

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

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 86121 of 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP/829/2020-21 dated 22.03.2021 passed by Commissioner of Customs (Appeals), Mumbai Zone-III)

M/s Brightpoint India Pvt. Ltd.

.....Appellant

5th floor Building A Empire Plaza, LBS Marg,
Vikhroli (W), Mumbai 400 083.

VERSUS

Commissioner of Customs

.....Respondent

Mumbai (Air Cargo Import)

Air Cargo Complex, Sahar Andheri (E),
Mumbai 400 099.

Appearance:

Shri T. Vishwanathan, Advocate for the Appellant

Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87098/2021

Date of Hearing : 02.11.2021

Date of Decision : 09.11.2021

PER : RAMESH NAIR

The issue involved in the present case is that whether refund can be rejected on the ground that no appeal was filed against the Bills of Entry under Section 128 of the Customs Act, 1962, when the said Bills of Entry were re-assessed by way of amendment under Section 149 of the Customs Act, 1962.

2. Shri T. Vishwanathan, learned Counsel appearing on behalf of the appellant submits that the department has re-assessed the Bills of Entry under Section 149 ibid only thereafter the refund claim arose and filed by the appellant. Since, the re-assessment has been done by the department thereafter there is no reason or occasion to file appeal against the re-assessment of the Bills of Entry by which neither side is aggrieved with. He submits that the learned Commissioner (Appeals) has heavily relied upon recent judgment in the case of ITC Ltd. Vs. CCE, Kolkata –IV, 2019 (368) ELT 216 (SC). He submits that the said judgment rather supports the appellant as the refund was filed against the re-assessment of Bills of Entry. He submits that the Bills of Entry can be re-assessed not only under Section 128 but the re-assessment by rectification or amendment of Bills of Entry under Section 149 or under Section 154 is legally permissible. Therefore, merely because appeal was not filed under Section 128 cannot be the reason for rejecting the refund claim. He submits that this issue has been considered by the Hon'ble Bombay High Court thereafter the Commissioner (Appeals) was bound to follow this order being binding precedent that too of the jurisdictional High Court. He placed reliance on the following judgments:

- (i) *SRF Ltd. Vs. Commissioner of Customs, Chennai*
2015 (318) E.L.T. 607 (S.C.)
- (ii) *ITC Ltd. Vs. CCE, Kolkata-IV,*
2019 (368) ELT 216 (SC)
- (iii) *Dimension Data India Pvt. Ltd. Vs. Commissioner of Customs*
2021-TIOL-224-HC-MUM-CUS
- (iv) *Sony India Pvt. Ltd. Vs. UOI*
2021 (8) TMI 622 – Telangana High Court
- (v) *Principal Commissioner of Customs, New Delhi, Vs. Vivo Mobile India Pvt. Ltd.*
2021 (9) TMI 646 – CESTAT New Delhi
- (vi) *Union of India Vs. Kamlakshi Finance Corporation Ltd.*

1991 (55) ELT 433 (SC)

3. On the other hand Shri Manoj Kumar, learned Assistant Commissioner appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. The Revenue against the sanction of the refund which arose out of re-assessment of the Bills of Entry, filed appeal before the Commissioner (Appeals), and the Commissioner (Appeals) accepted the appeal by holding that since the appellants have not filed appeals against the Bills of Entry the refund is not legal and correct. We find that the refund was not filed against the assessment of Bills of Entry but the Bills of Entry were admittedly re-assessed by the assessing officer in terms of Section 149 of the Customs Act, 1962. Once, the Bills of Entry was re-assessed by the Revenue thereafter if neither side is aggrieved with the said re-assessment, it attained finality. Accepting the re-assessment the appellant filed refund claim which arose out of the re-assessment of Bills of Entry . We are surprised to note that once there is no lis between the appellant and the department with regard to the re-assessment of the Bills of Entry, the contention of the Revenue to file appeal is baseless and not acceptable. The Commissioner heavily relied upon the judgment of ITC Ltd. (*Supra*), wherein it was held that against the assessment of Bills of Entry, the assessee cannot come directly with a refund unless and until the assessment of Bills of Entry is challenged and decided in favour of the assessee. In the present case rather, ITC Ltd. case directly supports the appellants case as the without challenging the assessment, Revenue on their own re-assessed the Bills of Entry. Once the re-assessment is acceptable to both the sides and if any refund arising out of said re-assessment, no question of filing the appeal arises. Therefore the refund of the appellant is line of the judgment in the case of ITC Ltd. We find that the Hon'ble Jurisdictional Bombay High Court in the case of Dimension Data India Pvt. Ltd. (*supra*) in a writ petition filed under Article 226 of the Constitution of India,

considering that if there is error in Bills of Entry the same can be rectified by amendment in terms of Section 149 of Customs Act,. The Hon'ble Bombay High Court has clearly held after considering the ITC Ltd. case (Supra) that the amendment in Bills of Entry is permissible under Section 149 of the Customs Act. The present case is on better footing for the reason that there is no dispute about whether the amendment to Bills of Entry under Section 149 is permissible or not. Whereas in the present case, the Revenue admittedly, amended the Bills of Entry by re-assessing the same under Section 149 of the Customs Act, 1962. Once, the Bills of Entry has been re-assessed and the refund is arising out of it, there is nothing exist against which any appeal need to be filed. Therefore, the contention of the Revenue that appellant has not filed appeal against the Bills of Entry is absolutely incorrect. Accordingly, we are of the clear view that since the refund arising out of re-assessment of Bills of Entry neither side has grievance against such re-assessment of Bills of Entry, refund is clearly permissible. Accordingly, we modify the impugned order and allow the appeal, with consequential relief, if any, in accordance with law.

(Order pronounced in the open court on 09/11/2021)

(C.J. Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)