2023:DHC:6966-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 18 September 2023**
Judgment pronounced on : 26 September 2023

\+ CUSAA 30/2021 & CM APPL. 30316/2021
COMMISSIONER OF CUSTOMS ..... Appellant
Through: Mr. Harpreet Singh, Sr. SC with Mr. Jatin Kumar, Adv.

versus

M/S M.D. OVERSEAS ..... Respondent
Through: Mr. Kishore Kunal and Ms. Runjhun Pare, Advs.

\+ CUSAA 31/2021 & CM APPL. 30363/2021
COMMISSIONER OF CUSTOMS ..... Appellant
Through: Mr. Harpreet Singh, Sr. SC with Mr. Jatin Kumar, Adv.

versus

M/S. GULAB IMPEX ENTERPRISES LIMITED
..... Respondent
Through: Mr. Kishore Kunal and Ms. Runjhun Pare, Advs.

\+ CUSAA 32/2021 & CM APPL. 30365/2021
COMMISSIONER OF CUSTOMS ..... Appellant
Through: Mr. Harpreet Singh, Sr. SC with Mr. Jatin Kumar, Adv.

versus

M/S. KANAK EXPORT ..... Respondent
Through: Mr. Kishore Kunal and Ms. Runjhun Pare, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The instant Appeals have been preferred by the Commissioner of Customs, Air-Cargo Export, New Delhi[1] under Section 130 of the Customs Act, 1962[2] assailing the orders dated 24 February 2020 passed by Custom, Excise and Service Tax Appellate Tribunal[3], whereby it allowed the amendment of documents filed with the Commissioner of Customs at the time of export of Gold Jewellery and Gold Medallions, purportedly in exercise of powers under Section 149 of the Act. All these appeals raise common questions of law, so are being adjudicated through this common judgment.

2. The exposition of facts leading to the filing of the present appeals is that the respondents filed applications under Section 149 of the Act on 14 March 2017 seeking amendment in their shipping bills filed at the time of export of Gold jewellery and Gold medallions during the period 01 April 2014 to 31 March 2015. It was claimed by Respondents that they are seeking amendment as they had not entered the declaration for claim of Service Tax Rebate[4] which was required to be made in electronic shipping bill as per paragraph 2 of the

[1] Appellant
[2] The Act
[3] CESTAT
[4] STR

Notification No. 41/2012-Service Tax dated 29 June 2012.[5] Accordingly, by way of amendment, they wanted to endorse the said declaration on the said shipping bills so that they could claim STR under the relevant notification. It is an admitted case that the respondents also filed all the relevant documents *viz*. shipping bills, relevant invoices, airway bills, bank realization certificate, etc. along with their applications for amendment as required vide Section 149 of the Act.

3. The Adjudicating Authority did not allow the amendment application filed by any of the Respondent and dismissed the same vide order dated 01 July 2017 holding that amendment can only be allowed on the basis of documentary evidence, which was in existence at the time of export, but the Respondents have not been able to produce any such documentary evidence. Being aggrieved, the Respondents preferred respective appeals before the Commissioner of Customs (Appeal) but the same were also rejected by the Commissioner (Appeal) vide order dated 06 June 2019 *inter alia* holding that the respondents had not produced any documentary evidence about receiving, using receipts of services and tax paid on services and so the requirement of Section 149 of the Act was not met. It was further held that the appellants failed to submit relevant information in the prescribed format with regard to the exports made,

[5] Relevant Notification

and therefore, denied the benefit of Paragraph (2) of the Relevant Notification dated 29 June 2012.

4. However, on the respondents filing second appeals, the learned CESTAT allowed those appeals vide separate orders in each appeal, each dated 24 February 2020[6], while observing as follows:-

> "17. The Commissioner (Appeals) completely failed to distinguish the requirements of paragraph 2 of the notification and paragraph 3 of the notification. The documents which the Commissioner (Appeals) sought from the Appellant are in relation to the requirements of paragraph 3 of the notification and in fact even the information sought in the format is a format contemplated in paragraph 3 of the notification. Paragraph 2 of the notification required a declaration to be made in the shipping bills regarding the intention to claim rebate either under paragraph 2 or paragraph 3 of the notification. The appellant had not indicated the said declaration and it is this declaration that was sought to be submitted in the shipping bills through the amendment sought by the Appellant. Neither the Adjudicating Authority nor the Commissioner (Appeals) have mentioned about any requirement of paragraph 2 of the notification not having been met by the Appellant. For applicability of section 149 of the Customs Act relating to amendment of documents, all that has to be seen is that documentary evidence should have been in existence at the time the goods were exported. There is no document which was not in existence at the time the goods were exported for the simple reason that all the Appellant was claiming by the amendment was incorporation of the declaration that the Appellant intended to avail the rebate under paragraph 2 of the notification. Under paragraph 2 of the notification all that has to be seen for calculation of the rebate is the schedule. The documents mentioned in the order of the Commissioner (Appeals) were not required to be examined.
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> 18. The provisions of section 149 of the Customs Act relating to amendment of documents came up for interpretation before the Bombay High Court in **Commissioner of Customs v/s. Man Industries (I) Ltd.** The observations of the Bombay High Court are as follows:

