

CESTAT RULING

[2011-TIOL-1722-CESTAT-DEL](#)

M/s Bholanath Industries Ltd Vs CCE, Allahabad (Dated: September 15, 2011)

Customs – 100% EOU – Capital goods imported under Notification No 53/97 Cus could not be installed within one year as stipulated in the Notification - Substantive condition of the notification, that the inputs and capital goods imported must be used for manufacture of the goods for export and the export target must be achieved is satisfied - There is no allegation that the capital goods, in question, were not used for the intended purpose or that the appellant failed to achieve the export target - Just because of some delay in installation of capital goods, which was condonable, the benefit of duty exemption cannot be denied.

Limitation – Extended period - While the duty free imports availing the benefit of Notification No. 53/97-Cus had been made during the period July 1999 to October 2000, the show cause notice denying the benefit of exemption has been issued only on 05/7/05, which will survive only if the extended period under proviso to Section 28 of the Customs Act, 1962 is available to the department - There is absolutely no evidence of any wilful misstatement or suppression of facts.

[2011-TIOL-1721-CESTAT-DEL](#)

M/s Kemtech International Pvt Ltd Vs CC (I &G), New Delhi (Dated: September 9, 2011)

Customs – Undervaluation of goods imported and supplied to GAIL – Allegation raised based on suspicion and complaint by recipient of goods viz., GAIL that importers had recovered excess duty from them but deposited less amounts with exchequer as importer did not furnish any bills of entries to GAIL – Customs authorities found that appellant had imported goods at 1/5 th to 1/4 th of the prices which were initially negotiated by GAIL with original supplier – Appellants did not provide any justifiable reason for abnormal discounts – In terms of Rule 10(1)(b) of Customs Valuation Rules, 1988 department authorized to call for manufacturer's invoices in such circumstances but appellants chose not to submit such invoices – In terms of CC, Bombay vs. Shibani Engineering Systems, Bombay [2002-TIOL-667-SC-CUS](#), such abnormally discounted prices not acceptable – Order rejecting transaction value maintainable even though revenue has not been able to trace evidence of remittance of differential values – Matter remitted back to original authority for re-quantification of short levy on the basis of prices quoted by earlier importer to the current importer - Penalties also to be decided afresh – Penalties imposed on individuals also requires to be adjudicated afresh – Section 28B of Customs Act, 1962 read with Rule 10(1)(b) of Customs Valuation Rules, 1988

[Also see analysis of the Order](#)

[2011-TIOL-1697-CESTAT-DEL](#)

M/s Royal Enterprises Vs CC, Amritsar (Dated: July 22, 2011)

Customs – Provisional release of seized goods – Imported goods declared as heavy melting scrap, on examination by chartered engineer engaged by department, found to be old compressors of various sizes resulting in seizure – One of the conditions

imposed for provisional release of seized goods i.e. the importer shall not challenge value or identity of seized goods, not sustainable, in as much as importer cannot be deprived of opportunity to contest classification or valuation – If such condition is allowed, department can allege any valuation and continue to have goods under detention unless aggrieved party withdraws the challenge of such valuation, which amounts to denial of justice– For provisional release of goods, authorities have to safeguard the revenue with regard to duty, redemption fine and penalty, if any – Not supplying report of chartered engineer also violates principles of natural justice – With regard to establishing identity and description of goods, department directed to draw representative samples – Importer directed to pay differential duty as provisionally assessed, furnish a bond equal to value of goods seized and furnish a bank guarantee equal to 10% of provisionally assessed value – Conditions for release of goods modified and on compliance of the same, department directed to provisionally release seized goods

[2011-TIOL-1693-CESTAT-DEL](#)

M/s Navshakti Industries Pvt Ltd Vs CC, New Delhi (Dated: November 14, 2011)

Customs – Stay/Dispensation of pre-deposit – Mis -declaration of description and value of printing paper – It is a debatable question as to whether the report in respect of one supplier from the Indian High Commission can be extrapolated to other suppliers also - The show cause notice also mentions that the department reserves its right to issue addendum to the show cause notice on receipt of the reports of overseas inquiries in respect of other suppliers and the matter has been adjudicated without waiting for these reports - It would not be correct to insist the pre-deposit of entire amount of duty demand confirmed and penalty – Rs five lakhs ordered to be deposited.

