CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85409 OF 2022

[Arising out of Order-in-Original No: S/6-Gen-03/2823/19-20 CEAC dated 30th December 2021 passed by the Commissioner of Customs (NS-II), Nhava Sheva.]

Mediquip Export House Pvt Ltd
Gold Filled Plaza, Office No. 35,
Sion-Bandra Link Road, Dharavi, Mumbai 400017 ...***Appellant***

versus

Commissioner of Customs (NS-II)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad ***...Respondent***

APPEARANCE:

Shri Lilesh Sawant, Chartered Accountant for the appellant

Shri Ashwini Kumar, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/ 85267/2023

DATE OF HEARING: 05/01/2023
DATE OF DECISION: 05/01/2023

PER: S.K. MOHANTY

Heard both sides and perused the records.

2. In this case, the appellant has filed this appeal against the communication dated 30th December 2021 of the Assistant Commissioner of Customs, NS-II, wherein the decision of the Commissioner of Customs was conveyed, which was to the effect

that the request made by the appellant for amendment of the Shipping Bill No. 6755129 dated 06/09/2019 has been rejected. The Assistant Commissioner has specifically stated that the request made by the appellant has been turned down on the ground that the request letter has not been made within three months from the date of 'Let Export Order (LEO)', as provided in the Board's Circular No. 36/2010 dated 23/09/2010.

3. Learned Advocate appearing for the appellant has relied upon the judgment dated 11th July 2022 of the Hon'ble High Court of Bombay, passed in Writ Petition No. 1198 of 2022 in the case of *Pinnacle Life Science Pvt. Ltd. v. Union of India & Ors* and stated that the issue arising out of the present dispute is no more open for any debate.

4. On perusal of the judgement dated 11th July 2022, we find that the Hon'ble High Court of Bombay, have categorically observed that time limit of three months laid down vide paragraph no. 3(a) of the circular is contrary to the statutory provisions and as such, the same has been issued without jurisdiction. The relevant paragraph of the judgement is extracted below

> *'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. vs. Union of India [Special Civil Application No. 21636 of 2019 dated 2nd March 20211]'.

5. In view of the above settled position of law, we find substance in the appeal filed by the appellant and accordingly, allow the same by setting aside the communication dated 30th December 2021 issued by the officer of customs.

6. Appeal is thus disposed off in the above terms.

(Dictated and Pronounced in Open Court)

(C J Mathew)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

**/as*