IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76318 of 2025

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/DC/197/2025 dated 20.06.2025 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Roy Global Trading Private Limited **: Appellant**
P-537, Hemanta Mukhopadhyay Sarani,
Kolkata – 700 073 (West Bengal)

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, Kolkata,
15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

APPEARANCE:

Smt. Sukanya Roy, Consultant,
For the Appellant

Shri Subrata Debnath, Authorized Representative,
Shri Sameer Chitkara, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76078 / 2026

DATE OF HEARING: 21.07.2026

DATE OF DECISION: 18.08.2026

ORDER: [PER SHRI R. MURALIDHAR]

The appellant is a Merchant Exporter engaged in export of Iron Ore Fines procured from its supporting manufacturer, namely, M/s. Emars Mining & Construction Pvt. Ltd. They were granted three EPCG Licenses by the DGFT during 2006-2007. Pursuant to the EPCG licenses, the appellant exported Iron Ore Fines under Shipping Bill Nos. 001077 dated 10.05.2007, 5362592 dated 05.02.2007 and 5363048 dated 07.02.2007. However, due to inadvertence, the concerned EPCG Authorisation / License numbers were not mentioned in the Shipping Bills and the exports were completed under Free Shipping Bills.

2. Since the exports were actually intended towards fulfilment of EPCG export obligation, the appellant filed an application dated 06.04.2015 under Section 149 of the Customs Act, 1962 seeking amendment/conversion of the Free Shipping Bills into EPCG Shipping Bills. No action was taken by the Customs Dept. A further reminder was submitted on 13.08.2024.

2.1. The Assistant Commissioner, Export Section, Customs House, Kolkata rejected the request vide letter dated 11.11.2024, on the ground that under Notification No. 11/2022-Cus. (N.T.), the request for conversion was required to be made within one year from the date of clearance and therefore the request was time-barred.

3. On appeal, the Commissioner (Appeals) upheld the rejection vide Order-in-Appeal No. KOL/CUS/PORT/DC/197/2025 dated 20.06.2025, holding that the amendment sought after an inordinate delay could not be permitted and that the claim had become stale.

4. Being aggrieved by the said Order-in-Appeal, the present appeal has been filed before the Tribunal.

5. The Ld. Counsel appearing on behalf of the appellant makes the following submissions:

(i) The Section 149 of the Customs Act 1962, contains no limitation for amendment of documents. It permits amendment of any customs document on the basis of documentary evidence existing at the time of export. The only statutory requirement is existence of contemporaneous evidence. No limitation period was prescribed in Section 149 for the exports undertaken in 2007. Therefore, rejection solely on the ground of delay is contrary to the statutory provision.

(ii) Notification No. 11/2022-Cus. (N.T.) cannot operate retrospectively/ The lower authorities erroneously relied upon the Shipping Bill (Post Export Conversion in relation to Instrument Based Scheme) Regulations, 2022. The impugned exports were completed in 2007, whereas the Regulations came into force only in 2022. A delegated legislation cannot be applied retrospectively unless specifically authorised by the parent statute. Hence, the one-year limitation introduced in 2022 cannot govern exports made fifteen years earlier.

(iii) Substantive export benefit cannot be denied for procedural lapse. The exports were genuinely effected under valid EPCG Authorisations and all documentary evidence existed at the time of export. The omission to mention the EPCG license number in the Shipping Bills was purely clerical and procedural mistake. It is settled law that substantive benefits under export promotion schemes cannot be denied for procedural infractions when eligibility is otherwise established.

(iv) The CBEC Circular dated 23.09.2010 supports conversion on merits. CBEC Circular No. 36/2010-Cus. recognizes the power of conversion/amendment under Section 149 based upon contemporaneous documentary evidence and eligibility under the export promotion scheme. The Appellant satisfies all such requirements.

(v) The Circular-imposed limitation cannot override the statute. Even assuming that Circular No. 36/2010 prescribed any limitation, such limitation could not override Section 149 which did not prescribe any time limit. The power to curtail a statutory right cannot be exercised through executive instructions.

5.1. The appellant relies on the following case laws:

a. Union of India v. Mahalaxmi Rubitech Ltd.

The Hon'ble Supreme Court dismissed the Department's challenge and thereby affirmed the Gujarat High Court's view that Paragraph 3(a) of CBEC Circular No. 36/2010 prescribing limitation for conversion of shipping bills was ultra vires Section 149 of the Customs Act.

b. Gupta Enterprises v. The Commissioner of Customs.

No prescribed limit for filing an application for conversion or amendment of documents u/s 149 of Customs Act 1962 where CESTAT allows the conversion

These judgments directly support the appellant's case.

5.2. In view of the above submissions, it is prayed that the present appeal may be allowed, by directing the Revenue authorities to pass an order under

Section 149, allowing the conversion of Free Shipping Bills to Shipping Bills filed claiming the EPCG benefits.

6. The Ld. Authorized Representative appearing on behalf of the Revenue submits that the appellant had cleared their consignments under Free Shipping Bills, but much later after more than 8 years, they have filed their request to amend the same in terms of Section 149 of the Customs Act, 1962; that such inordinate delay is not permissible since the Circular issued on 23.09.2010, has clearly stated that request for such amendments should be made within 3 months from the date of exports. Hence, he justifies the rejection of the amendment request by the lower authorities.

6.1. He further submits that in respect of Free Shipping Bills, no examination is carried out; on the other hand, where the exporter claims the benefit of EPCG and DEEC etc., the export consignments have to be examined as has been specified under Circular No.6/2002-Cus dated 23.01.2002. It is his submission that the request to change the Free Shipping Bill to EPCG based Shipping Bill would result in amending the Shipping Bill wherein no examination has taken place; that after 8 years from the date of export, such examination would not be possible.

6.2. In the rejoinder, the Ld. Counsel for the appellant submits that the goods in question, is iron ore; the export consignments are invariably examined to test the Fe content and therefore, even in these cases, the examination would have taken places.

6.3. But the Ld. Authorized Representative of the Revenue counters the same on the ground that at the time of export of these goods in 2007, the Export Duty was on Ad valorem basis and the Duty was simply payable based on the per ton of the goods exported; that since there was no necessity to know the Fe content of the iron ore, the goods were not subjected to any examination. In view of all these submissions, it is prayed that the appeal may be dismissed.

7. Heard both the sides and perused the documents placed before us.

8. It would be important to go through the relevant provisions of Section 149, Notification No. 11/2022-Cus. (N.T.) dated 22.02.2022, CBEC Circular No. 36/2010-Cus. dated 23.09.2010.

- Section 149 of the Customs Act, 1962:

> **"149.Amendment of documents. -** Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the customs house to be amended in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed :
>
> *Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended* after the imported goods have been cleared for home consumption or deposited in a warehouse, or *the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be:*

Provided Further that such authorisation or amendment may also be done electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria :

Provided Also that such amendments, as may be specified by the Board, may be done by the importer or exporter on the common portal."

(Emphasis supplied)

9. **Our Observation**: It is mandated that as a general rule, the amendment for the Shipping Bill should not be permitted after the goods have been exported. But exception to this Rule can be made, if the documentary evidence was in existence as on the date of export.

- Notification No. 11/2022-Customs (N.T.) dated 22.02.2022:

Notification No. 11/2022-Customs (N.T.)

New Delhi, the 22nd February, 2022

G.S.R. (E).— In exercise of the powers conferred by section 157 read with section 149 of the Customs Act, 1962 (52 of 1962), the Board, hereby makes the following regulations, namely:-

1. Short title and commencement. – (1) These regulations may be called the Shipping Bill (Post export conversion in relation to instrument based scheme**)** Regulations, 2022.

(2) *They shall come into force on the date of their publication in the Official Gazette*.

> (3) These regulations shall apply to shipping bills or bills of export filed on or after the date of publication of these regulations in the Official Gazette.
>
> *….*
>
> ***3.*** **Manner and time limit for applying for post export conversion of Shipping Bill in certain cases.** - (1) *The application for conversion shall be filed in writing within a period of one year from the date of order for clearance of goods under sub-section (1) of section 51 or section 69 of the Act, as the case may be:*
>
> *Provided that the jurisdictional Commissioner of Customs, having regard to the circumstance under which the exporter was prevented from applying within the said period of one year, may consider and decide, for reasons to be recorded in writing, to extend the aforesaid period of one year by a further period of six months:*
>
> *Provided further that the jurisdictional Chief Commissioner of Customs, having regard to the circumstances under which the exporter was prevented from applying within the said period of one year and six months, may consider and decide, for reasons to be recorded in writing, to extend the said period of one year and six months by a further period of six months.*

(Emphasis supplied)

10. **Our Observation**: This Notification is effective from 22nd February 2022 and nothing is mentioned towards the same having any retrospective effect. It is also seen that the application for conversion should

be filed within one year from the date of the order for clearance of goods. This time limit is extendable by the jurisdictional Commissioner by six months and another six months period can be extended by the jurisdictional Chief Commissioner.

- CBEC Circular No. 36/2010-Cus. dated 23.09.2010:

CIRCULAR NO. 36/2010-CUSTOMS

Dated : 23rd September 2010

Sir/Madam,

Subject : Conversion of free shipping bills to export promotion scheme shipping bills and conversion of shipping bills from one scheme to another - Reg.

I am directed to invite attention to the Board's circular No. 4/2004-Cus., dated 16-1-2004 which debars conversion of free shipping bills to Advance License/DFRC/DEPB shipping bills and allows conversion of shipping bills from one export promotion scheme to another only where the benefit of an export promotion scheme claimed by the exporter has been denied by the DGFT/MoC&I or Customs due to any dispute.

2. It has been represented to the Board that the norms for allowing conversion of shipping bills may be relaxed and the Commissioners should be allowed to consider requests for conversion of shipping bills from free to export promotion scheme and from one export promotion scheme to another on a case to case basis depending

on the merits of the case. *It has also come to notice of the Board that the Tribunals in a series of judgments have held that amendment to shipping bill after export of goods is governed by the proviso to section 149 of the Customs Act, 1962 and if the requirements of the said proviso are satisfied, conversion of shipping bill should be allowed.* The conversion of the shipping bill from one scheme to another cannot be linked with denial of benefit of one scheme by DGFT/MoC&I or Customs due to some dispute as no such condition for amendment of shipping bill has been provided in section 149 of Customs Act, 1962.

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 endorsement made on the shipping bill/export documents prove the fact of export and the export product is clearly covered under relevant SION and of 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/declaration/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 drawbacks on goods exported under free shipping bills, 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 & Service Tax Drawback Rules, 1995.

11. **Our Observation:**

(a) Conversion is to be permitted based on the merits of each case.

(b) Request for conversion to be made by the exporter within three months from the date of Let Export Order [*This condition stands set aside by various High Courts*]

(c) The Exporter should have fulfilled all the other conditions towards the Export Promotion Scheme for which he is seeking conversion

12. We have gone through the Letter No. CUS/ASS/MISC/1090/2024-EXP dated 11.11.2024, which is reproduced below:

S/MISC/1030/2024-EXP-O/O PR COMMR-CUS-PORT-KOLKATA ANNEXURE – D

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I/2420516/2024

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भारत सरकार / GOVERNMENT OF INDIA
सीमा शुल्क प्रधान आयुक्त का कार्यालय (पत्तन)
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (PORT)
सीमा शुल्क सदन, 15/1स्ट्रैण्ड रोड, कोलकाता (वं. प .) -700001
CUSTOM HOUSE, 15/1 STRAND ROAD, KOLKATA(WB) – 700001
Tel: 033-22131553 Fax No.: 033.22131552 Email Id: precommr-port-cuskol@gov.in

F.No. CUS/ASS/MISC/1090/2024-EXP

Date:11-11-2024

M/s. Roy Global Trading Pvt. Ltd.
P-537, Hemanta Mukhopadhyay Sarani
1st Floor, Kol.-700029

Sub: Request regarding conversion of free shipping bills 001077 dated 10.05.2007, 5362592 dated 05.02.2007, 5363048 dated 07.02.2007 into shipping bill for EPCG.reg.

Gentleman,

Please refer to your letter dated 13.08.2024 on the mentioned subject wherein it has been requested for conversion of free shipping bill into shipping bill for EPCG.

As per Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022(Notification No. 11/2022-Customs (N.T.)), the request for conversion has to be made within 01 year from the date of order for clearance.

In view of above, the request of the conversion of Free Shipping Bill into Shipping Bill for EPCG may be denied as being "Time Barred".

Signed by Sankar Biswas
Date: 11-11-2024 17:03:45
SANKAR BISWAS
ASSISTANT COMMISSIONER
Export Section (EGM)
Custom House, Kolkata

13. The relevant portion of the Order-in-Appeal No. KOL/CUS/PORT/DC/197/2025 Dated 20.06.2025 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 tocase basis on merits provided the Commissioner of Customs is satisfied, on the basis of documentary evidence which was inexistence at the time the goods were exported, that the goods were eligible for the export promotion scheme to whichconversion has been requested. Conversion of shipping bills shall also be subject to conditions as may be specified by theDGFT/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."

11. The appellant has cited case of Union of India vs Mahalaxmi Rubitech Ltd. in 2023 (385) E.L.T. 99, S.C where-in Hon'ble Supreme Court upheld the Gujarat High Court's ruling that Para 3(a) of Circular No. 36/2010 (three-month limit) was ultravires Section149. In the cited case, the exporter preferred an application dated 28th January 2019 requesting the Commissioner of Customs to allow the amendment of 41 shipping bills filed during the period between October, 2017 and November, 2018 by converting such shipping bills into drawback shipping bills by mentioning the claim for duty drawback on the shipping bills and invoices. The writ applicant invoked Section 149 of the Customs Act, 1962.

However, the factual matrix of Mahalaxmi Rubitech is materially distinct from the present case. In the referred case, there wasn't an inordinate delay in filling the amendment application and the same was filed within two years which the Court deemed reasonable, but in the present case, there is a delay of approx 8 years from first application dated 06.04.2015 and 17 years from follow-up application for amendment vide letter dated 13.08.2024. The appellant has failed to provide any valid justification for this protracted delay, nor has they demonstrated circumstances preventing timely compliance. The delay here is beyond the reasonable time of three years and the amendment cannot be allowed for indefinite period. A legal claim cannot be enforced if there is a long delay in asserting the right or the claim.

12. In view of the forgoing facts and discussion, I reject the appeal filed by the appellant and find no infirmity in the order communicated vide letter F. No. CUS/ASS/MISC/1090/2024- EXP dated 11.11.2024 passed by the lower authority.

दिनांक /Date:

Debjyoti 19/6/2025

देबज्योति चक्रवर्ती / Debjyoti Chakravarty
सीमा शुल्क आयुक्त (अपील), कस्टम हाउस ,कोलकाता
Commissioner of Customs (Appeals)
Custom House, Kolkata.

Copy to:

1. **The Appellant– M/s Roy Global Trading Private Limited, Add: P-[illegible], Hemanta Mukhopadhyay Sarani, Kolkata -700073.**
2. **The Respondent – Deputy/Assistant Commissioner of Customs, Export Section (EGM), Custom House, Kolkata-700001.**
3. **The Chief Commissioner of Customs, Kolkata Customs Zone, Custom House, Kolkata.**
4. **The Commissioner of Customs (Port), Custom House, Kolkata**
5. **Guard File.**
6. **Office Copy.**

For Commissioner of Customs (Appeals)
Custom House, Kolkata.

14. From the letter dated 11.11.2024 and the above extract of the Order-in-Appeal, we find that the sole ground on which the request for amending the Free Shipping Bill to EPCG applied Shipping Bill is on the ground of 'time-bar' alone. No other grounds have been taken on account of non-examination of the consignments at the time of exports or towards non-fulfilment of any other condition specified for the EPCG based exports.

15. We have for reference the following case laws dealing with the issue of time-bar in such cases:

- **M/s. Colossustex Pvt. Ltd. v. Union of India [2024 (387) E.L.T. 277 (Bom.)]**

  "15. It is on such backdrop, the rival contentions have fallen for our consideration. At the outset, we may observe that prior to the amendment of Section 149 by the Finance Act, 23 of 2019, i.e. prior to 1st August, 2019, admittedly, there was no authority and/or any power vested with the Central Government to prescribe any timeframe and/or restrictions and conditions to be imposed on amendment of the documents as Section 149 would stipulate. It is admittedly during the prevalence of the provision as it stood prior to the 2019 amendment, that the Circular in question (impugned Circular No. 36/2010) came to be issued. The impugned Circular could not have prescribed any time limits when the substantive provision of Section 149 of the Customs Act itself did not confer such power on the Central Government and, hence, for such reason, the impugned Circular prescribing the time limits was per se contrary and ultra vires of Section 149 of the Customs Act. The Central Government could exercise power, provided such a power and authority was conferred by Section 149 of the Act, which is the only provision under the Customs Act, which provides for amendment to the documents. It was, thus, not permissible for the Central Government to issue the impugned Circular and, more particularly, prescribing the timelines in Paragraph 3(a) when it provided that a request for conversion be made by the exporter within three months of the date of the Let Export Order, only when such request would be considered. Thus, in our opinion, the said Circular itself was rendered bad and illegal and was contrary to the provisions of Section 149 of the Customs Act.

….

22. We are also inclined to subscribe to the view taken by the Gujarat High Court in the case of M/s. Mahalaxmi Rubitech Ltd. when the Division Bench, considering the purport of Section 149, as it stood post-2019 amendment, has held the Circular to the extent it incorporates Para 3(a) was ultra vires of Article 14 of the Constitution of India as also ultra vires of Section 149 of the Customs Act, 1962. In our opinion, the Assistant Commissioner could not have been oblivious of the settled position in law that once the Gujarat High Court had struck down the Circular considering that the Customs Act has a pan-India operation being a Central Act, following the decision of the Supreme Court in Kusum Ingots & Alloys Ltd. v. Union of India and Anr. [(2004) 6 SCC 254 = 2004 (168) E.L.T. 3 (S.C.)]. The decision of the Gujarat High Court on the Circular in question was applicable and binding on all the customs jurisdictions throughout India."

- **M/s. Arvind Smart Textiles Ltd. v. Commissioner of Customs [(2024) 15 Centax 73 (Tri.-Mad)]:**

"6. On perusal of the impugned order, it seen that the Original Authority has held in Paragraph 8 that as the request for amendment is made after three Months' time as prescribed in Board Circular No. 36/2010 dated 23-9-2010, the request cannot be granted. The very same issue was considered by the Tribunal in the case M/s. Autotech Industries (India) Pvt. Ltd. (supra). The Board Circular was also considered by the Tribunal to hold that during the relevant period, there is no specific time limit prescribed in Section 149 to request for amendment of shipping bill. The relevant Paragraphs of the decision of the Tribunal reads as under:-

"40. Reverting to the case on hand, although no limitation has been prescribed in Section 149, an assessee cannot be permitted to take undue advantage. The remedy of amendment under Section 149 should be sought within a reasonable time. We have already expressed our view that there is inordinate delay in filing the application for amendment under section 149 of the Customs Act, 1962. We then have to consider what would be the reasonable period for entertaining an application under section 149 of the Customs.

41. The Customs Act, 1962 being a special law and a complete code in itself it would not be proper to pull in the limitation period under the Limitation Act, 1963 and make it applicable to Section 149. More so, because Section 149 does not deal with any recovery of duty or refund of duty. It is a section merely to permit amendment in documents. Amendment is purely a procedural requirement. The legislature in its wisdom has not prescribed either in the Act or Rules a time limit to fulfil this procedural requirement. The consequence of such amendment as already stated, is to claim refund of duty suffered on inputs in the nature of drawback. The Limitation Act limits the period for filing a suit for recovery of money to three years. As per Article 137 of the Schedule to The Limitation Act, 1963 any application for which no period of limitation is provided elsewhere is three years from the time when the right to apply accrues. We are unable to refrain ourselves from being not

> *persuaded by these provisions in the Limitation Act to hold that a period of three years would be a reasonable time for filing an application under section 149.*
>
> *42. The application dated 9-10-2015 contains request for amendment of Shipping Bills for the years 2012 to 2014. It gives details of shipping bills for three years (Jan., 2012 to Dec., 2014). The second application dated 25-1-2016 made by the appellant is only an afterthought by which appellant has included Shipping Bills from the year 2000 to 2011. We hold that there is unreasonable delay in filing the request for amendment of Shipping Bills from the year 2000 to 2011 and the order of rejection in respect of these Shipping Bills is just and proper."*

7. The Hon'ble High Court of Bombay in the case of Colossustex Pvt. Ltd. v. Union of India [2023 (9) TMI 313/(2023) 11 Centax 57/2024 (387) E.L.T. 277 had occasion to consider the Board Circular prescribing a period of three Months to request for amendment of shipping bill. The Hon'ble Court held that as Section 149 prior to its amendment, does not prescribe any time limit, the Board vide Circular cannot impose a time limit so as to decline the request for amendment of shipping bill.

8. After appreciating the facts and following the decisions cited supra, we are of the considered opinion that the rejection of request for amendment of shipping bill is not justified. The impugned order is set aside. The appeal is allowed with consequential relief, if any, as per law."

- **M/s. ADF Foods Ltd. v. Commissioner of Customs, Nhava Sheva-II [Final Order No. 86108 of 2025; Date of Decision: 17.07.2025; Customs Appeal No. 86244 of 2025 – CESTAT, Mumbai]:**

"Partial rejection of conversion request made under Section 149 of the Customs Act, 1962 of 2463 shipping bills through which Appellant had exported goods namely Namkeens, Mixtures/Mixed Pickles, Vegetable Pickles etc. between the period 01.10.2014, and 31.12.2020 solely on the ground of limitation as 1767 numbers of shipping bills were pertaining to the period beyond three years of export, is assailed in this appeal.

5. We have gone through the appeal paper book, relied upon decisions and written submissions made by adversaries. At the outset, it is to be placed on record that M.P. Steel Corporation judgment of the Hon'ble Supreme Court passed in the year 2015 is the authoritative pronouncement of application of the Limitation Act to the proceedings dealt before a Tribunal or a Quasi-Judicial Authority, which has encompassed divergent decisions on the issue and has laid down the law on this issue. With reference to the judgement passed by Hon'ble Supreme Court in the case of Commissioner of Sales Tax, UP, Lucknow Vs. Parson Tools and Plants, Kanpur, [(1975) 4 SCC 22] that has been further reiterated in Consolidate Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. reported in (2008) 7 SCC 169, it has been held that Limitation Act prescribes the period of limitation only to proceedings in Courts and not to any proceedings before a Tribunal or Quasi-Judicial Authority and consequently Section 3 as well as Section 29(2) of the Limitation Act will not be applied to proceedings before the Tribunal to appeals or applications before it, unless expressly provided (para 44 concurring judgment of Hon'ble

Justice Raveendran). It was further held in the said judgment, with reference to para 22 of the decision in Kerala State Electricity Board Vs. T.P. Kunhaliumma, [(1976) 4 SCC 634] delivered by a Three Judges Bench that Article 137 of Limitation Act, 1963 will apply to any petition or application filed under any Act in a Civil Court and therefore, in M.P. Steel decision it was ultimately concluded in para 28 that Suits, Appeals or Applications as are referred to in the Schedule are only related to Courts and not to Quasi-Judicial bodies or Tribunal and therefore, only when a Suit, Appeal or Application of the description in the Schedule is filed in a Court under a Special Local Law, Section 29(2) gets attracted.

5.1 From the above discussion it can be concluded without any doubt that Section 29(2) that deals with saving clause or Article 137 prescribing 3 years limitation for filing an application are not applicable to the proceedings initiated before a Quasi-Judicial Authority or Tribunal, for which a specific time limit can't be imputed to conversion of a shipping bill as Section 149 itself has not provided any such time limit and also categorically incorporated in its body that such conversion can be done on the basis of documentary proof (since after export no other material object would be available for such inspection). Therefore, when conversion from one scheme to another scheme would be beneficial to the exporter and there is no time limit available to carry out such conversion it would not be prudent and proper to fix a stipulation of 3 years of period from the date of export to enable the Appellant to convert shipping bills from one scheme to another scheme, on which score alone the rejection order passed by the Commissioner is unsustainable in law.

...

9. Though we have discussed other aspect agitated in the appeal which are not required for the reason that the sole ground of rejection of conversion beyond the period of 3 years by the Commissioner was related to the application of Article 137 of the Limitation Act, which is held by the Hon'ble Apex Court as not applicable, there remains nothing more to deal with the appeal except in declaring our views that shipping bills from Sr. No. 1 to Sr. No. 902 of Annexure-1 and Sr. No. 1 to Sr. No. 865 of Annexure-2 covering period from 12.08.2013 to the end of 2020 can be validly converted from drawback to DFIA scheme and in exercise of our Appellate jurisdiction, we do so. Hence the order."

16. From the above decisions of the High Courts and the Tribunal, it can be concluded as under:

(a) The time limit of 3 months at Para 3(a) set in by the CBIC vide Circular No. 36/2010-Cus. dated 23.09.2010, has been unequivocally held to be ultra-vires the Customs Act 1962. Hence, the same has no application.

(b) The time limit of one year has been brought in vide Notification No.11/2022-Cus. (NT) dated 22.02.2022, which is applicable from that date and has no retrospective effect. Therefore, the time limit given therein cannot be applied for the cases where the exports have taken place during the earlier period.

(c) In the cited decision of the Mumbai Tribunal – Final Order No.86108/2025 dated 17.07.2025, the Tribunal has relied on the Judgements of Hon'ble Supreme Court in the case of *M.P. Steel Corporation v. Commissioner* *of Central Excise [2017 (50) S.T.R. 205 (S.C.)], Commissioner of Sales Tax, UP, Lucknow v. Parson Tools and Plants, Kanpur [(1975) 4 SCC 22], Consolidate Engg. Enterprises v. Principal Secy. Irrigation Deptt. [(2008) 7 SCC 169],* wherein it has been held that the period of limitation set under Limitation Act prescribes the period of limitation only to the proceedings in Courts and not to any proceedings before any Tribunal or quasi-judicial authority. Accordingly, it has held that the conversion request made after 3 years, is required to be entertained by the Customs Department.

17. As a result, going by the factual details and the cited case laws, we hold that the application of the present appellant seeking to amend the Free Shipping Bills of Entry to EPCG Shipping Bills cannot be rejected on account of time-bar as has been done by the lower authorities. Therefore the impugned order is set aside. The Revenue authorities are required to take up the conversion request letter and allow the conversion of the Free Shipping Bills to EPCG Shipping Bills if all the documentary evidence are found to be proper. We direct the Revenue authorities to do so within 8 weeks from the date of receipt of this order.

18. The Ld. Authorized Representative of the Revenue had raised the issue of non-examination of the consignments and the directions contained in the Circular No. 6/2002-Cus. dated 23.01.2002.

18.1. From the initial Order dated 11.11.2024 and the impugned Order-in-Appeal, we find that this issue was not raised at all by both the authorities. Hence, we are not required to address this issue. We also find that the rejection of the amendment request was solely on the ground of time-bar. However, in order to not make the appellant suffer another round of litigation on such issues, we have taken up this issue also, since it has been raised by the Ld. Authorized Representative.

19. We have for reference the sample extracts of the relevant documents like Shipping Bill, Export Duty payment details, Invoice and Bank Realization statements, which are reproduced below:

- Sample copies of Shipping Bills:

ANNEXURE -

Invoice No. & Date: NIL DT.9.5.07
S.B. No. & Date: 001077

GLOBAL TRADING (P) LTD.
... HANGS, 6TH FL., G. R. DETACHED ...
1107000172

ARE/ARE4 No. & Date
AT Cert No. & Date: 10/5/07
Import-Export Code No.: 0205029298
RBI Code No.

Consignee: WORLD ENTERPRISE LTD.
(Subsidiary of LGS Resources Pty Ltd.
LEVEL 28, 140 ST. GEORGES TERRACE
PERTH WESTERN AUSTRALIA 6000

Export Trade Control: PAN & BIN NO.
AADCR1845E FT001
GR NO.0456259 DT.9.5.07

If export under: Deferred Credit [ ] Joint Ventures [ ] Rupee Credit [ ] Others [ ]
RBI's Approval/Cir. No. & Date

Custom House Agent: RAJESH SHIPPING & CLEARING AGENCY, LIC No. R-11
26A, RAMKAMAL ST., KOL-23

Type of shipment: Outright Sale [ ] Consignment Export [ ] Others [ ] (Specify)

Vessel/Flight No.: ZU-HAI VOY.NO.07-0202/07
Rotation No.: 9061/07
Port of Loading: HALDIA
Port of Discharge: ONE MAINE PORT
Country of Destination: CHINA
Nature of Contract: CIF [ ] /CFR [ ] /FOB [ ] Others (Specify) FOB
Exchange Rate U/S 14 of CA: 1US$=Rs.41.45
Currency of Invoice: US$

Marks & Nos.	No. & Kind of Pkgs. Container Nos.	Statistical Code & Description of Goods	Quantity	Value FOB
	PACKING IN BULK	ITC HS CODE: 26011150 IRON ORE FINES FE 63.5% LESS MOISTURE 4.0% (DETAILS AS PER INV.)	MT. 26880.000	INR. 70750176.00

Net Weight: 26880.000 MT. (TWENTYSIX THOUSAND EIGHT HUNDRED EIGHTY MT. ONLY)
Gross Weight: 28000.000 MT. (TWENTYEIGHT THOUSAND MT. ONLY.)
Total FOB Value in Words: SEVEN CRORE SEVEN LACS FIFTY THOUSAND ONE HUNDRED SEVENTYSIX ONLY.

Analysis of Export Value	Currency	Amount
FOB Value	INR.	7,07,50,176.00
Freight		
Insurance		
Commission		
Discount		
Other Deductions		

Full export value OR where not ascertainable, the value which exporter expects to receive on the sale of goods
Currency: US$
Amount: 17,06,880.00

10/5/07

Sl. No.	Export Tariff No.	Assessable Value under Sec. 14	DUTY Rate	DUTY Amount	CESS Rate	CESS Amount	Total Duty & Cess	Duty Payment particulars
		Rs. 62322176.00		Rs. 300/- PER MT. CESS Rs. 1/- PER MT.		8400000.00 28000.00 8428000.00		01 MAY 2008 Collection Stamp

Total Duty/Cess Amount in words: Rupees EIGHTY FOUR LACS TWENTYEIGHT THOUSAND ONLY

Declaration: I/We declare that all particulars given herein are true and correct.
I/We also attach the declaration (s) under clause No. (s) ____
Public Notice No. ____ dated ____

RAJESH SHIPPING & CLEARING AGENCY
Signature of Exporter/CHA & Date

27 32

(28) (23)

Indian Custom EDI System - Exports (ICES/E)

Calcutta Custom House (Sea Cargo), Calcutta

Shipping Bill for Export (With CESS)

EP. COPY

SB No : 5352533 / 05/02/2007 ERC Realisation Date :
CHA:ALFPS9981CCH001 M/S.RAJESH SHIPPING & CLEARING AGENC PrnDt:23/02/2007 16:51
(This Consignement was not opened for physical examination by Customs)
Port of Ldg-Code : INCCU1 State of Origin : WEST BENGAL

EXPORTER DETAILS	CONSIGNEE
0205029299 ( ) PAN No. : AADCR1845EFT001	
ROY GLOBAL TRADING PRIVATE LIMITED,	GOLDEN WORLD ENTERPRISE LTD.
Branch # : 0 4, LYONS RANGE, 5TH FLOOR,	(SUBSIDIARY OF LSG RESOURCES PTY
KOLKATA, W.B.	LTD) LEVEL 26, 140ST, GEORGES TERRACE
	PERTH WESTERN AUSTRALIA 6000
	CHINA

Port of Ldg : Calcutta Custom Hous Total Pkgs : 0 Loose Pckt : 0
Port of Discharge : ONE MAIN CHINA PORT Net Wt (MTS) 14016.000
Country of Dest : CHINA Gross Wt (MTS) 14016.000 No of Ctr : 0
Rotation No : 6471 Rotation Dt : 29/01/2007 Nature of Cargo : DB
Marks and Nos :
FOREX BANK ACC:031-245350-001 RBI Waiver No : Date :
FOB Val (INR) : 32006264.83

INVOICE DETAILS : Invoice 1/1

Inv val	32006264.83 INR	726589.44 USD	
FOB Val	32006264.83 INR		
Inv no	NIL	Inv Dt	02/02/2007
Nat of con	FOB	Curr (Inv)	USD
Exchange rate	1.00 (USD) = 44.050 (INR)		

	Rate	Currency	Amount
Insurance	0.00		0.00
Freight			0.00
Discount	0.00	USD	0.00
Commission	0.00	USD	0.00
Other Deductions	0.00	USD	0.00
Packing Charges		USD	0.00

Nature of payment : Period of Payment :
Buyer Name & Address :
SAME AS CONSIGNEE

(Page 1 of 4)

- Sample copy of Invoice:

INVOICE

EXPORTER
ROYGLOBAL TRADING PVT. LTD.
LYONS RANGE, 6TH FLOOR, KOLKATA,
001, INDIA

INVOICE NO. & DATE
NIL & DT. 09.05.2007

EXPORTER'S REF.

BUYER'S REF. NO. & DATE

OTHER REFERENCES

CONSIGNEE
GOLDEN WORLD ENTERPRISE LTD
Subsidiary of LSG Resources Pty Ltd)
LEVEL 28, 140 ST GEORGES TERRACE
PERTH WESTERN AUSTRALIA 6000

BUYER: (IF OTHER THAN CONSIGNEE)

Country Of Origin Of goods	Country of Final Destination
INDIA	CHINA

Terms of Delivery and Payment
UNDER L/C

Pre-Carrier by:	Place of Receipt by Pre-carrier
Name of the Carrying Vessel YUI-HAI	Port of Loading HALDIA PORT, INDIA
Port of Discharge ONE MAIN PORT, CHINA	Final Destination ONE MAIN PORT, CHINA

			Quantity MT	Quantity MT	Rate FOB USD	Amount FOB IN USD
NAME OF COMMODITY	63.5% IRON ORE FINES					
COUNTRY OF ORIGIN	INDIA	WET QUANTITY	28000.000			
		LESS MOISTURE	4.0 PCT			
		DRY QUANTITY	26880.000	26880.000 DRY MT	63.50 PER DMT	1,706,880.0
LOADING IN BULK						

*BASED ON 63.5% FE FRACTIONS PRORATA

Amount Chargeable
(in words) USD SEVENTEEN LACS SIX THOUSANDS EIGHT HUNDREDS EIGHTY ONLY.

