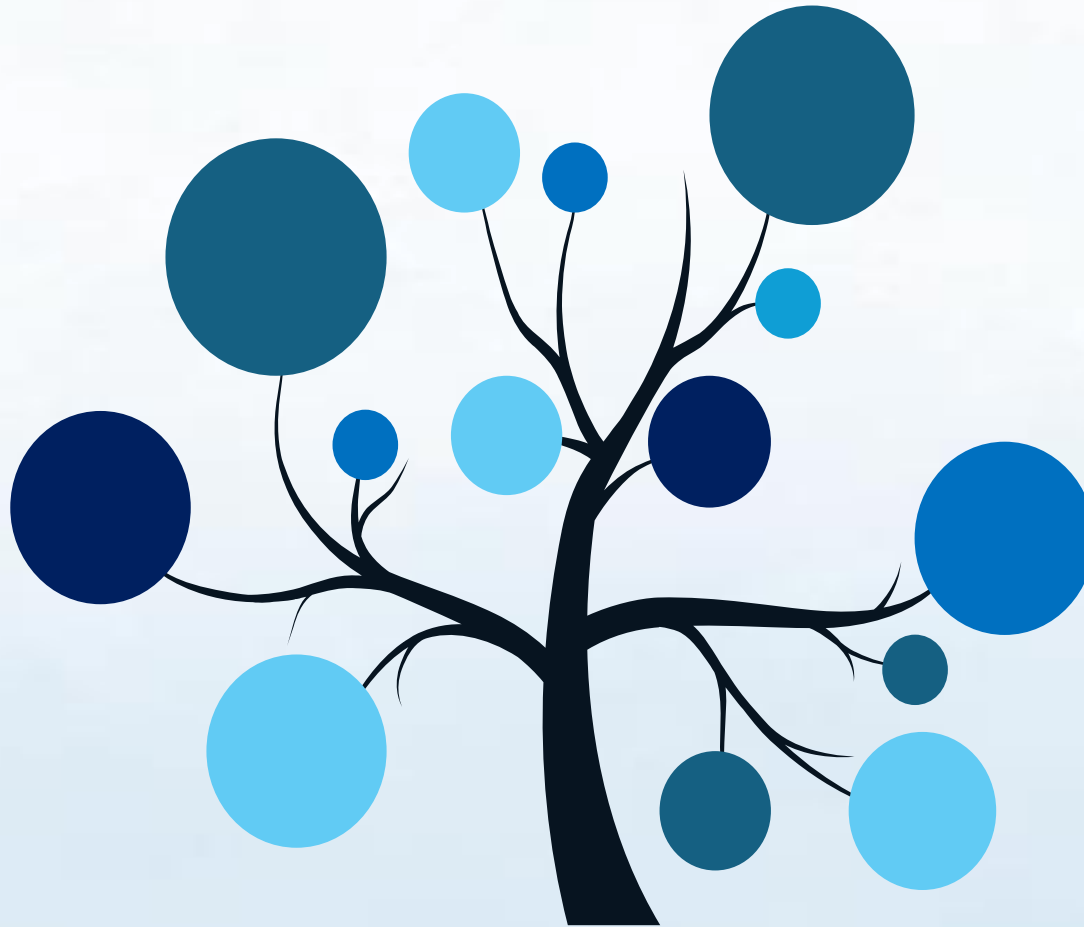


# Customs Compendio

## Volume 2





### Issue

Duty free shop in airport offering a promotional scheme for imported liquor leading to passengers being allowed liquor in excess of the permissible limits- Duty liability and penalty under Section 72 of the Customs Act, 1962.

### Decision

- Duty Free shop is liable to pay the differential duty in terms of Section 72 ibid on demand from customs.
- As regards penalty, as the Customs officer's responsibility to countersign the purchase vouchers cannot be overlooked,-penalty set aside.

**M/s. NUANCE GROUP (INDIA) PVT. LTD.**  
**2024 (1) TMI 591 - CESTAT BANGALORE**



### Issue

Demand for penalty alleging suppression in a classification dispute case where the differential duty was paid even before issue of SCN.

### Decision

- Penalty demand set aside as a) there was no suppression and it was case of misclassification b) as the duty was paid even before SCN was issue the demand for penalty is not maintainable.
- On suppression, reliance placed on SC decision of Continental Foundation Jt. Venture and for maintainability of penalty on the Karnataka HC decision of M/s Powerica Ltd

**M/s. MINEBEA INTEC INDIA P LIMITED**  
**2024 (1) TMI 592 - CESTAT BANGALORE**



## Issue

Classification of glass beads Chatons - Dispute between glassbeads classifiable under Heading 70181020, the chatons classifiable under heading 70181090 in the category “others”

## Decision

- Classification under CTH 70181090 as other held to be appropriate despite a governing Tribunal decision and a High Court decision on the ground that these decisions were rendered when the Customs Tariff was different and no reference was made to the HSN ENs in either of these decisions.
- Reference to the definition for the term beads provided in the HSN ENs was relied upon to hold that the goods in question cannot be regarded as beads.

**M/s ASIA WORLD EXPORTS -  
2024 (1) TMI 405 - CESTAT AHMEDABAD**



## Issue

Classification of paper licenses conveying right to use the software- Dispute between CTH 49070030 and CTH 85238020.

## Decision

- Classification under CTH 4907 0030 approved as this Tariff Items is specific for the product and the argument of Revenue that the license has an intellectual value and the software.
- Further, the license should be considered as a set was rejected in as much as the classification would depend upon the description of the product at the time of import.

**M/S. NCR CORPORATION INDIA PVT. LTD-  
2024 (1) TMI 690 - CESTAT BANGALORE**



### Issue

Denial of FTA benefit on import of cocoa powder from Malaysia.

### Decision

Decision- Benefit allowed on the following grounds:

- Allegations based on the opinion of DRI pertaining to other importers and not pertaining to the Appellant
- No independent retroactive check as prescribed in the Rules of origin conducted to reject the CoO which is documentary evidence for the claim.

**M/s SHIRAZEE TRADERS -  
2024 (1) TMI 781 - CESTAT AHMEDABAD**



### Issue

Non-fulfilment of EO under EPCG scheme - Order confirming recovery of duty foregone along with interest by Customs- Delay in issue of the EODC by DGFT.

### Decision

- Order conforming demand set aside as the EODC had been issued by DFFT though after delay but before the adjudication order. Remanded to the original authority to pass a fresh order taking into account the EODC.
- Delhi HC decision in the matter SMIEL relied upon.

**M/s. AARHAM SOFTRONICS. -  
2024 (1) TMI 785 - CESTAT NEW DELHI**



### Issue

SCN issued beyond normal period of limitation in a case of denial of FTA benefit under ASEAN Notification 46/2011 Cus.

### Decision

- Demand hit by limitation as the importer submitted the CoO on which he had no control.
- If Revenue had doubt about the CoO, retroactive checks should have been initiated and the demand issued within the normal period of limitation under Section 28 of the Customs Act 1962.

**MESSRS GLOBAL EXIM –  
2024 (1) TMI 901 - CESTAT AHMEDABAD**



### Issue

Payment of interest on the delayed refund of duties deposited during investigation etc., on their refund.

### Decision

- Placing reliance on the Hon'ble Gujarat HC decision in the matter of M/s. New Kamal Vs. UOI as reported in 2020 (372) ELT 571(Guj) and Board Circular No. 275/37/2K-CX.8A dated 2 January 2002, Tribunal confirmed the order of the Commissioner (Appeals) granting interest on the duty deposits refunded.

**M/s RELIANCE INDUSTRIES LIMITED-  
2024 (1) TMI 939 - CESTAT AHMEDABAD**



### Issue

Classification of Natural Calcite Powder under CTH 25309030 or goods is precipitated Calcium Carbonate Powder under CTH 28365000 with denial of notification No. 46/2011-CUS as contended by the revenue.

### Decision

- Since the CRCL, Kandla which tested the sample stated that they did not have the facility for testing the sample, their test report cannot be relied upon.
- Tribunal relied identical matter dealt with in the matter of GAURAV LUBRICANTS

**M/s ACME MICRONISED MINERALS  
2024 (1) TMI 965 - CESTAT AHMEDABAD**



### Issue

Denial of the Preferential duty for imported NATURAL Cocoa powder from Malaysia under Notification 46/2011 Cus ( ASEAN) on the allegation that in another investigation taken up by DRI in respect of certificate of origin pertaining to another party in the year 2014, Cocoa Beans were suspected to be derived from Ghana

### Decision

- Importers appeal challenging the denial allowed. On the ground that in the face of certificate of origin having been produced and no verification process having been conducted before issuance of show cause notice, the demand of duty cannot be sustained.
- In the absence of burden having been discharged or even having been attempted till such belated stage, the show cause notice cannot be sustained.

**M/s SYMPHONY INTERNATIONAL -  
2024 (1) TMI 988 - CESTAT AHMEDABAD**



### Issue

Classification of micronutrient fertilizers - to be classified under CTH 3105 or under CTH 2921.

### Decision

- Appeal of the importer allowed on the ground that the Order proceeded to classify the product under CTH 2921 as against CTH 2922 proposed in the SCN-
- Hence principles of natural justice violated.

**M/s. P.R. AGRO NUTRI (P) LIMITED –  
2024 (1) TMI 989 - CESTAT CHENNAI**



### Issue

Remission of duty on coffee beans short supplied-Import by a EOU.-Order confirming the differential duty on the short received goods on the ground that the loss occurred during transit after import clearance.

### Decision

- Order set aside and the importer's appeal allowed on the ground that nothing was hidden nor was there any attempt to play fraud or suppression of any facts on the part of the appellant insofar as the shortage in supply was concerned, which fact was very much within the knowledge of the Revenue.
- Importer to also succeed on limitation as the jurisdiction to invoke extended period has been invoked without any basis.

**M/s. TATA COFFEE LIMITED (INSTANT  
COFFEE DIVISION – 100% EOU) –  
2024 (1) TMI 1023 - CESTAT CHENNAI**



### **Issue**

Suspension of CB licence on account of improper classification. The Commissioner had concluded that there was no violation of any of the Regulations, by the respondent-Customs Broker

### **Decision**

Revenue's appeal dismissed as the classification adopted was proposed by the importer and the same has also been finally accepted and therefore there is no case for misclassification. Case against CB no longer exists.

**M/s. KING SHIPPING SERVICES P LIMITED -  
2024 (1) TMI 1090 - CESTAT CHENNAI**



### **Issue**

Refund of customs duty- Applicability if Unjust enrichment and Section 28 D of the Customs Act.

### **Decision**

- Hon'ble Kolkata HC held that a) UJE is not applicable for public sector undertaking placing reliance on the decision in the matter of Hon'ble Madras HC in TNEB
- the goods imported were in the use of the importer and not sold.

**M/s. DREDGING CORPORATION OF INDIA  
LIMITED 2024 (1) TMI 1174 - CALCUTTA  
HIGH COURT**





### Issue

Revocation of CBLR Licences alleging contravention of Regulations 10(d) and 10(m) of CBLR, 2018.

### Decision

- No contravention of Regulation 10(d) *ibid*, in the absence of any document to prove that the appellants CB had purposefully mis-declared the description or other details of imported goods.
- No contravention of Regulation 10 (m) *ibid*, as the CB has been careful and diligent in submitting the complete details inasmuch as the same are available in the invoice, packing list while submitting the bill of entry before the customs authorities.

**M/s JZN LOGISTICS -  
2024 (1) TMI 348 - CESTAT MUMBAI**



### Issue

Revocation of license of the CHA invoking the provisions of Regulations 10 (b), 10(d), 10(e) and 10(n) of the CBLR, 2018

### Decision

- Tribunal set aside the revocation as the charges were not grave and no *mens era* could be attributed to the CB.
- Reliance placed on Kunal Travels (Cargo) Delhi High Court.

**M/s. SOUPARNIKA SHIPPING SERVICES  
2024 (1) TMI 644 - CESTAT CHENNAI**

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