

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86866 of 2024

[Arising out of Order-in-Original No. 75/2024-25/Commissioner/CEAC/NS-II/CAC/JNCH dated 24.06.2024 passed by the Commissioner of Customs (NS-II), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva.]

Sigma Exports
Pocket A-8/98, LGF,
Kalkaji Extension
New Delhi – 110 019.

.... Appellants

Versus

Commissioner of Customs, NS-II
Nhava Sheva-II Customs Commissionerate
Centralized Export Assessment Centre (CEAC)
Jawaharlal Nehru Custom House (JNCH)
Taluk Uran, District Raigad
Maharashtra – 400 707.

.... Respondent

Appearance:

Ms. Vidushi Shubham, Advocate for the Appellants

Shri Ram Kumar, Authorized Representative for the Respondent

FINAL ORDER NO. A/85510/2026

Date of Hearing: 28.01.2026

Date of Decision: 24.03.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Sigma Exports, New Delhi (herein after, referred to as “the appellants”, for short) assailing the Order-in-Original No. 75/2024-25/Commissioner/CEAC/NS-II/CAC/JNCH dated 24.06.2024 (herein after, referred to as “the impugned order”) passed by the Commissioner of Customs (NS-II), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2. The appellants herein is an exporter of ‘made-up articles of textiles’ viz., 100% Organic Cotton Handloom/Power loom Cushion Covers, Organic Cotton power loom K. Towels, falling under Chapter 63 of the Customs Tariff Act, 1975 and for export of such goods they have filed 147 Shipping Bills (S/Bs) before the jurisdictional customs authorities.

2.3 In terms of the export promotion measures introduced by the Central Government, Ministry of Textiles, export of apparels and made-up sector of textiles, were provided with rebate of State taxes and Central taxes in order to avoid the taxes being built in with the cost of export of goods under the scheme of Rebate of State Levies (RoSL). However, as certain taxes continued to be present in the cost of exports, the Ministry of Textiles in the Central Government had discontinued RoSL scheme and a new scheme viz., Rebate of State and Central Taxes and Levies (RoSCTL) was introduced vide Notification No. 14/26/2016-IT (Vol.II) dated 07.03.2019. Under such scheme, the Central Government in accordance with the recognised international economic principle of Zero rating of export products, provided for rebate of State and Central Taxes and Levies in addition to the 'Duty Drawback Scheme' on export of garments and made-ups i.e., all goods falling under Chapter 61 or 62, all goods falling under Chapter 63 of the Schedule of All Industry Rates (AIR) of Drawback Schedule excluding certain goods specified therein. The rates of drawback under the said scheme was recommended by the Drawback Committee constituted by the Government. For claiming rebate under the above scheme, an exporter was required to make such claim for rebate on the exportation of each of the goods, by declaring it in the S/B at the item level. RoSCTL scheme was implemented through issue of scrip by the Directorate General of Foreign Trade (DGFT) through a Merchandise Exports from India Scheme (MEIS) type scrip system. It was also envisaged that such scheme will be administered on the basis of electronic online interface wherein 'electronic duty credit ledger' will be created by the customs authorities in Customs EDI system and DGFT authorities, on the basis of system-based approval of the final entitlement, shall issue the scrips online, obviating the need for unnecessary human interface and for promoting efficiency in the process of obtaining export promotion benefits to legitimate exporters. Corresponding instructions in the procedure to be followed for implementation of RoSCTL scheme for extending the benefit to the exporters was issued by the Drawback Division of the Ministry of Finance vide Circular No.10/2019-Customs dated 12.03.2019.

2.4 Since the appellants were claiming the duty drawback benefit with MEIS benefits in respect of the export of goods prior to introduction of the aforesaid schemes, for exports made during the period 08.03.2019 to 07.05.2020, they had inadvertently continued to file the S/Bs indicating exports under the scheme code "19" applicable for 'drawback scheme',

instead of indicating the correct code "60" relevant to RoSCTL scheme. Upon submission of the details of exports to the DGFT authorities on 15.01.2022 for claiming the RoSCTL benefits, and in response e-mail dated 02.02.2022 received from DGFT stating that the scheme code mentioned in the relevant S/Bs/Let Export Orders (LEOs) is showing as "19" instead of "60", the appellants had realised that they had mentioned the scheme code incorrectly. Therefore, the appellants had applied to the jurisdictional Commissioner of Customs for obtaining his permission in carrying out necessary amendments in respect of 147 S/Bs in terms of Section 149 of the Customs Act, 1962. The request made by the appellants vide their letters dated 29.03.2022 and 31.03.2022 was rejected by the jurisdictional capital Commissioner of Customs, NS-II, JNCH, Nhava Sheva, Mumbai Customs Zone-II on the ground of such request being time barred in terms of CBIC Circular No.36/2010 dated 23.09.2010, and the same was informed by Commissionerate office letter dated 09.06.2022, signed by the Assistant Commissioner of Customs, CEAC, JNCH, Nhava Sheva.

2.5 Being aggrieved by such decision of rejection, the appellants, initially, had preferred an appeal against the decision communicated vide letter dated 09.06.2022, before the Commissioner of Customs (Appeals), Mumbai-II, and it was disposed of by him vide the order dated 18.04.2023. In the said order, the appeal was rejected on the ground that rejection order was passed/decided by the Commissioner of Customs and as such, appeal against such order cannot be filed before the Commissioner of Customs (Appeals) in view of the provisions of Section 128 *ibid*; and thus, the appeal is not maintainable, being beyond the jurisdiction of the First Appellate Authority. In further appeal filed by the appellants against the decision of the learned Commissioner of Customs (Appeals) before this Bench, in Customs Appeal No.85990 of 2023, the Tribunal had passed Final Order No. A/85444/2024 dated 29.04.2024, holding that since the request for amendment/conversion of the S/Bs were rejected in a decision taken/order passed by the Commissioner of Customs and that the Assistant Commissioner of Customs working in his office vide letter dated 09.06.2022, has simply conveyed such decision/order of the Administrative Commissioner of Customs to the appellants, the appeal before the Commissioner (Appeals) is not maintainable in terms of Section 128 *ibid*.

2.6 Subsequently, one another appeal was filed by the appellants before this Tribunal bearing Customs Appeal No. 85928 of 2024, being aggrieved

against the decision of the Commissioner of Customs, NS-II communicated vide letter dated 09.06.2022 in rejecting their request for permitting amendment in 147 S/Bs, on the sole ground that the said request has not been made within three months from the date of LEO. The said case was heard by this Bench of the Tribunal and it was held that since the time limit under Section 149 ibid was prescribed in the Customs statute for the first time w.e.f. 22.02.2022, the said decision/order of the Commissioner is not maintainable. Accordingly, the said order/decision dated 09.06.2022 was set aside and the matter was remanded back to the jurisdictional Commissioner of Customs for consideration of the request made by the appellants for amendment/ conversion of S/Bs afresh on merits and for passing a speaking order in the disputed issue. In compliance with the said directions of the Tribunal, learned Commissioner of Customs (NS-II), JNCH, Nhava Sheva had passed the Order-in-Original dated 24.06.2024, in rejecting the request for conversion of 144 S/Bs on merits. Feeling aggrieved with the impugned order dated 24.06.2024, the appellants of filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants, submitted that this is the second round of litigation, wherein the appeal against the rejection of their request for amendment of S/Bs, for conversion from 'drawback scheme' of code "19" to 'RoSCTL scheme' of code "60", has come for hearing before the Tribunal. Initially, the request was rejected on the ground of time-limit; and subsequently, in the present impugned order the rejection has been made on the following grounds:

- (i) the request for conversion from one scheme to another involves change from the scheme involving less rigorous examination to more rigorous examination, which cannot be acceded to in terms of the CBIC Circular No.36/2010-Customs dated 23.09.2010;
- (ii) the appellants had not opted for RoSCTL scheme in the S/Bs and there is no document to show that they had intent or any other evidence to support their claim;
- (iii) the appellants could have availed the benefits of any of the schemes such as MEIS scheme and availment of export incentives/ benefits at both the ends have not been examined in order to allow such request for conversion.

In this regard, he submitted that against each of the aforesaid ground they have a strong case to prove the merits of their case and therefore submitted the following facts to support their case.

3.2 Learned Advocate stated that the appellants have exported goods falling under Chapter 63, which are duly covered under 'RoSCTL scheme' notified by the government, and thus the substantial benefits extended by a specific export promotion scheme cannot be denied on the grounds of procedural non-compliance in mentioning incorrect scheme code number. He further stated that from the representation dated 15.01.2022 made before the DGFT authorities and the reply mail dated 02.02.2022, it is evidential that they had not sought any benefits such as MEIS etc. Further, DGFT authorities were also empowered to adjust any excess/undue claims, if any, paid to the exporters under MEIS for the period from 07.03.2019 to 31.12.2019, from the RoSCTL scrips/benefits vide Public Notice (P.N.) No. 58/2015-2020 dated 29.01.2020 issued by DGFT, Ministry of Commerce & Industry and therefore he claimed that rejection of conversion of S/Bs on such ground is improper.

3.3 He further stated that benefits of duty drawback under scheme code "19" and duty credit scrips under MEIS up to 07.03.2019/ RoSCTL from 08.03.2019 are eligible for availing simultaneously by an exporter of specified goods and thus, there is no change in the nature of export benefits claimed in the S/Bs on the date of respective S/Bs and the date of request made for conversion, to state that there is no intent for availing the benefit of RoSCTL and it is a request for conversion from scheme involving less rigorous examination to other scheme of more rigorous examination norms. In support of the same, he relied upon the decision of the Tribunal in the case of *Lovy International Vs. Commissioner of Customs (Export) ICD, Tughlakabad* - (2024) 16 Centax 223 (Tri.-Del), wherein specific findings were given to the effect that examination norms for drawback scheme and that of drawback along with RoSCTL are the same level.

3.4 Learned Advocate submitted that the appellants have submitted to the jurisdictional authorities complete details of all shipping bills, invoices, packing lists and other relevant documents pertaining to the request for conversion and hence denial of amendment request is arbitrary and improper. He further stated that in the absence of anything found wrong in the export documents submitted by the appellants, the mere inadvertent mistake occurred in mentioning of scheme code in S/Bs should not be the ground to deny the legitimate benefits of RoSCTL scheme extended by the

government to promote export of goods. Thus, he pleaded that the appeal filed by the appellants may be considered on the above grounds.

4. Learned Authorised Representative (AR) appearing for the department reiterated the findings in the impugned order. He further stated that out of total 147 S/Bs for which the appellants had requested for allowing amendment for conversion from one scheme to another, learned Commissioner in the impugned order had explained why he could not consider the three S/Bs viz., S/B No.8370497 dated 20.11.2019 being not pertaining to JNCH, Nhava Sheva; S/B Nos.7435333 dated 07.10.2019 and 7864248 dated 25.10.2019 cover goods of Chapter 57, and thus he had considered and rejected the claim for rest of 144 S/Bs. Therefore, he claimed that the impugned order is sustainable.

5. Heard both sides and perused the records of the case. We have also examined the submissions advanced by learned Advocate appearing for the appellants and the learned Authorized Representative of the Department. Further, we have also perused the additional written submissions in the form of paper books submitted by both sides along with citation of case laws in support of their case.

6. The issue involved in this appeal for consideration before the Tribunal is, to examine whether, the request made by the exporter for amendment in the Shipping Bills for conversion of export promotion scheme i.e., from the 'Drawback' scheme having Scheme code No. "19" to other scheme of 'Drawback & RoSCTL' having Scheme code No. "60", is permissible under the provisions of Section 149 of the Customs Act, 1962. We find that the applicant had made a specific request for amendment of the Shipping Bills under the provisions of Section 149 *ibid*. The said statutory provision, relevant for consideration during the relevant period of time covering S/Bs filed from 08.03.2019 to 07.05.2020 for which LEOs were granted between 12.03.2019 to 11.05.2020, for both period i.e., before its amendment w.e.f. 01.08.2019, and after amendment introduced through Finance (No. 2) Act, 2019, w.e.f. 01.08.2019, are quoted herein below:

Section 149. Amendment of documents. (prior to 01.08.2019)

"Save as otherwise provided in Section 30 and 41, the proper officer may, in his discretion, authorize any document, after it has been presented in the customs house to be amended:

PROVIDED that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorized to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse,

or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be."

Section 149. Amendment of documents. (w.e.f. 01.08.2019)

"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 [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 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."

On perusal of the aforesaid legal provisions, it transpires that the amendment introduced w.e.f. 01.08.2019 provided for prescribing the restriction and conditions subject to which the proper officer may allow/authorize the amendment to Bill of Entry/Shipping Bill or other documents. Accordingly, in respect of S/Bs, the government had issued the Shipping Bill (Post Export Conversion in Relation to Instrument Based Scheme) Regulations, 2022 vide Notification No.11/2022-Customs dated 22.02.2022 prescribing the time limits within which the request for amendment could be considered and the relevant conditions and restrictions which are required to be fulfilled for permitting such conversion from one instrument based scheme to another. On perusal of the facts of the case and that the subject S/Bs, for which conversion from one scheme to another had been sought for the appellants, in respect of which orders for clearance of goods under Section 51(1) *ibid*/LEOs were granted between 12.03.2019 to 11.05.2020 i.e., prior to bringing into force of the above regulations, it clearly transpires that the aforesaid conditions/restrictions, time limits would not be applicable in the present case. The learned Commissioner of Customs had also correctly recorded the above statutory position of the non-application of the above regulations in paragraph 14 of the impugned order.

7. However, he had applied various criteria with respect to examination norms, documentary evidence in existence at the time of export, use of inputs in the resultant export product, examination report for the coverage of export product under relevant SION/drawback schedule, fulfilment of conditions of the scheme to which conversion is sought for, availment of benefits simultaneously under both schemes etc. as provided in the CBIC

Circular No. 36/2010-Customs dated 23.09.2010 in arriving at the conclusion of rejecting the request of the appellants for conversion of S/Bs.

8.1 It is on record that at paragraph 17(A)(a) of the impugned order that the examination instructions given by the proper officer of Customs in respect of the various S/Bs in the present case, as recorded in the Indian Customs EDI System (ICES) was found to be "*Inspect the packages and check marks and Nos. as per SB/ Invoice*" in most of the cases and as "*Open and examine*" in few cases. Therefore, it clearly transpires that the exportation of goods in the impugned case was subjected to specific instructions, as given by the proper officer of Customs. However, learned Commissioner of Customs has given the finding that Indian Customs Risk Management System (RMS) provides instructions regarding examination norms based on the risk profile of the consignment/export incentive declared by the exporter in the shipping bills; since, in the present case as the appellants had not declared the scheme-"Drawback & RoSCTL" in the S/Bs, it is possible that the examination order/instructions could have been different depending upon the nature and extent of export promotion scheme. On such basis he had concluded that conversion of S/Bs as requested by the appellants are from less rigorous scheme to more rigorous examination scheme.

8.2 In this regard, we find that CBIC had prescribed various instructions for examination of goods from time to time. In the earliest instructions vide Circular No.06/2002-Customs dated 23.01.2002, on the basis of the recommendations made by Export Promotion Board (EPB), CBEC in the Ministry of Finance had prescribed revised examination norms keeping in view the quantum of incentive, value of export goods, the country of destination etc., and stated that in case of exports where the duty benefit is above Rs.1 lakh, 10% shipments should be checked on a random basis, and in cases where the duty benefit is below Rs.1 lakh, only surprise checks should be resorted to. Further, enhanced scale of examination at 25% and 50% in respect of exports to sensitive places viz. Dubai, Sharjah, Singapore, Hong Kong and Colombo was also provided therein in place of 10%/surprise check examination norms, which is generally applicable in other cases. The Government had introduced Risk Management System (RMS) as a measure of trade facilitation and for selective screening of only high risk cargo for customs examination in respect of imports vide Circular No.43/2005-Customs dated 24.11.2005, in major Customs locations where

the ICES is operational. On such introduction of RMS, the then existing practice of routine assessment, concurrent audit and examination of almost all Bills of Entry were discontinued and the focus was kept on quality assessment, examination and Post Clearance Audit of Bills of Entry selected by the Risk Management System. Similarly, RMS in export was introduced with effect from 15.07.2013 vide CBIC's Circular No. 23/2013-Customs dated 24.06.2013. RMS for exports was developed with the following components viz., (i) ensuring appropriate control measures for proper and speedy disbursement of drawback and other export incentives (ii) effective utilization of human resources, to match the workload with the resources available (iii) ensuring proper and expeditious implementation of existing control over export under the applicable Allied Acts and Rules. Consequent to such introduction of RMS, it was provided that S/Bs filed electronically into ICES through the Service Centre or the ICEGATE will be processed by RMS; the RMS will process the data through a series of steps/corridors and produce an electronic output for the ICES; this output from RMS will determine the flow of the S/B in ICES i.e., whether the S/B will be taken up for Customs control (verification of self-assessment or examination or both) or to be given "Let Export Order" directly after payment of Export duty (if any) without any verification of self-assessment or examination. It had the feature that the RMS will also provide instructions for Appraising Officer/Superintendent, Examining Officer/Inspector or the Let Export Order (LEO) Officer, wherever necessary; these decisions communicated by the RMS on the need for verification of self-assessment and/or examination and the appraising and examination instructions communicated by the RMS are required to be followed by the field formations. However, with prior approval of the jurisdictional Commissioner of Customs or an officer not below the rank of Addl./Joint Commissioner of Customs, field formations were given the liberty for varying the treatment to be given for a particular S/B in variance with the examination instructions given by RMS, in a few cases, after recording the reason for the same. Further, it was also decided by the CBEC that RMS in export shall be implemented in two phases. In the first phase of implementation, RMS processed the data and provided output to ICES up to goods examination stage. Export RMS thus allowed low risk consignments to be cleared based on self-assessment of the declarations by exporters. In the second phase, which was introduced vide CBIC's Circular No. 15/2021-Customs dated 15.07.2021, RMS processes the shipping bill data after the Export General Manifest (EGM) is filed electronically and provides required output to ICES

for selection of S/Bs for risk-based processing of duty drawback claims with effect from 26.07.2021. On careful perusal of the above said details on the scheme of examination instructions prescribed by the CBIC from time to time, it is evident that the examination instructions could have given in respect of impugned export goods for the S/Bs filed from 08.03.2019 to 07.05.2020 only by the proper officer of customs; further, as the RMS in export was introduced with effect from 15.07.2013, there is no case for prescribing examination order/instructions by RMS, by varying it depending upon the nature and extent of export promotion scheme during such period when S/Bs were filed by the appellants i.e., from 08.03.2019 to 07.05.2020. Further, there is no evidence shown in the form of Circular/instructions etc., in the impugned order to state that the examination norms for such request for conversion of scheme is from less rigorous to more rigorous. Therefore, the finding given by the learned Commissioner at paragraph 17(A) to this extent is contrary to the factual position and thus the same is not legally sustainable.

8.3 Further, CBEC had also issued instructions vide Circular No.06/2003-Customs dated 28.01.2003 as amended by Circular No.40/2003-Customs dated 12.05.2003 for permitting (a) conversion of free shipping bills into Advance License/ DEPB/DFRC/Drawback shipping bills; and (b) conversion of shipping bills from one export promotion scheme to another on merits, by the Commissioner of Customs on case to case basis. Some of the conditions specified therein include (i) On the basis of available export documents etc., the fact of use of inputs is satisfactorily proved in the resultant export product for the purpose of allowing conversion into Advance License/DFRC/DEPB/Drawback Schemes; (ii) examination report and other endorsements made on the shipping bill/export documents prove the fact of export of the export product and the export product is clearly covered under relevant SION and DEPB Schedule, as the case may be; (iii) On the basis of S/B or export documents the exporter is fulfilling all conditions of the Scheme to which the conversion request has been made and he is eligible for its benefit; and (iv) exporter has not availed benefit of any export promotion scheme and no fraud/or suspected manipulation and no investigations have been initiated against the party in respect of such exports under these shipping bills for which conversion is sought.

8.4 It is on record that the learned Commissioner of Customs had examined the above aspects, and in respect of condition at (i) he has held

that the same is not applicable in the present case; and for condition (ii) he has remarked that there is no adverse comment by the examining officers. As regards condition (iii) he has held that the goods exported under various S/Bs are covered under chapter 63 and therefore RoSCTL benefits are allowable in terms of Notification No.14/26/2016-IT dated 07.03.2019. On the condition (iv) he has also recorded that nothing adverse has been mentioned against the various S/Bs. However, he denied the benefit of conversion on the basis of his finding that drawback is available in both the ends i.e., under Scheme-Drawback as well as under Scheme-Drawback & RoSCTL. In this regard, and perusal of the 'Customs online directory enquiry system' providing the details of Export Promotion (EP) scheme codes for various EP schemes numbering more than 70 such combinations, provide simple two-digit code ranging from "00" to "99". The relevant scheme code for 'Drawback' is "19" and for other scheme for which conversion is sought for by appellants is 'Drawback, and RoSCTL' with scheme code "60". Similarly, scheme codes "40, 41, 43, 44, 45, 46, 47, 48, 49, 61, 62, 63, 64, 65, 71, 73, 74, 75, 76, 79, 80, 81" cover drawback scheme in combination with various other EP schemes. Further, the data to be entered in the ICES in filing a S/B, for preferring a particular export promotion scheme/drawback is indicated only by the scheme code under column "18" of "Part-III item details" for each of the item exported therein and in 'Part-IV Export Scheme details' for providing details of drawback serial numbers, license details. Further, as provided in Circular No. 8/2017-Customs dated 20.03.2017 under the scheme of Rebate of State Levies (RoSL), the appellants were eligible to claim the benefits for rebate of state taxes along with benefit of drawback, either as a standalone drawback benefit or in combination with other schemes, as provided therein. The said RoSL scheme was discontinued and the new scheme viz., Rebate of State and Central Taxes and Levies (RoSCTL) was notified by the government from 08.03.2019. Consequently, CBIC vide Circular No. 10/2019-Customs dated 12.03.2019 had advised the Directorate General of Systems and Data Management to make necessary changes in the ICES/ Customs EDI System. In the said circular, it was also instructed that under RoSCTL scheme, the benefit to exporters shall be given by DGFT in form of Merchandise Exports from India Scheme (MEIS) type duty credit scrips and a detailed procedure for claiming benefit under the RoSCTL, issuance of scrips and their usage is being worked out. Till finalisation of such details, in the transition period, CBIC had decided that claims filed under the existing scheme codes for the erstwhile RoSL scheme will be treated as

claims filed under RoSCTL scheme. Therefore, in the above context of series of changes made in the export promotion schemes for the export goods under Chapter 63 and the complexity of scheme codes, the request made for correction of inadvertent entry for the scheme code in the S/Bs is reasonable and required to be addressed by the department properly.

8.5 Furthermore, the Public Notice No.58/2015-2020 dated 29.01.2020 issued by the DGFT in the Ministry of Commerce & Industry providing for the detailed procedure and procedure for submitting online application for claims under RoSCTL scheme, electronically populating the entitlement data as per shipping bills filed and adjustment of MEIS benefits already granted, if any, provided for self-contained procedure for grant of benefits for RoSCTL scheme with checks and balances, to ensure proper implementation of the entire scheme. It is also on record that the DGFT authorities had examined the representation made by the appellants for grant of benefits under RoSCTL scheme in various S/Bs and had informed them that as per Circular No. 10/2019-Customs dated 12.03.2019, scheme codes under use for RoSL (60, 61, 64 and 65) shall continue to be used for filing under RoSCTL scheme and S/B data having such scheme codes alone are transmitted from Customs gateway-ICEGATE to DGFT server. However, as the S/Bs filed by the appellants contained the scheme code as "19" for 96 S/Bs, the data may not have been transmitted from Customs server to DGFT server, for considering their request for extending the benefits under RoSCTL scheme. The above reply given by the DGFT authorities clearly evidence the fact that the appellants were neither given export incentives/benefit under any other scheme earlier, nor have extended the benefit of RoSCTL scheme in the wake of disparity in the data appearing in the S/Bs. Therefore, the finding of the learned Commissioner of Customs for rejecting the request for conversion on the ground that the appellants may avail the benefits of MEIS scheme, and such aspect have not been examined is contrary to the various circulars in force, RoSCTL scheme and improper in view of the detailed procedure prescribed by the DGFT in P.N. dated 29.01.2020.

9.1 In this regard, it is also relevant to take note of the decision of the Tribunal in *Man Industries (India) Limited Vs. Commissioner of Customs, (EP) - 2006 (202) E.L.T. 433* wherein it was held that "the statutory right, as also the statutory obligation of the proper officer to amend the document after its presentation in the custom house cannot be curtailed or set to not

by circulars of the Board." The said decision of the Tribunal was upheld by the Hon'ble Bombay High Court as reported in 2007 (216) E.L.T. 15 and the appeal filed by the department against such judgement before the Hon'ble Supreme Court in Civil Appeal No. 8513 of 2011 was also dismissed 2015 (326) E.L.T. A34 (SC), by holding as under:

"After hearing learned counsel for the parties, we are convinced that what was sought was the amendment of documents only and would squarely be covered under section 149 of the Customs Act, 1962. The appeals are accordingly dismissed."

9.2 We further find that the Co-ordinate Bench of the Tribunal in an identical set of facts involved in the case of *Lovy International* (supra) have held that the exporter is entitled to claim the benefit of the scheme to which they are eligible and the same cannot be denied on account of any procedural lapse as provided in the Circular No. 36/2010 dated 23.09.2010. It was also held by the Tribunal in the said case, that the examination norms/level of Drawback Scheme and that of Drawback along with ROSCTL Scheme is the same, while allowing the appeal in favour of the exporter. The relevant paragraphs of the said order dated 26.02.2024 are extracted and given below:

"6. Before considering the issue, it is necessary to consider the background in which the appellant had sought amendment of the Shipping Bills. The Rebate of State and Central Taxes and Levies (ROSCTL) was introduced with effect from 7-3-2019 replacing the Merchandise Exports from India Scheme (MEIS) by virtue of the Public Notice No. 58/2015-2020 dated 29-1-2020, thereby up to 7-3-2019 the benefit of Drawback scheme was available along with MEIS Scheme and after the withdrawal of MEIS Scheme, the benefit of Drawback Scheme was available with ROSCTL, with effect from 7-3-2019. The benefit under the new ROSCTL Scheme was given in the form of duty credit scrips same as MEIS scrips. The submission of the learned counsel that there was a clerical error on the part of the Customs Broker whereby the shipping bills were filed under the Drawback Scheme (Code 19) instead of Drawback ROSCTL Scheme (Code 60) seems to be bona fide in view of the withdrawal of the earlier scheme and introduction of the new scheme on 29-1-2020 made applicable with effect from 7-3-2019. We find merit in the submission of the appellant that they learnt about this clerical error only when they filed for license with the DGFT on 18-1-2021 and, therefore, on 21-1-2021 they submitted the necessary application with supporting documents, which also appear to be made in great hurry and in absence of any assistance from the Customs Broker and they filed the same before the Commissioner of Customs, Nhava Sheva though the Shipping Bill was filed before the ICD, Tughlakabad and hence further delay took place. The appellant acted on the response received from the Cell at Mumbai and submitted on line application on 31-3-2021 on account of pandemic Covid-19 and once the situation normalised, the hard copy of the application was sent on 11-7-2021.

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11. *In the facts of the present case, we find that the export goods is not in dispute and therefore, the entitlement of the appellant to claim the*

benefit under the scheme is clearly admissible and the same cannot be denied on account of any procedural lapse as provided in the circular. We also find that the examination level of Drawback Scheme and that of Drawback along with ROSCTL Scheme is the same and therefore, there is no reason to deny the benefit of the scheme....

10. In view of the foregoing discussions and analysis, we are of the considered view that the impugned order passed in rejecting the request made by the appellants for conversion of the scheme code in the impugned S/Bs from 'Drawback' scheme having Scheme code No. "19" to other scheme of 'Drawback & RoSCTL' having Scheme code No. "60", is liable to be set aside, as the same does not stand the legal scrutiny.

11. In the result, by setting aside the impugned order, the appeal is allowed in favour of the appellants.

(Order pronounced in open court on 24.03.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)