BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.09.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.3489 of 2020 and
WMP (MD) No.2950 of 2020

ATC Tires Private Limited
Plot No.A-2, Sipcot Industrial Growth Centre,
Gangaikondan,
Tirunelveli - 627 352. ... Petitioner

Vs.

1.Zonal Additional DGFT,
Office of the Additional Director General of Foreign Trade,
Shastri Bhawan, Haddows Road,
Chennai - 600 006.

2.Director General of Foreign Trade,
Through the Chairman, Policy Relaxation Committee,
5th Floor, Udyog Bhawan,
New Delhi - 110 001.

3.Commissioner of Customs,
New Harbour Estate,
Beach Road, Salt Pans,
Thoothukudi,
Tuticorin - 628 004.

4.Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi - 110 001

5.The Development Commissioner,
MEPZ, Tambaram, Chennai. ... Respondents

(R5 is suo motu impleaded vide Court order dated 11.09.2020 by GRSJ)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, quashing the impugned order dated 23.12.2019 passed by respondent No.2 and direct Respondent No.1 to consider the case of the petitioner and grant export incentives under MEIS or to re-open online portal to allow the petitioner to rectify the inadvertent and bona fide error or to accept and process physical application to grant export incentives under MEIS to the petitioner or alternatively, direct Respondent No.3 to recall and amend the Shipping Bills granting the MEIS benefit.

For Petitioner : Mr.Raghavan Ramabadran
For R1,R2 & R4, R5 : Mr.H.Lakshmi Shankar
For R3 : Mr.Aravindan

O R D E R

Heard the learned counsel on either side.

2.The petitioner is an exporter of certain goods. They are having their own manufacturing facility at SIPCOT, Special Economic Zone, Gangaikondan, Tirunelveli, Tamil Nadu. While filing their shipping bills through online, during the period from 08.04.2019 up to 09.08.2019, in the coloumn relating to intent for availing rewards under MEIS (Merchandise Exports from India Scheme), the petitioner's representative instead of entering 'Y' for each line item, selected 'Y' only for the first line item and did not make any selection for remaining items. As a result, the system on its own automatically entered it as 'No' for all the remaining items. The petitioner discovered this error only a little later. Therefore, they submitted an application dated 10.08.2019 to the Policy Relaxation Committee of Director General of Foreign Trade. The Committee held its meeting on 19.11.2019 and 03.12.2019 and by the impugned communication rejected the petitioner's request. This is under challenge in this Writ Petition.

3.The respondents have filed a detailed counter affidavit. The contention of the learned Standing Counsel appearing for the respondents is that the Director General of Foreign Trade cannot be blamed for the lapse committed by the writ petitioner. He would also point out that Director General of Foreign Trade is not in possession of the relevant material to even take a call in the matter. Since the petitioner's transaction had been entered as 'No' in the system, the shipping bills were not forwarded to the Director General of Foreign Trade. Therefore, he submitted that the decision impugned in the communication does not call for any interference.

4.The learned Standing Counsel for the Customs authority submitted that the petitioner had not so far approached them and therefore they are not able to take a stand in the matter.

5.I carefully considered the rival contentions and I went through the materials on record. The learned counsel appearing for the writ petitioner drew my attention to the order dated 10.01.2019, made in W.P.(MD).No.25252/18 (Pasha International Limtied vs Commissioner of Customs, Tuticorin and two others). He pointed out that the case on hand is absolutely similar. In the said case, the writ petitioner had though actually intended to claim the benefit under MEIS (Merchandise Exports from Indian Scheme), while filing the shipping bills, he had opted for 'No' instead of 'Yes'. I held that the exporter ought not to suffer for the inadvertent mistake committed by him. When the filing was done manually, Section 149 of Customs Act provides for effecting corrections. Now, there has been a shift from the manual system to EDI System. In the EDI System, approval is also automated. Since the petitioner had opted only for 'Yes', as far as the first line item is concerned and did not opt for the remaining items, by system default, for the remaining items the system opted 'No' automatically. As already pointed out, this was a sheer inadvertent mistake committed by the writ petitioner's representative. The petitioner had actually intended to claim the benefit under the aforesaid Scheme. The petitioner deserves to be given one more opportunity to set right things. After the shipping bills were filed, they are transferred to NSDL (National Securities Depository Limited), which is a Digital Depository. Unless, the third respondent specifically instructs NSDL, they will not be in a position to forward the petitioner's shipping bills to the second respondent. It is seen that the petitioner had been corresponding only with NSDL all these months.

6. I therefore permit the petitioner to make a formal request to the third respondent. After the third respondent receives such a request from the petitioner herein, the 3rd respondent / Commissioner of Customs, Tuticorin will issue No Objection Certificate to enable the petitioner to avail the benefit and also instruct NSDL to transmit all the relevant materials to the Development Commissioner, MEPZ, Tambaram, Chennai.

7. The learned standing counsel for the Central Government points out that the Competent authority is now the Development Commissioner, MEPZ, Tambaram, Chennai and not the second respondent. Hence, the Development Commissioner is suo motu impleaded as the fifth respondent. Mr.H.Lakshmi Shankar, the learned counsel is directed to take notice for the impleaded 5th respondent. Registry to make necessary correction in the cause title.

8. The Development Commissioner on receipt of such documents from NSDL, will consider the claim of the writ petitioner and pass appropriate orders as expeditiously as possible.

9. With these directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vrn

To:

1. Zonal Additional DGFT,
   Office of the Additional Director General of Foreign Trade,
   Shastri Bhawan, Haddows Road,
   Chennai - 600 006.

2.Director General of Foreign Trade,
   Through the Chairman, Policy Relaxation Committee,
   5th Floor, Udyog Bhawan,
   New Delhi - 110 001.

3.Commissioner of Customs,
   New Harbour Estate,
   Beach Road, Salt Pans,
   Thoothukudi,
   Tuticorin - 628 004.

4.Union of India,
   Represented by its Secretary,
   Ministry of Finance,
   Department of Revenue,
   North Block, New Delhi - 110 001.

5.The Development Commissioner,
   MEPZ, Tambaram, Chennai.

+1 CC to Mr.H.LAKSHMI SHANKAR, Advocate SR-16718.

W.P.(MD)No.3489 of 2020 and
WMP (MD) No.2950 of 2020
11.09.2020

CS(18.09.2020) 4P 7C