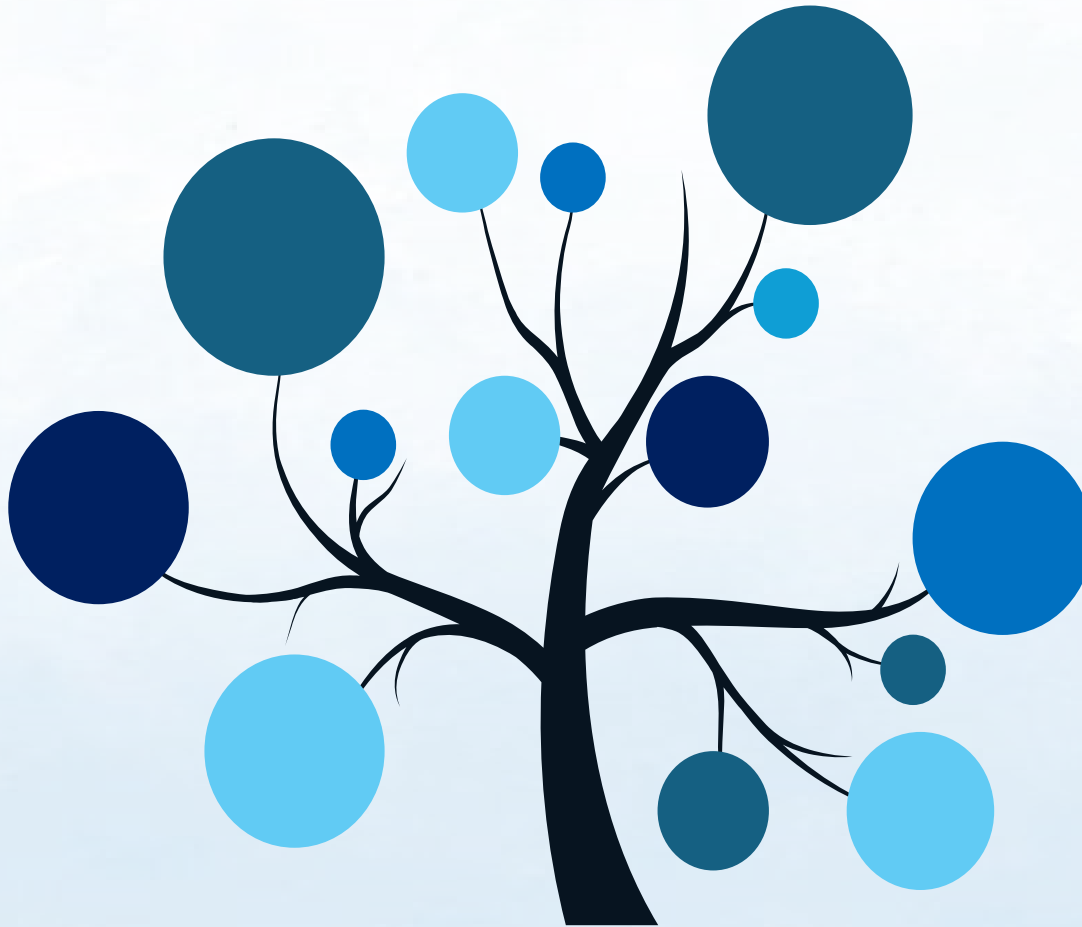


Customs Compendio

Volume 7



Snippets from Mukesh Manish & Kalpesh, Chartered Accountants



Issue

The classification of Menthol scented supari challenges the AAR's ruling as to whether it shall be categorized under CTH 2106 as against Chapter 8

Decision

AAR's ruling classifying Menthol scented supari under CTH 2106 approved placing reliance on the supplementary Note 6 under Chapter 21 and also after distinguishing the Hon'ble SC decision in CRANE BETEL NUT POWDER WORKS VERSUS COMMR. OF CUS. & C. EX., TIRUPATHI [2007 (3)TMI 6 - SUPREME COURT]

**M/s. AK IMPEX AND THE PRINCIPAL COMMISSIONER OF CUSTOMS, TUTICORIN
VERSUS M/S. GANI GRANITES PVT. LTD. - 2024 (4) TMI 85
MADRAS HIGH COURT**



Issue

Adjudication of a Notice issued by DRI in December 2020, the light of the decision of Hon'ble Supreme Court in Canon India (P) [2021 (3) TMI 384 - SUPREME COURT] Ltd on the question of jurisdiction of DRI officers as Proper Officers.

