IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 40246 of 2021

(Arising out of Order-in-Original No. 1017/2020-AIR dated 07.11.2020 passed by the Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai – 600 027)

M/s. Contemporary Leather Private Limited **: Appellant**
2/400, Mount Poonammallee High Road,
Iyyapanthangal, Chennai – 600 056

VERSUS

The Commissioner of Customs **: Respondent**
Chennai-VII Commissionerate,
New Custom House, Meenambakkam, Chennai – 600 027

APPEARANCE:

Shri T. Ramesh, Advocate for the Appellant

Shri S. Balakumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

FINAL ORDER NO. 42456 / 2021

DATE OF HEARING: 06.12.2021

DATE OF DECISION: **07.12.2021**

Order :

The appellant is aggrieved by the rejection of the request for conversion of free shipping bills to drawback shipping bills.

2. Brief facts are that the appellant is engaged in the business of manufacture and export of leather products and accessories. They have been making exports to M/s. Aspinal of London since 2013. These exports were handled by a merchandiser specifically recruited for

handling these exports. The merchandiser was not aware of the eligibility of drawback for the said exports and thus the shipping bills filed were not declared for availing drawback benefits. Later, on realizing the mistake, the appellant vide letter dated 23.11.2017 requested for conversion of the free shipping bills to drawback shipping bills. The details of the shipping bills for the period from 2013-14 to 2016-17 for which conversion was requested, are as under:

Year	**No. of Free Shipping Bills filed**	**FOB Value (INR)**	**Drawback Amount Eligible (INR)**
2013-14	117	8,87,61,868/-	46,48,956/-
2014-15	126	13,69,59,790/-	69,55,899/-
2015-16	151	17,00,11,176/-	59,27,317/-
2016-17	141	14,43,76,695/-	80,86,028/-
TOTAL	**535**	**53,92,09,530/-**	**2,56,18,202/-**

3. The exporter was given an opportunity of personal hearing where the CEO of the company Shri R. Sriram submitted a letter dated 18.01.2018 stating that he had assumed charge as CEO of the company and noticed that drawback benefits were not claimed for the exports by the earlier merchandiser who was handling the exports made to M/s. Aspinal of London. He took corrective measures and has filed the request for conversion of the free shipping bills to drawback shipping bills.

4. During the course of personal hearing, samples of the items exported were produced before the Adjudicating Authority. A committee was constituted for looking into the samples as well as related documents of exports made during the disputed period. The committee reported that on visual examination of old and new items, the goods appeared to be made of 60% or more of visible outer / inner surface leather That the description of old and new items are the same. Further that the product code as mentioned in the export invoices tallied with the stock code mentioned in the purchase orders. However,

the Adjudicating Authority rejected the request for conversion of the shipping bills on the ground that the appellant had not put forward plausible explanation for not filing the drawback shipping bills at the time of exports itself. Aggrieved by such order of rejection of the request for conversion of the shipping bills, the appellant is now before the Tribunal.

5.1 Shri T. Ramesh, Learned Advocate, appeared and argued for the appellant. He submitted that the merchandiser who was handling the exports made to M/s. Aspinal of London was not aware of the drawback procedure and did not file declaration, as required, along with the shipping bills to claim the drawback benefits; that when the inadvertent omission came to the knowledge of the present CEO, he took corrective measures and started filing drawback shipping bills with respect to exports made to M/s. Aspinal of London. Further, a request for conversion of the previous shipping bills in order to claim drawback benefits was also filed.

5.2 He adverted to paragraph 7 of the impugned order and submitted that out of the impugned shipping bills, Customs examination was carried out with regard to 59 shipping bills before issuance of 'Let Export Order' for the years 2013-14, 2014-15, 2015-16 and 2016-17. That out of the 535 shipping bills for which conversion has been requested, almost 10% has been subjected to examination. Moreover, a committee was formed to examine the details with regard to the documents as well as the goods that have been exported. He adverted to paragraphs 15 and 16 of the impugned order wherein it is observed that the appellant has furnished samples of the export goods, which was examined by the committee and they were found to be the same. That the appellant has submitted all documents / samples as requested by the Department and answered all the queries of the Department; however, the Adjudicating Authority has held that the reason given by the appellant that they did not have knowledge about the drawback benefit is not convincing. He argued that the specific merchandiser who was entrusted with the duty of filing the shipping bills in regard to exports made to M/s. Aspinal, London, omitted to take note of the drawback benefits. That the previous management was not aware of the drawback eligibility and only after the new CEO took charge, the measures to correct the same were undertaken. That it was only an inadvertent omission on the part of the appellant not to file drawback shipping bills at the time of export.

