IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. C/1216/2008

(Arising out Order-in-Original No. 107/2008 dated 06.10.2008 passed by the Commissioner of Customs (Export), JNCH,Nhava Sheva)

For approval and signature:
Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Dr. Suvendu Kumar Pati, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. PLG Power Ltd. — Appellant

Vs.

Commissioner of Customs (Export), Nhava Sheva — Respondent

Appearance:

None for the appellant
Shri Roopam Kapoor, Principal Commissioner (AR) for the respondent

CORAM:
Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 24-01-2019
Date of decision : 24-01-2019

O R D E R No: **A/85232 / 2019**

Per: C J Mathew

The present appeal of M/s PLG Power Ltd against order-in-original no. 107/2008 dated 6th October 2008 pertains to the denial of their request for conversion of shipping bills filed under the 'Duty Exemption Entitlement Certificate' (DEEC) scheme in the Foreign Trade Policy notified under Foreign Trade (Development and Regulation) Act, 1992, to shipping bills entitled to claim for drawback.

2. None appeared for the appellant. We have heard Learned Authorised Representative. Considering the narrow compass of the dispute and age of the appeal, we take up the matter for disposal even in the absence of representative of the appellant.

3. The issue, in brief, is the entitlement of an exporter for conversion of shipping bills for goods exported as obligation under one scheme to that which entitlement for an entirely different privilege. It may be noted that the 'Duty Exemption Entitlement Certificate' (DEEC) scheme is an initiative for promoting exports by granting exemption from duties of custom on material imported for utilisation in goods that are to be exported. On the other hand,

'drawback' is a statutory mechanism under Customs Act, 1962, for reimbursing duties borne by the exporter in the production of goods that are sent out of the country tracing its antecedent to the principle the cost of goods that are sent to another customs jurisdiction is not burdened with the duties that devolve on clearance within the country.

4. Though the condition and the obligation, even the percentage, are distinct,

> ***'SECTION 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.'*

of the Customs Act, 1962 provides for such concession. In pursuance thereof, Central Board of Excise and Customs has issued circulars no. 6/2003-Cus dated 28th January 2003 and no. 4/2004-Cus dated 16th January 2004 to govern the exercise of such discretion in the interest of consistency and safeguards.

5. Reliance is placed by the Learned Authorised Representative on the decision of the Tribunal in *Kaytee International v. Commissioner of Central Excise (EP), Mumbai [2008 (224) ELT 271 (Tri-Mumbai), J.S. Garments v. Commissioner of Central Excise (EP) [2008 (232) ELT 558 (Tri-Del)]* and the decision of the Hon'ble High Court of Madras in *Commissioner of Customs (Seaport-Export), Chennai v. Suzlon Energy Ltd. [2013-TIOL-1195-HC-MAD-CUS]*. The general principle underlying all these decisions, as well as the circulars, is that the authority concerned must be satisfied that the conditions contingent upon which the privilege is claimable at the time of export should have been fulfilled in entirety at the time of export and this is to be evidenced by the record of examination in the shipping bills. The appellant in this case has been unable to do so as clearly noted by the competent authority in the impugned order.

6. Accordingly, we find no reason to interfere with the denial of conversion ordered by the adjudicating authority. The appeal is, therefore, dismissed.

(Operative part pronounced in Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)