IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.9583 & 9584 of 2014

M/s.A.R.Gherkins Private Ltd.,
Represented by its Director,
Mr.Ranjit P.Shah,
15, Race Course Road,
Guindy, Chennai 600 032. … Petitioner in both WPs

Vs

The Assistant General Manager,
Agricultural and Processed,
Food Products Export Development Authority,
Ministry of Commerce, Government of India,
12/1/1, Palace Cross Road,
Bangalore-560 020. … Respondent in both WPs

PRAYER in WP.No.9583 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to orders rejecting the transport assistance claims filed by the Petitioner Company as detailed in the table given below and quash the same is illegal and direct the Respondent to sanction the transport assistance subsidy to the Petitioner.

PRAYER in WP.No.9584 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, directing the

Respondent to sanction the transport assistance subsidy in TAS-2008-09-4574 and TAS-2008-09-6660 to the Petitioner.

(In both WPs)
For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.H.S.Hredai

COMMON ORDER

The petitioner is a manufacturer-cum-exporter of Agro Products, such as Gherkins. The Government of India had approved a scheme for the grant of Transport Assistance for the export of identified floriculture vide Notifications dated 07.02.2005, 01.08.2008 and 26.08.2013. Some of the products identified and included for the benefit of the Notifications are gherkins in vinegar, gherkins in brine and gherkins in acidic acid.

2.The petitioner had filed 30 claims for Transport Assistance Subsidy (TAS) for the period 01.04.2008 to 31.10.2010 amounting to a total of Rs.12,71,776/- and all 30 claims came to be rejected for various reasons. One of the reasons for rejection is the failure of the petitioner to submit the breakup of Bunker Adjustment Factor (BAF) and Currency Adjustment Factor (CAF) in the component of 'freight'.

3.BAF is collected as an adjustment to the freight rate, by taking into account fluctuations in the cost of fuel oil. CAF is collected as an adjustment to freight rate by taking into account fluctuations in currency change rates.

4.The Notification admittedly, required the exporters to provide a break-up of the BAF and CAF vide Clause 15 thereof. This is to ensure that what is extended as subsidy, comprised purely the freight component in the invoice in line with the litter and spirit of the Notification.

5.Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner is aggrieved by the rejection of the claims on the aforesaid account, for the reason that the respondent has itself extended the benefit of 21% adhoc deduction for the period 01.04.2007 to 31.03.2008.

6.According to him, having extended such a benefit once, there was nothing coming in the way of the respondent providing for a flat deduction even for the subsequent periods. He would also point out that this condition, of providing for a breakup of BAF and CAF did not figure in the subsequent Notification issued with effect from 01.04.2012, and the procedure for grant of flat rate of deduction had been followed consistently thereafter.

7.Per contra, Mr.Hredai, learned counsel appearing for the respondent would submit that the grant of a flat rate of deduction was at the instance of the Association of Gherkins Exporters. The representation made by the Association itself confirmed the request only to the first year of the grant of subsidy. The request had been accepted for the reason that the Notification had been issued only on 15.05.2008, whereas the effective date of commencement of the subsidy was

01.04.2007. The claim of the exporters was that they had not envisaged the condition under Clause-15 for the period prior to the date of Notifiction and this was found to be a legitimate grievance. Hence, for the period 01.04.2007 to 31.03.2008, the Committee had accepted the grant of subsidy, after effecting a deduction on a flat percentage. Incidentally, if at all the grievance was to be alleviated in full, the exemption granted ought to have extended till date of Notification, being 15.05.2008.

8.Be that as it may, and without it being a precedent in other cases, I am of the considered view that the request of the petitioner in this case can well be considered favourably following the procedure for grant of adhoc flat rate of deduction that has found acceptance by the respondent on and from 01.04.2012 onwards. After all, the period for which the petitioner seeks benefit is only between 22.12.2008 and 17.12.2009.

9.That apart, the facility of a flat deduction has found favour with the respondent on a continuous basis from 01.04.2012 onwards and thus even on this score, it does merit acceptance. The request of the petitioner for grant of subsidy that has been rejected, for the aforesaid reason above, be re-quantified and the subsidy paid over, within a period of twelve (12) weeks from today. WP.No.9583 of 2014 is allowed to the extent as indicated above. With this, the prayer in

WP.No.9854 of 2014, for a mandamus to the respondent to re-compute the Transport Assistance Subsidy stands achieved. No costs in either writ petition.

09.12.2022

vs
Index : Yes/No
Speaking Order

To

The Assistant General Manager,
Agricultural and Processed,
Food Products Export Development Authority,
Ministry of Commerce, Government of India,
12/1/1, Palace Cross Road,
Bangalore-560 020.

Dr.ANITA SUMANTH,J.

vs

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