

Circular prescribing time limit for amendment in Shipping Bill in absence of a substantive provision in law is illegal and without jurisdiction – Bombay HC

18 September 2023



Summary

The Bombay High Court (HC) has held that the impugned circular prescribing a time limit for amendment in the Shipping Bill in the absence of any substantive provision in the Customs Law is illegal and without jurisdiction. The HC noted that prior to the amendment in Section 149 of the Customs Act, 1962 (Customs Act), there was no power/authority vested in the Central Government to prescribe any time frame. The HC opined that the circular prescribing the time limit was issued during the period wherein there was no substantive power under the Customs Law to prescribe such time period and, therefore, was in violation of the statute. Accordingly, the HC held that the impugned circular, to the extent it incorporates the time limit for amendment in the Shipping Bill, was ultra vires of Article 14 of the Constitution of India and Section 149 of the Customs Act.

Facts of the case

- Todi Rayons Private Limited (petitioner no. 2), who is an importer and merchant exporter, had imported goods under the Advance Authorisation Scheme (AAS) for carrying out the manufacturing process of the final product for the purpose of export. It had sold the goods to Colossustex Private Limited (petitioner no. 1) and also exported goods vide Let Export Order to fulfil its export obligations so as to avail of the benefit of the Advance Authorisation on or before 31 March 2021.
- The Directorate General of Foreign Trade (DGFT) extended the Export Obligation Period of specified Advance and EPCG Authorisations for those Advance authorisations where the original or extended export obligation period expired during the period from 1 August 2020 to 31 July 2021 till 31 December 2021. Therefore, the petitioners No. 1 and 2 requested the Revenue to amend the Shipping Bills from one scheme to the other as per the provisions of Section 149 of the Customs Act.
- The Assistant Commissioner rejected the request made by the petitioners in

light of Circular No.36/2010 Customs dated 23 September 2010 (impugned circular), which provided that the request for conversion of the Shipping Bills has to be made within three months from the date of the Let Export Order.

- Aggrieved by such rejection, the petitioners have filed a present writ before the Bombay HC challenging the legality of the impugned circular.

Bombay HC observations and ruling [Writ Petition No. 2010 of 2022 vide order dated 23 August 2023]:

- **No authority/power vested with the Central Government:** The HC noted that prior to the amendment in Section 149 of the Customs Act, there was no authority and/or any power vested in the Central Government to prescribe any time frame and/or restrictions and conditions to be imposed on amendment of the documents as stipulated in Section 149 of the Customs Act. The Central Government could exercise power, provided such a power and authority was conferred by Section 149 of the Customs Act, which is the only provision under the Customs Act which

provides for amendment to the documents.

- **Not permissible for the Central Government to issue the impugned circular:** The HC observed that the impugned circular was issued during the period when there was no substantive provision under the Customs Law to prescribe any time frame for amendment. Thus, it was not permissible for the Central Government to issue the impugned circular and, more particularly, prescribe the timelines.
- **Impugned circular is illegal and bad, and ultra vires to the Customs Law:** The impugned circular at the time when it was issued cannot be traced to any authority, power and jurisdiction vested with the CBEC considering the provisions of Section 149 of the Customs Act as it stood. Therefore, the impugned circular could not have been issued by the Central Board of Excise and Customs (CBEC), prescribing for a three-month time period to make a request for amending the bills as per Section 149 of the Customs Act, when no timeline was prescribed. Thus, the impugned circular, to the extent it prescribes a time limit, was ultra vires of Article 14 of the Constitution of India as well as ultra vires of Section 149 of the Customs Act.

Our comments

On a similar issue earlier, the Gujarat HC in the case of M/s. Mahalaxmi Rubitech Ltd., had held that the impugned circular to the extent it prescribes the time limits in para 3(a) was ultra vires the provisions of Article 14 of the Constitution of India as well as Section 149 of the Customs Act.

Even the Division Bench of the Bombay HC had pronounced a similar view in the case of Pinnacle Life Science Pvt. Ltd.

The present ruling is in line with the above jurisprudence and shall set precedence in similar matters.

It is pertinent to note that the Board, vide Notification No. 11/2022-Customs (N.T.) dated 22 February 2022, notified the Shipping Bill (post export conversion in relation to the instrument-based scheme) Regulations, 2022. The regulations provide that the application for conversion/amendment of the Shipping Bill or Bill of Export shall be made within a period of one year from the date of order for clearance of goods.

Contact us



Scan the QR code to view our office addresses

www.grantthornton.in

For more information or for any queries, write to us at GTBharat@in.gt.com



Follow us [@GrantThorntonIN](https://twitter.com/GrantThorntonIN)

© 2023 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001. References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.