BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.2085 of 2022
and
W.M.P.(MD).No. 1789 of 2022

Tractors and Farm Equipment Limited,
Rep. by its Vice President (Madurai Operations)
V.Srinivasan ... Petitioner

Vs.

1.Directorate General of Foreign Trade (DGFT),
Udyog Bhavan H- Wing,
Gate.No.2 Moulana Azad Road,
New Delhi - 110011.

2.The DGFT Policy Relaxation Committee,
Rep. by its Deputy Director General of Foreign Trade (PRC),
Directorate General of Foreign Trade,
Udyog Bhawan, H-Wing, Gate No.2
Maulana Azad Road, New Delhi - 110011.

3.The Assistant Commissioner of Customs,
KERN Enterprises Inland Container Depot,
29/3, Aruppukottai Road,
Valayankulam Village,
Madurai.
...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in its proceedings in F.No.HQRPRCAPPLY00182069AM22 in the Meeting No.19/AM22, dated 30.12.2021 and quash the same as illegal and consequently to direct the 2nd respondent to grant the reward under MEIS Scheme to petitioner company in respect of its shipping bills Nos.9415497 and 9415639, dated 03.01.2020 within the time that may be specified by this Court.

For Petitioner : Mrs.H.Jasima Yasmin
For M/s.Ajmal Associates
For R1 & R2 : Mrs.L.Victoria Gowri
Assistant Solicitor General of India

ORDER

The petitioner challenged the impugned order of the second respondent rejecting the request of the petitioner for grant of relief under the MEIS Scheme under the Foreign Trade Policy 2015-2020. It is the specific case of the petitioner that the petitioner had filed two bills of entry as Shipping Bill Nos.9415639 and 9415497, dated 03.01.2020. It is submitted that by filing the bill of entry by the petitioner stated that no for yes as aforesaid benefits.

2. The learned counsel for the petitioner submits that the petitioner had approached the jurisdictional Assistant Commissioner of Custom for amending the above mentioned bills, who by a communication/Certificate dated 07.06.2021, bearing Reference No.VIII/48/14/2021-KERN ICD has certified that if the petitioner is eligible for the benefit and MEIS Scheme, the request of the petitioner may be considered favourably. The learned counsel for the petitioner submits that the impugned communication dated 30.12.1921 rejected the request of the petitioner is therefore liable to be quashed.

3. Opposing the prayer, the learned counsel for the respondents submitted that the writ petition is devoid of merits. It is submitted that the petitioner has an alternate remedy before the first respondent for filing a suitable review application in appendix 2K of the Foreign Trade Policy 2015-2020 on payment of appropriate fee. It is submitted that the review application will be considered by norms Committee, DGFT Committee and the Policy Relaxation Committee and thereafter appropriate orders will be passed by the first respondent after hearing the petitioner. It is therefore submitted that the present writ petition is pre-mature.

4. By way of rejoinder, the learned counsel for the petitioner has also drawn attention to paragraph 6,7,8 and 9 from the decision of the learned Single Judge in **K.I.Internatioanl Limited Vs Commissioner of Customs** in W.P.No.16328 of 2020, vide order dated 23.06.2021. They read as under:-

> *6.In view of the fact that the petitioner's intention to claim MEIS benefit is clear from the shipping bills and the mistake has only happened while uploading the bills in the EDI, the error is hyper-technical, inadvertent and a human error and should not stand in the way of the petitioner being granted the substantial benefit which it has opted for, from inception.*
>
> *7.Learned counsel for the respondents points out that though the last of the shipping bills is dated 02.01.2018, the representation of the petitioner for grant of MEIS is dated 04.10.2019, one year and 9*

months thereafter. According to him, the claim is thus substantially belated. However, as rightly pointed out by the learned counsel for the petitioner, this does not appear to have been a ground on which the claim of the petitioner has been rejected by either the original or the appellate authority.

8.It appears that the petitioner has been inspired by an order passed by this Court in a writ petition granting benefit in similar situations . It would be too harsh to state in such circumstances, specifically in the light of the facts as noticed by me above in paragraph Nos.2 to 5 that the petitioner should be denied the benefit merely on the ground of delay. This argument is rejected.

9.In the light of the aforesaid discussion, the impugned order is set aside and the writ petition allowed. The petitioner is entitled to the benefit under the MEIS Scheme and the respondents are directed to grant consequential benefits to the petitioner within a period of eight weeks (8) from today. No costs.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents. I have perused the "No Objection Certificate", dated 07.06.2021 issued by the third respondent and the recommendation made therein. The third respondent has clarified that the petitioner is entitled for MEIS scheme and that there was a mistake while filing the shipping bills. The third respondent has categorically stated that the petitioner's case may be considered favourably. The second respondent under the Commerce Ministry has, however, rejected the request of the petitioner by stating that the Committee had examined the case of the petitioner and the Committee decided as under:

> *<u>Decision:</u> The committee examined the case on the bais of justification furnished by the firm and discusse the matter at length. The committee observed that the Shipping Bills where 'No' is ticked (for whatsoever reason) do not get electronically transmitted on-line in the automated environment. Accordingly, it decided to reject the case.*

6. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents and the decision of the learned Single Judge in W.P.(MD).No.16328 of 2020. In the said writ petition, the petitioner appears to challenged the order of the

Commissioner of Customs rejecting the request for amending the shipping bill and to issue "No Objection Certificate" to avail the benefits of MEIS scheme under the Foreign Trade Policy.

7. A same what identical issue came up for consideration at the Principal Bench in W.P.No.12188 of 2020, which was filed by **Wabco India Private Limited Vs Union of India and others** vide order, dated 31.01.2022, after considering the letter of judgment, the relevant portion reads as under:-

> *11. 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.*
>
> *12. 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.*
>
> *13. 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.*

14. 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.

15. 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.

16. In this connection, reference may be made to the decision of the Hon'ble Supreme Court in the cases of ***Commissioner of Sale 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.*

17. 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.*

18. 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.

19. 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.

20. In fine, the Writ Petition shall allowed. No costs.

8. The issue stands squarely covered by the above decision of this Court. The incentive under the Merchandise Exports from India (MEIS) is intended to be passed on to exports to eligible exporter, if they have otherwise satisfied the substantive requirements of the scheme under the Foreign Trade Policy. In this case, the petitioner has satisfied all other requirements. Therefore, I do not find any reason to differ with the views taken in W.P.No.12188 of 2020 vide order, dated 31.01.2022. The Writ Petition is therefore allowed together with consequential relief. The second respondent is directed to grant relief to the petitioner within thirty days from the date of receipt of copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

/   /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-7370[F] dated 21/02/2022)

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MGJ(17.03.2022) 7P 5C