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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 10th May, 2023***

+ **W.P.(C) 1184/2021**

M/S. RK AGROEXPORT PRIVATE LIMITED

..... Petitioner

Through: Mr. Sonal Jain & Ms.
Kajal Sharma, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Asheesh Jain, CGSC
with Mr. Gaurav Kumar &
Ms. Ankita Kedia, Advs.
with Mr. Anirudh Shukla,
GP for R-1, 4 & 5.

Mr. Satish Kumar, Sr.
Standing Counsel
alongwith Mr. Atri
Mandal, Adv. on behalf of
R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

CM APPL. 24118/2023

1. The petitioner has filed the present application praying that the hearing fixed on 08.08.2023, be advanced.
2. For the reasons stated in the application, the same is allowed.
3. With the consent of counsel for the parties, the petition is taken up for hearing. The date already fixed, that is, 08.08.2023, stands cancelled.

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4. The petitioner has filed the present petition impugning an order dated 10.10.2019, passed by respondent No. 3 and an order

Neutral Citation Number: 2023:DHC:3348-DB
dated 22.11.2019, passed by respondent No. 5 (hereafter
‘impugned orders’).

5. In terms of the impugned orders, the petitioner has been denied the benefit of Merchandise Exports from India Scheme (hereafter **‘MEIS’**) in respect of certain Shipping Bills (13 in number) as contemplated under the Foreign Trade Policy, 2015-2020. The petitioner has been denied the said benefit for the reasons that the petitioner had checked the box ‘N’ (for No) instead of ‘Y’ (for Yes) in the reward column pertaining to MEIS. The petitioner claims that the same is an inadvertent error. The petitioner had sought to correct the said mistake, however, the same was not permitted.

6. Mr. Asheesh Jain, learned counsel appearing for the respondents, submits that the controversy involved in the present petition is covered by the decision of a coordinate Bench of this Court in *Jubilant Biosys Limited v Directorate General of Foreign Trade and Others: W.P.(C) 14754/2022*. Pursuant to the orders passed in the said petition, a committee of officers was constituted to consider whether the benefit of MEIS could be extended to the petitioner in that case. The said committee took a lenient view and the petitioner in W.P.(C) 14754/2022 (*Jubilant Biosys Limited*), which was earlier denied the benefit of MEIS on similar grounds as in the present petition, was granted the benefit of MEIS. The relevant extract of the order dated 16.02.2022, passed by this Court in *Jubilant Biosys Limited vs. Directorate General of Foreign Trade and Others (supra)*, reads as under:

“6. This Court is informed that in compliance with the aforesaid order, a meeting of concerned officers was held on 08.12.2022. A copy of the minutes of the said meeting had been handed over to this Court. Paragraph nos. 4 and 5 of the said minutes read as under:

“4. In exceptional cases the customs as per defined procedure amends the SBs from ‘N’ to ‘Y’ in MEIS SBs under section 149 of Customs act. However post EGM such amendments are done in a manual mode and no electronic transmission of such manual amendments is possible to the DGFT server.

5. Nothing the Hon’ble Court’s directions in this individual case it was decided that Customs will transmit the ‘N’ SBs to DGFT server through a manual intervention at ICEGATE, DGFT based on the electronic transmission and keeping in view the manual amendments made, will process the case for further for grant of MEIS benefits as exceptional manner.”

7. In view of the aforesaid decision, respondent no.4 shall transmit the corrected bills as decided in terms of paragraph no. 5 of the minutes, as stated above, within a period of two weeks from today. The petitioner’s claim for benefits under MEIS shall be decided within a period of six weeks thereafter.”

7. Learned counsel for the respondents, has also drawn the attention of this Court to the decision of Bombay High Court in ***Technocraft Industries (India) Ltd. vs. The Union of India and Ors.: W.P.(C) 3202/2022***, decided on 12.04.2023. The said order sets out the advisory dated 11.04.2023, issued by the Directorate General of Foreign Trade. The said advisory is reproduced below:

“Date : 11th April, 2023

Advisory No.: 07/2023

Category : Exports

Issued by: DgoS, ICES

Subject : Transmission of Shipping Bills from systems’ backend to DGFT for MEIS benefits in certain cases-reg.

Various references have been received regarding post EGM amendment of Shipping Bills where the customs authorities have allowed amendment of shipping bills under Section 149 of the Customs Act, 1962 after filing of EGM.

2. *However, there have been various cases, where jurisdiction customs authorities have examined the case and*

allowed amendment under Section 149, on merit, in terms of the relevant policy guidelines issued from CBIC from time to time.

3. *This Advisory is being issued to handle the post EGM amendment of shipping bill cases of MEIS scheme (since discontinued from January 2021).*

4. *In MEIS scheme the exporter declares whether he wants to claim benefit or not at item level in the shipping bill and the same is entered in the form of 'Y' and 'N' under reward flag to show "Yes" or "No". In case of 'Y' flag, the details of the shipping bills are transmitted to DGFT automatically. However, in case of 'N' flag, details of the shipping bills are not transmitted to DGFT.*

5. *Since this is an inter-ministerial matter (CBIC, MoF and DGFT, DoC), such amendments may be routed through Drawback Division of CBIC along with a copy to this Directorate for necessary action. As per existing practice with DGFT, such cases shall be transmitted to DGFT from backend without any change in the self-declaration of the exporter i.e., such cases will be transmitted with "N" flag only without any modification to the original declaration of the exporter.*

6. *In addition, an e-mail correspondence shall be sent to the nodal officer of DGFT who handles the technical wing for necessary action at their end.*

7. *The records shall be transmitted from the ICEGATE to the DGFT as per the normal protocol of exchange of data between ICEGATE and DGFT. As agreed by DGFT, their system will accept such records even with "N" flag and thereafter handling at Systems end shall be complete.*

Deputy Director, ICES".

8. In view of the above, we consider it apposite to allow the present petition. The respondents shall follow the methodology as set out in the advisory dated 11.04.2023 as quoted above, and process the petitioner's request for benefits under the MEIS.

9. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 10, 2023 / 'SK'