

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.34627 & 34629 of 2019

Hindustan Unilever Limited
Represented by its Manager-Indirect Taxes,
Raja Raman
Registered Office at
Unilever House, B.D.Sawant Marg
Chakala, Andheri East,
Mumbai - 400 099. ... Petitioner in both WPs

Vs.

1. Union of India,
Represented by Secretary to Government,
Ministry of Finance, Department of Revenue,
North Block, New Delhi - 110 001.
2. The Chairman, Central Board of Indirect Taxes & Customs,
(earlier known as Central Board of Excise and Customs),
Ministry of Finance, Department of Revenue,
North Block, New Delhi - 110 001.
3. Joint Secretary (Customs),
Central Board of Indirect Taxes & Customs,
Ministry of Finance, Department of Revenue,
North Block, New Delhi - 110 001.
4. Commissioner of Customs, Chennai-II,
Customs House, 60, Rajaji Salai,
Chennai-600 001.
5. Deputy Commissioner of Customs, Chennai-II,
Group-II, Customs House, 60, Rajaji Salai,
Chennai-600 001.
6. Assistant Commissioner of GST & Central Excise,
Guindy Division, Range IV,
EVR Periyar Maligai, 3rd Floor,
No.690, Anna Salai, Nandanam,
Chennai-600 035.

7. Director General,
Directorate General of Systems,
Customs and Central Excise,
4th & 5th Floor, Hotel Samrat,
Chanakyapuri, Kautilya Marg,
New Delhi - 110 021.
8. The Commissioner of GST & Central Excise,
GST & Central Excise Commissionerate,
1st Floor, CGO Complex,
CBD Belapur, Navi Mumbai - 400 614.
9. The Commissioner (ST),
Office of the Commercial Taxes Department,
1st Floor, 100 Feet Road,
Ellapillaichavady,
Puducherry-605 005.

... Respondents in both WPs

Prayer in WP.No.34627 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus calling for the records in File No.S.Misc.1457/2018 Gr.2 comprising the impugned Order No.S.Misc.1457/2018 Gr2 dated 20 May 2019 on the file of the 5th Respondent, quash the same and consequently direct the Respondents to verify that the credit is not duplicated and has finally transitioned to the location which has received and consumed the goods and thereby enable regularization of credit so availed by the Petitioner.

Prayer in WP.No.34629 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus calling for the records in File No.S.Misc.1457/2018 Gr.2 comprising the impugned Order No.S.Misc.1457/2018 Gr2 dated 13 February 2019 on the file of the 5th Respondent to amendment the 87 Bills of Entry requested by the petitioner details of which has been annexed in the typed set of papers.

(In both WPs)

For Petitioner : Mr.Arvind Datar, Senior Counsel
for Mr.S.Muthuvenkatraman

For Respondents : Mr.Venkatasamy Babu (for R1)

Mr.M.Santhanaraman (for R2 to R5)
Senior Panel Counsel

Mr.A.P.Srinivas, (for R6)
Senior Standing Counsel

No Appearance (for R7 & R9)

COMMON ORDER

The petitioner challenges orders rejecting the request of the petitioner for amendment of bills of entry (b/e) in terms of Section 149 of the Customs Act, 1944 (in short 'Act').

2. The petitioner is engaged in the manufacture and supply of various types of toiletries/fast moving consumer goods and its units are located pan India. The provisions of the Central Goods and Services Tax Act, 2017 (in short CGST Act) mandate that registration has to be obtained in all States from where an entity makes taxable supplies. The petitioner has obtained registrations in several locations across the country and each registered unit is treated as a distinct person in terms of the provisions of the CGST Act.

3. Imports of raw materials have been made by the petitioner from overseas suppliers and during the period July 2017 to September 2018, 87 b/e have been filed in the Chennai Customs. These b/e are to contain the Goods and Services Tax Identification Number (GSTIN). An entity such as the petitioner, which is a single legal entity holding multiple GST registrations, thus has multiple GSTIN numbers in respect of its various units.

4. Tax credit under the Integrated Goods and Service Tax Act, 2017 (IGST Act) is availed by an importer based on the b/e filed and in relation to the GSTIN number mentioned in that b/e. With the onset of GST, the GSTIN number was specifically required to facilitate a seamless flow of IGST and it was proposed that the Customs Electronic System Data Interchange System would be integrated with the Indian Customs and Central Excise Electronic Commerce/Electronic Data Interchange Gateway (ICEGATE). Failure of this integration would result in mismatch between GSTIN numbers leading to a disastrous collapse of the import-export system as well as untold hardship even in the case of bona fide mistakes in mentioning of GSTIN numbers or other data in the documentation filed

5. The present petitioner claims to be a victim of such failure. 87 imports made under 19 b/e are said to contain inadvertent errors in mention of the GSTIN. GSTIN number '27AAACH1004N1U' relates to the unit at Maharashtra whereas '33AAACH1004N1Z1' relates to the Tamil Nadu unit. Purchase orders for imports in 19 instances were raised at Maharashtra, destination Tamil Nadu. However, the GSTIN numbers mentioned were that of Maharashtra. Since the imports were meant for Tamil Nadu, IGST was claimed in Tamil Nadu in the GSTR-B returns and not claimed either in Maharashtra or elsewhere. Upon receipt in

Chennai, the imports have been stock transferred to other locations, according to the petitioner, on payment of applicable GST. In the case of remaining 67 transactions, the GSTIN number was that of the unit at Puducherry, whereas credit of IGST had been taken in Tamil Nadu, where the goods had been received. According to the petitioner, no credit was taken in respect of these 67 transactions either in Puducherry or any other location, barring Tamil Nadu.

6. In support of its plea that the transactions were wholly bona fide and the error was human and inadvertent, the petitioner has circulated specimen copies of b/e, bill of lading (b/l), tax invoices issued by the suppliers overseas and stock transfer invoices issued by the petitioner while dispatching goods to the concerned plants. One more error is stated to have been occasioned in respect of one b/e wherein the GSTIN number was that of a unit at Karnataka. However, since the revenue impact of this transaction is low, the petitioner states that it does not pursue its claim in this regard.

7. In the light of the errors that have transpired and apprehension that the credit to which it was entitled would be questioned and not granted, the petitioner requested the 2nd respondent/the Central Board of Indirect Taxes and Customs to rectify the procedure involved, as according to it, such errors had their genesis in the format of the documentation provided by the authorities. This, however, did not have the desired result.

8. A formal application for amendment was filed under Section 149 of the Act in response to which the petitioner was informed that the data had already been shared with the Goods and Services Tax Network (GSTN) and no amendment was possible at that juncture. When the petitioner persisted, the following reply was issued by R5/Deputy Commissioner of Customs (Chennai - II) (Group-II)/Assessing Authority:

"As the ICES system has been designed in such a way that once out of charge is given for the imported goods and date thereof is transmitted to the GSTN, no amendment of GSTN ID could be made in the system, this office does not have the authority to issue any letter/no objection certificate to manually rectify the GSTN ID in the bills of entry subsequent to grant of OOC"

9. The petitioner sought reconsideration of the above decision referring to a decision of this Court in Pasha International Vs. Commissioner of Customs, Tuticorin (2019-TIOL-373-HC-MAD-CUS) to the effect that a bonafide request of an assessee could not be rejected merely on the basis that the

system did not support such request. This was also rejected by the respondent justifying the rejection on the ground that it was part of a safeguard mechanism put in place to secure the integrity of transactions and it was for this reason that no manual alterations or rectifications could be effected by the Officer. The aforesaid orders dated 20.05.2019 and 13.02.2019 are under challenge now and read as follows:

Order dated 13.02.2019:

'S.Misc.1457/2018 Fr.2

Date: 13.02.2019

Sub: Amendment of Bill of Entry
No.7187564/12-07-2018 under
Section 149 of Customs Act

Sir/Madam,

Please refer to your letter dated NIL regarding amendment of Bill of Entry No.7187564/12.07.2018 under Section 149 of Customs Act. In this regard, it is informed that when the Bill of Entry was processed for amendment of GSTIN in the EDI system, the system showed the message as "Data already shared with GSTN. No. amendment in the GSTN ID is possible now". Hence the abovesaid Bill of Entry cannot be amended. As the ICES system has been designed in such way that once out of charge is given for the imported goods and the data thereof is transmitted to GSTN, no amendment of GSTN ID could be made in the system, this office does not have the authority to issue any letter/No Objection Certificate to manually rectify the GSTN ID in the Bills of Entry subsequent to grant of OOC.'

Order dated 20.05.2019:

'F.No.S.Misc.1457/2018-Gr2

DATE: 20.05.2019

Gentlemen,

Sub: Amendment of GSTIN details in the Bills
of Entry - reg.

Please refer to your letter dated 25.03.2019 seeking amendment of GSTIN details furnished in your Bills of Entry under Section 149 of the Customs Act 1962.

In this regard, it is informed that your request seeking amendment of GSTIN details furnished in your Bills Of Entry could not be considered as the GSTIN details furnished in a Bill of Entry could not be amended in the ICES, once the Out of Charge is granted for the subject B/E, due to the safeguard mechanism put in place to check the flow of credit to the actual GSTIN holder. As regards your right to claim credits on inputs that were imported & duty paid, the same does not come under the jurisdiction of this Office and the same may be taken up with the jurisdictional GST authorities.

This is issued with the approval of Commissioner of Customs, Chennai-II Commissionerate.'

Sd/-

(Dy.Commr.of Customs (Group 2))

10. Initially an objection was raised by Mr.Santhanaraman, learned Senior Panel Counsel appearing for R2 to R5, questioning the bona fides of the request. He seemed convinced that the request for amendment hid a devious design on the part of the petitioner to manipulate the department and claim credit that was applicable. Since the allegation levelled was serious, he was directed to put the apprehensions in writing by way of an affidavit. An additional affidavit has been filed on 14.10.2020 which do not support the allegations made orally. Thus, only two legal questions arise for resolution (i) whether the provisions of Section 149 of the Act support the request of the petitioner for amendment of the b/e (ii) whether the limitation of the technology available at the end of the respondent can stand in the way of the petitioner obtaining substantial relief.

11. I have dealt with the first question in W.P.No.6764 of 2020 while considering a similar request for amendment of b/e to correct bona fide error. The provisions of Section 149 read thus:

SECTION 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.

12. The argument put forth by the revenue in that case was that, only such documents that were already on record with the respondents could be taken into account to correct the error, if at all and no other documents may be admitted for that purpose. I have rejected that argument stating that the spirit and intent of Section 149 is to facilitate the correction of error where the importer is in a position to establish that such error was inadvertent and bonafide.

13. To say that the goods have already been cleared for home consumption and thus no amendment may be made, would fall in the face of the proviso to Section 149 which imposes a condition to be satisfied by an importer if he requests amendment after the goods have been cleared. The imposition of the condition itself means that a request for amendment may certainly be considered, subject to satisfaction of the condition imposed. I have gone into on to say that the phrase 'on record' would mean any documents that were available with the petitioner that were contemporaneous with imports must also be taken into consideration, to decide the question of existence of error. The Assessing Authority cannot restrict her examination only to documents that are available on her record. This issue thus stands answered in favour of the petitioner

14. The purpose of transition to the goods and services tax regime is to facilitate the conduct of transactions pan India and all consequences thereof including the seamless availment of credit. The robustness of the information technology system is critical to this venture. It is thus incumbent upon the authorities to ensure that technology is kept up to date in order to facilitate a seamless exchange of data. The impugned order states that ICEA System is limited in its operation and cannot permit any changes once the goods have left for home consumption. This is clearly erroneous even in the context of the 1944 Act that envisages amendments to be made even after goods have been cleared. The operation of the 2017 Act cannot go back to the Jurassic age denying an assessee relief that it would have obtained under the earlier enactment. Measures must be put in place for this purpose and till such time this is done, amendment of documents must be considered manually.

15. The petitioner succeeds and must be permitted to place all records on material that it has in its possession to prove its plea in regard to the erroneous mention of the GSTIN numbers in the b/e. Though some samples of the documents are placed before the Court and are referred to in an effort to convince me that the documents support the case of the

petitioner, I leave that exercise to the Assessing Officer who is at liberty to consider the materials to be filed by the petitioner and pass orders in accordance with law and in the light of the observations made in this order. These writ petitions are allowed and the impugned orders are set aside. No costs.

16. The petitioner is permitted to approach the Assessing Authority i.e. R5, seeking amendment of the b/e, which request shall be considered by the Officer and orders passed after hearing the petitioner within a period of four weeks from date of first hearing with all consequential reliefs thereof.

17. Mr.Datar submits that show cause notice dated 01.02.2021 has been issued by the Authorities for reversal of credit. Let the notice be kept in abeyance till such time the exercise as above is carried out and revived based on the outcome of the aforesaid exercise, if at all.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SKA

To

1. The Secretary to Government,
Union of India,
Ministry of Finance, Department of Revenue,
North Block, New Delhi - 110 001.
2. The Chairman, Central Board of Indirect Taxes & Customs,
(earlier known as Central Board of Excise and Customs),
Ministry of Finance, Department of Revenue,
North Block, New Delhi - 110 001.
3. The Joint Secretary (Customs),
Central Board of Indirect Taxes & Customs,
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4. Commissioner of Customs, Chennai-II,
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5. Deputy Commissioner of Customs, Chennai-II,
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9. The Commissioner (ST),
Office of the Commercial Taxes Department,
1st Floor, 100 Feet Road,
Ellapillaichavady,
Puducherry-605 005.

+2 cc to Mr.M.Santhanaraman, Advocate SR.No.13998 & 14068
+1 cc to Mr.Venkataswamy Babu, Advocate SR.No.14553
+1 cc to the Government Pleader for Puducherry SR.No.14605

W.P. Nos.34627 & 34629 of 2019

PL(CO)
TE(21/04/2021)

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