

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

REGIONAL BENCH- COURT NO. 2

Customs Appeal No. 10879 of 2018-DB

(Arising out of Notification Order-F-NO-VIII-48-17-EXP-AMD-MP-SEZ-17-18 Dated-
19/01/2018 passed by Commissioner of CUSTOMS-MUNDRA)

Nisan Exports

Near Railway Crossing, Dhoraji Road, Jetpur,
RAJKOT,
GUJARAT

.....Appellant

VERSUS

C.C.-MUNDRA

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

.....Respondent

APPEARANCE:

Shri. P. D. Rachchh, Advocate for the Appellant

Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. C.L MAHAR, MEMBER (TECHNICAL)**

Final Order No. A/ 12221 /2023

DATE OF HEARING:25.09.2023

DATE OF DECISION:09.10.2023

SOMESH ARORA

1. M/s. Nisan Exports, Jetpur (Hereinafter referred to as Appellant) filed present appeal against decision of the Commissioner, Customs, Mundra communicated vide letter F. No. 48-17/EXP/AMD/MP & SEZ/17-18 dated 19.01.2018 by the Superintendent of Customs (Export), Custom House, Mundra rejecting request/application dated 12.07.2017 for conversion of various shipping bills stated therein from Duty Free Import Authorisation scheme (DFIA) to Drawback Scheme under Section 149 of the Customs Act, 1962.

2. Appellant is engaged in process of printing on Cotton Fabrics falling under tariff item 52085290 of the First Schedule to the Central Excise Tariff Act, 1985. Since, printed cotton fabrics were exempted from whole of duty of excise it had not obtained Central Excise Registration. It procures all raw materials/ inputs locally from the DTA. Almost all the production of appellant was being exported out of India.

3. Appellant had applied for Duty Free Import Authorisation (DFIA) and obtained 13 DFIA scripts from the DGFT, Rajkot during the period from 17.09.2013 to 15.01.2014. It had entered details of the said scripts in 42 shipping bills filed for export of goods at MP & SEZ port, Mundra as shown below to claim fulfillment of the export obligation.

Sr. No.	DFIA License No.& date	S/B No. Date of S/B	Sr. No.	DFIA License No.& date	S/B No. Date of S/B
1	2410039936 17.09.2013	7586312 21.09.13	8	2410040133 21.10.2013	8469205 16.11.13
		7590297 21.09.13			8469208 18.11.13
		7608009 23.09.13			8550013 21.11.13
					8550011 21.11.13
2	2410039937 17.09.2013	7716828 28.09.13	9	2410040134 21.10.2013	
		7716838 28.09.13			9165116 26.12.13
		7734539 30.09.13			9165115 26.12.13
					9215351 26.12.13
3	2410039938 17.09.2013	7768784 01.10.13	10	2410040335 25.11.2013	
		7768789 01.10.13			9215354 28.12.13
		7814055 04.10.13			9263118 31.12.13
					9261705 31.12.13
4	2410040062 08.10.2013	7936836 12.10.13	11	2410040350 26.11.2013	
		7936890 12.10.13			9347961 06.01.14
		7936898 12.10.13			9504308 15.01.14
					9598106 21.01.14
5	2410040063 08.10.2013	7951767 14.10.13	12	2410040351 26.11.2013	9601059 21.01.14
		8003041 17.10.13			
		8003046 17.10.13			9347975 06.01.14
					9466340 13.01.14
6	2410040131 21.10.2013	8273114 01.11.13	13	2410040595 15.01.2014	9467173 13.01.14
		8273777 01.11.13			9471906 13.01.14
		8275552 01.11.13			
					9557213 18.01.14
7	2410040132 21.10.2013	8469178 16.11.13	13	2410040595 15.01.2014	9557258 18.01.14
		8469288 16.11.13			9614702 22.01.14
		8469237 16.11.13			

3.1 The said licenses were issued for export and import of "Relevant Cotton Processed Fabrics", which were later on amended for import of "Relevant Cotton processed fabrics GSM 122.81 +/- 10%... GSM 130.32 +/- 10%...and GSM 133.25 +/- 10%" against/for export of "Relevant Cotton processed fabrics GSM 122.81, GSM 130.32 and GSM 133.25" for quantity & value in respect to import & export as mentioned in respective authorization as per amendment sheets

4. Appellant had exported the goods specified under above said 13 DFIA scripts and obtained further amendment to the effect that all the 13 scripts are transferable as export obligations were duly discharged. Shipping Bills were filed under claim of DFIA scheme in EDI system through its Customs Broker.

5. Appellant further submits that due to adverse market conditions for import of goods specified in the scripts nobody turned up for buying said scripts. Besides, appellant was also not required to import the said specified goods in its manufacturing process. Therefore, it had no other option but to surrender DFIA scrip to the DGFT for cancellation. Accordingly, it had surrendered all 13 original DFIA scripts along with EODC/Transferability letters (if any issued) for the purpose of cancellation before Regional Authority, DGFT, Rajkot vide different letters which are part of appeal memorandum and acknowledgement issued by DGFT. Appellant had applied before the Principal Commissioner, Customs, MP&SEZ Mundra port, Custom House, Mundra for conversion of said 42 shipping bills from DFIA to Drawback Scheme by way of amendment vide letter dated 12.07.2017.

6. The learned Commissioner however rejected its request for conversion of 42 shipping bills from the scheme of DFIA to Drawback vide letter dated 19.01.2018. And therefore aggrieved by the order, appellant has filed the present appeal on various grounds as below:-

6.1 Learned Commissioner has failed to appreciate that various incentives are offered through different schemes by the government from time to time in the EXIM Policy to promote export of goods from India and to encourage the exporters with a view to maximize foreign exchange earnings for the nation. That both the schemes i.e. DFIA and the Duty Drawback are also part of such schemes introduced by the government for the said purpose. It, therefore, submits that when an exporter is unable to claim benefits extended under DFIA scheme by the government even after exporting the specified goods within time stipulated in the scrip due to compelling circumstances, then in that case there should not be any hitch for the customs authorities in converting such exporter's shipping bills from DFIA to

Drawback scheme. Furthermore, if there is any procedural lapse in doing so, the same can be ignored in the interest of justice. Otherwise, purpose of framing export incentive schemes aimed to earn maximum foreign exchange for the nation would get defeated.

6.2 Appellant further submits that in terms of Section 149 of the Customs Act, 1962 read with CBEC's Circular No. 36/2010-Cus dated 23.09.2010, it was eligible for such conversion/amendment in relevant shipping bills on merits i.e. 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 was requested. In fact, the Board's circular dated 23.09.2010 giving instructions to the Commissioners for permitting conversion of shipping bills from one export incentive scheme to the other is very liberal, as compared to restrictions placed under Board's superseded circular No.4/2004-Cus dated 16.01.2004. Relevant para of the circular dated 23.09.2010 are reproduced for ease of perusal please:

*"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 goods were exported and no fraud/misdeclaration /manipulation has been noticed or investigation initiated against him in respect of such exports.

4. Free shipping bills (shipping bills not filed under any export promotion scheme) are subject to 'nil' examination norms. Conversion of free shipping bills into EP scheme shipping bills (advance authorization, DFIA, DEPB, reward schemes etc.) should not be allowed. However, the Commissioner may allow All Industry Rate of duty drawback on goods exported under free shipping bill, without conversion of such free shipping bill to Drawback Scheme shipping bill, in terms of the proviso to rule 12(1) (a) of the Customs, Central Excise and Service Tax Drawback Rules, 1995.

5. Due care may be taken while allowing conversion to ensure that the exporter does not take benefit of both the schemes i.e. the scheme to which conversion is sought and the scheme from which conversion is sought. Whenever conversion of a shipping bill is allowed, the same should be informed to DGFT so that they may also ensure that the exporter does not take benefit of both the schemes."

It was thus emphasized by the appellant that conversion as solicited by them was permissible as per above provisions read with the conditions (a) to (e), that appellant's request for amendment/ conversion of shipping bills was justified in all respects, except that application was not filed within three months of LEO (condition-(a) above). However, the same can be condoned as procedural lapse, especially because section 149 of the Customs Act, 1962 does not specify such a period. Appellant further submits that condition (b) of the circular does not apply in its case as no goods were imported for utilization in export goods against DFIA.

This apart, it is further submitted that the said circular also emphasizes that Commissioner of Customs may allow conversion of shipping bills from schemes involving more rigorous examination such as Advance Authorization/DFIA scheme to schemes involving less rigorous examination like Drawback scheme, which is exactly the case here. Under the circumstances, it appears that learned Commissioner has grossly erred in rejecting appellant's genuine request of amendment in 42 shipping bills vide impugned order.

6.3 Appellant further submits that issue is no more res integra and fully covered by various decisions amongst other including Hon'ble High Court of Gujarat:

PR. COMMR. OF CUSTOMS, MUNDRA Versus LYKIS LTD. - 2021 (377) E.L.T. 646 (Guj.)

Export - Conversion from Drawback scheme to DFIA scheme - Time-limit - Rejection of request on ground that request after three months from date of Let Export Order (LEO) not proper - No time-limit prescribed under Section 149 of Customs Act, 1962 - Appellate Tribunal correctly holding that exporter eligible for conversion - Section 149 of Customs Act, 1962. [paras 5, 6]

GOKUL OVERSEAS Versus UNION OF INDIA - 2020 (373) E.L.T. 49 (Guj.)

EXIM - Shipping Bill - Amendment of - Omission to file 'declaration of intent' within three months from date of Let Export Order as stipulated in C.B.E. & C. Circular No. 36/2010-Cus., dated 23-9-2010 - HELD : Eligibility of assessee to claim benefits under Merchandise Exports From India Scheme (MEIS), not doubted - Application for amendment filed after prolonged inter se communications between respondents regarding jurisdiction to entertain application - Decision in Kedia (Agencies) Pvt. Ltd. [[2017 \(348\) E.L.T. 634](#) (Del.)] squarely applicable - Omission to file 'declaration of intent' when all other relevant material available, not fatal to assessee's case - All other respects, viz. goods conform to description in shipping documents and value, etc., continues to be ascertainable because concerned bills, invoices and other shipping documents available with Customs Authorities - Therefore, respondents, not justified in turning down assessee's request - Impugned order quashed and set aside - Petition succeeds - Section 149 of Customs Act, 1962. [paras 32, 33, 34, 35, 36, 37, 38]

ORIENTAL CARBON & CHEMICALS LTD. Versus UNION OF INDIA - 2021 (377) E.L.T. 850 (Guj.)

Merchandise Exports from India Scheme (MEIS) - Suspension of Duty Credit Scrips issued under provisions of MEIS in Foreign Trade Policy, 2015-20 - Inadvertent omission of declaration in non-EDI shipping bills - Writ applicant sought insertion of declaration in shipping bills that "We intend to claim rewards under MEIS" as also revocation of suspension of Duty Credit Scrips issued - HELD : Authorities were under confusion as to whether declaration as per Clause 3.14 of Handbook of Procedures, 2015-20 was mandatory prior to 1-6-2015; and hence, sought clarification from DGFT - While awaiting such clarification, three Duty Credit Scrips issued to writ-applicant by respondents themselves against six applications - Reliance upon Rule 46(1)(c) of Special Economic Zones Rules, 2006 as amended vide M.C. & I. (D.C.) Notification No. G.S.R. 909(E), dated 19-9-2018 completely misplaced since exports in question made during period between 1-4-2015 and 31-5-2015, at which point of time, said Rule 46 ibid did not provide for examination of goods where MEIS benefits are claimed - Section 149 of Customs Act, 1962 specifically permits amendment of shipping bills even after export on basis of documentary evidence in existence at time of export of goods - Moreover, neither time limit prescribed nor fixing of time limit by way of rules or regulations provided in said Section 149 ibid during relevant time - Also, writ-applicant cannot be said to have delayed in seeking amendment, when authorities themselves never asked

writ-applicant to amend shipping bills, and only asked to remove defect as late as in August, 2018 - Eligibility to claim benefits under MEIS undisputed since export of notified goods to notified countries carried out as per scheme of MEIS - Also, same goods exported prior to Foreign Trade Policy, 2015-20 and benefits under Focus Market Scheme (FMS) availed by writ applicant - Therefore, merely for technical or procedural lapse, writ applicant not to be denied substantive benefits - Article 226 of Constitution of India. [paras 18 to 40]

Shipping Bill - Amendment of - Limitation - Inadvertent omission of declaration as per Clause 3.14 of Handbook of Procedures, 2015-20 in shipping bills - HELD : No restriction in Section 149 of Customs Act, 1962 for not allowing amendment after goods are exported unless goods are checked at time of export - Hence, authorities cannot introduce such restrictions de hors said provision - Well-settled that subordinate legislation cannot travel beyond parent statute or impose limitation or restriction not found in parent statute - Therefore, no time limit can be read into Section 149 ibid nor can be introduced by way of circular - Section 149 of Customs Act, 1962. [para 21]

KEDIA (AGENCIES) PVT. LTD. Versus COMMISSIONER OF CUSTOMS - 2017 (348) E.L.T. 634 (Del.)

Shipping Bill - Amendment thereof - Insertion of declaration in free shipping bills to avail Export incentive - Denial of - Appellant exporting Cutch Block (Acacia Catechu) under free shipping bills without making statutory declaration required to avail benefits under Vishesh Krishi Gram Upaj Yojna (VKGUY) - His subsequent request for amendment of shipping bill for insertion of requisite declaration, rejected - HELD : Aforesaid agricultural produce regularly been exported for past three years in same manner as there was no condition prescribed for availing export benefit under VKGUY - It was subsequent amendment in Handbook of Procedures which necessitated filing of a declaration along with a form - Except for declaration, appellant's eligibility to export benefits not questionable as said product continued to be an eligible product - Further shipping bills pertaining to Post amendment exports complete in all respects viz. description, value, etc. - Since all relevant substantive particulars are available, fault of mere non-filing of declaration not fatal to appellant's claim on export benefits - Customs authorities directed to amend shipping bills in terms of appellant's request within two months - Section 149 of Customs Act, 1962. [paras 7, 8]

EXIM - Handbook of Procedures - Amendments therein - Scope of - While Foreign Trade (Development & Regulation) Act, 1992, Rules/ Regulations framed thereunder and FTP have force of law, Handbook of Procedures and amendments carried out thereto are, per se, not declaration of law - They only impose conditions which are to be fulfilled and otherwise conform to requirements of law. [para 7]

V.R.A. COTTON MILLS PVT. LTD. Vs. COMMISSIONER OF CUS., JAMNAGAR (PREV.) in 2014 (309) E.L.T. 100 (Tri. - Ahmd.)

Shipping bills - Conversion of DFIA shipping bills to drawback scheme - Time-limit for conversion - Export of goods viz.

Indian Raw Cotton Shankar-6 of Heading 5201 of Customs Tariff Act, 1975 and subsequently no import of any goods as per DFIA, not disputed - Cancellation of DFIA on appellants request by DGFT on 10-7-2013 - Para 4.28(e) of HBP Vol.-I, 2009-14 allows cancellation of DFIA when no imports made against exports and allows assessee to approach Customs for conversion of shipping bill under drawback scheme - No time limitation provided by DGFT - Section 149 of Customs Act, 1962 permits amendment of shipping bill without any such time-limit even after export of goods - Appellants could have applied for conversion only after getting cancellation of DFIA, which he did within 10 days of cancellation of DFIA by DGFT - Impugned order set aside - Conversion of DFIA shipping bills to drawback scheme allowed. [paras 8.1, 8.2, 8.4, 10] Appeal allowed

ITC LIMITED Vs. COMMISSIONER OF CUSTOMS, CHENNAI in 2011 (269) E.L.T. 378 (Tri. - Chennai)

Shipping Bills - Conversion from DFIA scheme to DEPB scheme - Jurisdiction of Customs officers - Conversion rejected by authorised officer and appeal thereagainst also rejected by Commissioner (Appeals) - Submission that DFIA not utilized and the same has been surrendered and hence cancelled by DGFT - Cancellation letter not before authorities below - As per Board's Circular, dated 16-1-2004 jurisdictional Commissioner only empowered to allow conversion - Matter remanded to jurisdictional Commissioner to decide afresh. [para 2]

Shipping Bills - Conversion of Shipping Bills from one export promotion scheme to another - Jurisdiction - As per Board's Circular, dated 16-1-2004, jurisdictional Commissioner alone empowered to allow such conversion subject to conditions - Neither authorized officer nor Commissioner (Appeals) authorized to deal with case of conversion from one export promotion scheme to another. [para 2] Appeal allowed

Appellant further invites attention towards a similar judgment in the case of **MAN INDUSTRIES (INDIA) LTD. VS COMMISSIONER OF CUSTOMS (EP): 2006 (202) E.L.T. 433 (Tri. - Mumbai)** which was further affirmed by Hon'ble High Court of Bombay as well as Apex court. It was inter alia held therein by Hon'ble Tribunal that:

"2.1 The request of the appellant for conversion of the Shipping Bills was made in terms of the statutory rights available to the appellant under Section 149 of the Customs Act, 1962. The said section entitles the proper officer of Customs to direct amendment of any document, after it has been presented in the Custom House. By the application of conversion of the Shipping Bill, appellant was requesting the proper officer, to exercise this statutory power vested in such authority, to amend a Shipping Bill. The statutory conditions subject to which such amendment could or could not be made is described in the proviso to Section 149 of the Customs Act, 1962, which reads as:

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.

It is not in dispute that the requirements of abovementioned proviso are satisfied by the appellant and consequently Commissioner ought to have allowed the request for conversion instead of "bound" by the terms of a Board circular which laid down certain situations, only in which conversion was permitted. That the appellants case was not specifically covered by one of the situations contemplated in the Board's circular cannot deny the appellants statutory right, to seek any amendment & same is lost. The statutory right, as also the statutory obligation of the proper officer to amend a document after its presentation in the Custom House cannot be curtailed or set to naught by circulars of the Board. The approach adopted by the Respondent has the effect of inferring from & conferring upon the Board Circular, a status of a statute overruling the proviso to Section 149 of the Customs Act, 1962 which is impermissible.

2.2 The Commissioner has clearly overlooked only circulars which are benevolent to the assessee that are binding upon the department and not circulars which seek to curtail statutory rights. This proposition is clearly laid down by the Hon'ble Supreme Court in the case of Collector of Central Excise, Patna v. Usha Martin Industries , wherein it was held that:

21. Through a catena of decisions this Court has pronounced that Revenue cannot be permitted to take a stand contrary to the instructions issued by the Board. It is a different matter that an assessee can contest the validity or legality of a departmental instruction. But that right cannot be conceded to the department, more so when others have acted according to such instructions, The Supreme Court thus makes it clear that while a benevolent Circular is binding on the department and an assessee is always entitled to dispute the applicability & correctness of a Board's Circular. By application of this principle, it ought to be held that even if the appellants' case did not fall within four corners of the Board's Circulars in question, the claim was eligible for consideration independently subject to provision of Section 149 of the Customs Act, 1962 and, in view of the facts and circumstances of the case, particularly the undisputed position that the entire claim for conversion of the Shipping Bills was based on documentary evidences in form of Chartered Engineers, & Range Superintendent of Central Excise certificates, arrived at on documents and material anterior to export i.e. which were in existence at the time of export of the goods, as is the requirement in the proviso to Section 149.

2.3 Since the entire claim of the appellant is established on the basis of documentary evidence already in existence at the time of export, there was no valid reason for the Commissioner to have refused such an amendment. The impugned order passed is therefore clearly untenable and is to be set aside.

2.4 The Commissioner has also erred in not following the ratio laid down by this Tribunal in the case of Smriti Pottery Works v. CC, Kandla and the reasons assigned by the Commissioner is clearly incorrect.

3.1 In view of the findings hereinabove, the order is set aside and the appeal is allowed."

6.4 Appellant further submits that the department had preferred an appeal against the above decision of Hon'ble Tribunal in the High Court of Bombay but the same was also dismissed as reported at [2007 \(216\) E.L.T. 15 \(Bom.\)](#). Thereafter the Revenue had challenged the said decision of Hon'ble High Court in C.A. No. 4244 of 2007 before the Apex Court. The Hon'ble Supreme Court Bench while dismissing the appeals, passed the following order, as reported at [2015 \(326\) E.L.T. A34 \(S.C.\)](#):

"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."

