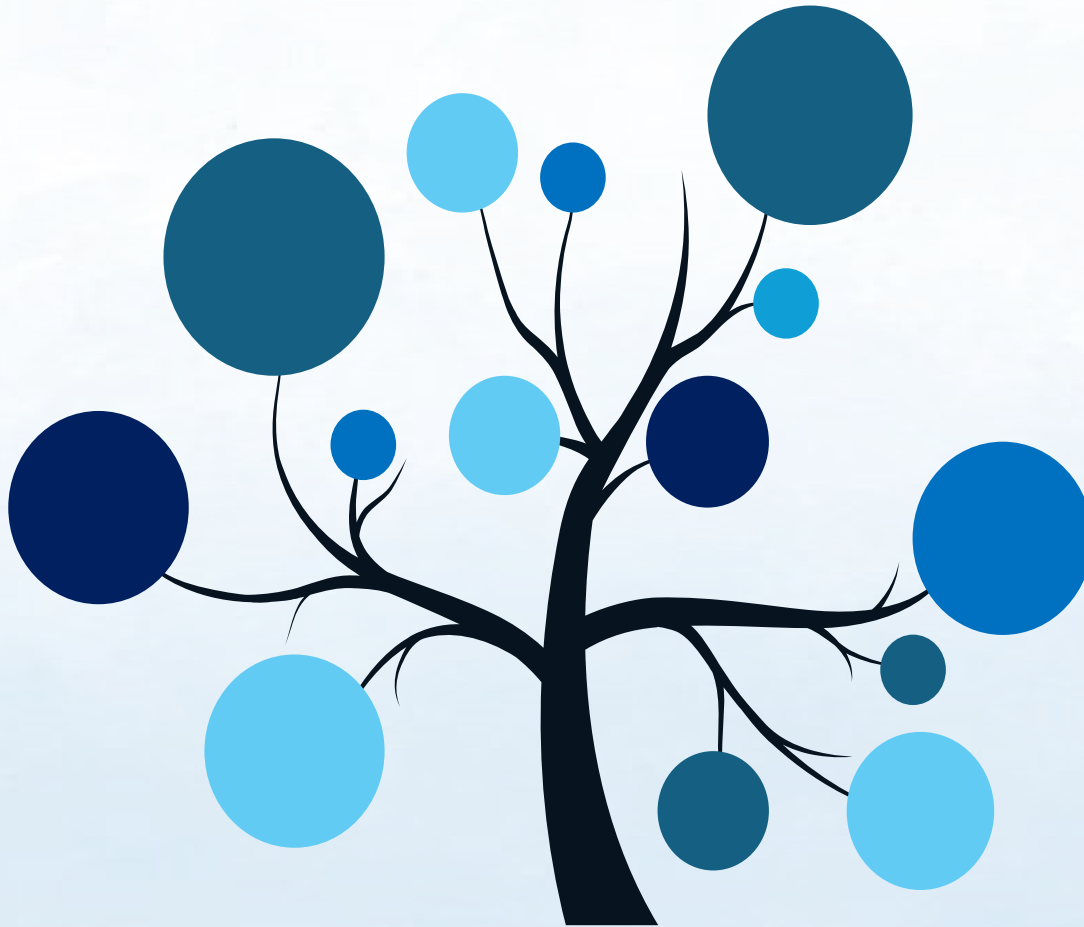


# Customs Compendio

Volume 3



Snippets from Mukesh Manish & Kalpesh, Chartered Accountants



### Issue

Interest on the Redemption fine and penalty deposited during seizure for provisional release of goods. Amount refunded after a decision in favour of the Appellant. Whether interest payable?

### Decision

- Interest payable by Revenue on the entire amount of RF and penalty collected and refunded after the case was decided in favour of the Appellant and against Revenue. Revenue cannot enrich itself at assessee's expense

**M/s. RAJ KUMAR BATRA  
2024 (2) TMI 1146  
DELHI HIGH COURT**



### Issue

Immunity from prosecution and penalty granted by the Settlement Commission to the main Noticee-whether Co-Noticee was also entitled to the said immunity?  
Tribunal agreed

### Decision

Hon'ble High court set aside the order of the Tribunal placing reliance on a coordinate Bench decision in M/s. Seville Products. The SLP against this decision was dismissed by Hon'ble SC)(2024 (1)TMI 686 - SC Order)

**M/s. EVERGREEN SHIPPING AGENCY  
INDIA PVT. LTD. 2024 (2) TMI 1189  
DELHI HIGH COURT**



### **Issue**

Interpretation of Section 149 of the Customs Act, 1962-Amendmnt of bill of entry post clearance.

