IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75630 of 2023

(Arising out of Order-in-Original No. DIN-20230176NM000011101A dated 31.01.2023 passed by the Commissioner of Customs (Preventive) Kolkata 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001)

M/s. Siemens Ltd. : **Appellant**
Birla Aurora, Level 21,
Plot No. 1080, Dr. Annie Besant Road
Worli, Mumbai-400030

VERSUS

Commissioner of Customs (Preventive) : **Respondent**
3rd Floor, Customs House, 15/1,
Strand Road, Kolkata-700001

APPEARANCE:

Shri Anil Balani, Advocate for the Appellant

Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76731/ 2024

DATE OF HEARING / DECISION: 23.08.2024

ORDER : [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order, which is extracted hereinbelow:

> This is with reference to your letter dated 11.10.2022 wherein permission/ approval was sought for Transfer of Scheme Code from Drawback to Advance License in respect of 17 Shipping Bills in terms of Section 149 of Customs Act, 1962.
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> 2. In this connection, this is to intimate that the claim submitted by you vide letter dated 11.10.2022 is barred by limitation period as prescribed in Para 3 (a) of Circular No.30/2010-Customs dated 23.09.2010, hence not tenable.
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> 3. This issues with the approval of Competent Authority.

2. The facts of the case are that the appellant filed 17 shipping bills for export of transformers to M/s. Dhaka Electric Supply Company Ltd. (DESCO), Bangladesh under drawback scheme during the period 22.04.2018 to 06.02.2019. Later on, the appellant realized that there was a mistake and they filed an application for amendment under Section 149 of the Customs Act, 1962 for conversion of shipping bills from drawback scheme of export to advance licence scheme. The said request has been rejected by the adjudicating authority vide letter dated 30.01.2023 holding that the request of transfer of shipping bills from drawback to advance licence dated 11.10.2022 is barred by limitation in terms of para 3(a) of Circular No. 30/2010-Cus. Dated 23.09.2010. Therefore, the request of the appellant was rejected.

3. Against the said order, the appellant is before us.

4. Heard the parties and perused the records.

5. We find that the Hon'ble Gujarat High Court in the case of *Principal Commr. Of Customs, Mundra Versus LYKIS LTD. 2021(377) E.L.T. 646 (Guj.)* has examined the issue and held that there is no time-limit prescribed under Section 149 of the Customs Act, 1962 and therefore, conversion of shipping bills from drawback scheme to DFIA scheme cannot be rejected on the ground of time bar.

5.1. We have gone through the said order wherein the Hon'ble High Court has observed as under: -

> "4. It appears from the materials on record that the respondents herein preferred an application addressed to the Principal Commissioner Customs, Mundra for conversion of 204 shipping bills from Drawback Scheme to Duty Free Import Authorization (DFIA) Scheme. The request came to be rejected by the Principal Commissioner Customs on the ground that the same was time barred. The Principal Commissioner Customs took the view that such a request was made for conversion after three months from the date of the Let Expert Order (LEO)

and if such a request is accepted, the same would be contrary to the Circular No. 36/2010-Cus, dated 23-9-2010.

5. In appeal by the respondents before the Tribunal, the Tribunal look notice of Section 149 of the Customs Act, 1962. The Tribunal noticed that no time limit has been prescribed under the statutory provision of Section 149 of the Act. In such circumstances, the Circular cannot prescribe particular time period, which is otherwise not provided in statute. The Tribunal while allowing the appeal of the respondents herein observed as under:-

> "4. We have heard both the sides and perused the records. We find that the appellant has sought for the of conversion of Drawback shipping bills to DFIA shipping bills, in terms of Section 149 of Customs Act, 1962 which reads as under:-
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> "149. Amendment of documents. Save as otherwise provided in Sections 30 and 41, the proper officer may, in discretion, authorize any document, after. It has been presented in the customs house to be amended his Provided that no amendment of a bill of entry or shipping bill or bill of export shall be so authorized 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 cleared, deposited or exported, as the case may be."
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> 4.1 From the above Section, it is clear that no time limit is the time of the goods were prescribed. We find that the request of the appellant for conversion was rejected on the sole ground of limitation as prescribed under Board Circular No. 36/2010-Cus. We find that since the time limit has not been pre escribed under the Act, the same cannot be fixed by way of the circular. Therefore, if at all there is a time limit by way of circular, it is only procedural requirement. Therefore, on this ground of limitation, application could not have been rejected, particularly when circular prescribing time limit is without authority of any statutory provision, Act and rules supported.

4.2 It is settled law that the time limit prescribed by the Board Circular is not binding as same is not statutory provision in terms of section 49 of the Customs Act, 1962. We further

> find that in the identical case of Bectors Food Specialities Ltd. (Supra) this Tribunal, Chandigarh after considering the Hon'ble Gujarat High Court judgment in the case of Anil Sharma v. Union of India 2017 (350) ELT. 322 (Guj) held that the assessee was entitled for conversion of shipping bill from DBK Scheme to DFIA Scheme. We after going through the said decision find that the circumstances and reason for delay in fling request for conversion was almost identical in the present case. in the case cited of co-ordinate Bench of this Tribunal Mumbai dealing with the identical issue in the case of Parley Product Pvt. Ltd. (supra) on the fact that the conversion of drawback shipping bill to DFIA shipping better 2 years wherein it was held that no time limit provided under section 149 of Customs Act, 1962
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> 5. As per our above discussion, we are of the view that the appellant is legally entitled for conversion Drawback Shipping Bills to DFIA Shipping Bills in respect of 184 Shipping Bills as per the list provided in appeal along with the appeal memo The respondent Commissioner is directed to Shipping necessary certificate enabling appellant to get the DFIA licenses revalidated."
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> 6. We are of the view that no error, not to speak of any error of law could be said to have been committed by the Tribunal in passing the impugned order. Section 149 is applicable at the relevant point of time in fact, the questions as proposed by the Revenue cannot be termed as substantial applicable at thaw as the issue is squarely covered by a decision of this Court in the case of *inter-Continental (India) v. Union of India 2003 (154) ELT. 37 and the same is also upheld by the Supreme Court, 2008 SCC Online SC 22 2008 (226) E.LT. 16 (S.C.).*

6. As the issue has already been decided that if an amended in the shipping bill is filed under Section 149 of the Customs Act, 1962, there is no time-limit prescribed under the Act for conversion of shipping bill from one scheme to another scheme.

7. In view of that, we hold that the application for conversion of shipping bills from drawback to advance licence was filed by the appellant in time.

8. In that view, we set aside the impugned order and remand the matter to the adjudicating authority to

consider the request for conversion from drawback scheme to advance licence, on merit.

9. The appeal is disposed of on the above terms.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP