IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

C.M.A.No.170 of 2022

The Commissioner of Customs
O/o.The Commissioner of Customs
Custom House
Chennai IV Commissionerate
No.60 Rajaji Salai
Chennai 600 001 .. Appellant

Vs

M/s.Angel Starch and Food Pvt. Ltd.
First Floor, H-19
Periyar Nagar
Erode
Tamil Nadu 638 009 .. Respondent

Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962, to set aside the Final Order No.41639/2021 dated 01.07.2021 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant	Mr.A.P.Srinivas Senior Standing Counsel
For Respondent	Mr.E.Ramesh

JUDGMENT

[Judgment of the Court was delivered by **R.MAHADEVAN, J.**]

Heard both sides and perused the materials available on record.

2.This appeal is filed by the appellant / Revenue, challenging the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai, formulating the following substantial questions of law:

(i)Whether the shipping bill filed under drawback can be amended to be filed under MEIS scheme after the export of the goods and against the mandate of Section 149 of the Customs Act, 1962 ?

(ii)Whether the Tribunal is correct in directing the appellant to amend the shipping bill in violation of the DGFT Public Notice No. 09/2015-20 dated 16.05.2016 ?

3.The respondent / assessee is engaged in the business of manufacture and export of corn starch. They had filed nine drawback shipping bills and the same were facilitated through RMS. After coming to know that they are eligible for MEIS scheme, the respondent made representation to the Assistant Commissioner of Customs requesting to convert the shipping bills from drawback to MEIS citing Board's Circular No.36/2010 dated 23.09.2010. The Assistant Commissioner of Customs/Adjudicating Authority denied the said request *vide* order-in-original dated 29.11.2018 stating that the amendment of the shipping bills cannot be done manually as the intent of the respondent to avail MEIS was not declared at the time of filing of shipping bills.

4.Aggrieved by the said rejection, the respondent preferred an appeal in SEA.C.Cus II No.207/2019, before the Commissioner of Customs (Appeals-II), Chennai, who by order-in-appeal dated 28.03.2019, set aside the order-in-original and directed the Adjudicating Authority to consider the amendment of the shipping bill and pass an order to that effect. On appeal by the appellant / Revenue, the said order-in-appeal was affirmed by the CESTAT, by holding that the benefit available in the statute cannot be denied on the ground of technical issues. Aggrieved over the order of the Tribunal, the appellant / Revenue has come up with this appeal before this court.

5.The issue involved herein is no longer *res integra* and is decided against the Revenue, in various decisions by several High Courts. One such decision is in the case of ***Bombardier Transportation India Pvt. Ltd. v. Directorate General of Foreign Trade [2021(377) E.L.T. 489 (Guj.)]***, by the Gujarat High Court, the relevant passage of which is usefully extracted below :

> *"18. The entitlement to MEIS benefits is governed by the Chapter-III of the Foreign Trade Policy 2015-20 (FTP 2015-20) and accordingly, the scheme for the grant of the benefit will be governed thereunder. In other words, the substantive rights and obligations are created by the MEIS scheme under Chapter-III of the FTP. It also becomes apparent from para*

30.4 of the Policy that once the notified goods are exported to a notified market, the exporter becomes entitled to the MEIS benefits. Thus, entitlement, restriction thereof and conditions, if any, have to be found within the letters of the Chapter-III of the FTP 2015-20. Thus, the writ-applicant becomes entitled to the MEIS benefits once it exports the notified goods to the notified market. This benefit cannot be defeated due to procedural infirmity of missing to mark/tick "Y" in the rewards column.

19. It is further submitted that the issue in the present writ-application is no longer res integra. Various High Courts including this Hon'ble High Court have already permitted the amendment of shipping bills that have been erroneously ticked as 'No' instead of 'Yes' in the MEIS benefit column."

6.In view of the above, this court is of the opinion that there is no substantial questions of law arisen for consideration herein. Therefore, this civil miscellaneous appeal filed by the appellant / Revenue stands dismissed. No costs.

[R.M.D., J.] [M.S.Q., J.]

23.06.2022

Index : Yes/No
gya

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