

Ajay/Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2532 OF 2019

Portescap India Private Limited .. Petitioner
Versus
Union of India & Ors. .. Respondents

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- Mr. Bharat Raichandani a/w. Ms. Pragya Koolwal i/by UBR for Petitioner.
 - Mr. Pradeep S. Jetly, senior counsel a/w. Mr. Devesh Tripathi for the Respondents.
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CORAM : UJJAL BHUYAN & MILIND N. JADHAV, JJ.

RESERVED ON : FEBRUARY 11, 2021.
PRONOUNCED ON : MARCH 02, 2021.

JUDGMENT : (PER : MILIND N. JADHAV, J.)

Heard Mr. Bharat Raichandani a/w. Ms. Pragya Koolwal, learned counsel for the petitioner; and Mr. Pradeep Jetly, learned senior counsel a/w. Mr. Devesh Tripathi, learned counsel for the respondents.

2. By this petition filed under the provisions of Article 226 of the Constitution of India, petitioner has sought to challenge the rejection of its applications filed under the Merchandise Exports from India Scheme (for short "**MEIS**") by the respondents on the ground of mis-declaration of intent by the petitioner and thereby depriving the petitioner benefit under the said scheme.

2.1. Petitioner has however prayed for the following reliefs in the petition:-

- "(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner case and after going into the validity and legality of the provisions and direct the respondent No. 2 to issue such directions / orders to the respondents to guide the petitioner by communicating the exact modification required, if any, in the form submitted by the petitioner and to allow benefit under Merchandise Exports from India Scheme to the petitioner;*
- (b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner case and after going into the validity and legality of the provisions and direct the respondents to issue such directions to the Respondents to pass such directions to the respondents to guide the petitioner by communicating the exact modification required, if any, in the form submitted by the petitioner and to allow benefit under Merchandise Exports from India Scheme to the petitioner;*
- (c) For interim and ad-interim reliefs in terms of prayer clause (a) to clause (b);*
- (d) For costs of this Petition;*
- (e) For such and other reliefs as the nature and circumstances of the case may required."*

3. Before we advert to the submissions made on behalf of the respective parties, it will be apposite to briefly refer to the relevant facts as pleaded:-

3.1. Petitioner is a private limited company situated in Santacruz Electronics Export Processing Zone (for short "**SEEPZ**"), a Special Economic Zone in Mumbai and engaged in the manufacture and export of electronic motors. Petitioner is entitled to special fiscal provisions as envisaged in the Special Economic Zone Act, 2005 (for short "**SEZ Act**") in respect of goods manufactured and exported by the petitioner being eligible and notified products under the MEIS.

3.2. Since 01.04.2015 petitioner has been exporting electronic motors to notified markets and claiming benefit under the MEIS in the manner prescribed under paragraph 3 of the Handbook of Procedure (HBP). For this purpose petitioner has been filing applications online using its digital signature on the Director General of Foreign Trade (for short "**DGFT**") portal by filing the requisite details in the appropriate form to claim reward under MEIS. The reward is received in the form of duty credit scrips.

3.3. In the present case, the exports of petitioner are made through SEEPZ i.e. the Non-EDI port. These Non-EDI (manual) shipping bills are not transmitted electronically by Customs Department to DGFT. Hence petitioner is required to manually enter the data for all such shipping bills and file MEIS applications separately on the DGFT portal in respect of each shipping bill to claim reward under MEIS after completion of export obligations.

3.4. Petitioner filed applications dated 09.03.2017 and 06.09.2017 on the DGFT portal as well as before the regional authority to claim reward under MEIS against various shipping bills.

3.5. By letters dated 31.08.2017 and 19.09.2017 respondent No.4 rejected petitioner's claim for seeking reward (duty credit scrips) under MEIS, *inter alia*, on the ground that petitioner had not stated its declaration of intent i.e. "*We intend to claim rewards under Merchandise Exports from India Scheme*" on the shipping bills.

3.6. Petitioner states that similar applications filed by the petitioner for the period 2015-16 and 2016-17 for claiming reward under MEIS in respect of various shipping bills have also been rejected on the ground of absence of '*declaration of intent*' on the shipping bills.

3.7. Petitioner filed representation dated 17.10.2017 before respondent No.2 and submitted a list of shipping bills on which benefit of MEIS was denied to the petitioner. Petitioner asserted that it was entitled to the reward (duty credit scrips) under MEIS and highlighted several difficulties in claiming the rewards such as:-

- (i) *in certain specified cases (shipping bills) the DGFT portal showed that benefit under MEIS was claimed by the petitioner;*
- (ii) *in some cases there was failure to link Electronic Bank Realization Certificate (E-BRC) to the shipping bills which was issued by the banks to the exporter for the purpose of claiming benefits under the scheme;*
- (iii) *in some case using the E-BRC platform, banks were electronically transmitting foreign exchange realization to the DGFT server directly; and in view thereof, petitioner was denied the benefit under the scheme.*

3.8. By order dated 10.05.2018 respondent No. 4 rejected the petitioner's application for amending one such

shipping bill No. 4013543 under the provisions of section 149 of the Customs Act, 1962.

3.9. Petitioner filed a second representation dated 16.10.2018 before respondent No.4 with respect to denial of benefit under MEIS due to the difficulties faced by the petitioner and sought leave to carry out amendment in the shipping bills under the provisions of section 149 of the Customs Act, 1962 (for short "**the Customs Act**").

3.10. Petitioner preferred appeal before the Commissioner of Customs (Appeals) to challenge the order dated 10.05.2018. By order dated 12.02.2019, Commissioner of Customs (Appeals) dismissed the petitioner's appeal on the ground of jurisdiction, *inter alia*, holding that the remedy for such kind of inadvertence was not within the purview of the Customs Department under Section 149 of the Customs Act.

3.11. Petitioner filed a third representation dated 07.02.2019 before respondent No.2 highlighting the difficulties faced while claiming reward under MEIS.

3.12. Again, petitioner filed application dated 28.05.2019 with the respondents to claim reward under MEIS against various shipping bills.

3.13. Since there was no response petitioner filed a fourth representation dated 10.07.2019 with the Export Promotion Council of India highlighting the difficulties faced by the petitioner in claiming benefit under MEIS in respect of its shipping bills and denial of the same to the petitioner.

3.14. By letter dated 15.07.2019 respondent No.4 rejected the application dated 28.05.2019 seeking reward (duty credit scrips) in respect of various shipping bills under MEIS on the ground that the petitioner was not eligible to claim the reward due to absence of declaration of intent on the said shipping bills.

4. Respondents have filed reply affidavit denying the claim and contentions of the petitioner.

5. Mr. Raichandani, learned counsel for the petitioner submitted that the petitioner has fulfilled all requirements required to claim benefit under MEIS as an exporter of notified goods to the notified markets under the Foreign Trade Policy 2015-2020 (for short "**FTP**"). He submitted that there is no dispute in respect of this fact i.e fulfillment of the preliminary requirement on behalf of the petitioner to claim benefit under MEIS; however due to procedural infraction and error on the part of the petitioner at the time of filing application forms for seeking benefit under MEIS being the declaration of intent was not stated or mentioned in the application forms which has led to denial of benefit to the petitioner. He submitted that due to a procedural and inadvertently committed mistake of not affirmatively stating "Y" (for Yes) in the declaration of intent column for claiming reward under MEIS, petitioner has been denied the benefit. He submitted that petitioner committed an inadvertent and bonafide error while filing the application forms for claiming benefit under Chapter 3 of FTP, though the petitioner was entitled for the benefit having completed its export obligations.

5.1. He submitted that clause 3.14 of the FTP prescribes the procedure for declaration of intent of EDI and Non-EDI shipping bills for claiming reward under MEIS; in doing so in cases where exports are made through EDI port, the exporter is required to mark / tick "Y" (for Yes) in the reward column of shipping bills against each item for claiming reward under the scheme; whereas in cases where exports are made through Non-EDI port, the exporter is required to specifically declare on the shipping bills "*We intend to claim reward under MEIS*" in order to claim rewards under MEIS. He submitted that in the present case, due to an inadvertent mistake on the part of the petitioner, instead of marking "Y" (for Yes) in the reward column of the shipping bills, petitioner had marked "N" (for No) thereby leading to denial of benefit to the petitioner. This mistake on the part of the petitioner has led to denial of benefit due to the petitioner. He submitted that in respect of some shipping bills though the benefit is not claimed by the petitioner, yet it is reflected in the system portal of the DGFT that MEIS benefit towards the said shipping bills have already been claimed; in respect of some shipping bills though the petitioner has exclusively downloaded the E-BRC form from the website, however, while availing MEIS scheme, petitioner is unable to upload the application as the portal has displayed an error "*E-BRC not found*".

5.2. Thus, from the above, there has been denial of MEIS reward due to the petitioner as under:-

- (i) In respect of shipping bills wherein inadvertently, petitioner has marked "N" (for No) in the reward column instead of "Y" (for

Yes);

- (ii) In respect of shipping bills where benefit though not claimed by the petitioner, the DGFT portal is reflecting that such benefit has already been claimed;
- (iii) In respect of shipping bills where the petitioner has successfully downloaded the E-BRC form, but while availing MEIS benefit the petitioner is unable to upload the application form due to an error message.

5.3. He submitted that any error / failure of the aforementioned nature, cannot be a ground to deny benefit to the petitioner under MEIS scheme to which the petitioner is otherwise entitled considering that admittedly excisable goods have been exported by the petitioner and the benefits of MEIS under Chapter 3 of FTP 2015-2020 are therefore available to the exporter exporting notified goods / products with ITC(HS) code to notified markets; that reward under MEIS in the form of duty credit scrips are offered to mitigate the effect of double taxation and to allow the Indian exporter / service provider / exporter to become internationally competitive; that due to system generated issues as well as inadvertent and bonafide mistake on the part of the petitioner it has been deprived of the benefit under MEIS scheme.

5.4. He has referred to and relied upon the following cases in support of the proposition that a party can be

allowed to manually carry out corrections in the shipping bills in the case of Non-EDI bills and the respondents can issue the necessary No-Objection Certificate to such party in the case of EDI bills for seeking the benefit under the scheme if such party has inadvertently committed a mistake while filing and uploading the shipping bills on the DGFT portal and not claimed MEIS benefit :-

- (i) **Pasha International Vs. Commissioner of Customs, Tuticorn¹;**
- (ii) **M/s. Global Calcium Pvt Ltd Vs. Asst. Commissioner of Customs & Ors.²;**
- (iii) **M/s. Greenglobe Exports India P Ltd Vs. Asst. Commission of Customs & Ors.³;**
- (iv) **M/s. N C John and Sons Pvt Ltd Vs. Commissioner of Customs.⁴;**
- (v) **Anu Cashews Vs. Commissioner of Customs⁵.**

6. *PER CONTRA*, Mr. Jetly, learned senior counsel appearing for the respondents has at the outset drawn our attention to the reliefs claimed by the petitioner in the prayer clause i.e paragraph 14 of the petition. He submitted that the reliefs prayed for by the petitioner are not specific but vague and insufficient and as such, the same cannot be granted.

6.1. He has referred to the affidavit in reply dated 29.01.2020 filed on behalf of respondent Nos. 1 and 4 wherein it is contended that the petitioner's application for claiming reward under MEIS was declined due to absence of

1 2019(365) E.L.T. 669 (Mad.)

2 2019-TIOL-1259-SC-MAD-CUS

3 2018-TIOL-94-SC-MAD-CUS

4 2019-TIOL-3536-CESTAT-BANG

5 2019-TIOL-2809-HC-KERALA-CUS

declaration of intent to claim MEIS benefit in the respective shipping bills; while applying online for claiming MEIS benefit petitioner chose the Non-EDI ports of export being SEZ and marked "N" (for No) in the column of declaration of intent / reward instead of "Y" (for Yes) and failed to make the declaration of intent in the export promotion copies of shipping bills submitted by it.

