

## SC affirms Telangana HC's order that there is no time limit to amend the Bill of Entry

11 May 2023



## Summary

In an important decision, the Supreme Court (SC) has upheld the decision of the Telangana High Court (HC) that there is no time limit for amendment in the Bill of Entry (BoE). The Telangana HC had held that to claim a refund of customs duties wrongly paid, there is an additional remedy of amendment of the BoE apart from the remedy of appeal against the assessment order. The HC had further held that the petitioner could not be penalised due to incorrect determination of duty by the assessing authority and allowed the petitioner to amend the BoE u/s 149 of the Customs Act, 1962 (Customs Act).

### Facts of the case

- Sony India Private Limited (petitioner) is engaged in the manufacture and marketing of different types of electronic goods and consumer electronics, including mobile phones.
  - The petitioner had imported mobile phones for trading purposes after paying countervailing duty (CVD) at the rate of 6%. The petitioner did not claim exemption which permitted a concessional rate of CVD on mobile phones at the rate of 1%, subject to the condition that no credit was availed on the inputs or capital goods used to manufacture such mobile phones.
  - Subsequently, the SC, in the *M/s. SRF Limited v. Commissioner of Customs* case, had clarified that the condition of non-availment of credit attached to the concessional rate shall be deemed to be fulfilled for an importer.
  - Basis the SC order, the petitioner applied for an amendment in the BoE to avail the concessional rate. However, the Revenue rejected the application on the ground that in the absence of an appeal, the assessment order is final.
  - The petitioner challenged the order of the adjudicating authority before the HC. The HC set aside the impugned order and allowed the amendment. Therefore, the Revenue filed an appeal before the SC.
- **Revenue's stand that only reassessment u/s 128 is a remedy available untenable:** Referring to the its decision in the case of *ITC Ltd.*, the SC stated that the Revenue's stand that only reassessment u/s 128 is the remedy available to the petitioner and Section 149 cannot be invoked is not tenable. It also rejected the Revenue's stand that there is no possibility of getting an order of assessment modified under any other relevant provision and that petitioner was trying to overcome limitations stipulated in Section 128.
  - **Judgement of the Supreme Court is the law of the land:** The HC rejected the contention of the Revenue that the judgement, which entitled the petitioner to avail the concessional rate, had prospective application. The HC clarified that the SC's judgement could not be treated as 'documentary evidence,' which shall exist at the time of clearing, deposit or export of goods. Conclusively, a denial of benefit despite admitting the entitlement of the petitioner was untenable in law.
  - **Impugned order of the respondents violates Articles 14, 19(1)(g), 365 and 300A of the Constitution:** The HC set aside the order of the Revenue on the ground that it had failed in its obligation to determine the duty correctly and caused further injustice by refusing amendment in the BoE. Opining that the petitioner cannot be penalised for the oversight of the Revenue, the HC allowed the amendment.

### HC observations and order (Writ Petition No. 4793/2021, order dated 12 August 2021):

- **Amendment of BoE an additional remedy:** The HC noted that apart from the remedy of appeal against the assessment order, there is an additional remedy of amending the BoE. However, such amendment is subject to the condition that it is sought on the basis of documentary evidence which existed at the time of clearing, deposit or export of goods. Notably, the Customs Act does not prescribe any time limit to file such an amendment application.

### SC observations and Order (SLP(C) No. 2319/2023, order dated 17 April 2023):

- **Revenue's SLP dismissed:** The SC refused to interfere with the order of the HC and dismissed the appeal.

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## Our comments

This is a significant ruling by the SC wherein it highlights that there is no time limit prescribed u/s 149 of the Customs Act for amendment of the Bill of Entry.

On a similar issue earlier, the SC, in the Flock (India) Private Limited case, had held that it is mandatory to appeal the assessment order before filing a refund claim. This view was also upheld by the SC in the Priya Blue Industries Limited case. Even in the ITC Limited case, the SC had further clarified that a refund claim should be preceded by amendment or modification in the Bill of Entry.

The Bombay High Court, in the Dimension Data India Private Limited case, had concluded that it was mandatory on the part of the adjudicating authorities to ascertain the refund claim basis the amendment of the Bill of Entry.

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