IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2010 of 2021
and
W.M.P.No.2270 of 2021

M/s.NewGenAgro Processors Pvt Ltd,
Rep by its Authorised Signatory,
Mr.R.Veeraraghavan
17/10, Azeez Nagar, 2nd Street,
Kodambakkam,
Chennai – 600 024. ... Petitioner

Vs.

1.The Deputy Director General of Foreign Trade,
Policy 3 Division,
Directorate General of Foreign Trade,
Udyog Bhawan,
New Delhi.

2.The Joint Director General of Foreign Trade,
Shastri Bhawan Annex,
No.26, Haddows Road,
Chennai – 600 014.

3.The Commissioner of Customs,
Chennai IV Commissionerate,
Custom House,
60 Rajaji Salai,
Chennai – 600 001.

4.The Assistant Commissioner of Customs (EDC),
Chennai IV Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai – 600 001. ... Respondents

Prayer: Writ Petition filed underArticle226 of the Constitution for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned e-mail communication dated 19.08.2020 of the 1st respondent and quash the same and further direct the 3rd respondent to amend the shipping bills as sought for in the petitioner's representation 05.10.2020 and transmit the shipping bills online to the DGFT server to enable the petitioner to claim the MEIS benefit.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.R.P.Pragadish
for R1 and R2
M/s.Anu Ganesan
SC for R3 and R4

ORDER

The writ petition is of the year 2021.

2. In this writ petition, the petitioner has prayed for the following relief:-

"to call for the records pertaining to the impugned e-mail communication dated 19.08.2020 of the 1st respondent and quash the same and further direct the 3rd respondent to amend the shipping bills as sought for in the petitioner's representation 05.10.2020 and transmit the shipping bills online to the DGFT server to enable the petitioner to claim the MEIS benefit."

3. The petitioner has exported consignments of Fruit pulp vide several shipping bills, wherein, the petitioner had claimed duty drawback under Section 75 of the Customs Act, 1962. The petitioner was also entitled for Merchandize Export from India Scheme (MEIS). Since filing of the shipping bills and transactions for claiming export incentives under the Foreign Trade Policy are to be made electronically in the shipping bills itself. The petitioner claims to have failed to press "YES" in the reward column of the shipping bills.

4. According to the petitioner, this mistake was committed by the Custom House Agent of the petitioner who had filed the Shipping Bills for exports of l4 consignments of the Fruit Pulp. Under these circumstances, the petitioner had approached the authorities under the Foreign Trade Policy namely Commerce Ministry/Respondent Nos.1 and 2. The respondent Nos.1 and 2 by their impugned communication dated 19.08.2020, have rejected the

request of the petitioner for the following observations:-

> *"Reference trail mail. The subject Trade Notice 24 referred by you has not committed to provide any MEIS benefit and only information was sought from exporters. After compilation of all such information a proposal was sent to the Department of Revenue, which did not agree to provide MEIS to such N marked shipping bills, since such N marked shipping bills are not been evaluated under the Exports' Risk Management System at the time of export at the relevant ports. Therefore, all such N marked shipping bills from 01.10.2015 onwards were ineligible and continue to be ineligible under MEIS. Now of course they are time barred as well since 3 years have elapsed since their date of export."*

Under these circumstances, the petitioner has prayed for the above relief.

5. In support of the plea, the learned counsel for the petitioner has drawn attention to Chapter 3 of the Foreign Trade Policy which deals with Merchandize Export from India Scheme (MEIS). It is submitted that the petitioner is indeed eligible for the benefit in the form of rewards. It is further submitted that the exports of the petitioner is not falling under any of the ineligible categories as per Paragraph 3.06 of the Chapter 3 of the Foreign Trade Policy.

6. The learned counsel for the petitioner further submits that an identical issue also came up before the Division Bench of the Kerala High Court in the case of ***Commissioner of Customs, Cochin*** Vs. ***N.C.John and Sons Pvt Ltd*** reported in 2020 (374) E.L.T. 465 (Ker), which was affirmed by the Hon'ble Supreme Court in the case of ***Commissioner of Customs*** Vs. ***N.C.John and Sons Pvt Ltd*** reported in 2022 (380) E.L.T 241.

7. He further submits that under similar circumstances, this Court and other Court has also passed the following orders which is extracted hereunder:-

> *(i)**M/s.Gupta Hair Products (P) Ltd** Vs. **The Deputy Director General of Foreign Trade and others** in W.P.No.25860 of 2021;*
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> *(ii)**Indian Metals and Ferro Alloys Limited** Vs. **Director General of Foreign Trade and others** in W.P.(C).No.29635 of 2020;*
>
> *(iii)**Pasha International** Vs. **Commissioner of Customs, Tuticorin** reported in 2019 (365) E.L.T. 669 (Mad) and*
>
> *(iv)**Davinci Leather Pvt Ltd** Vs. **Commissioner of Customs, Chennai** reported in 2020 (372) E.L.T 367*

(Mad).

8. The learned counsel for the respondents/Customs Department on the other hand would submit that the petitioner has made a claim for incentive under the Foreign Trade Policy long after the exports were made. It is submitted that the exports were made in the year between 2015 – 2016 and that the request of the petitioner for altering the shipping bills were made only in the year 2021 by filing the present writ petition. It is therefore submitted that the writ petition is liable to be dismissed.

9. That apart, the learned counsel for the respondent Nos.3 and 4 would drew attention to Circular No.36/2010-Cus., dated 23.09.2010. Specifically, she would drew attention to Para 3 of the aforesaid Circular which reads as under:-

> *3.The issue has been re-examined in light of the above. It is clarified that Commissioner of Customs may allow conversion of shipping bills from schemes involving more rigorous examination to schemes involving less rigorous examination (for example, from Advance Authorization/DFIA scheme to Drawback/DEPB scheme) or within the schemes involving same level of examination (for example from Drawback Scheme to DEPB scheme or vice versa) irrespective of whether the benefit of an export promotion scheme claimed by the exporter was denied to him*

by DGFT/DOC or Customs due to any dispute or not. The conversion may be permitted in accordance with the provisions of Section 149 of the Customs Act, 1962 on a case to case basis on merits provided the Commissioner of Customs is satisfied, on the basis of documentary evidence which was in existence at the time the goods were exported, that the goods were eligible for the export promotion scheme to which conversion has been requested. Conversion of shipping bills shall also be subject to conditions as may be specified by the DGFT/MOC. The conversion may be allowed subject to the following further conditions:

(a)The request for conversion is made by the exporter within three months from the date of the Let Export Order (LEO).

(b)On the basis of available export documents etc., the fact of use of inputs is satisfactorily proved in the resultant export product.

(c)The examination report and other endorsements made on the shipping bill/export documents prove the fact of export and the export product is clearly covered under relevant SION and or DEPB/Drawback Schedule as the case may be.

(d)On the basis of S/Bill/export documents, the exporter has fulfilled all conditions of the export promotion scheme to which he is seeking conversion.

(e)The exporter has not availed benefit of the export promotion scheme under which the good's were exported and no fraud/misdeclaration/manipulation has been noticed or investigation initiated against him in respect of such exports.

10. It is therefore submitted that although there is no time limit for altering or amending the shipping bill, there is an embargo under Clause 3(a) and that the revenue was bound by the aforesaid Circular.

11. Defending the stand of the respondent Nos.1 and 2, learned counsel for the respondents would submit that the respondent No.1 had rightly rejected the request of the petitioner. It is submitted that the respondent has correctly informed the petitioner that after compilation of all such information and a proposal was sent to the Department of Revenue, which did not agree to provide Merchandize Export from India Scheme (MEIS) to such "No" marked shipping bills, since such N marked shipping bills are not been evaluated under the Exports' Risk Management System at the time of export at the relevant ports.

12. Therefore, all such "No" marked shipping bills from 01.10.2015 onwards were ineligible and continue to be ineligible under under MEIS. It was also informed that shipping bills were time barred on the date of communication i.e. 19.08.2020, as 3 years have elapsed since their date of export (which as per provisions of the para 3.15 and para 9.02 of the HBP 2015-20).

13. The learned Senior Counsel for the respondent Nos.3 and 4 would submit that the consignments were exported by the petitioner was not physically opened for examination and therefore there is no proof that the petitioner was indeed entitled to incentives.

14. I have considered the submissions made by the learned counsel for the petitioner and the learned counsel for the respondents and also perused the respective shipping bills filed by the petitioner.

15. There are no dispute that the petitioner had exported the goods namely Fruit pulp, Mango puree etc., which are eligible for the benefit of Merchandize Exports from India Scheme (MEIS) under Chapter 3 of the Foreign Trade Policy. There is no dispute that the petitioner has also claimed duty drawback under Section 75 of the Customs Act, 1975 read with Customs, Central Excise and Service Tax Duty drawback Rules, 1995. There are no records to indicates that the parallel incentives under Section 75 of the Customs Act, 1961 read with the aforesaid Rule and the Customs

Notification has been denied to the petitioner. Therefore the benefit of Merchandize Exports from India Scheme (MEIS) under Chapter 3 of the Foreign Trade Policy ought not to be denied. The export of goods stands confirmed. Therefore, the benefit of Export incentives cannot be denied.

16. Under similar circumstances, Courts have been liberal and have been granting reliefs to the exporters under the scheme. I do not wish to take a contrary stand in this writ petition. That apart, the legitimate exports cannot be denied, if the petitioner had made actual exports. Since there is no other material available to come to a conclusion that the petitioner was not otherwise dis-entitled for export incentives under the Merchandize Exports from India Scheme, this writ petition has to be allowed.

17. The respondent Nos.3 and 4 are therefore directed to ensure that the shipping bills are suitably amended for the petitioner to claim export incentives on the exports made by the petitioner under the Merchandize Exports from India Scheme. Incentives to be granted to the petitioner will be without prejudice to the rights of the Department to recover the same, in case, any other discrepancies are noticed in the exports made by the

petitioner.

18. This writ petition stands allowed. No costs. Consequently, the connected writ miscellaneous petition is closed.

08.08.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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