### **Decision**

Amendment under Section 149 ibid is to be allowed if the CoO for claiming the preferential duty benefit was available on the date the goods were cleared for home consumption.

**M/s. HANON AUTOMOTIVE INDIA PVT.  
LTD. 2024 (2) TMI 32  
MADRAS HIGH COURT**



### **Issue**

Whether rejection of the request for amendment of a bill of entry under Section 149 of the Customs Act, 1962, by relying on a Public Notice 88/2019 dated 18.10.2019

### **Decision**

Amendment under Section 149 ibid to be considered on the basis of the documents in existence on the date of clearance of the goods- Impugned order quashed and matter remanded as the PN dated 18.10.2019 had been quashed by the same HC

**M/s. MINERA STEEL AND POWER PVT.  
LTD. 2024 (2) TMI 1032  
MADRAS HIGH COURT**



### **Issue**

Jurisdiction of DRI officers to issue a Show Cause Notice under Section 124 read with Section 28 of the Customs Act, 1962.

### **Decision**

SCN stayed pending Supreme Court's decision in the Canon Review matter placing reliance on a similar decision in the matter of Parvezshaikh v. Union Of India & Ors – (Bombay HC). It is to be noted that note that across the country, the same position has been maintained by the High Courts and Tribunals.

**M/s. KEJAL MEHTA  
2024 (2) TMI 66  
BOMBAY HIGH COURT**



### **Issue**

Whether customs duty liability on the Advance Authorization holder will be extinguished on their merger or amalgamation with another entity

### **Decision**

Customs duty liability on the Advance Authorization holder will not be extinguished on account of merger/ amalgamation with another entity.

**M/s. INTEGRA GARMENTS &  
TEXTILES LTD. 2024 (2) TMI 1033  
MADRAS HIGH COURT**



### **Issue**

Whether Food grade Hexane require a mandatory BIS certification or not.

### **Decision**

- As the requirements for food grade Hexane to comply with IS 3470 has been done away with by the DGFT vide their notification dated 04.08.22, Hexane (food grade)
- freely importable. Provisionally released Hexane was ordered to be finally assessed.

**M/s. AKIN CHEMICALS PVT. LTD.  
2024 (2) TMI 448  
GUJARAT HIGH COURT**



### **Issue**

Order for deportation of offending goods under the Insecticides Act 1971 on confiscation and allowed to be redeemed on payment of redemption fine?

### **Decision**

Once the redemption fine is paid, the offending goods should be allowed to be clearance for home consumption. Order prescribing redemption only for deportation (re-export to the country of origin) set aside

**M/s. FMC INDIA PVT. LTD.  
2024 (2) TMI 380  
GUJARAT HIGH COURT**



### Issue

Interest on delayed payment of deemed export drawback by Government

### Decision

- Interest payable at 15% for delayed payment of deemed export drawback. The Hon'ble SC confirmed the decision of the Division Bench while dismissing the Appeal filed by Revenue

**M/s. B.T. PATIL AND SONS BELGAUM  
(CONSTRUCTION) PVT. LTD.  
2024 (2) TMI 324 - SUPREME COURT**



### Issue

Liability to interest under Section 28AA of CA 1962, on CVD short paid on account of the lower rate of CVD shown in the EDI system made good on issue of a SCN

### Decision

As the CVD was paid as per the EDI indication and the differential CVD also made goods on demand, no short levy of duty and therefore no case for demand of interest under Section 28AA ibid. Commissioner of Customs, Vijayawada Vs. Ruchi Soya Industries Ltd. [2016 (339) E.L.T. 613 (Tri.-Bang.)] cited in support..

**M/s. TITAGARH WAGONS LIMITED  
2024 (2) TMI 876  
CESTAT KOLKATA**



### **Issue**

Classification - Can extended period be invoked when the importer has not suppressed any facts

### **Decision**

- In matters of classification where facts have been correctly disclosed extended period of limitation cannot be invoked. Notice is held to be barred by limitation.

**M/s. POLYCAB WIRES PVT LTD  
2024 (2) TMI 1318  
CESTAT AHMEDABAD**



### **Issue**

EOU - Utilization of inputs in excess of SION - applicability of limitation under Section 28 of the Customs Act, 1962.

### **Decision**

When the notice is issued under Section 72 in addition to Section 28 and invoking the B-17 bond, the period of limitation will not apply.

**M/s. AMARDEEP EXPORTS  
2024 (2) TMI 206  
CESTAT AHMEDABAD**





### Issue

Revocation of CB Licence when time limits prescribed in the Regulations were not followed- When Regulation 17 (1) required the Show cause noticed to be issued within 90 days from the receipt of office offence report

### Decision

- In the light of the ratio laid down by various high courts and Tribunals, the Tribunal ordered that the time limits prescribed in Regulation 17 is mandatory and with the said time limits having not been followed by Customs the revocation of CB licence was set aside and the appeal filed by the Appellant was allowed.

**M/s. ASHAPURA SHIPPING AGENCY**  
**2024 (2) TMI 26**  
**CESTAT AHMEDABAD**



### Issue

Denial of the preferential duty benefit under India-ASEAN FTA (Notification 46/2011 Cus), on the ground that Cost data could not be provided by the importers- when the Malaysian Authorities who issued the CoO did not doubt the correctness.

### Decision

Duty benefit cannot be denied when the importers have produced a valid CoO which was not doubted by the Malaysian authorities - The onus then shifted to Revenue. As the cost data is confidential importer cannot be penalized - Appeal allowed.

**M/s. KIARA INGREDIENTS INC**  
**2024 (2) TMI 740**  
**CESTAT AHMEDABAD**





### Issue

Whether benefit of an alternative exemption can be claimed after import and amendment under Section 149 permissible

### Decision

• Yes. Tribunal held insofar as the alternative exemption sought was in existence at the time of clearance of the goods, claim is permissible. Tribunal distinguished, the Hon'ble SC decision in Indian rayon & industries ltd. 2008 (7) TMI 401 - SUPREME COURT.

**M/s. OLAM AGRO INDIA LTD  
2024 (2) TMI 317  
CESTAT AHMEDABAD**



### Issue

Classification- Reliability of a Test Report for testing Calcite Powder (coated) when the Testing Laboratory did not have the facility to test the samples.

### Decision

Test Report not reliable for deciding the classification-Reliance was placed on identical matter in ACME Micronised Minerals Versus C.C. -Mundra [2024 (1) TMI 965 - CESTAT AHMEDABAD].

**M/s. OASIS IMPEX VERSUS JAMNAGAR  
(PREV) - 2024 (2) TMI 445  
CESTAT AHMEDABAD**



### Issue

Whether hand tools are capital goods and used hand tools require a licence for their import and absence of a licence will render the goods liable for confiscation?

### Decision

Hand tools and machine tools fall under the category of capital goods and can be imported freely without a licence, Not liable for confiscation, Reliance was placed on the Tribunal decision in Asia Power Projects Ltd. Versus Commissioner of Customs, Chennai - 2019 (1) TMI 333 – CESTATCHENNAI.

**M/s. PS BEDI & CO PVT. LTD.**  
**2024 (2) TMI 264**  
**CESTAT CHENNAI**



### Issue

Rejection of amendment of the shipping bill (conversion) on account of delay – Circular 36/2010 dated 23.09.2010, prescribed a time limit of three months

### Decision

As Section 149 of the Customs Act, 1962 did not prescribe any time limit for carrying out amendments, rejection of the request for amendment not justified. A time limit of one year in terms of Section 149 ibid was prescribed through Notification 11/2022(NT) Cus. Dated 22.2.2022. Therefore, prescription of time limit prior to this date through circular not proper.

**M/s. ARVIND SMART TEXTILES LTD.**  
**2024 (2) TMI 28**  
**CESTAT CHENNAI**

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