IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 42052 of 2013

(Arising out of Order-in-Original No. 07/2013 dated 10.07.2013 passed by the Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004)

Chief Terminal Manager **: Appellant**
M/s. Indian Oil Corporation Limited,
Tuticorin Terminal,
Marketing Division, Harbour Estate,
Tuticorin – 628 004

VERSUS

Commissioner of Customs, **: Respondent**
Custom House, New Harbour Estate,
Tuticorin – 628 004

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant

Shri N. Satyanarayanan, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 41116 / 2023

DATE OF HEARING: 30.10.2023

DATE OF DECISION: 13.12.2023

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed by M/s. Indian Oil Corporation Ltd. against the impugned Order-in-Original No. 07/2013 dated 10.07.2013 passed by the Commissioner of Customs, Tuticorin. The only grievance of the appellant is the denial of conversion of shipping bills under Advance Authorization scheme to Duty Drawback scheme for realization of export benefits.

2. It is the case of the appellant that for the period between 23.06.2010 and 06.08.2011, for the goods exported, it had filed shipping bills under Advance Authorization scheme. On withdrawal of customs duty on crude oil with effect from 25.06.2011, it could not utilise the benefits under Advance Authorization scheme, which prompted the appellant to seek for conversion to Duty Drawback scheme for realisation of export benefits. Accordingly, a request for the above conversion was made before the authority.

3. Pending the said application, it appears that authority, namely, the Commissioner of Customs, sought to deny the above request on the ground that the said application was filed after nearly 8 months and that the appellant had effected exports under Advance Authorisation scheme during the period for which they were not expected to export their goods under the said scheme. It appears that the appellant participated in the personal hearing granted by the Commissioner, during which time it relied on various judicial precedents in support of its case that there was no time-limitation prescribed under Section 149 of the Customs Act and therefore its request for conversion was required to be allowed. The Commissioner, however, after considering the explanation of the appellant and also the decisions

relied upon by the importer, proceeded to pass the adjudication order, whereby he has distinguished the case-laws relied upon and further held that the time-limit has been prescribed by the Board Circular No. 36/2010 dated 23.09.2010 which is binding on him, thereby denying the request for conversion.

4. It is against this denial vide impugned order that the present appeal has been filed before us.

5. Heard Shri M.N. Bharathi, Ld. Advocate for the appellant and Shri N. Satyanarayanan, Ld. Assistant Commissioner for the Revenue.

6. Upon hearing both sides, we find that the only issue to be decided is: whether the denial of conversion, as requested by the appellant, by the Commissioner is in order?

7.1 The Ld. Advocate submitted at the outset that the Circular relied upon by the original authority has been held to be *ultra vires* Section 149 of the Customs Act by the Hon'ble Gujarat High Court in the case of *M/s. Mahalaxmi Rubtech Ltd. v. Union of India in its Order dated 02.03.2021 [2021 (3) TMI 240 – Gujarat High Court].* Thereafter, the Hon'ble Supreme Court also dismissed the special leave petition against the said decision, as reported in *2023 (385) E.L.T. 99 (S.C.).*

7.2 He would also contend that Section 149 *ibid.* does not specify any time limitation as to the presentation of application for request of conversion and hence, the original authority has ignored the requirement of law. He would also refer to various other judicial pronouncements in support of his claim.

8. *Per contra*, the Ld. Assistant Commissioner supported the findings of the lower authority.

9. We find that the Hon'ble Gujarat High Court (*supra*) has considered Section 149 *ibid.* in extenso and therefore, the Tribunal, as a lower authority, is bound by the said decision since the very Circular, which has been relied upon by the original authority even in the case on hand, has been clearly struck down by the Hon'ble High Court as *ultra vires*. Hence, we do not subscribe to the views expressed by the original authority for denying the conversion request of the appellant.

10. In view of the above, the impugned order is set aside and the appeal is allowed.

(Order pronounced in the open court on **13.12.2023**)

Sd/-	Sd/-
(M. AJIT KUMAR)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd