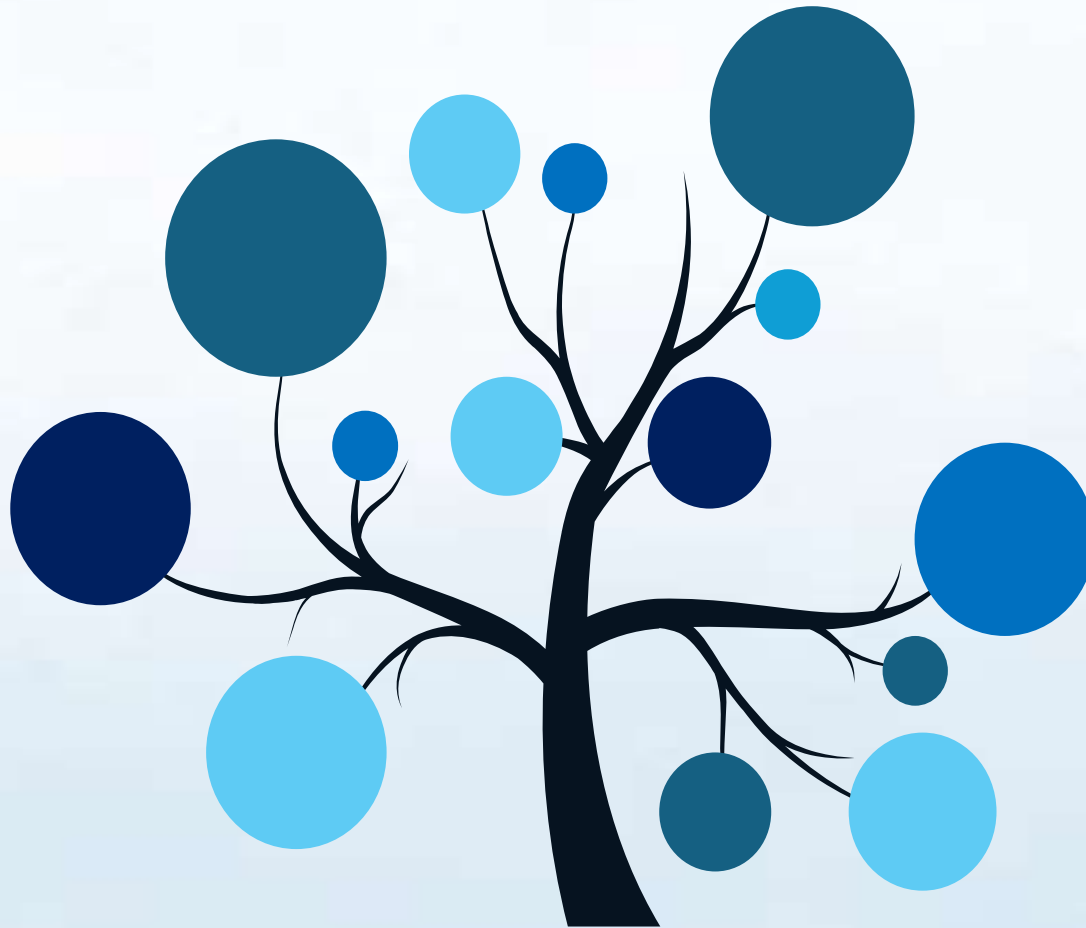


# Customs Compendio

Volume 15



Snippets from Mukesh Manish & Kalpesh, Chartered Accountants



## Issue

Classification of imported goods - rotors, stator, down case, top case and down rod etc. imported together – All parts of a fan except the fan blades, imported together as a set -whether the goods merits classification under heading 8414 or under 8503?

## Decision

Classification under CTH 8414 as incomplete fans imported in a disassembled condition by application of the second part of GIR 2 (a) as approved by the Tribunal was upheld. The Tribunal decision reported in *Ajanta Limited, Manoj Kumar and Liladhar Pasoo Forwarders Pvt. Limited Versus Commissioner of Customs, Kandla - 2019 (9) TMI 800 - CESTAT AHMEDABAD*. The Tribunal also held that imposition of penalty and confiscation was not justified.

**M/s. AJANTA LLP  
2024 (9) TMI 335  
SUPREME COURT**



## Issue

Revocation of Customs Broker Licence- denial of cross-examination without specific grounds and lack of reasons - violation of principles of natural justice.

## Decision

Sub Regulation (4) of Regulation 17 of the CBLR, the customs broker shall be entitled to cross-examination of the persons whose statements were used as grounds for forming the basis of the inquiry proceedings and in case, the inquiry officer declined to permit cross-examination of such persons, then he is required to record the reasons in writing for denial. Denial of the request for cross examination amounts to violation of principles of natural justice. Reliance was placed on the Hon'ble Telangana HC decision in the matter of *Shasta Freight Services Pvt. Ltd. vs. Principal Commissioner of Customs, Hyderabad 2019 (368) E.L.T. 41 (Telangana) upheld by the Hon'ble Apex Court 2022 (381) E.L.T. 436 (S.C.)* on a similar question.

**M/s. SHRILCON SHIPPING AND LOGISTICS**  
**2024 (9) TMI 10**  
**BOMBAY HIGH COURT**



## **Issue**

Section 26 of the SEZ Act, 2005-Availability of duty concessions to the captive power plants set up in the processing area of the SEZ- Denial of the said concessions through a communication dated 6.4.2015 restoring the guidelines of 2009.

## **Decision**

The impugned communication dated 6.4.2015, which stated that the captive power plants, situated in processing areas of SEZs would be demarcated as non-processing areas and the operation and maintenance benefits which were denied earlier shall thereupon be available for such power plants- held to be arbitrary and hence, invalid.

**M/s. MANYATA PROMOTERS PVT. LTD., VIKAS TELECOM PVT. LTD.**

**2024 (9) TMI 72**

**KARNATAKA HIGH COURT**



## Issue

Whether the Extra Duty Deposit (EDD) paid towards SVB investigations could be regarded as duty and the refund claim regulated accordingly under Section 27.

## Decision

The HC held that EDD paid is a deposit and not a duty payment notwithstanding the fact that it could be finally adjusted towards duty and therefore the limitations prescribed under Section 27 will not apply. Having held that the EDD is not duty, the HC however held that the refund will be governed by the unjust enrichment requirements under Section 27.

**M/s. NITTAN INDIA TECH PVT. LTD.  
2024 (9) TMI 1502  
MADRAS HIGH COURT**



## **Issue**

Jurisdiction to invoke extended period of limitation under Section 28(4)  
Issue on failure to comply with the conditions of end use exemption,  
without any findings on suppression or wilful misdeclaration.

## **Decision**

In the absence of any findings in the impugned Order-in Original on suppression of any material facts by the importer, the assumption of jurisdiction by the Adjudicating authority to invoke Section 28(4) was held to be incorrect and the entire proceedings vitiated.

**M/s. GAIL (INDIA) LIMITED**  
**2024 (9) TMI 127**  
**GUJARAT HIGH COURT**



## Issue

Recording of reasons to believe while seizing goods – Section 110 of the Customs Act, 1962

## Decision

It must be based on material on the record. It cannot be arbitrary, capricious or whimsical. 'Reason to believe' cannot be a rubber stamping of the opinion already formed by a competent officer. The officer who is supposed to write down his minimum reasons to believe must independently apply his mind. Reliance was placed on the Hon'ble Supreme Court in the case of *N. Nagendra Rao and Company [1994 (9) TMI 316 - SUPREME COURT]* that even though formation of opinion may be subjective, it should not be a mechanical reproduction of the words in the statute. The seizure order set aside in the absence of satisfaction of these requirements.

**M/s. ASSAM SUPARI TRADERS**  
**2024 (9) TMI 1617**  
**PATNA HIGH COURT**



## Issue

Delay in adjudication of Show Cause Notice and failure to inform the Noticee about the fact of transfer to Call Book by Customs authorities.

## Decision

Show Cause Notice was quashed placing reliance on the Mumbai HC decision in the matter of *Coventry Estate Pvt. Ltd. Vs. The Joint Commissioner CGST & Central Excise & Anr. 2023 (8) TMI 352-Bombay High Court* – On non-communication of the fact of transfer to Call Book, reliance was placed on *ATA Freight Line (1) Pvt. Ltd. Vs. Union of India (2022) 1 Centax 32 (Bom)* approved by SC in *Union of India & Ors. Vs. ATA FreightLine (1) Pvt. Ltd. 2023 (2) TMI 1131*. The availability of statutory remedy of appeal was held to be no bar for deciding the question. Reliance was placed on the SC decision in *Assistant Commissioner of State Tax & Others vs M/s Commercial Steel Ltd. dated 3rd September,2021 passed in Civil Appeal No. 5121 of 2021*

**M/s. BHUSHAN VORA  
2024 (9) TMI 713  
BOMBAY HIGH COURT**





## **Issue**

Denial of Preferential duty without recording the reasons for the denial and without carrying out the due process of verification - Sec 28DA of the Customs Act, 1962

## **Decision**

High Court set aside the order denying the preferential duty benefit holding that, “It is by now well-settled that the requirement of reasons being recorded forms the core of our jurisprudential doctrine of fairness, constitutes an important safeguard against arbitrary exercise of power and serves as validation of due application of mind”

**M/s. AUSIL CORPORATION PVT. LTD. AND M/S. M.D. OVERSEAS PRIVATE LIMITED**  
**2024 (9) TMI 716**  
**DELHI HIGH COURT**



## Issue

Relevant date for reckoning the time limit of one year prescribed under Notification 102/2007 Cus. for claiming refund of SAD in provisional assessment cases.

## Decision

The time limit of one year must be reckoned with reference to the date of finalisation and not the date of payment of provisional duty. Reliance was placed on the Delhi High Court decision in case of *Pioneer India Electronics Pvt Ltd Vs. Union of India* reported in 2014 (301) ELT 59 which was followed by the Tribunal in case of *SUZUKI MOTORCYCLE INDIA P. LTD VS C.C., NEW DELHI (IMPORT & GENERAL)* reported in (9) TMI 1260

**M/s. M/S. SHIRDI STEEL TRADERS**  
**2024 (9) TMI 1260**  
**GUJARAT HIGH COURT**



### Issue

Amendment of Import General Manifest (IGM) due to change in consignee – when the procedure prescribed in paragraph 3(c) and (e) of Customs Circular No. 14/2017-Customs dated 11th April 2017 has been complied with

### Decision

IGM to be amended – No need for a NOC  
-Reliance was placed on a similar matter *ETGAGRI INDIA PVT. LTD. VERSUS UNION OF INDIA AND OTHERS* [2017 (10) TMI 1658 - BOMBAY HIGHCOURT]

**M/s. SHREEJI TRADING**  
**2024 (9) TMI 75**  
**BOMBAY HIGH COURT**



### Issue

Admissibility of claim for interest on duty paid in excess under Section 27 A of the Customs Act, 1962, when the duty paid in excess of what is due.

### Decision

Interest under Section 27A should be payable – Doctrine of restitution laid down in the SC decision in *SOUTH EASTERN COALFIELDS LTD. VERSUS STATE OF M.P. & ORS.* [2003 (10) TMI 638 - SUPREME COURT] relied upon.

**M/s. TELECARE NETWORK**  
**(INDIA) PVT. LTD.**  
**2024 (9) TMI 129**  
**DELHI HIGH COURT**



## Issue

Classification of Calcium Carbonate - Whether under CTH 28365000 or under CTH 25369030

## Decision

Tribunal decided that classification under CTH 25369030 will be appropriate for the following reasons:

- a) In order to classify under the said tariff item, the goods should conform to the IS standard and must meet with the parameters provided in the IS specification
- b) The Kandla Customs Lab did not have the capability to test all parameters as required under IS: 8767-1978, i.e. the Specification for Precipitated and activated Calcium Carbonate for Paints, and the range of Oil Absorption and other parameters (including particle size)
- c) Reliance was also placed on the Tribunal decision *M/S. ASIAN GRANITO INDIA LIMITED VERSUS C.C. -MUNDRA [2020 (8) TMI 615 -CESTAT AHMEDABAD]*

**M/s. SPENCER POLYMERS  
2024 (9) TMI 9  
CESTAT AHMEDABAD**



### **Issue**

Import of Zinc ash - restricted in the Foreign Trade Policy (FTP), required licence for import - hazardous waste, liable to be returned to country of despatch in terms of rule 17(2) of Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2008 - Imposition of Redemption fine u/s 125 of Customs Act, 1962, in lieu of confiscation and imposition of penalty of ₹ 1,50,000 u/s 112 of Customs Act, 1962, when the offending goods were ordered to be re-exported?

### **Decision**

The order for confiscation and levy of RF as a consequence and penalty set aside as:

- a) the re-export of goods had not been ordered either as an alternative to clearance for home consumption or in exercise of discretion under any provision of Customs Act, 1962. Instead, under the mandate of rule 17 of Hazardous Waste (Management, Handling & Transboundary Movement) Rules, and,
- b) the goods in any case have not been cleared for home consumption and ordered to be re-exported.

**M/s. BN INDUSTRIES**  
**2024 (9) TMI 124**  
**CESTAT MUMBAI**



## Issue

Valuation of imported goods - inclusion of Licence Fee and Management Fee in the assessable value of the goods imported from related parties - Inclusion of Management Fee in the assessable value of imported goods.

## Decision

The Licence fee and the management fee are not related to the imported goods nor are these payments a condition of sale of the imported goods as required in Rule 10)(1)(c) of the Customs Valuation Rules 2017.

Reliance was placed on the Tribunal, decision in the matter of *India Ltd. v. Commissioner of Customs, Mumbai 2003 (6) TMI 30 - CEGAT, NEW DELHI*

**M/s. SCHENCK PROCESS INDIA PRIVATE LIMITED**  
**2024 (9) TMI 190**  
**CESTAT KOLKATA**



### **Issue**

Classification of EPS-ECU used in motor vehicles- Whether under CTH 870894 as parts of motor vehicles or under CTH 9032 as automatic regulating or controlling equipment or under CTH 8543 as other electrical apparatus?

### **Decision**

As parts identifiable for use with the motor vehicles, classification under CTH 87089400 was approved.

**Our comments :** Yet another decision where an instrument appropriately classifiable under CTH 9032 has been taken to CTH 8708. The instrument measures and decides the desired torque to be maintained by the motor used in an electronic power steering for a given load requirement. The steering assistance part is the resultant action because of the torque of the motor maintained at the desired level by the instrument. Therefore, the ECU should be regarded an automatic regulator of the torque of the motor rather than as steering assistance device as the instrument has been incorrectly understood.

**M/s. NISHKA INTERNATIONAL  
2024 (9) TMI 254  
CESTAT KOLKATA**



## Issue

Interest on the amount collected during investigation paid before the issue of SCN

## Decision

Any amount received during investigation is Revenue Deposit and hence cannot be retained for want of any authority of law to retain such amount. As per Article 300A of Constitution of India also, no person shall be deprived of his property, save by authority of law. Once the demand proposed under the show cause notice is set aside, it becomes clear that the money deposited continues to be the appellant's property. He cannot be deprived of the same and is entitled for benefits arising out of the said property. Hence, interest accrued on the amount refunded from the date of payment of the initial amount till the date of refund.

**M/s. M/S. CHURCHIT INTERNATIONAL**  
**2024 (9) TMI 418**  
**CESTAT NEW DELHI**





## Issue

Denial of benefits of the erstwhile VABAL licences to the transferee, and demand for penalty when the licence has not been cancelled by the DGFT

## Decision

The transfer is not liable towards the demand of duty and penalty as the scrips/licenses were valid at the time of import; therefore, the subsequent cancellation of the same on the ground of fraud etc. will not have bearing on the transferee appellant. The ratio laid down by SC in the matter of *Aafloat Textile (I) Pvt. Ltd. [2009 (235) E.L.T. 587 (S.C.)]* distinguished.

**M/s. LARK CHEMICALS PRIVATE LIMITED AND MICRO LABS. LIMITED**  
**2024 (9) TMI 511**  
**CESTAT MUMBAI**



## Issue

The classification of imported Quick Lime. The appellant classified it under CTH 2522 1000, while the Department argued it should be under CTH 2825, leading to a higher duty rate. The appellant, having paid duty and interest under protest, challenged this reclassification and the resulting demand and penalty under Section 114A of the Customs Act, 1962.

## Decision

Classification under CTH 25221000 approved placing reliance on a similar matter in *Viraj Profiles Ltd. v. Commissioner of Customs (Preventive)*, Mumbai reported in 2023 (10) TMI 1260 – *CESTAT, Mumbai, approved by SC as reported in 2024 (388) E.L.T. 673 (S.C.)*].

**M/s. JINDAL STAINLESS LIMITED**  
**2024 (9) TMI 846**  
**CESTAT KOLKATA**



## **Issue**

Classification of imported electric kettle parts, as complete electric kettle by application of GIR 2(a)

## **Decision**

Classification as complete electric kettle is approved, since heating element and thermostat and the body in which the water is to be heated are all imported. The sensor which the respondent procures domestically only adds some additional functionality. Therefore, what is imported is an incomplete electric kettle in a disassembled condition. GIR 2(a) is invocable.

**M/s. PRINGLE HOMEWARE(P) LTD  
2024 (9) TMI 571  
CESTAT NEW DELHI**



## **Issue**

Motor Controller for Electric Tricycle Spare Parts -enhancement of value - rejection of declared value - change in classification of the item imported

## **Decision**

Rejection of declared values based on NIDB data and not on the basis of any other evidence is not appropriate. The controller, which is meant for use with the electric motor to control the same, will merit classification under CTH 8503 as a part of the motor and not under CTH 8708.

**M/s. AAHANA COMMERCE PRIVATE LIMITED**  
**2024 (9) TMI 543**  
**CESTAT KOLKATA**



### **Issue**

Classification of imported goods – Compressor and clutch assembly for use in automobile air conditioners- to be classified under Chapter Headings 8421 9900, 8409 9990 and 8414 9090 or under CTH 84159000? classification of the impugned goods claimed by the Appellant earlier under a different CTH would operate as an estoppel or not – applicability of 'predominant use' or 'sole/principal' use test stated in *Westinghouse Saxby Farmers [2021 (3) TMI 291 - SUPREME COURT]*.

### **Decision**

- a) The subject goods, being air compressors used for car air conditioning equipment, are rightly classifiable under its respective heading CTH 8414 8011 as gas compressors of a kind used in air-conditioning equipment as per Note 2(a) to Section XVI of CTA, 1985.
- b) There is no estoppel in taxation matters; reliance was placed on the SC decision in *DUNLOP INDIA LTD. & MADRAS RUBBER FACTORY LTD. VERSUS UNION OF INDIA AND OTHERS [1975 (10) TMI 94 - SUPREME COURT]*,
- c) SC decision in *Westinghouse Saxby Farmers [2021 (3) TMI 291 - SUPREME COURT]* is distinguished.

**M/s. FORD INDIA PVT. LTD.  
2024 (9) TMI 944  
CESTAT CHENNAI**



## Issue

Recovery of interest on short paid IGST

## Decision

Placing reliance on a catena of HC and SC decisions on the same question, the Tribunal held that in the absence of specific provision for recovery or charging of interest, fine and penalty u/s 3(7) or 3(12) of Customs Tariff Act 1975, the orders for recovery of interest, fine and penalty on late payment of the IGST are not sustainable.

**M/s. CHIRIPAL POLY FILMS LTD.**  
**2024 (9) TMI 940**  
**CESTAT AHMEDABAD**



## **Issue**

Classification of Fork/Yoke 5th and reverse gear shift (parts of motor vehicles) – whether under CTH 84831099 considering the goods as ‘Transmission Shafts’ or to be classified under CTH 8708400 as parts of motor vehicle like gear boxes and parts thereof.

## **Decision**

Classification under CTH 8708400 as parts for gear boxes of motor vehicles is approved, the goods being transmission parts notwithstanding in view of their being non- engine transmission parts and hence not excluded by Note 2 (e) to Section XVII.

**M/s. BEST KOKI AUTOMOTIVE PVT. LTD.  
2024 (9) TMI 1181  
CESTAT NEW DELHI**



## Issue

High sea's sales - validity of addition of 2% charges to the CIF values declared in the face of the importer providing complete evidence for justifying the transaction value.

## Decision

The addition of 2% to the value when the importer had provided complete evidence of transaction value is not sustainable. Transaction value to be taken into consideration is the transaction between the high sea's supplier and the appellant, which clearly shows that the consideration for the goods is as declared by the appellant.

**M/s. M/S. HINDUSTAN ORGANIC CHEMICALS LTD.**  
**2024 (9) TMI 1037**  
**CESTAT BANGALORE**





## **Issue**

Vicarious liability of CHA for a penalty under Section 112 (a) of the Customs Act, 1962 for an act of misdeclaration by the importer

## **Decision**

In the absence of a positive act or omission on the part of the appellant that should render the goods liable for confiscation, the vicarious responsibility cannot be cast on the CHA. Accordingly, the penalty imposed on the appellant on this ground is not sustainable

**M/s. VR ADARSH PROPRIETOR  
2024 (9) TMI 1258  
CESTAT CHENNAI**



## Issue

Revocation of CBLR licence - whether the SCN issued could be regarded as the Offence report for purposes of reckoning the time limit

## Decision

Since the investigation report, the offence report in the instant case, was issued on 17.04.2014 and the show cause notice was issued on 06.12.2018, it is clearly barred by limitation consequently. The show cause notice itself does not survive the test of limitation.

**M/s. RICHIES CARGO LOGISTICS PVT LTD.  
2024 (9) TMI 1182  
CESTAT AHMEDABAD**



## **Issue**

Levy of Customs duty on imported goods destroyed in fire in SEZ units – eligibility to seek remission of customs duty under Section 23 of the Customs Act, 1962 - demand of custom duty amounting to Rs. 8,11,12,992/- along with interest, redemption fine and penalty.

## **Decision**

Though the appellants took the position that SEZ being a customs territory outside India, since Tribunals have taken a consistent view that in cases of destruction due to natural causes in the SEZ, the SEZ unit is entitled for the remission of duty in terms of Section 23 of Customs Act, 1962. Therefore, as of now there is no dispute on the legal issue that the SEZ unit is eligible for the remission of the customs duty in case the goods are destroyed in the SEZ unit. The Appellant was given an option to seek remission under Section 23 ibid. Matter remanded form the limited purpose.

**M/s. YASHASHVI RASAYAN PVT. LTD.**  
**2024 (9) TMI 1501**  
**CESTAT AHMEDABAD**



## Issue

Duty paid post import- held to be not payable by courts later- Refund- applicability of limitation.

## Decision

Duty paid should be regarded as a deposit- Notwithstanding that the letter submitted by the importer did not mention the words under protest. Time limit under Section 27 not applicable as the duty has been collected without authority.

**M/s. VINOD BROTHERS**  
**2024 (9) TMI 1259**  
**CESTAT CHANDIGARH**



## Issue

Whether additional document in support of factual evidence could be produced for the first time before an appellate forum? Refund of differential duty between the duty already paid and the duty that would have been leviable - when documents such as the balance sheet, profit of loss accounts, invoices, cost data and other basic financial records of the relevant periods not presented to rule out unjust enrichment.

## Decision

Though the SC order in *Chittoori Subbanna Vs Kudappa Subbanna [1964 (12) TMI46 - SUPREME COURT]* recognized that it is possible to include additional grounds in the grounds of appeal by moving a separate application for permission before the appropriate forum for its consideration, in the absence of such miscellaneous application, the appeal was dismissed.

**M/s. ENTERPRISE INTERNATIONAL LTD.  
2024 (9) TMI 1555  
CESTAT CHENNAI**



## Issue

Classification of sawn New Zealand pine logs - to be classified under CTH 4403 or under CTH 4407- Burden to prove the classification on Revenue.

## Decision

Since Revenue failed to provide evidence that the logs in question were worked to such an extent to merit classification under CTH 4407, classification under CTH 4403 confirmed- Reliance as placed in the Tribunal decision in - *BHAIRAMAL GOPIRAM VERSUS COMMISSIONER OF CUSTOMS, CALCUTTA [2000 (6) TMI 474 - CEGAT, KOLKATA* which in turn had relied upon a SC ruling in the matter of *DISPLAYOR OF CUSTOMS, BOMBAY VERSUS SONI ENTERPRISES- 1997 (10) TMI 80 - SC ORDER.*

**M/s. VARIETY LUMBERS P LTD**  
**2024 (9) TMI 1554**  
**CESTAT AHMEDABAD**



## **Issue**

Demand of Customs duty in respect of goods destroyed while they were warehoused – Correctness of the demand interest and penalty in terms of the Warehousing (Custody and Handling of Goods) Regulation 2016 – Duty liability discharged by appellant.

## **Decision**

Loss by fire cannot be regarded as removals contemplated under Section 71 and Section 73A of the Customs Act, 1962. Loss by fire cannot be regarded as a deemed removal for purposes of these provisions. No liability to pay duty or interest would arise under Section 71/73A of the Customs Act, 1962 as in the instant case there was no illicit physical removal of warehoused goods from the warehouse. Additionally, the Customs Commissioner is not held liable for interest, and therefore, the invocation of Regulation 4(c) of the Customs Warehousing Regulation, 2016, was deemed incorrect.

**M/s. CENTRAL WAREHOUSING CORPORATION**  
**2024 (9) TMI 1614**  
**CESTAT AHMEDABAD**



## Issue

a) Classification of solar power inverters-VFD -whether under CTH 85415000 as semi-conductor devices or under CTH 8504 as inverters b) whether a Notice under Section 28 could be issued to finalize a provisional assessment when the demanded duty was also paid for release of the goods. c) liability to Interest under Section 28AA of the Customs Act, 1962d penalty under Section 114 ibid.

## Decision

a)Solar inverters are classifiable under CTH 8504 and not under CTH 8541 as semi-conductor devices, b) when finalizing a provisional assessment there is no case for issue of a SCN under Section 28 ibid and therefore no case for levy of interest under Section 28 AA ibid and c) for the same reason levy of penalty under Section 114 AA ibid was also not approved.

**M/s. SHAKTI PUMPS INDIA LTD.  
2024 (9) TMI 1556  
CESTAT NEW DELHI**



## Key Connects



**P Sridharan, Senior Advisor:**  
**E-Mail:** [sridharan.p@m2k.co.in](mailto:sridharan.p@m2k.co.in)  
**Mob No.:** +91 94444 20647



**Rahul Jain, Partner:**  
**E-Mail:** [rahul.jain@m2k.co.in](mailto:rahul.jain@m2k.co.in)  
**Mob No.:** +91 97908 78922



**Kalpesh Jain, Partner:**  
**E-Mail:** [kalpesh@m2k.co.in](mailto:kalpesh@m2k.co.in)  
**Mob No.:** +91 95001 17061

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