IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.6764 of 2020

M/s.Hewlett Packard Enterprise
India Private Limited
Represented by its
Customs operations Manager Mr. Gajendra
Singh Tril Info Park Ltd
C Block Hardy Tower
11th floor Ramanujan IT City
Rajiv Gandhi Salai (OMR)
Taramani, Chennai 113. …Petitioner

Vs

1 Joint Commissioner of customs
Group 5A ACC Office of the principal
commissioner of customs Chennai VII Commissionerate
Meenambakkam Chennai 600 016

2 Deputy commissioner of Customs
Group 5A Office of the Principal
Commissioner of customs (Chennai VII) Air
Cargo Complex New customs House
Meenambakkam Chennai 600 016

3 The Principal Commissioner of Customs
Chennai VII Commissionerate Air
Cargo Complex New Customs House
Meenambakkam Chennai 600 016

4 Union of India
Ministry of Finance Department of Revenue
North Block New Delhi 110 001
(R4 given up) .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari to quash the letter bearing F.No. S. Misc. 581 / 2019- GR5A - ACC dated 03.01.2020 issued by the 1st Respondent as it is contrary to the provisions of the Customs Act 1962 and in violation of principles of natural justice and to direct the 2nd respondent to amend the relevant Bills of Entry as prayed for by the petitioner.

For Petitioner : Mr.Raghavan Ramabadran

For Respondents : Mr.T.Pramodkumar Chopda
Senior Standing Counsel

O R D E R

Mr.Raghavan, learned counsel for the petitioner would state that no relief is sought as regards the Union of India/R4 who is given up. This is recorded.

2. The petitioner is engaged in the business of regularly importing Information Technology (IT) products. The present dispute relates to imports during the period 24.07.2019 to 26.07.2019. 17 Bills of Entry (B/E) were filed seeking clearance of imported consignments. According to the petitioner, the invoices in relation to the aforesaid 17 B/E contained an error in the unit price of the imported products that came to be perpetrated in the B/E as well. However, according to the petitioner, contemporaneous documents by way of purchase orders as well as other materials, such as communications inter se the suppliers and the petitioner and a comparison of the prices of imports of identical products in other Ports including the Chennai Port itself at other points in time, would establish this error.

3. Having come to realise the error, the petitioner approached the Deputy Commissioner of Customs/R2 on 09.09.2019 pointing out the same and seeking amendment of the B/E under Section 149 of the Customs Act, 1962 (in short 'Act') in order that the correct value of the imported products be reflected therein. Though they state that purchase orders and subsequent invoices reflecting the correct value of the product and a tabulation to show the comparative value of unit prices of the same products imported at other Ports also accompanied the aforesaid communication, Mr.Pramod Kumar Chopda, on instructions received from the respondent officer, confirms that such documents are not available on record.

4. Be that as it may, a communication dated 27.09.2019 came thereafter to be issued by the Assistant Commissioner of Customs, wherein the amendment sought was rejected as the imported goods had been cleared for home consumption. The proviso to Section 149 however permits amendment even after

clearance for home consumption, if contemporaneous documents to establish the error are supplied by the assessee.

5. In this case, it appears that at the time when the first request for amendment was sought on 09.09.2019 contemporaneous documents were not filed. The officer however conveys to the petitioner on 27.09.2019 that it may approach the Department for refund of excess duty paid on account of wrong declaration of invoice value. Prima facie, the extension of such relief to the petitioner appears contrary to the judgment of the Hon'ble Supreme Court in ITC Limited V. CCE, Kolkata IV (2019(368) ELT 216).

6. On 17.10.2019, the petitioner reiterates the request for amendment, in response to which, the Officer, vide communication dated 31.10.2019, makes a reference to the judgment of the Hon'ble Supreme Court in the case of ITC Limited V. CCE, Kolkata IV ((2019(368) ELT 216 - Civil Appeal Nos.293294 of 2009) and reiterates his earlier communication permitting the petitioner to submit a refund application in the prescribed format. On 21.11.2019, the petitioner approaches the revenue yet again seeking amendment of the B/E annexing several documents to evidence the error in the B/E available contemporaneous with the import, duly received by the respondent.

7. The documents are (i) Price list, (ii) Purchase order inter se the petitioner and its supplier reflecting the correct unit price, (iii) Original invoices containing the erroneous unit price, iv) Purchase order inter se the petitioner and its customer and v) Remittance report.

8. On 03.01.2020, R1/Joint Commissioner of Customs passes the impugned order once again rejecting the request for amendment of the bills, as against which, the present Writ Petition is filed. The Officer also suggests that the petitioner may approach the appellate authority challenging the B/E.

9. Addressing the last point where the request for amendment is rejected on the ground that an appellate remedy is available, it is to be noted that the relief sought is for amendment on the ground of inadvertent error. The appropriate remedy in such a case is not that of appeal, since there is no legal flaw amenable to appeal but only a factual mistake that calls for rectification by amendment.

10. The provisions of Section 149 of the Customs Act providing for amendment of a B/E read as follows:

> 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 custom house to be amended:

Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so 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.

11.Admittedly, in the present case, the goods have been cleared for home consumption and therefore the petitioner seeks the benefit of the proviso, as per which, the petitioner/assessee would be entitled for amendment if it were able to supply sufficient evidence by way of documents that were 'in existence' at the time of the goods were cleared, deposited or exported to establish the error.

12. The lis in this matter revolves around the interpretation of the phrase 'in existence', as according to the revenue the phrase should be read as available with the Department and it is only if the documents relied upon by the petitioner seeking amendment were, in fact, 'on record' that such amendment could even be considered.

13. I cannot agree. What is contemplated vide the proviso to Section 149 is an opportunity to be extended to an assessee to produce such documents that were 'in existence' at the stipulated time that would serve to establish the error, if any, in the B/E. The genuineness of such documents or a confirmation as to whether such documents were actually 'in existence' is certainly to be left open for thorough examination by the customs authorities and the Court would have no say in such a factual matter. Suffice it to say that the Department should take note of the documents that are presented by an assessee as being 'in existence' at the relevant time to evidence an error sought to be amended.

14. In the light of the discussion as aforesaid, the rejection of the request for amendment by the respondent is set aside to be re-done de novo. This Writ Petition is allowed.

15. The petitioner is granted liberty to file such documents as it may rely upon as contemporaneous within two (2) weeks from date of uploading of this order. I reiterate that the revenue is at liberty and, in fact, must, examine whether the documents relied upon by the petitioner are contemporaneous and

'in existence' at the relevant point in time. Appropriate orders shall be passed after hearing the petitioner within a period of six (6) weeks from today. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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Ministry of Finance Department of Revenue
North Block New Delhi 110 001

+1 CC to M/s. Lakshmi Kumran, Advocate sr 34285.

W.P. No.6764 of 2020

SR(CO)
SP(09/11/2020)