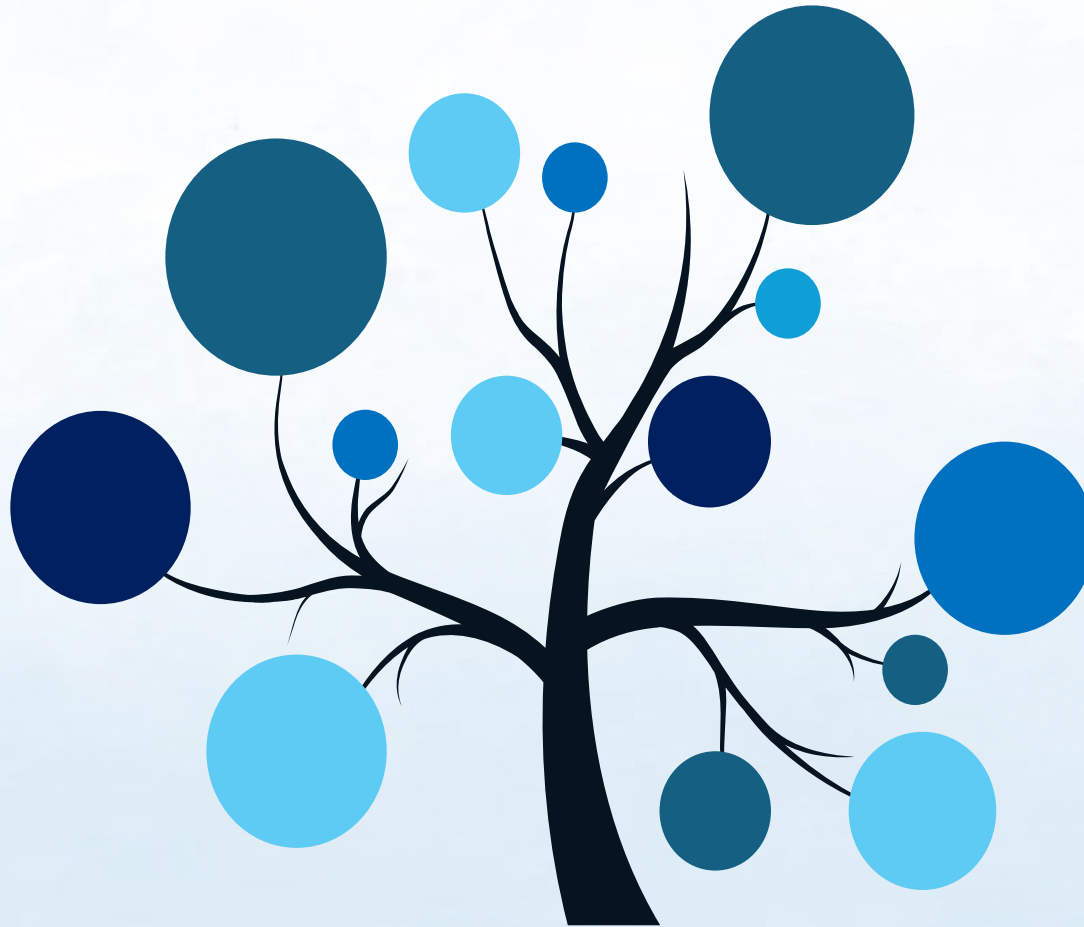


Customs Compendio

Volume 9



Snippets from Mukesh Manish & Kalpesh, Chartered Accountants



Issue

- a) Whether penalty levied under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 will be covered under the waiver granted under rehabilitation scheme of BIFR?
- b) Whether penalty can be levied under Section 11(2) of FT(DR) Act 1992 for non-fulfilment of the Export Obligation on capital goods imported under a concessional rate of duty?

Decision

- a) When the waiver granted under the rehabilitation scheme covered only the Customs duty and interest thereon, the penalty levied under the Act cannot be covered under the said scheme.
- b) Since there was no allegation against the appellant or its predecessor of violating the export and import policy, Section 11(2) should not have been invoked, and thus, the penalty demand under this section is unwarranted.

M/s EMBIO LIMITED
2024 (5) TMI 684
SUPREME COURT



Issue

- i) Whether there is a liability to pay customs duty when the confiscated goods are redeemed after payment of fine under Section 125 of the Customs Act?
- ii) Whether the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act?
- iii) What is the true and correct ratio of the SC decision in Jagdish Cancer case?

Decision

There is a liability to pay Customs duty when the confiscated goods are redeemed after payment of fine under section 125. Once Section 28 applies for determination of duty, interest on delayed payment of duty under Section 28AB follows. **Our comments:** This decision contradicts the Jagdish Cancer case, where the Court had held that Section 28(1) doesn't apply when liability arises under Section 125(2).



Issue

Legality of Not Extending Anti-dumping duty - Power of Central Government to accept or not to accept the recommendations in terms of Section 9A of the Act read with Rule 18 of the Rules

Decision

Placing reliance on the Division Bench decision of the Hon'ble Gujarat High Court in the matter of Alembic Ltd vs. Union of India reported in (2013) (291) ELT 327 (Guj), the Court held that it is open to the Central Government not to accept the recommendations of the Designated Authority which are not binding on the Central Government. Holding so, the Hon'ble High Court ruled that no interference can be made while exercising writ jurisdiction as it would be in the domain of the Central Government to decide as to whether the anti-dumping duty should be continued in the public interest taking into consideration of all the various factors.

**M/s MESSRS BOROSIL RENEWABLES LTD. & ANR.
2024 (5) TMI 287
HIGH COURT - GUJARAT**



Issue

Validity of the action of Govt of India in rescinding an ADD notification pertaining to levy of ADD on Purified Terephthalic Acid without conducting the sunset review by the Designated Authority as contemplated under law.

Decision

Rescission of the ADD notification by Government of India without the recommendations of the Designated Authority as contemplated under the law is not valid. The Notification No. 3/2020-Customs (ADD) dated February 2, 2020, rescinding the anti-dumping duty on subject goods was set aside. Reliance was placed on the Hon'ble Gujarat HC decision in the matter of Real strips Limited and others [2022 (9) TMI 1171 - GUJARAT HIGH COURT].

**M/s RELIANCE INDUSTRIES LIMITED AND ORS.
2024 (5) TMI 383
HIGH COURT - GUJARAT**



Issue

Validity of a Central Board of Indirect Taxes and Customs [CBIC] Instruction dated 09 July 2022 placing the licensing authorities (customs) under a clear mandate to proceed on the basis that generation of electricity as a subject per se falls outside the ambit of the MOOWR Regulations and the vires of the impugned Instruction under Section 151A of the Act

Decision

Instructions set aside as being ultra-vires of section 151A ibid. It was also held that Section 61 and 65 ibid cannot be read as the embodiment of an intent to place a restriction on the type of goods that may be imported and used in the course of manufacture. The arguments on purposive interpretation and level playing field rejected. **Our Comments:** In order to overcome the hurdle placed by the Hon'ble Gujarat HC, now through the Finance Act, 2024, a proviso has been introduced to Section 65 (1) of the Customs Act, 1962, enabling Govt of India to specify the manufacturing processes and other operations in relation to a class of goods that shall not be permitted in a warehouse.

M/s ACME HEERGARH POWERTECH PRIVATE LIMITED
2024 (5) TMI 480
HIGH COURT - DELHI



Issue

Jurisdiction of the Commissioner of Customs(Preventive)/ Directorate of Revenue Intelligence(DRI) to issue the show cause notices under Section 28 of the Customs Act, 1962- Remand orders of CESTAT on the question of jurisdiction after the Supreme Court delivers the decision in Civil Appeal preferred against the decision of this court in Mangali Impex Ltd vs Union Of India And Ors:2016 (335) ELT 605 (DEL) questioned by Revenue.

Decision

CESTAT directed to decide the jurisdictional question without being influenced by the Delhi High Court's decision in the Mangali Impex case, which has been stayed by the Supreme Court. **Our comments:** Pending Canon Review decision will affect the Mangali Impex case also, Tribunals have been remanding these matters to the lower authorities to await the SC's final ruling in the Canon Review.

**M/s BALAJI EXPORTS, SHRI VINOD POPLI, PROP M/S. VENUSARTS AND WONDER
TRADE LINKS. - 2024 (5) TMI 554
HIGH COURT - DELHI**



Issue

Status of the Customs duty demand pertaining to the period prior to the approval of Resolution Plan, when the claim for the demand was not lodged in the capacity of the Operational Creditor before the Resolution Professional before the appointed date.

Decision

The appeals filed by Revenue were disposed of as abated without answering the question of law, in the light of the ratio laid down in the case of Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction 2021 (4) TMI 613 - SUPREME COURT, and a decision by the same High Court in R/Tax Appeal No.32 of 2019.

**M/s GENERAL FOODS LTD.
2024 (5) TMI 806
HIGH COURT - GUJARAT**



Issue

Import restriction imposed on Non-Basmati white rice - Denial of transitional arrangement under Para 1.05 of FTP

Decision

Testing the impugned notification on the anvil of the principle of legitimate expectation, vis-à-vis Article 14 of the Constitution, no reasons were forthcoming for denial of the benefit of the transitional arrangements. It was therefore, held and declared, that the impugned notification, dated 20/07/2023, insofar as it denied the benefit of the transitional arrangement as contained in para -1.05 of the FTP 2023, was bad-in-law and the benefit of these transitional arrangement would be available to the petitioners, in case the requirements, as indicated in clause (b) therein are complied by the petitioners

M/s SHRIRAM FOOD INDUSTRY LTD., AND OTHERS
2024 (5) TMI 835
HIGH COURT - BOMBAY



Issue

Liability to face prosecution under Section 174 and 175 of IPC for an offence under the Customs Act, 1962- Non-obedience to summons issued under Section 108 *ibid*.

Decision

Prosecution under Section 174 and 175 of IPC not applicable in the light of Section 117 of the Customs Act, 1962. A special law provision overrides a general law provision. In the case of contravention of the provisions of Customs Act, 1962, special procedure is prescribed under Section 117 of the Act itself. In view of Section 4 & 5 of the Code of Criminal Procedure, the Customs Act, 1962 being a special law, the offences under Customs Act, 1962 are to be dealt with under the procedure laid down therein and not under the Indian Penal Code.

M/s RAKESH KUMAR GOYAL
2024 (5) TMI 945
PUNJAB AND HARYANA HIGH COURT



Issue

Whether duty-free shops at an international airport are deemed to be outside the territory of India and whether the commission of offences punishable u/s 36 (1) the Legal Metrology Act, 2009.

Decision

A duty-free shop at an international airport is beyond/outside the custom frontiers of India. Accordingly, the proceedings in this case under the LM Act 2009, being not in accordance with law and thus an abuse of the process of Court/law, is liable to be quashed. Reliance was placed on the Hon'ble SC decision in the case of Hotel Ashoka (Indian Tour. Dev. Cor. Ltd.) vs Assistant Commissioner of Commercial Taxes and Ors. [2012 (2) TMI 62 - SUPREME COURT.

M/s FLEMINGO DUTY FREE SHOP PVT. LTD. & ORS.
2024 (5) TMI 1008
HIGH COURT - CALCUTTA



Issue

Import of Aluminium scrap called Thorn- a) confiscation under Section 111(m) of the Customs Act, 1962 on account of incorrect classification and declaration of a lower value. b) absolute confiscation in the absence of a licence for import

Decision

Confiscation under Section 111(m) ibid not justified for an incorrect classification and declaration of the transaction value. The Tribunal held that, simply because the officer has changed the classification and the valuation, the goods do not become liable to confiscation under section 111(m) because the goods did correspond to the declarations and only the classification and the valuation which are matters of opinion were changed by the officer. Absolute confiscation also set aside and goods allowed to be redeemed on payment of redemption fine, even after holding that the goods are prohibited goods under the Customs Act, in the absence of a licence for importing restricted goods, the goods could still be allowed to be redeemed under Section 125 ibid.

M/s RAJ METALS & ALLOYS AND SHRI MAHAVEER JAMNALALJI JAIN
2024 (5) TMI 18
CESTAT NEW DELHI



Issue

Letter from the Assistant Commissioner conveying the Administrative Commissioner's decision to reject the request for amendment of shipping bills under Section 149 of the Customs Act, 1962—Determining the Appropriate Appellate Authority.

Decision

Since, the Administrative Commissioner has communicated the view through the Assistant Commissioner, regarding non-entertainment of the application for amendment of the Shipping Bills, the order or decision passed by him cannot be appealed against before the Commissioner (Appeals) in terms of Section 128 *ibid*.

**M/s SIGMA EXPORTS
2024 (5) TMI 20
CESTAT MUMBAI**



Issue

Eligibility for interest on pre-deposits made before the statutory provision in Section 129EE, effective from 12.08.2014, which allows for payment of interest on refunded pre-deposits.

Decision

Interest at 12% payable on the pre-deposits made prior to the introduction of Sec 129EE placing reliance on the decision of Hon'ble SC in ITC Limited 2004(12) TMI 90 and Hon'ble HC decision in Madura Coats Private Limited Commissioner of Central Excise, Kolkata – IV 2012 (285) ELT 188 (Cal.)

**M/s RAJENDRA KUMAR JAIN
2024 (5) TMI 743
HIGH COURT - CALCUTTA**



Issue

Monetary limit for filing appeal before the High Court - whether duty and penalty cumulatively need to be taken into account.

Decision

In cases involving duty, fine, penalty and interest, the decisive element would only be duty. However, in cases where duty is not an issue and only fine and penalty are in issue then they would need to be cumulatively reckoned for determining the applicability of threshold limit.

**M/s LINEAR TECHNOLOGIES INDIA
PVT. LTD. - 2024 (5) TMI 861
HIGH COURT - DELHI**



Issue

Seizure of gold - Invocation Section 123 of the Customs Act, 1962 on the reasonable belief that the goods are of foreign origin-What constates a reasonable belief for purposes of Section 123 ibid

Decision

Reasonable belief must be in existence at the time of seizure. In the absence of any evidence on the existence of reasonable belief, Section 123 ibid cannot be invoked. Confiscation and penalties set aside

M/s SHRI R.K. SWAMI SINGH
2024 (5) TMI 19
CESTAT KOLKATA



Issue

Payment of Duty and 25% penalty under Section 28(5)-Applicability of Clause 10 of the General Clauses Act, 1897 for reckoning intervening holidays.

Decision

Reduced penalty under Section 28(5) ibid available as the act of paying the duty and penalty on the next day after the intervening holidays will be covered under Clause 10 of the General Clauses Act 1897. – Enhance penalty set aside.

M/s HONDA CARS INDIA LIMITED
2024 (5) TMI 79
CESTAT NEW DELHI

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