CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20672 of 2021

[Arising out of Order-in-Original No. 623/2021 dated 21/05/2021 passed by the Principal Commissioner of Customs, Bengaluru]

Louverline Blinds
1st Floor, 'Hoysala Bhavan',
Near 3rd Cross, Wilson Garden Main Road,
Hombegowda Nagar
Bangalore - 560 027
Karnataka

Appellant(s)

VERSUS

Commissioner of Customs, Bangalore
C.R. Building, Queens Road,
P.B. No. 5400,
Bangalore - 560 001
Karnataka

Respondent(s)

Appearance:

Smt. Neetu James, Advocate for the Appellant

Shri P. Gopakumar, Additional Commissioner (AR) for the Respondent

CORAM:
HON'BLE SHRI P. DINESHA, JUDICIAL MEMBER

Final Order No. 20168 / 2022

Date of Hearing: 18/03/2022
Date of Decision: 01/04/2022

Per : P. DINESHA

The only issue that arises for my consideration is, whether the authorities below were justified in denying the benefit of conversion of shipping bills into advance license Shipping Bills as requested by the appellant?

2. Heard Ms. Neethu James, learned Advocate for the appellant and Shri P. Gopakumar, learned Additional Commissioner for the Revenue.

3. Undisputed facts forthcoming from the record are that the appellant is a manufacturer of motorized curtains and blinds assemblies and its accessories, procures several inputs by way of import for the use in the manufacture of the goods which are exported. During the period under challenge the appellant had an Advance Authorization License issued by the concerned authority and it had imported certain goods like ceiling brackets, curtain track belts etc. which were to be used in the manufacture of final product. One of the conditions of the Advance License was that the appellant was required to export the final product within 18 months from the date of import of goods which was without the payment of import duty. It is also undisputed that the invoices raised by the appellant indicated that the exports were made against its obligation under Advance License Scheme, when its exports were made to M/s. K. Ithaafushi Resort Development Project, Maldives. The appellant accordingly had filed 6 shipping bills for the export of goods wherein it was clearly mentioned that the appellant intended to avail benefit under the Merchandise Export Incentive Scheme (MEIS) but, however, it is the case of the appellant that inadvertently it had failed to mention

that its exports were made against the obligation under the Advance License. It is also undisputed that the exported goods were not subjected to any examination by the Customs authorities. After noticing the above inadvertent mistake, the appellant by its letter dated 13/10/2020 requested *inter alia* for amendment of the said shipping bills to Advance License shipping bills stating clearly that the exported goods were manufactured by using the goods imported under the Advance License and that the exports had been made in fulfillment of export obligation under the Advance License.

4. In response to the above request, a personal hearing was granted by the Principal Commissioner of Customs, Airport & Air Cargo Complex, Air India Sats Airfreight Terminal, KIAL, Devanahalli, Bengaluru, before whom the appellant was represented and it was *inter alia* pleaded that there was a lapse on the part of the appellants which was unintentional and hence, it was requested to consider the appellant’s plea for conversion of shipping bills from ‘free’ to ‘Advance License’ shipping bills. The learned Principal Commissioner after hearing and analyzing claim of the appellant in the light of Section 149 of the Customs Act, 1962, relevant Board Circular No. 36/2010 dated 23/09/2010 and Circular No. 6/2002-Cus. dated 23/01/2002 held *inter alia* that the appellant had not satisfied requirements of Section 149 *ibid*. Consequently, he rejected the appellant’s claim for

conversion and in this regard, he also drew support from a decision of Hon'ble Delhi High Court in the case of ***Terra Films Pvt. Ltd. - 2011 (268) E.L.T. 443 (Del.).***

5. I have considered the rival contentions and have also gone through the relevant provisions as well as relevant Board Circulars. The decision of the Hon'ble Delhi High Court in the case of ***Terra Films Pvt. Ltd.*** (supra) was referred by the very same High Court in a later decision in ***Kedia (Agencies) Pvt. Ltd. Vs. Commissioner of Customs - 2017 (348) E.L.T. 634 (Del.)*** wherein the Hon'ble High Court has deviated from its earlier decision. Section 149 which provides for amendment of documents reads as under:

> ***"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 [1][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:

*[2][**Provided** further that such authorisation or amendment may also be done electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:*

***Provided** also that such amendments, as may be specified by the Board, may be done by the importer or exporter on the common portal.]"*

From the above it is clear that the amendment is permissible but the same is subject to Sections 30 and 41 *ibid.* There is also no doubt that none of these Sections prescribes any time limit but it is only the circular which is prescribing such time limit. Further, both the above Circulars referred to in the impugned order prescribe scale of physical examination under Para 2.1, as per which physical examination is to be undertaken at the port of export; under Para 2.1 (B) for export under Free Shipping Bills, no scale of examination is prescribed except where there is a specific intelligence. Under Para 2.1 (C) for exports under Duty Drawback DEPB Scheme, the scale of examination is between 2 to 10% for exports made to a non sensitive location, depending upon the FOB value of goods; under Para 2.1 (D) the scale of examination is again between 2 to 10% for exports made under EPCG/DEEC schemes.

6. It is therefore clear from the above circulars

itself that the amendment to a shipping bill after the goods are exported shall be on the basis of documentary evidence which was inexistence at the time of export of goods, such request for conversion is made within 3 months from the let export order, the examination report and other endorsement proves the fact of export and that the exported product is clearly covered under relevant SION/DEPB/Drawback as the case may be, the exporter has fulfilled all other conditions of export promotion scheme to which conversion was sought. Authorities have also never expressed anu doubts over the documents available/in existence at the time of export. The non-examination by the Revenue appears to have been taken to the appellant's disadvantage since, practically also, other than requesting for an examination an assessee cannot do anything more. Moreover, the learned Principal Commissioner has clearly erred in not appreciating that the shipping bills filed by the appellants were not free shipping bills but it was clearly declared therein the intent of the appellant as to the availment of benefit under MEIS. This fact coupled with the requirement of pre-examination under Circular No. 6/2002 makes it clear that physical examination if any, should have been done as per Para 2.1 (C) under Circular No. 6/2002 and hence, failure on the part of the authorities in conducting physical examination could not be attributed to as lapses on the part of the appellant. Be that as it may, Para 3 of Circular No. 36/2010 makes it clear that the Commissioner may allow conversion of shipping bills where the level of examination is same. When this is applied to the case on hand, the level under Para 2.1 (C) for exports under Drawback DEPB Scheme covering MEIS is same as the level of examination under Para 2.1 (D) where exports made under EPCG/DEEC schemes covering advance licenses, which implies that the request for conversion was to the schemes involving same level of examination and hence, the conversion of shipping bills are to be permitted as per Para 3 of Circular No. 36/2010.

7. Viewed thus, the denial of benefit is clearly unacceptable and not in terms of the spirits of Section 149 *ibid.* The decisions/orders relied on by the appellant support this view. In view of the above, impugned order cannot be sustained and hence, the same is set aside, appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the Open Court on 01/04/2022)

(P. DINESHA)
JUDICIAL MEMBER

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