



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद  
सीमा शुल्क भवन, आल इंडिया रेडीओं के बाजु मे, नवरंगपुरा, अहमदाबाद 380009  
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: GEN/TECH/Misc/1411/2022-TECH  
DIN- 20250771MN000081338E

आदेशकीतारीख/Date of Order : 11.07.2025  
जारीकरनेकीतारीख/Date of Issue : 11.07.2025

द्वारापारित :-  
Passed by: -

शिव कुमार शर्मा, प्रधान आयुक्त  
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR- 16 -2025-26 Dated 11.07.2025** in the case of **M/s Gulabdas International Trading LLP**, 3C, Benefice Business House, 126, Mathuradas Mill Compound, N.M. Joshi Marg, Lower Parel (West), Mumbai – 400 013.

- 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.
- 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, अहमदाबाद-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.
- उक्त अपील प्रारूप 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 प्रतियाँ 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 प्रतियाँ में अंग्रेषित 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 संलग्न 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. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ए 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 विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती 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.

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Subject: Applications for amendment/Conversion of Shipping Bill under Section 149 of Customs Act, 1962 by **M/s Gulabdas International Trading LLP**, 3C, Benefice Business House, 126, Mathuradas Mill Compound, N.M. Joshi Marg, Lower Parel (West), Mumbai – 400 013.

**Brief facts of the Case:**

M/s. Gulabdas International Trading LLP, 3C, Benefice Business House, 126, Mathuradas Mill Compound, N.M. Joshi Marg, Lower Parel (West), Mumbai – 400 013, (herein after referred to as the exporter) had exported two consignments from ICD, Khodiyar, Ahmedabad under Shipping Bill No.7543868 dated 29.12.2020 and 7544395 dated 29.12.2020 under Drawback and MEIS Scheme. The exporter vide letter dated 25.01.2022, addressed to the Commissioner of Customs, Ahmedabad, requested for conversion/amendment of Shipping Bill No.7543868 dated 29.12.2020 and 7544395 dated 29.12.2020 from Drawback and MEIS Scheme to Drawback and RoDTEP Scheme, stating that due to oversight at the time of shipment they were unable to change the scheme from Drawback and MEIS Scheme to Drawback and RoDTEP Scheme.

2. As per the records available and factual position submitted by field formation i.e. ICD Khodiyar, Gandhinagar, it appears that the exporter had exported goods classified under CTH 52085290 vide two Shipping Bills No.7543868 dated 29.12.2020 and 7544395 dated 29.12.2020, wherein they mentioned that they will claim MEIS Scheme or ROSCTL Scheme whichever is applicable; after due procedure the customs officer had given the Let Export Order (LEO) for the said Shipping Bills on 01.01.2021. Further, in terms of the DGFT Notification No.19/2015-20 dated 17.08.2021 and CBIC Notification No.76/2021-Cus(N.T.) dated 23.09.2021 regarding implementation of RoDTEP Scheme, the RoDTEP has been made effective for exports from 1<sup>st</sup> January, 2021 in respect of those exports where intention to claim the benefit has been manifested on the shipping bills. Further, as per the CBIC Circular No. 36/2010-Customs dated 23.09.2010 the conversion may be allowed subject to the conditions that the request for conversion is made by the exporter within three months from the date of the Let Export Order (LEO). The applicable drawback in respect of both the Shipping Bills was sanctioned vide scroll No.47287/2021 dated 16.01.2021 to the exporter.

**3.** After considering the facts, the Commissioner of customs, Ahmedabad rejected the request of the exporter on the ground of time bar and the exporter was accordingly, informed vide letter F. No. GEN/TECH/Misc/1411/2022-TECH-O/o PR COMM-RUS-AHMEDABAD/3342 dated 09.06.2022 that-

*"your request for conversion of the above mentioned Shipping Bills has been rejected by the Commissioner as it is barred by time"*

**4.** With reference to the letter dated 09.06.2022, the exporter, vide letter dated 14.06.2022, further submitted their submission/ clarification -

- The concerned authority deliberately ignored the directions of various Higher Appellate Authorities that provisions of Section 149 of the Customs Act, 1962 does not prescribe any time limit for amendment of the Shipping Bills. Hence, the Board's Circular 36/2010 seeking restrictions on time limit of conversion is going beyond the mandate of law. The concerned authority has failed and neglected to appreciate the facts and negligently passed the order in letter format. The said impugned letter is illegal and irregular on the case of it and should be cancelled in the interest of justice;
- They referred various judgments pointing out that various High Courts/Tribunals have clearly stated that the provisions of Section 149 of the Customs Act, 1962 does not prescribe any time limit for amendment/conversion of Shipping Bills;
- They have strong case to succeed on merits and they cannot be made to suffer due to shortcomings of the department, and therefore, requested to re-consider and decide the matter on merits by immediate remedial process and pass a speaking order accordingly, which is lawfully entitled to them.

**5.** The Technical Officer (Drawback), Drawback Division, CBIC, New Delhi vide E-mail dated 17.06.2022 had forwarded exporter's letter dated

13.06.2022 to the Customs Ahmedabad to examine whether the party's request for conversion of Shipping Bills to RoDTEP Scheme is valid and also mentioned that the basis of denying the request as time-barred also needs to be specified. The Technical Officer (Drawback), CBIC, New Delhi has also requested to look into the matter, get the issue resolved as per the existing law provisions and provide suitable reply to exporter under intimation to them.

**6.** Customs, Ahmedabad vide letter dated 21.06.2022, giving detailed reasons, informed the exporter that against the claims indicated in the Shipping Bills – Drawback, MEIS and/or ROSCTL the Drawback has already been sanctioned to the exporter; the said exports are not found eligible for MEIS and ROSCTL, the claim for RoDTEP was not indicated in Shipping Bill. Further, the exports are not eligible for RoDTEP benefit as per para 2(1)(d) of CBIC Notification No.76/2021-Cus(NT) dated 23.09.2021 as it has not been indicated in the Shipping Bills and Shipping Bills had also been filed prior to implementation of RoDTEP Scheme w.e.f. 01.01.2021. So, the benefits available in respect of Subject Shipping Bills have already been sanctioned and the other benefits not available to them, as explained above. Copy of the said letter dated 21.06.2022 also endorsed to the Technical Officer (DBK), Drawback Division, CBIC, New Delhi.

**7.** Complying with the directions received from the Technical Officer (Drawback), Drawback Division, CBIC, New Delhi, the exporter was replied by the Additional Commissioner of Customs, Ahmedabad vide letter F. No. GEN/TECH/Misc/1411/2022-TECH-O/o PR COMM-R-CUS-AHMEDABAD/3342 dated 28.06.2022 informing that (i) the letter dated 21.06.2022 may be treated as withdrawn; (ii) As regards conversion of Shipping Bills from MEIS Scheme to RoDTEP scheme, it is to inform that as mentioned vide CBIC Notification No.76/2021-Cus(NT) dated 23.09.2021, notifying the RoDTEP Scheme, the Shipping Bills filed on or after 01.01.2021 are eligible for RoDTEP benefit. However, in the instant case as both the Shipping Bills are filled on 29.12.2020, therefore same are not eligible for conversion in RoDTEP scheme.



**8.** Aggrieved with the above, the exporter has filed **two separate appeals** before the Commissioner (Appeals) against both letters dated 09.06.2022 and 28.06.2022, issued from F. No. GEN/TECH/Misc/1411/2022-TECH-O/o PR COMMR-CUS-AHMEDABAD, vide appeal No. S/49-212/CUS/AHD/22-23 (against the letter-1 dated 09.06.2022) and S/49-213/CUS/AHD/22-23 (against the letter-2 dated 28.06.2022). The Commissioner (Appeals), Customs Ahmedabad has decided both the appeals vide Order-in-Appeal No.AHD-CUSTM-000-APP-155-156-23-24 dated 23.08.2023, read with corrigendum dated 11.09.2023 as –

- (i) **dismissed the appeal filed against letter dated 09.06.2022 being not maintainable before the Commissioner (Appeals), since the decision/order is passed by the Commissioner, Customs, Ahmedabad;**
- (ii) allowed the appeal filed against letter dated 28.06.2022 by way of remand to the ADC, Customs for passing fresh order, after taking the submissions made by the appellant in that appeal which becomes sine qua non to meet the ends of justice.

**9.** The Commissioner (Appeals) while deciding the appeal No. S/49-213/CUS/AHD/22-23 against the letter dated 28.06.2022 (letter-2) vide above Order-in-Appeal dated 23.08.2023, observed that:

*"7.3 On perusal of the submissions of the appellant and impugned letter-2, it emerges that before rejecting the request of the appellant, no personal hearing was granted to the appellant. Therefore, I am of the considered view that the impugned letter-2 is issued in gross violation of principles of natural justice.*

*7.4 In view of the above, I find that remitting the present appeal to the ADC, Customs for passing fresh order, after taking the submission made by the appellant in the present appeal on record, which becomes sine qua non to meet the ends of justice. Accordingly, the case is*

*remanded back to the ADC, Customs, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing fresh order by following the principles of natural justice. In this regard, I also rely upon judgment of Hon'ble High Court of Gujarat in case of Medico Labs- [2004 (173) ELT 117 (Guj.)], judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) ELT 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) ELT 677 (Tri-Del)] holding that Commissioner (Appeals) has power to remand the case under Section 35A (3) of the Central Excise Act, 1944 and Section 128A(3) of the Customs Act, 1962.*

*7.5 In view of the above, I set the impugned letter-2 and allow the appeal filed Under F.No.S/49-212/CUS/AHD/22-23 by way of remand to the ADC, Customs for passing fresh order after considering the submissions made by the appellant in the present appeal on record. The ADC, Customs shall examine the available fact, documents, submission and issue speaking order afresh following principles of natural justice and legal provisions.*

**10.** Corrigendum dated 11.09.2023 to the above Order-in-Original issued by the Commissioner (Appeals), Customs Ahmedabad stating that in the OIA, the F. No. mentioned as "S/49-212/CUS/AHD/22-23" in para 7.5 and line 4 of the para 8 may be read as "S/49-213/CUS/AHD/22-23".

**11.** As per Direction of Commissioner (A), OIO No. 01/ADC/VM/TECH/2023-24 dated 30.11.2023 has been issued by the Additional Commissioner, Customs, Ahmedabad as under;

*I refrain from passing any order with reference to conversion of Shipping Bills No. 7543868 dated 29.12.2020 & 7544395 dated 29.12.2020 since the competent authority i.e. the Principal Commissioner of Customs, Ahmedabad has already decided the matter*

*and the same has been communicated to the exporter vide letter dated 09.06.2022.*

**12.** Being aggrieved by the letter dated 09.06.2022, the exporter has filed an appeal before Hon'ble CESTAT, Ahmedabad. Hon'ble CESTAT vide Order No: 12476/2024 dated 17/23.10.2024 ordered as under:

*"I find that it will be appropriate to remand back the matter to the Commissioner of Customs for passing a speaking the order in this regard. I also direct him to consider the decisions of this Tribunal as mentioned by the learned Advocate during the course of the hearing and as mentioned in the proceedings paragraphs while deciding the matter a fresh."*

**13.** Order No. 12476/2024 dated 17/23.10.2024 passed by the Hon'ble CESTAT, Ahmedabad has been accepted by the Department.

**14.** In view of above, matter is taken up for passing suitable speaking order.

**15. Written Submission: -**

Exporter vide email dated 28.05.2025 and 12.06.2025 submitted written submission wherein it is submitted that;

1. there is no dispute to the fact that the exports are done, sale proceeds are realized in foreign Currency in time.

2. They submitted that the Honourable Gujarat High Court in the case of M/s. Shri Niwas Dall And Besan Mill vs. UOI & Ors. SCA No.16793 of 2022 is disposed of by following directions, which would serve the ends of justice:-

(i) The petitioner shall be entitled to RoDTEP scheme benefit in respect of the exports of the goods by the respondent authorities in view of the amendment of the shipping bills under Section 149 of the Customs Act, 1962.

(ii) The respondent authorities are directed to process the claim of the petitioner for RoDTEP scheme benefit irrespective of the amendment of the shipping bills on the custom automated system or in alternative the respondents are directed to permit the petitioner to amend the shipping



bills online on custom automated system by suitably making technical deviation in the system and thereafter, process the claim of the petitioner for benefit under the RoDTEP scheme if otherwise available to the petitioner.

3. Further, the Honourable Gujarat High Court in the case of M/s. Siddharth Enterprises vs. Nodal Officer, reported in 2019 (29) G.S.T.L. 664, wherein it is held that the technical or system difficulties cannot be the reason for not granting benefit to the assessee which is otherwise available under the law. It was submitted that there is no dispute otherwise on facts or law that the petitioner is entitled to claim the benefit under the RoDTEP scheme except such technical obstacle, where the system is not designed to amend the shipping bills online which have been amended manually by the custom department.

4. They further submitted that the Honourable Gujarat High Court in the case of M/s. Shree Renuka Sugars Ltd vs. Union Of India, reported in 2023 (4) TMI 789 in granting benefit under RoDTEP scheme has issued the following directions:-

5. As the controversy unfolds as above, the court is of the view that the following directions would serve the ends of justice. Accordingly, it is provided that,

iii) The non-mentioning of the claim of the benefit in the shipping bill by the petitioner shall also not be treated as waiver on part of the petitioner by the authorities.

(iv) The authority shall process the claim of the petitioner for RoDTEP Scheme benefit irrespective of the fact that the same was not mentioned or lodged along with the shipping bill concerned.

(v) If any adjudicatory proceedings are require to be undertaken by the authorities in respect of the claim of the petitioner for the benefit

5. the Honorable Supreme Court of India have confirmed repeatedly that no genuine claim should be denied on Procedural lapses/ Technical grounds and they refer to & rely upon the following judgements in support of their submissions:

- \* Mangalore Chemical & Fertilizers Ltd Vs. Dy. Comm...1991(51) ELT 437 (SC).
- \* Formica India Vs. Collector of Central Excise .....1995 (77) ELT 51 (SC)
- \* Suksha International Vs. Union of India.... ..... 1993 (39) ELT 503 (SC)
- \* Union of India Vs. A V Narasimhalu .....1983 (13) ELT 1534 (SC)

Therefore, they submit that they are clearly eligible for export incentive of RoDTEP against the said two shipping bills.

6. They further submit that Section 149 of the Customs Act, 1962 does not prescribe any time limit for amendment of the document. This is also clarified & upheld by the judgement of Gujarat High Court in the case of

- \* Mahalaxmi Rubtech Ltd. vs Union of India C/SCA/21636/2019
- \* Lykis Ltd vs CC Mundra...Order No.A/10398/2020 upheld by Gujrat High Court-2021(377) ELT 646 (Guj)...Order dated 02.02.2021.
- \* Nissan Exports vs CC Mundra-Order No.A/12221/2023
- \* VRA Cotton Mills Pvt. Ltd. vs CC, Jamnagar (Preventive) -2014 (309) ELT 0100 (Tri. Ahmedabad.)

The said order of Gujrat HC was upheld by the Apex court & reported in (2023) 6 Centax 154 (SC).

4. They would like to further submit that it is settled law where it is held that procedural irregularities are condonable when the "factum of export is not disputed." In the instant case also there has never been a dispute about the export of goods. However, the export benefit has been sought to be denied based on condonable procedural irregularities. The Government of India in its revisionary jurisdiction has also held that the procedural lapse are condonable in interest of export promotion and benefit have been allowed. They rely upon the following case laws: -

- \* 2010-TIOL-575-HC-MUM-CX: IN RE: M/s. Madhav Steel.
- \* 2009 (233) ELT 46 (Guj.) IN RE: M/s. Cosmonaut Chemicals.
- \* 2009 (16) STR 198 (Tri. Del) IN RE: M/s. Convergys India Pvt. Ltd.
- \* 2006 (205) ELT 1027 (GOI) IN RE: M/s. Cotfab Exports.

- \* 2006 (205) ELT 1093 (GOI) IN RE: Commissioner of Central Excise Bhopal.
- \* 2006 (204) ELT 632 (GOI) IN RE: M/s. Modern Process Printers.
- \* 2001 (131) ELT 726 (GOI) IN RE: M/s. Krishna Filaments Ltd.

They therefore request for amendment/conversion of Shipping Bills No.7543868/29.12.2020 & 7544395/29.12.2020 from Drawback and MEIS Scheme to Drawback and RoDTEP Scheme be positively considered by your honour.

5. They further submitted that in the instant case the Shipping bills are filed on 29.12. 2020 & the Let Export Order (LEO) was passed on 1.1.2021. The new scheme of Remission of Duties & Taxes on Exported Products (RoDTEP) was introduced vide notification No.76/2021-CUS (NT) dated 23.9.2021 wherein the shipping bill or bill of export presented after 1.1.2021. The clause (d) of the said notification reads as follows:

(d) against the shipping bill or bill of export, presented under section 50 of said act on or after 1st day of January 2021, and where the order permitting clearance and loading of goods for exportation under section 51 of the said act has been made.

In the instant case though the shipping bill were filled on 29/12/2020, the let export order (LEO) was issue on 01/01/2021. Therefore the said shipping bills having passed for exportation of goods under section 51 is clearly eligible for RoDTEP. In view of the above they PRAY before your Honour to allow amendment/ conversion of Shipping Bills No.7543868/29.12.2020 & 7544395/29.12.2020 from the Drawback and MEIS Scheme to the Drawback and RoDTEP Scheme with consequential relief.

#### **16. Records of Personal Hearing:**

Exporter was granted opportunity to appear and represent their case on 04.06.2025; 12.06.2025 and 30.06.2025. However exporter vide email dated 20.06.2025 & 30.06.2025 submitted that they do not want to appear in Personal Hearing and submitted their final written submission and requested to decide the matter on the basis of their final written submission.

## **DISCUSSION AND FINDINGS**

**17.** I have carefully gone through the facts of the entire case and the submissions made by the exporter in writing. The issues for consideration in the present case is whether the exporter is eligible for conversion of Shipping Bill from DBK & MEIS scheme to DBK & RoDTEP Scheme or otherwise.

**18.** I find that with reference to conversion of Shipping Bill of documents under the provisions of the Customs Act, 1962, Circular No. 36/2010-Cus dated 23.09.2010 has been issued by the CBEC (now, CBIC). Para 3 of the circular states that:

*3. The issue has been re-examined in light of the above. It is clarified that Commissioner of Customs may allow conversion of shipping bills from schemes involving more rigorous examination to schemes involving less rigorous examination (for example, from Advance Authorization/DFIA scheme to Drawback/DEPB scheme) or within the schemes involving same level of examination (for example from Drawback scheme to DEPB scheme or vice versa) irrespective of whether the benefit of an export promotion scheme claimed by the exporter was denied to him by DGFT/DOC or Customs due to any dispute or not. The conversion may be permitted in accordance with the provisions of section 149 of the Customs Act, 1962 on a case to case basis on merits provided the Commissioner of Customs is satisfied, on the basis of documentary evidence which was in existence at the time the goods were exported, that the goods were eligible for the export promotion scheme to which conversion has been requested. Conversion of shipping bills shall also be subject to conditions as may be specified by the DGFT/MOC. The conversion may be allowed subject to the following further conditions:*

- a) The request for conversion is made by the exporter within three months from the date of the Let Export Order (LEO).*
- b) On the basis of available export documents etc., the fact of use of inputs is satisfactorily proved in the resultant export product.*

*c) The examination report and other endorsements made on the shipping bill/export documents prove the fact of export and the export product is clearly covered under relevant SION and or DEPB/Drawback Schedule as the case may be.*

*d) On the basis of S/Bill/export documents, the exporter has fulfilled all conditions of the export promotion scheme to which he is seeking conversion.*

*e) The exporter has not availed benefit of the export promotion scheme under which the goods were exported and no fraud/ mis-declaration /manipulation has been noticed or investigation initiated against him in respect of such exports.*

**19.** From the above legal provisions, I find that Commissioner of Customs is the competent authority for conversion of shipping bills in terms of Section 149 of Customs Act, 1962. I further find from above that 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.

**20.** It is settled 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. This view is supported by series of decisions of the Hon'ble Supreme Court, including the judgment pronounced by the Hon'ble Appex Court in the case of Commissioner Of Customs, Calcutta Vs. Indian Oil Corporation Ltd reported as 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."*

The Hon'ble High Court of Gujarat in the case of F.S. Enterprise Vs. State Of Gujarat, reported as 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."*

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....."*

**21.** I find that in the present case, the main issue involved is conversion of Two Shipping Bills No. 7543868 dated 29.12.2020 and 7544395 dated 29.12.2020 from Drawback and MEIS Scheme to Drawback and RoDTEP Scheme. **The Competent authority has declined the conversion/amendment of the above Shipping Bills. The decision of the Competent authority was conveyed to the exporter vide letter dated 09.06.2022,** however, the exporter has further represented to Technical Officer (Drawback), Drawback Division, CBIC, New Delhi and the Technical Officer vide e-mail dated 17.06.2022 emphasized that it need to be examined whether the party's request for conversion of Shipping Bills to RoDTEP Scheme is valid and also mentioned that the basis of denying the request as time-barred also needs to be specified. The Technical Officer (DBK) has requested to look into the matter, get the issue resolved as per the existing law provisions and provide suitable reply to exporter under intimation to them. Accordingly, the exporter was further communicated vide letter dated 28.06.2022.

**22.** I further find that the exporter had filed two separate appeals in the instant matter/issue, one against decision of the competent Authority conveyed vide letter dated 09.06.2022 (Appeal No. S/49-212/CUS/AHD/22-230) and second (Appeal No. S/49-213/CUS/AHD/22-23) against the letter F. No. GEN/TECH/Misc/1411/2022-TECH-O/o PR COMMR-CUS-AHMEDABAD/3342 dated 28.06.2022 complying with the directions received from the Technical Officer (Drawback), Drawback Division, CBIC, New Delhi. I also find that the Commissioner of Customs (Appeals), Customs Ahmedabad had **dismissed the appeal filed against letter dated 09.06.2022 being not maintainable before the Commissioner (Appeals), since the decision/order is passed by the Commissioner, Customs, Ahmedabad.** I further find that on the other hand the Commissioner of Customs (Appeals),

Customs Ahmedabad had allowed the second appeal on the same matter and remanded back the matter in respect of appeal against letter dated 28.06.2023 to the ADC, Customs for passing fresh order, after taking the submissions made by the appellant. Accordingly the ADC, Customs, Ahmedabad, after considering the submission of the applicant, has passed the Order-In-Original No. 01/ADC/VM/TECH/2023-24 dated 30.11.2023. Further, Hon'ble CESTAT vide Order No: 12476/2024 dated 17/23.10.2024 *remanded back the matter to the Commissioner of Customs for passing a speaking order in this regard.*

**23.** I further find that Exporter has availed the benefit of DBK & MEIS vide the impugned shipping bills. They have declared at respective places in the Shipping bill that they intend to claim DBK & MEIS benefits. This is not disputed by the Exporter as well. It would be pertinent to refer Clause (e) of Para-3 of Circular No. 36/2010-Cus dated 23.09.2010 which prescribes one of the conditions of conversion of Shipping bills and reads as under-

*"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."*

**24.** It is evident from above that any exporter who has availed benefit of export promotion scheme under which the goods were exported..... is not eligible for conversion of shipping bills. In the present case, Exporter has exported goods in respect of the impugned shipping bills under DBK & MEIS scheme as a benefit of export promotion scheme and DBK has been sanctioned and disbursed to the exporter. In view of the same, Exporter is legally not eligible for conversion of impugned shipping bill from DBK & MEIS to DBK & RoDTEP after availment of Export benefit/incentive under the scheme in which the goods were originally exported.

**25.** Exporter has relied upon various case laws in their favour. I find that most of the case laws cited by the exporter are in relation to quashing of time

restriction for grant of export benefits i.e. Refund/rebate of duty & submission of Proof of Export etc. Exporter has further relied upon the decision of Hon'ble CESTAT Ahmedabad in the case of Lykis Ltd. Vs. CC, Mundra. In the aforesaid case Hon'ble CESTAT, Ahmedabad has observed that;

- i) There is no time limit prescribed under Section 149 of the Customs Act, 1962.
- ii) The Board Circular is not binding as the same is not statutory provisions in terms of Section 149 of the Customs Act, 1962.

The said order of Hon'ble CESTAT, Ahmedabad is upheld by the Hon'ble High Court of Gujarat in Tax Appeal No. 301 of 2020 in case of Pr. Commissioner, Customs, Mundra Vs. Lykis Ltd. I find that the ratio of cited case law is not applicable in the present case since the present case is being decided on merit and not solely on the basis of time bar as cited by the exporter.

**26.** I find that in the present case Exporter has exported the goods under impugned shipping bills during December, 2020; LEO dated 01.01.2021 and the application for conversion has been filed on 25.01.2022. I find that Exporter has failed to file the application for conversion of Shipping Bills within reasonable time. I rely on decision of Hon'ble CESTAT in the case of M/s Gupta Enterprises Vs. Commissioner of Customs (Sea Exports, Chennai) (Customs Appeal No.40150 of 2014) and Hon'ble Tribunal's decisions in the case of Autotech Industries (India) Ltd. I also rely upon decision of Hon'ble High Court of Delhi in the case of Commissioner of Customs (Export) Vs. E.S .Lighting Technologies (P) Ltd. reported in 2020(371) E.L.T 369 (Del) where in Hon'ble High Court has observed that- "merely because no time limitation prescribed under Section 149 *ibid* for purpose of seeking amendment/conversion, it does not follow that request in that regard could be made after passage of any length of time. Request could not have been entertained without examination of records- Not fair to expect department to maintain, and be possessed of, the records after passage of such a-long periods."

**27.** I also find that Applicant has claimed that Section 149 of the Customs Act, 1962 does not prescribe any time limit for filing the application for conversion of Shipping Bill. I find no merit even in this plea of the applicant as the time limit for filing application for conversion of Shipping bill, though not defined in Section 149 of Customs Act, 1962, however, the time limit has been prescribed at para 3(a) of the Circular No. 36/2010-Cus dated 23.09.2010 which stipulate that such request should be filed within three months. It is settled 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. This view is supported by series of decisions of the Hon'ble Supreme Court, including the judgement pronounced by the Hon'ble Appex Court in the case of Commissioner Of Customs, Calcutta Vs. Indian Oil Corporation Ltd reported as 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].*

**28.** In addition of above legal factual provisions, I find that, CBIC vide Notification No.76/2021-Cus (NT) dated 23.09.2021, notifying the RoDTEP Scheme. Para 2(1)(d) of the said Notificaion provides that,

**2. Such duty credit shall be subject to the following conditions, namely:-**

**(1) that the duty credit is issued –**



(a) .....

(b) .....

**(c) against claim of duty credit under the Scheme made by an exporter by providing the appropriate declaration at the item level in the shipping bill or bill of export in the customs automated system;**

**(d) against the shipping bill or bill of export, presented under section 50 of the said Act on or after the 1st day of January, 2021, and where the order permitting clearance and loading of goods for exportation under section 51 of the said Act has been made;**

In present case, exporter has filed both the Shipping Bills on 29.12.2020. Further, exporter has not claimed RoDTEP scheme by providing appropriate declaration at the item level in Shipping Bill in the Customs Automated System. As such exporter is not entitled for claiming benefit of RoDTEP scheme.

Under the Circumstances, both the Shipping Bills have not fulfilled the criteria of RoDTEP Scheme. As both the SBs are filed prior to eligible date for RoDTEP Scheme, exporter is not entitled to claim RoDTEP benefit in aforesaid both the Shipping Bills.

**29.** I find that Deputy Commissioner, Customs, ICD - Khodiyar, Ahmedabad in their verification report dated 18.06.2022 has not recommended for conversion of impugned shipping bills to RoDTEP Scheme, as both the SBs are filed on 29.12.2020, whereas RoDTEP is admissible to SB filed on or after 01.01.2021. The Exporter in their written submission requested to allow the request for conversion of subject Shipping Bills. I find from the facts of the case and documents on record that Exporter has failed to make a convincing case for themselves. They have failed to put anything on record which justify that the impugned Shipping bill is eligible for conversion from DBK & MEIS to DBK & RoDTEP 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.

**30.** Thus, I find that Exporter's application for conversion of shipping bill cannot be considered as discussed hereinabove. I therefore pass following order:

**- : ORDER : -**

**31.** In view of the above, permission for conversion of Shipping Bill No: 7543868/29.12.2020 and 7544395/29.12.2020 from DBK & MEIS to DBK & RoDTEP scheme cannot be granted under Section 149 of Customs Act, 1962. Accordingly, the application of the exporter for conversion of Shipping Bill Nos. 7543868/29.12.2020 and 7544395/29.12.2020 from DBK & MEIS to DBK & RoDTEP scheme is rejected.



11.07.2025

**(Shiv Kumar Sharma)**

Principal Commissioner

Customs, Ahmedabad

**F. No: GEN/TECH/Misc/1411/2022-TECH**

**Date: 11.07.2025**

**DIN - 20250771MN000081338E**

**By SPEED POST**

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