

**IN THE HIGH COURT OF MADHYA PRADESH**

**BENCH AT INDORE**

BEFORE HON'BLE SHRI JUSTICE VIVEK RUSIA &

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

**WRIT PETITION No. 2614 of 2021**

Between:-

- M/S ADROIT INDUSTRIES (INDIA) LTD THROUGH EXECUTIVE DIRECTOR SHRI SAURABH SANGLA EXECUTIVE DIRECTOR OFFICE AT- 1003, MEADOWS BUILDING, SAHAR PLAZA, COMPLEX, JB NAGAR, ANDHERI (EAST ) MUMBAI/ FACTORY AT - 44-59, SECTOR D2 INDUSTRIAL AREA, SANWER ROAD, INDORE (MADHYA PRADESH)
1. SHRI SAURABH SANGLA
  2. \_\_\_\_\_

.....PETITIONER

AND

1. UNION OF INDIA SECRETARY MINISTRY OF FINANCE DEPARTMENT OF REVENUE, ROOM NO. 137, NORTH BLOCK, NEW DELHI (DELHI)
2. DIRECTOR-GENERAL OF FOREIGN TRADE (DGFT) MINISTRY OF COMMERCE AND INDUSTRY DEPARTMENT OF COMMERCE DIRECTORATE OF FOREIGN TRADE UDYOG BHAWAN H-WING GATE NO. 2 MAULANA AZAD ROAD, NEW DELHI (DELHI)
3. POLICY RELAXATION COMMITTEE OF DGFT THROUGH JOINT DIRECTOR MINISTRY OF COMMERCE DIRECTORATE OF FOREIGN TRADE POLICY SECTION 3 UDYOG BHAWAN NEW DELHI (DELHI)
4. ASSISTANT DIRECTOR, DIRECTORATE GENERAL OF FOREIGN TRADE (DGFT) GROUND FLOOR, A WING, C G O COMPLEX A.B. ROAD INDORE (MADHYA PRADESH)
5. PRINCIPAL CHIEF COMMISSIONER OF CUSTOMS, JAWAHARLAL NEHRU CUSTOMS HOUSE NHAVA SEVA, TEHSIL URAN DIST RAIGHAD (MAHARASHTRA)

.....RESPONDENTS

Shri Rabi Sankar Roy Choudhury learned counsel for the petitioners.

Shri Himanshu Joshi learned Assistant Solicitor General for respondent No.1/Union of India.

Shri Prasanna Prasad learned counsel for respondents No.2, 3, 4 and 5.

**ORDER**

(Passed on 08.04.2022)

**Per Vivek Rusia, J :**

The petitioners have filed the present petition seeking the following relief/s :

“(i) That this Hon'ble Court be pleased to declaration relaxation/condonation of the procedure lapse of non-mentioning of MEIS scheme in the shipping bills at the time of export as arbitrary and discriminative.

(ii) That this Hon'ble Court be pleased to issue a writ of Mandamus or any other appropriate Writ, order or direction ordering and directing the Respondent No.2 by themselves, their sub ordinate servants to award the MEIS to the petitioner on export of their products through the Shipping Bills issued during 2017-18 & 2018-19.

(iii) That this Hon'ble Court be pleased to issue a writ of Mandamus or any other appropriate Writ, order or direction ordering and directing the Respondent No.5 by themselves, their sub ordinate servants to issue no objection certificate in favour of the petitioner to certify that the goods were exported by the petitioner and they have realised the export proceeds.”

1. Petitioner No.1 is a Private Limited Company having its registered office at 1003, Meadows Building, Sahar Plaza Complex, JB Nagar, Andheri (East), Mumbai and factory at 44-59, Sector D2 Industrial Area, Sanwer Road, Indore. Petitioner No.1 is engaged in the manufacture of automobile parts. Petitioner No.2 is the Executive Director of petitioner No.1 company.

2. The Government of India has introduced the *Merchandise*

***Export from India Scheme*** (MEIS) as a Foreign Trade Policy 2015-20 which has now been discontinued for the export w.e.f. 1.1.2021. Under the scheme, incentives were given to the Indian exporters in terms of Duty Credit Scrips @ 2, 3, 4, 5 and 7% of the FOB value of realized exports made during the validity period. The process of availing the aforesaid benefit is provided under the scheme itself and according to which, at the time of filing of shipping bills, if the HS Code of the exported product is under the eligible code list (Appendix 3B of MEIS) then the exporter is required to mark “Yes” by clicking “Y” in the rewards column of the shipping bill. All such “Yes” marked shipping bills are transferred from the Customs Database to the DGFT database electronically. Once the payment for these shipments is realized, the exporter requests the concerned bank to generate and upload an electronic Bank Realization Certificate (eBRC) on the DGFT server. After this, for every IEC (exporter), the DGFT database has details of goods exported and the consequent realization amount. Thereafter, the exporter was required to lodge the portal where his electronic data is available to him in DGFT online repository and tag the individual shipping bills in the online application with e-BRC and an application is submitted. Under the provisions of the scheme, without electronic data of shipping bills being transmitted from the Customs server, such shipping bills are not present in the DGFT repository and a claim under MEIS cannot be applied by the exporter for the relevant shipping bills.

3. The case of the present petitioners is that as per Paragraph 3.04 of Foreign Trade Policy 2015-20 for the period from 2017-18 and 2018-19 and 2-19-20 the petitioner could not avail the benefit of MEIX due to the clerical error as they could not tick “Y” (for Yes) in

the reward column of shipping bills. Under these circumstances, the system automatically treated the shipping bills as “N” (for No) in the reward column of the shipping bills.

4. The case of the petitioner is that during the relevant period i.e. 2015-20 the petitioner was entitled to avail the benefit of MEIS but could not avail of such benefit as did not declare the intention by ticking or marking “Y” (for Yes) in the shipping bills. Since the aforesaid mistake was committed by several exporters, therefore, the DGFT with a view to promoting the exports from India issued Trade Notice No. 24/2018 dated 21.2.2018 asking the exporters to submit their applications in a proper format. The petitioner has also submitted the representation on 19.7.2019 followed by a reminder and the legal notice. When no response was received, petitioner no.1 has filed the present petition.

5. After the filing of the petition, petitioner no.1 has received a letter dated 27.1.2021 informing that the application dated 19.7.2019 has been rejected on 3.9.2019 by the DGFT and the same was also communicated through an e-mail dated 26.9.2019. Instead of challenging the aforesaid rejection order by amending the writ petition, especially the relief clauses therein, the petitioner has filed the aforesaid letters and emails by way of rejoinder and in which seeking the relief of quashment of order/letter dated 3.9.2019. This is not the proper procedure. The petitioner ought to have amended the writ petition challenging the validity of the order dated 3.9.2019.

6. After notice in this writ petition, respondents No.2 to 4 (i.e. DGFT) have filed a preliminary reply by submitting that the procedure for claiming the benefit of MEIS is described in Paragraph 3.14 of Hand Book of Procedures (HBP), 2015-20. Under the said scheme,

without electronic data of shipping bills being transmitted from the Customs Server, such shipping bills are not available in the DGFT repository and a claim under MEIS cannot be applied by the exporter for the relevant shipping bills. It is submitted by the respondents that the non-marking of “Yes” in the shipping bills was a violation of the mandatory requirement to be fulfilled as per the HBP, therefore, at this stage, no benefit can be given to the petitioner unless the Customs Department amend the bills and send to the DGFT repository.

7. Respondent No.5, ( i.e. Commissioner of Customs) has also filed the reply by submitting that as per Paragraph 3.14 of the HBP 2015-20 it is mandatory on the part of the firm to file the EDI shipping bills by marking/ticking of “Y” (for Yes) in the reward column of shipping bills against each item which is sufficient to declare an intention to claim rewards under the scheme. The mistake has not been committed in one or two bills but continued for two years more and during this period approximately 700 bills were submitted without marking “Y” (for Yes) in the reward column. Therefore, such a perpetual mistake cannot be called a bona fide mistake.

8. By way of an additional reply/application it is further submitted that the scheme of the Customs Act/allied rules governing the field provides for a mechanism for redressal of the grievance of the petitioner under which the shipping bills issued could have been amended by the Customs authorities under the relevant provisions of the Customs Act. After such an amendment in the bills, the petitioner could have got the electronic data of shipping bills from the DGFT server from the Customs. Then, thereafter, the petitioner could have applied to the Policy Relaxation Committee which is the apex body to take a decision on such grievance or the matter. Hence, no relief can

be granted to the petition in this petition and the same is liable to be dismissed.

We have heard the learned counsel for the parties and perused the record.

9. Facts of the case are not in dispute to the effect that the petitioner during the relevant period i.e. 2015-20 was entitled to avail the benefit of MEIS but could not avail of such benefit as the concerned staff did not declare the intention by ticking or marking “Y” (for Yes) in the shipping bills.

10. Shri Rabi Sankar Roy Choudhury learned counsel for the petitioners has argued that the object of the scheme under the Chapter is to provide rewards to the exporters in order to get more and more imports to India. The petitioners could not avail the benefit of MEIS during 2017-18 and 2018-19 due to the clerical error of the concerned staff and the system automatically has treated the shipping bills as “N” (for No) in the reward column. A similar issue came up for consideration before the Kerala High Court in W.P. No. 25339/2019 and it has been held that there is no justification for denying the claim based on such an inadvertent omission. In the matter of condoning such an omission, there cannot be discrimination between the exporters who made the claim within six months and those who have raised the claim after six months of the introduction of the scheme. Learned counsel for the petitioner has also placed reliance on the judgment of the Bombay High Court in the case of *Portescap India Pvt. Ltd. V/s. Union of India: 2021 (376) ELT 161 (Bom.)* in which the High Court has directed the Customs Department to issue NOC to the petitioner in respect of EDI online shipping bills which could not be amended to enable the petitioner to claim the reward under MEIS

and thereafter, the petitioner therein shall file an application in respect of shipping bills to claim the benefit under MEIS. Likewise, in other cases also, the Kerala High Court, as well as Bombay High Court, came to the rescue of similarly placed exporters.

11. Shri Prasanna Prasad, learned counsel for respondents No.2 to 4 and respondent no 6 has also placed reliance on various judgments passed by several High Courts and submitted that the Foreign Trade Policy provides the remedy of appeal to the Grievance Redressal Committee. The petitioner has not made an application for correction of shipping bills before the appropriate officer of the Customs Authority. Therefore, as of today, the bills in the “non-MEIS” category have not been transmitted to the DGFT in order to claim the benefit. No legal right is available to the petitioners to claim by way of a writ petition under Article 226 of the Constitution of India. In support of his contention, he has placed reliance on the judgments of the Apex Court in the case of *G. Bassi Reddy V/s. International Crops Research Institute : (2003) 4 SCC 225*; *Director of Settlements A.P. V/s. M.R. Apparao : (2002) 4 SCC 638*; and the recent judgment of the Apex Court in the case of *Assistant Commissioner of State Tax V/s. Commercial Steel Ltd.: 2021 SCC Online SC 884* wherein the writ petition has been dismissed for want of an alternative statutory remedy available u/s. 107 of the Central Goods and Service Tax Act, 2017.

12. It is not in dispute that the petitioner submitted a representation to the Policy Relaxation Committee and the said Committee after going through the submissions made and the relevant provisions of the scheme have found that in the shipping bills “Y” (for Yes) was not marked/ticked in the reward column and the system automatically

treated the same for “N” (for No) to get the benefit of the scheme. As far as the role of DGFT is concerned, as per the policy, unless the DGFT gets the shipping bills amended from the Customs Department, no benefit under the scheme can be extended. Therefore, respondents No.2 to 4 are right in contending that the impugned shipping bills are issued by the Customs Department and could not have been amended by the Customs Department unless and until the petitioners could have got electronic data of shipping bills transmitted to the DGFT server from the Customs Department, the claim of the petitioners could have been considered by the Policy Relaxation Committee at the relevant point of time. As per HBP Chapter 3, Clause 3.13 provides validity period and revalidation and according to which, Duty Credit Scrip issued on or after 1.1.2016 under Chapter 3 shall be valid for a period of 24 months from the date of issue and must be valid on the date on which actual debit of duty is made. Revalidation of Duty Credit Scrip shall not be permitted unless covered by Paragraph 2.20(c) of HBP. Clause 3.15 provides the last date of filing of the application for Duty Credit Scrips and according to which, the application shall be filed within a period of 12 months from the date of LEO date or 3 months from the date of uploading of EDI shipping bills on to the DGFT server by Customs. The Commissioner of Customs issued Public Notice No.88/2017 dated 5.7.2017 prescribing the procedure for amendment/conversion of the shipping bills from one scheme to another scheme and according to which the post-shipment amendments shall ordinarily be examined and disposed of within a period of 30 days from the date of receipt of the request from the CB/exporter and in case of delay beyond the stipulated period, the CB/exporter may approach the JC/ADC concerned to resolve the

matter.

13. The petitioner has only challenged the action of the DGFT in this petition by which the claim has been rejected. As held above, the DGFT has rightly declined on the basis of the bills received in the server from the Customs Department. Therefore, the petitioners ought to have approached the Customs Department for correction of the shipping bills and after such correction in the shipping bills, the DGFT get jurisdiction or authority to examine the matter. Hence no relief can be granted to petitioners in this writ petition hence the writ petition is dismissed. However petitioners shall be at liberty to approach respondent No.5 seeking rectification/correction in shipping bills online. Thereafter, respondent No.5 is directed to consider the claim of the petitioners by an appropriate committee as per law and the scheme.

With the aforesaid, this petition stands dismissed.

[ VIVEK RUSIA ]  
JUDGE.

[AMAR NATH (KESHARWANI)]  
JUDGE.

Alok/-