6.2. He has referred to clauses (g) and (h) of section 3.01 of Chapter 3 relating to Exports from India Schemes pertaining to MEIS in the Handbook of Procedure (HOP) which reads thus:-

"3.01. Merchandise Exports From India Scheme (MEIS)

- (a)
- (b)
-
- (g) *No manual feeding allowed for EDI shipments : For EDI Shipping Bill, no manual feeding of shipping bill details shall be allowed to the applicants in the online system. Rewards will be granted by RAs without the need for cross verifying EDI Shipping Bill details.*
- (h) *RA shall process the electronically acknowledged files and scrip shall be issued after due scrutiny of electronic documents. After scrutiny, if the officer has reasonable suspicion of wrong classification / mis-declaration in any application, in such cases officer may, after approval of his senior officer / Head of the Office, seek physical documents for scrutiny. On receipt of such documents, the officer must decide the claim within 7 working days. In cases, where the claim is rejected, a speaking order shall be issued."*

6.3. With reference to the above clauses, he has submitted that due to non-adherence to the procedural requirement envisaged under the above provisions, petitioner has been denied the benefit.

6.4. He has referred to the affidavit in reply dated 27.02.2020 filed on behalf of respondent Nos. 2 and 3 to

contend that there has been a lapse on the part of the petitioner in not following the mandatory procedural requirement which was available in the public domain. He submitted that clause 3.14 of the Foreign Trade Policy (2015-20) states that no person can claim an authorization as a right and DGFT or Regional Authority shall have power to refuse to grant or renew the same in accordance with the provisions of FT (D&R) Act, Rules made thereunder and FTP; in line with the procedural eligibility condition petitioner was not eligible for MEIS benefit as declaration of intent on shipping bills is not merely a procedural requirement but a substantive requirement; petitioner is in the business of import and export since a long time and the provisions for declaration of intent on the shipping bills was available in the public domain since 01.04.2015; petitioner cannot claim ignorance of such an essential policy which is substantive in nature. Therefore, considering the procedural requirement of the scheme the present petition may be rejected.

7. Mr. Raichandani in his rejoinder has referred to a decision of the Supreme Court in the case of **Mangalore Chemicals & Fertilizers Ltd Vs. Deputy Commissioner**⁶, more specifically to paragraph No. 11 to contend that provisions of a statute which are of substantive character are required to be distinguished from those which are merely procedural and technical in nature. He asserted that once the petitioner had fulfilled the eligibility conditions for reward, even if there was a technical or procedural infraction while claiming the reward, the same was required to be disregarded. Paragraph 11 of the judgment reads thus:-

6 2002-TIOL-234-SC-CX

"11. We have given our careful consideration to these submissions. We are afraid the stand of the Revenue suffers from certain basic fallacies, besides being wholly technical. In Kedarnath's case, the question for consideration was whether the requirement of the declaration under the proviso to Sec. 5(2)(a)(ii) of the Bengal Finance (Sales-tax) Act, 1941, could be established by evidence aliunde. The court said that the intention of the Legislature was to grant exemption only upon the satisfaction of the substantive condition of the provision and the condition in the proviso was held to be of substance embodying considerations of policy. Shri Narasimhamurthy would say the position in the present case was no different. He says that the notification of 11th August, 1975 was statutory in character and the condition as to 'prior-permission' for adjustment stipulated therein must also be held to be statutory. Such a condition must, says counsel, be equated with the requirement of production of the declaration form in Kedarnath's case and thus understood the same consequences should ensue for the non-compliance. Shri Narasimhamurthy says that there was no way out of this situation and no adjustment was permissible, whatever be the other remedies of the appellant. There is a fallacy in the emphasis of this argument. The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

In Kedarnath's case itself this Court pointed out that the stringency of the provisions and the mandatory character imparted to them were matters of important policy. The Court observed:

" The object of S. 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will wellnigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the two fold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative

inconveniences, both of which the provisions of the said clause seek to avoid."

(Emphasis supplied)

*Such is not the scope or intendment of the provisions concerned here. The main exemption is under the 1969 notification. The subsequent notification which contain condition of prior-permission clearly envisages a procedure to give effect to the exemption. A distinction between the provisions of statute which are of substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished. What we have here is a pure technicality. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he "will grant". There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld--not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told "we are sorry. We should have given you the permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denning: "Now I know that a public authority can not be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality" (See *Wells v. Minister of Housing and Local Government*, [1967] 1 WLR 1000 at 1007).*

Fancis Bennion in his "Statutory Interpretation", 1984 edition, says at page 683:

"Necessary technicality: Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfillment of the purposes of the legislation."

7.1. He submitted that in the above case, appellant had also satisfied all conditions, yet permission was withheld not for any valid or substantial reason but owing to certain extraneous things concerning some inter-departmental issues. He submitted that there is a distinction with respect to a condition which is a substantive one and one which is procedural in nature; its stringency and mandatory nature must be justified by the purpose intended to be served; that if the intent of the legislature is to grant benefit under the MEIS scheme on fulfillment of export obligations and if the petitioner had fulfilled the eligibility criteria and was indeed

eligible for the benefit, then the inadvertent mistake committed by the petitioner could not be held against the petitioner for denial of such benefit; the intention of the legislature under the scheme is to grant reward / benefit; and therefore any procedural irregularity or mistake committed by the petitioner cannot be held against the petitioner for denial of benefit.

8. Submissions made by the respective counsel have received the due consideration of the Court. Materials on record have also been perused.

9. Before we proceed to adjudicate the issue it would be beneficial to refer to the Foreign Trade Policy (01.04.2015 to 31.03.2020) [updated as on 05.12.2017] with which we are concerned with in the present case. FTP-2015-20 was launched on 01.04.2015 and introduced a slew of measures by providing a framework for increasing exports of goods and services, generation of employment and increasing value addition, in keeping with the 'Make in India' vision. The Policy was far reaching in nature and incorporated various export friendly innovations and simplifications. These included simplifications & merger of reward schemes, introducing new schemes for promotion of merchandise and services exports, incentivising e-commerce exports, encouraging procurement of capital goods from indigenous manufactures under the EPCG scheme etc.

9.1. Chapter 3 relates to Exports from India Schemes. In so far as MEIS is concerned, the relevant provisions are contained in clauses 3.00 to 3.06 which read thus:

"3.00 Objective

The objective of schemes under this chapter is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs.

3.01 Exports from India Schemes

There shall be following two schemes for exports of Merchandise and Services respectively:

- (i) Merchandise Exports from India Scheme (MEIS).
- (ii) Service Exports from India Scheme (SEIS).

3.02 Nature of Rewards

Duty Credit Scrips shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported / domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for :

- (i) Payment of Basic Customs Duty and Additional Customs Duty specified under sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act, 1975 for import of inputs or goods, including capital goods, as per DoR Notification, except items listed in Appendix 3A.
- (ii) Payment of Central excise duties on domestic procurement of inputs or goods,
- (iii) Deleted
- (iv) Payment of Basic Customs Duty and Additional Customs Duty specified under Sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act, 1975 and fee as per paragraph 3.18 of this Policy.

Merchandise Exports from India Scheme (MEIS)**3.03 Objective**

Objective of the Merchandise Exports from India Scheme (MEIS) is to promote the manufacture and export of notified goods/ products.

3.04 Entitlement under MEIS

Exports of notified goods/products with ITC[HS] code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise]. The basis of calculation of reward would be on realised FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign currencies, whichever is less, unless otherwise specified.

3.05 Entitlement under MEIS for export of goods through Courier or Foreign Post Offices

Export of goods through courier or foreign post offices as

notified in Appendix 3C, of FOB value upto Rs. 5,00,000 per consignment shall be entitled for rewards under MEIS. If the value of exports is more than Rs. 5,00,000 per consignment then MEIS reward would be calculated on the basis of FOB value of Rs. 5,00,000 only.

3.06 Ineligible categories under MEIS

The following exports categories /sectors shall be ineligible for Duty Credit Scrip entitlement under MEIS

- (i) Supplies made from DTA units to SEZ units
- (ii) Export of imported goods covered under paragraph 2.46 of FTP;
- (iii) Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India;
- (iv) Deemed Exports;
- (v) SEZ/ EOU /EHTP/ BTP /FTWZ products exported through DTA units;
- (vi) Export products which are subject to Minimum export price or export duty.
- (vii) Exports made by units in FTWZ"

9.2. Public Notice No. 47/2015-20 dated 08.12.2015 issued by the Directorate General of Foreign Trade sets out the procedure for claiming reward under MEIS and is relevant for the present case and reads thus:-

"PUBLIC NOTICE No.47/2015-20 Dated:8thDecember, 2015

Subject: Declaration of intent under Merchandise Exports from India Scheme (MEIS)-reg.

DGFT by Public Notice No. 40 dated 09th October 2015, had prescribed a procedure to be followed for claiming rewards under MEIS where exports had been made through EDI generated shipping bills between 01.04.2015 to 31.05.2015 and the exporter had inadvertently marked 'N' in the "reward item box"and wished to seek MEIS benefit.

2. Subsequently representations have been received from exporters and trade & industry that such procedure should also be made applicable to exportsmade beyond 31.05.2015.

3.To suitably address the matter, in exercise of powers conferred under paragraph 1.03 of the Foreign Trade Policy(FTP)(2015-2020) read with para 3.14 of the Handbook of

Procedures of FTP 2015-20, the Director General of Foreign Trade hereby allows the following procedure to be followed where exports have been made between 1.6.2015 to 30.9.2015 through EDI generated shipping bills, and where the exporter has inadvertently marked "N" in the "reward item box" but has declared his intention in the affirmative on the shipping bill.

4. The concerned RA will consider such applications for issue of scrip subject to the following conditions:

- (a) Item level details for Shipping Bills related to exports from 01.6.2015 to 30.9.2015 that were not transmitted to DGFT (due to declaring 'N' at item level and thus showing negative intent for the Reward Scheme) shall be identified and transmitted by Director General (Systems) to Director General of Foreign Trade (DGFT). This would enable exporters to file reward applications electronically with DGFT in such cases. Physical Export Promotion (EP) copy of each Shipping Bill will be submitted by the exporters to concerned Regional Authority (RA) (in all cases of 'N' declaration) to verify that the declaration of intent was made by exporter as provided in Para 3.14 of Handbook of Procedure (HBP) 2015-20 before allowing reward, subject to other provisions of FTP/HBP.
- (b) Where Shipping Bills for exports from 01.06.2015 to 30.9.2015 have been otherwise transmitted to DGFT {being Advance Authorisation (AA) / Export Promotion Capital Goods (EPCG)/Duty Free Import Authorisation (DFIA) scheme Shipping Bills} but 'N' has been declared in the 'Reward item' field, the exporter shall submit EP copy of shipping bills and reward may be issued by concerned RA after confirming declaration of intent on physical EP copy of the shipping bills as provided in Para 3.14 of HBP 2015-20.

Effect of the Public Notice :

Shipping bills, where declaration of intent 'Y' has not been marked and 'N' has been ticked inadvertently in the 'reward item box' while filing shipping bills in Customs for exports made between 01.06.2015 to 30.09.2015, shall be transmitted by CBEC to DGFT.

(Anup Wadhawan)
Director General of Foreign Trade
Email: dgft@nic.in

(Issued from File No. 01/61/180/179/AM16/PC-3"

9.3. Public Notice No. 09/2015-20 dated 16.05.2016 is also relevant and it has further simplified the procedure in the case of EDI shipping bills in respect of claiming reward under MEIS and reads thus:-

"PUBLIC NOTICE No. 09/2015-20 Dated: 16th May, 2016

Subject: Marking of Y in the EDI generated Shipping Bills by Exporters would be treated as declaration of intent to claim MEIS benefit

In exercise of powers conferred under paragraph 2.04 of the Foreign Trade Policy 2015-20, Director General of Foreign Trade, hereby makes the following amendments in Paragraph 3.14(a) of the Handbook of Procedures 2015-20:

Existing Paragraph

Paragraph 3.14: Declaration of Intent on shipping bills for claiming rewards under MEIS including export of goods through courier or foreign post offices using e-Commerce

(a) Export shipments filed under all categories of the Shipping Bills would need the following declaration on the Shipping Bills in order to be eligible for claiming rewards under MEIS: “ **We intend to claim rewards under Merchandise Exports From India Scheme (MEIS)**”. Such declaration shall be required even for export shipments under any of the schemes of Chapter 4 (including drawback), Chapter 5 or Chapter 6 of FTP. In the case of shipping bills (other than free shipping bills), such declaration of intent shall be mandatory with effect from 1st June 2015

Amended Paragraph:

Paragraph 3.14 : Procedure for Declaration of Intent on EDI and Non EDI shipping bills for claiming rewards under MEIS including export of goods through courier or foreign post offices using e-Commerce

(a) (i) EDI Shipping Bills: Marking/ ticking of “Y” (for Yes) in “Reward” column of shipping bills against each item, which is mandatory, would be sufficient to declare intent to claim rewards under the scheme. In case the exporter does not intend to claim the benefit of reward under Chapter 3 of FTP exporter shall tick “N” (for No). Such marking/ticking shall be required even for export shipments under any of the schemes of Chapter 4 (including drawback), Chapter 5 or Chapter 6 of FTP

(ii) Non-EDI Shipping Bills: In the case of non-EDI Shipping Bills, Export shipments would need the following declaration on the Shipping Bills in order to be eligible for claiming rewards under MEIS: “ **We intend to claim rewards under Merchandise Exports From India Scheme (MEIS)**”. Such declaration shall be required even for export shipments under any of the schemes of Chapter 4 (including drawback), Chapter 5 or Chapter 6 of FTP.

Effect of this Public Notice: The procedure for declaration of intent in Paragraph 3.14(a) of the Handbook of Procedures

2015-20 for EDI is simplified. The marking of tick in pursuance of the earlier Public Notice No. 47, dated 8th December 2015 shall be treated as declaration of intent in case of EDI shipping bills. The marking of tick in the appropriate tick boxes are mandatory in EDI shipping bills.

(Anup Wadhawan)
Director General of Foreign Trade
E-mail: dgft@nic.in

[Issued from File No. 01/61/180/179/AM16/PC3/Pt]"

10. It is an admitted position that petitioner committed an error while filling the shipping bills. Petitioner had actually intended to claim benefit under what is known as MEIS but while filling the shipping bills, petitioner had inadvertently marked "N" (for No) instead of "Y" (for Yes) in the declaration of intent column. Since the EDI system was followed online, corrections could not be done. In the case of non-EDI cases, under the provisions of section 149 of the Customs Act only manual corrections can be made by a party. Respondents' only contention is that since the entire procedure is followed by the system portal there can be no amendment in the shipping bills. Save and except this submission on behalf of the respondents there is no other challenge to the petitioner's case on merit.

11. We have perused the orders and judgments passed by the High Courts of Kerala as well as Madras which have been referred to and relied upon by the petitioner. Identical questions had arisen in the said cases wherein the writ petitioners had filed shipping bills for export of manufactured goods. The writ petitioners therein actually intended to claim benefit under MEIS but while filing the shipping bills, inadvertently opted for "N" (for No) instead of "Y" (for Yes) in the column of declaration of intent. Reliefs

claimed in the said petitions before the High Courts of Kerala and Madras were for seeking a direction to the DGFT to amend the shipping bills filed by the petitioners to enable the petitioners to avail benefit under the scheme. In the said cases it was the specific contention of the respondent i.e DGFT that there can be no amendment in the shipping bills since the entire procedure was followed by the system portal. However, in those cases it was conceded by the respondents that they would issue No-Objection Certificate to the aggrieved petitioners to enable them to make appropriate applications for availing the benefits under the scheme. The Courts held that in the event of such No-Objection Certificate being issued to the writ petitioners, they would thereafter apply for seeking the benefit under the scheme and the respondents shall consider such claim of the petitioners and pass appropriate orders expeditiously.

12. We find that the facts in the present case are identical to the facts of *Pasha International (supra)* and *M/s. Greenglobe Exports India Pvt Ltd (supra)* decided by the Madras High Court and see no reason as to why the petitioner herein should not be extended the benefit under MEIS considering that the only lapse on the part of the petitioner was that it had inadvertently mentioned in the reward column "N" (for No) instead of "Y" (for Yes). This is a procedural defect and is curable considering the fundamental objective of the scheme under Chapter 3 of the FTP 2015-20. The basic objective of the Exports from India Schemes is to provide reward to the exporters and to promote manufacture and export of notified goods / products to notified markets. Once this is done, the party is

entitled and eligible to claim its reward. For claiming the reward, procedure as envisaged under the policy, handbook of procedure (HOP), rules and various public notices like public notice No. 47/2015-20 dated 08.12.2015 and public notice No. 9/2015-20 dated 16.05.2016 are required to be complied with. In the instant case, while doing so, petitioner had inadvertently committed an error while filing up the claim form on the DGFT portal and entered its declaration of intent as "N" (for No) instead of "Y" (for Yes) resulting in rejection of petitioner's claim for reward under MEIS. Except for this inadvertent mistake, petitioner is otherwise eligible and entitled to the reward under MEIS. In our considered opinion, such a procedural mistake on the part of petitioner should not deprive the petitioner from the benefit of the reward under MEIS. We note that a similar situation was in fact considered by the respondents in respect of shipping bills for the period 01.04.2015 to 31.05.2015 at the time of inception of the FTP, when exporters had inadvertently marked "N" in the "reward item box" and wished to seek MEIS benefit. Public Notice 47/2015-20 dated 08.12.2015 was issued by the DGFT to which we have referred to hereinabove to give the benefit of MEIS reward in such cases.

13. Though we are not happy with the manner in which the reliefs [prayer clauses (a) and (b)] in paragraph No. 14 have been drafted in the present petition, *inter alia*, seeking directions to the respondents to guide the petitioner by communicating the exact modification required and in the ordinary course would have declined the relief; however looking into the facts and circumstances of the present case

coupled with the inherent objective of the Exports from India Scheme, we have considered the petitioner's case. The objective of the MEIS scheme is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs. In other words, the objective of Merchandise Exports from India Scheme (MEIS) is to promote manufacture and export of notified goods / products to notified markets and once this is done, such exporter is required to be rewarded by duty credit scrips which can be utilized by the exporter. There is no ambiguity or doubt that the petitioner has not exported the goods; petitioner in fact has carried out its export obligations fully and is therefore eligible for the reward under MEIS; this has been accepted by the respondents also. However, due to inadvertence and erroneous mistake committed by the petitioner, it has been denied the incentive.

14. Therefore, on a thorough consideration of the matter, we hold that the petitioner is entitled to the reward under MEIS in respect of its shipping bills wherein exports of notified goods / products with ITC(HS) code to the notified markets have been carried out by the petitioner under the FTP 2015-20.

15. In view of the above discussion, we pass the following orders:-

- (i) Letters / Orders dated 31.08.2017, 19.09.2017, 10.05.2018 and 15.07.2019 issued by respondent No. 4 rejecting the applications for reward / benefit under MEIS to the petitioner are quashed and set aside;

- (ii) Respondent Nos. 2 and 3 are directed to issue no-objection certificate (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. Said NOC shall be issued within a period of four weeks from the date of receipt of a copy of the instant order;
- (iii) Petitioner shall thereafter file a fresh application in respect of its shipping bills i.e EDI-Online and Non-EDI shipping bills to claim MEIS reward with all documentary evidence with the respondents within a period of two weeks from the date of receipt of the NOC;
- (iv) Respondents shall consider the fresh applications filed by the petitioner for seeking MEIS benefit afresh in accordance with law and dispose of the same within a period of 8 weeks from the date of filing of fresh application by the petitioner;
- (v) Petitioner / its authorized representative shall be granted an opportunity of personal hearing before a decision is taken on the petitioner's applications seeking benefit / reward under MEIS in respect of its shipping bills under FTP-2015-20.

16. Writ petition is accordingly disposed of in the above terms. However, there shall be no orders as to cost.

[MILIND N. JADHAV, J.]

[UJJAL BHUYAN, J.]

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