

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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 222 of 2011 - DB

(Arising out of Review Order-VIII/48-65/CUC/T/2010 dated 28/02/2011 passed by Commissioner of CUSTOMS-AHMEDABAD)

Gujarat Ambuja Exports Ltd

.....Appellant

Ambuja Tower,
Opp. Memnagar Fire Station,
Post Navjivan,
Ahmedabad, Gujarat

VERSUS

Commissioner of Customs-Ahmedabad

.....Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:

Shri Manish Jain, Advocate for the Appellant

Shri A R Kanani, Superintendent (AR) for the Respondent

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

Final Order No. 11624/2024

DATE OF HEARING: 05.04.2024
DATE OF DECISION: 23.07.2024

RAMESH NAIR

The brief fact of the case are that appellant was a 100% EOU and they applied for exiting from EOU to DTA unit on 04.06.2009. The appellant receive in-Principal approval for exit from EOU scheme by Development Commissioner, Kandla vide letter No. KASEZ/ 100% EOU/ii/130. Thereafter, the appellant have discharged the Custom Duty and Excise Duty in respect of imported Capital Goods, Domestic Capital Goods, Raw Material and Inputs, Process Stock of finished goods imported and indigenous Raw Material, Consumables & Spares, High speed Diesel which were available with EOU as on 31.08.2009. The duty was paid by 09.01.2010, thereafter the appellant started importing on payment of custom duty without availing benefit of EOU scheme. While exporting their

goods, the appellant filed shipping bill under EOU because there was no final de-bonding of EOU. The Commissioner of Customs has issued No Dues Certificate i.e. NOC on 12.01.2010 to the appellant after verifying details of payment of custom duty. On 21.01.2010, the development commissioner allowed final de-bonding of appellant's 100% EOU and cancelled the green card. The appellant on 23.03.2010 submitted a letter requesting for conversion of shipping bills filed during the period of 01.09.2009 to 12.01.2010 to the Assistant Commissioner of Customs Ahmedabad. The appellant reminded for the conversion to the concerned authority vide their letters dated 13.04.2010, 15.07.2010 and 12.01.2011. The Deputy Commissioner of Customs vide impugned letter dated 28.02.2011 informed that Learned Commissioner has refused the conversion of shipping bill from EOU to DEPB and drawback scheme. The Learned Commissioner rejected the request for conversion on the ground that when the export has taken place under shipping bill mentioning EOU, the final de-bonding was not completed, the final de-bonding was completed only on 21.01.2010. Being aggrieved by the said impugned letter dated 28.01.2011, the appellant filed the present appeal.

2. Shri Manish Jain, Learned counsel appearing on behalf of the appellant at the outset submits that Learned Commissioner denied the request for conversion of the shipping bill without issuing any show cause notice or giving any opportunity of personal hearing. Further the impugned letter communication issued on behalf of the Learned Commissioner is non speaking order and has gravely violated the principles of natural justice.

2.1 He submits that though the final de-bonding was confirmed by the Development Commissioner on 21.01.2010 but the appellant had paid the entire duty on the stock as on 31.08.2009. Therefore, any export made thereafter is eligible for DEPB and drawback benefit. He submits that since in principal approval for exit from EOU was granted by the Development Commissioner on 04.06.2009 and entire duty was admittedly paid on the stock as on 31.08.2009, thereafter practically the unit become DTA and they were paying Custom duty and Excise duty on their procurement of goods after 01.09.2010.

2.2 He further submits that the appellant are entitled for conversion of the shipping bills into DBK/DEPB Shipping bills depends on the following reasons:-

"a) Condition (a) is not a mandatory requirement, as no such condition for the purpose of conversion of shipping bill has been prescribed in Section 149 of the Customs Act.

b) Condition (b) is not applicable for the DBK claim as the availability of all industry drawback is not dependent upon the use of the imported inputs in the export product. With respect to DEPB, condition (b) of the circular is satisfied as the appellants being 100% EOU were statutorily required to fulfil the condition of use of inputs in the resultant output.

c) Condition (c) has been satisfied as the examination report and SION/DEPB norms are fulfilled in the present case.

d) Condition (d) has been satisfied by the Appellants as they have fulfilled all the conditions of DEPB and DBK scheme.

e) Condition (e) is fulfilled in the present case as during the period of 02.09.2009 to 05.01.2010 the appellants have not availed any benefits under Export Promotion Scheme. The reliance in this regard is placed on the case of Atul Limited vs. C.C.E. & S.T.- Surat-1, 2022 (7) TMI 987-CESTAT Ahmedabad."

2.3 In support of his submission, he placed reliance on the following judgments:-

- Messrs Gokul Overseas vs. Union of India, 2023 (3) TMI 167- Guj. High Court
- Messrs Mahalaxmi Rubtech Ltd. vs. Union of India, 2021 (3) TMI 240- Guj. High Court as affirmed by Supreme Court in 2023 (4) TMI 1272- SC Order
- Kwalitiy Paper Products vs. Commissioner of Customs- Mundra, 2023 (7) TMI 890-CESTAT Ahmedabad
- Atul Limited vs. C.C.E. & S.T.- Surat-1, 2022 (7) TMI 987- CESTAT Ahmedabad
- Bhavin Export Pvt. Ltd. vs. Commr. of Cus., Mundra, 2021 (12) TMI 89- CESTAT Ahmedabad
- Chief Terminal Manager M/s. Indian Oil Corporation Ltd. vs. Commr. of Cus., Tuticorin, 2023 (12) TMI 576- CESTAT Chennai
- Summer India Textile Mills Pvt. Ltd. vs Commr. of Cus., Tuticorin, 2022 (381) E.L.T. 101 (Tri. - Chennai)

3. On the other hand, Shri AR Kanani Learned Superintendent (AR) appearing on behalf of the Revenue, support the observation made by the Learned Commissioner in the letter by which the request for conversion was rejected.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the appellant have raised various grounds and taken support of various judgments in their submission in the present appeal. However, the Learned Commissioner while rejecting request for conversion neither issued any show cause notice nor granted any personal hearing. Therefore the decision taken for rejecting the conversion from EOU shipping bill to DBK/DEPB shipping bill is absolutely in gross violation of natural justice. Therefore the said decision is liable to be

set aside on this ground alone. However, this Tribunal being a final fact finding authority considered the fact of the present case and we find that there is no dispute that the appellant have been paying duty on all their clearances after debonding and also paid the duty on the closing stock, therefore all the goods cleared for export suffered the duty on the inputs raw material in process material therefore the appellant were clearly eligible for conversion of shipping bill from EOU to DBK/DEPB scheme. There is no fault on the part of the appellant in filling the EOU shipping bill for the reason that though the appellant had discharged all the duties and started paying duty for the subsequent clearances but since they were not given the final NOC, they could not have filed DBK/DEPB shipping bill. Therefore in these circumstances we do not find any reason for denying the conversion of EOU shipping bill to DBK/DEPB shipping bill.

4.1 The appellant filed the request for conversion of shipping bill in terms of Section 149 of the Customs Act, 1962 which is reproduced below:-

"SECTION 149. Amendment of documents.- Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended [in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed]:

Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised 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."

From the above section 149, it is clear that the only condition to be fulfilled for conversion is that at the time of export the documentary evidence should be existed on the basis of which the conversion can be made. In the present case there is no dispute that the export of the goods have been made out of duty paid inputs and the EOU shipping bill was filed for want of final NOC. Therefore in this case the appellant's case is clearly covered by Section 149 of the Customs Act, 1962.

4.2 On the identical issue of Summer India Textile Mills Pvt. Ltd. Vs. Commr. of Cus., Tuticorin, 2022 (381) ELT 101 (Tri.- Chennai) the following order was passed:-

"19. In the present case, the request is only for conversion of free shipping bills in terms of Section 149 of the Customs Act, 1962, It is not the case of the department that the appellant has not produced sufficient document to prove that the export of goods were done by them. So also there is no allegation that there is delay in filing the request for conversion. On such score, we are of the view that the request for conversion cannot be denied. However, we make it clear that the claim for drawback after conversion of the free shipping bills to drawback shipping bills has to be reconsidered by the officer as per the provision of law. By allowing the conversion of the free shipping bills to drawback shipping bills, we do not make any finding that the appellant is eligible for drawback benefits. We only hold that there are no grounds to deny the conversion/amendment of shipping bills in terms of Section 149 of the Customs Act. 1962. The eligibility of drawback has to be looked into by the concerned officer."

(Emphasis Supplied)

4.3 On the similar facts the reliance is placed on the following judgments:-

- Kwality paper Products Vs. Commissioner of Customs-Mundra, 2023 (7) TMI 890- CESTAT Ahmedabad

- Chief Terminal Manager M/s. Indian Oil Corporation Ltd. Vs. Commr. of Cus. Tuticorin, 2023 (12) TMI 576- CESTAT Chennai
- M/s. Mahalaxmi Rubtech Ltd. Vs. Union of India, 2021 (3) TMI 240
- Bhavin Export Pvt. Ltd Vs. Commr. of Cus. Mundra, 2021 (12) TMI 89- CESTAT Ahmedabad

In view of the above settled legal position, the appellant is legally entitled for conversion of EOU shipping bill to DBK/DEPB shipping bill.

4.4 Having observed above, we are aware that the DEPB scheme has been abolished, however at the relevant time since the appellant's benefit has been accrued the same must extended to the appellant. Somewhat similar view was taken by the Hon'ble Kerala High Court in the case of M/s Elite Green Pvt. Ltd vide WA NO. 1630 of 2023, wherein the Hon'ble court vide order dated 08.07.2024 has taken following view:-

"7. We have considered the rival submissions and we find force in the submission of the learned counsel for the appellant with regard to the entitlement of the appellant for the refund aforementioned. While it may be a fact that, based on the subsequent Circular issued by the Central Board of Excise and Customs (which has since been annulled by the Delhi High Court in the decision in Allen Diesels India Pvt. Ltd (Supra)), the appellant did not satisfy a pre-condition for claiming refund, the fact remains that the payment of 4% SAD effected by the appellant at the time of import of the goods, albeit by debiting the DEPB scrips, was accepted by the Customs Authorities, who recognised the said payment as in the discharge of the appellant's liability in respect of the import duties at the time of import of the goods. If that be the case, then notwithstanding the Circular dated 29.04.2013 aforementioned, the respondents cannot take a stand that there was no "payment" of the 4% SAD by the appellant at the time of import of the goods. It follows as a consequence that if the appellant satisfies the conditions in Notification No.102/2007-Cus dated 14.09.2007 for the purposes of refund of the said 4% SAD, then merely because the facility of re-crediting the DEPB scrips has been taken away, the refund that the appellant is entitled to by virtue of the notification aforementioned

cannot be denied. At any rate, since the Delhi High Court has already annulled the Circular dated 29.04.2013, the respondents are now legally obliged to consider the refund application preferred by the appellant independently, on its merits, to see whether the conditions specified in Notification 102/2007-Cus dated 14.09.2007 have been satisfied by the appellant. We, therefore, allow the Writ Appeal by setting aside the impugned judgment of the learned Single Judge and by directing the respondents to process the application for refund preferred by the appellant within a period of one month from the date of receipt of a copy of this judgment, after hearing the appellant.

The Writ Appeal is allowed as above."

As per our above discussion and findings, the decision of the Commissioner rejecting the conversion of EOU shipping bill to DBK/DEPB shipping bill is set aside. Appeal is allowed with consequential relief.

(Pronounced in the open court on 23.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha