

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Customs Appeal No. 41250 of 2015

(Arising out of Order-in-Appeal C.Cus. II No. 166/2015 dated 18.02.2015 passed by Commissioner of Customs (Appeals-II), No. 60 Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Nissan Motor India Private Limited

...Appellant

Plot No. 1A, SIPCOT Industrial Park,
Mattur Post, Oragadam,
Sriperumbudur Taluk,
Kancheepuram – 602 105.

Versus

Commissioner of Customs

...Respondent

Chennai Import Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

For the Appellant : Mr. R. Rajaram, Consultant

For the Respondent : Ms. Anandalakshmi Ganeshram, Authorized Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 04.09.2025

DATE OF DECISION : 26.11.2025

FINAL ORDER No. 41374 / 2025

Order:-

This Customs Appeal No. C/41250/2015 has been filed by M/s. Nissan Motor India Private Ltd. (hereinafter referred to as 'Appellant') directed against the Order-in-Appeal C.Cus. II No. 166/2015 dated 18.02.2015 passed by the Commissioner of Customs (Appeals-II).

2. Briefly stated, the facts of the case are that the Appellant is engaged in export of motor cars through Chennai / Ennore Port falling under Chapter 87 of the Central Excise Tariff. In order to claim refund of service tax under Notification No. 52/2011 ST dated 30.12.2011, the Appellant was required to make a declaration in the shipping bill of export to the effect that the refund of service tax paid on the specified services is being claimed as a percentage of the FOB value of goods exported at the rates mentioned in the notification and that no further refund for such services shall be claimed in terms of the procedure prescribed in para 3 of the said notification.

3. The Appellant after noting that it had failed to make the above declaration for certain exports effected by it approached the Customs Authorities seeking to amend the Shipping Bills of Export, and to declare their intention to claim the refund under the said notification.

4. Such request of the Appellant was rejected by the Assistant Commissioner of Customs *vide* Letter bearing F.No.S Misc 132/2014- EDC (NOC) dated 13.11.2014. The rejection was on the ground that the declaration was not made at the

time of filing the shipping bills and that the request for amendment cannot be considered after completion of export.

5. Being aggrieved, the Appellant filed an appeal before the Commissioner (Appeals) who dismissed the appeal of the Appellant and upheld the rejection of the request by the lower Authorities. Aggrieved by the same, the Appellant has filed the present appeal before this Tribunal.

6. The Ld. Consultant Mr. Rajaram appeared and argued for the appellant. He has argued that non-mention of the declaration was a procedural requirement not complied with by the Appellant but the Commissioner proceeded to reject the request for amendment of the shipping bills without any valid reason. He submitted that the export of goods was not under dispute and under such circumstances, rejection of the request for amendment on procedural issues should be set aside in order to provide the intended benefits for the exporter.

7. To substantiate this argument, the Ld. Consultant, relied upon various case-laws and in specific drew

a parallel to similar instances in Merchandise Export scheme, an export incentive scheme which required the exporter to declare their intent to claim incentive in the shipping Bills. He has informed that when certain exporters missed to declare the same in the Shipping Bills, Higher Judicial Forum in the following cases have held that the benefit cannot be denied owing to the procedural error in not disclosing the intent and directed the Authorities to enable necessary amendments in the Shipping Bills and claim the benefit: -

- a. *Reliance Industries Ltd. (2023 (9) TMI 734) - Gujarat High Court*
- b. *Saint Gobain India Pvt. Ltd. (2018 (11) TMI 536) - Kerala High court*
- c. *Pasha International (2019 (2) TMI 1187) - Madras High Court*

8. *Per contra*, the Ld. Authorized Representative Ms. Anandalakshmi Ganeshram appeared and argued for the Revenue and submitted that the Appeal may be dismissed since the declaration was not made at the time of export. In this regard, she placed reliance on the decision of this Tribunal in the *M/s. J.K.Tyre and Industries Limited v. Commissioner of Customs* reported in 2024 (8) TMI 1220 *CESTAT Chennai*.

9. Heard both sides and perused the appeal records.

10. The issue for consideration in this case is whether the Customs Authorities are justified in rejections to amend the Shipping Bills to reflect the declaration by the Appellant to enable them to claim refund of service tax under Notification No.52/2011 ST dated 30.12.2011?

11. In this regard, I refer to the Hon'ble Madras High Court in the case of *M/s. Pasha International v. The Commissioner of Customs* reported in 2019 (2) TMI 1187 *Madras High Court*, in the context of Merchandise Exports scheme has held as follows: -

"2. *The Writ petitioner is a manufacturer and exporter of "Bags and made-ups". They had filed shipping bills Nos.5450964/09.06.2018, 5671009/20.06.2018 and 5146758/26.05.2018 for export of cotton shopping bags. The Writ petitioner actually intended to claim benefit under what is known as Merchandise Exports from India Scheme(M.E.I.S).*

But while filling up the shipping bills, the Writ petitioner inadvertently opted for "No" instead of "Yes". When the system was done manually, the corrections can be made in view of the enabling provision in Section 149 of the Customs Act, but now that E.D.I. system is being followed, the corrections cannot be done. But then, the petitioner cannot suffer for an inadvertent mistake committed by him.

3. *The learned counsel appearing for the Writ petitioner points out that in an identical situation, the High Court of Kerala in the decision reported in 2018 (361) E.L.T. 1000(Ker.) (Saint Gobain India Pvt. Ltd., V. Union of India), held as follows:-*

"6. *... it is the specific contention of the 3rd respondent that there can be no amendment in the*

shipping bills, since the entire procedure is operated by the system.

However, it is stated that the 3rd respondent is ready to issue 'No Objection Certificate' to enable the petitioner to avail the benefits from the 4th respondent. In the above view of the matter, there will be a direction to the 3rd respondent to issue the necessary 'No Objection Certificate' to the petitioner.

The petitioner shall produce the said NOC before the 4th respondent and seek the benefits from the 4th respondent. The 4th respondent shall consider such claim and pass orders thereon expeditiously, at any rate within a period of three months from the date of receipt of a copy of this Judgment."

4. *I am of the view that a similar direction can be given in the present case also. Of course in the present case, the learned counsel for the respondent is only seeking time.*

Considering the facts and circumstances of this case, the second respondent can be directed to issue N.O.C. to enable the petitioner to avail the benefit from the third respondent.

The third respondent shall consider the claim of the Writ petitioner and pass appropriate orders thereon expeditiously.

This order is passed, taking note of the fact that only due to inadvertence, the Writ petitioner instead of putting "Yes", had put "No" in the form.

5. *The Writ petition stands disposed of, accordingly. No costs. Consequently, connected Miscellaneous petition is closed."*

12. Furthermore, the reliance placed on the decision in the case of *JK Tyre and Industries, 2024 (8) TMI 1220 CESTAT, Chennai* by the Ld. AR, it is observed that the said decision of this Tribunal was rendered in the context of a case where the appellant therein had preferred an application for conversion of shipping bills under NFEI Scheme to drawback scheme and for consequent duty drawback under the

provisions of Section 74 of the Customs Act, 1962 read with Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. Whereas in the present case, the dispute is on a narrower compass in so far as there is only a request for amending the said shipping bills to obtain input services credit.

13. During the period of dispute Section 149 of the Customs Act, 1962 relating to amendment of documents reads as given below: -

"Section 149. Amendment of documents. - *Save as otherwise provided in section 30 and 41, the proper officer may, in his discretion, authorize any document, after it has been presented in the custom house to be amended:*

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."*

The provisions of the above section make it clear that the proper officer may allow in his discretion amendment of any document after it has been presented before the Customs if there is documentary evidence which was in existence at the time of clearance of the goods. In this case, the appellant has argued that the Notification No. 52/2011-ST dated 30.12.2011 was existing when Shipping Bills were filed during

the period April 2012 for export of motor cars through Chennai / Ennore Port. The avowed policy of the Government of India is not to export taxes and to promote exports.

14. The Authority has not detailed any reasons for not allowing the amendment of the Shipping Bills filed in terms of the provisions of Section 149 though necessary documentary evidence is existing in the form of Notification No. 52/2011-ST dated 30.12.2011

15. For the above reasons, I hold that the impugned Order-in-Appeal C.Cus. II No. 166/2015 dated 18.02.2015 is not sustainable and ordered to be set aside. Thus, the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 26.11.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)