

HIGH COURT RULING

[2009-TIOL-407-HC-MAD-CUS](#)

Tamilnadu Steel Tubes Ltd Vs ACC (Refund), Chennai (Dated: July 9, 2009)

Customs – Refund of excess duty paid – Nothing on record to suggest that the duty is paid under protest to attract the provisions of proviso to Section 27(1)(b) of Customs Act – No reason to interfere with order of Single Judge

[Also see analysis of the Order](#)

[2009-TIOL-404-HC-DEL-EXIM](#)

Ajay industrial. Corpn Vs Dir General, Foreign Trade (Dated: July 16, 2009)

EXIM Policy 1992-97 – Revalidation of licenses after endorsement of transfer on duty free advance licenses – Para 125 of EXIM Policy does not differentiate between transferable license and a non-transferable license – All import licenses whether endorsed as transferable or non-transferable to be treated alike – On transfer a duty free license in the hands of third party is valid for the balance period mentioned in the licence or six months from the date of transfer, whichever is later – Rejection of applications for revalidation of licenses after endorsement of transfer quashed – DGFT directed to consider request for revalidation – No opinion expressed as to whether request for extension has merits and justifiable

[Also see analysis of the Order](#)

[2009-TIOL-367-HC-DEL-CUS](#)

DRI Vs MD Jamil @ Wasim @ Bhura (Dated: July 15, 2009)

Customs – Bail - Merely because there is a serious offence against the respondent, it cannot be a ground for cancellation of bail – DRI petition dismissed: circumstances when bail can be recalled:

- (1) Where the accused has misused the liberty granted to him.
- (2) Where accused has attempted to tamper with the evidence.

(3) Where he has attempted to influence the witnesses.

(4) Where there is a possibility of the accused to abscond and, therefore, there is a possibility that the accused may not be available for trial.

[Also see analysis of the Order](#)

[2009-TIOL-365-HC-DEL-CUS](#)

M/s Seiko Brushware (India) & OrsVs Directorate Of Revenue Intelligence (Dated: July 15, 2009)

Customs - Prosecution vs Departmental proceedings - once the department has no legs to stand with respect to the original cause of action, continuing criminal proceedings and prosecuting the accused in such like matters amounts to abuse of the process of Court: once departmental adjudication exonerates the accused of the offences which are the basis of lodging a complaint against the accused/petitioners before a criminal Court under Section 135 Customs Act, the complaint cannot be permitted to be tried further because once the department has no legs to stand with respect to the original cause of action, continuing criminal proceedings and prosecuting the accused in such like matters tantamounts to abuse of the process of Court and therefore such proceedings must come to an end.

[Also see analysis of the Order](#)

[2009-TIOL-353-HC-MUM-CUS](#)

Poona Health Services Private Limited Vs CC (Airport), Mumbai (Dated: June 25, 2009)

Customs – Redemption Fine – Duty is payable even if the confiscated goods are not redeemed – the issue really stands concluded considering the Coordinate Bench Judgments of this Court in *Commissioner of Customs Vs. Wockhardt Hospital and Heart Institute* , reported in [2006-TIOL-115-HC-MUM- CUS](#) and the judgment in *Bombay Hospital Trust Versus Commissioner of Customs (ACC) Mumbai* [2006-TIOL-170-HC-MUM- CUS](#) . Apart from that, the legislature has made it clear that even if the goods are released on payment of fine, such person is also liable to pay duty and charges thereon. The fine payable to get possession of the goods under section 125 is distinct and different from the duty of goods which are to be imported or exported. It is the nature of recompense to the state for goods which are vested in it and on sale would have realized the value of the goods and from that to recover the duty which is unpaid as also fine.

If benefit is given to another assessee illegally, the Court cannot perpetuate illegality ; Even assuming that the tribunal has acted arbitrarily in the case of *Harkishandas Hospital* that by itself is no ground for the appellant to contend that they should also be exempted from the payment of duty. The exemption and or remission is only as provided under the Act. If not provided under the Act, neither A.O. nor the tribunal or courts can exercise the jurisdiction of waiving the payment of duty. If what the appellant says is correct, at the highest it is for the respondents to prefer an appeal against that order in case of *Harkishandas Hospital* . At any rate if

the order is illegal, this court cannot perpetuate the illegality. We may add a note of caution that we are not aware of the facts in the case of *Harkishandas* .”

[Also see analysis of the Order](#)

[2009-TIOL-337-HC-MUM-CUS](#)

Ranjeet Sanghvi Vs CC , Mumbai (Dated: July 1, 2009)

Customs – Goods imported under ‘Actual User’ condition, diverted – penalty justified: the Government of India formulated and announced the export and import policy for the period from April, 1992 to March, 1997. Clause 25 of the Export and Import Policy provides that all second hand capital goods, having a minimum residual life of 5 years , may be imported by the Actual Users, without a license, subject to “Actual User” condition. The Actual User was also required to furnish to the Customs at the time of clearance of the goods, self-declaration to the effect that the second hand capital goods being imported had minimum residual life of 5 years. In view of these provisions, it is clear that such second-hand capital goods could not be imported unless they were to be imported for actual user by the importer. That itself was a prohibition against import. However, the import would be exempted from the prohibition subject to “Actual User Condition”. If that condition is violated, provisions of S.111 (o) of the Customs Act would be attracted.

[Also see analysis of the Order](#)

[2009-TIOL-327-HC-MUM-ST](#)

Suzlon Infrastructure Ltd Vs UoI (Dated : May 2, 2009)

CESTAT – ROM is permissible even while the matter is pending with the Third Member – An application for rectification would be maintainable even when a reference is made to a Member. Apart from the language of the provisions it would be a more constructive and purposeful method of answering the issue. Holding otherwise, and accepting the stand of the revenue would be to delay the proceedings and may also again lead to other points being referred once again.

Tribunal has to frame points for determination and each point has to be answered. The points for determination would be those points which are relevant for the purpose of deciding the controversy and if decided would have the affect of determining the controversy in the appeal. For this purpose while hearing and deciding an appeal the Tribunal is bound to frame points for determination which are relevant for deciding the issue in controversy in the appeal. Once the points for determination are fixed the members are bound to answer the points so framed. It is only on the points on which there is difference of opinion, then only is there a need to refer to a third member those points for determination. It is in that context while disposing of appeals the tribunal is bound to fix points for determination and answer the said points.

It is the cardinal duty of Court or Tribunal to do complete justice: it is the cardinal duty of Court or Tribunal to do complete justice between the parties subject to its

jurisdiction in order to avoid multiplicity of proceedings. The Court or tribunal in such case has an inherent jurisdiction to decide an application for rectification so that the real controversy in issue is decided

[Also see analysisof the Order](#)

[2009-TIOL-317-HC-MUM-CUS](#)

Hero Cycles Limited Vs UoI (Dated : June 16, 2009)

Customs – benefit of exemption notifications not allowed – Refund without challenging assessment – writ maintainable – The law is well settled that mere statutory remedy even of an appeal by itself, will be no bar to the exercise of the extra ordinary jurisdiction of the High court. The High Court if it finds that there has been a breach of the fundamental principles of justice, would certainly not hesitate to issue a writ of certiorari and the fact that the alternative remedy is available would be no answer. The fact that the Petitioner has paid the duty under mistake of law and or in the instant case by oversight cannot result in being assessed to duty which was otherwise not payable. This will be a case of manifest injustice and on the face of it erroneous.

Assessment ordered to be modified : the relief of refund claimed is not maintainable before the order of assessment is amended or modified as held by the Supreme Court in *Priya Blue Industries* . The Petitioner no doubt has contended that he has not passed on the duties and as such the question of unjust enrichment would not arise in the matter. Revenue directed to modify the assessment order after which the assessee can apply for refund.

[Also see analysisof the Order](#)

[2009-TIOL-316-HC-MUM-CUS](#)

United Spirits Limited Vs CC, Mumbai (Dated : June 25, 2009)

Principle of 'unjust enrichment' does not apply to refund of Redemption Fine: The question is whether fine or penalty is also subject to the doctrine of unjust enrichment. The Customs Act, 1962 has specifically provided in Section 27(2) that when a person is claiming refund of duty and that if applicant is entitled to refund the amount will be credited in the fund subject to the proviso. Section 2(15) defines 'duty', which means a duty of customs leviable under this Act. It does not include fine or penalty. Section 12 sets out the duties on goods. Section 111 provides for confiscation of improperly imported goods as set out therein. The principles of 'unjust enrichment', therefore, would not arise in a case of redemption fine.

[Also see analysisof the Order](#)

[2009-TIOL-313-HC-MUM-CUS](#)

M/s P Kishanchand Textiles Pvt Ltd Vs UoI (Dated : June 10, 2009)

Customs – seizure – Show Cause Notice issued after three years – goods liable to be released: Admittedly, the show cause notice was issued about 3-1/2 years after the seizure. In view of this, under the provisions of Section 110(2), the respondents are bound to return the goods to the petitioners from whose possession the same were seized.

[Also see analysisof the Order](#)

[2009-TIOL-305-HC -P&H-EXIM](#)

Escorts Limited Vs UoI (Dated : May 20, 2009)

FTP - Retrospective withdrawal of Target Plus Scheme, quashed – Govt loses case because it failed to get the case transferred to Supreme Court: The High Court is also in full agreement with the judgment passed by the High Court of Gujarat in the case of Welspun India Ltd. v. Union of India. Adopting the same reasoning, the Court allowed the present writ petition and quashed the notification No. 08(RE-2006)/2004 - 2009 dated 12.06.2006 issued by the Director General of Foreign Trade and Ex-Officio Additional Secretary to the Government of India, and declared it ultravires the Act, 1992 so far as it gives retrospective effect and the petitioners are held entitled to get duty credit entitlement certificate, if entitled to otherwise.

[Also see analysisof the Order](#)

[2009-TIOL-303-HC -DEL-SD](#)

Saint-Gobain Glass India Ltd Vs UoI (Dated : May 27, 2009)

Challenge to safeguard Duty on Soda Ash – the levy is in public interest, which is made to give effect to a provision in the statute that domestic industry is to be protected from onslaught of increased quantities of export which cause or threaten to cause market disruption; power is conferred on a senior functionary i.e., the Director General, who is required to exercise the same after due analysis of material and evidence collected by him after taking into account the presence of critical circumstances. In the instant case, the Director General has evaluated the material and criticality of circumstances and come to the conclusion that if the flow of increased imports from China are not stemmed it would cause or threaten to cause market disruption unleashing irreparable damage; the recommendation of the Director General was considered by the Central Government whereupon the rate of provisional duty imposed was 20% ad valorem as against the recommended rate of 31% ad valorem; the decision to levy provisional duty is transitory, which is required to be followed by a final finding by the Director General within a stated time frame after which the levy would dissolve.

Writ Petitions ought to be entertained, when there is either a complete lack of jurisdiction or a palpable error so grave which requires imminent interference by a writ court – Petition dismissed : The scope for interference in matters which have huge economic impact is very narrow. As a matter of fact, actions instituted in courts such as the instant writ petitions have portents of derailing decisions- which could have a cascading impact and inflict resultant damage not only on the domestic industry in issue but even on industries which are vertically integrated to the said domestic industry, as also on their employees and industrial labour, which perhaps at times Courts cannot monetarily quantify. Therefore, the Court should be slow in entertaining such petitions.

[Also see analysis of the Order](#)

[2009-TIOL-301-HC-MAD-CUS](#)

Isak Ebinesar Vs Chairman, CBEC, New Delhi (Dated: April 15, 2009)

Customs- CHA Licensing Regulations 2004 - the petitioners who passed the examination under the old regulations (1984) do not have any vested right to seek exemption from passing the examination under the New Regulations - petitioners cannot claim legitimate expectation that they would be issued with license under the old regulations - doctrine of legitimate expectation is not applicable to the petitioner's case - Challenge to the new regulations and the notification inviting applications under new regulations is rejected - however, the Central Board of Excise and Customs, is directed to examine the matter and come up with a scheme for extending to the petitioners herein, the same benefits as conferred upon similarly placed persons in Delhi and Punjab and Haryana.

[Also see analysis of the Order](#)