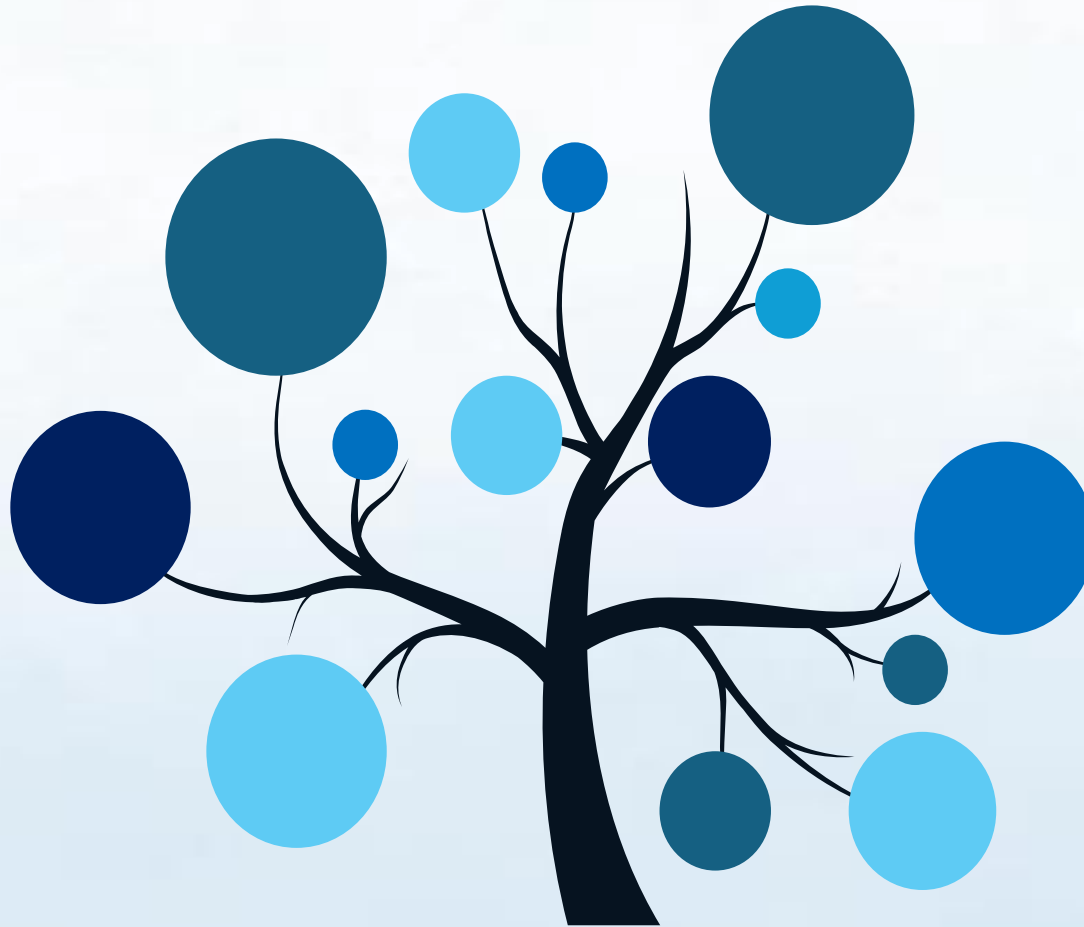


Customs Compendio

Volume 12





Issue

Goods were imported under Notification 32/97 Cus. for job work and export, and the goods were already exported after the job work, however the authorities are now demanding duty and confiscation.

Decision

As the goods have been exported after job work, duty demand cannot be sustained and the goods are also not available for confiscation. The Hon'ble SC decision approving the Madras HC decision in the matter of *SANKAR PANDI VERSUS UNION OF INDIA [2001(12) TMI 83 - MADRAS HC]* was relied upon.

M/s. NEW KARUNAI GRANITES
2024 (6) TMI 258
CESTAT CHENNAI



Issue

Whether the appellant can be worse-off in an Appeal proceedings without being notified of the enhanced values??

Decision

The general principle is that the Appellate authority should not travel outside the record of the lower authority and make out a case which even Revenue did not canvas. Reliance was placed on *M/s. Trojan & Co. Vs. RM.N.N. Nagappa Chettiar AIR 1953 SC 235*

M/s. LIFESTYLE INTERNATIONAL
PVT. LTD. - 2024 (6) TMI 854
CESTAT CHENNAI



Issue

- a) Admissibility of Statements recorded under Section 108 of the Customs Act, 1962 as evidence without conforming to the legal requirements prescribed under Section 138B ibid and
- b) Admissibility of WhatsApp messages as evidence without meeting the requirements under Section 138B ibid?

Decision

- a) None of the statements recorded under Section 108 would be admissible as evidence against the appellant, without following the procedure laid down under section 138B of Customs Act, as it is against the accepted legal practices and judicial pronouncements made by various Courts.
- b) WhatsApp messages on the basis of which the penalty has been imposed cannot be taken as evidence against the appellant without following due legal procedure laid down under the Customs Act, 1962.

**M/S. ARUN KUMAR
2024 (6) TMI 259
CESTAT AHMEDABAD**



Issue

Classification of Parts for Ball Pen Tips (Blank for Ball Pen Tips) NM6 Alloy 1.60MM*7.10MM- and applicable GST rates-whether classifiable under the residuary entry Sl No 453 of Sch-III to Notification 1/2017 IGST (Rate)?

Decision

As parts of ball pens classification under CTH 96089990 will be appropriate and the applicable GST will be that applicable to the ball pens specified in Sl No 232 of Sch-II ibid and not under the residuary entry. Reliance was placed on the TRU circular 113/32/2019-GST dated October 11, 2019, decision made by the GST Council in its 14th GST Council meeting held on May 18 & 19, 2017, and the Hon'ble Tribunal decision in *M/s. Camlin Limited V/s commissioner of Central Excise, Mumbai-III reported as 2000 (121) ELT 178 (Tri)* which was upheld by the Hon'ble SC as reported in *2001 (128)E.L.T. A72 (S.C.)*

M/S PERFECT WRITING INSTRUMENTS PVT. LTD.
2024 (6) TMI 852
CESTAT KOLKATA



Issue

- a) Classification of naturally obtained Apatite (Ground) Calcium Phosphate - to be classified under CTH 25102030 or under CTH 28352690?
- b) Legality of drawing samples for testing from factory premises for goods imported and cleared from Customs port.

Decision

The classification was determined under CTH 25102030- Reliance was placed on a ruling on an identical question in the matter of *MUDRIKA CERAMICS I LTD.Vs COMMISSIONER OF CUSTOMS-AHMEDABAD [2024 (1) TMI 1294 - CESTAT AHMEDABAD]*. No ruling was however given on the legality of taking samples after the impugned goods had been cleared from Customs though the importer relied upon the decisions of the Hon'ble P&H HC in the matters of *Raghav Woolen Mills P. Ltd. 2020 (372) E.L.T. 42 (P & H)* and *Super Oil Company 2020 (372) E.L.T. 536 (P & H)* holding that taking samples from the factory premises after the impugned goods had been cleared from Customs premises in not permissible under Sec 144 of the Customs Act

M/s. ARTABROCH CERAMICS PVT LTD
2024 (6) TMI 916
CESTAT AHMEDABAD



Issue

Applicability of time limit for claiming a refund under Section 27 of the Customs Act, 1962 when the duty had been paid under protest.

Decision

The time limit of one year under Section 27 *ibid*, not applicable when the duty was paid under protest and the protest had not been vacated by issue of a speaking order. Stand of Revenue that the assessment is final and therefore the re-assessment by way of an Appeal as laid down by SC in ITC matter held not applicable when the duty had been paid under protest.

Reliance was placed on the Hon'ble Tribunal decision in the matters of *HDFC Bank Vs. Principal Commissioner of GST & Central Excise 2020 (7) TMI 362 CESTAT Chennai* and *COMMISSIONER OF CUSTOMS VERSUS M/S. SAKTHI SUGARS LTD. [2020 (4) TMI 840 CESTAT-Chennai.]*

M/s RAYMOND APPAREL LIMITED
2024 (6) TMI 310
CESTAT KOLKATA



Issue

Status of an appeal pending before CESTAT, after initiation of Corporate Insolvency Resolution Process (CIRP) and Order approving the Resolution plan passed/approved by the Learned NCLT under Insolvency and Bankruptcy Code, 2016

Decision

In terms of Rule 22 of CESTAT (Procedure) Rules, 1982, the appeal abates once IRP is appointed and / or a Resolution Plan is approved by NCLT. Reliance was placed on the Hon'ble Tribunal decision in *M/s. Alok Industries Ltd. Versus Commissioner of Central Excise, Belapur and Commissioner of Cen. Excise, Mumbai Central - 2022 (10) TMI 801 - CESTAT MUMBAI* on this specific question and also a clutch of other Tribunal decisions.

M/s. ILC INDUSTRIES LIMITED
2024 (6) TMI 1011
CESTAT BANGALORE



Issue

Export duty on Iron ore - Determination of Iron content in the Iron ore exported to computed on Wet Metric Tonne (WMT) basis or on Dry Metric Tonne (DMT) basis?

Decision

Iron ore content to be determined on Wet Metric Tonne (WMT) basis. Reliance was placed on the CBEC Circular No 04/2012-Cus dated 17.02.2012 and the Hon'ble Bombay High Court decision in the case of *UNION OF INDIA AND OTHERS VERSUS GANGADHAR NARSINGDAS AGRAWAL AND ANOTHER*[1986 (4) TMI 71 - HIGH COURT OF BOMBAY approved by the Hon'ble Supreme Court in *UNION OF INDIA VERSUS GANGADHAR NARSINGDAS AGGARWAL* [1995(8) TMI 73 - SUPREME COURT].

M/s JINDAL STEEL & POWER LIMITED
2024 (6) TMI 914
CESTAT KOLKATA



Issue

Classification of Solar lantern - under Customs Tariff Heading 94055040 or under CET 85131090?

Decision

Given the fact that the lanterns use essentially solar power, notwithstanding the capability of being charged with AC power source, classification approved under CTH 9405 5040. Reliance was placed on an identical issue decided by the Hon'ble Tribunal in *Aura Solar Products Pvt. Ltd. Vs. CCE-Pune-III-2021 (44) G.S.T.L. 82 (Tri.-Mumbai)*

SIGMA POWER PRODUCT PVT. LTD.
2024 (6) TMI 917
CESTAT KOLKATA



Issue

Applicability of the SC decision in the matter of ITC Ltd. on the need to challenge the assessment by way of an Appeal for EDI BOE enabled through RMS

Decision

The Hon'ble SC decision in the ITC Ltd. was in respect of bills of entry filed before the introduction of the self-assessment regime on 8.4.2011. Therefore, this decision is not applicable to EDI bill of entry enabled through Risk Management System (RMS) as there will be no assessment order.

M/S. PARADEEP PHOSPHATES LTD.
2024 (6) TMI 913
CESTAT KOLKATA



Issue

Applicability of time limit prescribed under Section 27 of the Customs Act, 1962, for a claim of refund of security deposit made for provisional assessment.

Decision

The refund of security deposit will be governed by the provisions of Section 18 ibid and not Section 27 ibid. Time limit prescribed under Section 27 ibid not applicable. Reliance was placed on the Hon'ble SC decision in the matter of *Mafatlal Industries [1997 (89) ELT 247 (SC)]*.

**M/s. BASF INDIA LTD.
2024 (6) TMI 352
CESTAT ALLAHABAD**



Issue

Relevant date for application of the exchange rate for an import on High Seas Sales.

Decision

Date of filing the bill of entry will be the relevant date even in High Seas sales cases and not the date of payment to the High Seas seller. Reliance was placed on the Hon'ble HC decisions in the matters of *Ever Bright Plastic Pvt. Ltd. Vs. Collector of Customs [1992 (9) TMI 108 – HC AT CALCUTTA]*.

**M/s. RASHTRIYA CHEMICALS &
FERTILIZERS LTD. - 2024 (6) TMI 398
CESTAT BANGALORE**

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