IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 10.06.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.3321 of 2019

M/s.Global Calcium Private Limited
Represented by its Director-Operations
Mr.Satish Hebbar R
Branch Sr.No.4,125 & 126
SIPCOT Industrial Complex
Hosur, Tamil Nadu - 635 126 .. Petitioner

Vs.

1.The Assistant Commissioner of Customs (EDC)
Chennai IV Commissionerate, Custom House
60 Rajaji Road, Chennai - 600 001

2. The Commissioner of Customs
Chennai IV Commissionerate, Custom House
60, Rajaji Salai, Chennai - 600 001
.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned letter dated 31.12.2018 in F.No.S.Misc/160/2017-EDC (NOC) passed by the 1st respondent and quash the same and direct the 1st respondent to attend the shipping bills as sought for in the petitioner's application dated 21.05.2017.

For Petitioners : Mr.Hari Radhakrishnan

For Respondent : Mr.S.R.Sundar
Senior Standing Counsel

O R D E R

Mr.Hari Radhakrishnan, learned counsel on record for writ petitioner and Mr.S.R.Sundar, learned Senior Standing Counsel on behalf of both the respondents are before this Court. To be noted, there are two respondents in this writ petition and both the respondents are official respondents.

2.This matter is listed under the caption 'ADJOURNED ADMISSION' before this Court today.

3.Be that as it may, with consent of both the learned counsel, the main writ petition itself is taken up, heard out and is being disposed of.

4.Owing to the trajectory the hearing before this Court has taken today, short facts absolutely imperative for disposal of this writ petition alone are set out.

5.It is the case of the writ petitioner that goods exported by the writ petitioner are eligible for benefit under the 'Merchandise Exports from India Scheme ('MEIS' for brevity), which has been notified under the Foreign Trade Policy. It is the case of the writ petitioner that at the time of filing of the shipping bills, the petitioner had inadvertently omitted to select 'Yes' in the online platform and omitted to mention/declare in the shipping bill that they intend to claim benefit under the MEIS scheme.

6. Subsequently, when the writ petitioner applied to the 'Director General of Foreign Trade' ('DGFT' for brevity) for incentive, the writ petitioner was informed that shipping bills have to be amended qua the Customs authorities.

7. When things stood as above, when the writ petitioner submitted an application dated 21.05.2017 to the second respondent seeking amendment of the relevant shipping bills filed by the writ petitioner so as to claim incentive under MEIS scheme stating that the writ petitioner had inadvertently omitted to select 'yes' in the online platform and had failed to incorporate the required declaration in the shipping bills so as to claim the benefit under MEIS scheme from DGFT.

8. When things stood as above, when the writ petitioner sought amendment, vide 'letter dated 31.12.2018 bearing reference F.No.S.Misc/160/2017-EDC (NOC) from the first respondent' (hereinafter 'impugned letter' for brevity), writ petitioner was informed that the request for amendment is rejected.

9.Aggrieved, the writ petitioner has filed the instant writ petition.

10. Learned counsel for writ petitioner pressed into service an order made by a Hon'ble single Judge in the Madurai Bench of this Court in Pasha International Vs. Commissioner of Customs, Turicorin reported in 2019 (365) E.L.T 669 (Mad.).

11. Learned Revenue counsel submitted that the case on hand is similar to the aforesaid order in Pasha International.

12. The order of the learned single Judge in Pasha International reads as follows:

"Heard the Learned Counsel appearing for the Writ petitioner and the Learned Standing Counsel appearing for the respondents.

2. The Writ petitioner is a manufacturer and exporter of "Bags and made-ups". They had filed shipping bill Nos.5450964/9-6-2018, 5671009/20-6-2018 and 5146758/26-5-2018 for export of cotton shopping bags. The Writ petitioner actually intended to claim benefit under what is known as Merchandise Exports from India Scheme (MEIS). But while filling up the shipping bills, the Writ petitioner inadvertently opted for "No" instead of "Yes". When the system was done manually the corrections can be made in view of the enabling provision in Section 149 of the Customs Act, but now that E.D.I system is being followed, the connections cannot be done. But then, the petitioner cannot suffer for an inadvertent mistake committed by him.

3. The Learned Counsel appearing for the Writ petitioner points out that in an identical situation, the High Court of Kerala in the decision reported in 2018 (361) E.L.T.1000 (Ker.) (Saint Gobain India Pvt. Ltd., V. Union of India) held as follows:-

> '6 ..It is the specific contention of the 3rd respondent that there can be no amendment in the shipping bills, since the entire procedure is operated by the system. However, it is stated that the 3rd respondent is ready to issue 'No Objection Certificate' to enable the petitioner to avail the benefits from the 4th respondent. In the above view of the matter, there will be a direction to the 3rd respondent to issue the necessary 'No Objection Certificate' to the petitioner. The petitioner shall produce the said NOC before the 4th respondent and seek the benefits from the 4th respondent. The 4th respondent shall consider such claim and pass orders thereon expeditiously, at any rate within a period of three months from the date of receipt of a copy of this judgment."

4. I am of the view that a similar direction can be given in the present case also. Of course in the present case, the Learned Counsel for the respondent is only seeking time. Considering the facts and circumstances of the case, the second respondent shall consider the claim of the writ petitioner and pass appropriate orders thereon expeditiously. This order is passed, taking

note of the fact that only due to inadvertance, the Writ petitioner instead of putting "Yes", had put "No" in the form.

5.The Writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.'

13. It is not in dispute before this Court that the aforesaid order of Hon'ble single Judge has not been carried in appeal by way of any intra-court appeal and it has attained legal quietus. Therefore, it follows that there should be a similar direction in the instant case.

14. This Court passes the following order:

a) Impugned letter dated 31.12.2018 in F.No.S.Misc/160/2017-EDC (NOC) sent by the first respondent to the writ petitioner is set aside;

b) Respondents are directed to permit the writ petitioner to make necessary amendments;

c) First respondent is directed to issue a 'No Objection Certificate' ('NOC' for brevity) to enable the petitioner to claim the benefits under any MEIS scheme from DGFT.

d) NOC shall be issued within three weeks from the date of receipt of a copy of the instant order.

This writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Assistant Commissioner of Customs (EDC)
Chennai IV Commissionerate, Custom House
60 Rajaji Road, Chennai - 600 001

2. The Commissioner of Customs
Chennai IV Commissionerate, Custom House
60,Rajaji Salai, Chennai - 600 001

+1cc to Mr.Hari Radhakrishnan , Advocate SR.No. 47111
+1cc to Mr.S.R.Sundar , Advocate SR.No. 46136

W.P.No.3321 of 2019

A.SK(05/07/2019) 06.2019