IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.20 OF 2021

Ajanta Industries
a proprietorship concern,
at Apewal, Priol, Ponda,
Goa, through its proprietor,
Mr. A. Surendra Kamath,
son of late A. Sitaram Kamath,
64 years old, residing at
'Ajanta' Shivnagari,
Farmagudi, Ponda Goa,
Pin Code : 403 401. ….. Petitioner

Versus

1. The Assistant Commissioner of Customs,
   with his office at Customs House,
   Marmagoa, Goa.
   Pin Code: 403 803

2. The Additional Director General
   of Foreign Trade, with office at,
   CGO Office, New Building,
   SE Wing, New Marine Lines,
   Churchgate, Mumbai, Maharashtra.
   Pin Code: 400 020

3. The Director General of Foreign
   Trade, with office at, H Wing,
   Gate No.2, Udyog Bhavan,
   Maulana Azad, Road, New Delhi.
   Pin Code-110 011 … Respondents

Mr. V.P. Thali, Advocate for the Petitioner.

MR. Pravin Faldessai, Assistant Solicitor General of India for Respondents No.2 & 3.

CORAM: REVATI MOHITE DERE &
M. S. JAWALKAR, JJ.

DATE : 1st DECEMBER 2021

ORAL JUDGMENT : (*Per M.S. Jawalkar, J.*)

Rule. Rule made returnable forthwith at the request and by consent of the parties. Learned Assistant Solicitor General of India waives service for the respondent nos.2 and 3.

2. Petitioner is a proprietary concern. He deals with the business of manufacturing and exporting cashew kernels. The petitioner, who seeks to avail the benefit of merchandise export from India Scheme (MEIS) envisaged under the foreign trade policy by which exporters are entitled to export benefit of 3% of the net export in the form of Duty Credits Scrips which can be used for the payment of duty and are also transferable. The said benefit was further increased to 5% of the net exports with effect from 01.11.2017. Paragraph 3.04 of the foreign trade policy reads as under :

> **3.04 Entitlement under MEIS**
> Exports of notified goods/products with ITC [HS] code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC(HS) code wise]. The basis of calculation of reward would be on realized FOB

value of exports as given in the Shipping Bills in freely convertible foreign currencies; whichever is less, unless otherwise specified."

3. The procedure for claiming the benefits of the MEIS is described in para 3.14 which reads as follows:

> *"**3.14: Declaration of Intent on shipping bills for claiming rewards under MEIS including export of goods through courier or foreign post offices using e-Commerce.***
> *(a) Export shipments filed under all categories of the Shipping Bills would need the following declaration on the Shipping Bills in order to be eligible for claiming rewards under MEIS" **"We intend to claim rewards under Merchandise Exports From India Scheme (MEIS)".** Such declaration shall be required even for export shipments under any of the schemes of Chapter 4 (including drawback), Chapter 5 or Chapter 6 of FTP. In case of shipping bills (other than free shipping bills), such declaration of intent shall be mandatory with effect from 1st June 2015.*
> *(b) ….*
> *(i) ….*
> *(ii) ….*
> *(iii) …."*

4. It is submitted by the petitioner that prior to the introduction of the electronic filing of shipping bills through Electronic Data Interchanged (EDI), an application for claiming rewards under MEIS was made manually to the respondent no.2 – Additional Director General of Foreign Trade alongwith the copy of shipping bills. However, after EDI was introduced,

the application for claiming rewards under MEIS was a part of the filing of the shipping bills online. In the shipping bill a question as to, whether the petitioner is claiming the benefit under any reward scheme including MEIS had to be ticked with either “Yes” or “No”. The default answer in the EDI answer system in the shipping bill to the question whether the applicant is claiming the benefit under MEIS is “No”.

5. It is further submitted by the petitioner that the petitioner exported cashew kernels by shipment under the two shipping bills bearing no.7833886 dated 04.08.2017 and no.8085081 dated 18.08.2017. The shipping bills once uploaded with the customs get redirected or transmitted to the web portal of the respondent no.2 in terms of EDI. The consignor has to then apply for MEIS licence to get the said reward under the said MEIS scheme. It is further submitted that the petitioners clearing agent i.e. Custom House Agent (CHA) while filling and filing the shipping bill did not notice the default setting and hence even though the petitioner was eligible and claiming the benefits under MEIS, by inadvertent mistake the default setting was taking “No” was not corrected to “Yes”. For this reason the shipping bills were not uploaded to the system of the second respondent for considering the

claim for reward under MEIS.

6. There is enabling provision under Section 149 to amend the document even after it has been presented in the custom house. However after the EDI system was introduced, correction could not be made to said documents, including the shipping bill, even for an inadvertent mistake. It is further submitted that respondent no.1 - Office of the Commissioner of Customs, issued 'certificate of amendment' by which the reward items in the shipping bills stands amended as per table given in the certificate. In view of these facts the petitioner is seeking direction to respondents no.2 & 3 to consider the grant to the petitioner of export benefits/rewards envisaged by the MEIS scheme.

7. Learned Counsel relied on ***Annu Cashews V/s. Commissioner of Customs (2019 SCC ONLINE Kerala 4729)*** and also relied on judgment of Division Bench confirming the judgment of Kerala High Court in support of his above contentions.

8. Respondent No.3 opposed the petition and submitted that there was public notice dated 16.05.2016, wherein

marking “Y (for Yes)” in the EDI shipping bill was made mandatory and it was notified that such marking is to be made at the time of filing of the shipping bills. It is also pointed out after getting manual amendment of such shipping bill under Section 149 of the Customs Act by the relevant Customs Commissioners/ Authorities with a plea to enable them to apply for MEIS, despite their shipping bills not available with DGFT server. It is submitted that a shipping bill with manual amendment is not electronically transmitted to the DGFT server by customs and DGFT is not in a position to issue benefit to such forms in the online environment. Therefore, it is necessary to direct respondent no.1 to transmit the data for such amended shipping bills, failing which DGFT office cannot enable the issuance of scrip for the impugned shipping bills.

9. We have heard both the parties at length and gone through the rival contentions of the parties. There is no substance in the defence raised by the respondent no.3. It appears that claims in cases where the exporters had omitted to tick “Yes” in the portal only for a period of 6 months from the date of introduction of scheme by virtue of circular issued by DGFT instruction was allowed. Therefore, amendment to bill is allowed to be carried out only for a limited period of 6 months

from the date of introduction of the scheme. Kerala High Court in writ appeal filed by the Commissioner of Customs in ***Anu Cashew*** (supra) specifically observed that :

> *“we do not find any logic in putting such a limitation... the intention was explicit from other details uploaded in the portal and also from the documents relating to the shipping. Therefore, the omission seems to have been quite inadvertent. There is no justification in denying the claim, based on such an inadvertent omission. In the matter of condoning such an omission, there cannot be a discrimination between exporters, who made a claim within six months and those who have raised the claim after six months of introduction of the Scheme.”*

10. Petitioner in rejoinder submitted that in view of ***Anu Cashews*** (Supra) and on perusal of exchange of emails the respondent no.3 has the ability, as well as the capabilities to enable issuance of the scrip in respect of the petitioner's shipping bills in question.

11. If shipping bills are perused in the column meant for description of the goods, the petitioners had clearly indicated their intention to avail the benefit of MEIS. However, it appears that there is technical lapse on the part of the exporters in not ticking a particular box in the web portal, more so, when there was sufficient indication in other details entered therein about the intention of the exporter to claim the

rewards. Not only this, the Assistant Commissioner of Customs issued certificate of amendment by which reward item under shipping bills stands amended as mentioned in table 1. However, it could not be amended in the EDI system as the EGM has been closed. It appears that exporter did not check the box concerned, to read “Yes”, whereas in the column meant for the description of the good he had clearly indicated his intention to avail the benefit of the export promotion scheme. The Customs House, in fact, issued certificate of amendment. Thus, denial of benefits only on such technical lapse on the part of exporter cannot be accepted, particularly, when there was sufficient indication from the other details pointing out exporters' intention to avail the benefit.

12. In view of above discussion, it is necessary to direct the respondent to consider the claim of the petitioner for export benefit, afresh within a period of one month from the date of receipt of the copy of this judgment by granting due opportunity of hearing to the petitioner, if required. The respondent no.3 is directed to take into consideration amendment certificate issued by respondent no.1.

13. In our considered opinion, in order to overcome this

technical flaw, the respondent nos.2 & 3 to take steps to develop a software so that amendment, if any required, can be facilitated.

14. Rule is made absolute in the aforesaid terms.

15. All concerned to act on the authenticated copy of this order.

M. S. JAWALKAR, J. REVATI MOHITE DERE, J.

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NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2021.12.08 17:15:54 +05'30'