231

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 17482 of 2019 (O&M)
Date of Decision: 19.11.2019

KEI Industries Limited through its authorized signatory
Sh. Vinay Aggarwal, New Delhi

.... Petitioner

Versus

Commissioner of Customs, New Delhi and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Jagmohan Bansal, Advocate
for the petitioner.

Mr. Sourabh Goel, Sr. Standing Counsel, Indirect Taxes
for the respondents/Customs.

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JASWANT SINGH, J.

1. Through instant writ petition under Article 226 of the Constitution of India, the petitioner is seeking quashing of communication dated 05.04.2019 (**Annexure P-5**), whereby Deputy Commissioner of Customs, Gurugram has declined request of the petitioner to amend shipping bills under Section 149 of the Customs Act, 1962.

2. Conceded facts emerging from record are that during June' 2016 to March' 2018, the petitioner exported electrical cables to different countries against 19 Shipping Bills. The agent of petitioner at first page of the Shipping Bills declared *"the exporter wishes to avail the reward under Merchandise Export Rewards Scheme",* whereas by mistake at the time of ticking against column "Scheme Reward" mentioned 'N' which denotes 'no', consequently, the petitioner became disentitled to benefit of MEIS Incentive. The petitioner approached respondent No. 2-Customs Authorities seeking amendment of Shipping Bills in terms of Section 149 of Customs

Act, 1962. The Deputy/Assistant Commissioner of Customs, ICD, Gurugram vide impugned order dated 05.04.2019 **(P-5)** turned down request of the petitioner on the ground that details desired to be amended were not inexistence at the time of goods exported.

3. Mr. Bansal, counsel for the petitioner contended that respondent has power to amend Shipping Bill on the basis of a document which was in existence at the time of export. The petitioner categorically claimed benefit of MEIS on the first page of Shipping Bill thus intention of petitioner was very much clear. The petitioner has not relied upon or furnished any document which was not on record at the time of export of goods. Thus, there is no reason to deny amendment of Shipping Bills in question. In support of his contention, the petitioner cited judgment of Madras High Court in the case of ***M/s Global Calcium Pvt. Ltd. Versus The Assistant Commissioner of Customs (EDC) & Another 2019-TIOL-1259-HC-MAD-CUS***.

4. Mr. Sourabh Goel, counsel for the respondents contended that there is no infirmity in the impugned order dated 05.04.2019. Merely because on the first page exporter expressed its intention to avail benefit of MEIS does not absolve the petitioner from submitting documentary proof to the satisfaction of proper officer as required under Section 149 of the Act.

5. Having scrutinised record and heard arguments of both sides, we find that the Petitioner-Company concededly expressed its intention to claim benefit of MEIS on the first page of Shipping Bill. There seems no reason / or rationale to first to claim benefit on the first page in bolded words and thereafter tick 'N' on the second page except inadvertent mistake. It seems to be highly improbable that anybody eligible to some incentives

would waive of or disclaim an incentive without any alternative benefit or other reason. It appears a clerical mistake and no document was produced or required to amend/correct the Shipping Bill. Section 149 admittedly permits amendment of Shipping Bill even after export of goods and only requirement is that document should be in existence on the basis of which amendment is sought. Section 149 of Customs Act, 1962 is extracted below:

> ***" 149. Amendment of Documents.***
>
> *Save as otherwise provided in section 30 and 41, the proper officer may, in his discretion, authorize and document, after it has been presented in the customs house to be amended:*
>
> ***Provided*** *that no amendment of a bill of entry or shipping bill or bill of export shall be so authorized to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be. "*

From the reading of above quoted section 149, it can be inferred that amendment of Shipping is not permitted after export of goods except on the basis of documentary evidence which was in existence at the time of export.

6. In the case in hand, the petitioner is claiming amendment of Shipping Bills not on the basis of documents which were not in existence at the time of export of goods. The petitioner, rather, by seeking amendment of Shipping Bill is actually seeking correction of mistake, which is apparent on record. Reliance upon order of Madras High Court in the afore-cited case is well founded. Madras High Court in the identical circumstances has directed

Customs Authorities to issue 'No Objection Certificate' to enable the petitioner to claim benefit of MEIS from DGFT.

7. We are at one with counsel for the petitioner. Finding ourselves unable to form any contrary view from order of Madras High Court and relying upon mandate of Section 149 of Customs Act, 1962, we find that present **petition** deserves to succeed, and accordingly, **allowed**.

We **direct** the Assistant/Deputy Commissioner of Customs, ICD, Gurugram to amend / permit amendment of 19 shipping bills in question and issue NOC to petitioner to enable to claim MEIS from office of DGFT.

(JASWANT SINGH)
JUDGE

November 19, 2019 **(LALIT BATRA)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*