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C.M.A.No.1043 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

C.M.A.No.1043 of 2025
and C.M.P.No.8902 of 2025

The Commissioner of Customs (Preventive)
Tiruchirapalli Commissionerate
No.1, Williams Road Cantonment
Tiruchirapalli,
Tamil Nadu - 620001

Appellant(s)

Vs

Indian Oil Corporation Ltd
Sr. Manager Fin E and C, Marketing Div
Indian Oil Bhavan
139 Mahatma Gandhi Road,
Nungambakkam High Road,
Chennai - 600 034

Respondent(s)



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Prayer : Appeal filed under Section 130 of the Customs Act, 1962 against Final Order No.41548/2024, dated 29.11.2024 in Appeal No.40085 of 2015-RB on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai.

For Appellant(s): Mr.Rajendra Ragavan

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Appeal impugns an order dated 29.11.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai [CESTAT], by which the CESTAT was pleased to set aside an order dated 19.12.2013 passed by the Commissioner of Customs and remand the matter to the Original Authority to consider and dispose the same in accordance with law.

2. Respondent herein, viz., Indian Oil Corporation Limited (IOCL), had applied for conversion of 698 shipping bills from Advance Authorisation Scheme to Draw Back Scheme on 26.6.2011. The Commissioner of Customs permitted conversion of 594 shipping bills and rejected the balance 104 shipping bills. The reason for rejection is that respondent applied for conversion beyond the period of three months from



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the date of Let Export Order (LEO). Reliance was placed on Circular No.36/2010 issued on 23.9.2010.

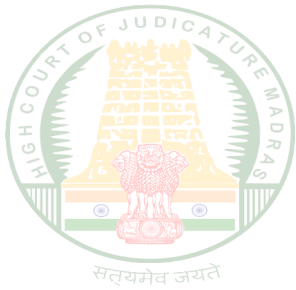
3. The CESTAT relying upon a judgment of the Gujarat High Court in ***Mahalakshmi Rubtech Ltd v. Union of India***¹, held that the rejection relying on Circular No.36/2010 was incorrect. The Apex Court has not interfered with the said finding of the Gujarat High Court.

4. Shri Raghavan submitted that the judgment of the Gujarat High Court in *Mahalakshmi Rubtech Ltd* (supra) has not been upheld, but the SLP filed by the department was dismissed in view of the delay in filing the SLP.

5. The fact is the judgment of the Gujarat High Court in *Mahalakshmi Rubtech Ltd* (supra) has not been interfered with.

6. In *Mahalakshmi Rubtech Ltd* (supra), Clause (A) of first paragraph reads as under:

¹ 2021 (3) TMI 240



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“(A) That Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, direction or order 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.”

7. Circular No.36 of 2010 in paragraph 3 provides as under:

“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;

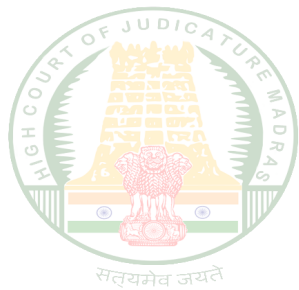
(a) The request for conversion is made by the exporter within three months from the date of Let Export Order (LEO).
...”

[emphasis supplied]

8. Paragraphs 16 and 32 of the judgment in *Mahalakshmi Rubtech*

Ltd (supra), read as under:

“16 We find merit in the principal argument of Mr.Dave that in Section 149 of the Act, no time period has been prescribed and if in a



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substantive statutory provision of law, if no time period has been prescribed, then the CBEC could not have issued the circular providing for three months time period to make a request for conversion from the date of the LEO.

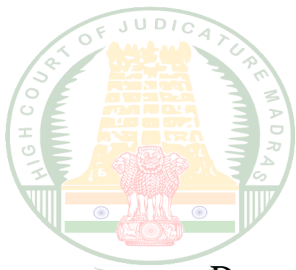
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32 In view of the aforesaid discussion, we hold that the impugned circular to the extent of para 3(a) is ultra vires Articles 14 and 19(1)(g) of the Constitution of India as also ultra vires Section 149 of the Customs Act, 1962.”

9. Since the Gujarat High Court has held that the impugned circular to the extent of paragraph 3(a) is ultra vires Articles 14 and 19(1)(g) of the Constitution of India, as also ultra vires Section 149 of the Customs Act, 1962, the question of the Commissioner or the Original Authority relying on the said provision in the circular does not arise.

10. In these circumstances, appeal is dismissed. The remaining 104 shipping bills shall be reconsidered by the Original Authority and an order shall be passed on merits and in accordance with law within 12 weeks from today. Before passing an order, personal hearing be also given to IOCL.

11. A copy of this order be sent to the Commissioner of Customs, who shall forward the copy of this order to the head of the Legal



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सत्यमेव जय Department of IOCL within one week of the order being uploaded.

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There shall be no order as to costs. Consequently, interim application stands closed.

(K.R.SHRIRAM, C.J.)

(MOHAMMED SHAFFIQ, J.)

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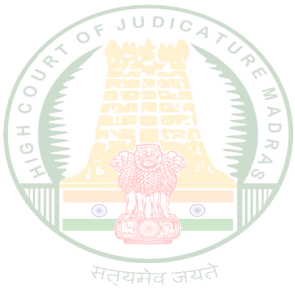
NC : Yes/No

sasi

To

The Commissioner of Customs
No.1 Williams Road Cantonment
Tiruchirapalli, Tamil Nadu – 620001.

THE HON'BLE CHIEF JUSTICE
AND
MOHAMMED SHAFFIQ, J.



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