

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86883 of 2022

(Arising out of Order issued in letter No. S/12-Hindustan-BR-613/2018-19/DBK/JNCH dated 19.04.2022 passed by the Commissioner of Customs, JNCH, Nhava Sheva-II)

Hindustan Inox Limited

.... Appellant

Block No.7, 11/13, Raghuvanshi Mansion,
1st Floor, Raghuvanshi Mill Compound,
Lower Parel, Mumbai – 400 001.

Versus

Commissioner of Customs, Nhava Sheva-II

.... Respondent

Jawaharlal Nehru Customs House (JNCH),
Nhava Sheva, Taluka – Uran, District – Raigad,
Maharashtra – 400 707.

WITH

Customs Appeal No. 85282 of 2020

(Arising out of Order-in-Original No.49/2019-20/Commr/NS-III/CAC/JNCH dated 01.11.2019 passed by the Commissioner of Customs (NS-III), JNCH, Nhava Sheva)

Hindustan Inox Limited

.... Appellant

Block No.7, 11/13, Raghuvanshi Mansion,
1st Floor, Raghuvanshi Mill Compound,
Lower Parel, Mumbai – 400 001.

Versus

Commissioner of Customs, Nhava Sheva-III

.... Respondent

Jawaharlal Nehru Customs House (JNCH),
Nhava Sheva, Taluka – Uran, District – Raigad,
Maharashtra – 400 707.

AND

Customs Appeal No. 85283 of 2020

(Arising out of Order-in-Original No.49/2019-20/Commr/NS-III/CAC/JNCH dated 01.11.2019 passed by the Commissioner of Customs (NS-III), JNCH, Nhava Sheva)

Hemant Bohra

.... Appellant

Director, Hindustan Inox Limited
Block No.7, 11/13, Raghuvanshi Mansion,
1st Floor, Raghuvanshi Mill Compound,
Lower Parel, Mumbai – 400 001.

*Versus***Commissioner of Customs, Nhava Sheva-III Respondent**

Jawaharlal Nehru Customs House (JNCH),
Nhava Sheva, Taluka – Uran, District – Raigad,
Maharashtra – 400 707.

AND**Customs Appeal No. 85284 of 2020**

(Arising out of Order-in-Original No.49/2019-20/Commr/NS-III/CAC/JNCH dated 01.11.2019 passed by the Commissioner of Customs (NS-III), JNCH, Nhava Sheva)

Vimal Bohra**.... Appellant**

Director, Hindustan Inox Limited
Block No.7, 11/13, Raghuvanshi Mansion,
1st Floor, Raghuvanshi Mill Compound,
Lower Parel, Mumbai – 400 001.

*Versus***Commissioner of Customs, Nhava Sheva-III Respondent**

Jawaharlal Nehru Customs House (JNCH),
Nhava Sheva, Taluka – Uran, District – Raigad,
Maharashtra – 400 707.

Appearance:

Shri Vishal Agrawal a/w Shri Karthik Dedhia Advocates for the Appellants

Shri D.S. Mann, 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/85806 – 85809/2024**

Date of Hearing: 17.04.2024

Date of Decision: 26.08.2024

PER: M.M. PARTHIBAN

The appeal being No. C/86883/2022 has been filed by M/s Hindustan Inox Limited, Mumbai (herein referred to as 'appellant' for short) against the decision/Order issued in letter No. S/12-Hindustan-BR-613/2018-19/DBK/JNCH dated 19.04.2022 (referred to, as 'the impugned letter') and passed by the Commissioner of Customs, JNCH, Nhava Sheva-II, Nhava Sheva, Mumbai Zone-II, Mumbai. The other appeal being Nos.

C/85282/2020 has been filed by M/s Hindustan Inox Limited, Mumbai against confirmation of demand of duty; and appeals being Nos. C/85283/2020 and C/85284/2020 have been filed by Shri Hemant Bohra and Shri Vimal Bohra, Directors of the appellant company respectively (herein after, all referred together as 'the appellants'), against imposition of penalty, all the three appeals assailing the Order-in-Original No.49/2019-20/Commr/NS-III/CAC/JNCH dated 01.11.2019 (herein after, for short, referred to as 'the impugned order') passed by the Commissioner of Customs, NS-III, JNCH, Nhava Sheva (herein after, referred to for short, as 'the original authority'). As all the four appeals relate to a common issue of payment of anti-subsidy/ Countervailing Duty (CVD) imposed on the import of stainless steel coils and plates from China under Section 9 of the Customs Tariff Act, 1975, vide Notification No.18/2015-Customs dated 01.04.2015, as amended and consequent to the confirmation of demand proposed in the Show Cause Notice, the appellant had filed for the claim for amendment of the shipping bills under Section 149 of the Customs Act, 1962 and permission for procedural relaxation under Drawback Rules, 2007, all the four appeals have been taken together for disposal of the same.

2.1. Briefly stated, the issue involved in the present appeals relate to the dispute regarding payment of CVD imposed on import of stainless steel coils and plates from China under Section 9 of the Customs Tariff Act, 1975. The appellants have imported stainless steel coils falling under Customs Tariff Heading (CTH) 7219/7220 in eight consignments covered under eight Bills of Entries No. 3596552, 3598762, 3599313, 3599991, 3601155, 3601291, 3601436 and 3601539 all dated 12.10.2017 by availing customs duty exemption vide Notification No.18/2015-Customs dated 01.04.2015, as amended, under two Advance Authorization Licenses No.0310816121/2/03/00 dated 04.10.2017 and No.0310816182/2/03/00 dated 06.10.2017 without payment of duty and cleared the goods from the port of import. However, subsequent investigation conducted by the department had interpreted that the goods imported by the appellants on 12.10.2017 are not eligible for CVD exemption, as the amendment providing such exemption was issued through notification No. 79/2017-Customs dated 13.10.2017 by suitably amending the parent Notification No.18/2015-Customs providing for inclusion of CVD in the list of customs duties exempted on imports made under Advance License. Accordingly, show cause proceedings were initiated and the matter was adjudicated by the original authority by confirming the

duty demands and by imposing penalties on the appellants. During investigation the appellants have also paid applicable CVD along with interest. Since the appellants were having *bona fide* belief that CVD like other trade remedial duty imposed in terms of WTO agreement, are exempt when such imported goods are used for export of final products produced by use of such imported goods. The appellants had also approached various Ministries for obtaining necessary clarification and the Director General of Foreign Trade vide its Circular dated 11.10.2018 had clarified that the duty exemption under Notification No. 79/2017-Customs dated 13.10.2017 is prospective, and thus in respect of CVD leviable under Section 9 *ibid*, the exporters can claim Drawback in terms of Section 75 of the Customs Act, 1962. The same position was also separately clarified by the CBEC, Ministry of Finance in Circular No.49/2017-Customs dated 12.12.2017. Accordingly, the appellants have submitted a request in the form of an application dated 16.11.2018 for fixation of brand rate of drawback against payment of CVD along with interest made by them vide challan dated 23.10.2018. The said application dated 16.11.2018 was submitted to the jurisdictional Commissioner of Customs, along with requisite documents with a request for condonation of delay and the same was duly acknowledged by the Drawback Department of JNCH Customs on 16.11.2018.

2.2 The jurisdictional Commissioner of Customs had examined the requests made by the appellants vide their letter dated 16.11.2018 for fixation of Brad rate of duty drawback and for exemption from the requirements of Rule 13(1)(a) of the Drawback Rules, 2017, duly submitted by the appellants with requisite enclosures. In disposing these cases he had decided the issues and informed the appellant vide letter dated 19.04.2022; wherein, it was stated that the learned Commissioner of Customs, JNCH, Nhava Sheva-II had denied grant of permission for giving exemption from compliance of Rule 13(1)(a) *ibid* in terms of the proviso appended to such Rule and also denied for accepting the request for amendment of shipping bills as sought by the appellants. Feeling aggrieved with the above order/decision communicated through impugned letter dated 19.04.2022 and against the impugned order dated 01.11.2019, the appellants have preferred these appeals before the Tribunal.

3.1 Learned Advocate for the appellants have submitted that the appellants have availed the benefit of duty exemption from payment of anti-

subsidy/ Countervailing Duty (CVD) imposed on the import of stainless steel coils and plates from China under Section 9 of the Customs Tariff Act, 1975, vide Notification No.18/2015-Customs dated 01.04.2015 and cleared the said imported goods through the port of import. The appellants were having the *bona fide* belief that since CVD is a trade remedial duty, the same is not payable on imports effected under Advance Licence. The appellants belief was also strengthened the issue of amendment made to Notification No.18/2015-Customs by issue of another Notification No.79/2017-Customs dated 13.10.2017 read with DGFT Notification No.33 dated 13.10.2017 suitably amending the Foreign Trade Policy. However, subsequently based on the investigations conducted by the Directorate of Revenue Intelligence (DRI), the appellants had deposited such duty on 23.10.2018.

3.2 Learned Advocate further submits that on the basis of the clarifications issued by the DGFT and the Drawback wing of the CBIC, Ministry of Finance, an application was made by the appellants seeking fixation of brand rate of drawback under Rule 6 of the Drawback Rules, 2017 as the same could not have been filed with the declaration of drawback claim, inasmuch as the CVD was paid much after the date of filing of shipping bills in respect of exports effected by using the impugned imported goods. Therefore, the appellants had sought for permission of the jurisdictional Commissioner of Customs for relaxation of the procedural requirements under Rule 13(1)(a) *ibid*.

3.3 In the impugned order dated 19.04.2022, the learned Commissioner of Customs had decided as follows:

"5. It is further observed that you have also made the following requests:

- A. Request for conversion of the relevant Shipping Bills from 'Free Shipping Bill' to 'Drawback Shipping Bills';*
- B. Request for exemption from the requirements of Rule 13(1)(a) of the Drawback Rules in terms of the Proviso there to.*

6. Your request for conversion of shipping bills has been considered by the undersigned and denied. The same has been communicated to you vide this office letter of F. No. S/6-Gen-03/2380/2021-22 CEAC dated 21.02.2022.

7. As regards your request as at 'B' above it is observed that the Proviso to Rule 13(1)(a) of the Drawback Rules, provides that the Commissioner of Customs can exempt an exporter from the provisions of Rule 13(1)(a) if satisfied the exporter failed to comply with the provisions of the said the clause due to reasons beyond his control. In the instant case, it is observed that you chose not to discharge applicable CVD at the time of the relevant imports. It was only after an investigation was initiated by the Directorate

of Revenue Intelligence and a Show Cause Notice dated 10.08.2018 was issued for the recovery thereof, that the applicable duty and interest was deposited on 23.10.2018. Given the stated circumstances it is found that there is nothing on record to indicate that you failed to comply with the provisions of clause 13(1)(a) of the Drawback Rules, 2017 due to reasons beyond your control. Consequently, exemption from the compliance of Rule 13(1)(a) of the Drawback Rules in terms of the proviso thereto cannot be permitted in this case.

8. The present application is rejected for the reasons stated above and returned herewith along with enclosures in original."

By assailing the above order dated 19.04.2022, the appellant have preferred this appeal before the Tribunal.

3.4 In the letter dated 21.02.2022 referred above in the order dated 19.04.2022, the Commissioner of Customs had observed as follows:

"3. On scrutiny of the documents and list of the shipping bills submitted by you, it is found that the shipping bills have been filed during the period from November, 2017 to February, 2018. The last shipping bill i.e., 3151683 dated 27.02.2018 was given Let Export Order (LEO) on 28.02.2018. All the other shipping bills have been given LEO on or before 28.02.2018. And the request for amendment/conversion has been made on 16.11.2018. therefore, it is found that there is a delay of more than five months in filing the application.

4. Thus, it is seen that the request for conversion of shipping bills has not been made within three months from the date of Let Export Order (LEO), as stipulated in the Board Circular.

5. In view of the above, I am directed to inform that your request for conversion of the shipping bills has been rejected by the Commissioner of Customs, NS-II. JNCH, Mumbai Zone-II as time-barred, without going into the merits of the case."

3.5 In this regard, the learned Advocate submitted that the power to amend the shipping bills is prescribed under Section 149 *ibid* and it does not mention any time limit which was introduced by way of Board's circular, which is against a well settled principle of law that where the statute does not provide any limit, the same cannot be introduced by way of departmental circular. In this regard they relied upon the following case laws:

(i) Mahalaxmi Rubtech Ltd. Vs. Union of India in Civil Application No.21636 of 2019 decided on 02.03.2021.

(ii) Louverline Blinds Vs. Commissioner of Customs, Bangalore – MANU/CB/0055/2022

(iii) Carboline India Pvt. Ltd. Vs. Commissioner of Customs [Customs Appeal No.40606 of 22021 dated 16.02.2022]

(iv) Angel Overseas Corporation Vs. Union of India - 2018 (362) E.L.T. 87 (Mad.)

(v) Phil Corporation Limited Vs. Union of India - 2004 (168) E.L.T. 24 (Bom)

(vi) Commissioner of Customs, Mumbai Vs. Terai Overseas Limited - 2003 (156) E.L.T. 841 (Cal.)

4. Learned Authorised Representative (AR) reiterated the findings of the Commissioner of Customs in the Letters dated 21.02.2022 and 19.04.2022. He further submitted that as the appellants have not filed the amendment request within the prescribed time as mentioned in the Circular No. 36/2010-Customs dated 23.09.2010 and as they could not provide complete details for considering the request under Rule 13(1)(a) of the Drawback Rules, 2017, he claimed that the impugned order is sustainable.

5. Heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of paper books by learned Advocate for the appellants as well as Authorised Representative for the Revenue.

6. The issues involved in these appeals before us are herein below:

(i) Whether import of stainless steel coils and plates from China in eight impugned B/Es all dated 12.10.2017 are liable for payment of Countervailing Duty (CVD) imposed under Section 9 of the Customs Tariff Act, 1975 or whether such imports under Advance Authorization Licenses are eligible for CVD exemption vide Notification No.18/2015-Customs dated 01.04.2015, as amended, vide Notification No.79/2017-Customs dated 13.10.2017;

(ii) Whether confiscation of imported goods covered in eight impugned B/Es under Section 111(d) of the Customs Act, 1962 and imposition of penalty on the appellant company under Section 114A *ibid*; penalties on S/Shri Hemant Bohra and Vimal Bohra, Directors of the appellant company under Sections 112(a) and 114AA *ibid* in the impugned order dated 01.11.2019 is sustainable?

(iii) Whether impugned letter dated 19.04.2022 of the Commissioner of Customs, JNCH, Nhava Sheva-II in denial of grant of permission for giving exemption from compliance of Rule 13(1)(a) *ibid* in terms of the proviso appended to such Rule and also denial for amendment of shipping bills under Section 149 *ibid* read with earlier letter dated 21.02.2022, is sustainable?

7.1 In the impugned order dated 01.11.2019, learned Commissioner of Customs had given a finding that the imported HR/CR Stainless Steel coils originating or exported from China was leviable with CVD @ 18.95% on its landed cost in terms of Notification No.01/2017-Customs (CVD) dated 01.04.2017; the said CVD was exempted only after the issuance of Notification No.79/2017-Customs dated 13.10.2017. Inasmuch as the impugned goods were imported by the appellants during the period 07.09.2017 to 12.10.2017, and inasmuch as the notification providing exemption from CVD came into effect only on 13.10.2017, it cannot be applied retrospectively for the imports made prior to 13.10.2017 in terms of Section 159A of the Customs Act, 1962 which state that any notification issued under the Customs Act, 1962 shall not have any impact on the imports prior to that date. Further, he had given a finding that the inclusion of CVD in the exempted list of duties occurred only on 13.10.2017. Thus, he confirmed the proposals in the SCN for demand of duty. Further, he held that the appellants importer had suppressed the facts by quoting advance authorization and did not pay applicable CVD and hence he found it fit for confiscation of the said goods and imposition of penalties on the appellants under 112(a) and 114AA *ibid*.

