IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition Nos.34505, 34506 & 34508 of 2023
and W.M.P.Nos.34414 & 34417 of 2023

In all WPs.

M/s.Minera Steel and Power Pvt. Ltd.,
SY No.9, 114P 124 & 131,
Yarabanahalli Village,
Sandur Taluk, Bellary District,
Karnataka-583 115
Represented by the Assistant General Manager. ... Petitioner

-vs-

1.The Assistant Commissioner of Customs,
Group-I, Office of the Commissioner of
Customs Chennai-II Import,
Custom House, No.60,
Rajaji Salai, Chennai-600 001.

2. The Assistant Commissioner of Customs,
(Refunds II),
Custom House, No.60,
Rajaji Salai, Chennai-600 001. ... Respondents

Prayer in W.P.No.34505 of 2023: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent ending with order in F.No.Cus/APR/BE/AMND/1260/2023-GR-1 dated 09.11.2023 and quash the same and consequently direct the 1st respondent to consider the petitioner's application for amending the Bills of Entry No.3969274 dated 30.12.2022 by incorporating the Customs Exemption Notification No.62/2022 dated 26.12.2022.

Prayer in W.P.No.34506 of 2023: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent ending with order in F.No.Cus/APR/BE/AMND/1260/2023-GR-1 dated 09.11.2023 and quash the same and consequently direct the 1st respondent to consider the petitioner's application for amending the Bills of Entry No.3969675 dated 30.12.2022 by incorporating the Customs Exemption Notification No.62/2022 dated 26.12.2022.

Prayer in W.P.No.34508 of 2023: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent ending with order in F.No.Cus/APR/BE/AMND/1260/2023-GR-1 dated 09.11.2023 and quash the same and consequently direct the 1st respondent to consider the petitioner's application for amending the Bills of Entry No.3969660 dated

30.12.2022 by incorporating the Customs Exemption Notification No.62/2022 dated 26.12.2022.

In all WPs.

For Petitioner : Mr.M.A.Kalam

For Respondents : Mr.Sai Srujan Tayi
Senior Standing Counsel

COMMON ORDER

The petitioner challenges orders dated 09.11.2023 by which applications for amendment of bills of entry Nos.3969274, 3969675 and 3969660 were rejected.

2. The petitioner is a manufacturer of basic iron and steel and had imported 'steam coal' in bulk in relation to such business under bills of entry Nos.3969274, 3969675 and 3969660, each dated 30.12.2022, for home consumption, Customs duty was paid in relation to said imports. By asserting that the petitioner was entitled to exemption from basic customs duty under the Australia India Economic Co-operation and Trade

Agreement dated 02.04.2022, the petitioner applied for an amendment of the above mentioned bills of entry. The said application was rejected under orders impugned herein. These writ petitions were filed in the said facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the public notice issued on 18.10.2019 whereby public notice No.65/2018 dated 11.09.2018 was cancelled. By relying on the judgment of this Court in *M/s.Brilliant Metals Pvt. Ltd. v. The Authorised Officer, J.Matadee Free Trade Zone and another, W.P.Nos.4222 & 4223 of 2020, order dated 21.11.2023*, he submits that this Court quashed the public notice dated 18.10.2019 on the ground that the judgment of the Hon'ble Supreme Court in *ITC Limited v. Commissioner of Central Excise (ITC), 2019 (368) E.L.T. 216 S.C.* was misconstrued. By further contending that the fact situation in the present cases corresponds to that in the above mentioned judgment, learned counsel submits that the amendment applications filed by the petitioner are liable to be allowed.

4. Learned senior standing counsel for the respondents countered these contentions by referring to Section 149 of the Customs Act, 1962 (the Customs Act). Learned senior standing counsel points out that an amendment is permissible only on the basis of documentary evidence which was in existence at the time when the goods were cleared. He also submits that the scope of Section 149 is restricted to the rectification of errors in import documents and does not extend to entertaining claims, which would substantially alter the assessment.

5. Section 149 of the Customs Act is as under:

> ***"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 [in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed]:*
>
> *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****. (emphasis added)*
>
> *[Provided further that such authorisation or amendment may also be done electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:*
>
> *Provided also that such amendments, as may be specified by the Board, may be done by the importer or exporter on the common portal.]*

6. The first proviso to Section 149 clearly indicates that it enables the amendment of a bill of entry *inter alia* after the goods are cleared for home consumption subject to the condition prescribed therein. The condition prescribed therein is that such amendment can be made only 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. On the facts of the cases at hand, the primary question would be whether the certificate of origin was in existence at the time of clearance of the goods. This aspect should be considered by the officer concerned and not by this Court in exercise of discretionary jurisdiction.

7. As regards the implications of the judgment of the Hon'ble Supreme Court in *ITC*, this Court examined the same in earlier orders and concluded that the Hon'ble Supreme Court did not intend to restrict the remedies of the assessee to the filing of an appeal.

8. On examining the impugned order, I find that the Assistant Commissioner of Customs has rejected the claim on the basis that the importer should establish that the goods originated from Australia and by placing reliance on public notice No.88/2019 dated 18.10.2019. The said public notice was quashed by the earlier order of this Court. As regards the requirement that the importer should establish that the goods originated from Australia, as discussed earlier, this aspect should be determined by examining the certificate of origin and any other relevant documents. Since the impugned orders were issued without examining such documents, they call for interference.

9. Therefore, the impugned orders are quashed and the matters are remanded for reconsideration. The 1st respondent is directed to reconsider

the matter in accordance with Section 149 and other applicable provisions of the Customs Act and issue fresh orders after providing a reasonable opportunity to the petitioner. This exercise shall be concluded within a maximum period of two months from the date of receipt of a copy of this order.

10. These writ petitions are disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

14.02.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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To

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SENTHILKUMAR RAMAMOORTHY,J

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