CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 10525 of 2020-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-273-274-19-20 dated 14.02.2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

C.C.-MUNDRA **...Appellant**

Office Of The Principle Commissionerate Of Customs,
Port User Buld. Custom House Mundra,
Kutch, Gujarat-370421

VERSUS

PHILLIPS CARBON BLACK LTD **...Respondent**

31, Netaji Subhas road
Kolkata, West Bengal-700001

WITH

CUSTOMS Appeal No. 10628 of 2020-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-273-274-19-20 dated 14.02.2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

...Appellant

C.C.-MUNDRA

Office Of The Principle Commissionerate Of Customs,
Port User Buld. Custom House Mundra,
Mundra

VERSUS

PHILLIPS CARBON BLACK LTD **...Respondent**

31, Netaji Subhas road
Kolkata, West Bengal-700001

APPEARANCE:
Shri. Anand Kumar, Superintendent (Authorized Representative) for the Appellant
Shri Niraj Baheti, CA for the Respondent

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

FINAL ORDER NO.A / 12326-12327 /2023

DATE OF HEARING: 16.10.2023
DATE OF DECISION: 19.10.2023

RAMESH NAIR

These are revenue's appeals on one of the main ground that the Commissioner(Appeals) was not supposed to entertain the appeal as the letters dated 17.07.2019 & 07.08.2019, though, issued by Superintendent and the Deputy Commissioner, but the decision for rejection of the request of the respondent or conversion of shipping bills was taken by the principal Commissioner of Customs.

2. Shri Anand Kumar, learned Superintendent (AR) appearing on behalf of the revenue appellant reiterates the grounds of appeal.

3. Shri Niraj Baheti, Learned CA appearing on behalf of the revenue submits that both the letters issued by the Superintendent and Deputy Commissioner respectively. Therefore, against the such letters, the appeal lies before the Commissioner (Appeals) and Commissioner (Appeals) has rightly entertained the appeal and remanded the matter back to the Adjudicating Authority.

4. We have carefully considered the submissions made by both the sides and perused the records. This appeal can be disposed of only on the ground that against the order in original i.e letters dated 17.07.2019 & 07.08.2019, appeals lie before the Commissioner (Appeals) or otherwise. For the ease of reference, both the letters are scanned below:

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
MUNDRA COMMISSIONERATE
Custom House, Mundra (Kachchh)-370421
Phone No.02838-271463, 02838- 271169/271475

F.No.VIII/48-67/Exp./Conversion-II/CHM/2019-20 Date: -07.08.2019

To,
M/s. Phillips Carbon Black Ltd.,
Survey no- 47, SH-46, Village- Mokha,
Mundra-370421.

Gentlemen,

Subject:-Amendment under sec. 149 of customs act, 1962- Reg.

Please refer to your letter dated 18.07.2019, received this office on 31.07.2019, regarding conversion of 38 Shipping Bills (copy enclosed as annexure-A) from Advance Authorization (03) to Drawback Scheme (19) after shipment of the export goods under Sec 149 of Customs Act, 1962.

In this connection, your request for such amendment has been rejected by the competent authority in view of failure on your part to fulfil the condition laid down under Para 3(a) of Board's Circular No.36/2010-Cus. da ted 23.09.2010 which is narrated 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)'

Your attention is invited to the facts that your application for conversion of 38 shipping bills is made after more than one year from the dates of let export order. Therefore, the same is rejected.

This issues with the approval of the Principal Commissioner, Customs House, Mundra.

Yours Sincerely,

09.08.19
Deputy Commissioner(Export)
Custom House, Mundra

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
MUNDRA COMMISSIONERATE
Custom House, Mundra (Kachchh)-370421
Phone No.02838-271463, 02838- 271169/271475

F.No.VIII/48-702/EXP/AMD/CHM/19-20 Date: - 17.07.2019

To,
M/s. Phillips Carbon Black Limited,
31, Netaji Subhas Road,
Kolkata 700001

Gentlemen,

Subject:-Amendment under sec. 149 of customs act, 1962- Reg.

Please refer to your letter dated 04.02.2019(received on 18.6.2019) and 04.07.2019 (received on 08.07.2019) for amendment under Sec 149 of Customs Act, 1962 in Total 18 Shipping Bills.

In this connection, it is to inform you that Hon'ble Principal Commissioner of Customs, Mundra has rejected your request for amendment of above shipping bill in view of non-fulfilment of the condition laid down under Para 3(a) of Board's Circular No.36/2010-Cus. dated 23.09.2010 which states that '*the request for conversion is made by the exporter within three months from the date of the Let Export Order (LEO)*' but in your case application for conversion of shipping bill is made after more than One and half year from the date of let export order.

Yours Sincerely,
17.07.19
Superintendent of Customs (Export)
Custom House, Mundra

Received
17/7/19

Certified copy
O. P. K. Meena
Superintendent
CHM, Mundra.

From the above letters against which the appeals were filed before the Commissioner (Appeals), we find that there is no doubt that the decision of rejection of request of the respondent for conversion of shipping bills was taken by the Principal Commissioner, and it is that decision which was communicated by the Superintendent and Deputy Commissioner to the respondent. Since the decision was taken by Principal Commissioner against his decision, the appeal lies before the Tribunal and not before the Commissioner (Appeals). Therefore, the appeals filed by respondent before the Commissioner (Appeals) were not maintainable. Consequently, the orders passed by the Learned Commissioner (Appeals) remanding the matter to the Adjudicating Authority is not legal and correct. Accordingly, the revenue's appeals are maintainable. The respondent are at liberty to file appeals before the Tribunal, in accordance with law as provided in the act.

5. The impugned orders passed by the Commissioner (Appeals) are therefore set aside, revenue's appeals are allowed only on the above ground of maintainability.

(Pronounced in the open Court on 19.10.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PALAK