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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10073 of 2024- DB

[Arising out of F/ No. VIII/48-67/Exp./Conversion-II/CHM/2019-20 dated 07.08.2019 passed by Principal Commissioner – Mundra(Kuchchh)]

PCBL Ltd. **........Appellant**
Formerly known as M/s Philips carbon Black Limited
31, Netaji Subhash Road, Kolkata,
West Bengal-700001

VERSUS

C.C. Mundra **......Respondent**
Office of the Commr. of Customs, Custom House
Mudra, Kutch, Mundra Port and Special Economic Zone
Mundra-Kachchh-Gujarat-370241

WITH

Customs Appeal No. 10074 of 2024- DB

[Arising out of F/ No. VIII/48-702/Exp./AMD/CHM/2019-20 dated 17.07.2019 passed by Principal Commissioner – Mundra(Kuchchh)]

PCBL Ltd. **........Appellant**
Formerly known as M/s Philips carbon Black Limited
31, Netaji Subhash Road, Kolkata,
West Bengal-700001

VERSUS

C.C. Mundra **......Respondent**
Office of the Commr. of Customs, Custom House
Mudra, Kutch, Mundra Port and Special Economic Zone
Mundra-Kachchh-Gujarat-370241

APPEARANCE:
Shri Niraj Baheti, Chartered Accountant for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 12861-12862 /2024

DATE OF HEARING: 07.11.2024
DATE OF DECISION: 28.11.2024

RAJU

This appeal has been filed by M/s PCBL Limited against order of Commissioner (Appeals) remanding the matter to the original adjudicating authority.

2. Learned Chartered Accountant pointed out that the appellant had made a request for amendment of the shipping bill under Section 149 of

the Customs Act, 1962. At the time of filing the shipping bills the appellants had filed the shipping bills under draw back scheme however they later on sought to convert the same to shipping bills under advance authorization scheme. The said request was rejected by the original adjudicating authority on the ground that the request for conversion was made by the exporter beyond the period of three months. He pointed out that the requirement of filing the amendment application under section 149 within the period of three months was introduced not by law but by CBEC Circular No. 36/2010-Cus dated 23.09.2010 in para 3(a). The learned counsel pointed out that the said para 3(a) of Circular No. 36/2010-Cus dated 23.09.2010 has been struck down as ultravirus by Hon'ble High Court of Gujarat in the case of Messrs Mahalaxmi Rab Tech Limited 2021 (3) TMI 240 (Guj. HC).

3. Learned Authorised Representative relies on the impugned order.

4. We find that the impugned order though signed by Deputy Commissioner (Exports), Customs House, Mundra has been rejected by the competent authority. In the instant case the competent authority was the Principal Commissioner of Customs, consequently the appeal has been filed before the Tribunal.

5. The sole ground mentioned in the impugned order dated 07.08.2019 for rejection of the request made by the appellant is delay of more than three months from the date of let export order. The said limitation of three months was introduced by the Circular 36/2010 dated 23.09.2010. The Hon'ble High Court of Gujarat in the case of Messrs Mahalaxmi Rub Tech Limited (supra) has set aside the said requirement of filing the application for conversion within a period of three months as ultravirus, Article 14 and 19(1)(g) of Constitution of India as well as ultravirus section 149 of the Customs Act, 1962. The special leave

petition filed by the Revenue against the said order before Hon'ble Apex Court has been rejected as reported under 2023 (385) ELT 99 (SC). In the impugned order, the sole ground for rejection is the delay of more than three months in filing the application in terms of Circular No. 36/2010-Cus dated 23.09.2010. Since the said Circular itself has been set aside by Hon'ble High Court of Gujarat, reliance on the said Circular cannot be sustained. The impugned order, is therefore, set aside and appeal allowed.

(Order pronounced in the open court on 28.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha