

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

**Customs Appeal No.40606 of 2021**

(Arising out of Speaking Order No. 80550/2021 dated 53.2021 passed by the Commissioner of Customs, Chennai – IV)

**M/s. Carboline India Pvt. Ltd.**

No. 365 & 357  
SIDCO Industrial Estate  
Chennai – 600 098.

**Appellant**

Vs.

**Commissioner of Customs**

Chennai IV Commissionerate  
Custom House  
Chennai – 600 001.

**Respondent**

**APPEARANCE:**

Shri M. Karthikeyan, Advocate for the Appellant  
Shri Vikas Jhajharia, AC (AR) for the Respondent

**CORAM**

**Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)**

Final Order No. **40072 / 2022**

Date of Hearing : 11.2.2022

Date of Pronouncement: 16.2.2022

**Per Ms. Sulekha Beevi C.S.**

The appellant is aggrieved by the rejection of their request for conversion of free shipping bills to advance authorization shipping bills.

2. Brief facts are that the appellant had exported goods in the nature of "Paint for fire proofing THERMO Lag 3000 SP" vide two shipping bills. They had obtained advance authorization license dated 9.4.2018 and 2.5.2018 for import of raw materials with an obligation to export manufactured goods in the nature of "Paint for Fire Proofing". They had exported these goods under shipping bills dated 18.4.2018 and 2.5.2018. However, the code mentioned in the shipping bills was

"00" instead of mentioning the scheme code as "01". They requested for conversion of the free shipping bills to advance authorization shipping bills. The request was rejected by the Commissioner on the basis of the Board Circular No. 36/2010 dated 23.9.2010. Hence this appeal.

3. The learned counsel Shri M. Karthikeyan appeared and argued on behalf of the appellant. He submitted that the appellant had exported "Paint for Fire Proofing" vide shipping bills dated 18.4.2018 and 2.5.2018 under advance authorization. In the first page of both these shipping bills it had been clearly indicated that the export is under advance authorization. Similarly, in both the export invoices raised for the export shipments, the appellant had indicated that the export is made under advance authorization. However, in the second page of the above shipping bills, in the space provided for mentioning the scheme code, they had inadvertently declared the code as "00" pertaining to free shipping bill instead of "01" which is the code for scheme shipping bill. Further, they had also wrongly mentioned the advance authorization license No. as 0310820320 dated 9.4.2018 instead of 0310820746 dated 2.5.2018.

4. Immediately on realizing the mistake, the appellant requested for amendment of the shipping bills vide their letter dated 19.8.2020. The adjudicating authority rejected the request on the ground of time limit as well as on the merits relying upon the Board Circular No. 36/2010 dated 23.9.2010.

5. The learned counsel adverted to section 149 of the Customs Act, 1962 to argue that the said provision does not stipulate any time period to seek amendment of a shipping bill. The time period of three months provided in the Circular issued by the Board cannot prevail over the

statute. To support this argument, he relied upon the recent decision of the Hon'ble High Court of Kerala in the case of Parayil Food Products Pvt. Ltd. – 2010 (10) TMI 1141 KERALA High Court and the decision of the Tribunal in the case of Contemporary Leather Pvt. Ltd. – 2021 (12) TMI 293 CESTAT Chennai.

6. The learned counsel submitted that the second ground on which the request for amendment was rejected is that the goods exported were not physically examined. Since the shipping bills were filed as free shipping bills, they were not selected for examination under advance authorization scheme and the verification of the goods exported as mentioned in para 3(b), (c) and (d) of the Circular (supra) could not be done. It is submitted by the learned counsel that section 149 does not stipulate any condition that only if the goods have been physically examined, the amendment sought for can be allowed. The requirement in section 149 is that the documents in existence at the time of export has to be furnished. The appellant has furnished all necessary documents. It is also argued by the learned counsel that in another shipping bill in which the appellant had clearly mentioned the scheme code as "01", the officers have not conducted any physical examination. He adverted to page 82 of the appeal paper book which pertains to shipping bill dated 19.7.2018. The learned counsel pointed out that the said shipping bill dated 19.7.2018 though filed under advance authorization scheme by mentioning the correct scheme code, no physical examination was done. On the last page, it can be seen that the consignment was not opened for physical examination by customs. When the officers have not taken any effort to conduct physical examination of the goods exported under the shipping bills which has been declared to be under advance authorization scheme,

the rejection of request for conversion of the shipping bill cannot be merely for the reason that the consignment was not opened for physical examination is without any legal basis.

7. In addition, the appellant has received the export proceeds in FOREX in respect of both the shipping bills. The BRCs also have been furnished. As per the Handbook of Procedures / Foreign Trade Policy, the advance authorization holder is required to maintain consumption register in form Appendix 4H and submit a certified copy of the same for obtaining necessary EODC from the licensing authority. Since all the documents are clear with regard to the goods exported, the rejection for request of conversion of free shipping bills on the ground that the goods have not been physically examined has caused much injustice to the appellant. He prayed that the appeal may be allowed.

8. The learned AR Shri Vikas Jhajharia appeared on behalf of the department and supported the findings in the impugned order. He adverted to the discussion and findings in para 6 of the impugned order. As per the Board circular No. 36/2010 (supra) the request for conversion has to be filed within three months. In the present case, the appellant has filed the request with a delay of more than three months from the LET export order and therefore the adjudicating authority has correctly rejected the request for amendment. Further, para 3(b) of the Circular states that the goods have to be verified by physical verification so as to ensure that the conditions of the scheme have been compiled. In the present case, as the physical examination had not taken place, the Commissioner has rightly rejected the request for conversion. He prayed that the appeal may be dismissed.

9. Heard both sides.

10. The issue is with regard to the rejection of the request for conversion of free shipping bills to advance authorization scheme shipping bills. Section 149 of the Customs Act, 1962 which deals with conversion / amendment of the shipping bills is as under:-

**Section 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 custom house to be amended:

**Provided** that no amendment of a bill of entry or a shipping bill or bill of export shall be so 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”.

11. The said provision does not stipulate any time limit for permitting the amendment of shipping bills. The department has relied upon the Board Circular No. 36/2010 (supra). The said circular reads as under:-

“Sub: 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 16.01.2004 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 endorsements made on the shipping bill/export documents prove the fact of export and the export product is clearly covered under relevant SION and or DEPB/Drawback Schedule as the case may be.
- d) On the basis of S/Bill/export documents, the exporter has fulfilled all conditions of the export promotion scheme to which he is seeking conversion.
- e) The exporter has not availed benefit of the export promotion scheme under which the goods were exported and no fraud/ misdeclaration /manipulation has been noticed or investigation initiated against him in respect of such exports.

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

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

6. This circular supersedes the Board circular No.4/2004-Cus dated 16.01.2004 and the earlier circulars issued in the past on this issue. This circular shall be applicable only to shipping bills filed on

or after the date of issuance of this circular. Till such time as EDI system is modified to allow conversion of shipping bill in the EDI system, conversion may be allowed manually.

7. A suitable Public Notice for information of the Trade and Standing Order for guidance of the staff may be issued. Difficulties faced, if any in implementation of the directions may be brought to the notice of the Board.”

12. When the statute does not prescribe any time limit for filing an application for conversion of a shipping bill, the department cannot rely upon a circular to frustrate the provisions contained in the statute. When there is a conflict, the statute will definitely prevail over the Board circular. The issue whether the time limit prescribed as per the Board circular will apply was considered by this Tribunal in the case of Autotech Industries (India) Pvt. Ltd. reported in 2021 (11) TMI 518 – CESTAT Chennai and held that time limit of three months prescribed in the above Board circular cannot be applied to reject the request of conversion / amendment of shipping bills. The Tribunal in the case of Contemporary Leather Pvt. Ltd. Vs. CC, Chennai reported in 2021 (12) TMI 393 – CESTAT Chennai followed the decision of the Hon'ble jurisdictional High Court to hold that the Board circular cannot be pressed into application to deny the request for conversion of shipping bills.

13. The Hon'ble High Court of Kerala in the case of Parayil Food Products Pvt. Ltd. Vs. Union of India reported in 2020 (10) TMI 1141 – Kerala High Court had considered the very same issue and held that when section 149 does not prescribe any time limit, the request for conversion cannot be denied by application of the Board circular. The relevant para is reproduced as under:-

*“8. For the purpose of issuance of No Objection, provisions of Section 149 of the Customs Act, 1962 envisage the complete procedure for issuance of no objection certificate, i.e. for the purpose of*

*amendment of a bill of entry or a shipping bill only after fulfilling certain conditions in the proviso. The same read thus:*

*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: Provided that no amendment of a bill of entry or 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.*

*9. On the other hand, the respondent rejected the application of the petitioner by relying upon condition No.3a of the WP(C).No.21418 OF 2020(B) 6 Circular which reads thus:*

*“The request for conversion is made by the exporter within three months from the date of the Let Export Order (LEO)”*

*10. It is trite law that circulars cannot assume the role of the Principal Act lest the provisions only a binding force. If at all the revenue is facing difficulties in accepting and processing applications for amendment of bills of lading, an amendment to the Principal Act can be suggested in accordance with law and till the pendency of the same, an Ordinance can also be issued. No such stand is taken as evident from Ext.P10. I am afraid the action of the respondent cannot be accepted, for, it is an utter violation of statutory provision of Section 149 of the Customs Act. For the reasons assigned, the impugned order Ext.P10 dated 7.7.2020 is hereby quashed. The writ petition is allowed. Respondents are directed to issue no objection certification seeking amendment of the bill in accordance with law. Let this exercise be done within a period of one month from the date of receipt of a copy of this judgment.”*

14. The second ground for rejecting the request for conversion of free shipping bills is that the goods exported have not been subjected to physical examination. As can be seen from Section 149, which has been noticed above, there is no requirement in the said section that the amendment can be allowed only if the goods have been subjected to physical examination before export. On perusal of the impugned shipping bills, it is seen that the appellants have clearly stated in the shipping bills that the goods are exported under advance authorization scheme. On one shipping bill, there is a mistake in noting the license number of the advance authorization. In both the shipping bills, the



scheme code was wrongly mentioned though they have stated that the goods are exported under advance authorization. The code has been noted as "00" instead of "01".

15. Section 149 is a provision which permits the importer / exporter to request for amendment of documents for the mistakes that may have happened while filing the documents. When an application for amendment is received, if it is very much clear from the documents that the mistake was only an inadvertent mistake and there is no attempt of fraud or mis-statement to evade duty, the request for conversion ought to be allowed.

16. The Tribunal in the case of Autotech Industries (India) Pvt. Ltd. (supra) had observed that the amendment is only a procedural issue. In the present case, the documents itself establish that these were inadvertent mistakes.

17. The Hon'ble High Court of Madras in the case of CC Vs. Diamond Engineering (Chennai) Pvt. Ltd. – 2019 (5) TMI 492 – Madras High Court had occasion to consider similar issue wherein substantial questions of law were taken up for consideration which are as under:-

*“(i) Whether the 2<sup>nd</sup> respondent tribunal was right in holding that the 1<sup>st</sup> respondent is entitled to the benefit of the Circular No.36/2010, dated 23.09.2010 and that the period of limitation of 3 months under the said circular is not applicable to the 1<sup>st</sup> respondent as Section 149 does not impose any period of limitation?”*

*“(ii) Whether the 2<sup>nd</sup> respondent tribunal was right in holding that, though the 1<sup>st</sup> respondent filed the shipping bills prior to the implementation of the Circular No.36/2010, dated 23.09.2010, the aid <http://www.judis.nic.in> 3 circular is applicable to the 1<sup>st</sup> respondent despite the fact that the circular specifically enunciates that the circular shall be applicable only to shipping bills filed on or after the date of issuance of the circular?”*

*“(iii) Whether the Tribunal was right in holding that the Circular No.36/2010, dated 23.09.2010 is applicable to the 1<sup>st</sup> respondent, when Circular 4/2004 dated 16.01.2004 was in force at the relevant point of time when the 1<sup>st</sup> respondent filed the shipping bills?”*

*(iv) Whether the Tribunal was right in remitting the case back to the adjudicating authority for verifying if the documents filed were in existence at the time of the export, despite the specific finding given by the adjudicating authority that no documentary evidence which was in existence at the time of the export has been produced before him?*

*(v) Whether the Tribunal was right in remitting the case back to the adjudicating authority for verifying if the documents filed were in existence at the time of the export when no fresh documents, which escaped the consideration by the adjudicating authority were produced before it for consideration?*

*(vi) Whether the circulars issued by the Central Board of Excise and Customs under Section 151A of the Customs Act, 1962 can be read along with the various provisions under the Customs Act, 1962 during its implementation?"*

The appeal filed by the department was dismissed upholding the decision taken by the Tribunal allowing conversion of the shipping bills.

18. After appreciating the facts, evidence and also following the judgments cited above, I am of the view that the rejection of request for conversion of free shipping bills to advance authorization scheme shipping bills are not justified. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in open court on 16.02.2022)

**(SULEKHA BEEVI C.S.)**  
Member (Judicial)