

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

REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 494 of 2011-DB

(Arising out of OIA/18/COMMR/TECH/2011 dated 26.08.2011 passed by Commissioner of CUSTOMS –AHMEDABAD)

VINNY ROYAL PLASTICOATES PVT LTD**APPELLANT**

PLOT NO. B, B/H NATIONAL AVENUE, KANDIVALI (EAST),
MUMBAI-MAHARASHTRA

VERSUS

COMMISSIONER OF CUSTOMS - AHMEDABAD.....RESPONDENT

CUSTOM HOUSE, NEAR ALL INDIA RADIO
NAVRANGPURA, AHMEDABAD, GUJARAT

AND

CUSTOMS Appeal No. 495 of 2011-DB

(Arising out of OIA/18/COMMR/TECH/2011 dated 26.08.2011 passed by Commissioner of CUSTOMS –AHMEDABAD)

ROYAL CUSHION VINYL PRODUCTS LIMITED**APPELLANT**

PLOT NO. 55, VILLAGE : GARADHIA,
TALUKA : SAVLI, VADODARA, GUJARAT

VERSUS

COMMISSIONER OF CUSTOMS – AHMEDABADRESPONDENT

CUSTOM HOUSE, NEAR ALL INDIA RADIO
NAVRANGPURA, AHMEDABAD, GUJARAT

APPEARANCE:

Shri Devan Parikh and Nirav Shah, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)**

Final Order No. A/ 11510-11511 /2023

DATE OF HEARING: 11.07.2023

DATE OF DECISION: 14.07.2023

SOMESH ARORA

M/s Royal Cushion Vinyl Products Ltd., Plot No.55, Village Garadhia, Taluka Savli, Dist. Vadodara (hereinafter referred to as 'the applicant') was engaged in manufacture and export of 'Vinyl Flooring. They had cleared the said goods for export through M/s. B. Framjee & Co., Mehta Building, Nagindas Master Road, Fort, Mumbai (hereinafter referred to as the merchant exporter) under Duty Free Replenishment Certificate (DFRC) scheme, whereas, the license holder in the case was M/s. Vinny Royal Plasticoates Pvt. Ltd., Plot No. B, Behind National

Avenue, Kandivali (East), Mumbai (hereinafter referred to as 'the licence holder').

2. Vide applications dated 22.9.2003 and 6.9.2004, the applicant had applied to the Assistant Commissioner of Customs, ICD, Dashrath, for conversion of 05 Shipping Bills filed during the period from February, 2003 to June, 2003. In response thereof, the Assistant Commissioner of Customs had informed to the applicant vide letters dated 10.10.2003 and 6.10.2004 to the effect that there was no evidence on record that the applicant was forced to file shipping bill under DFRC Scheme or benefit under the said scheme had been denied to the applicant by DGFT and so, it was informed that the request for conversion of shipping bills could not be considered. The applicant had submitted another application dated 29.7.2005 to the A.C. of Customs, ICD, Dashrath, requesting to allow conversion of 11 DFRC shipping bills into DEEC Scheme. The said 11 shipping bills were filed during the period of February, 2003 to October, 2003 and includes the 05 Shipping Bills for which conversion was sought in the earlier application.

2.1 In short the applicant in the matter requested that the eleven shipping bills filed during the period 05.02.2003 to 24.10.2003 which were made by them under DFRC Scheme may be converted to DEEC Scheme as there was practice earlier also and even later on exporting Vinyl Flooring under the DEEC Scheme only was permitted and only in the limited period as impugned, they were asked by the department to file claim under DFRC Scheme which fact is disputed by the department as being without evidence.

2.2 The learned Advocate arguing the matter placed emphasis on the fact that SION norms were same under both the schemes and the material imported were used in the manufacture of goods as was requirement of the relevant Customs Notification. He also pointed out

that goods were moved after factory stuffing from the premises of M/s Royal Vinyl Plasticoates Pvt. Ltd. Only, as even in the shipping bills as per the declaration contained in the body of the shipping bill they were the supporting manufacturer as per policy. And M/s. B. Framjee & Co., were the exporter as per the shipping bills and the declaration clearly indicated that both were joint exporters and the benefit would be claimed by the present appellant i.e. Vinny Royal Plasticoates Private Limited. In short his emphasis was that procedure under DFRC to DEEC was same and it was duly followed for exports covered by 11 shipping bills. He sought to place reliance, inter alia, on the following case laws:

- 2006 (202) ELT 433 (Tri. Mum.) in the matter of Man Industries (India) Ltd. Vs CC Mumbai where conversion of shipping bill from DEPB to DEEC Scheme based on documentary evidences was allowed after considering requirement of Section 149 of Customs Act, 1962 which permitted amendment of documents at any stage based on the documents which were pre-existing.
- Further, he placed reliance on 2010 (259) ELT 157 (Tri. Mum.) in the matter of Manawat Plastics Pvt. Ltd. Vs Commissioner of C.Ex. & Cus. Nagpur which permitted conversion of DEEC shipping bill to Draw Back shipping Bill if all the relevant documents furnished were verified by the custom officers.
- Further he sought to place reliance on the decision of Hon'ble High Court of Gujarat at Ahmedabad in the matter of Vipor Chemicals Pvt. Ltd. decided on 04.03.2005 in which conversion of DFRC Shipping Bills to DEPB Scheme was the matter in dispute in the circumstances and DEPB rate became more beneficial to assesses who were earlier also availing the same scheme but had to avail DFRC scheme as at that time it was monetarily better for them.

2.3 He again drew attention to Exim Policy Provision of 1997-2002 version to emphasize the point that there is no material difference between the two scheme and that they having been mentioned as an exporter or person fit to claim benefit in the shipping bills entitles them to seek conversion also.

3. As against this, the learned Authorized Representative relied upon the impugned order to emphasize that learned Commissioner (Appeals) has correctly pointed out that the present applicant being supporting manufacturer (and M/s. B. Framjee & Co., being merchant exporter as per the body of the shipping bill) could not have claimed the conversion from one scheme to another. It is also his point emphasis that M/s Vinny Royal Plasticoates Pvt Ltd. was a licensee in the matter and M/s Royal Cushion Vinyl Products Limited was the manufacturer. He also emphasized that the request could only be made by M/s. B. Framjee & Co., for conversion and not by M/s Royal Cushion Vinyl Products Limited who were not exporter. M/s Royal Cushion Vinyl Products Limited also had no DEEC License; in fact he relied upon and reiterated all findings of Commissioner (Appeals).

4. Considered.

5. From various case law relied upon by the advocate for the appellant, it is clear that conversion from one scheme to another has only been allowed, though conversion from DFRC to DEEC as resisted upon by the Commissioner in order-in-original, is not specifically covered by cited case law. We agree with the submissions of the advocate for the appellant as what is to be considered is amendment in the shipping bill under Section 149 of the Customs Act, which is an independent provision and has to be examined as per its own ambit. There can be no reasons not to permit amendment under Section 149, if the requirement of pre-existing documents was fulfilled as mentioned in proviso. In fact, the benefit sought being an export benefit has to be liberally construed, and so are the relevant Export Notifications. We also find merit in the submissions made by the advocate for the appellant that the shipping bills even when filed by

M/s. B. Framjee & Co., clearly indicated in the body of the shipping bills that they were allowed to claim the benefits and likewise the liabilities if any will equally be that of the supporting manufacturers in the matter, which were M/s Royal Cushion Vinyl Products Limited. Such a dispensation having been permitted and not specifically restrained under the relevant scheme, the benefit of Exports Scheme can well be claimed by the present appellant after suitable amendment in the relevant shipping bills. We find from the factual narrative including relating to sealing of containers, actual export of the goods, raw material used etc., that there was substantial similarities in the two schemes as to allow the benefit of either Export Scheme, if liberally construed. It is trite law that the exemption notifications relating to exports are required to be construed liberally. We accordingly are inclined to agree with the request of the appellant to allow amendment sought by them after examination of availability of relevant license etc. at the time of export and to direct consequent benefit as sought by the appellant considering that only one benefit will be permitted and also to only one person i.e. supporting manufacturer or merchant exporter. With these observations, we allow the appeals and remand the matter back to original authority to implement the same by allowing amendment as per law. Appeals are allowed by way of remand.

(Pronounced in the open court on 14.07.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)