Total USD 1,706,880.00

Declaration:
WE CERTIFY THAT INVOICES IN ALL RESPECTS TRUTH AND CORRECT INCLUDING
PRICE AND DESCRIPTION OF GOODS REFERRED THERIN

ROYGLOBAL TRADING PRIVATE LIMITED
Signature & Date
Auth. Signatory

- Sample copy of Bank Certificate of Export and Realization:

APPENDIX – 22 A

BANK CERTIFICATE OF EXPORT AND REALISATION

FORM NO. 1

To THE JT. DIRECTOR GENERAL OF FOREIGN TRADE, 4, Esplanade East, Calcutta 700 069
We M/s Roy Global Trading Pvt.Ltd., 4 Lyons Range, 6th Floor, Kolkata-700001 hereby declare that
We have forwarded a documentary export Bill to STATE BANK OF INDIA, COMMERCIAL BRANCH, BALLYGUNGE, 53 A Gariahat Road, KOLKATA - 700 019 for Collection / Negotiation / Purchase as per particulars given hereunder.

Invoice		Export Promotion copy of Shipping Bill duly authenticated by the customs		Description of goods as given in the Customs authenticated Shipping Bill	Bill of Lading / PP Receipt / Airways Bill		Destination of Goods	Bill Amount CIF / C&F / FOB (In Foreign Exchange)	Freight Amount as per Bill of Lading / Freight Memo	Insurance Amount as per Insurance Company's Bill / Receipt	Commission / Discount Paid / Payable	Whether the export is in freely convertible currency or in Indian Rupees	FOB Value / FOB value actually realized in free Foreign Exchange / Rupees	Date of realisation of export proceeds	GRI / PP / SDF Form No.	No. Date & Category of applicable Licence
No.	Date	No.	Date		No.	Date	Country Name		Rs.	Rs.	Rs.					
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)
RGTPL/EXP/004	13.05.2007	001077	10.05.07	Iron Ore Fines (Fe 63.5%)	01	13.05.2007	ONE MAIN PORT, CHINA	$ 1,674,506.97				FCC	Rs.68250183.00 (INR)	AMOUNT REALISED ON 11.06.2007	05456259	

We further declare that the aforesaid particulars are correct. (copies of Invoices relevant to these exports and Customs attested E.P. Copy of relevant Shipping Bill is attached for verification by the bank).

Place : Kolkata
Date : 15.06.2007
Official Seal / Stamp :

EMARS MINING & CONSTRUCTION PVT. LTD.

Signature of the Exporter : Mala Ray

Director

Name in block letters: MALA ROY
Designation: Director
Full official address: 4 Lyons Range, 6th Floor Kolkata-700 001
Full Residential address: 192 D, N S C Bose Road Kolkata-700 040

STATE BANK OF INDIA ALIPORE KOLKATA COMMERCIAL BRANCH

BANK'S CERTIFICATE

Authorised Foreign Exchange Dealer Code No. allotted to the Bank by RBI : SBIN0004140
Bill Ref. No. :
Date :
Place : Kolkata

1. This is to certify that we have verified the relevant Export Invoices, Customs attested E.P. copy of the Shipping Bill and other relevant documents of.
We further certify that the particulars given in Col. 1 to 17 have been verified and found to be correct. We have also verified the F.O.B. value mentioned in Col. 14 above with reference to following documents:-
(i) Bill of Lading / PP receipt / Airways Bill.
(ii) Insurance Policy / Cover / Insurance Receipt.
2. FOB actually realised and date of realisation of export proceeds are to be given in all cases except where consignment has been sent against confirmed irrecovable letter of credit or exports made against the Government of India / EXIM Bank Line of Credit or exports made under Deferred Payment / Suppliers Line of Credit Contract backed by ECGC Cover. An endorsement to that effect needs to be endorsed in BRC.
3. We have also verified that the date of export is ------ (Applicable only in respect of Exports by air).
4. This is to certify that we have Certified the amount of commission paid / payable as declared by the exporter i.e. Rs. NIL (in figures and words) with G.R. Forms and found to be correct.

For STATE BANK OF INDIA

(Signature of the Bankers)
Full address of the Bankers : 50 A, GARIAHAT ROAD, 5TH FLOOR, KOLKATA - 700 019.
Branch and City : BALLYGUNGE, KOLKATA
Official Stamp : Asst. General Manager Commercial Branch Alipore, Kolkata-700 027.

NOTE :
(1) Bank can issue a consolidated certificate (consignment-wise) for more than one consignment.
(2) FOB actually realised and date of realisation of export proceeds are to be given in all cases except where consignment has been sent against confirmed irrevocable letter of credit.
(3) This shall be required wherever specifically prescribed in the policy / procedures.

20. The above documents show that the appellant has filed the Free Shipping Bills, on which no Physical Examination was taken up, as was rightly pointed out by the Ld. A R. It is also seen that the goods exported are Iron Ore on which the Export Duty @ Rs.300 per MT has been paid by the appellant. This Export Duty has been accepted by the Customs and hence, there cannot be any dispute about the product being exported. The other documents like Invoice and Bank Realization statement show that the value of the exported iron ore has been realized from the overseas importer. Thus, all the documentary evidence, corroborating the product exported are available as on the date of export.

21. The copy of the request letters filed by the appellant towards the conversion are reproduced below:

- Copy of Letter dated 06.04.2015:

~~ANNEXURE-A~~
ANNEXURE-C

सेवोत्तम प्राप्ति
SEVOTTAM RECEIPT
Office of the Commissioner of Customs
Kolkata
SL. No. 5064
Date 06/4/15

LETTER-E

Date - 06.04.2015.

From
ROY GLOBAL TRADING PVT. LTD.
4LYONS RANGE, 6TH FLOOR,
KOLKATA- 700001

To
The Deputy Commissioner Customs
Export Department, Customs House
15/1 Strand Road, Kol -1

Dear Sir,

Sub: Conversion of free shipping bill into Shipping bill for EPCG.

We humbly submit that we had exported iron ore fines under the following free shipping bills irrespective of the fact that the same were required to be declared against EPCG licenses:-

Sl.No	Shipping Bill No.	Items	Amount
1.	001077 Dated- 10-05-2007	Iron or fines	USD 1706880
2.	5363048 Dated- 09-02-2007	Iron or fines	USD 494400
3.	5362592 Dated- 23-02-2007	Iron or fines	USD 726589.44

Copy of the said Shipping Bills are attached and marked with ANNEXURE- "A"

Due to inadvertence on the part of our concerned staff as well as on the part of our CHA who handled the consignment the respective EPCG licenses were missed to record on the body of the shipping bills. The goods were exported under free shipping bill on payment of Customs duty as applicable during the material period.

Now we pray for amendment of the above shipping bills for mentioning the EPCG licenses in terms of section 149 of Customs Act 1962.
The EPCG license during the material period was availed as under.

- Copy of Letter dated 13.08.2024:

43 38

Roy Global Trading Pvt. Ltd.

CIN U13100WB2006PTC107186

सेवोत्तम प्राप्ति
SEVOTTAM RECEIPT
Contents not Verified
Office of the Commissioner of Customs
Kolkata (PORT)
Sl No : 010446
Date : 14/8/24 14:24

DATE: 13/08/2024

TO
THE DEPUTY COMMISSIONER OF CUSTOMS
EXPORT DEPARTMENT
CUSTOM HOUSE
15/1 STRAND ROAD
KOLKATA – 700 001

SUBJECT: REQUEST FOR CONVERSION OF FREE SHIPPING BILL INTO SHIPPING BILL FOR EPCG

Dear Sir,

With reference to our earlier letter dated 06/04/2015 submitted to your office on the same date (copy attached for your ready reference) we humbly request your assistance in converting our Free Shipping Bill into a Shipping Bill for EPCG purposes. We had exported iron ore fines under the following Free Shipping Bill:

- **Shipping Bill Number:** 001077
- **Shipping Bill Date:** 10/05/2007
- **Amount (Rs.):** 7,07,50,176.00
- **Amount (US $):** 17,06,880.00

- **Shipping Bill Number:** 5362592
- **Shipping Bill Date:** 05/02/2007
- **Amount (Rs.):** 3,20,06,264.83
- **Amount (US $):** 7,26,589.44

- **Shipping Bill Number:** 5363048
- **Shipping Bill Date:** 07/02/2007
- **Amount (Rs.):** 2,17,78,320.00
- **Amount (US $):** 4,94,400.00

Please find the copy of the Shipping Bill attached, marked as **ANNEXURE – A.**

Due to an inadvertent error by our staff and our CHA, the EPCG license numbers were not recorded on the Shipping Bill. The goods were exported under a Free Shipping Bill with payment of applicable Custom Duty at that time.

Regd. Office: P-537 HEMANTA MUKHOPADHYAY SARANI1ST FLOOR Kolkata WB 700029 IN

(44) (39)

oy Global Trading Pvt. Ltd.

CIN U13100WB2006PTC107186

e request the amendment of the Shipping Bill to include the EPCG license numbers as per Section 9 of the Customs Act, 1962. The following EPCG Authorization Numbers should be mentioned:

- **EPCG Authorization Number:** 0230002455
- **EPCG Authorization Date:** 04/07/2007
- **Export Obligation (US $):** 6,26,879.83

- **EPCG Authorization Number:** 0230001888
- **EPCG Authorization Date:** 08/11/2006
- **Export Obligation (US $):** 10,49,523.07

EPCG Authorization Number: 0230001428
EPCG Authorization Date: 30/03/2006
Export Obligation (US $): 3,13,659.96

es of the EPCG Authorization Certificates are attached as **ANNEXURE – B.**

ommercial invoice, along with the Shipping Bill, was submitted at the time of export, with no ites regarding the consignment. The request for amendment is based on the documentary evidence was in existence at the time of export, complying with Section 149 of the Customs Act, 1962.

y of the commercial invoice is attached as **ANNEXURE – C**, and the Bank Realization Certificate) showing proper realization of export remittance is attached as **ANNEXURE – D.**

indly request you to amend the Shipping Bill from Free Shipping Bill to Shipping Bill for EPCG orization.

k you for your consideration and prompt action in this matter.

s sincerely,
ROY GLOBAL TRADING PVT. LTD.

ECTOR)

otal Pgs- 1 to 32

Regd. Office: P-537 HEMANTA MUKHOPADHYAY SARANI1ST FLOOR Kolkata WB 700029 IN

22. The above letters show that the appellant has provided all the documents with regard to the exports and realization of the consideration.

23. We have for reference the following cases decided by the High Courts and Tribunals, wherein they have taken the view that Free Shipping Bills can be converted to Shipping Bills pertaining to schemes like DEEC / Drawback etc.

- **M/s. Gujarat Tea Processors and Packers Ltd. v. Union of India [(2024) 25 Centax 237 (Guj.)]:**

> *"12. The Court thus had recognised the fact that the eligibility of the petitioner to claim benefits under the MEIS scheme has not been questioned. The only hurdle was that the shipping bills were free shipping bills and there was no declaration of intent made. The petitioner needed to get the shipping bills amended by incorporating the declaration of intent as provided under the MEIS and it had taken aid of various circulars to allow that petition.*
>
> *…*
>
> *14. Therefore, when the petitioner filed an application for conversion of the shipping bills to drawback shipping bills from 01.10.2017 to 31.03.2020, para 3(a) of the Circular No.36/2022 was already struck down and therefore the time limit prescribed therein would not be applicable to the application made by the petitioner on 01.07.2022 and the respondent no.3 was required to consider the application for conversion of the shipping bills to drawback shipping bills as per the provision of Section 149 of the Customs Act without rejecting the same on the ground of limitation.*
>
> *15. In view of the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned*

order dated 19.04.2023 passed by the respondent no.3 is hereby quashed and set aside. The matter is remanded back to the respondent to pass appropriate order to convert the shipping bills of the petitioner from 01.10.2017 to 13.03.2020 to drawback shipping bills while exercising its powers under Section 149 of the Customs Act, so that the petitioner becomes eligible for duty drawback as per Circular no.88 of 2017. Rule is made absolute to the aforesaid extent. No order as to cost.”

- **M/s. Vedanta Aluminium Ltd. v. Commissioner of Cus. & C.Ex., Visakhapatnam [2016 (344) E.L.T. 288 (Tri. - Hyd.)]:**

“6. I have considered the submissions made by either side carefully. The issue involved is conversion of free shipping bills into DEPB shipping bills. It is the case of the appellants that at the time of filing the shipping bills dated 17-6-2008, they were eligible to avail DEPB benefit against exports made, but had omitted to mention the same in the shipping bill. It is seen from the documents that 772.724 MTs of Calcined Alumina was cleared from their factory for export under ARE1 No. 2008-09/66, dated 25-5-2008. It was declared in the said ARE1 form that the export is in discharge of the export obligation under EPCG Licence No. 05301378737/2/11/00, dated 12-1-2005 and benefit under DEPB scheme is to be availed. The same is seen certified by the Customs Officer. It is recorded therein that a quantity of 386.231 MTs out of the total quantity (772.724 MTs) cleared is to be shipped under Shipping Bill No. 8101548, dated 17-6-2008 and the remaining quantity of 386.231 MTs is to be shipped vide Shipping Bill No. 8101862, dated 30-7-2008. The Shipping Bill No. 8101862 dated 30-7-2008 is filed by appellants under EPCG

and DEPB scheme and the benefit was availed. The Shipping Bill No. 8101548, dated 17-6-2008 which is subject matter of the present dispute was filed as a free shipping bill and DEPB benefit could not be availed. When the appellants claimed DEPB benefit for part of the quantity of 772.724 MTs shown in ARE-I, it can be safely inferred that the non-declaration of the DEPB benefit in the Shipping Bill No. 810548, dated 17-6-2008 was only due to a clerical error. So the observation made by the Commissioner that the appellants did not declare the DEPB benefit because they did not intent to avail DEPB benefit cannot be accepted.

…..

9. In the above judgments, the Tribunal has held in favour of the assessee and allowed conversion of the shipping bill under Section 149 of the Customs Act. The appellant in the present case has sought amendment of document (shipping bill) under Section 149 of the Customs Act, 1962. When the appellant has satisfied the requirements of the proviso under Section 149, the Commissioner ought to have allowed the request for conversion instead of disallowing the same by applying the Board's Circular No. 4/2004. It is also to be stated that Section 149 does not lay down any time limit for seeking amendment of the documents. In Man Industries (I) Ltd. (supra), the Tribunal observed as under :-

> *2.1 …. …. 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 in stead 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 Customs 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.

10. From the foregoing, I am of the view that the rejection of the request for conversion of shipping bills is unjustified. Applying the ratio laid in the above judgments which are applicable to the facts of the case, I hold that the impugned order is not sustainable."

24. We have also for reference the following case-law wherein the High Court and Tribunals have taken the view that the substantive benefit accruing to the exporter cannot be denied on account of procedural infraction, where the defects are curable:

- **<u>M/s. Oriental Carbon & Chemicals Ltd. v. Union of India [2021 (377) E.L.T. 850 (Guj.)]:</u>**

"31. There is <u>no dispute that the writ-applicant is eligible to claim the benefits under the MEIS since it has admittedly exported the notified goods to the notified countries as per the scheme of the MEIS</u>.

32.The writ-applicant has been exporting the very same goods prior to the Foreign Trade Policy, 2015-20, and claiming the benefits under the then *extant Focus Market Scheme (FMS) and has subsequently also exported the very same goods and claimed the benefits under the MEIS scheme.*

33.The only lapse is with regard to the inadvertent non mention of the declaration of intent as per Clause 3.14 of the Handbook of Procedures during the period between 1-4-2015 and 31-3-2015, i.e. during the initial period of the FTP, 2015-20.

34.The writ-applicant's shipping bills were non-EDI only because the Mundra Port was not an EDI port.

35.This lapse being a technical or a procedural lapse, the writ applicant should not be denied substantive benefits, as held by this Court in the case of Bombardier Transportation India Pvt. Ltd. (supra).

38.The case of M/s. Gokul Overseas (supra) is similar to the case on hand. In that case also the shipping bills were non-EDI and this Court allowed the petition. That apart, even the Delhi High Court, in the case of Kedia Agencies (supra), has held that omission to file declaration for claiming the export incentive under the erstwhile VYGUY scheme was not vital and the exporter should be permitted to amend its shipping bill.

39.In light of the aforesaid, it would be extremely unfair and unjust not to extend the benefits of the MEIS to the writ applicant on the ground that it had exported goods from a non-EDI port.

40.In the result, this application succeeds and is hereby allowed. The reliefs as prayed for in paragraphs-27A(i), (ii) and 27B respectively are granted. Let the entire exercise be undertaken at the earliest and completed within a period of eight weeks from the date of receipt of order of this Court by the concerned department."

- **M/s. WABCO India Pvt. Ltd. v. Union of India [2022 (381) E.L.T. 309 (Mad.)]:**

"16. The fact that the petitioner has exported goods and was otherwise entitled to the benefit under the aforesaid scheme has not been disputed by the respondents. There is only a procedural lapse on the part of the petitioner in failing to exercise the option in all the shipping bill by assuming that one declaration in the first shipping bill will suffice for exports as was the procedure prior to the amendment. Since the scheme is an export incentive given to an exporter, the procedures cannot be imposed to deny the substantive benefit under the Foreign Trade Policy.

17.In this connection, reference may be made to the decision of the Hon'ble Supreme Court in the cases of Commissioner of Sales Tax v. Auriya Chambers of Commerce [1986 (3) SCC 50 = 1986 (25) E.L.T. 867 (S.C.)] and State of Gujarat v. Ramprakash P. Puri [(1969) 3 SCC 156] is invited. The Hon'ble Supreme Court has held that rules or procedures are handmaids of Justice and not mistress of law.

18.Incidentally, the Learned Single Judge of this Court in the case of M/s. K.I. International Limited v. Commissioner of Customs (Appeal- II) and Others has also granted similar relief as sought for in this writ petition to the petitioner therein.

19.In this case, there is only a procedural lapse. If the petitioner was otherwise entitled to the aforesaid exporter incentive and was not disentitled to the same, such benefit cannot be denied. Therefore, I am of the view that the impugned order passed by the third respondent has to go as such export incentives cannot be denied on account of procedural lapse. Accordingly, the impugned order passed by the third respondent is quashed and the *case is remitted back to the respondents to re-examine the issue as to whether the petitioner had indeed exported and was entitled to the exporter incentive under the aforesaid scheme, but for the lapse of not clicking the correct option in the System/Web Portal."*

(Emphasis supplied)

25. From the cited case laws of the High Courts, we get the clarity that even where the request is to convert Free Shipping Bills to DEEC or to any other Scheme, the same cannot be denied. It has also been held that the substantive benefit accruing to the exporter, cannot be withheld on account of any procedural infraction. We find that the ratio laid down in these case laws is squarely applicable to the facts of the present case.

26. To summarize our conclusion:

(a) The rejection of the conversion request of the Shipping Bills, on the sole ground of time-bar is not legal. Hence, the same stands set aside.

(b) The time limits specified under the Board Circular dated 23.09.2010 and Notification No.11/2022-Cus.(NT) dated 22.02.2022 have no application in respect of the Free Shipping Bills under consideration in the present appeal.

(c) Even the points raised by the Ld. Authorized Representative of the Revenue at the time of Appeal hearing, though not raised while rejecting the conversion request by the lower authorities, have been addressed by us and we find them not to be sustainable.

(d) We direct the Revenue to take up all the Free Shipping Bills for conversion to EPCG based Free Shipping Bills giving due consideration to all the documentary evidence to be placed by the appellants.

(e) The conversion process is directed to be completed within 8 weeks from the date of receipt of this Order.

27. The Appeal stands allowed as per the above terms.

(Order pronounced in the open court on **18.08.2026**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd