IN THE HIGH COURT OF BOMBAY

Writ Petition (L) No. 249 of 2020

DIMENSION DATA INDIA PVT LTD

Vs

COMMISSIONER OF CUSTOMS AND ANR

Ujjal Bhuyan & Milind N Jadhav, JJ **Dated: January 18, 2021**

Petitioner Rep by: Mr Sandeep Chilana with Shahana Manjesh i/by Ms Farzeen Khambata
Respondent Rep by: Mr J B Mishra

Cus - Petitioner seeks a direction to the respondents to reassess the customs duty in respect of Bills of Entry by correcting the Customs Tariff Heading (CTH) from 85176990 to 85176930 – Petitioner submits that during internal audit, it realised that it had made inadvertent typographical error at the time of fling the Bills of Entry by incorrectly declaring the CTH as 85176990 instead of correct CTH 85176930; that for goods under CTH 85176930, rate of duty is NIL whereas in respect of goods under CTH 85176990, rate of duty is 20%; that because of such inadvertent error, petitioner had to make excess payment of basic customs duty to the extent of Rs. 14,50,01,413/-; that the petitioner submitted a letter dated 07.06.2019 before respondent No. 2 requesting correction in the Bills of Entry and they received a communication dated 25.10.2019 from respondent No. 2 declining the request on the ground that the petitioner had not obtained an order of re-assessment or appealed against the self-assessment done on the Bills of Entry – As the respondent No. 2 has not taken any decision for re-assessment of the self-assessed Bills of Entry as requested [u/section 17(4) read with section 149] in their representation dated 21.11.2019, the present petition is filed.

Held:

+ Short-point for consideration is whether request of the petitioner for correction of inadvertent mistake or error in the self-assessed Bills of Entry and consequential passing of orders for re-assessment is legal and valid? Corollary to the above is the question as to whether even in a case of this nature, petitioner is required to be relegated to the remedy of appeal? [para 14]

+ It is quite evident (from the scheme of Section 17) that though duty is cast upon an importer to self-assess the customs duty leviable on the imported goods, a corresponding duty is also cast upon the proper officer to verify and examine such self-assessment. [para 16]

+ Amendment of the Bill of Entry [u/s 149] is clearly permissible even in a situation where the goods are cleared for home consumption. The only condition is that in such a case, the amendment shall be allowed only on the basis of the documentary evidence which was in existence at the time of clearance of the goods. [para 18]

+ **Section 154 permits correction of any clerical or arithmetical mistakes in any decision or order or of errors arising therein due to any incidental slip or omission. Such correction may be made at any time. [para 20]**

+ **From a conjoint reading of the aforesaid provisions of the Customs Act, it is evident that customs authorities have the power and jurisdiction to make corrections of any clerical or arithmetical mistakes or errors arising in any decision or order due to any accidental slip or omission at any time which would include an order of self-assessment post out of charge. [para 21]**

+ It is clear that the issue before the Supreme Court [in ITC Ltd. *2019-TIOL-418-SC-CUS-LB*] was not invocation of the power of re-assessment under section 17(4) or amendment of documents under section 149 or correction of clerical mistakes or errors in the order of self-assessment made under section 17(4) by exercising power under section 154 vis-a-vis challenging an order of assessment in appeal. The issue considered by the Supreme Court was whether in the absence of any challenge to an order of assessment in appeal, any refund application against the assessed duty could be entertained. It was in that context that Supreme Court held that in case any person is aggrieved by any order which would include an order of self-assessment, he has to get the order modified under section 128 or under other relevant provisions of the Customs Act. [para 22.1]

+ In the judgment itself Supreme Court has clarified that in case any person is aggrieved by an order which would include an order of self-assessment, he has to get the order modified under section 128 *or under other relevant provisions of the Customs Act* before he makes a claim for refund. This is because as long as the order is not modified the order remains on record holding the field and on that basis no refund can be claimed but the moot point is Supreme Court has not confined modification of the order through the mechanism of section 128 only. Supreme Court has clarified that such modification can be done under other relevant provisions of the Customs Act also which would include section 149 and section 154 of the Customs Act. [para 22.2]

+ **In the instant case, petitioner has not sought for any refund on the basis of the self-assessment. It has sought re-assessment upon amendment of the Bills of Entry by correcting the Customs Tariff head of the goods which would then facilitate the petitioner to seek a claim for refund. This distinction though subtle is crucial to distinguish the case of the petitioner from the one which was adjudicated by the Supreme Court and by this Court. [para 24]**

+ Grievance of the petitioner is not on the merit of the self-assessment as the petitioner is aggrieved by the failure on the part of the respondents to carry out amendment in the Bills of Entry by replacing the incorrect CTH by the correct one namely by replacing CTH 85176990 with 85176930 which was declared inadvertently by the petitioner at the time of filing the Bills of Entry. This request of the petitioner, in our opinion, falls squarely within the domain of section 149 read with section 154 of the Customs Act. Upon amendment in the Bills of Entry by correcting the CTH, consequential re-assessment order under section 17(4) of the Customs Act would be in order. [para 25]

+ **The expression "mistake" appearing in section 154 of the Customs Act may be defined as something done unintendedly or through inadvertence. The section itself says that the error in any decision or order should be due to any accidental slip or omission. Moreover, it can be a mistake of law or a mistake of fact. In all cases it need not be an arithmetical error alone. It may connote errors which can be discerned upon due verification**.

+ Power to amend documents available under section 149 of the Customs Act read with correction of clerical or arithmetical mistakes or errors in orders due to accidental slip or omission under section 154 thereof is different and distinct from the appellate power exercised under section 128 of the Customs Act.

+ Power of amendment or correction, as the case may be, is vested on the same officer who had passed the initial order or an officer of equivalent rank. [para 27]

+ Petitioner has made out a case for issuance of a direction to the respondents for correction of the mistake or error in classification of the goods from CTH 85176990 to 85176930 and thereby for amendment of the Bills of Entry. Refusal of the respondents to look into the aforesaid grievance of the respondents is therefore not justified. [para 28]

+ **Bench directs respondent No. 2 to consider the prayer of the petitioner for amendment of the Bills of Entry by exercising power under section 149 read with section 154 of the Customs Act and thereafter pass an appropriate order under section 17(4) of the Customs Act after giving due opportunity of hearing to the petitioner - exercise shall be carried out within a period of six weeks: High Court [para 29, 30]**

Petition disposed of

Case laws cited:

M/s. Maharashtra Cylinders Pvt. Ltd. Vs. CESTAT, Mumbai - 2010-TIOL-934-HC-MUM-CX... Para 9.4

M/s. ITC Ltd. Vs. Commissioner of Central Excise Kolkata-IV - 2019-TIOL-418-SC-CUS-LB... Para 9.4

GTN Textiles Limited vs. Union of India - 2014-TIOL-1988-HC-KERALA-CUS... Para 12

Usha International Ltd. Vs. Assistant Commissioner of Customs - 2018-TIOL-2124-HC-MAD-CUS... Para 12

M/s.Hewlett Packard Enterprise India Private Limited Vs. Joint Commissioner of Customs - 2020-TIOL-1778-HC-MAD-CUS... Para 12

JUDGEMENT

Per: Ujjal Bhuyan:

Heard learned counsel for the parties.

2. This petition under Article 226 of the Constitution of India seeks a direction to the respondents to reassess the customs duty in respect of Bills of Entry Nos. 2434172, 2436049, 2522910, 2805152 and 2968920 (annexed as Annexure B colly. to the writ petition) by correcting the Customs Tariff Heading (CTH) from 85176990 to 85176930.

3. Facts lie within a narrow compass. However to put the matter in proper perspective relevant facts are briefly stated hereunder.

4. Petitioner is an importer and by the five Bills of Entry Nos. 2434172, 2436049, 2522910, 2805152 and 2968920 had imported 48 units of routers between 15.03.2019 to 25.04.2019. Details of the Bills of Entry are as under:

Sr. No.	Bills of Entry No.	Date	Product	HSN (as declared on BoEs)
1.	2434172	15.03.2019	NCS5500 8 Slot Single Chasis (Cisco Routers)	85176990
2.	2436049	15.03.2019	--do--	85176990
3.	2522910	25.03.2019	--do--	85176990
4.	2805152	11.04.2019	--do--	85176990
5.	2968920	25.04.2019	--do--	85176990

5. During internal audit, it realised that it had made inadvertent typographical error at the time of fling the Bills of Entry by incorrectly declaring the CTH as '85176990' instead of correct CTH '85176930'. It is stated that for goods under CTH 85176930, rate of duty is NIL whereas in respect of goods under CTH 85176990, rate of duty is 20%. Because of such inadvertent error, petitioner had to make excess payment of basic customs duty to the extent of Rs. 14,50,01,413.00.

