

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.4095/2019

M/s Shah Nanji Nagsi Exports Pvt. Ltd., Nagpur

..Vs..

Union of India and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Dewani, Advocate for the petitioner.
Shri U.M. Aurangabadkar, A.S.G.I. for respondent Nos.1 to 4.

CORAM :- SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED :- 2.8.2021.

Heard Shri Dewani, learned counsel for the petitioner and Shri Aurangabadkar, learned A.S.G.I. for respondent Nos.1 to 4.

2. The basic grievance of the petitioner is that the company, since last 100 years has been engaged in export of rice, oil seeds, food-grains, cornstarch and pulses and in the present case, when it was export of cornstarch, it had expressed its intention to avail of the benefit of reward under Merchandise Export from India Scheme (for short "MEI Scheme") under the foreign trade policy.

3. As per the provisions of this MEI Scheme, such expression of intent has to be shown by the exporter by ticking "Y" from out of two options in the nature of "Y/N". It is also the condition that consistently the company has been exercising its option by ticking "Yes" (ticking "Y" for Yes) showing its intention to avail of the benefit of the scheme. However, as submitted by the

company this time, when the shipping bills were submitted, during the period from July 2017 and October 2017, the Customs Broker while filing these shipping bills exercised the option “No” by ticking “N” due to oversight but later on such mistake was permitted to be rectified by the respondents when the respondents allowed the request of the petitioner to submit amended shipping bills, as submitted by the learned counsel for the petitioner. However, now, the case of the petitioner is that the respondents have erroneously and illegally refused to grant benefit of the scheme to the petitioner.

4. Reliance has been placed on the observations of the Apex Court in the case of **Popatrao Vyankatrao Patil V/s. The State of Maharashtra & Ors.** reported in 2020(2) HLT 367 wherein the Apex Court held that even when there are disputed questions of facts which fall for consideration but when such disputed questions of facts do not require any elaborate evidence to be adduced, the High Court is not precluded from entertaining a writ petition under Article 226 of the Constitution of India.

5. In the present case, we are of the considered view that from the view point of the petitioner there are no facts which would require any proof, by adducing any evidence. The case of the petitioner, plain and simple, is that while submitting the shipping bills for the period from July 2017 to October 2017, the Customs Broker, due to oversight, chose the option “No” instead of option “Yes” as regards the claim of reward of the aforesaid

M.E.I. Scheme. This could be seen from a communication dated 13.3.2018 made to the respondents by the petitioner, a copy of which is available on record at page 27.

6. The communication dated 13.3.2018 would clearly show that it is an admitted fact that while submitting the shipping bills in question mistakenly “No” was chosen not by the petitioner but by its Customs Broker. If such a mistake has been committed, about which there is no dispute, the remedy for the redressal of grievance of the petitioner would be against the Customs Broker who has committed the mistake and not against the government which would not be responsible for making any mistake or mistakenly reading the options indicated by the petitioner in the shipping bills. When admittedly there is a mistake committed by its own Customs Broker, the petitioner would have to make the Customs Broker to pay for his mistake and not the government which has not played any role in the matter. Thus, the petitioner is not entirely remediless and the petitioner can appropriately proceed against the Customs Broker, if it desires.

7. Such being the facts of the present case, no assistance can be sought from the judgment in the case of Popatrao Vyankatrao Patil (supra). In the result, we find no merit in the petition. The petition stands **dismissed**. No costs.

JUDGE

JUDGE