IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6713 OF 2019

Ashwini Ashish Dighe .. Petitioner

v/s.

The Union of India and Ors. .. Respondents

Mr. Prakash Shah a/w Mr. Jas Sanghavi, Mr. Suyog Bhave I/b PDS Legal for the petitioner
Mr. Pradeep S. Jetly a/w Mr. D.P. Singh for the respondents

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 7th AUGUST, 2019

P.C.

1. At the request of the parties, the petition is taken up for final disposal at the stage of admission.

2. This petition, as originally filed, had challenged :

(a) the orders / 4 communications dated 25th October, 2017 issued by the Joint Director of Foreign Trade, rejecting the petitioner's application for benefits of duty credit scrips available under the Merchandise Exports from India Scheme (for short “MEIS”) as a part of the Foreign Trade Policy (FTP) for the period 2015-20; and

(b) the suspension of IES (Import Export Code) No.3115905611.

The challenge was on the basis that the above impugned actions on the part of the respondents were in breach of principles of natural justice. This in as much as both the impugned orders and the suspension of the IEC were without hearing and without furnishing of any reasons for the actions taken.

3. After the petition was filed, the Deputy Director General of Foreign Trade with the approval of the Director General of Foreign Trade – respondent no.3, by a communication dated 18th July, 2019, informed the petitioner that it would not be entitled to the benefits of MEIS. This on the ground that supplies made from Domestic Traffic Area (DTA) units to Free Trade Warehousing Zones (FTWZ) are excluded by virtue of paragraph 3.06 (i) of the FTP and exports made by units in FTWZ by virtue of paragraph 3.06 (vii) of the FTP 2015-20. On receipt of the above communication, the petitioner amended the petition and also challenged the communication / order dated 18th July, 2019 passed by Deputy Director General of Foreign Trade with the approval of the Director General of Foreign Trade – respondent no.3.

4. Briefly, the facts leading to this petition are as under :-

(a) The petitioner is engaged in export of telecommunication equipment and fiber optic cables.

(b) The petitioner had exported optic fibers to a party in Dubai from India. On instructions of the Dubai buyer, the petitioner sent the optic fibers to the FTWZ so as to be stored therein. Thereafter, the optic fibers were shipped from the FTWZ at the instance / direction of the foreign buyer. Thus, it was the claim of the petitioner that it was entitled to avail of the benefit of MEIS scheme as the said goods were exported through FTWZ and not by an unit in FTWZ.

(c) The respondent no.1 – Union of India, under the Foreign Trade Development Regulation Act, formulates and announces the FTP from time to time. In this case, we are concerned with FTP for the period 2015-20. The FTP 2015-20 contained a scheme called MEIS Scheme so as to accelerate export of goods from India. The paragraph 3.06 of the FTP 2015-20 lists out the category of exporters who are not entitled to and / or otherwise not eligible for benefit of duty credit scrips under the MEIS scheme. Amongst the categories excluded for MEIS benefit are supplies made from DTA units to SEZ units and exports made by units in FTWZ.

(d) The issue of duty credit scrips under the MEIS scheme would entitle the petitioner to import raw-materials free of custom duty subject to the extent specified in the duty credit scrips issued under the MEIS by the Director General of Foreign Trade. Thus, the petitioner made four applications, all dated 6th October, 2017, claiming the benefit of duty credit scrips under the MEIS scheme. However, the respondent no.4 – the Joint Director General of Foreign Trade by 4 impugned orders, all dated 25th October, 2017, rejected the petitioners claim by recording as under :-

> *"Sir/Madam,*
> *Your application has been rejected due to following reasons"*
> *1. Your case has been rejected under para 3.06(ii) of FTP. Your case stands closed."*

5. Consequent to the aforesaid orders, the respondent no.4 – the Joint Director General of Foreign Trade suspended the import Export Certificate IEC No.3115905611 of the petitioner. It was the aforesaid orders dated 25th October, 2017 of the Joint Director General of Foreign Trade and the purported cancellation of IEC No.3115905611 that led the petitioner to file this petition.

6. Pending the admission of the present petition, the Deputy Director General of Foreign Trade, with the approval of respondent no.3 – Director General of Foreign Trade, clarified that the petitioner is not entitled to the benefits of MEIS for the reasons set out in paragraph 3.06(i) and 3.06(vii) thereof. This without considering the fact that the petitioner is not a unit in the FTWZ but is only exporting the goods through FTWZ. This communication dated 18th July, 2019 would be binding on all Authorities under the Act. Thus, the petitioner, by amending the petition, has also challenged the communication dated 18th July, 2019.

7. When the petition is taken up for consideration Mr. Jetly, learned Counsel appearing for the respondents, states that the suspension of IES No.3115905611 has been withdrawn. Thus, the only issue which now remains is whether the petitioner is entitled to the benefit of MEIS scheme for exports made through FTWZ, when it is not a unit in FTWZ.

8. We note that the impugned communication dated 18th July,

2019 of the Deputy Director General of Foreign Trade, issued with the approval of respondent no.3, reads as under :-

> *"Dear Exporter,*
> *Please refer to the matter raised by the your letter dated 08.12.2017 for consideration of this Directorate on Exports from DTA to FTWZ.*
> *2. The matter has been examined in the Directorate and it is conveyed that*
> *i. Under para 3.06(i) Supplies made from DTA units to SEZ units & Para 3.06(vii) Exports made by units in FTWZ of the FTP, benefits of MEIS are not eligible for such exports.*
> *ii. The supplies from DTA units to FTWZ units are ineligible under the above provisions because, a FTWZ unit is a category of SEZ. Provision of the SEZ Act 2005, clearly mention in the definition (n) that "Free Trade and Warehousing Zone" means a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on.*
> *3. This is issued with the approval of the Competent Authority."*

9. From the above, it is evident that it does not take into account the clear words of 3.06(vii) of the FTP which excludes only exports made by units in FTWZ. In this case, the petitioner's contention is that it is not a unit in FTWZ but a unit in DTA. Therefore the exports in this case was not by unit in FTWZ but by a DTA unit. This aspect has not been considered at all in the impugned communication dated 18th July, 2019.

10. It is in the above circumstances, that we set aside the communication dated 18th July, 2019 and direct the respondent no.3 – Director General of Foreign Trade to examine this issue in the context of the petitioner's claim. This clarification with regard to paragraph 3.06 of the FTP 2015-20 would bind all Authorities under the Foreign Trade Development and Regulation Act so far as the interpretation put on paragraph 3.06 of the FTP by the Director General of Foreign Trade – respondent no.3 is concerned. In the above circumstances, the impugned communication dated 18th July, 2019 is set aside. The petitioner to make a fresh representation about its claim for the benefit of paragraph 3.06 of the FTP to the respondent no.3 – the Director General of Foreign Trade who would consider the same and pass appropriate order thereon. This it would do as expeditiously as possible and preferably within 12 weeks from the date this order is uploaded on the High Court website.

11. The four impugned orders dated 25th October, 2017 are also set aside. It is only after the Director General of Foreign Trade rules on the appropriate interpretation of paragraph 3.06 of the FPT, the

Joint Director General of Foreign Trade would take up the petitioner's application and dispose it of in accordance with law as expeditiously as possible and preferably with in a period of six weeks from the communication of the Director General of Foreign Trade on the above application.

12. Needless to state that the respondent no.4 – the Joint Director General of Foreign Trade, before he passes any order adverse to the petitioner's claim for MEIS scheme consequent to the interpretation of paragraph 3.06 of the FTP, would give a personal hearing to the petitioner before deciding the issue.

13. The petition is disposed of in the above terms.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**