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

Date of decision: 21st MARCH, 2024

IN THE MATTER OF:

\+ W.P.(C) 3663/2021

JSW STEEL LIMITED & ANR. ..... Petitioners

Through: Mr. Kumar Visalaksh and Mr. Udit Jain, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Varun Rajawat, Ms. Shreya V. Mehra, Mr. Kartik Baijal and Mr. Varun Pratap Singh, Advocates.
Mr. Harpreet Singh, SSC with Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advocates for R-6 to 10.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. Learned Counsel appearing for the Petitioner states that there is a typographical error in the Order dated 14.03.2024 inasmuch as this Court has recorded that the matter is squarely covered by the Judgment of the Apex Court, however, in fact the matter is squarely covered by the Judgments passed by this Court.

2. In view of the aforesaid, the Order dated 14.03.2024 stands corrected accordingly.

3. The Petitioner has approached this Court with the following prayers:

"a. Issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, order or direction, to call for, examine and quash the orders issued in the PRC Meeting No. 31/AM19 dated 19.02.2019 (Case No. 17 & 18), 15/AM20 dated 13.08.2019 (Case No. 12 & 13), 15/AM21 dated 03.11.2020 & 11.11.2020 (Case No. 9 & 1 0);

b. Issue a Writ of Mandamus, or a Writ in the nature of Mandamus, or any other appropriate Writ, order or direction:

(i) directing the Respondent No. 2/3 to accept, consider and process a manual application from the Petitioners in lieu of the online application for MEIS benefits in respect of exports for which the Respondent Nos. 6, 8 and 9 have issued no objection certificates;

(ii) directing the Respondent Nos. 7, 8 and 10 to issue the no objection certificates with respect to the balance shipping bills as filed in their respective jurisdictions, similar to those issued by the Respondent Nos. 6, 8 and 9, and further directing the Respondent No. 2/3 to accept, consider and process a manual application from the Petitioners in lieu of the online application for MEIS benefits in respect of such exports;

(iii) in the alternative, directing the Respondent No. 2/3 and/or the Respondent Nos. 6 to 1 0 to make necessary technical modifications in the DGFT portal / Customs ICEGATE System, as deemed appropriate, such that the reward column of the subject shipping bills can be amended from 'No' to 'Yes' and duly reflected for the purposes of filing an online MEIS application;

(iv) in the alternative and if deemed necessary, directing the Respondent No. 4 to re-consider the Petitioners' request to permit filing manual application of MEIS claim on the basis of such no-objection certificates;

c. for such further and other reliefs, as the nature and circumstances of the case may require."

4. Learned Counsel appearing for the Petitioner states that the matter stands settled by the rulings of this Court. He places reliance upon the Judgment dated 10.05.2023 passed by this Court in **W.P.(C) 1184/2021** in the case of "M/s RK Agroexport Pvt. Ltd vs. Union of India and Ors." wherein the Division Bench of this Court disposed of the writ petition by observing as under:

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

5. Learned Counsel for the Petitioner also places reliance upon the Judgment dated 05.01.2023 passed by this Court in **W.P.(C) 14131/2021** in the case of <u>"Hindalco Industries Limited vs. Union of India and Ors."</u> wherein the Division Bench of this Court has taken a very similar view and

observed as under:

> *"3. The learned counsel appearing for the respondents, states that a committee of officers, which was constituted pursuant to orders passed in another matter – Jubilant Biosys Limited v Direcotrate General of Foreign Trade and Others: W.P.(C) 14754/2022 – has taken a lenient view. In the said case, the petitioner (Jubilant Biosys Limited) had been denied the benefit of MEIS scheme for somewhat similar reason. Pursuant to the order passed by the Court in that petition, a meeting of the concerned officers was held and the said officers had decided to extend the benefit of the MEIS scheme to the petitioner in question. It is relevant to note that the concerned officers had decided that Customs will transmit the shipping bills to DGFT through a manual intervention at ICEGATE. The DGFT, based on the said electronic transmission, and keeping in view the manual amendments made, would process the case for further grant of MEIS benefits as an exceptional matter.*
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> *4. In view of the decision of the concerned officers taken at the meeting held on 08.12.2022, allowed the aforesaid petition by an order dated 16.12.2022. The relevant extract of the said order 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:*
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> > > *"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."

5. This Court is of the view that the similar benefits ought to be extended to the petitioner in this case as well. The petitioner's case stands on a better footing as it had clearly indicated that it intended to take the benefit of the MEIS scheme. Thus, the error of not marking 'Y' against the reward column is clearly an inadvertent error.

6. In view of the above, respondent no.4 shall transmit the corrected bills through manual intervention at ICEGATE within a period of two weeks from today. The DGFT (respondent no.2) shall process the petitioner's claim for benefits under the MEIS scheme within a period of six weeks thereafter."

6. Learned Counsel for the Petitioner further places reliance upon the Judgment dated 16.12.2022 passed by this Court in **W.P.(C) 14754/2022** in the case of "Jubilant Biosys Limited vs. Directorate General of Foreign

Trade and Ors." wherein the Division Bench of this Court has observed as under:

> *"5. The petition was considered on 19.10.2022 and a coordinate bench of this Court had had passed the following order:*
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> ***"W.P.(C) 14754/2022***
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> *2. The principal grievance of the petitioner is, that although necessary amendments have been made in the 69 shipping bills, which are in issue, via the amendment certificate dated 08.02.2022, it has been denied benefits under the Merchandise Export from India Scheme [in short "Scheme"], only for the reason that the portal would not accept the amendments.*
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> *3. It is on this account that the decision taken at the meetings dated 22.04.2022 and 05.05.2022, which was communicated to the petitioner via e-mail dated 20.05.2022, is being assailed.*
>
> *3.1 This decision has been taken by respondent no.2.*
>
> *4. To be noted, the aforementioned amendment certificate dated 08.02.2022, has been issued by respondent no.4.*
>
> *5. Prima facie, we are of the view that the grievance of the petitioner can be addressed, if a meeting is convened between respondent no.1/Directorate General of Foreign Trade (DGFT); respondent no.2/Policy Relaxation Committee (PRC); respondent no.3/Directorate General of Systems and Data Management and respondent no.4/Deputy Commissioner of Customs (CRU), who, as indicated, has issued the aforementioned amendment*

certificate.

6. Learned counsel for the petitioner says, that an advance copy of the petition was served on the respondents. However, there is no appearance on behalf of the respondents.

7. Since Ms Sonu Bhatnagar, Advocate, is present, albeit, via videoconferencing (VC), we have requested her to accept notice on behalf of the respondents in the matter.

8. Ms Bhatnagar will ensure, that a meeting is convened by respondent no.1/DGFT, so that this imbroglio is resolved before the next date of hearing.

9. A report, in this behalf, will be placed before us, before the next date of hearing.

10. In any event, we are issuing notice in the matter.

10.1 In case the respondents wish to resist the writ petition, they will file counter-affidavit(s), before the next date of hearing.

11. We may also record, that the 69 shipping bills concern the period spanning between 06.04.2018 and 31.05.2020.

12. List the matter on 16.12.2022.

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.

8. In view of the above, the petitioner's grievance in the present petition stands addressed. No further orders are required to be passed in this petition."

7. Mr. Kritiman Singh, learned CGSC, draws attention of this Court to the counter affidavit filed by Respondent Nos.8 to 10 wherein the Customs Department has accepted the case of the Petitioner.

8. In view of the above pronouncements by the Division Bench of this Court in aforesaid three Judgments, the present writ petition is allowed on the same terms and conditions. Pending applications, if any, stand disposed of.

9. The Petitioner will now be able to take the benefit of Merchandise

Exports from India Scheme (MEIS) and the fact that the last date has expired, will not come in way of the Petitioner and the Respondents are directed to consider the case of the Petitioner in accordance with the law laid down by this Court.

SUBRAMONIUM PRASAD, J

MARCH 21, 2024
S. Zakir