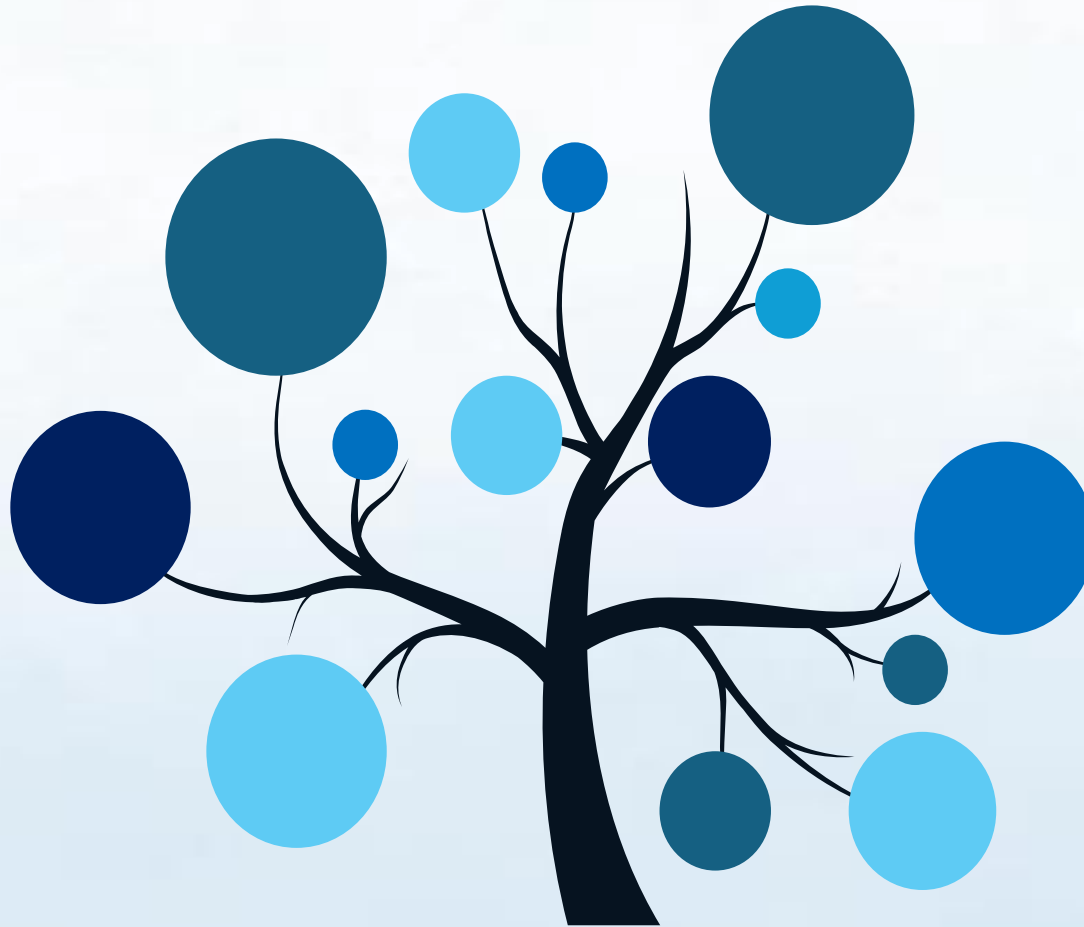


Customs Compendio

Volume 11





Issue

- a) Liability to pay SWS - Whether a notification, only by virtue of having been issued under Section 25(1) of the Customs Act, can be understood as resulting in providing exemption from levy of customs duty?
- b) Whether a notification containing a reference only to Section 25(1) of the Customs Act can be understood as granting exemption to other levies such as Education Cess, Secondary and Higher Education Cess, SWS, etc.?
- c) What is the effect of debit of duty scrips? viz., whether it is a mode of payment of duty (or) it is merely procedural and an administrative exercise?
- d) Whether forming part of the Consolidated Fund of India is a sine qua non, for a levy to operate /exist?

Decision

- a) A Notification, merely by virtue of having been issued under Section 25(1) of the Customs Act, cannot be understood as granting exemption from levy of Customs Duty, instead, one must enquire and find the substance of the notification.
- b) The subject notifications viz., Notification Nos.24 and 25 of 2015 cannot be understood as granting exemption from levy of SWS, in as much as, the notifications only refer to Section 25(1) and bear no reference to Section 110 of the Finance Act under which SWS is levied.
- c) The effect of debiting of duty scrips is not administrative, but is, a mode of payment of duty and thus, the argument that there is neither levy nor collection of customs duty is untenable.
- d) The fact that duty does not form part of Consolidated Fund of India does not have any bearing on determining the scope and nature of an exemption notification nor would have relevance in determining as to whether there was any levy/ collection of duty. In their Appellate jurisdiction, the Division Bench of Hon'ble Madras High Court has confirmed the Writ Order in the Gemini Edibles in all aspects.



