IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.9584 and 9578 of 2022

M/s.Steel Authority of India Ltd,
Represented by its Executive Director,
Mr.Surajit Mashra,
Visvesvaraya Iron and Steel Plant,
New Town, Bhadravathi,
Shimoga – 577 301. ... Petitioner in both W.Ps.

Vs

1.The Deputy Commissioner of Customs (Gr.4),
Customs House, 60, Rajaji Salai,
Chennai – 600 001.

2.The Deputy Commissioner of Customs (EDI),
Customs House, 60, Rajaji Salai,
Chennai – 600 001. ... Respondents in both W.Ps.

Prayer in W.P.No.9584 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the second respondent to update the EDI system with the details of Notification No.119/2008-cus dated 31.10.2008.

Prayer in W.P.No.9578 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the first respondent to amend the Bills of Entry No.894996 dated 19.11.2008 and 879684 dated 31.10.2008 in compliance with the Final order No.40760/2015 dated 29.05.2015 as passed by the Customs, Excise and Service Tax, Chennai.

For Petitioner (in both W.Ps)	:	Mr.L.Gokulraj
For Respondent (in both W.Ps)	:	Mr.H.Siddharth Government Advocate

COMMON ORDER

By this common order, both these writ petitions are being disposed of.

2. In W.P.No.9578 of 2022, the writ petition has been filed to implement the order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) vide Final Order No.40760/2015 dated 29.05.2015. Relevant portion of the order reads as under:

> 5. The learned AR appearing for the Revenue while supporting the orders passed by the lower authorities submits that Section 149 will not be attracted in view of the assessment

order having become final, no claim for refund could have been entertained.

6. We have carefully considered the submissions made by both the sides and perused the relevant records. This Tribunal has in a plethora of decisions directed the Department to amend the Bills of Entry in terms of Section 149 of the Customs Act, 1962 based on documents which were in existence at the time of import and thereafter to cause re-assessment. In the instant case, the appellant is claiming amendment and consequent re-assessment of the bill of entry since the notification No 119/2008 dated 31.10.2008 was in existence at the time of filing of bill of entry.

7. Section 149 and Section 154 of Customs Act, 1962 are reproduced below:-

"SECTION 149: Amendment of documents

Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorize 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 authorized 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.

SECTION 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."

8. From the above, it can be seen that as far as Section 149 is concerned, amendment is to be allowed on the basis of documentary evidence which was in existence at the time when the goods were cleared, deposited or exported. The only restriction is Sections 30 and 41 of Customs Act, 1962 which relates to export and import manifest which are not allowed to be amended of when there is a fraudulent intention. In the case of amended document under Section 149, the amendment has to be allowed when a request is based on documentary evidence, which was in existence at the time of clearance of the goods. We also find that the decision of Hon'ble High Court of Mumbai in Hero Cycles Ltd. Vs. Union of India (supra) relied upon by Id. Counsel is relevant and the relevant paragraphs 8 & 9 are reproduced below:

8. In the instant case, the Petitioners admittedly, based on the sald notification were being granted benefit of the notification previous to the imports in issue and also subsequent to the Imports in question. In other words, both the parties were aware of the said notifications. If the Petitioner on account of an inadvertent error chose not to apply for the benefit, would that result in denial of the benefit. In our opinion that by itself would not be answer as a duty is cast on the authority to assess the goods and impose duty according to law which includes a statutory notification, if duty cannot be demanded if otherwise not payable. Once there be a power to assess there is a corresponding duty to assess according to law. The fact that the Petitioner has paid the duty under mistake of law and or in the instant case by oversight, cannot result in being assessed to duty which was otherwise not payable. In our opinion, this will be a case of manifest injustice and on the face of it erroneous.

The facts of this case being so obvious, this would be a fit case for us to exercise our extraordinary jurisdiction.

9. Once we exercise our extraordinary jurisdiction, we will have to issue directions to the respondents to amend the original order of assessment. In so far as the claim for refund is concerned, that would only arise after the order is amended. The relief of refund claimed is not maintainable before the order of assessment is amended or modified as held by the Supreme Court in Priya Blue Industries (supra). The Petitioner no doubt has contended that he has not passed on the duties and as such the question of unjust enrichment would not arise in the matter. That is not for us to answer today. That would only be on an appropriate application being filed for relief after original orders of assessment which have been quoted in our judgment are modified."

9. In view of the decision of the Hon'ble High Court of Mumbai which is squarely applicable and the direction given was that the assessing officer has a duty to assess according to the law and refusal to amend the document would result in an irregular assessment and therefore what was held by Hon'ble High Court was that it was the duty of the officer to make amendment. It has to be noted that in that case also the issue involved was difference in rate of duty. The SLP filed by the Revenue was dismissed.

10. In view of the fact that the Hon'ble High Court's decision supports the claim of the appellant and we also find that in terms of provisions of Section 149 of Customs Act, 1962, the appellant is eligible for amendment. Accordingly, we allow the appeal with consequential relief to the appellant.

3. It is informed that, no further Appeal has been filed by the Department against the above order of the CESTAT. Consequently, the petitioner is entitled for the relief sought for in W.P.No.9578 of 2022. Consequently, W.P.No.9584 of 2022 is also to be allowed.

4. Accordingly, these writ petitions are allowed. No costs.

07.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
jas

To

1.The Deputy Commissioner of Customs (Gr.4),
Customs House, 60, Rajaji Salai,
Chennai – 600 001.

2.The Deputy Commissioner of Customs (EDI),
Customs House, 60, Rajaji Salai,
Chennai – 600 001.

C.SARAVANAN, J.

jas

W.P.Nos.9584 and 9578 of 2022

07.09.2023