

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40491 of 2022

(Arising out of Order-in-Original No. 91798/2022 dated 16.08.2022 passed by the Commissioner of Customs, Chennai-IV, Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

M/s. Fuso Glass India Private Limited

: Appellant

No. 91, Poonamallee High Road,
Egmore, Chennai – 600 084

VERSUS

The Commissioner of Customs

: Respondent

Chennai-IV Commissionerate
Customs House, No. 60, Rajaji Salai, Chennai – 600 001

APPEARANCE:

Shri Hari Radhakrishnan, Learned Advocate for the Appellant

Smt. Sridevi Taritla, Learned Additional Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40384/ 2022

DATE OF HEARING: 12.12.2022

DATE OF DECISION: 23.12.2022

Order :

The appellant is an exporter of "Double Layered Laminated Glass", filed an application requesting for Scheme Code change from "00-Free Shipping Bill" to "03-Advance Authorization Shipping Bill" in respect of four shipping bills.

2. The appellant had obtained Advance Authorization No. 040160337 dated 24.03.2015 for import of clear float glass and polyvinyl butyl, due to which there was an export obligation on the part of the appellant to export

Double Layered Laminated Glass of the value of USD 498368.68. It is the case of the appellant that they fulfilled their export obligation by exporting the resultant final product vide 11 shipping bills tabulated at paragraph 3(b) of the impugned Order-in-Original. Vide communication dated 21.01.2016, after fulfilling its export obligation, the appellant filed an application with the Zonal Director General of Foreign Trade (DGFT) at Chennai for the issuance of Export Obligation Discharge Certificate ('EODC' for short), in response to which the Assistant Director General of Foreign Trade appears to have issued a deficiency letter dated 25.01.2016 calling for the submission of bank realization certificates in respect of exports made by the appellant. It is the case of the appellant that they responded to the above vide documents that were filed on 15.12.2017. It is the further case of the appellant that as the DGFT did not issue EODC, they filed reminder letters (dated 25.03.2019, 28.12.2020 and 10.02.2021); but however, the Joint Commissioner of Customs, after issuing a Show Cause Notice dated 06.11.2020, passed an Order-in-Original dated 22.03.2021, demanding Customs duty for non-fulfilment of export obligation. Against this order, the appellant filed a Writ Petition before the Hon'ble High Court of Madras, wherein the DGFT filed a counter-affidavit by contending that the application filed by the appellant for issuance of EODC was defective for the reason that four out of eleven shipping bills were not filed under Advance Authorization scheme since the same were filed as free shipping bills. The appellant, after withdrawing the above Writ Petition, chose to file an application dated 11.09.2021 seeking conversion of the above four free shipping bills into Advance Authorization shipping bills, the details of which are as under:-

1. Shipping Bill No. 7426894 – 27.01.2015
2. Shipping Bill No. 7695931 – 09.02.2015

3. Shipping Bill No. 7998387 – 24.02.2015

4. Shipping Bill No. 8272820 – 10.03.2015

3. The matter was taken up for adjudication by the Commissioner of Customs, Chennai-IV, who, after affording personal hearings to the appellant-exporter, has, vide impugned Order-in-Original No. 91798/2022 dated 16.08.2022, held *inter alia* that the exporter had violated the conditions / procedures for conversion of shipping bills provided under paragraph 3 of the Board Circular No. 36/2010 dated 23.09.2010 and that the request for Scheme Code conversion was made after five years; that the fact of use of imported inputs under Advance Authorization was not proved in the export of the final products and therefore, the request of the appellant was not permissible even under Section 149 of the Customs Act, 1962.

4. Heard Shri Hari Radhakrishnan, Learned Advocate appearing for the appellant and Smt. Sridevi Taritla, Learned Additional Commissioner appearing for the Revenue. I have considered the rival contentions and have also gone through the various decisions/orders relied upon during the course of arguments.

5. Facts are not in dispute; the only issue, therefore, to be decided by me is: whether the Revenue is justified in rejecting the request of the appellant for conversion of free shipping bills into Advance Authorization shipping bills for the reasons of limitation as well as non-fulfilment of conditions of paragraph 3(b)(c)(d) of the Board Circular No. 36/2010 *ibid*.

6. I have carefully gone through the documents placed on record, which consist mainly of all the shipping bills for export, Form A.R.E.-1 along with "PART-A – Certification by the Central Excise Officer", "PART B – Certification by the Customs Officer", etc.

7.1 A perusal of one of the shipping bills - Shipping Bill No. 8272820 dated 10.03.2015, reflects the file number, since as on the date of the said shipping bill, the appellant had not received the physical copy of the Advance Authorization. The same is the case with respect to the other three shipping bills which are in dispute, as well. By this, it is abundantly clear that the appellant, having requested for Advance Authorization, had filed the shipping bills in anticipation of their Advance Authorization.

7.2 Further, as pointed out by the Learned Advocate for the appellant, the DGFT did not issue the EODC nor did it communicate any deficiency until the appellant-exporter approached the Hon'ble High Court and hence, the delay cannot be attributed to the appellant-exporter alone. The appellant has established its *bona fides*; but for the inaction by the DGFT, perhaps there would not have been any delay in seeking conversion/ amendment under Section 149 *ibid*. Vide letter dated 21.01.2016 itself the appellant did communicate to the DGFT for issuance of EODC by contending that it had fulfilled the export obligation, in response to which the said authority had replied on 25.01.2016 asking for bank realization certificates and, if at all there were any deficiencies, nothing prevented the said authority from communicating the same to the appellant-exporter.

8. In view of the above, I am of the clear view that there is no delay, much less any delay in terms of paragraph 3(a) of the Board Circular No. 36/2010 *ibid*.

9.1 From a perusal of the Form A.R.E.-1 with PART-A and PART-B, I am also of the view that both the Central Excise Officer as well as the Customs Officer have certified having opened and examined the relevant packages /consignment under those very shipping bills which are under dispute. Hence, there is no such violation

as flagged in the impugned order to the conditions of paragraph 3(b)(c)(d) of the Board Circular *ibid*.

9.2 My above view is supported by an order of the Bangalore Bench of the Tribunal in the case of *M/s. Gennex Laboratories Ltd. v. Commissioner of Customs, Hyderabad* [2012 (285) E.L.T. 363 (Tri. – Bangalore)] wherein, under similar circumstances, the Division Bench has ruled as under:-

"4. We have considered the submissions made by both sides. We find that, as submitted by the learned counsel, the description of the goods, value and the fact that export was being made to fulfill the export obligation have been made in the ARE-1 form and the certification by Central Excise officers based on which the goods were allowed to be exported without examination would make it clear that in this case, there is no dispute as regards description, value and fact that goods were being exported for fulfillment of export obligation. There is no allegation of fraud against the assessee and there is no allegation of manipulation also. In fact, the decision does not indicate as to why the request has been refused. We find that the essential requirements in the Board's Circular for conversion of Shipping Bills from one scheme to another have been fulfilled by the appellant. Further, we also find that a similar issue had come up before the Tribunal in the case of *Kiran Pandy Chems Ltd. v. Commissioner of Customs, Chennai* [2006 (203) E.L.T. 588 (Tri.-Chennai)] and in that case also, the conversion was allowed by the Tribunal on the ground that in the ARE-1 form, there was a certification from the Superintendent certifying that the export took place under his supervision and the documents were existing at the time of export. It is to be noted that when this decision was rendered the Board's Circular which is much more liberal with regard to conversion of Free Shipping Bill to Export Promotion Shipping Bill was not here and circular issued in 2004 had laid down much stricter norms. In view of the discussion above, the issue in the present case is covered by decision in the case of *Kiran Pandy Chems*

Ltd. (supra). Therefore, we allow the appeal and direct the Commissioner of Customs to allow conversion of the Free Shipping Bills to the Export Promotion Scheme Shipping Bills as requested.”

9.3 Further, this very Chennai Bench of the CESTAT has also considered a more or less similar issue in the case of *M/s. Visoka Engineering Pvt. Ltd. v. Commissioner of Customs, Chennai-IV Commissionerate* [Customs Appeal No. 40247 of 2021 – Final Order No. 40073 of 2022 dated 16.02.2022] wherein it has been held as under:-

"19. The second ground for rejection for conversion of free shipping bills is that the goods exported have not been physically examined. The learned counsel has referred to the last page of the shipping bill wherein the seal of the Preventive Officer is endorsed. It thus becomes evident that the goods have been stuffed under the supervision of the Preventive Officer who has verified the invoice, packing list etc. before stuffing the goods into the container. Moreover, there is no requirement under section 149 of the Customs Act, 1962 that the conversion can be allowed only if the goods have been subjected to physical examination. Therefore, the rejection of the request for conversion on the ground that physical examination was not conducted before export is without any legal basis.”

9.4 Learned Advocate for the appellant also seriously contended that the period of limitation for filing an application seeking conversion within the meaning of Section 149 *ibid.* has not been provided under Section 149, but the same has only been provided in the Board Circular No. 36/2010 *ibid.* and the Hon'ble jurisdictional High Court (*M/s. Global Calcium Pvt. Ltd. v.*

Commissioner of Customs, Chennai vide judgement dated 29.06.2017 in C.M.A. No. 875 of 2017) as well as the Hon'ble High Court of Kerala (*M/s. Parayil Food Products Pvt. Ltd. v. Union of India – 2020 (10) TMI 1141 – Kerala High Court*) have considered the issue of the above time-limit stipulated in the Board Circular and held that the stipulation of the period of limitation was in utter violation of the statutory provision of Section 149 *ibid.* and that the request for conversion could not be denied as time-barred by resorting to the Board Circular. This is also in addition to and in support of my view at paragraph 7.2 above of this order, and therefore, denial of conversion on the ground of limitation is clearly unsustainable.

10. In view of the above discussions, the denial of conversion from free shipping bills to Advance Authorization shipping bills by the lower authority and the impugned order, being bad in law, are set aside.

11. Consequently, the appeal stands allowed.

(Order pronounced in the open court on **23.12.2022**)

-sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd