

**SUPREME COURT RULING**[2012-TIOL-121-SC-CUS](#)**CC Vs M/s Magus Metals Pvt Ltd (Dated: December 10, 2012)**

Customs - Provisional Release of Detained Goods - Customs Authorities directed to release the goods subject to compliance with the provisions of Chapter 15 of the Customs Manual, 2011

[2012-TIOL-120-SC-CUS](#)**M/s Haripriya Traders Vs CC (Dated: December 12, 2012)**

Customs - Import - Under-valuation : Is the First Secretary, Indian High Commission, Singapore a competent authority to furnish authentic trade information from ASEAN countries ?. Since the Tribunal has remanded the case for de-novo adjudication before the Adjudicating Authority, even the issue as to whether the First Secretary (Commerce) is a competent authority to furnish authentic trade information from ASEAN countries could have been kept open, so that the parties could have agitated this issue as well. Since that has not been done, that portion of the conclusion reached by the Tribunal is set aside and the Adjudicating Authority is directed to permit the Appellant to raise the aforesaid issue and after adjudication, pass a speaking order on the same.

[2012-TIOL-119-SC-CUS](#)**UoI Vs Guwahati Carbon Ltd (Dated: February 28, 2012)**

Writ Petition - Alternative Remedy - CESTAT decision regarding valuation of goods - Against it appeal lies to Supreme Court under Section 35L of Central Excise Act, 1944, and that remedy must be exhausted first - Excise law is complete code to seek redress - In that view, writ petition against it before High Court is not maintainable irrespective of vast powers of High Court under Article 226 of Constitution of India (Para 17 & 18).

Scope of Writ Petition - Under Articles 32 and 226 of Constitution of India Supreme Court and High Courts have vast powers but they can only be exercised where statutory authority has not acted in accordance impugned enactment, or in defiance of fundamental principles of judicial procedure, or has invoked repealed provisions, or when order has been passed in total violation of principles of natural justice (Para 7).

[2012-TIOL-113-SC-CUS](#)**M/s Kemtech International Pvt Ltd Etc Vs CC (Dated: November 9, 2012)**

CUSTOMS - REMAND - Adjudicating Authority directed to supply all relied upon documents : while examining the case for the purpose of quantification of short levy, the Adjudicating Authority shall supply all the documents, on which it proposes to place reliance, to the appellants. It will be open to the appellants to furnish their explanation thereon. They would also be permitted to lead additional evidence, in support of their claim. (para 3)

[2012-TIOL-111-SC-CUS](#)

**Sayed M Masud Vs UoI (Dated: November 6, 2012)**

Customs/ PMLA Arrest – Bail : Offences under Customs Act are bailable as per Supreme Court Decision – No such decision in respect of PMLA /FEMA : Bail under Customs Act is covered by the decision of the Supreme Court in Om Prakash & Anr . vs . Union of India - [2011-TIOL-95-SC-CX-LB](#) ; No such decision in regarding the bailability of offences under PMLA /FEMA.

[2012-TIOL-105-SC-CUS](#)

**M/s Thakker Shipping P Ltd Vs CC (Dated: October 30, 2012)**

CESTAT has power to condone delay in filing application consequent to Review by Committee of Chief Commissioners: it is competent for the Tribunal to invoke Section 129A(5) where an application under Section 129D(4) has not been made within the prescribed time and condone the delay in making such application if it is satisfied that there was sufficient cause for not presenting it within that period. From the plain language of Section 129D(4), it is clear that Section 129A has been incorporated in Section 129D. For the sake of brevity, instead of repeating what has been provided in Section 129A as regards the appeals to the Tribunal, it has been provided that the applications made by the Commissioner under Section 129D(4) shall be heard as if they were appeals made against the decision or order of the adjudicating authority and the provisions relating to the appeals to the Tribunal shall be applicable in so far as they may be applicable. Consequentially, Section 129A(5) has become integral part of Section 129D(4) of the Act. In other words, if the Tribunal is satisfied that there was sufficient cause for not presenting the application under Section 129D(4) within prescribed period, it may condone the delay in making such application and hear the same.

[Also see analysis of the Order](#)

[2012-TIOL-99-SC-COFEPOSA](#)

**Baby Devassy Chully @ Bobby Vs UoI (Dated: October 12, 2012)**

COFEPOSA – Preventive Detention is on the subjective satisfaction of the Detaining Authority; Even though bail was granted to the appellant, he did not avail it and so it was possible for him to come out and indulge in prejudicial activities. It is the subjective satisfaction of the Detaining Authority whether the order of detention is to be invoked or not.

High Courts requested to give priority for the disposal of the matters relating to

personal liberty of a citizen: in a matter of this nature affecting the personal liberty of a citizen, it is the duty of the Courts to take all endeavours and efforts for an early decision. In the case on hand, keeping the writ petition pending after hearing the parties and compelling the detenu to wait for 5 months to know the result of his petition, cannot be accepted. All the High Courts requested to give priority for the disposal of the matters relating to personal liberty of a citizen, particularly, when the detention period is for one year or less than a year and, more so, after hearing the parties, the decision must be known to the affected party without unreasonable delay.

[Also see analysis of the Order](#)

[2012-TIOL-98-SC-CUS](#)

**CC Vs M/s Variety Lumbers Pvt Ltd (Dated: November 24, 2011)**

Customs - Refund of Additional duty of Customs paid under Sub-section (5) of Section 3 of the Customs Tariff Act, 1975 – Notification No 102/2007 Cus dated 14.09.2007 – Imported Timber logs sold as sawn timber after cutting into different sizes – Whether amounts to violation of Notification No 102/2007 Cus and refund should be denied - Refund ordered to be given on Bank Guarantee of half the refund amount pending disposal of the appeals.

[2012-TIOL-64-SC-CUS](#)

**M/s Bharti Airtel Ltd Vs CC (Dated: September 7, 2012)**

Customs - Valuation - Import of Telecom Hardware with software preloaded – Whether Value of software to be included in Assessable Value – Bharti Airtel directed to Deposit Rs. 218 Crores

[2012-TIOL-49-SC-CUS](#)

**Research Foundation For Science Technology And Natural Resource Policy Vs UoI (Dated: July 6, 2012)**

Government directed to ban import of all hazardous/toxic wastes, which had been identified and declared to be so under the BASEL Convention and its different protocols: The Supreme Court expected and reiterated that the directions contained in the BASEL Convention have to be strictly followed by all the concerned players, before a vessel is allowed to enter Indian territorial waters and beach at any of the beaching facilities in any part of the Indian coast-line. In case of breach of the conditions, the authorities shall impose the penalties contemplated under the municipal laws of India. The Central Government is also directed to ban import of all hazardous/toxic wastes which had been identified and declared to be so under the BASEL Convention and its different protocols. The Central Government is also directed to bring the Hazardous Wastes (Management & Handling) Rules, 1989, in line with the BASEL Convention and Articles 21, 47 and 48A of the Constitution. The further declaration sought for that without adequate protection to the workers and public, the aforesaid Rules are violative of the Fundamental Rights of the citizens and are, therefore,

unconstitutional, is, however, rejected.

[Also see analysis of the Order](#)

[2012-TIOL-45-SC-CUS](#)

**Sunil Kohli Vs UoI (Dated: April 27, 2012)**

Customs - CHA Licence - examinations held under the 1984 Regulations did not get nullified with the enactment of the 2004 Regulations and the candidates who had qualified the examinations held under the 1984 Regulations are not required to again qualify the examination which may be held under the 2004 Regulations: the language of the opening paragraph of the 2004 Regulations and proviso to Clause 8(1) thereof make it clear that those who have already passed the examination are not required to appear in any further examination. It is also evident from the plain language of the opening paragraph of the 2004 Regulations that the actions already taken under the earlier regulations, that is, the 1984 Regulations were saved. In other words, the examinations held under the 1984 Regulations did not get nullified with the enactment of the 2004 Regulations and the candidates who had qualified the examinations held under the 1984 Regulations are not required to again qualify the examination which may be held under the 2004 Regulations. As a corollary, it must be held that those who had cleared the examinations held between 1995 and 2003 under the 1984 Regulations would be eligible for grant of licence subject to their fulfilling other conditions of eligibility.

Board is not empowered to make Regulation with Retrospective Effect : The language of that section and other provisions of the Customs Act do not indicate that the Board is empowered to make Regulations with retrospective effect. Therefore, the 2004 Regulations would operate prospectively and would not in any manner affect the eligibility and entitlement of those who had qualified the examination held under the 1984 Regulations for grant of licences to act as Custom House Agents. The saving clause contained in the opening paragraph of the 2004 Regulations unmistakably show that while enacting the new Regulations, the Board did not want to adversely impact the right of those who had qualified the examination held under the 1984 Regulations because the nature of the examinations envisaged under the two sets of regulations is substantially similar.

[Also see analysis of the Order](#)

[2012-TIOL-41-SC-CUS](#)

**M/s Uplus Batteries P Ltd Vs UoI (Dated: December 7, 2011)**

Customs – Anti Dumping Duty - Pre-deposit - High Court of Karnataka Ordered pre-deposit of Rs.10 Crores - Reduced to Rs.5 Crores.

[2012-TIOL-40-SC-CUS](#)

**CCE & CC, Nasik Vs Rajmal Lakhichand (Dated: February 10, 2012)**

Customs- Delay in Filing appeal by Revenue – CBEC Chairman to get enquiry conducted to fix responsibility: No sufficient cause is made out for condonation of inordinate delay of 317 days in filing the present special leave petition. Chairman, Central Board of Excise and Customs, to have an enquiry conducted, by a senior officer, in order to fix the responsibility on the officer(s) responsible for causing delay in preferring the present petition. It cannot be pleaded on behalf of the concerned Commissionerate that they were not aware of the impugned order passed by the Tribunal. The enquiry shall be completed within four weeks of the receipt of a copy of this order. The Chairman shall submit his report within two weeks thereafter.

[2012-TIOL-38-SC-CUS](#)

**CC, Chennai Vs Denso Kirloskar Industries Pvt Ltd (Dated: February 29, 2012)**

Customs – Confirmed the Order passed by the CESTAT as the revenue involved is too meagre and Questions of law kept open, if the revenue wants to agitate the same in an appropriate appeal (Para 4 & 5).

[2012-TIOL-33-SC-CUS](#)

**M/s Keihin Penalfa Ltd Vs CC (Dated: February 14, 2012)**

Customs - Classification: for the period after 01.03.2002, in view of the Notification issued by the Central Government, the goods, namely Electronic Automatic Regulators would fall under Chapter sub-heading 9032.89.

[2012-TIOL-32-SC-CUS](#)

**UoI Vs M/s Champion Photostat Indust. Corp (Dated: March 2, 2012)**

Customs - Bill of Entry not accepted as the importer who had filed it did not have educational qualifications required for a CHA - wholly illegal, untenable and without jurisdiction: Costs imposed on IRS Officers waived: In this case the High Court had imposed costs a Commissioner and Assistant Commissioner to be paid out of their own funds; On appeal by the UOI and on conceding by the respondent's counsel, the Supreme Court waived the costs imposed on the two officers.

[2012-TIOL-29-SC-CUS](#)

**CC, Mumbai Vs M/s Konkan Synthetic Fibres (Dated: February 29, 2012)**

Customs - Exemption - Expert Opinion should be given due importance - beneficial notification should be given a liberal interpretation: It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgments emphasise that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances.

[Also see analysis of the Order](#)

[2012-TIOL-17-SC-CUS](#)

**CC, New Delhi Vs M/s Caryaire Equipment India Pvt Ltd (Dated: February 9, 2012)**

Customs: DEPB - whether the aluminium grills can be termed as Extruded aluminium products, and if it is so, whether the assessee can take the benefit of the Item 7 of Code 61 : It is an admitted position that assessee carries out the fabrication to derive a product known as aluminium grills made out of extruded aluminium products. If that fact situation is accepted, then the Tribunal was wholly incorrect in holding that the aluminium grills are nothing but extruded aluminium products and therefore, they would fall under Entry 7 of Code 61. The issue can be looked into from another angle also. The Legislature, while enumerating the goods that would fall under Item 7 of the Product Code 61 of the DEPB Schedule, immediately after the expression "extruded aluminium products" has specifically used the expression "included" to include pipes and tubes. The legislature recognizes pipes and tubes which are engineered out of the extruded aluminium products, as included under the Item 7. The expression "including pipes and tubes" following the words "extruded aluminium products" in Item 7 is restrictive in nature and will give 'extruded aluminium products' a restrictive meaning in order to include the standardized products such as pipes and tubes within the meaning of the term extruded aluminium products.

[Also see analysis of the Order](#)