CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30449 of 2023

(Arising out of **Order-in-Appeal** No.VJD-CUSTM-000-APP-001-2023-24 dated 09.08.2023 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

Commissioner of Customs (Preventive), Vijayawada .. **APPELLANT**
55-17-3, C-14,
Industrial Estate,
Auto Nagar,
Vijayawada, Krishna,
Andhra Pradesh – 520 007.

VERSUS

M/s Vishnu Barium Pvt Ltd., .. **RESPONDENT**
Plot No. C-23, Road No. 08,
Film Nagar, Jubilee Hills,
Hyderabad,
Telangana – 500 233.

APPEARANCE:
Shri Kakarala Prasanth Kumar, Authorized Representative for the Appellant.
Shri Raghavendra Rao, Consultant for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30469/2026

Date of Hearing: 22.07.2026
Date of Decision: 25.08.2026

[ORDER PER: ANGAD PRASAD]

The present appeal has been filed by the Revenue against the Order-in-Appeal No. VJD-CUSTM-000-APP-001-2023-24 dated 09.08.2023 passed by the Commissioner (Appeals), Guntur, whereby the Order-in-Original dated 12.01.2023 rejecting the respondent's request for amendment of 59 shipping bills under Section 149 of the Customs Act, 1962 was set aside.

2. Briefly stated, the respondent is engaged in the manufacture and export of Barium Carbonate. During the Financial Years 2017-18 to 2019-20, the respondent exported goods under 59 shipping bills. While filing the

shipping bills electronically, the option in the reward column relating to the Merchandise Export from India Scheme (MEIS), was shown as "NO". Consequently, the shipping bills were transmitted for claiming MEIS benefit.

3. Subsequently, the respondent, by letters dated 22.02.2021 and 08.09.2021, requested amendment of the aforesaid shipping bills under Section 149 of the Customs Act, 1962 by challenging the declaration from "NO" to "YES". The request was initially rejected. The matter thereafter travelled to the Hon'ble Andhra Pradesh High Court, which remanded the matter for reconsideration. Upon such consideration, the Deputy Commissioner again rejected the request by Order-in-Original dated 12.01.2023.

4. On appeal, the Commissioner (Appeals), the impugned order dated 09.08.2023 allowed the respondent's appeal, inter alia, observing that Section 149, as applicable during the relevant period, did not prescribe any limitation for seeking amendment and that the omission appeared to be inadvertent. Aggrieved by the said order, Revenue is before this Tribunal.

5. Learned Authorized Representative for the Revenue submits that the declaration "NO" was consciously made in all 59 shipping bills over a period of nearly 3 years and cannot subsequently be substituted by "YES" merely for obtaining a fiscal incentive. It is submitted that Section 149 confers discretion upon the proper officer and amendment is not a matter of right. The proviso thereto requires the amendment of documents relating to goods already exported to be founded upon documentary evidence which was in existence at the time of export.

6. Revenue further submits that there is no contemporaneous evidence showing that the respondent had intended to claim MEIS benefit at the time of export. According to Revenue, the Commissioner (Appeals), proceeded merely on a presumption that a prudent businessman would ordinarily claim an available incentive. Reliance has been placed by Revenue upon Commissioner of Customs Vs Dilip Kumar and Co. (2018) 9 SCC 1, Priya Blue Industries Ltd., Vs Commissioner of Customs (2004) 9 SCC 433 and ITC Ltd., Vs Commissioner of Central Excise (2019) 17 SCC 46, to contend that fiscal benefits have to be claimed in conformity with the statutory scheme and that statutory declarations cannot lightly be reopened after the transaction has attained finality.

7. Learned Counsel appearing for the respondent has, at the outset, raised a preliminary objection regarding maintainability of the Department's appeal on account of the monetary limits prescribed by the Board. It is submitted that no Customs duty whatsoever is involved in the present appeal. The dispute is confined to amendment of shipping bills under Section 149 for enabling the respondent to pursue MEIS benefit. Even if the value of the entire MEIS entitlement is treated as the amount involved in the dispute, the same is stated to be only Rs. 47,19,103/-.

8. The respondent submits that the Boards instruction dated 11.02.2023 prescribed a monetary limit Rs. 50,00,000/- for filing Departmental appeals before CESTAT in Customs matter, in exercise of powers referable to Section 131BA of the Customs Act. Section 131BA statutorily enables the Board to issue orders or instructions fixing monetary limits for filing appeals by the Department.

