



CMA(MD)No.280 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 07.04.2026
Pronounced on 10.04.2026

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

AND

THE HONOURABLE Mr. JUSTICE K.K.RAMAKRISHNAN

**CMA. (MD)Nos.280 and 281 of 2024
and CMP(MD) Nos.3675 to 3677 of 2024**

The Commissioner of Customs (Export)
Customs House
New Harbour Estate
Tuticorin 628 004

.. Appellant/Respondent
in both appeals

Vs.

M/s.Regin Exports
18-9, 18-45B, Alavilai
Karukkankuzhi
Thickanamkode Post
Kanyakumari 629 804

..Respondent/Petitioner
in both appeals

Appeals filed under Section 130 of the Customs Act, 1962 against the final orders No.FO/C/A40596 and A40597 of 2023 dated 21.7.2023 passed by the CESTAT, Chennai

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For Appellant : Mr.N.Dilipkumar
Senior standing counsel
For Respondent : Mr.Isaac Mohanlal
Senior Counsel for M/s.Isaac Chambers

COMMON JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH, J.)

These appeals have been filed by the Commissioner of Customs against the order passed by the CESTAT, Chennai in No.FO/C/A40596 and A40597 of 2023 dated 21.07.2023 setting aside the order passed by the Commissioner of Customs and Central Excise (Appeals) dated 20.03.2020 permitting the amendment of shipping bills to indicate as Duty Free Import Authorisation (DFIA) Scheme as against free shipping bill.

2. The respondent had made two sets of applications for DFIA license before the Joint Director General for import of 1000 MT and 5 MT of raw cashew nuts. The shipping bills were filed through the Customs Broker and while filing shipping bills, the respondent had selected the code “00”, which



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pertains to free shipping instead of “26”, which is the code for DFIA scheme. After the completion of the export, the respondent submitted a letter dated 26.12.2018 requesting to amend the shipping bills and to modify the option as DFIA scheme against free shipping bill.

3. The request made by the respondent was rejected by the Assistant Commissioner through his letter dated 31.12.2018. Aggrieved by the same, appeals were filed before the appellate authority and the same came to be rejected vide order dated 20.03.2020. Aggrieved by the same, the respondent filed two appeals before the CESTAT and the CESTAT through the impugned proceedings dated 21.07.2023, was pleased to allow the appeals. Aggrieved by the same, the department has preferred the present appeals.

4. When these appeals were entertained, the following substantial questions of law were framed by this Court on 25.03.2024:



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“i)Whether the Hon'ble Tribunal is correct in now considering the circular No.36/2010 with regard to the time limit and examination norms for which conversion of scheme is sought for?

(ii) Whether the Hon'ble Tribunal is correct in placing reliance on the judgment in the case of M/s.N.C.John & Sons Pvt.Ltd., which deals with claim for MEIS reward and not conversion of export promotion scheme for which examination norms are applicable? (iii) When the consideration of the export is claimed under a beneficial scheme like DFIA can it be claimed as a matter of right to seek conversion, when it is only a concession and will it not vitiate the order of the Tribunal.

(iv) When the Assistant Commissioner is bound by the circulars issued by the Central Board of Indirect Taxes and Customs, can his order of rejection to consider the request for conversion of the shipping bill which was filed as free export to one under the DFIA scheme beyond the time limit prescribed under the board circular, be held as incorrect, particularly, when the same has also been upheld by the appellate authority?

(v) Whether the Tribunal is correct in entertaining an



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WEB COPY application filed at any point in time for conversion to the beneficial DFIA scheme stating that there is no such time limit prescribed in the act.

(vi) Whether the Tribunal is correct in placing reliance on the judgment in the case of Autotech Industries (India) Pvt., ltd., reported in 2022(380) E.L.T., 364 (Tri.Chennai) which deals with conversion of Free Shipping Bill to Drawback Shipping Bill especially when Drawback is not an instrumental scheme like DFIA, DDFRC, DEEC etc?"

5. Heard the learned Senior Standing Counsel appearing for the appellant Department and the learned Senior Counsel for the respondent.

6. The learned senior standing counsel submitted that conversion of shipping bills from one scheme to another is governed by the circular issued by the Government of India dated 23.09.2010. It was submitted that the request for conversion has to be made within a period of three months from the date of let export order, failing which, such request cannot be entertained. That apart, no free shipping bills will be permitted to be converted into EP scheme shipping bills like DFIA. Therefore, the request

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made by the respondent was rejected by the Assistant Commissioner and confirmed by the appellate authority on the basis of this circular. It was contended that the CESTAT had completely disregarded the circular and has allowed the bills filed by the respondent and the same requires the interference of this Court.

7. The learned senior standing counsel to substantiate his submission relied upon the judgment in *Terra Films Pvt., Ltd., v. Commissioner of Customs* reported in *2011 (268) ELT 443 (Delhi)* and *Anil Sharma v. Union of India* reported in *2017 (350) ELT 332 (Gujarat)*.

8. Per contra, the learned senior counsel appearing on behalf of the respondent submitted that the right to get the amendment of documents flows from Section 149 of the Customs Act 1962 and that the said provision does not prescribe any time frame and therefore a circular cannot prescribe a time frame and go beyond the provision under the Act. It was further submitted that DGFT had allotted specific file numbers under DFIA based on the applications submitted by the respondent and the Customs Broker

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WEB COPY while filing the shipping bills indicated a wrong billing code by entering the same as “00” instead of “26”. This inadvertent mistake was sought to be corrected by the respondent and it was well within the powers under Section 149 of the Customs Act.

9. The learned Senior Counsel in order to substantiate his submission, relied upon the following judgments:

(i) *CC v. Diamond Engineering (Chennai) Pvt., Ltd.*, reported in *2019 (5) TMI 492* ;

(ii) *Commissioner of Customs v. N.C.John and Sons P. Ltd.*, reported in *2020 SCC Online Kerala 13064* and

(iii) *Shaj Nanji Nagsi Exports Pvt. Ltd., v. Union of India and others* reported in *(2025) SCC Online SC 1798*.

10. This Court has carefully considered the submissions made on either side and the materials available on record.



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11. Before going into the issue that is involved in the present case, it must be kept in mind that the billing code “00” pertains to free shipping where the goods are not scrutinized. However, if the billing code is entered as “26”, there is a scrutiny and the examination norms are different.

12. In the instant case, the cashew kennels have already been exported by the time the representation was made by the respondent and when the goods were exported, the consignment was not opened for physical examination by customs. Therefore, the appellant by relying upon the circular of the Government of India dated 23.09.2010 has taken a stand that free shipping bills are sought to be converted into EP scheme shipping bills and the same cannot be allowed. If any such conversion is to be done, the appellant will not have an opportunity to verify the goods since it has already been exported. Apart from that, the time frame of three months fixed by the circular was also put against the respondent. According to the appellant, except for one shipping bill dated 23.10.2018, all the other shipping bills for which the respondent had sought for the amendment of the

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shipping bills during December 2018, was beyond the period of three months stipulated as limitation by the circular.

13. The judgments that were relied upon by the Senior Standing counsel are cases where the exporter had attempted for conversion of one scheme to another scheme and it was held by the Delhi High Court and the Gujarat High Court that it falls within the *proviso* to Section 149 and unless such amendment is sought for based on documentary evidence in existence at the time when the goods are exported, the same cannot be allowed. The Court also took into consideration the fact that such amendment of shipping bills cannot be sought for after the lapse of a long period of time after the goods have already been exported.

14. It will be relevant to take note of the judgment of this Court in the case of ***Diamond Engineering, Chennai Pvt., Ltd.***, referred supra. That was a case where the goods were exported under Advance Authorisation Scheme and by mistake in the shipping bills, the code was noted as “00” instead of “01”. It was held that when such inadvertent mistake is

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WEB COPY committed, Section 149 permits an exporter to make request for the amendment of the document.

15. In the judgment in *N.C.John and sons Pvt., Limited* case referred supra, the exporter instead of declaring their intention to claim merchandise export from India Scheme benefits by marking it as “Y”, inadvertently entered it as “N”. Therefore, application was made for making the necessary corrections. The Kerala High Court held that Section 149 of the Customs Act provides for making such corrections of inadvertent mistake in the shipping bills and upheld the decision taken by CESTAT. This judgment was confirmed by the Apex Court in the judgment reported in **2022 (19) SCC 679**.

16. Insofar as fixing a limitation of three months under the circular, it has to be held that such limitation cannot override a substantive provision under Section 149 of the Customs Act, which does not provide for any period of limitation. Therefore, the CESTAT was perfectly right in overruling the objections raised by the department on the ground of limitation.

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17. The only other issue involved is as to whether the respondent was attempting to convert the shipping bills from one scheme to another, which is impermissible both under the circular as well as the first proviso to Section 149 of the Customs Act.

18. On a close scrutiny of the materials placed before this Court, it is seen that the respondent had made applications for DFIA license before the Joint Director General for the import of the raw cashew nuts and such permission was also granted and files were opened by providing the DFIA file numbers. When the Customs Broker submitted the bills, he had mentioned the billing code as “00” instead of “26”. The concerned shipping bills which forms part of the paper book clearly shows that the shipment was under DFIA license when the export of the cashew nuts kennels was made. However, instead of mentioning the billing code as “26”, it was mentioned as “00”.



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WEB COPY 19. The only difference in mentioning the billing code as “26” instead of “00” is that the goods exported will be subjected to different examination norms. If it is free shipping, there will be no scrutiny. If it is under the DFIA scheme, it will undergo a particular scrutiny norm.

20. The main objection that was raised on the side of the appellant is that the goods have already been exported and the items were not opened when it was exported and therefore, it amounts to conversion from free shipping to DFIA scheme.

21. In the considered view of this Court, the mere non opening of the consignment for physical examination by itself will not tantamount to conversion from one scheme to another. The shipping bills clearly stated that it was under DFIA scheme and the DGFT had also allotted the DFIA number for each file. Therefore, the billing code that was wrongly entered as “00” instead of “26” does not actually convert the free shipping bills into EP scheme under DFIA. At the best the request made by the respondent is only to carry out necessary corrections of an inadvertent error that had crept

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in while filing the shipping bills by the Customs Broker. In view of the same, the bar provided under the first proviso to Section 149 will not stand in the way of amending the shipping bill. This very issue was considered by this Court in the case of Diamond Engineering, Chennai Pvt., Ltd., referred supra and the substantial questions of law were answered by dismissing the appeals filed by the department and allowing the decision taken by the Tribunal for conversion of the shipping bills.

22. In the light of the above discussion, the substantial questions of law are answered accordingly and the Civil Miscellaneous Appeals filed by the department stand dismissed and the decision taken by the CESTAT allowing the conversion of bills is upheld. No costs. Consequently connected Miscellaneous Petitions are closed.

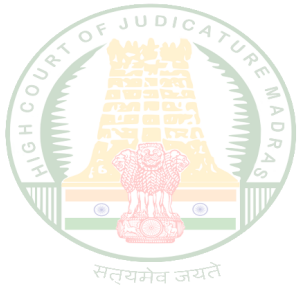
[N.A.V, J.] & [K.K.R.K, J.]

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NCC : Yes
Index : Yes

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**N.ANAND VENKATESH, J
AND
K.K.RAMAKRISHNAN, J.**

RR

**Judgment made in
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