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

Date of Decision: 09th August, 2024

+ **W.P.(C) 10177/2021**

ZYDUS TAKEDA HEALTHCARE PRIVATE LIMITED

.....Petitioner

Through: Mr. Kunal Kapoor and Mr. Yatharth
Tripathi, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Satya Ranjan Swain, Sr. Panel
Counsel with Mr. Kaubilya Birat and
Mr. Manish Aggarwal, Advocates for
R-1, 2 & 4.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The brief factual background leading to the filing of the present petition, as presented by Mr. Kunal Kapoor, counsel for Petitioner, is summarised as under:

1.1. The Petitioner, Zydus Takeda Healthcare Private Limited, is a 100% Export Oriented Unit (EOI) engaged in the business of pharmaceuticals. In order to avail the benefit under Merchandise Export from India Scheme (MEIS), the Petitioner submitted an online application on website of the Directorate General of Foreign Trade (DGFT).

1.2. In terms of Paragraph No. 3.14 of Handbook of Procedure (2015-



2020), exporters are required to declare their intent to claim benefit under MEIS at the time of generating shipping bills for both, Export Data Interchange (EDI) generated Shipping Bill and Non-EDI Shipping Bill. For EDI Shipping Bills, the exporter is mandated to mark/ tick either “Y” (for “Yes”) or “N” (for “No”) under the “Reward” column against each item of export. By marking “Y”, the exporter declares their intent to claim reward under MEIS, whereas marking “N” indicates that the exporter does not intend to claim the benefit of reward. However, for Non-EDI Shipping Bills, in order to be eligible for claiming rewards under MEIS, the exporter is required to mention a declaration on the shipping bills, which reads as follows “*We intend to claim rewards under Merchandise Exports From India Scheme (MEIS)*”.

1.3. During the period from 20th April, 2015 to 27th July, 2015, the Petitioner exported pharmaceutical products under 17 shipping bills, out of which 10 shipping bills were filed in the months of April and May, while the remaining 7 bills were filed in the months of June and July. At the time of filing of these bills, the Petitioner inadvertently selected “N” (for No) instead of “Y” (for Yes) in “Reward” column of the shipping bills. After goods were exported and payments were realized, the Petitioner filed applications for issuance of scrips under MEIS scheme in respect of 27 shipping bills, of which 17 shipping bills are in dispute¹. At that stage, Assistant Development Commissioner, SEEPZ, SEZ (Respondent No. 4), issued certain deficiency notices pointing out the error in selection of “N” instead of “Y” in the rewards column pertaining to the 7 shipping bills which were filed in June and July 2015.

¹ Details of the 17 shipping bills are delineated at Paragraph No. 18 of the writ petition.



1.4. Realising their mistake, the Petitioner applied for amendment of the 7 shipping bills under Section 149 of Customs Act, 1962² to rectify their error, on the basis of the documents available at the time of the export. The Assistant Commissioner of Customs, Export (Respondent No. 3) rectified the inadvertent error. However, since the amendment could not be carried out in the automated EDI system after completion of export, Respondent No. 3 issued amendment certificates in respect of the 7 shipping bills which were identified to be deficient.

1.5. Although the deficiency was noticed only in 7 shipping bills, Respondent No. 4 proceeded to issue letters dated 24th May, 2018, rejecting the Petitioner's MEIS claims in respect of all 17 shipping bills, stating that the Petitioner had not submitted compliance to the deficiency notices within the permissible timelines. The Petitioner submitted the aforementioned amendment certificates issued by Respondent No. 3 and requested for grant of MEIS benefits, however, Respondent No. 4 requested the Petitioner to re-apply for MEIS benefits through the DGFT portal. However, these shipping bills were not reflected on the DGFT portal owing to a system error, and therefore, the Petitioner could not re-apply for MEIS benefits.

1.6. In the aforementioned background, the Petitioner approached Policy Relaxation Committee³ (Respondent No. 2) requesting for re-validation of the 17 shipping bills which were not reflected in the DGFT portal, so as to enable the Petitioner to re-apply for MEIS incentives. This request of the Petitioner was considered and rejected through the impugned order dated 21st May, 2019, to the following effect:

² "Customs Act"

³ "PRC"



“Case No.15 Mis Zydus Takeda Healthcare Pvt. Ltd., Mumbai

F. No. 01/60/162/91/AM20/PRC

PRC Meeting No. 06/AM20 dated 21.05.2019

Subject: Revalidation of shipping bills for MEIS.

They had applied for MEIS application on 30.03.2018 for the financial year 2015 — 2016 to the office of the Development Commissioner, SEEPZ Special Economic Zone, Andheri East, Mumbai 400096. SEEPZ issued deficiency letter on 07.05.2018 stating that intent declaration is not mentioned on the shipping bills. In order to amend the shipping bill they had approached customs authority through their CHA. Meanwhile on 16.07.2018, SEEPZ has issued another letter stating that application has been rejected as not reply to their deficiency letter dated 07.05.2018 within 30 days as per the RA's letter dated 11.05.2018. They had submitted amended shipping bills to SEEPZ on 13.07.2018. SEEPZ has issued letter on 16.07.2018 stating that their application has been rejected on 24.05.2018, and asked to re-apply with fresh ,online application. They had re-applied online to DGFT for re-activation of shipping bill on 20,07.2018 and issue resolved by DGFT on 16.08.2018. Now in the system the shipping bills are not valid for re-application.

Decision: *The Committee having discussed the case observed that declaration of intent was not mentioned in the stills and same was added later by customs in the form of letter and the same is not reflecting in the automated system. Accordingly, it found no merit in it and decided to reject the request of the firm.*

(Action: Applicant)”

1.7. The aforementioned order was challenged by the Petitioner through a review application, however, this was also refused by the PRC through impugned order dated 6th January, 2020. The relevant portion of the said order reads as below:



"Decision: The Committee having heard and reviewed the case on the basis of justification furnished by the firm observed that there is no merit in firm's contention and decided to maintain rejection of the request of the firm as in earlier PRC Meeting No.06/AM20 dated 21.05.2019."

1.8. In such circumstances, the Petitioner has filed the instant petition assailing the aforementioned impugned orders. They urge that once the amendment certificates were issued under Section 149 of the Customs Act, the Respondents ought to have allowed the Petitioner's request for the MEIS incentives. The rejection of their claim is arbitrary and unreasonable, and therefore, the impugned orders are liable to be quashed by this Court.

2. In response, Mr. Satya Ranjan Swain, Senior Panel Counsel for Respondents No. 1, 2 & 4, argues that it is not in dispute that the Petitioner did not fill the declaration of intent column. Sufficient opportunity was given to the Petitioner after issuance of deficiencies notices to rectify their mistakes, however, since the Petitioner failed to comply within time, they cannot be afforded the benefit of MEIS. He points out that, on 11th May, 2018, the DGFT issued instructions to all regional authorities to close the cases of processing MEIS/ SEIZ applications where the applicants had not responded to deficiency letters within 30 days of the issuance of such letter. The Petitioner has failed to comply within the time period prescribed and hence no relief can be granted to them.

3. The Court has carefully perused the documents on record and deliberated on the submissions advanced by the counsel for parties. In the opinion of the Court, since the Petitioner has satisfied all the requirements to claim benefits under MEIS which were due to them, the same ought not to



be denied on hyper-technical grounds, purely on account of an inadvertent and *bona fide* error of not declaring the intent to claim MEIS benefits on shipping bills. This, in the opinion of the Court, was a procedural lapse which has thereafter been duly rectified under Section 149 of the Customs Act, with Respondent No. 3 having issued amendments certificates in respect of the deficient shipping bills.

4. Further, the Court also notes that the Petitioner's request was rejected on account of a system error which was beyond the Petitioner's control. The Petitioner could not reapply for MEIS benefit as the online request on the DGFT portal for re-validation of shipping bills has not been resolved. Although the system has generated a report indicating that the issue has been resolved, as depicted in the screenshots placed on record by the Petitioner, however, in reality, that is not the case as a result the shipping bills in question are still not reflected on the EDI system.

5. The Petitioner has received amendment certificates in respect of 7 shipping bills, as there were no deficiency notices issued with respect to the remaining bills. However, that would still not come in the way of the Petitioner receiving benefits under MEIS in light of advisory No. 07/2023 dated 11th April, 2023, issued by the Directorate General of Systems and Data Management, to the following effect:

***“Directorate General of Systems and Data Management
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS
Dept. of Revenue, Ministry of Finance, Government of India***

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 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 1998 8/21/23, 6:47 PM 31 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 As per through Drawback Division of CBIC along with a copy to this Directorate for necessary action. 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”



6. In the opinion of the Court, the PRC ought to have considered all the aforementioned facts, and particularly that this was a case of pure inadvertent error on the part of the Petitioner which was subsequently rectified. Therefore, since the Petitioner has already cured the deficiencies and secured amendment certificates, their request should not be rejected on account of amended shipping bills not being reflected on the automates system. Thus, since the Petitioner has fulfilled the pre-requisites to claim the MEIS benefits, in the opinion of the Court, the present petition deserves to be allowed. Accordingly, the following directions are issued:

6.1. The impugned order dated 21st May, 2019 as well as impugned review order dated 6th January, 2020, are set aside.

6.2. Respondents are directed to consider the Petitioner's MEIS claims electronically/ manually and process the application in accordance with public notices No. 40/ 2015-2020 dated 9th October, 2015 and 47/ 2015-20 dated 8th December, 2015, in respect of all 17 shipping bills.

7. With the above directions, the present petition is disposed of.

SANJEEV NARULA, J

AUGUST 9, 2024

as