IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.15419, 15423, 15428, 15429 and 15431 of 2021
and
W.M.P.Nos.16318, 16323, 16335, 16337 and 16340 of 2021

M/s.Bharti Airtel Limited,
Represented by its Authorized Signatory
Vijeyakumar Raja
Airtel Centre,
Plot No.16, Udyog Vihar, Phase – IV,
Gurugram – 122 015. ... Petitioner in all W.Ps.

Vs.

1.The Union of India,
Under Secretary, Ministry of Finance,
North Block,
New Delhi – 110 001.

2.The Authorized Officer,
Office of the Authorized Officer,
SIPCOT Hi-tech – SEZ Oragadam,
Sriperambadur Taluk.

3.The Specified Officer,
SIPCOT Oragadam,
Chennai.

4.The Commissioner of Customs,
Office of Commissioner of Customs,
Custom House,
60, Rajaji Salai,
Chennai – 600 001. ... Respondents in W.P.Nos.15419 of 2021

1.The Union of India,
Under Secretary, Ministry of Finance,
North Block,
New Delhi – 110 001.

2.The Assistant Commissioner of Customs (Group 5A),
Office of Commissioner of Customs,
Chennai – II
Custom House,
No.60, Rajaji Salai, Chennai – 600 001.

3.The Deputy Commissioner of Customs, (Group 5A),
Office of Commissioner of Customs,
Chennai – II
Custom House, No.60, Rajaji Salai,
Chennai – 600 001. ... Respondents in W.P.No.15423 of 2021

1.The Union of India,
Under Secretary, Ministry of Finance,
North Block,
New Delhi – 110 001.

2.The Authorized Officer,
Office of the Authorized Officer,
SIPCOT Hi-tech – SEZ Oragadam,
Sriperambadur Taluk.

3.The Specified Officer,
MEPZ Tambaram,
Chennai 600 045.

4.The Commissioner of Customs - Import,
Office of Commissioner of Customs,
Custom House,
60, Rajaji Salai,
Chennai – 600 001. ... Respondents in W.P.No.15428 and 15429 of 2021

5.The Union of India,
Under Secretary, Ministry of Finance,
North Block,
New Delhi – 110 001.

6.The Assistant Commissioner of Customs (Appeals-II),
Office of the Commissioner of Customs (Appeals-II),
Customs House,
60, Rajaji Salai, Chennai – 600 001.

7.The Deputy Commissioner of Customs – (Group 5A),
Office of Commissioner of Customs, Chennai – II,
Custom House,
60, Rajaji Salai,
Chennai – 600 001. ... Respondents in W.P.No.15431 of 2021

<u>Prayer in W.P.No.15419 of 2021:</u> Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned Public Notice No.88/2019 dated 18.10.2019 issued by the respondent No.4 and quash the same to the extent it seeks to exclude rectification/modification as contemplated under Section 149 and 154 of the Customs Act, 1962.

Prayer in W.P.No.15423 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned communication vide F.No.S49/478/2019/Gr.5A dated 24.10.2019 issued by the respondent No.2 and quash the same on the ground that the same is illegal, arbitrary, without authority of law and direct the respondent No.2 to expeditiously and in a time bound manner, process the petitioner's amendment application dated 11.10.2019 in accordance with the provisions of Section 149 and Section 17 of the Customs Act, 1962.

Prayer in W.P.No.15428 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned communication vide F.No.SEZ ORAGADAM/Airtel/1/2019 dated 26.11.2019 issued by the respondent No.2 and quash the same on the ground that the same is illegal, arbitrary, without authority of law and direct the respondent No.2 to expeditiously and in a time bound manner, process the petitioner's amendment application dated 11.10.2019 in accordance with the provisions of Section 149 and Section 17 of the Customs Act, 1962.

Prayer in W.P.No.15429 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned communication vide F.No.SEZ ORAGADAM/Airtel/1/2019 dated 04.08.2020 issued by the respondent No.2 and quash the same on the ground that the same is illegal, arbitrary, without authority of law and direct the respondent No.2 to the expeditiously and in a time bound manner, process the petitioner's amendment application dated 11.10.2019 in accordance with the provisions of Section 149 and Section 17 of the Customs Act, 1962.

Prayer in W.P.No.15431 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned communication vide F.No.CUS/APR/MISC/1745/2021-GR 5A-0/0 CoMMR-CUS-IMP-CHENNAI dated 22.04.2021 issued by the respondent No.3 and quash the same on the ground that the same is illegal, arbitrary, without authority of law and direct the relevant respondent to the expeditiously and in a time bound manner, process the petitioner's amendment application dated 11.10.2019 in accordance with the provisions of Section 149 and Section 17 of the Customs Act, 1962.

For Petitioners (in all W.Ps) : M/s.Mannat Naraich for M/s.A.T.Rajaraman

For Respondents (in all W.Ps) : Mr.R.Sidharth for R2 and R3

Mr.S.Gurumoorthy for R4

COMMON ORDER

By this common order, all these Writ Petitions are being disposed of.

2. In these Writ Petitions, the petitioner has challenged the impugned Public Notice No.88/2019 issued by the Commissioner of Customs, Chennai and the individual order rejecting the request of the petitioner for amending the respective Bill of Entries under which the goods were cleared from the petitioner for clearing the goods from SEZ units. It appears that while filing the Bill of Entry, the petitioner had by mistake paid 20% of the Customs duty and therefore wanted an amendment to the Bill of Entry and therefore filed an applications for amending the Bill of Entry under Section 149 of the Customs Act, 1962. The request of the petitioner has been rejected by the impugned communications as detailed below:-

Sl.Nos.	***Rejection order No.***	***Dated***
1	F.No.S49/478/2019/Gr.5A	24.10.2019
2	F.No.SEZ ORAGADAM/Airtel/1/2019	26.11.2019
3	F.No.SEZ ORAGADAM/Airtel/1/2019	04.08.2020
4	F.No.CUS/APR/MISC/1745/2021-GR 5A-0/0 COMMR-CUS-IMP-CHENNAI	22.04.2021

3. The Department's contention is based on the impugned Circular issued by the Board purportedly the following decisions of the Hon'ble Supreme Court in the case of ***ITC Limited*** Vs. ***Commissioner of Central Excise, Kolkata*** reported in ***(2019) 17 SCC 46***. The decision of the Hon'ble Supreme Court has been summarised as follows:-

> *"43.As the order of self-assessment 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 the 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 self-assessment. 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, self- assessment 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.

44. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or reassessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, reassessment is not permitted nor conditions of exemption can be adjudicated. Reassessment is permitted only under Sections 17(3), (4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or reassessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India[3] though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries

Ltd.

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

4. A reading of the above paragraphs indicates that not only a Bill of Entry can be modified by way of an Appeal before the Appellate Authority but also other relevant provisions of the Act. This Court has considered the same in the case of ***M/s.Neyveli Lignite Corporation India Limited*** Vs. ***The Commissioner of Customs, The Assistant Commissioner of Customs (Import)*** reported in ***2022 (4) TMI 1374*** by its order dated 04.04.2022 in W.P.(MD).No.18910 of 2021. In para 16, the Madurai Bench of this Court has taken note of the decision of the Hon'ble Supreme Court referred to supra and has ultimately concluded as under:-

"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."

5. Thus, there is no doubt that an importer or a person filing a bill of entry can amend the bill of entry by any of the three methods prescribed under the Customs Act, 1962 namely by way of an appeal or by filing an application under section 149 or Section 154 of the Customs Act, 1962.

6. Under these circumstances, the impugned Public Notice No.88/2019 issued by the Commissioner of Customs, Chennai dated 18.10.2019 is liable to be quashed. On a reading of the decision of the Hon'ble Supreme Court in ***ITC Limited*** Vs. ***Commissioner of Central Excise, Kolkata*** reported in (2019) 17 SCC 46.

7. Accordingly, Writ Petition No.15419 of 2021 deserves to be allowed. The rest of the impugned orders challenged in the other writ petitions relating the impugned communications also are liable to be quashed, as the public Notice No.88/2019 dated 18.10.2019 stands quashed. The impugned order(s) rejecting the request of the petitioner for amending the Bill of Entry under Section 149 of the Act therefore

stand quashed.

8. These Writ Petitions are allowed by directing the respondents to re-do the exercise under Section 149 of the Customs Act, 1962, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

12.12.2024

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

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Under Secretary, Ministry of Finance,
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Office of the Authorized Officer,
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C.SARAVANAN, J.

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