

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 3451 of 2012**

*(Arising out of Order-in-Appeal No.202/2012 dated  
6.9.2012 passed by the Commissioner of Customs  
(Appeals), Cochin.)*

**The Commissioner of  
Customs**

Custom House,  
Cochin – 682 009.

Appellant(s)

**Versus**

**M/s. Cochin Shipyard Ltd  
Perumanur,**

P. B. No.1653,  
Cochin – 682 015.

Respondent(s)

**Appearance:**

Smt. D. S. Sangeetha,  
Addl. Commissioner (AR)

For the Appellant

Shri Kuriyan Thomas,  
Advocate

For the Respondent

**CORAM:**

**HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)**

**HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Final Order No. 20943 /2023**

Date of Hearing: 07/06/2023

Date of Decision: 20/09/2023

**Per : R. BHAGYA DEVI**

The Respondent, M/s. Cochin Shipyard Ltd., imported consignment “upgradation of Plasma Cutting Machine No. II” vide Bill of Entry No.231216 dated 4.9.2008. These goods were covered by a commercial invoice No. DRA/8304995 dated 11.6.2008 where the value was declared as EURO 310,000. The

goods were assessed and on payment of duty out of charge was given on 25.09.2008. The respondent later filed an application for refund of excess amount of duty paid claiming that they had inadvertently included installation, commissioning and training charges equivalent to EURO 65,000 and hence, requested for amendment of Bill of Entry under the provisions of Section 149 of the Customs Act, 1962. This request was rejected by the Assistant Commissioner of Customs (Import) vide his letter dated 4.5.2009 holding that the Bill of Entry was assessed by the system and out of charge was given and therefore, the question of amendment did not arise. The respondent filed an appeal against this letter and the Commissioner (A) vide the impugned order No.202/2012 dated 6.9.2012 allowed the request for amendment and remanded the matter to the original authority with a direction to amend the Bill of Entry. The Revenue is in appeal against the above impugned order.

2. The learned Authorised Representative on behalf of the Revenue reiterating the grounds of appeal submits that any assessment order cannot be amended under Section 149 and 154 of the Customs Act, 1962 as assessment itself was not under challenge by the respondent. It is also submitted that the purchase order and the invoice clearly indicated EURO 310,000 inclusive of cost of installation, commissioning and training charges of EURO 65,000 and hence, the transaction value was rightly declared and assessed and duty was paid accordingly. He also relied on various decisions to substantiate his arguments.

He relied on **ITC vs. Commissioner of Central Excise, Kolkata-IV: 2019 (368) E.L.T. 216 (SC)** wherein it has been held that once an assessment is done, refund cannot be claimed unless the assessment is challenged. He also relied on the judgment in the case of **Maharashtra Cylinders Pvt. Ltd. vs. CESTAT, Mumbai: 2010 (259) E.L.T. 369 (Bom.)** wherein the Hon'ble High Court held that the self-assessment cannot be challenged by filing a refund claim.

3. The respondent referring to Section 142 claims that the Commissioner (A) had rightly allowed amendment of Bill of Entry considering the fact that the commercial invoice No. DRA/83049995 dated 11.6.2008 comprised of two parts i.e., value of materials and charges for installation, commissioning and training. They were liable to pay duty only on the value of the materials and not on the charges of installation, commissioning and training which were post import expenses which are not to be included in the transaction value as per Section 14 of the Customs Act, 1962 and since there was an inadvertent error committed by them, they had rightly requested for amendment under Section 149 which clearly authorises amendment of any documents by the proper officer after the clearance of the imported goods. He has also relied on various judgements which allows amendment on the basis of the existing documents at the time of the import.

4. Heard both sides. The fact that the purchase order dated 8.11.2007 clearly shows the value as EURO 3,10,000 including installation, commissioning and training charges and the commercial invoice dated 11.06.2008 has given break-up of EURO 65000 for installation, commissioning and training charges is not under dispute. When a request was made by the respondent for amendment in the Bill of Entry, the Original Authority rejected their request stating that "since the Bill of Entry was assessed by the system and out of charge was taken 5 months back, no amendment can be carried out now.

5. Let us now examine Section 149 of the Customs Act, 1962.

**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 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 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.

As per the proviso to Section 149 allows an amendment of Bill of Entry after the imported goods have been cleared for home consumption only on the basis of documentary evidence which was in existence at the time the goods were cleared. Therefore, the Original Authority could not have rejected the amendment only on the ground that the request for amendment has been made after five months after the goods were cleared.

6 In the instant case, the amendment is filed within five months from the date of clearance, which is well within the time limit for claiming any refund as per Section 27 of the Customs Act, 1962. Moreover, Section 149 allows amendment only based on the documentary evidences which were in existence at the time of assessment of the goods and in the present case, the purchase order/commercial invoice were in existence and there is no change in the values declared. The only claim of the respondent is that they had inadvertently added the value meant for installation, commissioning and training which arise as post import expenses and are not to be included in the transaction value as per Section 14 of the Customs Act, 1962 read with Customs Valuation Rules.

7. The case laws referred by the learned Authorised Representative are with regard to refund but in this case the request is for amendment of Bill of Entry which is rejected by the Original Authority. In the case of **ITC vs. CCE** (supra), the Hon'ble Supreme Court vide para 47 has held that "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 any other relevant provisions of the Act." Section 149 is one such provision where an amendment to the Bill of Entry can be requested and allowed, if it satisfied the conditions of Section 149 and other relevant Sections, the basis for which the amendment is sought for.

8. In view of the above observations, the matter is remanded to the original authority to consider the request of the respondent after examining Section 14 of the Customs Act read with the Customs Valuation Rules to verify whether the transaction value includes the charges for installation, commissioning and training and accordingly, amendment may be allowed as per the provisions of Section 149.

9. Matter is remanded to the Original Authority for reconsideration of the amendment of Bill of Entry on the above terms. The appeal is disposed of on the above terms.

*(Order pronounced in Open Court on 20/09/2023.)*

**(D.M. MISRA)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

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