IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3864 OF 2021

Eaton Technologies Pvt. Ltd. … Petitioner

Versus

Union of India & Ors. …Respondents

Mr. Vikram Nankani, Senior Advocate a/w. Mr. Shreyash Shah for the petitioner.
Ms. Shehnaz V. Bharucha with Ms. Vaishali Chaudhary for the respondents.

CORAM: G. S. KULKARNI & JITENDRA JAIN, JJ.
DATED: 3 July, 2023

P.C.

1. We have heard Mr. Nankani, learned senior counsel for the petitioner and Ms. Bharucha, learned counsel for the respondents.

2. This petition has been filed praying for the following reliefs:

> *a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of certiorari under Article 226 and 227 of the Constitution quashing that part of para 3.10A of the Impugned Notification dated 23.09.2021 which imposes a ceiling of INR 5 crores on the entitlements under the SEIS scheme for FY 2019-20, being manifestly arbitrary and thus violative of Article 14 and Article 19(1)(g) of the Constitution and being ultra vires the powers conferred on the respondent no. 1under section 5 of the FTDR Act;*
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> *b) that this Hon'ble Court be pleased to issue*
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> *(i) a Writ of Certiorari or any other appropriate writ, order or direction in the nature of certiorari under Article 226 and 227 of the Constitution of India quashing that part of the Impugned Notification dated 23.09.2021 which has the effect of reducing the petitioner's entitlements under*

the SEIS Scheme from 7% to 5% under the impugned notification vis-a-vis the previous rate fixation notifications under the FTP;

(ii) a Writ of mandamus or any other appropriate writ,order or direction in the nature of mandamus under Article 226 and 227 of the Constitution of India directing the Respondents to grant the benefit of SEIS Scheme under the category of 'Management Consultancy Services' as granted to the petitioner for the previous financial year 2015-16 to financial year 2018-19 under the FTP;

OR, in the alternative,

that this Hon'ble Court be pleased to issue a Writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus under Article 226 and 227 of the Constitution of India directing the respondent no. 1 to reconsider (i) the reduction in the rate of entitlements under the SEIS Scheme from 7% to 5% and (ii) removal of benefit to 'management consultancy services' under the impugned notification vis-a-vis the previous notifications rate fixation notifications under the FTP;

c) that this Hon'ble Court be pleased to direct that pending the hearing and final disposal of this Writ Petition that (a) the Respondents shall consider and allow the claim for benefit of SEIS for financial year 2019-20 without imposing the upper ceiling of INR 5 crore under the impugned notification dated 23.09.2021 issued by Respondent no. 1; b) accept and process the claim for SEIS benefit without insisting on compliance with changes brought about by impugned notification dated 23.09.2021; and (c) the respondents shall not enforce upon the petitioner paragraph 3.10B in the FTP (inserted by the impugned notification) which mandates that the SEIS claim for fy 2019-20 should be filed by 31.12.2021 and all claims "shall get time barred after 31.12.2021";

d) That this Hon'ble Court may be pleased to grant ad-interim relief in terms of prayer clause (c) above.

3. The petitioner is assailing the notification dated 23 September, 2021 contending that the notification adversely affects the petitioner inasmuch as with retrospective effect the benefit entitled to the petitioner under SEIS for

the period from 2019-2020, stands curtailed at Rs. 5 crores as also the rate being retrospectively reduced from 7% to 5% in respect of management consultants. In support of such contention, several grounds are raised in the petition contending that the impugned notification is bad and illegal and it cannot be made applicable retrospectively. It is submitted that as far as the petitioner is concerned, the petitioner was otherwise entitled to the benefits under the Foreign Trade Policy 2015-20 as prevailing dehors the impugned notification.

4. On behalf of the respondents, a detailed affidavit-in-reply is filed opposing the prayers as made in the Writ Petition including raising an objection that the petitioner has an alternate remedy as paragraph 2.59 of the FTP 2015-2020 would provide.

5. Mr. Nankani on such preliminary objection of Ms. Bharucha of an alternate remedy being available to the petitioner, would submit that the challenge to the Writ Petition is to a notification which is issued by the Government of India, being the highest authority, hence such remedy may not be an appropriate alternate remedy as the law would provide, and in no case it would be an efficacious remedy, considering the facts of the present case.

6. We may observe that this petition was filed on 24 November, 2021. On 17 December, 2021, a co-ordinate Bench of this Court had passed the following order:

> *1. We had deferred hearing of this writ petition (WPL/27559/2021) on December 14, 2021 till today to enable Ms. Bharucha, learned advocate for the respondents to obtain instructions. The instructions received by Ms. Bharucha, to the extent relevant, read as follows: - "*
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> > *The firm is not eligible for availing benefits in excess of cap as imposed (i.e. Rs 5 Cr per IEC) and for service categories not notified in the Appendix 3X for service exports made in the FY 2019-20. There cannot be a manual submission.* ***All claims are required to be filed online for SEIS. If firm is filing a claim under any of the eligible categories, the firm can apply online, however the scrip issuance cannot be more than Rs 5 Cr per IEC, irrespective of the claimed amount."***
> >
> > *(bold in original)*
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> *2. In view of the above instructions, we are not inclined to permit the petitioner to submit any application manually. However, without prejudice to its rights and contentions, the petitioner will be at liberty to file online application for SEIS benefits and if such application is received, the same shall be processed in accordance with law. Needless to observe, any decision taken on the application as well as denial of any benefit to the petitioner by reason of the impugned notification dated September 23, 2021, shall be subject to and abide by the outcome of this writ petition.*
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> *3. Let reply affidavit be filed by the respondents by January 17, 2022; rejoinder thereto, if any, may be filed by January 21, 2022. The writ petition may be listed for further consideration on January 25, 2022.*
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> *4. This arrangement shall not create any equity in favour of any party.*
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> *5. The above order shall govern the parties in Writ Petition No. 26441 of 2021 too."*

7. In pursuance of such order, the petitioner has made an application as permitted whereby the petitioner applied for availing the benefit upto Rs.5 crores on any foreign exchange as earned as per the impugned notification. We are informed that such benefit had already been granted to the petitioner. The question is whether the petitioner in the facts and circumstances of the case and with the bonafides the petitioner is contending, in the petitioner's case the impugned notification ought not to have been applied till 31 December, 2021, in respect of balance amount of foreign exchange as earned which is stated to be about 23 crores. The contention of the petitioner is that the petitioner is entitled to duty credit scrip in respect of such foreign exchange earning inasmuch as the said earnings were made in due consideration to the policy which was prevailing at that point of time, i.e., FTP 2015-2020 before its amendment by insertion of paragraph 3.10A read with Appendix 3X insofar as the rate is concerned by the impugned notification.

8. In our opinion, without delving into the merits of the rival contentions, in the peculiar facts and circumstances of the case, it would be appropriate that the petitioner is permitted to make an application to the Designated Officer of the respondents to make a claim for the entitlement to the balance foreign exchange as earned and to that effect its entitlement to duty credit scripts asserting non-applicability of the impugned notification. Let such application be made as permitted by the earlier order within two weeks from today. If such an

application is made, the same be decided within a period of six weeks from the day it is filed, on its own merits. While deciding such application, the concerned authority should consider whether in the facts of the petitioner's case, the petitioner could be exempted from applicability of the impugned notification and/or whether it would be entitled to take the benefit of the entire foreign exchange earning for the FY 2019-20.

9. All contentions of the petitioner to raise the challenge as raised in the petition as and when the need so arises, including all contentions of the revenue are expressly kept open.

10. Petition is disposed of in the above terms. No costs.

(JITENDRA JAIN, J.) (G. S. KULKARNI , J.)