7.2 In order to address the above issues, we would like to refer the relevant legal provisions contained in the Customs Act, 1962; Customs Tariff Act, 1975; the notifications issued thereunder; and Drawback Rules, 2007 for proper consideration and for appropriate decision on payment of CVD and consequent confirmation of the adjudged demands. The relevant provisions are extracted below:

Extract of Customs Act, 1962

"Power to grant exemption from duty.

Section 25. (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification

goods of any specified description from the whole or any part of duty of customs leviable thereon.....

Confiscation of improperly imported goods, etc.

Section 111. The following goods brought from a place outside India shall be liable to confiscation :—

....

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

Penalty for improper importation of goods, etc.

Section 112. Any person,—

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or; ... shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater....

Penalty for use of false and incorrect material.

Section 114AA. If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

Effect of amendments, etc., of rules, regulations, notifications or orders.

Section 159A. Where any rule, regulation, notification or order made or issued under this Act or any notification or order issued under such rule or regulation, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not—

(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or.....”

Extract of Customs Tariff Act, 1975

"Section – 9. Countervailing duty on subsidized articles.

9. (1) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.....

"[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,
PART II SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No. 18/ 2015 - Customs New Delhi, the 1st April, 2015.

G.S.R. 254 (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and **from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act**, subject to the following conditions, namely :-

- (i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;
- (ii) that the said authorisation bears,-
 - (a) the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter; and
 - (b) the shipping bill number(s) and date(s) and description, quantity and value of exports of the resultant product in cases where import takes place after fulfillment of export obligation; or
 - (c) the description and other specifications where applicable of the imported materials and the description, quantity and value of exports of the resultant product in cases where import takes place before fulfillment of export obligation;...."

"[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No. 79/2017 - Customs New Delhi, the 13th October, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, in the manner as specified in the corresponding entry in column (3) of the said Table, namely :-

Table

S. No.	Notification number and date	Amendments
1.		
2.	18/2015- Customs, dated the 1 st April, 2015 [vide number G.S.R. 254 (E), the 1 st April, 2015]	In the said notification, in the opening paragraph,- (a) for the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A",the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub- sections (1), (3) and (5) of section 3,integrated tax leviable thereon under sub- section (7)of section 3, goods and services tax compensation cess leviable thereon under sub- section (9) of section 3,safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti- dumping duty leviable thereon under section 9A"shall be substituted"

"CIRCULAR NO. 36/2010-CUSTOMS
F.No.609/121/2009-DBK
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Custom

New Delhi, the 23 rd September, 2010

To

All Chief Commissioners of Customs/Central Excise/Customs &Central
Excise.

All Commissioners of Customs/Customs (P)/Customs &Central Excise
/Central Excise.

All Director Generals of CBEC, Chief Departmental Representative of
Customs Excise & Service Tax Appellate Tribunal.

Sir/Madam,

Sub: Conversion of free shipping bills to export promotion scheme shipping
bills and conversion of shipping bills from one scheme to another - reg.

I am directed to invite attention to the Board's circular No.4/2004-Cus
dated 16.01.2004 which debars conversion of free shipping bills to
Advance License/DFRC/DEPB shipping bills and allows conversion of
shipping bills from one export promotion scheme to another only where the
benefit of an export promotion scheme claimed by the exporter has been
denied by the DGFT/MoC&I or Customs due to any dispute.

2. It has been represented to the Board that the norms for allowing
conversion of shipping bills may be relaxed and the Commissioners should
be allowed to consider requests for conversion of shipping bills from free to
export promotion scheme and from one export promotion scheme to
another on a case to case basis depending on the merits of the case. It has
also come to notice of the Board that the Tribunals in a series of judgments
have held that amendment to shipping bill after export of goods is
governed by the proviso to section 149 of the Customs Act, 1962 and if the

requirements of the said proviso are satisfied, conversion of shipping bill should be allowed. The conversion of the shipping bill from one scheme to another cannot be linked with denial of benefit of one scheme by DGFT/MoC&I or Customs due to some dispute as no such condition for amendment of shipping bill has been provided in section 149 of Customs Act, 1962.

3. The issue has been re-examined in light of the above. It is clarified that Commissioner of Customs may allow conversion of shipping bills from schemes involving more rigorous examination to schemes involving less rigorous examination (for example, from Advance Authorization/DFIA scheme to Drawback/DEPB scheme) or within the schemes involving same level of examination (for example from Drawback scheme to DEPB scheme or vice versa) irrespective of whether the benefit of an export promotion scheme claimed by the exporter was denied to him by DGFT/DOC or Customs due to any dispute or not. The conversion may be permitted in accordance with the provisions of section 149 of the Customs Act, 1962 on a case to case basis on merits provided the Commissioner of Customs is satisfied, on the basis of documentary evidence which was in existence at the time the goods were exported, that the goods were eligible for the export promotion scheme to which conversion has been requested. Conversion of shipping bills shall also be subject to conditions as may be specified by the DGFT/MOC. The conversion may be allowed subject to the following further conditions:

a) The request for conversion is made by the exporter within three months from the date of the Let Export Order (LEO).

b) On the basis of available export documents etc., the fact of use of inputs is satisfactorily proved in the resultant export product.

c) The examination report and other endorsements made on the shipping bill/export documents prove the fact of export and the export product is clearly covered under relevant SION and or DEPB/Drawback Schedule as the case may be.

d) On the basis of S/Bill/export documents, the exporter has fulfilled all conditions of the export promotion scheme to which he is seeking conversion.

e) The exporter has not availed benefit of the export promotion scheme under which the goods were exported and no fraud/ misdeclaration /manipulation has been noticed or investigation initiated against him in respect of such exports.

4. Free shipping bills (shipping bills not filed under any export promotion scheme) are subject to 'nil' examination norms. Conversion of free shipping bills into EP scheme shipping bills (advance authorization, DFIA, DEPB, reward schemes etc.) should not be allowed. However, the Commissioner may allow All Industry Rate of duty drawback on goods exported under free shipping bill, without conversion of such free shipping bill to Drawback Scheme shipping bill, in terms of the proviso to rule 12(1) (a) of the Customs, Central Excise and Service Tax Drawback Rules, 1995.

5. Due care may be taken while allowing conversion to ensure that the exporter does not take benefit of both the schemes i.e. the scheme to which conversion is sought and the scheme from which conversion is sought. Whenever conversion of a shipping bill is allowed, the same should be informed to DGFT so that they may also ensure that the exporter does not take benefit of both the schemes.

6. This circular supersedes the Board circular No.4/2004-Cus dated 16.01.2004 and the earlier circulars issued in the past on this issue. This circular shall be applicable only to shipping bills filed on or after the date of issuance of this circular. Till such time as EDI system is modified to allow conversion of shipping bill in the EDI system, conversion may be allowed manually.

7. A suitable Public Notice for information of the Trade and Standing Order for guidance of the staff may be issued. Difficulties faced, if any in implementation of the directions may be brought to the notice of the Board.

Kindly acknowledge receipt of this Circular."

7.3 Plain reading of the above legal provisions and the notifications issued there under, particularly Section 9 of the Customs Tariff Act, 1975, clearly demonstrate that the Central Government has power to impose a specific Countervailing duty (CVD) not exceeding the amount of subsidy bestowed upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, when such subsidized article is imported into India. Accordingly, Notification No. 01/2017-Customs (CVD) dated 07.09.2017 issued by the Central Government had imposed CVD on import of 'Flat rolled products of stainless steel, whether hot rolled or cold rolled of all grades/series; whether or not in plates, sheets, or in coil form or in any shape, of any width, of thickness 1.2 mm to 10.5 mm in case of hot rolled coils; 3 mm to 105 mm in case of hot rolled plates & sheets; and up to 6.75 mm in case of cold rolled flat products' falling under CTH 7219 or 7220. Therefore, it could be concluded that there was a levy of CVD in force in terms of the said notification dated 07.09.2017. However, such levy was exempted only after the issuance of Notification No.79/2017-Customs dated 13.10.2017. Inasmuch as the impugned goods were imported by the appellants during the period 07.09.2017 to 12.10.2017, the duty exemption brought into effect by Notification No.79/2017-Customs dated 13.10.2017, cannot apply retrospectively when such a provision has not been exercised by the Government. In view of the above legal position and in terms of Section 159A *ibid* which provide that the effect of amendment do not revive anything that was not in force or existing at the time at which the amendment takes effect, we are of the considered view that import of stainless steel coils and plates from China in eight impugned B/Es all dated 12.10.2017 are liable for payment of Countervailing Duty (CVD) imposed under Section 9 of the Customs Tariff Act, 1975. To this extent the impugned order dated 01.11.2019, passed by learned

Commissioner of Customs in confirmation of the demand of CVD duty is legally sustainable.

8.1 It is on record that the issue of CVD exemption in respect of imports through use of Advance Licenses was under dispute and the appellants and similarly placed exporters/importers have made a number of representations (14 such representations) to different authorities viz. Chairman, EEPC; Additional DGFT, Mumbai; Chairman, CBEC; Additional Director General, DGEP, CBEC; Additional DGFT, Additional Director, DGEP; Chairman, CBEC; Federation of Indian Export Organisations; Executive Director, EEPC and Regional Director, EEPC from 27.11.2017 to 08.03.2018. In fact one of the letters written by appellants to the Chairman, Central Board of Excise and Customs, New Delhi dated 29.11.2017 addresses the specific issues of dispute in the present case and seeks solution for the same, while highlighting that they are pressurised to pay the duty demand of CVD on account of investigation, despite their *bona fide* belief that since such imports are by using Advance Licenses, the CVD is not payable in terms of Notification No.18/2015-Customs dated 01.04.2015, which have been amended on 13.10.2017 providing specific exemption from the levy of such CVD levied under Section 9 of the Customs Tariff Act, 1975. In this regard, we find that the notification dated 01.04.2015 had exempted the import of goods against Advance Authorization/License in terms of para 4.12 of the Foreign Trade Policy (FTP) from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A of the Customs Tariff Act, 1975. By issue of an amending notification No. 79/2017-Customs dated 13.10.2017, such exemption as stated above included specifically the levy of countervailing duty leviable thereon under section 9 of the Act of 1975. The above facts clearly prove that the issue of CVD having been imposed on 07.09.2017 vide Notification No. 01/ 2017-Customs (CVD) dated 07.09.2017 on the impugned imported goods and till it was ultimately exempted by issue of amending notification No.79/2017-Customs dated 13.10.2017, the Central Government and the departmental authorities are aware of the issue and have also been specifically made aware of the difficulty caused due to such levy and the solution thereof, by various representations made by the appellants importer. There is no act of any element of any collusion or any wilful mis-statement or suppression of facts on the part of the appellants

importer as concluded in the impugned order dated 01.11.2019 justifying the imposition of penalty under Section 112(a) *ibid*.

8.2 From plain reading of the legal provisions under Section 112(a) of the Customs Act, 1962, it is clear that a penalty is imposed, if it established that in relation to 'goods' which are liable to confiscation under Section 111 *ibid*, and that such penalty is liable to be imposed on 'any person'. It is not the case that in the factual matrix of the present case, that the impugned imported goods were imported by the appellants involving any prohibition imposed under Customs Act, 1962 or any other Act. In fact, the appellants importer have given the specific Advance Licenses on which they had claimed exemption from the levy of CVD, and the departmental authorities at the Customs port of importation had also permitted such impugned imported goods to be cleared without payment of such CVD approving of such act by the appellants. It is only on account of subsequent investigation by DRI, that the appellants have paid the CVD duty on 23.10.2018. From the above factual details, it is clearly proved that there is no trace of any element of violation of Section 111(d) *ibid* and hence the imposition of penalty under Section 112(a) *ibid* is without any evidence or grounds and hence to this extent the impugned order is not legally sustainable.

8.3 In respect of penalty imposable under Section 114AA *ibid* is concerned, the legal provisions clearly provide that such penalty is imposed if a person is knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. The Advance Authorisations which have been produced and upon which the departmental authorities at the port of customs had cleared the imported goods without payment of CVD, clearly demonstrate that the present case do not involve any use of declaration of incorrect material particular in the impugned goods. In fact, the details declared in the eight B/Es there is no element of any mis-declaration and the same holds good, even in their application made for the claim of duty drawback before the customs authorities. Thus, in the present factual matrix of the case as discussed in paragraphs 8.1 and 8.2 above, there is no such element present in the case before us. This is also not a case of fraudulent export of goods, where such export is being shown only on paper and no goods actually crossed the Indian border. The penalty provision introduced by the Government under Section 114AA has been proposed considering the

serious frauds being committed as that no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes as has been held in the case of *Suresh Kumar Aggarwal Vs. Commissioner of Customs -III, Nhava Sheva* vide Final Order No. A/85533/2024 dated 03.06.2024. Therefore, we are also on the considered view that imposition of penalty under Section 114AA *ibid* is without any evidence or grounds and hence the impugned order is not legally sustainable in this aspect also.

8.4 Further, in the case of *Sachin Kshirsagar Vs. Commissioner of Customs (Import-I), Mumbai – (2022) 1 Centax 199 (Tri.-Bom)* the Co-ordinate Bench of this Tribunal have held that the personal penalty imposed on the Director under Section 114AA of the Customs Act, 1962 is not sustainable and set aside the order. The relevant paragraphs of the said order is extracted and given below:

"5. *The enhancement of value of the impugned vessel is set aside in accordance with our findings supra. The sole issue that remains is the choice of the appropriate classification. The controversy is contentious and the alternative classification proposed by customs authorities is based upon reliance on technical features to distinguish it from a capability inherent in all vessels that put out to sea in terms of subordination to its principal function. With that complexity to be resolved, there is no scope for indicting the individuals in these proceedings for deliberate mis-declaration. That the benefit of an exemption has been sought to be availed does not, of itself, render such claim to be with intent to evade duty. Furthermore, the role of these individuals in the mis-declaration of stores and bunkers is not evident in the impugned order. The penalties imposed on the individuals are, accordingly, set aside to allow their appeals."*

In an appeal filed by the department against the said order of the Tribunal in Civil Appeal Diary No. 26805/2022, the Hon'ble Supreme Court had upheld the above order of the Tribunal and dismissed the Civil appeals filed by the department.

9.1 In fact, it is due to a number of representation made by the appellants importer and the trade, that the Government came out with the solution to the dispute in relation to imports by use of Advance Authorization/License, both for the period commencing from 13.10.2017 by issue of amending notification dated 13.10.2017 (*supra*) and for the period prior to 13.10.2017,

by issue of circular allowing the exporter/importer to claim duty drawback benefits, as detailed in the following paragraphs.

9.2 In this regard, we find that the Central Board of Excise and Customs (CBEC) had prescribed detailed guidelines on how the imported goods shall be tested, re-tested in order to decide the issue in a conclusive manner and to facilitate the trade. The extract of the said circular is given below:

Circular No. 49/2017-Cus

F.No.609/97/2017-DBK
Government of India
Department of Revenue
Central Board of Excise & Customs
Drawback Division

New Delhi, the 12th December, 2017

To
Principal Chief Commissioners/ Principal Directors General,
Chief Commissioners/ Directors General,
Principal Commissioners and Commissioners,
all under CBEC.

Sir/Madam,

Subject: Refund/Claim of Countervailing duty as Duty Drawback.

Attention is invited to the Circular Nos. 106/95-Cus dated 11.10.1995 and 23/2015-Cus dated 29.9.2015 regarding refund/claim of Anti-Dumping Duty and Safeguard Duties as Duty Drawback respectively.

2. With respect to Countervailing Duties which are leviable under section 9 of the Customs Tariff Act, the Board clarifies that these are rebatable as Drawback in terms of Section 75 of the Customs Act. Since Countervailing Duties are not taken into consideration while fixing All Industry Rates of Duty Drawback, the Drawback of such Countervailing Duties can be claimed under an application for Brand Rate under Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and/or the Customs and Central Excise Duties Drawback Rules, 2017, as the case may be. This would necessarily mean that drawback shall be admissible only where the inputs that suffered Countervailing Duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

3. Where imported goods subject to Countervailing Duties are exported out of the country as such, then the Drawback payable under Section 74 of the Customs Act, 1962 would also include the incidence of Countervailing Duties as part of total duties paid, subject to fulfilment of other conditions.

4. Suitable Public Notice and Standing Order should be issued for guidance of the trade and officers.

Yours faithfully,

(Dipin Singla)
OSD (Drawback)

On perusal of the above CBEC instructions, it is established that with respect to Countervailing Duties (CVD) which are leviable under Section 9 of the Customs Tariff Act, the Board had in clear terms had clarified that these are rebatable as Drawback in terms of Section 75 of the Customs Act, 1972. The said circular also explains the grounds/reasons as to why such drawback should be entertained by the departmental authorities, by stating that since CVD are not taken into consideration while fixing All Industry Rates of Duty Drawback, the Drawback of such Countervailing Duties can be claimed under an application for Brand Rate under Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and/or the Customs and Central Excise Duties Drawback Rules, 2017. The said circular also clearly give directions to the departmental authorities in the field formations that drawback shall be admissible only where the inputs that suffered CVD were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

9.3 We also find that the DGFT authorities vide letter F. No. 01/94/180/201/AM18/PC-4(GST) dated 11.10.2018 had addressed to the EEPC India, Kolkata on the problem faced by the appellants and had clarified in terms of the Circular No. 49/2017-Customs dated 12.12.2017 exports are free to apply for fixation of Brand Rate of Drawback for the CVD suffered on the inputs used in the export product and entire burden of such CVD on the exporter should be neutralized by such payment of drawback.

9.4 On the basis of the above CBEC's instructions and the specific clarification provided by the DGFT, it is crystal clear that the case of the appellants for claim of drawback in respect of the CVD suffered cannot be rejected as was decided in the case of appellants by the Commissioner of Customs, Nhava Sheva-II in the impugned letter dated 19.04.2022. Further, the aforesaid instructions issued by CBEC and DGFT specifically provide for accepting the claim for drawback and allowing the exporters/importers to file the documents with the jurisdictional customs authorities. As the appellants have submitted complete details with respect to the B/Es and Shipping Bills relevant to their claims for drawback along with supporting documents, there is no ground for denying the same under Rule 13 (1) (a) of the Customs and Central Excise Duties Drawback Rules, 2017. Furthermore, the customs authorities themselves had allowed the imports under impugned B/Es without payment of CVD upon claim for exemption and have not

objected to such claim under Section 17 of the Customs Act, 1962 and when the details for claim for drawback have been submitted as per the circulars issued subsequent to the clearance of imported goods, and that the details of export/shipping bills filed by the appellants during 26.12.2017 to 27.02.2018 have been duly verified by the DGFT authorities. In view of the above we are of the considered view, that the application for claim of drawback submitted by the appellants is eligible to be considered under Customs and Central Excise Duties Drawback Rules, 2017.

9.5 As regards the rejection of the request for amendment of shipping bills under Section 149 of the Customs Act, 1962, on the ground that there is delay of more than five months in filing the application, we find that the legal provisions do not prescribe any specific time limit and the time limit prescribed under Circular No.36/2010-Customs dated 23.09.2010 has been struck down by a number of judgements of Hon'ble High Courts and Hon'ble Supreme Court as discussed in the following paragraphs.

9.6 The Hon'ble High Court of Madras has held in the case of *Angel Overseas Corporation (supra)* that the object being that the exporter should be entitled to drawback, the delay in filing claim filed for drawback should be entertained by condoning the delay.

"24. *The Learned Central Government Standing Counsel for the Revenue emphasise that such power to relaxation is only in relation to the export of any goods and not in a case like that of the petitioner, where it is a case of supplementary claim. What has to be noted is that a claim for drawback can arise only in a case where an export occurs. Therefore, to state that Rule 17 would have no application is a very narrow and incorrect way of interpreting Rule 17. Above all, the object of the Drawback Rules is to encourage and boost exports and if the entitlement for drawback is interpreted to be on par with the exemption notification, then what is essential is compliance of the mandatory conditions."*

9.7 The Hon'ble High Court of Bombay has held in the case of *Phil Corporation Limited (supra)* that condonation of delay is permissible and the same cannot be rejected only on the ground that certain conditions have not been complied with.

9.8 The Hon'ble High Court of Calcutta has held in the case of *Terai Overseas Ltd. (supra)* that the various provisions of the Drawback Rules being an incentive oriented scheme for augmenting export, the claim for drawback cannot be withheld on the basis of technicality. The relevant paragraphs of the above judgement is extracted and given below:

"29. *In the instant case also, this Court finds that filing for such claim with the accompanying document under Clause 13(2) of the said Rule, is a procedural aspect and the said procedure is not mandatory. Therefore, the same should receive a liberal construction. And a filing of documents which has been found incomplete by the appropriate authority, the benefit of drawback cannot be denied.*

30. *The other judgment cited by the learned Counsel was rendered in the case of Collector of Customs, Calcutta v. Sun Industries, reported in [1988 \(35\) E.L.T. 241 \(S.C.\)](#). In that case, the question which came up for consideration was what is meant by export under the Drawback Rules, 1971. The Court held that if the ship had left the Indian port and passed beyond the territorial waters of India, but, thereafter, the engine of the ship developed a trouble and the ship was in the high seas and the goods in question were on board, the export was complete. The fact that subsequently the ship decided to sail back into the territorial water of India was of no consequence. In that case, the goods did not land in any place because of the defect in the ship but export under the Drawback Rules is completed and the title of the goods passed on to the purchaser.*

31. *The definition of export under the present Drawback Rules of 1995 is the same.*

32. *Relying on the said judgment, the learned Counsel submitted that since in such a case also the Court held that the export was complete and the Company doing the export is entitled to benefit under Section 75 of the Customs Act, so in this case in which the export was admittedly completed and the goods reached the other country and the foreign exchange had come to India, the benefit of drawback claim cannot be denied to the respondents.*

33. *The learned Counsel further relied on another judgment in the case of Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, reported in [1991 \(55\) E.L.T. 437 \(S.C.\)](#). In that case, what come up for consideration for the Court is how an exemption clause is to be interpreted. The learned judges held that in the matter of granting exemption, some provisions are mandatory which are decided on the basis of the policy division and some provisions are procedural. It will be erroneous if the Court interprets both the provisions on the same footing. In M/s. Mangalore Chemicals the Apex Court was considering the interpretation of the provisions of the Karnataka Sales Tax Act, 1957. The Court in coming to the aforesaid conclusion relied on Francis Bunion's 'Statutory Interpretation' 1984 Edition, page 683. The learned author states that the modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation.*

34. *In the instant case, also the Court should adopt a liberal construction as is required to further the object behind Drawback Rules, namely to boost export."*

9.9 The Hon'ble High Court of Ahmedabad has held in the case of M/s *Mahalaxmi Rubtech Ltd. (supra)* that the time limit of the submission of the request for conversion of shipping bills from one scheme to another within three months from the date of Let Export Order is held as ultra vires to Section 149 of the Customs Act, 1962. The relevant paragraph of the above judgement is extracted and given below:

"32 In view of the aforesaid discussion, we hold that the impugned circular to the extent of para 3(a) is ultra vires Articles 14 and 19(1)(g) of the Constitution of India as also ultra vires Section 149 of the Customs Act, 1962"

In the Special Leave Petition (Civil) Diary No. 40297/2022 filed by the department against the said judgement of the Hon'ble High Court of Gujarat, the Hon'ble Supreme Court had upheld the said judgement and dismissed the SLP vide its judgement dated 11.04.2023.

10.1 In view of the foregoing discussions and analysis, and on the basis of the orders of the Tribunal, judgements of the Hon'ble High Courts and Hon'ble Supreme Court, we conclude that the impugned order dated 01.11.2019 passed by learned Commissioner of Customs, NS-III, JNCH, Nhava Sheva to the extent it has confirmed the confiscation of impugned goods under Section 111(d) of the Customs Act, 1962 and imposed penalty on the appellant company under Section 114A *ibid* and also imposed penalties on S/Shri Hemant Bohra and Vimal Bohra, Directors of the appellant company under Sections 112(a) and 114AA *ibid* is not legally sustainable and the same is set aside. However, we do not find any reason to interfere with the confirmation of Countervailing Duty (CVD) imposed under Section 9 of the Customs Tariff Act, 1975 in the impugned order and the same is upheld.

10.2 As regards the impugned letter dated 19.04.2022 of the Commissioner of Customs, JNCH, Nhava Sheva-II denying grant of permission for giving exemption from compliance of Rule 13(1)(a) *ibid* in terms of the proviso appended to such Rule and also denying the amendment of shipping bills sought by the appellants under Section 149 *ibid* read with earlier letter dated 21.02.2022, we find that the same is not consistent with the legal provisions of the Customs Act, 1962 and Customs and Central Excise Duties

Drawback Rules, 2017. Further, as has also been held by the judgements of higher judicial forum as discussed above, such decision/order of the Commissioner of Customs, JNCH, Nhava Sheva-II is contrary to the settled legal position. Therefore, impugned letter dated 19.04.2022 is set aside and the jurisdictional Commissioner of Customs is directed to examine the application filed by the appellants and provide necessary relief in grant of drawback benefits as per law.

11. In the result, by setting aside both the impugned orders dated 01.11.2019 to the extent stated in paragraph 10.1 above and the impugned letters dated 19.04.2022 and 21.02.2022, we allow the appeals in favour of the appellants with consequential relief.

(Order pronounced in open court on 26.08.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha