CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86877 OF 2022

[Arising out of Order-in-Appeal No: 391 (Gr.IV)/2022 (JNCH)/Appeals dated 6th May 2022 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Larsen & Toubro Ltd
Defence IC, G1 Building, Gr. Floor, Powai Campus
Gate-I, Saki Vihar Road, Powai, Mumbai – 400 072 … ***Appellant***

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Ashish Chauhan, Advocate for the appellant

Shri Krishna Azad, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85984/2025

DATE OF HEARING: 22/11/2024
DATE OF DECISION: 13/05/2025

PER: C J MATHEW

M/s Larsen & Toubro, aggrieved by dismissal of their challenge to rejection of their application for amendment of bill of entry no.

8107624/08.07.2020 in order[1] of Commissioner of Customs (Appeals), Mumbai-II, is before us for relief thereof on the ground of improper application of provisions of law.

2. Learned Counsel for appellant submitted that the said bill had been filed for clearance of 892 nos. of 'aluminium extrusion – pier bracket plate' on which liability, computed on invoice value of € 164,449.12 (at € 184.36 apiece), had been assessed under section 17 of Customs Act, 1962 and discharged immediately and that the error, instead of reflecting actual supply of 93 pieces by M/s Hydro Extrusions Brazil, SA, was noticed and brought to the notice of jurisdictional customs authorities only on 11th July 2020 in correspondence for amending the quantity and value in the bill of entry in accordance with section 149 of Customs Act, 1962.

3. It was recounted further that, on advice of customs authorities to appeal against assessment as the sole option, delivery of goods were taken on 18th July 2020 following which attempt at amendment was initiated again on 3rd September 2020. Thereafter, appeal was filed before the first appellate authority on 12th November 2020. It was contented by Learned Counsel that, during the pendency of the appeal, customs authorities, *vide* communication dated 4th Match 2021, turned down the application for amendment.

4. It would appear that the first appellate authority took note of the

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[1] [order-in-appeal no. 391 (Gr IV)/2022 (JNCH)/Appeals dated 6th May 2022]

facts and, after going to the extent of conceding that

> *'7. The above submissions of the appellant look convincing on the face of it but on closer scrutiny, these are not as sound as they look....'*

in the impugned order, did go on to suggest that the error would not have occurred if only the appellant had been vigilant and

> *'...In my considered opinion the appellant had ample opportunity to hold the payment of duty and delay out of charge till correct documents were submitted to the DC/Gr IV...'*

to decide the appeal against them.

5. Having heard Learned Counsel and Learned Authorized Representative, we find that both the lower authorities have misdirected themselves. The appeal before Commissioner of Customs (Appeals) had been preferred even while their application under section 149 of Customs Act, 1962 was pending and the plea could have been only one of either grievance about non-disposal thereof or of challenge to assessment as stated to have been advised by jurisdictional officers. We are unable to conclude with certainty as the impugned order is not forthcoming on the grounds. If, indeed, as the appellate authority chose to do, *i.e.*, deal with rejection of application for amendment, that, too, was out of jurisdiction inasmuch as rejection had not taken place when the appeal was filed. If the relief sought was for setting aside the assessment, as advised by customs authorities, the disposal in the impugned manner is on an entirely

different matter. Either way, the impugned order has no legal support to be sustained.

6. Section 149 of Customs Act, 1962 is not an end of itself but a potential channel of re-assessment which itself is subject to legal provisioning. An appeal before Commissioner of Customs (Appeals) for alteration of assessment would be a conflict of jurisdictions. It would, therefore, not be appropriate to restore that appeal, if any filed, to first appellate authority. We hold the proceedings before the first appellate authority to have concluded with the impugned order but without prejudice to appellate recourse available to the importer.

7. It is on record that the goods were available for examination even as the first application for amendment was pending before the proper officer. In such circumstances,

> *'149. Amendment of documents.*
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> - *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:*
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> *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.'*

in Customs Act, 1962 does not, under specified conditions, exclude consideration of application for amendment even after clearance of goods but, with goods available, the forced recourse to alternative of clearance and fitment within the ‘post-clearance’ framework is improper administration of law. To, thereafter, moralise on normality of opportunities available as ground for rejection and to fall back on the ‘shibboleth’ of ‘self-assessment’ making importer responsible for administration of Customs Act, 1962 was to further add metaphorical ‘salt’ to the injury of rejection.

8. Section 149 of Customs Act, 1962 requires exercise of discretion but it does not confer absolute and unfettered discretion to act in any manner. The factual circumstances and material facts are to be scrutinized for proper exercise of discretion. That the goods, them available and amenable to examination, were not verified is improper administration of the law and shrugging off of responsibility. That must now be made good in the manner prescribed by law. To enable that, we set aside the impugned order and restore the application before the original authority to decide on facts before it.

9. Appeal is, accordingly, disposed off.

(Order pronounced in the open court on 13/05/2025)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

**/as*