CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Early Hearing Application No. 85543 of 2024

In

Customs Appeal No. 85928 of 2024

(Arising out of Order-in-Original No. S/6 GEN-03/521/2022-23/CEAC dated 09.06.2022 passed by the Commissioner Customs, NS-II, JNCH, Mumbai-II)

M/s Sigma Exports .... **Appellant**
Pocket A-8/98, LGF, Kalkaji Extension,
New Delhi- 110 019.

Versus

Commissioner of Customs, JNCH Nhava Sheva-II .... **Respondent**
Jawaharlal Nehru Customs House,
Dist. Raigad, Maharashtra- 400 707.

Appearance:

Ms Vidushi Shubham, 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/85463/2024

Date of Hearing: 03.05.2024

Date of Decision: 03.05.2024

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. Applicant has filed this miscellaneous application, seeking early hearing of appeal. On going through the averments made in the said application, we are of the view that the prayer made by the applicant for out of turn hearing can be considered in the interest of justice. Therefore, the miscellaneous application is allowed. Since the issue lies in a narrow compass, with the consent of both sides, the appeal is taken up for final hearing of disposal today.

3. The appellant has preferred the present appeal against the impugned communication dated 09.06.2022 addressed by the Assistant Commissioner of Customs, JNCH, Nhava Sheva to them. In the said communication, the Assistant Commissioner had conveyed the decision of the Administrative Commissioner of Customs that the request made for amendment/conversion of the shipping bills cannot be considered, in view of the fact that such request has not been made within three months from the date of the Let Export Order. In this context, the said communication has referred to the Circular No. 36/2010 dated 23.09.2010 issued by the Central Board of Excise & Customs (CBEC).

4. The issue involved in this appeal for consideration by the Tribunal is, as to whether, there is any time limit prescribed for consideration of the request of the exporter for amendment/conversion of the Shipping Bills under the provisions of Section 149 of the Customs Act, 1962. We find that the applicant had made a specific request for amendment of the Shipping Bills under the provisions of Section 149 ibid. The said statutory provision, relevant for consideration of the present dispute, before its amendment w.e.f. 01.08.2019, is quoted herein below:

> *Section 149. Amendment of documents.*
>
> *Save as otherwise provided in Section 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 a 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 the goods were cleared, deposited or exported, as the case may be."*

5. On reading of the said statutory provision, it transpires that discretion has been provided to the proper officer to amend the document in certain circumstances. In Section 149 ibid, no provisions have been made for filing of any application for amendment/conversion of the Shipping Bill or Bill of Entry within the specific time frame. The said section underwent an amendment with effect from 01.08.2019 by insertion through Finance (No.2) Act, 2019. The effect of such amendment is that the Board was entrusted

with the power to prescribe the form, manner, time limit, restrictions and conditions for consideration of the issue of amendment of documents. In exercise of the powers conferred under Section 149 ibid, the Central Board of Indirect Taxes & Customs (CBIC), vide Notification No. 11/2002-Customs (N.T.), dated 22.02.2002, has framed “The Shipping Bill (Post Export Conversion in relation to Instrument Based Scheme) Regulation, 2022” (for short, referred to as ‘Regulations’). In sub-regulation (1) to Regulation 3 ibid, the CBIC has prescribed the time limit of one year from the date of order for clearance of the goods under sub-section (1) of Section 51 ibid or Section 69 ibid, as the case may be. Under such sub-regulation, the jurisdictional Commissioner of Customs is empowered to extend the period of one year by a further period of six months. Wherever, the period is beyond one year and six months, then the jurisdictional Chief Commissioner of Customs is vested with the power to condone such period for another six months. Wherever extension is granted either by the Commissioner of Customs or the Chief Commissioner of Customs, such authority(ies) are required to record the reason thereof in writing regarding such extension of time limit beyond the period of one year.

6. We find from the case records that the Administrative Commissioner of Customs, in the letter dated 09.06.2022 of the Assistant Commissioner, has referred to the Circular No. 36 of 2010 dated 23.09.2010 of CBEC, to deny the request of the appellant for amendment/conversion of the Shipping Bills. The said circular was issued by the CBEC much prior to the date the amendment of Section 149 ibid i.e., 01.08.2019 and publication of the Regulations on 22.02.2022. Since, the specific requirement regarding the form, manner, time limit etc. were prescribed for the first time in the Regulations w.e.f. 22.02.2022, in our considered view, the CBEC was not empowered under the statute to frame any guidelines in the year 2010 by issuance of any circular, prescribing the time limit for filing of the request for amendment of the documents. Thus, issuance of such circular by the CBEC is not only contrary to the statutory provisions, but also lacks jurisdiction and accordingly, cannot be acted upon to implement the instructions contained therein.

7. We find that considering the statutory provision contained in Section 149 ibid vis-à-vis the Circular No.36/2010-Customs, the

Hon'ble Gujarat High Court, in the case of *Mahalaxmi Rubtech Ltd. Vs. Union of India,* vide judgement dated 02.03.2021 has held that the circular dated 23.09.2010, to the extent it has provided the time limit of three months for making the request for conversion of the shipping bill from the date of Let Export Order is *ultra vires* to Article 14 and Article 19(1)(g) of the Constitution of India as also *ultra vires* to the Section 149 of the Customs Act, 1962. Further, the Hon'ble High Court of Bombay in the case of *Pinnacle Life Sciences Pvt. Ltd. Vs. Union of India* – (2024) 16 Centax 340 (Bom.) has held that CBEC circular could not prescribe the time limit for making request for amendment or conversion of the shipping bills. The relevant paragraphs in the said judgement are extracted herein 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. v. Union of India.*
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> ***7.** In the circumstances, we hereby quash and set aside the impugned communication dated 30th December, 2021. Respondent No. 3 is directed to consider the amendment application without raising an issue of time limit and dispose the amendment application on merits and in accordance with law. This application shall be disposed within six weeks from today. Before any order is passed a personal hearing shall be given to petitioner and notice of such personal hearing shall be given atleast seven working days in advance. If Respondent No. 3 wishes to rely on any judicial pronouncements, a list thereof shall be provided to petitioner along with notice for personal hearing. This would enable petitioner to deal with/distinguish those judicial pronouncements."*

8. In view of the foregoing discussions, we do not find any substance in the impugned communication dated 09.06.2022, in denying the request made by the appellant for amendment/conversion of shipping bills. Therefore, the impugned communication is set aside and the matter is remanded back to the jurisdictional Commissioner of Customs for consideration of the application(s) filed by the appellant with regard to amendment/conversion of shipping bills from customs scheme from code '19' to '60'. The said adjudicating authority should pass the speaking order in respect of the prayer made by the appellant within a period of five weeks from the date of receipt of this order. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the matter afresh.

9. 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)

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