

CESTAT RULING

[2010-TIOL-1436-CESTAT-MUM](#)

Cummins India Ltd Vs CC, Mumbai (Dated: October 1, 2010)

Commissioner(Appeals) has jurisdiction to hear the appeal against the order passed by the Customs officer lower than the rank of Commissioner of Customs – even an allegedly void order is to be challenged within the period of limitation - if the statutory time limit expires, Court cannot give the declaration sought that the order against him is inoperative and not binding – COD applications dismissed.

[Also see analysis of the Order](#)

[2010-TIOL-1432-CESTAT-MUM](#)

M/s Veekay Prints Pvt Ltd Vs CC, Mumbai (Dated: June 23, 2010)

Provisions of section 27 of the Customs Act, 1962 applies only when the refund that is being sought is of customs duty – 4% Additional duty paid by mistake not a Customs duty – Matter remanded

[Also see analysis of the Order](#)

[2010-TIOL-1427-CESTAT-MUM](#)

CC Vs Vikas Corporation (Dated: October 5, 2010)

An appeal for the sake of filing an appeal - allegations and proposals in the show-cause notice are seen reiterated in the memo of appeal without any semblance of documentary support – Revenue appeal rejected

[Also see analysis of the Order](#)

[2010-TIOL-1421-CESTAT-MAD](#)

M/s Caltex Gas India Private Ltd Vs CC, Tuticorin (Dated: April 15, 2010)

Customs – Refund of duty paid on short landed goods – The quantity on which duty is to be paid stands settled in favour of the assessee holding that assessment of bulk liquid cargo is to be done only on the basis of shore tank quantity and not as per ship ullage report – The assessee are entitled for refund subject to unjust enrichment.

[2010-TIOL-1399-CESTAT-MUM](#)

M/s Liladhar Pasoo Forwarders Pvt Ltd Vs CC, Mumbai (Dated: June 17, 2010)

CHA has filed the Bill of Entry on the basis of document and invoice supplied by the importer - no allegation against the CHA that he was having any knowledge that the goods in the impugned Bill of Entry were prohibited – Penalty u/s 112 of Customs Act, 1962 not imposable hence set aside – ratio of decision in Prime Forwarders ([2008-TIOL-513-CESTAT-AHM](#)) squarely applies – Appeal allowed with consequential relief.

[2010-TIOL-1395-CESTAT-MAD](#)

CC, Tuticorin Vs Hari & Co (Dated: July 23, 2010)

Customs – Penalty under the provisions of Section 112(a) of the Customs Act, 1962 can be fastened on the steamer agent in view of the Bombay High Court decision in [2006-TIOL-295-HC-MUM-CUS](#)

[2010-TIOL-1389-CESTAT-BANG](#)

M/s SI2 Microsystems Ltd Vs CC, Bangalore (Dated: July 5, 2010)

Customs – No bar on transfer of CENVAT credit balance available in books of DTA on conversion into EOU – Prima facie case for full waiver of pre-deposit – Stay granted

[2010-TIOL-1378-CESTAT-AHM](#)

M/s Agarwalla Timbers Pvt Ltd Vs CC, Kandla (Dated: September 24, 2010)

Customs – Refund of Additional duty of Customs under Notification No 102/97 Cus dated 14.9.07 – Imported Timber logs subjected to sawing and sold as sawn timber in different sizes and length – Refund denied on the ground that the sawn timber and timber logs are different – Department has not established that the sawn timber after the process undertaken by the appellants has become a new commodity with distinct, name, character and use - Contention raised by the Revenue, that imported goods fall under Heading 44.03 and sawn timber falls under Heading 44.07 of Customs Tariff and this establishes these two are not the same goods is incorrect – Refund of additional duty cannot be denied to the appellants.

CBEC Circular No 15/2010-Cus dated 29.06.10 - The Boards circular gives an impression that when the goods sold are having a different classification, SAD refund would not be available - It is settled law that judicial precedents would prevail over the circulars issued by the Board.

[Also see analysis of the Order](#)

[2010-TIOL-1363-CESTAT-MAD](#)

Smt Saranga Agarwal Vs CC, Chennai (Dated: July 2, 2010)

Customs – Interest on delayed refund – No interest is payable on delayed refund of fine and penalty as the Customs Act, 1962, provides only for interest on delayed refund of duty – No interest can be granted by the Tribunal under Rule 41 of the CEGAT Procedural Rules, 1982.

[2010-TIOL-1352-CESTAT-BANG](#)

M/s Obulapuram Mining Company Pvt Ltd Vs CC, Visakhapatnam (Dated: May 31, 2010)

Customs – Export of iron ore claiming iron content being less than 64% for availing export benefits – Test reports of samples drawn at destination port cannot be ignored and summarily rejected as held by Tribunal in Taurion Iron & Steel Co. Ltd = [2009-TIOL-907-CESTAT-BANG](#) – When goods are exported no question of imposing redemption fine – Prima facie case for full waiver of pre-deposit – Stay granted

[2010-TIOL-1351-CESTAT-DEL](#)

M/s Seaking Marine Services Vs CC, Mumbai (Dated: June 28, 2010)

Customs – Unjust enrichment - mere deposit of some money made upon detection by Revenue is not immune from scrutiny of unjust enrichment when refund is claimed: When the appellant made certain deposits without any protest made under law through appropriate procedure known to law and failed to produce the original invoices and books of accounts to establish live link of the entire transaction from the time of import till disposal of the goods to verify description of goods sold and also status of the duty if any collected, such failure before 3 successive stages of the proceedings shows that the appellant has not come out with clean hands to buttress its claim:

The modus operandi adopted by the appellant shows that on detection by search party the appellant came forward to make some deposit having made breach of law. Had the investigation not done, the appellant would have been unjustly enriched at the cost of Revenue. The appellant without proving its claim to be bonafide with cogent evidence made its conduct questionable.

Fraud nullifies everything: Appellant's plea that time bar does not attract bar of unjust enrichment is untenable for the cardinal principle which is enshrined in section 17 of the Limitation Act that fraud nullifies everything. In absence of any lawful protest lodged, plea of inapplicability of bar of unjust enrichment on the ground of excess payment made is untenable. Similarly, entertainment of claim of refund without leading any cogent evidence is inconceivable. The plea of appellant that amount paid

against export need not undergo test of unjust enrichment is baseless when refund claimed is unsupported by original evidence. Further, the plea of voluntary payment of duty shall not be subject to test of unjust enrichment is devoid of merit when some payments were made by appellant only upon discovery of improper clearance from warehouse.

[Also see analysis of the Order](#)

[2010-TIOL-1341-CESTAT-MAD](#)

M/s Sri Suguna Machine Works Private Ltd Vs CC, Chennai (Dated: July 21, 2010)

Customs – Refund of customs duty equal to the excise duty paid on goods re-imported – The ground taken by the appellant that the time limit of one year for refund provided under the Central Excise Law should be applied is not acceptable as the duty which was collected was customs and the provisions of Customs Law is applicable – Refund claim rightly rejected by the lower authorities on limitation – However, the appellants are at liberty to claim admissible drawback.

[2010-TIOL-1335-CESTAT-DEL](#)

CC, New Delhi Vs Shri Surjeet Singh (Dated: July 19, 2010)

Customs – Purchase of imported second hand car within two years of import in violation of import conditions – When parties were clearly in the know of violation of import conditions, confiscation upheld but redemption fine reduced – Penalties on individuals restored but reduced considering facts of the case – Impugned order of the Appellate Commissioner set aside

[2010-TIOL-1327-CESTAT-MAD](#)

M/s Tamil Nadu Newsprint & Papers Ltd Vs CC, Tuticorin (Dated: July 8, 2010)

Customs – Valuation – Ship's demurrage charges are not includable in the assessable value in view of the Supreme Court decision in case of M/s IOCL.

[2010-TIOL-1326-CESTAT-AHM](#)

M/s The Shipping Corporation Of India Ltd Vs CC, Jamnagar (Dated: June 22, 2010)

Customs – Refund consequent to finalisation of provisional assessment – Relevant date for filing the claim is the date of adjustment of duty to be communicated to the importer by way of letter indicating the finalisation of the assessment or the return of

Bill of Entry with endorsement of finalisation of assessment – Unjust enrichment - Merely because the duty had been shown as expenditure, the conclusion of the Commissioner (Appeals) that duty incidence has been passed on is erroneous - Matter remanded to examine limitation and unjust enrichment afresh.

[Also see analysis of the Order](#)

[2010-TIOL-1315-CESTAT-MAD](#)

Allied Healthcare India Vs CC, Chennai (Dated: June 15, 2010)

Customs – Exemption under Notification No 17/2001 – Cus dated 1.3.2001 – Exemption is allowed in respect of Cardiac Stents – However, since the exemption is available only for diathermy apparatus, the benefit cannot be extended to the electro-surgical apparatus imported by the assesseees.

[2010-TIOL-1309-CESTAT-MAD](#)

M/s Vaibhav Mercantile Ltd Vs CC, Chennai (Dated: July 21, 2010)

Customs – Refund – Refund arising out of higher duty paid inadvertently without taking benefit of Notification due to ignorance – Matter remanded for grant of refund applying the ratio of the Delhi High Court decision in ([2009-TIOL-566-HC-DEL-CUS](#)) .

[2010-TIOL-1303-CESTAT-MAD](#)

Hivelm Industries Vs CC, Chennai (Dated: July 7, 2010)

Customs – Conversion of duty free shipping bill into drawback shipping bill – The claim of the assesseees for conversion is to be considered on merits in the light of the provisions of Section 149 of the Customs Act, 1962 – Matter remanded.

[2010-TIOL-1297-CESTAT-MAD](#)

M/s Kiran Pandy Chems Ltd Vs CC, Tuticorin (Dated: June 18, 2010)

Customs – Interest on goods cleared from a warehouse under DEPB beyond 90 days period – Demand of interest is upheld in view of the SC decision in Tanfac Industries Ltd.