CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. III

Customs Appeal No. 52262 of 2022 – (SM)

(Arising out of Order-in-Appeal No. 119(SM)CUS/JPR/2022 dated 29.07.2022 passed by the Commissioner of Customs (Appeals), Jaipur)

M/s Ceramic Tableware Pvt. Ltd. **Appellant**
S-707-A, Road No. 6, V.K.I. Area,
Jaipur

VERSUS

The Commissioner of Customs (Appeals) **Respondent**
Customs Commissionerate Jodhpur Hqrs.
at Jaipur, Jaipur

Appearance

Shri Bipin Garg & Ms. J. Kainaat, Advocates – for the Appellant.

Shri Mahesh Bhardwaj, Authorized Representative – for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

Date of Hearing: 12/02/2024
Date of Decision: 29/02/2024

Final Order No. 54523/2024

Binu Tamta

The present appeal has been filed challenging the Order-in-Appeal No. 119(SM)CUS/JPR/2022 dated 29.07.2022 whereby the prayer made by the appellant under Section 149 of the Customs Act, 1962 (the Act) for amendment of the Bill of Entry was rejected.

2. The appellant herein are engaged in the manufacture of Tableware, Crockery etc. and are registered with the GST authorities. One of the raw material is Calcium Phosphate which

the appellant had been regularly importing. The appellant had imported four consignments of Calcium Phosphate under Bill of Entry No. 6174489 dated 21.12.2019, 6352795 dated 04.01.2020, 6634377 dated 25.01.2020, 6531619 dated 18.01.2020 classifying under Chapter 25 which were cleared by the Customs Authorities. The Customs (Preventive) conducted the search operation on 26.11.2020 at the premises of the appellant where they recorded statement of Shri Dinesh Chand Agarwal, Director of the appellant company where he accepted that they have mis-declared the HSN Code due to clerical error and agreed to pay the differential amount of duty. On the basis of the Panchnama along with Chart-A differential duties were calculated for a sum of Rs. 12,91,570/- which the appellant deposited vide challan dated 04.12.2020. Later on, the appellant made an application under Section 149 of the Act on 11.12.2020 to amend relevant Bill of Entries and thereafter repeated the request for amendment of the Bill of Entries vide letter dated 21.06.2021. The adjudicating authority vide order dated 14.07.2021 rejected the application observing that mis-declaration has not been revealed suo-moto by the appellant but had been revealed pursuant to the search conducted and Shri Dinesh Chand Agarwal accepted the mis-declaration of HSN Code due to clerical error. The appellant challenged the order in original before the Commissioner (Appeals) who was pleased to reject the same by the impugned order. Hence, the present appeal has been filed before this Tribunal.

3. The learned Counsel for the appellant has submitted that the proper officer ought to have exercised the power in terms of

section 149 of the Act for amendment of the BEs as by mistake they had wrongly mentioned the classification under CTH 25 instead of CTH 28 as their exporter suggested that they have made certain changes in the composition of the product and therefore it merits classification under chapter 25 and on such advice, the staff of the appellant filed the bill of entries under chapter 25. He further submitted that since the differential duty as well as interest and penalty has been deposited manually by challan dated 4.12.2020, so the same is not reflecting online and therefore if the bill of entries are amended, they would be able to get the IGST credit. The case of the appellant is that they have been classifying their goods prior to the import in question and even thereafter under Chapter 28 and there was no mala fide intention on their part.

4. The learned Authorized Representative for the Revenue referring to Para 7 of Chapter 3 of Customs Manual, 2018 pointed out that it is only in case of bonafide mistakes that rectification by way of amendment to the bill of entry can be allowed and in the present case, Shri Dinesh Chandra Agarwal, Director of the appellant company accepted that they have mis-declared the HSN code due to clerical error, which ultimately resulted in evasion of customs duty and therefore no interference is called for.

5. Having heard both sides and perused the records of the case, the short question which arises in the present appeal is whether the request made by the appellant for amendment of the

Bill of Entries can be allowed under the provisions of section 149 of the Customs Act, 1962.

6. It may be relevant to extract the provisions of Section 149 of the Customs Act, 1962 and Para-7 of Chapter-3 Procedure for Clearance of Imported and Exported Goods of Customs Manual, 2018 which reads as under:

> **"149. Amendment of documents.**
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> - Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended:
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> Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised 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."
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> **Amendment of Bill of Entry: 7.1** Bonafide mistakes noticed after submission of documents, may be rectified by way of amendment to the Bill of Entry with the approval of Deputy/Assistant Commissioner. Levy of Fees (Customs Documents) Amendment Regulations, 2017, issued vide Notification No. 36/2017-Customs (N.T.) dated 11.04.2017, provides a number of amendments which can be allowed on payment of amount mentioned therein."

7. The provisions of section 149 of the Act had been the subject matter of consideration in various decisions and it has been consistently held that amendment of the bill of entry is permissible under section 149 of the Customs Act even after the goods have been cleared for home consumption provided the said amendment is based on documentary evidence which was in existence at the time when the goods were cleared. The Bombay High Court in **Dimension Data India Pvt. Ltd Vs. Commissioner of Customs, 2021 (376) ELT 192,** where similar issue had arisen

and the party had prayed to reassess the customs duty in respect of bills of entry by correcting the Custom Tariff Heading which had been incorrectly declared at the time of filing the bills of entry. On section 149 the Court observed as :

> **"18.** From a careful analysis of Section 149, we find that under the said provision a discretion is vested on the proper officer to authorise amendment of any document after being presented in the customs house. However, as per the proviso, no such amendment shall be authorised after the imported goods have been cleared for home consumption or warehoused, etc. except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, etc. Thus, amendment of the Bill of Entry is clearly permissible even in a situation where the goods are cleared for home consumption. The only condition is that in such a case, the amendment shall be allowed only on the basis of the documentary evidence which was in existence at the time of clearance of the goods."

Further distinguishing the applicability of the decision of the Apex Court in **ITC Ltd. Vs Commissioner of Central Excise, Kolkata, 2019 (368) ELT 216 (SC)** on the issue of filing an appeal, the High Court observed that:

> **"24.** In the instant case, petitioner has not sought for any refund on the basis of the self-assessment. It has sought reassessment upon amendment of the Bills of Entry by correcting the customs tariff head of the goods which would then facilitate the petitioner to seek a claim for refund. This distinction though subtle is crucial to distinguish the case of the petitioner from the one which was adjudicated by the Supreme Court and by this Court.
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> **25.** Grievance of the petitioner is not on the merit of the self-assessment as the petitioner is aggrieved by the failure on the part of the respondents to carry out amendment in the Bills of Entry by replacing the incorrect CTH by the correct one namely by replacing CTH '8517 69 90' with '8517 69 30' which was declared inadvertently by the petitioner at the time of fling the Bills of Entry. This request of the petitioner, in our opinion, falls squarely within the domain of Section 149 read with Section 154 of the Customs Act. Upon amendment in the Bills of Entry by correcting the CTH, consequential reassessment order under Section 17(4) of the Customs Act would be in order.
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> **28.** In the light of the above, we are of the view that petitioner has made out a case for issuance of a direction to the respondents for correction of the mistake or error in classification of the goods from CTH '8517 69 90' to '8517 69 30' and thereby for amendment of the Bills of Entry. Refusal of the respondents to look into the aforesaid grievance of the respondents is therefore not justified."

8. The aforesaid decision of the Bombay High Court was challenged by the department and the same was dismissed by the Apex Court as reported in **2022 (379) ELT A39 (SC).**

9. I am of the considered opinion that reliance placed by the learned Counsel for the appellant on the decision of Bombay High Court is correct as it squarely applies in the facts of the case. The provisions of section 149 allows amendment of a bill of entry even in cases where the imported goods are cleared for home consumption only on the basis of the documentary evidence which was in existence at the time the goods were cleared. The Deputy Commissioner has rejected the request for amendment on the sole ground that the fact of mis-declaration of HSN was not revealed by the appellant suo-moto and therefore it would not fall in the category of bonafide mistake as provided in the Customs Manual. I do not find any valid reason to reject the application for amendment of Bill of Entries and refere to the short order passed by the High Court of Delhi in **Mohit Overseas Vs. Commissioner of Customs – 2016 (335) ELT 18 (Del.)** observing that :

> **"3.** We have heard the learned counsel for the parties. We are of the view that what the petitioner is seeking is an amendment of the Bill of Entry which is permissible under Section 149 of the Customs Act, 1962 even after the goods have been cleared for home consumption provided the said amendment is based on documentary evidence which was in existence at the time when the goods were cleared. According to the learned counsel for the petitioner, the said notification was in existence at that point of time. Consequently, we are of the view that this is a clear case where the petitioner could avail of the provisions of Section 149 of the Customs Act,

> 1962 and we, therefore, direct him to move an application before the proper officer seeking amendment of the Bill of Entry in terms of Section 149.

10. In the present case the appellant had stated that all through out they have been declaring the classification of the goods under CTH 28 and this was the solitary instance when their staff had classified the goods under CTH 25 on the advice of the supplier that there was change in the composition of the product and would therefore merit classification under Tariff Heading 25 of the Custom Tariff Act. I also take note of the fact that soon after detection on 26.11.2020, the appellant paid the differential duty along with interest and penalty on 4.12.2020 without any protest. From the nature of amendment sought by the appellant in Bills of Entry, the same is liable to be allowed since only a paper declaration was sought for amending the Customs Tariff Heading from 25 to 28. The observations made by the Delhi High Court in **CC Vs. M.D. Overseas – 2023 SCC Online Del. 6056** are relevant in the present context on the applicability of Section 149 of the Act, the same reads as :

> "7. There is no gainsaying that Section 149 of the Act has to be read in conjunction with the requirement spelt out in the above Notification dated 19th June 2012. A careful perusal of Section 149 of the Act shows that **firstly**, it provides no period of limitation for filing of an application for amendment of relevant documents in order to seek rebate or any other benefit. **Secondly**, it does not provide for any reasons that may enable an exporter to claim amendments in the shipping documents. **Thirdly**, the proposed amendment in the shipping bills can be allowed by the Proper Officer subject to the only rider that same is based on documentary evidence that must be shown to be in existence at the time the goods were exported."

11. In the circumstances, it would well be considered as a mistake which has been rectified at the first available opportunity and therefore there is no error in allowing the application made by

the appellant under section 149 of the Act seeking amendment of the bill of entries. The legislative purpose of providing the remedy by way of amendment under section 149 gets defeated by rejecting the prayer for amendment in a case where the interest of the revenue has already been protected. In so far as the element of duty, interest and penalty is concerned the same having been paid and satisfied without any protest, the application made for consequent amendment of the bill of entry needs to be allowed.

12. The amendment sought by the appellant in the facts of the present case is justified and therefore the impugned order is liable to be set aside. The Department is directed to amend the Bill of Entries by exercising power under Section 149 of the Customs Act and pass appropriate orders on the appellant depositing the requisite fee under Notification No. 36/2017-Customs (NT) dated 11.04.2017. The appeal is, accordingly allowed.

(Pronounced in open Court on 29/02/2024)

(Binu Tamta*)*
Member (Judicial)

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