CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85565 OF 2015

[Arising out of Order-in-Original No: 11/2014-15 dated 28th November 2020 passed by the Commissioner of Customs (Export), Nhava Sheva.]

Ghatge Patil Industries Ltd
4th Floor State Bank Building N G N Vaidya Marg
Fort Mumbai – 400 023 … ***Appellant***

versus

Commissioner of Customs (Export)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri DB Shroff, Senior with Ms Yashmin and Shri Heetkumar, Advocates for the appellant

Shri CS Vinod, 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: 85161/2026

DATE OF HEARING: 06/01/2026
DATE OF DECISION: 06/01/2026

PER: C J MATHEW

Resolution of this dispute rests on a very limited plea of the direction in the order of remand by the Tribunal in the first round of litigation not having been taken into consideration while disposing off their application, under section 149 of Customs Act, 1962, for amendment of shipping bills.

2. The appellant, M/s Ghatge Patil Industries Ltd, a manufacturer of 'industrial valves', and had been exporting 'cast body valves' under 'duty entitlement passbook (DEPB)' scheme in the Foreign Trade Policy (FTP). In 29 shipping bills, filed between 23rd April 2001 and 17th July 2001, they, had, in accordance with revision of policy in relation to 'industrial values'[1], and, that too, of passing existence, had not resorted to the format prescribed for claiming benefit of exports under the scheme. In applications of 14th July 2009, amendment of these 'free shipping bills' to 'scheme' shipping bills was sought from the competent authority under section 149 of Customs Act, 1962.

3. The applications were rejected on the finding that the stipulation in the amending empowerment, enabling acceptance of such requests only if supported by documentation existing at the time of exports, could not, in the absence of any reference to the scheme in the records of the impugned transaction, be adhered to. On appeal to the Tribunal, the applications were restored to the original authority to consider the documents that had been submitted instead of mere scrutiny of entries in the shipping bills. In fresh proceedings, and on the very same

[1] [Group C-689 at serial no. 61 in Standard Input Output Norms (SION)]

grounds as before, order[2] of Commissioner of Customs (Export), Nhava Sheva rejected the applications leading to this round of litigation.

4. Learned Senior Counsel submitted that the appellants had complied with the letter of the law in complying with the Foreign Trade Policy (FTP) amending the relevant column of 'export goods' in the Standard Input Output Norm (SION) to 'forged industrial body valves' and, under the impression of the entitlement having been restricted to the item understood commercially, had filed shipping bills without the endorsement indicating export under the said scheme till the original nomenclature was restored *vide* public notice[3]. Narrating further developments, he informed that on representation by the appellant that 'cast body valves', intended for identical use, did not merit distinguishment from 'forged industrial valves', the empowered authority under the Foreign Trade Policy (FTP) affirmed so in their meeting of 26th December 2005 and recommended to the Department of Commerce in communication of 14th February 2006 which, by public notice[4], accorded retrospective inclusion in the norms for the interregnum *supra*. He submitted that the appellant had, unquestioningly, been exporting identical goods before and after the revision with appropriate endorsements in the shipping bills by the customs authorities owing to which the supporting documents of each

[2] [order-in-original no. 11/2014-15 dated 28th November 2020]
[3] [no. 44 dated 31st October 2001]
[4] [no. 96 (RE-2006)/2004-09 dated 5th April 2006]

of the transactions before, during and after the disputed period should have been accorded identical treatment and conversion allowed in the shipping bills.

5. Learned Senior Counsel further submitted that the pre-requisite insisted upon by the competent authority is illogical inasmuch as the shipping bills, admittedly, did not indicate the title of the scheme owing to the alteration and it was only upon restoration that such could be claimed without objection from customs officials at the time of export. According to him, instead of technical discountenancing of the amending empowerment, the Commissioner of Customs, as befitting to his exalted place in the decision hierarchy, should have considered the peculiar circumstances of re-description, restoration and retrospective effect as set out *supra* and, for implementation of the order of the Tribunal, by examining documents furnished at the time of export.

6. He relied upon the decision of the Tribunal, in *Kiran Pondy Chems Ltd v. Commissioner of Customs, Chennai [2006 (203) ELT 588 (Tri.-Mad)]*, holding that

> *'4. Neither side has referred to a vital provision of the Customs Act, which is Section 149 which reads as under -*
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> > *"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 custom house to be amended :*

> *Provided that no amendment of a bill of entry or a 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." (emphasis added)*

The above provision provides for amendment of import and export documents. Normally, no such amendment will be allowed after the imported goods have been cleared for home consumption or deposited in a warehouse or the export goods have been exported, as the case may be. ***However, there is an exception to this normal rule, which can be had from the proviso to Section 149. Accordingly, in respect of exports, if any documentary evidence, which was in existence at the time of export, is available (in support of a claim for amendment of any export document such as Shipping Bill) the export document could be allowed to be amended.*** *It appears, this proviso was overlooked by the Board while issuing the above Circular and by the ld. Commissioner while taking the impugned decision. (emphasis supplied)*

5. In the instant case, as we have already noted, the exports in question were made under cover of Shipping Bills and allied documents including ARE-1s. We have seen specimens of these ARE-1s. Part 'A' of ARE-1 is a certification by the Central Excise Range Superintendent regarding clearance of the goods for export. Part 'B' of this document is a certification by the proper officer of Customs, which certified that the export of goods was supervised by him. These documents (ARE-1s) clearly indicate that the exports were made under the DEEC Scheme. These documents were available at the time of export and were seen by the proper officer of Customs who supervised the exports. Thus the documentary evidence contemplated under the proviso to Section 149 ibid was in existence at the time of exports. Had situations of this kind been conceived, and the above provision of

> *law been noted, by the Board, the circular would not have placed any embargo on the Commissioners of Customs in the matter of permitting conversion of "free" SBs to "DEEC" SBs. The aforesaid crucial fact in the instant case was not noticed by the Commissioner either, nor did it occur to him that he was expected to discharge a quasi judicial function while dealing with the party's application. Hence we have no hesitation in setting aside the impugned proceedings. Since the impugned proceedings are also in violation of the principles of natural justice, we have to remand the case to ld. Commissioner of Customs for fresh decision. Accordingly, the impugned proceedings are set aside and ld. Commissioner is directed to reconsider the application of the appellants for conversion of the subject Shipping Bills, in accordance with law and in terms of this order, after giving the party a reasonable opportunity of being heard.'*

in dealing with a circular barring conversion from 'free shipping bills' to 'shipping bills' with attendant benefits and incentives.

7. Learned Authorized Representative submitted that, as exports had been entered against 'free shipping bills' during the period of dispute, the goods had, most likely, not been inspected for conformity with declaration and, in the absence, thereby, of report existing at the time of export, the conversion sought by appellant is beyond the empowerment of Commissioner of Customs.

8. Doubtlessly, the exports were preferred against 'free shipping bills' and, in all likelihood, not subjected to examination at the port of export. However, it was incumbent on the Commissioner of Customs

to take note of the extremely peculiar circumstances of the policy at that point in time. Examination of goods is at the discretion of customs officials and, merely from absence of such venturing on the part of the customs administration for whatever reason, the claim for benefit accruing from exports was not to be hindered except by proper consideration of every available document. Especially so, in the light of the direction of the Tribunal.

9. The appellant, as manufacturer of goods, was liable to duties of central excise and registered as an assessee under the law relating to levy of that duty. Every export is excluded from the levy and it is on responsible endorsement of prescribed documentation, at the time of removal from the factory as well as the certification of safe arrival at the port of export, that the goods are, finally, relieved of recovery under section 11A of Central Excise Act, 1944. Thus, notwithstanding the lack of mandated examination of goods exported against 'free-shipping bills', documents exist for verification that 'cast body valves' were, indeed, permitted to leave the factory without payment of duties of excise and the packages containing these had been enumerated before 'let export order' was granted with appropriate endorsements on the ARE-1 resubmitted to central excise authorities to relieve the burden of duties of excise.

10. Commissioners of Customs are not unaware of this procedure

and of the role of customs authorities in the prescribed process. Discard of this evidence is merited only on peril of proceeding against customs officials concerned for dereliction of responsibility. There is no record of such in the impugned order or submission on behalf of respondent herein. Furthermore, section 149 of Customs Act, 1962 does not purport to grant benefits of any incentive scheme but merely enabling amendment of bills of entry and shipping bills, as well as other documents furnished in support, without consideration of any consequential benefits and to be dealt with on available facts. The foregoing of duties of central excise on manufactured goods, validated in duly certified ARE-1s by not having been controverted in the impugned order, leave no room for doubt that the requests for amendment of the shipping bills was *bonafide*. In these circumstances, rejection of the requests for amendment under section 149 of Customs Act, 1962 was improper.

11. Accordingly, we set aside the impugned order to allow the appeal with direction to the competent authority to effect the necessary amendment in the impugned shipping bills.

(Operative part of the order pronounced in the open court on 6th January 2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*