IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.42235 of 2016

(Arising out of Order-in-Original No.697/2016-AIR dated 1.8.2016 passed by the Commissioner of Customs (Air Cargo), Chennai)

Simpson and Co. Ltd. **Appellant**
861/862, Anna Salai
Chennai – 600 002.

Vs.

Commissioner of Customs **Respondent**
Chennai Air Cargo, VII Commissionerate
New Custom House, Meenambakkam,
Chennai – 600 027.

APPEARANCE:

Ms. Shobhana Krishnan, Advocate for the Appellant
Smt. O.M. Reena, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 41157/2026

Date of Hearing : 13.10.2026
Date of Decision: 30.10.2026

This appeal is filed by the appellant against Order-in-Original No. 697/2016 dated 01.08.2016 passed by the Commissioner of Customs (Air Cargo), Chennai.

2. Brief facts are that the Appellant sought conversion of 48 shipping bills from the EPCG/Advance Authorisation Scheme to the Drawback Scheme before the Commissioner of Customs (Sea), who allowed conversion, including for three Air Export shipping bills. The Appellant subsequently claimed drawback on 21 shipping bills, including the said three Shipping Bills, in dispute involving a drawback amount of Rs.6,52,423/-, that belonged to Air Export, supported by a

brand letter issued by the Additional Commissioner, LTU, Chennai. The drawback claim relating to the Air Export three shipping bills—Nos. 6401581 dated 25.11.2011, 6505238 dated 02.12.2011 and 6564041 dated 07.12.2011—were rejected on the ground that the drawback conversion was granted by the Commissioner of Customs (Sea), although they belonged to the jurisdiction of the Air Commissionerate. Further any request for conversion of shipping bills from one scheme to another scheme should have been filed before the Principal Commissioner of Customs (Air Cargo), the proper officer, within three months from the date of Let Export Order as per Circular No. 36/2010 dated 23.09.2010. The claims were rejected as they were not filed within the stipulated period. Hence the present appeal.

3. Ms. Shobhana Krishnan, Ld. Counsel appeared for the appellant and Ld. Authorized representative Smt. O.M. Reena appeared for the respondent.

Submissions made by the Appellant

3.1 Ms. Shobhana Krishnan, Ld. Counsel for the appellant submitted as under:

A. The time-chart of events leading to the present issue were given in the form of a Table, reproduced below:

DATE	EVENT
2011	The Appellant secured a long-term contract from Cummins Inc., USA for supply of diesel engines.
August 2011	The Appellant applied for Advance Authorisation License to avail duty exemption on the imported components used in the manufacture of diesel engines to be exported and was granted Advance Authorisation License No. 0410127375 under F. No. 04/21040/00243 dated 24.08.2011 for various part numbers.

September to October 2011	Change in the customer specifications led to change in the part numbers of the proposed imports under the Advance Authorisation. Resultantly, certain components imported did not match with the part numbers as per the Import Item List given in Advance Authorisation. These components were cleared on payment of duty and balance under Advance Authorisation. Hence, the exported diesel engines had duty paid components and components cleared under Advance Authorisation.
10.11.20211	To neutralise the duty component on the imported goods used in exported diesel engines, the Appellant opted for drawback which necessitated the conversion of Shipping Bills from Advance Authorisation scheme to Drawback Scheme. Accordingly, Appellant filed letter dated 10.11.2011 to Commissioner of Customs (Sea) requesting conversion of Shipping Bills from Advance Authorisation to Drawback. This request was in request of previous shipping Bills and did not cover the Impugned Shipping Bills.
25.11.2011	The Appellant was directed to pay duty on all the imports made under Advance Authorisation No. 0410127375 dated 24.08.2011 along with appropriate interest and surrender the advance license to the JDGFT and produce acknowledgement thereof.
Dec 2011-March 2012	Following the instruction from the Assistant Commissioner of Customs, the Appellant paid duty of Rs. 1,51,65,210/- along with interest of Rs. 6,17,746/- vide 16 TR Challans.
12.03.2012	Acknowledging the payment of duty along with interest made by the Appellant, the Department issued letter to the Foreign Trade Development Officer requesting for issuance of EODC against the Advance Authorisation No. 0410127375 dated 24.08.2011.
6.03.2012	On fulfilment of the above conditions, the Appellant submitted a letter dated 26.03.2012 along with export promotion copies of Shipping Bills and other documents before the Assistant Commissioner requesting for conversion of 48 Shipping Bills from Advance Authorisation License to Drawback Shipping Bills. In the said letter, the Appellant specifically mentioned that export promotion copy of Shipping Bills in respect of Shipping Bill No. 6401581 dated 25.11.2011, 6505238 dated 02.12.2011 and 6564041 dated 07.12.2011 ("**impugned Shipping Bills**") was not available and therefore the same will be subsequently submitted upon receipt. Further, it was requested that the conversion of the impugned Shipping Bills also be considered.

24.04.2012	Appellant submitted the Redemption letter issued by the Foreign Trade Development Officer, Chennai in respect of Advance Authorisation No. 0410127375 dated 24.08.2011 along with export promotion copy of impugned Shipping Bills.
30.07.2012	After verification of all the submitted documents, the Commissioner of Customs (Exports) approved the conversion of 48 Shipping Bills including the impugned Shipping Bills from Advance Authorisation to drawback vide letter F. No. S. Misc./211/2011-EDC/CON dated 30.07.2012.
28.09.2013	Post conversion of Shipping Bills, Brand Rate of Drawback was fixed under Rule 7(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 vide letter dated 28.09.2013.
03.10.2013	Based on fixation of brand rate of drawback, Appellant made claim before Commissioner of Customs (Air Port) for drawback in respect of goods exported *vide* 21 shipping Bills including the impugned Shipping Bills.
26.12.2013	During pendency of above application, the Additional Commissioner of Central Excise issued corrigendum to the original letter dated 28.09.2013 revising the brand rate of drawback fixed in respect of goods exported by sea as well as air.
09.09.2015	While drawback was granted in respected of 18 shipping bills, in respect of 3 impugned Shipping Bills, drawback was not sanctioned. Appellant *vide* letter dated 09.09.2015, intimated the authority of the proceedings pertaining to conversion *vide* which the Impugned Shipping Bills were converted. Further, copy of letter from Large Tax Payer Unit granting drawback against the exports through Air Customs, including for impugned shipping bills was also enclosed.
29.01.2016	Thereafter, in January 2016, the Principal Commissioner of Customs (Drawback-Air), Chennai issued Show Cause Notice F. No. Misc. 243/2015-DBK-ACC dated 29.01.2016 asking the Appellant to show cause as to why the claim for conversion should not be rejected as time barred. The SCN observed that the request for conversion of impugned shipping bills was not filed in time prescribed in Circular 36/2010-Cus. dated 23.09.2010 to the Principal Commissioner of Customs (Air Cargo) who is the proper officer to grant the conversion.
16.02.2016	In response to the SCN, the Appellant submitted reply to SCN dated 16.02.2016. In the said reply, the Appellant, *inter alia,* submitted the following the request for conversion filed appropriately and was granted for all shipping bills including the impugned Shipping Bills by the Commissioner of Customs (Sea) after due verification of all documents and duty payments.

	In light of the same, and subsequent sanction of drawback by Large Tax Payer Unit, there is substantial compliance with the requirement of law, and hence, drawback must be sanctioned. Without prejudice, even if the application for conversion was filed before the wrong authority, it is settled position that the date of filing such application shall be taken into account for the purpose of computing the limitation of time by the proper authority who is to consider the said application. In this regard, reliance was placed on ***Rathi Steel and Power Ltd. v. Commissioner of Central Excise, Ghaziabad, 2014-TIOL-1401-CESTAT-DEL.***
15.03.2016	Without considering the submissions, another letter was issued with the approval of the Principal Commissioner wherein it was proposed to reject the claim as time barred
29.03.2016	Personal hearing in the matter was conducted wherein the Appellant appeared and made all submissions and prayed for release of drawback
01.08.2016	However, the Ld. Principal Commissioner passed the impugned Order in Original No. 697/2016-AIR dated 01.08.2016 rejecting the Appellant's Drawback Claim. In the impugned order, it was held that the application for conversion of the impugned Shipping Bills was not filed before the jurisdictional Commissionerate within the prescribed time limit as per the provisions under Section 149 of the Customs Act read with the Circular No. 36/2010-Cus. dated 23.09.2010. The Impugned Order observed that the exporter has not applied for conversion of the impugned Shipping Bills to the jurisdictional Customs Commissionerate within the time limit of three months as envisaged in the Circular 36/2010-Cus. dated 23.09.2010 and thereby hits by time limitation. (Para 18 and 21)

B. The three shipping bills were converted from the Advance Authorisation Scheme to the Drawback Scheme by the Commissioner of Customs (Exports) vide letter dated 30.07.2012, after verification of the relevant documents, and the drawback brand rate was subsequently fixed on 26.12.2013.

C. Neither order was challenged by the Department, and their validity could not be questioned at the stage of sanctioning drawback.

D. As held in **Colossustex Pvt. Ltd. v. Union of India** [2024 (387) E.L.T. 277 (Bom.)] and **CC (Exports), Tuticorin v. Regin Exports**

[2026 (4) TMI 804 (Mad.)], the three-month limit prescribed under Circular No. 36/2010-Cus. dated 23.09.2010 was not enforceable, as Section 149 of the Customs Act, 1962 did not prescribe such a limitation.

E. The applications dated 26.03.2012 and 24.04.2012 were supported by the requisite documents and that the impugned conversion requests were filed after the 'Let Export Order' was given to the respective Shipping Bills; the contrary finding in the impugned order arose from confusing these applications with an earlier request concerning different shipping bills.

F. Relying on **Boving Fouress Ltd. Vs CCE** [2006 (202) E.L.T. 389 (S.C.)], **ITC Ltd. Vs CCE** [2019 (368) E.L.T. 216 (S.C.)] and **Estocorp India Pvt. Ltd. Vs Union of India** [2012 (275) E.L.T. 313 (Del.)], it was submitted that an unchallenged conversion order could not be reopened in subsequent drawback proceedings.

G. Denial of the substantive drawback benefit on procedural grounds, despite conversion and brand-rate fixation, would defeat the scheme's object and unjustly deprive the appellant of the benefit of export-related duty relief.

H. The Ld. Counsel accordingly prayed that the impugned order be set aside and the appeal allowed with consequential relief.

Submissions made by the Respondent-Revenue

3.2 Ld. Authorized representative Smt. O.M. Reena, submitted on behalf of Revenue that:

A. The drawback claims relating to three shipping bills, viz., No. 6401581 dated 25.11.2011, No. 6505238 dated 02.12.2011 and No.

6564041 dated 07.12.2011, were correctly rejected on the ground that the conversion of the shipping bills from the original scheme to the Drawback Scheme had been allowed by the non-jurisdictional Commissioner of Customs (Sea), although the exports fell within the jurisdiction of the Air Commissionerate.

B. Secondly in terms of Circular No. 36/2010-Cus. dated 23.09.2010, the request for conversion was required to be made before the Principal Commissioner of Customs (Air Cargo), being the proper officer, within three months from the date of the respective Let Export Orders. As the requests were held to be not filed before the proper officer within the stipulated period, the drawback claims were rejected.

C. She hence prayed that the appeal may be rejected.

Discussion and Analysis

4. I have considered the submissions made by both sides and have gone through the records. The issue is whether the drawback claim of Rs 6,52,423/- for Air Export shipping bills Nos. 6401581 dated 25.11.2011, 6505238 dated 02.12.2011 and 6564041 dated 07.12.2011 was rightly rejected because conversion from Advance Authorisation to Drawback was not sought before the jurisdictional Air Commissionerate within three months of the respective 'Let Export Orders'.

5. The appellant sought conversion of 48 shipping bills, including the three disputed bills, on 26.03.2012 and submitted the missing export promotion copies and redemption letter on 24.04.2012. After verification, the Commissioner of Customs (Exports) approved conversion on 30.07.2012. The drawback brand rate was fixed on

28.09.2013 and revised on 26.12.2013. Of the 21 bills covered by the drawback claim, 18 were sanctioned and three were withheld.

6. Revenue rejected the claim because the Commissioner of Customs (Sea), rather than the Air Commissionerate, had allowed conversion, and no request was filed before the proper officer within the three-month period under Circular No. 36/2010-Cus. dated 23.09.2010. The appellant submits that its request dated 26.03.2012 covered the disputed bills, whereas the earlier request dated 10.11.2011 concerned other bills. It also contends that the Circular cannot override Section 149 of the Customs Act, 1962.

7. I find that the request dated 26.03.2012 covered the disputed bills, with supporting documents supplied on 24.04.2012. The request dated 10.11.2011 related to other bills. The impugned order therefore wrongly treated the earlier request as the relevant application.

8. Conversion of the Shipping Bills was approved after verification, and neither that approval nor the brand-rate fixation has been shown to have been set aside or withdrawn. The issue now is whether drawback can be refused on the jurisdictional and time-limit grounds, not whether conversion should originally have been granted.

9. Section 149 of the Customs Act, 1962, as applicable at the relevant time, allowed amendment after export on documentary evidence existing at the time of export. It did not prescribe the three-month limitation relied upon in the impugned order. A circular issued by the Board cannot, by itself, introduce a statutory bar that is not contained in the governing provision. The decisions relied on by the Appellant—**Colossustex Pvt. Ltd. Vs Union of India** [2024 (387)

E.L.T. 277 (Bom.); and **CC (Exports), Tuticorin Vs Regin Exports** [2026 (4) TMI 804 (Mad.)]—support this position. Further as held by the Apex Court manuals, circulars and guidelines are administrative directions and cannot be regarded as law under Article 13 of the Constitution. [See**: Bidi Supply Co. Vs Union of India & Ors.** - AIR 1956 SC 479 (para 9); **Collector of Malabar & Anr. Vs Erimmal Ebrahim Hajee** - AIR 1957 SC 688 (paras 8,9); **G.J. Fernandes Vs The State of Mysore & Ors.** - AIR 1967 SC 1753 (para 12)]

10. The conversion order dated 30.07.2012 remains unchallenged. The drawback claim cannot be rejected by reopening that order at the sanction stage without first dealing with it in accordance with law. The subsequent brand-rate fixation supports the claim.

Conclusion

11. The rejection on these grounds is unsustainable. I therefore set aside the impugned order and direct the jurisdictional authority to process the drawback claim of ₹6,52,423/- for the three disputed bills in accordance with law. The appellant is entitled to consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 30.10.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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