IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1447 OF 2021

EMAMI AGROTECH LIMITED ….PETITIONER

V/s.

UNION OF INDIA THROUGH
SECRETARY MINISTRY OF FINANCE
AND MINSTRY OF LAW AND
JUSTICE AND ORS …RESPONDENTS

Mr. Sriram Sridharan for Petitioner.
Mr. P. S. Jetly, Sr. Advocate a/w Mr. J. B. Mishra for Respondent nos.2 & 3.
Mr. Anjani Kumar Singh for Respondent No.1

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ
DATED : 27th SEPTEMBER 2022

P.C. :

1 Prayer clause (a) reads as under:

> *"(a) That this Hon'ble court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the respondents to grant the exemption of the Social Welfare Surcharge amount in terms of the Exemption Notification No.24/2015-CUS dated 8-4-2015 & 25/2015 dated 8-4-2015."*

In addition, in prayer clause (e) petitioner is also seeking refund of the Social Welfare Surcharge wrongly debited from the Merchandise Export from India Scheme (MEIS) / Service Exports from India Scheme (SEIS) scrips held by petitioner from July 2018 onwards alongwith applicable interest.

2 An identical issue was considered by this court where the court by order dated 10th August 2022 in Writ Petition No.8677 of 2019 disposed the

petition. The order dated 10th August 2022 reads as under:

"1 Mr. Prakash Shah tenders Circular No.3/2022-Customs issued on 01st February 2022 by the Department of Revenue (Tax Research Unit), Ministry of Finance, Government of India. The same is taken on record and marked "X" for identification, and for ease of reference, the same is scanned and reproduced herein below :-

'X' 10/8/2022

Circular No. 3/2022-Customs

F. No. CBIC-190354/262/2021-TRU Section-CBEC
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)
*****

Room No. 156, North Block
New Delhi, dated the 1st of February, 2022

To,

All Principal Chief Commissioners/ Chief Commissioners of Customs/Customs (Preventive),
All Principal Chief Commissioners/ Chief Commissioners of Customs & Central Tax,
All Principal Commissioners/ Commissioners of Customs/Customs (Preventive),
All Principal Commissioners/ Commissioners of Customs & Central Tax

Madam/ Sir,

Subject: Clarification regarding applicability of Social Welfare Surcharge on goods exempted from basic and other customs duties/cesses –reg.

References have been received seeking clarification on the issue of applicability of Social Welfare Surcharge (SWS) on goods that are exempted from basic customs duty or taxes or cesses which are levied as a duty of customs. In absence of any specific exemption on Social Welfare Surcharge, certain field formations have taken a view that Social Welfare Surcharge shall be payable on notional customs duty as determined on Tariff rate.

2. The matter has been examined. Social Welfare Surcharge (SWS) is levied and collected, as a duty of customs, *vide* Section 110 of the Finance Act, 2018 (13 of 2018) and is calculated at the rate of 10 per cent. on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government as a duty of customs on goods imported into India.

3. In this regard, it may be noted that at present SWS applies at the rate of 10% of the aggregate of customs duties payable on import of goods and not on the value of imported goods. If aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of value equal to 'Nil' (as aggregate amount of customs duties payable is zero). Law does not require computation of SWS on a notional customs duty calculated at tariff rate where applicable aggregate of duties of customs is zero.

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4. Thus, it is clarified that the amount of Social Welfare Surcharge payable would be 'Nil' in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted.

5. The contents of this circular may please be brought to the notice of trade and industry through issue of Trade/ Public notices. The field formations may also be suitably sensitized in this regard. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version follows.

Yours faithfully,

(Nitish Karnatak)
Under Secretary to the Government of India

> *2 In view of the circular, the grievance of the Petitioner, Respondents debiting notional social welfare surcharge in the duty credit scrip issued under the Merchandise Export from India Scheme (MEIS) is resolved.*
> *3 In view of the circular, certainly Petitioner will be entitled to re-credit and/or refund of notional social welfare surcharge in the duty credit scrip issued under MEIS in the goods imported by Petitioner.*
> *4 Respondents to do needful within 8 weeks of receiving copy of this order.*
> *5 Petition accordingly stands disposed.*
> *6 In view of the circular, we would add that those parties, who have not filed petition in this court, will also be able to take benefit of this order."*

3 Mr. Mishra and Mr. Sridharan submit that order in Writ Petition No.8677 of 2019 will squarely applied to this petition as well.

4 In the circumstances, respondents are directed not to auto debit from petitioner's MEIS and SEIS scrips any amount towards Social Welfare Surcharge.

5 Moreover, any amount deducted shall be refunded to petitioner within

8 weeks of receiving an application from petitioner for refund. Mr. Sridharan states that necessary application for refund to justify the quantum of refund will also be filed. Refund shall be issued together with interest thereon in accordance with law.

6 Petition disposed.

(A. S. DOCTOR, J.) **(K.R. SHRIRAM, J.)**