(2022) 06 TEL CK 0055

In the Telangana High Court

Case No : Writ Petition No. 3104 Of 2019

M/S. Almelo Private Limited APPELLANT

Vs

Union Of India RESPONDENT

Date of Decision : 17-06-2022

Acts Referred:
Foreign Trade (Development and Regulation) Act, 1992 — Section 2(e)

Citation : (2022) 06 TEL CK 0055

Hon'ble Judges : Dr. G. Radha Rani, J

Bench : Single Bench

Advocate : N Rajeshwar Rao

Final Decision : Dismissed

Judgement

1. This writ petition is filed by the petitioner to issue Writ of Mandamus declaring the action of the respondents in rejecting the claim of the petitioner for award of incentive/reward under the MEIS scheme (Merchandise Exports from India Scheme) for the transaction of the petitioner with M/s. Cempra Pharmaceuticals INC, USA, as arbitrary and illegal and to direct the respondents to grant certificate to the petitioner relating to the incentive reward under MEIS for all that quantity of 8661 kgs of 13 transactions relating to manufacture and sale of Fluoro and Oxo Erythromolide A-11, 12- Carbamate at 3% of the amount of the goods.

2. Heard Sri V. Venkataramana, learned Senior Counsel representing the counsel on record for the petitioner and the learned Additional Solicitor General of India representing the respondents.

3.1 The learned counsel for the petitioner submitted that the petitioner, being a Manufacturer, had accepted the following Purchase Orders from Cempra Pharmaceuticals Inc; 6320 Quadrangle Drive | Suite 360 | Chapel Hill, NC 2751, USA:

Purchase Order No & Date

Name of the Intermediate

Rate USD

Quantity

621036 dated 23-12-2104

Fluoro Erythronolide A-11,12- Carbamate

4000/kg

161 kgs

6,44,000/-

621117 dated 17-3-2015

Oxo Erythronolide A,11,12- Carbamate

2850/kg

8500 kgs

2,42,25,000

3.2 The petitioner was required to transport the manufactured goods to Wockhardt Limited, 100% EOU Unit located at Ankhaleshwar, Gujarat on account of Cempra Pharmaceuticals Inc; 6320 Quadrangle Drive Suite 360 Chapel Hill, NC 2751, USA as per the Purchase Orders placed by the foreign buyer. The petitioner had manufactured the indented goods and also supplied the indented goods to the destination point as per the instructions of the foreign buyer i.e. Cempra Pharmaceuticals Inc, USA. The total Invoice amount of the goods manufactured and supplied by the petitioner at the destination point were paid by the foreign buyer i.e. Cempra Pharmaceuticals Inc, USA in US Dollars directly to the petitioner through banking channels for all the consignments. Since the transaction was an export trade, the petitioner was entitled to the rewards under the MEIS scheme. Since the purchase orders were placed by a foreign company and the amount of the goods had been paid in US dollars, the transactions had to be construed as direct export sale to the foreign buyer.

3.3 The petitioner had submitted a claim for reward as per the representation dated 27.09.2018 and requested the respondents to issue the reward certificate for the 3% value of the price of the goods purchased by the foreign buyer, as the petitioner was fully entitled for the same. However, the 2nd and 3rd respondents, vide impugned communication dated 01.02.2019 had rejected the claim of the petitioner on the ground that the transaction was in the nature of a "deemed export", for which there was an ineligibility as per the grant of reward under the MEIS scheme.

3.4 The learned counsel for the petitioner further submitted that the transaction was in the nature of acceptance of the Purchase Orders from a foreign buyer and receipt of the amount of the goods in foreign exchange as such fully qualified for the reward under the MEIS scheme since the destination point of goods was always as per the choice and instructions of the foreign buyer. The petitioner would have sent the manufactured goods to US only, had the foreign buyer instructed that way, but the Purchase Orders received by the petitioner were containing a specific condition that the goods should be delivered to M/s. Wokhardt Ltd (100% EOU) at Gujarat and hence the petitioner was obligated to abide itself by the said condition regarding delivery of the manufactured goods to M/s. Wokhardt Ltd (100% EOU), which was on account of the foreign buyer. Thus the Purchase Orders clearly required the petitioner to supply the goods to that destination point which was equivalent to supply of goods to the foreign buyer himself. Hence such a transaction would not fall in the category of "deemed export" within the meaning of the MEIS scheme. Rejection of the claim of the petitioner for grant of incentive/reward under the MEIS scheme was arbitrary and illegal. The whole object of promoting export sale was to receive foreign exchange from the foreign buyer. The delivery of goods at the specified destination point would not have any impact on the nature of the transaction as full invoice amount was received in foreign exchange in US Dollars, which was a direct export only. The impugned rejection letter of the respondents had not contained any valid reasons to reject the claim of the petitioner for the reward incentives and prayed to allow the petition.

4. The learned Additional Solicitor General of India submitted that the supplies made by the petitioner could not be treated as exports for the purpose of MEIS scheme. MEIS scheme was eligible only on exports and not on local supplies. As per the entitlement under MEIS scheme, export of notified goods to notified markets was only eligible for MEIS benefit. As per the definition of exports, export would mean taking out of India any goods by land, sea or air. In the instant case, the petitioner had not taken any goods out of India and they had supplied to 100% EO Unit located at Ankaleshwar, Gujarat. Therefore, the supplies made by the petitioner could not be treated as exports. The above supplies were treated as deemed exports in terms of para 7.02 A (b) of Foreign Trade Policy of 2015-2020, as no goods had gone out of India and no goods had been supplied to the notified markets, which was a basic requirement under MEIS. No online application as mandated was made to the office. The petitioner had submitted only manual letter which was not in accordance with the procedure and prayed to dismiss the writ petition.

5. Perused the record. The petitioner was claiming benefit under MEIS scheme (Merchandise Exports from India Scheme) as per the Foreign Trade Policy of the GOI, Ministry of Commerce and Industry. The objective of the scheme was to encourage export of goods/products which were manufactured in India having high export intensity, increasing the employment potential and enhancing India’s export competitiveness. Para 3.04 of the Foreign Trade Policy under MEIS prescribes the entitlement under MEIS as follows:

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 free foreign exchange, whichever is less, unless otherwise specified".

6. Thus, one is entitled for the rewards under the MEIS only when the exports of the notified goods were made to the notified markets. The definition of export is defined in Section 2(e) of FT (D&R) Act, 1992 as follows:

Import and export means respectively brining into, or taking out of, India any goods by land, sea or air.

Thus export means taking goods out of India by land, sea or air. Admittedly, the petitioner supplied goods to M/s Wockhardt Ltd (100% EOU) located at Ankaleshwar, Gujarat. Though the purchase order was by a foreign buyer and the amount was paid in American Dollars, the destination point of supply was at Ankaleshwar, Gujarat which is in India.

7. As per para 3.01 (b) of the Handbook of the Procedures, 2015-20, to claim the benefit under MEIS, an online application was mandated. It reads as under:

"3.01 Merchandise Exports From India Scheme (MEIS)

(b) An application for claiming rewards under MEIS on exports (other than Export of goods through courier or foreign post offices using e-Commerce), shall be filed online, using digital signature, on DGFT website at http://dgft.gov.in with RA concerned in ANF 3A. The relevant shipping bills and e BRC shall be linked with the on line application."

As seen from the above procedure prescribed, the petitioner has to file an online application linking shipping bill and Electronic Bank Realization Certificate (EBRC). The petitioner had not enclosed any shipping bill as no export was made outside India. The petitioner had not made any export of notified goods to the notified markets as listed in Appendix 3B.

8. The impugned order dated 1-2-2019 stated that application filed online only would be considered for grant of scrips under MEIS and no manual applications would be considered under any circumstances. It was also stated that the supplies made by the petitioner would fall under "deemed exports" under ineligible category as per para 3.06 (iv) of Foreign Trade Policy, FTP, 2015-20 and that MEIS was only granted on physical exports and not on deemed exports against local supplies, hence rejected the application of the petitioner.

3.06 lists the categories of exports which were ineligible under MEIS. Sub-clauses (iv) and (v) are only extracted as they were only referred:

(iv) Exports through trans-shipment, meaning thereby exports that are originating in third country but trans shipped through India;

(v) Deemed Exports;

9. Though, the impugned order refers to para 3.06 (iv), the deemed exports fall under sub-clause (v) which was specifically stated by the respondents in their letter dated 1-2-2019. Deemed exports was defined under Chapter 7 of Foreign Trade Policy. 7.01 defines it as:

"Deemed Exports" refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in Paragraph 7.02 below shall be regarded as "Deemed Exports" provided goods are manufactured in India."

10. The goods are manufactured in India and were also supplied in India at the instance of a foreign buyer. The payment was made in Foreign exchange. Thus, the supply of goods by the petitioner fall under deemed export but not export as defined u/s 2(e) of FT (D&R) Act, 1992. The petitioner had also not complied the procedure to make an application through online and not enclosed the shipping bills which were required to claim the benefits under MEIS. The goods were not even sent to the notified markets as mentioned in Annexure 3B. Hence the petitioner is not entitled for the benefit under MEIS and as such the rejection of the application of the petitioner by the respondents is considered justified. This court does not find any merit in the contention of the petitioner and as such the petition is liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

