In the High Court of Judicature at Madras

Dated : 02.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.33972 of 2017

M/s.Greenglobe Exports India
Pvt. Ltd. Rep. by its Managing
Director Mr.C.K.Sunil Kumar ...Petitioner

Vs

1.The Assistant Coimmissioner of
Customs, ICD CONCOR (INTVT6),
Thiruvottriyur, Chennai-19.

2.The Commissioner of Customs,
Chennai IV Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai-1. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to amend the shipping bills filed by the petitioner in pursuance of the application dated 13.4.2017 of the petitioner.

For Petitioner : Mr.Hari Radhakrishnan
For Respondents : Mr.S.R.Sundar, SSC

ORDER

Mr.S.R.Sundar, learned Senior Standing Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner seeks a direction to the respondents to amend the shipping bills filed by the petitioner pursuant to their application dated 13.4.2017.

3. In the said application dated 13.4.2017, the petitioner stated that they are regular exporters of coco peat through the port of Chennai, that their shipping bills are filed under the claim for drawback and that the goods exported are also eligible for the benefits under the Merchandise Exports from India Scheme (MEIS), notified under the Foreign Trade Policy 2015-2020. The petitioner further stated that at the time of filing the

shipping bills, they inadvertently omitted to select 'YES' in the on line platform so as to claim the benefit of the scheme. Therefore, the petitioner sent the application dated 13.4.2017 seeking permission to amend the shipping bills in terms of Section 149 of the Customs Act, 1962.

4. The petitioner also placed reliance on the decision of the Customs, Excise and Service Tax Appellate Tribunal, Chennai in the case of Madura Coats Pvt. Ltd. Vs. Commissioner of Customs, Turicorin [reported in (2009) 248 ELT 431] and the decision of this Court in the case of Ford India Pvt. Ltd. Vs. Assistant Commissioner of Central Excise, Chennai [reported in (2011) 272 ELT 353] wherein it has been held that export incentive schemes should be liberally construed and that the benefit of the schemes should not be denied on technicalities. Therefore, the petitioner states that the inadvertent error occurred on account of not selecting the proper option in the on line platform should not lead to denial of the benefit under the relevant Notifications.

5. The said application dated 13.4.2017 was initially filed before the second respondent, who, in turn, appeared to have forwarded the same to the Deputy Commissioner of Customs (EDC), Office of the Commissioner of Customs, Chennai IV, who, by reply dated 15.9.2017, informed the petitioner that as the petitioner sought for clearance of the goods through ICD CONCOR (INTVT6), the petitioner was requested to approach Assistant Commissioner/ Deputy Commissioner, [ICD CONCOR (INTVT6)], for any amendment or for a no objection certificate. In respect of identical issue where the no objection certificate was granted to the petitioner in F.No.5.Misc/31/2017-EDC-NOC, the Deputy Commissioner of Customs (EDC) stated that in respect of those seven shipping bills, the clearance was through INMAA1.

6. Thus, in effect, the Deputy Commissioner of Customs (EDC) informed the petitioner that she is not the proper officer to consider the request and that the petitioner has to approach ICD CONCOR (INTVT6). Immediately thereafter, the petitioner sent a representation dated 09.11.2017 to the first respondent reiterating the stand taken in their earlier application dated 13.4.2017. Since the said representation is pending from November 2017 before the first respondent, the petitioner is before this Court.

7. It is submitted by the learned counsel for the petitioner that the representation dated 09.11.2017 was sent to the first respondent by registered post and that it would have reached the office of the first respondent within two or three days of dispatch.

8. The learned Senior Standing Counsel appearing for the respondents submits that reasonable time may be granted to the first respondent to consider the representation dated 09.11.2017.

9. In the light of the above facts, the writ petition is disposed of with a direction to the first respondent to consider the representation of the petitioner dated 09.11.2017 requesting for issuance of a no objection certificate for amending 'MEIS Reward Detail - No to MIES Reward Detail - Yes' and such a consideration shall be made within a period of two weeks from the date of receipt of a copy of this order. It is made clear that an opportunity of personal hearing may be granted to the authorized representative of the petitioner before a decision is taken on the petitioner's representation. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

RS

To
1.The Assistant Coimmissioner of Customs, ICD CONCOR (INTVT6), Thiruvottriyur, Chennai-19.

2.The Commissioner of Customs, Chennai IV Commissionerate, Custom House, 60, Rajaji Salai, Chennai-1.

+1cc to Mr.S.R.SUNDAR, Advocate, S.R.No. 31
+1cc to Mr.HARI RADHAKRISHNAN, Advocate, S.R.No. 281

WP.No.33972 of 2017

SS(CO)
TR(29/01/2018)