CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Miscellaneous Application No. 85247 Of 2023

(on behalf of Appellant)

in

Customs Appeal No. 87042 Of 2022

(Arising out of Order-in-Original No. COMM/RK/99/2022-23/MCD(X)/ACC dated 29.06.2022 passed by Commissioner of Customs (Exports), ACC. Mumbai)

Mylan Laboratories Ltd. .....**Appellant**
PlotNo. 564/A/22 Road No. 92 Jubilee Hills,
Hyderabad Telangana 500 096.

VERSUS

Commissioner of Customs (Export)-Mumbai(Air Cargo Export) .....**Respondent**
Air Cargo Complex, Sahar Andheri (E),
Mumbai, Maharashtra

Appearance:

Shri Naresh Thakkar along with Ms Geenita Bodani, Advocate for the Appellant
Shri S. K. Hatangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85959/2023

Date of Hearing: 02.06.2023
Date of Decision: 02.06.2023

PER : S. K. MOHANTY

Briefly stated, the facts of the case are that the appellant M/s. Mylan Laboratories Ltd., had filed the application under Section 149 of the Customs Act, 1962 for amendment of 422 numbers of Shipping Bills filed during the period between 01.04.2015 to 31.08.2015 in respect of the exports made thereunder. The amendment applications filed by the appellants were rejected by the Learned Commissioner of Customs (Export), Mumbai vide the impugned order dated 29.06.2022. The reason assigned by the original authority for rejection of the amendment applications was that the conditions laid down under para 3(a) of the Circular No. 36/2010-Cus. dated 23.09.2010 have not been complied with by the appellants. Further, he has also held that the MEIS benefit in respect of the subject Shipping Bills claimed before the DGFT was also rejected by the authorities. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

2. The Learned Advocate appearing for the appellants submitted that in respect of amendment of the Shipping Bills, the appellant had all the requisite documents at the time of exportation of the goods and filing of the relevant Shipping Bills. Thus, he submitted that the substantive right for claim of the benefit of under MEIS cannot be whittled down for non-compliance of the procedural requirements contained in the CBEC Circular No. 36/2010-Cus. dated 23.09.2010. Further, he has relied upon the judgment of Hon'ble Gujarat High Court in the case of M/s Mahalaxmi Rubtech Ltd. vs. Union of India - 2021(3)TMI 240- Gujarat High Court and the judgment of Hon'ble Bombay High Court in case of Pinnacle Life Science Pvt. Ltd vs. Union Of India – 2022(7) TMI 725 – Bombay High Court to state that the Circular No. 36/2010-Cus. dated 23.09.2010 have also been struck down with specific reference to para 3(a) contained therein, holding that since no specific provision exists in Section 149, providing for time limit for filing of amendment application, the Circular cannot prescribe the time limit

of three months' for filing of such application for the amendment or conversion of shipping bills from one scheme to other scheme of export, as the case may be.

3. On the other hand, Leaned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both the sides and perused the case records.

5. The issue involved in this appeal lies in a narrow compass for consideration as to whether the application filed for amendment of the Shipping Bills can be entertained in terms of the statutory provisions contained in the customs statute. The statutory provisions contained in Section 149 *ibid* during the relevant period is extracted herein below:

> ***"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 customs house to be amended:*
>
> *Provided that no amendment of a bill of entry or 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."*

On reading of the above statutory provision, it is manifestly clear that after exportation of the goods, an exporter can file the application for amendment of the Shipping Bills, subject to fulfillment of the condition that the documents required for amendment of the Shipping Bills were in existence at the time of exportation of the goods. It is not the case of Revenue that the appellant was not entitled for the benefit of MEIS Scheme as per the provisions of Foreign Trade Policy 2015-2020. Further, we also find that Section 149 *ibid* has not provided any time limit for filing of the application for amendment of the bill of entry of Shipping Bills. Thus, in the absence of any specific provisions contained in the Customs statute, the Board is not empowered to issue any circular prescribing the time limit for filing of the said application. We also find that an identical issue was dealt with by the Hon'ble Bombay High Court in the case of Pinnacle Life Science Pvt. Ltd. (Supra), wherein the Hon'ble Bombay High Court have made the following observations.

> *"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 2021".

6. In view of the position of law, as outlined by the judgments relied upon by the Learned Advocate for the appellants, we do not find any justification in allowing the contention of Revenue for not amending the Shipping Bills filed by the appellant. Therefore, by setting aside the impugned order, we allow the appeal by way of remand to the original authority with a direction to consider the application filed by the appellant under Section 149 *ibid by* following due process of law.

7. In the result, the appeal is allowed by way of remand. Since, the issue pertains to the period 2015, it is expected that the original authority should complete the de *novo* adjudication proceedings, preferably within a period of three months from the date of receipt of this order. Miscellaneous application stands disposed off.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member(Judicial)

(M. M. Parthiban)
Member (Technical)

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