



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडीओं के बाजू में, नवरंगपुरा, अहमदाबाद 380009
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निबन्धित पावती डाक द्वारा / By **SPEED POST A.D.**

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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-61-2024-25 Dated 09.01.2025

in the case of **M/s. Meghmani Industries Limited**, 9th Floor, B-Wing, Siddhivinayak Tower, Nr. Kataria Arcade, Off. S. G. Highway, Makarba, Ahmedabad - 380051.

- 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 मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजू में, 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.
3. 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 प्रतियों 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.

Subject: Applications for amendment/Conversion of Shipping Bill under Section 149 of Customs Act, 1962 by **M/s. Meghmani Industries Limited**, 9th Floor, B-Wing, Siddhivinayak Tower, Nr. Kataria Arcade, Off. S. G. Highway, Makarba, Ahmedabad - 380051.

Brief facts of the Case:

M/s. Meghmani Industries Limited, 9th Floor, B-Wing, Siddhivinayak Tower, Nr. Kataria Arcade, Off. S. G. Highway, Makarba, Ahmedabad - 380051 (hereinafter referred to as the "Exporter"), holding IEC No. 0893016012, had exported goods falling under CTH No. 38 from ICD Khodiyar, Ahmedabad under following Four shipping bills and claiming Advance Authorization Scheme benefits. The exporter vide letters dated 30.08.2024, addressed to the Commissioner of Customs, ICD Khodiyar, Ahmedabad, requested for conversion/amendment of Shipping Bill from Advance Authorization Scheme to Drawback scheme, stating that at the time of export they have inadvertently filed following shipping bills under AA scheme. Exporter has requested for conversion of shipping bill as detailed below:

Sr. No.	Shipping Bill No.	Shipping Bill Date	LEO date	Advance Authorization No.	Type of conversion/ amendment
1	2171799	02.06.2021	03.06.2021	0811001039 dated 16.03.2021	From Advance Licence Scheme to Drawback scheme.
2	2556038	21.06.2021	21.06.2021	0811001674 dated 04.06.2021	From Advance Licence Scheme to Drawback scheme.
3	2443962	16.06.2021	16.06.2021	0811001674 dated 04.06.2021	From Advance Licence Scheme to Drawback scheme.
4	7520670	18.01.2022	18.01.2022	0811003260 dated 29.11.2021	From Advance Licence Scheme to Drawback scheme.

2. Exporter has submitted that they have inadvertently filed the shipping bill under AA instead of drawback scheme but not utilised the said SBs to fulfil / cover the export obligation of Advance Authorizations mentioned against the respective Shipping Bills. As they have not taken Advance License benefits for the subject Shipping Bills, they requested for conversion of above said four Shipping Bills under Duty Drawback Scheme.

3. The exporter requested for amendment of Shipping Bills number 2556038 dated 21.06.2021; 2171799 dated 02.06.2021; 2443962 dated 16.06.2021 and 7520670 dated 18.01.2022 under Section 149 of the Customs Act 1962 for conversion of shipping bill from Advance Authorisation to duty drawback scheme, as they have not utilised subject Shipping Bills to fulfilled export obligation benefit under Advance Authorisation Scheme.

4. Conversion of Shipping bill is governed by 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.

4.1 Further, CBIC Circular No. 36/2010-Customs dated 23.09.2010 has detailed the condition in which conversion of shipping bills may be allowed:-

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.

In the present case, conversion is being asked from Advance Authorization Scheme to DBK Scheme.

4.2. Regulation -3 & 4 of Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 20 which prescribes as under:-

3. *Manner and time limit for applying for post export conversion of Shipping Bill in certain cases. - (1) The application for conversion shall be filed in writing within a period of one year from the date of order for clearance of goods under sub-section (1) of section 51 or section 69 of the Act, as the case may be:*

Provided that the jurisdictional Commissioner of Customs, having regard to the circumstance under which the exporter was prevented from applying within the said period of one year, may consider and decide, for reasons to be recorded in writing, to extend the aforesaid period of one year by a further period of six months:

Provided further that the jurisdictional Chief Commissioner of Customs, having regard to the circumstances under which the exporter was prevented from applying within the said period of one year and six months, may consider and decide, for reasons to be recorded in writing, to extend the said period of one year and six months by a further period of six months.

(2) For the purpose of computing the period of one year under sub-regulation (1), the period, during which stay was granted by an order of a court or tribunal, shall be excluded.

(3) The jurisdictional Commissioner of Customs, may, in his discretion, authorize the conversion of shipping bill, subject to the following, namely:

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

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

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

(4) 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 Shipping Bill. - (1) The conversion of shipping bill and bill of export 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 benefit of the instrument based scheme from which conversion is being sought;

(c) no condition, specified in any regulation or notification, relating to presentation of shipping bill or bill of export 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 shipping bill or bill of export of which the conversion is sought is one that had been filed in relation to instrument based scheme.

5. Exporter has submitted the application to the Deputy Commissioner (Export), Customs, ICD Khodiyar, who forwarded the same to this office vide letter dtd. 30.08.2024 along with comments as under-

The exporter has failed to comply with the point (a) of para 3 of Circular No. 36/2010-Customs dated 23.09.2010, if deemed fit, the exporter may not allowed amendment of Shipping bill Nos. 2171799/02.06.20221; 2556038/21.06.2021; 2443962/16.06.2021 and 7520670/18.01.2022 .

PERSONAL HEARING:

6. The exporter was granted opportunity to be heard in person on 18.10.2024; 04.11.2024 & 06.12.2024. Shri CA Manohar Maheshwari, Vice President – Commercial, Meghmani Industries Limited, Ahmedabad appeared for personal hearing conducted virtually on 06.12.2024 and submitted that they will submitted their written submission by 13.12.2024.

7. M/s. Meghmani Industries Limited vide letter dated 06.12.2024 submitted their written submission received on 09.12.2024. In the written submission, they submitted that;

- They submitted their application dated 13.04.2024 for conversion of Shipping Bills from Advance Authorisation to Drawback under Section 149 of the Customs Act, 1962.
- These Shipping Bills were mistakenly filed under the Advance Authorisation based on the situation existing at the time of filling the Shipping Bills.
- The mistake is apparent and based on the situation already in existence at the time of export and come to their notice while reconciling the export obligation against Advance Authorisation and applying for it redemption online. On observing mistake they requested for the conversion to Drawback Scheme (AIR).
- They submitted that Section 149 of the Customs Act, 1962, which deals with such amendment, does not provide any time limit. In support of the same, they submitted following relevant decisions.
 - a) 2023 (385) ELT 99 (SC)/(2023) 6 Centax 154 (SC)- Union of India Vs. Mahalaxmi Rutech Limited.
 - b) 2024 (387) ELT 277 (Bom.) Colossustex Pvt. Ltd. Vs. UOI.
 - c) Pinnacle Life Science Pvt. Ltd. Vs. UOI.- Bombay (HC).
- They have not taken advance license benefit against these shipping bills.
- Recent Notification No. 11/2022-Cus (N.T.) dated 22.02.2022 prescribing time limit for amending the Shipping Bills is not applicable in present case.
- They have not availed any export benefits on export made under these shipping bills, unless amended, it would cause loss to them and against the stated policy of the government that 'taxes should not be exports', which are refunded through such remission/reimbursement scheme like duty draw back.

- In view of above stated facts and settled legal position, they requested to allow the amendment in the subject shipping bills from Advance Authorisation to Draw Back on AIR basis.

DISCUSSION AND FINDINGS

8. I have carefully gone through the facts of the case, documents on record, record of personal hearing held on virtual mode on 06.12.2024 and submissions made by the exporter in writing. 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 Advance Authorisation scheme to Drawback scheme in terms of Section 149 of Customs Act, 1962 or otherwise.

9. I find that with reference to conversion of Shipping Bill under the provisions of the Section 149 of 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 as follows:

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.

10. 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.

11. 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....."

12. I further find that Exporter has availed the benefit of Advance Authorization vide the impugned shipping bills. They have declared at respective places in the Shipping bill that they intend to claim Advance Authorization 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."

13. 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 Advance Authorization scheme as a benefit of export promotion scheme. In view of the same, Exporter is legally not eligible for conversion of impugned shipping bill from Advance License scheme to Drawback scheme after availment of Export benefit/incentive under the scheme in which the goods were originally exported.

14. 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 of 3 months for conversion of shipping bills. Exporter has further relied upon the decision of Hon'ble High Court of Mumbai in the case of Colossustex Pvt Ltd & Todi Rayons Pvt. Ltd. Vs. UOI (Writ Petition No. 2010 of 2022). Hon'ble High Court of Mumbai has observed that the adjudicating authority has rejected the application of the appellant on the basis of time bar without going in to the merits of the case. Further, I find that in most of the case laws cited by the exporter, the appellate authority allowed the appeal subject to the other compliances as may be warranted by law. 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.

15. I find that in the present case Exporter has exported the goods under impugned shipping bills during June, 2021 to January, 2022 and the application for conversion has been filed in June, 2024. 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."

16. 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 judgment pronounced by the Hon'ble Apex 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].

17. I find that Deputy Commissioner, Customs, ICD - Khodiyar, Ahmedabad has also in verification report recommended for not allowing for conversion of impugned shipping bills, as exporter has failed to comply with the Point (a) of para 3 of Circular No: 36/2010-Customs dated 23.09.2010. 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 himself. They have failed to put anything on record which justify that the impugned Shipping bill is eligible for conversion to Duty drawback 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.

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

- : ORDER : -

19. In view of the above, conversion of Shipping Bill No: 2171799/02.06.2021; 2443962/16.06.2021; 2556038/21.06.2021 and 7520670/18.01.2022 from Advance License Scheme to Drawback scheme cannot be granted under Section 149 of Customs Act, 1962. Accordingly, the application of the exporter for conversion of Shipping Bill Nos. Shipping Bill No: 2171799/02.06.2021; 2443962/16.06.2021; 2556038/21.06.2021 and 7520670/18.01.2022, from Advance Authorization to Drawback is rejected.



(Shiv Kumar Sharma)

Principal Commissioner
Customs, Ahmedabad

F. No: GEN/TECH/Misc/1819/2024-TECH

Date: 09.01.2025

DIN:- 20250171MN0000824166

By SPEED POST/Hand Delivery

To;

M/s. Meghmani Industries Limited,
9th Floor, B-Wing, Siddhivinayak Tower,
Nr. Kataria Arcade, Off. S. G. Highway,
Makarba, Ahmedabad - 380051

Copy to: -

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad.
- ✓ 2. The Deputy Commissioner of Customs, ICD, Khodiyar, Ahmedabad
3. The Superintendent (System), Customs, Commissionerate, Ahmedabad ,
for uploading on the website
4. Guard File