Decision

Hon'ble Mumbai HC directed the adjudication of the SCN, taking into account the law laid down by Hon'ble SC in the Canon India matter on the jurisdiction question- reliance was placed on a similar position taken by the Hon'ble Mumbai HC in the matter of Laxmi Organic Industries Ltd Versus Union of India, through its Secretary, Department of Revenue& Ors. - 2023 (12) TMI 1157 - BOMBAY HIGH COURT

**M/s. IDEAL INTERNATIONAL POWER TOOLS PVT. LTD. AND ZOHER BHOPALWALA,
SHABBIRBHOPALWALA - 2024 (4) TMI 127
BOMBAY HIGH COURT**



Issue

Cancellation of the High Seas Sales (HSS) Agreement, after filing of the bill of entry by the HSS buyer on account of cancellation of HSS agreement- Request for amendment of the bill of entry by the HSS seller denied.

Decision

It is appropriate that the application of the petitioner (HSS seller) for clearance of the goods either by permitting amendment of bill of entry or by filing of a fresh bill of entry as the law may permit, needs to be decided by the concerned designated officer.

M/s. MADHAV VIVITEX PVT. LTD
2024 (4) TMI 251
BOMBAY HIGH COURT



Issue

Time limit for issue of SCN post seizure under Section 110 (2) of the Customs Act, 1962.

Decision

Six months, unless extended by invoking the provision under Section 110 (2) *ibid.* Non-compliance with the time limit – seized goods shall be returned to the importer. Sections 110 and 124 are independent of each other, and under Section 110, even though the seized goods might have to be returned or stand returned, the proceedings survive under Section 124.

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



Issue

Amendment of Bill of entry under Section 149 of the Customs Act, 1962 after clearance for home consumption, in cases where the IGST and interest is paid after clearance for home consumption.

Decision

Amendment to be permitted. Reliance was placed inter-alia on the Hon'ble SC decision in the matter of ITC LIMITED Versus COMMISSIONER OF CENTRAL EXCISE, KOLKATA -IV - 2019 (9) TMI 802 -Supreme Court ; M/s. Sony India Pvt. Ltd. Versus Union of India and another - 2021 (8) TMI 622 – TELANGANA HIGH COURT and the Circular No.16/2023 dated 7th June 2023

M/s. TRAVANCORE COCOTUFT PRIVATE LIMITED
2024 (4) TMI 446
KERALA HIGH COURT



Issue

Importability of used Multi-function printers (MFDs) – whether they are covered under the exclusion for Highly Specialised Equipment (HSE) under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2021 as amended.

Decision

MFDs meeting the specifications prescribed under Clause 8 of the 2021 Order should be regarded as HSEs and hence would not be covered by the Order. No exception for second-hand/used goods. Provisional release permitted . Reliance was placed on the Hon'ble Madras High Court decision in the matters of M/s. Simple Machines v. The Commissioner of Customs and Others vide order dated 23.11.2023 and M/s. Atul Commodities Private Limited. v. Commissioner of Customs (Chennai II) Import, Custom House and Others decided on 18.12.2023.

M/S. ARKA BUSINESS AND M/S. AK IMPORTS & EXPORTS SOLUTIONS
2024 (4) TMI 540
TELANGANA HIGH COURT



Issue

- a) Whether any customs authority will have jurisdiction/authority under the Customs Act to proceed against the property of a third party, namely the wife of a person, who is being investigated?
- b) Whether de hors the Customs Act, there is any provision in law permitting any customs authority to issue such communication?

Decision

Both the questions answered in negative. No provision under the Customs Act, 1962, can be resorted by the Customs officials to attach the property of a third party like the petitioner who is not connected to any recovery under the Customs Act. Even Section 142 of the Customs Act, which deals with the recovery of sums due to the Government, cannot be invoked by the customs authorities to issue the impugned communication against the property of a third party. This action suffers from a clear lack of jurisdiction.

SMT. SUPRIYA CHOKHARA
2024 (4) TMI 541
BOMBAY HIGH COURT



Issue

Amendment of shipping bills after export- Claim for ROSCTL Credit-
Inadvertent marking of 'N' instead of 'Y'.

Decision

Amendment permitted- Reliance was placed on the Hon'ble Madras HC decision in the matter of Paramount Textiles Mills Private Limited Vs The Deputy Director General of Foreign Trade, and others- 2022 (4) TMI 1260 - MADRAS HIGH COURT and the decision of Hon'ble Karnataka HC decision in the matter of M/s. Suretex Prophylactics (India) Pvt. Ltd. Versus Director General Of Foreign Trade, New Delhi, and others- 2022 (4) TMI 1373 - KARNATAKA HIGH COURT

M/S. SILVER CREST CLOTHING PRIVATE LIMITED
2024 (4) TMI 576
KARNATAKA HIGH COURT



Issue

Attending summons before DRI- Section 108 of the Customs Act, 1962-
Presence of an Advocate and permission for Videography.

Decision

No impediment in permitting the Petitioner's advocate to remain present when the Petitioner is summoned for interrogation by DRI. The advocate to remain present at a visible but not audible distance. Videography of the said interrogation also permitted, at the cost of the Petitioner.

Reliance was placed on the Hon'ble Bombay HC decisions in the matter of Ronak Kumar, Jasraj Jain and Chetan Kumar [2022 (2) TMI 470 -BOMBAY HIGH COURT] as well as in Gagan Jot Singh [2024 (3) TMI747 - BOMBAY HIGH COURT]

M/s. BHAVIKA SONI VERSUS UNION OF INDIA
2024 (4) TMI 702
BOMBAY HIGH COURT



Issue

Classification of different categories of "IP Phones" such as (i) IP Audio Phones(ii) IP Audio Conference Phones (iii) Wireless IP Phones (iv) IP Video Phones - IP Audio phones and IP Audio Conference phones under CTI 8517 1810 or not - Wireless IP Phones to be classified under CTI 8517 1210 or not

Decision

Classification was approved as under: (i) 'IP Audio Phones' (ii) 'IP Audio Conference Phones' of various models of 'CISCO' brand would appropriately be classifiable under Customs Tariff Item (CTH) 8517 18 10 and not under CTH 8517 69 90,as claimed by Revenue.
(iii) 'Wireless IP Phones' of 'CISCO' brand would be under CTH 8517 12 90 and not under CTH 8517 69 90, as claimed by Revenue.
GIR 3(a)-specific over general applied to arrive at the conclusion. Reliance was placed on the Hon'ble SC decision in the matter of MOORCO (INDIA) LTD. Versus COLLECTOR OF CUSTOMS, MADRAS - 1994 (9) TMI 68 - Supreme Court.

M/s. INGRAM MICRO INDIA PVT. LTD.
2024 (4) TMI 42
CESTAT MUMBAI



Issue

Classification of Food flavouring materials known as Agitide, to be used along with Ajinomoto- Whether under CTH 3824 as claimed by the importer or under CTH 2106 as claimed by Revenue; eligibility to the preferential duty under Notification 46/2011 Cus: Invocation of extended period and confiscation:

Decision

Classification under CTH 21069060 approved on the ground that the product is known in the trade and among people who use it as food flavouring material.

Hence the classification of the goods is more specific as a food flavouring material than as a miscellaneous chemical product.

Invocation of the extended period and confiscation not approved as claiming a different classification which was adopted even before the introduction of self-assessment cannot be treated as suppression. Further goods cleared for home consumption cannot be treated as imported goods and thus cannot be confiscated.

M/S. AJINOMOTO INDIA PVT. LTD

2024 (4) TMI 46

CESTAT CHENNAI



Issue

Denial of relinquishment of title of part (balance) goods lying in the warehouse before clearance for home consumption, undersection 68 of the Customs Act, 1962

Decision

Relinquishment of title to the goods during the pendency of the proceedings undersection 72(1)(b) of the Act, permissible when it is found that on the date of such relinquishment, no case of any offence committed by the appellant under this Act or any other Act for the time being in force. Issuance of SCN under section 72(1)(b) for warehoused goods cannot stop the time running and available to the owner to relinquish the title before the order for clearance of such goods for home consumption.

M/s. JOHN ENERGY LTD
2024 (4) TMI 338
CESTAT HYDERABAD



Issue

On export of Iron ore fines: a) Can the transaction value between the buyer and seller be modified by the Customs based on the test report of the chemical examiner of CRCL when the price should be finalised as per the test report of CIQ/ China as per the agreement between the buyer and seller? b) Can the US\$ 10 per MT be added as additional consideration for sale in the case?

Decision

No reliance can be placed on the test Report of CRCL when the price is finalised as per the test report of CIQ/ China as per the agreement between the buyer and seller. The addition of USD 10 was also not approved as such an addition is not contemplated under any of the provisions of the Export Valuation Rules.

M/s. THE KUTCH SALT & ALLIED INDUSTRIES LTD
2024 (4) TMI 47
CESTAT HYDERABAD



Issue

Classification of quick lime-Whether under CTH 2522 as claimed by the importer or under CTH 2825 as claimed by Revenue?

Decision

Classification under CTH 2522 is appropriate as the purity has to be determined at the time of import which was less than 98%. Reliance was placed on the rulings of the Hon'ble Tribunal in Commissioner of Central Excise, Hyderabad – III v. Bhadradi Minerals Pvt Ltd [2015 (324) ELT395 (Tri.-Bang.)] and in Jindal Stainless (Hisar) Ltd v. Commissioner of Customs, New Delhi [2020 (8) TMI743 – CESTAT New Delhi] and M/S VIRAJ PROFILESLIMITED VERSUS COMMISSIONER OF CUSTOMS (PREVENTIVE) , MUMBAI [2023 (10) TMI 1260 -CESTAT MUMBAI.

**M/s. MUKAND LIMITED
2024 (4) TMI 81
CESTAT MUMBAI**



Issue

a) Classification of plastic regrind as waste plastics, and b) applicability of restrictions on plastic waste under FTP placing reliance on BIS standards for defining plastic waste.

Decision

Determination whether the imported product was a plastic waste or not on the basis of a Test report of CRCL is incorrect as the proceeding are vitiated by lack of expert ascertainment- Reclassification on the basis of the said Test Report was also not accepted as the onus not discharged. – Order of confiscation and re-export set aside - appeal allowed.

Our comments: This is an important ruling on the role of customs where they are required to perform agency functions as against their regular assessment functions.

**M/s. ANMOL RATAN ENTERPRISES
2024 (4) TMI 79
CESTAT MUMBAI**



Issue

Classification of a kid's education/ entertainment device – described as 'Emotix Miko' – Dispute between CTH 8471 as ADP machine Vs CTH 9503 as an electronic toy.

Decision

Classification under CTH 8471 ordered to remain in the absence of discharge of onus on the part of Revenue- Reliance was placed on the Hon'ble SC decisions in Hindustan Ferodo Ltd v. Collector of Central Excise [1997 (89) ELT 16 (SC)] and HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh [2006 (197) ELT 324 (SC)]

Our comments: This decision could be used to emphasize the ratio in matters where the Revenue failed to establish their case for reclassification, the classification adopted by the importer should remain.

**M/s. CHIDAKASHI TECHNOLOGIES PVT. LTD.
2024 (4) TMI 179
CESTAT MUMBAI**



Issue

Valuations - Whether the expenditure incurred by the appellant towards advertising, marketing and promotion of the goods imported by the appellant under the Agreements with the foreign suppliers is liable to be added to the transaction value of the imported goods

Decision

Not addable in absence of satisfaction of the requirements under Rule 10(1)(e) of the Customs Valuation Rules 2007. Reliance was placed on (a) Commissioner of Customs, Parparganj vs. Adidas India Marketing Pvt. Ltd. [2020(374) E.L.T. 394 (Tri.- Del.)]; and (b) Giorgio Armani India (P) Ltd. vs. Commissioner of Customs, New Delhi [2018 (362)E.L.T. 333 (Tri.- Del.)] as confirmed by the Supreme Court in Commissioner vs. Giorgio Armani India (P) Ltd [2019 (365) E.L.T. A110 (S.C.)];

M/s. RELIANCE BRANDS LUXURY FASHION PRIVATE LTD.

2024 (4) TMI 243

CESTAT NEW DELHI

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