[6] Impugned Orders

"3. We have also perused the order of the CESTAT, wherein it is clearly observed as under :-

"By application of this principle, it ought to be held that even if the Appellant's case did not fall within four corners of the Board's Circulars in question, the claim was eligible for consideration independently subject to provision of Section 149 of the Customs Act, 1962 and, in view of the facts and circumstances of the case, particularly the undisputed position that the entire claim for conversion of the Shipping Bills was based on documentary evidences in form of Chartered Engineers & Range Superintendent of Central Excise Certificates, arrived at on documents and material anterior to export i.e. which were in existence at the time of export of the goods, as is the requirement in the proviso to Section 149.

2.3 Since the entire claim of the 2.3. Appellant is established on the basis of documentary evidence already in existence at the time of export, there was no valid reason for the Commissioner to have refused such an amendment. The impugned order passed is therefore clearly untenable and is to be set aside."

4. From the aforesaid facts, it is clear that it is merely a finding of fact on the basis of the documents furnished by the Respondents and there is no substantial question of law involved in the matter. There is no dispute regarding the correctness of the documents relied upon by the Respondents before the Tribunal. Accordingly, the appeal stands dismissed."

19. The Department filed an Appeal before the Supreme Court to assail the aforesaid judgement of the Bombay High Court. The Supreme Court dismissed the Appeal. The order of the Supreme Court is reproduced below:

"After hearing learned counsel for the parties, we are convinced that what was sought was the amendment of documents only and would squarely be covered under Section 149 of the Customs Act, 1962."

20. In **Mohit Overseas v. Commissioner of Customs**[7]**,** the observation of the Delhi High Court on section 149 of the Customs Act are as follows:

[7] 2016 (335) ELT 18 (Del.)

> "3. We have heard the learned counsel for the parties. We are of the view that what the petitioner is seeking is an amendment of the Bill of Entry which is permissible under Section 149 of the Customs Act, 1962 even after the goods have been cleared for home consumption provided the said amendment is based on documentary evidence which was in existence at the time when the goods were cleared. According to the learned counsel for the petitioner, the said notification was in existence at that point of time. Consequently, we are of the view that this is a clear case where the petitioner could avail of the provisions of Section 149 of the Customs Act, 1962 and we, therefore, direct him to move an application before the proper officer seeking amendment of the Bill of Entry in terms of Section 149."

21. In **Share Medical Care v. Union of India,**[8] the Supreme Court observed that even if an applicant claims exemption under category 2 of an exemption notification which was granted it would not mean that the applicant cannot later claim exemption under category 3 of the exemption notification after seeking cancellation of exemption granted under category 2. The Supreme Court observed that in case the applicant is entitled to the benefit under two different heads, grant of exemption under category 2 and withdrawal of the said benefit cannot come in the way of the applicant claiming exemption under category 3 if the conditions laid down are fulfilled. The observations are as follows:

> "10. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. It is, no doubt, true that initially the appellant claimed exemption under category 2 of exemption notification which was granted. That, however, does not mean that the appellant could not claim exemption under category 3. So far as cancellation of exemption under category 2 is concerned, we are not called upon to decide legality or otherwise of the said decision as it has not been challenged before us in the present proceedings. The short question which we have to answer is whether the appellant could claim exemption under category 3 and non-consideration of the said application by the Deputy Director General (Medical) is in consonance with law. Our reply is in the negative. And we are supported in our view by the decisions of this Court.
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> x x x x

[8] 2007 (209) ELT 321 (SC)

> 16. In the instant case, the ground which weighed with the Deputy Director General (Medical), DGHS for non-considering the prayer of the appellant was that earlier, exemption was sought under category 2 of exemption notification, not under category 3 of exemption notification and exemption under category 2 was withdrawn. This is hardly a ground sustainable in law. On the contrary, well settled law is that in case the applicant is entitled to benefit under two different Notifications or under two different Heads, he can claim more benefit and it is the *duty* of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit. Therefore, non- consideration on the part of the Deputy Director General (Medical), DGHS to the prayer of the appellant in claiming exemption under category 3 of the notification is illegal and improper. The prayer ought to have been considered and decided on merits. Grant of exemption under category 2 of the notification or withdrawal of the said benefit cannot come in the way of the applicant in claiming exemption under category 3 if the conditions laid down thereunder have been fulfilled. The High Court also committed the same error and hence the order of the High Court also suffers from the same infirmity and is liable to be set aside."
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> 22. It is, therefore, clear from the nature of the amendment that was sought by the Appellant in the Bills of entry and also from the provisions of section 149 of the Customs Act and the notification dated 29 June, 2012 that the amendment sought by the appellant in the shipping bills of entry was liable to be allowed since only a declaration was sought by the Appellant that rebate should be granted by refund of service tax paid on the specified services under paragraph 2 of the notification."

5. The impugned orders dated 24 February 2020 passed by learned CESTAT are assailed by the appellant by way of present appeals. The following questions of law were framed in the instant appeals on 22 September 2021:-

> "I. Whether the learned Tribunal did not err in holding that the provisions of Section 149 of the Customs Act, 1962 will not come into play in case of an exporter seeking rebate under Para 2 of Notification No. 41/2012-ST dated 29.6.2012?

> II. Whether in view of the fact that the respondent could not produce any document to show that taxable services on which service tax has been allegedly paid by the respondent, were actually received by it and were further used for the export of goods, could the application of the respondent seeking amendment in the shipping bills filed by it, be still allowed by the learned Tribunal?
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> III. Whether the learned Tribunal erred in not appreciating the fact that the terms and conditions of Notification No.41/2012-ST dated 29.6.2012 required strict compliance and the respondent failed in doing so? "

ANALYSIS AND REASONING:

6. Having considered the submissions addressed by the learned counsels for the rival parties at the Bar, we find that it is a common case of the parties that the shipping bills were filed during the period 01 April 2014 to 31 March 2015 without declaration for claim of STR and the proposed amendments were sought belatedly by the respondents on 14 March 2017. Since the decision in the instant appeals hinges on the interpretation of Section 149 besides the Notification dated 29 June 2012, it would be relevant to reproduce both:

> **"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:
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> 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."
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TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)

Government of India
Ministry of Finance
Department of Revenue

New Delhi, the 29th June, 2012

Notification No. 41/2012-Service Tax

G.S.R.___ (E)- In exercise of the powers conferred by section 93A of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 52/2011- Service Tax, dated the 30th December, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 945(E), dated the 30th December, 2011, except as respects things done or **omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid (hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to the extent and manner specified herein below, namely:**

Provided that-

(a) the rebate shall be granted by way of refund of service tax paid on the specified services.

Explanation. - For the purposes of this notification,-

(A) "specified services" means-

(i) in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;

(ii) in the case of goods other than (i) above, taxable services used for the export of said goods;

but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (i) of rule (2) of the CENVAT Credit Rules, 2004;

(B) "place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act1944(1 of 1944);

(b) the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph 2 or on the basis of documents, as per the procedure specified in paragraph 3;

(c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2,
(d) no CENVAT credit of service tax paid on the specified services used for export of goods has been taken under the CENVAT Credit Rules, 2004;
(e) the rebate shall not be claimed by a unit or developer of a Special Economic Zone:
(2) the rebate shall be claimed in the following manner, namely:
(a) manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with the customs;
(b) exporter who is not so registered under the provisions referred to in clause (a), shall register his service tax code number and bank account number with the customs;
(c) service tax code number referred to in clause (b), shall be obtained by filing a declaration in Form A-2 to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having Jurisdiction over the registered office or the head office, as the case may be, of such exporter,
(d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that-
(i) the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board (FOB) value of the said goods, on the basis of rate specified in the Schedule;
(ii) no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services;
(iii) conditions of the notification have been fulfilled;
(e) service tax paid on the specified services eligible for rebate under this notification, shall be calculated by applying the rate prescribed for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;
(f) amount so calculated as rebate shall be deposited in the bank account of the exporter;

(g) shipping bill or bill of export on which rebate has been claimed on the basis of rate specified in the Schedule, by way of procedure specified in this paragraph, shall not be used for rebate claim on the basis of documents, specified in paragraph 3;
(h) where the rebate involved in a shipping bill or bill of export is less than rupees fifty, the same shall not be allowed;
(3) the rebate shall be claimed in the following manner, namely:-
(a) rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;
(b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;
(c) the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall file a claim for rebate of service tax paid on the taxable service used for export of goods to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1;
(d) the exporter who is not so registered under the provisions referred to in clause (c), shall before filing a claim for rebate of service tax, file a declaration in Form A-2, seeking allotment of service tax code, to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter,
(e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the exporter referred to in clause (d)within seven days from the date of receipt of the said Form A-2;
(f) on obtaining the service tax code, exporter referred to in clause (d), shall file the claim for rebate of service tax to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having Jurisdiction over the registered office or the head office, as the case may be, in Form A-1;
(g) the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.
Explanation.- For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for

exportation under section 51 of the Customs Act, 1962 (52 of 1962);

(h) where the total amount of rebate sought under a claim is upto 0.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 shall be submitted along with relevant invoice, bill or challan, or any other document for each specified service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax paid thereon, certified in the manner specified in sub-clauses (A) and (B):

(A) If the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be self-certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

(B) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorised by the Board of Directors, to the effect that specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill number;

(i) where the total amount of rebate sought under a claim is more than 0.50% of the total FOB value of the goods exported, the procedure specified in clause (h) above shall stand modified to the extent that the certification prescribed thereon, in sub- clauses (A) and (B) shall be made by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961(43 of 1961), as the case may be;

(j) where the rebate involved in a claim is less than rupees five hundred, the same shall not be allowed;

(k) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself,-

(i) that the service tax rebate claim filed in Form A-1 Is complete in every respect;

(ii) that duly certified documents have been submitted evidencing the payment of service tax on the specified services;

(iii) that rebate has not been already received on the shipping bills or bills of export on the basis of procedure prescribed in paragraph 2;and

(iv) that the rebate claimed is arithmetically accurate, refund the service tax paid on the specified service within a period of one month from the receipt of said claim:

Provided that where the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, has reason to believe that the claim, or the enclosed documents are not in order or that there is a reason to deny such rebate, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made thereunder;

(4) Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), Including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made thereunder,

(5) This notification shall come into effect on the 1st day of July, 2012.

7. There is no gainsaying that Section 149 of the Act has to be read in conjunction with the requirement spelt out in the above Notification dated 29 June 2012. A careful perusal of Section 149 of the Act shows that **firstly**, it provides no period of limitation for filing of an application for amendment of relevant documents in order to seek rebate or any other benefit. **Secondly**, it does not provide for any reasons that may enable an exporter to claim amendments in the shipping documents. **Thirdly**, the proposed amendment in the shipping bills can be allowed by the Proper Officer subject to the only rider that same is based on documentary evidence that must be shown to be in existence at the time the goods were exported.

8. Before alluding to the Notification dated 29 June 2012, it is pertinent to mention that admittedly, the goods already stood exported from time to time and the respondents were otherwise entitled to claim STR paid on input services, which had been prescribed at a fixed rate of 0.06% of the FOB value of exported goods falling under CTH 71 vide serial No. 162 of the schedule to the notification. Further, no dispute was raised by the appellant to the assertion/declaration by the respondents in their request letter dated 14 March 2017 that the sales remittances had already been received on each of the export consignments as per the RBI guidelines.

9. However, it was urged by learned counsel for the appellant that the proposed amendment could only be allowed at the discretion of the Proper Officer only when it is in 'public interest' and also on the satisfaction arrived at by the Competent Authority that the taxable services had been received by an exporter of goods so as to claim STR. Further, canvassing that the respondents had failed to specify payment of Service Tax on specified services utilised by them for carrying out export so as to seek rebate, it was urged that the use of word 'shall' in the entire body of the Notification dated 29 June 2012 leaves no scope for doubt that the declaration had to be filed mandatorily at the time of filing of the shipping bills. Reliance was also placed on the decision in **M/s. Eagle Flasks Industries Ltd. v.**

Commissioner of Central Excise, **Pune,**[9] wherein it was observed as under:

> "The proviso makes it clear that where the goods are chargeable to nil rate of duty or where the exemption from the whole of the duty of excise leviable is granted on any of the six categories enumerated, the manufacturer is required to make a declaration and give an undertaking, as specified in the Form annexed while claiming exemption for the first time under this Notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including CEGAT, factually, the declaration and the undertaking were not submitted by the appellants. **This is not an empty formality. It is the foundation for availing the benefits under the Notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non- observance. The consequences are denial of benefits under the Notification. For availing benefits under an exemption Notification, the conditions have to be strictly compiled with**. Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the view is on terra firma. We find no merit in this appeal, which is, accordingly, dismissed." **{Bold Emphasis supplied}**

10. We are unable to persuade ourselves to find any merit in the pleas canvassed by the learned counsel for the appellant for the simple reasons that evidently, all the relevant documents containing requisite information had been duly submitted by the respondents along with their request letters dated 14 March 2017. It is not the case of the appellant that any notice pointing out any deficiency in the documents was served by the Proper Officer upon the respondents. The decision in ***M/s. Eagle Flasks Industries Ltd. v. Commissioner of Central Excise, Pune (supra)*** has no bearing in the instant matters since it was

[9] 2004 [171] ELT 0296 S.C.

a case where exemption from payment of excise duty was subject to rigorous timely compliances and it is in the said context that it was held that filing of declaration and undertaking were the foundation for availing benefits and not just empty formalities. There is no provision in the Central Excise Tariff Act, 1985 or for that matter in the Central Excise Act, 1944, which is akin to Section 149 of the Act. It would be expedient to refer to the extract of the letters dated 14 March 2017 which go as under:-

> "1. We are in the business of export of Gold jewellery. During the period 01 April, 2014 to 31 March, 2015, while making the exports, we could not enter the declaration for claim of Service tax refund required to be made in the electronic shipping bill/bill of export as per Para (2) of the Notification No. 41/2012 dated 29th June, 2012. The detail of exports made by us during the period is enclosed. We have been registered under the Central Excise Rules 2002 holding central excise registration number AACCM9507FSD003. Therefore, copies of all these shipping bills are again enclosed along with copy of invoice & airway bill and the same be please amended to include the declaration for Service tax rebate.
> 2. Further, as per the proviso to Sec. 149 of the Customs Act, 1962, the amendment has been sought on the basis of Notification No. 41/2012 dated 29th June, 2012 which was in existence at the time the goods were exported.
> 3. Further, we have complied with the provisions of the said notification and declares that we shall not make any claim for refund of service tax paid on the basis of procedure prescribed in Paragraph (3) as per Notification No. 41/2012 dated 29th June, 2012.
> 4. Further, with respect to the export, made by us during the aforesaid period, we have received the sale proceeds within the period allowed by the Reserve Bank of India under Section 8 of the Foreign Exchange Management Act, 1999. Copies of bill-wise Statement of bank realization have also been enclosed. "

11. As regards the plea by the learned counsel for the appellant that no declaration was made by the respondents with regard to payment of Service Tax on the specified services availed by it before the exports, same is belied on a careful perusal of the order dated 01 July 2017 passed by the Adjudicating Authority, which, *inter alia*, brings out that the relevant documents were filed by the respondents before the Adjudicating Officer. It is borne out from the record that the respondents in their appeal before the learned CESTAT had specifically made a categorical assertion in ground (R) that they had suffered Service Tax on the input services and apparently had annexed relevant details, although the same were not alluded to while passing the impugned order dated 24 February 2020. We observe that learned counsel for the appellant was all at sea to indicate which document was amiss, or as to which information or declaration was lacking that were not filed along with the shipping bills/orders at the time of making the exports.

12. In arriving at such conclusions, we may refer to the decision of this Court in the case of **Kedia (Agencies) Pvt. Ltd. v. Commissioner of Customs**[10]. It was a case where the appellants had exported 155 consignments of goods during the period June 2008 to March 2009 as 'free-shipping bills' but failed to make a declaration in terms of Notification dated 01 April 2018 for claiming export incentive. The appellant belatedly applied with the concerned Officer

[10] 2017 (348) E.L.T. 634 (Del.)

for the Duty Credit Entitlement under the relevant Scheme which was declined. The appellant challenged the order and the Commissioner (Appeal) allowed the appeal holding that exported goods confirmed what was prescribed. On the revenue challenging the said decision, the CESTAT set aside the grant of export incentives. This Court held as under:

> "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 :-
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> > "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."
>
> **{bold portions emphasized}**

13. To sum up, apparently all the relevant documents which could have been filed at the time of exports, were available as it is in original form and format without any change as such and were submitted along with the application for amendment of the shipping bills etc. on 14 March 2017. The respondents specifically stated in the application that no claim would be made by them under Paragraph (3) of the Relevant Notification. Resultantly, there was no reason to hold otherwise and nothing more was required to be done on the part of the respondents. Therefore, we find no legal infirmity, perversity or incorrect approach adopted by the learned CESTAT in passing the impugned orders dated 24 February 2020 thereby allowing the respondents the benefit of STR based on the exports made during the relevant period.

14. Accordingly, the present appeals are dismissed. The pending applications also stand disposed of.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

SEPTEMBER 26, 2023
Sadique