9. The respondent further submits that the present dispute, being merely one concerning amendment of shipping bills under Section 149, does not fall within the stated exceptional categories requiring an appeal to be pursued irrespective of monetary limit. The exception identified in the 02.11.2023 instruction include, inter alia, constitutional-validity challenges, cases where a notification/instruction/order/circular has been held illegal or ultra virus, and specified classification/refund issues of legal or recurring nature.

10. We have considered the submissions of both sides and perused the records.

11. The Preliminary issue which arises for consideration is whether the present appeal filed by Revenue is liable to be entertained in view of the monetary-limit instructions issued by the Board. Since this objection goes to the very maintainability of the Departmental appeal, it is appropriate to decide the same before entertaining into the merits of the controversy under Section 149 of the Customs Act, 1962.

12. It is not disputed before us that there is no demand of Customs duty, interest, fine or penalty involved in the present proceedings. The lis arises only from the respondent’s request to amend 59 shipping bills so as to facilitate a claim for MEIS benefit. Even accepting, for the sake of argument, Revenue’s position for the monetary value of the MEIS benefit should be taken as the amount in dispute, the material placed before us shows that the total benefit involved in Rs. 47,19,103/-.

13. The Board, in exercise of the statutory power contemplated under Section 131BA of the Customs Act, has prescribed monetary threshold below which Departmental appeals are not ordinarily to be filed. The instruction

dated 02.11.2023 prescribed Rs. 50,00,000/- as the threshold for appeals before CESTAT in Customs matters. The statutory scheme under Section 131BA also requires the appellant forum to have regard to the circumstances in which an appeal is or is not filed pursuant to such instructions. Thus, viewed from either angle, the present appeal falls below the prescribed monetary threshold. If Customs duty involved is taken as the basis, the amount is Nil. Even if the monetary value of the alleged MEIS entitlement is treated as the disputed amount, the same is only Rs. 47,19,103/-, which is below Rs. 50,00,000/-

14. We have also examined whether the subject matter falls within any of the exceptions contemplated in the Board's instruction. The present proceeding does not involve a challenge to the constitutional validity of any statutory provision. The dispute essentially concerns the permissibility of amendment of shipping bills under Section 149 on the facts of the particular case. Revenue has not demonstrated before us that the present appeal falls within any specific exception to the monetary-limit policy so as to warrant its continuation notwithstanding the amount involved. The object behind prescribing monetary limits is to reduce Government litigation and to ensure that Departmental resources are concentrated upon disputes involving the prescribed Revenue effect or falling within identified exceptional categories. The statutory recognition of such instructions in Section 131BA of the Customs Act, 1962 cannot be rendered otiose by continuing an appeal which is plainly below the applicable threshold without showing that it falls within an exception. The contention of the respondent on maintainability, therefore, deserves acceptance.

15. Even otherwise, since both sides have addressed detailed submissions on merits, we deem it appropriate to examine the controversy the under Section 149 of the Customs Act, 1962 as well.

16. The important question is whether the respondent could seek amendment of the 59 shipping bills pertaining to Financial Year 2017-18 to 2019-2020 by changing the declaration from "NO" to "YES" for the purpose of pursuing MEIS benefit.

17. Section 149 of the Customs Act, 1962, empowers the proper officer, in his discretion, to authorize amendment of any document it has been presented in the Customs House. In respect of goods already exported, the proviso stipulates that such amendment can be permitted on the basis of documentary evidence which was in existence at the time the goods were exported. Thus, the statutory provision itself contemplates amendment even after exports; what is material is the existence of contemporaneous evidence supporting the amendment. Significantly during the period when the exports in question were made, Section 149 did not prescribed any specific period of limitation for making such an application. The statutory time limit for amendment was introduced subsequently. Therefore, a request relating to exports completed before the introduction of such limitation cannot be rejected merely by retrospectively importing the subsequently prescribed time limit into the earlier statutory provision. Judicial decisions dealing with Section 149 have consistently recognized that the provision can be invoked even after clearance or export where the amendment is capable of being verified from documents which existed contemporaneously. The Court has also noticed that Section 149, in its earlier form, did not itself prescribe a limitation period for such amendment.

18. The Revenue has strongly emphasized that the respondent declared "NO" not in an isolated shipping bill but in as many as 59 shipping bills spread over nearly 3 years. According to Revenue, such repeated declarations establish conscious exercise of option rather than inadvertence. We find that this circumstance is undoubtedly relevant, but by itself it cannot conclude the issue. The enquiry under Section 149 is not merely whether the declaration originally entered was "NO". If that alone were determinative, no post-export amendment of such a declaration could ever be contemplated. What Section 149 requires is examination of whether the proposed amendment is supported by documentary material which was already in existence at the time of export.

19. The distinction sought to be drawn by Revenue between "correction of a document" and "creation of fresh entitlement" also cannot be accepted in the absolute terms in which it has been advanced. Amendment of a shipping bill may undoubtedly have fiscal consequences. Nevertheless, the Legislative itself has authorized post-export amendment under Section 149 subject to the safeguards contained therein. The mere fact that the amended document may thereafter be used for pursuing an export incentive does not, without anything more, place the amendment beyond Section 149 of the Customs Act, 1962.

20. At the same time permission under Section 149 does not by itself grant MEIS benefit. Amendment of the shipping bills merely enables the respondent to place the corrected shipping bills before the competent authority administering the incentive scheme. Whether the respondent ultimately satisfies all requirements of the MEIS scheme and is entitled to the incentive is a separate matter to be decided by the competent authority

in accordance with law. Revenue has relied upon Dilip Kumar and Co., supra, to submit that fiscal incentives must be strictly construed. We find no quarrel with that proposition. However, the present a stage is not one at which MEIS benefit is being finally sanctioned by this Tribunal. The limited question is whether amendment of a customs documents is permissible under Section 149. Strict construction of an incentive provision cannot be employed to read into Section 149a prohibition which the provision itself did not contain during the relevant period. The reliance placed upon Priya Blue Industries Ltd., supra and ITC Ltd., supra, also does not advance Revenue's case to the extent suggested. Those decisions recognize the legal consequences flowing from an assessment or self-assessment. They do not render Section 149 otiose. Subsequent judicial decisions have specifically recognized Section 149 as an independent statutory route for amendment of customs documents, subject to fulfillment of its conditions. Therefore, the proposition that finalization of export transactions completely bars recourse to Section 149 cannot be accepted. Indeed, the proviso to Section 149 expressly deals with amendment after goods have already been exported. Such an interpretation as canvassed by Revenue would substantially deprive the proviso of its intended operation.

21. We also find substance in the respondent's contention regarding the subsequently introduced limitation. The exports in the present case were effected during Financial year 2017-18 to 2019-20. The one-year restriction relied upon by Revenue was introduced subsequently. In the absence of language giving the subsequently introduced restriction retrospective effect, substantive requests pertaining to exports governed by the earlier provision have to be considered in accordance with the law applicable to them. The

fact that the request was made after considerable delay cannot be entirely ignored. Delay may legitimately be taken into account while exercising discretion under Section 149, particularly while examining the reliability of the asserted contemporaneous intention. However, where the statute as applicable to the relevant exports, fixed no outer limitation, delay by itself cannot operate as an absolute jurisdiction bar. The proper officer is required to consider the request on the touchstone of the statutory requirement of contemporaneous documentary evidence.

22. In the present case, the Commissioner (Appeals), has allowed the amendment and Revenue has Preliminary assailed the same on the ground that repeated "NO" declarations should be treated as conclusive, the amendment would create a new entitlement and that the request was belated. For the reasons recorded above, none of these considerations, either individually or collectively, establishes a legal prohibition against exercise of power under Section 149 of the Customs Act, 1962.

23. We further observe that permitting amendment does not automatically result in any loss of Revenue. The respondent will still have to establish its eligibility for MEIS benefit before the competent authority. That authority shall remain free of examine the admissibility of the claim under the applicable Foreign Trade Policy, notifications and scheme conditions, uninfluenced by the mere fact that amendment of the shipping bills has been permitted.

24. In this view of the matter, we find no sufficient ground to interfere with the conclusion reached by the Commissioner (Appeals), permitting amendment of the shipping bills. The impugned order, in so far as it permits the respondent to seek amendment under Section 149, is sustainable.

25. Accordingly, we hold that the Revenue's appeal is liable to be dismissed, firstly, on account of the applicable monetary limit. Even otherwise, on merit also.

26. Therefore, the appeal filed by the Revenue is dismissed, both on the ground of monetary limit and, even otherwise, on merits.

(Pronounced in the open court on 25.08.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha