

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

REGIONAL BENCH, COURT NO. 1

Customs Appeal No. 20770 of 2018

(Arising out of Order-in-Appeal No. 115-125/2018 dated 12.03.2018 passed by the Commissioner of Customs (Appeals), Bangalore.)

Nedcommodities India Private Limited

P.B. No. 51, Plot No. 23,
KIADB Industrial Area,
Kudloor,
Kushalnagar – 571 234.

.....**Appellant(s)**

Versus

The Commissioner of Customs

New Customs House,
Panambur,
Mangalore – 575 010.

.....**Respondent(s)**

APPEARANCE:

Mr. N. Anand, Advocate for the Appellant.
Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent.

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20436 / 2025

DATE OF HEARING: 02.12.2024

DATE OF DECISION: 28.03.2025

Per : R. BHAGYA DEVI

This appeal is filed against Order-in-Appeal No. 115-125/2018 dated 12-03-2018 by the appellant M/s. Nedcommodities India Pvt. Ltd.

2. Briefly the facts of the case are that the appellant was into export of 'Monsooned Coffee'; at the time of export, the appellant

raised export invoices declaring the value/price of the product as per original sales contract. The 11 shipping bills were duly accessed and goods were exported by the appellant from 30.10.2016 to 14.03.2017. However, later the appellant revised the export value/price, pursuant to this revision in the sales contract and increase in the export price, the appellant approached the Jurisdictional Officer of the customs for amending the shipping bills to include the revised value. The Deputy Commissioner of Customs (Export) refused amendment of 11 shipping bills for the reason that sufficient documentary evidences were not produced. On an appeal before the Commissioner (Appeals), who also rejected the amendment on the ground that the transaction is between the related persons and initially the goods were neither exported under bond or provisionally assessed and the enhancement is to the extent of 146% which is not justified. Relying on the decision in the case of **M/s. Bharath Commerce Industries Vs. CC 1997 ELT 653 (S.C.)**, he held that there is explicit violation of Foreign Exchange Management Act (FEMA) provisions and hence, rejected amendment of all 11 shipping bills, hence, this appeal before us.

3. The Learned Counsel on behalf of the appellant submitted that the observations of the Commissioner (Appeals) that the transaction were between related parties and there was an explicit FEMA violation, is baseless and not relevant to issue when the determination of amending the shipping bills is concerned. It is further submitted that there is no fraud involved in these transactions neither there was any request for conversion of shipping bills but it was only a case of revising a value for receiving the correct export value.

3.1 He further submitted that the only issue for consideration is to examine the sales contracts with the foreign buyer wherein the sales contracts contained price revision/re-negotiation clause,

which read as 'Price subject to re-negotiation on processing of complete lot', which was agreed between the contracting parties. Since, 'Monsooned Coffee' which was a specialised product and was being exported for the first time, the appellant was uncertain about the export price in the international trade. Since, these documents were available only at the time of export and the price revision happened only after the complete export and amendment was sought for revising the same. It is further stated that due to amendment of shipping bills, the appellant has not yet received the foreign exchange, and the amounts are shown as receivables in their books of account.

4. The learned Authorized Representative (AR) Revenue reiterated the findings of the Commissioner (Appeals) and relied upon the decisions in the case of **Bharath Commerce and Industries Ltd.** (supra) and **M/s. IBM India Pvt. Ltd. Vs. Commissioner of Customs(Appeals), Bangalore: 2023 (9) TMI 422 CESTAT, Bangalore** and the decision by this Tribunal in the case of **Prem Nath Diesels Pvt. Ltd. Vs. Collector of Customs, Calcutta: 1997 (91) ELT 130 (Tri.-Del.)**.

5. Heard both sides. The undisputed facts are that the appellant had filed 11 shipping bills from 30.10.2016 to 14.03.2017; on 18.05.2017 they filed a letter before the Commissioner of Customs (Export) requesting amendment of the above 11 shipping bills under Section 149 of the Customs Act, 1962. It was submitted that their product 'Monsooned Coffee' which was a specialty coffee and since it was their first year of export, they lacked knowledge on the differential pricing and hence, they would like to now revise the value based on mutually agreed price. It was also submitted that once revision is accepted and the documents are amended, the same would be submitted to the bank, DGFT and other authorities concerned. The letter also requested the revision of the invoices and updation in the EDI systems so as to generate e-BRCs and

claim export benefits (MEIS and duty drawback). The Superintendent of Customs (Export) vide letter dated 12.06.2017 intimated that the contracts have been signed and invoices issued much earlier to the shipment but the same have not been incorporated in the shipping bills, EGMs have been filed and in most of the cases BRCs have already been received, hence updation in EDI system is not possible. The letter also mentioned that though shipping bills have been filed and cleared between October 2016 to March 2017, only on 18.05.2017 the letter for amendment has been filed and the reasons for the same has not been explained. It was also noted that though the original and the revised sales contract is the same and invoices have been issued as per contract before filing of the shipping bills, the reasons for not mentioning the correct invoice value is not explained. The letter also noted various other discrepancies and requested for submission of all the documentary evidence in support of their claim for amendment of shipping bills. The appellant vide letter dated 31.07.2017 once again reiterating their lack of knowledge on the differential between New York future price and the Spot price, submitted that the contract and the invoice remains the same in all parameters except for the revision in the price and again vide letter dated 28.09.2017, the appellant requested for revision of the price in the shipping bills for submitting the same to the bank only for the limited purpose of inward remittance only. The Deputy Commissioner (Export) vide letter dated 19.12.2017 rejected the request for amendment of invoice value only on the ground that sufficient documentary evidences existing at the time of export were not produced. On appeal instead of looking into the documentary evidences, the Commissioner (Appeals) had gone beyond the scope of the order before him and gave different explanation that the export being final, the parties being related, with the assumption that there is explicit FEMA violation rejects the claim for amendment submitted after 11 months of filing the

shipping bills for export. This observation of the Commissioner which deals with beyond the issues that are placed before him cannot be legally sustained as is held by the Supreme Court in the case of **Joint Commissioner of Income Tax, Surat Versus Saheli Leasing & Industries Ltd. 2010 (253) E.L.T. 705 (S.C.)** observed as:

"7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case :-

(a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.

(b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.

(c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society”.

(g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society.

8. Aforesaid are some of the guidelines which are required to be kept in mind while writing judgments. In fact, we are only reiterating what has already been said in several judgments of this Court”.

6. Coming to the issue in-hand, we find that Section 149 of the Customs Act, 1962 deals with amendment of documents, which reads:

“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.”

This provision regarding amendment of documents gives a clear indication that such amendments cannot be permitted as a matter of course but a discretion given to the authorities to permit amendment but no amendment can be made after the export, except on the basis of documentary evidence which was in

existence at the time when the goods were exported. The appellant has now placed on record the relevant documents including the document which was in existence at the time of export and seeks amendment in the existing invoice based on the price negotiation along with the reasons for amending the Shipping bill. It is also submitted that the amendment is only to enable them to receive the differential payments through proper channels. Therefore, in the interest of justice, and as observed by the apex court, the authorities need to examine the documents and accept or reject with justifying reasons. In view of the above, we remand the matter to the original authority for examining these documents for necessary amendment of the shipping bills as per the provisions of the law. Needless to say, an opportunity of hearing to be given to the appellant before completion of the remand proceedings.

Appeal is allowed by way of remand.

(Order pronounced in Open Court on 28.03.2025.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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