Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 12918 of 2018
(Arising out of Notification Order-VIII-48-705-EXP-AMD-CHM-2018-19 passed by Commissioner of CUSTOMS-MUNDRA)

M/s. Torrent Pharmaceuticals Ltd **.....Appellant**
Mr. Krovvidi Ramakrishna, Assistant General Manager (procurement),
Torrent House, Off Ashram Road,
Ahmedabad, Gujarat-380009.

VERSUS

C.C.-Mundra **......Respondent**
Office of the Principle Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:
Sh. Shriraj Shah, Advocate for the Appellant
Sh. L. Patra, Authorised representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 11431 /2019

DATE OF HEARING: 29.07.2019
DATE OF DECISION:29.07.2019

RAMESH NAIR

The brief facts of the case are that the appellant after the export of the goods under drawback requested the Commissioner Customs for amendment of shipping bill from 'drawback' to "advance license" vide letter dated 11.01.2018. The Commissioner rejected the request which was communicated by the Deputy Commissioner. Against the rejection letter of the request of amendment, the present appeal filed by the appellant.

2. Sh. Shriraj Shah, Ld. Counsel appearing on behalf of the appellant submits that at the time of export they have declared in export invoices that export is made under advance license, however on the shipping bill they claimed drawback in the drawback shipping bill. The appellant was sanctioned the drawback which subsequently returned back by the appellant to the department along with the interest. He submits that as per section 149 of the Customs Act, 1962, it is permissible to amend the shipping bill from one scheme to other scheme. In the present case from drawback to advance license. He placed reliance on the following judgments:-

- Polydrug Laboratories Pvt. Ltd-2015 (317) ELT 271 (Tri.-Mumbai)
- V.R.A. Cotton Mills Pvt. Ltd-2014 (309) ELT 100 (Tri. Ahmd.)

3. Sh. L. Parta Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He further submits that in case of Anil Sharma Vs. Union of India-2017 (350) ELT 332 (Guj.), the Hon'ble Gujarat High Court in the identical facts rejected the request of the appellant for amendment.

4. I have heard both the sides and perused the records. I find that there is no order of the Commissioner provided to the appellant, it was only communicated by the letter dated 25.9.2018. Regarding the rejection of the request for amendment of shipping bill, I am of the considered view that before rejection of the request the principal of natural justice should be followed by the Commissioner. Since, in the present case the ex-parte decision was taken for rejection without giving an opportunity to the appellant for explaining their case, I set aside the impugned order i.e. letter dated 25.09.2018 and remand the matter to the Commissioner to pass a fresh reasoned order, after allowing the appellant to make their submission. Appeal is allowed by way of remand to the Commissioner.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Prachi