

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

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REGIONAL BENCH – COURT NO. 1

**Customs Appeal No. 328 Of 2011**

[Arising out of OIA No. 56/CUS/Ldh/2011 dated 20.04.2011 passed by the Commissioner (Appeals) of Central Excise, Customs, Chandigarh]

**M/s Crown Milk Specialities Private Limited : Appellant (s)**  
C-16, Industrial Area, Phase VIII-B, SAS Nagar, Mohali

Vs

**Commissioner of Customs, Amritsar : Respondent (s)**  
Customs House, Central Revenue Building  
The Mall, Amritsar 143001

APPEARANCE:

Shri Naveen Bindal, Advocate for the Appellant  
Shri Manoj Nayyer, Authorised Representative for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)  
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**ORDER No. A/ 60289/2023**

Date of Hearing:01.05.2023

Date of Decision:25.08.2023

**Per : S. S. GARG**

The present appeal is directed against the impugned order dated 20.04.2011 passed by the Ld. Commissioner (Appeals) of Central Excise, Customs, Chandigarh whereby the Ld. Commissioner (Appeals) has rejected the appeal of the appellant for conversion of shipping bills from one scheme to another i.e. from drawback of DEPB Scheme.

2. Briefly the facts of the case are that the appellant is engaged in the manufacture of Milk Products and they have exported their products to Germany by various shipping bills. The details of shipping bills and the date of export are given herein below:-

| Invoice Number  | Shipping Bill No. | Shipping Bill Date | FOB Value  |
|-----------------|-------------------|--------------------|------------|
| CMSL/EXPORT/001 | 1161690           | 04.01.2010         | 6926480.00 |
| CMSL/EXPORT/003 | 1055654           | 23.01.2010         | 7634870.00 |
| CMSL/EXPORT/004 | 1063958           | 02.02.2010         | 7535930.00 |

As per the appellant, they have exported the goods for the first time, and therefore, inadvertently shipping bills were filed under Drawback Scheme where the rate of drawback was 1% whereas the appellant was duly entitled to export under DEPB Scheme at the rate of 9%. On coming to know that the CHA has wrongly filed shipping bills under Drawback Scheme instead of DEBP Scheme, the appellant filed an application dated 08.07.2010 for conversion of shipping bills from drawback to DEPB under Section 149 of the Customs Act, 1962. The Respondent vide Order dated 28.09.2010 has rejected claim of the appellant taking the view that conversion is allowed where benefit of export promotion scheme claimed by exporter has been denied by DGFT/MOC from customs due to any dispute. Aggrieved by the Order-in-Original dated 28.09.2010, the Appellant preferred an Appeal before the Ld. Commissioner (Appeals), Chandigarh and the Ld. Commissioner (Appeals) rejected the request for conversion of shipping bills by relying upon the Board Circular No. 04/2004 dated 16.01.2004. Aggrieved by the said order, the appellant filed the present appeal.

3. Heard both the parties and perused the records.

4. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed by relying upon the old Board Circular which has been subsequently changed by issuance of a new Circular. He further submitted that the Board Circular No. 04/2004 dated 16.01.2004 relied upon by both the lower authorities have been substituted by another Circular No. 36/2010 dated 23.09.2010 which allows conversion of shipping bills from one scheme to another. He further submitted that in the Circular No. 36/2010 dated 23.09.2010 itself, it is provided that in both drawback scheme and DEPB scheme, there is same level of examination and therefore, conversion is permissible. He further submits that both the authorities did not consider the said circular and rejected the request for conversion on the basis of old circular. He further submitted that the appellant requested the authorities for conversion of shipping bill within six months which cannot be said to be unreasonable in any manner. He further submitted that there is no time limit provided under Section 149 of the Customs Act, 1962 seeking conversion of shipping bills from one scheme to another and it is only in Circular No. 36/2010, the time limit of three months from the date of let export order is provided which has been held to be unreasonable and has been set-aside by various Courts including the Jurisdictional High Court of Punjab and Haryana. He further submitted that the appellant is ready to furnish undertaking that the benefit of drawback which has been availed by the appellant shall be returned alongwith interest. In support of his submissions, the Ld. Counsel relied upon the following decisions:-

i) Commissioner of Customs Vs. Mrs. Bectors Food Specialities Ltd., CUSAP-10-2019, Order dated 15.02.2023.

ii) Central Board of Indirect Taxes and Customs Vs. Parayil Food Products Pvt. Ltd., (2023) 4 Centax 207 (Ker.).

iii) Principal Commissioner of Customs, Mundra Vs. Lykis Ltd., 2021 (377) ELT 646 (Guj.).

iv) Diamond Engg. (Chennai) P. Ltd. Vs. CC, (Seaport-Export), Chennai, 2013 (288) ELT 265 (Tri-Mad).

5. On the other hand, the Ld. DR reiterated the findings in the impugned order. He further submits that as per provisions of Section 149 no amendment of shipping bill can be allowed after the export goods have been exported except on the basis of the documentary evidence, which was in existence at the time, the goods were exported. He further submitted that the amendment in the shipping bill cannot be sought in routine and as the matter of right and is based upon the discretion vested in the proper officer.

6. After considering the submissions of both the parties and perusal of material on record, we find that the authorities below have rejected the request of the appellant for conversion of shipping bill from duty drawback to DEPB by relying upon the Circular No. 04/2004 dated 16.01.2004 which stands substituted by another Circular No. 36/2010 dated 23.09.2010 which allows the conversion of shipping bill from one scheme to another. Further, we find that in this Circular itself, it is provided that in both drawback scheme and DEPB scheme, the level of examination is the same which shows that the request of the appellant should have been allowed by the authorities below, but both the authorities have rejected the request without considering the

Circular No. 36/2010 dated 23.09.2010. Further, we find that in this case, the request for conversion was made within six months from the date of export whereas under Circular No. 36/2010 conversion is allowed if the request for the same is filed within three months from the date of let export order.

7. Further, we find that the said condition of prescribed time limit of three months has been set-aside by various courts including the Jurisdictional High Court of Punjab and Haryana in the case of Commissioner of Customs Vs. Mrs. Bectors Food Specialities Ltd., CUSAP-10-2019, Order dated 15.02.2023.

8. Further, the decisions relied upon by the Ld. Counsel for the appellant cited (supra) also allows the conversion from one scheme to another scheme under Section 149 of the Customs Act, 1962 and by following the ratio of the decisions cited (supra), we hold that the impugned order is not sustainable in law and the same is set-aside by allowing the appeal of the appellant.

*(Pronounced on 25.08.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

G.Y.