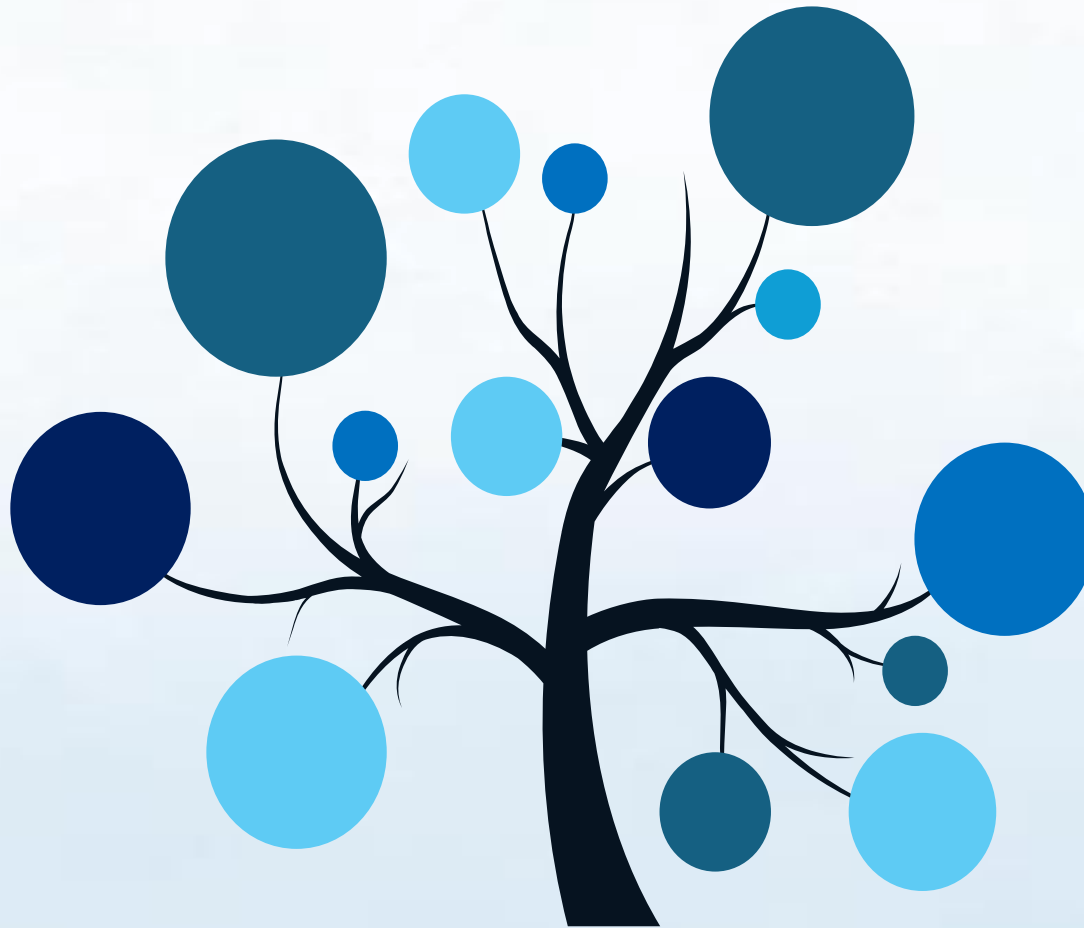


Customs Compendio

Volume 10



Snippets from Mukesh Manish & Kalpesh, Chartered Accountants



Issue

Classification of accordion springs- Whether these springs could be regarded as leaf springs used in automobiles and classified under 732010?

Decision

Accordion springs are not leaf springs and therefore merit classification under the residuary Tariff Item 7320 9090 and appeal by the importer dismissed. The reliance placed by the importer on the expert opinion rejected holding that, “An expert can give his opinion on the nature of the goods but he cannot classify the goods. If he suggests any classification, that has to be ignored because neither does the expert have the authority to decide the classification nor his opinion appealable”.

M/s EXEDY INDIA LTD
2024 (5) TMI 21
CESTAT NEW DELHI



Issue

Redetermination of declared values on the basis of NIDB data without reference to factors such as place of import, the foreign supplier, quantity of the goods, nature of the goods imported etc.

Decision

Redetermination of declared values on the basis of NIDB data alone without recourse to factors such as place of import, foreign supplier, quantity of the goods, nature of the goods imported etc. is not correct. These details are to be discussed by the adjudicating authority as well as the Commissioner (Appeals) to hold that there are sufficient grounds to reject the transaction value and for enhancing the value of the goods. In the absence of such discussions the redetermination of declared values cannot be sustained.

**M/s OLIVA CARE
2024 (5) TMI 142
CESTAT CHENNAI**



Issue

**Classification of Nickel Chromium Austenitic Stainless Steel-
Determination of a classification in the Order-in-original different from
the classification proposed in the SCN- Invocation of extended period in
disputes pertaining to classification**

Decision

**It is well settled that the Order cannot travel beyond the SCN and in
matters of classification, if Revenue cannot establish their case for
classification, the classification adopted by the Noticee must prevail even
if it is not correct. Reliance was placed on few Tribunal decision such as
Sedna Impex India Pvt Ltd. 2017 (347) ELT 317 (Tri. Chennai) and Maruti
Fabrics Impex 2016 (343) ELT 963 (Tri.).**

**M/s SHAH FOILS LTD., SHRI KARTIK RAMESH SHAH, SUNCITY SHEETS PVT LTD,
MUKESHAGARWAL - 2024 (5) TMI 336
CESTAT AHMEDABAD**



Issue

Permission to re-export warehoused goods after the expiry of the permitted warehousing period- levy of redemption fine (RF) and penalty – especially during the COVID-19 period

Decision

In the absence of any allegations of fraud or wilful omission, the re-export should be allowed without any RF/ Penalty. CBEC Circular No 3/2003 dated 14.01.2003 relied upon. Hon'ble SC decision in Siemens Ltd Vs Collector of Customs [1999(113)ELT 776 (SC) and Tribunal decisions in II. Essar Oil Ltd, Jamnagar Vs Commissioner of Customs, Rajkot [2005-TIOL-35-CESTAT-MUM] and Skylark Office Machines Vs CC, Chennai [2020 (374) ELT 99 (Tri-Che)] also relied upon in addition to the Hon'ble SC decision on extension limitation during the COVID 19 period.

M/s VELANKANI INFORMATION SYSTEMS PRIVATE LIMITED
2024 (5) TMI 337
CESTAT BANGALORE



Issue

Imposing anti-dumping duties while questioning the country of origin declared in the Certificate of Origin under the India-Malaysian FTA, without following the procedures outlined in the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Republic of India and Malaysia) Rules, 2011

Decision

Rejection of the CoO without complying the provisions of Rule 9 of Custom Tariff (Determination of Origin of Goods under the Preferential Trade agreement between the Government of Republic of India and Malaysia) Rules, 2011 the certificate of origin issued by Malaysia Government cannot be disputed. Accordingly, the entire proceeding is vitiated. Reliance was placed on Alfakrina Exports [2023 (9) TMI 86 - CESTAT AHMEDABAD].

M/s JAI GOVERDHAN ENTERPRISE
2024 (5) TMI 476
CESTAT AHMEDABAD



Issue

- (i) Whether the declared MRP for laptops could be redetermined by Revenue on the ground that the MRP declared was incorrect and lower than the actual MRP collected from the buyers?
- (ii) Invocation of the extended period when the Revenue commenced the investigations four years before issue of the SCN and all the information was available with Revenue collected during the investigation?
- (iii) Whether interest and penalty could be demanded in relation to a demand of CVD leviable under Section 3 (1) of the CTA 1975?

Decision

Answered in favour of the importers in all the three issues. Placing reliance on ABB Ltd. Vs Commissioner of Customs, Bangalore – 2011 (272) ELT 706(Tri.-Bang.), CCE v. Essel Propack Ltd., [2015 (323) E.L.T. 248 (S.C.)] and Mahindra & Mahindra Ltd. v. Union of India - 2023 (8) TMI 135-SC

M/s ACER INDIA (PVT.) LTD.
2024 (5) TMI 478
CESTAT CHENNAI



Issue

Eligibility to the concessional rate of BCD to High Density Poly ethylene (HDPE) containing a miniscule amounts of other chemicals such as Hexane.

Decision

Despite the presence of other chemicals such as Hexane in minute quantities the product contained nearly 98% Ethylene and therefore the product should be regarded as HDPE and the concessional rate of BCD applicable to HDPE is available. Reliance was placed on a catena of Tribunal decisions including 2023 (4) TMI 928 - CESTAT AHMEDABAD - C.C. -Kandla vs. PSL Limited 2013 (8) TMI 851 CESTAT AHMEDABAD - Ratnamani Metal & Tubes Limited vs. CC Kandla.

**M/s TIME TECHNOPLAST LTD
2024 (5) TMI 855
CESTAT AHMEDABAD**



Issue

Can reliance be placed on contemporaneous values for exported iron ore fines, when the Adjudicating authority has not rejected the transaction value and has in fact found that there was no documentary evidence for incorrect declaration of values?

