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

REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 11263 of 2019-DB
(ARISING OUT OF OIA MUN-CUSTM-000-APP-307-18-19 DATED 12.03.2019 PASSED BY COMMISSIONER (APPEALS) COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX-AHMEDABAD)

KWALITY PAPER PRODUCTS ....**Appellant**
502 FIFTH FLOOR POOJA AVENUE V OPP ST FRANCIS SCHOOL
HIMMATNAGAR 02, JAMNAGAR-GUJARAT

VERSUS

COMMISSIONER OF CUSTOMS-MUNDRA ....**Respondent**
OFFICE OF THE PRINCIPAL COMMISSIONERATE OF CUSTOMS,
PORT USER BULD., CUSTOM HOUSE MUNDRA,
KUTCH, GUJARAT-370421

APPEARANCE:
Shri Amit Ladhha, Advocate appeared for the Appellant
Shri Anand Kumar, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER No. 11544 /2023

DATE OF HEARING:19.07.2023
DATE OF DECISION:19.07.2023

SOMESH ARORA

Learned Advocate for the appellant informs this court that the issued involved in this matter is conversion of shipping bill from one scheme to another which is already settled by plethora of case law. In the instant case, the conversion has been sought from DFIA to Drawback Scheme. In support of his submission he relies on the following decisions:

- Mahalaxmi Rubtech Vs UOI 2021 (3) TMI 240 Gujarat High Court
- Lykis Ltd. vs CCE Mundra Order No. A/10398/2020 dated 04.02.2020-CESTAT AHMEDABAD affirmed by Gujarat High Court reported as 2021 (377) ELT 646 (Guj.)
- V.R.A. Cotton Mills vs CC Jamnagar 2014 (309) ELT 100 (Tri. Amd.)
- Parle Products Pvt Ltd. vs CC Nhava Sheva-II- 2017 (358) ELT 341

- Diamond Eng. (Chennai) P. Ltd. vs CC (Seaport – Export), Chennai-2013 (288) ELT 265
- Mrs Bectors Food Specialities Ltd.vs CC Ludhiana 2019-TIOL-960-CESTAT-CHD
- Inter Continental (India) vs UOI 2003 (154) ELT 37 (Guj.) affirmed by Hon'ble Supreme Court in 2008 (226) ELT 16 (SC)
- Bhushan Steel & Strips Ltd. vs CCE Meerut 1999 (114) ELT 564 (Tri.)
- Autotech Industries (India) Pvt. Ltd. vs CCE Chennai-IV 2022 (380) ELT 364 (Tri.-Chennai)
- Contemporary Leather Private Limited vs Commr. Of Customs 2021 (12) TMI 293 – CESTAT CHENNAI.

2. Confronted with above case law, learned Authorized Representative relies upon the order in appeal and specially the CBEC Circular No. 36/2010 dated 23.09.2010 which indicates that the exporter can seek conversion in any case within the period of three months from the date of let export order.

3. In rebuttal the learned Advocate additionally also relies upon the decision of Autotech Industries (India) Pvt. Ltd. as reported in 2022 (380) ELT 364 (Tribunal Chennai) which after taking note of the CBEC Circular allows such conversion within the general law of limitation and the period assigned therein of three year for filing application under Section 149 as per Article 137 of Schedule to the Limitation Act, 1963, counted from the date of let export order. The learned advocate also points out that even the above Circular has been struck down by the Hon'ble Gujarat High Court in the matter of 2021 (3) TMI 240 – (Gujarat High Court) in the matter of M/s Mahalaxmi Rubtech Ltd. vs Union of India to the extent of prescription of three months period for allowing conversion.

4. Considered.

5. We find ourselves in agreement that in the absence of any period having been prescribed in the statute especially for Section 149, the reading of general period of limitation under Article 137 of the Limitation Act, 1963 of three years appears proper. We accordingly, hold that when the period has not been specifically provided in the statute, period upto three years can be construed as a reasonable period and all concerned can act accordingly. We also like to point out that under general law of limitation the courts are allowed to condone the period of three years as mentioned in the Limitation Act, as per the specific circumstances on case to case basis. Accordingly, we are incline to allow the appeal to the extent that amendment under section 149 will be duly considered by proper officer. Appeal allowed in above terms. Appeal disposed of.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha