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

+ W.P.(C) 4687/2024

M/S BECTON DICKINSON INDIA PVT. LTD.

.....Petitioner

Through: Mr. Udayan Jain, Mr. Raj Surana, Ms. Kajal Sharma, Mr. Ranjan Mishra and Ms. Shrutika Garg, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC along with Ms. Reeve, Adv. for UOI.

Mr. Anurag Ojha, SSC along with Mr. Kumar Abhishek, Mr. Subham Kumar, Ms. Seema Tyagi, Ms. Veena Tyagi, Mr. Rajeev L. Seth and Mr. Sunder Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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25.07.2024

1. This writ petition has been preferred seeking the following reliefs:-

“(i) Issue orders, directions or any writs to quash the order dated 17.08.2017 and 10.10.2017 and Email dated 26.09.2023 issued by the Respondent No. 4 and 5 and consequently direct the Respondent no 1 to 5 to extend the benefit of Merchandise Exports From India Scheme (MEIS) as envisaged under Foreign Trade Policy Of India 2015-2020 by permitting the Petitioner Company to make amendment in the EDI shipping bill and tick the option of ‘Y’ (for YES) instead of ‘N’ (for NO) to claim MEIS benefits.



(ii) Pass such other and further order/s that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. As was noticed by us in our order dated 02 April 2024, the grievance which is raised in the instant writ petition appears to be settled in light of the judgment that the Court had rendered on 10 May 2023 in **M/s RK Agro Export Private Limited vs. Union of India & Ors.**¹ The dispute itself emanates from a denial of benefits under the Merchandise Exports from India Scheme [‘MEIS’] in light of certain discrepancies and mistakes in the shipping bills.

3. While dealing with the aforesaid question, the Court in *M/s RK Agro Export* had taken note of the following position as struck by the respondents: -

“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

¹ 2023 SCC OnLine Del 2831



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.”

4. Following the aforesaid decision, we dispose of this writ petition with liberty to the writ petitioner to apply for appropriate amendments in terms of the Advisory dated 11 April 2023. The respondent shall proceed further in light of the aforesaid Advisory and examine the claim of the petitioner in accordance with law.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

JULY 25, 2024/RW