CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87826 of 2022

(Arising out of Order-in-Original No. S/6-GEN-03/2536/2021-22/CEAC dated 03.03.2022 passed by the Commissioner of Customs (NS-II), Nhava Sheva)

M/s Sonia Fisheries **.... Appellant**
1773, BPT Building, Sasson Docks,
Colaba, Mumbai – 400 001

Versus

Commissioner of Customs (NS-II), Nhava Sheva .. Respondent
JNCH, Nhava Sheva, Uran, Raigad - 400707

Appearance:

Shri Mohit Raval, Advocate for the Appellant

Shri Ram Kumar, 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/86216/2023

Date of Hearing: 16.08.2023
Date of Decision: 16.08.2023

Per: S.K. Mohanty

Heard both sides and perused the records.

2. The appellant herein is engaged *inter alia,* in the business of processing and exporting different varieties of fishes and other sea foods to various overseas buyers. The appellant has claimedthat it is eligible for the benefit provided under the Merchandise Export from India Scheme (MEIS) on the exportation of goods as per the provisions under the Foreign Trade Policy 2015-2020. In context with such policy, the Directorate General of Foreign Trade (DGFT) has clarified that w.e.f. 01.06.2015, the declaration of intent for reward

on goods is required to be made by the exporter in the shipping bill filed in the EDI system. At the time of filing the shipping bills in dispute, the appellant had declared its intention to claim the MEIS reward, which is reflected under the head "A-STATUS" sub-head "5. MEIS-Y". However, due to inadvertence, while filing the details of the goods exported, the appellant had marked/ticked "N" (indicating 'No') instead of "Y" (indicating 'yes') under the head "28. REWARD BENEFIT" in the said shipping bills.Subsequently, realizing the mistake that the shipping bill has not been properly filled up, the appellant had filed an application dated 04.02.2022 before the jurisdictional Customs authorities for post export amendment to shipping bill in terms of Section 149 of the Customs Act, 1962. The application filed by the appellant was not favourably considered by the Department and the Assistant Commissioner of Customs, JNCH, Nhava Sheva has communicated the view of the jurisdictional Commissioner of Customs that such application cannot be entertained in view of the time limit prescribed by the CBIC vide Circular No. 36/2010 dated 23.09.2010. According to the Department, since the request has not been made for amendment within a period of three months from the date of Let Export Order (LEO), the amendment sought for in the post export shipping bills cannot be considered.

3. On reading of the provisions of Section 149 *ibid*, it is clear that at the time of export there was no such time limit prescribed therein for amendment to the documents etc. However, by amendment brought with effect from 01.08.2019, the said section 149 *ibid* provided for prescribing the form and manner, time limit, restrictions and conditions subject to which the amendment could be allowed. Further, the Board had prescribed the regulation in this regard viz.

the Shipping Bill (Post Export Conversion in relation to Instrument Based Scheme) Regulations, 2022 by issue of Notification No. 11/2022-Cus (N.T.) dated 22.02.2022 and brought this in force on 22.02.2022. Sub-regulation (3) *ibid*, provide for the manner and time limit for applying Import Export conversion of shipping bill. Accordingly, an application for conversion shall be filed in writing within one year from the date of order for clearance of goods for export under Section 51(1) or Section 69 *ibid* or such extended time, as provided therein.

4. In the present case, we find that the application for amendment to shipping bills was submitted to Customs Commissionerate on 04.02.2022, prior to the introduction of these regulations. Thus, we find that there was no specific time limit prescribed for submissions of the application for amendment under Section 149 *ibid*.

5. We also find that the issue arising out of the present dispute is no more *res integra* in view of the judgment by the Hon'ble Gujarat High Court in the case of *Principal Commissioner of Customs, Mundra vs. Lykis Ltd. – 2021 (377) ELT 646 (Guj.)*. In the said order, it has been held that time limit cannot be prescribed for conversion from Drawback scheme to DFIA scheme. The relevant paragraphs in the said order are extracted herein below: -

> **"5.** In appeal by the respondents before the Tribunal, the Tribunal took 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 a statute. The Tribunal while allowing the appeal of the respondents herein observed as under :-
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> > "4. We have heard both the sides and perused the records. We find that the appellant has sought for the conversion of Drawback shipping bills to DFIA shipping bills, in terms of Section 149 of Customs Act, 1962 which reads as under :-

> **“149.Amendment of documents** - Save as otherwise provided in Sections 30 and 41, the proper officer may, in his discretion, authorize 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 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 the time of the goods were cleared, deposited or exported, as the case may be.”

4.1 From the above Section, it is clear that no time limit is 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 prescribed 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) E.L.T. 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 filing 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 bill was after 2 years, wherein it was held that no time limit provided under section 149 of Customs Act, 1962.

5. As per our above discussion, we are of the view that the appellant is legally entitled for conversion of 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 issue necessary certificate enabling appellant to get the DFIA licenses revalidated.”

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 questions of law 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) E.L.T. 37 and the same is also upheld by the Supreme Court; 2008 SCC Online SC 22 = 2008 (226) E.L.T. 16 (S.C.).

7. In the result, this appeal fails and is hereby dismissed.”

6. In view of the foregoing discussions, we do not find any merits in the impugned communication dated 03.03.2022, wherein the request of appellant for conversion of shipping bill was denied by the Department. Accordingly, by setting aside the communication, we allow the appeal in favour of the appellant with direction to the

Department to consider the application dated 04.02.2022 for necessary amendment in the shipping bills as discussed above.

7. In the result, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha