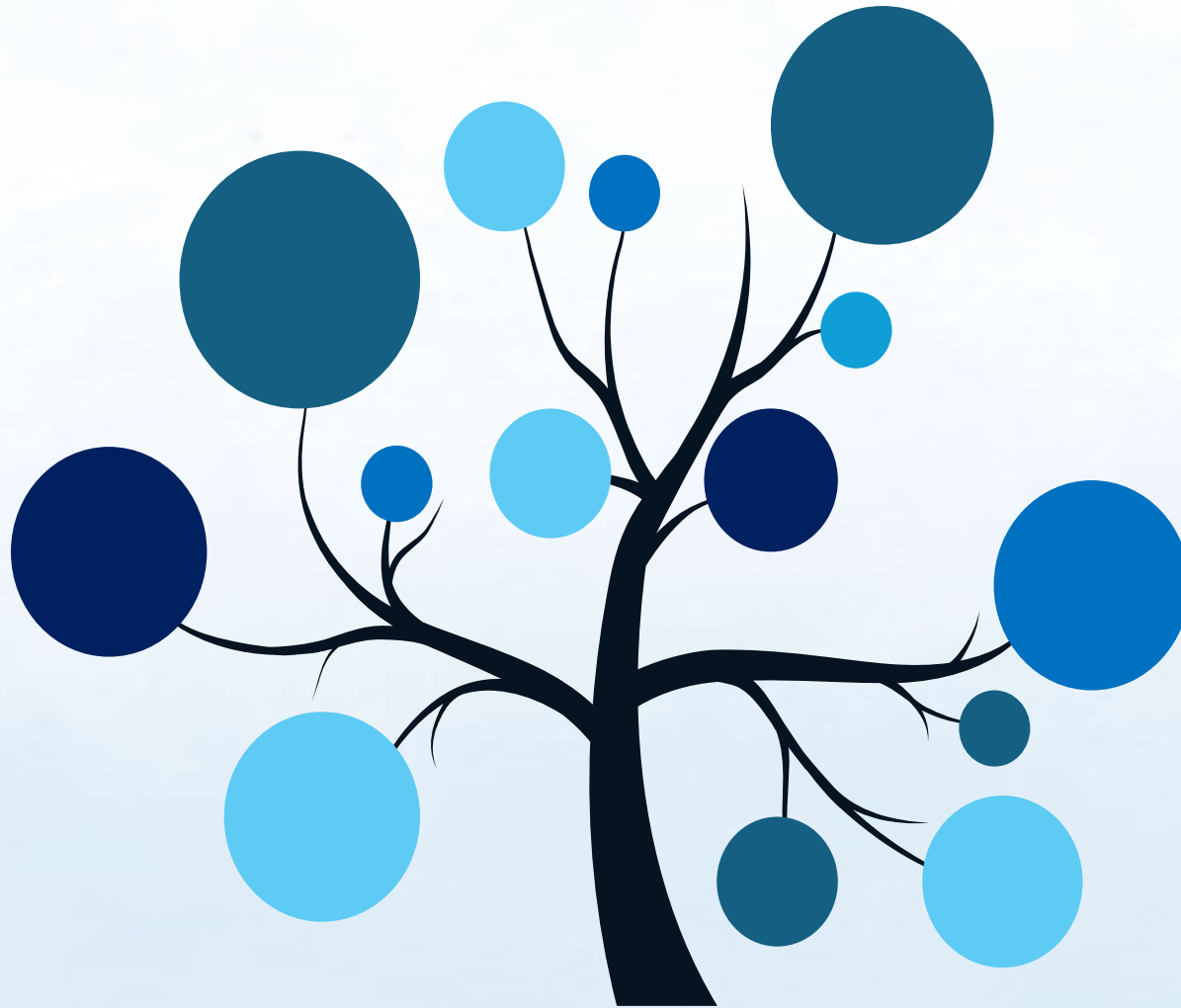


Customs Compendio

Volume 14



Snippets from Mukesh Manish & Kalpesh, Chartered Accountants



Issue

Delay in issue of show cause notices demanding excess paid drawback -
Review petition filed by Revenue.

Decision

Review petition dismissed. The SC order now settles the question that despite Rule 16 of the Drawback Rules not providing for any time limit, a reasonable time limit has to be read into the Rules and a SCN issued after a period of lapse of more than three years was held to be time barred. The Hon'ble Gujarat High Court, had earlier quashed the SCN due to the reason that the SCN had been issued after three years from the date of payment of drawback. Though the Review petition was against the dismissal of the SLP against the Gujarat HC Order, the Hon'ble SC while dismissing the SLP practically confirmed the Gujarat HC order holding, as under: "In the circumstances, a challenge made to the show cause notices before the High Court was successful in as much as the action of the respondent authority was held to be belated and hit by delay and latches. Consequently, the show cause notices were quashed. We do not think that the impugned order would call for any interference in this case."

M/s. RAGHAV INTERNATIONAL AND ANR.
2024 (8) TMI 35
SUPREME COURT



Issue

Maintainability of a suit filed by the plaintiff claiming damage for malicious prosecution against the Directorate of Revenue Intelligence and their Officer and if the suit is filed within the period of limitation prescribed for such suits.

Decision

Suit not maintainable when it is filed without meeting the requirements under Section 80 of the CPC and Section 155 (2) of the Customs Act, 1962. In the present case the suit was filed initially without a Notice under Section 80 of the CPC and when the Notice was eventually issued the Notice under Section 155 (2) of the Customs Act, 1962 was beyond the time limit of one year. Reliance was placed on the Supreme Court decision in the matters of *the EXECUTIVE ENGINEER, IRRIGATION DIVISION, PURI VERSUS GANGARAM CHHAPOLIA [1983 (10) TMI 291 - SUPREME COURT OF INDIA and STATE OF GUJARAT VERSUS KOTHARI AND ASSOCIATES [2015 (10) TMI 2806 – SUPREME COURT]*

M/s. PUSPHA L. TOLANI & ORS.
2024 (8) TMI 332
SUPREME COURT



Issue

The Review petition filed by Government against the dismissal of the SLP against one Hon'ble Mumbai HC decision in the matter of JSW STEEL LTD. v. UNION OF INDIA – 2016 (334) E.L.T. 222 (Bom.). One of the issues involved – Whether Court can read into a policy or legislation, anything not already there, the introduction of which would result in the imposition of an unwarranted restriction upon the rights of the beneficiaries or a class of beneficiaries?

Decision

Though the review petition was against the dismissal of SLP against the HC decision, the decision of the Hon'ble Mumbai HC has practically been confirmed.

The Hon'ble Mumbai HC had held as under on the question: “The other important and equally salutary principle of interpretation is that in a beneficent piece of legislation or a policy such as the one involved in the present case, the Court will not or cannot read into that policy or legislation, anything not already there, the introduction of which would result in the imposition of an unwarranted restriction upon the rights of the beneficiaries or a class of beneficiaries” [*Jnan Ranjan Sen Gupta v. Arun Kumar Bose, (1975) 2 SCC 526, paragraph 9, at p. 530*].



Issue

- a) Classification of Multifunction devices used in motor vehicles, described as Infotainment systems in the catalogue but declared as navigation equipment
- b) Charge of suppression, mis-declaration and invocation of the extended period of limitation - confirmed against the importer.

Decision

The Tribunal decided the classification under CTH 8527 as against CTH 8526 claimed by the importer and confirmed the charge of misdeclaration and invocation of the extended period and levy of penalty under Section 114A of the Customs Act, 1962. The levy of penalty was challenged before the SC. The Appeal filed by the importer was dismissed by SC.

M/s. Bosch Ltd
2024 (8) TMI 1004
SUPREME COURT



Issue

- a) Liability to pay demurrage / detention charges when the detention is lifted, or the issue is decided in favour of the importer and a certificate of waiver of demurrage is given by customs and
- b) Whether customs are required to grant a waiver in cases where the issue is decided in favour of the importer?

Decision

When a certificate of waiver of demurrage is granted, the Custodian cannot insist on payment of demurrage. The High Court also held that Regulation 6 (1) of the HCCA Regulations will prevail over the Contract Act. Customs are required to grant a waiver of demurrage when the detention is lifted, and the issue is decided in favour of the importer.

M/s. K.S TEAMSHIP AGENCIES PVT. LTD.

2024 (8) TMI 31

MADRAS HIGH COURT



Issue

Denial of Export Obligation discharge Certificate (EODC) on the ground of non -submission of Bills of export for supplies to SEZ.

Decision

In the light of the settled law that if the party is able to show the proof of supply to SEZ Unit, then non-submission of “Bill of Export” cannot be treated as non-discharge of proof of EO. The ADGFT was directed to issue EODC basis other documents in support of the supply.

Reliance was placed on the Bombay HC decision in *Larsen & Toubro Limited v. Union of India 2018 (360) E.L.T. 289 (Bom.)* and *Electromech Material Handling System (India) Pvt. Ltd. vs. The Union of India & Ors. 2018 (10) TMI 336 (Bom.)*.

M/s. PHOENIX INDUSTRIES LIMITED
2024 (8) TMI 965
BOMBAY HIGH COURT



Issue

Jurisdiction of the Adjudicating authority (JDGFT) under Section 15 of the FT (DR) Act 1992, to decide a case for demand for interest treating the interest as penalty payable?

Decision

The JDGFT does not have jurisdiction to demand interest in exercise of the powers under Section 15 of the FT (DR) Act, 1992. Reliance was placed on the Supreme Court in *INDIA CARBON LTD. VERSUS STATE OF ASSAM (AND OTHER APPEALS)* [1997 (7) TMI 566 - SUPREME COURT] holding that demand for interest without a substantive provision is untenable.

M/s. CHOWGULE AND COMPANY PRIVATE LIMITED

2024 (8) TMI 963

BOMBAY HIGH COURT



Issue

Applicability of 'Catch – all' condition under SCOMET for export of aircraft parts meant for civilian aircraft.

Decision

When the entry Sl. No. 8A901 specifically excluded aircraft parts meant for civilian aircraft certified so by Civil Aviation authorities of India, parts so certified by the DGCA cannot be brought under the 'Catch-all' controls on the ground of dual use and an export licence is not required.

**M/s. A.R. SALES PVT LTD.
2024 (8) TMI 729
DELHI HIGH COURT**



Issue

Adjudication order issued without a clear finding on the only allegation in the SCN despite a detailed explanation by the Noticee.

Decision

In the absence of a clear finding on the issue raised in the Notice, the submissions of the Noticee should be deemed to have been accepted.
The Order set aside.

**M/s. HEMANT SURGICAL INDUSTRIES
LTD. - 2024 (8) TMI 34
BOMBAY HIGH COURT**



Issue

Classification of Vitamin Pre-mixes - whether under CTH 2309 or 2936 - CAAR deciding the classification under CTH 2936 without a speaking order - Appeal under Section 28 KA of the Customs Act, 1962.

Decision

Advance Ruling set aside with a direction to rehear the matter and pass a reasoned order considering all the submissions of the importer.

**M/s. BASF INDIA LTD.
2024 (8) TMI 860
BOMBAY HIGH COURT**



Issue

Classification of adjuvants used in the manufacture of animal vaccines as vaccines under CTH 3002 as against CTH 3824 chose by the importer.

Decision

The item imported is “Immunological Adjuvant” used in the preparation of vaccines for human and animals. The imported goods are injectable mineral oil and emulsifier obtained from mannitol and purified oleic acid of vegetable origin. The Adjuvants are of different types and they are used for the purpose of enhancing the immune response in the Immunological vaccines administered for humans and animals. Therefore, Adjuvants cannot be classified as a vaccine.

**M/s. BHARAT BIOTECH INTERNAL LTD.
2024 (8) TMI 1000
CESTAT BANGALORE**



Issue

Inclusion of royalty payable for use of the Trademark - for use when the imported product is sold after repacking.

Decision

Not includible in the absence of evidence that the payment of royalty was a condition of sale of the imported products. The Tribunal also held that revenue should have actually raised the questions whether the product in question could have been permitted to be imported, or permission denied for repacking if the imported failed to pay the royalty. The appeal is dismissed for lack of evidence on these grounds also.

**M/s. AJINOMOTO INDIA PVT. LTD.
2024 (8) TMI 1063
CESTAT CHENNAI**



Issue

Two of the issues involved - a) Whether the re-assessment before clearance of the goods for home consumption has been done under Section 17 (2) of the Customs Act, 1962 or Section 28 ibid and b) when the re-assessment is done under Section 17 (2) ibid, whether interest under Section 28AA or penalty under Section 114 A ibid could be demanded?

Decision

When the goods are re-assessed before clearance for home consumption, the assessment is under Section 17(2) and not under Section 28 ibid. When the demand could not be issued under Section 28, demand for interest under Section 28 AA or penalty under Section 114A, which are linked to a demand under Section 28 ibid cannot be justified.

SHRI SAURABH BAHETY
2024 (8) TMI 1112
CESTAT NEW DELHI



Issue

Classification of oil contained in the bunker tanks of the engine room of a ship imported for breaking up.

Decision

Classification under CTH 8908 as part of the ship approved on the strength of an earlier decisions of a) the CESTAT in *MAHALAXMI SHIP BREAKING CORP. v. COMMISSIONER OF CUS., BHAVNAGAR* and approved by the Hon'ble SC in 2023 (384) ELT 482 (S.C.) in which rejecting the contrary view of CESTAT in *KAMDARASSOCIATE as reported in 2016 (339) ELT 158 (Tribunal)*, and b) *NAVYUGSHIP BREAKING CO., DHAN STEELS PRIVATE LIMITED. AND OTHERS v. C.C., JAMNAGAR(PREV) [2022 (12) TMI 100 - CESTAT AHMEDABAD]*

M/s. HARIYANA SHIP DEMOLITION PVT LTD
2024 (8) TMI 1224
CESTAT AHMEDABAD



Issue

White and yellow poppy seeds imported from Turkey - rejection of declared value by the Appellants importer basis the values available in data base maintained by Turkish customs authorities and Public Ledger prices

Decision

Rejection of declared prices basis the data base of Turkish Customs and the Public Ledger prices rejected. Reliance was placed on the Tribunal decision on an identical issue where the very same question had been extensively examined by the Coordinate Bench of the Tribunal, in the matter of *Ajay Exports [2023 (6) TMI 1090 - CESTAT MUMBAI]* where the Tribunal head rejected the reliance placed on the data base of Turkish Customs and the public ledger on the ground that valuation under the Customs Valuation Rules and the rejection of the declared prices should be done in the manner prescribed under the Valuation Rules.

**M/s. VIRAL INTERNATIONAL
2024 (8) TMI 1285
CESTAT MUMBAI**



Issue

Classification of Clear Float Glass - Whether under CTH 70051090 adopted by the importer or under CTH 70052990 as held by Revenue?

Decision

Classification under CTH 70051090 approved on the strength of the Tribunal decision on the same question in *M/s. Bagrecha Enterprises Ltd. v. Commissioner of Custom, Chennai* [2024 (5) TMI 943 - CESTAT CHENNAI]

M/s. RIDER GLASS INDUSTRIES PVT. LTD.
2024 (8) TMI 1346
CESTAT CHENNAI



Issue

Restrictions under the Policy Condition 2(II)(d) of Chapter 87 of the ITC (HS) Classification under the Foreign Trade Policy [FTP] - applicability of port restrictions to new vehicles imported in completely knocked down [CKD] condition - whether the expression 'motor vehicles' in 2(II) (d) also includes vehicles imported in CKD condition or it includes only completely built units?

Decision

The expression 'motor vehicles' has been used at multiple places in Condition 2 to Chapter 87 and if this expression is interpreted as including motor vehicles in CKD condition, it will result in absurd consequences. Therefore, this expression cannot mean 'motor vehicles' in CKD condition and can only mean completely built vehicles. Therefore, policy condition no. 2 II (d) to Chapter 87 of ITC (HS) classification which restricts the ports and ICDs through which the vehicles can be imported does not apply to vehicles imported in CKD condition. Vehicles in CKD condition can be imported from any port or ICD.

Reliance placed on *M/S. RAMA KRISHNA SALES PVT. LTD. v. UNION OF INDIA AND ORS. [2019 (2) TMI 149 - DELHI HIGH COURT]*

M/s. HONDA MOTORCYCLE AND SCOOTER INDIA PVT. LTD.

2024 (8) TMI 30

CESTAT NEW DELHI



Issue

Manner of determination of Iron content in the Iron ore for purposes of levy of export duty-whether on Dry Metric Tonne (DMT) basis or Wet Metric Tonne (WMT) basis?

Decision

The iron content for export made prior to 1.5.2022 should be determined on WMT basis and not on DMT basis. Reliance was placed on *M/S BAGADIYABROTHERS PRIVATE LIMITED v. COMMISSIONER OF CUSTOMS (PORT), KOLKATA AND COMMISSIONER OF CUSTOMS (PREVENTIVE), BHUBANESWAR [2023 (9) TMI 827 - CESTATKOLKATA]*

M/s. KAI INTERNATIONAL PRIVATE LIMITED
2024 (8) TMI 161
CESTAT KOLKATA



Issue

Satisfaction of the question of reasonable belief for the purposes of Section 110 of Customs Act, 1962 and Section 123 *ibid*. Absolute confiscation of gold.

Decision

The question of reasonable belief has to be tested on the existence of evidence on the date of seizure and not on the date of evidence collected subsequently.

Reliance was placed on the SC decisions in the matter of *Indru Ram Chand Bharvani v. Union of India [1988 (7) TMI 78 SC]* and the matter of *Collector of Customs, Madras v. Nathela Sarpathu Shetty [1999(110) ELT 157 (SC)]*. In the absence of such evidence, Section 123 could not have been invoked. Absolute confiscation set aside.

**M/s. RAJ JEWELLERY MALL
2024 (8) TMI 214
CESTAT HYDERABAD**



Issue

Denial of FTA benefit on the ground that the value addition of 35% indicated in the CoO was doubtful, without adopting the verification process prescribed in the FTA.

Decision

The issue is no longer res-integra. Without carrying out the verification process by the Customs Authorities of India by reference to issuing authorities to do a retroactive check as prescribed in the FTA, denial of FTA benefit cannot be justified. Reliance was placed on a catena of decisions especially the Tribunal decision in *SHIRAZEE TRADERS v. C.C. -MUNDRA* [2024 (1) TMI781 - CESTAT AHMEDABAD]

M/s. DP CHOCOLATES
2024 (8) TMI 266
CESTAT AHMEDABAD



Issue

Rejection of declared values basis of a) contemporaneous imports at higher value and b) NIDB (National Import Database) data.

Decision

Rejection of declared values set aside on the ground that a) there was no finding that the invoices issued by suppliers are fake or fabricated and that the transaction value shown therein has not been actually paid by the Appellant, and b) reliance cannot be placed on NIDB data unless the value given therein falls within the parameters of identical goods or similar goods. Reliance was placed on a catena of Tribunal decisions.

M/s. METALLOYS RECYCLING LIMITED
2024 (8) TMI 270
CESTAT AHMEDABAD



Issue

Whether terms, 'offence' and 'contravention' mean the same and whether non-disclosure of a 'contravention' can be regarded as non-disclosure of an 'offence'?

Decision

Relying on the well settled ratio, when two expressions have been used in the same statute, two different meanings should be assigned thereto, the Tribunal held when the Appellant had been penalised for a contravention, the Appellant cannot be held to have been penalised for an offence, when the Customs Act used the two expressions with different meanings. Reliance was placed on the SC decision in the matter of *COMMISSIONER OF TRADE TAX, UP. v. SS. AYODHYA DISTILLERY AND OTHERS (OTHER APPEALS)* [2008 (12) TMI 394 - SUPREME COURT] and the HC decision in the matter of *DEVIDAYALELECTRONICS & WIRES LTD. AND ANOTHER v. UNION OF INDIA AND ANOTHER* [1981 (1) TMI 78 - HIGH COURT OF JUDICATURE AT BOMBAY]

M/s. KUNDAN CARE PRODUCTS LTD.

2024 (8) TMI 271

CESTAT NEW DELHI



Issue

Classification of HDPE Regrind materials and importability on the ground that the material is plastic waste and require a licence for import.

Decision

HDPE regrind is not plastic waste as it is proved basis the test reports from accredited labs that the material is made of single thermoplastic materials-classification under CTH 3901 2000 approved - The materials cannot be regarded as plastic waste and therefore freely importable.

**M/s. A-1 IMPEX
2024 (8) TMI 1351
CESTAT MUMBAI**



Issue

Rejection of declared values on the basis of print out of the data obtained from mobile phones and hard disks without these data having been certified in terms of Section 138C of the Customs Act, 1962 on admissibility of electronic records.

Decision

The evidence in the form of computer print-outs etc. can be admitted, as in the present proceedings, only subject to fulfilling the conditions under section 138C as evidenced by the certificate issued by a responsible person under sub-section (4) of the said section. The lack of such a certificate is fatal to revenues case and the portion of the order relying on such evidence is liable to be set aside. Reliance was placed on *ANVAR P.V v. S P.K. BASHEER AND OTHERS [2014 (9) TMI 1007 – SUPREMECOURT* and in *ARJUNPANDITRAO KHOTKAR v. KAILASH KUSHANRAO GORANTYAL AND ORS. [2020 (7) TMI 740 -SUPREME COURT]*.

**M/s. MEDIA GRAPHICS
2024 (8) TMI 728
CESTAT CHENNAI**



Issue

Classification of medical grade monitors
- CTH 8528 Vs CTH 9018

Decision

All types of monitors will be classifiable
under CTH 8528.

M/s. AKARUI SOLUTION LLP.
2024 (8) TMI 331
CESTAT MUMBAI



Issue

Levy of Redemption Fine on goods
permitted for re-export

Decision

Redemption fine not leviable on goods
permitted to be re-exported. Reliance was
placed on the Tribunal decision in the
matter of *HBL Power Systems Ltd. v.*
Commissioner of Customs, Visakhapatnam
2018 (362) E.L.T. 856 (Tribunal,
Hyderabad).

M/s. LEADSTONE ENERGY LTD.
2024 (8) TMI 216
CESTAT KOLKATA

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