CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Court No.5

Customs Appeal No. 87408 of 2025

(Arising out of Order-in-Original No. 30/2025-26/Commissioner/ CEAC/NS-II CAC/JNCH dated 09.04.2025 passed by the Commissioner of Customs (NS-II), JNCH, Nhava Sheva)

Commissioner of Customs, Nhava Sheva-II **Appellant**
JNPT, Custom House,
Nhava Sheva, Raigad 400 707.

Vs.

ADF Foods Ltd. **Respondent**
83/86, GIDC Industrial Estate,
Nadiad Kheda 387 001,
Gujarat

Appearance:

Shri Krishna Azad, Assistant Commissioner, Authorised Representative for the Appellant
Shri Mihir Mehta with Shri Mohit Raval, Advocates, for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

Date of Hearing: 25.11.2025
Date of Decision: 15.12.2025

FINAL ORDER No. 86916/2025

PER: DR. SUVENDU KUMAR PATI

The appeal was heard from both the sides on the other day and is taken up for order today.

2. The background of the case would go to reveal that against part acceptance of request for conversion of Shipping Bills for about 10 years from one export promotion to another export promotion scheme, the matter had travelled upto this Tribunal and ultimately decided on 26.06.2025 in favour of the exporter-appellant while determining the legality of the order passed by the Commissioner in permitting such conversion upto three years and refusing conversion of rest of the Shipping Bills on the ground that it is hit by Article 137 of the Indian Limitation Act, 1963, which was held by this Tribunal to be not applicable to such conversion request made under Section 149 of the Customs Act, 1962. In

other words, the Appellant exporter has got complete remedy from this forum. Subsequently the respondent department has come up with this appeal for quashing of the order passed by the Commissioner in permitting conversion for three years.

3. We have gone through the submissions made by both the sides and perused the appeal paper book as well as the order passed by the Tribunal on 17.07.2025 in the appeal preferred by the exporter appellant. In the said order under para 5, 5.1 and 6, the reasons for allowing such conversion has been clearly enunciated. It would be worthwhile to reproduce those paragraphs for better clarity:-

"5. We have gone through the appeal paper book, relied upon decisions and written submissions made by adversaries. At the outset, it is to be placed on record that M.P. Steel Corporation judgment of the Hon'ble Supreme Court passed in the year 2015 is the authoritative pronouncement of application of the Limitation Act to the proceedings dealt before a Tribunal or a Quasi-Judicial Authority, which has encompassed divergent decisions on the issue and has laid down the law on this issue. With reference to the judgement passed by Hon'ble Supreme Court in the case of Commissioner of Sales Tax, UP, Lucknow Vs. Parson Tools and Plants, Kanpur, [(1975) 4 SCC 22] that has been further reiterated in Consolidate Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. reported in (2008) 7 SCC 169, it has been held that Limitation Act prescribes the period of limitation only to proceedings in Courts and not to any proceedings before a Tribunal or Quasi- Judicial Authority and consequently Section 3 as well as Section 29(2) of the Limitation Act will not be applied to proceedings before the Tribunal to appeals or applications before it, unless expressly provided (para 44 concurring judgment of Hon'ble Justice Raveendran). It was further held in the said judgment, with reference to para 22 of the decision in Kerala State Electricity Board Vs. T.P. Kunhaliumma, [(1976) 4 SCC 634] delivered by a Three Judges Bench, that Article 137 of Limitation Act, 1963 will apply to any petition or application filed under any Act in a Civil Court and therefore, in M.P. Steel decision it was ultimately concluded in para 28 that Suits, Appeals or Applications

as are referred to in the Schedule are only related to Courts and not to Quasi-Judicial bodies or Tribunal and therefore, only when a Suit, Appeal or Application of the description in the Schedule is filed in a Court under a Special Local Law, Section 29(2) gets attracted.

5.1 From the above discussion it can be concluded without any doubt that Section 29(2) that deals with saving clause or Article 137 prescribing 3 years limitation for filing an application are not applicable to the proceedings initiated before a Quasi-Judicial Authority or Tribunal, for which a specific time limit can't be imputed to conversion of a shipping bill as Section 149 itself has not provided any such time limit and also categorically incorporated in its body that such conversion can be done on the basis of documentary proof (since after export no other material object would be available for such inspection). Therefore, when conversion from one scheme to another scheme would be beneficial to the exporter and there is no time limit available to carry out such conversion it would not be prudent and proper to fix a stipulation of 3 years of period from the date of export to restrtict the Appellant to convert shipping bills from one scheme to another scheme, on which score alone the rejection order passed by the Commissioner is unsustainable in law.

6. Now coming to the other points raised by the leaned Authorised Representative for the Respondent-Department namely restriction imposed under Clause 3(e) of the Circular No. 36/2010 in not permitting such conversion if Exporter had availed benefit of any Export Promotion Scheme (EP Scheme), it can be said that neither the said issue was raised before the Commissioner nor being aggrieved with his order of allowing conversion for 3 years after receipt of drawbacks, Department had preferred any appeal assailing the order favouring conversion for 3 years. More importantly, when such a stipulation for conversion is not available in Section 149 of the Customs Act, imputation of such a condition through a circular would naturally meet the consequence as it happened in respect of Clause 3(a) imposing 3 months condition for such conversion that has been struck down by several High Courts including Hon'ble High Court of Gujarat in

M/s. Lykis Ltd. judgment cited supra. More importantly not only learned Commissioner had allowed such conversion for 3 years from drawback scheme to DFIA scheme with condition for reversal of drawback receipt alongwith applicable interest but also through several judicial pronunciation including in the case of Commissioner, Customs ICD, GRFL Vs. M/s. Bectors Food Specialities Ltd. (date of judgment 15.02.2022) Hon'ble Panjab & Haryana High Court had given a clear finding that such conversion of shipping bills from drawback scheme to DFIA scheme is valid subject to reversal of benefit taken under duty drawback scheme is made by the exporter alongwith interest."

4. When ultimately we have allowed the appeal of the appellant exporter and given a finding that apart from the Shipping Bills mentioned in Annexure I and Annexure II, which were allowed by the Commissioner for conversion, rest of the Shipping Bills can also be converted validly from drawback to DFIA scheme and we had converted the same in exercise of our appellate authority with a direction to the respondent jurisdictional Commissioner to issue amended certificate for DFIA licence finalisation upon conditions, the said order can be stated to have merged with the order passed by the Commissioner in respect of conversion of Shipping Bills for three years and that cannot be reopened now at the instance of the respondent department as appellant herein, who had participated in the previous proceedings that would ultimately enable the exporter/respondent herein to get protection under the principles of *res judicata*, when its ground of appeal deals with the restrictions enumerated under Clause 3 of Circular No.36/2010-Cus. which was held by several judicial forums including Writ Courts as not in conformity to the language of Section 149 of the Customs Act. Hence the order:-

<u>ORDER</u>

The appeal is dismissed and the order passed by the Commissioner to the extent of granting the benefit of conversion of Shipping Bills to the exporter for three years is held to be valid since for the entire period of over 10 years, it is declared by this

Tribunal on 17.07.2025 as valid conversion, that includes these three years period also under the doctrine of merger.

(Order pronounced in the open court on 15.12.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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