***Director General of Foreign Trade & Anr. v. Kanak Exports & Anr.***, (2016) 2 SCC 226, she submits that the allegation against the petitioner being grave, the petitioner cannot claim any relief from this Court under Article 226 of the Constitution.

30. To appreciate the above submissions, certain provisions of the Act and the Rules need to be considered. Section 9 of the Act provides for the issue, suspension and cancellation of licence, and reads as under:-

“9. Issue, suspension and cancellation of licence.—
(1) The Central Government may levy fees, subject to such exceptions, in respect of such person or class of persons making an application for licence, certificate, scrip or any instrument bestowing financial or fiscal benefits of in respect of any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted or renewed in such manner as may be prescribed.

(2) The Director General or an officer authorised by him may, on an application and after making such inquiry as he may think fit, grant or renew or refuse to grant or renew a licence to import or export such class or classes of goods or services or technology as may be prescribed and, grant or renew or refuse to grant or renew a certificate, scrip or any instrument bestowing financial or fiscal benefit, after recording in writing his reasons for such refusal.

(3) A licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted or renewed under this section shall—

(a) be in such form as may be prescribed;

(b) be valid for such period as may be specified therein; and

(c) be subject to such terms, conditions and restrictions as may be prescribed or as specified in the licence, certificate, scrip or any instrument bestowing financial or fiscal benefits with reference to the terms, conditions and restrictions so prescribed.

(4) The Director General or the officer authorised under sub-section (2) may, subject to such conditions as may be prescribed, for good and sufficient reasons, to be recorded in writing, suspend or cancel any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted under this Act:

Provided that no such suspension or cancellation shall be made except after giving the holder of the licence, certificate, scrip or any instrument bestowing

financial or fiscal benefits a reasonable opportunity of being heard.

(5) An appeal against an order refusing to grant, or renew or suspending or cancelling, a licence, certificate, scrip or any instrument bestowing financial or fiscal benefits shall lie in like manner as an appeal against an order would lie under section 15.”

31. A reading of Section 9(4) clearly shows that any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits can be suspended or cancelled only “for good and sufficient reasons, to be recorded in writing”. The Proviso to Section 9(4) further mandates grant of a reasonable opportunity of hearing to the holder of the licence, certificate, scrip or any instrument bestowing financial or fiscal benefits.

32. Rule 7 of the Rules also authorises the Director General or the licensing authority to refuse to grant or renew a licence, certificate, scrip or any instrument bestowing financial or fiscal benefits “for reasons to be recorded in writing” and in the circumstances mentioned therein. Rule 7 of the Rules is quoted herein below:

7. Refusal of licence.-

(1) The Director General or the licensing authority may for reasons to be recorded in writing, refuse to grant or renew a licence if -

(a) the applicant has contravened any law relating to customs or foreign exchange;

(b) the application for the licence does not substantially conform to any provision of these rules;

(c) the application or any document used in support thereof contains any false or fraudulent or misleading statement;

(d) it has been decided by the Central Government to canalise the export or import of goods and distribution thereof, as the case may be, through special or specialised agencies;

(e) any action against the applicant is for the time being pending under the Act or rules and Orders made thereunder;

(f) the applicant is or was a managing partner in a partnership firm, or is or was a Director of a private limited company, having controlling interest against which any action is for the time being pending under the Act or rules and Orders made thereunder;

(g) the applicant fails to pay any penalty imposed on him under the Act;

(h) the applicant has tampered with a licence;

(i) the applicant or any agent or employee of the applicant with his consent has been a party to any corrupt or fraudulent practice for the purposes of obtaining any other licence;

(j) the applicant is not eligible for a licence in accordance with any provision of the Policy;

(k) the applicant fails to produce any document called for by the Director General or the licensing authority;

(l) in the case of a licence for import, no foreign exchange is available for the purpose;

(m) the application has been signed by a person other than a person duly authorised by the applicant under the provisions of the Policy;

(n) the applicant has attempted to obtain or has obtained cash compensatory support, duty drawback, cash assistance benefits allowed to Registered Exporters or any other similar benefits from the Central Government or any agency authorised by the Central Government in relation to exports made by him on the basis of any false, fraudulent or misleading statement or any document which is false or fabricated or tampered with.(2) The refusal of a licence under sub-rule (1) shall be without prejudice to any other action that may be taken against an applicant by the licensing authority under the Act.

33. Rule 9 provides for suspension of a licence, certificate, scrip or any instrument bestowing financial or fiscal benefits, again “by an order in writing” and in the circumstances mentioned therein, including where proceedings for cancellation of such licence, certificate, scrip or any instrument bestowing financial or fiscal benefits have been initiated under Rule 10 of the Rules. Rule 9 is quoted herein below:

9. Suspension of a licence.-

(1) The Director General or the licensing authority may, by order in writing, suspend the operation of a licence granted to -

(a) any person, if any order of detention has been made against such person under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974); or

(b) a partnership firm or a private limited company, if the person referred to in clause (a) is a partner or a whole time director or managing director, as the case may be, of such firm or company:

Provided that the order of suspension shall cease to have effect in respect of the aforesaid person or, as the case may be, the

partnership firm or company, when the order of detention made against such person, -

(i) being an order of detention to which the provisions of section 9 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) do not apply, has been revoked on the report of Advisory Board under section 8 of that Act or before receipt of the report of the Advisory Board or before making a reference to the Advisory Board; or

(ii) being an order of detention to which the provisions of section 9 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) apply, has been revoked on the report of the Advisory Board under section 8 read with sub-section (2) of section 9 of the Act or before receipt of such report;

(iii) has been set aside by a court of competent jurisdiction.

(2) The Director General or the licensing authority may by an order in writing suspend the operation of any licence granted under these rules, where proceedings for cancellation of such licence has been initiated under rule 10.

34. Rule 10 of the Rules authorises the Director General or the licensing authority to “by an order in writing”, cancel any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits. It is quoted herein below:

10. Cancellation of a licence.-

The Director General or the licensing authority may by an order in writing cancel any licence granted under these rules if -

(a) the licence has been obtained by fraud, suppression of facts or misrepresentation; or

(b) the licensee has committed a breach of any of the conditions of the licence; or

(c) the licensee has tampered with the licence in any manner; or

(d) the licensee has contravened any law relating to customs or foreign exchange or the rules and regulations relating thereto.

35. A reading of the above provisions would clearly show that any refusal to grant, suspend or cancel any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits, can only be “by an order in writing”. In fact, Section 9(4) expressly mandates that suspension or cancellation of any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits can only be “for good and sufficient reasons”. The requirement of giving reasons cannot therefore, be dispensed with and is mandatory.

36. Even otherwise, it is now firmly established that even an administrative decision having civil consequences must record reasons as a mandatory compliance with principles of Natural Justice. This is especially so where the order itself is appealable, like in the present case. Even otherwise, the necessity of giving reasons cannot be undermined.

37. In the present case, the learned counsel for the respondents has admitted that except for the reference on the website to the Impugned Order dated 10.01.2020, there is no separate order dated 10.01.2020 recording reasons for placing the petitioner on DEL. The sheer starkness

of the same is highlighted by reproducing the relevant extract from the website of the respondent as under:-

<i>S.No.</i>	<i>Order Number</i>	<i>Order Date</i>	<i>Order Issued by</i>	<i>Order Details</i>
1	14/AM20/EPS-II/CLA	10/1/2020	Jt.DGFT,CLA -New Delhi	FIRM IS UNDER D.R.I LUDHIANA INVESTIGATION

38. Therefore, in the so-called order there is no reference to the Show-Cause Notices and to the replies submitted by the petitioner and how they have been dealt with and appreciated by the Authority. In fact, it gives no reason except stating that the “Firm is under D.R.I Ludhiana Investigation”. In terms of the Guidelines reproduced hereinabove, the same cannot be a sufficient reason as the respondent/Authority is to apply its independent mind to the allegations against the petitioner. The respondent admits that barring receiving a reference/request dated 04.09.2019 from the DRI, it has no other material to proceed against the petitioner. The reference/request itself is cryptic.

39. The Show Cause Notice was for “availing Special MEIS benefits fraudulently by mis-declaration and forgery of documents”. The petitioner in its reply had categorically submitted that it had not claimed or submitted any documents for grant of Special MEIS benefits till date. The petitioner had also requested for a copy of the communication received from DRI to understand the background for the proposed action.

The Impugned Order dated 10.01.2020 does not show any application of mind to these submissions as the order contains no reasons.

40. The Impugned Order dated 10.01.2020 is liable to be set aside on this short ground itself.

41. The submission of the learned counsel for the respondents that the Impugned Order is interim in nature and therefore principles of Natural Justice can be dispensed with cannot also be accepted. First of all, this plea was not taken in the counter affidavit filed by the respondent but has been raised only during the oral submissions. Secondly, the order itself does not reflect so. It does not state that it has been passed only till such time that the petitioner is granted a hearing and some other final order is passed.

42. The purpose and effect of the Impugned Order has been explained by the respondent in its counter affidavit itself. It is stated that when an entity is placed under DEL, it becomes ineligible to receive any Foreign Trade Policy benefits during the time of it being placed on DEL. It blocks future export incentives. Therefore, it is a final order having civil consequences on the petitioner. It cannot therefore, be accepted that the principles of Natural Justice, in so far as recording of reasons is concerned, need not be followed before passing such an order. Even if it is accepted that in grave and emergent circumstances, such order is required to be passed without giving an opportunity of prior hearing, reasons for the same must be recorded in such order and an opportunity of post-decisional hearing must be afforded to the affected party. In the present case, no reason is recorded showing such urgency. In fact, the

respondents had issued not one but two Show Cause Notices to the petitioner, thereby completely belying its stand. There is also no notice issued to the petitioner informing that it can avail of post-decisional hearing. The judgement of this Court in **J.K. Impex** (supra), therefore, can be of no assistance to the respondents. In fact, the stand of the respondents is clearly an after-thought and is liable to be rejected.

43. I must also note that in many other cases, on being challenged, the respondents had withdrawn similar Show Cause Notices and orders placing such parties on DEL reserving liberty to issue fresh Show Cause Notice and thereafter pass fresh orders.

44. In view of the above, the Impugned Order dated 10.01.2020 and the Show Cause Notices dated 08.11.2019 and 02.12.2019 are set aside. This order shall not however, bar the respondents from passing a fresh order, in accordance with law, in future.

45. The respondents shall pay costs of Rs. 25,000/- to the petitioner.

न्यायमेव जयते

NAVIN CHAWLA, J

NOVEMBER 18, 2020/RN