

Bill of entry to be amended where IGST paid post clearance of goods – Kerala HC

25 April 2024



Summary

The Kerala High Court (HC) has held that the amendment of the bill of entry (BoE) should be allowed on the payment of Integrated Goods and Services Tax (IGST), along with interest on post clearance of goods in case of default made by the petitioner who availed the benefit under the advance authorisation (AA) scheme. The HC observed that Section 149 of the Customs Act, 1962 (Customs Act), provides an additional remedy for amending the BoE. The department had incorrectly rejected the petitioner's request for amendment because only reassessment under Section 128 of the Customs Act is available. The HC held that the department's argument that the BoE cannot be allowed to be amended, as the petitioner has not paid the IGST at the time of clearance of the imported goods and as a BoE can be amended only based on the documents available at the time of clearance of the goods, does not hold a valid ground for rejecting amendment of the BoE. Consequently, the HC allowed the writ petitions and directed the department to amend the petitioners' BoE.

Facts of the case

- Travancore Cocotuft Private Limited (the petitioner) manufactures and exports mats, mattings, and other textile materials.
- The petitioner had imported raw materials under the AA scheme to export finished goods and claimed exemption of basic customs duty (BCD) and IGST under the Notification Nos. 78 and 79 Customs dated 13 October 2017. The petitioner also availed an IGST refund on exported goods.
- The department initiated an inquiry, and consequently, a notice was issued to the petitioner to remit the IGST exemption availed plus interest to regularise the refund.
- Subsequently, a show cause notice (SCN) was issued to the petitioners, alleging that the amount of IGST refund sanctioned to the petitioner was ineligible because it was in contravention to Rule 96 (10) of the CGST Rules, 2017 (CGST Rules).
- The petitioner paid IGST for 23 BoE along with the interest amount and requested the department to amend the

BoE to reflect the IGST amount paid post clearance.

- The department rejected the amendment request, as it was of the view that when an original order of assessment has been made under Section 17 of the Customs Act, which includes self-assessment as well, such order can be modified only following the provisions of law by taking recourse to appropriate proceedings laid down under Section 128 and proceeded with the further proceedings as initiated by the impugned SCN dated 31 July 2023.

Issue before the Kerala HC:

- Whether Section 149 of the Customs Act can be invoked to amend the BE, or whether the only available recourse is to seek modification/reassessment under Section 128 (the appellate provision) of the Customs Act.
- Whether Section 149 of the Customs Act allows amendment of a BE only on the basis of documentary evidence that

existed at the time of the clearance of the goods.

Kerala HC's observations and judgement [W.P.No. 5394 of 2024, order dated 1 April 2024]

- **IGST paid along with interest:** The HC noted that the petitioners had initially claimed exemption from paying IGST when importing the goods under the AA scheme. However, after receiving notices from the department, the petitioners paid the IGST amount that was earlier exempted, along with the applicable interest.
- **Amendment to BoE should be allowed after the payment of IGST:** The HC placed reliance on Circular No.16/2023 dated 7 June 2023 issued by the CBIC, which provides a procedure for amending the BoE where IGST was paid as a violation of the pre-import condition. Pursuant to the circular, the HC noted that the amendment to the BoE can be allowed.
- **Section 149 provides an alternative method for amending BoE:** The HC, in the present case, held that the department had incorrectly rejected the petitioner's request for amendment of the BoE by taking a view that a BoE, being a self-assessment order, can only be amended through the reassessment procedure under Section 128.
- **Amendment to BE to be allowed:** The HC relied on the judgement of the Madras HC in the case of Hindustan Unilever Limited, wherein it was held that the condition of having documentary evidence available at the time of clearance of goods could not be invoked as a ground to deny amendment of the BoE. The HC noted that the Principal Commissioner of Customs had also issued a public notice dated 23 February 2024, amending the BE as per the procedure prescribed in different scenarios. Relying on the above, the HC held that the amendment to the BE is to be allowed.
- **Writ petitions are allowed:** The HC examined the provisions of Sections 128, 149, and 154 of the Customs Act and relevant judgements, and held that the customs authorities should allow amendment of the BE for the petitioners after verifying the payment of the IGST and interest. Therefore, the HC allowed the writ petitions in favour of the petitioner.

Our comments

The HC, in the present case, has dealt with one of the key issues of the BoE amendment for imported goods under Section 149 of the Customs Act, precisely when the amendment is requested after the goods have been cleared for home consumption.

Earlier, the Telangana HC, in the case of Sony India Pvt. Ltd., held that Section 149 provides an additional remedy for amending BoE and that reassessment under Section 128 is not the sole remedy available. The SC also upheld the HC's decision.

This is an important decision by the Kerala HC, wherein the court has held that the customs authorities must amend the bill of entry, where the IGST, along with interest, is paid on advance authorisation (AA) default since under GST laws, the credit of the IGST paid on the import of goods is dependent upon an assessment order. The present judgement shall provide relief to taxpayers who may have faced similar issues, and shall set precedence in similar matters.

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