Decision

Reference to contemporaneous values is not justified when the Adjudicating Authority has not rejected the transaction value and in fact has taken the view that it has correctly reflected as per the documentary evidence placed. The Department was not agitated by the findings of the Adjudicating Authority and no further Appeal was filed by the Revenue. Hence the issue of transaction value being correct has reached finality.

**M/s JAI BALAJI JYOTI STEELS LTD.
2024 (5) TMI 818
CESTAT HYDERABAD**



Issue

Whether the imported insulated boxes designed for carrying vaccines and blood should be classified under Chapter Tariff Heading 39231030 (insulated ware) or under Heading 9018 (instruments and appliances used in medical, surgical, dental, or veterinary sciences)

Decision

Imported insulated boxes designed for carrying vaccines and blood should be classifiable under CTH 9018 and not under CTH 3923 as plastic containers. Reliance was placed on the Tribunal decision in the matter of Becton Dickinson 1998 (6) TMI 162 - CEGAT, MADRAS

**M/s THE DY DIRECTOR ANIMAL HUSBANDRY
2024 (5) TMI 903
CESTAT AHMEDABAD**



Issue

Classification of Clear Float Glass- whether under CTH 70051090 or under CTH 70052990 – SCN issued consequent to a Customs Revenue Audit (CRA) objection.

Decision

Classifiable under CTH 70051090 on the basis of the satisfaction of the requirement under Note 2 (c) to Chapter 70- Further reliance was placed on a) the fact that Ministry has not accepted the CRA objection b) a catena of Tribunal decisions including appellant's own case on the very same issue, Tribunal at Calcutta vide their Final Order No. 77460-77462/2023 reported in [2023 (11) TMI 485 CESTAT and c) invocation of the extended period was also rejected as the provisional assessments in respect of 61 Bills of enties had undergone the rigours of provisional assessment and subsequent finalization for the very same assessee accepting the classification under CTH 70051090.

M/s. BAGRECHA ENTERPRISES LTD.

2024 (5) TMI 943

CESTAT CHENNAI



Issue

Classification of I-MAS POs-Nickel Compound (Compound of Nickel Hydroxide)" -Misdeclaration of goods - Demand - Confiscation - interest - Penalty - benefits of Customs Notification No. 50/2017.

Decision

As the product is a mixture of Nickel hydroxide, Cobalt Hydroxide and Graphite, and these substances are added to Nickel hydroxide make the imported product more suitable for Nickel Cadmium cells and the product imported is made more suitable for Nickel Cadmium battery manufacturing. Classification under CTH 28254000 not appropriate. Classification under CTH 38249900 is appropriate. Consequently, the concession under Notification 50/2017 Cus not available. As regards confiscation, fine and penalty applying the ratio decided in the Hon'ble SC's decision of Northern Plastic Ltd. Vs. Collector of Customs & Central Excise [1998 (7) TMI 91 - SUPREME COURT], imposition of fine and penalty was not justified and so ordered to be set aside.

**M/s SAFT INDIA PVT. LTD.
2024 (5) TMI 1156
CESTAT CHENNAI**



Issue

Eligibility to an exemption which was not claimed at the time of import. Claim to the exemption under ISLFTA submitted with documentary evidence seeking amendment under Section 149 of the customs Act, 1962

Decision

Exemption can be claimed notwithstanding the fact that it was not claimed at the time of import-Reliance was placed on the decision of Hon'ble High Court of Bombay in Hero Cycles vs. UOI: 2009 (240) ELT 490(Bom.) which was upheld by the Hon'ble Supreme Court as reported at 2010 (252) ELT A103 (SC).

**M/s. KAIRALI GRANITES.
2024 (5) TMI 1157
CESTAT BANGALORE**



Issue

Relevancy of the statements recorded under Section 108 of the Customs Act 1962. Applicability of the requirements under Section 138B ibid to place reliance on the statements made.

Decision

Unless the statements have been put through the process prescribed under section 138B, they are not relevant at all to prove the case. Holding thus the Tribunal set aside the Order-in original passed relying on the statements obtained under Section 108 ibid.

**M/s SHRI MANISH SINGHAL
2024 (5) TMI 22
CESTAT NEW DELHI**



Issue

Denial of Preferential duty benefit under India-ASEAN FTA merely on the allegation of value addition norms were not satisfied without carrying out the retroactive checks with the exporting country

Decision

Denial of benefit without carrying out the retroactive checks not justified. Reliance was placed on the Tribunal decision on identical questions dealt with in Shriazee Traders [2024 (1) TMI 781 - CESTAT AHMEDABAD] and M/s. BDB Exports Pvt. Ltd Vs. CC[2016 (9) TMI 1087 - CESTAT KOLKATA].

**M/s GOLDSMITH FOOD PRODUCTS
2024 (5) TMI 144
CESTAT AHMEDABAD**



Issue

Value of the ship imported for breaking up- acceptability of a lower value on account of the difference between the MOA based on the LDT and the final value based on the revised lower LDT.

Decision

Lower values declared acceptable in the light of the ratio laid down by Hon'ble SC in the case of M/s Chaudhary Ship Breakers 2010 (259) ELT 161 (SC) and the Tribunal decision in Hussain Sheth Ispat Versus Commissioner of Customs, Jamnagar (Prev.) - 2023 (6) TMI 1200 - CESTAT AHMEDABAD.

**M/s PRIYANK SHIP BREAKING CO.
PVT LTD - 2024 (5) TMI 209
CESTAT AHMEDABAD**



Issue

Interest for delay in sanction of refund of duty when the enhanced duty collected on revision of transaction value, set aside in appeal.

Decision

Interest payable from the day one till the actual date of refund at 12% as the amount collected can not be regarded as either duty or pre-deposit. Reliance was placed on the Hon'ble SC decision in the matter of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I 2006 (1) TMI 55 -SUPREME COURT (331) E.L.T. 477 Tri. Mum.

**M/s SARASWATI KNITWEAR PVT.
LTD. - 2024 (5) TMI 530
CESTAT NEW DELHI**



Issue

whether a Certificate of Origin, which has been issued by a competent authority and validated by the issuing authority, is valid for claiming benefits under Notification 99/2011, which pertains to the SAFTA.

Decision

If the Revenue does not claim that the Certificate of Origin or the verification report from the Deputy Director of EPB, Bangladesh is false or incorrect, then the certificate and report is valid. This conclusion was supported by several High Court and Tribunal decisions.

**M/s KANPUR EDIBLES PRIVATE
LIMITED - 2024 (5) TMI 576
CESTAT KOLKATA**



Issue

Whether a certificate from a CA is sufficient to prove that the burden of SAD has not been passed on to others, and thus, whether a refund of SAD can be granted without violating the principle of unjust enrichment under Notification No. 102 of 2007 Customs.

Decision

CA certificate is sufficient to prove that the SAD burden was not passed on to others, thus validating the refund claim. This decision aligns with CBEC Circular No. 16/2008-Cus and is supported by the Supreme Court's ruling in Commissioner of Central Excise, Madras v. Addison & Company Ltd.

**M/s AADYA OVERSEAS LTD.
2024 (5) TMI 577
CESTAT ALLAHABAD**



Issue

Whether adjudication by an officer senior to the Proper Officer (PO) automatically extends the time limit under Section 28(9) of the Customs Act.

Decision

No. The proviso to Sec 28(9) clearly stipulates that in case adjudication is not done within the time stipulated, an Officer senior in rank to the PO must grant extension in such cases. Even if an Officer senior to the PO adjudicates the case, a formal extension must be obtained as mandated in Sec28(9). Impugned Order set aside on this ground alone.

**M/s ENTERPRISE INTERNATIONAL
LIMITED - 2024 (5) TMI 683
CESTAT KOLKATA**



Issue

Date of effect of the Notification 05/2012-Cus (safeguard) dated 20.12.2012 but the same undisputedly published in the Official Gazette on 24.02.2013.

Decision

The Notification no 05/2012-Cus (safeguard) dated 20.12.2012 imposing safeguard duty will be effective only from the date of publication on 24.2.213 and not 20.12.2012. Reliance was placed on a catena of court decisions including the Hon'ble SC decision in the matter of UOI vs G S Chatha Rice Mills 2020 (374) ELT 289 (SC)

**M/s PMC PROJECTS IP LTD AND VELJI
P SONS - 2024 (5) TMI 794
CESTAT AHMEDABAD**



Issue

Classification - Applicability of sub-heading Notes for determining the classification under the headings.

Decision

For choosing the headings, Chapter note is relevant. Once a heading is chosen it is only for choosing the sub-heads, sub-heading Notes will be relevant. The sub-heading notes will not be relevant for choosing the headings.

M/s UNIWORTH ENTERPRISES LLP
2024 (5) TMI 631
CESTAT AHMEDABAD



Issue

Liability of SWS levy, when the BCD is debited to a duty credit scrip such as a MEIS scrip under Notification 24/2015 Cus.

Decision

SWS levy is not attracted as the BCD payable is Nil, notwithstanding the fact that the said BCD is debited to duty credit scrip such as MEIS scrip. Reliance was placed on the Hon'ble HC decision in the matter of La Tim Metal & Industries Ltd. [2022 (11) TMI 1099 – BOMBAY HIGH COURT]

M/s DALMIA CEMENT (BHARAT) LTD.
2024 (5) TMI 632
CESTAT HYDERABAD

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