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

REGIONAL BENCH- COURT NO. 3

CUSTOMS APPEAL NO. 10100 of 2024-DB
(Arising out of Order in Original CUS-TECH-296-2023-TECH-O-O-COMMR-CUS-PREV-JAMNAGAR Dated 08/12/2023 passed by Commissioner of Customs (Preventive), Jamnagar)

VRA COTTON MILLS P LTD ....**Appellant**
Fazilka Road, National Highway No.10,
Abohar, District-Fazilka, Punjab-152116..

VERSUS

Commissioner of Central Excise and
Service Tax - Customs (P) Jamnagar ....**Respondent**
Seema Shulk Bhavan, Jamnagar- Rajkot Highway,
Near Victoria Bridge, Jamnagar-361001..

APPEARANCE:
Ms. Shamita Patel, Advocate with Shri J.C.Patel, Advocate appeared for the Appellant
Shri Prashant Tripathi, Superintendent (AR) appeared for the Respondent

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

FINAL ORDER NO. 13075/2024

DATE OF HEARING:10.10.2024
DATE OF DECISION: 05.12.2024

RAMESH NAIR

The Issue arising in the present Appeal is whether the rejection of the Appellant's request for conversion of Shipping Bills from DFIA to Drawback on the ground that the request was made after the expiry of the three months from the date of let export order as prescribed under Para 3(a) of the CBIC Circular No. 36/2010-Customs dated 23-9-2010 is sustainable in law, when the said Para 3(a) of the said Circular has been held to be *ultra vires* Articles 14 and 19 (1) (g) of the Constitution of India as also *ultra vires* Section 149 of the Customs Act 1962, by the Hon'ble Gujarat High Court by its decision in Messrs. Mahalaxmi Rubtech Ltd v UOI- 2021 (3) TMI 240.

1.1 The facts in brief are that the Appellant is a manufacturer-exporter of "Indian Raw Cotton-Type-Not carded or combed) and during the period January 2012 to June 2012, the Appellant exported the said goods from

Pipavav port, under 15 Shipping Bills under claim for 'Duty Free Import Authorization" (DFIA).

1.2 The Appellant was issued the following DFIA licenses against the said exports:

a) DFIA No. 0510309011 dated 23-11-2011

b) DFIA No. 0510317769 dated 15-2-2012

The Appellant, however, did not effect any imports under the said DFIA licenses and accordingly the Appellant surrendered the said DFIA licenses to the licensing authority and requested the licensing authority i.e. Assistant Director General of Foreign Trade, New Delhi to cancel the said DFIA licenses who, by two letters dated 11-7-2013 and 12-3-2014 cancelled the said two licenses on the ground that the same had been surrendered without being utilized.

1.3 Since the Appellant had not made any import under the aforesaid two DFIAs and the same had been accordingly cancelled by the licensing authority, the Appellant is entitled to apply for drawback after seeking conversion of the said Shipping Bills to Drawback Shipping Bills from customs in terms of Para 4.28 (e) of the Handbook of Procedures 2009-14 which provides as follows:

> *"e) In case an exporter is unable to complete EO undertaken in full and he has not made any import under Authorisation, Authorisation holder will also have an option to get the Authorisation cancelled and apply for drawback after obtaining permission from Customs authorities for conversion of shipping bills to Drawback Shipping Bills."*

1.4 The Appellant accordingly by letters dated 20-7-2013 and 21-3-2014 respectively, applied to customs for conversion of the said 10 + 5 = 15 Shipping Bills from DFIA to Drawback Shipping Bills.

1.5 In respect of similar earlier exports under DFIA which were cancelled as no imports thereunder were made, the Appellant's request for conversion of shipping bills from DFIA to Drawback Scheme had been rejected by Commissioner of Customs, Jamnagar (Preventive) by Orders dated 15-1-2014 and 29-3-2013, by relying on CBEC Circular No.36/2010-CUS dated 23-9-2010, on the ground that the request for conversion had been made after expiry of three months from the date of Let Export Order (LEO). Against the said Orders of rejection of request for conversion of the Shipping Bills, the Appellant had preferred Appeal no. C/12375/2014 before this Hon'ble Tribunal. Since identical issue in respect of the said earlier exports was pending before this Hon'ble Tribunal, the Appellant's requests for conversion of the said 15 Shipping Bills were kept in abeyance to await the outcome of the said appeal before this Hon'ble Tribunal. In the meantime, the Appellant by letters dated 26-3-2014, 14-5-2014, 19-6-2014, 2-7-2014 and 28-4-2014 sent reminders for considering the said two applications dated 20-7-2013 and 21-3-2014.

1.6 This Tribunal by Order dated 1-8-2014 allowed the Appellant's appeal against the orders dated 15-1-2014 and 29-3-2013 relating to the said similar earlier matters and held that no time limit was prescribed in Para 4.28 (e) of the Handbook of Procedures for seeking conversion of the Shipping Bills to Drawback Shipping Bills and held that the Appellant was entitled to conversion of the Shipping Bills into drawback shipping bills.

1.7 In view of the Tribunal's Order dated 1-8-2014 in respect of the said similar earlier matters, the Appellant by letters dated 17-11-2014 and 25-2-2015 requested the Customs to allow the said two pending applications for conversion of the said 15 Shipping Bills.

1.8 The Department preferred appeal against the said Order of this Tribunal to the Hon'ble Gujarat High Court and in view of pendency of the said appeal before the Hon'ble High Court, the Appellant's requests for conversion of the said 15 Shipping Bills were kept in abeyance to await the outcome of the said appeal before the Hon'ble High Court. The Hon'ble Gujarat High Court dismissed the Department's appeal against the said Order dated 1-8-2014 by Order dated 10-10-2022.

1.9 In view of the dismissal of the department's appeal by the Hon'ble High Court in respect of the said similar earlier matters, the Appellant once again requested the Commissioner of Customs (Preventive), Jamnagar by its two letters dated 24-8-2023 for conversion of the said 15 shipping bills from DFIA to Drawback Shipping Bills.

1.10 The Commissioner of Customs, (Preventive), Jamnagar, without granting any personal hearing, rejected the said applications of the Appellant and the Appellant was informed of the said rejection by the Additional Commissioner by letter dated 8-12-2023. The said request for conversion was rejected on the ground that the request was made after the expiry of the period of three months from the date of let export order as laid down in Para 3(a) of the CBIC Circular No. 36/2010-Customs dated 23-9-2010.

1.11 The Appellant has preferred the present appeal against the said rejection, by the Commissioner of Customs (Preventive), Jamnagar, of the Appellant's request for conversion of the said 15 Shipping Bills, as communicated by the said letter dated 8-12-2023 of the Additional Commissioner.

2. Ms. Shamita J Patel Learned Counsel and Shri J C Patel, Advocate appearing for the appellant submitted that rejection of Appellant's request for conversion of DFIA Shipping Bills to Drawback based on Para 3 (a) of Board Circular No. 36/2010-Cus dated 23-9-2010 is ex-facie bad in law, in view of the said Para 3(a) having been struck down by Hon'ble Gujarat High Court by its decision in Messrs. Mahalaxmi Rubtech Ltd v UOI- 2021 (3) TMI 240 and Issue also stands settled in Appellant's favour by decision of this Tribunal in Appellant's own case by Order No.A/11457/2014 dated 1-8-2014

3. Shri Prashant Tripathi, Learned Superintendent (AR) appearing for the revenue reiterated the findings given in the impugned Order.

4. We have heard both sides and carefully considered the submission made by both sides. We find that it was not open to the Commissioner to reject the Appellant's requests for conversion of DFIA Shipping Bills to Drawback Shipping Bills by relying on Para 3 (a) of the Board Circular No.36/2010-Cus dated 23-9-2010 since the Hon'ble Gujarat High Court in the case of Mahalaxmi Rubtech Ltd v UOI-2021 (3) TMI 240, has by its judgment and order dated 2-3-2021 held that the said Board Circular No. 36/2010-Cus dated 23-9-2010, to the extent of Para 3 (a), to be ultra vires Article 14 and 19(1)(g) of the Constitution of India and also as ultra vires Section 149 of the Customs Act, 1962. Since the only basis for rejecting the Appellant's request for conversion of the Shipping Bills in the impugned Order/ decision of the Commissioner, is Para 3(a) of the said Circular, which has been struck down by the Hon'ble Gujarat High Court as ultra vires as aforesaid, the impugned Order/ decision of the Commissioner is clearly bad in law.

4.1 Further it is observed that Hon'ble Bombay High Court has also held in the case of Pinnacle Life Science P. Ltd v UOI **-2022 (7) TMI 725** that the said Para 3(a) of the said Circular No. 36/2010 is illegal and without jurisdiction and that application for conversion of shipping bill has to be considered without raising an issue of time limit, To the same effect is the decision of the Hon'ble Bombay High Court in the case of Colossustex P. Ltd and ors v UOI and ors-2023 (9) TMI 313 and the decision of the Hon'ble Tribunal in the case of Chief Terminal Manager, IOCL v CC-2023 (12) TMI 576.

4.2 Further it is noticed that this Tribunal has in the Appellant's own case by Order No. A/11457/2014 dated 1-8-2014 held that the said Para 4.28 (e), Rule 12 of the Drawback Rules and Section 149 of the Customs Act 1962, do not stipulate the time limit of three months from the date of Let Export Order (LEO) for making the application for conversion to drawback shipping bills. The Applications for conversion of Shipping Bills in the present case were kept in abeyance to await the outcome of the said appeal before the Tribunal which pertained to earlier shipping bills in identical situation. Consequently, the Commissioner ought to have followed the said decision of the Hon'ble Tribunal in the Appellant's own case.

4.3 It is further seen that under Para 4.28 (e) of the Handbook of Procedures 2009-14, the Appellant could have applied for conversion of the Shipping Bills only after the cancellation of the DFIA licenses by the licensing authority. The DFIA licenses were cancelled by two letters dated 11-7-2013 and 12-3-2014 and soon thereafter the Appellant applied for conversion by letters dated 20-7-2013 and 21-3-2014 which were followed by various reminders; there was therefore no delay on the part of the Appellant in applying for conversion of the Shipping Bills.

4.4 Considering the submissions made and following the aforesaid decisions of Hon'ble High Court and of this Tribunal, we hold that no time limit was prescribed in Para 4.28 (e) of the Handbook of Procedures for seeking conversion of the Shipping Bills to Drawback Shipping Bills and the Appellant was entitled to conversion of the Shipping Bills into drawback shipping bills.

5. Accordingly, impugned order cannot be sustained. Appeal is allowed with consequential relief.

(Pronounced in the open court on 05.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi