IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 42188 of 2014

(Arising out of Order in Appeal No. 85/2014 dated 21.8.2014 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy)

TANGEDCO **Appellant**
2nd Floor, NPKRR Maligai
144, Anna Salai
Chennai – 600 002.

Vs.

Commissioner of Customs **Respondent**
Custom House, New Harbour Estate
Tuticorin – 628 004.

APPEARANCE:

Shri R.R. Padmanabhan, Consultant for the Appellant
Shri Sanjay Kakkar, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41261/2025

Date of Hearing: 06.06.2025
Date of Decision: 10.11.2025

This appeal is filed by M/s. TANGEDCO against Order in Appeal No. 85/2014 dated 21.8.2014 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy.

2. Brief facts of the case are that the appellant had filed two refund claims on 11.6.2012 for Rs.9,06,059/- and Rs.10,00,021/- in respect of import of non-coking coal in bulk imported under two Bills of Entry (**BOE**) both dated 9.6.2011. The BOE's were self-assessed to customs duty by adding 2% high sea sales commission on CIF value. The duty paid was contested by the appellant, by filing the said refund claims, on the ground that the BOE's should have been

assessed by adding the actual 'Trade Margin' of Rs.33/- per MT paid to MMTC, along with the CIF value and hence the excess paid customs duty is to be refunded. On perusal of their refund claim and the worksheet enclosed therein, it was held that the said margin of profit of Rs.33/- per MT arrived was not disclosed to the department. Revenue further observed that the appellant's contention that the bill of lading quantity has to be taken for assessment purpose is contradictory to the conditions set forth in the purchase order. As per Board's Circular No. 32/2004 dated 11.5.2004, high sea sale contract price paid by the last buyer is to be established by way of furnishing the entire chain of documents such as HSS contract, details of service charges / commission paid etc. In this case, no such documentary evidence were produced to prove how the trade margin of Rs.33/- per MT was arrived at and thus they have not complied with the Board's circular. After due process of law, the Ld. Adjudicating Authority rejected the said refund claims. Against such order, the appellant preferred an appeal before the Ld. Commissioner (Appeals). Vide the impugned order, the Ld. Commissioner (Appeals) dismissed the appeal by upholding the order passed by the lower authority. Hence the present appeal.

3. The learned counsel Shri R.R. Padmanabhan appeared for the appellant and Ld. Authorized Representative Shri Sanjay Kakkar appeared for the respondent.

4. The Ld. Counsel for the appellant submitted that the appellant imported steaming coal through MMTC, a Government of India Enterprise under a High Seas Sale agreement. While admitting to the mistake made during self-assessment, he stated that in terms of

Board circular 32/2004, the notional addition of 2% is not permitted as long as the chain of documents were presented to the department during assessment. Board circulars are binding on the department and the assessment should have been corrected. The appellant's claim for refund of excess duty was rejected in 2015 on the grounds that the issue was not raised during assessment. The appellant filed an application for refund under the bonafide belief that post 08.04.2011 when section 27 of the customs act was amended, the need for challenging the assessment - that too self-assessment - was not there. When the refund application was rejected, appeal before the Commissioner Appeal was also dismissed. Now the appeal before this Honorable CESTAT has come up hearing now, after 10 years. The governing case law on the subject has since evolved, particularly with the ruling in **ITC Ltd. vs. Commissioner of Customs** (2021). The Ld. Counsel stated that the appellant in the present case did not withhold or newly introduce the HSS agreement. The document was part of the records at the time of final assessment. The Ld. Counsel referred to the Miscellaneous Petition dated 24.04.2025 filed by them for including an additional plea for permitting amendment of the BOE under section 149 of the Customs Act 1962. He stated that the principle laid down in **Sony India Pvt Ltd Vs Union of India** [2021 (379) ELT 588 (Telangana HC)] is particularly relevant and supports the appellant's case. He stated that the Hon'ble High Court held that Section 149 is a valid remedial mechanism when the proposed amendment is based on documents that were in existence at the time of clearance and are already part of the records. He submitted that the facts of this case do not call for reopening of an assessment, but only a rectification or correction of an error, which squarely falls within the purview of Section 149. In light of the above submissions, the appellant prayed that their appeal may be allowed.

5. The Ld. Authorised Representative Shri Sanjay Kakkar submitted that the fresh plea for amendment of BOE under Section 149 can only be permitted if it was solely for minor changes such as those involving Custom House Code, Importer Type, or CHA Code that do not affect the assessment or for amendments to documents accompanying the Bill of Entry when no specific statutory provision exists. There are separate provisions for addressing assessment and amendments to assessment or reassessment under Sections 17 and 128 of the Customs Act, 1962, hence the change in self-assessment now being sought after filing a refund claim may be rejected.

6. We have heard the rival parties and have perused the appeals and all connected documents. We have also gone through the Miscellaneous Application for amending the BOE. We find that this is a case of self-assessment where the appellant subsequently claimed refund on the ground that they had mistakenly added a notional 2% as High Sea sale charges to the CIF value instead of the actual Rs.33 per MT as per the Purchase order which was also available to the department at the time of assessment. We find that Borads Circular No. **32/2004-Cus,** Dated: 11.05.2004, stated that the Hon'ble Supreme Court, in the case of **M/s. Hyderabad Industries Limited** [2000(115)E.L.T.593(S.C)/ 2002-TIOL-198-SC-CUS] has held that the service charges/ high-seas-sales-commission ('actuals') are includable in the CIF value of imported goods. Therefore, it was clarified that the actual high-seas-sale-contract price paid by the last

buyer would constitute the transaction value under Rule 4 of Customs Valuation Rules, 1988 and inclusion of commission on notional basis may not be appropriate. However, the refund claimed by the appellant on the said ground was rejected as they had not challenged the self-assessment made. The appellant has now taken an additional plea before us to permit correction of an error in the BOE as per section 149 of Customs Act 1962.

7. We find that the appellant is a Government of India Enterprise. The issue of correcting the BOE by amending it under Section 149 of Customs Act, 1962 has also been examined by this Tribunal in **M/s. Valeo India Pvt. Ltd. Vs Commissioner of Customs, Chennai**, Final Order No 40393/2023, Dated: 10.04.2024.

8. We find that the proper function of an appellate court is to correct an error in the judgment or proceedings of the authotity below. The Apex Court while dealing with the role of appellate courts in **RAMAKANT AMBALAL CHOKSI Vs HARISH AMBALAL CHOKSI & OTHERS** [2024 INSC 913 / CIVIL APPEAL NO. 13001 OF 2024, Dated: 22.11.2024], examined the hierarchical functioning of the trial court and the appellate court in a criminal trial and held:

> "30. This Court in **Shyam Sel & Power Ltd. Vs Shyam Steel Industries Ltd.** reported in (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. **It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.**

> 31. This Court in **Monsanto Technology LLC Vs Nuziveedu Seeds Ltd.** reported in (2019) 3 SCC 381, observed that the **appellate court should not usurp the jurisdiction of the Single Judge** to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not."
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> (emphasis added)

We feel that the same is applicable to quasi-judicial authorities also.

9. We hence deem it fit to set aside the order and remand the matter to the Original Authority to examine the request for amendment of the BOE in terms of Section 149 of Customs Act, 1962 with all issues remaining open. The appellant may be heard in the matter and permitted to file their written submissions if they so desire, before passing a final order within 90 days of receipt of this order. The appellant should also cooperate with the Original Authority in ensuring timely disposal of the matter.

10. The appeal is disposed of on the above terms. The appellant is eligible for consequential relief as per law.

(Order pronounced in open court on 10.11.2025)

sd/-
(**AJAYAN T.V.**)
Member (Judicial)

sd/-
(**M. AJIT KUMAR)**
Member (Technical)

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