IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

WP.No.12188 of 2020

Wabco India Private Limited
Plant III Plot No.AA8
Central Avenue, Auto Ancillary SEZ
Mahindra World City, Natham Sub Post
Chengalpet, Kancheepuram Dist - 603 002.

....Petitioner

-Vs.-

1. Union of India
   Represented by its Secretary
   Ministry of Commerce and Industry
   Department of Commerce
   Udyog Bhavan, New Delhi - 110 107.

2. The Development Commissioner
   MEPZ Special Economic Zone and HEOUs in Tamil Nadu
   Pondicherry and Andaman & Nicobar Islands
   Administrative Office Building
   National Highway-45, Tambaram
   Chennai - 600 045.

3. Specified Officer, MEPZ-SEZ
   Office of the Development Commissioner
   Administrative Office Building
   National Highway-45, Tambaram
   Chennai - 600 045.

4. The Authorised Officer
   Mahindra World City (SEZ)
   Central Avenue, Auto Ancillary SEZ
   Chengalpet.

...Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in proceedings F.No./22/SO/2019/MEPZ-SEZ/254, dated 10.01.2020 passed by the 3rd respondent, quashing the same and direct the 3rd respondent to consider the case of the petitioner and grant a "No Objection Certificate" and amend the Shipping Bills under Section 149 of the Customs Act, 1962.

For Petitioner : Mr.P.Sridharan

For Respondents : Mr.R.Sankaranarayanan
Additional Solicitor General of India
Assisted by
Mrs.Hema Muralikrishnan,
Senior Standing Counsel,
for R1 to R4.

ORDER

The Petitioner is aggrieved by the impugned order dated 10.01.2020 in F.No.22/SO/2019/MEPZ-SEZ/254 (hereinafter referred to as ''the impugned order'') passed by the third respondent, rejecting the request of the Petitioner for no objection.

2.It is the specific case of the Petitioner that the Petitioner is an exporter/manufacturer of auto mobile components and availed the benefit of merchandise under Merchandise Exports India Scheme (MEIS) under chapter 3 of the Foreign Trade Policy 2015-20.

3.Learned counsel for the Petitioner submits as per the hand book of the procedure and relevant public notice/circulars issued in this regard, it is sufficient if an option was exercised once for claiming the above incentives on all the exports and it was not mandatory for an exporter to exercise the option to claim the benefit of the aforesaid scheme separately in each of the shipping bills. It is further submitted that a change was effected in the year 2016, vide Public Notice 9/2015-20 dated 16.05.2016 [amendment to the Hand Book of Procedure to Foreign Trade Policy]. As per the said amendment, for every exports, an exporter was required to exercise the option in the shipping bill in the EDA system of the Customs Department, to claim the benefit under the Merchandise Exports India Scheme.

4.Learned counsel for the Petitioner further submits that the Petitioner has exported several consignments in 44 different shipping bills but failed to make necessary declaration to claim the benefit under the aforesaid scheme.

5.Learned counsel for the Petitioner submits that the aforesaid scheme is an export incentive granted to an exporter under the Foreign Trade Policy 2015-20. It entails rewards to exporters to offset infrastructural inefficiencies and the associated costs to promote manufacture and export of notified goods.

6.Learned counsel for the Petitioner further submitted that these are export incentives which ought to have been granted and a mere defect in the declaration filed in EDA system of the Customs Department cannot come in the legitimate way of grant of the aforesaid incentives to the Petitioner.

7.It is submitted that the Petitioner has approached the first respondent/Ministry of Commerce and since the third Respondent is the authorised officer under the Foreign Trade Policy, the third Respondent has passed the impugned order and by the impugned order the third Respondent has rejected the request of the Petitioner.

8.Learned counsel for the Petitioner submits that the denial of export incentives is contrary to well settled principles of law. In this connection a reference was made to the following decisions:

S.Nos.	Case Laws
1	R.K.Garg Vs. Union of India (1981) 4 SCC 675
2	Pasha International Vs. Commissioner of Customs & Ors. [2019 (365) ELT 669 MAD]
3	ATC Tires Pvt. Ltd., Vs. Zonal Additional DGFT & Ors (HC-Madurai Bench dated 11.09.2020)
4	M/s.Green Globe Exports India Pvt. Ltd., Vs. The Additional Commissioner of Customs (2018-TIOL-94-HC-MAD-CUS)
5	M/s.Davinci Leather Pvt. Ltd., Vs. CC, Chennai & 1 Other (2020-TIOL-464-HC-MAD-CUS)
6	Anu Cashews Vs. Commissioner of Customs and Ors. (2019-TIOL-2809-HC-KER-CUS)
7	Kedia Agencies Pvt. Ltd., Vs. Commissioner of Customs [2017 (348) ELT 364 (Del.)]
8	Union of India Vs. Suksha International & & Nutan Gems & Anr. [1989 (39) ELT 503 (SC)]
9	Formica India Division Vs. CCE [1995 (77) ELT 511 (SC)]

S.Nos.	Case Laws
10	Ford India Pvt. Ltd., Vs Assistant Commissioner of Central Excise, Chennai [2011 (272) ELT 353 (MAD)]
11	Madura Coats Pvt. Ltd., Vs. Commissioner of of Customs, Tuticorin [2009 (248) ELT 431(Tri.-Mad)]
12	Commissioner of Customs Tuticorin Vs. Madura Coats Pvt. Ltd., [2014 (307) ELT 87(Mad.)]
13	M/s.Shree Prithvi Iron Mills Pvt. Ltd., Vs. Commissioner (Appeals), Central Excise & Central Goods & Service Tax, [2019 (5) TMI 969-CESTAT New Delhi]
14	Vinod Kumar Jain Vs. Income Tax Officer-Word-1 (3) Jammu [(2012) SCC Online ITAT 13483]
15	Commissioner of Customs Airport and Air Cargo Complex, Bangalore Vs. M/s.Pfizer Products India Pvt. Ltd. [2015 (9) TMI 34-Karnataka High Court]
16	East India Commercial Co. Ltd., Calcutta Vs. Collector of Customs Calcutta, [1983 (13) E.L.T. 1342 (S.C)]
17	Union of India Vs. Kamlaksi Finance Corporation Ltd., [1991 (55) ELT 433 (SC)]
18	Veena Commercial Corporation Vs. Union of India,[1993 (68) ELT 569 (Bombay)]

9.Opposing the prayer, the learned Additional Solicitor General of India for the Respondents submits that the procedures which are prescribed under the hand book of procedure were followed and therefore, no fault can be attributed in the impugned order passed by the third Respondent, inasmuch as the Petitioner failed to exercise the option. It is submitted that the Petitioner ought to have been vigilant to exercise the option to claim the benefit under the aforesaid scheme, by opting 'yes' against each of the shipping bills on the exports made by the Petitioner. Since the Petitioner failed to exercise the option, such incentives cannot be granted.

10.Opposing the prayer, learned Additional Solicitor General of India further submits that there is no merits in the Writ Petition inasmuch as the scheme under the Merchandise Exports From India Scheme [MEIS] contemplates particular procedure to be followed by the exporters to avail the benefit. It is submitted that if the petitioner has failed to follow the mandatory procedure, the question of granting relief to the petitioner would not arise and therefore, submits that the Writ Petition is liable to be dismissed as it is devoid of any merits. In these circumstances, the learned Additional Solicitor General of India submits that the Writ Petition may be dismissed.

11.By way of rejoinder, learned counsel for the petitioner has drawn the attention to the decision of the learned Single Judge in the case of M/s.K.I.International Limited v. The Commissioner of Customs (Appeal-II) and others reported in 2021 (6) TMI 1007. The learned counsel for the petitioner submits that in the said Writ Petition under a similar circumstance, the learned Single Judge of this Court had interfered and has granted relief to the petitioner therein. It is therefore submitted that the same order could be passed in the light of the decision cited supra.

12.Heard the learned counsel for the petitioner and the learned Additional Solicitor General of India for the respondents and perused the provisions of Foreign Trade Policy 2015-20.

13.The Merchandise Exports From India Scheme [MEIS] is an exporter incentive given to an exporter to offset the infrastructural inefficiencies and the associated costs. The aforesaid scheme entitles an exporter to duty credit script to be utilized for discharging the basic customs duty, additional customs duty specified under Sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 for import of inputs of goods including capital goods, as per DoR Notification, except in the case of listed goods under Appendix 3A to Foreign Trade Policy.

14.The scheme also entitles utilisation of the duty credit script for payment of Central Excise Duty for domestic procurement of inputs or goods or payment of basic customs duty, additional duty of customs as per Paragraph 3.02 of the Foreign Trade Policy 2015-2020 reads as under:

> "3.02 Nature of Rewards
>
> Duty Credit Scrips shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported / domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for:
>
> (i) Payment of Basic Customs Duty and Additional Customs Duty specified under sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 for import of inputs or goods, including capital goods, as per DoR Notification, except items listed in Appendix 3A.
>
> (ii) Payment of Central excise duties on domestic procurement of inputs or goods,
>
> (iii) Deleted

(iv) Payment of Basic Customs Duty and Additional Customs Duty specified under Sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 and fee as per paragraph 3.18 of this Policy.

15.The petitioner herein has failed to exercise the option in all the shipping bills unaware of the changes in the procedure. Though the Government has issued clarification dated 09.10.2015 in Public Notice No.40/2015-2020 to the effect that Paragraph 3.01 of the Foreign Trade Policy [2015-20] does not allow manual feeding of EDA shipping bill details and following of such scheme is not possible manually, it is to be noticed that the aforesaid scheme in the Foreign Trade Policy is an incentive granted to an exporter.

16.The fact that the petitioner has exported goods and was otherwise entitled to the benefit under the aforesaid scheme has not been disputed by the respondents. There is only a procedural lapse on the part of the petitioner in failing to exercise the option in all the shipping bill by assuming that one declaration in the first shipping bill will suffice for exports as was the procedure prior to the amendment. Since the scheme is an export incentive given to an exporter, the procedures cannot be imposed to deny the substantive benefit under the Foreign Trade Policy.

17.In this connection, reference may be made to the decision of the Hon'ble Supreme Court in the cases of Commissioner of Sales Tax v. Auriya Chambers of Commerce [1986 (3) SC 50] and State of Gujarat v. Ramprakash P Puri [(1969) 3 SCC 156] is invited. The Hon'ble Supreme Court has held that rules or procedures are handmaids of Justice and not mistress of law.

18.Incidentally, the learned Single Judge of this Court in the case of M/s.K.I.International Limited v. The Commissioner of Customs (Appeal-II) and others has also granted similar relief as sought for in this writ petition to the petitioner therein.

19.In this case, there is only a procedural lapse. If the petitioner was otherwise entitled to the aforesaid exporter incentive and was not dis-entitled to the same, such benefit cannot be denied. Therefore, I am of the view that the impugned order passed by the third respondent has to go as such export incentives cannot be denied on account of procedural lapse. Accordingly, the impugned order passed by the third respondent is quashed and the case is remitted back to the respondents to re-examine the issue as to whether the petitioner had indeed exported and was entitled to the exporter incentive under the aforesaid scheme, but for the lapse of not clicking the correct option in the System / Web Portal.

20.If the petitioner's case is not falling under any other exceptions provided in the aforesaid scheme, in terms of Paragraph 3.06 of the Foreign Trade Policy 2015-20, the respondents shall pass appropriate orders granting relief to the petitioner. This exercise shall be carried out by the respondents within a period of four weeks from the date of receipt of a copy of this order.

21.In fine, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To
1. The Secretary to Union of India
   Ministry of Commerce and Industry
   Department of Commerce
   Udyog Bhavan, New Delhi - 110 107.

2. The Development Commissioner
   MEPZ Special Economic Zone and HEOUs in Tamil Nadu
   Pondicherry and Andaman & Nicobar Islands
   Administrative Office Building
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   Chennai - 600 045.

3. The Specified Officer, MEPZ-SEZ
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   Chennai - 600 045.

4. The Authorised Officer
   Mahindra World City (SEZ)
   Central Avenue, Auto Ancillary SEZ
   Chengalpet.

+1cc to M/s.Lakshmi Kumaran, Advocate, S.R.No.6116

W.P.No.12188 of 2020

SSN[co]
NSK/15/06/2022