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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CUSAA 323/2018 and CM APPL. 49459-49460/2018

COMMISSIONER OF CUSTOMS (EXPORT) ..... Appellant

Through: Mr. Amit Bansal, Mr. Aman Rewaria and Ms. Vipasha Mishra, Advocates.

versus

E.S. LIGHTING TECHNOLOGIES (P) LTD. ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **06.11.2019**

1. The Commissioner of Customs has preferred the present appeal to assail the order dated 03.04.2018 passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi in Customs Tax Appeal No.51801/2017. The said appeal had been preferred by the respondent due to the request for conversion of free shipping bill to advance license shipping bill being rejected on the basis of time limit as prescribed by Circular No.36/2010-Cus dated 23.09.2010 by the Adjudicating Authority. The Adjudicating Authority has held that since the request was made beyond the period of three months, the request could not be entertained.

2. By a short impugned order, the Tribunal held that there was no time

limitation prescribed in Section 149 of the Customs Act and, therefore, the rejection of the respondent's request for conversion of the license was held to be bad. Reliance was placed by the Tribunal on ***Diamond Engg. (Chennai) Pvt. Ltd. Vs. Commissioner of Customs (Seaport, Chennai)***, 2013 (288) ELT 265 (Tribunal-Chennai), – a decision of the Chennai Bench of the Tribunal, as also to the decision of the Mumbai Bench of the Tribunal in ***Parle Products Pvt. Ltd. Vs. Commissioner of Customs II Nhava Sheva***, 2017 (358) ELT 341 (Tribunal-Mumbai).

3. The submission of Mr. Bansal is that even though no time limitation is prescribed under Section 149 of the Customs Act, the general rule that such a request for conversion/ amendment should be made within a reasonable period, should have been adopted. In this regard, he placed reliance on the decision of the Supreme Court in ***State of Punjab Vs. Bhatinda District Co-Op. Milk P. Union Ltd.***, 2007 (217) ELT 325 (SC), wherein the Supreme Court observed that:

> *"It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."*

4. Mr. Bansal points out that, in the present case, the respondent had sought conversion of the license after lapse of five years. After passage of such length of time, the appellant was not in a position to entertain the request. In this regard, he placed reliance on the decision of this Court in ***Terra Films Pvt. Ltd. Vs. Commissioner of Customs***, 2011 (268) ELT 443 (Del.). In the said decision, after setting out Section 149 of the Customs

Act, this Court observed:

> *"6. As per proviso of this Section 149, no amendment of a shipping bill was to be allowed after the export goods have been exported except on the basis of the documentary evidence, which was in existence at the time the goods were exported. The submission of the learned counsel for the appellant/exporter in this regard was that the exporter was in possession of all the documents at the time of export to show that it was entitled to claim under the DEPB/DECC cum drawback scheme. From the plain reading of Section 149, it may be seen that exporter could not claim amendment in routine and as a matter of right. The discretion vested in the Proper Officer to permit amendment in any document after the same has been presented in the Customs house. Though this discretion was to be exercised judiciously, but it was qualified with the proviso that the amendment could be allowed only if it was based on the documentary evidence in existence at the time the goods were exported. The Commissioner in the remand case has rightly observed that the present case in fact relates to the request for conversion of shipping bills from one export promotion scheme into another and was not merely of an amendment in the shipping bill. The request was made for conversion from one scheme to another after the lapse of long period of more than one year. It was a case of request for "conversion" and not of "amendment" inasmuch by converting from one scheme to another, it was not only addition of word „cum" duty drawback, but change of entire status and character of the documents. Even if it was to be taken as a case of amendment, the proper officer may not be in possession of the documents sought to be amended after lapse of such a long period, particularly when the goods already stood exported. For enabling an exporter to draw the benefits of any scheme, not only physical verification of documents would be required, but as is noted by both the authorities below, the verification of the goods of export as also their examination by the Customs was necessarily required to be done. In the given factual circumstances, that was rightly held to be impossible. The Commissioner in the remand case*

rightly distinguished the cases cited on behalf of the exporter from the facts of the present. The finding of fact as arrived at by the Commissioner has been rightly upheld by the CESTAT."

5. He submits that this decision was followed by the Gujarat High Court in ***Anil Sharma Vs. Union of India***, 2017 (350) ELT 332 (Gujarat).

6. Having perused the impugned order and the decisions relied upon by Mr. Bansal and having considered the facts of the case, we are of the view that the Tribunal was not justified in adopting the approach that it did. Merely because no time limitation is prescribed under Section 149 for the purpose of seeking amendment/ conversion, it does not follow that a request in that regard could be made after passage of any length of time. The same could be made within a reasonable period. The conversion sought by the respondent was from free shipping bill to advance license shipping bill. The petitioner could not have entertained the application for such conversion without examination of the records. It was not fair to expect the Department to maintain, and be possessed of, the records after passage of five long years – when the respondent made its application for such conversion.

7. We, accordingly, set aside the impugned order and allow the present appeal.

VIPIN SANGHI, J

SANJEEV NARULA, J

NOVEMBER 06, 2019
B.S.Rohella