CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

Regional Bench COURT-2

Customs Appeal No. 23334 of 2014

[Arising out of the Order-in-Original No.25/2014 dated 23.07.2014 passed by the Commissioner of Customs, Mangalore.]

Indian Oil Corporation
Marketing Division, India Oil Bhavan,
139, Mahatma Gandhi Road,
Nungambakkam Road,
Chennai, TN - 600034 **.......Appellant**

VERSUS

Commissioner of Customs, Mangalore
New Custom House, Panambur,
Mangalore, Karnataka – 575010 **..... Respondent**

Appearance:
Mr. Raghavendra.B, Advocate for Appellant
Mr. Neeraj Kumar, Authorized Representative for Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 21195 of 2024

Date of Hearing: 23.02.2024
Date of Decision: 22.08.2024

Per: Pullella Nageswara Rao

M/s. Indian Oil Corporation Limited, the appellant a public sector undertaking is engaged in receipt, storage and clearances of warehoused petroleum products.

2. The brief facts are the appellant obtained Advance Authorization licenses from time to time and had imported crude oil without payment of duty. The appellant processed crude oil and supplied Aviation Turbine Fuel (ATF) to aircrafts on foreign run, which amounts to export of

goods. Due to the sudden withdrawal of customs duty on crude oil on 25.06.2011, as the appellant was not in a position to utilize the benefits of Advance Authorisation Scheme decided to convert to Duty Drawback Scheme for realisation of export benefits. Accordingly, the Appellant vide letter dated 26.07.2011 sought for conversion of shipping bills filed under Advance Authorisation scheme into Duty Drawback Scheme. The Assistant Commissioner of Customs, Mangalore vide letter dated 01.08.2012 intimated that the Commissioner of Customs, Mangalore had accorded permission for conversion of 286 shipping bills filed for the period from 27.03.2011 to 26.06.2011 from Advance Authorisation Scheme to Duty Drawback Scheme. However, as the appellant did not get any communication in respect of the status of the approval for conversion of the remaining shipping bills, the Appellant vide letter dated 12.12.2012 requested for conversion of remaining 164 shipping bills filed for the period from 01.03.2011 to 26.03.2011 and 27.06.2011 to 30.07.2011. The appellant was informed by the Assistant Commissioner of Customs, Mangalore vide letter dated 03.04.2013 that the Commissioner of Customs, Mangalore had rejected the request for conversion of shipping bills for the above periods on time bar by placing reliance on condition 3(a) of the Circular No.36/2010-Cus. dated 23.09.2010. Thereafter, the Appellant sought for personal hearing for contesting the rejection of conversion of shipping bills. The Assistant Commissioner of Customs, Mangalore vide letter dated 31.07.2013 informed the appellant that the Commissioner had rejected the request based on the condition 3(a) of the Circular No. 36/2010-Cus dated 23.09.2010. In view of the above, the Appellant had filed an appeal before this Tribunal on the communication dated 03.04.2013. This

Hon'ble Tribunal vide Final Order Nos. 20434-20435/2014 dated 02.04.2014 in Appeal Nos. C/27792-27793/2013 held that Tribunal has no Jurisdiction to entertain the appeal in the absence of Adjudication Orders. Thereafter, the Appellant requested the Learned Commissioner for passing a speaking order after granting an opportunity of personal hearing. The appellant was heard on 27.06.2014. The Learned Commissioner vide Order-in-Original No. 25/2014-Commr dated 23.07.2014 rejected the request for conversion of shipping bills from Advance Authorisation scheme to Duty Drawback scheme shipping bills on the ground of time bar by placing reliance on condition 3(a) of the Circular No. 36/2010-Cus dated 23.09.2010. Aggrieved by the Order of the Commissioner, the appellant filed this appeal before the Tribunal.

3. Learned Counsel for the appellant contended that the impugned Order is vitiated by law as it is passed without issuance of any Show Cause Notice.

4. Further, the Learned Counsel contended that; the amendment of document as provided under Section 149 of the Customs Act, 1962 is a discretionary power vested with the proper officer and the same has to be exercised judiciously; the provisions under Section 149 of the Customs Act, 1962 or the Rules/Notification issued thereunder did not prescribe any time limit for amendment / conversion of documents and hence, the Circular issued by the CBEC cannot override the statutory provisions and the clarifications issued are only binding on the Department. Further, Circular No.36/2010-Cus dated 23.09.2010 fixing the time limit is going beyond the scope of the provisions of Section 149 of the Customs Act, 1962 and has been declared as unconstitutional by various High Courts and the appellant relied on the following decisions:

i. CBEC., New Delhi Vs. Parayil Food Products Pvt. Ltd. (2023) 4 Centax 207 (Ker.)
ii. Oriental Carbon & Chemicals Ltd. Vs. Union ofIndia - 2021 (377) ELT 850 (Guj.)
iii. M/s. Mahalaxmi Rubitech Ltd. Vs. Union of India R/Spl. Civil Application No. 21636/2019 dated 02.03.2021 (Guj. HC)
iv. Arvind Smart Textiles Ltd. Vs. Commissioner of Customs - (2024) 15 Centax 73 (Tri.-Mad.)
v. Pinnacle Life Science Pvt. Ltd. Vs. Union of India - LAWS(BOM)-2022-7-283
vi. Colossustex Pvt. Ltd. Vs. Union of India - (2023) 11 Centax 57 (Bom.)
vii. Mohit Overseas Vs. CC 2016 (335) E.L.T. 18 (Del.)
viii. VRA Cototn Mills Pvt. Ltd. Vs. CC., Jamnagar (Preventive) - 2014 (309) ELT 100 (Tri-Ahmd.)
ix. Diamond Engineering (Chennai) Pvt. Ltd. Vs. CC (Seaport Export), Chennai 2013 (288) E.L.T. 265 (Tri. - Chennai)
x. Carboline India Pvt. Ltd. Vs. Commissioner of Customs Final Order No. 40072/2022 dated 16.02.2022 passed by Chennai Tribunal in Appeal No. C/40606/2021
xi. Gupta Enterprises Vs. Commissioner of Customs Final Order No. 40559-40561/2023 dated 17.07.2023 passed by Chennai Tribunal in Appeal Nos.40150-40152/2014.

5. The learned counsel submitted that, hence it was held that there is no time limit prescribed under Section 149 of the Customs Act. Therefore, the time limit prescribed under condition 3(a) of Circular No. 36/2010-Cus is untenable. In any case, the time limit requesting for amendment / conversion of shipping bills will start from the date of knowledge and not from the date of export itself as it is well settled law that if the inadvertent mistake was not within the knowledge of the exporter then one cannot expect the exporter to make request for conversion of shipping bills within 3(three) months from the export.

6. Further, the learned counsel submitted that in any case, Notification No.11/2022-Cus. (NT) dated 22.02.2022 introduced the Shipping Bill (Post Export Conversion in relation to Instrument based Scheme) Regulations, 2022 by virtue of which a time limit of one year and additional period of six months plus six months totalling to two years was provided under Regulation 3 thereof for seeking conversion of shipping bills. Therefore, the application filed by the Appellant is well within time.

7. The Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order.

8. Heard both sides and perused the records.

9. We find that in this case, the amendment of 164 shipping bills for conversion from Advance Authorisation Scheme to Duty Drawback Scheme was disallowed only on the grounds of time bar, i.e., within 3(three) months from the date of Let Export Order (LEO). We find that duty on crude oil was exempted on 25.06.2011 and the shipping bills which were filed before the withdrawal of duty on crude oil were permitted for amendment. However, certain shipping bills during the period 01.03.2011 to 26.03.2011 (period before the withdrawal of duty on crude oil) and 27.06.2011 to 30.07.2011 (period after the withdrawal of duty on crude oil) were not allowed for amendment/conversion.

