CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO.-2

CUSTOMS APPEAL NO. 51621 of 2019

[Arising out of Order-in-Original No. 02/MK. SINGH/PR. COMMR./2019 dated 10.04.2019 passed by the Pr. Commissioner of Customs, Export, ICD, Tughlakabad, New Delhi]

M/S ISOLLOYD ENGINEERING TECHNOLOGIES LTD .....APPELLANT
Punj Star Premises, Kalkaji Industrial Area,
Kalkaji, New Delhi

Versus

COMMISSIONER OF CUSTOMS, EXPORT
INLAND CONTAINER DEPOT, TUGHLAKABAD
NEW DELHI .....RESPONDENT

Appearance

Shri B K Singh and Ms. Vandana Singh, Advocates	-	for the appellant
Shri Rakesh Kumar, Authorized Representative	-	for the respondent

CORAM:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 06.11.2019
Date of Decision: 03.01.2020

FINAL ORDER NO: 50001 /2020

BIJAY KUMAR:

1. The present appeal is directed against the Order dated 10.04.2019 passed by the Commissioner of Customs (Export), Inland Container Depot (ICD TKD), New Delhi, vide which a request of M/s Isolloyd Engineering Technologies Limited (the Appellant) for conversion of fourteen shipping bills from free shipping bills under scheme Code

00 to Export Promotion Capital Goods Scheme (EPCG) under scheme Code 11 was denied in terms of Circular No. 36/2010 dated 23.09.2010. The details of the shipping bill are as under;

S. No.	Shipping bill No./Date	Let export Order Date
1.	1619511/ 03.07.2006 √	04.07.2006
2.	1673710/ 18.12.2006 √	19.12.2006
3.	1967536/ 26.02.2007 1697536	02.03.2007
4.	1720706/ 40.05.2007 √	05.05.2007
5.	1611199/ 28.01.2008 1811199	29.01.2008
6.	2023679/ 11.12.2009 √	16.12.2009
7.	1671883/ 15.10.2010 √	22.10.2010
8.	1776565/ 08.11.2010 √	19.11.2010
9.	2275950/ 19.01.2011 √	24.01.2011
10.	3566495/ 06.05.2011 √	10.05.2011
11.	4503319/ 12.07.2011 √	15.07.2011
12.	4979924/ 12.08.2011 √	19.08.2011
13.	5585953/ 26.09.2011 √	30.09.2011
14.	3917744/ 11.02.2013 √	16.02.2013

2. Learned Commissioner has passed the following order;

> "4.1 I find that M/s Isolloyd Engineering Technologies Limited has requested to issue certificate of amendment in terms of Section 149 of the Customs Act, 1962 to get Export Obligation Discharge Certificate from the DGFT.
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> 4.2 I observe that the amendment of shipping bills post Let Export Order under Section 149 of the Customs Act, 1962 can be allowed only on the basis of documentary evidence, which was in existence at the time of clearance of goods for export. Assistant Commissioner (Export Shed) was requested vide letter dated 26.12.2018 to provide Customs Bunch of the Shipping bills. Assistant Commissioner (Export Shed) vide letter dated 15.02.2019 has informed that the desired Customs Bunch pertains to very old period, and the original docket files relating to shipping bills in questions are not traceable.
>
> 4.3 I find that exporter's request for amendment of shipping bills actually tantamount to conversion of Scheme.

> The Exporter had earlier filed the shipping bills under Scheme Code '00' (free shipping bills involving remittance of foreign exchange); and now, the exporter is requesting for issuing certificate of amendment under Scheme Code 11 (Concessional Duty EPCG). The request has been examined in light of CBEC circular no. 36/2010-Customs dated 23.09.2010 which provides that " The Commissioner may allow conversion of shipping bills from schemes involving more rigorous examination to schemes involving less rigorous examination (for example, from Advance Authorization/DFIA scheme to Drawback/DEPB scheme) or within the schemes involving same level of examination (for example from Drawback scheme to DEPB scheme or vice versa) irrespective of whether the benefit of an export promotion scheme claimed by the exporter was denied to him by DGFT/DOC or Customs due to any dispute or not. The conversion may be permitted in accordance with the provisions of section 149 of the Customs Act, 1962 on a case to case basis on merits provided the Commissioner of Customs is satisfied, on the basis of documentary evidence which was in existence at the time the goods were exported, that the goods were eligible for the export promotion scheme to which conversion has been requested". Further, said circular also categorically stipulates, "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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> 4.4 I find that the exporter has made the present request for conversion of Shipping Bills on 11.10.2018, which is not within the prescribed period of three month from the date of LEO. The Let Export Orders in the impugned shipping bills are between 04.07.2006 to 16.02.2013. thus there has been considerable delay in making this request, and no valid grounds have been ascribed for the same. Moreover I also find that there is no provisions for condoning the delay filing such request. Hence the request is untenable.
>
> 4.5 I find that circular No. 36/2010-Customs dated 23.09.2010 explicitly highlights that free shipping bills (Shipping bills not filed under any export promotion scheme) are subject to 'nil' examination norms; and therefore, conversion of free shipping bills to EP scheme shipping bills (advance authorization, DFIA, DEPB, reward schemes etc.) should not be allowed."

Being aggrieved the Appellant has filed the present appeal.

3. We have heard learned Advocate, Shri B.K. Singh on behalf of the Appellant and Shri Rakesh Kumar, learned Authorized Representative on behalf of Respondent.

4. Shri Singh took us through the documents submitted by appellant along with the appeal and at the time of hearing. His main contentions were as under:

(i) **Referring to the provisions of Section 149 of the Customs Act, 1962, he argued that** the Section gives power to the Proper Officer to allow any document presented before the Custom House to be amended by the importer/exporter subject to the provisions of Section 30 and 41 of the Customs Act, 1962 (for short the Act). The Commissioner, being proper officer, had power to allow amendment of any document by the person who presented the document. Normally, the Bill of Entry or Shipping Bill cannot be amended after the goods have been cleared for import/deposited in the warehouse or a Let Export Order has been given in respect of export goods. However, the Section has one exception by way of proviso to the Section, to the effect that even after clearance of goods under home consumption/warehousing in the case of imported goods and even after giving an order for export goods have been exported, the amendment can be allowed if it is sought on the basis of documents, which were in existence at the time when goods were cleared, deposited in the warehouse or exported, as the case may be. He further submitted that there was no time limit for applying for the amendment of the Shipping Bills. He further submitted that, in any case, the appellant could not have requested for amendment before the completion of the export which continued from 2006 to 2013. He also submitted that as the act does not prescribe for any time limit under section 149 of the Act and the CBEC (now CBIC) cannot fix a time limit for filing an application for amendment of any document as referred to in Section 149 ibid. He relied upon the following decisions for the proposition that there was no time limit for filing of application for amendment in the Shipping Bill or Bill of Entry.

(a) Commissioner of Customs (Export) Mumbai Vs PEETEE Coach Builders (p) Ltd. reported in 2018 (363) ELT 176 (Tri.-Mum) (Para 5)

(b) Pratibha Pipes & Structural (P) Ltd. Vs Commr. Of Customs (Exp), Mumbai reported in 2014 (314) ELT 161 (Tri.-Mumbai) (Para 3, 4 and 5)

(c) Pasha International vs CC Tuticorin reported in 2019 (365) ELT 669 (Mad.). The Hon'ble Madras High Court held that even if the documents to be amended could not be retrieved for amendment as those were filed electronically, it will be sufficient if the Commissioner issues a certificate certifying that the Shipping Bills as mentioned in his Order were indeed eligible for benefit of the scheme as claimed.

(d) Saurabh Overseas Traders Vs CC, Cochin reported in 2017 (356) ELT 463 (Tri.-Bang). It was held in Para 4 that amendment could be allowed based on the documents which were in existence at the time of filing of the Shipping Bills.

(e) Man Industries (india) Ltd. Vs CC (EP), Mumbai reported in 2006 (202) ELT 433 (Tri.-Mumbai) (Para 2.1

& 2.2). This Order has been approved by the Hon'ble Mumbai High Court as reported in **2007 (216) ELT 15 (Bom)**

(ii) Learned advocate pleaded that, the aforementioned decisions clearly indicate that there was no time limit for amendment of the Shipping Bills but that can be done only when the amendment is sought for based on documents which were in existence at the time of filing the Shipping Bills.

(iii) The learned advocate produced before us the EPCG License for import of the machinery in question. He has also produced the installation certificate which shows that the Machine was installed in the Factory, whose name appeared in the Shipping Bills, Invoices and the AREs 1 accepted by the jurisdictional Central Excise Officer. He pleaded that, all these documents, were in existence at the time of filing the Shipping Bills. In fact, those were supporting documents of the Shipping Bills.

(iv) Pointing out at page 24b of the appeal Paper Book, ld. advocate submitted that in similar Circumstances, the Dy. Commissioner of Customs (NHAV SHEVA) had issued a Certificate of Amendment in respect of hipping Bills filed between 12/01/2005 to 24/11/2005 on 14/12/2016. Which clearly shows that no time limit is prescribed under section 149 of the Customs Act.

(v) Explaining the scheme of Export Import Policy, ld. Advocate explained that in the Foreign Trade Policy, while the duty exemption and remission schemes are covered under Chapter(IV) of the Foreign Trade Policy (which includes import under Advance Authorization, Duty Free Import Authorization, Duty Entitlement Passbook), but the EPCG scheme is instead covered under Chapter V of the Foreign Trade Policy. Thus, EPCG scheme cannot be equated with the other incentive schemes which refer to imported raw material and where export goods have to be examined whether they are manufactured out of the imported raw material. On the other hand, under the EPCG scheme, the only examination to be done is as to whether the invoice for export goods was issued from the factory at which the imported machinery was installed.

(vi) Ld. Advocate further stated that although in the shipping bills, the Appellant has declared that they are not claiming any export incentive, the said declaration is limited to export incentive such as DEPB/Advance Licence, but does not include goods to be exported under EPCG scheme as explained earlier. Further, he stated that the only reason for the amendment being sought is to enable the Appellant to obtain the Export Obligation Discharge Certificate (EODC) from the DGFT. This fact has also been clearly mentioned in the original application dated 18.08.2018 filed by the Appellant before the Dy/Asst. Commissioner of Customs, ICD, Tughlakabad.

Ld. Advocate also referred to the other grounds which the appellant had taken in the grounds of appeal.

5. The learned Authorized Representative relied on CBEC circular no. 36/2010-Customs dated 23.09.2010 which provides that:

> " The Commissioner may allow conversion of shipping bills from schemes involving more rigorous examination to schemes involving less rigorous examination (for example, from Advance Authorization/DFIA scheme to Drawback/DEPB scheme) or within the schemes involving same level of examination (for example from Drawback scheme to DEPB scheme or vice versa) irrespective of whether the benefit of an export promotion scheme claimed by the exporter was denied to him by DGFT/DOC or Customs due to any dispute or not."

It is his submission that the Commissioner is bound by the Circular issued by the CBEC. He also stated that the documents referred to by the appellant for proving that the exported goods were in fact produced by the imported machine were not sufficient to support the claim of the appellant.

6. We have considered the rival contentions and perused in the appeal paper book as argued at the time of hearing. First of all, we will address the contention of the Respondent Department that the departmental officers are bound by the Circular issued by the Department. The sanctity of such Circulars was examined by the Hon'ble Supreme Court in the case of **Bengal Iron Corporation Versus Commercial Tax Officer reported in 1993 (66) ELT 13 (Supreme Court).** We gainfully reproduce the relevant Paragraph of the said judgments of the Hon'ble Apex Court:

> **" 18.** So far as clarifications/circulars issued by the Central Government and/or State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the Courts. It is true that those clarifications and circulars were communicated to the concerned dealers but even so nothing prevents the State from recovering the tax, if in truth such tax was leviable according to law. There can be no estoppel against the statute. The understanding of the Government, whether in favour or against the assessee, is

> nothing more than its understanding and opinion. It is doubtful whether such clarifications and circulars bind the quasi-judicial functioning of the authorities under the Act. While acting in quasi-judicial capacity, they are bound by law and not by any administrative instructions, opinions, clarifications or circulars. Law is what is declared by this Court and the High Court - to wit, it is for this Court and the High Court to declare what does a particular provision of statute say, and not for the executive. Of course, the Parliament/Legislature never speaks or explains what does a provision enacted by it mean. (See Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Ltd. and Another - A.I.R. 1983 SC 239)."

7. We also find that identical issue has come up for consideration before the coordinate bench of this Tribunal in case of **M/s Indian Oil Corporation Limited vs. Commissioner of Customs AIR [2019-TIOL-3426-CESTAT-MAD]**

> "5. The issue is with regard to the rejection of the request for conversion from Advance Authorization Scheme to duty drawback scheme. The dispute relates to the disallowance of conversion of 2178 shipping bills only. The Commissioner has applied the Board Circular to hold that since the let export order is issued beyond the time limit of three months, the request for conversion of the shipping bill cannot be granted. During the relevant period there was no provision under the Customs Act, 1962 prescribing the time limit for conversion of the shipping bill. Further, in the case of Global Calcium Pvt. Ltd. (supra), the request of the assessee was for conversion of the free shipping bills to drawback shipping bills. The Tribunal after considering the submissions observed that the time limit specified in the above circular cannot be applied to deny the request for conversion of the free shipping bills to drawback shipping bills. In the present case, it is for conversion from Advance Authorization scheme to duty drawback scheme. The decision of the Tribunal though appealed by the assessee before the Hon'ble High Court as the assessee entertained a view that the adjudicating authority may subject to the claim of conversion to the Board circular dated 23.9.2010, the Hon'ble High Court observed in para 2 that the Tribunal having clearly held that the time limit provision will not apply, there is no scope for interfering the order. Thus, it is abundantly clear from the said decision of the Tribunal as well as the judgment of the Hon'ble High Court, that the request for conversion of the shipping bill cannot be disallowed by

> pressing into the application of time limit prescribed by the Board in its circular dated 23.9.2010."

8. After considering the averments made by the learned Counsel also the Departmental Representative, and the precedent decisions of this Tribunal. We are of the considered opinion that the impugned order cannot be sustained and is being set aside. The appeal is allowed by way of remand to the original adjudicating authority for conversion of free shipping bills to EPCG shipping bill. The Appellant is directed to provide all the documents so as to prove their claim for exports made under free shipping bill required for conversion thereof to DEEC scheme as the customs have accepted that their documents are not available for carrying out such exercise. This exercise should be completed within three months from the receipt of this order.

(Order pronounced on **03.01.2020)**

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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