CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 87040 of 2023

(Arising out of Order-in-Original Letter F. No. S/6-GEN-03/926/2022-23/CEAC dated 27.10.2022 passed by Commissioner of Customs Excise, NS-II, JNCH, Mumbai Customs Zone-II, Nhava Sheva.)

Infiiloom India Private Limited **.....Appellants**
(Formerly known as Renfro India Pvt. Ltd.)
GAT No.1231(Part), Sanaswadi
Taluk Shirur, District Pune – 412208.

VERSUS

Commissioner of Customs **.....Respondent**
Nhava Sheva-II Customs Commissionerate
Jawaharlal Nehru Customs House (JNCH), Nhava Sheva
Taluka-Uran, District-Raigad
Maharashtra - 400 707.

APPEARANCE:

Shri Mohit Raval, Advocate for the Appellants
Shri Ram Kumar, Authorised 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/87588/2023

Date of Hearing: 13.12.2023
Date of Decision: 13.12.2023

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Infiiloom India Private Limited, Pune(herein after, referred to as 'the appellants'), assailing Order-in-Original in Letter F. No. S/6-GEN-03/926/2022-23/CEAC dated 27.10.2022 (herein after, referred to as 'theimpugned order')passed by Commissioner of Customs, Nhava Sheva-II, Jawaharlal Nehru Customs House(JNCH), Mumbai Customs Zone-II, Nhava Sheva.

2.1 The facts of the case, leading to this appeal, are summarised herein below:

2.2 The appellants herein, are *interalia,* engaged in the manufacture andexport of knitted socks falling under Chapter 61 of the Customs Tariff and are entitled to the export benefits of the Scheme for Rebate of State and Central Taxes and Levies on Export of Garments and Made-ups (RoSCTL) issued by the Ministry of Textiles, Government of India vide Notification No. 14/26/2016-IT(Vol. II) dated 07.03.2019. In the normal course of exports of goods to different buyers abroad through JNCH port, the appellants have at the time of filing the shipping bills had also filed Annexure-A declaring their intent to claim the export benefits under RoSCTL scheme. However, while filing the Shipping Bills (S/Bs) with Customs authorities, their Customs Broker/Custom House Agent (CHA) had inadvertently filed 179 S/Bs under Scheme Code '19', instead of indicating correct Scheme Code '60'applicable for Duty Drawback Cum RoSCTL.

2.3 The appellantscame to know about the fact that indication of the correct Scheme Code 60 would alone enable for generation of RoSCTL scrolls electronically through Customs Electronic Ledger, and due to inadvertent error by the appellant's CHA by mentioning incorrect Scheme Codes on S/Bs, and that they were unable to claim RoSCTL for all 179 S/Bs filed during the impugned period. Therefore, the appellants vide their letter dated 17.03.2022, requested the Deputy Commissioner of Customs, Exports (EDI Section) to allow the appellants to amend the said 179 S/Bs for change of respective scheme code enabling them to claim RoSCTL rebate and generation of e-scrips. In consideration of the request made by the appellantsin respect of 179 S/Bs, the Assistant Commissioner of Customs CEAC, JNCH had issued a Certificate of Amendment dated 05.08.2022 on the basis of permission accorded by the Commissioner of Customs by allowing the appellants to amend 89 S/Bs. However, the Assistant Commissioner of Customs vide letter F. No. S/6-GEN-03/926/2022-23/CEAC dated 27.10.2022, had informed the appellants that their request for conversion from Customs Scheme Code '19' to '60', in respectof balance 90 S/Bs exported during September, 2021 to December, 2021,were rejected by the Commissioner of Customs, NS-II, JNCH, Customs,as the same were time barred, without going into the merits of the case, by relying upon the CBIC Circular No.36/2010 dated 23.09.2010, read with Section 149 of Customs Act 1962.

2.4 Subsequent to this, the appellants vide their letter dated 02.11.2022, again took up the matter with the Assistant Commissioner of Customs stating that the conversion of shipping bill is covered under Notification No.11/2022-Cus (N.T.) dated 22.02.2022 read with section 157 and 149 of the Customs Act,1962 and that theirrequest for conversion of S/Bs has been rejected without providing them an opportunity of personal hearing.

Thus, they requested the Assistant Commissioner that an opportunity of personal hearing may be granted to them and thereafter an appealable order be passed. Further, the appellants also filed a grievance on the Centralised Public Grievance Redress and Monitoring System (CPGRAMS) on 23.11.2022. The Status of the said grievance was reflecting as "case closed" on 26.12.2022 with the following remarks:

> *"The grievance has been examined. It is to inform the Exporter has applied for conversion of shipping bills beyond the stipulated period of 03 months. Hence, request of the exporter for the said conversion was rejected by the Commissioner of Customs, NS-II, JNCH. In the view of the matter as per request of the Grievant a personal hearing is being fixed in the second week of January-2023."*

The appellants vide their letter dated 21.12.2022, after setting out relevant facts requested the Deputy/Assistant Commissioner of Customs (NS-II) to give them an opportunity of personal hearing and submit its reply. The Assistant Commissioner of Customs vide letter dated 05.01.2023 informed the appellants that a personal hearing has been fixed on 12.01.2023 (inadvertently mentioned as 2022) at 11 A.M. before the Respondent. The authorized representative of the appellants attended the hearing before the Respondent on 12.01.2023 and filed submissions of behalf of the appellants.In the absence of any communication from the Respondent department, the appellants vide e-mail dated 06.04.2023 requested to issue Order-in-Original. The appellants also attached to the said e-mail copy of judgment in the case of M/s. *Stitchwell GarmentsVs.* Union of India and M/s. *Mahalaxmi Rubtech Ltd. Vs. Union of India*.The Assistant Commissioner of Customs, vide letter dated 08.05.2023, informed the appellants that the Respondent has fixed another personal hearing on 08.06.2023.The authorized representative of the appellants appeared at the personal hearing on 08.06.2023. The appellants vide its e-mail dated 09.06.2023 also filed a detailed submissions before the Respondent.

2.5 However, the Assistant Commissioner vide letter F. No. S/6-GEN-03/926/2022-23/CEAC dated 21.06.2023, after referring to meeting with Respondent on 08.06.2023 and the decision of the Commissioner of Customs, NS-II in letter F. No. S/6-GEN-03/926/2022-23/CEAC dated 27.10.2022, had informed the appellants that only option with themis to file an appeal against the said decision of the Commissioner of Customs. Feeling aggrieved impugned order of the Commissioner of Customs, NS-II in rejecting the application of the appellants for amendment of shipping bills under Section 149 of the Customs Act, 1962, the appellants have preferred this appeal before the Tribunal.

3. Heard both sides and perused the records of the case.

4.1 The short issue for consideration before the Tribunal in this case is whether the decision taken by the learned Commissioner of Customs, in rejecting the amendment of shipping bills as time barred, for having been filed beyond three months, on the basis of CBEC Circular No.36/2010 dated 23.09.2010 for the purpose of Section 149 of the Customs Act, 1962, is legally sustainable or not?

4.2 In order to appreciate the issue under dispute, the specific legal provision of Section 149 ibid is extracted and herein given below for ease of reference:

> *"**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[1][in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed]:*
>
> *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 plain reading of the above legal provision, it transpires that the shipping bill or bill of entry, subject to the documentary evidence available at the time of clearance of goods supporting the amendment or changes sought, shall be permitted to be amended by the proper officer of Customs. It is on record that the appellants have submitted in the documents filed with Customs authorities for alltheir exports, the relevant commercial invoices along with Annexure-A i.e., 'Declaration to be filed as part of shipping bill for export of goods under RoSCTL Scheme' giving the following specific declaration:

> *"I/We Infiiloom India Private Limited, holder of IEC no. 0396052649, in regard to my claimunder RoSCTL scheme made in this Shipping Bill or Bill of Export, hereby declare that:*
>
> *1. I/ We undertake to abide by the provisions, including conditions, restrictions, exclusions andtime-limits as provided under RoSCTL scheme, and relevant notifications, regulations, etc., asamended from time to time.*
>
> *2. Any claim made in this shipping bill or bill of export is not with respect to any duties or taxesor levies which are exempted or remitted or credited under any other mechanismsoutsideRoSCTL.*

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[1] Inserted by the Finance (No.2) Act, 2019 (23 of 2019) dated 01.08.2019.

> *3. I/ We undertake to preserve and make available relevant documents relating to the exportedgoods for the purposes of audit in the manner and for the time period prescribed in theCustoms Audit Regulations, 2018."*

Further, the purported amendment brought though by amending the Act w.e.f. 01.08.2019, was actually implemented/prescribed by issue of relevant regulations viz., The Shipping Bill (Post Export Conversion in relation to Instrument Based Scheme) Regulations, 2022 vide Notification No.11/2022-Customs (N.T.) with effect from 22.02.2022. Hence, there was no such legal requirement of specific time frame within which such amendment request under Section 149 ibid is required to be made, during the disputed period.

4.3 In view of the above factual matrix of the case, we are of the considered view that there exists sufficient evidence to state that the appellants-exporter had indicated their claim for exports under 'RoSCTL Scheme' and it is only an inadvertent mistake made by their CHA by incorrect mention of scheme code and in indication of 'Y' in the specific scheme under which they had intended to export the impugned goods and avail the export benefits. In view of aforesaid evidential documents available at the time of export, we are of the considered view that all the 90 shipping bills for which exports were done during September, 2021 to December, 2021 by the appellants are eligible to be considered for amendment under Section 149 of the Customs Act, 1962.

4.4 From the records of the case, it is seen that the impugned order has rejected the request for conversion of shipping bills solely on the ground of time limit prescribed in CBEC's circular, without going into the merits of the case. As the time limit of three months have been prescribed in the Circular No. 36/2010-Customs dated 23.09.2010, the same has been extracted and given below:

"Circular No. 36/2010-Cus., dated 23-9-2010

F. No. 109/121/2009-DBK
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

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

> *I am directed to invite attention to the Board's circular No. 4/2004-Cus., dated 16-1-2004 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 good's were exported and no fraud/ misdeclaration/manipulation has been noticed or investigation initiated against him in respect of such exports……."

4.5 On careful reading of the above circular prescribing the time of three months from the date of Let Export Order, for making a request for conversion of shipping bills, we find that the same does not flow from any specific legal provision of the Customs Act, 1962 and it has been prescribed without any authority or legal basis. Thus, we are of the considered view that such restriction of time without any legal provision being present in the parent legislation does not stand for legal scrutiny. We also find that the relevant period for which amendment of shipping bills were sought by the appellants-exporter has been sought relate to September, 2021 to December, 2021, which is prior to the amendment having been brought into effect by notifying the relevant regulations viz. The Shipping Bill (Post Export Conversion in relation to Instrument Based Scheme) Regulations, 2022 vide Notification No.11/2022-Customs (N.T.) dated 22.02.2022. Therefore, we are of the considered view that at the relevant point of time when the request of the appellants-exporter was under consideration, there was no legal requirement with respect to time limitation within which the application for amendment is required to be made.

5.1 We find that the above issue is no more *res integra*, as in a number of cases involving similar circumstances and facts of the case, the Tribunal and Hon'ble High Courts have held that when the provisions of Section 149 ibid did not prescribe any condition of time limit, a Circular issued prescribing a limited time of three months for filing the requests for amendments to be made in S/Bs is not legally sustainable.

5.2 In the case of *Oriental Carbon & Chemicals Ltd. Vs. Union of India* – 2021 (377) E.L.T. 850 (Guj.), the Hon'ble High Court of Gujarat has held that no time limit can be read into Section 149 of the Customs Act, 1962 when there is no such legal provision and the subordinate legislation cannot travel beyond the parent statute or impose limitation/restriction that is not found in parent statute. The relevant paragraphs in the said judgement is given below:

> ***"21.*** *Section 149 of the Customs Act, 1962, specifically permits amendment of the shipping bills even after the export on the basis of the documentary evidence which was in existence at the time the goods were exported. There is no restriction in the said provision for not allowing the amendment after the goods are exported unless the goods are checked at the time of export. Hence, the authorities cannot to introduce such restrictions de hors the said provision. The respondents had themselves asked the writ-applicant to remove the deficiency (i.e. lack of declaration) vide their letters issued in August, 2018. Therefore, the respondents were ready to allow the writ-applicant's claim despite the said declaration not having been there on the shipping bills at the relevant point of time. This contention, therefore, has no substance.*
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> ***22.*** *This Court, as well as other High Courts have allowed several petitions where the free shipping bills were allowed to be amended and/or the MEIS benefits were directed to be given despite lack of*

> *declaration. [See (i) Bombardier Transportation India Pvt. Ltd. v. Directorate General of Foreign Trade, 2021 (3) TMI 9; (ii) Judgment dated 8-2-2021 in the case of M/s. Raj & Co. v. UOI; (iii) M/s. Gokul Overseas v. UOI, (SCA No. 7500 of 2019, decided on 21-1-2020), wherein this Court had allowed the petition, inter alia, holding that whether the goods confirm to the description, etc. is ascertainable from the shipping bills, invoices, etc. available with the Customs authorities; (iv) Delhi High Court judgment in the case of Kedia Agencies v. Commissioner of Customs, reported in 2017 (348) E.L.T. 634 (Del.); (v) Madras High Court judgment in the case of Pasha International v. Commissioner of Customs, reported in 2019 (365) E.L.T. 669 (Mad.); (vi) Madras High Court judgment in the case of Global Calcium v. Asst. Commissioner of Customs, reported in 2019 (370) E.L.T. 176 (Mad.); and (vii) Madras High Court judgment in the case of P.A. Footwear v. DGFT, reported in 2020 (372) E.L.T. 660 (Mad.)].*
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> ***23.*** *The aforenoted decisions squarely cover the present matter.*
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> ***24.*** *So far as the second objection raised on behalf of the respondents is concerned, we may only say that Section 149 of the Customs Act, 1962 does not prescribe any time limit. In fact, at the relevant point of time, it did not even provide for the fixation of the time limit by way of rules or regulations. Therefore, no time limit can be read into the said provision nor can it be introduced by way of a circular. It is well-settled that a subordinate legislation cannot travel beyond the parent statute or impose a limitation or restriction not found in the parent statute.*
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> ***25.*** *This Court, in the case of Principal Commissioner of Customs v. M/s. Lykis Limited, 2021 (2) TMI 261, has upheld the Tribunal's judgment holding that when no time limit is prescribed in Section 149 of the Customs Act, 1962, no such time limit can be fixed by way of a circular.*
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> ***26.*** *In the case of M/s. Mahalaxmi Rubtech v. UOI, (SCA No. 21636 of 2019, decided on 2-3-2021), this Court upheld that the Circular is ultra vires Articles 14, 19(1)(g) of the Constitution and Section 149 of the Customs Act, 1962. Therefore, the said Circular cannot be relied upon."*

5.3 Further, in the case of *N.C. John & Sons Pvt. Ltd. Vs. Commissioner of Customs, Cochin* – 2020 (371) E.L.T. 543 (Tri. – Bang.), the Tribunal has held that only lapse of mentioning in reward column as 'N' instead of 'Y', is only a procedural defect that can be corrected by amending the shipping bill. The relevant paragraph in the said order is given below:

> ***"6.*** *After considering the submissions of both the parties and perusal of the material on record, I find that the Commissioner has failed to notice that the appellant has declared their intention to claim MEIS benefits in all the shipping bills which have been produced on record. The only lapse on the part of the appellant was that they have mentioned in the reward column as 'N' instead of 'Y', which is only a procedural defect. Further, I find that otherwise the appellant is entitled to claim MEIS benefit as per the export policy. Failure to mention 'Y' in the reward column of the shipping bill for availing the benefit under MEIS scheme can be corrected by amending the shipping bill as held by the Hon'ble Madras High Court in the case of Pasha International cited supra. Further, I find that Hon'ble Delhi High Court in the case of Kedia (Agencies) Pvt. Ltd. (supra) has*

also allowed the amendment even in a situation where there was no declaration of intention whereas in the present case, the appellant has made the declaration on the front page of the shipping bills regarding their intention to claim the MEIS benefit. Further, I find that the other ports have allowed the amendment of shipping bill in identical situation. In view of my discussion above, I am of the considered view that rejection of request for amendment of shipping bill by the Commissioner is not sustainable in law and therefore, I set aside the impugned order and direct the Customs Authorities to allow the amendment in the shipping bill as per the request of the appellant on production of certified copy of this order. Appeal is, accordingly, allowed."

5.4 The said Order of the Tribunal was upheld by the Hon'ble High Court of Kerala in the case of *Commissioner of Customs, Cochin Vs. N.C. John and Sons Pvt. Ltd.* in Cus. Appeal No. 5 of 2020 dated 27.07.2020 – 2020 (374) E.L.T. 465 (Ker.), by upholding that the exporter-assessee is to be given the permission to amend the shipping bill. The relevant paragraphs of the said judgement are extracted below:

"5. *The issue involved is no longer res integra. In a similar circumstance, where the exporter had indicated their intention for claiming the reward in a specific box provided in the software through which it is uploaded to the web portal of the Central Government, but failed to check the correct box in a further column, the exporter had approached this Court by filing W.P. (C) No. 25339 of 2019. The case was heard along with W.P. (C) No. 27126 of 2019 [2020 (371) E.L.T. 241 (Ker.)] filed for similar reliefs. The writ petitions were allowed by a Learned Single Judge holding that it was an inadvertent mistake which is apparent from the perusal of the shipping bill, which shows both the words "we intend to claim reward under MEIS" as also "No" in the box against the query, with regard to intention to claim MEIS benefit. The Learned Single Judge disposed of the writ petitions directing the respondents to consider the claim of the exporters afresh. Writ Appeal Nos. 97 and 118 of 2020 preferred against the judgment of the Learned Single Judge were dismissed by a Division Bench by judgment dated 4-3-2020 upholding the findings of the Learned Single Judge [2020 (373) E.L.T. 149 (Ker.)]. We are in respectful agreement with the aforesaid decisions of this Court. In the case on hand, it can be seen from Annexure 1 order of the Tribunal that, as a matter of fact, the respondent had declared their intention and that here also there is a case of an inadvertent mistake in checking the column 'N' instead of 'Y'. We do not find any reason to interfere with Annexure 1 order of the CESTAT.*

6. *The Counsel for the appellant invited our attention to Section 149 of the Customs Act, which deals with amendment of documents. Section 149 is extracted below.*

*"**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."

> ***7.*** *The Counsel submits that going by the proviso to Section 149 an amendment of bill of lading or a shipping bill or bill of export should be permitted only in the circumstances specified in the statute. The counsel submitted that the permission granted by this Court to amend the shipping bills should not be understood as a matter of right by all exporters, which would lead to numerous applications of this kind. We make it clear that amendment of shipping bills shall necessarily be conforming to the conditions laid down in Section 149 of the Customs Act.*
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> ***8.*** *In the case on hand, since the appellant does not have any case that the conditions stipulated in Section 149 are not existing, there can be no denial of the permission to amend the shipping bills."*

5.5 The said judgement of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court in the case of *Commissioner of Customs, Cochin Vs. N.C. John and Sons Pvt. Ltd.*in Special Appeal to Appeal (C) No.5334 of 2022 dated 04.04.2022 – 2022 (380) E.L.T. 241(S.C.). The relevant paragraph of the said judgement is given below:

> *"In the facts and circumstances of the present case, more particularly, when right from the very beginning the respondent had declared the intention to claim the rewards under the MEIS (Merchandise Export from India Scheme) and it was found that there was an inadvertent mistake in checking the column 'N' instead of 'Y', we see no reason to interfere with the impugned judgment and order passed by the High Court.*
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> ***2.*** *As such, we are in complete agreement with the view taken by the High Court.*
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> ***3.*** *No interference of this Court is called for."*

6. In view of the foregoing discussions and analysis, wedo not find any merits in the impugned order passed by the learned Commissioner of Customs as it does not stand the scrutiny of law. Therefore, by setting aside the impugned order dated 27.10.2022, the appeal is allowed in favour of the appellants, by allowing the amendments sought to be made in the various shipping bills covered under the present appeals.

7. In the result, the impugned order dated 27.10.2022 is set aside and the appeal is allowed in favour of the appellants.

(Operative portion of the Order pronounced in open court.)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha