

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76675 of 2017

(Arising out of Order-in-Original No. 04-Cus/CC/Conv. Of SB/17-18 dated 16.06.2017 passed by the Commissioner of Customs Central Revenue Building, 5th Floor, Birchand Patel Path Patna (Bihar)800001)

M/s. Texmaco Rail And Engineering Limited : Appellant
Belgharia, Kolkata-700056

VERSUS

Commissioner of Customs (Preventive), Patna : Respondent
Central Revenue Building,
5th Floor, Birchand Patel Path,
Patna (Bihar)800001

APPEARANCE:

Shri Bhaskar Thakkar, CA, Ms. Sneha Nandi, Advocate,
Shri Debanjan Ranu, Advocate for the Appellant

Shri F. Ahmed, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76862/2025

DATE OF HEARING / DECISION: 19.06.2025

Order: [PER SHRI K. ANPAZHAKAN

Texmaco Rail & Engineering Limited (herein after referred as Appellant), are engaged in heavy engineering and steel foundry. The appellant had entered into a contract with Upper Tamakoshi Hydropower Limited, Nepal, to supply hydro-mechanical items. The Appellant obtained Advance Authorization No. 0210196856 which was later on amended on 25.05.2016 for duty-free import of materials.

1.1. During the period from November 2013 to April 2015, the appellant made exports to Nepal through Raxaul LCS, vide 51 Shipping Bills, under the Drawback scheme, despite the availability of an Advance Authorization license. The Appellant applied to the Commissioner of Customs, Patna, for conversion of those shipping bills from Drawback Scheme to Advance authorization Scheme, on 14.06.2016. The Ld. Commissioner rejected the conversion application for the 51 shipping bills vide Order No. 04-Cus/CC/Conv. Of SB/17-18 dated 16.06.2017. Aggrieved against the rejection of their request for conversion, the appellant has filed this appeal.

2. The appellant submits that in the impugned order, the Ld. Commissioner has denied the application to convert shipping bills Advance Authorization Scheme, by citing the Circular no. 36/2010 dated 23.09.2010. As per the Circular, any applications for conversion of the shipping bill from one scheme to another requires to be filed within three months from the date of Let Export Order. However, in this case, the applications have been filed beyond the three months period prescribed in the said Circular.

2.1. With respect to the ground that the applications have been filed beyond the three months period prescribed in the Circular, the appellant submitted that the Circular No. 36/2010 dated 23.09.2010 cannot override the statutory provisions as laid down in Section 149 of the Customs Act, 1962 which prescribes no time limit for filing applications to convert the shipping bills. Section 149 of the Customs Act, 1962 only requires

documentary evidence available at the time of export to support such conversions. Further, the appellant submitted that the three-month time limit specified in the said circular has been struck down by various High Courts as ultra vires to the Constitution of India and the parent Act. The said judgements have been upheld by the Hon'ble Supreme Court also.

2.2. In support of this claim, the appellant relied on the decisions of the Hon'ble Apex Court in the following cases:

(i) M/s. Mahalaxmi Rubtech Ltd. Vs Union of India [Special Civil Application No. 21636 Of 2019] (Gujarat HC). This decision has been affirmed by Supreme Court [(2023) 6 Centax 154 (SC)] enclosed as Annexure- B.

ii) Pinnacle Life Science Pvt. Ltd Vs Union of India [(2024) 16 Centax 340 (Bom.)]

2.2. Accordingly, the appellant submits that the applications filed by them cannot be rejected on the ground of delay in filing the applications.

3. The appellant further submits that the Ld. Commissioner has rejected the application for shipping bill conversion due to the CHA's error in filing the said shipping bills under the drawback scheme and based on the restriction in Circular 36/2010- Customs dated 23.09.2010 against converting from a less to a more rigorous examination scheme. However, the Appellant submits that they have fully complied with Section 149 of the Customs Act, 1962, by submitting comprehensive export documentation, including the export obligation contract, advance license, ARE-1 form (Part B, duly countersigned by the customs

officer who permitted the export and recorded the shipping bill details), export invoices, and the shipping bills themselves. This documentation shows that the exports fulfilled the obligations under the valid advance authorization license obtained at the time of export. The CHA's inadvertent filing error cannot negate this documents evidencing fulfilment of the conditions mentioned in Section 149 of Customs Act, 1962.

3.1. Further, the Ld. Commissioner's reliance on Circular 36/2010-Customs dated 23.09.2010 is misplaced, as Section 149 of the Customs Act, 1962, imposes no restriction on such conversions. It has been consistently held by various judicial forums, including Tribunals and High Courts, that the conversion of a shipping bill under the duty drawback scheme to one under the Advance License scheme is permissible under the governing provisions. Importantly, such conversions have been allowed even though, in principle, they involve a transition from a less rigorous to a more rigorous scheme. Despite this upward shift in regulatory rigor, the conversion has been permitted, recognizing the objective of promoting legitimate exports and ensuring procedural fairness. Therefore, the appellant submits that the rejection of the conversion request in the present case is not in line with the consistent legal position and hence it merits reconsideration. Also, it is a settled legal principle that substantial benefits should not be denied on account of mere procedural lapses, especially when all core conditions of the scheme are fulfilled. In the present case, the Appellant held a valid Advance Authorization at the time of export, complied with all necessary requirements. Also, the appellant claimed

that they did not avail any benefit under the Duty Drawback Scheme. There was no dual benefit claimed and no loss to the revenue. This can be verified by the Customs authorities. They agreed to pay back the drawback benefit, if any, availed along with interest. Accordingly, the appellant prayed that the conversion of the shipping bills to the Advance Authorization Scheme may be allowed in accordance with law.

4. The Ld. A.R. reiterated the findings in the impugned order. He submits that the Circular categorically states that the application for conversion from one scheme to another needs to be filed within three months from the Let export Order. As there was a delay in filing the applications for the conversions, he submits that the adjudicating authority has rightly denied the conversion.

5. Heard both sides and perused the appeal documents.

6. We observe that the Appellant has applied to the Commissioner of Customs, Patna, for conversion of 51 shipping bills filed by them from Drawback Scheme to Advance authorization Scheme. We observe that Section 149 of the Customs Act, 1962 allows conversion of shipping bills from one scheme to another. For ready reference, the section 149 is reproduced below:-

149. Amendment of documents.

- Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise 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.

6.1. From the above we find that the section 149 does not prescribe any time limit for filing the application for conversion of the shipping bill from one scheme to another. The time limit of three months from the date of Let Export Order is prescribed in the Circular no. 36/2010 dated 23.09.2010. We agree with the submission of the appellant that a Circular cannot override the statutory provision laid down in section 149 of the Customs Act, 1962 which prescribes no time limit for filing the applications to convert the shipping bills. Section 149 of the Customs Act, 1962 only requires documentary evidence available at the time of export to support such conversions. Further, we find that the three-month time limit specified in the said circular has been struck down by various High Courts as ultra vires to the Constitution of India and the parent Act. In support of this claim, we rely upon the decisions of the Hon'ble Gujarat High Court in the case of M/s. Mahalaxmi Rubtech Ltd. Vs Union of India [Special Civil Application No. 21636 Of 2019] (Gujarat HC), wherein the Hon'ble Gujarat High Court has observed as under:-

32. In view of the aforesaid discussion, we hold that the impugned circular to the extent of para 3(a) is ultra vires Articles 14 and 19(1)(g) of the Constitution of India as also ultra vires Section 149 of the Customs Act, 1962.

6.2. We find that the above decision of the Hon'ble Gujarat High Court has been affirmed by Supreme Court [(2023) 6 Centax 154 (SC)].

6.3. We find that the same view has been taken by the Hon'ble Bombay High Court also in the case of *Pinnacle Life Science Pvt. Ltd Vs Union of India* [(2024) 16 Centax 340 (Bom)], wherein it has been held as under:

6. In our view such a circular could not have been issued by the Central Board of Excise & Custom (CBEC) providing for three months time period to make a request for amending the shipping bills. This is because in Section 149 of the Act no time period has been prescribed and if in any specific statutory provision of law, no time period has been prescribed, then such circular could not have been issued by the CBEC. As rightly submitted by Mr. Namboodiri where the legislature wanted to prescribe any time limit for taking action like Section 128, 129 and 130 etc., of the Act, such time limit has been specifically laid down in the relevant provisions of the Act. When no time limit for making a request for amendment of any document is specified under section 149 of the Act, it is clear that the legislature has not thought fit to restrict the scope of this provision for the amendment of

the documents in terms of the time limit for making a formal request for such amendment. Moreover, Section 149 of the Act or any other provision of the Act does not confer any power or jurisdiction over the Board for laying down any time limit for operating this provision in respect of the amendment of documents. Therefore in our view the time limit of three months laid down vide paragraph no. 3(a) of the circular is especially illegal and without jurisdiction. We find support for this view in a judgment of the Hon'ble Gujarat High Court at Ahmedabad in the matter of Messrs Mahalaxmi Rubtech Ltd. v. Union of India [Special Civil Application No. 21636 of 2019, dated 2-3-2021].

6.4. We also observe that it is a settled legal principle that substantial benefits should not be denied on account of mere procedural lapses, especially when all core conditions of the scheme are fulfilled. In the present case, the Appellant held a valid Advance Authorization at the time of export, complied with all necessary requirements. The appellant claimed that they did not avail any benefit under the Duty Drawback Scheme and hence there was no dual benefit claimed and no loss to the revenue. They agreed to pay back the drawback benefit, if any, availed along with interest.

6.5. Thus, by relying on the decisions cited supra. we hold that the applications filed by the appellant for conversion of the 51 shipping bills from Drawback Scheme to Advance authorization Scheme cannot be rejected on the ground that the appellant has filed the applications for conversion beyond the three

months period prescribed in the Circular. Accordingly, we hold that the conversion of the shipping bills under the Advance Authorization Scheme is allowed subject to verification of availment of drawback on the said shipping bills.

6.5. We observe that the appellant has submitted various documents such as, the export obligation contract, advance license, ARE-1 form (Part B, duly countersigned by the customs officer who permitted the export and recorded the shipping bill details), export invoices, and the shipping bills themselves. These documentation clearly shows that the exports fulfilled the obligations under the valid advance authorization license obtained at the time of export. Thus, we hold that the appellant has fulfilled all the conditions stipulated section 149 of the Customs Act, 1962 for conversion of those 51 shipping bills from Drawback Scheme to Advance authorization Scheme. Thus, we hold that the rejection of the applications for conversion of shipping bills by the Ld Commissioner is legally not in sustainable and accordingly, we set aside the same. Accordingly, we hold that the conversion of the shipping bills under the Advance Authorization Scheme is allowed subject to verification of non-availment of drawback on the said shipping bills.

7. In view of the above findings, we pass the following order:

(i) We hold that the rejection of the applications for conversion of shipping bills by the Ld Commissioner is legally not in sustainable and accordingly, we set aside the same.

(ii) We hold that the conversion of the shipping bills under the Advance Authorization Scheme is allowed subject to verification of non-availment of drawback on the said shipping bills. The appellant is liable to pay back the drawback benefit, if any, availed on the above said 51 shipping bills, along with interest.

(iii) The appeal filed by the appellant is remanded back to the Ld Commissioner for the limited purpose of verification of availment of drawback on these shipping bills.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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