IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1198 OF 2022

Pinnacle Life Science Pvt. Ltd.
Mahendra Industrial Estate,
3rd Floor, Plot No.109-D,
Road No.29, Sion East,
Mumbai – 400 022. ….Petitioner

V/s.

1. Union of India
Notice to be served through
Ministry of Finance,
Department of Revenue,
New Delhi – 110 001.

2. Central Board of Indirect Taxes
And Customs
Ministry of Finance,
Department of Revenue
North Block, New Delhi – 110 001.

3. Commissioner of Customs
Nhava Sheva – II,
Jawaharlal Nehru Customs House,
Mumbai Zone – II, Nhava Sheva,
Tal. - Uran, Dist. - Raigad – 400 707.

4. Deputy/Assistant Commissioner of
Customs
Centralised Export Assessment Cell (CEAC),
Nhava Sheva – II,
Jawaharlal Nehru Customs House,
Nhava Sheva, Tal. - Uran,
Dist. - Raigad – 400 707. …Respondents

Mr. Namboodiri Prasannan a/w Ms. Tejal Darekar for Petitioner.
Mr. J.B. Mishra a/w Mr. Ram Ochari and Mr. Dhananjay Deshmukh for Respondents.

CORAM : K.R. SHRIRAM &
MILIND N. JADHAV, JJ.
DATED : 11th JULY, 2022

ORAL JUDGMENT : (PER : K.R. SHRIRAM, J.)

1. By consent taken up for hearing at the admission stage itself.

2. Petitioner is engaged in manufacture and supply of medicaments and holds an Importer-Exporter Code – 2214005889.

3. Petitioner is seeking relief in the form of direction to Respondent Nos. 3 and 4 to permit petitioner to amend six shipping bills for inserting Advance Authorization details thereon which according to petitioner was not mentioned on the GST Invoices and Commercial Invoices due to clerical error of petitioner. Consequently, the details of Advance Authorization was not reflected in the shipping bills. Petitioner is also seeking relief in the form of conversion of the aforesaid shipping bills from Drawback Scheme to Advance Authorization Scheme. Mr. Namboodiri submitted that without amendment and conversion of the shipping bills petitioner cannot claim adjustment of the expenses made under the shipping bills towards export obligation under the Advance Authorization and cannot receive Export Obligation Discharge Certificate (EODC) under the said scheme in respect of the Advance Authorization dated 22nd February 2019, 20th June 2019 and 25th September 2019. Petitioner requested Respondent No.3 for leave to amend the shipping bills which came to be rejected.

Petitioner wants to insert Advance Authorization details and to convert those shipping bills from Drawback Scheme to Advance Authorization Scheme.

4. We do not have to go into too many details and suffice to say that petitioner's application for amendment in the six shipping bills was under Section 149 of the Customs Act, 1962 (the Act). By the impugned letter dated 30th December 2021 Respondent No.3 rejected petitioner's amendment application on the specious ground that (a) the request in respect of five of the six shipping bills was time barred without going into the merits of the case; and (b) as regards sixth shipping bill documentary evidence has not been produced. Mr. Namboodiri states that all documentary evidence had been produced but if Respondent No.3 wants these documents again petitioner would provide the same during the personal hearing.

5. As regards five shipping bills that came to be rejected on the ground of being time barred, Respondent No.3 has relied upon Circular No.36/2010-Customs dated 23rd September, 2010. A copy of the circular is annexed to the petition which reads as under :

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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. Conversions of shipping bills shall also be subject to conditions as may be specified by the DGFT/MOC. The conversions 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).*
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> *...............*

6. In our view such a circular could not have been issued by the Central Board of Excise & Custom (CBEC) providing for three months time period to make a request for amending the shipping bills. This is because in Section 149 of the Act no time period has been prescribed and if in any specific statutory provision of law, no time period has been prescribed, then such circular could not have been issued by the CBEC. As rightly submitted by Mr. Namboodiri where the legislature wanted to prescribe any time limit for taking action like Section 128, 129 and 130 etc., of the Act, such time limit has been specifically laid down in the relevant provisions of the Act. When no time limit for making a request for amendment of any document is specified under Section 149 of the Act, it is clear that the legislature has

not thought fit to restrict the scope of this provision for the amendment of the documents in terms of the time limit for making a formal request for such amendment. Moreover, Section 149 of the Act or any other provision of the Act does not confer any power or jurisdiction over the Board for laying down any time limit for operating this provision in respect of the amendment of documents. Therefore in our view the time limit of three months laid down vide paragraph no.3(a) of the circular is especially illegal and without jurisdiction. We find support for this view in a judgment of the Hon'ble Gujarat High Court at Ahmedabad in the matter of ***Messrs Mahalaxmi Rubtech Ltd. vs. Union of India***[1]

7. In the circumstances, we hereby quash and set aside the impugned communication dated 30th December, 2021. Respondent No.3 is directed to consider the amendment application without raising an issue of time limit and dispose the amendment application on merits and in accordance with law. This application shall be disposed within six weeks from today. Before any order is passed a personal hearing shall be given to petitioner and notice of such personal hearing shall be given atleast seven working days in advance. If Respondent No.3 wishes to rely on any judicial pronouncements, a list thereof shall be provided to petitioner along with notice for personal hearing. This would enable petitioner to deal with/distinguish those judicial pronouncements.

1 Special Civil Application No. 21636 of 2019 dated 2nd March 2021

8. Petition accordingly stands disposed with no order as to costs. We hasten to clarify that we have not expressed any view on the merits of the application.

(MILIND N. JADHAV, J.) **(K.R. SHRIRAM, J.)**