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W.P.No.25860 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No25860 of 2021

M/s Gupta Hair Products (P) Ltd.
Represented by its Chairman & Managing Director,
Mr.Mohana Gupta Madupalli
279, Sydenham's Road,
Nehru Timber Market, Choolai,
Chennai – 600 112

... Petitioner

Versus

1. The Deputy Director General of Foreign Trade
Directorate General of Foreign Trade,
Udyog Bhawan, New Delhi.
2. The Additional Director General of Foreign Trade,
Shastri Bhawan Annex,
No.26, Haddows Road, Chennai-600014.
3. The Deputy Commissioner of Customs,
P/o The Principal Commissioner of Customs,
Custom House, Port Area, Visakhapatnam,530035

(R.3 impleaded vide order dated 03.03.2022 made
in WMP No.2271/2022 in WP No.25860/2021)

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus to direct the 2nd respondent to sanction the benefits under the Merchandise Export from India Scheme (MEIS) in terms Chapter 3 of the Foreign Trade Policy 2015-2020 within a time bound manner.



W.P.No.25860 of 2021

For Petitioner : Mr.G.Derrick Sam
For Respondents : Mr.T.V.Krishnamachari
Senior Panel Counsel
For R.1 and R.2

Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

This writ petition has been filed for a mandamus seeking for a direction to the second respondent to sanction the benefits under the Merchandise Export from India Scheme (MEIS) in terms of Chapter 3 of the Foreign Trade Policy 2015-2020 within a time bound manner.

2. The petitioner is an exporter of human hair and they are entitled to the benefits of the export incentive scheme called Merchandise Export from India Scheme (MEIS). In the shipping bill, for the subject exports, where incentive sought for by the petitioner, has not been considered by the respondents, the petitioner has made a categorical stand that they intend to claim rewards under merchandise exports from India scheme (MEIS).

3. By inadvertence, in the shipping bills submitted through on-line for the subject export, the petitioner has stated “ No “ which is the default option with regard to whether the petitioner intends to claim rewards and merchandise exports



W.P.No.25860 of 2021

from India scheme or not. However, the same has been amended subsequently by the certificate issued by the Deputy Commissioner, Office of the Principal Commissioner of Customs on 31.07.2019 and it has been amended to “Yes” .

4. The respondents have not processed the petitioner's application for Merchandise Export from India Scheme (MEIS) on the ground that in the shipping bill, they have declared as “No” with regard to their intention to claim the benefit under Merchandise Exports from India Scheme and further, the amendment dated 31.07.2019 having been done manually and not in electronic form, the respondents have refused to consider the petitioner's request for entitlement under Merchandise Exporters from India Scheme.

5. A counter affidavit has been filed by the respondents reiterating the contentions of the respondents as seen from the communications which have been filed along with the writ petition. The relevant portion of their contentions is found in paragraph Nos.11 and 12 of the counter affidavit, which is extracted hereunder:-

“ 11. The Hon'ble Court is requested to make the office of the Principal Commissioner of Customs, Vishakhapatnam as the respondents, since the Customs office has manually amended the Shipping bill as is evident by their certificate dated 31.07.2019, thereby changing the declaration under



W.P.No.25860 of 2021

Scheme from “No” to “Yes”, however, Customs has not transmitted the Shipping bill to the DGFT server. It is submitted that once the electronic data of the shipping bill is received from Customs server, only then can the application of the firm would be materially present before the respondents to examine and pass suitable orders.

12. I humbly submit that in the absence of electronic data of the impugned shipping bill from Customs, the request of the petitioner for issuance of MEIS benefits cannot be processed and considered by the respondents.”

6. The issue raised in this writ petition has been considered by the following decisions:-

(a) Bombardier Transportation India Pvt Ltd vs Directorate General of Foreign Trade reported in 2021 (377) E.L.T 489 (Guj.)

b)Portescap India Pvt Ltd vs Union of India reported in 2021 (376) E.L.T.161 (Bom.)

c)Pasha International vs Commissioner of Customs, Tuticorin reported in 2019(365) E.L.T 669 (Mad.)

7. In all the aforesaid decisions, the respective High Courts have consistently



W.P.No.25860 of 2021

held that the benefit which otherwise a person is entitled to once the substantive conditions are satisfied cannot be denied due to a technical error or lacunae in the electronic system. In the case on hand also, a clear intention was revealed in the shipping bill submitted by the petitioner they then intend to claim the benefits/incentive under Merchandise Export from India Scheme (MEIS) and further, the petitioner having got the inadvertent mistake made in the shipping bill, amended by an order dated 31.07.2019 passed by the Deputy Commissioner, Office of the Principal Commissioner of Customs, the respondents ought to have processed the petitioner's shipping bill and ought to have granted the benefits to the petitioner under Merchandise Export from India Scheme (MEIS) .

8. The decisions referred to supra squarely applies to the facts of the instant case also as the request for the benefits/incentives under Merchandise Export from India Scheme (MEIS) has not been considered by the respondents only due to the fact that subsequent amendment dated 31.07.2019 has been done manually and not electronically.

9. This Court is of the considered view that the petitioner cannot be deprived of its rights to avail the benefits under Merchandise Export from India Scheme only on the ground that subsequent amendment ratifying the earlier inadvertent



W.P.No.25860 of 2021

mistake was done manually and not electronically.

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10. Due to technical error or lacunae in the electronic system, the petitioner cannot be deprived of its benefit/incentive under the Merchandise Export from India Scheme (MEIS).

11. Therefore, after recording the aforesaid observations, this Court directs the respondents to consider the petitioner's representation dated 17.08.2019 seeking to get the benefit under the Merchandise Export from India Scheme (MEIS) for the subject shipping bill (No.5918049) and pass orders in the light of the above observations made by this Court within a period of six weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. No costs.

04.07.2022

sr

Index: Yes/No

Speaking Order/Non-Speaking Order



W.P.No.25860 of 2021

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WEB COPY



W.P.No.25860 of 2021

ABDUL QUDDHOSE, J

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W.P.No.25860 of 2021

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