प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडीऑ के बाजु मे, नवरंगपुरा ,अह्मदाबाद 380009
दुर भाष (079) 2754 46 30 **फैक्स** (079) 2754 23 43
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CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ **F. No.: GEN/TECH/Misc/1227/2025-TECH -O/o PR COMMR CUS-AHMEDABAD**

DIN- 20250964WY0000666F7B

आदेशकीतारीख/Date of Order : 26.09.2025
जारीकरनेकीतारीख/Date of Issue : 26.09.2025

द्वारापारित :- **शिव कुमार शर्मा ,प्रधान आयुक्त**
Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-24-2025-26 Dated 26.09.2025 in the case of M/s. Automat Controls, A-29/30, Karnavati Estate, Phase-III, GIDC, Vatva, Ahmedabad, Gujarat – 382445.

1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन , गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004.

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियोँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियोँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Subject: Application for amendment/Conversion of Shipping Bill filed under Drawback Scheme to Advance Authorisation Scheme under Section 149 of Customs Act, 1962 by M/s. Automat Controls, A-29/30, Karnavati Estate, Phase-III, GIDC, Vatva, Ahmedabad, Gujarat – 382445.

BRIEF FACTS OF THE CASE:

M/s. Automat Controls (hereinafter referred to as *"the exporter"*), holding IEC No. 0802009174, having its registered office at A-29/30, Karnavati Estate, Phase-III, GIDC, Vatva, Ahmedabad, Gujarat – 382445, had exported goods under the Drawback Scheme against Shipping Bill No. 9944919 dated 15.04.2025. The Let Export Order (LEO) was issued on 16.04.2025.

2. The exporter, vide their letter dated 13.05.2025, submitted a request for amendment of Shipping Bill No. 9944919 dated 15.04.2025 filed under the Drawback Scheme (Scheme Code–19) to be changed to the Advance Authorisation Scheme (Scheme Code–03) to the ICD Khodiyar. In their request, the Exporter stated that the shipment was cleared from ICD Khodiyar to Jebel Ali, UAE, under Invoice No. U1/007/25-26 dated 07.04.2025.

2.1. They further explained that, due to an inadvertent error/oversight during the filing process, the shipping bill was mistakenly filed under the Drawback Scheme. However, the export was actually made under the Advance Authorisation Scheme, and the request for amendment has been made to ensure compliance with DGFT and Customs regulations. The exporter further submitted that they are ready to surrender export Drawback and RoDTEP benefits.

2.2. The Assistant Commissioner, Export, ICD Khodiyar, Customs Ahmedabad, vide their letter F. No. ICD-Khodiyar/Export/2025-26/599 dated 11.06.2025, forwarded the Exporter's request along with their comments, stating that the request for conversion has been made within the prescribed period of three months from the date of the Let Export Order (LEO), in accordance with Para 3(a) of Circular No. 36/2010-Cus. dated 23.09.2010.

2.3. Further, ICD Khodiyar vide email dated 17.09.2025 submitted that as per Circular No. 36/2010-CUS Dated 23.09.2010, conversion of Shipping Bill may be allowed in case of shipping bills from schemes involving more rigorous examination to schemes involving less rigorous examination. In the present case the exporter has requested for conversion of Shipping Bill from scheme involving less rigorous examination to scheme involving more rigorous examination. Therefore, the request of the exporter is not considerable and liable for rejection.

PERSONAL HEARING AND SUBMISSION OF THE EXPORTER:

3. The exporter, vide letter File No. GEN/TECH/MISC/1227/2025-TECH dated 31.07.2025, was granted an opportunity for a personal hearing scheduled on 08.08.2025. The exporter was represented by Mr. Rakshit Parikh and Mr. Yogesh, authorized signatory of the exporter, who appeared for the hearing on the said date. During the personal hearing, the representative submitted that a written submission in support of the request would be submitted by 18.08.2025.

3.1. The exporter vide their letter dated 11.08.2025 submitted their written submission on 29.08.2025 wherein they reiterated that during the filing of the Shipping Bill, due to an inadvertent error/oversight, the same was filed under the Drawback Scheme. The oversight occurred because the responsible person, Mr. Rakshit Parikh, was out of the country at the time, and the Shipping Bill was filed by his team in his absence. Consequently, the linkage of the Advance License was missed. Further, they have submitted that their company maintains a strong record of compliance with DGFT and Customs regulations and in the past, they have successfully availed EPCG License and duly fulfilled all associated export obligations, completing proper closures for each license without any discrepancies. They submitted that the present export was actually made under the Advance Authorisation and requested to amend the Shipping bill reflecting correct scheme as per Advance License. The exporter has submitted the copy of Advance License, Copy of Shipping Bill, Export Invoice, Packing List, Bank Realisation Certificate, DGFT BRC.

DISCUSSION AND FINDINGS:

4. I have carefully gone through the facts of the entire case and the submissions made by the exporter in writing received on 29.08.2025 as well as the record of personal hearing held on 08.08.2025. I find that main and only issue to be decided in the instant case is whether the exporter is eligible for conversion of shipping bill from Drawback scheme to Advance Authorisation in terms of Section 149 of Customs Act, 1962 or otherwise.

5. I find that the present case in fact relates to the request for conversion of Shipping Bill from one export promotion scheme (Drawback) to another scheme (Advance Authorisation) and is not merely of an amendment in the Shipping Bill. It was a case of request for "conversion"

and not of "amendment" inasmuch by conversion from one scheme to another.

6. I find that amendment of documents is governed under the provisions of the Section 149 of the Customs Act, 1962, which reads as under:

> ***"Section 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 custom 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 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.*
> *[**Provided** further that such authorisation or amendment may also be done electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:*
> ***Provided** also that such amendments, as may be specified by the Board, may be done by the importer or exporter on the common portal.]*
> *1. Inserted (w.e.f. 1-8-2019) s. 80 of the Finance (No.2) Act, 2019 (23 of 2019).*
> *2. Inserted (w.e.f. 28-03-2021) s. 98 of Finance Act 2021 (13 of 2021)."*

7. I find that with reference to conversion of Shipping Bill under the provisions of Section 149 of the Customs Act, 1962, Circular No. 36/2010-Cus dated 23.09.2010 is issued by CBEC (now, CBIC) regarding conversion of free Shipping Bills to export promotion scheme Shipping Bills and conversion of shipping bills from one scheme to another. Conditions stipulated under para 3 of the circular are 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 Authorisation /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/ mis-declaration /manipulation has been noticed or investigation initiated against him in respect of such exports."

Para 5 of the said circular No. 36/2010-Cus dated 23.09.2010 states that:

"5. Due care may be taken while allowing conversion to ensure that the exporter does not take benefit of both the schemes i.e. the scheme to which conversion is sought and the scheme from which conversion is sought. Whenever conversion of a shipping bill is allowed, the same should be informed to DGFT so that they may also ensure that the exporter does not take benefit of both the schemes."

8. I find that Notification No. 21/2025-Customs (N.T.) dated 03.04.2025 is issued by CBIC regarding Export Entry (Post export conversion in relation to instrument based scheme) Regulations, 2025. Manner and time limit for applying for post export conversion of export entry and Conditions and restrictions for conversion of export entry stipulated under para 3 and para no. 4 of the said Notification respectively are as under:

3. Manner and time limit for applying for post export conversion of export entry–

(1) The application for conversion shall be filled by an exporter in writing ***within one year from the date of clearance of goods under sub-section (1) of section 51 or section 69 of the Act or from the date of entry made under section 84 of the Act****, as the case may be:*

Provided that the jurisdictional Commissioner of Customs may, for the reasons to be recorded in writing, extend the time limit not exceeding six months, if it is satisfied that the circumstances were such which prevented the exporter from filing an application within the period specified under sub-regulation (1):

Provided further that the jurisdictional Chief Commissioner of Customs may, for the reasons to be recorded in writing, extend the time limit not exceeding six months, if it is satisfied that the circumstances were such which prevented the exporter from filing an application for a period exceeding one year and six months.

(2) Where an export entry is filed before the 22nd February, 2022, the period of one year specified under sub-regulation (1) shall be reckoned from the date on which these regulations have come into force.

(3) Where filing of an application under sub-regulation (1) was prevented due to stay or an injunction passed by any court or tribunal, then, in computing the period specified therein, the period of continuance of the stay

or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(4) The jurisdictional Commissioner of Customs, may, in his discretion, authorise the conversion of export entry, subject to the following, namely: –

(a) on the basis of documentary evidence, which was in existence at the time the goods were exported;

(b) subject to conditions and restrictions for conversion provided in regulation 4;

(c) on payment of a fee in accordance with Levy of fees (Customs Documents) Regulations, 1970.

(5) Subject to the provision of sub-regulation (1), the jurisdictional Commissioner of Customs shall, where it is possible so to do, decide every application for conversion within a period of thirty days from the date on which it is filed.

4. Conditions and restrictions for conversion of export entry– *The conversion of export entry shall be subject to the following conditions and restrictions, namely: -*

(a) ***fulfilment of all conditions of the instrument based scheme to which conversion is being sought;***

(b) ***the exporter has not availed or has reversed the availed benefit of the instrument based scheme from which conversion is being sought or reversed the amount of drawback or any other benefit, in case drawback or such scheme is not admissible in the scheme to which conversion is being sought, as the case may be;***

(c) no condition, specified in any regulation or notification, relating to presentation of export entry in the Customs Automated System, has not been complied with;

(d) no contravention has been noticed or investigation initiated against the exporter under the Act or any other law, for the time being in force, in respect of such exports;

(e) the export entry of which the conversion is sought is one that had been filed in relation to instrument based scheme, or under drawback or for fulfilment of any export obligation or combination thereof.

9. I further find that Export Entry' has been defined as "export entry" means entry relating to export as defined in clause (16) of section 2 of the Act and includes an entry made in the Shipping Bills or Bills of Exports under section 50 or entries made for goods to be exported by post or courier under section 84 of the Act. Clause (16) of section 2 of the Act is reiterated as under;

Section 2. Definitions *-*

(16) "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under section 84;

9.1. I also find that "instrument based scheme" means a scheme involving utilisation of instrument referred to in explanation 1 to sub-section (1) of section 28AAA of the Act. Explanation 1 to sub-section (1) of section 28AAA of the Act is reiterated as under;

Section 28AAA. Recovery of duties in certain cases –

(1) Where an instrument issued to a person has been obtained by him by means of-
(a) collusion; or
(b) wilful misstatement; or
(c) suppression of facts,
for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), or 2 [any other law, or any scheme of the Central Government, for the time being in force, by such person] or his agent or employee and such instrument is utilised under the provisions of this Act or the rules 3 [or regulations] made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued:
***Provided** that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.*

***Explanation 1 - For the purposes of this sub-section, "instrument" means** any scrip or **authorisation** or licence or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), [or duty credit issued under section 51B, with respect to] a reward or incentive scheme or duty exemption scheme or **duty remission scheme** or such other scheme bestowing financial or fiscal benefits, which may be utilised under the provisions of this Act or the rules made or notifications issued thereunder.*
.....
.....

9.2. I have gone through the provisions of Foreign Trade Policy wherein Schemes enable duty free import of inputs for export production, including replenishment of inputs or duty remission, which read as under:

4.01 Schemes

(a) Duty Exemption Schemes.

The Duty Exemption schemes consist of the following:

- ***Advance Authorisation (AA)** (which will include Advance Authorisation for Annual Requirement).*

- *Duty Free Import Authorisation (DFIA).*

(b) Duty Remission Scheme.

***Duty Drawback (DBK) Scheme**, administered by Department of Revenue.*

10. From the above legal provisions, I find that the request of the exporter in the present case is for amendment/conversion of impugned Shipping Bill from one instrument based scheme i.e. Drawback Scheme to another instrument based scheme i.e. Advance Authorisation Scheme and an exporter regarding amendment/conversion of Shipping Bill from one instrument based scheme to another instrument based scheme have to pass

test of all the conditions stipulated in this regard by CBEC (now, CBIC) in the Circular No. 36/2010-Cus dated 23.09.2010 and in Export Entry (Post export conversion in relation to instrument based scheme) Regulations, 2025 issued vide Notification No. 21/2025-Customs (N.T.) dated 03.04.2025, in addition to falling the case under the scope of Section 149 of the Customs Act,1962.

11. I find that the export under the above Shipping Bill was effected on 16.04.2025 and the exporter has filed application for amendment/conversion of the above Shipping Bill from Drawback Scheme to Advance Authorisation before the department on 13.05.2025, which is within time as stipulated in the Circular No. 36/2010-Cus dated 23.09.2010 and in Export Entry (Post export conversion in relation to instrument based scheme) Regulations, 2025 issued vide Notification No. 21/2025-Customs (N.T.) dated 03.04.2025.

12. I find that in the present case, the exporter has requested for amendment/conversion of Shipping Bill from Drawback Scheme to advance Authorisation, therefore, condition 3(b) of the Circular No. 36/2010-Cus dated 23.09.2010 need to be fulfilled by the exporter. In this regard I have gone through the provisions of Foreign Trade Policy at the relevant time, which read as under:

Para 4.03 of Chapter 4 of the Foreign Trade Policy, 2023

4.03 Advance Authorisation

(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, may also be allowed.

.....

.....".

Para 4.16 of Chapter 4 of the Foreign Trade Policy, 2023

4.16 Actual User Condition for Advance Authorisation

i. Advance Authorisation and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

.....

....."

13. I find that Advance Authorisation is issued in terms of Para 4.03 of Chapter 4 of the Foreign Trade Policy, 2023. Advance Authorisation and/or materials imported under Advance Authorisation would be subject to 'Actual

User' condition in terms of Para No.4.16 of the Foreign Trade Policy, 2023. The same would not be transferable even after completion of export obligation. Thus, from the above, it is evident that the import of input under Advance Authorisation Scheme was allowed, subject to condition that such inputs should be used in the export product with actual user condition.

14. I find that CBIC issued Notification No. 18/2015-Cus Dated 01/04/2015 - Regarding implementation of Advance Authorisation Scheme under FTP 2015-2020. The Notification No. 18/2015-Cus Dated 01/04/2015 exempted materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy from the whole of the duty of customs leviable thereon which was specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to certain conditions. Condition (x) of the said Notification which read as under:

> *"(x) that the said authorisation shall not be transferred and the said materials shall not be transferred or sold;"*

15. I find from the above legal provisions of the foreign trade policy and Customs duty exemption notification, that the goods imported against an Advance Authorisation shall be utilized only in the manufacture of dutiable goods, and raw material imported under Advance Authorisation shall not be transferable even after completion of export obligation. Therefore, I find that it is essential to establish by the exporter that the goods exported under the Shipping Bill, under consideration for amendment/conversion, are manufactured out of the duty free raw material imported by them under the said advance Authorisation.

16. I further find that shipping bill contains scheme details at specific places. Exporter had filled the impugned shipping bill claiming Drawback. I further find that under Item details and under Drawback details, Exporter had mentioned Drawback as Scheme name. I find that it is not disputed that Exporter had claimed and received Drawback in respect of the impugned shipping bill. I further find from the perusal of invoice, packing list that the exporter had no where mentioned that – "The shipment is proposed under Advance Auhtorisation."

17. I find that in the present case, declaration for export under Advance Authorisation was not existing on the date of export, therefore, the requirement of Section 149 of the Act was not met. I also find that since exporter had not claimed the exports under the above Shipping Bill against fulfilment of export obligation under Advance Authorisation at the time of export, therefore, the aspect as to whether the duty free inputs have been utilised under the exported goods could not be examined at the time of export. There are plethora of judgments where the judicial and quasi-judicial authorities have declined to accept the request for conversion of Shipping Bill from one scheme to another when the exporter failed to establish that the duty free imported goods is utilized in manufacturing of the exported consignments.

18. I further find that Exporter has requested for conversion of impugned shipping bill from a less rigorous examination scheme to a more rigorous examination scheme. I find that Para—3 of Circular No. 36/2010-Cus dated 23.09.2010 prescribes that -

Conversion of shipping bills from schemes involving more rigorous examination to schemes involving less rigorous examination (for example, from Advance Authorisation/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).....

18.1. I therefore, find that conversion from scheme involving more rigorous examination to less rigorous examination or same level of examination scheme is allowed. In the present case exporter has requested for conversion from scheme involving less rigorous examination to more rigorous examination i.e from Drawback scheme to Advance Authorisation which is contrary to the provisions prescribed in above referred Board's Circular. Exporter has also failed to appreciate that more rigorous examination scheme has enhanced risk management parameters based on which examination of goods is being done at the port during export. I find that the subject goods exported vide the impugned Shipping bill were not subjected to risk management parameters involving more rigorous examination scheme. The goods intended to export under the Advance Authorisation is to be examined to ascertain that the duty free imported raw material had been physically incorporated in the manufacture of exported goods and required value addition etc. is there, whereby the examination of

goods under drawback scheme is on different footings. Being Advance Authorisation in the present case, and as such allowing for conversion of such shipping bill from Drawback scheme to Advance Authorisation will be contrary to the provisions of the above referred Board's Circular. Further, I find that the exported goods are not physically available today so that it could be subjected to more rigorous examination. At the time of export, the goods were subjected to less rigorous examination as per the declaration of the exporter.

19. I therefore, find that from the available export documents and details furnished by the exporter, the fact of use of duty free inputs in the resultant exported products claimed by the exporter, is not established, and thus, condition 3(b) of the Circular No. 36/2010-Cus dated 23.09.2010 is not fulfilled in the present case. Further, since I did not find the request of the exporter regarding conversion of the shipping bill under consideration from drawback to advance authorisation allowable, therefore, the aspect of condition 3(d) of the Circular No. 36/2010-Cus dated 23.09.2010 and condition 4(a) of the Notification No. 21/2025-Customs (N.T.) dated 03.04.2025 are not being looked into at this stage.

20. I find that the export under the above Shipping Bill under consideration for conversion was under Drawback Scheme. The exporter in their letter dated 13.05.2025 stated that they are ready to surrender export Drawback and RoDTEP benefits, which implies that the exporter had already received Drawback & RoDTEP from department against the said export and not reversed the amount of Drawback & RoDTEP till date, therefore, I find that the exporter in the present case also failed to fulfil the condition 3(e) of the Circular No. 36/2010-Cus dated 23.09.2010 i.e. *the exporter has not availed benefit of the export promotion scheme under which the goods were exported....and also failed to fulfil condition 4(b) of the Notification No. 21/2025-Customs (N.T.) dated 03.04.2025 i.e. the exporter has not availed or has reversed the availed benefit of the instrument based scheme from which conversion is being sought or reversed the amount of drawback or any other benefit....*I find that considering such request of the exporter at this stage would amount to availment of double benefit against the export effected under the Shipping Bill.

21. I find that it is settled law that the circulars issued by the CBEC (now, CBIC) are binding on the department and it cannot take a stand contrary to the instructions issued by the Board.

22. My above findings are supported by series of decisions of various Hon'ble High Courts and Hon'ble Supreme Court, including –

(i) The judgment pronounced by the Hon'ble Appex Court in the case of **Commissioner Of Customs, Calcutta Vs. Indian Oil Corporation Ltd** reported in **2004 (165) E.L.T. 257 (S.C)**, wherein the Hon'ble apex court has found that:

> ***"11.****Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in Collector of Central Excise, Vadodara v. Dhiren Chemicals Industries - 2002 (143) E.L.T. 19 where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 37B of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in Simplex Castings Ltd. v. Commissioner of Customs, Vishakhapatnam [2003 (155) E.L.T. 5 (S.C.) = (2003) 5 SCC 528].*
>
> ***12.****The principles laid down by all these decisions are :*
>
> *(1) Although a circular is not binding on a Court or an assessee, it is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.*
>
> *(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.*
>
> *(3) A show cause notice and demand contrary to existing circulars of the Board are ab initio bad.*
>
> *(4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."*

(ii) The Hon'ble High Court of Gujarat in the case of **F.S. Enterprise Vs. State Of Gujarat,** reported in **2020 (32) G.S.T.L. 321 (Guj.)** also held that:

> ***"13....*** *..... The officers and all other persons employed in the execution of the GST Acts are, therefore, bound to observe and follow such orders, instructions and directions of the Board."*

(iii) The revisionary authority, Ministry of Finance, Government of India in the case of **M/s. Cheer Sugar, Jaipur,** reported in **2011 (273) E.L.T. 470 (G.O.I.)**, held that:

> ***"11.Govt. therefore, is of the considered opinion that clarificatory circulars/instructions/public notices issued from time to time are not mere formalities but are bindings not only for Customs authorities but for the trade also.*** *Hon'ble Supreme Court laid down in case of UOI v. Kirloskar Pneumatics [1996 (84) E.L.T. 401 (S.C.)] that Customs authorities are creatures of Customs Act and they cannot ignore the time limits prescribed under the Customs Act."*

(iv) The Hon'ble High Court of Allahabad in the case of **Hindustan Coca-Cola Beverages Ltd. Vs. Union of India,** reported in **2013(296) E.L.T. 150 (All.)** also held that:

> *18. The law is settled that the* ***circulars issued in exercise of statutory power by the departments are binding upon the authorities and the officials of the department.***
>
> *19. The three Judges Bench of the Supreme Court in UCO Bank Calcutta v. Commissioner of Income Tax W.B. - (1999) 4 SCC 599 = 1999(05)LCX0223 Eq 1999 (111) ELT 0673 (S.C.) while dealing with circular issued by the Central Board of Direct Taxes took the view that circulars issued by the CBDT is to tone down the rigour of the law and are binding upon Income Tax Authorities.*
>
> *20. In Paper Products Limited v. Commissioner of Central Excise - (1999) 7 SCC 84 = 1999 (112) E.L.T 165 (S.C.) their Lordships of the Supreme Court were dealing with a circular issued by the C.B.E. & C. regarding classification of particular goods and they held that the circulars issued by the Board are binding upon the department and the department is precluded from challenging the correctness of the said circulars even on the ground of the same being inconsistent with the statutory provision. Therefore, whatever action is to be taken by the de-partment, the same has to be in consistence with the circular in force at the relevant point of time.*

23. I would also like to rely upon the following judgments, with reference to my findings relating to conversion of above Shipping Bill from Drawback Scheme to Advance Authorisation scheme–

(i) The Judgment pronounced by the Hon'ble double bench of High Court of Gujarat in the case of **Anil Sharma Versus E.S. Union of India,** reported in **2017(350) E.L.T. 332 (Guj.),** wherein the Hon'ble High Court held that:

> *"6.1 Thus, the request of the petitioner which has been rejected by the respondent cannot be said to be a mere amendment in the shipping bill as contemplated under Section 149 of the Customs Act, but it will be case of*

conversion of one scheme to another scheme, for which, proper officer is required to verify whether the very manufactured final product which has been manufactured from the raw material has been exported or not.

7. The contention on behalf of the petitioner that as the case would fall under Section 149 of the Customs Act which does not prescribe any time limit and therefore, on the basis of material on record, which was available at the time of export, it could have been verified ***whether final goods manufactured from the raw material imported has been exported or not, can be verified is concerned, as such, as observed herein above Section 149 of the Customs Act will not be applicable****. Even otherwise, it is required to be noted that what is considered at the time of DEEC, the appropriate inquiry would be limited to the extent to satisfy the authority whether raw material which was imported has been used in manufacturing final product or not. So far as Advance Authorisation Scheme is concerned, the appropriate authority is required to consider after holding appropriate inquiry that the raw material which was imported has only been used in the manufacture of final product and that final product has been actually exported.*

8. Now, so far as the decision of the Bombay High Court in the case of Man Industries (I) Ltd. (supra) relied upon by the learned advocate for the petitioner is concerned, on facts the said decision shall not be applicable.

9. In view of the above and for the reasons stated above, ***it cannot be said that the respondents have committed any error and/or illegality in rejecting the application of the petitioner considering the Board Circular No. 36 of 2010. Under the circumstances, present petition deserves to be dismissed and is accordingly dismissed.*** *Notice discharged."*

(ii) The Judgment pronounced by the Hon'ble High Court of Delhi in the case of **Commr. of Customs (Export) Versus E.S. Lighting Technologies (P) Ltd.,** reported in **2020 (371) E.L.T. 369 (Del.)**, wherein the Hon'ble High Court held that:

"6. *Having perused the impugned order and the decisions relied upon by Mr. Bansal and having considered the facts of the case, we are of the view that the Tribunal was not justified in adopting the approach that it did. Merely because no time limitation is prescribed under Section 149 for the purpose of seeking amendment/conversion, it does not follow that a request in that regard could be made after passage of any length of time. The same could be made within a reasonable period. The conversion sought by the respondent was from free shipping bill to advance license shipping bill. The petitioner could not have entertained the application for such conversion without examination of the records. It was not fair to expect the Department to maintain, and be possessed of, the records after passage of five long years - when the respondent made its application for such conversion."*

(iii) The Judgment pronounced by the Hon'ble High Court of Delhi in the case of **Commissioner of Customs (Exports) Air Cargo, Mumbai Versus Areva T&D India Ltd.,** reported in **2011(07)LCX0337,**

Equivalent 2013 (298) ELT 0689 (Mad.), wherein the Hon'ble High Court held that:

> *"16. The provision regarding amendment of documents gives a clear indication that such amendments cannot be permitted as a matter of course. It is true that discretion is given to the authorities to permit amendment of documents after it has been presented in the customs house. However, no amendment can be made after the export, except on the basis of documentary evidence which was in existence at the time when the goods were exported.*
>
> *17. There is a purpose in putting such onerous condition in the matter of amendment of documents after making exports. The conversion is not a matter of right. The idea is that such conversion should not result in availment of double benefits. Though the Section does not say that omission should be genuine, a reading of the provision gives a clear idea that it was not intended as a routine measure. Only in very exceptional cases,* ***conversion would be permitted and that too, on production of contemporaneous documentary evidence.*** *In case of abnormal delay in making such request for conversion, the Department would not be in a position to ascertain as to* ***whether the duty free goods were utilised in the export product****. It was only for the said purpose the Legislature has incorporated provision regarding strict rules of evidence in the nature of contemporaneous documents for the purpose of amendment of bill of entry, shipping bills or bill of export."*

(iv) The Judgment pronounced by the Hon'ble Principal bench of CESTAT, New Delhi in the case of **Radnik Exports vs. Commissioner of Central Excise, Delhi-IV (Faridabad)**, reported in **2008(06)LCX0246, Equivalent 2008 (089) RLT 0419 (CESTAT-Del.)** wherein the Hon'ble Tribunal held that:

> *"5. In this case, we find that as per the provisions of Section 149 of the Customs Act, the Proper Officer may in his discretion authorize any document after it has been presented for the Customs House to be amended provided that no amendment of bill of entry or shipping bill or bill of export shall be authorized to be amended after the imported goods have been cleared for home consumption or deposited in the 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. The Proper Officer can allow the amendment of shipping bill or bill of entry in a given circumstances. The facts of the present case are that the goods were exported and claim was made under the draw back scheme. The claim was processed and an amount was received by the appellant on 14/5/99. Then the appellant requested the revenue for conversion their shipping bills from draw back scheme to DEEC Scheme and also deposited the amount received*

by them in the year 2003 along with interest. We find that DEEC Scheme and draw back scheme are two completely different schemes. The DEEC Scheme allows duty free import of specified material shown on the advance licence and the exported goods should be made of the imported raw material. In the present case, the import was made against special value based advance licence and as per the condition of the advance licence the imported raw material is to be used in the imported goods with 50% value addition and the export should be made through the same port, from where the goods were imported. The purpose of the scheme was that a comparison can be made in respect of exported goods whether the same are made out of the raw material imported duty free. In the present case, since import was made at a different Port and the claim was under a different scheme, therefore the goods were not examined at the time of export as certain as to whether the same fulfilled the condition under DEEC scheme. Further, we find that the raw material was imported with the description 100% rayon fabric whereas in the export document, the appellant made declaration that the garments are made of 100% viscose. In these circumstances, we find no infirmity in the impugned order, whereby the claim of the appellant was rejected. The appeal is dismissed."

(v) The Judgment pronounced by the Hon'ble CESTAT, Ahmedabad in the case of **Maize Products vs. Commissioner of Customs, Kandla,** reported in **2018 (360) E.L.T. 560 (Tri. - Ahmd.)**, wherein the Hon'ble Tribunal held that:

"7. Applying the principle of law settled in the above cases to the circumstances of the present case, I find that undisputed facts in the present case are that the appellants had applied for conversion of free shipping bills into DEPB Shipping Bills much after the export of goods. Also, at the time of clearance of the goods it was specifically not disclosed in the free shipping bills nor in the ARE-1 export document by declaring thereunder, specifically their intention to claim any of the export benefit i.e. benefit under DEPB scheme, therefore, the consignment was not opened for physical examination by the Customs and the export was allowed. Hence, it is difficult to appreciate the argument of the appellant that it was a question of mere amendment to the shipping bills, which is contrary to the Circular No. 4/2004, dated 16-1-2004 issued by the Board and was in force during the relevant time.

8. I also agree with the contention of the Ld. AR for the Revenue that the request for conversion of ***free shipping bills to DEPB Scheme cannot be considered, as the said scheme is strictly on actual user basis exemption and no transferability is allowed pre- or post-export. Hence, strict interpretation needs to be applied. In the result, the impugned orders are upheld and the appeals are dismissed."***

24. I find that Assistant Commissioner (Export), Customs, ICD, Khodiyar

in her verification report also recommended for not allowing for conversion of impugned shipping bill. The Exporter during personal hearing and also in his written submission asked for relief. I find from the facts of the case and documents on record that Exporter has failed to make a convincing case for himself. They have failed to put anything on record which justify that the impugned Shipping bill filed under Drawback is eligible for conversion to Advance Authorisation scheme in the instant case. In view of discussions in foregoing paras, I find that the impugned shipping bill has failed to pass the test of statutory provisions for conversion.

25. Thus, I do not find the present request of the exporter considerable in their favour for conversion of Shipping Bill from Drawback Scheme to Advance Authorisation Scheme on the above counts discussed hereinabove. I, therefore, pass the following order:

ORDER

26. In view of above, the request of the exporter for conversion of Shipping Bill No. 9944919 dated 15.04.2025 from Drawback scheme to Advance Authorisation scheme is not granted under Section 149 of Customs Act, 1962. Accordingly, the application of the exporter for conversion of Shipping Bill No. 9944919 dated 15.04.2025, from Drawback scheme to Advance Authorisation scheme, is rejected.

26.09.2025

(Shiv Kumar Sharma)
Principal Commissioner
Customs, Ahmedabad

F.No. GEN/TECH/Misc/1227/2025-TECH Date: 26.09.2025

DIN:- 20250964WY0000666F7B

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M/s. Automat Controls,
A-29/30, Karnavati Estate, Phase-III,
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Copy to: -

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad.
2. The Deputy/Assistant Commissioner of Customs, Export, ICD Khodiyar.

3. The Superintendent (System), Customs, Commissionerate, Ahmedabad, for uploading on the website.
4. Guard File.