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

REGIONAL BENCH – COURT NO.2

Customs Appeal No.70773 of 2013

(Arising out of Order bearing F.No.S60(OE)Misc.-37/2013 A Gr.7 dated 11.04.2013 passed by Commissioner of Customs (Port), Kolkata)

M/s Shockley Hall Electronics Pvt. Ltd.
Plot No.DN-3, Sector V, Salt Lake City, Kolkata-700091

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Respondent

APPERANCE :

None for the Appellant
Shri M.P.Toppo, Authorized Representative for the Appellant

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO……75400/2023

DATE OF HEARING : 11.05.2023
DATE OF DECISION : 11.05.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein their application for conversion of DEEC cum Drawback Shilling Bills to Drawback Shipping Bills, was denied.

2. The facts of the case are that the appellant filed four shipping bills for export under DEEC cum Drawback Shilling Bills during the period from 11.07.2012 to 22.08.2012. On 11.02.2013, the appellant moved an application for conversion of DEEC cum Drawback Shilling Bills to Drawback Shipping Bills, which was denied by relying on the Board's Circular No.36/2010-Cus dated 23.09.2010 on the ground that the request of conversion is required to be made within three months from

the date of Let Export Order and this request for conversion has been filed beyond the said period. Against the said order, the appellant is before us.

3. Heard the parties and gone through the reports.

4. We find that the said issue has been settled by this Tribunal in the case of Carboline India Pvt. Ltd. Vs. Commissioner of Customs, Chennai IV reported in 2022 (381) ELT 397 (Tri.-Chennai) wherein it has been held that Section 149 of the Customs Act, 1962 deals with the situation for conversion or amendment of shipping bills from one Scheme to another and there is no time limit prescribed. The CBEC Circular shall not prevail the Customs Act.

5. In the said case this Tribunal has observed as under :

> "***12.*** *When the statute does not prescribe any time limit for filing an application for conversion of a shipping bill, the department cannot rely upon a circular to frustrate the provisions contained in the statute. When there is a conflict, the statute will definitely prevail over the Board circular. The issue whether the time limit prescribed as per the Board circular will apply was considered by this Tribunal in the case of Autotech Industries (India) Pvt. Ltd. reported in 2021 (11) TMI 518-CESTAT Chennai = 2022 (380) E.L.T. 364 (Tri. - Chennai) and held that time limit of three months prescribed in the above Board circular cannot be applied to reject the request of conversion/amendment of shipping bills. The Tribunal in the case of Contemporary Leather Pvt. Ltd. v. CC, Chennai reported in 2021 (12) TMI 393-CESTAT Chennai followed the decision of the Hon'ble jurisdictional High Court to hold that the Board circular cannot be pressed into application to deny the request for conversion of shipping bills."*

6. As there is no time limit prescribed under Section 149 of the Customs Act, 1962, therefore, the impugned Circular cannot be relied upon to frustrate the appellant.

7. In view of this, we do not find any merit in the impugned order and accordingly, the same is set aside.

8. The appeal filed by the appellant is allowed with consequential relief, if any.

(Dictated and pronounced in the open court.)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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