

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Customs Appeal No.11915 of 2019**

(Arising out of OIO-CH-HAZIRA-SB-AMND-94-18-19 dated 16/11/2018 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**Atul Limited**

G.I.Patel Marg, Po: Atul,  
Valsad, Gujarat

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-Surat-I**

New Building...Opp. Gandhi Baug,  
Chowk Bazar,  
Surat, Gujarat – 395001

**.....Respondent**

**APPEARANCE:**

Shri P.P Jadeja, Consultant for the Appellant  
Shri R.P Parekh, Superintendent (AR) for the Respondent

**CORAM:        HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
                     HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. A/ 10810 /2022**

DATE OF HEARING: 06.06.2022  
DATE OF DECISION: 21.07.2022

**RAMESH NAIR**

This appeal is directed against order-in-original No. CH/Hazira/SB/AMND/94/18-19 dated 16.11.2018 passed by the Principal Commissioner of Customs, Ahmedabad which was communicated to the appellant by the Deputy Commissioner of Customs, Custom House, Hazira whereby the appellant's request dated 03.04.2018 for conversion of Export Promotion Scheme from "Duty Drawback(DBK) to Advance Licence" in respect of Shipping Bill No. 3055471 dated 23.02.2018 has been rejected. It is this order against which the appellant filed an appeal before this tribunal.

1.2 The brief facts of the case is that the appellant exported goods vide Shipping Bill No. 3055471 dated 23.02.2018. The export shipment was for Invoice No. 17015209 dated 22.02.2018. The export goods were cleared under duty drawback with DBK Sr. No. 3808B with DBK rate @ 1.50% amounting to Rs 1,71,519/- as per DBK scroll No. 24220/2018 dated 09.03.2018. Since the appellant had intention to clear the export consignment under the scheme of Advance License but they cleared under

DBK. The appellant requested customs department vide letter dated 03.04.2018 that under DBK Scroll No. 24220/2018 dated 09.03.2018 the said drawback amount was not received in their bank account till then. Hence, they requested the customs officials to instruct the Bank for stopping payment of said drawback in their Bank Account. The Appellant requested to allow them Post Shipment amendment under Section 149 of Customs Act, 1962 in Shipping Bill No. 3055471 dated 23.02.2018 from Export Promotion Duty Drawback Scheme to Advance License Scheme. The Appellant in their aforesaid letter also intimated customs to stop payment of Drawback of Rs. 1,71,519/- and also confirmed that they were liable to reverse the Duty Drawback of Rs 1,71,519/- if the same is remitted to their Bank Account. The Appellant vide their letter dated 09.08.2018 also accepted that they will pay Drawback amount of INR 1,71,519 along with interest to customs, in case if the same is credited to their Bank Account. The Appellant vide above letter dated 09.08.2018 again requested the Custom Officials to allow them to change Shipping Bill scheme from Drawback to DEEC in Advance Authorization Number 0810139972/2/03/00 dated 30.03.2017. The Office of the Deputy Commissioner of Customs, Hazira Port, Surat vide letter dated 16.11.2018 informed Appellant that they request for conversion of the said Shipping Bill No.3055417 dated 23.02.2018 from Duty Drawback to Advance Licence is rejected by Principal Commissioner, Customs, Ahmedabad on the ground of violation of condition No. 3(e) of Circular no. 36/2010-Cus dated 23.09.2010. Therefore, the present appeal.

2. Shri P.P Jadeja, Learned Consultant appearing on behalf of the appellant submits that the Learned Principal Commissioner rejected the request for conversion of Shipping bill from Duty Drawback to Advance Licence on the basis of condition No. 3(e) of Circular no. 36/2010-Cus dated 23.09.2010. He submits that the appellant had not violated the said condition in as much as though at the time of the clearance of the export goods the appellant have inadvertently claimed the drawback scheme but subsequently they offered to surrender the drawback amount along with interest. Therefore this is not a case where the appellant have availed benefit of any other export promotion scheme. Accordingly, the condition 3 (e) of the Circular 36/2010 – Cus stands complied. He further submits that the conversion of shipping bill was sought for by the appellant in terms of section 149 of the Customs Act, 1962 according to which the only condition prescribed is that at the time of export the document on the basis of which the benefit of export promotion scheme was claimed should be existing. Thus condition is satisfied in as much as the appellant was in

possession of Advance License at the time of clearance of the goods. Therefore, the Adjudicating Authority has wrongly rejected the request of the appellant for conversion of shipping bill from Drawback Scheme to Advance Licence Scheme. He placed reliance on the following judgments:-

- V.R.A Cotton Mills Pvt. Ltd Vs. Commissioner of Customs, Jamnagar – 2014 (309) ELT 100 (Tri. Ahmd)
- Kedia (Agencies) Pvt. Ltd Vs. CC- 2017 (348) ELT 634 (Del.)
- Parle Products Pvt Ltd Vs. Commissioner of Customs, Nhava Sheva-II – 2017 (358) ELT 341 (Tri. Mumbai)
- Gokul Overseas Vs. UOI – 2020 (373) ELT 49 (Guj.)
- Commissioner of Cus.& ST, Bengaluru Vs. Carl Zeiss India Pvt . Ltd – 2021 (376) ELT 457- (Kar.)
- Oriental Carbon & Chemicals Ltd Vs. UOI – 2021 (377) ELT - 850 (Guj.)

3. Shri R.P Parekh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the reason stated for rejecting the request of the appellant in the impugned order. He submits that the appellant had earlier claimed the Duty Drawback Scheme at the time of assessment of shipping bill. Thus, the amendment claimed was not an amendment simplicitor, but was for the purpose of changing the assessment order. He submits that the assessment order can be changed or modified only by the way of an appeal before Commissioner (Appeal). In the present case the appellant has not filed any appeal for changing the assessment of shipping bill hence, the appeal is liable to be rejected, moreover, for the reason that the appellant have already received the Duty Drawback. He placed reliance on the judgment of this Tribunal in the case of Tata Teleservices (M) Ltd Vs. CC – 2019 (12)TMI- CESTAT MUMBAI.

4. We have carefully considered the submission made by both sides and perused the record. We find that the limited issues to be decided is that whether the appellant's request for conversion of Export Promotion Scheme from Duty Drawback to Advance License is legal and correct. We find that the Learned Principal Commissioner has rejected the claim of the appellant on the ground that the appellant had violated the Condition No. 3(e) of the Circular no. 36/2010-Cus dated 23.09.2010 which is reproduced below:-

*"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."***

Referring the above circular we find that the Learned Principal Commissioner has rejected the claim interpreting the clause 3(e) of the Para 3 that since the appellant have availed the DBK Scheme under which the goods were exported the appellant had violated the Condition 3(e) of the Circular. On the careful reading of the said clause we find that the contention of the Principal Commissioner is incorrect in as much as though the appellant were granted the DBK but the appellant had already

informed the department that they do not wish to get the DBK amount credited in their Bank account and if at all it is credited they offered to surrender same amount along with interest. This approach of the appellant, in our view as good as non availment of any Export Promotion Scheme.

4.1 It is undisputed fact that the appellant though claimed the DBK in Shipping Bill but before receiving the amount of DBK informed the department that they do not want the credit of DBK amount. The conversion of shipping bill was sought by the appellant in terms of Section 149 of Customs Act, 1962 which is reproduced below:

***"Section 149: Amendment of documents. - Save as otherwise provided in Sections 30 and 41, the proper officer may, in his discretion, authorize 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 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."*

As per above Section 149 it is clear that the amendment of export promotion scheme under the shipping bill can be permitted even if the goods have been exported only on the condition that the documentary evidence on the basis of which the amendment is claimed was in existence at the time when goods were exported. In the present case the goods were exported vide Shipping Bill No 3055417 dated 23.02.2018 whereas Advance Authorization (DEEC) No. 0810139972/2/03/00 is of dated 30.03.2017. Therefore, there is no doubt that the DEEC licence on the basis of which amendment is being sought by the appellant was very much in existence at the time of export. In this undisputed fact the condition of Section 149 of the Customs Act for the purpose of amendment in shipping bill stands satisfied. This issue has been considered in many judgments some of the judgments are reproduced below:-

In the case of Leotex vs. UOI – 2012 (281) ELT 173 ( Kar.) , the Hon'ble Karnataka High Court has allowed the conversion from DEPB to Drawback Scheme observing para 4 as under:-

*" Circular dated 23.09.2010 is not mandatory at all. In fact the latest Circular dated 23.09.2010 shows that in view of the decisions of the Tribunal and this court on the question, the Government themselves has decided to liberalize the provision regarding even conversion from one scheme to another."*

In the case of Rajguru Impex(India) Ltd vs. CC- 2013 (298) ELT 123 (Tri.Ahd) this Tribunal held as under:-

*" Description of goods in Shipping Bill had to be taken as one covering goods which were exported- since that description was exactly as mentioned in DEPB schedule, application for conversion had to be considered sympathetically, and allowed – It was more so as EXIM policy was designed to encourage exports and in facts of case liberal view was called for"*

4.2 In the following judgments also by taking consistent view the conversion of Shipping Bill from one scheme to another scheme has been allowed

- Diamond Engg. (Chennai) P. Ltd Vs. CC – 2013 (288) ELT 265 (Tri.- Chennai)
- Oriental Carbon & Chemicals Ltd Vs. UOI – 2021 (377) ELT - 850 (Guj.)
- CC Vs. Carl Zeiss India Pvt . Ltd – 2021 (376) ELT 457- (Kar.)
- Gokul Overseas Vs. UOI – 2020 (373) ELT 49 (Guj.)
- Kedia (Agencies) Pvt. Ltd Vs. CC- 2017 (348) ELT 634 (Del.)
- Commissioner Vs. Smruti Pottery Works – 2015 (324) ELT A79 (SC)
- Commissioner Vs. Man Industries (I) Ltd – 2015 (326) ELT A34 (SC)

From the above judgments it is almost settled that when the condition prescribed under Section 149 is satisfied the conversion should be allowed. As regard the submission made by Learned AR that the appellant should have challenged the assessment by filing the appeal before the Commissioner (Appeals). We find that this is not a case of department, also there is a clear and independent provision under section 149 that without challenging the assessment an assessee can seek amendment under shipping bill even after assessment of export documents. Moreover, the learned principal commissioner has denied the conversion only on the ground that the appellant had violated condition prescribed under para 3

(e) of Circular no. 36/2010-Cus dated 23.09.2010 as already discussed above thus condition does not get violated therefore, the revenue's submission is not relevant. As regard the fact that whether the DBK amount has been received by the appellant or otherwise, the department is at liberty to verify the same. Needless to say that before making conversion of DBK shipping bill to advance license scheme the department has to ensure that if at all the DBK amount is credited to the appellant the same needs to be returned back to the department.

5. As per above discussion and finding, the impugned order is set aside appeal is allowed in above terms with consequential relief.

(Pronounced in the open court on 21.07.2022)

**RAMESH NAIR**  
**MEMBER (JUDICIAL)**

**RAJU**  
**MEMBER (TECHNICAL)**

Geeta