



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6273 OF 2022

Sinochem India Company Pvt. Ltd.,
Through Authorized Amit Bansal

...Petitioner

Versus

Assistant Commissioner of Customs,
JNCH, Group II (C-F).

...Respondent

Ms. Priyanka Rathi a/w. Ms. Ashwini Chandrasekaran a/w. Mr. Prasad Avhad and Mr. Surajsinh Malas i/by Mr. Kuldeep U. Nikam for the Petitioner.

Smt. Neeta V. Masurkar a/w. Adv. Ruju R. Thakker for Respondent.

CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

DATE : 5th SEPTEMBER, 2023.

Oral Judgment:- (Per G. S. Kulkarni, J.)

. Rule returnable forthwith. Respondent waive service. By consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution of India has prayed for the following reliefs:-

“a. To issue writ of Certiorari or any other appropriate writ, order or direction to set aside the Impugned Order dated October 29, 2021 passed by the Respondent;

b. To issue writ of mandamus directing the Respondent to redecide the amendment request of the Petitioner and carry out amendment of GSTIN details in the BOE from Delhi to Vadodara Unit;

c. To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

d. To award Costs of and incidental to this application be paid by the Respondents;”

3. This is the second round of litigation at the behest of the Petitioner on the same cause of action. The Petitioner initially had approached this Court in the proceedings of Writ Petition (L) No.13894 of 2021 making an identical grievance as urged in the present petition, namely that the Respondent be directed to amend the Bill of Entry (for short “BoE”) as requested by the Petitioner in its application. The said application of the Petitioner was to the effect that the GSTIN and the address in the Bill of Entry No.8405273 dated 7th August 2021 be remitted to be amended. A Coordinate Bench of this Court by an order dated 15th September 2021, disposed of the said petition by directing the Respondent to consider the said application as made by the Petitioner, in the light of the observations made in the said order and in accordance with law and after granting the Petitioner an opportunity of a hearing. We may observe that in issuing such directions, the Division Bench considered the provisions of Section 149 of the Customs Act, which provide for amendment of the documents as also the relevant decisions of the Coordinate Bench of this Court, as also of the Madras

High Court interpreting the said provisions. The relevant observations as made by the Division Bench are required to be noted, which reads thus:-

“13. The second and third provisos have been incorporated in section 149 by way of amendment; however, such amendments do not have the effect of stultifying the prayers made by the respective petitioners. The decision in Micromax Informatics Ltd. (supra), with due respect, proceeds to read the only proviso to section 149 (as it then stood) in a constricted manner as if the words “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” are not there in such proviso. However, it could be so that the interpretation placed by the Court on the first proviso is correct for the purpose of determination of the issue arising for decision therein, i.e., rejection of the petitioner’s refund claims for the period between July 2014 and June 2015. We, therefore, hold that such interpretation of section 149 as made by the coordinate Bench turns on the facts and circumstances of the case before it.

14. In our considered opinion, the decision in Dimension Data India Private Ltd. (supra) correctly interprets section 149 and we share the view expressed therein that amendment to the Bill of Entry is clearly permissible even in a situation where the goods are cleared.

16. As it appears from the decision in Hindustan Unilever Limited (supra) decided by the Gujarat High Court, counsel appearing for the respondents had submitted that they would have no objection if the request of the petitioner to amend the GST details in the Bills of Entry was directed to be considered afresh after giving the petitioner opportunity to prove its documents qua the amendment sought in the light of section 149 of the Act. Since the petitioner in Writ Petition (L) No.8163 of 2021 was the same petitioner before the Gujarat High Court, we may accept the statement of Mr. Paranjape that the order dated June 23, 2021 has since been complied with. What is of importance in this regard is that the respondents before the Gujarat High Court did not raise the argument that amendment in the Bill of Entry is not permissible in terms of section 149 of the Act. We cannot allow the same set of respondents to prevaricate and take divergent stands before different High Courts.

17. Although the opening words of section 149 say that, “save as otherwise provided in sections 30 and 41”, it has not been demonstrated before us that such other provisions in the Act do stand in the way of the respective petitioners’ prayers for amendment; also that, the amendments sought for by them cannot be allowed because such

amendment is requested on the basis of documentary evidence which were not in existence at the time of clearance of the goods. Given such situation, coupled with the fact that the petitioners had prayed for amendment of documents only, which is squarely covered under section 149 of the Act, any deficiency in the system cannot be used by the respondents as a shield so as to deny relief to a party; if indeed the system does not permit, the deficiency has to be covered up manually until improvements are effected in the system for such amendment. We also record not having been shown from the reply-affidavit that even a manual amendment is not possible.”

4. In pursuance of the above orders passed by the Division Bench, the Petitioner was granted a hearing as also all the documents of the Petitioner was considered by the designated officer, namely the Assistant Commissioner of Customs, who passed the impugned order dated 29th October 2021, by which the Petitioner’s application has been rejected. The reasons which are set out in the impugned order are quite peculiar, which are required to be noted, which reads thus:-

“It may be further noted that, movement to any place in India, post clearance by Customs will be governed by the CGST law and the GST Policy. In the instant case, the units based in the Delhi and Vadodara have separate GSTINs, under the relevant provisions of the GST Act and are entirely distinct entities. Hence, the ‘Taxable Person’ in Delhi is different from the ‘Taxable Person’ in Vadodara. In this context, when the address provided in the invoice is of Delhi, accepting amendment from Delhi GSTIN to Vadodara GSTIN, is not be acceptable under the GST law. As per Section 25 of the CGST Act, 2017, these two units are reckoned as different entities and availing or utilization of input tax credit across entities, located in different states, would essentially vitiate the concept of destination based consumption tax, a fundamental principle under the GST law. This has been also endorsed by the Customs and GST policy wing of the CBIC.

Hence as taxable person in Delhi is different from Vadodara with different GSTIN and as all legal document available on record at the time of clearance of goods for home consumption are in the account of M/s. Sinochem India Company Pvt. Ltd. based in Jasola, Delhi accepting any amendment of Delhi GSTIN to Vadodara GSTIN is not possible under Sect 25 of GST act 2017. So even manual amendment is not legal as per above clarification received from the Board after Hon’ble High Court of Mumbai’s Judgment Order dated 15.09.2021 issued in Writ Petition (L)

No.13894 of 2021. Accordingly manual amendment of GSTIN of M/s. Sinochem India Company Pvt. Ltd. is rejected on merits.”

5. Being aggrieved by the aforesaid order, the Petitioner is before this Court in the present proceeding.

6. Learned counsel for the Petitioner in assailing the impugned order would submit that the basic premise on which the Assistant Commissioner of Customs has proceeded to pass the impugned order is erroneous and contrary to law as the Customs Officer has travelled beyond the provisions of the Customs Act, 1962 and more particularly, in applying the provisions of Section 25 of the Central Goods and Services Tax Act, 2017 (for short “GST Act”). Our attention has been drawn to the provisions of sub-section (4) of Section 25 of the GST Act, 2017 to contend that it is specifically provided by such provisions that a person who has opted or is required to opt for more than one registration, whether, in one State or Union Territory or more than one State or Union Territory shall in respect of each and such registration be treated as a distinct person for the purpose of the GST Act only and, therefore, it cannot have any other relevance. In so far as the application as made by the Petitioner is concerned, it is her contention that what was imperative for the Assistant Commissioner of Customs was to consider the application of the Petitioner by applying the provisions of Section 149 of the Customs Act, 1962.

7. Learned counsel for the Petitioner has also drawn our attention to the provisions of Section 46 of the Customs Act, 1962, which provides for entry of goods on importation, the same being applicable in regard to the presentation of the Bill of Entry for home consumption and to the definition of “importer” as defined under Section 2(26) of the Customs Act, 1962. It is her submission that what was relevant was that the Assistant Commissioner ought to have confined himself to the provisions of the Customs Act, 1962, which is a code by itself and as per the clear directions of the Division Bench in the Petitioner’s writ petition the application as made by the Petitioner ought to have been granted.

8. Learned counsel for the Petitioner has also drawn our attention to the bill of lading to submit that the same referred to the Petitioner’s GSTIN which pertains to Vadodara, Gujarat, in respect of the BoE in question. It is her submission that all these documents were placed for consideration of the Assistant Commissioner and which has been totally overlooked to give an appropriate effect and for correction of the inadvertent mistakes which have taken place in entering a wrong GSTIN in the BoE. She, accordingly, submits that the petition deserves to be allowed.

9. On the other hand, Ms. Masurkar, learned counsel for the Respondent would oppose this petition relying on the reply affidavit as filed to the petition. Referring to the reply affidavit filed by Mr. Rajiv G. Kakeri, Assistant Commissioner of Customs, Group II (C-F), JNCH, Nhava Sheva, our attention is drawn to para 4.4 of the said reply, wherein, it is contended that first proviso to Section 149 does not permit amendment of the BoE, after customs clearance has been given, except in cases, where the documentary evidence for such amendment was available at the time of custom clearance. It is contended that amendment as per Section 149 of the Customs Act would be admissible only based on documents which were in existence at the time of the import of goods and which were presented before the customs. It is contended that in this case no documentary evidence was available with the Respondent/Department, at the time of clearance of goods and for the reasons that the Petitioner-Importer itself has not entered the correct GSTIN at the time of clearance of the goods. It is submitted that the amendment of GSTIN is not possible post clearance of the goods under Section 149 of the Customs Act, 1962, due to system constraints. It is her also submission that no fault can be found in the impugned order and the Petition would be required to be dismissed.

10. Having heard learned counsel for the parties and having perused the record, at the out set we may observe that the reasons as

set out in the impugned order and more particularly, the Assistant Commissioner referring to the provisions of Section 25 of the GST Act, 2017 does not commend us. We find that the reasons as set out in the impugned order are quite different from the justification, the officer intends to give in the reply affidavit. Be that as it may, we find much substance in the contention as urged on behalf of the Petitioner that the Assistant Commissioner ought to have confined himself to the provisions of the Customs Act, namely, the provisions of Section 149, which provides for amendment of the documents. For convenience, the provisions of Section 149 of the Customs Act, which reads 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 customs house to be amended: Provided that no amendment of a Bill of Entry or 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. As noted above, this was a clear case that on the documentary evidence which was available for consideration of the Assistant Commissioner the amendment to the BoE ought to have been allowed. It is not the case that the Assistant Commissioner did not have the authority to modify the document and more particularly in a situation that there was a bonafide mistake on the part of the Importer in

entering the wrong GSTIN number. The case of the department is not of any illegality or any malafides on the part of the Petitioner, so as to deliberately effect the clearance of goods on a false or erroneous GSTIN. We find from the bill of lading that it contains the GSTIN number with details of the Petitioner unit at Vadodara, Gujarat. Thus, there is no material adverse to the Petitioner as to why the amendment of the Bill of Entry to change the GSTIN number of Head Office, Delhi to Vadodara, Gujarat ought not to have been granted.

12. The reasons as recorded by the Assistant Commissioner, which has been noted by us above, in our opinion, would not satisfy the test in law, in as much as, it would be none of the concern of the Custom Officer considering the scheme of Customs Act, as also the GST laws, that the Assistant Commissioner could have travelled beyond the provisions of Customs Act, in exercising jurisdiction under Section 149. In exercising such jurisdiction, the Assistant Commissioner could not have taken into consideration something which was extraneous to the Customs Act. The Assistant Commissioner certainly did not have any jurisdiction as to what would be the position of the Revenue and/or the jurisdiction or the consequences which would fall under the CGST Act, 2017. Thus, *ex-facie*, there was no jurisdiction with the Assistant Commissioner in taking such view and passing an order of the nature as

impugned.

13. We may also observe that the directions of this court in its earlier order (supra) to the Assistant Commissioner were clear and unambiguous to the effect that the Assistant Commissioner was directed to decide the Petitioner's application in the light of the observations made by the Division Bench. The Division Bench had made categorical observations interpreting Section 149 of the Customs Act as also considering decisions of this Court and also the Madras High Court. We are at pains to note that the purport of the said orders passed by the Division Bench have been completely overlooked and/or nullified by the Assistant Commissioner in passing the impugned order. Moreover, a serious view would be required to be taken when categorical observations of the Division Bench of this Court in its operative directions that the Petitioner's application be decided in the light of the observations made and in accordance with law, have been mischievously overlooked/misinterpreted and/or not applied by the Assistant Commissioner. We may also observe that when the Division Bench has observed that the application of the Petitioner be decided in the light of the observations as made by the Court and in accordance with law that could not mean that the Assistant Commissioner would be completely indifferent to such observations of the Division Bench and/or discard the binding observations as made by the Court as being

canvassed by Ms. Masurkar so as to pass an order, which is exactly not in accordance with law and which is in fact perverse. This is our concern in the present proceedings. The Commissioner of Customs needs to look into such approach of the officers and not take it lightly so as to prevent a likelihood that such officers for reasons best known to them acting contrary to the binding orders passed by this Court and this is one of such cases. In these circumstances, we would request the Commissioner of Customs to look into the issue on understanding of the legal matters by such officers as in the present case wherein the Assistant Commissioner has totally discarded to consider the binding effect of the orders of this Court.

14. Copy of this order be forwarded for appropriate consideration of the Commissioner and the steps being taken to appraise such situations to the concerned officers be informed by the Commissioner to the Registrar (Judicial) of this Court within a period of one month from the date the order is received by the Commissioner.

15. In the aforesaid circumstances, we allow the present petition. Rule is made absolute in terms of prayer clauses (a) and (b).

16. The amendment to the Bill of Entry be issued within a period of one week from the day a copy of this order is made available.

17. In the facts and circumstances of the case, we allow the petition with cost of Rs.1,000/- to be paid personally by the Assistant Commissioner, who has passed this order to be deposited with the Maharashtra Legal Services Authority within a period of three months from today.

18. Rule is made absolute in the above terms.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]