6. Immediately on detecting the inadvertent error, petitioner submitted a letter dated 07.06.2019 before respondent No. 2 requesting correction in the Bills of Entry. Petitioner received a communication dated 25.10.2019 from respondent No. 2 declining the request as the petitioner had not obtained an order of re-assessment or appealed against the self-assessment done on the Bills of Entry.

7. Petitioner fled a detailed representation dated 21.11.2019 requesting respondent No. 2 to pass a reassessment order in terms of section 17(4) of the Customs Act, 1962 (briefly "the Customs Act" hereinafter) read with section 149 of the said Act by making suitable modification to the Bills of Entry. This was followed by several reminders, oral as well as written. However, respondent No. 2 has not taken any decision for re-assessment of the self-assessed Bills of Entry.

8. Aggrieved, present writ petition has been fled seeking the reliefs as indicated above.

9. Respondents have fled a common reply affidavit. Stand taken in the affidavit is that petitioner had imported goods declared as routers under five Bills of Entry bearing Nos. 2434172, 2436049, 2522910, 2805152 and 2968920. The Bills of Entry were facilitated under the Risk Management System (RMS) with no assessment and no examination. It is stated that petitioner had self- assessed the Bills of Entry in terms of section 17 of the Customs Act and had classified the goods under CTH '85176990' instead of '85176930' because of which it now claims of having made excess payment of customs duty.

9.1 Regarding request of the petitioner for reassessment of the Bills of Entry, stand taken is that respondent No. 2 had informed the petitioner that consequent upon amendment to section 17 of the Customs Act made in the year 2011, concept of 'self-assessment' has been introduced in the Customs Act effective from 08.04.2011 which provides for self-assessment of duty on imported goods by the importer himself by fling Bill of Entry in the electronic form. Therefore, burden is on the importer to ensure that he declares the correct classification and applies the correct rate of customs duty.

9.2 The Bills of Entry in question were assessed by the petitioner and such Bills of Entry upon self-assessment itself would be an order of assessment. However, no appeal has been preferred against such assessment order. Consequently, no order for re-assessment has been obtained. Therefore, petitioner has been informed that request for amendment of the Bills of Entry in question could not be accepted.

9.3 In the present case, petitioner had self-assessed the Bills of Entry in terms of section 17 of the Customs Act. Bills of Entry were facilitated under the Risk Management System (RMS). The goods have since been out charged. Process of import is complete. To re-open the assessment at this stage, petitioner is required to challenge the order of assessment by fling appeal before the Commissioner of Customs (Appeals).

9.4 Reference has been made to an order passed by this Court in the case of *M/s. Maharashtra Cylinders Pvt. Ltd. Vs. CESTAT, Mumbai 2010 (259) ELT 369 Bom* = ***2010-TIOL-934-HC-MUM-CX***. wherein it has been held that self-assessment can be challenged for seeking any relief. Further reference has been made to the decision of the Supreme Court in the case of *M/s. ITC Ltd. Vs. Commissioner of Central Excise Kolkata-IV (2019) 17 SCC 46* = ***2019-TIOL-418-SC-CUS-LB*** in support of the contention that if the petitioner is aggrieved by the order of assessment, he is required to file an appeal before the Commissioner of Customs (Appeals) and seek its remedy under section 128 of the Customs Act. Without exhausting the remedy of appeal it is not open to the petitioner to invoke the writ jurisdiction. Therefore, the writ petition is liable to be dismissed.

10. Learned counsel for the petitioner has referred to the request made by the petitioner on 07.06.2019 to respondent No. 2 for re-assessment of the Bills of Entry because of inadvertent error in classification of the goods. Reference has also been made to the reply given by respondent No. 2 to the petitioner on 25.10.2019 wherein it was pointed out that since no appeal has been filed by the petitioner and since no order for re-assessment has been obtained, request for amendment of the Bills of Entry could not be accepted. Thereafter, learned counsel for the petitioner has taken us to the detailed representation submitted by the petitioner before respondent No. 2 on 21.11.2019 whereby and whereunder request was made for re-assessment of the five Bills of Entry by correcting the CTH code in terms of section 17(4) read with section 149 of the Customs Act.

10.1. Referring to the aforesaid provisions of the Customs Act, learned counsel submits that respondents are fully empowered to rectify the mistakes which were inadvertently made in the five Bills of Entry and thereafter pass the order of re-assessment. Failure to do so would amount to abdication of duty as conferred upon them by law.

10.2. Learned counsel has placed before us a compilation of notifications and case laws wherefrom he submits that respondents have the power to make the corrections as requested by the petitioner and pass reassessment orders.

11. In his reply submissions, Mr. Mishra, learned counsel for the respondents has extensively referred to the reply affidavit fled by the respondents and submits that if the petitioner is aggrieved by the order of self-assessment, he should prefer appeal against such order before the Commissioner of Customs (Appeals) under section 128 of the Customs Act. In support of his contention, he has placed reliance on the decision of the Supreme Court in *ITC Limited* Vs. *Commissioner of Central Excise, Kolkata IV* (supra) more particularly to paragraphs 43 and 47 thereof which are extracted hereunder :

"43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression "Any person" is of wider amplitude. The Revenue, as well as the assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of reassessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of reassessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts.

47. When we consider the overall effect of the provisions prior to amendment and post amendment under the Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self- assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."

12. In reply, learned counsel for the petitioner has distinguished the decision of the Supreme Court in *ITC Limited* (supra) and submits that Central Government itself had issued notification way back on 02.05.2012 being Notification No. 40/2012 which was amended in the year 2017 by empowering officers of the rank of Deputy Commissioner or Assistant Commissioner of Customs to exercise functions under section 149 of the Customs Act after grant of order for clearance of goods under section 47 or section 51 of the said Act as the case may be. He has also referred to Circular No. **45/2020-Customs** of the Central Board of Indirect Taxes and Customs (briefly 'the Board' hereinafter) dated 12.10.2020 to contend that in respect of re-assessment of Bills of Entry where re-assessment is requested after out of charge has been given under section 47 of the Customs Act, the same shall continue to be done by the Port Assessment Group (PAG) as was done earlier. From the compilation, he has pressed into service decision of the Kerala High Court in *GTN Textiles Limited vs. Union of India 2015 SCC Online Ker 39433* = ***2014-TIOL-1988-HC-KERALA-CUS*** and that of the Madras High Court in *Usha International Ltd. Vs. Assistant Commissioner of Customs, Chennai 2019 (365) E.L.T. 56 (Mad)* = ***2018-TIOL-2124-HC-MAD-CUS*** in support of his contention that in a case of this nature, it is not necessary to prefer appeal when power to make corrections of inadvertent mistakes or errors leading to re-assessment has been conferred upon the authorities. Finally, he places reliance on the decision of the Madras High Court in *M/s. Hewlett Packard Enterprise India Private Limited Vs. Joint Commissioner of Customs, 2020 (10) TMI 970* = ***2020-TIOL-1778-HC-MAD-CUS*** in which case it has been specifically held that in a case of this nature, appropriate remedy is not that of appeal but rectification of an error apparent on the face of the record which existed at the time of clearance of the goods.

13. Submissions made by learned counsel for the parties have been duly considered.

14. Short-point for consideration is whether request of the petitioner for correction of inadvertent mistake or error in the self-assessed Bills of Entry and consequential passing of orders for re-assessment is legal and valid ? Corollary to the above is the question as to whether even in a case of this nature, petitioner is required to be relegated to the remedy of appeal ?

15. To answer the above queries, it would be apposite to refer to relevant provisions of the Customs Act. Section 17 deals with assessment of duty. Sub-section (1) says that an importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85 which deals with stores which may be allowed to be warehoused, self-assess the duty, if any, leviable on such goods. So sub-section (1) provides for self-assessment of customs duty by an importer.

15.1. As per sub-section (2), the proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose examine or test any imported goods or export goods or such part thereof as may be considered necessary. The proviso deals with selection of cases for such verification. In terms of sub-section (3), for the purpose of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

15.2. Thereafter, comes sub-section (4). Sub-section (4) is relevant. It empowers the proper officer to go for reassessment if he finds on verification etc. that self-assessment was not done correctly. The same is extracted hereunder :

"(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods."

15.3 To complete the narrative, we may also mention that sub-section (5) deals with a situation where any reassessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter. In such a case the proper officer shall pass a speaking order in reassessment except in such cases where the importer or exporter confirms acceptance of the re-assessment in writing.

16. Thus, the scheme of section 17 from the perspective of the importer (since in this case we are dealing with imports) is that an importer upon entering his imported goods is required to self-assess the duty leviable on such imported goods. This is subject to verification and examination by the proper officer. If upon verification or examination etc. the proper officer finds that the self- assessment is not done correctly, he may re-assess the duty leviable on such goods. In a case where re-assessment is contrary to self-assessment and where the importer does not confirm his acceptance of such re-assessment, the proper officer shall pass a speaking order on the reassessment. Therefore, it is quite evident that though duty is cast upon an importer to self-assess the customs duty leviable on the imported goods, a corresponding duty is also cast upon the proper officer to verify and examine such self-assessment. Such verification and examination has to be done in good faith and in the process of verification or examination if the proper officer finds that there is misclassification of Tariff head or wrong classification of Tariff head of the imported goods leading to lesser levy of

customs duty or excess levy of customs duty, he has the power and authority under sub-section (4) to make re-assessment and re-assess the duty leviable on such goods.

17. Section 149 deals with amendment of documents. It says that save as otherwise provided in sections 30 and 41 which deals with delivery of arrival manifest or import manifest or import report and delivery of departure manifest or export manifest or export report, the proper officer may, in his discretion, authorise any document, after it has been presented in the customs house to be amended in such form and manner and within such time, subject to such restrictions and conditions, as may be prescribed. As per the proviso, 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.

17.1. For ready reference, section 149 is extracted hereunder :

"149. 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 customs house to be amended [in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed]:

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."

18. From a careful analysis of section 149, we find that under the said provision a discretion is vested on the proper officer to authorise amendment of any document after being presented in the customs house. However, as per the proviso, no such amendment shall be authorised after the imported goods have been cleared for home consumption or warehoused, etc. except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, etc. Thus, amendment of the Bill of Entry is clearly permissible even in a situation where the goods are cleared for home consumption. The only condition is that in such a case, the amendment shall be allowed only on the basis of the documentary evidence which was in existence at the time of clearance of the goods.

19. This bring us to section 154 of the Customs Act which deals with correction, clerical errors, etc. It says that clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under the Customs Act or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be.

19.1. Section 154 of the Customs Act reads as under :

"154. Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be.

20. Thus, section 154 permits correction of any clerical or arithmetical mistakes in any decision or order or of errors arising therein due to any incidental slip or omission. Such correction may be made at any time.

21. From a conjoint reading of the aforesaid provisions of the Customs Act, it is evident that customs authorities have the power and jurisdiction to make corrections of any clerical or arithmetical mistakes or errors arising in any decision or order due to any accidental slip or omission at any time which would include an order of self-assessment post out of charge.

22. Having noticed and analysed the relevant legal provisions, we may now turn to the decision of the Supreme Court in *ITC Ltd*. Vs. *Commissioner of Central Excise, Kolkata IV* (supra). The question which arose before the Supreme Court was whether in the absence of any challenge to the order of assessment in appeal, any refund application against the assessed duty could be entertained.

22.1. From the question itself, it is clear that the issue before the Supreme Court was not invocation of the power of re-assessment under section 17(4) or amendment of documents under section 149 or correction of clerical mistakes or errors in the order of self-assessment made under section 17(4) by exercising power under section 154 vis-a-vis challenging an order of assessment in appeal. The issue considered by the Supreme Court was whether in the absence of any challenge to an order of assessment in appeal, any refund application against the assessed duty could be entertained. In that context Supreme Court observed in paragraph 43 as extracted above that an order of self-assessment is nonetheless an assessment order which is appealable by "any person" aggrieved thereby. It was held that the expression "any person" is an expression of wider amplitude. Not only the revenue but also an assessee could prefer an appeal under section 128. Having so held, Supreme Court opined in response to the question framed that the claim for refund cannot be entertained unless order of assessment or self-assessment is modified in accordance with law by taking recourse to appropriate proceedings. It was in that context that Supreme Court held that in case any person is aggrieved by any order which would include an order of self-assessment, he has to get the order modified under section 128 or *under other relevant provisions of the Customs Act* (emphasis ours).

22.2. Therefore, in the judgment itself Supreme Court has clarified that in case any person is aggrieved by an order which would include an order of self-assessment, he has to get the order modified under section 128 or under other relevant provisions of the Customs Act before he makes a claim for refund. This is because as long as the order is not modified the order remains on record holding the field and on that basis no refund can be claimed but the moot point is Supreme Court has not confined modification of the order through the mechanism of section 128 only. Supreme Court has clarified that such modification can be done under other relevant provisions of the Customs Act also which would include section 149 and section 154 of the Customs Act.

23. In *Maharashtra Cylinders Private Limited* (supra), a Division Bench of this court also reiterated the proposition that unless an order of self-assessment is varied or altered, question of refunding the duty paid on self-assessment does not arise at all. Validity of an assessment cannot be considered while dealing with a refund claim. Therefore, this decision on the face of it is clearly distinguishable and is not at all applicable to the facts of the present case.

24. In the instant case, petitioner has not sought for any refund on the basis of the self-assessment. It has sought re-assessment upon amendment of the Bills of Entry by correcting the customs Tariff head of the goods which would then facilitate the petitioner to seek a claim for refund. This distinction though subtle is crucial to distinguish the case of the petitioner from the one which was adjudicated by the Supreme Court and by this Court.

25. Grievance of the petitioner is not on the merit of the self-assessment as the petitioner is aggrieved by the failure on the part of the respondents to carry out amendment in the Bills of Entry by replacing the incorrect CTH by the correct one namely by replacing CTH '85176990' with '85176930' which was declared inadvertently by the petitioner at the time of fling the Bills of Entry. This request of the petitioner, in our opinion, falls squarely within the domain of section 149 read with section 154 of the Customs Act. Upon amendment in the Bills of Entry by correcting the CTH, consequential re-assessment order under section 17(4) of the Customs Act would be in order.

26. Madras High Court in *M/s. Hewlett Packard Enterprise India Private Limited* (supra) correctly held that in a case of correction of inadvertent error, the appropriate remedy would be seeking an amendment to the Bills of Entry and not fling of appeal because there is no legal flaw in the order of self-assessment amenable to appeal but only a factual mistake which can be rectified by way of amendment or correction. Such correction or amendment has been sought for by the petitioner on the basis of documents which were already in existence at the time of release of the goods for home consumption.

27. **The expression "mistake" appearing in section 154 of the Customs Act may be defined as something done unintendedly or through inadvertence**. The section itself says that the error in any decision or order should be due to any accidental slip or omission. Moreover, it can be a mistake of law or a mistake of fact. In all cases it need not be an arithmetical error alone. It may connote errors which can be discerned upon due verification. Having said so, we may also indicate that power to amend documents available under section 149 of the Customs Act read with correction of clerical or arithmetical mistakes or errors in orders due to accidental slip or omission under section 154 thereof is different and distinct from the appellate power exercised under section 128 of the Customs Act. The power of amendment or correction, as the case may be, is vested on the same officer who had passed the initial order or an officer of equivalent rank. On the other hand, appellate jurisdiction is directed to correct decisions or orders passed by an inferior or lower authority. By its very nature an appellate authority is superior to the authority which had passed the order appealed against.

28. In the light of the above, we are of the view that petitioner has made out a case for issuance of a direction to the respondents for correction of the mistake or error in classification of the goods from CTH '85176990' to '85176930' and thereby for amendment of the Bills of Entry. Refusal of the respondents to look into the aforesaid grievance of the respondents is therefore not justified.

29. Accordingly, we direct respondent No. 2 to consider the prayer of the petitioner for amendment of the Bills of Entry Nos. 2434172, 2436049, 2522910, 2805152 and 2968920 (annexed as Annexure B colly to the writ petition) by exercising power under section 149 read with section 154 of the Customs Act and thereafter pass an appropriate order under section 17(4) of the Customs Act after giving due opportunity of hearing to the petitioner.

30. The above exercise shall be carried out within a period of six weeks from the date of receipt of a copy of this judgment and order.

31. Writ petition is disposed of accordingly. However, there shall be no order as to costs.