CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 85417 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1790/2020-21 dated 04.03.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III, Mumbai.)

Drive India Enterprises Solutions Limited .... Appellants
Kamla Executive Park, 7th Floor, Near Vazir Glass Factory
Off Andheri Kurla Road, Andheri (East)
Mumbai – 400 059.

VERSUS

Commissioner of Customs (Import), ACC, Mumbai .... Respondent
Air Cargo Complex
Sahar, Andheri (East)
Mumbai – 400 099.

APPEARANCE:

Shri Ananta Khandait, Advocate representing for the Appellants

Shri Dinesh Nanal, Authorized Representatives for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86926/2025

Date of Hearing: 25.08.2025

Date of Decision: 19.12.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Drive India Enterprises Solutions Limited, Mumbai (herein after, referred to as 'the appellants', for short), assailing the Order-in-Appeal No. MUM-CUSTM-AMP-APP-1790/2020-21 dated 04.03.2021 (herein after, referred together as 'the impugned order', for short) passed by the Commissioner of Customs (Appeals), Mumbai-III, Mumbai.

2.1 Brief facts of the case, leading to these appeals, are summarized herein below:

2.2 The appellants herein is, *inter alia*, engaged in providing freight, logistics, warehousing and other related services. They had imported mobile handsets through Air Cargo Complex, Sahar, Mumbai during January, 2015 to March, 2015 in eight consignments for which they had filed the various Bills of Entry (B/Es) in which they had classified the import goods under

Customs Tariff Item (CTI) 8517 1290 of the First Schedule to the Customs Tariff Act, 1975 and cleared such goods on payment of applicable duties of customs. The applicable rate of Additional duty of Customs (CVD) being equivalent to excise duty leviable on mobile phones upto 28.02.2015 was 6% and the manufacturers had an option to pay the concessional rate of 1% subject to the condition that no CENVAT Credit is claimed under Rules 3 or 13 of the CENVAT Credit Rules, 2004, in terms of Sl. No. 263A of amending Notification No. 12/2015-C.E. dated 01.03.2015.

2.3 The rate of CVD/excise duty w.e.f. 01.03.2015, was increased to 12.5%. In terms of Circular No. 37/2001-Customs dated 18.06.2001 issued by Central Board of Excise & Customs (CBEC) importers were not eligible to claim the concessional 1% duty as they cannot avail CENVAT Credit. By relying on this circular, the appellant had paid the CVD on imported mobile phones during 20.01.2015 to 25.03.2015 at standard 12.5%. However, subsequently on the basis of judgement delivered by the Hon'ble Apex Court, the appellants realized that were also entitled to benefit of Notification No. 12/2012-C.E. dated 17.03.2012 as amended by Notification No. 12/2015-C.E. dated 01.03.2015 at Sl. No.263A i.e., 1% CVD. Therefore, they approached the jurisdictional customs authorities and got the self-assessment at higher rates of CVD, again re-assessed by the Customs appraising group and had applied for refund of excess CVD paid/borne by them. The jurisdictional Assistant Commissioner of Customs after examining the issue on merits and on the unjust enrichment angle, and by following the Hon'ble Supreme Court's decision in *SRF Limited Vs. Commissioner of Customs* – 2015 (318) E.L.T. 607 (S.C.), had sanctioned a refund of Rs.32,93,132/- on the basis of documentary evidences submitted by the appellants vide Order-in-Original dated 09.08.2019. Feeling aggrieved with the said order of the original authority, the department had appealed before the Commissioner of Customs (Appeals), who in the impugned order had allowed the appeal filed by the department and set aside the refund sanction order of the original authority. Feeling aggrieved with the said impugned order dated 04.03.2021, the appellants have filed this appeal before the Tribunal.

3. Heard both sides and perused the records of the case.

4. The short issue for decision before the Tribunal is to decide as to, whether the impugned order passed by the learned Commissioner (Appeals), in rejecting the refund claim filed by the appellants by setting aside the

refunds sanctioned earlier to the appellants, is legally sustainable or not, in terms of the Customs Act, 1962 read with Customs Tariff Act, 1975?

5. In order to address the issue, I would like to refer to the relevant legal provisions relating to assessment, refund of duty, amendments etc., of imported goods under the Customs Act, 1962, which are extracted and given below:

The Customs Act, 1962

Definitions.

"Section 2. *In this Act, unless the context otherwise requires,—*

(2) *"assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to—*

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;"

xxx xxx xxx xxx

Assessment of duty.

"Section 17. *(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50 shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

Provided *that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.*

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any reassessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment in writing, the proper officer shall pass a speaking order on the reassessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation.—For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received."

Claim for refund of duty.

"Section 27. *(1) Any person claiming refund of any duty or interest—*
(a) paid by him; or
(b) borne by him,
may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest :

xxx *xxx* *xxx* *xxx*

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely :—
(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;
(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;
(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.

xxx *xxx* *xxx* *xxx*

(2) If, on receipt of any such application, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided *that the amount of duty and interest, if any, paid on such duty as determined by the Assistant Commissioner of Customs or Deputy Commissioner of Customs under the foregoing provisions of this sub-*

section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) the duty and interest, if any, paid on such duty paid by the importer or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
(b) the duty and interest, if any, paid on such duty] on imports made by an individual for his personal use;
(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
(d) the export duty as specified in section 26;
(e) drawback of duty payable under sections 74 and 75;
(f) the duty and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify;
(g) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—
(i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment:"

Amendment of documents
"Section 149. *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 customs house to be amended in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed :*
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:*
Provided further *that such authorisation or amendment may also be done electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:*
Provided also *that such amendments, as may be specified by the Board, may be done by the importer or exporter on the common portal.*

Correction of clerical errors, etc.
"Section 154. *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."*

6. On plain reading of the legal provisions of the Customs Act, 1962, as it relates to import of goods, it transpires that on importation of goods into India, an importer is required to make an entry in terms of Section 46 ibid and self-assess the import duty payable on such goods. The proper officer of Customs, may for the purpose of verification of entry as well as the self-

assessment made by the importer, seek any additional document, test or examine the goods imported therein, and thereafter either allow the self-assessment if it is proper or may re-assess the duty as may be determined by him, by following the procedure prescribed therein by passing of a speaking order. The definition of 'assessment' include the self-assessment made by the importer, re-assessment, if any, subsequently made by the proper officer of Customs and any other kinds of assessment made under the Customs Act, 1962. In the context of factual matrix of the present case, the self-assessment was made by the appellants importer, firstly at the time of import of goods and was subsequently, modified by the proper officer of customs in terms of the re-assessment made by the Deputy Commissioner of Customs, Group V-A vide Order in F. No. S/3-Misc.123/2015-16/CRC-I/ACC dated 24.07.2019, in manually re-assessing the imports made through eight B/Es, by extending the benefit of Notification No.12/2012-C.E. dated 17.03.2012 (Sl. No.263A) as amended by Notification No. 12/2015-dated 01.03.2015, as the same was not updated in Customs EDI system. Such re-assessment made by the proper officer of customs is also in conformity with the amendment permitted under Section 149 of the Customs Act, 1962, as this was based on the same documents that were available at the time of import and the appraising group re-assessed the same, upon submission of the request made by the appellants-importer claiming their eligibility to 1% CVD. Therefore, it could be seen from the above facts, that the self-assessment and the re-assessment made under Section 17 ibid, and amendment under Section 149 ibid, all are proper 'assessment' done under the Customs Act, 1962. Therefore, the requirement of Section 27 ibid in terms of the judgement delivered by the Hon'ble Supreme Court in the case of ITC Limited (supra), that the refund should be arising from an assessment or re-assessment made, changing such self-assessment made by importer, as may be applicable, has been fulfilled in the present case.

7. On perusal of the Original order dated 09.08.2019, more specifically at paragraphs 17 & 18, it is evident that the appellants importer had filed the refund claim within the time limit and they had also submitted to the adjudicating authority, proof of satisfying the unjust enrichment angle, through Chartered Accountant's certificate. Therefore, it clearly establishes that the basic requirement of Section 27 *ibid* to prove that the burden of incidence of duty having been not passed on to their buyers/customer or any other person. Therefore, the twin requirement of Section 27 ibid has been fulfilled.

8. In the impugned order, the learned Commissioner of Customs (Appeals) had concluded that the requirement of re-assessment of the self-assessment has not been made enabling the process of refund eligible under Section 27 ibid in terms of the judgement delivered in the case of ITC Ltd. (supra). However, he has not considered the facts of the case as discussed above, and that the re-assessment under the provisions of Section 17 or Section 128 or Section 149 or Section 154 of the Customs Act, 1962 fulfils the requirements of ITC case. He has not taken into account the re-assessment made by the Deputy Commissioner of Customs vide Order in F. No. S/3-Misc.123/2015-16/CRC-I/ACC dated 24.07.2019, and has also not considered the above factual aspects, and therefore such conclusion is not duly supported by any fact and the impugned order is liable to be set aside.

9. I further find that the Co-ordinate Benches of the Tribunal had examined similar issue under consideration in the following cases and have held that the conditions of the requirements of Section 27 ibid having been fulfilled, the refund in those cases are eligible to be considered. The relevant paragraphs of these cases are quoted below:

Principal Commissioner of Customs, ACC (Import) Commissionerate Vs. Lava International Ltd. – (2023) 4 Centax 322 (Tri. – Del)

> **"2.** *Two issues would, therefore, have to be examined in this appeal, namely, as to whether refund could have been claimed by the respondent as the Bills of Entry were amended under section 149 of the Customs Act and whether the refund claims filed by the respondent were barred by time.*
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> *xxx xxx xxx xxx*
>
> ***13.*** *In regard to the first issue much emphasis has been placed by the learned special counsel appearing for the department on the decision of the Supreme Court in ITC. The issue involved before the Supreme Court in all the Civil Appeals was whether, in the absence of any challenge to the order of assessment in appeal, any refund application against the assessed duty can be entertained. The Bench of the Tribunal at Kolkata had opined that unless the order of assessment is appealed, no refund application against the assessed duty can be entertained. On the other hand, the Delhi High Court had opined that when there is no assessment order for being challenged in appeal, because there is no contest or lis and hence no adversarial adjudication, a refund application can be maintained even if appeals are not filed against the assessed bills of entry. The Madras High Court had also similarly opined. The first question that arose for consideration before the Supreme Court was whether a self-assessment, when there is no speaking order, can be termed to be an order of self-assessment. It was urged on behalf of the assessees that there is no application of mind in such a situation and merely an endorsement is made by the authorities concerned on the Bills of Entry which endorsement cannot be said to be an order, much less a speaking order. This contention of the assessees was not accepted by the Supreme Court and it was held that the endorsement made on the Bills of Entry would be an order of*

assessment and that when there is no lis, a speaking order is not required to be passed in "across the counter affair". The Supreme Court then examined the provisions of sections 17 and 27 of the Customs Act, both prior to the amendments made by Finance Act, 2011 and after the amendments, and observed that there is no difference even after the amendments as self-assessment is also an assessment.

14. *It needs to be noted that in Escorts Ltd. v. Union of India & Ors 2002-TIOL-2706-SC/1998 (97) E.L.T. 211 (S.C.), the issue that had arisen for consideration before the Supreme Court was regarding the Bills of Entry classifying the imported goods under a particular tariff item and payment of duty thereon. The Supreme Court held that in such a case signing the Bills of Entry itself amounted to passing an order of assessment and, therefore, an application seeking refund on the ground that the imported goods fell under a different tariff item attracting lower rate of duty, should be filed within six months after the payment of duty. The Supreme Court, therefore, held that the signature made in the Bills of Entry was an order of assessment of the assessing officer.*

15. *The Supreme Court, thereafter, in ITC observed that the provisions relating to refund were more or less in the nature of execution proceedings and it would not be open to an authority, while processing a refund application, to make a fresh assessment on merits. The relevant portions of the judgment of the Supreme Court are reproduced below:*

> *"44. The provisions under section 27 cannot be invoked in the absence of amendment or modification having been made in the bills of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or reassessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, reassessment is not permitted nor conditions of exemption can be adjudicated. Reassessment is permitted only under section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or reassessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under section 27.*
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> ** ** **
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> *47. When we consider the overall effect of the provisions prior to amendment and post amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under section 128 or under other relevant provisions of the Act.*
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> *48. Resultantly, we find that the order(s) passed by the Customs, Excise and Service Tax Appellate Tribunal is to be upheld and that passed by the High Courts of Delhi and Madras to the contrary, deserves to be and are hereby set aside. We order accordingly. We hold that the application for refund were*

not maintainable. The appeals are accordingly disposed of. Parties to bear their own coasts as incurred."

(emphasis supplied)

16. *It would, at this stage, be appropriate to examine sections 17, 27, 149 and 154 of the Customs Act.*

17. *Section 17 of the Customs Act deals with assessment of duty. While sub-section (1) deals with assessment, sub-section (4) deals with reassessment. The relevant portions of section 17 are reproduced below:*

"17. Assessment of duty -

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any reassessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment in writing, the proper officer shall pass a speaking order on the reassessment, within fifteen days from the date of reassessment of the bill of entry or the shipping bill, as the case may be."

18. *Section 27 of the Customs Act deals with claim for refund of duty and the portion of this section relevant for the purposes of these appeals is reproduced below:*

"27. Claim for refund of duty

(1) Any person claiming refund of any duty or interest,-

(a) paid by him; OR

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest."

** ** **

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely:-

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of reassessment, from the date of such reassessment.

(2) If, on receipt of any such application, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund."

19. *Section 149 of the Customs Act deals with amendment of documents and is reproduced below:*

"149. Amendment of documents
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 customs house to be amended in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed:
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."

20. *Section 154 of the Customs Act deals with correction of clerical errors and is reproduced below:*

"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."

21. *In paragraph 44 of the judgment of the Supreme Court in ITC, which has been reproduced in paragraph 16 of this order, the Supreme Court observed that the provisions of section 27 cannot be invoked in the absence of amendment or modification having been made in the Bills of Entry on the basis of which self-assessment was made. The Supreme Court further observed that refund proceedings are in the nature of execution proceedings and, therefore, the order of self-assessment is required to be followed unless modified/amended before the claim for refund is entertained under section 27. In this connection, the Supreme Court relied upon the decision of the Supreme Court in Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive) 2004 (172) E.L.T. 145 (S.C.)/2004 taxmann.com 347 (SC).*

22. *The Supreme Court ultimately observed in paragraph 47 of the judgment that the overall effect of the provisions of section 27 of the Customs Act, both prior to the amendment and post amendment, is that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified "in accordance with law by taking recourse to appropriate proceedings".*
23. *In view of the aforesaid judgment of the Supreme Court in ITC. It was open to the respondent to invoke the provisions of section 149 or 154 of*

the Customs Act for seeking amendment in the Bills of Entry or correction in the Bills of Entry for claiming refund.

24. *The Bombay High Court in Dimension Data India v. Commissioner of Customs and anr 2021 (1) 1042 Bombay High Court 2021 (376) E.L.T. 192 (Bom.) examined this precise issue and after referring to the provisions of sections 149 and 154 of the Customs Act, observed as follows:*

> *"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.*
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> *19. This bring us to section 154 of the Customs Act which deals with correction, clerical errors, etc. It says that clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under the Customs 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.*
> *Thus, section 154 permits correction of any clerical or arithmetical mistakes in any decision or order or of errors arising therein due to any incidental slip or omission. Such correction may be made at any time.*
>
> *20. From a conjoint reading of the aforesaid provisions of the Customs Act, it is evident that customs authorities have the power and jurisdiction to make corrections of any clerical or arithmetical mistakes or errors arising in any decision or order due to any accidental slip or omission at any time which would include an order of self-assessment post out of charge.*
>
> *21. Having noticed and analysed the relevant legal provisions, we may now turn to the decision of the Supreme Court in ITC Ltd. v. Commissioner of Central Excise, Kolkata IV (supra). The question which arose before the Supreme Court was whether in the absence of any challenge to the order of assessment in appeal, any refund application against the assessed duty could be entertained.*
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> *22.1. From the question itself, it is clear that the issue before the Supreme Court was not invocation of the power of reassessment under section 17(4) or amendment of documents under section 149 or correction of clerical mistakes or errors in the order of self-assessment made under section 17(4) by exercising power under section 154 vis-à-vis challenging an order of assessment in appeal. The issue considered by the Supreme Court was whether in the absence of any challenge to an order of assessment in appeal, any refund application against the assessed duty could be entertained. In that context Supreme Court observed in paragraph 43 as extracted above that an order of self-assessment is nonetheless an assessment order which is appealable by "any person" aggrieved thereby. It was held that the expression "any person" is an expression of wider amplitude. Not only the revenue but also an assessee could prefer an appeal under section 128. Having so held, Supreme Court opined in response to the question framed that the claim for refund cannot be entertained unless order of assessment or self-assessment is modified in accordance with law*

by taking recourse to appropriate proceedings. It was in that context that Supreme Court held that in case any person is aggrieved by any order which would include an order of self-assessment, he has to get the order modified under section 128 or under other relevant provisions of the Customs Act

(emphasis ours).

22.2. Therefore, in the judgment itself Supreme Court has clarified that in case any person is aggrieved by an order which would include an order of self-assessment, he has to get the order modified under section 128 or under other relevant provisions of the Customs Act before he makes a claim for refund. This is because as long as the order is not modified the order remains on record holding the field and on that basis no refund can be claimed but the moot point is Supreme Court has not confined modification of the order through the mechanism of section 128 only. Supreme Court has clarified that such modification can be done under other relevant provisions of the Customs Act also which would include section 149 and section 154 of the Customs Act."

(emphasis supplied)

25. *The Telangana High Court in M/s. Sony India Pvt. Ltd. v. Union of India and another 2021 TIOL-1707-HC-Telangana-CUS - 2022 (379) E.L.T. 588 (Telangana)/[2021] 129 taxmann.com 251 (Telangana) also examined almost a similar controversy as has been raised in the present appeals. The appellant therein had imported mobile phones in India for trading purposes during the period 4-8-2014 to 29-1-2015. At the time of import of the mobile phones, the petitioner had not claimed any exemption under serial no. 263A (ii) of the Exemption Notification which allowed payment of Additional Duty at the rate of 1% only in the Bills of Entry in view of the decision of the Supreme Court in SRF. The petitioner, in view of the decision in Supreme Court in ITC, made an application for amendment of the Bills of Entries under section 149 of the Customs Act so that after that the duty could be refunded. The application filed by the petitioner was however, rejected. The contentions of the petitioners, as noted in paragraphs 14, 19 and 20 of the judgment of the Telangana High Court, are reproduced below:*

14. The petitioner contends that the impugned order has been passed in complete contradiction with the decision of the Supreme Court in ITC Ltd. (supra) wherein it has been held that a BoE is required to be amended or modified, under the relevant provisions of the Customs Act, before filing of a refund application under Section 27 of the Customs Act; that under the Customs Act, a BoE can be either modified by way of filing an appeal under Section 128 of the Customs Act or can be amended under Section 149 and/or 154 of the Customs Act; that under the Customs Act, there is no other manner in which a BoE can be modified or amended part from these two methods; thus, from the above observations of the Supreme Court, it is very clear that a refund of any excess duty paid while filing the BoE, can be claimed under Section 27 of the Customs Act when such a BoE is amended; that the 2nd respondent has not even considered the decision of the Supreme Court in ITC Ltd. (supra); that the Supreme Court clearly stated in the above case that a BoE has to be amended before filing a claim of refund under Section 27; and that the ratio of decision is very clearly applicable, and it is squarely covered in the present case.

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19. Petitioner also contended that the 2nd respondent erred in holding that the BoEs should have been challenged only by way of filing an appeal before the Appellate authority and on not being challenged, the assessment became final.

20. Petitioner pointed out that a BoE can be amended either by filing an appeal u/s.128 or being amended under Sec.149 of the Act; and he could not have insisted that only an appeal is a proper remedy to amend the BoEs ignoring Sec. 149 of the Act.

(emphasis supplied)

26. *The contention of the Department, as noted in paragraphs 23, 24 and 26 of the aforesaid judgment are reproduced below:*

"23. It is contended that meanwhile the Supreme Court in ITC Ltd. (2 supra) held that refund under Section 27 would only be permissible when the Bills of Entry had been amended or modified under the provisions of the Customs Act, 1962; that in ITC Ltd. (2 supra), it was held that the refund under the provisions of Section 27 of the Customs Act, 1962 would only be available when Bills of Entry has been amended or modified under the provisions of Customs Act, 1962; that in the instant case, the petitioners filed self-assessed Bills of Entry and not disputed the assessment, and the assessment had attained finality; that it is not the case of any error or lapse apparent on account of 2nd respondent's -Department; that petitioner was required to seek reassessment as provided under the provisions of Section 128 of the Customs Act, 1962 within such stipulated time and as per the conditions provided therein.

24. According to the 2nd respondent, the petitioner's request for amending the BoE is against the provisions of the Customs Act and was not sustainable.

** ** **

26. It further stated that same action cannot be sought under two different sections of the Customs Act, 1962; that there is a specific provision for reassessment as provided under Section 128 of the Customs Act, 1962; that if reassessment has to be carried out under Section 149 without any limitation of time, the existence of the provisions of Section 128 and Appeal mechanism therein would become redundant; and if at all the amendments, even in the nature of reassessment, are to be carried out under the provisions of Section 149, there is no requirement for the existence of the provisions of Section 128 or other similar provisions."

27. *The Telangana High Court noted that though there is a remedy of an appeal against the assessment of the Bills of Entry, but section 149 of the Customs Act also enables an assessee to seek amendments in the Bills of Entry. The relevant portions of the judgment are reproduced below:*

"33. So Sec.149 is an additional remedy available to the petitioner to seek amendment of the BoEs subject to the condition that such amendment is sought 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.

34. In the decision of the Supreme Court in ITC Ltd. (supra) while holding that the refund cannot be granted by way of a refund application under Section 27 of the Act until and unless an assessment order is modified and a fresh order of assessment is passed and duty re-determined, the Supreme Court nowhere said that such amendment or modification of an assessment order can only be done in an Appeal under Section 128. In para 47, the Court held categorically.

35. Thus, even the Supreme Court clearly indicated that the modification of the assessment order can be either under Section 128 or under other relevant provisions of the Act i.e. Section 149.

36. Therefore, the stand of the respondents in the counter affidavit that only reassessment under Section 128 is the remedy available to the

petitioner, and Section 149 cannot be invoked, is not tenable. We also reject the plea of the 2nd respondent that there is no possibility of getting modified an order of assessment under any other relevant provision and that petitioner is trying to overcome limitations stipulated in Section 128.

37. The only condition required to be fulfilled for seeking amendment of documents such as a BoE under section 149 is that such amendment should be sought 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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46. Moreover, the said order was passed on 28-6-2019 prior to the decision in ITC Ltd. (supra) on 18-9-2019. The Supreme Court has clarified in para no. 47 of ITC Ltd. (supra) that an order of assessment can be modified either under Section 128 or under other relevant provisions of the Act, and thus clarified that modification of an order of assessment can also be sought under Section 149 of the Act, its judgment has to be followed by the 2nd respondent, as it is binding under Article 141 of the Constitution of India.

** ** **

48. Further, it is the duty and responsibility of the Assessing Officer/Assistant Commissioner to correctly determine the duty leviable in accordance with law before clearing the goods for Home consumption. The assessing officer instead, having failed in correctly determining the duty payable, has caused serious prejudice to the importer/petitioner at the first instance. Thereafter, in refusing to amend the Bills of Entry under Section 149 of the Act, to enable the importer/petitioner to claim refund of the excess duty paid, the Assessing Authority/Assistant Commissioner caused further great injustice to petitioner.

49. Also, the Assessing Authority has failed to consider the fact that Section 149 of the Act does not prescribe any time limit for amending the Bills of Entry filed and assessed. The power to amend under Section 149 of the Act is a discretionary power vested with the authority. Since, it is due to incorrect determination of duty by the assessing authority initially, the petitioner is compelled to seek amendment of Bills of Entry under Section 149 of the Act. Thus, the importer/petitioner cannot be penalized for what the authority ought to have done correctly by himself."

(emphasis supplied)

28. *Thus, in view of the aforesaid decisions of the Bombay High Court in Dimension Data India and the Telangana High Court in Sony India, the respondent could take recourse to appropriate proceedings, including the provisions of section 149 or 154 of the Customs Act for either seeking amendment of the Bills of Entry. These two decisions have placed reliance on the decision of the Supreme Court in ITC.*

29. *In the present case, the order carrying out an amendment in the Bills of Entry under section 149 of the Customs Act attained finality, as the department did not challenge these orders in appeal. It is only during the course of refund applications that the department took a stand that since the order of the assessment was not assailed by the respondent in appeal under section 128 of the Customs Act, the refund applications could not be allowed. Such a stand could not have been taken by the Department. If the department felt aggrieved by the order seeking an amendment in the Bills of Entry under section 149 of the Customs Act, it was for the department to have assailed the order by filing an appeal under section 128 of the Customs Act. This plea could not have been taken by the department to contest the claim of the respondent while seeking refund*

filed as a consequence of the reassessment of the Bills of Entry or amendment in the Bills of Entry.

30. *The Commissioner (Appeals), therefore, committed no illegality in taking a view that refund has to be granted to the respondent as the order for amendment in the Bills of Entry had attained finality.*

31. *The second issue that needs to be decided is whether the refund claims were barred by time. The department contends that the period of one year should be counted from the date of assessment and not from the date of amendment was carried out in the Bills of Entry. This contention of the department has not found favour with the Commissioner (Appeals) and nor are we inclined to accept this plea of the department. The Commissioner (Appeals) held that if section 149 of the Customs Act relating to amendment in the Bills of Entry is made applicable, the cause of action for claiming refund would arise only after the amendment is made and so the limitation for claiming refund would start from that date. In coming to this conclusion, the Commissioner (Appeals) placed reliance upon the decision of the Bombay High Court in Keshari Steels v. Commissioner of Customs, Bombay 2000 (115) E.L.T. 320 (Bom.), wherein what was examined was whether the rejection of the refund claim on the ground of limitation contemplated under section 27 of the Customs Act was justified. It was held by the Bombay High Court that the refund was within time from the date the rectification was carried out and limitation was not to be counted from the date of assessment. This decision has been affirmed by the Supreme Court in 2000 (121) E.L.T. A139 (S.C.). The Commissioner (Appeals) as also relied on the decision of the Tribunal in Commissioner of Cus. (Import) v. Indian Farmers Fertiliser Co-Op. Ltd. 2008 (230) E.L.T. 667 (Tri.-Mumbai), which decision relied upon the decision of the Bombay High Court in Keshari Steels.*

32. *The decision of the Bombay High Court in Keshari Steels and the decision of the Tribunal in Indian Farmers were considered by the Bombay High Court in Commissioner of Cus. (Import) v. Indian Farmers Fertiliser Co-Op. Ltd.2009 (243) E.L.T. 687 (Bom.) and it was held that:*

> *"2. Vide order dated 13-12-2001, the assessing officer rectified the mistake by modifying the assessment order and holding that the goods were assessable at the rate of 5%, but rejected claim as being time-barred under the provisions of Section 27 of the Customs Act, 1962. The tribunal relying upon the judgment of this Court in Keshari Steels v. Collector of Customs, Bombay [2000 (115) E.L.T. 320 (Bom.)] has held that the rejection of refund claim of the appellant as being time-barred under the provisions of Section 27 of the Customs Act, 1962 is not in accordance with law. The tribunal however remanded the matter to consider the question of unjust enrichment.*
>
> *3. We have heard learned counsel for the appellant. It is contended that the tribunal erred in holding that the claim is not time-barred. It is contended that the limitation runs from the date of payment of duty and not from the date of rectification. We find it difficult to accept this contention. Till the assessment order is rectified, the question of refund would not arise at all. In the present case, the assessment order was rectified on 13-12-2001 pursuant to the order of the Supreme Court dated 13-3-2001. In the present case, the refund claim was made even prior to the rectification. Therefore, the refund claim could not be said to be time-barred."*
>
> *(emphasis supplied)*

33. *It would be seen that the Bombay High Court held that the question of refund would arise only when the assessment order is rectified.*

34. *The Commissioner (Appeals), therefore, committed no illegality in holding that the refund claims were not barred by time.*

35. *In view of the aforesaid discussion, there is no illegality in the order of the Commissioner (Appeals) allowing the six appeals filed by the respondent."*

SRF Ltd. Vs. Commissioner of Customs, Chennai - 2015 (318) E.L.T. 607 (S.C.)

"2. *The appellant herein had imported Nylon Filament Yarn of 210 deniers falling under Chapter 54 of the Customs Tariff. The appellant claimed nil rate of additional duty of Customs by relying on exemption in terms of Serial No. 122 of Notification No. 6/2002-C.E., dated 1-3-2002. The Deputy Commissioner of Customs passed orders dated 12-4-2002 holding that the appellant was not entitled for exemption from payment of additional duty/Countervailing Duty (CVD) since it was not fulfilling Condition No. 20 of the aforesaid Notification. The Commissioner (Appeals) confirmed the aforesaid order of the Deputy Commissioner and dismissed the appeal of the appellant vide orders dated 12-9-2002. In further appeal to the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as 'CEGAT'), even the CEGAT has affirmed the order of the authorities below and dismissed the appeal.*

3. *Entry/Serial No. 122 in the Notification No. 6/2002 reads as under -*

S. No.	***Chapter or Heading No. or sub-heading No.***	***Description of goods***	***Rate under the First Schedule***	***Rate under the Second Schedule***	***Condition No.***
122	*5402.10 5402.41 5402.49 5402.51 5402.59 5402.61 or 5402.69*	*Nylon filament yarn or polypropylene multifilament yarn of 210 deniers with tolerance of 6 per cent.*	*Nil*	*-*	*20*

4. *As per the aforesaid entry, the rate of duty is nil. Condition No. 20 of this Notification, which was relied upon by the authorities below in denying the exemption from payment of CVD, is to the following effect :*

> *"20. If no credit under Rule 3 or Rule 11 of the Cenvat Credit Rules, 2002, has been taken in respect of the inputs or capital goods used in the manufacture of these goods."*

5. *The aforesaid condition is to the effect that the importer should not have availed credit under Rule 3 or Rule 11 of the Cenvat Credit Rules, 2002, in respect of the capital goods used for the manufacture of these goods.*

6. *In the present case, admitted position is that no such Cenvat credit is availed by the appellant. However, the reason for denying the benefit of the aforesaid Notification is that in the case of the appellant, no such credit is admissible under the Cenvat Rules. On this basis, the CEGAT has come to the conclusion that when the credit under the Cenvat Rules is not*

admissible to the appellant, question of fulfilling the aforesaid condition does not arise. In holding so, it followed the judgment of the Bombay High Court in the case of 'Ashok Traders v. Union of India' [1987 (32) E.L.T. 262], wherein the Bombay High Court had held that "it is impossible to imagine a case where in respect of raw nephtha used in HDPE in the foreign country, Central Excise duty leviable under the Indian Law can be levied or paid." Thus, the CEGAT found that only those conditions could be satisfied which were possible of satisfaction and the condition which was not possible of satisfaction had to be treated as not satisfied.

7. *We are of the opinion that the aforesaid reasoning is no longer good law after the judgment of this Court in 'Thermax Private Limited v. Collector of Customs (Bombay), New Customs House' [1992 (4) SCC 440 = 1992 (61) E.L.T. 352 (S.C.)] which was affirmed by the Constitution Bench in the case of 'Hyderabad Industries Limited v. Union of India' [1999 (5) SCC 15 = 1999 (108) E.L.T. 321 (S.C.)]. In a recent judgment pronounced by this very Bench in the case of 'AIDEK Tourism Services Private Limited v. Commissioner of Customs, New Delhi' [Civil Appeal No. 2616 of 2001 - 2015 (318) E.L.T. 3 (S.C.)], the principle which was laid down in Thermax Private Limited and Hyderabad Industries Limited was summarised in the following manner :-*

> *"15. The ratio of the aforesaid judgment in Thermax Private Limited (supra) was relied upon by this Court in Hyderabad Industries Ltd. (supra) while interpreting Section 3(1) of the Tariff Act itself; albeit in somewhat different context. However, the manner in which the issue was dealt with lends support to the case of the assessee herein. In that case, the Court noted that Section 3(1) of the Tariff Act provides for levy of an additional duty. The duty is, in other words, in addition to the Customs duty leviable under Section 12 of the Customs Act read with Section 2 of the Tariff Act. The explanation to Section 3 has two limbs. The first limb clarifies that the duty chargeable under Section 3(1) would be the Excise duty for the time being leviable on a like article if produced or manufactured in India. The condition precedent for levy of additional duty thus contemplated by the explanation deals with the situation where 'a like article is not so produced or manufactured'. The use of the word 'so' implies that the production or manufacture referred to in the second limb is relatable to the use of that expression in the first limb which is of a like article being produced or manufactured in India. The words 'if produced or manufactured in India' do not mean that the like article should be actually produced or manufactured in India. As per the explanation if an imported article is one which has been manufactured or produced, then it must be presumed, for the purpose of Section 3(1), that such an article can likewise be manufactured or produced in India. For the purpose of attracting additional duty under Section 3 on the import of a manufactured or produced article the actual manufacture or production of a like article in India is not necessary. For quantification of additional duty in such a case, it has to be imagined that the article imported had been manufactured or produced in India and then to see what amount of Excise duty was leviable thereon."*
>
> *(Emphasis supplied)*

8. *We are of the opinion that on the facts of these cases, these appeals are squarely covered by the aforesaid judgments. We accordingly hold that appellants were entitled to exemption from payment of CVD in terms of Notification No. 6/2002. The appeals are allowed and the demand of CVD raised by the respondents-authorities is set aside."*

ITC Limited Vs. Commissioner of Central Excise, Kolkata-IV – 2019 (368) E.L.T. 216 (S.C.)

"47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."

10. In view of the foregoing discussions and analysis, and on the basis of the orders of the Tribunal and the judgements delivered by the Hon'ble Supreme Court as discussed above, I am of the considered opinion that the impugned order in rejecting the refund of customs duty is not consistent with the legal provisions of the Customs statute. Accordingly, I find that the impugned order does not stand the scrutiny of law and therefore is not legally sustainable.

11. In the result, by setting aside the impugned order, the appeal is allowed in favour of the appellants, with consequential relief, as per law.

(Order pronounced in the open court on 19.12.2025)

(M.M. Parthiban)
Member (Technical)

Sinha