



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

फा. सं./ F. No.: GEN/TECH/Misc/1156/2024-TECH

DIN- 20240721MN0000000E6C

आदेशकीतारीख/Date of Order : 30.07.2024  
जारीकरनेकीतारीख/Date of Issue : 30.07.2024

द्वारापारित :-  
Passed by :-

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

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COM- 35 - 2024-25 Dated 30.07.2024**

in the case of **M/s Alleima India Private Limited** ( Formerly known as Sandvik Materials Technology India Pvt. Ltd.),Vill- Rajpur, Taluka- Kadi, Dist- Mehsana, Gujarat- 384440.

- 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, दूसरी मंज़िल, 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 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 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 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 No. 9927877 dt. 25.04.2022 under Section 149 of Customs Act, 1962 by M/s Alleima India Private Limited ( Formerly known as Sandvik Materials Technology India Pvt. Ltd.), Vill- Rajpur, Taluka- Kadi, Dist- Mehsana, Gujarat- 384440

**Brief facts of the Case:**

M/s Alleima India Private Limited ( Formerly know as Sandvik Materials Technology India Pvt. Ltd.), Vill- Rajpur, Taluka- Kadi, Dist- Mehsana, Gujarat- 384440(hereinafter referred to as the "Exporter"), holding IEC No. ABBCS6573P, had exported Seamless stainless steel tubes from ICD, Khodiyar, Ahmedabad under shipping bill No. 9927877 dt 25.04.2022 and claimed Drawback. The exporter vide letter dated 04.06.2024, addressed to the Principal Commissioner of Customs, Ahmedabad, requested for conversion/amendment of Shipping Bill from Drawback scheme to Advance Authorisation Scheme, stating that clearing agent has inadvertently filed the shipping bill under drawback scheme instead of AA scheme. All industry Drawback (AIR) claim has been received by the company. Exporter has requested for conversion of shipping bill as detailed below:

Sr. No.	Shipping Bill No.	Shipping Bill Date	LEO date	Type of conversion/ amendment
1	9927877	25.04.2022	26.04.2023	From Drawback scheme to Advance Licence Scheme

**2.** Exporter has submitted that they have imported the goods without payment of duty under Advance Authorization and consumed the goods in the manufacture of finished products which were subsequently exported. They further submitted that, though these export were against export obligation against Advance Authorisation but through oversight they have not claimed this export against fulfillment of export obligation under Advance Authorisation and instead claimed Drawback. Exporter has submitted that they have received All Industry rate Drawback(AIR) from the department and now they are willing to refund drawback claimed on the shipping bill along with interest. Exporter has also submitted that historically they have been importing under AA scheme and has been compliant with all the laws , and requested to allow them the conversion of impugned shipping bill No. 9927877 dt. 25.04.2022 from Drawback scheme to AA scheme.

**3.** Exporter vide written submission dt. 30.06.2024 submitted that Company has obtained Advance authorization licenses to avail the benefit of customs duty exemptions in relation to exports made by it. The Company was issued Advance Authorization (AA) no 0811004097 dated 17 February 2022. The Company has imported 92.086 metric tons of Stainless steel billets grade : 254 SMO (i.e. raw material) under the AA license without payment of duties. Such imports lead to an export obligation of 46.043 metric tons of Seamless

Stainless Steel Pipes (Cold finish) grade : 254SMO (i.e. the finished product). The Company had already exported 10.743 metric tons of finished product vide shipping bill numbers 9201231, 1821639, 8597656 and 3841272 under the AA license. The Company had also exported 30.217 metric ton of finished product under shipping bill no 9927877 dated 25 April 2022 with the intention of reflecting such exports towards fulfilment of export obligation under the AA. However, the clearing agent inadvertently filed the shipping bill under drawback scheme instead of AA scheme. Further, the Company had used 44.64 metric tons of duty free raw material imported under AA under BOE number 774103 dated 05 March 2022 to manufacture such finished goods. This can be substantiated through the HEAT number 561508 (similar to batch number) and packing note no which is present in the invoice of goods imported under AA, inspection certificate, and the export invoice. Due to the inadvertent error, the export obligation against 44.64 metric tons of raw materials which is used in the manufacturing of the finished product stands unfulfilled whereas such finished product is already exported by the Company. The Company has also received All Industry Drawback (AIR) for such exports. Exporter further submitted as under:

**3.1.** The Company is a part of renowned Swedish multinational engineering Company group named Alleima (earlier was a part of Sandvik Group) and has been majorly exporting to Korea, China, Czech Republic and other countries and contributing to the foreign exchange reserves. The Company has also previously obtained and closed various AA licenses by fulfilling the export obligations and have been compliant to prevailing laws.

**3.2.** The Company wishes to submit that due to an inadvertent error, shipping bill no 9927877 dated 25 April 2022 was reflected under drawback scheme instead of AA scheme. Further the Company has also used 44.64 metric tons of duty free raw material imported under AA under BOE number 774103 dated 05 March 2022 to manufacture the finished goods exported under Shipping bill number 9927877 dated 25 April 2022.

**3.3.** Since the Shipping bill was inadvertently reflected under drawback scheme, 44.64 metric tons of duty free raw material imported under AA used in such export would not be considered towards fulfilment of export obligation. This in turn would lead to situation wherein the Company would be required to refund the Customs duties benefit availed on import along with interest. Whereas in substance, the Company with right intentions has used such duty



free procured raw material for the purpose of manufacturing the finished products for exports as per the AA.

**3.4.** The Company wishes to place a humble request for amendment of Shipping bill number 9927877 dated 25 April 2022 under Section 149 of the Customs Act 1962 for conversion of shipping bill from duty drawback scheme to AA scheme. The Company also wishes to refund the drawback received under AIR along with interest which was granted through an automatic route as soon as the goods were exported.

**3.5.** In this regard, the Company wishes to rely on Circular No 36/2010 – Customs dated 23 September, 2010 which provides guidance on conversion of shipping bills from one scheme to other. As per the Circular, conversion of shipping bills may be permitted under Section 149 of the Customs Act, 1962, on a case to case basis on merits, on the basis of documentary evidence which was in existence at the time the goods were exported. Further it also provides that conversion of shipping bills within the schemes involving the same level of examination should be allowed.

**3.6.** The Company wishes to submit that, since the authorities are allowed to examine the goods exported even under drawback scheme, the conversion of shipping bill from drawback to AA involves same level of examination and the same should be allowed. Further, the Company through the following documents prove that the duty free imported goods were physically incorporated in the exported finished goods based on the documents which existed at the time the goods were exported from India.

**3.7.** Further, the Company wishes to rely on case laws issued by various courts which allowed conversion of shipping bills from drawback scheme to AA scheme based on the documentary evidences prevailing during exports. We wish to rely on:

- i) In the case of M/s Pinnacle Life Sciences Pvt Limited vs Commissioner of Customs, Nhava Sheva II [2024(5) TMI 527] wherein CESTAT Mumbai had set aside the order denying the conversion of shipping bills from drawback to AA scheme. The CESTAT in para 6 of the order held that Section 149 of the Customs Act 1962 is statutorily circumscribed by the framework of the provision. It is intended for rectification of documents issued by parties to a commercial engagement which is, thereby, transposed into the statutorily prescribed entry envisaged by section 46 and section 50 of Customs Act,

1962. The empowerment stands on its own, and subject only to verifiability of facts as available on date of import or export, as the case may be. No other intrusion may be permitted to influence the disposal of request for amendment.

ii) In the case of M/s Carl Zeiss India (Bangalore) Pvt Ltd vs the Commissioner of Customs Bangalore [2024(2) TMI 1098] wherein CESTAT Bangalore allowed conversion of shipping bills from drawback to AA on the basis of documentary evidences which prevailed at the time of exports and since the appellant was ready to pay back the drawback received at the time of export.

iii) In the case of Messrs Mahalaxmi Rubtech Ltd vs Union of India [2021(3)TMI 240], the Gujarat High Court allowed conversion of the EPCG shipping bill into the EPCG- cum- Drawback shipping bill - Striking down circular No.36/2010-Cus dated 23.9.2010 (i.e. para 3(a) of this Circular) as ultra vires Section 149 of the Customs Act, 1962 and also ultra vires Articles 14 and 19(1)(g) of the Constitution of India.

**3.8.** Based on the above case laws and Circular cited, the Company request for amendment of Shipping bill number 9927877 dated 25 April 2022 under Section 149 of the Customs Act 1962. The Company accepts the inadvertent error and agrees to repay the AIR drawback along with interest. Non conversion of the shipping bills would cause undue hardship to the Company and would lead to payment of customs duties and interest in a case wherein in substance the Company has exported the finished goods as per the AA licenses issued by the Company.

**4.** Application of the Exporter was sent to Deputy Commissioner (Export), Customs, ICD, Khodiyar for verification and comments. Deputy Commissioner (Export), customs, ICD, Khodiyar vide letter dt 16.07.2024 in her verification report has submitted as under-

Letters dt 04.06.2026 received from M/s Alleima India Private Limited regarding conversion of shipping bill No. 9927877 dt 25.04.2022 from Drawback Scheme to Advance License Scheme. The exporter has requested for conversion of the said shipping bill from Drawback to Advance License. Exporter had submitted copy of advance license, shipping bill along with covering letter.

**5.** 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.

**5.1** 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 DBK Scheme to Advance Authorization i.e. less rigorous examination to more rigorous examination.

**5.2.** She also referred to Regulation -3 & 4 of Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022 Notified vide Notification No. 11/2022-Customs (N.T.) dated 22.02.2022 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 : -*

*(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.*

**6.** Further, Deputy Commissioner (Export), Customs, ICD, Khodiyar vide her verification report dt 16.07.2023 has recommended for not allowing the conversion of impugned shipping bills on following grounds:-.

**6.1.** The exporter has also failed to comply the point (a) and point(e) of the Para-3 of the above said circular as they

**(i)** Failed to submit the application within stipulated time of 3 months from the date of LEO.

**(ii)** The exporter has availed the benefit of Drawback schemes in their shipping bills.

(iii) The exporter has requested for conversion of Shipping Bills from less rigorous examination scheme to more rigorous examination scheme contrary to the provisions specified in aforesaid Circular.

**6.2** She reported as the exporter has failed to comply with the point (a) and (e) of Para-3 of the Circular No. 36/2010 –Customs dt. 23.09.2010 and Regulation 3(1) of Notification No. 11/2022-Customs (N.T.) dated 22.02.2022, the exporter may not be allowed for conversion of shipping bill No. 9927877 dt 25.04.2022 as requested by them.

**Personal Hearing:**

**7.** The exporter vide letter File No. GEN/TECH/MISC/1156/2024-TECH dated 18.06.2024 & 24.06.2024 were granted opportunity to be heard in person. Shri Mohit Airon, CA, Shri Ashok Jani, Business Controller and Shri Nimit Dabhi, General Manager, representatives of the exporter, attended the personal hearing on 01.07.2024. During personal hearing, they reiterated their written submission submitted vide letter dated 30.06.2024.

**8.** The exporter vide letter 01.07.2024 has made additional written submission- The Company had submitted a representation requesting for amendment of shipping bill no 9927877, based on which the Company has been granted a personal hearing on 1<sup>st</sup> July 2024. During the hearing the Company was asked whether it complies with the Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022. The Company wishes to submit as follows:

The Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022, which exercise the powers under Section 149 and 157 of the Customs Act 1962, provides the procedure and timelines for amendment of shipping bills post export. The conditions mentioned under the scheme are as follows

*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.*

i. The Company wishes to submit that it has complied with all the conditions mentioned in the above procedure as follows:

*Condition 1: (a) fulfilment of all conditions of the instrument based scheme to which conversion is being sought;*

The Company wishes to submit that it has complied with the conditions mentioned under AA scheme. The Company has made all efforts in the past and in the present case to fulfil the export obligations or to pay duty with interest and be compliant with the AA scheme. Further, the Company through the following documents prove that the duty free imported goods were physically incorporated in the exported finished goods based on the documents which existed at the time the goods were exported from India. Further, all other conditions are complied with.

Sl no	Type of document	Document number	Linkage
1.	Import invoice from AB Sandvik Materials Technology submitted at the time of import, imported duty free	BOE no : 7741034 dated 05 March 2022 Import invoice 2008953 dated 10 January 2022	Contains the details of the Packing note number (i.e. 28857, 28858, 28902 and 28903)
2.	Inspection certificate by Sandvik	Certificate no : A/21-987882	The inspection certification contains the above packing note number and the HEAT number

	Materials Technology	dated 27 December 2021	i.e. 564128 (similar to a batch number)
3.	The export invoice raised by Alleima India submitted to the Customs department during export	Export invoice no : B311026 dated 23 April 2023 Shipping bill no: 9927877 dated 25 April 2022	The HEAT number is mentioned in the export invoice based on which the shipping bill was created

Based on the above submission, condition no 1 stands satisfied.

*Condition 2 : (b) the exporter has not availed benefit of the instrument based scheme from which conversion is being sought;*

The Company wishes to submit that as soon as the goods were exported the AIR drawback was received through an automatic route. The Company is willing to pay the drawback received with interest received on export of shipping bill no 9927877 if the conversion is allowed under AA scheme. Further the Company also wishes to quote the following judicial case wherein CESTAT had allowed conversion of drawback shipping bill to AA in cases where the applicant was willing to refund the drawback with interest.

In the case of *M/s Carl Zeiss India (Bangalore) Pvt Ltd vs the Commissioner of Customs Bangalore [2024(2) TMI 1098]* wherein CESTAT Bangalore allowed conversion of shipping bills from drawback to AA on the basis of documentary evidences which prevailed at the time of exports and since the appellant was ready to pay back the drawback received at the time of export.

Based on the above submission, condition 2 stands satisfied.

*Condition 3 : (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;*



*Condition 4 : (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;*

*Condition 4 : (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.*

With respect to the above mentioned conditions, the Company wishes to submit that

- It has complied with all the regulations relating to presentation of shipping bill or bill of export in the Customs Automated System
- There are no contravention has been noticed or investigation initiated against the exporter under the Act or any other law, for the time being in force
- the shipping bill or bill of export of which the conversion is sought is one that had been filed in relation to drawback instrument based scheme

Based on the above submission, the condition 3, 4 and 5 stands satisfied.

- ii.** Further exercising the powers under Section 149 and 157 of the Customs Act 1962, the regulation also provides time limit of 1 year for the conversion of shipping bill which can be further extended by 6 month each by the jurisdictional Commissioner of Customs and Chief jurisdictional Commissioner of Customs on reasonable basis. The Company wishes to submit that while request for shipping bill conversion is exceeding the timelines provided in the regulation, the Company should not be denied a substantive benefit on account of a procedural lapse. As stated above, the Company has fulfilled all the conditions provided in the regulations and is able to substantiate the genuineness of the transaction.
- iii.** Therefore the Company humbly request for your approval for conversion of Shipping bill no 9927877 from drawback scheme to AA scheme. Non conversion of the shipping bills would cause undue hardship to the Company and would lead to payment of customs duties and interest in a case wherein in substance the Company has exported the finished goods as per the AA licenses issued by the Company.
- iv.** We also seek your support and guidance in taking approval if required from the Central Board of Indirect tax and customs (CBIC) considering this

to be an exceptional and genuine case allowing the conversion of shipping bill in this matter.

## **DISCUSSION AND FINDINGS**

**09.** I have carefully gone through the facts of the case, documents on record, submissions made by the exporter in writing as well as the record of personal hearing held on 01.07.2024. 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 scheme in terms of Section 149 of the Customs Act, 1962 read with related Regulations/Circular in this regard.

**10.** 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 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.*

**11.** I further find that with reference to post export conversion of Shipping Bill under the provisions of Section 149 of the Customs Act, 1962, Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022 has been Notified by the CBIC vide Notification No. 11/2022-Customs (N.T.) dated 22.02.2022 . Regulation 3 & 4 of the said Notification 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 : -

(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.

**12.** 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. I also find that the impugned case of conversion of shipping bill is governed by Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022 Notified by the CBIC vide Notification No. 11/2022-Customs (N.T.) dated 22.02.2022.

**13.** 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 observed *inter alia* as follows :-

*"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....."*

**14.** I have gone through the impugned Shipping bills and on perusal of the same I find that the submission of the exporter that they have mentioned quantity of raw materials for intended claim for Advance Authorization is misplaced and far from facts and thus not tenable. I find that quantity mentioned in shipping bills are finished products quantity and they were mentioned as they intended to claim benefits under RODTEP (Remission of duty and taxes on exported products) scheme.

**15.** I further find that Part-IV of shipping bills contains scheme details. Part-A contains Drawback/ROSL claim and Part-B contains AA/DFIA claim. Exporter has filled Part-A of Part-IV of shipping bill, thus intending to claim Drawback on the impugned shipping bill. I further find that at Sr. No. 19 of Part-III, Exporter has mentioned Drawback as Scheme name. I find that it is not disputed that Exporter has claimed and received Drawback in respect of the impugned shipping bill.

**16.** I further find from the perusal of export invoice, Packing List that exporter has categorically mentioned that – "The shipment under Duty drawback scheme with Sr. No 9807730402B ." Exporter has also made similar remarks on shipping bill as well in relation to Drawback & RODTEP scheme.

**17.** In view of the above facts and documentary evidences on record, exporter has failed to make a convincing case for themselves that due to human error they could not export under Advance Authorization. I am not inclined to form an opinion that not filling Advance Authorization details at so many places in the shipping bill, Export invoices & Packing list could be a result of human error.

**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 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).....*

**19.** 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 license Scheme which is contrary to the above provisions and cannot be acceded. 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 also find that Exporter in his submission has also relied upon Para—3 of Circular No. 36/2010-Cus dated 23.09.2010 stating that they are eligible for conversion since both the schemes have same level of examination. I find that Exporter has failed to appreciate that Drawback scheme and AA scheme , to which conversion is sought, are not same level examination schemes and export under Advance Authorisation Scheme (AA scheme) demands higher level of examination as compared to Drawback scheme. I find that the subject goods exported vide the impugned Shipping bill were not subjected to risk management parameters involving more rigorous examination scheme, being Advance license in the present case, and as such allowing for conversion of such shipping bills from Drawback scheme to Advance license Scheme will be contrary to the provisions of the above referred Circular.

**20.** I further find that Exporter has availed the benefit of Drawback vide the impugned shipping bill. They have declared in their Export invoice, packing list and respective places in the Shipping bill that they intend to claim Draw back. 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."*

I further find that Regulation 4(b) of Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022 prescribes condition for conversion as under-:

*(b) the exporter has not availed benefit of the instrument based scheme from which conversion is being sought;*

**21.** It is evident from above that any exporter who has availed benefit of export promotion scheme from which conversion is being sought/ under which the goods were exported..... is not eligible for conversion of shipping bill. In the present case Exporter has exported goods in respect of impugned shipping bill under Drawback scheme and claimed & received Drawback amount as a benefit of export promotion scheme. In view of the same, Exporter is legally not eligible for conversion of impugned shipping bill from Drawback scheme to Advance License scheme after availment of Export benefit/incentive under the scheme from which conversion is being sought.

**22.** I further find that Exporter has filed the application for conversion of shipping bill no. 9927877 dt 25.04.2022, Let Export order dt. 26.04.2022, on 04.06.2024 i.e after expiry of more than two years. In this connection, I find that Regulation 3(1) of Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022 prescribes time limit for filing application for conversion of shipping bill as one year from the date of let export order. Proviso 1 further prescribes that time limit for filing application for conversion can be extended by six months by the Commissioner of customs and proviso 2 prescribes further extension of six months by Chief commissioner of customs on reasonable grounds of delay being submitted by the exporter. It is evident that statute has provided sufficient remedy for a legitimate delay in filing application for conversion beyond one year. It is also evident that an application for post export conversion of shipping bill can not be filed beyond two years of the date of export, even after considering two extensions provided by the statute. I find that present application for post export conversion of shipping bill has been filed beyond two years of let export order and as such has been filed beyond the statutory time limit prescribed in Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022. I further find that Exporter are aware of this fact and they have acknowledged filing application for shipping bill conversion beyond



statutory time limit in their additional submission dt 01.07.2024. I am constrained and bound by the statute and hold that the present application for conversion of impugned shipping bill has been filed beyond statutory time limit.

**23.** 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 relied upon the decision of Hon'ble CESTAT Mumbai in the case of M/s Pinnacle Life Science Pvt. Ltd. Vs. Commissioner of Customs Nhava Sheva II (CUS Appeal No. 87621/2022) 2024 (5) TMI 527- CESTAT Mumbai. I find that facts of the case in the cited case law were entirely different from the present case. In the cited case law the shipping bills pertained to the period prior to the enactment of Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022 and in most of the case laws cited, applications has been dismissed based on the time limit prescribed in Para 3(a) of CBIC Circular N. 36/2010-Cus. Dt 23.09.2010. The present application is being considered on merit and as envisaged under Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022.

**24.** Exported has further relied upon the decision of Hon'ble CESTAT , Bangalore in the case of Carl Zeiss India Pvt. Ltd. Vs. Commissioner of Customs, Bangalore ( CUS Appeal No. 20398/2022) 2024(2) TMI 1098-CESTAT - Bangalore. Hon'ble CESTAT , Bangalore has observed that the adjudicating authority has rejected the application of the appellant on the basis of limitation of period as prescribed in CBIC Circular N. 36/2010-Cus. Dt 23.09.2010 without going in to the merits of the case and thereafter allowed the appeal of the appellant by remanding back the case to adjudicating authority. I find that the ratio of cited case law is not applicable in the present case since it pertain to the period prior to the enactment of Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022. Present case is being decided on merit and in term of Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022 and not on the basis of limitation of period prescribed in CBIC Circular N. 36/2010-Cus. Dt 23.09.2010, as cited by the exporter.

**25.** Exported has further relied upon the decision of Hon'ble Gujarat High Court in the case of M/s Mahalaxmi Rubtech Ltd. Vs. UOI ( SCA No. 21636/2019) 2021 (3) TMI 240- Gujarat High Court. In the cited case law

application for conversion of shipping bill from EPCG to EPCG & Drawback scheme was rejected by the commissioner of Customs on the ground of limitation of period as envisaged in para 3(a) of CBIC Circular N. 36/2010-Cus. Dt 23.09.2010. Hon'ble Gujarat High Court has allowed the writ application of the applicant after striking down para 3(a) of CBIC Circular No. 36/2010-Cus. Dt 23.09.2010 as ultra vires Section 149 of Customs Act, 1962. I find that the ratio of cited case law is not applicable in the present case since it pertains to the period prior to the enactment of Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022. Present case is being decided on merit and in term of Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022 and not on the basis of limitation of period prescribed in para 3(a) of CBIC Circular N. 36/2010-Cus. Dt 23.09.2010, as cited by the exporter.

**26.** I further find support from Hon'ble CESTAT decision in the case M/s Gupta Enterprises Vs. Commissioner of Customs (Sea Exports, Chennai) ( Customs Appeal No. 40150 of 2014). Hon'ble CESTAT after relying Hon'ble Tribunal's decisions in the case of Autotech Industries (India) Ltd. in Para-12.28 of the order has observed interalia that : -

*"Be that as it may, before concluding, we are not able to overlook a serious question presented by the peculiar facts of the case before us. In the absence of any period of limitation prescribed in the Section, whether it would mean that the remedy/relief can be sought for at any time when the Importer/Exporter wake up to realize the mistake or omission. In our opinion, the remedy has to be sought for within a reasonable time. A legal claim cannot be enforced if there is a long delay in asserting the right or the claim."*

**27.** I find from above that Hon'ble CESTAT has also observed that even a legal claim cannot be made after inordinate delay and any legal claim has to be made within reasonable time. I find that in the present case Exporter has exported the goods under impugned shipping bill during April- 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....."

**28.** I find that 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].*

**29.** I find that Deputy Commissioner (Export), Customs, ICD, Khodiyar has also in her verification report recommended for not allowing for conversion of impugned shipping bills, as detailed in para-4 ,5 & 6 above. The Exporter has reiterated his submissions during personal hearing and 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 is eligible for conversion from Drawback scheme to Advance License scheme in the instant case. In view of discussions in the 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 on all three counts discussed hereinabove. I therefore pass following order:

**:-ORDER:-**

**31.** In view of the above, conversion of Shipping bill No. 9927877 dt. 25.04.2024 from Drawback scheme to Advance License Scheme cannot be granted under Section 149 of Customs Act, 1962. Accordingly, the application of the exporter for conversion of Shipping bill from Drawback to Advance Authorization is rejected.

  
**(Shiv Kumar Sharma)**  
 Principal Commissioner  
 Customs, Ahmedabad  
 Dt. 30.07.2024

F.No. GEN/TECH/Misc/1156/2024-TECH

DIN:- 20240771MN0000000E6C

**By SPEED POST/Hand Delivery**

To;

M/s Alleima India Private Limited

( Formerly know as Sandvik Materials Technology India Pvt. Ltd.),

Vill- Rajpur, Taluka- Kadi, Dist- Mehsana, Gujarat- 384440

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