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Date: 02.06.2025

CESTAT Allahabad Allowed to Convert Free Shipping Bills to Drawback Bills Under Section 149

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Allahabad Bench, has allowed the appeal of M/s Pakka Ltd. (formerly Yash Pakka Ltd.), setting aside the denial of conversion of free shipping bills to drawback shipping bills. The Tribunal reaffirmed the exporter's right to seek amendment under Section 149 of the Customs Act, 1962, even post-export, based on pre-existing documentation.

Case Summary

- **Appellant**: M/s Pakka Ltd., Faizabad
- **Respondent**: Commissioner of Customs (Preventive), Lucknow
- **CESTAT Appeal No.**: 70109 of 2024
- **Impugned Order**: OIO No. 01/Tech/2023 dated 13.12.2023
- **Final Order**: No. 70136/2024 dated 14.02.2024

Background: Drawback Claim Denied Due to Free Shipping Bill Filing

Pakka Ltd., a regular exporter of paper products, inadvertently filed free shipping bills during the transition to GST (01.07.2017 – 01.08.2018) due to confusion regarding duty drawback applicability. For periods before and after, they properly filed drawback shipping bills and received the benefits.

They later sought amendment of the free shipping bills under Section 149, but the Customs Commissioner rejected the request—first without a hearing, and again in de novo proceedings—even after CESTAT remanded the matter.

Tribunal's Findings

1. **Customs Misapplied Rule 13(1)(a)**
    - The Tribunal held that Rule 13(1)(a) of the Drawback Rules, 2017 cannot override the right to amendment under Section 149.
    - The Commissioner failed to evaluate whether supporting documents were available at the time of export, which is the crux of Section 149.
2. **Misreading of Circulars**
    - The denial was based on Circular No. 36/2010, which limits conversion from schemes with less rigorous to more rigorous examination norms.
    - The Tribunal clarified that for All Industry Rate (AIR) Drawback, conversion can be allowed, especially when documentation existed and confusion arose from GST implementation.
3. **Precedents Support Amendment Without Time Limit**
    - CESTAT cited binding precedents like:
        - ITC Ltd. [2019 (368) ELT 216 (SC)]
        - Hewlett Packard Enterprises [2021 (375) ELT 488 (Mad.)]
        - Dimension Data [2021 (376) ELT 192 (Bom.)]
    - These rulings uphold that Section 149 permits post-export amendment if the documents existed at the time of export, regardless of delay.
4. **Natural Justice Violated**
    - The Commissioner introduced Rule 13(1)(a) without issuing a show cause notice, violating basic procedural fairness.

Final Tribunal Ruling

- Appeal Allowed
- The denial order is set aside.
- Pakka Ltd. is entitled to amend free shipping bills to claim AIR duty drawback under Section 149.

Legal Significance

- Section 149 rights upheld even for delayed applications, provided supporting documents pre-exist.
- Drawback claims cannot be denied solely due to GST confusion or clerical omissions.
- Exporters have a judicially protected route to recover legitimate benefits, even years after export.

Conclusion

This decision by CESTAT Allahabad is a landmark for exporters navigating post-GST compliance irregularities. It empowers businesses to rectify honest errors and claim rightful duty drawbacks under the law.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Allahabad

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70109 of 2024

(Arising out of Order-In-Original No.01/Tech/2023 dated 13/12/2023 passed by Commissioner of Customs (Preventive), Lucknow, Uttar Pradesh)

M/s Yash Pakka Ltd. **.....Appellant**
(Now known as M/s Pakka Ltd)
(Yash Nagar, Darshan Nagar, Faizabad-224125)

VERSUS

Commissioner of Customs (Preventive), Lucknow

....Respondent

(5th Floor, Kendriya Bhawan, Sector-H, Lucknow-226001)

APPEARANCE:

Shri Amit Awasthi, Advocate &
Shri Ashish Kumar Shukla, Advocate for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70136/2024

DATE OF HEARING : 14.02.2024
DATE OF DECISION : 14.02.2024

SANJIV SRIVASTAVA:

This appeal is directed against the Order-In-Original No.01/Tech/2023 dated 13/12/2023 passed by Commissioner of Customs (Preventive), Lucknow. By the impugned order Commissioner has in the *denovo* proceedings undertaken as per this Tribunal Final Order No.70052 of 2023 dated 23.08.2023 held as follows:-

ORDER

In view of above discussion,

"1 . I held that the request of the party to amend free shipping bills to drawback shipping bills is not acceptable and hence hereby rejected.

2. I also held that drawback at All Industry Rate on the basis of said free shipping bills without conversion in terms of Para 4 of Circular No. 36/2010-Cus, dtd. 23.09.2010 cannot be allowed."

2.1 Appellant is manufacturer and exporter of paper and paper products classifiable under Chapter 48.

2.2 GST was introduced with effect from 01.07.2017. Due to ignorance and confusion during the period from 01.07.2017 to 01.08.2018 they have exported their goods against free shipping bills.

2.3 For the period prior to and post the above stated period they had exported their goods under claim of drawback by filing the Drawback Shipping Bills. Drawback has been allowed in respect of these shipping bills.

2.4 Appellant made a request on 07.12.2019 to the jurisdictional Assistant Commissioner for conversion of free shipping bills filed during the afore stated period to drawback shipping bills in terms of Section 149 of the Custom Act, 1962. They also filed the similar request before the Commissioner on 21 December, 2020.

2.5 The request made was rejected by the Commissioner by the order in original No 01/Tech/2021 dated 10.02.2021 without affording any opportunity for hearing to the appellant.

2.6 Against this order rejecting the request made for conversion/ amendment in the shipping bills appellant filed an appeal to CESTAT (Customs Appeal No 70655 of 2022)

2.7 Vide Final Order No.70052/ 2023 dated 23.08.2023. the matter was remanded to the Original Authority. Para 5.1 of the order remanding the matter to the Original Authority is reproduced below:-

"5.1 Appeal is allowed. Matter is remanded back to the Original Authority for re-consideration de-novo. Needless to say that as the issue is in respect of conversion of free shipping bill into drawback shipping for the period from 01.07.2017 to 01.08.2018, Commissioner in de-novo proceeding will decide the matter within three months from

the date of receipt of a copy of this order. Counsel undertakes that the appellant will not seek any adjournment before the Commissioner and provide all the assistance for speedy disposal."

2.8 In the de-novo proceedings Commissioner has passed the impugned order. Aggrieved appellant again filed this appeal.

3.1 We have heard Shri Amit Awasthi & Shri Ashish Kumar Shukla, Advocate appearing on behalf of the appellant and Shri A.K. Choudhary, Authorized Representative appearing for the Revenue.

3.2 Arguing for the appellant learned counsel submits that:

- Appellant is a regular exporter of the said goods and was exporting the same prior to introduction of GST with effect from 01.07.2017. They were filing the drawback shipping bills and were being allowed the drawback.
- for the period 01.07.2017 to 01.08.2018 the appellant had exported the same goods manufactured by them but filed the free shipping bills. After 01.08.2018 they again started filing the drawback shipping bills and the drawback has been allowed to them against these shipping bills.
- Subsequently on 07.12.2019 they made a request to the Assistant Commissioner for amendment of the free shipping bills filed by them during the aforestated period to drawback shipping bills in terms of Section 149 of the Customs Act, 1962.
- As their request for conversion made under Section 149 was rejected by the Commissioner without adhering to the principles of natural justice they filed an appeal to the CESTAT which has been allowed remanding the matter back to the original authority for de novo consideration.
- The only issue during the *denovo* proceeding was seeking remedy of conversion of Free Shipping Bill to the one under the claim of Drawback, which was albeit

post-facto, with all the documents, during the period 01.07.2017 till 01.08.2018, well addressed and with the Customs in their record files.

- After the order of CESTAT, the representation were filed on 20.09.2023 21.10.2023 and 04.12.2023 respectively, by the Appellants seeking remedy under Section 149 of the Customs Act, 1962, for the amendment of documents. They inter-alia submitted that:
  - prior to the levy of GST, factory stuffing was done, during the levy of GST, even then stuffing was done within the factory, and sporadically the Jurisdictional Officers conducted verification and drew samples;
  - post 01.08.2018, there is absolutely no dispute; and
  - during the period in question, neither the product under manufacture/ export i.e. Paper and Paper Products had ever been changed, nor any other benefit, which has been claimed.
- In denovo proceedings, after taking the note of the written submissions and the oral arguments, simply traversed beyond the scope of proceedings which were for conversion of free shipping bills to drawback shipping bill in terms of the Section 149 of the Customs Act, 1962, arbitrarily invoked Rule 13(1) (a) of the Drawback Rules, 2017, without putting the Appellants to Notice.
- It is a settled position in law that the conversion as prayed by the appellant in terms of Section 149 is to be allowed without any limitation, on the basis of the documents which were available at the time of let export.
- It is also settled that Drawback Claim not rejectable when earlier allowed for same goods, Reliance is placed on the following judgments/decisions:

- Kedia (Agencies) Pvt. Ltd. [2017(348) ELT 634 (Del.)]
- Cargil India Pvt. Ltd. [2010(258) ELT 298 (Tri-Bang.)]
- Carl Zeiss India Pvt. Ltd. [2018 (359) E.L.T. 388 (Tri. Bang.)]
- Angel Marketing & Finance Pvt. Ltd.[2001 (135) ELT 987 (Commr. Appeal)]

➢ Reliance is also placed on the following decisions whereby similar conversion has been permitted:

- ITC Ltd. [2019 (368) ELT 216 (S.C.)]
- Dimension Data Indian Pvt. Ltd, [2021 (376) E.L.T. 192 (Bom.)] affirmed by Hon'ble Apex Court as reported [2022 (379) ELT A39 (S.C.)]
- Share Medical Ltd. [2007 (209) ELT 321 (SC)]
- Hewlett Packard Enterprises India [2021 (375) ELT 488 (Mad.)].
- UMA Exports Lid. [Final Order No. 77256-77262/2023 in Customs Appeal No. 76127 of 2019],

➢ Reliance is also placed on Standing Order No 06/2022 dated 04.07.2022 (para 5) issued Commissioner of Customs Nhava Sheva,

➢ It is settled by the aforestated decisions that section 149 of Customs Act, 1962, provides for allowing such conversion.

➢ In any case if the Commissioner intended to deny benefit of Section 149 which is admissible as per the above decisions, then he should have issued proper notice to Show Cause. Rejection of their request by referring to Rule 13 (1) of the Drawback Rules, without even putting them on notice, shows nothing but perversity and arbitrariness on the part of the Learned Respondent.

➢ The request made by them be allowed.

3.3 Arguing for the Revenue, learned Departmental Representative reiterates the finding recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of the argument

4.2 For rejecting the request for amendment of Shipping Bills as per Section 149 of the Customs Act, 1962 impugned order observe as follows:-

"Discussion and Finding:

……. I observe that the main issue to be decided in this case is, whether the party's request dated 21/09/2020 regarding conversions of Free Shipping Bills to Drawback Shipping Bills is acceptable or not and whether the benefit of All Industry Rate of duty Drawback may be allowed to the party or not?

1. *I observe that the matter pertains to drawback on imported materials used in the manufacture of goods which are exported. The same has to be dealt with section 75 of the Customs Act, 1962 which reads as under:*

   Section 75. Drawback on imported materials used in the manufacture of goods which are exported.

   (1) Where it appears to the Central Government that in respect of goods of any class or description S[manufactured, processed or on which any operation has been carried out in lndia, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer, or being goods entered for export by post under clause (a) of section 84 and in respect of which an order permitting clearance for exportation has been made by the proper officer], a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2):

(2) The Central Government may make rules for the purpose of carrying out the provisions of sub-section (1) and, in particular, such rules may provide

(a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carying out any operation on the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or other operation, and interest if any payable thereon;]

(aa) :

(ab) .....

(b) …….

Central Excise and Service Tax Drawback Rules, 2017 (earlier Custom, Central Excise and Service Tax Drawback Rules, 1995) were made vide Notification No. 88/2017-CUs.(N.T.), dated 21.09.2017 in accordance with Sub Section (2) of aforementioned Section 75 to allow the drawback in respect of such goods as elaborated in Sub Section(1) of the Section 75 as above.

As per Rule 13 (1)(a)_of Central Excise and Service Tax Drawback Rules, 2017 (earlier Rule 12(1)(a) of Custom, Central Excise and Service Tax Drawback Rules, 1995) there are certain requirements/declaration to be made in the shipping bill at the time of export which reads as under:

13. Statement/Declaration to be made on exports other than by Post. - (1) In the case of exports other than by post, the exporters shall at the time of export of the goods –

(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that-

i. claim for drawback under these rules is being made

(ii) in respect of duties of Customs and Central Excise paid on containers, packing materials and materials used in the manufacture of the export goods on which drawback is claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 or any other law has been or will be made to the Central excise authorities:

Provided that if the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from the provisions of this clause.

As per this rule there should be a declaration by the exporter or his authorized agent on the shipping bill that a claim for drawback under these rules is being made. However, in terms of proviso to Rule 13(1)(a) exemption from this condition may be granted by Principal Commissioner or Commissioner of Customs, as the case may be, if exporter or his authorised agent is able to prove that he failed to comply with the provisions as the situation was beyond his control.

I observe that, according to the exporter, the main reason for non declaration of claiming drawback on these shipping bills was implementation of GST on 01.07.2017 due to which lots of confusions were emerged w.r.t. claim of drawback. Even the domain experts were not able to clarify the issue properly and therefore they decided that they would not take the benefit of Duty Drawback till further clarity and started filing shipping bill without claiming Duty Drawback to avoid taking any double benefit or wrong incentive. Hence, the party requested for conversion from free shippin g billsto duty drawback shipping bills. Now, I intend to examine the reason put forth by the exporter as to whether they could able to make a case for exemption from compliance of Rule 13(1)(a) of the Rules, supra. The party's request for exemption from declaration may be considered subject to fulfillment of conditions prescribed under provise to the above said Rule13 (1)(a). Under proviso to this rule the exporter or his authorised agent has to establish that due to reasons beyond control they failed to comply with the

provisions. In the instant case letters for conversion of free shipping bill to drawback shipping bill were written by the party on 07.12.2019 and 08.12.2019 addressed to Deputy Commissioner, ICD Panki and ICD JRY respectively wherein they had stated that "unfortunately we missed to claim drawback inadvertently in some of the shipping bills with no reason to explain." From above it is evident that two completely different reasons were submitted by the party in different letters sent to different authorities for the same issue. Submission of incongruous reasons clearly indicates that the party deliberately has not exported the goods under duty drawback shipping bill and now trying to make it a case of export done under ambiguity of law. Had there been any ambiguity at the time of export, the party would have sought the guidance of department but no such letter was written by the party to the department. Accordingly it is amply clear that the party failed to provide any plausible grounds which could establish that due to reasons beyond control they failed to comply with the provisions of Rule 13(1)(a) of the Central Excise and Service Tax Drawback Rules, 2017.

3. I further observe that implementation of GST was paradigm shift from old tax regime to new era of taxation under GST and accordingly various issues have been highlighted by the field formations as well as exporters regarding export of claim under drawback in GST Scenario. However, taking immediate corrective measures, the board (CBIC) has issued many circulars to resolve the issues and clarify the ambiguity noticed in new era of GST. Some circulars e.g. Circular No. 32/2017- Customs dated 27.07.2017 and Circular No. 38/2017 dated 22.09.2017 were issued by the Board clarifying drawback related changes. For instance Para (a) and Para (d) of above said Circular No. 38/2017 dated 22.09.201 7 reads as under: a . Definition of Drawback has been amended to provide for drawback of Customs and Central Excise duties excluding integrated tax leviable under sub-section (7) and compensation cess leviable under sub-section (9) respectively of Section 3 of the Customs Tariff Act, 1975 chargeable on any imported materials or excisable materials used in the manufacture of goods exported; b. The Composite rates of Drawback are being discontinued w.e.f. 01.10.2017. Hence, the composite rates and Notes and Conditions pertaining to CENVAT credit, rebate of Central Excise duty, etc. stand omitted. Thus, the declaration required to be given by an exporter for

claiming composite rate of drawback w.e.f. 01.07.2017 as per Circular No. 32/2017-Customs dated 27.07.2017 is no longer required w.e.f. 01.10.2017

4. I further observe that these circulars, clarifying the ambiguity regarding admissibility of drawback among exporters, were issued within initial 03 to 04 months of implementation of GST and subsequently it can be held that there was no confusion afterwards. However the party continued to file free shipping bill ill August 2018. Application for conversion of free shipping bill to duty drawback shipping bill was also submitted to Commissioner of Customs on 05.02.2020 i.e. after lapse of almost 03 years. Confusion at the end of party for so long period seems unjustified and also the party failed to provide any convincing explanation that due to reasons beyond control they failed to comply with the provisions of Rule 13(1)(a) of the Central Excise and Service Tax Drawback Rules, 2017.

5. I further observe that prior to the disputed period and post disputed period the shipping Bills of the party were duly assessed under claim of Drawback at All Industry Rate and in newly implemented GST era, there was no substantial change regarding drawback admissibility at All Industry Rate. Accordingly, the submission of the party regarding ambiguity in admissibility of duty drawback is not tenable

6. I further observe that the party has requested for amendment of shipping bill under Section 149. The said section reads as under:

***"Section 149: Amendment of documents.-** Save as otherwise provided in section 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 [in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed.]:*

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."

……..

……..

From the above it is clear that option to amend any document under section 149 is restricted. Exporter doesn't have unfettered right to get the documents amended under this section. As per the Section 149 amendment can be made "Within such time, subject to such restrictions and conditions, as may be prescribed". These time limits and other restrictions and conditions are prescribed vide Circular No. 36/2010 dated 23.09.2010. Relevant portion i.e. Para (3) of this circular reads as under:

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)....
d)…..
e)....

This circular provides conditions for conversion of Shipping Bill for schemes involving more rigorous examination to schemes involving less rigorous

examination norms. However, in the instant case the party applied for conversion from free shipping bill to duty drawback shipping bill. Free shipping bills are subject to 'NIL' examination norms whereas Drawback shipping examination, bill are subject to 10% examination norms. Since this is a case of conversion of shipping bill involving less rigorous to more rigorous examination, the same cannot be allowed in the light of above mentioned circular.

7. Further, I observe that this is not a case of conversion/amendment under section 149 of Customs Act, 1962 as it has been clarified by CBIC vide Para-4 of Circular No. 36/2010 dated 23.09.2010 that for allowing drawback at All Industry Rate, conversion of shipping bill is not required to be done at all. Only requirement prescribed in Para-4 of the said circular is that the exporter should satisfy the Commissioner (Customs) to the effect that for reasons beyond his control he failed to comply with the provisions of the rule 13(1)(a) of Central Excise and Service Tax Drawback Rules, 2017.

8. I further observe that in exercise of powers conferred by Section 157 (General Power to make regulations) read with Section 149 of the Customs Act, 1962 the board (CBIC) made Shipping Bill (Post Export conversion in relation to instrument based scheme) Regulations, 2022 vide notification No. 11/2022-Customs(N.T.) dated 22.02.2022. Regulation No. 03 of this Regulation elaborates manner and time limit for applying for post export conversion of Shipping Bill in certain cases which reads as under:

3. Manner and time limit for applying for post export conversion of Shipping Bill in certain cases. -

(1) The application for conversion shall be filed in writing within a period of one year from the date of order for clearance of goods under sub-section (1) of section 51 or section 69 of the Act, as the case may be:

Provided that the jurisdictional Commissioner of Customs, having regard to the circumstance under which the exporter was prevented from applying within the said period of one year, may consider and decide, for reasons to be recorded in writing, to extend the aforesaid period of one year by a further period of six months:

Provided further that the jurisdictional Chief Commissioner of Customs, having regard to the circumstances under which the exporter was prevented from applying within the said period of one year and six months, may consider and decide, for reasons to be recorded in writing, to extend the said period of one year and six months by a further period of six months.

From the above it is evident that application for conversion shall be filed in writing within a period of one year from the date of order of clearance. Though this regulation came in to existence on 22.02.2022 but it implies that amendment of documents under Section 149 is not an unregulated right and the application for the same should be done within reasonable time limit. In the instant case the party has filed for conversion of shipping bill offer lapse of considerable time I.e. almost 03 years andioon this delay they failed to persuade that there were circumstances under which the exporter was prevented from applying within prescribed time limit. Accordingly conversion of shipping bill after such lapse of time will not be proper and justifiable.

9. Even if it is assumed that the party has succeeded in making their case for amendment of export documents (free shipping bills to drawback shipping bills) under section 149 of the Customs Act, 1962, for getting benefit of drawback under section 75 they must pass through the rigours of Rule 13(1)(a) of Central Excise and Service Tax Drawback Rules, 2017 made under 75 (2) of the Customs Act, 1962. It is evident that the party has not with the conditions of the said Rule while filing the shipping bills Section complied and as discussed in foregoing para, party could not able to make a case for exemption from compliance of those conditions in accordance with the proviso appended to Rule 13(1)(a).

10. I further observe that the request of the party to 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 para 4 of Circular no. 36/2010-Cus dated 23.09.2010 could not be considered. Para 4 of Circular no. 36/2010- Cus dated 23.09.2010 reads as under:

"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."

In this circular the board (CBIC) has clarified that in terms of proviso to rule 12(1)(a) of Customs, Central Excise and Service Tax Drawback Rules, 1995 (now Rule 13(1)(a) of Central Excise and Service Tax Drawback Rules, 2017) All Industry Rate of duty drawback may be allowed without conversion of shipping bill. Thus, it is crystal clear that permission to allow All Industry Rate of duty drawback without conversion shall only be granted in accordance of proviso to Rule 13(1)(a) of the Customs, Central Excise and Service Tax Rules, 2017; meaning thereby the exporter must establish the fact that due to the reason beyond their control they failed to comply with the conditions as prescribed in Rule 13(1)(a). However, as discussed in foregoing paras the exporter failed to establish that due to reasons beyond control they failed to comply with the provisions of Rule 13(1)(a) of the Customs, Central Excise and Service Tax Drawback Rules, 2017. As the requirement of the law is not being fulfilled, application of the party to allow All Industry Rate of duty drawback is not acceptable.

4.3 We find that the issue for consideration in the present case was limited for consideration whether the free shipping bills filed by the appellant from 01.07.2017 to 01.08.2018 could have been amended into drawback shipping bills in terms of the provisions of Section 149 of the Customs Act, 1962. No other issue was there for consideration in the present case for the Commissioner. On the basis of the past judicial precedent decisions of various High Courts and Tribunals which have been recorded in Final Order No 70052/2023 dated 23.08.2023, in our view amendment could have been permitted on the basis of the documents which were presented at the time of the export. Thus if those documents on the basis of which amendment was sought existed and were presented to custom authorities then, amendment should have been allowed. Instead of considering

whether this amendment could have been allowed based on those documents, the Commissioner has misdirected himself into various legal issues without even referring to the documents available at the time of export which were produced.

4.4 In the impugned order Commissioner referred to Rule 13(1)(a) for the denial of conversion such an approach cannot be justified. It appears that he has not understood the scope of Section 149 *vis-à-vis* Rule referred in his order if the shipping bill which is sought to convert was filed in terms of Customs Drawback Rules 2017 then where was the question of invoking the provisions of Section 149 for conversion. Admittedly the shipping bills filed were free shipping bills. They would have never carried all the declarations as required under the said rules. If the approach of the Commissioner was to be accepted it will render Section 149 completely otiose for the purpose of such conversion.

4.5 Rule 13 (1) (a) of the Customs and Central Excise Drawback Rules,2017 is pari-materia with Rule 12 (1) (a) of the Customs and Central Excise Drawback Rules, 1995. Board has clarified by Circular No 36/2010-Cus, as follows:

"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."

4.6 Section 149 allows conversion of shipping bills filed under one scheme into another scheme subject to the conditions prescribed. In case of Autotech Industries [2022 (380) ELT 364 (T-Chennai)] this circular and earlier precedences have been considered and following has been held:

"12. *The issue is whether the rejection of a request for amendment/conversion of free shipping bills to duty drawback shipping bills is legal and proper.*

13. *The appellant has made request for conversion of the shipping bills vide two letters as mentioned above. In the letter dated 25-1-2016, it is explained by them that drawback has been inadvertently not claimed by them while filing the shipping bills. In para 3 of the reply to the Show Cause Notice the reason for omitting to claim drawback by filing drawback shipping bills is explained by the appellant as under :-*

"The noticee have been exporting goods from 1998 onwards. During 2014-15, they faced difficulties in competing in the international market due to escalation in cost of production and competition. In order to reduce the cost of production, so as to complete in the international market, they hired auditors to conduct audit for the said purpose. From such audit only they came to know that they have been exporting taxes also in addition to exporting the goods which otherwise, could have been got back as duty drawback. As per drawback sub-serial No. 8409, subject goods are eligible for 2% drawback."

14. *On realizing the mistake/omission, the appellants vide their letters dated 9-10-2015 and 25-1-2016, requested the Commissioner to convert the Free Shipping Bills to Drawback Shipping Bill so as to sanction the drawback for the same. In the Annexure to the letter dated 9-10-2015, they have requested for conversion of Shipping Bills from the period January, 2012 to December, 2014. The details in the Annexure are as under :-*

Annexure	***Period***	***INR FOB Value of Export***	***INR DBK Amount***

1.	*January, 2012 to March, 2012*	*3,75,95,276.88*	*7,51,906.00*
2.	*April, 2012 to June, 2012*	*4,68,16,310.85*	*9,36,320.00*
3.	*July, 2012 to September, 2012*	*3,16,22,695.08*	*6,32,451.00*
4.	*October, 2012 to December, 2012*	*4,09,40,845.31*	*8,18,817.00*
5.	*January, 2013 to March, 2013*	*6,76,08,335.91*	*13,52,166.00*
6.	*April, 2013 to June, 2013*	*6,39,40,642.06*	*12,78,819.00*
7.	*July, 2013 to September, 2013*	*9,08,81,484.78*	*17,56,341.00*
8.	*October, 2013 to December, 2013*	*8,80,73,595.68*	*15,00,140.00*
9.	*January, 2014 to March, 2014*	*7,45,32,856.45*	*10,75,200.85*
10.	*April, 2014 to June, 2014*	*8,52,79,400.78*	*14,51,424.00*
11.	*July, 2014 to September, 2014*	*9,39,08,202.03*	*15,96,443.00*
12.	*October, 2014 to December, 2014*	*5,29,61,530.50*	*9,40,536.00*

15. *In the subsequent letter dated 25-1-2016, the appellant has included the Shipping Bills from the year 2000 to 2011 also. The details of the annexure are as under :-*

Annexure	***Period***	***INR FOB Value of Export***	***INR DBK Amount***
1.	*For 2000 - 2001 Invoices*	*46,685,572.50*	*887,026.00*
2.	*For 2002 - 2003 Invoices*	*61,438,095.68*	*1,167,319.00*
3.	*For 2003 - 2004 Invoices*	*341,033,124.36*	*6,479,534.00*
4.	*For 2004 - 2005 Invoices*	*172,758,600.00*	*3,282,413.40*
5.	*For 2005 - 2006 Invoices*	*513,563,926.05*	*9,757,709.00*
6.	*For 2006 - 2007 Invoices*	*335,911,765.83*	*6,382,316.00*
7.	*For 2007 - 2008 Invoices*	*600,337,073.14*	*11,406,412.00*
8.	*For 2008 - 2009 Invoices*	*342,435,776.37*	*6,506,279.00*
9.	*For 2009 - 2010 Invoices*	*402,037,449.91*	*7,638,718.00*
10.	*For 2010 - 2011 Invoices*	*458,249,510.96*	*8,706,737.00*
11.	*For 2011 - 2012 (Upto Dec., 12)*	*253,438,788.39*	*4,815,328.00*
12.	*January, 2012 to March, 2012*	*37,595,276.88*	*7,51,906.00*
13.	*April, 2012 to June, 2012*	*4,68,16,310.85*	*9,36,320.00*
14.	*July, 2012 to September, 2012*	*3,16,22,695.08*	*6,32,451.00*
15.	*October, 2012 to December, 2012*	*4,09,40,845.31*	*8,18,817.00*
16.	*January, 2013 to March, 2013*	*6,76,08,335.91*	*13,52,166.00*
17.	*April, 2013 to June, 2013*	*6,39,40,642.06*	*12,78,819.00*
18.	*July, 2013 to September, 2013*	*9,08,81,484.78*	*17,56,341.00*
19.	*October, 2013 to December, 2013*	*8,80,73,595.68*	*15,00,140.00*
20.	*January, 2014 to March, 2014*	*7,45,32,856.45*	*10,75,200.85*
21.	*April, 2014 to June, 2014*	*8,52,79,400.78*	*14,51,424.00*
22.	*July, 2014 to September, 2014*	*9,39,08,202.03*	*15,96,443.00*
23.	*October, 2014 to December, 2014*	*5,29,61,530.50*	*9,40,536.00*
		4,302,050,859.59	*81,120,455.25*

16. *It is stated in these letters that they have produced the necessary documents in the nature of Shipping Bill, ARE-I, BRC etc. In the impugned order one of the reasons for rejecting the request is that the documents at the time of exports are not available. However, there is no such allegation raised in the*

Show Cause Notice which was issued on the basis of these letters. In the Show Cause Notice, the only ground raised is that the request for conversion is time barred.

17. *The only requirement under Sec. 149 to allow amendment is that the exporter has to produce documentary evidence which was in existence at the time of export. The department does not specifically dispute the export of goods. The appellants have furnished copies of Shipping Bills, BRC and ARE-1. These documents are sufficient to prove that goods manufactured by them using imported inputs were exported. The ARE-1 document would show that the goods have been removed from the factory for export after it has been examined/verified by the Superintendent of Central Excise. The reverse side of ARE-1 inter alia reads as under :-*

"Certified that I have opened and examined the packages No. 5/12 and found that the particulars stated and the description of goods given overleaf and the packing list (if any) are correct and that all the packages have been stuffed in the container No. NIL with marks and the same has been sealed with Central Excise Seal Lead Seal."

18. *the above document would establish the description, quantity of the goods exported. The Bank Realization Certificate (BRC) would prove that consideration for the export has been received.*

19. *The Learned AR has argued that the documents are not available with the department and that it is usually stored only for five years. As per Sec. 149, the requirement is not that the documents should be available with the department. It merely states that the exporter has to furnish documentary evidence which were in existence at the time of exports. In the case of M/s. Hewlett Packard Enterprises which is referred by us later, this point was discussed in para 12 and 13 of the judgment. The contention of the Revenue that the documents should be available with the department was not accepted by the Hon'ble*

High Court. The proviso gives an opportunity to the exporter/importer to furnish documents which were in existence at the time of export/import and get the error rectified. We therefore hold that the rejection of request on the ground that appellants did not furnish documents is factually and legally untenable.

20. *We may now address the issue of limitation which is the main ground for rejecting the request for conversion of free shipping bills to drawback shipping bills. The request for conversion/amendment of shipping bill is made under Section 149 of the Customs Act, 1962. This section does not prescribe any time limit for filing an application for amendment of shipping bill. The said section reads as under :-*

"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".

21. *It can be seen that law allows amendment of the shipping bill even after the goods have been exported. The only requirement, as already discussed, is that the exporter has to produce documentary evidence which was in existence at the time when goods were exported.*

22. *The question as to whether the conversion of the shipping bills can be allowed at a later stage after exports has been considered in a plethora of judgments. In the decisions relied by the Learned Counsel for appellant, this issue has been held in*

favour of the assessee allowing the conversion of shipping bill and reiterating that Section 149 of Customs Act, 1962 does not prescribe any time limit.

23. *The jurisdictional High Court in the case of M/s. Hewlett Packard Enterprises v. Joint Commissioner of Customs - 2021 (375) E.L.T. 488 observed that the proviso in Section 149 permits amendment even after clearance for home consumption, if contemporaneous documents to establish the export are supplied by assessee. In the said case, the writ petitioner imported goods during the period 24-7-2019 to 26-7-2019 by filing 17 bills of entry. The invoices contained an error while mentioning the unit price of the imported products which came to be perpetrated in the Bill of Entry as well. On realizing the error they approached the Customs authorities seeking amendment under Section 149 of Act ibid. The amendment sought was rejected on the ground that the imported goods have already been cleared for home consumption. On 17-10-2019, the petitioner made a further request to which the officer vide communication dated 31-10-2019 referred to the judgment of Hon'ble Supreme Court in the case of ITC Ltd. v. CCE, Kolkata-IV - 2019 (368) E.L.T. 216 and informed that petitioner could file refund for the excess customs duty paid. Yet another request was made on 21-11-2019 and documents in the nature of (i) Price list, (ii) Purchase order inter se the petitioner and its supplier's reflecting the correct unit price (iii) original invoices showing the error (iv) purchase order (v) remittance report on 3-1-2020 order was submitted. However, the request was rejected once again. The Hon'ble Court held as under :-*

"11. Admittedly, in the present case, the goods have been cleared for home consumption and therefore the petitioner seeks the benefit of the proviso, as per which, the petitioner/assessee would be entitled for amendment if it were able to supply sufficient evidence by way of documents that were 'in existence' at the time of the goods were cleared, deposited or exported to establish the error.

12. The lis in this matter revolves around the interpretation of the phrase 'in existence', as according to the revenue the phrase should be read as available with the Department and it is only if the documents relied upon by the petitioner seeking amendment were, in fact, 'on record' that such amendment could even be considered.

13. I cannot agree. What is contemplated vide the proviso to Section 149 is an opportunity to be extended to an assessee to produce such documents that were 'in existence' at the stipulated time that would serve to establish the error, if any, in the B/E. The genuineness of such documents or a confirmation as to whether such documents were actually 'in existence' is certainly to be left open for thorough examination by the customs authorities and the Court would have no say in such a factual matter. Suffice it to say that the Department should take note of the documents that are presented by an assessee as being 'in existence' at the relevant time to evidence an error sought to be amended.

14. In the light of the discussion as aforesaid, the rejection of the request for amendment by the respondent is set aside to be re-done de novo. This writ petition is allowed."

24. *The Hon'ble jurisdictional High Court in the case of Global Calcium Pvt. Ltd. v. Commissioner of Customs, Chennai vide judgment dated 29-6-2017 in CMA No. 875 of 2017 observed as under :-*

1. After some arguments, Mr. Derrick Sam, seeks to withdraw the captioned appeal. Learned Counsel, however, says that he has only one apprehension, which is, that the Adjudicating Authority may subject the claim for duty drawback to the time limit of three months provided in the Circular No. 36/2010-Cus., dated 23-9-2010 (in short, "2010 Circular").

2. According to us, this apprehension is misplaced, as in paragraph 6 of the order, the Tribunal has, clearly, stated that "the time bar provision will not apply in this matter".

3. Needless to say, since, the Revenue has not come up by way of cross objection, they cannot raise any cavil about limitation of three months prescribed in the Circular.

4. We may also indicate that neither Rule 12(1)(a) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, nor Section 149 of the Customs Act, 1962, (in short, "the Act") prescribes, any time limit for processing the claim of duty drawback.

4.1 Furthermore, Mr. Chopda, has not been able to show any other provision in the Act or, the Rules framed thereunder, which provide for a time limit for processing the claim lodged for duty drawback.

5. As indicated above, the Tribunal has not accepted the stand of the Revenue that the Assessee's claim can be subject to time limit, as provided in the 2010 Circular.

6. Accordingly, the appeal is dismissed as withdrawn. Resultantly, pending application shall stand closed. There shall, however, be no order as to costs.

25. *In the above judgment, the Hon'ble High Court has referred to the Board Circular, Section 149 of Customs Act, 1962 and Section 12(1)(a) of Drawback Rules and opined that the apprehension of the Counsel for petitioner that the request for conversion would be subject to scrutiny on the ground of limitation is for no reason.*

26. *The Hon'ble High Court of Delhi in the case of Dimension Data India Pvt. Ltd. v. Commissioner of Customs - 2021 (376) E.L.T. 192 (Bom.) has examined the very same issue. In the said case, the Bills of Entry dated 15-3-2019 to 25-4-2019 were sought to be amended. During internal audit, the petitioner*

realized that it had made inadvertent typo error at the time of filing the Bill of Entry by incorrectly declaring the CTH as 8517 69 90 instead of correct CTH 8517 69 30. For the goods under CTH 8517 69 30, the rate of duty is NIL whereas in respect of goods under other heading, the rate of duty is 20%. The error resulted in payment of excess duty to the tune of Rs. 14,50,01,413/-. Immediately, on detecting the error, a letter dated 7-6-2019 was submitted requesting to correct the bill of entry. The request was declined. The Hon'ble High Court referred to various decisions including the decisions in Hewlett Packard Enterprises (supra) and Usha International Ltd. v. Assistant Commissioner - 2019 (365) E.L.T. 56 (Mad.). The relevant paras read as under :-

"17. The Learned Counsel for the petitioners submits that the mistake in adopting the correct classification for the purpose of assessment can be rectified under Section 149 read with Section 154 of the Customs Act, 1962. Section 149 of the Customs Act, 1962 a proper officer in his discretion may authorise any document to be presented. Section 149 of the Customs Act, 1962 reads as under :-

"Amendment to 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 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."

18. In WP Nos. 18891 to 18893 of 2017, this High Court by its decision dated 25-7-2017 has held that the only embargo under Section 149 of the Customs Act, 1962 is that a person seeking

relief cannot rely upon a documentary evidence, which came into existence after the goods were cleared, deposited or exported, as the case may be.

xx xx xx

26. With these observation, the above writ petitions are partly allowed with a direction to the 1st respondent or any other officer authorised under the Act :

(i) to pass a speaking order in respect of assessment made in the 23 and 9 bills of entries of the respective petitioner under Section 17 read with proviso to Sections 149 and 154 of the Customs Act, 1962 within a period of six month from the date of this order after giving adequate opportunity to the petitioners to establish the classification of imported wall fan under sub-heading 8414 51 90 following the principle [it] of natural justice.

(ii) Refund any will be subject to the petitioner satisfying the test of unjust enrichment."

27. *The Commissioner has denied the request for conversion of shipping bills by resorting to the Board Circular. The relevant paras 3 and 4 of the Board Circular No. 36/2010 has already been reproduced in para 8 above. By this Circular, a period of three months is prescribed to file the request for conversion/amendment. Section 149 does not prescribe any time limit for filing an application for amendment of document. No doubt that Section 149 of the Customs Act, 1962 would prevail over the Board circular. Further, Rule 12(1) of the Drawback Rules,1995 which lay down the procedure to claim drawback also allows filing of belated declaration to claim drawback if the Commissioner is satisfied that the failure to file the declaration was due to reasons beyond the control of exporter. The Rules also does not limit the time. We have to hold that the request for conversion of Free Shipping Bill cannot be denied as time-barred by resorting to the Board Circular.*

28. *Be that as it may, before concluding, we are not able to overlook a serious question presented by the peculiar facts of the case before us. In the absence of any period of limitation prescribed in the section, whether it would mean that the remedy/relief can be sought for at any time when the Importer/Exporter wake up to realize the mistake or omission. In our opinion, the remedy has to be sought for within a reasonable time. A legal claim cannot be enforced if there is a long delay in asserting the right or the claim.*

29. *The duty drawback or drawback is a fundamental principle of international trade law and policy under which the duties, taxes and fees paid on imported inputs which are used for manufacture of goods and then exported are refunded. This is allowed in the nature of export promotion scheme and the intention is to eliminate the recovery of such costs (duty, taxes and fees) on the export goods in the international market. Chapter X of The Customs Act, 1962 provides for the law relating to drawback. Sections 74 and 75 deals with two types of drawback. Section 74 of the Chapter speaks about drawback allowable on export of duty paid goods. Section 75 deals with drawback of imported materials used in the manufacture of goods which are exported which would be relevant for the case on hand. Sub-section (2) of this section lays down that Central Government may make rules for the purpose of carrying out the scheme of drawbacks. Section 75A speaks about interest. It states that when any drawback payable to a claimant under Section 74 or 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, the claimant will be eligible for interest at the rate fixed under Section 27A of the Customs Act, 1962.*

30. *The Drawback Rules, 1995, as amended from time to time governs the procedure for claiming of drawback. Being an export promotion incentive, the procedure for claiming is also simple and hassle-free. The exporter is required to file a drawback shipping bill in the format as required under Rule 13 along with*

necessary declaration. The goods are examined by officers and a report made thereof. Copy of the drawback shipping bills which contains details of examination report is the claim copy for the drawback. The claim is then settled and passed by the officers of the customs department.

31. *We are fully conscious that the issue in this appeal is not for claim of drawback but only request for amendment of shipping bills. In fact, as per sub-clause (a) of the first proviso to Section 129A(1) of the Customs Act, 1962, the Tribunal has no jurisdiction to entertain an appeal if the order relates to payment of drawback under Chapter X. The fleeting glance in the above paras on the nature and scheme of duty drawback is only to equip ourselves while considering the huge delay on the part of the appellant in filing application for conversion of the free shipping bill to drawback shipping bill. Needless to say, that the consequence of such conversion is nothing but to put forward a claim for duty drawback.*

32. *At the cost of repetition, it is stated that in the first application for amendment dated 9-10-2015 the period involved is from 2012 to 2014. In the second application dated 25-1-2016, the appellant has included the period from 2000 to 2011 also.*

33. *Though Section 149 of Customs Act, 1962 and Drawback Rules, 1995 do not specify any time limit, the huge and humongous delay does concern us. Under Section 75A there is liability to pay interest on delayed payment of drawback. Conversely, it has to be construed that a claim of drawback has to be filed within reasonable time. The Limitation Act, 1963 bars unduly long time for pursuit of a legal remedy. Neither do Courts encourage enforcing stale demands.*

34. *Section 27 of the Customs Act, 1962 deals with claim for refund of duty. The refund claim under this section has to be filed within one year from the date of payment of duty. Section 28 deals with recovery of duty which is not paid or short-paid.*

While raising a demand for recovery of such duty the period is limited to two years. Prior to 14-5-2016, this period was one year. In case of fraud, collusion or suppression of facts, the said period for which the duty can be demanded and recovered is extended to five years. When the time limit is specifically prescribed, the same would apply and one need not take recourse to the Limitation Act.

35. *In the absence of any period of limitation prescribed, it is generally understood that every authority has to exercise the powers within a reasonable period. Conversely, any right that has to be enforced is to be sought without unreasonable delay. If the right is not enforced within reasonable time the remedy would stand extinguished. No hard and fast rule can be laid down to determine what is reasonable time. It depends upon the facts and circumstances of each case.*

36. *In the case of Collector of Customs v. TVS Whirlpool - 1996 (86) E.L.T. 144 (Tri.) the question that came up for consideration was that what would be the limitation period for raising a demand of interest when there is no time limit prescribed for demand/recovery of interest under Sec. 47 read with Sec. 61(3) of the Customs Act, 1962 as it then stood during the relevant time. No period of limitation was prescribed in these provisions for recovery of interest. The facts are such that, though the assessee had paid duty with interest the department was of the view that assessee was liable to pay further amount as interest for which notice of demand was issued. The Tribunal followed the judgment of Hon'ble Apex Court in Govt. of India v. Citedal Fine Pharmaceuticals - 1989 (42) E.L.T. 515 (S.C.) which has been already captioned in the above decision.*

The relevant portion of the order is reproduced as under :-

"4. We have considered the submissions made by both sides. We observe that no period of limitation has been prescribed under Section 61(3). A reasonable period of limitation will have to be read under this section as held by the Hon'ble Supreme

Court in the case of Government of India v. Citedal Fine Pharmaceuticals - 1989 (42) E.L.T. 515 (S.C.). This Tribunal in number of cases where the demands were raised under Rule 57-I at a time when no period was prescribed for recovery of Modvat credit has held that the reasonable period of limitation would in that case would be six months or five years depending upon whether there was any suppression of facts involved or not. We observe that the scheme of the Customs Act is similar to the scheme of Central Excises and Salt Act and in that view of the matter we hold that similar view has to be taken in the case of recovery to be made under the Customs Act where no period of limitation has been prescribed. In this premise we therefore hold that the lower authority's order is prima facie maintainable in law and the prayer of the department for stay of the operations of the order of the Ld. Lower Authority has to be dismissed. Inasmuch as it is a covered matter by our decisions referred to supra the appeals themselves are also taken up for disposal with the consent of the both sides. The only plea of the Revenue is that in the absence of any period of limitation provided under Section 61(3), the general period, of limitation prescribed under the Limitation Act should be made applicable. We are unable to accept this plea of the Ld. D.R. in view of the judgment of the Hon'ble Supreme Court in the case of G.O.I. v. Citedal Fine Pharmaceuticals (supra). The Hon'ble Supreme Court in para 6 has held is reproduced below :

"Ld. Counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12, does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or

violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

5. This Tribunal in the context of the demands raised under Rule 57-I of the Central Excises and Salt Act, 1944 when no period of limitation was prescribed under the said rule has held that taking into consideration the scheme of the Central Excise Law and the limitation periods prescribed for various purposes under different sections and rules reasonable period limitation would be six months or five years depending upon whether there has been any suppression of facts etc. with the fraudulent intention or not. We observe as pointed out before us that the scheme of the Central Excises and Salt Act so far as the recovery of duty etc. is concerned is similar to that under the Customs Act, 1962. Here also we observe under Section 28 of Customs Act, 1962 period of limitation prescribed for recovery of duty is six months or five years as above and also the period for claim of refund is also six months. The position being similar we hold that the same logic should apply in respect of the recovery to be made under the Customs Act where no period of limitation has been prescribed. We therefore hold that the Ld. Lower Authority is right in holding that the demand for interest beyond the period of six months from clearance of goods is barred by limitation and we therefore uphold the order of the lower authority and dismiss the appeals. We observe that the relevant date for demand of duty would be date on which goods were allowed clearance from

the Warehouse as the interest is required to be paid till the date of clearance in terms of Rule 61(3) of the Customs Act, 1962. The department recovered at the time of clearance the duty as well as interest as held payable at that time and cancelled the bonds. Taking into consideration the relevant date the demand have been clearly raised much after the period of six months. The Appeals of the Revenue are therefore dismissed."

37. *The Tribunal refused to accept the plea of Revenue that the limitation period of three years for recovery of money as per Limitation Act, 1963 should apply. The said decision of the Tribunal was upheld by the Hon'ble Supreme Court as reported in 2000 (119) E.L.T. A177 (S.C.). The principle enunciated in these judgments is that when no limitation period is prescribed under the Act, the proceedings for recovery have to be initiated within a reasonable time.*

38. *Again, Section 128 of the Customs Act, 1962 provides for filing of appeals before Commissioner (Appeals). This section bars the Commissioner (Appeals) from condoning the delay beyond the period of 30 days. The question as to whether delay beyond six months can be condoned by resorting to Section 5 of the Limitation Act, 1963 was discussed by the Hon'ble High Court of Delhi in Delta Impex v. Commissioner of Customs - 2004 (173) E.L.T. 449 (Del.). The relevant portion is as under :-*

"12. The Customs Act, 1962 itself is a complete Code. Reading various chapters and various sections thereof, it is very clear that it is an Act independent of other provisions. It provides for search, seizure, arrest, confiscation of goods, conveyance, imposition of penalties, settlement of cases, appeals including the appeal to the Supreme Court and hearing before the Supreme Court, period of limitation, offences and prosecution. Thus, it is an independent Act.

13. The Court is required to examine the scheme of the special law, and the nature of the remedy provided therein. Considering these aspects, the Court will have to find out whether the

Legislature intended to provide a complete code by itself which alone should govern the matters provided by it. On examination of the relevant provisions, if it becomes clear that the provisions of Section 5 of the Limitation Act are necessarily excluded, then the said provisions cannot be called in aid to supplement the provisions of the Act. It is open to the Court to examine whether and to what extent the nature of the provisions contained in Limitation Act in comparison with the scheme of the special law are excluded from operation. When Section 128 of the Customs Act specifically provides the period of limitation and a further period of 30 days only during which the applicant was prevented by sufficient cause from presenting an appeal can be condoned, meaning thereby that the Legislature has given a mandate that delay could be condoned only for the specified period, prescribed in the proviso to Section 128 of the Act, and not further.

14. In the instant case, a separate period of limitation is provided, as also the period for which delay can be condoned. The Legislature was aware about the provisions contained in Section 5 of the Limitation Act, yet with an intention to curb the delay in taxation matters, it has specially provided that after the statutory period, if there is delay of 30 days, on showing sufficient grounds for delay of 30 days, can be condoned and no further. Thus, applicability of Section 5 of the Limitation Act is specifically excluded.

15. The expression "expressly excluded" in sub-section (2) of Section 29 of the Limitation Act means an exclusion by express words, i.e. by express reference and not exclusion as a result of logical process of reasoning. In the instant case, there is no question of implied exclusion but, it specifically provides a different period of limitation, as also the period during which, if delay has occurred, it could be condoned."

39. *The Hon'ble High Court held that when the Act provides for different period of limitation, the applicability of Section 5 of the Limitation Act is specifically excluded.*

40. *Reverting to the case on hand, although no limitation has been prescribed in Section 149, an assessee cannot be permitted to take undue advantage. The remedy of amendment under Section 149 should be sought within a reasonable time. We have already expressed our view that there is inordinate delay in filing the application for amendment under Section 149 of the Customs Act, 1962. We then have to consider what would be the reasonable period for entertaining an application under Section 149 of the Customs.*

41. *The Customs Act, 1962 being a special law and a complete code in itself it would not be proper to pull in the limitation period under the Limitation Act, 1963 and make it applicable to Section 149. More so, because Section 149 does not deal with any recovery of duty or refund of duty. It is a section merely to permit amendment in documents. Amendment is purely a procedural requirement. The legislature in its wisdom has not prescribed either in the Act or Rules a time limit to fulfil this procedural requirement. The consequence of such amendment as already stated, is to claim refund of duty suffered on inputs in the nature of drawback. The Limitation Act limits the period for filing a suit for recovery of money to three years. As per Article 137 of the Schedule to The Limitation Act, 1963 any application for which no period of limitation is provided elsewhere is three years from the time when the right to apply accrues. We are unable to refrain ourselves from being not persuaded by these provisions in the Limitation Act to hold that a period of three years would be a reasonable time for filing an application under Section 149.*

42. *The application dated 9-10-2015 contains request for amendment of Shipping Bills for the years 2012 to 2014. It gives details of shipping bills for three years (Jan., 2012 to Dec., 2014). The second application dated 25-1-2016 made by the appellant is only an afterthought by which appellant has included Shipping Bills from the year 2000 to 2011. We hold that there is unreasonable delay in filing the request for amendment of*

Shipping Bills from the year 2000 to 2011 and the order of rejection in respect of these Shipping Bills is just and proper."

4.5 It is a settled law that export benefits should not have been denied by finding technical/procedural irregularities, as drawback and other promotional schemes do try to reduce the tax burden so that the exports become internationally competitive. If the approach of the Commissioner was to be followed, exporters would have suffered for an entire one year on this ground. In the impugned order a finding has been recorded to the effect that appellant - exporter have not explained the reason which were beyond his control for not making the declarations as required under Customs Drawback Rules, 2017. Was the change in the scheme of the taxation of the goods with effect from 01.07.2017, the prevailing confusion thereafter, in implementation of the new schemes not enough as reason, to allow such conversion. Nhava Sheva Customs issued public notice clarifying as follows:

*"**PUBLIC NOTICE NO. 88/2017***

Dated : 05.07.2017

***Sub: Procedure for amendment/conversion of free shipping bills to Export Promotion shipping bills and amendment/conversion of shipping bills from one scheme to another scheme- Reg**.*

Attention of all the importers, exporters, Customs Brokers, and other stakeholders is invited to the Notification No. 35/2017-Customs (N.T.), dated 11.04.2017 and Board Circular No. 36/2010-Customs, dated 23.09.2010 alongwith the Public Notice Nos. 88/2009, dated 20.11.2009 and 105/2010, dated 20.10.2010 on the subject 'Procedure for post shipment amendment/conversion of free shipping bills to export promotion shipping bills and amendment/conversion of shipping bills from one scheme to another scheme'.

2. In continuation to the Public Notice Nos. 88/2009, dated 20.11.2009 and 105/2010, dated 20.10.2010, it has been

decided that all requests for amendments in the shipping bills are divided into two categories:-

A. Amendment/conversion in the shipping bill before allowing Let Export Order (LEO).

B. Amendment/conversion in the shipping bill after allowing Let Export Order (LEO), i.e., Post Shipment Amendment.

…..

Post Shipment Amendments

2.B. Any request for post shipment amendments in the shipping bills shall be processed at Centralized Export Assessment Cell (CEAC) in the following manner:-

i. The Customs Broker/ exporter is required to submit his request/application for post-shipment amendment along with all supporting (self-certified) documents to the TA / STA posted in the CEAC, situated at the Speedy CFS. According to proviso to Section 149 of Customs Act "no amendment of a shipping bill shall be so authorised to be amended after the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were exported. Therefore, Customs Broker/ exporter should keep in mind the aforesaid mandatory requirement, while submitting aforesaid application.

ii. The TA / STA shall give a separate file number to each case and he shall put up the file to the Assistant/Deputy Commissioner of Customs of the respective Group of the Centralised Export Assessment Cell (CEAC). The Group AC/DC shall mark the file to the concerned AO/Supdt.(P), posted in CEAC, for scrutiny of documents. The concerned AO/Supdt.(P) shall examine the documents and in case any deficiency/discrepancy is observed, he shall issue a deficiency memo to the Exporter/Customs Broker within 7 working days, providing the full details of deficiencies/discrepancies, which have been observed during scrutiny of documents.

iii. The AO/Supdt.(P) concerned shall scrutinize the correctness of the amendment, sought by the exporter, in the light of the SO 34/2008 dated 01.08.2008, Board Circular No.