Issue

Liability of a former director of company for penalty as per Section 11(7) of the Foreign Trade (Development and Regulation) Act, 1992 leviable on the company when the Director had resigned before the issue of SCN?

Decision

The Directors of the company cannot be substituted of the company in their individual capacity. There is no provision of the Act for the recovery of penalty imposed from its Directors when the said penalty cannot be recovered from the company. More so when the said Director had resigned even before issue of the SCN. Reliance was placed on the decision of the Hon'ble High Court of Delhi in the case of *Anita Grover vs Commissioner of Central Excise* reported in 2013 (288) E.L.T. 63 (Del) and *Ved Kapoor vs Union of India* reported in 2014 (299) E.L.T. 385 (Del).

M/S. D.V. RAO
2024 (6) TMI 204
MADRAS HIGH COURT



Issue

Dismissal of the appeal filed before CESTAT on the ground that a writ petition has been filed by the Appellant and the same is pending before the Hon'ble High Court

Decision

When the Appellant has complied with all the requirements for filing an Appeal before CESTAT such as mandatory pre-deposit, dismissal of the appeal on the ground that the writ petition is pending is not in order. Reliance was placed on Hon'ble SC decisions in the matters of *Sheo Raj Singh & ors. v. Union of India & Anr. (2023 SCC Online SC1278, State of Nagaland v. Lipok Ao &ors. [(2005) 3 SCC 752] and Robin Thapa v. Rohit Dora (2019 SCC online SC 836),*

M/s YASIR IBNU MUHAMMED
2024 (6) TMI 313
KERALA HIGH COURT



Issue

Refund of SAD - When the imported products were "Betel Nut Industrial Grade" (not fit for human consumption), and the goods sold in domestic market were "Supari" (edible) - whether the products sold in the market as supari could be regarded as the same products for purposes of refund of SAD paid at the time of import of Betel Nut Industrial Grade?

Decision

Given the fact that there is no dispute that the imported goods were required to be processed to make them edible, refund of SAD could not be denied. Reliance was also placed on the minutes of ALC meeting No.02/2007 held on 20.4.2006 that areca nut and supari has been considered as the same product.

M/S. BABURAM HARICHAND
2024 (6) TMI 1189
GUJARAT HIGH COURT



Issue

Interpretation of the condition, 'aircraft shall be used only for providing non-scheduled (passenger) services or non-scheduled (charter) services', provided in the condition No 104 of notification 21/2002 Cus (Sl No.347B)

Decision

The usage of the Aircraft 'for private purpose' in the case of usage by the group companies and for charter purpose in case of use by other entities other than group companies, will meet the requirements of Condition 104 of Notification 21/2002 Cus. Reliance was placed on the CESTAT (LB) decision in the matter of *M/s VRL Logistics Ltd Versus Commissioner of Customs, Ahmedabad - 2022 (8) TMI 720 - CESTATAHMEDABAD (LB)*

M/s GMR AVIATION PVT. LTD.
2024 (6) TMI 21
CESTAT NEW DELHI



Issue

Whether the same findings of the fact arrived by the original and appellate authority sitting independently can be challenged or faulted in review filed by the revenue unless the same is shown to be perverse.

Decision

The same findings of the fact arrived by the original and appellate authority sitting independently should not to be challenged or faulted in review filed by the revenue, unless the same is shown to be perverse. Reliance was placed on the Hon'ble SC decision in the matter of *Suresh Lataruji Ramteke Versus Sau. Sumanbai Pandurang Petkar & Ors.* [2023 (9)TMI 1475 - SUPREME COURT]



Issue

Effect of price variation clause in the purchase contract on the finally assessed bill of entry, when the price payable is revised on the basis of the price variation clause, post import.

Decision

Re-assessment on the basis of the revised price permissible when the price variation clause was known to Customs at the time of initial import, notwithstanding the final assessment of the bill of entry. The initial assessment should be deemed provisional. Reliance was placed on the Hon'ble Tribunal decision in the matter of *Commissioner of C.Ex., Tirupativ. Kurool Cylinders Pvt. Ltd. [2007 (219) E.L.T. 473 (Tri. – Bang.)]*



Issue

- a) Binding nature of an Advance Rulings before other Customs jurisdictions
- b) Applicability of the three-year limit for the Advance rulings obtained prior to 30 March 2022 when the Finance Act, 2022 received the assent of the President of India?

Decision

- a) The Advance Rulings given under the provisions of section 28J (1) of Customs Act, 1962, bind the trinity of applicant, ruling and customs administration of India, with the customs formations as surrogates according to location of import, till the span of life of the ruling unless distinguished in accordance with section 28J (2) of Customs Act, or the rescinding of the ruling by operation of section 28K of Customs Act, 1962.
- b) The amendment to Section 28 (J)(2) fixing the validity of three years is not retrospective and this will not apply to the rulings provided prior to the amendment to Section 28 (J)(2) *ibid*.

**M/S. EXCELLENT BETELNUT PRODUCTS P LTD, SATYENDRA GOEL AND JIGAR SETH
2024 (6) TMI 57
CESTAT MUMBAI**



Issue

Rejection of declared values only on the basis of NIDB data without any evidence for rejection – Non- issue of a speaking order under Section 17 (5) of the Customs Act, 1962.

Decision

Placing reliance on a clutch of SC decisions, the Hon'ble Tribunal held- when no reasons have been given by the Proper Officer for rejection of transaction value and no order has been passed under section 17(5) of the Customs Act, 1962, declared values cannot be rejected. Reliance only on NIDB data not approved.

M/s RADHA TRADING
2024 (6) TMI 138
CESTAT KOLKATA



Issue

Whether royalty payments made in terms of Technology Licence Agreement are to be included or not to the value of imported raw materials, in the absence of satisfaction of the requirement that the payments were a condition of sale of the imported goods?

Decision

Not includible in the absence of any condition on the sale of imported materials in question. Reliance was placed on the decision of the Hon'ble Tribunal in the matter of *Kruger Ventilation Industries (North India) Private Limited Vs. Commissioner of Customs*, [2022 (5) TMI 496 - CESTAT NEW DELHI] affirmed by the Hon'ble Supreme Court, decision of the Hon'ble SC in the matters of *Commissioner of Customs Vs. Ferrodo India Pvt. Ltd.* [2008 (224) ELT 23 (SC)] and *Commissioner of Customs (Port), Chennai Vs. Toyota Kirloskar Motor Pvt. Ltd.* [2007 (213) ELT 4 (SC)].

M/S. VALEO FRICTION MATERIALS INDIA LTD.
2024 (6) TMI 61
CESTAT CHENNAI



Issue

Forged Special Import Licences-obtained by transfer –
a) liability to penalty under Section 112(a) on the transferee importer and
b) delay in levy of such penalty.

Decision

- a) Transferee importer not liable under Section 112 (a) *ibid* - unless clear evidence are placed to state that they have acted in a particular manner or they have failed to do any particular act which resulted in the forgery of licences in the present case, enabling the imported goods for being liable to confiscation under Section 111(d) and 111(o) *ibid*.
- b) Power of imposition of penalty has to be exercised within a 'reasonable time' as prescribed under the statute - Reliance was placed on a clutch of SC and HC decisions in this regard.

M/s SAN INTERNATIONAL
2024 (6) TMI 139
CESTAT MUMBAI



Issue

Liability to Customs duty on imported goods lost in a fire accident in a SEZ unit. Whether remission under Section 23 of the Customs Act 1962 available?

Decision

Customs duty cannot be demanded as the goods were lost in a fire accident in a SEZ unit which is deemed to be a foreign territory. As the impugned goods were not brought into DTA, no customs duty can be demanded. Reliance was placed on the Tribunal decision in the matter of *Satguru Polyfab Private Limited [2011 (267) ELT 273(Tri.)* and *ONGC Petro Additions Ltd [2023(12) TMI 530 (Tri. Amd).*

M/S. PI INDUSTRIES LIMITED
2024 (6) TMI 203
CESTAT AHMEDAB



Issue

Correctness of the time limit of one year from the date of payment of SAD prescribed under Notification 93/2008(Cus) dated 01.08.2008 (as amended) for claiming the refund of the SAD paid.

Decision

The Larger Bench of CESTAT in a reference to them, answered the question as under: It would not be necessary for an importer to file a claim for refund of the additional duty of customs paid on the imported goods, with the jurisdictional customs officer, before the expiry of one year from the date of payment of the said additional duty of customs in view of the judgment of the Delhi High Court in Sony India. The limitation of one year for filing a claim for refund of additional duty of customs paid on import of goods from the date of payment of additional duty would, therefore, not be applicable.

M/s AMBEY SALES
2024 (6) TMI 257
CESTAT CHANDIGARH

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