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

REGIONAL BENCH – COURT NO.1

1. **Customs Appeal No.75458 of 2020**

(On behalf of Appellant)

(Arising out of Order-in-Appeal No.01-04/Cus/CCP-GST/2020 dated 29.07.2020 passed by Commissioner (Appeals) of CGST & Excise, Bhubaneswar)

M/s Paradeep Phosphates Limited
(PPL-Township, Paradeep-754145, Odisha)

Appellant

VERSUS

Commissioner of CGST, Excise & Customs, Bhubaneswar
C.R.Building, Rajaswa Vihar, Bhubaneswar, Odisha

Respondent

WITH

2. **Customs Appeal No.75459 of 2020**
3. **Customs Appeal No.75460 of 2020**
4. **Customs Appeal No.75461 of 2020**

(On behalf of Appellant)

(Arising out of Order-in-Appeal No.01-04/Cus/CCP-GST/2020 dated 29.07.2020 passed by Commissioner (Appeals) of CGST & Excise, Bhubaneswar)

M/s Paradeep Phosphates Limited
(PPL-Township, Paradeep-754145, Odisha)

Appellant

VERSUS

Commissioner of CGST, Excise & Customs, Bhubaneswar
C.R.Building, Rajaswa Vihar, Bhubaneswar, Odisha

Respondent

APPEARANCE :

Shri Jnanesh Mohanty & Ms.Shreya Mundhra, both Advocates for the Appellant
Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER Nos. 75248-75251 / 2024

DATE OF HEARING : 13.02.2024
DATE OF DECISION : 13.02.2024

Customs Appeal Nos.75458 to 75461 of 2020

Order: Per Shri K.Anpazhakan

The facts of the case are that the appellant imported rock phosphates under a contract dated 05.07.2014 (as amended on 1st January, 2016), which contained a price variation clause on account of volume discount and the same is determinable at the end of the contract period. The appellant requested the authorities below for provisional assessment in respect of the following four Bills of Entry, as the agreement contained a price variation clause and final assessment was not possible. The details of the said Bills of Entry are as under: -

Sl. No	Bill of Entry No. and date	Refund application date	Amount of refund	Order-in-Original date	Order-in-Appeal date
1.	7988213 dated December 27, 2016	05.12.2017	6,28,254	01.03.2018	29.07.2020
2.	7874686 dated December 19, 2016	05.12.2017	7,59,141	01.03.2018	
3.	7340452 dated November 4, 2016	05.12.2017	6,72,908	26.03.2018	
4.	5889002 dated July 6, 2016	30.07.2017	9,18,180	26.09.2017	
Total			**29,78,483**	-	

2. However, the adjudicating authority has not considered their request for provisional assessment and finalized the assessments vide Orders-in-Original as mentioned above.

3. Aggrieved against the above said Orders-in-Original, the appellant filed appeals before the ld. Commissioner (Appeals) wherein they raised an additional ground that they are claiming amendment of the Bills of Entry under Section 149 of the Customs Act, 1962, which was not considered by the proper officer. However, the ld. Commissioner (Appeals) while considering the additional grounds, has not accepted their request for amendment of the Bills of Entry on the ground that as per the provisions of Section 149 of the Customs Act, 1962, the amendment is permissible only on the basis of documentary evidences available at the time of filing of the Bills of Entry. However, in this case,

the credit notes issued by the appellant were not in existence at the time of assessment of these Bills of Entry. Accordingly, the request for amendment was not considered by the ld. Commissioner (Appeals) and the impugned order was passed. Aggrieved against the impugned order, the appellant has filed these appeals.

4. In their grounds of appeal, the Appellant submits that the price variation clause was available in the contract at the time of filing of the Bills of Entry. Their request for provisional assessment was not considered by the proper officer at the time of initial assessment of the Bills of Entry. Had their request been considered, the necessity for amendment would not have arisen. The ld. Counsel for the appellant submits that the 'credit notes' alone should not be taken in isolation to find out the existence of documentary evidence for allowing the amendments. The ld. Commissioner (Appeals) should have taken into account the price variation clause available in the contract as the documentary evidence and allowed their request for amendment of the Bills of Entry. The documentary evidences necessary for amending the Bills of Entry as provided under Section 149 of the Customs Act, 1962, are available at the time of filing of the Bills of Entry for clearance of the goods. Accordingly, he prayed for setting aside the impugned order and remanding the matter back to the proper officer for allowing the amendment of the Bills of Entry.

5. The ld. Authorized Representative for the Revenue submits that the appellant was not having credit notes at the time of assessment of the Bills of Entry. The documentary evidences for amendment the Bills of Entry were not available as provided under Section 149 of the Customs Act, 1962. He relies on the decision of the Hon'ble Supreme Court in the case of ITC Limited Vs. Commissioner of Central Excise, Kolkata-IV reported in 2019 (368) ELT 216 (S.C.) and contended that the assessment has not been challenged by the appellant and hence their request for amendment cannot be considered at this stage.

6. Heard both sides and perused the appeal records.

7. I find that the agreement dated 05.07.2014, as amended on 01.01.2016, has the price variation clause on account of volume discount, which is determinable only at the end of the contract period. The price variation clause is very much available in the contract at the time of filing in the Bills of Entry. As the price was not final at the time of filing of the Bills of Entry, the proper officer should have considered the provisional assessment before final assessment. Had their request for provisional assessment has been considered by the proper officer, the necessity for amendment would not have arisen.

8. I find that the Bills of Entry were initially assessed without giving an opportunity to the appellant for submitting the documentary evidences required for considering amendment of the Bills of Entry. The appellant has submitted the documentary evidences before the ld. Commissioner (Appeals) who has accepted their request for submission of additional evidence required for considering amendment of the Bills of Entry. However, he has not accepted their request for amendment on the ground that the credit notes were not available at the time of assessment of the Bills of Entry by the proper officer.

9. I find that the reason given by the ld. Commissioner (Appeals) for rejecting their request for amendment is not proper. The agreement submitted by the appellant has a price variation clause, which clearly states that the discount can be determined only at the end of the contract period. As the price declared in the Bills of Entry were not the final price, final assessment was not possible. Thus, the proper officer should have considered their request for provisional assessment. Since, provisional assessment was not considered, the appellant sought amendment of the Bills of Entry after receipt of the credit notes on account of price variation. The appellant has submitted the evidences required for amending the Bills of Entry as per the provisions of Section 149 of the Customs Act, 1962 before the ld. Commissioner (Appeals). I find that the documentary evidence required for amending the Bills of Entry as provided under section 149 of the Customs Act, 1962 were

available even at the time of filing of the Bills of Entry. However, the ld. Commissioner (Appeals) has not accepted as documentary evidences and rejected their request for amendment of the Bills of Entry. I observe that the amendment requested by the appellant should have been considered by the ld. Commissioner (Appeals), as the documentary evidences as provided under section 149 of the Customs Act, 1962, were available even at the time of filing of the Bills of Entry.

10. In view of the above, I set aside the impugned order and remand the matter back to the adjudicating authority to take into account the credit note submitted by the appellant as documentary evidence as necessitated under the provisions of Section 149 of the Customs Act 1962 and allow the amendment of the Bills of Entry as requested by the appellant and re-assess the Bills of Entry as per the provisions of law.

11. In view of the above discussions, the appeals filed by the appellant are allowed by way of remand to the proper officer.

(Dictated and pronounced in the open court)

Sd/-
(K.Anpazhakan)
Member (Technical)

mm/Sdd