- **DIAMOND EGG. (CHENNAI) P. LTD. Versus C.C., (SEAPORT-EXPORT), CHENNAI: 2013 (288) E.L.T. 265 (Tri. - Chennai),**
- **AMRITSAR SWADESHI TEXTILE CORP. P. LTD. Versus C.C., BANGALORE: 2008 (224) E.L.T. 415 (Tri. - Bang.)**

Appeal filed by the Revenue against the above cited order of Tribunal was also dismissed by Hon'ble High Court of Karnataka as reported at **2011 (273) E.L.T. A87 (Kar.)**.

- **PARLE PRODUCTS PVT. LTD. Versus COMMISSIONER OF CUSTOMS, NHAVA SHEVA-II: 2017 (358) E.L.T. 341 (Tri. - Mumbai)**
- **SUZLON ENERGY LTD. Versus COMMISSIONER OF CUSTOMS, CHENNAI: 2013 (295) E.L.T. 717 (Tri. - Chennai).**
- **CHERMA'S EXQUISITE LTD. Versus COMMR. OF CUS. (EXPORTS), CHENNAI: 2013 (288) E.L.T. 545 (Tri. - Chennai)**
- **PATODIA SYNTEX LTD. Versus COMMISSIONER OF CUSTOMS, RAIGAD: 2004 (176) E.L.T. 189 (Tri. - Mumbai)**
- **SOLOGUARD MEDICAL DEVICES PVT. LTD. Versus CC (SEAPORT), CHENNAI - 2007 (216) E.L.T. 62 (Tri. - Chennai)**

6.5 Appellant in view of the above submits that in accordance with the Board's above circular and settled position of law, the learned Commissioner was only required to satisfy himself 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 i.e. Drawback to which conversion has been requested. It is more so because it is not a case that appellant had not physically exported the goods or that description/classification of goods was mis-declared or that specified goods were not exported or that appellant had already availed any benefits under DIFA scheme. Besides, the required documents such as Bills of Lading,

Shipping Bills, B.R.C. showing realization of sale proceed of exported goods, etc. specifically indicate that the goods which were cleared for export were printed cotton fabrics falling under CTSN 52085290 of the First Schedule to the Central Excise Tariff Act, 1985. Thus, in the instant case it had fulfilled criteria laid down under proviso to Section 149 of the Customs Act, 1962 and also conditions laid down under the above clarification issued by CBEC. Therefore, learned Commissioner' has grossly erred in rejecting its genuine request of amendment in the shipping bills. He ought to have appreciated that appellant was requesting to amend/convert shipping bills from DFIA to drawback scheme due to genuine compulsions without any intention to hoodwink the provisions of the law. Instead of the same, he has arbitrarily rejected its genuine request without even subscribing any reason in gross violation of the principles of natural justice as well as in violation of the Board's instructions contained in the above circular. He has also failed to appreciate that it is settled law that quasi-judicial officer is bound to follow judicial discipline. The advocate for the appellant pleaded for directing amendment of shipping bills as requested by them.

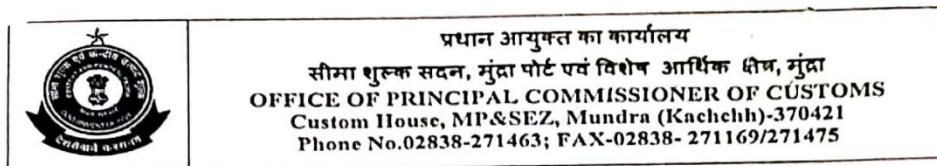
6.6 The learned A.R on his part justified the rejection of the claims by the office of Commissioner.

7. Considered. In the instant case, the issue pertains to denial of export benefit to the appellants by disallowing their request of conversion from DFIA shipping bills to Drawback Scheme. Same was denied to them by the Commissioner without any reasoned order through the impugned order, the order is in the nature of letter conveying the decision of Commissioner of Customs. The rejection of conversion request dated 12.07.2023 made by the appellants has been done vide letter dated 18.01.2018 of the Commissioner of Customs without giving any reason. The copy of the order is reproduced

below:

EXHIBIT- A

26



F.No.VIII/48-17/EXP/AMD/MP&SEZ/17-18 / 3321

Date:-19.01.2018

To,
M/s. Nissan Exports,
Near Railway Crossing,
Dhoraji Road, Jetpur,
Dist- Rajkot-360370

Gentleman,

Subject:-Amendment under sec. 149 of customs act, 1962- Reg.

Please refer to your letter dated 12.07.2017 requesting for conversion of below mentioned Shipping bills from Duty Free Import Authorisation scheme (DFIA) to Drawback Scheme, under Sec 149 of Customs Act, 1962.

S. No.	Shipping Bill No. & Date	S. No.	Shipping Bill No. & Date
1	7586312 dtd. 21.09.2013	22	8469205 dtd. 16.11.2013
2	7590297 dtd. 21.09.2013	23	8469208 dtd. 18.11.2013
3	7608009 dtd. 23.09.2013	24	8550013 dtd. 21.11.2013
4	7716828 dtd. 28.09.2013	25	8550011 dtd. 21.11.2013
5	7716838 dtd. 28.09.2013	26	9165116 dtd. 26.12.2013
6	7734539 dtd. 30.09.2013	27	9165115 dtd. 26.12.2013
7	7768784 dtd. 01.10.2013	28	9215351 dtd. 28.12.2013
8	7768789 dtd. 01.10.2013	29	9215354 dtd. 28.12.2013
9	7814055 dtd. 04.10.2013	30	9263118 dtd. 31.12.2013
10	7936836 dtd. 12.10.2013	31	9261750 dtd. 31.12.2013
11	7936890 dtd. 12.10.2013	32	9347961 dtd. 06.01.2014
12	7936898 dtd. 12.10.2013	33	9504308 dtd. 15.01.2014
13	7951767 dtd. 14.10.2013	34	9598106 dtd. 21.01.2014
14	8003041 dtd. 17.10.2013	35	9601059 dtd. 21.01.2014
15	8003046 dtd. 17.10.2013	36	9347975 dtd. 06.01.2014
16	8273114 dtd. 01.11.2013	37	9466340 dtd. 13.01.2014
17	8273777 dtd. 01.11.2013	38	9467173 dtd. 13.01.2014
18	8275552 dtd. 01.11.2013	39	9471906 dtd. 13.01.2014
19	8469178 dtd. 16.11.2013	40	9557213 dtd. 18.01.2014
20	8469288 dtd. 16.11.2013	41	9557258 dtd. 18.01.2014
21	8469237 dtd. 16.11.2013	42	9614702 dtd. 22.01.2014

In this connection, it is to inform you that Hon'ble Commissioner of Customs, Custom House, Mundra has rejected your request on 18.01.2018.

Yours Sincerely,

[Signature]
Superintendent of Customs (Export)
Customs House, Mundra

Scanned with
CamScanner

[Signature]
P. D. RACHCHH
ADVOCATE
G/1303/2016

7.1 The appellants in this regard had surrendered unutilized DFIA after the export was made by them of Cotton Printed Fabrics, during September 2013 to January, 2014 vide their request application dated 13.07.2017 to Joint DGFT Rajkot for cancellation of unutilized DFIA so as to allow them to claim draw back benefit. It is stated position that despite vigorous follow up with

the office of Joint DGFT, Rajkot for cancellation, the same has not met with any response and is pending till date. Therefore, being in denial of any of the benefit, the appellants approached for amendment of Shipping Bills to claim draw back benefit which has been denied to them without affording any opportunity or reasons for denial of the claim even by the Customs. The appellants, therefore, have made various detailed submissions including on the validity of CBEC No. 36/2010-Cus. dated 23.09.2010 for indicating that the 3 months period prescribed in the same has been struck down by the Hon'ble Gujarat High Court in the matter of Principal of Commissioner, Customs, Mundra Vs. Likes Ltd as reported in 2021 (377) ELT 646 (Guj.) which has been reiterated by the Hon'ble Bombay High Court in Colossuster Pvt Ltd Vs. Union of India-2023 (9) TMI 313. In which Hon'ble High Court of Bombay has also struck down the limitation of 3 months from the let export order in aforementioned circular. With the point of emphasis of the appellants being that the amendment should have been allowed in the shipping bill to them from DFIA Scheme to Drawback as claimed by them and the denial of the same through amendment or otherwise as export benefit was totally unfair and not maintainable . They rely on para 5 of Board Circular which has not been struck down and which is reads as follows:-

"5. Due care may be taken while allowing conversion to ensure that the exporter does not take benefit of both the schemes i.e. the scheme to which conversion is sought and the scheme from which conversion is sought. Whenever conversion of a shipping bill is allowed, the same should be informed to DGFT so that they may also ensure that the exporter does not take benefit of both the schemes."

8. It is grievance of the the appellants that Commissioner not having given any detailed rejection order, they are probing in dark for reasons as could have prevailed with the department in denying them the export benefit. We find that them since, October, 2015 despite doing exports in the year 2013-2014 and having applied for cancellation of DFIA. They have been in denial of the benefit both by the joint DGFT authority as well as Customs

authorities due to lack of response or lack of proper response. Left in a limbo, appellant have filed present appeal against letter of rejection considering the same as appealable as they are aggrieved by the same. We find that such denial of export benefit even when export has taken place is not worthy of approval. Commissioner could have easily considered the claim by allowing amendment under Section 149 by allowing conversion of shipping from DFIA to Duty Drawback Scheme. We also find that the denial of cancellation by Joint DGFT authorities is also unfair for such a long time, as such cancellation by DFIA and issuing of cancellation order by DGFT is a noted practice even by this Tribunal in the matter of 2014 (309) ELT 100 (Tri.-Ahm.), in the matter of M/s V.R.A COTTON MILLS PVT LTD. VS. COMMISSIONER OF CUSTOMS-JAMNAGAR (PREV) which is reproduced below:-

"6.*The issue involved in this case is whether the appellant's application for conversion of Shipping Bills from DFIA to Drawback scheme needs to be allowed or otherwise, when such application filed on 20-7-2013 is made after the goods have been exported, no imports are made against such DFIA and cancellation of such DFIA on 10-7-2013 by DGFT. (Emphasis Supplied)*

7.*The undisputed facts are that documents relating to the exports i.e. Invoice, Shipping Bills, Bills of lading and the Bank Realization Certificate clearly indicate that the goods were exported and said goods were described in documents as "Indian Raw Cotton Shankar-6 of CTH 5201". It is also undisputed that the appellant has exported the said goods and subsequently not imported any goods as per the DFIA, which has been cancelled by DGFT on 10-7-2013. Thus, there will be no imports under the said DFIA.*

8.*On this factual background, I have to consider the submissions made by both sides and I find that the submissions made on behalf of the Appellant needs to be accepted for more than one reason as under.*

8.1*I find that DFIA in terms of Para 4.2.1 of Export-Import Policy, issued is to allow duty-free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product. Similarly, Para 4.2.6 shows that once export obligation has been fulfilled, request for transferability of Authorisation or inputs imported against it may be made before concerned authority. Once, transferability is endorsed, authorisation holder may transfer DFIA or duty-free inputs. Para 4.28(e) of HBP Vol. I, 2009-14 allows cancellation of DFIA when there is no imports made against exports and allows assessee to approach customs for conversion of Shipping Bill under Drawback scheme, for which no time limitation is provided by DGFT.*

8.2*I find that Rule 12(1)(a) of Drawback Rules require an exporter to declare on the Shipping Bill, the description, quantity and such other particulars as are necessary for deciding whether the goods are*

entitled to Drawback, and if so, at what rate or rates and make a declaration on the relevant Shipping Bill that a claim for Drawback is being made and in respect of duties paid on containers packing materials service tax, etc. no separate claim for rebate of duty has been made. The Commissioner is empowered to allow Drawback on Shipping Bills which may not contain any of these details. The provisions of Rule 12(1) of Customs & Central Excise Duties Drawback Rules, 1995 (Drawback Rules) and also proviso empowers the Commissioner to condone non-observance of provisions of Rule 12 and allow Drawback. This is nothing but an amendment or conversion of the Shipping Bill filed. The circular issued by the Board goes beyond the Rules. In fact Section 149 of Customs Act, 1962 clearly permits amendment of Shipping Bill without any such time limit even after export of goods. The section 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."

8.3 Documents submitted by the appellant like contracts for exports, Test analysis reports by Cotton Association of India, Shipping Bills were signed & cleared by proper Customs officers and Bills of Lading, BRC for realisation of currency, etc. specifically indicate that the goods which were cleared for export were "Indian Raw Cotton Shankar-6 of CTH 5201". Perusal of the analytical certificate given by M/s. Cotton Association of India seems to co-relate the goods in the shipping bills wherein the description was given as "Indian Raw Cotton Shankar-6 of CTH 5201".

8.4 Appellant's submission of non-observance of provisions of Rule 12(1) of Drawback Rules could also be treated beyond their control, when export, as claimed by appellant, was only to China on "quota basis" and when such quota for export to China had been exhausted by other such exporters, there was no possibility for appellant to export any other quantity to China. After exports against DFIA scheme, there was no import by the appellant. Since Appellant could not fulfill export obligation, Appellant requested DGFT for cancellation of DFIA in terms of Para 4.28(e) of HBP Vol. I, 2009-14 vide their request, dated 28-6-2013. Para 4.28(e) *ibid* is reproduced :

In case an exporter is unable to complete EO undertaken in full and he has not made any import under Authorisation, Authorisation holder will also have an option to get the Authorisation cancelled and apply for drawback after obtaining permission from Customs authorities for conversion of shipping bills to Drawback Shipping Bills.
(e)

Considering no imports made against said DFIA, DGFT, New Delhi cancelled DFIA No. 0510306798, dated 31-10-2011 in terms of Para 4.28(e) of HBP Vol.-I, 2009-14 vide their communication, dated 10-7-2013. Thus, in such facts, appellant could have applied for conversion only after getting cancellation of the said DFIA. The appellant applied for such conversion immediately on 20-7-2013, which is within 10 days of such cancellation of DFIA by DGFT.

(Emphasis Supplied)

8.5I also find that Hon'ble High Court of Mumbai in the case of *Repro India Ltd.* - [2009 \(235\) E.L.T. 614](#) (Bom.) has specifically laid down in Para 8 which read that the intentions of the Government is not to export taxes but only to export the goods. In the case in hand, if the duty drawback is not allowed to the appellant, the appellant is perforce required to export the taxes, which gets included in the FOB value. In my view, this being not the intention, conversion of Shipping Bills from DFIA to Drawback Scheme needs to be allowed.

8.6The provisions of Para 4.28(e) of HBP Vol.-I, 2009-14, Rule 12 of Customs, Central Excise Duties and Service Tax Drawback Rules and Section 149 of the Customs Act, 1962 has not specifically prescribed any such time limitation of 3 months for applying for the conversion of Shipping Bill.

8.7I find that in the relied upon decisions on behalf of appellant, [2012 \(281\) E.L.T. 173](#) (Ker.) - *Leotex v. UOI*, the Hon'ble High Court has allowed conversion from DEPB to Drawback Scheme observing in Para 4 as under

"Circular dated 23-9-2010 is not mandatory at all. In fact, the latest Circular dated 23-9-2010 shows that in view of the decisions of the Tribunal and this court on the question, the Government themselves had decided to liberalise the provision regarding even conversion from one scheme to another."

8.8I find that in the relied upon decisions on behalf of appellant, [2013 \(298\) E.L.T. 123](#) (Tri.-Ahd.) - *Rajguru Impex (India) Ltd. v. CC*, this Bench has also allowed conversion from DFRC to DEPB scheme observing in Paras 9, 10 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."

8.9I find that in the relied upon decisions on behalf of appellant, [2013 \(288\) E.L.T. 265](#) (Tri.-Chennai) - *Diamond Engg. (Chennai) P. Ltd. v. CC*, Bench has allowed conversion from DEEC to DEPB observing as under :-

EXIM - Shipping bill - Conversion from "Advance Licence to DEPB Scheme" - Request made after more than one year of export - Request rejected on the ground that Circular No. 36/2010-Cus., dated 23-9-2010 permitted conversion within three months from the date of 'Let Export' order and no documentary evidence produced by the exporter which existed at the time of export to support the request - HELD : Circular being beneficiary in nature, issued consequently to a number of Tribunal's decisions holding that amendment of shipping bill after export is governed by proviso to Section 149 of Customs Act, 1962, which prescribes no time-limit for such conversion and if the documentary evidence available at the time of export is produced such conversion needs to be allowed - Circular No. 36/2010-Cus., dated 23-9-2010 and Section 149 of Customs Act, 1962.

8.10I find that in the relied upon decisions on behalf of appellant, [2010 \(259\) E.L.T. 295](#) (Tri.-Ahmd.) and recent Order No. A/10565/2014, dated 9-4-2014 in Appeal No. C/39/2012-DB in case of *Essar Oil Ltd.*, Division Bench of this Court has also allowed conversion of Shipping Bill from Free scheme to Drawback scheme considering exports made, Rule 12(1) of Drawback Rules and Section 149 of the Customs Act, 1962.

Ld. Departmental Representative's reliance on the judgment of Hon'ble High Court in the case of 9. Commr. of Cus. (Seaport-Export), Chennai v. Suzlon Energy Ltd. reported in [2013 \(293\) E.L.T. 3](#) (Mad.) may not carry the case of the Revenue any further for the reason that in the said case, conversion was sought from one export benefit scheme into another after importing the goods under DEEC & EPCG and conversion of Shipping Bills. I find that the Hon'ble High Court have perused the Circular No. 36 of 2010, dated 23-9-2010 and observed in Para 17 as under :-

I "No doubt, the issue has been considered by the Board in detail and it is stated therein that conversion should be permitted in accordance with the provision of Section 149 of 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 and that the goods were eligible for the export promotion scheme to which conversion has been requested"

I find that facts of the said case are totally different than the issue in hand. I find that on deeper perusal of the judgment, it transpires that supporting evidences were not in existence at time of export of goods. In view of this, I find that the Hon'ble High Court has taken a view in facts of the said case, which may be applicable in situation which is similar or identical case. For the case in hand, appellant's exports are not in any dispute as regards description, quality, quantity, value, BRC, etc., having no import against DFIA the substantial benefit on such exports now available need not be denied.

10.*Division Bench of this Court has taken view that conversion can be allowed in such cases, I do not find any reason to deviate from such a view already taken. Accordingly, in view of the foregoing, I set aside the impugned order and direct lower authorities to convert DFIA Shipping Bills in this appeal to drawback shipping bills. I also make it clear that I have allowed only conversion into drawback Shipping Bills and eligibility of the appellant to the amount of drawback and its quantum, etc. would be decided in accordance with the law by the appropriate authorities of customs."*

8.1 The above decision acknowledges that in normal course conversion could have been applied only after cancellation by DGFT. Appellant thus having waited for long for cancellation correctly applied for conversion to Customs authorities. However, denial of export benefit despite delay and non response by the DGFT authorities makes the rejection letter of Commissioner improper. We, therefore quash the rejection letter and direct lower authorities to convert DFIA Shipping Bills to Drawback Shipping Bills as are involved in the present appeal. Due to unprecedented delay on the part of DGFT authorities, the appellants cannot be let hemmed between proverbial devil and the deep sea. We therefore direct amendment of impugned Shipping Bills by the Commissioner, while doing so and in the absence of any cancellation being on record which was indicated in VRA

Cotton Mills Pvt. Ltd. Case, we direct the Commissioner to follow Course indicated in para-5 of Board's Circular No. 36/2010-Cust dated 23.09.2010 and ensure that exporter does not take benefit of both schemes and also inform the DGFT authorities that in view of non-response to the cancellation request, same is deemed to have been granted. The quantum of eligibility of Drawback and relevant conditions if any of Drawback shall be decided in accordance with law, by the customs authorities. We make it clear that like an exemption notification can be granted at any stage even the export benefit can be allowed by amendment without any limitation of 3 months as has been struck down from board's Circular No. 36/2010 (ibid). The minimum in this case, that was expected of Joint DGFT authorities, in the whole gamut of circumstances was to, at least inform the appellants about their decision of no requirement for cancellation in writing if it was so (as it has been claimed by the appellant on record with us to have been orally intimated to them). Appeal is therefore, allowed directing Customs authorities to allow conversion and consider Drawback claim in above terms.

9. Appeal disposed of.

(Pronounced in the open court on 09.10.2023)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

PRACHI