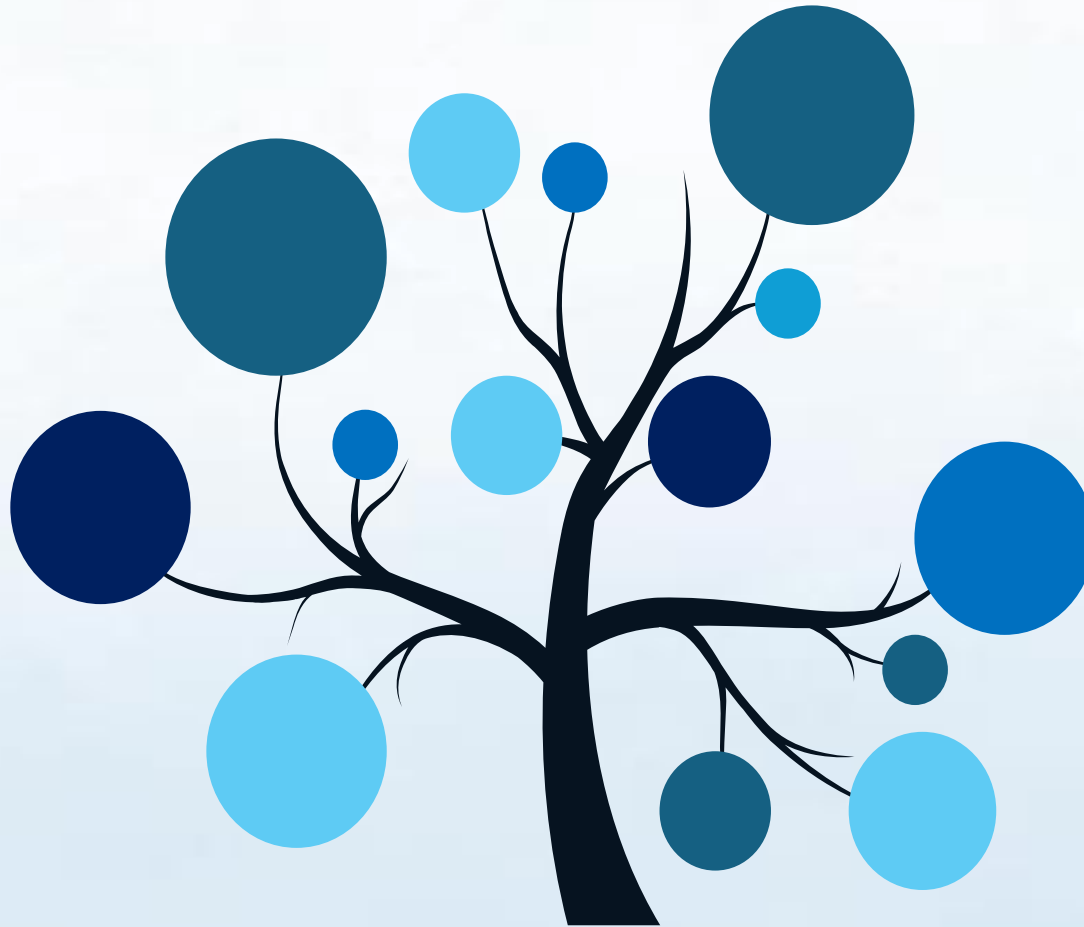


Customs Compendio

Volume 8





Issue

The request to convert a free shipping bill to a drawback shipping bill under Section 149 of Customs Act was denied based on CBEC Circular No. 4/2004-Cus. dated 16/01/2004, which addresses the conversion of shipping bills.

Decision

Amendment should be allowed based on the ground that (a) the rejection was based on grounds not specified in Section 149, (b) a circular cannot override statutory provisions and (c) all the requirements of Section 149 were met. However, in a similar issue where the amendment was sought after a lapse of more than 9 years, the Hon'ble Delhi Tribunal rejected the request for amendment on the following grounds (a) Amendments to shipping bills under Section 149 are at the officer's discretion, not a right of the exporter, (b) Amendments requested after export must be based on documents available at that time of export and (c) Conversion of Shipping Bills from one scheme to another is not an amendment as it changes the entire nature of the documents.

M/S. INDIAN OIL CORPORATION LIMITED
2024 (4) TMI 1098
CESTAT KOLKATA



Issue

- a) Classification of Gold Coins (other than legal tender) imported from Korea - CTH 714 adopted by the importer Vs CTH 7118 proposed by Revenue
- b) import restrictions, if any, applicable to the importer importing the goods &
- c) eligibility to the preferential duty benefit under Notification 152/2009 Cus.

Decision

Decision: All three questions answered in favour of the importer. Reliance was placed on the Hon'ble SC decision in Commissioner of Central Excise, Shillong vs. Wood Craft Products Ltd.[1995 (3) TMI 93 - SUPREME COURT] and also in a later decision in the case of L.M.L Ltd. vs. Commissioner of Customs [2010 (9) TMI 12 - SUPREME COURT] on applicability of HSN ENs.

M/S. GIRIRAJ PROP MART PRIVATE LIMITED
2024 (4) TMI 481
CESTAT NEW DELHI



Issue

**Classification of Rice mill Rubber rollers
- Whether under CTH 4016 or under
CTH 8437**

Decision

**Classifiable under CTH 4016 only-
Reliance was placed on the Hon'ble
Apex Court's decision in KOHINOOR
RUBBER MILLS VERSUS COLLECTOR
OF C. EX., CHANDIGARH [1997 (2)TMI
125 - SUPREME COURT].**

**M/s. VINFLEX PRODUCTS PVT. LTD
2024 (4) TMI 83
CESTAT NEW DELHI**



Issue

**Claims for preferential duty benefits under
the India-ASEAN FTA as per Notification
46/2011 Cus. denied due to suspected
authenticity of the CoO.**

Decision

**Despite an investigation by the DRI, no
confirmation was obtained from
Malaysia regarding the veracity of the
CoO, leading to the order being set aside
and remanded for seeking confirmation
from the Malaysian Government.**

**M/S. KIRAN KOTAK AND CO
2024 (4) TMI 123
CESTAT AHMEDABAD**



Issue

Levy of redemption fine by Commissioner (Appeals) on goods confiscated and sought to be abandoned by the importer

Decision

No Redemption fine can be levied when the goods are confiscated and the request for abandonment has been submitted by the importer. The Appellant cannot be worse off by filing the appeal

**M/s. GENCOR PACIFIC AUTO
ENGINEERING PVT. LTD
2024 (4) TMI 182
CESTAT CHENNAI**



Issue

Applicability of unjust enrichment principles and grant of interest on duty deposited during investigation

Decision

As the amount collected during investigation is only a deposit and not a duty collected under any provisions, unjust enrichment principles will not apply and therefore Interest is payable at 6% per annum from the date of deposit till the date of refund.

**M/S. BAGADIYA BROTHERS PVT LTD
2024 (4) TMI 381
CESTAT HYDERABAD**



Issue

IGST exemption availed on imports made against Advance Authorisation-demand for IGST invoking the extended period.

Decision

Extended period cannot be invoked in revenue neutral situation, when the IGST was available as input tax credit, had the same been paid by the appellant.

**M/s. HIMADRI SPECIALITY CHEMICAL LTD - 2024 (4) TMI 383
CESTAT HYDERABAD**



Issue

Import of Benz cars - Non-availability of a Type Approval as required under Import Licensing Note 2 under Chapter 87 of ITC (HS)

Decision

When the vehicles had been registered with the competent authority in India under the Motor Vehicles Act, the absence of a Type Approval certificate can only be regarded as a procedural requirement- Confiscation set aside.

**M/s. MANN TOURIST TRANSPORT SERVICE PVT. LTD.-2024 (4) TMI 377
CESTAT NEW DELHI**



Issue

Failure to re-export returned goods in terms of Notification 158/95 Cus. Availability of an alternate Notification 94/96 Cus though not claimed at the time of import.

Decision

Alternate benefit under Notification 94/96 Cus can be claimed even though it was not initially claimed at the time of import by the Importer

M/s. FARIDA SHOES PVT. LTD
2024 (4) TMI 482
CESTAT CHENNAI



Issue

Retrospective applicability of an import licence issued post import - when the DGFT has made a specific reference that the licence will be applicable for goods already imported.

Decision

Licence will cover goods already imported, when the DGFT has made a specific reference in this regard. Import licence, restrictions etc, is in the exclusive remit of DGFT and Customs authorities cannot override or sit in judgment of this remit.

M/s. DEE PEARLS (INDIA) LLP
2024 (4) TMI 638
CESTAT MUMBAI



Issue

Classification of Aluminium shelves specifically designed for growing mushroom- CTH 8436 as agriculture machinery Vs CTH 7610 as generic Aluminium structures

Decision

As the imported goods are specifically meant for use for growing Mushrooms CTH 8436 will be more specific. GIR 3(a) applied- Classification by the Chinese supplier under CTH 7610 notwithstanding.

**M/s. WELKIN FOODS
2024 (4) TMI 830
CESTAT NEW DELHI**



Issue

Amendment of bills of entry under Section 149 of the Customs Act, 1962, seeking reclassification resulting in a duty refund

Decision

Order denying amendment set aside with the direction to the lower authorities to consider amendment under Section 149 ibid.

**M/s. VALEO INDIA PVT. LTD.
2024 (4) TMI 484
CESTAT CHENNAI**



Issue

Allegation of obtaining DEPB scrips by fraudulently enhancing the values of CD ROMs exported - demand of customs duty from the transferees

Decision

Since the overvaluation case for an identical product was previously set aside for one exporter, the case of overvaluation fails, Further when the DEPB scrips had not been cancelled by DGFT, no duty liability arises, as the importers have used valid DEPB scrips

**M/s. ADANI EXPORTS LIMITED
2024 (4) TMI 874
CESTAT AHMEDABAD**



Issue

Remission of duty on goods destroyed by fire inside a Special Economic Zone

Decision

Remission available in the light of the Hon'ble tribunal decision in the case of ONGC Petro Additions Ltd. Vs. CC- 2023 (12) TMI 530, holding the fact that assessments for goods imported into SEZ are done under the provisions of the CA, 1962, the remission under Section 23 ibid will also be available

**M/s. PI INDUSTRIES LIMITED
2024 (4) TMI 792
CESTAT AHMEDABAD**



Issue

Revocation of CHA Licence for export of SCOMET covered goods without an Authorisation- Violation of Regulations 11(d), 11(e) and 11 (n) of CBLR, 2013

Decision

Order revoking CHA Licence set aside on the grounds a) CHA is not expected to be an expert in interpreting the SCOMET entries when Customs could not do so b) no violation of regulation 11(d) 11) e) and 11(n) ibid.

**M/s. . SUN IMPEX CLEARING &
SHIPPING AGENCY - 2024 (4) TMI
1068 - CESTAT NEW DELHI**



Issue

Levy of penalty under Sections 112 and 114-whether mandatory or discretionary- Misclassification of unflavoured boiled supari

Decision

Levy of penalty under Section 112 and 114 is discretionary and not mandatory- As the expression used is “shall be liable to penalty “and not shall impose penalty. Liability depends on how serious the actions by the importer were.

**M/s. N&N TRADERS
2024 (4) TMI 918
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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