

Customs

Duty payable by EOU for DTA clearance is excise duty and not customs duty. SCN under customs law bad and defective *Suresh Synthetics 2007 (216) ELT 662 (SC)*

The Supreme Court stated that in respect of clearances made by a 100% export oriented undertaking in domestic tariff area, the duty to be paid by the 100% EOU was the duty of excise and not customs duty. The Apex Court pointed out that even the investigations made before the issuance of the show cause notice were made under the Central Excise Act, 1944. Thus, the Supreme Court held that the show cause notice was defective in law and accordingly the demand was not maintainable.

Goods re-imported and failed to export-- duty payable- Indian Rayon & Industries Ltd. - S. C.- 2008

The goods were initially exported by the respondent-assessee, which were rejected by the foreign buyer being defective and the assessee re- imported them back to India. Assessee has **executed bonds for re-export After repair as per sec. 20** – later on assessee **could not re-export the goods** held that assessee liable to pay duty along with interest and penalty.

Assessee send goods (magnetic heads) sent for repair and reported them. Held he is liable for customs duty as well as CVD. **Super Cassettes Industries Ltd. v CC [2008] 225 ELT 401 (SC)**

Goods cleared from DTA to SEZ not attract export duty liability Essar Steel Ltd. –H.C.

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No security or bond is required when the full duty applicable as demanded by department in case of provisional assessment under sec 18 of Customs Act- *Jhoola Refineries Ltd. v. Union of India 2007 (218) ELT 181 (Guj.)*

Import of laptop along with preloaded software classification

Laptop imported with preloaded hard disc along with Preloaded software should be classified as single unit as laptop and not as different items as operational software, HDD etc., under different headings as claimed by assessee. **Hewlett Packard India Sales (P) Ltd. 2007 (215) ELT 484 (SC)**

Customs Valuation:

Overvaluation not able to prove by department, transaction value acceptable MAHALAXMI GEMS - S. C.-2008

Assessee imported rough diamonds found to be overvalued in **appraisers valuation report and trade panel report. However**, department not proved by showing any contemporaneous evidence that invoices are fabricated or there was any relation between importer and exporter – Held that declared value acceptable.

Rejection of transaction value when the nature of goods has been misdeclared at the request of buyer: *M/s. Atam Manohar Ship Breakers Ltd.-*

A, M O U was entered by importer for import of vessel at USD 9.7 lakh and later at the request of importer an addendum was inserted for an import of vessel at a price of USD 8.7 lakh. Held value will be at \$ 9.7 lakh

Unsigned Xerox copies of documents are not be relied upon for claiming under-valuation of imported goods Bussa Overseas Properties Ltd. 2007 (216) ELT 659 (SC)

Held that no evidence of under valuation particularly when the Department was relying on unsigned xerox copies of the documents in support of its case. The Apex Court added that even the contents of those documents did not support the case of the Department.

The burden to prove that transaction value is not genuine' is on the Department J.D. Orgochem Ltd. [2008] (SC)-

The assessee imported certain goods at US\$ 13.2 per Kg. The same were earlier imported by the assessee at US\$ 18.7 per Kg. The assessee submitted that the due to lessor demand in the international market, the price were declining

The imports made earlier by the importer cannot be regarded as contemporaneous imports.

The Department failed to produce contemporaneous evidence to reject transaction The assessee's submission that international prices have declined was to be considered value, hence, the transaction value of US& 13.2 per Kg. was acceptable.

Rejection of transaction value: Where the transaction value is rejected for extra ordinary or special reasons, without specifying such reasons, then such rejection is not acceptable. **Motor Industries Co Ltd (2009) 244 ELT 4 (SC)**

Royalty which is not a condition to sale is not includible in valuation: When Royalty Payment is not a condition pre-requisite to sale of goods (import of goods), and when royalty payment is not based on value of imported goods, but was payable independent of such value at specific unit rate, it cannot be added to Transaction Value. **WEP Peripherals Ltd (2008) 224 ELT 30 (SC)**

Price Decrease due to Volume Increase: Substantial increase in volume may have resulted in decrease in price (old price per ft \$ 0.0150. new price 0.0100) Identical goods for this purpose should be goods of comparable quantity imported at the same time, and not a lower volume of goods imported sometime back. , transactional value should be accepted as assessable value. **Initiating Explosives Systems (I) Ltd 2008 (224) ELT 343 (SC)**

Related Persons — Mutuality of Interest: Exporter holding 30% of Equity Capital of importer does not establish mutuality of interest, as Importer does not hold any equity in the unit of the Supplier Volume of export has increased which is the reason for decrease in price. The burden to prove is on the department. Held transaction value acceptable.

Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue. Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)

The High Court thus, concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty may be as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act. Thus, the High Court held that the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.