
(2021) 06 CESTAT CK 0026

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40165, 40166 Of 2021

M/s. Lenovo India Private Limited

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 23-06-2021

Acts Referred:

Customs Act, 1962 — Section 2(2), 27, 128, 149

Citation : (2021) 06 CESTAT CK 0026

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Advocate : R. Srinivasan, Arul C. Durairaj

Final Decision : Allowed

Judgement

1. The only issue that arises for my consideration in this appeal is, whether the appellant can seek reassessment/amendment of its Bills-of-Entry under

Section 149 of the Customs Act, 1962?

2. The appellant had placed two purchase orders for the purchase of Laptop computers/Notebooks manufactured by the Chinese manufacturing

company viz. M/s. LCFC (HEFEI) Electronics Technology, China, which were shipped directly by the manufacturer to the appellant. The same

arrived at the Chennai Air Cargo, upon which the appellant filed the impugned Bills-of-Entry No. 8211322 dated 18.07.2020 and No. 8212024 dated

18.07.2020 for their clearance. It is maintained that due to inadvertence, the goods were described as "Cartons" in the Bill-of-Entry and the Tariff

Item applicable to Cartons, namely, 4819 10 10 was applied and the applicable Basic Customs Duty (BCD) at 10% was paid as against "Nil".

BCD payable for the correct classification of Laptops under Tariff Item 8471 30 10; and that due to inadvertence, the invoice raised by the Chinese

factory entity (manufacturer) on the Hong Kong entity (supplier) was enclosed to the Bill-of-Entry instead of the actual invoice raised by the Hong Kong entity on the appellant.

3. Upon noticing the above mistake, the appellant vide its letter dated 19.08.2020 requested for reassessment of the above Bills-of-Entry with a request to pass necessary orders without issuing any Show Cause Notice or personal hearing, but however, as there was no reply to the above request letter, the appellant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai, against the impugned Bills-of-Entry, whereby it sought for amendment of the impugned Bills-of-Entry under Section 149 *ibid.* on the basis of correct invoices. The Commissioner (Appeals) vide impugned order, however, has rejected the claim of the appellant, firstly, holding that the appeal was filed with a delay of 116 days and secondly, holding that if there was any mistake on the part of the appellant, then they could not seek amendment under Section 149 *ibid.*; that after considerable lapse of time, they could not seek for substituting different set of invoices and seek reassessment, which are not permissible under Section 149 *ibid.*

4. Heard Shri R. Srinivasan, Learned Consultant appearing for the appellant and Shri Arul C. Durairaj, Learned Departmental Representative.

5. The Honâ??ble Supreme Court has in the case of M/s. ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV reported in 2019 (368) E.L.T.

216 (S.C.) has categorically held that:

â??.....43. As the order of selfassessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by

any person aggrieved thereby. The expression â??Any person' is of wider amplitude. The revenue, as well as 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 selfassessment. 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.....

47. When we consider the overall effect of the provisions prior to amendment and postamendment under Finance Act, 2011, we are of the

opinion that the claim for refund cannot be entertained unless the order of

assessment or selfassessment 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 selfassessment

and reassess the duty for making refund; and in case any person is aggrieved by any order which would include selfassessment, he has to

get the order modified under Section 128 or under other relevant provisions of the Act.....â??

6. Further, The Honâ??ble High Court of Madras in the case of M/s. Hewlett Packard Enterprise India Pvt. Ltd. v. Joint Commissioner of Customs

& ors. reported in 2020 (10) T.M.I. 970 â?? Madras High Court has held that the proviso to Section 149 contemplates an opportunity to be extended

to an assessee to produce such documents that were in existence at the stipulated time that would serve to establish the error, if any, in the Bill-of-

Entry. For this reason, the rejection of the plea for amendment under Section 149 *ibid.* by the commissioner (Appeals) is not sustainable. In the present

case, the appellant claims that all such necessary documents were available, but however, it is for the Proper Officer to verify the availability of the

same at the relevant point of time. This job is therefore left to the Adjudicating Authority to ascertain and pass a speaking order.

7. With regard to the rejection of the first appeal as time-barred, the Honâ??ble Supreme Court itself had extended the limitation wherever applicable

across the whole of India due to the outbreak of Covid-19, following which even the C.B.E.C. issued a Notification in F. No. 450/61/2020-

Cus.IV(Part-1) dated 30.09.2020 by which the time limit for filing appeals before First Appellate Authorities was extended till 31.12.2020. The

appellant had filed its first appeal before the Commissioner (Appeals) vide Acknowledgement dated 11.11.2020 and hence, the rejection of the appeal

as time-barred by the First Appellate Authority cannot also be sustained.

8. On both the counts, therefore, the findings as well as the impugned order are set aside.

9. Any amendment/re-assessment has to be in terms of Section 149 of the Customs Act, 1962 and by the Proper Officer. Hence, it serves no purpose

if the case is remanded to the Commissioner (Appeals) since it is the Proper Officer who could call for any documents and then exercise his

discretion to order amendment or reject, subject to the provisions of Section 149

ibid. Therefore, the matter is remanded to the file of the Adjudicating Authority/Proper Officer to verify the claim of the appellant strictly in terms of Section 149 ibid. and thereafter, pass an appropriate speaking order after giving reasonable opportunities to the appellant. All the contentions are left open.

10. The appeals are allowed by way of remand.

(Order pronounced in the open court on 23.06.2021)