IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.31011 of 2017
&
W.M.P.No.33984 of 2017

M/s.P.A.Footwear Pvt. Ltd.,
Rep. by its Managing Director,
Mr.S.V,Kumaragurparasamy,
314, 1C, S.R.Kandigai Road,
Pappankuppam Village,
Gummidipoondi - 601 201,
Thiruvallur District. ... Petitioner

Vs.

1.The Director General of Foreign Trade,
Directorate General of Foreign Trade,
Udyog Bhawan, H-Wing, Gate No.02,
Maulana Azad Road,
New Delhi - 110 011.

2.The Central Board of Excise & Customs,
Rep. by its Chairman,
North Block,
New Delhi - 110 001.

3.The Deputy Commissioner of Customs,
Chennai - VII Commissionerate,
Air Carge Compex, Meenambakkam,
Chennai - 600 027.

4.The Deputy Commissioner of Customs,
Chennai - IV Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

5.The Joint Director General of Foreign Trade,
4th Floor, Shastri Bhawan Annexe,
No.26, Haddows Road,
Chennai - 600 006.

6.The Policy Relaxation Committee,
Rep. by its Chairman,
Directorate General of Foreign Trade,
Udyog Bhawan, H-Wing, Gate No.02,
Maulana Azad Road,
New Delhi - 110 011. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the sixth respondent culminating in the decision taken in meeting No.07/AM18 on 31.05.2017 by the sixth respondent in the meeting and quashing the same direct the respondents to grant MEIS benefit to the petitioner herein in respect of 44 shipping bills covered by the Files (i) 04/21/090/00733/AM16, (ii) 04/21/090/00747/AM16 and (iii) 04/21/090/80074/AM17 of the fifth respondent.

For Petitioner : Mr.R.Mansoor Ilahi, for Mr.S.Murugappan

For Respondents 1, 5 & 6: Mr.T.V.Krishnamachari, Senior Panel Counsel

For Respondents 2 to 4 : Ms.Hema Muralikrishnan. Standing counsel

ORDER

This writ petition has been filed challenging the decision taken by the sixth respondent against the petitioner in their meeting dated 31.05.2017 and quashing the same and consequently, direct the respondents to grant Merchandise Exports from India Scheme (MEIS) benefit to the petitioner herein in respect of 44 shipping bills covered by the files (i) 04/21/090/00733/AM16, (ii) 04/21/090/00747/AM16 and (iii) 04/21/090/80074/AM17 of the fifth respondent.

2. It is the case of the petitioner that the goods exported by the petitioner are eligible for benefit under Merchandise Exports from India Scheme which has been notified under the Foreign Trade Policy. It is their case that at the time of filing of their 44 shipping bills covered by the files (i) 04/21/090/00733/AM16, (ii) 04/21/090/00747/AM16 and (iii) 04/21/090/80074/AM17, the petitioner had inadvertently omitted to select 'Yes' in the online platform and omitted to mention/declare in the shipping bills that they intend to claim benefit under the Merchandise Exports from India Scheme. According to the petitioner, they filed an application dated 20.03.2017 before the sixth respondent seeking to amend the 44 shipping bills filed by the petitioner so as to claim incentive under the Merchandise Exports from India Scheme stating that only due to inadvertence, they have omitted to select 'yes' which will enable them to claim benefit under the Merchandise Exports from India Scheme. The said application of the petitioner was considered by the sixth respondent in their meeting held on 31.05.2017 and they have rejected the same on the ground that the applicant has neither marked 'yes' in the reward item box nor declared intent for claiming rewards and no cogent reasons have been given by him for omitting to mention 'yes' in the online platform. Aggrieved by the same,

this writ petition has been filed.

3. A counter affidavit has been filed by the first, fifth and sixth respondents reiterating the contents of the scheme of Merchandise Exports from India Scheme (MEIS) and also reiterating the contents of the rejection order passed by the sixth respondent in its meeting held on 31.05.2017.

4. Heard Mr.R.Mansoor Ilahi, learned counsel for the petitioner, Mr.T.V.Krishnamachari, learned Senior Panel Counsel for the respondents 1, 5 & 6 and Ms.Hema Muralikrishnan, learned standing counsel for the respondents 2 to 4.

5. The learned counsel for the petitioner submitted that in an identical matter, a learned Single Judge of this Court has allowed the writ petition on the ground that 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 in view of prevailing E.D.I. system, the corrections cannot be done and hence, the petitioner cannot suffer for an inadvertent mistake committed by him.

6. The decisions referred to by the learned counsel for the petitioner are as follows:

(a) an order of the learned Single Judge in the Madurai Bench of this Court in the case of Pasha International vs. Commissioner of Customs, Tuticorin reported in 2019 (365) E.L.T. 669 (MAD)

(b) an order of the learned Single Judge of this Court in the case of Global Calcium Private Limited vs. The Assistant Commissioner of Customs (EDC) reported in 2019 (6) TMI 811.

7. In the case on hand also, it is the case of the petitioner that only due to inadvertence, 'Yes' was not mentioned in the online platform while filing the shipping bills and the only reason for rejection of the petitioner's application is that no cogent reasons have been given by him for not mentioning 'Yes', while filing the shipping bills in the online platform. In view of the identical facts, this Court is of the considered view that the decisions relied upon by the learned counsel for the petitioner are squarely applicable to the facts of the instant case also.

8. However, since the details of the shipping bills filed by the petitioner have not been disclosed in the affidavit filed in support of this writ petition, it is made clear that the petitioner will have to satisfy the respondents with regard to the genuineness of the 44 shipping bills to enable them to claim the incentive under the Merchandise Exports from India Scheme.

9. For the foregoing reasons, the following orders

are passed:

(a) the impugned decision made against the petitioner on 31.05.2017 by the sixth respondent during their meeting held on the same date in respect of 44 shipping bills covered by the files (i) 04/21/090/00733/AM16, (ii) 04/21/090/00747/AM16 and (iii) 04/21/090/80074/AM17 of the fifth respondent is hereby quashed.

(b) the third and fourth respondents are directed to issue no objection certificate to the fifth respondent within a period of three weeks from the date of receipt of a copy of this Order, to enable the petitioner to claim benefits under Merchandise Exports from India Scheme from DGFT, subject to the satisfaction of the third and fourth respondents with regard to the genuineness of the 44 shipping bills submitted by the petitioner.

(c) On receipt of the No objection certificate from the third respondent, the fifth respondent shall act upon the said no objection certificate and pass incentive orders in favour of the petitioner within a period of three weeks thereafter.

10. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

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Maulana Azad Road, New Delhi - 110 011.

+1cc to Mr.S.Murugappan, Advocate, S.R.No. 7305
+1cc to Mr.Hemamuralikrishnan, Advocate, S.R.No. 7161
+1cc to Mr.T.V.Krishnamachari, Advocate, S.R.No. 7039

W.P.No.31011 of 2017

VBA(CO)
GN(26/02/2020)