ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 21.07.2025

CESTAT Mumbai Allows Conversion of 1767 Shipping Bills Beyond 3-Year Limit

Background

ADF Foods Ltd., a leading exporter of pickles, namkeens, and chutneys, approached the Commissioner of Customs (NS-II), Nhava Sheva seeking conversion of 2463 shipping bills from the Drawback Scheme to the Duty-Free Import Authorization (DFIA) Scheme under Section 149 of the Customs Act, 1962.
While the Commissioner allowed conversion for 696 shipping bills, conversion for the remaining 1767 shipping bills was rejected on the ground of being beyond 3 years from the date of export—by invoking *Article 137 of the Limitation Act*.

Key Issues

1. Whether a time limit of 3 years can be imposed on conversion under Section 149 of the Customs Act?
2. Whether conversion is impermissible if benefit of the original export scheme (Drawback) has already been availed?
3. Whether procedural barriers in circulars can override statutory provisions?

Appellant's Arguments

- **No Limitation in Law**: Section 149 of the Customs Act does not prescribe any time limit for conversion of shipping bills.
- **Judicial Precedents**: Relied on:
  - *Lykis Ltd. v. CC Mundra* (affirmed by Gujarat HC)
  - *M.P. Steel Corporation* (SC): Limitation Act not applicable to quasi-judicial proceedings.

- **Drawback vs. DFIA**: Drawback is a statutory benefit under the Customs Act, not an Export Promotion Scheme (EPS); hence, Clause 3(e) of CBEC Circular No. 36/2010 is inapplicable.
- **Procedural laws are retrospective**: Cited *M.P. Steel* and *Bectors Foods* cases.

Respondent's Arguments

- **Reasonable Time Doctrine**: Even in absence of a limitation period, Article 137 (3-year rule) applies as "reasonable time".
- **Prohibition under Circular**: Para 3(e) of Circular No. 36/2010 prohibits conversion if benefits under any export scheme have already been availed.
- **Incomplete Examination of Shipping Bills**: Conversion not permissible if no physical examination was done at the time of export.

Tribunal's Observations

1. **No Legal Basis for 3-Year Limit**:
    - Citing *M.P. Steel Corporation*, the Bench held that Limitation Act applies only to courts, not to tribunals or quasi-judicial authorities.
    - Section 149 provides no such time restriction, so no artificial limitation can be read into the provision.
2. **Circular Cannot Override the Act**:
    - Clause 3(e) of Circular No. 36/2010, barring conversion after availing scheme benefits, is not applicable, especially when such conversion is from Drawback to DFIA (the latter being part of DGFT Export Promotion Policy).
    - Circular conditions cannot prevail over statutory rights under Section 149.
3. **Drawback ≠ Export Promotion Scheme**:
    - Drawback is a statutory entitlement under the Customs Act, not a discretionary export incentive under FTP.
    - Therefore, conversion to DFIA is permissible even after drawback is availed—provided it is reversed with interest.
4. **Examination Not Mandatory in RMS Era**:
    - The Tribunal noted that the Commissioner himself had relied on ICES data and RMS mechanisms to allow conversion for other bills.
    - Hence, rejection on grounds of physical examination absence was unwarranted.

Final Order

- The Tribunal set aside the Commissioner's order rejecting conversion of 1767 shipping bills.
- Held that all 2463 shipping bills are eligible for conversion from Drawback to DFIA scheme.
- Directed that:
    - Conversion is subject to reversal of duty drawback with interest.
    - Amendments and DFIA validation certificates be issued by the customs authorities within 3 months of reversal.

Legal Takeaways

- Limitation Act not applicable to Section 149 Customs Act proceedings.
- Circulars cannot override statute where the law is silent on limitation.
- Drawback to DFIA conversion is legally valid, even post benefit, if drawback is reversed.
- Procedural benefits are retrospective, not prospective, unless expressly stated.

Conclusion

The ruling is a landmark win for exporters and sets a strong precedent that conversion of export schemes cannot be denied on technical grounds of limitation where the law is silent. It upholds the principle that statutory benefits must be interpreted liberally in favour of the assessee, ensuring that procedural rigidity does not defeat legitimate entitlements.

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 Mumbai

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Customs Appeal No. 86244 of 2025

(Arising out of Order-in-Original No. 30/2025-26/Commissioner/CEAC/NS-II/CAC/JNCH dated 11.04.2025 passed by the Commissioner of Customs, NS-II, JNCH, Nhava Sheva.)

M/s. ADF Foods Ltd. .....Appellant
86/86, GIDC Industries Estate,
Nadiad, Kheda, Gujarat - 387 001

VERSUS

Commissioner of Customs, Nhava Sheva-II .....Respondent
JNPT, Customs House, Nhava Sheva,
Raigad, Maharashtra – 400 707

APPERANCE:

Shri Prakash Shah, Sr. Advocate with
Shri Mihir Mehta, Advocate for the Appellant

Shri D.S. Maan, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 86108/2025

Date of Hearing: 03.07.2025
Date of Decision: 17.07.2025

PER: DR. SUVENDU KUMAR PATI

Partial rejection of conversion request made under Section 149 of the Customs Act, 1962 of 2463 shipping bills through which Appellant had exported goods namely Namkeens, Mixtures/Mixed Pickles, Vegetable Pickles etc. between the period 01.10.2014, and 31.12.2020 solely on the ground of limitation as 1767 numbers of shipping bills were pertaining to the period beyond three years of export, is assailed in this appeal.

2. Facts of the case, in a nut shell, is that Appellant M/s. ADF Foods Ltd. is a company having registered office at Nadiad, Gujarat. It is engaged in the export of vegetable pickles/chutneys as well as various types of Namkeens/Mixtures etc. It is provided with IEC No. 0391167677 by the Director General of Foreign Trade for the above referred period concerning its export through Mumbai jurisdiction. Appellant had also received drawback under the Drawback Scheme at the rate applicable under AIR. *Vide* its letter dated 26.07.2022, Appellant had sought for conversion of 2463 shipping bills from Drawback Scheme (DBK) to Duty Free Import Authorisation Scheme (DFIA). After personal hearing was granted to the Appellant on 13.03.2025 wherein Appellant had made it's submission in favour of such conversion with reference to judgments of various High Courts and this Tribunal, *inter-alia* expressing that no time limit has been prescribed for such conversion of shipping bill from one scheme to another, Appellant was allowed by the Commissioner to convert only 696 in total, in respect of two sets of bills submitted through Annexure-1 and Annexure-2 on the ground that those were filed 3 years of shipment and no conversion was allowed in respect of rest 1767 shipping bills. Appellant is before us assailing legality of the order of rejection concerning conversion of shipping bills.

3. During course of hearing of appeal learned Counsel for the Appellant Mr. Prakash Shah submitted that though learned Commissioner had discarded the limitation period of 3 months prescribed in Circular No. 36/2010-Cus. dated 23.09.2011 on the basis of precedent decisions of this Tribunal mainly passed in the case of *Lykis Ltd. Vs. Commissioner of Customs, Mundra* on 04.02.2020 that

has been affirmed by the Hon'ble Gujarat High Court and in the case of the *Principal Commissioner of Customs, Mundra Vs. Lykis Ltd.* as reported in *2021 (377) ELT 646 (Guj.)* in respect of M/s. Colossustex Pvt. Ltd. and Anr. Vs. Union of India and Ors., it had imposed a restriction of 3 years' period to convert such shipping bills by referring to this Tribunal decision passed at Chennai Bench in the case of *Autotech Industries (India) Pvt. Ltd. Vs. Commissioner of Customs, Chennai-IV,* reported in *2022 (380) ELT 364 (Tri.-Chennai)* wherein Article 137 of the Schedule-2 of the limitation Act, 1963 was applied so as to restrict the limitation period to 3 years despite the fact that it has become a settled principle of law developed through several judicial decisions, which are referred in the case of *M.P. Steel Corporation Vs. Commissioner of Central Excise, reported in 2017 (50) STR 205 (S.C.),* that neither Section 29(2) dealing with application of Limitation Act to other statute not having expressed provision dealing with limitation to file Suit, Appeal or Application nor Article 137 appended to the schedule of the Limitation Act prescribing a period of 3 years as period of limitation for any other Application, would be applicable to quasi-judicial proceedings for which learned Commissioner having exercised Quasi-Judicial Authority can't pass an order imposing a period of limitation which is not expressly provided under Section 149 of the Customs Act. In citing other decisions including the one passed in the case of *Commissioner of Customs & Central Excise Vs. Hongo India (P) Ltd. [2009 (236) ELT 417 (S.C.)], Commissioner of Customs, Central Excise, Noida Vs. Punjab Fibres Ltd., Noida [(2008) 3 SCC 73], Messrs Mahalaxmi Rubtech Ltd. Vs. Union of India reported in 2021 (3) TMI 240 – Gujarat High Court* and

Principal Commissioner of Customs, Mumbai Vs. Lykis Limited, which order is stated by the Departmental Authorities in their letter dated 04.10.2021 to have been accepted by the Respondent-Department, conversion of shipping bills even for 4 years and beyond were held to be valid conversion since Section 149 of the Customs Act, 1962 has prescribed no time limit for such conversion, for which he pleaded for setting aside the order of rejection passed by the Commissioner in respect of shipping bills beyond 3 years of age.

4. Per contra, learned Authorised Representative Mr. D.S. Maan with reference to *Auto Tech Industries (India) Pvt. Ltd. Vs. Commissioner of Customs, Chennai-IV,* as reported in *2022 (380) ELT 364 (Tri.-Chennai)* read with judgment of Hon'ble Supreme Court passed in the case of *GOI Vs. M/s. Citedal Fine Pharmaceuticals, reported in (1989) (42) ELT 515 (SC)* submitted that it has been clearly held by the Hon'ble Supreme Court that in the absence of any period of limitation, a reasonable period is to be taken by every Authority, which would depend on the facts of every case and this Tribunal *vide* above referred decision of *Auto Tech Industries (India) Pvt. Ltd.* had given a findings that provisions in the Limitation Act as contained in Article 137 of its Schedule would be considered as reasonable time for filing an application under Section 149 of the Customs Act, for which order passed by the Commissioner need not be interfered with. Further, with reference to another decision of this Tribunal passed in the case of *Yaap India Automotive Systems Pvt. Ltd. Vs. CCE and S.T., Pune-I reported in 2019 (365) ELT 109 (Tri.-Mumbai),* he argued that principle of Limitation Act can be applied to advance cause of justice. Concerning application of para 3 sub-para

E of the Circular No. 36/2010-Cus. dated 23.09.2010 issued by the CBEC concerning restriction on conversion of shipping bill after availment of benefit of export promotion scheme under which goods were exported, learned Authorised Representative placed his reliance on the decision of this Tribunal in the case of *Stallion Laboratories Pvt. Ltd. Vs. Commissioner of Customs, Ahmedabad, reported in 2024 (388) ELT 721 (Tri. – Ahmd.)* and argued that para 3(e) having survived High Court's scrutiny, conversion to any others scheme could not be allowed once benefit under which shipping bill was filed had been availed. He concluded his argument in saying that nil examination of shipping bills were conducted in respect of many shipping bills for which amendment is impermissible in law in respect of those shipping bills.

5. We have gone through the appeal paper book, relied upon decisions and written submissions made by adversaries. At the outset, it is to be placed on record that M.P. Steel Corporation judgment of the Hon'ble Supreme Court passed in the year 2015 is the authoritative pronouncement of application of the Limitation Act to the proceedings dealt before a Tribunal or a Quasi-Judicial Authority, which has encompassed divergent decisions on the issue and has laid down the law on this issue. With reference to the judgement passed by Hon'ble Supreme Court in the case of *Commissioner of Sales Tax, UP, Lucknow Vs. Parson Tools and Plants, Kanpur, [(1975) 4 SCC 22]* that has been further reiterated in *Consolidate Engg. Enterprises Vs. Principal Secy. Irrigation Deptt.* reported in *(2008) 7 SCC 169,* it has been held that Limitation Act prescribes the period of limitation only to proceedings in Courts and not to any proceedings before a Tribunal or Quasi-

Judicial Authority and consequently Section 3 as well as Section 29(2) of the Limitation Act will not be applied to proceedings before the Tribunal to appeals or applications before it, unless expressly provided (para 44 concurring judgment of Hon'ble Justice Raveendran). It was further held in the said judgment, with reference to para 22 of the decision in *Kerala State Electricity Board Vs. T.P. Kunhaliumma, [(1976) 4 SCC 634]* delivered by a Three Judges Bench that Article 137 of Limitation Act, 1963 will apply to any petition or application filed under any Act in a Civil Court and therefore, in M.P. Steel decision it was ultimately concluded in para 28 that Suits, Appeals or Applications as are referred to in the Schedule are only related to Courts and not to Quasi-Judicial bodies or Tribunal and therefore, only when a Suit, Appeal or Application of the description in the Schedule is filed in a Court under a Special Local Law, Section 29(2) gets attracted.

5.1 From the above discussion it can be concluded without any doubt that Section 29(2) that deals with saving clause or Article 137 prescribing 3 years limitation for filing an application are not applicable to the proceedings initiated before a Quasi-Judicial Authority or Tribunal, for which a specific time limit can’t be imputed to conversion of a shipping bill as Section 149 itself has not provided any such time limit and also categorically incorporated in its body that such conversion can be done on the basis of documentary proof (since after export no other material object would be available for such inspection). Therefore, when conversion from one scheme to another scheme would be beneficial to the exporter and there is no time limit available to carry out such conversion it would not be prudent and

proper to fix a stipulation of 3 years of period from the date of export to enable the Appellant to convert shipping bills from one scheme to another scheme, on which score alone the rejection order passed by the Commissioner is unsustainable in law.

6. Now coming to the other points raised by the leaned Authorised Representative for the Respondent-Department namely restriction imposed under Clause 3(e) of the Circular No. 36/2010 in not permitting such conversion if Exporter had availed benefit of any Export Promotion Scheme (EP Scheme), it can be said that neither the said issue was raised before the Commissioner nor being aggrieved with his order of allowing conversion for 3 years after receipt of drawbacks, Department had preferred any appeal assailing the order favouring conversion for 3 years. More importantly, when such a stipulation for conversion is not available in Section 149 of the Customs Act, imputation of such a condition through a circular would naturally meet the consequence as it happened in respect of Clause 3(a) imposing 3 months condition for such conversion that has been struck down by several High Courts including Hon'ble High Court of Gujarat in *M/s. Lykis Ltd.* judgment *cited supra*. More importantly not only learned Commissioner had allowed such conversion for 3 years from drawback scheme to DFIA scheme with condition for reversal of drawback receipt alongwith applicable interest but also through several judicial pronunciation including in the case of *Commissioner, Customs ICD, GRFL Vs. M/s. Bectors Food Specialities Ltd.* (date of judgment 15.02.2022) Hon'ble Panjab & Haryana High Court had given a clear finding that such conversion of shipping bills from drawback scheme to DFIA scheme is valid subject to reversal of benefit taken

under duty drawback scheme is made by the exporter alongwith interest.

6.1 At this juncture, we would also like to place on record that drawback scheme has been introduced in Customs Act and in existence for centuries after being introduced in USA post independence, as being a contractual obligation to be carried by the State in favour of its subjects, while other benefits of Export Promotion (EP) Schemes launched by the Government of India and implemented through the Director General of Foreign Trade of the Ministry of Commerce, which are being implemented under Customs and other notifications and therefore, para 3(e) of the Circular No. 36/2010-Cus. that prohibits, though arbitrarily, conversion from one shipping bill to another, after availing benefit of the Export Promotion Scheme would not be applicable to Appellant's case since it is a conversion from drawback scheme to EP Scheme namely DFIA. EP Schemes are specifically enumerated in para 4 of Circular No. 36/2010-Cus. as Advance Authorisation, DFI, DEPB, reward schemes etc. and in the same paragraph duty drawback is specifically held to be applicable to free shipping bills and not to any EP Schemes. Therefore, we are of the view that though drawback is a benefit given to the exporter, it is not covered directly under Export Promotion Scheme of the DGFT, Ministry of Commerce. To say it otherwise, EP Scheme is a policy provided by the Government whereas Drawback is provided by the Customs Act itself.

7. Now coming to the examination of shipping bills which is argued by learned Authorised Representative that all bills not be examined, it

is to be noted that thorough specific observations at para 10.1 (page 59 of the Order-in-Original), sub-para E at page 61 of the Order-in-Original, learned Commissioner had categorically referred that shipping bills were duly examined from the ICES system and even he had gone to the extant of departing from para 3 of Circular No. 36/2010-Cus. in saying (at para 9 of his order) that rigorous examination of shipping bills at the point of conversion from more rigorous to less rigorous examination has lost its vigour in the RMS (Risk Management System) *era*.

8. Another point that was raised by learned Authorised Representative, though not agitated before the lower Authority, is that such conversion was sought by Appellant in FTP (Foreign Trade Policy) 2015-20 for which conversion for the prior period of 01.04.2015 should not be allowed since it has got prospective application but we don't agree with his view for the reason that in the said order of Hon'ble Panjab & Haryana High Court *vide* judgement dated 15.02.2023, *cited supra* conversion of shipping bill for the period from 13.11.2013 to 20.11.2015 was held to be proper and also in the judgement of *M.P. Steel Corporation, cited supra* it has been categorically held that Procedural Rules are retrospective in nature (para 45). We do not find any specific reference of prospective application of FTP 2015-20, the relevant Chapter of 4 which is annexed to the compilation filed by the learned Counsel for the Appellant in Volume-2.

9. Though we have discussed other aspect agitated in the appeal which are not required for the reason that the sole ground of rejection of conversion beyond the period of 3 years by the Commissioner was

related to the application of Article 137 of the Limitation Act, which is held by the Hon'ble Apex Court as not applicable, there remains nothing more to deal with the appeal except in declaring our views that shipping bills from Sr. No. 1 to Sr. No. 902 of Annexure-1 and Sr. No. 1 to Sr. No. 865 of Annexure-2 covering period from 12.08.2013 to the end of 2020 can be validly converted from drawback to DFIA scheme and in exercise of our Appellate jurisdiction, we do so. Hence the order.

THE ORDER

10. The appeal is allowed and the order of rejection for conversion of 1767 bills from drawback scheme to DFIA scheme is hereby set aside by holding that the request for conversion of those 1767 bills are also valid and hence converted from drawback to DFIA scheme, subject to reversal of duty drawback alongwith applicable interest to be done by the Appellant within 3 months of receipt of this order. Amendment/Certificate be issued by the jurisdictional Commissioner, JNCH, Nhava Sheva for DFIA licence validation upon compliance of reversal with interest to enable the Appellant to get the benefits of converted DFIA Scheme.

(Order pronounced in the open court on 17.07.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad