CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87245 OF 2023

[Arising out of Order-in-Appeal No: 159 & 160/Punjab Conware/2016(JNCH)-Appeal-I dated 15th September 2016 passed by Commissioner of Customs (Appeals - I), Mumbai -II.]

Mileage International
D-1, Bharat Nagar, Grant Road, Mumbai- 400 007 … ***Appellant***

versus

Commissioner of Customs
Jawaharlal Nehru Customs House, Nhava Sheva
Uran, District Raigad - 400 707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87246 OF 2023

[Arising out of Order-in-Appeal No: 159 & 160/Punjab Conware /2016(JNCH)-Appeal-I dated 15th September 2016 passed by Commissioner of Customs (Appeals - I), Mumbai -II.]

Rajguru Impex India Ltd
D-1, Bharat Nagar, Grant Road, Mumbai- 400 007 … ***Appellant***

versus

Commissioner of Customs,
Jawaharlal Nehru Customs House, Nhava Sheva
Uran, District Raigad - 400 707 ***…Respondent***

APPEARANCE:

Shri Lilesh P Sawant, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85475-85476/2025

DATE OF HEARING: 28/11/2024
DATE OF DECISION: 24/03/2025

PER: C J MATHEW

These appeals of Mileage International and Rajguru Impex India Ltd, against order[1] of Commissioner of Customs (Appeals - I), Mumbai – II, challenges rejection of their plea before the Commissioner of Customs (Appeals) on appeals against rejection of their applications for conversion of shipping bills under section 149 of Customs Act, 1962 with the finding of non-maintainability as the authority was vested thereon in Commissioner of Customs.

2. It would appear from the records that M/s Mileage International had sought conversion of thirteen shipping bills – no. 2398204/24.10.2003, 22400697/28.10.2003, 2416517/06.11.2003, 2416657/06.11.2003, 2430010/14.11.2003, 2431072/15.112003, 2440629/21.11.2003, 2442727/22.11.2003, 2476583/12.12.2003 2476729/12.12.2003, 2500192/26.12.2003, 2578885/06.02.2004 and 2581527/07.02.2004 – and M/s Rajguru Impex India Ltd had sought nine shipping bills – no. 2338354/16.09.2003, no. 2342290/18.09.2003, no. 2357059/27.09.2003, no. 2361400/30.09.2003, no. 2367650/ 06.10.2003, no.

[1] [order-in-appeal no.159 & 160/Punjab Conware /2016(JNCH)-Appeal-I dated 15th September 2016]

2376865/11.10.2003, no. 2380046/14.10.2003, no. 2386548/17.10.2003 and no. 2392153/21.10.2003 - for which no response was forthcoming prompting them to seek extracts of the 'note-sheet' pertaining to those. It would also appear that, by letter[2] dated 24th September 2015 under the signature of Assistant Commissioner of Customs, Jawaharlal Nehru Customs House (JNCH), Nhava Sheva, rejected for non-fulfilment of condition no. 3(a) of circular no. 36/2010 dated 23rd September 2010, was communicated but, instead of approaching the Tribunal, had sought intervention of the first appellate authority leading to the present appeals.

3. Appellants had, filed a separate appeal against the rejection as communicated by the Assistant Commissioner of Customs, but - having been substantially delayed beyond the period stipulated in law for seeking relief, required the issue of maintainability to be decided first and by interim order[3] the delay was condoned.

4. Learned Counsel for the appellant submitted that the issue in dispute is covered by decision of the Hon'ble High Court of Bombay in *Pinnacle Life Science Pvt Ltd v. Union of India*[4] inasmuch as the very condition that was inserted upon in the impugned order had been held to be *ultra vires* of section 149 of Customs Act, 1962.

[2] [file no. 8/6/GN 2004-15-16]
[3] [no. 322-23/2023 dated 15th September 2023]
[4] [order dated 11th July 2022 in writ petition no.1198 of 2022]

5. We have heard Learned Authorized Representative who reiterated the findings in the impugned order.

6. The limited issue in these appeals is the legal propriety in denial of permission to convert the endorsement in twenty two shipping bills from 'duty drawback scheme' of section 75 of Customs Act, 1962 to 'advance authorization scheme' of the Foreign Trade Policy (FTP) notified under the Foreign Trade (Development and Regulation) Act, 1992. The authority designated to dispose off application, under section 149 of Customs Act, 1962, had relied upon the prescriptions of time-lines in the circular impugned before us. The inappropriateness of enforcing conditions that were not contemplated in section 149 of Customs Act, 1962 had been examined by the Hon'ble High Court of Bombay in *re Pinnacle Life Science Pvt Ltd* and it had been held that

> *'6. In our view such a circular could not have been issued by the Central Board of Excise & Custom (CBEC) providing for three months time period to make a request for amending the shipping bills. This is because in Section 149 of the Act no time period has been prescribed and if in any specific statutory provision of law, no time period has been prescribed, then such circular could not have been issued by the CBEC. As rightly submitted by Mr. Namboodiri where the legislature wanted to prescribe any time limit for taking action like Section 128, 129 and 130 etc., of the Act, such time limit has been specifically laid down in the relevant provisions of the Act. When no time limit for making a request*

for amendment of any document is specified under Section 149 of the Act, it is clear that the legislature has not thought fit to restrict the scope of this provision for the amendment of the documents in terms of the time limit for making a formal request for such amendment. Moreover, Section 149 of the Act or any other provision of the Act does not confer any power or jurisdiction over the Board for laying down any time limit for operating this provision in respect of the amendment of documents. Therefore in our view the time limit of three months laid down vide paragraph no.3(a) of the circular is especially illegal and without jurisdiction. We find support for this view in a judgment of the Hon'ble Gujarat High Court at Ahmedabad in the matter of Messrs Mahalaxmi Rubtech Ltd. vs. Union of India [Special Civil Application No. 21636 of 2019 dated 2nd March 2021]'

7. In these circumstances, the impugned order stands invalidated and the applications are restored to the jurisdiction of the Commissioner of Customs for taking a decision on the conversion in accordance with the provisions of law and without being bound by the impugned circular.

8. Appeals are thus allowed by way of remand.

(Order pronounced in the open court on 24/03/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*