

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**West Zonal Bench At Ahmadabad**

REGIONAL BENCH- COURT NO.2

**Custom Appeal NO. 10034 OF 2024**

(Arising out of AHM-CUSTOM-000-PR-COM-24-2023-24 dated 19.12.2023 passed by Principal Commissioner of Customs-AHMEDABAD)

**Stallion Laboratories Pvt Ltd**

8<sup>th</sup> Floor, Devpath, B/h Lal Bungalow,  
Off. CG Road, Ahmedabad-380006

**.....Appellant**

*VERSUS*

**C.C.-AHMEDABAD**

1<sup>st</sup> Floor Custom House, Near Akashwani, Navrangpura,  
Ahmedabad,-Gujarat

**.....Respondent**

**APPEARANCE:**

Shri. R.R. Dave, Consultant for the Appellant

Shri. Anand Kumar, Authorized Representative for the Respondent

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

**Final Order No. A/ 10667 /2024**

DATE OF HEARING: 21.03.2024

DATE OF DECISION:22.03.2024

**SOMESH ARORA**

The appellants in this case were exporters of P&P medicines. The impugned period is from 2017 to 2021 in which 38 shipping bills were filed under claim of draw back. The appellants are also procuring raw material under advance license scheme and were also carrying out exports of the material procured under Advance License Scheme after processing to fulfil their export obligation related to Advance License Scheme. They approached the DGFT authorities by making request for reckoning the exports made under draw back scheme towards Advance License Scheme and related exports. Same was rejected by the DGFT which indicated that either draw back scheme benefit could be availed or advance license benefit could be availed and not both. On this point of time they approached the Customs authorities with an offer of conversion of draw back benefit with payment of interest and to claim the Advance License Benefit against the exports by requesting for conversion of shipping bills on 23.08.2023. The approach was done after almost two

years or more after exports were done and that too after availing draw back benefit.

2. Learned consultant for the appellant has, inter alia, taken various grounds and placed reliance on the case of Nissan Exports vs CC Mundra in which in para 8.1 this bench has permitted amendment of the shipping bills even after three months period from DFIA shipping bills to draw back scheme by noting that Hon'ble Gujarat High Court in the matter of Principal Commissioner of Customs-Mundra vs Lykis Limited as reported in 2021 (377) ELT 646 (Gujarat) has struck down clause 3(a) of the CBEC Circular No. 36/2010-Cus dated 23.09.2021. Vide clause 3(a) C.B.I.C. provided a limitation period of three months for seeking conversion of shipping bills from one scheme to another. They have also relied upon various other case laws to emphasize that conversion by amending of shipping bills has been allowed freely in the interest of exports. The decision, inter alia, include:

- Oriental Carbon & Chemical Ltd.- 2021 (377) ELT 850 (Guj.)
- Gokul Overseas - 2020 (373) ELT 49 (Guj.)
- Kedia (Agencies) Pvt. Ltd.- 2017 (348) ELT 634 (Del.)
- V.R.A. Cotton Mills Pvt. Ltd. – 2014 (309) ELT 100 (Tri. Amd)
- ITC Limited – 2011 (269) ELT 378 (Tri. Chennai)
- Man Industries (India) Ltd. – 2006 (202) ELT 433 (Tri. Mum)

It was therefore pleaded that conversion should be permitted by setting aside the impugned order and by following the above mentioned judgments.

Learned authorised representative, on the other hand, seeks to rely on the findings of the order in original. Learned authorised representative specially seeks to rely on the findings of the impugned order which are contained in para 10 to para 26 of the impugned order and seeks approval of the impugned order and dismissal of the appeal.

"Para 10. I find that with reference to conversion of Shipping Bill under the provisions of the Section 149 of Customs Act, 1962, Circular No. 36/2010-Cus dated 23.09.2010 has been issued by the CBEC (now, CBIC). Para 3 of the circular states that:

3. The issue has been re-examined in light of the above. It is clarified that Commissioner of Customs may allow conversion of shipping bills from schemes involving more rigorous examination to schemes involving less rigorous examination (for example, from Advance Authorization/DFIA scheme to Drawback/DEPB scheme) or within the schemes involving same level of examination (for example from Drawback scheme to DEPB scheme or vice versa) irrespective of whether the benefit of an export promotion scheme claimed by the exporter was denied to him by DGFT/DOC or Customs due to any dispute or not. The conversion may be permitted in accordance with the provisions of section 149 of the Customs Act, 1962 on a case to case basis on merits provided the Commissioner of Customs is satisfied, on the basis of documentary evidence which was in existence at the time the goods were exported, that the goods were eligible for the export promotion scheme to which conversion has been requested. Conversion of shipping bills shall also be subject to conditions as may be specified by the DGFT/MOC. The conversion may be allowed subject to the following further conditions:

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

b) On the basis of available export documents etc., the fact of use of inputs is satisfactorily proved in the resultant export product.

c) The examination report and other endorsements made on the shipping bill/export documents prove the fact of export and the export product is clearly covered under relevant SION and or DEPB/Drawback Schedule as the case may be.

d) On the basis of S/Bill/export documents, the exporter has fulfilled all conditions of the export promotion scheme to which he is seeking conversion.

e) The exporter has not availed benefit of the export promotion scheme under which the goods were exported and no fraud/mis-declaration /manipulation has been noticed or investigation Initiated against him in respect of such exports.

11. From the above legal provisions, I find that Commissioner of Customs is the competent authority for conversion of shipping bills in terms of Section 149 of Customs Act, 1962. I further find from above that the conversion may be permitted in accordance with the provisions of section 149 of the Customs Act, 1962 on a case to case basis on merits provided the Commissioner of Customs is satisfied, on the basis of documentary evidence which was in existence at the time the goods were exported, that the goods were eligible for the export promotion scheme to which conversion has been requested.

12. It is settled that the circulars issued by the CBEC (now, CBIC) are binding on the department and it cannot take a stand contrary to the instructions issued by the Board. This view is supported by series of decisions of the Hon'ble Supreme Court, including the judgment pronounced by the Hon'ble Appex Court in the case of Commissioner Of Customs, Calcutta Vs. Indian Oil Corporation Ltd reported as 2004 (165) E.L.T. 257 (S.C), wherein the Hon'ble apex court has found that:

"11. Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges In Collector of Central Excise, Vadodara v.

Dhiren Chemicals Industries - 2002 (143) E.L.T. 19 where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 378 of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in *Simplex Castings Ltd. v. Com Beach The Customs, Vishakhapatnam* (2003.(155) [E.L.T.](#) (S.C.) (2003) 5 SCC 528).

12. The principles laid down by all these decisions are:

- (1) Although a circular is not binding on a Court or an assessee, it is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.
- (2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.
- (3) A show cause notice and demand contrary to existing circulars of the Board are ab initio bad.
- (4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."

The Hon'ble High Court of Gujarat in the case of *F.S. Enterprise Vs. State Of Gujarat*, reported as 2020. (32) G.S.T.L. 321 (Guj.) also held that

"13..... The officers and all other persons employed in the execution of the GST Acts are, therefore, bound to observe and follow such orders, Instructions and directions of the Board."

The revisionary authority, Ministry of Finance, Government of India in the case of *M/s. Cheer Sugar, Jaipur*, reported in 2011 (273) E.E.T. 470 (G.O.1.), held that:

"11.Govt. therefore, is of the considered opinion that clarificatory circulars/instructions/public notices issued from time to time are not mere formalities but are bindings not only for Customs authorities but for the trade also....."

13. I have gone through the impugned Shipping bills and on perusal of the same I find that the submission of the exporter that they have mentioned quantity of raw materials for Intended claim for Advance Authorization is misplaced and far from facts and thus not tenable. I find that quantity mentioned in shipping bills are finished products quantity and they were mentioned as they intended to claim Reward under RODTEP (Remission of duty and taxes on exported products) scheme.

14. I further find that Part-IV of shipping bills contains scheme details. Part- A contains Drawback/ROSL claim and Part-B contains AA/DFIA claim. Exporter has filled Part-A of Part-IV in all shipping bills, thus intending to claim Drawback on all the impugned shipping bills. I further find that at Sr. No. 19 of Part-III, Exporter has mentioned Drawback as Scheme name. I find that it is not disputed that Exporter has claimed and received Drawback in respect of all the Impugned shipping bills.

15. I further find from the perusal of export Invoices/commercial Invoices that exporter has categorically mentioned in export invoices/commercial invoices that - "The shipment under Duty drawback scheme Tariff No....., We intend to claim benefit under RODTEP scheme." Exporter has also made similar remarks on shipping bills as well in relation to RODTEP scheme.

16. In view of above facts and documentary evidences on record, exporter has failed to make a convincing case for themselves that due to human error they could not export under Advance Authorization. I am

not inclined to form an opinion that not filling Advance Authorization details on such a large No. of invoices & shipping bills for such a long period could be a result of human error.

17. I further find that Exporter has requested for conversion of impugned shipping bills from a less rigorous examination scheme to a more rigorous examination scheme. I find that Para-3 of Circular No. 36/2010-Cus dated 23.09.2010 prescribes that -

Conversion of shipping bills from schemes involving more rigorous examination to schemes involving less rigorous examination (for example, from Advance Authorization/DFIA scheme to Drawback/DEPB scheme) or within the schemes involving same level of examination (for example from Drawback scheme to DEPB scheme or vice versa).....

18. I therefore, find that conversion from scheme involving more rigorous examination to less rigorous examination or same level of examination scheme is allowed. In the present case exporter has requested for conversion from scheme Involving less rigorous examination to more rigorous examination i.e. From Drawback scheme to Advance license Scheme which is contrary to the above statutory provisions and cannot be acceded. Exporter has also failed to appreciate that more rigorous examination scheme has enhanced risk management parameters based on which examination of goods is being done at the port during export. I find that the subject goods exported vide the impugned Shipping bills were not subjected to risk management parameters involving more rigorous examination scheme, being Advance license in the present case, and as such allowing for conversion of such shipping bills from Drawback scheme to Advance license Scheme will be contrary to the provisions of the statute.

19. I further find that Exporter has availed the benefit of Drawback vide the impugned shipping bills. They have declared in their commercial invoices and respective places in the Shipping bills that they intend to claim Draw back. This is not disputed by the Exporter as well. It would be pertinent to refer Clause (e) of Para-3 of Circular No. 36/2010-Cus dated 23.09.2010 which prescribes one of the conditions of conversion of Shipping bills and reads as under-

"The exporter has not availed benefit of the export promotion scheme under which the goods were exported and no fraud/ mis-declaration /manipulation has been noticed or investigation initiated against him in respect of such exports."

20. It is evident from above that any exporter who has availed benefit of export promotion scheme under which the goods were exported..... is not eligible for conversion of shipping bills. In the present case Exporter has exported goods in respect of all impugned shipping bills under Drawback scheme and claimed & received Drawback amount as a benefit of export promotion scheme. In view of same, Exporter is legally not eligible for conversion of impugned shipping bills from Drawback scheme to Advance License scheme after avallment of Export benefit/incentive under the scheme in which the goods were originally exported.

21. Exporter has relied upon various case laws in their favour. I find that most of the case laws cited by the exporter are in relation to quashing of time restriction of 3 months for conversion of Shipping bills. Exporter relied upon the decision of Hon'ble High Court of Delhi in the case of Commissioner of Customs Vs. M/s M.D Overseas & Others (CUSAA 30/2021 & CM APPI. 30316/2021). Hon'ble High Court of Delhi has observed that all records are available and goods were exported as free shipping bills and thereafter rejected the appeal of the Revenue. I find that facts of the case in the cited case were entirely different from the present case. In the present case conversion is sought after benefit of export scheme under which goods were exported has already been availed. Exporter has further relied upon the decision of Hon'ble High Court of Mumbai in the case of Colossustex Pvt Ltd & Todi Rayons Pvt. Ltd. Vs. UOI (Writ Petition No. 2010 of 2022). Hon'ble High Court of Mumbai has observed that the adjudicating authority has rejected the

application of the appellant on the basis of time bar without going In to the merits of the case. I find that the ratio of cited case law is not applicable in the present case since the present case is being decided on merit and not solely on the basis of time bar as cited by the exporter.

22. Exporter has further relied upon the decision of Hon'ble CESTAT in the case of M/s Gupta Enterprises Vs. Commissioner of Customs (Sea Exports, Chennai) (Customs Appeal No. 40150 of 2014). Hon'ble CESTAT (Chennai Bench) has observed that application cannot be denied merely because it has been filed beyond 3 months. I find that the present case is not decided solely on the basis of time restriction and can be distinguished with the cited case. I further find support that Hon'ble CESTAT after relying Hon'ble Tribunal's decisions in the case of Autotech Industries (India) Ltd. in Para-12.28 of the order has observed that

"Be that as it may, before concluding, we are not able to overlook a serious question presented by the peculiar facts of the case before us. In the absence of any period of limitation prescribed in the Section, whether it would mean that the remedy/relief ca be sought for at any time when the Importer/Exporter wake up to realize the mistake or omission. In our opinion, the remedy has to be sought for within a reasonable time. A legal claim cannot be enforced if there is a long delay in asserting the right or the claim."

23. I find from above that Hon'ble CESTAT has also observed that even a legal claim cannot be made after inordinate delay and any legal claim has to be made within reasonable time. I find that in the present case Exporter has exported the goods under impugned shipping bills during September- 2017 to April-2022 and the application for conversion has been filed in September- 2023. I find that Exporter has failed to file the application for conversion of Shipping bills within reasonable time. I rely on decision of Hon'ble CESTAT in the case of M/s Gupta Enterprises Vs. Commissioner of Customs (Sea Exports, Chennai) (Customs Appeal No. 40150 of 2014) and Hon'ble Tribunal's decisions in the case of Autotech Industries (India) Ltd. I also rely upon decision of Hon'ble High Court of Delhi in the case of Commissioner of Customs (Export) Vs. E.S .Lighting Technologies (P) Ltd. reported in 2020(371) E.L.T 369 (Del) where in Hon'ble High Court has observed that-" merely because no time limitation prescribed under Section 149 ibid for purpose of seeking amendment/conversion, it does not follow that request in that regard coulu be made after passage of any length of time. Request could not have been entertained without examination of records- Not fair to expect department to maintain, and be possessed of, the records after passage of five long years."

24. Exporter has further relied upon Hon'ble High Court of Punjab & Haryana in the case of Commissioner of Customs, ICD, GRFL, Vs. Bectos Food, Specialities Ltd. (CUSAP-10/2019) dt 15.02.2023. Hon'ble High Court of Punjab & Haryana while dismissing appeal of the Revenue has observed that no time limit is prescribed in Section 149 for conversion of shipping bills. In the cited case applications for conversion were rejected only because of time limit and hence are not squarely applicable to the present case. Exporter has further relied upon the decision of Hon'ble High Court of Gujarat in the case of Oriental Carbon & Chemical Ltd. Vs. UOI reported in 2021 (377) E.L.T 850 (Guj). Hon'ble High Court of Gujarat has observed that application for conversion cannot be rejected solely on ground that export were made from a Non -EDI port. I find that the cited case has no relation with the present case.

25. I also find that Applicant has claimed that Section 149 of the Customs Act, 1962 does not prescribe any time limit for filing the application for conversion of Shipping Bill. I find no merit even in this plea of the applicant as the time limit for filing application for conversion of Shipping bill, though not defined in Section 149 of Customs Act, 1962, however, the time limit has been prescribed at para 3(a) of the Circular No. 36/2010-Cus dated 23.09.2010 which stipulate that such request should be filed within three months. It is settled that the circulars issued by the CBEC (now, CBIC) are binding on the department and it cannot take a stand contrary to the instructions issued by the Board. This view is supported by series of decisions of the Hon'ble

Supreme Court, including the judgment pronounced by the Hon'ble Appex Court in the case of Commissioner Of Customs, Calcutta Vs. Indian Oil Corporation Ltd reported as 2004 (165) E.L.T. 257 (S.C), wherein the Hon'ble apex court has found that:

"11.Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in Collector of Central Excise, Vadodara v. Dhiren Chemicals Industries - 2002 (143) E.L.T. 19 where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 378 of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in Simplex Castings Ltd. v. Commissioner of Customs, Vishakhapatnam (2003 (155) E.L.T. 5 (S.C.) = (2003) 5 SCC 528].

26. I find that Deputy Commissioner (Export), Customs, ICD, Khodiyar has also in her verification report recommended for not allowing for conversion of impugned shipping bills, as detailed in para-4,5 & 6 above. The Exporter has reiterated his submissions during personal hearing and asked for relief. I find from the facts of the case and documents on record that Exporter has failed to make a convincing case for himself. They have failed to put anything on record which justify that the impugned Shipping bills are eligible for conversion to Advance License scheme in the instant case. In view of discussions in foregoing paras, I find that the Impugned 38 shipping bills have failed to pass the test of statutory provisions for conversion."

This court has considered the rival submissions. It is seen from the findings of the learned Commissioner that he has given detailed findings while refusing conversion from Draw Back Scheme to Advance License Scheme at such belated stage even after same was availed by the appellants sometime after the exports was done. The order clearly discusses the scheme and legal provisions related thereto and how freely done conversion from one scheme to another after availing benefit can jeopardize revenue interest as both have their own procedural encompass and how conversion from less rigorous to more rigorous examination scheme was not permitted by the Circular No. 36/2010. This court also finds that Hon'ble High Court after having a look at Circular No. 36/2010 dated 23.09.2010 struck down only the para 3(a) which had prescribed of three months limitation from the date of export order. The Circular is cited supra at para 10 above. The Hon'ble High Court while having look at the Circular did not strike down the para 3(e) which reads as follows:

"The exporter has not availed benefit of the export promote on scheme under which the goods were exported and no fraud, Mis-

declaration/ manipulation has been noticed or investigation initiated against them in respect of such exports”

In view of foregoing and especially as Hon’ble High Court of Gujarat had a look at para 3 and thought it fit to struck down only para 3(a) and not para 3(e), this court finds that while in normal course a conversion can be permitted even beyond three months prescription as was contained in para 3(a) now struck down by the Hon’ble Gujarat High Court in Lykis case cited (supra). The para 3(e) having survived scrutiny of Hon’ble High Court of Gujarat. This court finds validity of condition 3(e) of the aforesaid Circular survives and therefore holds that once a benefit under which shipping bill was filed has been availed, the conversion to any other scheme cannot be allowed. It is thus clear that the same has a bigger objective of atleast giving finality to some extent to decisions earlier taken while exporting, as is the case of the appellants in this matter. This court therefore, finds that once draw back benefit was availed then there was no scope for seeking conversion to any other scheme “And” in relation to mis-declaration clause in 3(e) above being disjunctive as in case later proposition of mis-declaration, manipulation etc., coming into play, the exporter even if has been precluded from availment can still be denied conversion. As facts stated by the learned consultant for the appellants bring out on record that they had availed draw back scheme and offered to pay back the benefit with interest, this court finds that matter falls within the ambit of para 3(e) of the above Circular and the conversion request after having enjoyed the benefit of draw back scheme, and after availing the same, cannot be allowed. Appeal is therefore, dismissed accordingly.

(Pronounced in the open court on 22.03.2024)

**(SOMESH ARORA)**  
**MEMBER (JUDICIAL)**