

## **CESTAT RULING**

[2010-TIOL-1287-CESTAT-MAD](#)

**M/s Sree Rayalaseema Hi-Strength Hypo Ltd Vs CC, Chennai (Dated: June 22, 2010)**

Customs – Conversion of Free Shipping Bills into DEPB Shipping Bills – Public Notice of August 1998 covers exports during the prior period of April 1997 to April 1998 and the contention of the assessee that the Public Notice should be deemed to have been in existence at the time when the goods were exported is well founded - Matter remanded to the Commissioner to consider the request for amendment on the basis of the Public Notice and pass fresh orders.

[2010-TIOL-1280-CESTAT-MAD](#)

**CC, Chennai Vs M/s Lmt Fette (India) Pvt Ltd (Dated: July 20, 2010)**

Customs – Department had filed a proper appeal before the lower appellate authority with necessary authorization, but the lower appellate authority has rejected the appeal on frivolous ground, as he has done in several other cases – Matter remanded to the lower authority for deciding the appeal on merit.

[2010-TIOL-1279-CESTAT-MAD](#)

**M/s Prime International India Pvt Ltd Vs CC, Chennai (Dated: July 14, 2010)**

Customs – Impugned order of Commissioner (Appeals) passed on the ground that the appellant cannot be considered to be aggrieved person is not sustainable – This particular lower appellate authority has been dismissing genuine appeals on frivolous grounds, of which there are several instances – Such orders passed by him cannot be upheld – Appeals are remitted back to the lower appellate authority for fresh decision.

[2010-TIOL-1270-CESTAT-BANG](#)

**Cargill India Pvt Ltd Vs CC, Visakhapatnam (Dated: December 23, 2009)**

Customs – Export of soyabean meal, an agricultural product, through free shipping bills and request for conversion into drawback shipping bills – Ignorance of drawback entitlements by exporter a valid reason to apply for condonation by Commissioner under Rule 12(1)(a) of Drawback Rules – When assessee entitled to drawback conversion to be allowed under s. 149 of Customs Act – Impugned order rejecting request for conversion set aside

<a href="#">2010-TIOL-1266-CESTAT-MAD</a>
<b>CC, Chennai Vs M/s National Enterprises (Dated: April 23, 2010)</b>
Customs – Calcium Carbide imported without licence confiscated absolutely – There is no reason to interfere with the order of the Commissioner (Appeals) permitting the redemption of the goods to a person authorized under the Calcium Carbide Rules, 1987 – However, penalty imposed is very low and same is enhanced to 5% of the total assessable value.
<a href="#">2010-TIOL-1264-CESTAT-MAD</a>
<b>M/s Expos Leather Company Vs CC, Chennai (Dated: April 23, 2010)</b>
Customs – Confiscation of goods declared as “finished leather”, but found to be other than finished leather – Confiscation and penalty set aside with a direction to the appellant to carry out the process of protective coating before exporting the goods following the earlier decisions of the Tribunal in similar cases.
<a href="#">2010-TIOL-1252-CESTAT-AHM</a>
<b>CC, Kandla Vs M/s Sturdy Polymers Ltd (Dated: August 3, 2010)</b>
Customs – Allegation of mis -declaration of ATF as SKO by the importer - It is a fact that while ATF can be used as SKO, SKO cannot be used as ATF. Therefore even if the product was purchased as ATF, nobody can prevent a manufacturer or an exporter selling it as SKO - The very fact as observed by the Commissioner that the ATF imported was transferred into tanks which contained SKO also defeats the case of the DRI - If there was an intention to declare ATF as SKO and sell the same, the documents would not have been kept in the ship and if they were to be kept, fabricated documents would have been kept. It is not a case of investigating skills of the DRI that load port documents have been recovered and special efforts had to be made for this purpose – Revenue appeal has no merit.
<a href="#">2010-TIOL-1249-CESTAT-DEL</a>
<b>M/s OM Udyog Vs CC, Amritsar (Dated: July 13, 2010)</b>
Customs – Import - Used oil confiscated by treating it as waste oil and for not following the provisions of EXIM Policy and importing without NOC from the Pollution Control Board - There is no warrant to treat every "used oil" as "waste oil". Definitely some used oil can come under the category of waste oil and in respect of such waste oil, provisions of EXIM Policy and the provisions of Hazardous waste (Management & Handling) Rules shall apply - In the present case, there is no evidence that the used

oil imported can be considered as waste oil – Confiscation, fine and penalty set aside.

[2010-TIOL-1242-CESTAT-MUM](#)

**M/s Rajguru Enterprises Pvt Ltd Vs CC, Mumbai (Dated: August 19, 2010)**

Provisional release of seized goods – nowhere in Circular 33/2005-Cus it is laid down that bank guarantees have also to be furnished – appellant executing a bond sufficient – Order set aside with consequential relief.

[Also see analysis of the Order](#)

[2010-TIOL-1235-CESTAT-MAD](#)

**M/s Misri Apparels Pvt Ltd Vs CC, Chennai (Dated: June 28, 2010)**

Customs – Plea for coverage under notification allowing concessional rate of duty can be raised by the assessee before the lower appellate authority who should have examined the merits of the claim or remanded the case to the adjudicating authority.

[2010-TIOL-1234-CESTAT-MUM](#)

**M/s Dia Precious Jewellery Pvt Ltd Vs CC (ACC & Import), Mumbai (Dated: August 18, 2010)**

Import of Wallets made of python skin – as per section 49B of Wild Life (Protection) Act, 1972, Schedule I, there is a prohibition on dealings in animal articles etc. – imports without obtaining NOC from the Wild Life Regional Office constitutes import of prohibited goods – order of absolute confiscation upheld – since in the country of import it can be used freely, re-export allowed – redemption fine cannot be imposed in view of SC decision in Siemens Limited vs. Collector of Customs

Appellant has imported several items which were packed individually - lower authorities has erred in holding the whole of the goods is liable for confiscation u/s 118(a) of the Customs Act, 1962 as the wallets in question were separately identifiable in the consignment itself - No redemption fine is imposable on the non-offending goods.

As the appellant has imported prohibited goods without any NOC from the Wild Life Regional Officer, the penalty u/s 112 of the Customs Act, 1962 is correctly imposed.

[Also see analysis of the Order](#)

[2010-TIOL-1228-CESTAT-MUM](#)

**M/s Ameya Dyechem Pvt Ltd Vs CC, CSI Airport, Mumbai (Dated: July 14, 2010)**

Since the last date of filing appeal fell on a Sunday, as per s.10 of the General Clauses Act, 1897, Monday, the next working day should be treated as the last date and consequently the condonable period of 30 days is to be computed thereafter – Appeal filed within condonable period – Matter remanded to Commissioner(Appeals)

[Also see analysis of the Order](#)

[2010-TIOL-1216-CESTAT-MAD](#)

**M/s Acer India Pvt Ltd Vs CC, Chennai (Dated: June 28, 2010)**

Customs – Short shipment of goods – Refund of duty paid on the short shipped mother boards – The importer has been able to produce contemporaneous documents to bring out the fact of short shipment – The importer is entitled to refund of duty paid on short shipped mother boards.

[2010-TIOL-1213-CESTAT-MAD](#)

**CC, Tuticorin Vs New Hope Food Industries (P) Ltd (Dated: June 24, 2010)**

Customs – Confiscation of Economical Margarine not conforming to the Standard of Margarine – No reason to interfere with the order of the lower appellate authority in reduction of quantum of fine.

[2010-TIOL-1207-CESTAT-MAD](#)

**M J Joshy Vs CC, Chennai (Dated: April 16, 2010)**

Customs – Penalty on CHA for abetting over-valuation of export garments - There is no material on record to conclude that the appellant facilitated mis-declaration of value of the export goods so as to enable the exporter to avail undue drawback. Penalty upon the appellant cannot be sustained.

[2010-TIOL-1203-CESTAT-MUM](#)

**CC, Mumbai Vs M/s Greater Pacific Capital (Dated: July 21, 2010)**

Import without IEC number tantamount to violation of the Foreign Trade (Development & Regulation) Act, 1992 and as per section 111(o) of the Customs Act, 1962, the goods become prohibited if there is violation of the provisions of Customs Act or any other Act in force – Commissioner(A) holding that no officer of Customs has been notified u/s 13 of the FTDR Act and hence s.11 cannot be applied is totally wrong and illegal – Order set aside

[Also see analysis of the Order](#)

[2010-TIOL-1195-CESTAT-AHM](#)

**M/s A M Ispat Ltd Vs CC, Kandla (Dated: May 21, 2010)**

Customs – Imported heavy melting scrap cleared without payment of duty by declaring lower quantity in bill of entry – Clearance without payment of duty also admitted by Director of Company – Confiscation and redemption fine upheld, penalty lowered considering lesser duty liability

[2010-TIOL-1186-CESTAT-DEL](#)

**CCE, Indore Vs M/s Maikaal Fibres Ltd (Dated: April 8, 2010)**

Customs – Allegation of diversion of furnace oil imported by availing benefit in terms of Notification No. 53/97-Cus – Order passed by appellate authority on assumptions and presumptions and without any reason not sustainable – Matter remanded to Appellate Authority to decide the case based on specific guidelines issued by this Bench and after conducting any further enquiry relevant to dispose of the issue – Impugned order set aside

[2010-TIOL-1182-CESTAT-DEL](#)

**CCE, New Delhi Vs M/s National Star Goods Carriers (Dated: April 22, 2010)**

Customs – Confiscation of goods from parcels en route their destination for want of documents evidencing legal import – The respondents are only the railway agents who book parcels from a large number of persons and in normal course of their business, they do not check the contents of the parcel - Even by checking the contents of the parcels, it would not be possible to ascertain whether the goods like ICs, Capacitor, Seiko Battery cells, Cameras etc. are of smuggled nature as such goods are also imported legally in large quantities - No infirmity in the impugned order setting aside the penalties on the respondents – Section 112 of the Customs Act, 1962.

[2010-TIOL-1175-CESTAT-MAD](#)

**M/s Deco Textil Vs CC, Chennai (Dated: April 30, 2010)**

Customs – Confiscation – Prior to the amendment of Section 113 (i), with effect from 14.5.2003, only dutiable goods could be confiscated. Since the impugned goods are not dutiable confiscation Under Section 113(i) set aside.

[2010-TIOL-1166-CESTAT-MAD](#)

**CC, Tuticorin Vs M/s Coromandel Electric Co Ltd (Dated: May 5, 2010)**

Customs - Project import - The distinction between a power generation project which generates and supplies power to consumers in general and a captive power plant set up for supply of power to a dedicated manufacturing unit is very clear - In the instant case, the respondent's power plant has been set up particularly to cater to M/s. ICL who are the sole consumer of the power produced and who hold more than 49% of the share in the respondent-company - They control the entire affairs of the respondent-company - Under Rule 3 of the Electricity Rules, 2005 also, the impugned power plant has to be considered as captive power plant since the captive user namely M/s. ICL has more than 26% of the ownership of the respondent-company and it consumes more than the specified 51% of the electricity generated. The order passed by the lower appellate authority allowing 5% duty benefit applicable to power generation project in respect of the impugned captive power plant cannot be sustained.

[2010-TIOL-1162-CESTAT-BANG](#)

**CC, Bangalore Vs M/s Crystal Granites & Marbles (P) Ltd (Dated: May 25, 2010)**

Customs – 100% EOU – Demand of duty for non-accountal of goods cleared from one warehouse to another warehouse for re-warehousing – Mahazar report gives no indication that goods damaged at the factory gate of consignee were returned to consignor – Mere arrival of goods at premises of consignee does not satisfy legal requirement of receipt of goods by consignee as prescribed in Rule 20(4) of Central Excise Rules, 2002 read with Regulation 4 of Warehousing Goods (Removal) Regulations, 1963 – Orders passed by Adjudicating Authority and Appellate Commissioner set aside and matter remanded to original authority with direction to deal with SCN in accordance with law

[2010-TIOL-1161-CESTAT-AHM](#)

**CC, Kandia Vs M/s Adani Exports Ltd (Dated: August 5, 2010)**

Case reluctantly pursued – strictures against DRI investigation – Commissioner equated production of shipping bills to taking bath in Ganga which is supposed to wash away all sins – Right from the investigation of the case till adjudication order

was passed, one gets a feeling that this case was reluctantly pursued.

Misdeclaration in obtaining advance licence – Export Obligation not fulfilled – Duty and Penalty upheld: It is strange that a limited company does not know the date of sale of the imported goods, the customers who purchased the goods and whether such a sale was made before or after fulfillment of export obligations. In such a situation, the department's contention that the Commissioner erred in coming to the conclusion that the respondent had discharged their export obligations, has to be upheld. Since the licence was obtained as manufacturer exporter, the respondent should have manufactured goods themselves whereas they did not even have a factory.

[Also see analysis of the Order](#)