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

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 12215 of 2019

(Arising out of Notification Order-VIII-48-619-EXP-MP-SEZ-2019-20 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-MUNDRA)

M/s. Lykis Limited ....**Appellant**
4th Floor , Grandeur Building, Veera Desai Road,
Opp. Gundecha Symphony, Near Country Club, Andheri
Mumbai, Maharashtra-400053.

VERSUS

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

APPEARANCE:
Shril. Hardik Modh, Advocate for the Appellant
Shri. S.K. Shukla, Authorised Representative for the Respondent

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

Final Order No. A/ 10398 /2020

DATE OF HEARING: 06.11.2019
DATE OF DECISION: 04.02.2020

RAMESH NAIR

This appeal is directed against the order of the Principal Commissioner Customs, Mundra Commissionerate, Custom House, Mundra, Communicated thru Deputy Commissioner, Customs House, Mundra Vide Letter dated 24.07.2019 where by the application of the Appellant for conversion of 204 shipping Bills from Drawback scheme to Duty Free Import Authorization (DFIA) Scheme was rejected on the ground that the appellant exporter made the request for conversion after three months from the date of let Export Order in violation of period prescribed under Board Circular No 36/2010-Cus dated 23.09.2010, which reads as under :

> *3(a). 'the request for conversion is made by the exporter within three months from the date of the Let Export Order (LEO)'*

Therefore, the present appeal was filed.

2. Shri. Hardik Modh, Learned Counsel appearing on behalf of the appellant submits that now the appellant is seeking conversion of 184 DBK S/Bills as against request made to the commissioner for 204 DBK S/Bills. He submits that the Learned Commissioner rejected the request for conversion of Shipping Bills to DFIA shipping Bills on the sole ground that the request for such conversion was not made within three months as prescribed under Board Circular No. 36/2010-Cus dated 23.09.2010. He submits that since the time limit has been prescribed under Board Circular and the same is not provided in section 149 under which the application was made by the applicant, therefore the time limit is only procedural requirement and for non-compliance of procedural requirement substantial benefit of conversion cannot be denied. He submits that the appellant made a categorical statement before the Learned Commissioner in their application that they are ready to surrender/deposit the drawback amount along with interest for conversion from drawback Shipping Bills to DFIA Shipping Bills therefore, there is no prejudice to the revenue. He submits that in the following judgments the conversion has been allowed;-

- M/s. Bectors Food Specialities Ltd Vs. C.C.-Ludhiana., Final Order No. A/60082/2019 dated. 07.02.2019.
- M/s. Parle Products Pvt. Ltd vs. Commissioner of Customs, Nhava Sheva-II.,-2017 (358) ELT 341 (Tri.-Mumbai).
- M/s. Pushpanjali Floriculture Pvt. Ltd Vs. C.C.(Export), Nhava Sheva-2015 (327) ELT 77 (Tri. –Mumbai)

2.1. He submits that as regard delay the appellant was able to file the request of conversion of the DBK Shipping Bills to DFIA Shipping Bills only after the decision of Hon'ble Punjab and Haryana High court in the case of M/s. Pushpanjali Floriculture Pvt. Ltd., Mumbai (Supra). He submits that due to prolonged litigation resulted in expiry of relevant DFIA Licenses. Therefore he prays for directions to issue certificate in terms of the provision of para 2.13.1 of handbook of procedure enabling the appellant to approach the regional licensing authorities for validating the DFIAs, as per the said provision. He submits that in the instant case the exports were made during the period 10.09.2013 to 31.03.2015, the said period is squarely covered in the case of parle products Pvt. Ltd (Supra).Therefore, on the ground of delay the request for conversion was illegally rejected.

3. On the other hand, Shri. S. K Shukla, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that there is an admitted violation of the condition of time limit prescribed for conversion of shipping bills under Board Circular No.36/2010-Cus. He placed reliance on the Gujarat High Court judgment in the case of Anil Sharma Vs. Union of India-2017 (350) ELT 322 (Guj.) Therefore, since the conversion was not requested within the stipulated time of 3 months, the learned commissioner has rightly rejected the request.

4. We have heard both the sides and perused the records. We find that the appellant has sought for the conversion of Drawback shipping bills to DFIA shipping bills, in terms of Section 149 of Customs Act 1962 which reads as under:-

> *"149. Amendment of documents.—Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorize any document, after it has been presented in the customs house to be amended:)*
>
> *PROVIDED that no amendment of a bill of entry or shipping bill or bill of export shall be so authorized to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be."*

4.1 From the above Section, it is clear that no time limit is prescribed. We find that the request of the appellant for conversion was rejected on the sole ground of limitation as prescribed under Board Circular No. 36/2010-Cus. We find that since the time limit has not been prescribed under the act, the same cannot be fixed by way of the circular. Therefore, if at all there is a time limit by way of circular it is only procedural requirement. Therefore, on this ground of limitation, application could not have been rejected, particularly when circular prescribing time limit is without authority of any statutory provision, act and rules supported.

4.2 It is settled law that the time limit prescribed by the Board Circular is not binding as same is not statutory provision in terms of section 149 of the Customs Act 1962. We further find that in the identical case of Bectors Food Specialities Ltd (Supra) this Tribunal, Chandigarh after considering the

Hon'ble Gujarat High court judgment in the case of Anil Sharma Vs. Union of India-2017 (350) ELT 322 (Guj.) held that the assessee was entitled for conversion of shipping bill from DBK Scheme to DFIA Scheme. We after going through the said decision find that the circumstances and reason for delay in filing request for conversion was almost identical in the present case. In the case cited of co-ordinate Bench of this Tribunal Mumbai dealing with the identical issue in the case of Parley product Pvt. Ltd (Supra) on the fact that the conversion of drawback shipping bill to DFIA shipping bill was after 2 years, wherein it was held that no time limit provided under section 149 of Customs Act 1962.

5. As per our above discussion, we are of the view that the appellant is legally entitled for conversion of drawback Shipping Bills to DFIA Shipping Bills in respect of 184 Shipping Bills as per the list provided in appeal along with the appeal memo. The respondent commissioner is directed to issue necessary certificate enabling appellant to get the DFIA licenses revalidated.

6. As per our above discussions and findings the impugned order is set aside, appeal is allowed with consequential reliefs, if any, in accordance with the law.

(Pronounced in the open court on 04.02.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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