

Customs Compendio

Volume 13





Issue

- a) 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, 1962?
- b) Whether the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act.
- c) What is the true and correct ratio of the decision in Jagdish Cancer case?

Decision

- a) The owner of goods has a liability to pay customs duty, even after the confiscated goods are redeemed after payment of fine under Section 125.
- b) The duty liability arising under Section 125(2) must be assessed under Section 28. Once Section 28 applies for determination of duty, interest on delayed payment of duty under Section 28AB follows.
- c) Jagdish Cancer case is not an authority for the proposition that when the liability to pay customs duty arises under Section 125(2), the calculation, determination or the assessment of such duty cannot be made under Sec 28.



Issue

Applicability of increased Tariff Values to goods imported, warehoused and bills of entry for home consumption for clearance of the goods filed before the actual time of e-gazetting of the Notification increasing the Tariff Value for the goods.

Decision

Increased Tariff Values not to apply to the goods for which home consumption bills of entry were filed before the time of e-gazetting of the Notification increasing the Tariff Value. Reliance was placed on the Hon'ble SC decision in *Union of India & Ors. Vs. M/s G.S. Chatha Rice Mills & Anr. 2020 SCC Online SC 770.*

M/S. PATANJALI FOODS LTD
2024 (7) TMI 426
BOMBAY HIGH COURT



Issue

Levy of penalty under Section 11 (2) of the Foreign Trade (Development and Regulation) Act 1992 for failure to fulfil the Export Obligation by a 100% EOU.

Decision

When the allegation pertains to the failure to fulfil the obligation to export goods within a specified period of five years, and there is no allegation of attempting to make an export or import in contravention of the provisions of the FT (DR) Act, therefore the imposition of a penalty under Section 11 (2) of the FT(DR) Act of 1992 cannot be sustained.

Reliance was placed on the Hon'ble SC decision in the matter of *M/s. EMBIO LIMITED Versus DIRECTOR GENERAL OF FOREIGN TRADE & ORS. - 2024 (5) TMI 684 - Supreme Court.*

M/S. SUCH SILK INTERNATIONAL LTD
2024 (7) TMI 628
KARNATAKA HIGH COURT



Issue

Can the 'Notified Party' in the Bill of Lading be deemed an 'Importer' under Section 2(26) of the Customs Act, 1962, when import documents are not provided to them? Additionally, does this meet the threshold under Section 46 for imposing penalties as an 'Importer'?

Decision

In this case, the shipper has not given the documents and therefore, the petitioner has not come forward to take delivery of the same. Thus, the petitioner neither satisfies the definition of Importer within the meaning of Section 2(26) of the Customs Act, 1962 nor has crossed the threshold under Section 46 of the Customs Act, 1962 to file a Bill of Entry for clearance of imported goods for home consumption. Therefore, imposition of penalty on the petitioner on the abandoned cargo cannot be justified in the absence of Bill of Entry by the petitioner.

M/S. SHANTHI FEEDS PVT. LIMITED
2024 (7) TMI 769
MADRAS HIGH COURT



Issue

Denial of MEIS benefit on the ground that the exporter chose 'N' instead of 'Y' inadvertently at the time of filing the shipping bill.

Decision

The Karnataka High Court's Division Bench upheld the Writ Court's order, dismissed the Government's appeal, and refused to intervene, observing: *In all human institutions whether humanly handled or machine handled, the errors are bound to occur, and they need to be rectified, in the absence of law to the contrary. Otherwise, innocuous errors would perpetuate to the disadvantage of citizens, which a Welfare State like ours cannot justify. Further, we have not been notified any rule that prescribes some limitation period that does not admit condonation of delay. All this is an added ground for our not interfering in the matter.*

M/S. SURETEXPROPHYLACTICS (INDIA) PVT LTD
2024 (7) TMI 941
KARNATAKA HIGH COURT



Issue

- a) Whether a new Advance Ruling can be obtained by an Applicant, who has already obtained an Advance Ruling on the same question, on the ground that there is a change in the business model and therefore a new Advance Ruling is warranted?
- b) Classification of components of motor vehicles imported- Whether GIR 2 (a) will have application when some essential components are procured locally?

Decision

- a) A new Advance Ruling can be obtained on the ground that there is a change in the business model, as compared to the model on the basis of which the earlier Ruling was obtained. HC relied on a harmonious interpretation of the provisions of Section 28(2), 28-E, and 28-I ibid. Challenge on maintainability of the new application was rejected. Having participated in the proceedings before ARA, Revenue waived their right to challenge maintainability before HC.
- b) On classification, the HC ruled that the components imported have to be assessed as parts without applying GIR 2(a), holding that unless all the components of the complete article are presented together for assessment at the same point of time, Rule 2(a) cannot be invoked to classify the parts as a complete article.

M/S.BMW INDIA PVT. LIMITED
MANU/TN/3730/2024
MADRAS HIGH COURT



Issue

Rejection of the declared values of cosmetics imported by wholesalers, on the basis of Retail Sale Price of the same goods sold in retail by application of Rule 4 of the Customs Valuation Rules, 2007.

Decision

Transaction value declared acceptable as the prices of goods sold in retail by the same supplier is not at the same commercial level and therefore not comparable. Thus, Rule 4 ibid will not apply. As the goods had been imported for wholesale trade, and the importers had also satisfied the requirements under Drugs and Cosmetics Act, 1940, the requirements of Legal Metrology (Packaged Commodity) Rules, 2011 will have no application.

M/S. GOODWILL INTERNATIONAL
2024 (7) TMI 121
CESTAT MUMBAI



Issue

Claim for a refund arising out of a challenge to the final assessment of a provisionally assessed bill of entry- Whether refund will be governed by the provisions of Section 27 of the Customs Act, 1962?

Decision

The refund arising directly from finalizations of a provisional assessment will be governed by the provisions of Section 18 and not separate refund claim under Section 27 *ibid* will be necessary. However, when the final assessment is challenged and a refund arises out of such a challenge, a separate claim under Section 27 *ibid* will be necessary and thus will be governed by the provisions of Section 27 *ibid*.

M/S. INDIAN OIL CORPORATION LIMITED
2024 (7) TMI 202
CESTAT NEW DELHI



Issue

Dispute on Classification of imported goods - Polyester knitted Girl's/kids leggings as classified by the importer or girl's trousers / girl's pyjamas as alleged by Revenue- Reliance on experts' opinion and confiscation and levy of penalty

Decision

Reliance on Textile Expert's opinion for determining the classification was not approved as classification should be done by the Proper Officer by application of the principles of classification under GIRs. Classification is not a matter of fact to be determined by an expert, but a quasi-judicial matter to be decided as per the law. On misdeclaration, it was held that the importer self-assessing the goods must apply his mind when classifying the goods. The classification of the goods by the importer, even if it is not in conformity with the re-assessment by the proper officer or even if it is held to be not correct in any appellate proceedings, does not render the goods liable to confiscation under Section 111(m). On these grounds, confiscation, penalties and imposition of RF set aside.

M/S SAHI TRADING COMPANY
2024 (7) TMI 326
CESTAT NEW DELHI



Issue

Misclassification of Artemia cysts under CTH 2309 as against the appropriate CTH 051199. Leviability of penalties under Section 112 (a) and 114 (A) of the Customs Act, 1962

Decision

Penalties not leviable:

The Tribunal held that the, “.. act of classifying the said products under Chapter Heading 23.09 by the appellants is reflective of their bona fide impressions and cannot by any stretch of imagination, would attract penal provisions of Sections 112(a) and 114A of the Customs Act, 1962. Under the circumstances it cannot be held that there was mis-declaration of the said products on importation on the part of the appellants warranting imposition of penalties on them”.

M/S. ATHERTON ENGINEERING CO. (PVT.) LIMITED
2024 (7) TMI 325
CESTAT KOLKATA



Issue

Payment of CVD on import under the GST regime due to a system error -
Availability of refund under Section 26A of the Customs Act, 1962

Decision

From the statutory provision it is clear that provisions of Section 26A is applicable while importing goods for home consumption and the provisions governing payment of duty on re-import of goods is as per the Notification No. 46/2017 dated 30.06.2017. Once the respondent satisfied the condition of said Notification by paying drawback drawn with interest, respondent was not liable to pay duty as demanded by the appellant. Refund was available.

Reliance was also paid on a clutch of HC/SC decisions including *Arvind Lifestyle Brands Ltd. v. Under Secretary, Technology Development Board, New Delhi [2019(368) E.L.T. 387(Kar.)]*

M/S SUNDARAM FASTENERS LTD.

2024 (7) TMI 487

CESTAT BANGALORE



Issue

Classification of Injection Stretch Blow Moulding Machine (ISBMM) from China and exigibility to Anti-dumping Duty –under Notification No. 57/2015-Cus (ADD) dated 04.12.2015.

Decision

Injection Stretch Blow Moulding Machine (ISBMM) is a composite machine comprising of IMM and BMM with the end-product being a Blow Moulded empty/hollow 100ml or 500ml capacity bottle to hold pharmacopeia IV Fluid for infusion to patients in hospitals. Here, the clearly defined function of the combination machine is Blow Moulding which is to be considered as the sole function. By application of Note 3 to Section XVI, product is classified as a Blow Moulding Machine under CTH 84773000. ADD not applicable.

M/S. AMANTA HEALTHCARE LIMITED
2024 (7) TMI 766
CESTAT AHMEDABAD



Issue

Recovery of 'cost recovery charges' under Handling of Cargo in Customs Areas Regulations, 2009 from the custodian in the absence of a statutory mechanism to recover the same.

Decision

Though the appeal filed by Revenue was against the decision of the Principal Commissioner of Customs action in dropping the cost recovery charges attributed to House Rent Allowance and Transport Allowance, the Tribunal went into legality of recovery of cost recovery charges in the absence of a statutory mechanism for such recovery and set aside the entire recovery with consequential relief.

Reliance placed in the case of *COMMISSIONER OF CUSTOMS, CUSTOM COMMISSIONERATE, LUDHIANA VERSUS M/S KRISHNA CARGO MOVERS PVT. LTD.* [2019 (12) TMI 899 - PUNJAB & HARYANA HIGH COURT and the *CENTRAL BOARD OF EXCISE AND CUSTOMS, REP. BY ITS MEMBER CUSTOMS, NORTH BLOCK, GOVERNMENT OF INDIA, NEW DELHI AND OTHERS VERSUS M/S. GMR HYDERABAD INTERNATIONAL AIRPORT LIMITED* [2024 (3) TMI 1301

M/S DIAMOND AND GEM DEVELOPMENT CORPORATION LIMITED
2024 (7) TMI 937
CESTAT AHMEDABAD



Issue

Classification of Transponder, Muxponder, and Optical splitter cards - to be classified under Customs Tariff Item (CTI) 8517 62 90 or under CTI 8517 70 90

Decision

Classification approved under CTH 85177090 as these are identifiable parts of Optical Transport Network Equipment and are proprietary in nature meaning that these cards cannot be used with any other vendors' equipment.

Reliance was placed on the Tribunal in Modicom Network, affirmed by the Supreme Court in *Commissioner of Cus., Bangalore vs. Modicom Network Pvt.Ltd.* 2015 (320) E.L.T. 21 (S.C.).

M/S VODAFONE IDEA LIMITED
2024 (7) TMI 766
CESTAT NEW DELHI



Issue

Inclusion of the supervision charges and license charges for process Know-How in the assessable value of goods imported by the appellant

Decision

The activities are clearly post importation activities and also not a condition for sale, the price paid for the same cannot be part of the assessable value of the goods. Reliance was placed on the SC decisions in *COMMISSIONER OF CUSTOMS, CHENNAI VERSUS M/S.DENSO KIRLOSKAR INDUSTRIES PVT LTD [2015 (10) TMI 549 - SUPREME COURT]* and *COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI VERSUS M/S. HINDALCO INDUSTRIES LTD.[2015 (5) TMI 696 - SUPREME COURT]*.

INDORAMA INDUSTRIES LTD
2024 (7) TMI 1045
CESTAT AHMEDABAD



Issue

Undervaluation of Aluminium and Zinc scrap - Rejection of transaction value on the basis of LME prices in the absence of any evidence of additional payments.

Decision

It is a settled position of law that if the declared value is to be rejected, the proper officer has to proceed sequentially through Rule 5 to Rule 8 of the CVR, 1988 - LME prices cannot be the sacrosanct evidence to substantiate the charge of undervaluation, especially when contemporaneous import of almost same price was available during the material time. The law is well settled, that transaction value cannot be rejected, unless there is contemporaneous evidence to reject the invoice value.

M/S NICO EXTRUSIONS LTD
2024 (7) TMI 939
CESTAT MUMBAI



Issue

Classification of DHA in powder form, containing 10-17% DHA meant for use as food additives- CTH 2916 Vs CTH 2106

Decision

Classification under CTH 29161590 approved holding inter-alia that the Original Authority, Appellate Authority and Commissioner of Customs Mumbai have all found the goods classifiable under Chapter 29 and the same goods imported by other importers and when manufactured domestically have also been classified under chapter 29. It was also held that the TRUs letter indicating classification of the same product under CTH 2106 was not acceptable as it was issued to one Commissionerate and therefore not a general circular to bring uniformity across the country.

**M/S. VASTA BIOTECH PVT. LTD
2024 (7) TMI 1530
CESTAT CHENNAI**



Issue

Import of helicopter- exemption under Sl. No 347B of the Notification 21/2002-Customs dated 01.03.2002 for provision of Non-Scheduled Air Transport Service - confiscation - penalty u/s 112 ibid

Decision

The definition under the Civil Aviation Regulation 2010 provides a meaning that the requirement of publishing a timetable; providing a pattern of regular frequency of flight services in a systematic manner; and such services being kept open for public, is not required to be followed for non-scheduled air transport service. Therefore, it was held that the importer was held to have satisfied the requirements for the exemption. Reliance was placed on the Tribunal decisions in *COMMR. OF CUS. (IMPORT) , ACC, MUMBAI VERSUS AIRMIDAVIATION PVT. LTD. [2020 (3) TMI 922 - CESTAT MUMBAI* and (i) *VRL Logistics Ltd. Vs. Commissioner of Customs, Ahmedabad- (2023) 3 Centax 168 (Tri. – LB.)* and a few other Tribunal decisions.

M/S UNITED HELICHARTERS PVT. LTD

2024 (7) TMI 1079

CESTAT MUMBAI



Issue

Levy of Countervailing Duty (CVD) on the transaction value in terms of Section 4 of the Central Excise Act, 1944 (CEA) or under Section 4A of the Central Excise Act - industrial consumers or institutional consumer – invocation of the extended period of limitation.

Decision

Though the goods are covered by Legal Metrology (Packaged Commodity) Rules (LMPCR), 2011, since the impugned goods were supplied to institutional consumers, exemption under Rule 6 was available. On invocation of the extended period, as there was an order on a similar question accepted by Revenue, there cannot be any allegation of suppression. In any case in the absence of any allegation of suppression, extended period was not available.

M/S. AMAR RADIO CORPORATION.
2024 (7) TMI 328
CESTAT BANGALORE



Issue

Classification of Roasted Betel Nuts-
Whether under CTH0802 80 vs CTH 2008
192

Decision

Classification of Roasted Betel Nuts confirmed under CTH 20081920 as the ratio 'specific prevails over the general' in classification matters is well settled. Reliance was placed on the Hon'ble HC decision in *Commissioner of Customs, Chennai-II vs. Shahnaz Commodities International Pvt Ltd., reported in (2023) 9 Centax 183 (Mad.)*

M/S. GENUINE SPICES
2024 (7) TMI 1324
MADRAS HIGH COURT



Issue

Eligibility to the refund of SAD paid by debit to the DEPB scrips- when the CBEC circular No 18/2013 dated 29.04.2013 specifically barred the refund when the duty was paid by debit to a DEPB scrip?

Decision

SAD refund cannot be denied when the SAD paid by debit to a DEPB scrip has been accepted as payment of duty. Further it was also noticed that the CBEC Circular 18/2013 had been annulled by the Delhi HC as reported in *Allen Diesels India Pvt. Ltd v. Union of India [2016 (334) E.L.T. 624 (Del.)]*.

M/S. ELITE GREEN PVT. LTD
2024 (7) TMI 1412
KERALA HIGH COURT



Issue

Enhancement of values based only on the acceptance letter by the importer and not in accordance with the Customs Valuation Rules 2007.

Decision

Declared values cannot be enhanced based only on the acceptance letter of the importer without any evidence about contemporaneous values or following the Customs Valuation Rules 2007.

**M/s. FERN EXIM LLP.
2024 (7) TMI 696
CESTAT AHMEDABAD**



Issue

Claim for preferential duty benefit under Indo-ASEAN FTA-Notification 46/2011 Cus - When documents supported claim – Revenue entertained a doubt and also relied on oral statements

Decision

In the absence of independent verification from Malaysian authorities in this case, reliance on oral evidence over clear documentary evidence cannot justify the denial of the claim for preferential duty

**M/s. GK ENTERPRISES
2024 (7) TMI 767
CESTAT AHMEDABAD**



Issue

Leviability of Anti-Dumping Duty under Notification 12/2021- Customs (ADD) dated 05.03.2021 on a consignment of Colour Toner that included a black toner, when the ADD is applicable to Black Toner alone.

Decision

A color toner, has four different color toners, namely CMYK, and a black color toner is one of the four color toners constituting a color toner and not a black toner for black and white printers, which attracted anti-dumping duty. It was held that black color toner would not be subjected to levy of anti-dumping duty under the Notification dated 05.03.2021

**M/S. VIJEX VYAPAAR PRIVATE LIMITED. - 2024 (7) TMI 1266
CESTAT NEW DELHI**



Issue

EPCG for equipment required for rendering port services - Receipt of payment for services in Indian Rupees for EO fulfillment - disentitled the License Holder to the IGST exemption claimed - Demand for IGST, interest and confiscation.

Decision

In view of the settled law on revenue neutrality, the demand for IGST and confiscation set aside. Reliance was placed on a) *Larsen & Toubro Ltd. v. CCE, Pondicherry - 2008 (227) E.L.T. 65 (Tri.-Chennai)*. (b) *India Pistons Ltd. v. CCE, Chennai - 2008 (221) E.L.T. 295 (Tri.-Chennai)*. (c) *CCE, Pune v. Coca-Cola India Pvt. Ltd. - 2007 (213) E.L.T. 490 (S.C.)*

**AMNS PORTS HAZIRA LIMITED
2024 (7) TMI 1268
CESTAT AHMEDABAD**



Issue

Classification of IC Codecs used in mobile phones - CTH 8542 Vs 8517-
Whether the IC Codecs could be regarded as machinery or apparatus on its own?

Decision

IC Codecs are Integrated Circuits and therefore CTH 8542 is specific to the goods. IC Codecs are not in the nature of machines or apparatus which are deployed in a network like LAN/WAN. Therefore, classification under CTH 8517 cannot be justified.

**M/S. SAMSUNG INDIA ELECTRONICS
PVT. LTD - 2024 (7) TMI 1409
CESTAT NEW DELHI**



Issue

Addition of royalty of 1.75% paid on the yeast manufactured in India and sold using the technical knowhow provided by the foreign supplier to the value of imported yeast culture in terms of Rule 10 (1)(c) of the Customs Valuation Rules, for payment of CD

Decision

Royalty is not addable to the declared valued in the absence of satisfaction of the condition of sale requirement. Reliance was placed on the Chennai Tribunal's decision in the matter of *M/S. VALEO FRICTION MATERIALS INDIA LTD. VERSUS COMMISSIONER OF CUSTOMS, CHENNAI* [2024 (6) TMI 61 - CESTAT CHENNAI.

**M/S. AB MAURI INDIA PVT. LTD.
2024 (7) TMI 327
CESTAT CHENNAI**

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