



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE C. SARAVANAN
W.P. (MD) No.18910 of 2021

and

W.M.P. (MD) Nos.15738 and 15739 of 2021

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M/s.Neyveli Lignite Corporation India Limited,
Presently NLC India Ltd.,
represented through its Company Secretary,
K.Viswanath,
S/o.Shri.Kalyanaraman,
having office at Neyveli,
Cuddalore District 607 801.

... Petitioner

/vs./

1. The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin 628 004.

2. The Assistant Commissioner of Customs (Import),
Customs House,
New Harbour Estate,
Tuticorin 628 004.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the impugned order passed in C.No.VIII/6/114/2018-1-A by the 2nd respondent dated 07.01.2019 and quash the same as illegal and violative of 265 of Constitution of India and directing the respondents to amend the Bills of Entries Nos.5491731, 5491871, 5491903 dated 08.03.2018 and 5712744 dated 24.03.2018 for the purpose of reassessment and consequently directing the respondents to refund the duty amount of Rs.5,91,97,944/- paid by the petitioner due to inadvertence, with appropriate interest at the applicable rate and within the time as fixed by this Court.

For Petitioner : Mr.A.K.Jayaraj
For Respondents : Mr.R.Aravindan
Senior Standing Counsel

ORDER

The petitioner has filed this writ petition against the impugned order dated 07.01.2019 bearing Ref.C.No.VIII/06/114/2018-I-A of the 2nd respondent, to quash the same as illegal, to direct

the respondents to amend the Bill of Entries and to further refund a sum of Rs.5,91,97,944/-.

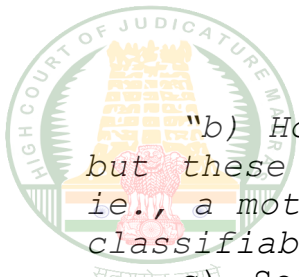
2.The case of the petitioner is that the petitioner had imported solar panel modules for the purpose of establishing 15 MW (AC) Grid Inter Active Solar PV Power Project in Ettankulam Village, Manoor Taluk, Tirunelveli District and had filed the following Bill of Entries.

S.No	Bill of Entry	Date
1	5491731	08.03.2018
2	5491871	08.03.2018
3	5491903	08.03.2018
4	5712744	24.03.2018

3.It is the further case of the petitioner that by mistake the petitioner classified the imports under the heading 8501 of the Customs Tariff Act, 1975 and thus, calculated the basic customs duty at 7.5%, though the imports were to be made by declaring the correct classification as 8541 of Customs Tariff Act, 1975, in which case the imported goods would have attracted nil rate of duty.

4.It is the further case of the petitioner that after realizing the mistake, the petitioner sent a representation dated 07.12.2018 to the 2nd respondent along with a refund claim. However, the refund claim was rejected by the 2nd respondent, vide a communication dated 07.01.2019 bearing Ref.C.No.VIII/06/114/2018-I-A. Under these circumstances, the refund claim was returned, wherein the 2nd respondent stated that the request to reassess the Risk Management System (RMS) facilitated Bills of Entries cannot be entertained as the consignments have already been self-assessed under Section 17(1) of the Customs Act, 1962 to applicable duty and cleared, as if the modules imported were equipped with blocking diodes without specifically examined by any technical person on the aspect of presence of bye-pass diodes. It was therefore submitted that the Bill of Entry could not be recalled and reassessed to applicable duty under CTH 8541 *suo motu* by appraising group. It was further stated that even filing a letter of protest in this regard would not have altered the legal position.

5.The learned counsel for the petitioner submits that when the subject Bill of Entries were filed, there was no clarification and that the Central Board of Indirect Taxes and Customs later by its clarification dated 06.04.2018 has clarified the position as under:-



"b) However, the solar panel/module is equipped with elements but these elements do not supply the power to an external load i.e., a motor, an electrolyser etc., then the solar panel/module is classifiable under CTH 8541.

c) Solar panel module without element is classifiable under CTH 8541.

2. In this regard, Board has further received representations from the trade regarding classification of solar modules/panels equipped with by pass diodes. The trade is of the view that the function of the bypass diodes in the module is to protect the solar modules/panels at the time of shading of solar cells and not to control the direction of the current. Therefore, in their opinion, solar modules equipped with bypass diode merits classification under Heading 8541."

6. It is submitted that the petitioner is entitled for amendment of the Bill of Entry filed under Section 149 of the Customs Act, 1962 r/w Section 154 of the aforesaid Act for rectification. In this connection, the learned counsel for the petitioner has drawn attention to the following decisions of this Court and the other High Courts.

"In the Commissioner of Customs, Chennai Vs. M/S. Volvo India Private Limited, Bangalore and other reported in 2019 (365) ELT 803 Madras.

In **Hero Cycles Limited Vs. Union of India** reported in 2009 (240) E.L.T. 490 (Bom).

In **Union of India Vs. Hero Cycles Limited** reported in 2010 (252) E.L.T. A103(SC).

In **Usha International Ltd Vs. Assistant Commissioner of Cus., Chennai** reported in 2019 (365) E.L.T. 56(Mad.,).

In **Commissioner of Customs (Port-Imports), Chennai Vs. Volvo India Private Limited** reported in 2019 (365) E.L.T. 802(Mad.,).

In **Hewlett Packard Enterprise India (P) Ltd., Vs. Joint Commissioner of Customs, Chennai** reported in 2021 (375) E.L.T. 488 (Mad.,).

In **Dimension Data India Pvt. Ltd Vs. Commissioner of Customs,** reported in 2021 (376) E.L.T. 192(Bom.,).

In **Commissioner Vs. Dimension Data India Private Limited** reported in 2022 (379) E.L.T. A39(SC).



In **Kirloskar Ferrous Industries Ltd Vs. Commissioner of Customs, Mangalore** reported in 2021 (377) E.L.T. 878 (Tri-Bang.,).

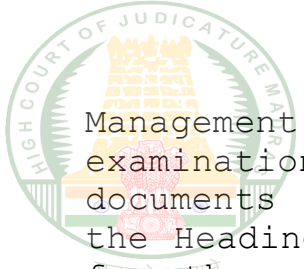
In **Lenovo India Pvt Ltd., Vs. Commissioner of Customs, Chennai VII, Commissionerate** reported in 2021 (378) E.L.T. 628 (Tri.Chennai)."

7.The learned counsel for the petitioner further submits that the Hon'ble Supreme Court in the case of **ITC Limited Vs. Commissioner of Central Excise, Kolkata IV** reported in (2019) 17 SCC 46, has held as under:-

"43.As the order of selfassessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of reassessment which is appealable but the provisions of **Section 128** make appealable any decision or order under the Act including that of selfassessment. The order of self assessment is an order of assessment as per **section 2(2)**, as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in **Section 17** to pass a reasoned/speaking order in the situation in case on verification, selfassessment is not found to be satisfactory, an order of reassessment has to be passed under **section 17(4)**. **Section 128** has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in *Escorts*.

47. When we consider the overall effect of the provisions prior to amendment and postamendment under **Finance Act, 2011**, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or selfassessment 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 selfassessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include selfassessment, he has to get the order modified under **Section 128** or under other relevant provisions of the Act."

8.The learned counsel for the petitioner therefore submits that an assessment in the Bill of Entry can be modified either by filing an appeal before the Appellate Authority under **Section 128** of the Customs Act, 1962 or any other provisions of the Customs Act. It is submitted that in this case, the petitioner made an inadvertent mistake by filing the Bill of Entry under the Risk



Management System and thus the goods were cleared without examination. However, the petitioner has all the contemporaneous documents to establish that the imported goods would fall under the Heading 8541 of Customs Tariff Act, 1975. The learned counsel for the petitioner therefore prays that the petitioner may be given an opportunity to establish the same notwithstanding the fact that the subject Bill of Entries were filed for the imported goods under the Heading 8501 of the Customs Act, 1962.

9. The learned counsel for the petitioner further submits that the decision of this Court was also quoted with approval by the Division Bench of the Bombay High Court in the case of **Dimension Data India Pvt. Ltd Vs. Commissioner of Customs reported in 2021 (376) E.L.T. 192 (Bom.,)** and the decision of the Division Bench of the Bombay High Court has also been upheld by the Hon'ble Supreme Court by dismissing the Special Leave Petition in **Commissioner Vs. Dimension Data India Private Limited** reported in **2022 (379) E.L.T. A39 (SC)**.

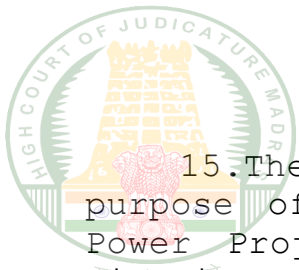
10. The learned counsel for the petitioner has also drawn attention to the decision of the Tribunal to persuade the above views.

11. The learned counsel for the respondents submits that the goods were self-assessed and therefore, the question of reassessment does not arise. The learned counsel for the respondents further submits that the goods were cleared based on the declarations filed in the Bill of Entry by the petitioner and therefore, Section 149 of the Act will not come to the petitioner's rescue.

12. It is further submitted that once an assessment order has been passed, the only option available to the petitioner was to file an appeal under Section 128 of the Customs Act, 1962 before the Appellate Commissioner and therefore, the writ petition is devoid of merits and is liable to be dismissed.

13. It is further submitted that the petitioner having slept over the rights for over a period of 2½ years, since the assessment was completed. It is therefore submitted that the writ petition filed at this distant point of time in 2021 is therefore liable to be dismissed on account of laches and therefore, the learned counsel for the respondents prays for dismissal of this writ petition.

14. I have considered the arguments advanced by the learned counsel for the petitioner and the Senior Standing Counsel for the respondents.



15. The petitioner had imported the solar panel modules for the purpose of establishing 15 MW (AC) Grid Inter Active Solar PV Power Project in Ettankulam Village, Manoor Taluk, Tirunelveli District and had filed the Bill of Entries as detailed above. After the Bill of Entries were filed, a clarification was issued by the Board as detailed above. Sections 149 and 154 provide for a machinery for altering the assessment. These are two of the three methods available under the provisions of the Customs Act, 1962. If one of the three methods are available, the importer would be entitled to claim refund under Section 27 of the Customs Act, 1962. In this case, the petitioner has requested for the amendment under Section 149 of the Customs Act, 1962.

16. The Hon'ble Supreme Court in **ITC Limited Vs. Commissioner of Central Excise, Kolkata IV** reported in **(2019) 17 SCC 46** has categorically stated that 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. Therefore, as long as such an application is filed within the time stipulated under the provisions of the Act, it cannot be denied. In this case, the petitioner has opted for the remedy under Section 149 of the Customs Act, 1962, which reads as under:-

"149. Amendment to 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.

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."

17. Section 154 of the Customs Act, 1962 deals with clerical errors 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. As long as the petitioner is able to satisfy the requirements for amendment of the document, namely, the subject Bill of Entry with the documents, which were in existence at the time of import, the benefit of amendments cannot be denied.

18. Under these circumstances, the impugned order passed by the 2nd respondent dated 07.01.2019 is set aside and the case is remitted back to the 2nd respondent to pass a speaking order within a period of 3 months from the date of receipt of a copy of this order, after examining the contemporaneous documents, which were available at the time of import with the petitioner notwithstanding the fact that the petitioner had allegedly by mistake filed Bill of Entry under the Heading 8501 of the Customs Tariff Act, 1975. The petitioner is also given liberty to produce the additional evidence in the form of a Chartered Engineer Certificate certifying that the imported goods are available in the 15 MW (AC) Grid Inter Active Solar PV Power Project in Ettankulam Village, Manoor Taluk, Tirunelveli District and that satisfy the requirements of the goods following under the Heading 8541 of the Customs Tariff Act, 1975. The 2nd respondent is directed to complete the assessment after amending the Bill of Entry under Section 149 of the Customs Act, 1962.

19. The writ petition stands allowed, in terms of the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AE)

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/ /2022
Sub Assistant Registrar(CS)

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To

1. The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin 628 004.
2. The Assistant Commissioner of Customs(Import),
Customs House, New Harbour Estate,
Tuticorin 628 004.

+1 CC to M/s.A.K.JAYARAJ, Advocate
(SR-16974[F] dated 06/04/2022)

W.P. (MD) No.18910 of 2021
and
W.M.P. (MD) Nos.15738
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