

## CESTAT RULING

[2011-TIOL-663-CESTAT-AHM](#)

**M/s Arvind Ltd Vs CC, Ahmedabad (Dated: February 24, 2011)**

Customs – Exemption under Notification No 04/2006 CE is admissible to Vat Indigo Blue falling under Customs Tariff Heading 3204 1559 - The reasoning of the lower authorities that the expression appearing under, the description of excisable goods in the said notification essentially relate to the products falling under 3809 cannot be appreciated in as much as the use of expression - "any kind" against "of a kind" is wide enough to take into its ambit the products of Chapter Heading 3204 also.

Revenue, having accepted the coverage of Vat Indigo Blue Dye by the description of the goods, in earlier order of the Tribunal which was appealed against on other grounds cannot be allowed to take an altogether different plea and contest the applicability of the notification on the basic issue of non coverage of the goods by the notification.

[2011-TIOL-659-CESTAT-AHM](#)

**M/s Vardhman Acrylics Ltd Vs CC, Kandla (Dated: April 27, 2011)**

Customs - Import - Assessment of bulk liquid cargo - The assessment of bulk liquid cargo should be based on invoice price, irrespective of the quantity ascertained through shore tank measurement or any other manner. (Para 3)

[2011-TIOL-653-CESTAT-MUM](#)

**CC, Nhava Sheva Vs Shail Builders (Dated: February 28, 2011)**

Agglomerated synthetic marble slabs and blocks – Goods not freely importable on the date of filing Bill of Entry – no import licence produced - Confiscation ordered and penalty imposed on respondent cannot be faulted - department's application seeking stay of order of Commissioner(A) allowed.

[2011-TIOL-649-CESTAT-MUM](#)

**Punjab State Sports Council Vs CC, Mumbai (Dated: April 6, 2011)**

A benefit denied to the appellant by the Government cannot be granted by the Tribunal in equity or otherwise - consignment of raw materials such as polyurethane, SBR rubber granules, adhesives etc. required for processing and producing an athletic track is classifiable under CTH 40.05 and not 9506.00 and is not entitled for

exemption under notification 109/94-Cus or 146/94-Cus

[Also see analysis of the case](#)

[2011-TIOL-648-CESTAT -MAD](#)

**M/s Viral Copier Services Vs CC, Chennai (Dated: December 6, 2010)**

Customs – Imports – Mis-declaration of description and value – Old and used sub assemblies of photocopiers - In cases of mis-declaration the irresistible conclusion would be that if the real value of the imported goods has not been shown in the invoices, then the declared value cannot be taken as the transaction value. Deemed value under Section 14(1) of the Customs Act, 1962 would prevail when price declared does not reflect the price at which the imported or like goods are ordinarily sold. Customs authorities can reject declared values on the face of misdeclaration of the goods and/or when the values are abnormally low and they cannot be precluded from determining correct values for the purpose of charging customs duty and cannot be compelled to accept abnormally low values to the detriment of public revenue. (Para 11)

Confiscation – Redemption fine - Penalty - Confiscation on the ground of import of old/used machinery without specific import licence as well as on the ground of misdeclaration is justified even without reference to the valuation aspect. The value determined by two independent Chartered Engineers establishes the charge of undervaluation against the importers and justifies confiscation on that ground. Consequently, the imposition of redemption fine and penalty are also justified. (Para 9)

Assessment - Reasonableness of - The importer has cleared the impugned goods on payment of duty on assessed value, redemption fine and penalty which goes to indicate the reasonableness of the assessment done by the customs authorities as no trader would normally clear the goods from customs control if such clearance was not profitable to him. (Para 10)

[2011-TIOL-645-CESTAT -MUM](#)

**CC, Mumbai Vs Andrew Telecomm India Pvt Ltd (Dated: February 28, 2011)**

Commissioner (Appeals) has made havoc - order does not reflect clarity of view – Operation of such order stayed – Revenue application allowed: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-641-CESTAT -MUM](#)

**Bimal Kumar Mehra Vs CC, Mumbai (Dated: March 22, 2011)**

Customs – Objection on Jurisdiction should be raised at the earliest stage: A jurisdictional objection should be raised at the earliest stage of quasi-judicial proceedings. The appellant could have raised the objection in his replies to the show-cause notices. He has not chosen to raise it even in the present appeals. Such an objection raised by the counsel for the appellant, at this late stage, is only liable to be over-ruled.

Person filing the Bill of Entry is the Importer: "Importer" as defined under Section 2 (26) of the Customs Act includes any owner or any person holding himself out to be the importer. In the present case, the appellant, by filing the Bills of Entry, held himself out to be the importer of the goods and, therefore, he is the importer for purposes of Section 28 of the Customs Act. Where the taxable event is "import", the tax has to be paid by the importer. Therefore, the importer is the person chargeable with the duty on the goods imported and presented under the Bill of Entry.

Confiscation: That the goods were diverted after duty-free clearance, instead of being used in the manufacture of products to be exported in discharge of export obligation under DEEC Scheme, is not in dispute. Hence there can be no resistance to the Commissioner's orders holding the goods liable to confiscation.

Redemption Fine when goods are not available for Confiscation: it is not in dispute that the clearance of the goods at Customs was allowed against bond and bank guarantee. That being so, the non-availability of the goods would not stand in the way of the adjudicating authority imposing redemption fine under Section 125 of the Act. This view is supported by the Supreme Court's judgment in *Weston Components Ltd vs Commissioner* - [2002-TIOL-176-SC-CUS](#), wherein the goods imported by the assessee were released on execution of bond and, on the basis of this fact, it was held by the apex court that the Customs authorities were entitled to confiscate the goods with option for redemption against payment of fine under Section 125 of the Act.

Penalty: The appellant, as importer, cannot claim immunity from penalty after having cleared the goods duty-free under the exemption notification and diverted the same in gross breach of a condition thereof. The appellant, by his conduct, rendered the goods liable to confiscation and rendered himself liable to penalty.

[Also see analysis of the case](#)

[2011-TIOL-632-CESTAT-MAD](#)

**M/s Bhavane Pte Ltd Vs CC, Chennai (Dated: January 4, 2011)**

CUSTOMS – Import – Non-filing of Bill of Entry within time – Confiscation – The confiscation of the goods is on the ground that the importer failed to file the Bill of Entry within the period stipulated in law - This does not amount to contravention of the provisions of Section 111 and hence the goods are not liable for confiscation. (Para 2)

[2011-TIOL-625-CESTAT-MAD](#)

**M/s Cargill India Pvt Ltd Vs CC, Chennai (Dated: January 13, 2011)**

Customs – Conversion of free shipping bill - Drawback – Exporter made export under Free Shipping Bill unaware of duty drawback entitlement. Conversion of free shipping bills into drawback shipping bills allowed. Matter remanded for allowing conversion of shipping bills. (Para 1 & 3)

[2011-TIOL-622-CESTAT -MAD](#)

**Shri A Gopalkrishnan, Unity Overseas Vs CC, Tuticorin (Dated: December 20, 2010)**

Customs – Exemption denied to 'Computerised Embroidery Pattern making machine' on the ground that it did not contain the plotter – Matter remanded to get the goods inspected by the specified authorities.

[2011-TIOL-619-CESTAT -AHM](#)

**M/s Rachana Seeds Industries Vs CCE, Bhavnagar (Dated: April 5, 2011)**

Customs – Stay/Dispensation of pre-deposit – Goods imported under Duty Free Credit Entitled Certificate sent to job work for conversion – Denial of exemption on the ground that job worker's names were not endorsed on the licences - The only bar is that the sale of imported product cannot be effected to the job worker prior to conversion – Prima facie case made out for waiver of pre-deposit.

[2011-TIOL-615-CESTAT -MAD](#)

**CC, Chennai Vs M/s Micro Village Communication Pvt Ltd (Dated: January 13, 2011)**

Customs – Revenue's appeal against the sanction of refund rejected by the Commissioner (Appeals) on the ground that the grounds of appeal to the Commissioner (Appeals) have been drafted subsequent to review order and the grounds of appeal did not exist at the time of review – The findings of the Commissioner (Appeals) are factually incorrect – Matter remanded for fresh decision.

[2011-TIOL-604-CESTAT -MAD](#)

**M/s Natco Pharma Ltd Vs CC, Chennai (Dated: January 25, 2011)**

Customs – Re-import- Exemption Notification - Benefit of Notification No. 94/96 dated 6.12.96 denied on the ground that the goods are not capable of being identified as being the same goods which were initially imported and exported and then re-

imported, the goods in question being chemicals.

HELD - Endorsement on the Bill of Entry is that the packages were opened and verified the marks on the drums with respect to marked description in the documents and this was verified with reference to export documents. Goods are capable of being identified. Conditions of notification satisfied. Benefit allowed. (Para 2)

[2011-TIOL-593-CESTAT-BANG](#)

**M/s DHL Lemuir Logistics Pvt Ltd Vs CC, Bangalore (Dated: March 14, 2011)**

Customs – suspension of CHA licence - Suspension is not a punishment. No need of Notice – Suspension upheld: The Commissioner is empowered to invoke powers in cases like this under Regulation 20 (2) of CHALR. Tribunal found that there is no necessity of putting the party on notice of such action proposed and the material relied on. Suspension is not a punishment. The CHA gets adequate opportunity to present its case before the Commissioner at the post decisional hearing which the CHA is yet to attend pending these proceedings initiated by it. The order is competently and justifiably made. The civil consequences of such an order cannot be avoided.

[Also see analysis of the case](#)

[2011-TIOL-579-CESTAT-MAD](#)

**CC, Chennai Vs Biomed Hi-Tech Industries Ltd (Dated: December 9, 2010)**

Customs – Denial of benefit of Zero duty benefit under EPCG Scheme – By applying the exchange rate prevalent at the time of import, the value of goods imported is in excess of Rs.20 crores, which is the threshold limit prescribed for availment of zero duty benefit under the EPCG scheme – Therefore the assessee is eligible to the benefit of notification in question.

[2011-TIOL-569-CESTAT-MAD](#)

**M/s L T Karle & Company Vs CC, Chennai (Dated: February 2, 2011)**

Customs – Conversion of Free Shipping Bill to Drawback Shipping Bill – The case of the appellants for grant of drawback needs to be considered on the basis of other documents and evidences produced by them for deciding as to whether the drawback can be sanctioned or not.

[2011-TIOL-563-CESTAT -DEL -LB](#)

**M/s Automotive Tyre Importers Association Vs Designated Authority & Others Ministry of Finance (Dated: March 31, 2011)**

Customs - Anti Dumping Duty on tyres , tubes and tyre -flaps - The DA has fairly recorded his findings on evaluation of various economic factors and has then taken an overall view. No reason to interfere : DA has taken into consideration the provisions of Rule 11 of the Anti-Dumping Rules and the Annexure -II to the Rules referred to therein in regard to determination of injury. He has examined both the volume effect and the price effect of the dumped imports referred to in clause (i) of the said Annexure II and he has examined the relevant economic factors referred to in clause (iv) of the said Annexure II. It is well settled that the DA is required to examine the overall impact of the dumped imports by evaluation of all the economic factors as a whole and not be guided by evaluation of any particular economic criterion. That is what has been done in this case.

[Also see analysis of the case](#)

[2011-TIOL-553-CESTAT -BANG](#)

**CC, Bangalore Vs M/s Paxal Corporation (Dated: December 2, 2010)**

Customs – Import of stainless steel sheets from Taiwan assessed to Anti-dumping duty – Request of assessee for re-export of goods rejected orally – Appeal filed against this 'oral instructions of lower authority' before Appellate Commissioner who ordered that assessee be given an option to bond the goods in bonded warehouse or alternatively allow re-export of goods – Lower appellate authority's order without any lawful filing of appeal under section 128 of Customs Act not sustainable, liable to be set aside – Fit case for invocation of Rule 40 of CESTAT (Procedure) Rules, 1982 – Assessee at liberty to approach jurisdictional Commissioner of Customs with application for re-export and directions issued to Commissioner to consider application without any delay as re-export is permissible under law and not prejudicial to Revenue

[2011-TIOL-533-CESTAT -MAD](#)

**M/s Ishwar Impex Vs CC, Chennai (Dated: December 10, 2010)**

Customs – Import of Mulberry Raw Silk - The goods were sought to be cleared fraudulently without payment of duty under Advance Licence to be supplied to non-existing manufacturing units - Belated claim by another importer for the clearance of the goods was made much later only after detection of the offence case by the customs authorities - The customs authorities were correct in refusing to entertain the request of the other importer to clear the goods in their name.

[2011-TIOL-530-CESTAT -DEL -LB](#)

**M/s Hyosung Corpn Vs Designated Authority Ministry Of Finance (Dated: March 31, 2011)**

Customs - Anti Dumping Duty on Polyester yarn - challenged - ADD to expire on 20 th August 2011; sunset review commenced - Issue to be agitated in review: Undisputedly the Sunset Review has already commenced. The period of notification expires on 20th August, 2011. We are already at 31st March, 2011. In the circumstances, no fruitful purpose will be served dealing with the issues sought to be raised in the appeals at this stage. The grievance sought to be made in the matter can very well be agitated by the appellants in the Sunset Review. Granting liberty to the appellants to that effect and leaving all the issues open, appeals disposed of.

[2011-TIOL-521-CESTAT -BANG](#)

**CC, Cochin Vs Shri Abhiraj Barfiwala (Dated: November 29, 2010)**

Customs – Two orders passed by Appellate Commissioner bearing same number and date but issued on different dates – One order received by Revenue and currently under appeal – Other order not received by Revenue but received by assessee – Statement of facts in both orders same but findings and conclusions different, one in favour of Revenue and another in favour of assessee– Both orders set aside by invoking Rule 40 of CESTAT (Procedure) Rules, 1982 – Matter remanded to Appellate Commissioner to pass a speaking order

[2011-TIOL-517-CESTAT -BANG](#)

**CC, Guntur Vs M/s Sameera Trading Co Ltd (Dated: November 29, 2010)**

Customs – Goods exported on payment of export duty – FOB value to be reckoned as cum -duty price for the purpose of determination of assessable value – No infirmity in impugned order allowing refund of excess duty paid

[2011-TIOL-512-CESTAT -MAD](#)

**CC, Chennai Vs M/s Thermo King India Pvt Ltd (Dated: December 2, 2010)**

Customs – Refund of duty paid on the part of the consignment not received – Appellants paid duty again when the consignment was actually received – Refund of duty cannot be denied on the ground that the assessee had not challenged the assessments – Since the case falls under the ambit of Section 149 of the Customs Act, 1962, no error in the order of the Commissioner (Appeals) order allowing the refund.

[2011-TIOL-511-CESTAT -MAD](#)

**M/s Mondepal Vs CC, Chennai (Dated: November 16, 2010)**

Customs – Exemption under Notification No 133/2000 Cus to leather exported – Since the product in question was not finished leather, impugned order disallowing the benefit of the Notification is upheld.

[2011-TIOL-501-CESTAT-MUM](#)

**Ruchi Acroni Industries Ltd Vs CC, Mumbai (Dated: December 28, 2010)**

SAD paid at the time of import – thereafter goods cleared on payment of VAT and refund claim filed in terms of Notfn. 102/07-Cus – claim rejected on the ground that appellant had not made endorsement on invoices as per condition 2(b) of notfn. - while issuing the invoice the appellants have clearly shown in the invoice the SAD as zero which clearly shows that the incidence of SAD has not been passed on the buyer as the buyer can take the credit of the duty shown in the invoice – No SAD shown in the invoice which amounts that the endorsement as per condition 2(b) of the Notfn 102/07-Cus has been made by the appellants - appellants are entitled for refund claim – Appeal allowed with consequential relief.

[2011-TIOL-500-CESTAT-MUM](#)

**Bizworld International Vs CC, Mumbai (Dated: January 17, 2011)**

Order passed by Chief Commissioner u/s 61 in the matter of extension of warehousing period is not maintainable before the CESTAT in view of section 129A of Customs Act, 1962: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-491-CESTAT-MAD](#)

**M/s Nypro Forbes Products Pvt Ltd Vs CC, Chennai (Dated: December 6, 2010)**

Customs – Stay/Dispensation of pre-deposit – Exemption to parts and components, accessories of mobile handsets under Notification No 21/2005 Cus to AC pins imported – No prima facie case has been made out for waiver of pre-deposit – 25% of the duty demanded ordered to be pre-deposited.

[2011-TIOL-487-CESTAT-DEL](#)

**M/s Corning Sas India Branch Office Vs CC, New Delhi (Dated: January 12, 2011)**



Customs – Exemption from CVD under Notification No 10/2006 CE dated 1.3.2006 is admissible to rough ophthalmic blanks and flint buttons - When the rough ophthalmic blanks are specifically included under 7510.10 which covered the broader category of "glasses for corrective spectacles", the interpretation that only finished goods are covered by the notification is not justified.

[2011-TIOL-486-CESTAT -MAD](#)

**CC, Chennai Vs Durga Enterprises (Dated: December 7, 2010)**

Customs – Exemption under Notification No 51/96 Cus – Exemption and refund of duty paid denied on the ground that the importer supplied to a private party and neither the importer nor the person to whom the goods were supplied was registered with Department of Scientific and Industrial Research – When there is no dispute that the goods were supplied to public funded research institution under the administrative control of the Department of Atomic Energy, exemption and refund cannot be denied – There is no warrant to interfere with the order extending the benefit.

[2011-TIOL-479-CESTAT -BANG](#)

**M/s Kushalchand & Co Vs CC, Mangalore (Dated: October 29, 2010)**

Customs – Import of 'cocoa powder' against authorized input item viz., 'flour' under DFIA scheme – Whether 'Cocoa Powder' covered under the description of input item 'Flour' permitted under DFIA issued against export of biscuit, already held in favour of appellant in Tribunal's earlier remand order – Clarification on Import Policy issued by DGFT binding on Customs – When Commissioner was given a limited direction of examining amended DFIA sheets, it is improper to adjudicate an issue already decided by CESTAT in its remand order – Commissioner's de novo order beyond scope of remand directions, liable to be set aside

[2011-TIOL-474-CESTAT -AHM](#)

**Shri Imran Haji Haroon Rukhnani Vs CC, Jamnagar (Dated: February 17, 2011)**

Customs – Confiscation of excess and undeclared diesel carried as ship stores – Just because the IGM was allowed to be amended, it cannot be said that no offence was committed – Confiscation of vessel and diesel and penalties upheld - Section 115 (2) of the Customs Act., 1962.

[2011-TIOL-473-CESTAT -DEL](#)

**Sunil Bhatia Prop Vs CC, New Delhi (Dated: March 4, 2011)**

Customs - Custom House Agent - Suspension of licence - Considerable delay in issuing suspension order against time frame fixed by the Board - suspension revoked: there has been considerable delay in issue of the suspension order when adjudged against the time frames prescribed by the Board. So following judicial discipline took note of the order of the Tribunal in Om Freight Forwarders . However stay on suspension order has the same effect as revocation of suspension. So disposed of the Appeal itself revoking the suspension order dated 15-12-2010.

[Also see analysis of the case](#)

[2011-TIOL-466-CESTAT-AHM](#)

**M/s Reliance Industries Ltd Vs CC, Jamnagar (Dated: March 14, 2011)**

Customs - Oil cleared from SEZ Unit - Duty demanded from recipient - No Jurisdiction - the authority vested with the powers under the SEZ Act, 2005/ SEZ Rules, 2006 has the exclusive jurisdiction to initiate action for any violations including raising/ confirming demand on account of short levy/non levy, etc. of the nature being dealt with in the instant appeals. As the impugned goods in these cases have admittedly been earlier assessed and cleared by the empowered officer of MP&SEZ , if at all a demand was required to be made for charging of and or to order recovery of duties, it was for the jurisdictional authorized SEZ officer having control over M/s. Adani Enterprises Limited, Mundra to proceed against in this direction. The demand and confirmation of duty under Section 28 of the Customs Act, 1962 by the adjudicating authority attached, Jamnagar in respect of goods assessed and cleared from the Unit functioning in MT&SEZ Unit, is held to be without jurisdictionFull waiver of duty of over Rs . 66 lakhs and equal penalty: condition of pre -deposit of duty and penalties dispensed with and stay petitions allowed.

[Also see analysis of the case](#)

[2011-TIOL-465-CESTAT-AHM](#)

**M/s Hussain Sheth Ship Breakers Vs CC, Jamnagar (Dated: December 15, 2010)**

Customs – Purchase of ship from foreign seller at reduced price after original buyer withdrew from sale agreement due to non-conformity of contents of ship with agreement – Reduced price not accepted by department resulting in payment of duty under protest on original price i.e. price at which first buyer agreed to purchase ship from foreign seller, followed by claim for refund of excess duty paid – Reduction in price sought as certain items were found missing from ship – Price reduction effected on 24.10.01 whereas survey of ship conducted by Customs/Experts on 08.11.01 – No material evidence produced to show removal of materials from ship to justify price reduction – Findings of Commissioner (Appeals) that value of missing materials was only Rs. 3 lakhs whereas price reduction sought was Rs. 28 lakhs – No justification in claim for price reduction – Impugned orders rejecting claim for price reduction upheld

[2011-TIOL-448-CESTAT-MAD](#)

**M/s Proteck Machiner (P) Ltd Vs CC, Chennai (Dated: December 16, 2010)**

Customs – Confiscation – Goods temporarily imported were used as erection and commissioning tools and subsequently re-exported under drawback – No justification for confiscation.

[2011-TIOL-438-CESTAT-MUM](#)

**CC, Mumbai Vs Rahim Ali Meda (Dated: January 11, 2011)**

A reading of 22 Kms. or 38 Kms. on the odometer of a car would not per se indicate the age of the car - fact that cars were not registered in Dubai or anywhere else before their exportation to India is an additional factor indicating that the vehicles were new at the time of their exportation to India - there were no other conditions attached to the Notification No. 17/01-Cus relevant to import of cars – Benefit admissible.

Appellate authority allowed 20% discount on the assessable value determined by the lower authority by considering various factors such as heavy demurrage to the appellant resulting from delay of clearances and exposure of the vehicles to adverse weather conditions while in the custody of the Port Trust - even after the above discount, the assessable value of the subject-cars remains far above the declared value, hence there can be no grievance for Revenue – Revenue appeals dismissed.

[2011-TIOL-432-CESTAT-MAD](#)

**CC, Chennai Vs M/s South India Drugs And Devices Pvt Ltd (Dated: November 16, 2011)**

Customs – Exemption under Notification No 21/2002 – Cus dated 01.03.2002 is admissible to Oxyphan Membrane in running length which is to be cut and fit into Oxygenator.

[2011-TIOL-431-CESTAT-AHM](#)

**M/s AL Cargo Global Logistics Ltd Vs CC, Kandla (Dated: March 3, 2011)**

Customs – Export of non-basmati rice in the guise of basmati rice - The exporter, CFS and CHA joined together and got the containers stuffed with Non Basmati Rice as export of non-basmati rice was prohibited by DGFT – Penalty on exporter, CHA and CFS upheld – However, redemption fine is reduced.

[2011-TIOL-422-CESTAT-MAD](#)

**M/s Shree Nidhi Secure Print Pvt Ltd Vs CC, Chennai (Dated: October 20, 2010)**

Customs – Classification – Nipson Graphic Printer is classifiable under 8479.89 as held by the lower authorities, but not under 8471.60 as contended by the appellant importer.

[2011-TIOL-419-CESTAT-MUM](#)

**M/s Classic Freight Forwarders Vs CCE, CC & ST, Aurangabad (Dated: February 11, 2011)**

Suspension of licence under Regulation 20(2) of CHALR, 2004 is ordinarily resorted to either pending investigation or while contemplating it - Admittedly, no investigations are pending - there must be a limit for the Commissioner to go on contemplating investigation - undue delay does violence to the mandate of Regulation 20(2) - CHA should not be prevented from carrying on their business in places other than Mundra port

[Also see analysis of the case](#)

[2011-TIOL-413-CESTAT-MAD](#)

**Manish Kumar Jain Vs CC, Chennai (Dated: December 6, 2010)**

Customs – Stay/Dispensation of pre-deposit – Demand of duty on the ground that the applicants have illegally diverted goods manufactured from duty free imports under advance licence – The applicants have made out prima facie case for waiver in the light of the fact that a fresh licence was issued to the assesseees treating them as “merchant exporters” and certificate of discharge of export obligations, taking into account the previous exports made.

[2011-TIOL-412-CESTAT-DEL](#)

**M/s Balarpur Industries Ltd Vs CC , New Delhi (Dated: January 11, 2011)**

Customs – Purchase and utilisation of DEPB licences which were obtained by the exporters by mis -declaration of value / description of the export product - Demand against transferee by invoking the extended period of limitation set aside as there was no finding of suppression against the appellant.

[2011-TIOL-406-CESTAT-DEL](#)

**M/s Friends Trading Co Vs CC, Jalandhar (Dated: October 8, 2010)**

Customs - DEPB - Transferee not entitled to the benefit of DEPB scrips fraudulently obtained by the transferor - However Penalty set aside: It is established principle of law that fraud and justice are sworn enemies. It is settled principle of common law that a purchaser steps into the shoes of the seller and does not acquire better title than the seller. When DEPB scrips have been obtained without undertaking exports, the question of granting a duty benefit by the exchequer cannot arise. Why should public revenue suffer on account of a fraud committed by someone else, just because he has successfully transferred the scrip to the appellants after obtaining the same fraudulently?

[Also see analysis of the case](#)

[2011-TIOL-405-CESTAT-BANG](#)

**M/s Kitti Steels Limited Vs CC & CCE, Hyderabad (Dated: December 3, 2010)**

Customs – Import of second hand machines under zero duty EPCG Scheme – Allegation of mis-declaration of age and value (over-valuation) of machines resulting in denial of EPCG benefit, confiscation of goods and imposition of penalties

Cross examination – When department issued show cause notice raising allegations against notice and proposing to demand duty, levy fine and penalty, noticee required to deny allegations by pleading facts and circumstances in support of his defense – Cross examination of any person whose statement was relied upon by Revenue to be claimed at the time of adjudication of dispute by adjudicating authority – Cross-examination of witnesses not a pre-requisite for replying to show cause notice – Claim of importer that adjudicating authority had not observed principles of natural justice not sustainable

Confiscation, redemption fine and penalty – Allegation that imported machines did not match description of goods provided in imported documents i.e. age, value or residual life sustained as conditions of EXIM Policy 1992-97 remain unfulfilled due to withdrawal of certificate by Chartered Engineer – Goods to be regarded as imported without valid license, liable for confiscation under section 111(d) – Since the description of goods are mis-declared, goods liable for confiscation under section 111(m) – When certain goods in imported consignment were neither covered by purchase order nor mentioned in import documents, liable for confiscation under section 111(1) – When adjudicating authority did not give a finding on mis-declaration of value and did not embark on determination of value under section 14, confiscation under section 111(m) on the ground of mis-declaration of value not sustained – Redemption fine and penalties imposed by adjudicating authority sustained

[2011-TIOL-397-CESTAT-AHM](#)

**M/s Auto Forging (India) Vs CC, Kandla (Dated: November 9, 2010)**

Customs – Import of old and used machines allegedly in violation of EXIM Policy 2002-2007

[2011-TIOL-388-CESTAT-BANG](#)

**M/s Surana Telecom & Power Limited Vs CC & CCE, Hyderabad (Dated: November 29, 2010)**

Customs – Import of goods claiming exemption benefit under S. No. 39 of Notification 24/05-Cus – Exemption admissible subject to finished goods manufactured being classified under Chapter 8544 - Manufacturer of OFCs falling under Chapter 9001 not eligible for such exemption benefit – Pre-deposit of Rs. 10 lakhs ordered

[2011-TIOL-387-CESTAT-AHM](#)

**M/s Satguru Polyfab Pvt Ltd Vs CC, Kandla (Dated: February 17, 2011)**

Customs - Goods destroyed by fire in SEZ - Destruction took place in a deemed Foreign Territory - No Customs Duty Payable: SEZ is a fiction created and in that fiction if there is contravention of provisions of SEZ Rules, the fiction itself provides for taking action. Once the action to the SEZ units or the loss of goods by fire is not covered by Rule 8 of SEZ Rules 2003, the deemed fiction of SEZ being a foreign territory comes into picture. As already considered earlier, duty becomes payable only when the goods are cleared into DTA or failure in terms of provisions of Rule 8 of SEZ Rules 2003. Once the event is not covered by these provisions at all, we have to hold that goods are still in foreign territory which is the status of SEZ and it is a deemed fictional status. As observed by Hon'ble Supreme Court, the fiction has to be given full effect to unless there is a valid reason supported by law to do otherwise. Therefore the goods which have been destroyed have to be held to have been destroyed in the deemed foreign territory and if that is so no customs duty can be demanded.

[Also see analysis of the case](#)

[2011-TIOL-382-CESTAT-MUM](#)

**CC, Mumbai Vs Safa Textiles(Dated: February 08, 2011)**

Commissioner (Appeals) order for clearance of the goods for home consumption has been in force for more than seven years - By no stretch of imagination can it be held that the feeding bottles are still available - In this scenario, Revenue's plea for ordering re-export of the goods is unacceptable – Appeal dismissed

[Also see analysis of the case](#)

[2011-TIOL-375-CESTAT-MAD](#)

**M/s Dalmia Cement (Bharat) Ltd Vs CC, Chennai (Dated: December 14, 2010)**

Customs – Refund – Duty paid on a consignment of three bearings indicated on the invoice, but only one bearing received – Appellants also paid duty on subsequent import of the remaining two bearings - Normally no refund should be allowed unless the shortage is recorded in the presence of customs officials and before the out of charge from customs control is given – However, in the peculiar facts and circumstances of the case and considering the documentary evidence available, in the interest of justice, it is felt that the appellants should not be denied refund of duty paid in excess against the first Bill of Entry.

[2011-TIOL-370-CESTAT -BANG](#)

**M/s Atmacon Machinery Vs CC, Hyderabad (Dated: December 2, 2010)**

Customs – Import of generators and used rotary – Confiscation of second hand rotary upheld for undervaluation and for not producing proper authorization – Redemption fine and penalty imposed by adjudicating authority disproportionate to value of goods, reduced to 10% and 5% of value of goods respectively – When imported generators are not held as prohibited by adjudicating authority, not providing an option to redeem them from confiscation amounts to incorrect appreciation of law, liable to be set aside – Matter remanded to re-consider this issue

[2011-TIOL-369-CESTAT -MUM](#)

**M/s Air Master Freight Service Vs CC, Nagpur (Dated: January 17, 2011)**

Sahab Singh, Member (T) Confiscation of carving as obscene - Exporter aware that the buyers wanted to purchase from them one stone carved panel having sexual impression on it but this fact not divulged to the CHA - Neither any provision of law nor any need to impose a penalty on the CHA in a proceeding initiated under the CHALR, 2004 – Penalty unwarranted.

[2011-TIOL-368-CESTAT -MUM](#)

**CC, Bangalore Vs M/s Molex ( India ) Ltd (Dated: March 4, 2011)**

Interim order passed by the Commissioner(Appeals) is not an order passed u/s 128A of the Customs Act, 1962 – appeal against such order is not maintainable before the CESTAT.

[Also see analysis of the case](#)

[2011-TIOL-367-CESTAT-BANG](#)

**CC, Bangalore Vs M/s Molex ( India ) Ltd (Dated: December 1, 2010)**

Customs – Re-export of DC plugs imported without payment of duty against advance licenses – When advance licenses are already redeemed allowance of re -credit of DEPB only of academic interest – Appeals filed by Revenue infructuous

[2011-TIOL-359-CESTAT-BANG](#)

**M/s Acer India Pvt Ltd Vs CC, Bangalore (Dated: November 26, 2010)**

Customs – Classification - Imported 'data projectors' classifiable under Chapter 8528 61 00 – Impugned order set aside

[2011-TIOL-352-CESTAT-BANG](#)

**Centre For Marine Living Resources And Ecology Vs CC, Kochi (Dated: September 20, 2010)**

Customs – Eligibility of exemption Notification No. 21/2002-Cus for imported parts meant for repair of 'research vessel' which is also included in definition of 'ocean going vessel' – No dispute that repairs were undertaken on an ocean going vessel registered with Director General of Shipping, Government of India – Condition of notification satisfied for eligibility of exemption – Prima facie case for full waiver of pre-deposit

[2011-TIOL-351-CESTAT-MUM](#)

**Raisoni Exports (India) Pvt Ltd Vs CC, Nhava Sheva (Dated: February 02, 2011)**

Where the determination of the moisture content was imperative in the context of ascertaining whether the garlic imported by the appellant was fresh or dried, it was necessary to get sample tested – visual examination of garlic by Commissioner to hold that it is not dried is erroneous – relying on certificate given by the National Horticultural Research Foundation in respect of some other sample of garlic is bad in law – Confiscation set aside

[Also see analysis of the case](#)

[2011-TIOL-350-CESTAT-BANG](#)

**M/s Good Health Agro Tech Pvt Ltd Vs CC, Visakhapatnam (Dated: November 10, 2010)**



Customs – Import of crude palm oil (edible grade) by filing warehouse bill of entry and claim of Notification No. 21/2002-Cus – Goods cleared on payment of additional duty of customs after filing ex-bond bill of entry claiming benefit of Notification No. 90/2004-Cus against purchased DFRC licenses – Crude palm oil (edible grade) which requires further refining before usage may be classified as 'intermediates' – DGFT also clarified that palm oil is an input for manufacture of biscuits – Eligible for benefit of Notification No. 90/2004-Cus – Also co-relation of input and output arises only in case of sensitive items, crude palm oil not listed as a sensitive item in terms of para 4.31 of HOP of FTP – Nexus not required to be established by transferee of licenses – Impugned order set aside

[2011-TIOL-337-CESTAT-MAD](#)

**M/s Quality Print N Pack Vs CC, Chennai (Dated: October 26, 2010)**

Customs – Valuation – Used printing machinery – The authorities below have taken recourse to Rule 10A of the Valuation Rules for rejecting the low declared value - The appellants themselves have waived the requirement of show-cause notice and personal hearing and hence at this belated stage, they cannot say that the reasons for enhancement were not communicated to them – The declared value was very low compared to the appraised value determined as per the inspection report of the Chartered Engineer, which was not challenged by the appellants despite having full opportunity to do so – No reason to interfere with enhancement of value – There is no scope for reduction of fine and penalty also.

[2011-TIOL-334-CESTAT-MUM](#)

**CC, Mumbai Vs Sunil Hemani (Dated: December 14, 2010)**

Adjudicating authority neatly set out his findings in respect of each of the SCNs and arrived at distinct conclusions in relation to the respondents - department should have raised specific grounds in appeal against each of the respondents - Revenue dismally failed to meet this basic requirement of an appeal – Appeals dismissed

[Also see analysis of the case](#)

[2011-TIOL-333-CESTAT-BANG](#)

**M/s Durgabhai Deshmukh Hospital & Research Centre Vs CC, Hyderabad (Dated: October 27, 2010)**

Customs – Import of medical equipment duty free against CDEC issued by DGHS – DGHS cancelled CDECs subsequently for non-fulfillment of conditions in Notification No. 64/88-Cus – Non-fulfillment of conditions evident based on available records for import of equipment and machinery under this notification, confiscation and duty liability upheld – Enhancement of redemption fine from Rs. 3 lakhs to Rs. 8 lakhs by adjudicating authority in his de novo order not sustainable, liable to be fixed at 10% of value – Claim of appellant with regard to eligibility of benefit of Notification No. 208/81-Cus and 65/88-Cus for Multi Channel Cardioscope and spare parts of

Angioscope not addressed by adjudicating authority – Matter remanded for re-quantification of duty liability, penalty and fine

[2011-TIOL-327-CESTAT-MUM](#)

**General Export Enterprises Vs CC (Dated: December 14, 2010)**

Actual confiscation u/s 113 of the Customs Act, 1962 is not imperative for holding a person liable to be penalized under Section 114 of the Act - Liability of the goods to confiscation is enough - denying the DFIA benefit is clearly beyond the jurisdiction of the Commissioner of Customs (Export).

[Also see analysis of the case](#)

[2011-TIOL-326-CESTAT-BANG](#)

**M/s P V Ramana Reddy Vs CCE, Bangalore (Dated: October 8, 2010)**

Customs – Applications for restoration of appeals – Order for pre -deposit complied with, though payments were allegedly made by main applicant on behalf of appellants after lapse of considerable time

[2011-TIOL-319-CESTAT-BANG](#)

**M/s Changzhou Youngfa Corduroy Co Ltd Vs CC, Bangalore (Dated: November 08, 2010)**

Customs – ROM application – Tribunal cannot modify its own order – Applicant already before High Court challenging entire order of Tribunal – No merit in ROM application

[2011-TIOL-313-CESTAT-BANG](#)

**M/s DHL Lemuir Logistics Private Limited Vs CC, Bangalore (Dated: November 15, 2010)**

Customs – Suspension of CHA licence in Bangalore based on an order passed by Mumbai Customs Commissioner which is already challenged before Mumbai High Court through Writ Petition – Order passed by Mumbai Customs Commissioner does not bring out any malafide on part of appellant, *prima facie*, allegation of violating CHALR 2004 not made out – Appellant being one of the oldest recognized CHA Licence Holder having Pan India and International Operations, suspension of CHA licence would act as retrograde step for trade as well as families of employees of CHA – Impugned order stayed

[2011-TIOL-312-CESTAT-BANG](#)

**M/s Emery Pharma Pvt Ltd Vs CCE, Visakhapatnam (Dated: November 15, 2010)**

Customs – Demand of excise/customs duty foregone on capital goods procured under Notifications 1/95-CE and 13/81-Cus – Duty not paid as capital goods were still available in factory premises – Depreciation admissible till date of payment of duty – Pre-deposit waived and stay granted

[2011-TIOL-311-CESTAT-BANG](#)

**CC, Bangalore Vs M/S Aaf Ltd (Dated: January 11, 2010)**

Customs - 100% EOU not required to calculate Education cess for DTA clearances afresh after working out duty payable equivalent to customs duty - Tribunal decision in Sarla Performance Fibers = 2010-TIOL-408-CESTAT-AHM followed – Revenue's stay application liable for rejection

[2011-TIOL-306-CESTAT-BANG](#)

**M/s JSW Steel Ltd Vs CC, Visakhapatnam (Dated: November 15, 2010)**

Customs – Export of non-alloy steel slabs under EPCG & DEPB scheme – Applications filed for conversion of shipping bills to claim EPCG & DFIA benefits after benefit of DEPB scheme withdrawn for impugned export goods – Denial of benefit of conversion by Commissioner without passing a speaking order – Commissioner directed to consider applications as applicants are entitled to relief in terms of s. 149 of Customs Act – Matter remanded

[2011-TIOL-292-CESTAT-MUM](#)

**Ringspann Elecon (India) Ltd Vs CC, Mumbai (Dated: December 10, 2010)**

Tribunal cannot pass futile orders – application filed for stay of operation of the Commissioner(A) is of academic interest only as the provisional assessments have since been finalised on the basis of the view taken by the original authority and affirmed by the appellate authority

[Also see analysis of the case](#)

[2011-TIOL-291-CESTAT-MAD](#)

CC, Customs Vs M/s Nandi Marketing (Dated: October 7, 2010)

Customs – Confiscation of toys imported from China due to non-production of certificate that the toys conformed to standards prescribed in ASTM F 963 or ISO 8124 or IS 9873 or EN 71 – Department is directed to send representative samples to any of the certified laboratories mentioned in the CBEC letter dated 07.12.2009, namely, IIT Chennai, M/s SGS India Pvt Ltd Gurgaon - If the imported toys conform to the standards specified, they shall be released to the importers who shall also ensure that the packaging requirements in terms of DGFT Notification No.44 dated 24.11.2000 are strictly complied with before clearance from the Customs.

[2011-TIOL-284-CESTAT-MAD](#)

CC, Chennai Vs M/s Taylor Rubber Pvt Ltd (Dated: April 22, 2010)

Customs – Stay/Dispensation of Pre-deposit – Refund of excess duty paid due to incorrect adoption of duty rate in terms of Section 154 of the Customs Act, 1962 – No prima facie error in granting refund – Revenue's application for stay dismissed.

[2011-TIOL-280-CESTAT-BANG](#)

CC, Bangalore Vs M/s Enterprises Software Solutions Lab Ltd (Dated: July 21, 2010)

Customs – Classification – Imported 'T4 Fingerprint Time and Attendance System' and 'K200 Proximity Time and Attendance System' comprising a CPU, an input device, an output device and using linux operating system whether classifiable under Chapter 84171490 as automatic data processing machines – Since the aspect of imported devices 'capable of being freely programmed in accordance with requirements of user' not examined by lower authorities with proper evidence, matter remanded to Appellate Commissioner to examine this issue

[2011-TIOL-274-CESTAT-BANG](#)

M/s R R Enterprises Vs CC & CE, Hyderabad (Dated: September 24, 2010)

Customs – Import of "Paper Phenolic Copper Clad Laminates C Grade/rejects" – Allegation of mis-declaration of description of goods and their value sustainable based on contents of commercial invoices retrieved from steamer agents – Tainted goods should be dealt with within the country in accordance with law and cannot be allowed to be re-exported, plea for allowing re-export rejected - Demand of duty sustained on live consignment – Demand of duty on previous imports applying same yardstick without proper evidences not sustainable, liable to be set aside  
Confiscation and Penalty – It is settled law that any goods imported in breach of any prohibition or restriction liable to confiscation and importer liable to penalty – Confiscation upheld in instant case but considering value of imported goods,

redemption fine reduced – Original authority directed to re-quantify penalty under s. 114A – When partnership firm not penalized under s. 112 by original authority, penalty on managing partner not sustainable, liable to be set aside

[2011-TIOL-270-CESTAT-MAD](#)

M/s Stallion Garments Vs CC, Tuticorin (Dated: August 10, 2010)

Customs – Interest on drawback claims – Interest is allowed for the delay after the expiry of one month from the date of Let Export, but not from the date of receipt of the order.

[2011-TIOL-269-CESTAT-AHM](#)

M/s Sanmar Speciality Chemicals Ltd Vs CCE & CC, Vapi (Dated: September 7, 2010)

Customs – 100% EOUs – Used packing materials of the inputs imported under Notification No 52/2003 Cus dated 31.03.2003 cleared in DTA – The appellants are liable to pay the customs duty leviable on such packing material – Demand of duty and penalty upheld.

[Also see analysis of the case](#)

[2011-TIOL-262-CESTAT-BANG](#)

M/s Wipro Fluid Power Ltd Vs CC, Bangalore (Dated: September 8, 2010)

Customs – Refund – Duty paid with interest prior to issue of SCN on capital goods imported duty free under EPCG scheme for non-fulfillment of export obligation – After issue of SCN, when approached by assessee, Settlement Commission fixed actual duty liability lesser than duty actually paid and waived interest liability leading to refund claim of balance duty and interest – Question of unjust enrichment does not arise where duty liability settled is less than amount deposited during investigation – Excess amount eligible for refund – Impugned order set aside

[2011-TIOL-257-CESTAT-MAD](#)

Shri Krishnaswamy Govindan Vs CC, Chennai (Dated: October 18, 2010)

Customs – Smuggling of foreign currency - The statements on record clearly bring out that the appellant attempted to smuggle the foreign currencies out of India – Absolute confiscation is warranted and penal action against the appellant is also sustainable – However, penalty reduced to Rs five lakhs.

<a href="#">2011-TIOL-249-CESTAT-MAD</a>
CC, Chennai Vs M/s Sagar Enterprises (Dated: September 24, 2010)
Customs – Reduction of redemption fine and penalty by the lower appellate authority in respect of import of second hand digital photocopiers without licence to 15% and 5% of the value – Repeated offences - Fines and penalties imposed by the original authorities in these cases of repeated offences are not unreasonable or arbitrary or whimsical - The lower appellate authority is totally unjustified in reducing the fines and penalties to very low levels totalling 20% only - The impugned orders passed by the lower appellate authority are set aside insofar as they relate to lowering of redemption fines and penalties and orders passed by the original authorities are restored.
<a href="#">2011-TIOL-238-CESTAT-MAD</a>
Rare Crafts Overseas Vs CC, Chennai (Dated: August 12, 2010)
Customs – Export of red sanders - Jurisdiction – Let Export order for the cargo was given under Section 51 of the Customs Act at Bangalore and show cause notice proposing Confiscation of Red sanders was issued by the Commissioner (Customs) Chennai under the provisions of Section 124 of the Customs Act 1962 – No infirmity in the order of the Commissioner of Customs (Export – Seaport) holding that the Commissioner Customs, Chennai has jurisdiction to issue show cause notice.
<a href="#">2011-TIOL-236-CESTAT-MAD</a>
M/s ACD Communication Pvt Ltd Vs CC, Chennai (Dated: September 21, 2010)
Customs – Exemption under Notification No 21/05 Cus – Exemption is not admissible for Valve Regulated Lead Acid Batteries as the same cannot be treated as parts or accessories of Integrated Fixed Wireless Telephones ( IFWT) manufactured and supplied to BSNL - It is an admitted position that the VRLA batteries cannot be used inside the telephones because of its size as also the fact that it is not a dry cell battery but a lead-acid battery containing electrolyte - VRLA batteries are actually placed in the Switch Mode Power Supply (SMPS) which supplies power to the telephone – Denial of exemption and confiscation upheld - Fine and penalty reduced.
<a href="#">2011-TIOL-230-CESTAT-MAD</a>
CC, Chennai Vs M/s UMA Mercantile (P) Ltd (Dated: August 30, 2010)
Customs – Interest – Enhancement of duty consequent to enhancement of assessable value vide order passed on 29.8.2000, but Bill of Entry was re-assessed only in May

2003 – Liability of interest does not arise as the differential duty was paid within five days of re-assessment – Section 47 (2) of the Customs Act, 1962.

[2011-TIOL-227-CESTAT-AHM](#)

M/s Saurashtra Cement Ltd Vs CC, Jamnagar (Dated: September 29, 2010)

Customs – Refund – Limitation - Appellants cannot be found fault with for not filing appeal against the letter of the superintendent and on this ground the refund claim cannot be denied - The stand taken by the lower authorities that appellants are not eligible for refund having not challenged the letter of the superintendent cannot be sustained.

[2011-TIOL-222-CESTAT-BANG](#)

Mr P Suresh Vs CC & CCE, Guntur (Dated: December 7 2010)

Customs – 100% EOU – Clearance of shrimps to DTA – Even if goods are removed without permission of DC, duty liability arising is excise duty and not customs duty – Since there was no excise duty on shrimps, duty demand not sustainable  
 Duty liability on shortages of capital goods procured duty free – Tribunal's remand order clearly directed adjudicating authority to re-quantify amounts after allowing depreciation till the point of payment of duty – Plea of assessee regarding availability of impugned goods in factory premises also to be verified before arriving at duty liability – Imposition of penalty to be reconsidered – Matter remanded to adjudicating authority  
 Claim of Revenue – Since matter is remanded for reconsideration by adjudicating authority, Revenue appeal becomes infructuous

[2011-TIOL-217-CESTAT-MAD](#)

M/s SNS Detergents Private Ltd Vs CC, Chennai (Dated: August 4, 2010)

Customs – Valuation – Inclusion of basic engineering charges paid by the importer under the provisions of Rule 9(1)(b)(iv) of the Customs Valuation ( Determination of Price of Imported Goods) Rule 1988 – Material on record clearly brings out that the drawing and designs did not relate to the production of the imported goods, but for the non-tower detergent powder plant to be set up – Provisions of Rule 9(1)(b)(iv) are not attracted.

[2011-TIOL-216-CESTAT-MUM](#)

Manasa Enterprises Vs CC, Nhava Sheva (Dated: January 3, 2011)

It is well settled principle that where any statutory provision prescribes a particular manner for doing a particular act, then that thing or act must be done in accordance with the manner prescribed therefore – Pre -deposit waived of penalty

[Also see analysis of the case](#)

[2011-TIOL-215-CESTAT -BANG](#)

M/s NCS Sugars Limited Vs CC, Visakhapatnam (Dated: October 20, 2010)

Customs - Advance License – Raw sugar imported against advance license cleared to DTA on payment of duty after conversion into white sugar – Sugar purchased from appellant and exported by another exporter to his foreign buyer cannot to be regarded as 'third party export' under FTP and cannot be considered for fulfilment of appellant's export obligation against advance license – No wilful intention on the part of appellant to contravene condition for export of white sugar to qualify for full exemption under Notification No.43/02 Cus – Order confirming confiscation sustained, fine and penalty reduced to Rs. 28 lakhs and Rs. 15 lakhs

[2011-TIOL-210-CESTAT -AHM](#)

CC, Ahmedabad Vs M/s Birla Ngk Insulator Pvt Ltd (Dated: June 23, 2010)

Customs – Whether education cess is also required to be debited to the DEPB along with customs duty – Issues stands decided by the Tribunal in case of M/s Reliance Industries – No reason to differ with the ratio on the ground that the Reliance decision was rendered in the context of Notification No . 45/2002-Customs and the present appeal involves Notification No 89/2005 -Cus.

[2011-TIOL-207-CESTAT -DEL](#)

M/s Shri Lakshmi Cotsyn Limited Vs CC & CCE, Kanpur (Dated: September 30, 2010)

Customs – Classification of plain dyed fabric - Whether texturised or not – Two diagonally opposite test reports by the Textile Committee - The second report which was issued after suo motu testing by the Textile Committee after discussion with Commissioner of Customs and after exchanging correspondence between Member Secretary of Textile Committee and Chief Commissioner of Customs cannot take precedence over the first report - The benefit of doubt naturally has to be given to the assessee especially when the test is clarified to be subjective.

[2011-TIOL-196-CESTAT -MAD](#)

**M/s Mohan Breweries & Distilleries Ltd Vs CC, Chennai (Dated: October 12, 2010)**



Customs – Exemption under Notification No 125/86 Cus dated 17.02.1986 meant for machinery for food processing – Since beer is not an article of food, exemption under Notification No 125/86 Cus is not admissible for the labeling machine imported.

[2011-TIOL-190-CESTAT-MAD](#)

**M/s Aircel Limited Vs CC, Chennai (Dated: October 20, 2010)**

Customs – Confiscation of Masts of steel for telecom applications on the ground that the same were not certified by Bureau of Indian Standards – Director in the BIS certified that there is no BIS for steel masts / steel towers – BIS is required inter alia for structural steel – Confiscation and penalty set aside.

[2011-TIOL-189-CESTAT-DEL](#)

**CC, Amritsar Vs M/s Sona Castings (Dated: October 8, 2010)**

Customs - DEPB - Transferee not entitled to the benefit of DEPB scrips fraudulently obtained by the transferor - However Penalty set aside: It is established principle of law that fraud and justice are sworn enemies. It is settled principle of common law that a purchaser steps into the shoes of the seller and does not acquire better title than the seller. When DEPB scrips have been obtained without undertaking exports, the question of granting a duty benefit by the exchequer cannot arise. Why should public revenue suffer on account of a fraud committed by someone else, just because he has successfully transferred the scrip to the appellants after obtaining the same fraudulently?

[Also see analysis of the case](#)