CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CUSTOMS APPEAL NO. 10038 OF 2015
(ARISING OUT OF OIA-AHM-CUSTM-000-APP-323-14-15 DATED 07/11/2014 PASSED BY COMMISSIONER OF CUSTOMS-AHMEDABAD)

ABARIS HEALTHCARE PVT LTD **.....Appellant**
406, 4TH FLOOR, SAFFRON TOWER,
AHMEDABAD-GUJARAT

VERSUS

C.C.- AHMEDABAD **....Respondent**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD,
GUJARAT

APPEARANCE:
Shri. Anil Gidwani, Advocate for the Appellant
Shri. G. Kirupanandan (Superintendent) Authorized Representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11227 /2022

DATE OF HEARING: 27.06.2022
DATE OF DECISION: 18.10.2022

RAMESH NAIR

This appeal is against the Order-in-Appeal No. AHM-CUSTM-000-APP-323-14-15 dtd. 07.11.2014 passed by the Commissioner (Appeals), Ahmedabad.

2. The relevant facts that arise for consideration is that the Appellant filed a Bill of Entry for clearance of imported goods viz. LDPE Innoplus LD 2420, availing the benefit exemption under Notification No. 12/2012 for payment of basis customs duty at 7.5%. Accordingly, the Assessment Authority assessed the bill of entry. Thereafter, the appellant requested the assessment authority to extend the benefit of Notification No. 46/2011. The assessment authority vide letter dtd. 25.05.2014 informed the Appellant that their request cannot be entertained. Being Aggrieved with the Assessment order Appellant filed appeal before the Commissioner (appeals). The Ld. Commissioner (Appeals) vide impugned order dtd. 07.11.2014 upheld the decisions of Original

Authority. Aggrieved with the impugned order of Commissioner (Appeals), the appellant have come before this tribunal for relief.

3. Shri Anil Gidwani, learned Counsel appearing on behalf of Appellant submits that the goods imported by the Appellant were covered under HSN No. 390110 which had been listed at Sr. No. 440 of Notification No. 46/2011 -Customs dtd. 01.06.2011 and the goods were imported from Thailand and the said country is notified at Sr. No. 3 of Appendix I to the above mentioned Notification. Thus, the benefit of concessional duty of 5% was available to the Appellant in place of 7.5% as declared by the Appellant at the time of filing Bill of Entry. Thus, the Bills of Entry could have been amended at the relevant time as all the details of the same were already declared on the Bill of Entry. Further, the HSN and country of Origin documents had also been furnished at the time of filing of Bill of Entry. Thus, there was no reason, for not amending the Bill of entry under Section 149 of the Act ibid.

4. He further submits that finding of Ld. Commissioner in not proper. Country of Origin was already declared by the Appellant at the time of filing of impugned Bill of Entry itself. Further, Ld. Commissioner (Appeals) has grossly erred in interpreting the provisions of Section 146 of the Customs Act, 1962 by observing that the country of origin was not available at the time of assessment and clearance whereas the provisions of Section 146 of the Act ibid require the existence of documentary evidence at the time of clearances of the goods and not availability of the said documents. Thus, assessing officer has grossly erred in denying the re-assessment of goods.

5. He also submits that in the instant case, the assessing officers were required to follow the provisions of re-assessment of the Bill of Entry as contained in Section 154 of the Customs Act, 1962. The assessing officer was required to correct the clerical mistake occurred at the time of filing of the impugned Bill of Entry as the lapse had occurred on account of clerical error on the part of the Customs Broker. However the same was not done.

6. He placed reliance on the following judgments.

(i) Commissioner of Customs (Import) Vs. Symrise Pvt. Ltd. – 2019(367) ELT 227.
(ii) Modison Metal Ltd. Vs. Commissioner of Customs – 2009(248) ELT 301
(iii) Bennett Colemen & Co. Ltd. Vs. Commissioner of Customs – 2008(232)ELT 367
(iv) I.P. Rings Ltd. Vs. Commissioner of Customs (Air) 2006(202) ELT 61.

7. On other hand Shri G. Kirupanandan appearing on behalf of revenue reiterated the finding of impugned order.

8. We have carefully considered the submissions made by both the sides and perused the relevant records. In the instant case, the appellant is claiming amendment and consequent re-assessment of the bill of entry since the benefit of Notification No. 46/2011 dtd. 01.06.2011 was available to the Appellant and in existence at the time of filing of bill of entry. The relevant section applicable in the present matter are reproduced below :

> ***"SECTION 149 : Amendment of documents***
>
> *Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorize any document, after it has been presented in the custom house to be amended :*
>
> *Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorized 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.*
>
> ***SECTION 154 : Correction of clerical errors, etc.***
>
> *Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be."*

9. From the above, it can be seen that as far as Section 149 is concerned, amendment is to be allowed on the basis of documentary evidence which was in existence at the time when the goods were cleared, deposited or exported. The only restriction is Sections 30 and 41 of Customs Act, 1962 which relates to export and import manifest which are not allowed to be amended of when

there is a fraudulent intention. In the case of amended document under Section 149, the amendment has to be allowed when a request is based on documentary evidence, which was in existence at the time of clearance of the goods. Further Section 154 of the Customs Act, 1962 deals with clerical error and allows correction of arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be.

10. In the case on hand, from the material on records, we could see that apparently, there was an error, on the part of the CHA who inadvertently mentioned Notification No. 12/2012- Customs and accordingly discharged 7.5% customs duty., whereas, the benefit of Notification No. 46/2011 was available to the Appellant. Section 154 and 149 of the Customs Act, 1962, postulates the intention of the legislature, and any correction could be made.

11. As per above Sections, an importer has a right to make amendments in the Bills of Entry covering imported goods assessed and cleared for home consumption or deposit in a warehouse, if he satisfies the condition prescribed in the said Section that such amendments are sought on the basis of documentary evidence which was in existence at the time the goods had been cleared/deposited. In the instant case amendments to the Bills of Entry sought to be made are not on the strength of any new document. This right of the importer is not removed or whittled down by the judgments in the case of *Priya Blue Industries Ltd.* v. *CC* which is relied upon by the Ld. Commissioner (Appeals). This issue was not before the Apex Court when their lordships had passed the said judgment. The judgment in the case of *Priya Blue Industries Ltd.* is not applicable as Section 149 and 154 of the Customs Act, independent, provides for correction of mistakes in any decision or order by an officer of Customs.

12. We also find that Tribunal had recorded the following findings on the provisions contained in Section 149 in *I.P. Rings Ltd.* v. *CC(AIR)*, 2006 (202) E.L.T. 61 (Tri.-Chen.) :

> *"Amendment of Bill of Entry is permissible on the basis of documentary evidence which was in existence at the time when the goods were cleared. In the present case, when the goods were cleared. Customs Notification 21/2002 (unamended) was in existence. As its amendment through corrigendum was retrospective in effect, the amended Notification should be deemed to have been in existence at the time of clearance of the goods and, consequently, in terms of Section 149, the subject Bills of Entry were open to be amended. It appears from the provisions of Section 149 that such amendment shall be made by the importer as authorized by the proper officer. Thus the importer is expected to apply to the proper officer for permission to amend the Bills of Entry. Such amendment of the Bills of Entry should precede re-assessment under Section 17 of the Act. Therefore, it would appear that the initiative for re-assessment should come from the assessee. I am of the considered view that it is still open to the assessee to take this initiative, there being no period of limitation prescribed for re-assessment under the Act".*

In Man Industries (India) Ltd. v. CC (EP) Mumbai, 2006 (202) E.L.T. 433 (Tri.-Mum.), the Tribunal had held as follows :

> *"The request of the appellant for conversion of the Shipping Bills was made in terms of the statutory rights available to the appellant under Section 149 of the Customs Act, 1962. The said section entitles the proper officer of Customs to direct amendment of any document, after it has been presented in the Custom House. By the application for conversion of the Shipping Bill, appellant was requesting the proper officer, to exercise this statutory power vested in such authority, to amend a Shipping Bill. The statutory condition subject to which such amendment could or could not be made is described in the proviso to Section 14S of the Customs Act, 1962".*

We are in agreement with the above findings of the Tribunal as regards an importer's right under Section 149 of the Act.

13. We also find that in *Hero Cycles* v. *Union of India* reported in 2009 (240) E.L.T. 490 (Bom.), the Hon'ble Bombay High Court, held that the mere fact that there was an inadvertent error, on the part of the importer, in not claiming benefit of exemption notification, cannot result in denial of the said benefit. Hon'ble Bombay High Court held that a duty is cast on the authorities, to assess the goods and impose duty, in accordance with law. High Court also held that, duty cannot be demanded, if it is otherwise not payable. Said Court has held that once there is a power to assess, there is a corresponding duty, to assess, in accordance with law. Against this order, the Revenue preferred an appeal before the Hon'ble Apex Court, and that the same was rejected in *Union of India* v. *Hero Cycles* reported in 2010 (252) E.L.T. A103 (S.C.).

14. Hence, by following the ratio of the above decisions we are of the considered view that the impugned order is not sustainable in law and is set aside by allowing the appeal of the appellant with the direction to the assessing officers / original authority that the request of the appellant for reassessment be considered for amendment of Bill of Entry and appropriate order be passed in accordance with law after giving an opportunity of hearing to the appellant. Appeal is allowed by way of remand to the original authority.

(Pronounced in the open court on 18.10 .2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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