5.3 Learned Counsel for the appellant relied upon the judgement of the Tribunal in the case of *M/s. Autotech Industries (India) Pvt. Ltd. v. Commissioner of Customs, Chennai* in *Customs Appeal No. 41584 of 2019 [Final Order No. 42351 of 2021 dated 30.09.2021]* and submitted that in the said case, the Tribunal has held that the conversion of shipping bills has to be allowed if filed within a reasonable time of three years. The decisions in the cases of *M/s. Suminter India Organics P. Ltd. v. C.C. (Export), Nhava Sheva, Mumbai-II* reported in *2016 (343) E.L.T. 599 (Tri. – Mumbai)* as well as *M/s. Polydrug Laboratories Pvt. Ltd. v. C.C. (General), Mumbai* reported in *2015 (317) E.L.T. 271 (Tri. – Mumbai)* were also relied by him.

5.4 Shri S. Balakumar, Learned Authorized Representative for the Revenue, supported the findings in the impugned order.

6. Heard both sides.

7. The issue involved is as to whether the rejection of the request for conversion of free shipping bills to drawback shipping bills is legal and proper.

8. In paragraphs 15 and 16 of the impugned order, it is seen that the Adjudicating Authority had constituted a committee to examine the documents related to the exports as well as the samples produced by the appellant

to ensure that the goods exported to the foreign company during the disputed period were one and the same. The relevant paragraphs read as under:

> *"15. Vide this office's email dated 21.12.2019, the exporter was granted one more personal hearing to appear before the Commissioner of Customs on 24.12.2019 at 4.30 PM. Shri R. Sriram, CEO of the Company & Shri A.C.S. Mutho, CHA, M/s. Shree Shuba Associates have appeared for the personal hearing before the Commissioner of Customs, Chennai-VII on 24.12.2019 at the scheduled time. They submitted 5 Nos. of samples along with related document for examination by the Committee constituting of one Appraiser and two Examiners. The Exporter had sought 15 days time for producing other selected samples. Meanwhile the Committee had examined the below mentioned samples:-*
>
> *<u>Item samples</u>:-*
>
> *I. Plain passport cover (desc as per new doc) / Leather Passport Wallet (desc as per old doc)*
>
> *II. Continental purse mini (desc as per new doc) / Continental Mini Wallet (desc as per old doc)*
>
> *III. Travel Wallet*
>
> *IV. Croc Leather Tidy Tray*
>
> *V. Zipper Travel Wallet*
>
> *The Committee reported that on visual inspection of old and new items, the goods appeared to be made of 60% or more of visible outer / inner surface leather; that the description of old and new*

items are the same; that to carry out further scrutiny, the exporter had been asked to produce Buyer's approved samples, selected randomly, along with purchase order, design specifications and mail communication.

16. Subsequently, as directed during the personal hearing held on 24.12.2019, the exporter on 07.01.2020, had produced 6 samples covered under the following Shipping Bill Nos.:-

Sl. No	***Shipping Bill No./Date***	***Style No.***	***Description***
1	*9030563/18.12.2013*	*LB324*	*Cow Fiesta Leather Black Travel Wallet*
2	*3048318/31.05.2014*	*LB349*	*Cow Croc Leather Zipped Travel Wallet*
3	*3766097/27.10.2015*	*LB505*	*Cow Flamingo Leather Essential flat Pouch*
4	*8177622/09.06.2016*	*LB529*	*Cow Elite Leather A5 Zipped Padfolio*
5	*8177622/09.06.2016*	*LB569A*	*Cow Elite Leather Men's classic Wasg Bag*
6	*8338596/17.06.2016*	*LB531*	*Cow Fiesta Leather A4 Padfolio*

17. It was observed by the Committee that on visual inspection, the item samples were found to be made of 60% more of visible outer / outer & inner surface leather; that it cannot be ascertained as to whether the same items were exported or not since the export cargo has already left & not available; that the said 6 samples were retained for future reference; that the produce code as mentioned in the export invoices have tallied with stock code of the item mentioned in purchase orders."

9. However, in paragraphs 21 to 23 of the impugned order, the Commissioner has relied upon Board Circular No. 36/2010-Cus. dated 23.09.2010 to hold that the appellant has not been able to satisfactorily explain the reasons for not filing the drawback shipping bills at the time of export. It is held in paragraph 24 that though the exporter has tried to prove that the goods exported were articles of leather, as described in the export documents, it would not be appropriate to extend the substantial benefit of drawback when they have not put forward proper reasons for not filing drawback shipping bills. This observation of the Adjudicating Authority is without any substance.

10. The law, as stated in Section 149 of the Customs Act, 1962, allows amendment of shipping bills. The said Section 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 [in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed] :*
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> ***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."*

11. The Board Circular No. 36/2010-Cus dated 23.09.2010 also allows conversion of free shipping bills into drawback shipping bills. The above Circular states that if the Commissioner is satisfied that the exporter

failed to comply with the provisions of Rule 13 of the Drawback Rules, 2017 (filing drawback shipping bill) for reasons beyond his control, the amendment can be allowed.

12. It is clear from the above provision as well as the Circular that the amendment of free shipping bills to drawback shipping bills can be allowed. The appellant has been able to sufficiently establish that they did not file the drawback shipping bill at the time of export for the reason that the merchandiser who was handling the exports did not have knowledge about the benefit that could be claimed.

13.1 On similar set of facts, when there was an inadvertent omission to claim drawback by filing drawback shipping bills, the request for conversion of the shipping bills was considered by the Tribunal in the case of *M/s. Autotech Industries (India) Pvt. Ltd. (supra)*, the Tribunal held that if the request is made within reasonable time of three years, the conversion of free shipping bills to drawback shipping bills can be allowed. The relevant paragraph reads as under:

> *"40. Reverting to the case on hand, although no limitation has been prescribed in section 149, an assessee cannot be permitted to take undue advantage. The remedy of amendment under section 149 should be sought within a reasonable time. We have already expressed our view that there is inordinate delay in filing the application for amendment under section 149 of the Customs Act, 1962. We then have to consider what would be the reasonable period for entertaining an application under section 149 of the Customs.*
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> *41. The Customs Act, 1962 being a special law and a complete code in itself it would not be proper to pull in the limitation period under the Limitation Act, 1963 and make it applicable to section 149. More so, because section 149 does not deal with any recovery of duty or refund of duty. It is a section merely to permit amendment in documents. Amendment is purely a procedural requirement. The legislature in its wisdom has not prescribed either in the Act or Rules a time limit*

> *to fulfill this procedural requirement. The consequence of such amendment as already stated, is to claim refund of duty suffered on inputs in the nature of drawback. The Limitation Act limits the period for filing a suit for recovery of money to three years. As per Article 137 of the Schedule to The Limitation Act, 1963 any application for which no period of limitation is provided elsewhere is three years from the time when the right to apply accrues. We are unable to refrain ourselves from being not persuaded by these provisions in the Limitation Act to hold that a period of three years would be a reasonable time for filing an application under section 149.*
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> *42. The application dated 9.10.2015 contains request for amendment of Shipping Bills for the year 2012 to 2014. It gives details of shipping bills for three years (Jan. 2012 to Dec. 2014). The second application dated 25.1.2016 made by the appellant is only an afterthought by which appellant has included Shipping Bills from the year 2000 to 2011. We hold that there is unreasonable delay in filing the request for amendment of Shipping Bills from the year 2000 to 2011 and the order of rejection in respect of these Shipping Bills is just and proper."*

13.2 In the case of *M/s. Suminter India Organics P. Ltd.* (*supra*) as well as *M/s. Polydrug Laboratories Pvt. Ltd.* (*supra*) , the Tribunal has allowed the conversion of free shipping bills to drawback shipping bills.

14. Applying the above decisions, I am of the view that the request for conversion of free shipping bills to drawback shipping bills has to be allowed. However, since the application for conversion is filed on 23.11.2017 in regard to the shipping bills for the period 2013-14 to 2016-17, the period of limitation as set out in the decision of the Tribunal in *M/s. Autotech Industries (India) Pvt. Ltd. (supra)* will apply. Hence, the shipping bills beyond the period of three years will not be eligible for conversion. For the limited purpose of looking into the shipping bills which are beyond the limitation period of three years, when computed from the date of application

i.e., 23.11.2017, the matter is remanded to the Adjudicating Authority.

15. In the result, the impugned order is set aside and the request for conversion of the shipping bills falling within the period of three years when computed from the date of application i.e., 23.11.2017, is allowed. The Adjudicating Authority is directed to check as to whether any shipping bill falls beyond the limitation period of three years as stated in the decision of the Tribunal in *M/s. Autotech Industries (India) Pvt. Ltd. (supra).*

16. The appeal is allowed in the above terms.

(Order pronounced in the open court on **07.12.2021**)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sdd