IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.40247 of 2021

(Arising out of Speaking Order No. 79380/2021 dated 8.2.2021 passed by the Commissioner of Customs, Chennai – IV)

M/s. Visoka Engineering Pvt. Ltd. **Appellant**
116, SIDCO Industrial Estate
Thirumalisai
Chennai – 600 124.

Vs.

Commissioner of Customs **Respondent**
Chennai IV Commissionerate
Custom House
Chennai – 600 001.

APPEARANCE:

Shri Hari Radhakrishnan, Advocate for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **40073 / 2022**

Date of Hearing : 10.02.2022
Date of Pronouncement: 16.02.2022

Per Ms. Sulekha Beevi C.S.

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

2. The learned counsel Shri Hari Radhakrishnan appeared and argued for the appellant. He submitted that the appellant had

exported various products such as "Stainless Steel Tubes (Seamless) with fins" under a cover of following shipping bills:-

S. No.	Shipping Bill No. and Date	Advance Authorization License No. & Date	LEO Date
1.	9644187 / 14.1.2020	0410166000 dated 26.8.2019	16.1.2020
2.	9814022 / 22.1.2020		23.1.2020
3.	9952741 / 27.1.2020		28.1.2020
4.	1646065 / 24.2.2020		25.2.2020
5.	9103557 / 20.12.2019		21.12.2019
6.	9485850 / 7.1.2020		7.1.2020
7.	9169175 / 23.12. 2019		24.12.2019
8.	9483949 / 7.1.2020		7.1.2020

3. The goods were exported in fulfilment of the export obligation in terms of Advance Authorisation No. 0410166000 dated 26.8.2019. At the time of filing the shipping bills, the Customs Broker of the appellant had attempted to file Advance Authorisation shipping bill. However, due to a technical error in the EDI system, they could not file advance authorization shipping bill. The error arose due to the fact that the quantity mentioned in the invoice was in meters whereas the unit of measurement in the Advance authorization was in kilograms. Due to the difference in the unit of measurement, the details could not be fed into the electronic form of the shipping bill. However, the appellant had mentioned the Advance Authorisation License number in the "marks and numbers column" of the shipping bill. In the above circumstances, the goods were exported after filing as free shipping bill. He submitted that the Preventive Officer had supervised the stuffing of the goods in the container prior to export as is seen from the last page of the shipping bill.

4. The learned counsel also adverted to the export invoices corelating to the shipping bills to submit that even in the export invoice, the Advance Authorization License number was mentioned by

the appellant. The defect in filing the shipping bill as free shipping bill instead of Advance Authorisation shipping bill occurred only for the reason that the unit of measurement mentioned in the Advance Authorisation which was in kilograms could not match with the unit of measurement mentioned in the export invoices. Since the overseas buyer wanted to have the units mentioned in meters, the appellant had to comply with the same.

5. The appellant filed application dated 12.5.2020 for amendment of these from free shipping bills to Advance Authorisation shipping bill. The Commissioner of Customs rejected the request for amendment / conversion vide order impugned herein mainly relying upon the Board Circular No. 36/2010 dated 23.9.2010. The learned counsel adverted to Section 149 of the Customs Act, 1962 and argued that the said provision does not prescribe any time limit for filing an application for conversion of the shipping bill. So also it does not stipulate a condition that the goods have to be physically examined so as to allow the conversion of the shipping bill.

6. He relied upon the decision of the Tribunal in the case of M/s. Autotech Industries (India) Pvt. Ltd. Vs. Commissioner of Customs, Chennai reported in 2021 (11) TMI 518 – CESTAT Chennai. The Tribunal in the said case had relied upon the decision of the Hon'ble High Court of Madras in CMA No. 875/2017 dated 29.6.2017 which held that there is no time limit applicable for seeking conversion of the shipping bill.

7. With regard to the second ground on which the amendment was rejected, the learned counsel submitted that the goods were examined by the Preventive Officer posted at the CFS prior to the

export. Only after verifying the description in the invoices with the physical goods, the export was permitted and LET export order was granted.

8. The appellant had obtained the Advance Authorisation for procuring Seamless Steel Tubes / Pipes – Cold finished grade UNS S31803 / S32205. This particular grade of tubes / pipes is thereafter subjected to further processing and the final product is described as Finned Tubes with a length of 13500 millimeters. The final product which are processed out of Seamless Steel Tubes / Pipes – Cold finished grade UNS S31803/S32205 are not supplied by the appellant in the domestic market. The appellant is an assessee registered under the Central Goods and Services Act, 2017 and has filed returns based on the self-assessment procedure. The department has not disputed these facts. The goods exported have been duly reported and declared in the GST returns. The declaration and assessment as per the returns having been accepted by the department, they cannot take a stand that the goods described under the shipping bills are not the goods which were actually exported. The appellant having produced the documents which were in existence at the time of export along with GST returns, the request for conversion ought not to have been rejected. He prayed that the appeal may be allowed.

9. The learned AR Shri R. Rajaraman appeared for the department. He supported the findings in the impugned order.

10. He referred to the Circular No. 36/2010 dated 23.9.2010 and submitted that the Board has prescribed a time limit of three months from the LET export order to file a request of amendment of shipping

bill. Moreover, the said section 149 has been amended with effect from 1.8.2019 which 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:*
>
> ***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.*
>
> ***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.*

11. The amended section provides that the time limit prescribed by the Board has to be complied. The appellant has filed request for conversion after three months from the LET export order. The adjudicating authority has correctly denied the request.

12.. The contention raised by the learned counsel for appellant that the Preventive Officer has endorsed the seal and therefore the goods have been physically examined cannot be accepted. He submitted that the Preventive Officer does not physically examine the goods but only supervise the stuffing of the packages as mentioned in the invoices and the packing list. Such officer also certifies that the goods have been loaded into the container to which the seal of customs is affixed. Such supervision of stuffing of goods cannot be considered as physical examination of the goods. He submitted that the

Commissioner has rightly rejected the request for conversion of the shipping bills. He prayed that the appeal may be dismissed.

13. Heard both sides.

14. The period involved in these shipping bills are after the amendment of section 149 of the Customs Act, 1962 with effect from 1.8.2019. The amended provision states that the proper officer can allow amendment of a document if presented within such time, subject to restriction and conditions as may be prescribed. However, so far there is no notification issued prescribing time limit or stipulating any conditions for amendment of shipping bill.

15. The department has relied upon Board Circular No. 36/2010 dated 23.9.2010. The said Circular was issued prior to this amendment. The Circular stipulates a time limit of three months from the date of issuance of LEO. The said circular being much prior to the amendment of section 149 of the Customs Act, 1962, the same cannot be applied to reject the request for conversion of shipping bill, when the Courts and Tribunal has repeatedly held that when the statute does not provide any time limit, the request for amendment cannot be rejected as time barred applying the Board Circular.

16. The Tribunal in the case of Autotech Industries (India) Pvt. Ltd. (supra) had analyzed the issue of rejection of request for conversion of shipping bill on the ground of time bar as applicable by the Board Circular and held that the request for conversion cannot be denied by applying the Board Circular. The relevant paragraph reads as under:-

> *"24. The Hon'ble jurisdictional High Court in the case of Global Calcium Pvt. Ltd. Vs. Commissioner of Customs, Chennai vide judgment dated 29.6.2017 in CMA No. 875 of 2017 observed as under:-*

1. After some arguments, Mr. Derrick Sam, seeks to withdraw the captioned appeal. Learned counsel, however, says that he has only one apprehension, which is, that the Adjudicating Authority may subject the claim for duty drawback to the time limit of three months provided in the Circular No.36/2010-Cus., dated 23.09.2010 (in short, "2010 Circular").

2. According to us, this apprehension is misplaced, as in paragraph 6 of the order, the Tribunal has, clearly, stated that "the time bar provision will not apply in this matter".

3. Needless to say, since, the Revenue has not come up by way of cross objection, they cannot raise any cavil about limitation of three months prescribed in the Circular.

4. We may also indicate that neither Rule 12(1)(a) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, nor Section 149 of the Customs Act, 1962, (in short, "the Act") prescribes, any time limit for processing the claim of duty drawback.

4.1. Furthermore, Mr. Chopda, has not been able to show any other provision in the Act or, the Rules framed thereunder, which provide for a time limit for processing the claim lodged for duty drawback.

5. As indicated above, the Tribunal has not accepted the stand of the Revenue that the Assessee's claim can be subject to time limit, as provided in the 2010 Circular.

6. Accordingly, the appeal is dismissed as withdrawn. Resultantly, pending application shall stand closed. There shall, however, be no order as to costs".

25. In the above judgment, the Hon'ble High Court has referred to the Board Circular, Sec. 149 of Customs Act, 1962 and 12(1)(a) of 18 Drawback Rules and opined that the apprehension of the counsel for petitioner that the request for conversion would be subject to scrutiny on the ground of limitation is for no reason.

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27. The Commissioner has denied the request for conversion of shipping bills by resorting to the Board Circular. The relevant para 3 and 4 of the Board Circular No. 36/2010 has already been reproduced in para 8 above. By this Circular, a period of three months is prescribed to file the request for conversion / amendment. Section 149 does not prescribe any time limit for filing an application for amendment of document. No doubt that section 149 of the Customs Act, 1962 would prevail over the Board circular. Further, Rule 12(1) of the Drawback Rules,1995 which lay down the procedure to claim drawback also allows filing of belated declaration to claim drawback if the Commissioner is satisfied that the failure to file the declaration 20 was due to reasons beyond the control of exporter. The Rules also does not limit the time. We have to hold that the request for conversion of Free Shipping Bill cannot be denied as time-barred by resorting to the Board Circular."

17. The Hon'ble High Court of Kerala in the case of Parayil Food Products Pvt. Ltd. Vs. Union of India reported in 2020 (10) TMI 1141 – Kerala High Court considered a similar issue and held as under:-

> *"8. For the purpose of issuance of No Objection, provisions of Section 149 of the Customs Act, 1962 envisage the complete procedure for issuance of no objection certificate, i.e. for the purpose of amendment of a bill of entry or a shipping bill only after fulfilling certain conditions in the proviso. The same read thus:*
>
> *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 customs house to be amended: Provided that no amendment of a bill of entry or 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.*
>
> *9. On the other hand, the respondent rejected the application of the petitioner by relying upon condition No.3a of the WP(C).No.21418 OF 2020(B) 6 Circular which reads thus:*
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> *"The request for conversion is made by the exporter within three months from the date of the Let Export Order (LEO)"*
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> *10. It is trite law that circulars cannot assume the role of the Principal Act lest the provisions only a binding force. If at all the revenue is facing difficulties in accepting and processing applications for amendment of bills of lading, an amendment to the Principal Act can be suggested in accordance with law and till the pendency of the same, an Ordinance can also be issued. No such stand is taken as evident from Ext.P10. I am afraid the action of the respondent cannot be accepted, for, it is an utter violation of statutory provision of Section 149 of the Customs Act. For the reasons assigned, the impugned order Ext.P10 dated 7.7.2020 is hereby quashed. The writ petition is allowed. Respondents are directed to issue no objection certification seeking amendment of the bill in accordance with law. Let this exercise be done within a period of one month from the date of receipt of a copy of this judgment."*

18. The Hon'ble High Court of Madras in the case of CC Vs. Diamond Engineering (Chennai) Pvt. Ltd. – 2019 (5) TMI 492 – Madras High Court considered the issue of time limit of three months stipulated in the Board Circular and held that the same is not applicable.

19. The second ground for rejection for conversion of free shipping bills is that the goods exported have not been physically examined. The learned counsel has referred to the last page of the shipping bill wherein the seal of the Preventive Officer is endorsed. It thus becomes evident that the goods have been stuffed under the supervision of the Preventive Officer who has verified the invoice, packing list etc. before stuffing the goods into the container. Moreover, there is no requirement under section 149 of the Customs Act, 1962 that the conversion can be allowed only if the goods have been subjected to physical examination. Therefore, the rejection of the request for conversion on the ground that physical examination was not conducted before export is without any legal basis.

20. After appreciating the facts, evidence and also following the judgments cited above, I am of the view that the rejection of request for conversion of free shipping bills to Advance Authorization shipping bills are not justified. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in open court on 16.02.2022)

Sd/-
(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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