10. We find that in the case of **CBEC Delhi Vs. Parayil Food Products Pvt Ltd. – (Supra),** Hon'ble High of Kerala held that;

> *"6. We have perused the judgment under appeal and taken note of the rival contentions. The judgment under appeal principally proceeded on the extent to which a Circular could prescribe the*

limits within which a request for amendment of Customs documents can be made. In the case on hand, respondents endeavour to elevate Circular No. 36/2010 to the level prescribed by the regulation. The definition clauses define what constitutes "prescribed and 'regulations'. The onus is on the respondents to demonstrate that irrespective of the year in which Circular no. 36/2010 was issued, the Circular still satisfies as one issued as a regulation under the Act by the Competent authority. The reading of Circular No. 36/2010 looks more like guidelines for the Officers under section 149 of the Act. Therefore, the judgment under appeal does not warrant our interference.

6.1 We have taken note of the omission in excerpting Section 149 in the judgment under appeal. We have reproduced Section 149 of the Act effective from 1-8-2019 and tested the efficacy of Circular 36/2010 in the background of defined words under the Act. Circular No. 36/2010 cannot be construed as a regulation issued under the Act. The power and scope of Section 149 are wide and have serious ramifications both for the revenue and the importer/exporter. Therefore, it is in the realm or jurisdiction of respondents herein to make Section 149 operable as prescribed by regulations subject to such terms and conditions as may be stipulated by the competent authority subject to the above observations, the Writ Appeal fails and stands dismissed accordingly."

11. We find that the denial of amendment of 164 Shipping bills from Advance Authorisation Scheme to Duty Drawback Scheme was solely on

the basis of time bar i.e., not seeking such amendment within 3(three) months of the Let Export Order (LEO). We find that there are catena of decisions, wherein the co-ordinate benches of the Tribunal and the Hon'ble High Courts have held that the limitation of 3(three) months prescribed in Circular No.36/2010-Cus dated 23.09.2010 is not legally tenable, since the relevant Section 149 of the Customs Act, 1962 states that by way of regulation issued under that section the time limit could be prescribed. However, we find that the Circular No.36/2010-Cus dated 23.09.2010 are not regulations made under Rule 149 of the Customs Act, 1962. Further, we find that vide Notification No. 11/2022-Cus (NT) dated 22.02.2022 the Shipping Bill (Post Export Conversion in relation to Instrument based Scheme) Regulations, 2022 were introduced, which provides for a total of 2(two) years time period for filing for conversion of shipping bills. Hence, the rejection of conversion of the impugned shipping bills on time bar is untenable.

12. Further, we find that CBEC vide Circular No.36/2010-Cus dated 23.09.2010 clarified on the issue as under;

> *"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. ....

4. Free shipping bills (shipping bills not filed under any export promotion scheme) are subject to 'nil' examination norms. Conversion of free shipping shopping bills into EP scheme shipping bills (Advance Authorisation, DFIA, DEPB, reward schemes etc.) should not be allowed. However, the Commissioner may allow all industry Rate of duty drawback on goods exported under free shipping bills, without conversion of such free shipping bill to Drawback Scheme shipping bill, in terms of the proviso to rule 12(1) (a)of the Customs, Central Excise and Service Tax Drawback Rules, 1995.

5. Due care may be taken while allowing conversion to ensure that the exporter does not take benefit of both the schemes i.e. the scheme to which conversion is sought and the scheme from which conversion is sought. Whenever conversion of a shipping bill is allowed, the same should be informed to DGFT so that they may also ensure that the exporter does not take benefit of both the schemes.

6. This circular supersedes the Board circular No. 4/2004-Cus., dated 16-1-2004 and the earlier circulars issued in the past on *this issue. This circular shall be applicable only to shipping bills filed on or after the date of issuance of this circular. Till such time as EDI system is modified to allow conversion of shipping bill in the EDI system, conversion may be allowed manually".*

13. We find that in this case the conversion sought by the Appellant was from Advance Authorisation scheme shipping bills involving more rigorous examination to a Duty Drawback scheme shipping bills involving less rigorous examination.

14. In view of the above discussion and the clarification of CBEC vide Circular No. 36/2010-Cus. dated 23.09.2010, we find that impugned order rejecting the request for conversion of shipping bills filed under Advance Authorisation scheme into Duty Drawback Scheme is unsustainable and needs to be set aside.

15. Accordingly, the appeal filed by the appellant is allowed with consequential relief, if any as per law.

(Order pronounced in open court on 22.08.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar