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

\+ LPA 164/2016 & C.M.No.9071/2016 *(stay)*

UNION OF INDIA & ORS ..... Appellants

Versus

K S COMMODITIES PVT LTD & ANR ..... Respondents

\+ LPA 167/2016 & C.M.No.9208/2016 *(stay)*

UNION OF INDIA & ORS ..... Appellant

Versus

SESA STERLITE LIMITED ..... Respondent

\+ LPA 169/2016 & C.M.No.9242/2016 *(stay)*

DIRECTORATE GENERAL
OF FOREIGN TRADE ..... Appellant

Versus

HIGH VALUE EXIM PVT LTD ..... Respondent

Present:- Mr.Sanjeev Narula, CGSC with Mr.Abhishek Ghai, Mr.Ajay Kalra, Advs. for Union of India.
Mr.Vinod Mehta, Adv. with Mr.Nikhil Mehta, Adv. for the respondent in LPA 164/2016.
Mr.Manish Garg, Adv. for the respondent in LPA 167/2016.
Dr.G.K.Sarkar, Adv. with Ms.Malabika Sarkar, Mr.Prashant Srivastava, Mr.Dhruv Seth, Advs. for the respondent in LPA 169/2016.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R

% **14.09.2016**

1. All these appeals arise out of a common order passed by the learned Single Judge dated 28.09.2015 in W.P.(C) No.5288/2015, 1345/2015 and 5317/2015 respectively. The Union of India/respondent No.1 in the writ petitions is the appellant before us.

2. The said writ petitions were filed by the respondents herein challenging the Notification No.44 dated 25.09.2013 as clarified on 23.09.2014 by the Directorate General of Foreign Trade (DGFT) with regard to the benefit under Incremental Export Incentivization Scheme (IEIS) and seeking a direction to allow the balance claim of IEIS scrips made by the writ petitioners in terms of Notification dated 28.12.2012 read with Notification dated 25.09.2013. The writ petitions were allowed by the learned Single Judge by the order under appeal dated 28.09.2015 holding that the petitioners are entitled to what they may have been entitled to under the Notification dated 28.12.2012 and without any cap and/or maximum limit. The decisions of the DGFT denying such benefit to the writ petitioners were set aside and DGFT was directed to issue the Duty Credit scrips to the writ petitioners in terms of the Notification dated 28.12.2012 on or before 31.01.2016.

3. The said order has been assailed by the Union of India in the present appeals preferred in March, 2016.

4. When the appeals are taken up for consideration, it is brought to our notice by the learned counsel for both the parties that after filing of the appeals, the issue regarding the benefit under IEIS in terms of the Notification No.44

dated 25.09.2013 read with the clarification dated 23.09.2014 was reconsidered in view of the decisions of the various High Courts and vide Trade Notice No.4/2016 dated 05.05.2016, the DGFT issued fresh instructions for processing the cases of the IEIS claims. A perusal of the Trade Notice dated 05.05.2016 shows that the clarification dated 23.09.2014 was superseded and the Regional Authorities have been directed to process the IEIS claims in terms of the fresh instructions specified therein. The relevant paragraph of the Trade Notice dated 05.05.2016 may be reproduced hereunder for ready reference:-

> "4. The Notification No.44 dated 25.09.2013 on the issue of limiting the entitlement has been challenged by many exporters in different High Courts. In view of the decisions of the various High Courts, the matter has been re-examined in consultation with the Department of Legal Affairs and accordingly, following instructions are hereby issued for processing the cases of the IEIS claims by RAs:-
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> (i) In supersession of clarification dated 23.09.2014, RAs may further process the cases without imposing any cap on account of the earlier stipulation of restricting growth to 25% or incremental growth of Rs.10 crore in value, whichever is less.
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> (ii) RAs must, however, exercise due diligence while processing such claims by following guidelines of greater scrutiny as prescribed in Public Notice No.28 dated 25.09.2013 to check claims having high growth % and/or value and against irregularities. In this regard the Policy Notification No.27 dated 28.12.2012 may also be carefully seen, in addition to other relevant provisions. Inter alia, transfer of export performance from any other IEC holder was not permitted under the scheme as per Para3.14.4(d). Similarly, disclaimer provision of para3.17.10(b) was also not admissible as per Para 3.14.4(c).

(iii) If in any case there are doubts/suspicions about the authenticity/genuineness of the increments in aspect like turn over/growth etc., the matter may be referred to investigating agencies like DRI etc. and the case may be finalized after taking into account their report.

(iv) All these cases should be approved by Head of the Office.

(v) The above stipulations will not be a bar to the RAs in scrutinizing small value claims also, when there is prima facie case to do so.

(vi) It is pertinent that no right is vested in favour of claimant when impropriety fraud has been detected.

Sd/-
(J.M.Gupta)
Joint Director General of Foreign Trade
e-mail : jmgupta@nic.in"

5. In the light of the subsequent events noticed above, we are of the view that there is no need for consideration of the appeals on merits. The learned counsel for both the parties have agreed for consideration of the claims of the writ petitioners/respondents herein in terms of the fresh instructions issued by DGFT vide Trade Notice dated 05.05.2016.

6. Accordingly, all the appeals are disposed of with a direction to DGFT/Regional Authorities to consider the claims of the writ petitioners/respondents herein in terms of the instructions vide Trade Notice No.4/2016 dated 05.05.2016 as expeditiously as possible preferably within eight weeks from today.

7. The order under appeal shall stand modified to that effect.

8. All the appeals are accordingly disposed of.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 14, 2016
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