IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CUSAP-10-2019 (O&M)
Date of decision:- 15.02.2023

Commissioner, Customs ICD, GRFL ....Appellant

vs.

Mrs. Bectos Food Specialities Ltd. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sharan Sethi, Advocate, for the appellant

Mr. Chetan Mittal, Sr. Advocate with
Mr. Pawan Pahwa, Advocate and
Mr. Himanshu Gupta, Advocate
For the respondent.

***

Ritu Bahri, J.

The present appeal has been filed under Section 130 of the Customs Act, 1962 (for short 'Act 1962') seeking setting aside of order dated 07.02.2019 (A-2).

The case in brief is that the respondent-Company is engaged in manufacturer of biscuits and cookies and used to export their goods under DIA Scheme as well as Duty Drawback scheme. As per notification dated 01.08.2013, the respondent was required to import the inputs actually used in the manufacture of export products should be imported must be used in export of goods. Due to that reason, during the period 13.11.2013 to 20.11.2015, the respondent exported their goods under Duty Drawback scheme, as there was bar in terms of above notification dated 01.08.2013.

However, this notification was declared ultra vires by this Court in a case of ***M/s Pushpanjali Floriculture Pvt. Ltd vs. UOI 2016 (340) ELT 32 (P&H).*** Accordingly, the respondent moved an application for conversion of their exports under Duty Drawback scheme to DFIA Scheme. However, his application was not accepted by the Adjudicating Authority in terms of CBEC Circular dated 23.09.2010 and he filed an appeal before the Appellate Tribunal.

The question for consideration before the Tribunal was that whether the conversion of Drawback shipping bills can be allowed to DFIA Scheme or not?

The appeal filed by the respondent was disposed of and the Company was held entitled for conversion of shipping bills from Duty Drawback Scheme to DFIA Scheme subject to reversal of benefit taken under Duty Drawback scheme is paid by the respondent along with interest.

Now the present appeal has been filed by the department and this Court on 08.02.2023 passed the following order:-

"Short question for consideration in this appeal is whether the duty drawback which has been paid back to the petitioner by the Revenue/Customs Department is on account of the fact that the petitioner had paid the import duty at the time of importing goods which were subsequently utilized in the production of biscuits which he exported, under Duty Drawback Scheme. As far as conversion of Duty Drawback Scheme to the Duty Free Import Authorization (DFIA) is concerned, this application cannot be rejected on the ground of limitation as this aspect has been considered by the Gujarat High Court in the judgments "M/s. Lykis

> *Limited Vs. C.C.Mundra" and "M/s. Mahalaxmi Rubtech Ltd. Vs. Union of India" which have attained finality and the Customs Department is following the judgment(s).*
>
> *Learned counsel for the appellant, to get a copy of the circular which regulates the payments of Duty Drawback Scheme.*
>
> *Adjourned to 15.02.2023."*

Now, C.M. No. 14100-CII-2021 has been filed by the respondent seeking disposal of the present appeal, in view of judgment of Gujarat High Court in a case of ***Principal of Commissioner of Customs vs. M/s Lykis Ltds, 2021 TIOL-327-HC-AHS-CUS (A-1).***

Reference at this stage can be made to ***M/s Lykis Ltds case (supra) wherein the appeal filed by the department was dismissed.*** In this case, the company preferred an application before the Principal Commissioner Customs, Mundra for conversion of 204 shipping bills from Drawback Scheme to Duty Free Import Authorization (DFIA) Scheme. The request was rejected on the ground that the same was time barred. The Principal Commissioner Customs took the view that such a request was made for conversion after three months from the date of the Let Expert Order (LEO) and if such a request is accepted, the same would be contrary to the Circular No. 36/2010-Cus dated 23.09.2010. However, the Company filed an appeal before the Tribunal and the same was allowed by referring to Section 149 of the Customs Act. The operative part of the order of the Tribunal reads as under:-

> *4. We have heard both the sides and perused the records. We find that the appellant has sought for the conversion of Drawback shipping bills to DFIA*

shipping bills, in terms of Section 149 of Customs Act, 1962 which reads as under:-

> *"149. Amendment of documents.- Save as otherwise provided in Section 30 and 41, the proper officer may, in his discretion, authorize 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 authorized 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 of the goods were cleared, deposited or exported, as the case may be."*

4.1 From the above Section, it is clear that no time limit is prescribed. We find that the request of the appellant for conversion was rejected on the sole ground of limitation as prescribed under Board Circular No. 36/2010- Cus. We find that since the time limit has not been prescribed under the act, the same cannot be fixed by way of the circular. Therefore, if at all there is a time limit by way of circular, it is only procedural requirement. Therefore, on this ground of limitation, application could not have been rejected, particularly when circular prescribing time limit is without authority of any statutory provision, act and rules supported.

4.2 It is settled law that the time limit prescribed by the Board Circular is not binding as same is not statutory provision in terms of section 49 of the Customs Act 1962. We further find that in the identical case of Bectors Food Specialities Ltd. (Supra) this Tribunal, Chandigarh after considering the Hon'ble Gujarat High Court judgment in the case of Anil Sharma Vs. Union of India - 2017 (350) ELT 322 (Guj.) = 2017-TIOL-383-HC-AHM- CUS held that the assessee was entitled for conversion of shipping bill from DBK Scheme to DFIA Scheme. We after going through the said decision find that the circumstances and reason for delay in *filing request for conversion was almost identical in the present case. In the case cited of coordinate Bench of this Tribunal Mumbai dealing with the identical issue in the case of Parley Product Pvt. Ltd (Supra) on the fact that the conversion of drawback shipping bill to DFIA shipping bill was after 2 years, wherein it was held that no time limit provided under section 149 of Customs Act, 1962.*

5. As per our above discussion, we are of the view that the appellant is legally entitled for conversion of drawback Shipping Bills to DFIA Shipping Bills in respect of 184 Shipping Bills as per the list provided in appeal along with the appeal memo. The respondent commissioner is directed to issue necessary certificate enabling appellant to get the DFIA licenses revalidated."

Gujarat High Court dismissed the appeal of the revenue and observed as under:-

6. We are of the view that no error, not to speak of any error of law could be said to have been committed by the tribunal in passing the impugned order. Section149 is applicable at the relevant point of time. In fact, the questions as proposed by the revenue cannot be termed as substantial questions of law as the issue is squarely covered by a decision of this Court in the case of Inter Continental (India) Vs. Union of India; (2003) 154 ELT 37 and the same is also upheld by the Supreme Court; 2008 SCC Online SC 22 = 2008-TIOL-83-SC-CUS.

The above mentioned judgment of Gujarat has attained finality as in the proposal for fling SLP before Hon'ble the Supreme Court of India against order dated 02.02.2021, it has been decided not to file SLP in this case (A-2).

Learned counsel for the respondent has further produced on record copy of letter dated 19.12.2022 issued by Hyderabad Customs, Commissionerate, Hyderabad and the same is taken on record as Annexure A-5. As per this letter, request was for conversion of 126 shipping bills from Draw Back to DFIA Scheme by M/s Rani International Exports and Imports.

It has been observed in the letter that the products are covered under the above mentioned 126 shipping bills i.e Biscuits and Confectioneries, were notified under the SION norms. Thus, they were held to be eligible to claim the benefit of DFIA. Section 149 of the Customs Act, 1962 lays down that any import/export document may be considered for conversion subject to satisfaction of the proper officer without having any limitation. In this letter, reference was made to ***M/s Lykis Ltds case (supa)*** wherein the conversion of SBs was allowed without any time limit.

No time period is prescribed in Section 149 for conversion of bills and any policy providing for time period is ultra vires, as held in ***M/s Lykis Ltds case (supa).*** The case of the respondent is squarely convered by the judgment of Gujarat High Court

In view of the above, no ground is made out to interfere in the order dated 07.02.2019 (A-2).

The appeal is dismissed.

(RITU BAHRI)
JUDGE

15.02.2023 **(MANISHA BATRA)**
G Arora **JUDGE**

Whether speaking/reasoned *:* Yes/No
Wheth1er reportable *:* Yes/No