

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

Regional Bench COURT-2

Customs Appeal No. 816 of 2012

[Arising out of the Order-in-Appeal No.244/2011 Cus(B)
dated 12.01.2012 passed by the Commissioner of Customs (Appeals),
Bangalore.]

Bharti Airtel Ltd,

Andhra Pradesh Mobile Div. 1-8-437, 438,
364 &365 Splendid Towers, Opp.
Begumpet Police Station, Huda Road,
Begumpet, Hyderabad

.....Appellant

VERSUS

**The Principal Commissioner of Customs,
Bangalore**

C.R. Building, P.B. No. 5400,
Queens Road, Bangalore-560001

..... Respondent

Appearance:

Mr. Syed Peeran, Advocate for Appellant

Mr. Maneesh Akhoury, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20667 of 2024

Date of Hearing: 27.02.2024

Date of Decision: 20.08.2024

Per: P.A. Augustian

Issue in the present appeal is regarding rectification of mistake in value declared at the time of filing of bill of entry. M/s. Bharti Airtel Ltd., appellants are providing basic Telephone, GSM and Broadband service and is a network service provider in the country.

2. The brief facts are the appellant had imported Telecom equipment from overseas supplier and as per the purchase order placed by the appellant, the unit price of the goods is 6299 USD and appellant placed order for 10 units. However, the appellant contends that at the time of supply, the overseas supplier had inadvertently mentioned total price as 629900 USD in place of 62990 USD. Since, DRI had booked a case regarding the valuation of such goods, goods were provisionally assessed and were cleared on payment of Customs duty of Rs. 61,94,341.70/- by considering the invoice value as 629900 USD.

3. Thereafter, on realising the mistake, appellant had made a request for amendment of the Bill of Entry No. dated 24.01.2006 on 15.07.2010, after a lapse of about four and half years and the same was rejected by the Adjudication Authority on the ground that request for amendment amounts to amendment of major parameters of bill of entry, which has bearing on the Revenue. Adjudication Authority also observed that investigation on the issue of valuation unearthed by the DRI is still pending, hence the request cannot be considered. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals), who rejected and dismissed the appeal, since the assessment has been made on a provisional basis on account of investigation regarding valuation by DRI. The appeal was rejected on the ground that the claim of appellant is premature and the same can be taken up for consideration at the time of finalisation of provisional assessment, if permissible under the law. Aggrieved by the said order, present appeal is filed.

4. When the appeal came up for hearing, learned advocate submits that there is an omission on the part of overseas supplier to mention correct amount in the invoice and on realising the same, revised invoice was issued and Adjudication Authorities are bound to allow rectification of mistake under Section 154 Customs Act, 1962. The Learned Counsel further submits that the bill of entry can be amended to rectify the clerical error in terms of Section 154 of the Customs Act, 1962. Learned Advocate relied on the following decisions;

- i. Dimension Data India Private Ltd. Vs. Commissioner of Customs - 2021 (376) E.L.T. 192 (Bom.),
- ii. Sony India Pvt. Ltd. Vs. UOI - 2022 (379) E.L.T. 588 (Telangana),
- iii. Volvo India Pvt. Ltd. Vs. Commissioner of Customs, Chennai 2009 (245) ELT 472 (Tri - Chennai),
- iv. Principal Commissioner of Customs, New Delhi Vs. Lava International Limited - 2023 (93) TMI 25 - CESTAT New Delhi.

5. Learned Advocate further submits that in the matter of M/s. Volvo India Pvt., Ltd. Vs. Commissioner of Customs, Chennai (Supra), the Tribunal held that:-

4.1 Section 154 of the Act reads as follows :

"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."

In the CC, New Delhi v. Hero Honda Motors Ltd. (supra), the Tribunal had held that the errors in a decision of the authorities occasioned by the mistake of an assessee could be corrected under Section 154 of the Act. I find that the Section provides for correcting errors of the nature involved in the instant case 'at any time'. No provision in the Act prohibits rectification of the errors in the provisional assessment under Section 154 and allowing the importer consequential relief. Grant of refund arising out of such rectification shall be subject to the provisions of Section 27(2) of the Act prescribing test of unjust enrichment. The assessing authority shall allow the appellants to correct the error in the Bill of Entry under Section 154 of the Act and consequential refund. The appeal is allowed".

6. Further submits that said decision of Hon'ble Tribunal has been affirmed by the Hon'ble High Court of Madras in the matter of Commissioner of Customs (Port-Imports), Chennai Vs. Volvo India Pvt. Ltd. reported in 2019 (365) E.L.T. 802 (Mad.).

7. Learned Authorised Representative (AR) for the Revenue reiterated the finding in the impugned order and also submits that the issue is squarely covered by the decision of the Hon'ble High Court of Delhi in the matter of Indo Rama Synthetics

(India) Ltd. Vs. Union of India reported in 2002(143) E.L.T. 299 (Del.), where it is held that if payment of excess duty owing to calculation mistake committed by importers on account of faulty functioning of computer, importer is guilty of negligence.

8. Learned Authorised Representative (AR) further relies on the decision of the Tribunal in the matter of Auto Tech Industries India Pvt Ltd. Vs. Commr. of Cus. Chennai-IV reported in 2022 (380) ELT 364 (Tri.-Chennai). wherein it is held that;

"40. Reverting to the case on hand, although no limitation has been prescribed in Section 149, an assessee cannot be permitted to take undue advantage. The remedy of amendment under Section 149 should be sought within a reasonable time. We have already expressed our view that there is inordinate delay in filing the application for amendment under Section 149 of the Customs Act, 1962. We then have to consider what would be the reasonable period for entertaining an application under Section 149 of the Customs.

41. The Customs Act, 1962 being a special law and a complete code in itself it would not be proper to pull in the limitation period under the Limitation Act, 1963 and make it applicable to Section 149. More so, because Section 149 does not deal with any recovery of duty or refund of duty. It is a section merely to permit amendment in documents. Amendment is purely a procedural requirement. The legislature in its wisdom has not prescribed either in the Act or Rules a time limit to fulfil this procedural requirement. The consequence of such amendment as already stated, is to claim refund of duty suffered on inputs in the nature of drawback. The Limitation Act limits the period for filing a suit for recovery of money to three years. As per Article 137 of the Schedule to The Limitation

Act, 1963 any application for which no period of limitation is provided elsewhere is three years from the time when the right to apply accrues. We are unable to refrain ourselves from being not persuaded by these provisions in the Limitation Act to hold that a period of three years would be a reasonable time for filing an application under Section 149."

9. Learned AR also produced Final Order of this Tribunal in the matter of M/s. IBM India Pvt. Ltd. Vs. The Commissioner of Customs (Appeals) in the Final Order No. 20920 of 2023 dated 08.09.2023, wherein this Tribunal held that;

"12. In the present case, first of all, no documents existed at the time of assessment and the documents produced for amendment were not available at the time of assessment, these surfaced at much later date. The goods were not examined and the invoice produced by the appellant at the time of import had no factual errors and therefore to change the value of the imported goods based on an amended purchase order and revised invoice will not be a simplicitor amendment envisaged under Section 149. Moreover, the Commissioner (A) has clearly observed that there is no evidence to indicate that this revised purchase order and the revised invoice related to the transaction already completed. He also notes that "the amended purchase order dated 10.12.2009, inter alia continue to indicate the date required delivery as 10.12.2009, payment to be made within 30 days, documents to be sent as soon as shipment is sent etc;" which clearly shows that

the revised documents cannot be related to the imported goods which have already been cleared for home consumption. Further, it is also observed that the supplier had indicated that on 11.01.2010 credit note would be issued for the differential amount and no evidence is produced till date. There are no evidences produced till date with regard to the revised transactions as to how the differential amounts reflect in the books of accounts of the supplier as well as the appellant. In view of the above, the question of considering change in value as mere amendment as per Section 14 read with Section 149 is ruled out. Therefore, the Commissioner (A) was right in rejecting these changes and in disallowing reassessment of the imported goods.

10. On rejoinder, Learned Counsel for the appellant submits that relying on the very decision in Indo Rama Synthetics (India) Ltd. Vs. Union of India (Supra), while considering the issue, Hon'ble High Court has also considered Article 265 of the Constitution of India and general principle of law and equity and held that state not to unjustly enrich itself and should consider matter on merit ignoring provisions of section 27.

11. Heard both sides and perused the records. We find that while considering the issue in the matter of **M/s. IBM India Pvt., Ltd (Supra)**, this Tribunal held that;

" In view of the above observations of the Apex Court, the changes to be brought about in valuation of goods is not

just a simplicitor amendment, Section 14 of the Customs Act along with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, clearly laid down the procedure for any assessment under this Specialized Act. Once an assessment is done, only on appeal, reassessment is possible and any demand/refund on account of reassessment on account of valuation or for any other reason has to be within the framework of laws as laid down under Section 28/27 of the Customs Act, 1962. Therefore, Section 149 amendments cannot be read in isolation making these sections with regard to classification or valuation redundant. Reassessment of any assessment cannot be equated with an amendment under Section 149. The legislature, in the interest of justice, has not laid down any time limit under Section 149, does not take away the fact that any changes in valuation should not be in tandem with the laws laid down for refund or demand or else there will be no end for amendments which will result in utter chaos and de-stabilize the entire gamut of the Customs Act, 1962”.

12. However, the issue in the present appeal is regarding amendment of the value mis-declared due to omission on the part of supplier/appellant at the time of import. The case laws relied by both learned AR as well as Learned Counsel for the appellant pertains to the amendments sought on finalisation of the assessment, whereas in appellant's case, goods were provisionally released and investigation was going on regarding

the very same issue of valuation. Further as per the impugned order, the Adjudication Authority also took note of the pending investigation on the issue of valuation unearthed by the DRI, while rejecting the request for amendment. Similarly, in the impugned order, Appellate Authority also considered pendency of the investigation. Now, when the appeal came up for hearing before this Tribunal, 18 years after import of the goods, both department and the appellant were not in a position to update the outcome of the DRI investigation. To a specific question, Learned Counsel for the Appellant submits that outcome of the investigation has no bearing on the present appeal. However, on perusal of the record and submissions made by both, it is evident that the provisional assessment was made only on the ground that the DRI had undertaken investigation regarding valuation of the goods.

13. Facts being so, though there was considerable delay in seeking amendment of Bill of entries, since the goods were cleared provisionally, records will be available with the respondent to verify the facts for final assessment. Moreover, the amendment on the very same issue of value is directly connected with the investigation conducted by DRI and in such cases, the Department would have awaited the outcome of the DRI investigation before rejecting the request for correction/ amendment of the declared value. Considering the above, it is just and reasonable to set aside the impugned orders and remand the matter to the Adjudication Authority.

14. The Adjudication Authority shall consider the outcome of the DRI investigation and if there is no allegation regarding misdeclaration of the value and no SCN is issued so far, considering the fact that the remedy of amendment under Section 154 was sought during the pendency of provisional assessment, the amendment as sought by the appellant shall be considered based on the outcome of the DRI investigation regarding unit price of the impugned imported goods and the provisional assessment should be finalised, accordingly, within a period of 3(three) months after the receipt of this final order, and appropriate order be passed in accordance with law after giving an opportunity of hearing to the appellant.

(Order pronounced in open court on 20.08.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar