

2024:BHC-OS:18484-DB



Pradnya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3667 OF 2024

Larsen & Toubro Limited
a company incorporated under
Indian Companies Act, 1913 and
having its registered office at L & T
House Ballard Estate Mumbai-400001 ...Petitioner

Versus

1. The Union of India,
(a) through the Secretary,
Department of Commerce
Ministry of Commerce and Industry,
Vanijya Bhawan, New Delhi-110011

(b) through the Secretary
Ministry of Finance, Department
of Revenue, New Delhi
2. The Director General of Foreign Trade
having his office at the Directorate
General of Foreign Trade,
A Wing, Vanijya Bhawan,
16 Akbar Road, New Delhi -110011
3. The Additional Director General
of Foreign Trade,
having its office at, Nishtha Bhavan
New C.G.O. Building, 48, Vithaldas
Thackersey Marg, Churchgate
Mumbai-400 020.
4. The Commissioner of Customs (Exports)
Custom House, Nr. All India Radio,

Income Tax Circle, Navrangpura,
Ahmedabad.

5. The Deputy Commissioner of
Customs (Exports),
Hazira Port, Bypass Road
Choriyasi, Hazira – 394 270
 6. The Superintendent of
Customs (Exports),
Hazira Port, Bypass Road
Choriyasi, Hazira – 394 270 ...Respondents
-

Mr Prakash D. Shah, a/w Mr Mihir Mehta, Mr Mohit Raval,
i/b. PDS Legal, for the Petitioner.

Ms Shruti Vyas, a/w Mr Ashutosh Mishra, for Respondent
Nos.1 to 3-Union of India.

Dr Sampath Kumar, Joint DGFT and Mr Haroon Bilal, Deputy
DGFT, Officers of Respondent Nos.1 to 3 are present.

Mr Ram Ochani, a/w Ms Sangeeta Yadav, for Respondent
Nos.4 to 6.

**CORAM : M.S.Sonak &
Jitendra Jain, JJ.**

DATED : 13 November 2024

ORAL JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The Petitioner seeks an appropriate writ to direct the second and third Respondents to (i) forthwith accept the amendment made in three shipping bills vide amendment certificates dated 17 October 2019 and flag “Y” appearing on ICEGATE under the head “REWARD” against the said three shipping bills and (ii) issue and grant MEIS Scrips amounting to Rs.1,61,34,190.00 to the Petitioner.

4. The above relief is sought in the context of three shipping bills for export of goods filed by the Petitioner between 23 August 2017 to 22 December 2018. In these shipping bills, the Petitioner, the Petitioner’s Customs brokers inadvertently declared the Petitioner did not intend to claim the Merchandise Exports from India Scheme (“MEIS”) benefit by indicating the letter “N” instead of “Y” in the relevant digital REWARD column.

5. By Notification dated 1 April 2015, the MEIS scheme was introduced, which seeks to promote the export of notified goods manufactured/produced in India and provide exporters rewards to offset infrastructural inefficiencies and associated costs. The Petitioner claims that there is no dispute about the Petitioner being eligible for the benefit of the MEIS scheme. However, the Petitioner is now being denied such benefit due to the error while submitting three shipping bills, even though the mistake has already been corrected following the law.

6. Upon realising the error, the Petitioner attempted to correct the same digitally. However, the digital system was not tuned to accept the correction of such mistakes. Therefore, by application dated 9 October 2019, the Petitioner sought leave to correct the errors in the said three shipping bills manually.

7. By communication dated 17 October 2019, the Superintendent of Customs (Exports) (Respondent No.6) allowed the correction of the error and permitted amendment manually. This was through a certificate of amendment issued by the sixth Respondent. These certificates at Exhibit “A1” to “A3” (pages 51 to 55 of the paper-book) clearly state that since the amendment cannot be carried out in the shipping bills in the EDI system post clearances, the amendment is permitted manually and the certificate is being issued on the request of the exporter and with the approval of the Deputy Commissioner, Customs, Hazira.

8. Armed with the certificate dated 17 October 2019, the Petitioner approached the Additional Director General of Foreign Trade (Respondent No.3) to accept the manual corrections and issue the necessary MEIS Scrips in terms of the Notification dated 1 April 2015. This was done via a letter dated 8 January 2020. Since there was no response, the Petitioner addressed a reminder on 9 March 2021.

9. On 26 March 2021, the third Respondent rejected the request on the grounds that there was no scope for considering such manual applications and advised the Petitioner to submit online applications. The Petitioner did attempt to apply online, but the DGFT portal and the established systems were not tuned to deal with this type of situation. Accordingly, due to systemic issues, the Petitioner could not apply electronically to the third Respondent for the issue of the MEIS Scrips.

10. The Petitioner, therefore, by communication dated 3 June 2021, once again requested the sixth Respondent to see

if three shipping bills could be amended in the EDI system and if such amended shipping bills could be electronically transmitted to the DGFT's portal. By communication dated 12 July 2021, the sixth Respondent expressed its inability to accede to the Petitioner's request because the system was not tuned to deal with this type of situation.

11. The Petitioner, by communication dated 28 October 2021, approached the Central Board of Indirect Taxes and Customs ("CBIC") to issue necessary directions and make essential systemic changes so that parties like the Petitioner do not suffer. Since there was no response, the Petitioner, by application dated 10 December 2021, approached the second Respondent and requested approval of the manual applications for the issue of MEIS Scrips. By application dated 18 July 2022, the Petitioner also approached the Directorate General of Systems and Data Management ("DG Systems") to inform them about the problems faced and request a solution.

12. On 11 April 2023, Public Notice No.30 of 2023 was issued by the Commissioner of Customs JNCH notifying, among other things, that the amended shipping bills shall be transmitted to the DGFT server from ICEGATE without any change in the self-declaration of the exporter and the system of DGFT shall accept such record even with the noting "N" for grant of benefit under the MEIS scheme. This Public Notice is at Exhibit "P" (page 116 of this Petition).

13. On 25 April 2023, the Petitioner approached the sixth Respondent to arrange to transmit the shipping bills from ICEGATE to the DGFT portal. On 16 November 2023, the Petitioner requested the Sixth Respondent to pass appropriate

orders for online transmission of the amendments. After repeated requests and following with the sixth Respondent, the shipping bills were amended under the head Reward Flag remark “Y”, which appeared. This was on 5 December 2023. Based on this amendment reflected in the electronic records, the Petitioner once again followed up on the matter with the Respondents for the issue of the MEIS Scrips.

14. The Petitioner was once again advised to proceed electronically, which the Petitioner, in fact, did. However, the electronic application required the Petitioner to state whether this was a PRC/Court case-approved matter. Since the Petitioner’s case, the matter had not travelled to PRC or the Court, the Petitioner was constrained to mark this column as “NO”. After this, the system would not permit the Petitioner to proceed further. It is at this stage that the Petitioner instituted the present Petition.

15. Thus, the record shows that at least prima facie, the only objection raised by the sixth Respondent for the issue of the MEIS Scrips to the Petitioner is the difficulty in the systems to process the Petitioner’s corrected shipping bills. This is not because of any default on the Petitioner’s part. The Petitioner’s Customs brokers no doubt made an inadvertent error while filing the shipping bills and not claiming the benefit under the MEIS scheme. However, applications were made for correction soon after this error was discovered. The Customs Authorities also accepted such applications, and amendments both in manual and electronic form were eventually permitted. The Petitioner cannot be made to suffer because the DGFT portal systems cannot process such amended shipping bills. The correspondence above shows

how the Petitioner has had to make several applications and follow up on the matter with the authorities. Still, no solution is in sight.

16. In the case of **Technocraft Industries (India) Limited vs. The Union of India and others** in Writ Petition No.3202 of 2022 decided by a Co-ordinate Bench of this Court on 13 January 2023, a similar or, rather, an identical issue was considered by this Court. This Court noted the apparent lacuna in the existing procedure regards dealing with shipping bills amended by the Customs Department under Section 149 of the Customs Act. This Court noted that because of the apparent disconnect between the Customs Department and the DGFT, the legitimate claims or exports were stifled. The Court also noted that the systems needed to be updated, and electronic solutions needed to be found to tide over these types of situations. Accordingly, directions were issued to the Customs Department and the DGFT to take the necessary steps to sort out such issues.

17. The observations in paragraphs 20 to 24 of the order dated 13 January 2023 are relevant and transcribed below for the convenience of reference.

“20. There appears to be a clear lacuna in the existing procedure as it emerged before us as to how to deal with shipping bills amended by the Customs Department under section 149 of the Act. DGFT has taken a stand that it has to go by the shipping bills transmitted online as per the procedure referred to aforesaid, and it has no methodology to deal with the amended shipping bills. The Customs Department has taken a completely non-committal stand. The only statement in the affidavit is that amended shipping bills are submitted; therefore, the Customs Department has no role to perform.

21. For making the MEIS policy efficient and workable, integration between the Customs Department and DGFT is vital. Two departments cannot work in silos. As per the DGFT, no manual modification to the shipping bills in the system is acceptable. Section 149 of the Customs Act empowers amendment to the documents. The power is conferred on the Proper Officer to use his discretion to amend the documents in cases where there is a genuine mistake in checking the relevant documents on the online shipping bills; power is confirmed to amend the shipping bills. The shipping bills duly amended under section 149 are legitimate in the eyes of the law. However, even though the law permits amendment to the shipping bills under section 149 of the Act, it has no functional effectiveness for claiming benefit under MEIS as per the stand of DGFT. This would render the power under section 149 of the Customs Act to amend the shipping bills to correct the declaration and reward item field, nugatory. Such a position would cause extreme hardship to the persons claiming benefits of the scheme.

22. When a software regulates the entire process, the DGFT may have a reasonable objection in processing the copies of the amended shipping bills not transmitted online to it. The Policy Relaxation Committee has correctly pointed out that in the computerized environment, when the governance of MEIS is online, it is difficult to proceed unless amended shipping bills are transmitted online. It is thus necessary for the Respondents-Customs Department to come up with a solution so that an issue such as the one presented before us does not recur and the parties entitled to the benefits of MEIS are not required to come to the Court for such trivial issues. The learned counsel for the Customs Department and DGFT have left it to this Court to issue necessary directions. However, recourse to writ jurisdiction for directions in each case cannot be the answer. The Respondents will have to coordinate to find a solution to the above-highlighted issue, if possible, by setting up a joint committee.

23. As regards relief to the Petitioner is concerned, in light of the above discussion, the Rule is made absolute in terms of prayer clauses (a) and (b). The concerned departments of the Respondents will take necessary steps within four weeks from the date order is uploaded.

24. Respondent-Customs and Respondent-DGFT will file an affidavit placing on record steps taken by them regarding the provision to submit amended shipping bills to the DGFT. The

Petition be listed on board under the caption "For Directions" on 27 February 2023 for reporting compliance on this aspect."

18. Based upon the above directions, the Directorate General of Systems and Data Management (CBIC) issued Advisory No.7 of 2023. This advisory refers to various references received regarding the post-EGM amendment of shipping bills, where the customs authorities allowed the amendment of shipping bills under Section 149 of the Customs Act, 1962, after filing the EGM.

19. This Advisory states that the same is issued to handle the post-EGM amendment of MEIS scheme shipping bill cases since discontinued from January 2021. Clause 4 of this Advisory states that in the MEIS scheme, the exporter declares whether he wants to claim the benefit or not at item level in the shipping bill and the same is entered in the form of "Y" and "N" under the 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. Clause 5 states that 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. Clause 6 provides that 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. Clause 7 then provides

that 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.

20. The above Advisory is quite comprehensive and requires all concerned departments to take cognisance of the shipping bills amended by the Customs Authorities exercising powers under Section 149 of the Customs Act, 1962 in the context of grant of benefits under the MEIS scheme. The Advisory very correctly indicates that the same has been issued for leveraging technology to serve taxpayers. In this case, the Petitioner has had to virtually run from pillar to post even after the Customs Authorities accepted the bonafide error and permitted its amendment. It is only on account of the system not being geared to deal with such situations coupled with extreme bureaucratic lethargy that the Petitioner was forced to institute this Petition. After the advisory, it was incumbent on the DGFT to update its electronic systems to align with the express advise so the technology is indeed leveraged to serve the people.

21. Based on the Advisory dated 11 April 2023, at least, the sixth Respondent should have examined the Petitioner’s case, and, if the Petitioner was otherwise eligible, released the necessary MEIS Scrips to the Petitioner. At least, the release of such MEIS Scrips could not have been withheld only on the ground that its system or portal was not geared to accept the amended shipping bills. This Court’s directions in **Technocraft Industries (India) Limited** (supra) were to all the necessary

departments of the Union of India to develop a comprehensive solution to deal with such issues.

22. The Advisory dated 11 April 2023, at least we largely thought, took care of the situation or predicament the Petitioner has found itself. Still, the Petitioner's predicament continues because of no corresponding changes in the handling systems. This must be the fate of several other parties in a similar predicament. Therefore, if the Union of India is indeed serious about its slogans of ease of doing business or leveraging technology for serving taxpayers, then the parties must not be forced to approach the Courts of law to sort out such technical issues which the Union of India could very quickly sort out with the immense resources at its command.

23. Accordingly, we are satisfied that the DGFT and its officials were not justified in refusing to consider the manually corrected shipping bills, particularly after the Customs Authorities allowed them to be amended by exercising their powers under Section 149 of the Customs Act. In any event, the DGFT and its officials were not justified in refusing to consider the amendments finally carried out electronically on the specious plea that the DGFT portal or the DGFT systems could not handle such situations.

24. Artificial intelligence cannot be at the cost of mortgaging human intelligence entirely. Technology is to serve the people and not to place booby traps and make life extremely difficult for the people. It is otherwise. If there are some gaps in the existing handling systems, bonafide parties cannot be made to suffer. The human element endowed with

discretion and reason must step in. The officials operating such systems, or the officials tasked with implementing the law and the Government schemes, cannot abdicate responsibility, raise their hands, deny legitimate relief or make parties run from pillar to post and ultimately the Courts to get their dues. The officials who handle technology must deal with matters with the sensitivity and intelligence that the situation requires.

25. At no stage did we hear any argument that the Petitioner was disentitled to the MEIS scrips on merits or for any reason other than the DGFT's handling electronic systems not being tuned to accept amended shipping bills. At least after this Court's observations and directions in **Technocraft Industries (India) Limited** (supra), the situation should have been corrected. At least after the Directorate General of Systems and Data Management (CBIC) issued Advisory No.7 of 2023, the DGFT should have aligned its systems with the advisory. This has not been done, and there is no grace to acknowledge this lacuna and sort out the matter as soon as possible.

26. The DGFT cannot adopt an attitude that its technological systems are not geared to deal with such situations and that its officials will not deal with such situations. Human and artificial intelligence must join to serve the people and achieve ease of business and not be at loggerheads. Suppose any party is entitled to any benefits under the law or under the schemes formulated by the Government to promote exports or trade. In that case, such benefits must not be denied or unduly delayed by citing technological glitches or the fact that the current electronic

systems meant to assist the implementation of the law or operation of such schemes are inadequate or need revamping. What the law grants cannot be denied or unduly delayed by technology meant only to assist in implementing the law. If such an approach continues, the claims of leveraging technology to serve the people or ease of doing business will remain paper slogans.

27. For all the above reasons, we direct the second and third Respondents to process Petitioner's application for the release of MEIS Scrips and, if the Petitioner is found eligible for the issue of such MEIS Scrips, to release the same within 15 days from today. We clarify that the second and third Respondents shall not, again, hold the Petitioner ineligible on the ground that its systems are not geared up to fully take cognisance of the manual amendments to the shipping bills or on account of any other systemic or technical issues in the DGFT's portals and system.

28. The above exercise must be completed within 15 days from today, particularly since Mr Ochani, learned counsel for the Customs, states that the amended shipping bill has already been electronically transmitted to the DGFT Authorities. In any event, we clarify that the release of MEIS Scrips should not be withheld because of a lack of coordination between the Customs and DGFT Authorities. For this purpose, the DGFT Authorities must take cognisance of the petitioner's manual application to release these Scrips.

29. In addition, the DGFT must tune its electronic handling systems to align with the directions issued by this Court in **Technocraft Industries (India) Limited** (supra) and the

Directorate General of Systems and Data Management (CBIC) Advisory No.7 of 2023, dated 11 April 2023, so that the current glitches do not persist. This exercise must be completed within 60 days, and the Directorate General of Systems and Data Management (CBIC) must assist the DGFT in this regard.

30. In the gross facts of this case, we direct the second Respondent to pay the Petitioner Rs.50,000/— in costs. This cost must be paid within four weeks of today. At this stage, Mr Shah, learned counsel for the Petitioner, states that the costs could be paid to Tata Memorial (Cancer) Hospital. This is much appreciated. We direct accordingly.

31. The rule is made absolute in the above terms.

32. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)