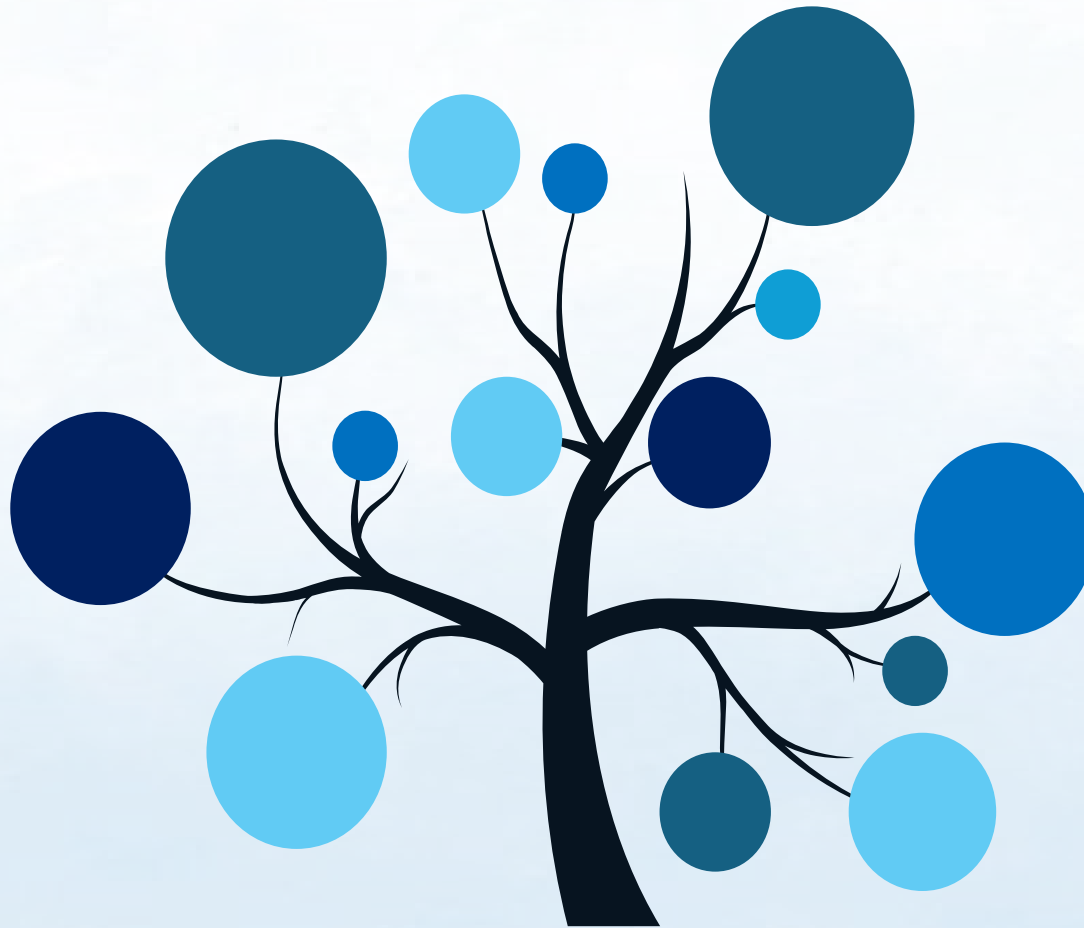


Customs Compendio

Volume 5



Snippets from Mukesh Manish & Kalpesh, Chartered Accountants



Issue

Whether the Levy of Stamp Duty on Delivery Order (DO) issued by the shipper for release of imported cargo from the port, dock or a warehouse under the Maharashtra Stamp Act, 1958 is within the legislative competence of the State and does not intrude upon the legislative domain of the Parliament

Decision

Maharashtra's imposition of stamp duty on DO falls within its legislative competence and does not intrude upon the legislative domain of the Parliament as reserved in Entries 41 and 83 of List I of Schedule VII of the Constitution of India and is not ultra vires Article 246(1), 286(1)(b) and 286(2) of the Constitution of India. It deemed DO issuance as occurring "not in the course of import" since it happens after customs duty payment.

**M/s. SAURER TEXTILE SOLUTIONS PVT. LTD.
2024 (3) TMI 1253
BOMBAY HIGH COURT**



Issue

Goods cleared under transferred Duty Entitlement Passbook (DEPB) scrips when the DEPB scrips were cancelled ab-initio on the ground that the DEPB scrips were obtained on the basis of forged shipping bills - Invocation of the extended period for demanding duty from the transferee importers

Decision

As the DEPB scrips were valid at the time of utilization by the transferee, notwithstanding the cancellation of the scrips by DGFT, invocation of the extended period of limitation against the transferee importers cannot be justified, as no suppression / collusion etc can be alleged against the transferee. Confiscation and penalties set aside.

M/s. WHIRLPOOL OF INDIA LIMITED
2024 (3) TMI 364
CESTAT NEW DELHI



Issue

Rejection of the request for amendment under Section 149 of the Customs Act to give effect to the price variation clause on account of volume discounts-agreement to this effect existing on the date of filing the bill of entry.

Decision

The refusal to amend the Bill of Entry under Section 149 of the Customs Act, 1962 is not correct. Provisional assessment should have been considered as an alternative, or if not, the amendment under Section 149 should have been permitted. Consequently, the case was sent back for the amendment of the bill of entry.

M/s. PARADEEP PHOSPHATES LIMITED
2024 (3) TMI 509
CESTAT KOLKATA



Issue

MEIS benefit denied based on the reclassification by customs despite the exporter's correct declaration and issuance of MEIS scrips by DGFT. Invocation of Section 28AAA of The Customs Act, 1962, when the entire case is on account of classification by Customs.

Decision

Denial of the MEIS benefit by Customs held to be incorrect when there is no allegations of suppression or misdeclaration by the DGFT. Moreover, when the authorities hold that the scrips were valid scrips in the hands of the importers, the question of them becoming invalid in the hands of the exporter appears to be too farfetched. Further unless the appellant has colluded or suppressed or misrepresented the facts, the question of invoking Section 28AAA ibid did not arise.

M/s. DOLPHIN WIRES PVT. LTD.
2024 (3) TMI 649
CESTAT BANGALORE



Issue

Classification of decalcified / demineralised fish scales -Whether under CTH 0511 as fish waste or under CTH 3504 as fish Protein

Decision

Tribunal concluded based on the test reports stating that the products were demineralised fish scales & rejected the claim of the appellants for classification as fish proteins, citing appearance and odour. Strangely for the same products where the test reports stated that the product was fish proteins, Tribunal accepted the classification as fish proteins imported under AA scheme and rejected the duty demand. For a few AA imports, however, based on the test reports, held that the product was demineralised fish scales.

Our comments: The Tribunal approved different classifications for identical products despite recognizing use of identical raw materials and processes. Lack of appreciation for the distinction between peptides and proteins suggests grounds for appeal to the Supreme Court.

**M/s. NITTA GELATIN INDIA LIMITED
2024 (3) TMI 869
CESTAT BANGLORE**



Issue

(i) Whether the lump sum and periodical patent and technology know-how fee paid by appellant to the foreign company to be included in the transaction value is legal and proper and (ii) Whether the order passed by Commissioner (Appeals) remanding the matter to the adjudicating authority to reconsider the rejection of transaction value is legal and proper.

Decision

The Hon'ble Tribunal held that royalty and technology know-how fees, **not being conditions of sale, should not be included in the transaction value.**

It further asserted that even if the addability of these fees was in question, there was no need to reject the transaction value. Consequently, remanding the matter to redetermine the transaction value was deemed unnecessary, as there were no grounds for rejecting it.

M/s. ABI-SHOWATECH (INDIA) LIMITED
2024 (3) TMI 874
CESTAT CHENNAI



Issue

Classification of Electronic Control Unit (ECU) used in the assembly of Electronic Stability Control System which in turn is used in the Antiskid Braking System (ABS) of a Motor vehicle- whether under CTH 9032 or under CTH 8708

Decision

The Tribunal classified the Electronic Control Unit (ECU) under CTH 8708, as it solely analyzes data from ABS sensors and issues instructions for safe braking, without directly measuring or regulating anything.

Our comments: The Tribunal did not appreciate the fact that the very purpose of ESCS and the ABS is to ensure that the stability of the vehicle is maintained at the desired levels under any driving/ braking conditions and not merely to control the brakes or speed. The ECU in question being the main controller for the ESCS and ABS would squarely meet the requirements of Note 7 (b). This case appears to be fit case for referral to the SC for resolution.

**M/s. CONTINENTAL AUTOMOTIVE BRAKE SYSTEMS INDIA PRIVATE LIMITED
2024 (3) TMI 1145
CESTAT NEW DELHI**



Issue

Need for BIS registration under IS 9873 (Part I): 2012 for balloons imported for decoration purposes.

Decision

Notwithstanding the classification of the balloons as toys under CTH 9503, there is no need for registration under IS 9873 as balloons for decoration ordinarily meant for ornamental purposes are excluded from the purview of IS 9873.

M/s. BUBBLY BALLOONS
2024 (3) TMI 87
CESTAT CHENNAI



Issue

Questioning the authenticity of the CoO in the absence of any involvement of the importer and lack of proper investigation and levy of penalties.

Decision

In the absence of evidence, the authenticity of the documents cannot be doubted. Thus, penalty u/s112(a) and 114AA of the Customs Act cannot be imposed on both the Appellant and its directors and the same was set aside.

M/s. AMGLO RESOURCES PVT. LTD.
2024 (3) TMI 360
CESTAT AHMEDABAD



Issue

a) Addition of freight and insurance charges to the cost of cement carrier ship imported b) addition of cost of balance quantity of bunkers on board the vessel

Decision

Freight and insurance not addable to the cost of the vessel as the vessel, coursing the seas and oceans, does not take on additional insurance merely for the purposes of movement to a destination for registration and the cost of self-propulsion does cannot be added to the value of vessel.

**M/s. K.C. MARITIME INDIA LTD.
2024 (3) TMI 934
CESTAT BANGLORE**



Issue

Liability to duty on raw materials imported by a 100% EOU when the waste generated is in excess of the Standard Input Output Norms (SION).

Decision

No liability to discharge duty on raw materials when the imported raw materials had been used in the production of final products exported in the 100% EOU, even when the waste generate is in excess of the norms.

**M/s. DEEP RECYCLING INDUSTRIES &
ORS. - 2024 (3) TMI 970
CESTAT AHMEDABAD**



Issue

Rejection of the transaction value (TV) of goods (already imported and cleared on payment of duty) by DRI on the ground that the insured value was higher.

Decision

When the TV was accepted based on the test report at the time of import and duty was discharged, the assessment had become final. Without challenging the assessment, rejection of the TV post clearance is not correct, more so when no evidence of payment of cost equal to the insured value was available.

**M/s. SKYPACK COMMODITIES PVT.
LTD. - 2024 (3) TMI 1053
CESTAT BANGLORE**



Issue

Re-determination of declared values for second - hand machinery after the goods cleared and on enhancement of values based on CE's certificate.

Decision

Re-determination of declared values for second-hand machinery post-clearance is not allowed once the initial assessment based on enhanced values, has been finalized. Without challenging this final assessment, re-determination of values is not permitted under CVR 2007.

**M/s. WELCO OVERSEAS PVT. LTD.
2024 (3) TMI 1248
CESTAT CHANDIGARH**



Issue

Availability of refund of the Anti Dumping Duty (ADD) paid without demur under an existing ADD notification which was subsequently held to be invalid by the Supreme Court

Decision

The Mumbai High Court went into details into the aspects of

- a) delays in filing the writ petition
 - b) applicability of the Doctrine of delays and laches and
 - c) feasibility of filing a money claim as a writ petition,
- while dismissing the writ petition on
- a) grounds of delay and
 - b) non-applicability of the subsequent SC decision holding the ADD notification invalid

M/s. SANSAR TEXTURISERS PVT. LTD.

2024 (2) TMI 97

BOMBAY HIGH COURT



Issue

- a) Inclusion of freight and insurance charges to the Aviation Turbine Fuel (ATF) carried in the aircraft reverting to the domestic circuit,
- b) Leviability of Redemption Fine (RF).

Decision

- a) Cost of the freight, transit insurance and the landing charges being ascertainable as NIL, they cannot be included in the value of the ATF.
- b) RF cannot be levied when goods are not available for confiscation and when the goods cannot be returned to the importer.

Reliance was placed on 2018 (4) TMI 785 - CESTAT NEW DELHI] [2019 (4) TMI 2132 -CESTAT NEW DELHI both in Appellant's own cases.

**M/s. INDIAN AIRLINES LTD.
2024 (3) TMI 28
CESTAT NEW DELHI**

Key Connects



P Sridharan, Senior Advisor:
E-Mail: sridharan.p@m2k.co.in
Mob No.: +91 94444 20647



Rahul Jain, Partner:
E-Mail: rahul.jain@m2k.co.in
Mob No.: +91 97908 78922



Kalpesh Jain, Partner:
E-Mail: kalpesh@m2k.co.in
Mob No.: +91 95001 17061

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