02.04.2024
Item No.06
RP
Ct. No.1

MAT 52 of 2024
With
IA No.CAN 1 of 2024

Commissioner of Customs (Preventive), WB, Kolkata
Vs.
M/s. Steel Authority of India Ltd. & Ors.

Mr. K.K. Maiti
Ms. Aishwarya Rajyashree
……for Appellant
Mr. Arijit Chakrabarti
Mr. Deepak Sharma
……for Respondents

1. This intra-Court appeal filed by the Commissioner of Customs (Preventive), West Bengal is directed against the order dated 7th December, 2023 passed in WPA 2226 of 2020. The said writ petition was filed by M/s. Steel Authority of India Limited, a public sector undertaking, seeking to set aside the decision taken by the Policy Relaxation Committee of the Director General of Foreign Trade in its meeting dated 17th August, 2017. By the said decision the request made by the respondents/writ petitioners for claim towards export to Nepal, Bangladesh and overseas countries under Merchandise Exports From India Scheme (MEIS) was rejected.

2. The respondent/writ petitioner, a public sector undertaking company, is engaged in manufacture

and export of steel in various countries including Nepal and Bangladesh. Initially, the benefit of MEIS was not allowed in respect of export of steel to Nepal and Bangladesh. However, by a public notice no.06/2015-2020 dated 4th May, 2016 the said benefit was extended to the export of steel to Bangladesh and Nepal in terms of the scheme. The exporter was required to file requisite documents and also to indicate in the declaration form as to whether they intend to claim the reward under MEIS by indicating "YES" by mentioning "Y" in the remark column and if they do not wish to claim the benefit they have to indicate "NO" by mentioning capital "N" in the remark column. The respondents/writ petitioners had made it explicitly clear that they seek to avail the benefit of MEIS but, however, in the declaration form instead of ticking the word "Y" in the reward filed the respondents/writ petitioners due to inadvertence ticked the word "N". On account of this the benefit was not extended to the respondents/writ petitioners. The respondents/writ petitioners had been continuously making representations since October 2016 requesting the authorities to permit them to rectify the mistake, which had inadvertently occurred in the declaration form to avail the benefit under MIES. Those representations were given from the year 2016 onwards and the same were not considered. Ultimately the matter stood referred to the Policy Relaxation Committee, which took up the matter in its meeting held on 17th August, 2017. The Policy Relaxation Committee opined that the mistake of selecting 'N' in the reward box has declared the intention of the respondents/writ petitioners in the affirmative on the shipping bill and, therefore, the Committee did not accede to the request made by the respondents/writ petitioners. At this juncture, it is relevant to take note of the decision of the Director General of Foreign Trade in public notice no.40/2015-2020 dated 9th October, 2015. A careful reading of the said public notice will show that there were several cases where due to inadvertence exporters had marked "N" instead of "Y". Taking note of the same the Government of India has issued public notice dated 9th October, 2015 and permitted the exporter to submit physical copies of free shipping bills after electronic filing of application to RA at the time of submission of application for MEIS in those cases. RA shall grant MEIS rewards after examination of such shipping bills in accordance with other provisions of FTP/HBP.

This public notice was to benefit the exports made between 1.4.2015 to 31.5.2015 which date was subsequently extended to 30.09.2015. It is not in dispute that the exports which were the subject matter of dispute are covered in 67 shipping bills during 5.5.2016 to 23.8.2016 as noted by the Policy Relaxation Committee. The respondents/writ petitioners by representation dated 5th October, 2016 submitted that after introduction of the scheme for Nepal and Bangladesh the respondents/writ petitioners in three EDI Shipping Bills have inadvertently marked as "N" in the reward filed even though they intended to avail the benefit under MEIS but these EDI Shipping Bills did not flow to DGFT server for which they were not able to apply for MEIS benefits against such shipping bills. Therefore, the Customs Authority was requested to kindly look into the matter and provide necessary help and guidance to the respondents/writ petitioners so that they can avail the benefits under MEIS against the said export. The same request was reiterated by another representation dated 24th October, 2016 clearly mentioning that the mistake has occurred due to inadvertence and they also enclosed the list of the shipping bills where such mistake has occurred. In the subsequent representation dated 25.10.2016 the respondents/writ petitioners have specifically stated that in respect of some of the Bill of Export/Shipping Bill field with customs in the EDI system, the MEIS reward filed was erroneously marked as 'N' although declaration to avail the MEIS benefit has been mentioned on the face of the Bill of Export/Shipping Bills under remark column. Therefore, it was submitted that in the light of the said discrepancy these shipping bills have not been transmitted from customs to MEIS portal of DGFT and, hence, the respondents/writ petitioners was unable to apply for the benefit under the MEIS. Therefore, they requested the Customs Authority to remove the discrepancy in the EDI Bill of Export/Shipping Bill by changing the MEIS reward field to 'Y' as the respondents/writ petitioners always intended and entitled to get MEIS benefits against such exports. The request made by the respondents/writ petitioners was partially accepted and an amendment certificate was issued by the Assistant Commissioner of Customs, Export Department, Kolkata dated 28.02.2017. However, in respect of the remaining bills the benefit was not extended. Thereafter, several other representations were made upto the year 2020 and since there was no positive response the writ petition was filed before this Court. The learned writ Court after considering the facts placed before it and also taking note of the affidavit-in-opposition filed by the department in the writ petition and considering the decisions in the case of M/s. Phoenix Overseas Limited & Anr. vs. Union of India & Ors. passed in WPA No.1409 of 2023 dated 25th January, 2023 allowed the writ petition and set aside the orders impugned in the writ petition and remanded the matter back to the Customs Authority concerned to consider the application of the petitioners for the amendment of the shipping bills in question in accordance with law and particularly by taking into consideration Section 149 of the Customs Act and by taking into consideration of the aforesaid unreported decision of this Court rendered in the case of M/s. Phoenix Overseas Limited (supra). Aggrieved by the same the Customs Department has preferred the present appeal.

3. As mentioned above, the first of the public notice which was issued by the Government of India dated 9th October, 2015 recognises the fact of such mistake as occurred in several cases which ultimately led to issuance of public notice

granting relief to the concerned exporters. Thus, the Government was conscious of the fact that due to inadvertence there was a likelihood of mistake being committed and, therefore, relaxation was granted in favour of the respondents/writ petitioners cannot stated to be malafide or wholly untenable since on the face of the bills of export of shipping in the remark column it has been specifically mentioned that the respondents/writ petitioners were intended to avail the benefit of MEIS. However, in the declaration column instead of marking 'Y' inadvertently ticked 'N'. This in our view is an inadvertent mistake done by the respondents/writ petitioners. Therefore, we are of the view that the learned Single Bench was fully justified in setting aside the orders which were impugned in the writ petition and remanding the matter back to the Customs Department to comply with the order and direction passed by the learned Single Bench.

4. For the above reasons, there is no ground to interfere with the order and direction passed by the learned Single Bench and the time for compliance of the direction is extended by a

period of twelve weeks from the date of receipt of the server copy of this order.

5. With the above observations, the appeal and the connected application are disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)