[2011-TIOL-1685-CESTAT-AHM](#)

M/s Gujarat Boron Derivatives Vs CCE, Daman (Dated: May 13, 2011)

Customs - Refund of SAD - Chartered Accountant's certificate - Unjust Enrichment - The assessee has produced the certificate of the Chartered Accountant as required under the notification and Board Circular No.6/2008-Cus. dated 28.04.08. From the invoices it is seen that no duty (SAD) is charged or recovered by the assessee from their buyers. It is sufficiently proved that the incidence of duty has not been passed on to the buyers. Refund is allowed. (Para 6 & 7)

[2011-TIOL-1678-CESTAT-DEL](#)

CCE, Meerut-II Vs M/s J S Gupta & Sons (Dated: September 27, 2011)

Customs - EOU - Removal of imported goods to sister concern without following procedure - verifications conducted with reference to documents when the goods are not available cannot in most situations identify the goods as the ones manufactured using imported raw material. But the whole facts have to be seen together before coming to a final conclusion. This is a factory which worked under the supervisions of two Central Excise officers posted in the factory. All documents relating to removals were under scrutiny by these officers. Further, the returns filed by the unit also were to be scrutinized. The department did not point out any contraventions. So issuing a demand in the year 2005 for non-compliance with procedural rules for the years 2001-02 to 2003-04 is not justified. In such a situation the verification got done by

the adjudicating authority based on records has to be respected. In the facts of the case such as that the officers were supervising the clearances and the Respondent had documents showing satisfactory accounting of the goods and that they had exported goods earning sufficient foreign exchange, the case made out by Revenue cannot be sustained in the absence of evidence showing sale of the imported goods in the local market. No such evidence has been produced by Revenue. [para 15]

[2011-TIOL-1677-CESTAT-DEL](#)

M/s Rochees Watches Pvt Ltd Vs CCE, Jaipur (Dated: October 20, 2011)

Customs Stay/Dispensation of pre-deposit Valuation DEP/B In terms of CBEC's circular No.27/2000-Cus dt.5.4.2000, when DEP/B credit allowed for the goods subject to value cap, PMV (Present Market Value) is irrelevant - Revenue is bound by the said Circular issued by the Board and the Revenue's endeavour to re-decide the FOB based upon the PMV cannot be appreciated at interim stage Considering the fact that bank guarantee of Rs.1.10 crore has already been given, the conditions of pre-deposit of penalties imposed upon the various appellants is dispensed with.

[2011-TIOL-1676-CESTAT-DEL](#)

CC, Jaipur Vs M/s V K International (Dated: November 3, 2011)

Customs - gold mountings and findings being items as jewellery are outside the purview of Notification No. 62/2004-Cus; jewellery made of gold or silver is excluded from the purview of this notification. Thus, the point of dispute is as to whether the mountings and findings of gold are gold jewellery or other than the gold jewellery covered by Sl. No. 2 of the table annexed to the notification. There is no dispute that so far as findings are concerned, the same are parts of gold and silver jewellery and the same would be covered by sub-heading 71131190 and being part of the jewellery, the same would be out of the purview of Notification No. 62/2004-CUS. [para 7]

Board Circulars are binding only when they are in accordance with the Law: while the Board under Section 151 (a) of the Customs Act, can issue clarifications with regard to classification of a product or scope of an exemption notification, by such clarifications, the Board cannot expand the scope of an exemption notification issued by the Central Government under Section 25 (1) of the Customs Act, 1962 as the Board is after all an office, subordinate to the Government of India. Constitutional Bench of the Supreme Court in the case of CCE, Bolpur vs. Ratan Melting & Wire Industries reported in [\(2008-TIOL-194-SC-CX-CB\)](#) has held that Circulars of the Board are binding only when the same are in accordance with the law. [para 11]

[Also see analysis of the Order](#)

[2011-TIOL-1652-CESTAT-AHM](#)

M/s Petronet LNG Ltd Vs CC, Ahmedabad (Dated: September 29, 2011)

Customs - Refund - Whether bar of unjust enrichment applicable to refund claim of duty paid on short landed goods - Refund claims arose because goods in r/o which duty was paid never landed in India - In such instances, there is no question of incidence of duty paid by importer being passed onto consumers - Impugned order of Appellate Commissioner crediting refund amounts to Consumer Welfare Fund set aside and order of original authority upheld - Section 27(2) of Customs Act, 1962 read with

Section 12C of Central Excise Act, 1944

[2011-TIOL-1651-CESTAT-DEL](#)

Air Travel Bureau Ltd Vs CC, New Delhi (Dated: October 14, 2011)

Customs - EPCG Scheme for service providers - Import of cars availing benefit of exemption Notification No. 44/02-Cus subject to fulfilment of export obligation - Importer providing services of travel agency and support services - Allegation that export obligation fulfilled by providing free services and unspecified trips and discharged out of foreign exchange earned by other means not related to imported cars - No specification in Customs Notification or EXIM policy to demonstrate one to one correlation between services rendered by usage of imported cars and foreign exchange realization - Fact that cars were not registered as tourist vehicles and appellants did not bill for the use of car separately cannot be fatal for claiming customs exemption - Sections 111(d), 111(o), 112 (a) and 114A of Customs Act, 1962

[2011-TIOL-1633-CESTAT-DEL](#)

CC & CE, Noida Vs M/s Prakash Freight Movers Ltd (Dated: August 8, 2011)

Customs – CHA Licence – Revocation : Revenue in their memo of appeal have no where contested the finding of the Commissioner that it was the CHA himself who had asked the department to exercise first check. If the intention of the CHA was to facilitate clearance of the goods by mis-declaring the same, he would not have requested for first check. In that scenario, no infirmity in the view taken by the Commissioner. Otherwise also, no independent evidence reflecting upon any malafide intention on the part of CHA in procuring the wrong certificate from the chartered engineer is available. Statement of chartered engineer, deposing that he requested the CHA to show the permission for inspection of the cargo from the customs department and for giving the certificate, cannot be relied upon as the sole factor, without any independent corroboration, inasmuch as the chartered engineer himself was a noticee in the proceeding under the Customs Act. There is no independent evidence available on record indicating any malafide on the part of the CHA. [para 9]

[2011-TIOL-1631-CESTAT-DEL](#)

CC, New Delhi Vs M/s Computer Infinitie (Dated: November 8, 2011)

Customs – Classification – Computer mouse - Heading 84716060 specifically mentions 'mouse' – As per the catalogue, the goods have been described as 'the stealth 3D mouse for two handed operation' - The said 3D mouse is standard computer mouse and has been designed by a collaboration of professionals from the mapping and ergonomic design fields - Merely because the said mouse is bigger in size and costlier than the ordinary mouse and also performs other specific functions, the same cannot be held to be a device other than the mouse – No infirmity in the order of Commissioner (Appeals) holding the goods to be mouse and classified under heading 84716060 – Revenue appeal seeking classification under CTH 84799090 has no merit.

[2011-TIOL-1624-CESTAT-BANG](#)

CC, Cochin Vs M/s Tata Tately Ltd (Dated: August 1, 2011)

Customs – Liability to pay SAD on DTA sale of tea bags by 100% EOU – Revenue has not issued any demand notice under s. 28, if no provisions are invoked for demand of duty, any amount paid by assessee required to be refunded to him if such amount is not due – In the instant case neither there was demand of duty nor any finalization of amounts required to be paid by assessee – In absence of any dues from assessee, findings of Appellate Commissioner legal and proper – No infirmity in impugned order – No merits in Revenue appeal

[2011-TIOL-1618-CESTAT-BANG](#)

M/s Eastern Silk Industries Limited Vs CC, Bangalore (Dated: July 1, 2011)

Customs – Demand of duty foregone for diversion of duty free imported raw materials – When there is violation of conditions of Notification No. 13/81-Cus, demand of duty under section 28(1) and imposition of penalties under sections 112(a) and 114A justified – Once a benefit is extended to assessee under a notification for discharge of 'nil' duty and if the conditions therein were violated, it would amount to short levy which requires to be demanded only under section 28(1) of Customs Act, 1962 - Permission from DGFT is required only if there is demand of duty for non-fulfillment of export obligation. In the instant case, there is only demand of duty foregone on diversion of duty free imported goods to DTA – Impugned order does not require any interference, upheld

[Also see analysis of the Order](#)

[2011-TIOL-1611-CESTAT-DEL](#)

M/s Signal Bearing Co Vs CCE, Delhi-IV (Dated: August 25, 2011)

Customs - Valuation - ball bearings - Commissioner's guidelines based on average cost of material, wastage, manufacturing cost and other charges etc - higher value upheld: The legality and veracity of such guidelines stand considered and upheld by the Tribunal; the appellate authority has taken into consideration the import of ball bearings from the same country i.e. China by other importers, assessed to duty at the rate of USD 1.60 per kg. When the large majority of the importers were conforming to such norms, there is no special reason to adopt a lower value for the imports made by the appellant.

[2011-TIOL-1607-CESTAT-DEL](#)

M/s JSL Ltd Vs Designated Authority (Dated: August 4, 2011)

Customs - Anti Dumping - No Appeal before CESTAT after High Court rejected writ on the same issue: once the appellants had chosen the remedy of writ petition and while disposing of the writ petition so filed, the relief was confined to allow the appellants to place their grievance before the designated authority in review proceedings under Rule 23 of Anti-Dumping Rules, while rejecting the challenge to the final findings it is but natural that the appellants did not reserve their right to appeal and agreed and/or accepted to confine their challenge in the review proceedings. It is not open for the appellants to challenge the final finding by way of appeal and only remedy available at this stage to the appellants is to approach Designated Authority in review proceedings

under Rule 23 of Anti-Dumping Rules in terms of the order of the Hon'ble High Court.

[2011-TIOL-1597-CESTAT-AHM](#)

M/s Kunal Travels (Cargo) Vs CC, Kandla (Dated: May 13, 2011)

Customs - CHA - Prohibition of work of CHA under Regulation 21 of the CHALR, 2004 for filing shipping bill for export of non-basmati rice in the guise of Indian basmati rice - CHA should exercise such supervisions as necessary to ensure the proper conduct of person sought to be appointed to act on behalf of the exporter as per Regulation 19 - The argument of the appellant that they are not responsible for the conduct or antecedents of such person is not acceptable - No merit in the appellant's case.

[2011-TIOL-1595-CESTAT-MAD](#)

M/s Centerpulse India Ltd Vs CC, Chennai (Dated: July 27, 2011)

Customs – Import – Implants – Exemption Notification – The imported goods i.e. "nkII ultra congruent tibial insert (Implants)" being implants meant of joint replacement for persons requiring such replacement are covered under Notification No. 21/2002. Without such implants, such persons will be severely handicapped and disabled to function normally. Benefit of exemption notification available. (Para 3)

[2011-TIOL-1588-CESTAT-MAD](#)

C Easwaran Vs CCE, Coimbatore (Dated: July 27, 2011)

Customs – Import – Second hand Looms – License – Since the looms are more than 10 years old, they require license for import. Confiscation and penalty upheld. However, redemption fine reduced. (Para 2)

[2011-TIOL-1582-CESTAT-MAD](#)

CC, Trichy Vs Shri K Balaganesan (Dated: May 23, 2011)

Customs - Import - Smuggling - Absolute Confiscation - Redemption Fine - Return of Sale proceeds - Deduction of duty, fine and penalty - The balance sale proceeds of disposed gold is to be returned after realization of the duty amount payable thereon together with fine and penalty imposed. (Para 2 & 23)

Interpretation of Section 125 - Whether the confiscated goods are redeemed or not, and whether the fine is paid or not, the duty has to be recovered in terms of Section 125(2). Duty is payable by the owner of the confiscated goods or where such owner is not known, by the person from whose possession or custody such goods have been seized. (Para 17)

[2011-TIOL-1576-CESTAT-MAD](#)

Shri Shakthi Vs CC, Tuticorin (Dated: July 28, 2011)

Customs - Export of Red sanders - Penalty - Adjudicating Commissioner has dealt with the points raised by the appellants adequately and in a detailed manner and about their involvement in the case – No reason to interfere with the order – Penalties upheld - However, quantum of penalty against the second appellant reduced.

[2011-TIOL-1571-CESTAT-MAD](#)

CC, Chennai Vs Hindustan Petroleum Corporation Ltd(Dated: September 7, 2011)

Customs - Demand under Section 28B of the Customs Act, 1962 for collecting excess duty - Issue covered in favour of the respondents in view of the finding that the excess collection of duty is not retained by the respondents, but deposited in the Oil Pool account in terms of Administered Price Mechanism.

[2011-TIOL-1570-CESTAT-MAD](#)

Gypcrete Building India Ltd Vs CC, Chennai (Dated: July 25, 2011)

Customs - Stay/Dispensation of pre-deposit - Valuation - Inclusion of Erection, Installation and Commissioning charges - Case of the department is based on the conditions of the agreements and the statements recorded - No prima facie case has been made out for total waiver - Pre-deposit ordered.

[2011-TIOL-1569-CESTAT-MAD](#)

ETA General Pvt Ltd Vs CC, Chennai (Dated: July 29, 2011)

Customs - Parts of air conditioning machines comprising a motor driven fan and elements for changing the temperature and humidity are very much covered under Heading 8415.90: The Explanatory Notes to the HSN for 'Parts' appearing under Heading 8415.90 clarifies that if presented as separate elements, the components of air-conditioning machines would get classified in accordance with the provisions of Note (2)(a) to Section XVI under Headings 84.14, 84.18, 84.19 etc. This Explanatory Note has to be read harmoniously with the legal text of Heading 84.19 which makes it amply clear that under the sub-heading 84.19 only those machinery which are other than machinery or plant of a kind used for domestic purposes are included. Hence, the heat exchanger unit covered under Heading 8419.50 can only include a heat exchanger unit which is not used for domestic purposes. The plea advanced on behalf of the appellants that the impugned goods can be classified under Heading 84.19 is not acceptable as the same are not for purposes other than air-conditioning machinery used for domestic purposes as has been brought out in the adjudicating Commissioner's order.

[2011-TIOL-1561-CESTAT-MAD](#)

M/s Mangal Singh Brothers Vs CC, Chennai (Dated: May 10, 2011)

Customs - Import - Used Cars - Transfer of residence - Violation of EXIM Policy - Penalty - At the time of import of the impugned cars, chassis number of vehicle was tampered with, the model number and the year of manufacture were mis-declared for justifying mis-declaration of value and claim for higher depreciation. It is crystal clear from the case records that the impugned car was not imported by a passenger for his personal use coming on transfer of residence for permanent settlement in India but for trading purposes avoiding import restrictions on such vehicles and without paying the appropriate customs duty. As per the facts all three appellants are involved and have had a common interest in the illegal transaction and import of the impugned car contrary to the EXIM policy and contrary to the provisions of the Customs Act, 1962 and in the evasion of customs duty.

HELD - Imposition of penalty justified. For repeat offenders higher penalty is mandated. However, penalty partially reduced. (Para 2)

[2011-TIOL-1555-CESTAT-AHM](#)

M/s AIA Engineering Ltd Vs CC, Ahmedabad (Dated: April 28, 2011)

Customs – Import of heavy melting scrap on clearance to factory and de-stuffing found to contain used arms and ammunitions – Imports duly accompanied by pre-shipment inspection certificate in terms of Board's Circular, it can be concluded that appellant fully followed procedure required to be followed by them – Import of war material along with scrap not on account of any malafide on the part of importer – Appellant not contesting confiscation of war material but challenging confiscation of balance quantity of waste and scrap for which certificate from authorized agency produced – Confiscation of waste and scrap, penalty imposed set aside – Confiscation of war material upheld

[2011-TIOL-1551-CESTAT-AHM](#)

M/s Phonix traders Vs CC, Kandla (Dated: May 18, 2011)

Customs – Examination of export consignment of rice in export warehouse revealed non-basmati rice whereas consignment was declared to be basmati rice – Appellant nowhere produced any evidence to show that they dealt with non-basmati rice for local traders – Since similar cases are repeated frequently, plea of mix up of rice or plea of mistake not convincing – When an exporter undertakes export of rice worth Rs. 1.5 crores, no reasonable prudent man would commit such type of mistakes – Redemption fine of Rs. 15 lakhs imposed not excessive – Provisions of s. 114 invocable when persons commit any act which will render goods to confiscation – As export of prohibited goods are liable for confiscation, penalty of Rs. 5 lakhs imposed on exporting firm justified – Penalty of Rs. 3 lakhs imposed on partner of exporting firm under s. 114A set aside as partnership firm was already penalized – Director of CHA firm found to be brother of partner of exporting firm – Plea of not being aware of contents of export consignment not convincing, penalty on CHA firm justified – Penalty on Director of CHA firm not justified as CHA firm was being penalized

[2011-TIOL-1550-CESTAT-MUM](#)

M/s Swiber Offshore Construction Pte Ltd Vs CC, Mumbai (Dated: October 25, 2011)

Vessel imported under exemption notification 21/2002-Cus seized on the charge of undervaluation – application made for Provisional release u/s 110A of Customs Act – no need for payment of Customs duty and execution of Bank Guarantee- execution of bond is sufficient: CESTAT by Majority.

[Also see analysis of the Order](#)

[2011-TIOL-1547-CESTAT-DEL](#)

M/s Huawei Technologies Co Ltd Vs Designated Authority Ministry Of Finance (Dated: August 11, 2011)

Customs – Anti dumping – DA who held public hearings transferred and final findings given by successor DA without conducting fresh hearing – In terms of Apex Court decision in Automotive Tyre Manufacturers Association successor = [2011-TIOL-03-SC-CUS](#) DA should give fresh hearings – Matter remanded to DA to give post decisional hearings and modify final findings – Any modifications made in the final findings would be considered by giving effect to the same by the Government by carrying out the necessary amendments to the impugned notifications imposing anti dumping duty – Process to be completed within six months – Status quo to be maintained meanwhile – CESTAT Anti Dumping Bench

[Also see analysis of the Order](#)

[2011-TIOL-1546-CESTAT-MUM](#)

A S Moloobhoy & Sons Vs CC, (CSI Airport), Mumbai (Dated: August 23, 2011)

Customs – Exemption under Notification No 21/2002 Cus – Handset imported for replacing a defective part of the Communication system of ocean going vessel – Exemption cannot be denied on the ground that such replacement does not amount to repair – Exemption is allowed.

[2011-TIOL-1534-CESTAT-AHM](#)

M/s Indian Oil Corporation Limited Vs CC, Jamnagar (Dated: August 12, 2011)

Customs - Import - Crude Oil - Refund of Interest - Unjust enrichment - Refund of duty sanctioned but refund of interest paid is rejected on the ground that the amount of interest was not shown as recoverable from customs in the book of accounts of the assesseees.

HELD - Due to the administrative price mechanism, it is accepted that duty was not passed on. Following the same principle, interest paid on the duty is also held to be not passed on to the customer. Refund of interest is allowed. (Para 3)

[2011-TIOL-1533-CESTAT-AHM](#)

CC, Jamnagar Vs M/s Reliance Industries Ltd (Dated: March 17, 2011)

Customs – Imports of crude petroleum oil by 100% EOU at Port whether liable to pay NCCD, SHE Cess and E Cess – Goods cleared without payment of duty under

provisionally assessed warehousing bills of entry and deposited in bonded warehouse situated in the jurisdiction of Central Excise Officer – 100% EOU not required to discharge any duty liability in r/o imported goods warehoused in their premises and used for manufacturing-in-bond – Jurisdiction for raising demand for short levy, in r/o goods imported and warehoused by 100% EOU lies with proper officer having jurisdiction over the EOU and not with Customs House – Larger Bench decision in Ferro Alloys Corporation Ltd case = [2002-TIOL-292-CESTAT-DEL-SB](#) followed

[2011-TIOL-1532-CESTAT-MAD](#)

CC, Chennai Vs M/s Microqual Techno Pvt Ltd (Dated: July 17, 2011)

Customs – Import – Classification – Exemption for co-axial cables under Notification No 25/05 Cus – The exemption notification No. 25/05, under Sl. No. 28, exempts "electric conductors" classifiable under 8544.41 and 8644.49 which are at the double "dash" level falling within the subheading No. 8544.40 at the single "dash" level. In view of the fact that the co-axial cables are classified under 8544.20, an entirely different subheading, the same obviously falls outside the exempted category of items under the said sl. no. 28. (Para 6)

Interpretation of notification – The notification clearly requires the goods to fall under particular classification and also to conform to the description given before exemption can be allowed. The imported goods having not satisfied the condition relating to the required classification under column (2) of the notification, the impugned goods cannot be allowed the exemption. If the exemption is subject to any conditions, the conditions have to be complied with. (Para 8)

[2011-TIOL-1525-CESTAT-MAD](#)

M/s SPM Trading (Madras) Pvt Ltd Vs CC, Chennai (Dated: July 29, 2011)

Customs – Import – Valuation – Price List – Price list pertaining to 2001 obtained from the overseas supplier has a glossary with article number and price is indicated in Japanese Yen. Price list of 2002 submitted by the importer does not contain these details. The price list of 2002 is not authentic and moreover there being no contemporaneous import the revenue is right in adopting the price list of 2001 for arriving at the value of the goods imported. (Para 2)

[2011-TIOL-1524-CESTAT-MAD](#)

M/s N M Zackhriah Vs CC, Chennai (Dated: July 26, 2011)

Customs – Benefit of Exemption Notification - Drawback/DEPB on exports made using duty-free material - Customs have sought to deny the benefit of Notification No. 32/97 under which goods were imported duty free and not the drawback / DEPB claimed.

HELD - Notification No. 32/97 is not conditional upon not availing the drawback/DEPB benefit. Importer has satisfied conditions of the said notification. Benefit allowed. (Para 2)

[2011-TIOL-1520-CESTAT-MAD](#)

<p>CCE, Salem Vs D Kumaresan (Dated: May 31, 2011)</p> <p>Customs – Export – Involvement in Fraud - Penalty – There is a clear finding that the individual has abetted in the drawback fraud and is liable for penal action under Section 114(iii) of Customs Act, 1962. Matter remanded to the Commissioner to pass fresh order insofar as penal liability against the individual is concerned. (Para 2 & 3)</p>
<p>2011-TIOL-1515-CESTAT-MAD</p>
<p>Adishwar Spinners Ltd Vs CC, Chennai (Dated: July 8, 2011)</p> <p>Customs – Import – Benefit of Exemption Notification – Burden of Proof – The burden lies on the importers to establish their entitlement for the benefit of concessional rate of duty / exemption from payment of duty claimed by them . (Para 7)</p>
<p>2011-TIOL-1512-CESTAT-MUM</p>
<p>CC, Mumbai Vs Raajratna Metal Industries Pvt Ltd (Dated: August 4, 2011)</p> <p>Rejection of logging of Shipping bill for export of Stainless steel wires of specification AWS ER 312 doubted – Since it has been accepted by the Customs at the time of import that the input wire rod conformed to the grade ER 312, therefore, the export product should also conform to the same specification as drawing of wires from the wire rods cannot change the composition of the product - In view of the fact that the test report of the Deputy Chief Chemist is incomplete, the respondent has to be given the benefit of doubt - Revenue appeal dismissed.</p>
<p>2011-TIOL-1511-CESTAT-MUM</p>
<p>Shailesh D Redeej Vs CC, Nhava Sheva (Dated: August 4, 2011)</p> <p>Customs – Import of Suzuki Hayabusa Motorcycle from USA – The motor cycle was manufactured in Japan and imported from USA – According to the provisions of FTP, the Vehicle should be imported only from the country of manufacture – No infirmity in the order of the lower authority confiscating the vehicle and providing an option to re-export on payment of redemption fine and penalty.</p>
<p>2011-TIOL-1504-CESTAT-MAD</p>
<p>Elgitread (India) Ltd Vs CCE, Coimbatore (Dated: August 11, 2011)</p> <p>Customs - Export under bond - Re-import - Demand of duty - The goods exported under bond without payment of duty in terms of Notification No.263/79-CE dt.22.9.79, are covered by Sl. No.1 (d) of the Table to Notification No.94/96-Cus when re-imported into India and are liable for duty. If the re-imported goods have been accounted in the stock register and have been cleared from the factory on payment of duty, then the present demand would amount to double demand and cannot be sustained. Further, the benefit of MODVAT credit of duty paid on inputs used in the manufacture of re-imported goods would be admissible subject to assessee's establishing duty paid nature of such goods. (Para 3)</p>
<p>2011-TIOL-1503-CESTAT-MAD</p>

M/s Leather Crafts (India) P Ltd Vs CC, Chennai (Dated: July 27, 2011)

Customs – Export – DEPB vis -à-vis Exemption Notification No.32/97 – Value addition – Drawback/DEPB claimed on exports made using duty-free material imported under Notification No. 32/97. Benefit of notification sought to be denied.

HELD - The benefit of the notification is admissible subject to fulfilling the condition of achievement of value addition. (Para 2)