

## CESTAT RULING

[2009-TIOL-2141-CESTAT-MUM](#)

**CC, Mumbai Vs Gibson Guitar Corpn India (Dated: October 14, 2009)**

Import without IEC - Main issue of confiscation under Section 111(d) does not survive for reason of voluntary payment of fine and penalty - Increase of fine & penalty on ground of respondent being habitual offender without giving sufficient past offences not correct - Appeal and stay application disposed off in above terms.

[2009-TIOL-2140-CESTAT-MUM](#)

**CC, Mumbai Vs Rochem Separatjion Systems India Ltd (Dated: November 26, 2009)**

'Reverse Osmosis Membrane Filtration System' squarely falls within the meaning of 'plant' used in the definition of 'Water Supply Project' - Importer eligible for benefit of exemption notification 14/2004-Cus - Revenue appeal rejected by CESTAT.

[Also see analysis of the Order](#)

[2009-TIOL-2125-CESTAT-MUM](#)

**CCE, Nhava Sheva Vs Crest Chemicals (Dated: July 27, 2009)**

Refund of CVD paid in excess - Section 149 of the Customs Act has no time limit fixed for amendment of any document - Rejection on the ground of finality of assessment order held improper by appellate authority relying on Tribunal decision in Senka Carbon Pvt. Ltd. [ [2007-TIOL-1155-CESTAT-MAD](#) ] proper in law - Revenue appeal citing SC decision in Priya Blue Industries Ltd. [ [2004-TIOL-78-SC-CUS](#) ] and Flock (India) Pvt Ltd. [ [2002-TIOL-208-SC-CX](#) ] since not applicable in the facts and circumstances of the case rejected.

[2009-TIOL-2122-CESTAT-DEL](#)

**Shri Mukesh Gupta Vs CCE, Meerut (Dated: August 20, 2009)**

**Customs - Import - Mis-declaration - Abetment - Departmental officer - Immunity** - The appellant who is a Superintendent of ICD, has himself endorsed the examination report and the bill of entry and had given the pass out order. Mis-declaration of the offending goods has been established. Appellant has not brought any evidence to rebut the charges on him. The appellant is not entitled to be absolved from the charge and liability to penalty. The appellant's is not entitled to the benefit of Section 155 as he has faced charge under Customs Act, 1962 itself for violation of

Section 112 readwith 114 of the Customs Act, 1962. Any suit filed against a public servant or a prosecution initiated against him or any other legal proceedings made against him is subject to test of immunity if he has acted on good faith - However, penalty reduced from Rs 10 lakhs to Rs 5 lakhs. (Para 10 and 13)

[2009-TIOL-2117-CESTAT-MAD](#)

**M/s Madura Coats Private Ltd Vs CC, Tuticorin (Dated: June 2, 2009)**

Customs – CVD debited to EPCG licence though exempted under Notification No 6/2002 CE dated 1.3.2002 – the appellants are directed to file an amended Bill of Entry in terms of Section 149 of the Customs Act, 1962 seeking assessment of the impugned goods in terms of Notification [No.6/2002-CE dated 1.3.2002](#) and the respondents allow the benefit of assessment sought.

[Also see analysis of the Order](#)

[2009-TIOL-2110-CESTAT-MAD](#)

**M/s GE India Industrial Pvt Ltd Vs CC, Chennai (Dated: September 7, 2009)**

Customs – clearance of goods through RMS and mis-declaration – the appellant had not mentioned the second invoice inadvertently and requested for reassessment – no case for warranting confiscation and penalty under Section 111(m) of the Customs Act, 1962.

[2009-TIOL-2094-CESTAT-MAD](#)

**M/s Transport Logistics Vs CC, Chennai (Dated: August 12, 2009)**

Custom – CHA – Penalty imposed on CHA for short shipment of export goods – There is no evidence on record to establish that the CHA had by any act of commission or omission rendered the goods liable to confiscation – Penalty set aside.

[2009-TIOL-2087-CESTAT-BANG](#)

**M/s NI Systems (India) Pvt Ltd Vs CC, Bangalore (Dated: June 29, 2009)**

Customs – Classification of imported PXI Controllers and parts thereof whether classifiable under 8471 or 9031 or 9032 – PXI Controller not a measuring instrument in itself but connected with processors, mother board, hard drive with Windows XP, serial port, USD ports, video port, ethernet port, etc and used for a variety of applications from advanced data acquisition to automated manufacturing test – PXI

Controllers have characteristics of automatic data processing machines – Not classifiable under 9031 or 9032 as held by revenue but classifiable under 8471 as claimed by appellant – Impugned order devoid of merits, set aside

[2009-TIOL-2085-CESTAT-BANG](#)

**CC, Cochin Vs M/s Victory Trading Co (Dated: May 26, 2009)**

Customs – Import of RBD Palmolein along with Palm Kernel Fatty Acid Distillate – Assessee unaware of supplier loading impugned goods resulting in mis-declaration and produced supplier's letter to adjudicating authority to that effect – No evidence adduced by revenue to suggest that assessee paid higher amount to supplier in lieu of import of RBD palmolein – No infirmity in reduction of redemption fine and penalty by Appellate Commissioner

[2009-TIOL-2080-CESTAT-MUM](#)

**M/s Pure & Cure Technology Vs CC (ACC & Import), Mumbai (Dated: November 23, 2009)**

Reverse osmosis membrane by itself would not constitute water purification equipment – only complete equipment can claim benefit of 'Nil' rate of duty under [notfn 6/2007-CE](#) – Pre-deposit ordered by CESTAT.

[Also see analysis of the Order](#)

[2009-TIOL-2079-CESTAT-MUM](#)

**Rajendra Bajaj Vs CC (CSI Airport), Mumbai (Dated: October 8, 2009)**

Gold chain with 12 diamonds worth Rs.1.20 Crores mounted on a gold pendant – whether personal effect – When the Delta Airlines flight from New York landed at the Mumbai International Airport at 22.04 hours, how could the panchanama be drawn at 22.00 hours at the Exit gate – CESTAT remands matter.

[Also see analysis of the Order](#)

[2009-TIOL-2072-CESTAT-MAD](#)

**CC, Chennai Vs Indian Surgicals (Dated: August 18, 2009)**

Customs – exemption - Cardiac Stents are essential for cardiac catheter treatment through the process of angioplasty and are eligible for exemption under [Notification](#)

[No 17/2001 Cus.](#)

[Also see analysis of the Order](#)

[2009-TIOL-2071-CESTAT-MAD](#)

**Glory Agencies Vs CC (Seaport-Exports) Chennai (Dated: August 13, 2009)**

Customs – Penalty on CHA under Section 112 (a) of Customs Act on account of submission of fake bank guarantees for importing under DEEC licences – Penalty set aside as they have no knowledge or reason to believe that the Bank Guarantees were fake.

[2009-TIOL-2060-CESTAT-MUM](#)

**Shri Mahendra Shah Vs CC (Import), Mumbai (Dated: July 10, 2009)**

Goods imported under forged licence are liable for confiscation under Section 111(d) of the Customs Act but since the same were not cleared under bond/undertaking, no redemption fine can be imposed in view of decisions in Raja Impex P. Ltd. [ [2008-TIOL-280-HC-P&H-Cus.](#) ] and Shiv Kripa Ispat P. Ltd. [ [2009-TIOL-388-CESTAT-Mum-LB.](#) ]

Penalty on importer under Section 112(a) of the Customs Act follows as a consequence but reduced to Rs.1.5 lakhs.

Evidence indicate that the broker and CHA entered into genuine transaction of dealing with a licence treating the same to be genuine and nothing is brought on record to show that they abetted the offence committed by the importer hence penalties on broker and CHA unsustainable hence set aside – Appeal disposed of.

[2009-TIOL-2055-CESTAT-MAD](#)

**M/s Srilankan Airlines Ltd Vs CC & CCE, Trichy (Dated: August 7, 2009)**

Customs – Second-hand Dolleys imported used for loading and unloading of pallets are capital goods and do not require licence – para 2.17 of Exim Policy.

[2009-TIOL-2054-CESTAT-MUM](#)

**Shimnit Kiwalite Industries Ltd Vs CC, Mumbai (Dated: November 17, 2009)**

Pre-deposit ordered by CESTAT upheld by Apex Court but time for deposit was extended – Appellant failed to comply with this deadline and makes payment subsequently – CESTAT does not have the power to condone such a delay and restore the appeal rejected earlier for non-compliance.

[Also see analysis of the Order](#)

[2009-TIOL-2047-CESTAT-BANG](#)

**CCE, Guntur Vs M/s Asian Peroxides Ltd (Dated: March 17, 2009)**

Customs – 100% EOU – Benefit of exemption notification 8/97-CE dtd 01.03.1997 not deniable for sales to DTA since items imported by assessee are only consumables and not raw materials – Revenue appeal devoid of merits

[2009-TIOL-2044-CESTAT-DEL](#)

**Shri Krishna Tambi Vs CC, Jaipur (Dated: July 9, 2009)**

Customs – Import of precious and semi precious stones by post parcel and undervaluation thereof – No concrete proof adduced by Revenue to implicate CHAs – Impugned order against CHAs set aside – Sufficient proof against owner of importing firm and his nexus with imported consignments and ownership proved, penalties confirmed

[2009-TIOL-2036-CESTAT-BANG](#)

**CC, Bangalore Vs M/s Hitachi Koki (I) Pvt Ltd (Dated: June 12, 2009)**

Customs – Extra duty deposits made during pendency of investigations by SVB cannot be equated to duty payment but to be treated as duty deposit only – Claim for refund also filed before customs authorities in 2004, not acted upon by authorities, cannot be held as hit by limitation of time – Revenue duty bound to refund even without letter of application – Tribunal decision in MICO Ltd [2005-TIOL-922-CESTAT-BANG](#) followed - No infirmity in impugned order

[2009-TIOL-2011-CESTAT-MAD](#)

**CC, Chennai Vs M/s Erbis Engineering Co Ltd (Dated: August 17, 2009)**

Customs – Exemption under Notification No 17/2001 Cus dated 1.3.2001 is admissible to the parts of the Image Intensifier – exemption not confined only to the Image Intensifier System.

[2009-TIOL-2010-CESTAT-MUM](#)

**Cooper Pharma Vs CC, Nhava Sheva (Dated: July 31, 2009)**

Duty was paid on assessment of bill of entry but the order permitting clearance of the goods for home consumption was not given under Section 47 of the Customs Act – Appellant has right to relinquish title of goods under Section 23 of Customs Act - Impugned order set aside and appeal allowed with consequential relief.

Rejection of claim for refund of import duty paid on abandoned goods on ground of finality of assessment order by relying on CCE, Kanpur Vs Flock (India) Pvt. Ltd. [ [2002-TIOL-208-SC-CX](#) ] – Appellant relies on provisions of Section 23 of Customs Act which provides the owner of goods the option to relinquish the title of goods before issuance of order for clearance of goods for home consumption Section 47.