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

REGIONAL BENCH-COURT NO. 2

Customs Appeal No. 10441 of 2025- DB

(Arising out of Order-in-Original No. AHM-CUSTM-000-PR-COMMR-60-2024-25 dated 03/01/2025 passed by the Principal Commissioner of Customs, Ahmedabad)

METALLOYS RECYCLING LIMITED ....**Appellant**,
Niraj Industrial Estate,
Off Mahakali Caves Road, Andheri, Mumbai-400093

VERSUS

COMMISSIONER OF CUSTOMS - AHMEDABAD ......**Respondent**
Office of the Pr. Commissioner of Customs,
1st Floor, Custom House,
Opposite Old High Court,
Navrangpura, Ahmadabad,
Gujarat - 380009

APPEARANCE:
Shri Dev Wadhwa, Advocate for the Appellant
Shri Aakash Singh, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10536/2026

DATE OF HEARING: 30.07.2026
DATE OF DECISION: 18.08.2026

SOMESH ARORA

1. M/s. Metalloys Recycling Limited, Andheri Mumbai ("Appellant") are engaged in the manufacture and export of high-grade non-ferrous metal products (Brass and Copper Billets). The Appellant is a recognized "Three-Star Export House" and holds an Authorized Economic Operator (AEO-T2) certification.

1.1 The Appellant was granted Advance Authorization (AA) License No. 0310833435 dated 16.12.2019, entitling duty-free import of 2,120 MT raw material. Between October 2019 and February 2022, the Appellant exported 30 consignments, declaring initial intent on the Shipping Bills to claim Advance Authorisation benefit, under the expectation of subsequent replenishment imports.

1.2 As per appellant, outbreak of COVID-19 pandemic severely crippled global supply chains. Overseas suppliers of metal scrap were unable to fulfil their obligations due to container shortages and port closures, making physical import of authorized 2,120 MT commercially and logistically impossible. To meet strict international export deadlines, they statedly steered its sourcing strategy, procuring required raw materials from domestic Indian market upon full payment of domestic taxes (GST). The official Customs Item Wise Ledger shows that out of 2,120 MT limit, they imported only 463.315 MT raw materials. A forensic Chartered Accountant Certificate confirming that export goods were manufactured out of duty-paid domestic inputs, calculating eligible Duty Drawback of Rs. 37,60,451.71.

1.3 As per appellant, they applied for conversion of 30 Shipping Bills from AA to DBK under Section 149 of the Customs Act which was arbitrarily rejected by Commissioner vide OIO No. AHM-CUSTM-000-PR-COMMR-60-2024-25 dated 03.01.2025, incorrectly equating "declaration of intent" with "actual availment" (Paras 14 & 15 of the impugned order) and rigidly applying an ultra vires three-month time bar under Circular 36/2010-Cus (Paras 18 & 19 of the order).

2. The Appellant submits that impugned Order is legally unsustainable, cryptic, and passed in violation of the parent statute and binding judicial precedents.

2.1 Rebuttal to OIO paras 14 & 15: Mere declaration of intent does not constitute actual availment of benefit-

- In Paragraphs 14 and 15 of the Impugned Order, the Adjudicating Authority held that the Appellant was disqualified from conversion of shipping Bills under Paragraph 3(e) of the Circular 36/2010-Cus solely because the Appellant "declared at respective places in the Shipping bill that they intend to claim Advance Authorization benefits". The Adjudicating Authority committed a grave error of law by conflating a procedural declaration of future intent with the actual consummation of a financial benefit.

- The tangible "benefit" of the AA Scheme is the duty-free import of raw materials. If the import leg of the transaction is severed or unutilized, the export leg is mathematically and legally devoid of any benefit.

2.2 The Adjudicating Authority's assertion of "availment" is factually unsustainable in view of irrefutable, contemporaneous documentary evidence furnished by Appellant:

- The Customs EDI Ledger for AA License No. 0310833435 unequivocally establishes that appellant imported only 463.315 MT against entitlement of 2,120 MT leaving massive balance of 1,657 MT left completely unutilized. One cannot "avail" an import exemption without actually importing the goods.
- Independent statutory certification explicitly confirms "Non-Availment of Double Benefit". It correlates domestic tax invoices for indigenous procurement with the exported billets, proving that domestic duties were suffered and calculating the legitimate Duty Drawback due at Rs. 37,60,451.71.

2.3 In the case of Ball Aerosol Packaging India Pvt. Ltd. v. Union of India reported at (2024) 25 Centax 29, Hon'ble Gujarat High Court held in para 47 and 55 as under : –

> ***"47.*** *On perusal of the section 149, it appears that when amendment to shipping bill after export of goods is sought, the same is governed by the proviso to section 149 and if the requirements of the proviso of section 149 are satisfied, the amendment has to be allowed.*
>
> ***55****.* *Considering the above conspectus of law, this petition is also disposed of by following directions, which would serve the ends of justice: (ii) The*

petitioner shall be entitled to MEIS scheme benefit in respect of the exports of the goods by the respondent authorities in view of the amendment of the shipping bills under Section 149 of the Customs Act, 1962. The respondent authorities are directed to process the claim of the petitioner for MEIS scheme."

- In view of above ratio, their initial declaration of intent for AA Scheme was merely a procedural step that never materialized into substantive availment. It is conclusively proven that the inputs utilized were duty-paid, the substantive conditions for DBK are perfectly satisfied. The Adjudicating Authority's reliance merely on declaration of intent to deny a substantive right directly contravenes this jurisdictional ruling.

2.4 The Ultra Vires Nature of the Three-Month Bar-

- In Para 18 and 19 of the OIO, the Adjudicating Authority rejected their application for conversion of shipping bills on the grounds of "time bar," relying on Paragraph 3(a) of the CBIC Circular No. 36/2010-Cus which prescribes a three-month limitation from the Let Export Order date.
- This reasoning is fundamentally flawed. Section 149 of the Customs Act, 1962, which governs the amendment of documents, does not prescribe any statutory time limit. The sole condition mandated by Parliament is that the amendment must be based on documentary evidence in existence at the time the goods were exported. Administrative bodies cannot artificially engineer and impose a strict time bar through an executive circular that travels beyond the parent statute.

2.5 In the case of Union of India v. Mahalaxmi Rubtech Ltd. reported at 2023 (385) E.L.T. 99 (S.C.), Hon'ble Apex Court held that, -

"In impugned order High Court had held that Para 3(a) of C.B.E.&C. Circular No. 36/2010-Cus., dated 23-9-2010 prescribing limitation of three months from date of Let Export Order (LEO) for filing application for amendment/conversion of EPCG shipping bill into drawback shipping bill, was ultra vires to Section 149 of Customs Act... On SLP filed by Revenue... SLP was to be dismissed."

- This ruling has affirmed that specific three-month restriction relied upon by the Adjudicating Authority in Para 18 and 19 of the order is unconstitutional and ultra vires. By enforcing a dead law, the Respondent has committed a grave judicial error.

2.6 In the case of Pinnacle Life Science Pvt. Ltd. v. Union of India reported at (2024) 16 Centax 340, Hon'ble Bombay High Court has in para 6 held as under: -

> ***"6**. In our view such a circular could not have been issued by the Central Board of Excise & Custom (CBEC) providing for three months time period to make a request for amending the shipping bills. This is because in Section 149 of the Act no time period has been prescribed... When no time limit for making a request for amendment of any document is specified under Section 149 of the Act, it is clear that the legislature has not thought fit to restrict the scope of this provision... Therefore in our view the time limit of three months laid down vide paragraph no.3(a) of the circular is especially illegal and without jurisdiction."*

2.7 In the case of Pr. Commr. of Customs, Mundra v. Lykis Ltd. reported at Citation: 2021 (377) E.L.T. 646, Hon'ble Gujarat High Court has dismissed Revenue's appeal against CESTAT order. The relevant paras are reproduced below:-

> ***"2**. The Revenue has proposed the following questions of law for the consideration of this Court.*
>
> *(i) Whether benefit of conversion from Drawback scheme to DFIA scheme can be allowed at any time for the clearances which had taken place almost four years back?*
>
> *(ii) Whether the Tribunal was justified in holding that benefit of conversion from Drawback scheme to DFIA scheme can be allowed for exports made in past after the period of 3 months are over from the date of such export?*
>
> *(iii) Whether the Tribunal is correct in holding that the Circular is only laying down a procedural guideline and the conditions mentioned therein are not required to be fulfilled by the exporter to take the advantage of the scheme?*

(iv) Whether the Tribunal is justified in following the judgment of Mumbai Tribunal and not appreciating the law laid down by this Hon'ble Court?

***6**. We are of the view that no error, not to speak of any error of law could be said to have been committed by the Tribunal in passing the impugned order. Section 149 is applicable at the relevant point of time. In fact, the questions as proposed by the Revenue cannot be termed as substantial questions of law as the issue is squarely covered by a decision of this Court in the case of Inter Continental (India) v. Union of India - 2003 (154) E.L.T. 37 and the same is also upheld by the Supreme Court; 2008 SCC Online SC 22 = 2008 (226)*

E.L.T. 16 (S.C.). 7. In the result, this appeal fails and is hereby dismissed."

2.8 Vide Final Order No. A/12221/2023 dated 9th October, 2023, this Tribunal in the case of Nisan Exports v. Pr. Commr. of Customs, Mundra has explicitly allowed conversion of shipping bills from one scheme to Duty Drawback post-export, ignoring 3-month limitation of Circular 36/2010. It held that once export has taken place, Export benefit should not be denied. The Appellant's identical request for conversion must similarly be allowed. The relevant para 8 of the order is as under:-

*"**8**…… 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)"*

2.9 In Paragraph 12 of the Impugned Order, the Adjudicating Authority dismissively brushed aside the Appellant's justification regarding the severe disruptions caused by the COVID-19 pandemic, stating the reasons were "not convincing". The COVID-19 pandemic triggered severe, asymmetric disruptions in international maritime shipping. While the Appellant managed to keep its domestic manufacturing operational, the inbound supply chain for imported raw materials from overseas suppliers was entirely fractured due to container shortages and port closures. Under the doctrine of Force Majeure, the Appellant was commercially bound to mitigate its damages to meet contractual delivery deadlines with foreign buyers. They procured raw materials domestically at significantly higher costs thereby frustrating the Advance Authorization leg. Penalizing the Appellant for ensuring India's export commitments were met despite a global crisis by using domestic inputs, as proven by Annexure 'B' and Annexure 'C', is highly punitive and inequitable. Appellants thus sought the relief prayed for.

3. The appellant exported brass billets (17 Shipping Bills) and copper billets (13 Shipping Bills) from ICD Tumb and initially claimed benefit of Advance Authorization Scheme. Later on, they requested to convert these 30 shipping bills from Advance Authorization Scheme to Drawback scheme, stating that due to COVID-related supply chain disruption and other difficulties, they could not fully use the Advance Authorization imports. The request was supported by various judgments of CESTAT Ahmedabad, CESTAT Madras etc. and also the fact that Section 149 itself does not prescribe a specific time limit.

3.1 As per CBIC Circular No. 36/2010-Cus., conversion is allowed only where the Commissioner is satisfied that documentary evidence existing at the time of export proves eligibility, and where the request is made within three months of the Let Export Order, among other conditions. Reference was also made to Notification No. 11/2022- Customs (N.T.) dated 22.02.2022 wherein the manner and time limit for applying for post export conversion of Shipping Bill in certain cases is provided. The Adjudicating Authority examined the exporter's explanation for delay but found that COVID-19 justification was not convincing because appellant had continued exporting before, during, and after the pandemic, and the Advance Authorization had also been extended by DGFT up to 28.02.2023. It also noted that appellant had already availed the benefit of Advance Authorization scheme under the impugned shipping bills, which made conversion to Drawback impermissible under the circular's condition that the exporter must not have availed the scheme under which the goods were originally exported. As per the Commissioner, the appellant failed to establish a convincing case and found that the request made in June 2024 for conversion, was filed much later than the exports, which were made between June 2021 and January 2022. Based on department's verification report that exporter had not complied with the relevant circular condition on timely filing, he rejected the application for conversion of shipping bills from Advance Authorization to Drawback.

3.2 The department relies on the judgement of Hon'ble High Court of Madras in the case of Commissioner of Customs (Seaport –Export) Versus M/s Suzlon Energy Limited reported in 2013 (3) TMI 506 (Mad.), especially para 11 was relied upon, wherein, Hon'ble High Court of Madras has observed that:

> *"if it is a conversion of one Scheme to another, certainly, relevant Board's Circular which governs the procedure for which conversion will come into operation and the exporter is bound by such Circular"*

The above mentioned fact has been re-iterated in the judgement of Hon'ble High Court of Gujarat in the case of Anil Sharma Versus Union of India reported in 2017 (2) TMI 50 (Guj.) as given below:

> *"Madras High Court has held that such goods would not fall under Section 149 of the Customs Act, but shall be governed by Board Circular No. 36 of 2010".*

4. We have considered the rival submissions advanced before us along with the relevant case laws cited by both sides. We find that the learned Authorised Representative as well as the authority below have relied upon the decision in the case of M/s. Suzlon Energy Limited, reported in 2013 (3) TMI 506 (Mad.), as well as in the case of Anil Sharma Vs. Union of India, reported in 2017 (2) TMI 50 (Guj.). We find that the said legal position is no longer holds good as same having been overruled in Union of India Vs. Mahalaxmi Rubtech Ltd.,

reported in 2023 (385) E.L.T. 99 (S.C.). While rejecting the Revenue's Special Leave Petition, the Hon'ble Apex Court held that Circular No. 36/2010-Cus. dated 23.09.2010, prescribing a time limit of three months from the date of "Let Export Order", was itself ultra vires to Section 149 of the Customs Act, 1962. The same view has also been taken in Pinnacle Life Science Pvt. Ltd. v. Union of India, reported in (2024) 16 Centax 340 (Bom.), as discussed above.

4.1 Further, we find that Hon'ble High Court of Gujarat has also addressed the issue of limitation in Pr. Commr. of Customs, Mundra v. Lykis Ltd., reported at 2021 (377) E.L.T. 646 (Guj.), as above, wherein Hon'ble High Court, inter alia, rejected the Circular and the reasoning contained therein. The issue was also examined by this Bench in Nisan Exports Vs. Pr. Commr. of Customs, Mundra, decided vide Final Order No. A/12221/2023 (CESTAT-Ahmedabad), referred to in paragraph 2.8 of this order, wherein conversion from one export promotion scheme to duty drawback, even beyond the period of three months prescribed under Circular No. 36/2010-Cus., was allowed. It was observed that once the export has taken place, the consequential export benefit cannot be denied merely on the ground of limitation prescribed under the said Circular.

4.2 We further, note that the Department has also raised the issue regarding applicability of Notification No. 11/2022-Cus. (N.T.) dated 22.02.2022, whereby a time limit was prescribed for post-export conversion of shipping bills in certain cases. We find that the said notification cannot be applied retrospectively to the exports made by the appellant between October, 2019 and January, 2022. Accordingly, we hold that the notification has no application to the facts of the present case.

4.3 In view of the foregoing discussion, we find that, in the facts and circumstances of the present case and in light of the legal position prevailing at the time of export, the export benefit cannot be denied to the appellant and is liable to be extended. Accordingly, the appeal deserves to be allowed.

5. Appeal is allowed.

(Pronounced in the open court on 18.08.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

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