

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 3084 of 2023****With****R/SPECIAL CIVIL APPLICATION NO. 3085 of 2023**

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M/S SATYENDRA PACKAGING LIMITED**Versus****UNION OF INDIA**

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Appearance:**MR ABHISHEK A RASTOGI ADVOCATE FOR MR BHAVESH B CHOKSHI(3109) for the Petitioner(s) No. 1****MR CB GUPTA(1685) for the Respondent(s) No. 6****MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 1,3,4****PRIYANK P LODHA(7852) for the Respondent(s) No. 5,7****NOTICE SERVED BY DS for the Respondent(s) No. 2,8**

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR. JUSTICE NIRAL R. MEHTA****Date : 29/11/2023****COMMON ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

[1] Heard learned advocate Mr. Abhishek Rastogi for learned advocate Mr. Bhavesh Chokshi for the petitioners and learned advocate Mr. C. B. Gupta for the respondent No.6.

[2] Rule returnable forthwith. Learned advocates waive service of notice of rule for the respective respondents.



[3] Having regard to the controversy in narrow compass and with the consent of learned advocates for the respective parties, both the petitions are taken up for hearing.

[4] By these petitions under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs:

“(a) issue a writ of mandamus or any other writ, order or direction in the nature of mandamus reading read down paragraph 4.55(iv) of Chapter 4 to the FTP, paragraph 3 of Notification No.19/2015-20 dated 17.08.2021 (Annexure-B), and Clause 3 of paragraph 2 of Notification No.76/2021-Customs (N.T.) dated 23.09.2021 (Annexure C) insofar as they arbitrarily deprive duty credit under RoDTEP on exports made during prior period i.e. 01.01.2021 to 31.05.2022 and subsequent period i.e. 01.06.2022 to 13.12.2022;”

[5] The brief facts of the case are as under:

[5.1] The petitioner is engaged in the business of export of sugar which is covered under the entry bearing ITC (HS) Code 17011490 and 17019990 under Open General License. According to the petitioner, the period of export relevant in the present case is 1st January 2021 to 13th December 2022.

[5.2] Vide Notification No.19/2015-20 dated 17th August 2021, respondent No.1, in exercise of its powers under Section 5 of the



Foreign Trade (Development and Regulation) Act, 1992 (for short, “FTDR Act”) read with paragraph 1.02 of the Foreign Trade Policy (for short, “FTP”), amended paragraph 4.01 of Chapter 4 to the FTP by inserting sub-paragraph (e) therein and added paragraphs 4.44 to 4.59 in Chapter 4 to the FTP. According to the said amendment, consequent insertions / additions were made for new scheme i.e. RoDTEP (Remission of Duties and Taxes on Exported Products) Scheme.

[5.3] The petitioner was claiming / utilizing rebate under the RoDTEP scheme on export of sugar under the valid shipping bills as such rebate under the said RoDTEP scheme is in the form of transferrable duty credit / electronic scrips.

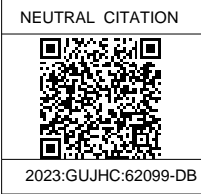
[5.4] The respondents authorities issued Notification No.10/2015-2020 dated 24th May 2022, in exercise of its powers under Section 3 read with Section 5 of the FTDR Act, as amended, read with paragraph 1.02 of Chapter 1 to the FTP and paragraph 2.01 of Chapter 2 to the FTP read with Notification No.40/2015-20 dated 28th October 2022, whereby the export policy of sugar, particularly, products bearing ITC(HS) Code 17011490 and 17019990 at Serial



No.93 of Chapter 17 of ITC (HS), Schedule 2 had been revised inasmuch as the same had been relegated to “restricted” category from 1st June 2022 till 31st October 2023. According to the petitioners, the amendment of the existing policy from free to revised policy of restricted is with policy conditions permitting export of sugar only with specific permission from the Directorate of Sugar.

[5.5] The respondents authorities have denied the benefit of the RoDTEP scheme to the petitioners on the ground that according to the policy, export made by the petitioners falls under the restricted category.

[6] Learned advocate Mr. Rastogi for the petitioners submitted that the petitioners have exported sugar with the permission of the Directorate of Sugar. Learned advocate Mr. Rastogi for the petitioners also invited attention of this Court to the circulars (Annexures : K and L) issued by the Government of India, Ministry of Consumer Affairs, Food and Public Distribution, whereby the conditions are prescribed for permitting exporter to export the sugar and allocation of the quota for export of sugar. It was



submitted that the issue arisen in both the petitions is no longer *res integra* in view of the decision of the Coordinate Bench of this Court in the case of **M/s. Shree Renuka Sugars Ltd vs. Union of India (Special Civil Application No.2186 of 2023 decided on 13th April 2023)**, whereby in similar facts, the Coordinate Bench of this Court has held as under:

“5. As the controversy unfolds as above, the court is of the view that the following directions would serve the ends of justice. Accordingly it is provided that,

(i) The petitioner shall be entitled to claim the RoDTEP Scheme benefit in respect of the exports of white refined sugar at the rate permissible. Even if such benefit is not claimed or mentioned in the shipping bills, the petitioner is permitted to make necessary application seeking such benefit in respect of the consignments concerned.

(ii) The passage of time in making such applications which would occur as amount would not be mentioned in the shipping bills, would not render the claim of the petitioner time barred.

(iii) The non-mentioning of the claim of the benefit in the shipping bill by the petitioner shall also not be treated as waiver on part of the petitioner by the authorities.

(iv) The authority shall process the claim of the petitioner for RoDTEP Scheme benefit irrespective of the fact that the same was not mentioned or lodged along with the shipping bill concerned.

(v) If any adjudicatory proceedings are require to be undertaken by the authorities in respect of the claim of the petitioner for the benefit, the respondent Nos.3- The Commissioner of Customs, Kandla and respondent No.4- The Assistant Commissioner of Customs, (DBK), Kandla, shall while deciding the claim, extend



opportunity of hearing to the petitioner and shall act in accordance with Section 28 of the Customs Act.”

[7] On the other hand, learned advocate Mr. C. B. Gupta for the respondent No.6 submitted that as per paragraph 4.55 of the Notification dated 17th August 2021 of the RoDTEP scheme, the petitioners are not entitled to the benefit of circulars. It was submitted that as per sub-clause (iv) of paragraph 4.55 of the scheme, the products which are restricted for export under Schedule – 2 of the Export Policy in ITC(HS) are ineligible for the benefit of rebate under the RoDTEP scheme. It was further submitted that it is not in dispute that with effect from 1st June 2022, the export of sugar is notified under the Schedule – 2 of the export policy from free to restricted category as the export is permitted subject to specific permission from the Directorate of Sugar.

[8] In support of his submissions, learned advocate Mr. Gupta for the respondent No.6 placed reliance on the decision of the Hon’ble Apex Court in the case of **Kasinka Trading vs. Union of India reported in 1994 (74) E.L.T. 782 (S.C.)**, to submit that it is for the Government to continue the exemption or not and such prerogative



of the Government is in public interest is a matter of policy and the Court would not bind the Government to its policy for all times to come irrespective of the satisfaction of the Government that a change in the policy was necessary in the public interest.

[9] Having heard the learned advocates for the respective parties and having considered the facts of the case which are identical to the case of **M/s. Shree Renuka Sugars Ltd. (supra)**, we are of the opinion that the respondents could not have denied the benefit of rebate under the RoDTEP scheme to the petitioners, more particularly, when the petitioners have exported product after fulfilling the conditions as prescribed by the Directorate of Sugar as well as the Notifications issued by the Central Government from time to time. The Coordinate Bench of this Court has also passed the order permitting rebate to the petitioner of the said case.

[10] In the facts of the case, vide Notification dated 24th May 2022, the category of sugar (raw sugar , white sugar and refined sugar) is changed from free to restricted category with policy conditions, which are as under:

“(i) With effect from 1st June, 2022 upto 31st October 2022 or



until further orders, whichever is earlier, export of sugar is allowed only with specific permission from Directorate of Sugar, Department of Food and Public Distribution (DFPD), Ministry of Consumer Affairs, Food & Public Distribution.

(ii) Detailed procedure for issue of necessary permissions for export of sugar will be notified separately by Department of Food and Public Distribution (DFPD).”

[11] As per the Government circular dated 5th November 2022, the schedule quantity of sugar for export in Sugar Season for 2022-23 was also issued with various conditions, whereby the quantity for export of sugar to various mills was also quantified.

[12] By Notification dated 21st October 2022, the Government has also issued export release order for sugar from Somalia.

[13] In view of the above Notifications issued by the Government from time to time permitting export of sugar, the basic objective of the RoDTEP scheme is to grant benefit of rebate to the exporter as an incentive or exporting product.

[14] In view of the facts and foregoing reasons, both the petitions are allowed. Prayers 32(a) and 36(a) in respective petitions are granted. The respondents are directed to grant benefit of rebate under the RoDTEP scheme to the petitioners who have exported



sugar with specific permission under the specific condition prescribed by the Directorate of Sugar as per Notification No.19/2015-20 dated 17th August 2021 and Clause 3 of paragraph 2 of the Notification No.76/2021-Customs (N.T.) dated 23rd September 2021. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA, J)

CHANDRESH