36/2010-Customs dated 23.09.2010 and other instructions / circulars, if any. In case of suspicion about genuineness of any documents, the AO/Supdt.(P) may call for the records from MCD for verification of the particulars which are sought to be amended. He shall put up the file to the Assistant/Deputy Commissioner of Customs (Admin), CEAC, along with comments whether the conditions of section 149 of Customs Act,1962 are fulfilled or not.

iv. If conditions of section 149 of Customs Act, 1962 are fulfilled, the request may be allowed by the Assistant/Deputy Commissioner of Customs (Group), CEAC.

3. The post-shipment amendments shall ordinarily be examined and disposed of within a period of 30 days from the date of receipt of the request from the CB / exporter. In case of delay beyond the stipulated period, the CB/ exporter may approach the JC / ADC concerned to resolve the matter."

4.6 Further vide Public Notice No 153/2017 dated 04.12.2017 of Nhava Sheva Customs following was clarified:

Date: 04.12.2017

PUBLIC NOTICE NO.153 /2017

SUB : Drawing of samples for the purpose of grant of drawback (Circular 47/2017- Customs dated 27.11.2017 – reg.

Attention of the Exporters, Custom Brokers and all concerned is invited to the Board Circular No. 47/2017-Customs dated 27.11.2017, 34/95-Cus dated 6.4.1995, 57/97- Customs dated 31.10.1997 and 25/2005-Customs and PUBLIC NOTICE No. 22/ 2009 issued vide File No.S/ 22-Gen -116 / 2008 AM Date:21.04.2009 prescribing monetary limits with respect to drawing of samples for the purpose of grant of drawback and giving exemptions from sampling requirements in certain situations .

2. In this regard, in order to further facilitate trade and enhance the ease of doing business, Board has decided to rescind the Circular Nos. 34/95-Cus dated 6.4.1995, 57/97- Customs dated 31.10.1997 and 25/2005-Customs. The export shipments shall

continue to be subjected to appropriate treatment in terms of risk criteria provided in Risk Management System (RMS). Wherever export consignments are selected for assessment or examination, the officer of Customs not below the rank of Assistant or Deputy Commissioner of Customs would determine the need to draw sample on merits of each case. Since drawback payment is subject to finalisation of case after receipt of test report of samples, monitoring on regular basis at senior level should be undertaken so that samples are drawn only where necessary and the cases are closed in a timely manner and not later than thirty days from date of let export. Customs may draw samples in case of any specific intelligence or doubt of misuse, fraud, etc."

4.7 From the above standing orders and public notices it is quite evident that post implementation of GST, the Government has set up the mechanism of Post Shipment of Amendment of the Free Shipping bills to drawback shipping bills. Even the examination norms of the shipping bills have been relaxed to facilitate the ease of doing business. In the present case it appears all the facilitation measures and judicial precedents have been ignored to even examine the issue in the right perspective. In the first round of litigation the conversion was denied on the ground of limitation, and when the matter was remanded back for consideration of the issue in right perspective, the conversion has been denied by quoting non applicable legal provisions contrary to the settled law on the subject.

4.8 In the case of Kedia (Agencies) Pvt. Ltd. V/s Commissioner of Customs reported in 2017 (348) E.L.T. 634 (Del.) wherein Hon'ble Delhi High Court has held as follows:-

> ***"5.*** *The appellant contends that it had been consistently exporting the goods concerned for over three years on free shipping basis and on account of inadvertence the declaration was not made. It is contended that having regard to the circumstances, the omission to file a declaration was a curable defect. Counsel relied upon the previous conduct and the pattern of exports to say that the goods are covered by the relevant entries in the schedule*

and that in the past the requirement of filing declaration did not exist. In these peculiar circumstances, since the goods stood exported, it would be possible to avail the benefit.

6. *Counsel for the Revenue submitted that the matter is concluded in favour of the Customs authorities in a Division Bench ruling in Terra Fills Pvt. Ltd. v. Commissioner of Customs, 2011 (268) E.L.T. 443 (Del.), which concerns export benefits to a manufacturer. The question in this case was whether an amendment could be made in the shipping bills about the scheme from "DEPB/DEEC" to "DEPB/DEEC cum-duty drawback". The Court held as follows :-*

> *"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/DEEC 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."

7. *In the present case, the appellant had been consistently dealing with the same goods and exporting them previously for over three years. The pre-condition of a declaration along with the relative forms, for grant of benefit was introduced on 1-4-2008 through an amendment to the Handbook of Procedures. It is now settled law that the provisions of the Foreign Trade (Development & Regulation) Act, 1992, the rules or regulations framed thereunder and the export import policy have the force of law. Handbook of Procedures and the amendments carried out thereto are per se not declaration of law but only impose conditions which are to be fulfilled and otherwise conform to the requirements of law. Without making a deeper analysis of these legal provisions, the facts of this case reveal that the export goods are essentially agricultural produce and continued to be covered as an item eligible for benefit. At the time, just prior to 1-4-2008, the goods had been exported as free shipping bills. The exporter/appellant's fault here is that it did not file the requisite declaration. In all other respects, i.e., as to whether they conform to the description in the shipping documents and the value, etc., continues to be ascertainable because the concerned bills, invoices and other shipping documents are available with the customs authorities.*

8. *Having regard to these, we are of the opinion that in the peculiar circumstances of the case, the omission to file the declaration of the kind we are concerned with, when all other relative materials are present was not vital to the appellant's case. The material which did and does exist is substantial; the appellant should, therefore, be permitted to amend its shipping bill. The respondents are directed to give effect to this order within the next two months. The appeal is consequently allowed."*

4.9 Taking note of the decision in case of Autotech referred earlier and decisions of Hon'ble Kearala High Court and Hon'ble Madras High Court, in the case of Visoka Engineering (P.) Ltd [2022) 1 Centax 205 (Tri.-Mad)] Chennai bench has held as follows:

*"**17.** The Hon ble High Court of Kerala in the case of Parayil Food Products (P.) Ltd. v. Union of India 2021 (375) E.L.T. 486 - Kerala High Court, considered a similar issue and held 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 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.

18. *The Hon ble High Court of Madras in the case of Commissioner of Customs v. Diamond Engg. (Chennai) (P.) Ltd. [Civil Misc. Appeal No. 3638 of 2013, dated 4-4-2019] Madras High Court considered the issue of time limit of three months stipulated in the Board Circular and held that the same is not applicable.*

19. *The second ground for rejection for conversion of free shipping bills is that the goods exported have not been physically examined. The learned counsel has referred to the last page of the shipping bill wherein the seal of the Preventive Officer is endorsed. It thus becomes evident that the goods have been stuffed under the supervision of the Preventive Officer who has verified the invoice, packing list etc. before stuffing the goods into the container. Moreover, there is no requirement under section 149 of the Customs Act, 1962 that the conversion can be allowed only if the goods have been subjected to physical examination. Therefore, the rejection of the request for conversion on the ground that physical examination was not conducted before export is without any legal basis.*

20. *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 shipping bills are not justified. The impugned order is set aside. The appeal is allowed with consequential relief, if any."

4.10 Taking note of the above, we do not find merits in the order. This is a fit case in which conversion under Section 149 should have been permitted.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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