

CUSTOMS

BASIC CONCEPTS

1. Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?

TIRUPATI UDYOG LTD

MAY 2012

DECISION

- The HC on the basis of the following observations, inferred that the clearance of goods from DTA to SEZ is not liable to export duty either under the SEZ act, 2005 or under the Customs Act, 1962:
- **SEZ Act does not contain any provision for levy and collection** of export duty for goods supplied by a DTA unit to a unit in a SEZ for its authorized operations.
- **In the absence of a charging provision in the SEZ act**, export duty **cannot** be levied on the DTA supplier by implication.
- Since both the SEZ Unit and the DTA unit are **located within the territorial waters of India**, **section 12(1)** of the customs act 1962 (which is the charging section for levy of customs duty) is not attracted for supply made by a DTAA unit to a unit located within the SEZ.

Note- Karnataka HC in case of Biocon Ltd has also taken a similar view as explain in the aforesaid judgment.

LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY

1. Would countervailing duty (CVD) on an imported product be exempted if the excise duty on a like article produced or manufactured in India is exempt?

AIDEK TOURISM SERVICES PVT LTD.

SC DECISION

- SC held that CVD u/s 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the central excise act, 1944 on a like article.
- Therefore, the importer would be entitled to payment of concessional/reduced or nil rate of CVD if any notification is issued providing exemption/remission of duty with respect to a like article if produced/manufactured in India.

2. Whether remission of duty is permissible under section 23 of the Customs Act, 1962 when the remission application is filed after the expiry of the warehousing period (including extended warehousing period)?

DECORATIVE LAMINATES

NOVEMBER 2013

HC OBSERVATIONS AND DECISION

- The HC observed that section 23 states that only when the imported goods have been lost or destroyed at any time before clearance for home consumption, the application for remission of duty can be considered.

- Therefore, the expression “***at any time before clearance for home consumption***” would mean the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not any period after the lapse of the aforesaid periods
- the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section.
- When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not permit the remission of duty under section 23 of the Act.

CLASSIFICATION OF GOODS

1. **Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?**

KEHIN PENALFA LTD

Point of dispute: The dispute was on classification of Electronic Automatic Regulators

SC DECISION

- The SC observed that the CG had issued an exemption notification classifying the abovementioned goods under chapter 9032.89.
- Since the revenue itself had classified the goods in dispute under chapter sub-heading 9032.89, the said classification needs to be accepted for the period prior to it.

2. **Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?**

NOKIA INDIA PRIVATE LTD

SC OBSERVATIONS

SC decided the case in favor of the revenue and against the assessee holding that the battery charger is not a part of the mobile/cell phone but an accessory to it, on the basis of the following observations:

- If the charger is part of cell phone, cell phone could not have operated without using the battery charger. However as a matter of fact charger is not required at the time of operation. Further battery in the cell phone can be charged directly from the other means like laptop without employing the battery charger.
- Hence, it is nothing but at an accessory to the mobile.
- As per the information available on the website of the assessee, it had regularly put the mobile battery charger in the category of an accessory which means that **in the common parlance also**, the mobile battery charger is understood as an accessory.
- Rules 3(b) of General Rules for interpretation of the first schedule of the customs tariff act, 1975 can also not be applied in the assessee's case as **merely making a composite package of cell phone and mobile battery charger** cannot be held to be composite part of the cell phone.
- A particular model of **Nokia make battery charger** was compatible with many models of Nokia mobile phones, imparting various levels of effectiveness and convenience to users.

DECISION

The apex court held that mobile battery charger is an accessory to mobile phone and not an integral part of it.

Further, battery charger cannot be held to be composite part of cell phone, but is an independent product which can be sold separately without selling the cell phone.

3. **I) Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test?**
II) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?

CPC TEXTILES P LTD

DECISION

- **i) The HC** held that the description of the goods as per the documents submitted along with shipping bill would be relevant criterion for the purpose of classification, **if not otherwise disputed on the basis of any technical opinion or test.**
- **ii) Court, while interpreting section 75A(2)** of the customs act 1962, noted that when the claimant is liable to pay excess amount of drawback , he is liable to pay the interest as well.
The section provides for payment of interest automatically along with excess drawback.
- **No notice** for the payment of interest need to be issued separately **as the payment of interest becomes automatic**, once it is held that excess drawback has to be repaid.

VALUATIONS UNDER THE CUSTOMS ACT, 1962

1. Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?

GIRA ENTERPRISES

FACTS

- The appellant imported some goods from China. On the basis of certain information obtained through a computer printout from the Customs House, Department alleged that during the period in question, large number of such goods were imported at a much higher price than the price declared by the appellant.
- Department did not provide these printouts to the appellant.

HC OBSERVATIONS

- Supreme Court observed that since **Revenue did not supply the copy of computer printout, which formed the basis of the conclusion that the appellants under-valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions.**

DECISION

- The SC held that mere existence of alleged computer printouts was not proof of existence comparable imports.

- Even if assume that such printouts did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable.
- Thus in the given case, value of imported goods **cannot be enhance** on the basis of value of identical goods **as Department was not able to provide evidence of import of identical goods at higher prices.**

IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

1. Can the time-limit prescribed under section 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under section 46 of the Act?

SHREEJI OVERSEAS (INDIA) PVT LTD.

NOV 2013

PROVISION

- **Section 46** of the customs act, 1962 provides that BOE may be presented at any time after the delivery of the import manifest/import report as the case may be, but does not prescribed any time limit for the presentation of the same.
- **Section 48** if any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transshipped within 30 days from the date of unloading thereof at a custom station **or** within such further time as the proper officer may allow **or** if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by person having the custody thereof.

DECISION

The HC held that the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit for filing of BOE.

WAREHOUSING

1. Whether the issue of the imported goods warehoused in the premises of 100% EOU for manufacture/processing /production in 100% EOU would amount to clearance for home consumption?

ISSUES

- I) Whether the entire premises of 100% EOU should be treated as a warehouse?
- II) Whether the imported goods warehoused in the premises of 100% EOU are to be held to have been removed from the warehouse if the same is issued for manufacture/production/processing by the 100% EOU?
- III) Whether issue for use by 100% EOU would amount to clearance for home consumption?

PARAS FAB INTERNATIONAL

TRIBUNAL OBSERVATIONS

- It observed that as per the custom manual, premises of EOU are approved as a customs bonded warehouse under the warehousing provisions of the customs act.
- It is also stated therein that manufacturing and other operations are to be carried out under customs bond.
- **The EOUs are licensed to manufacture goods** within the bonded premises for the purpose of export.
- Tribunal held that **neither** the scheme of the act **nor** the provisions contained in the manual **nor** there is any provision to treat such goods as deemed to have been removed for the purpose of the customs act, 1962.

DECISION

Issued I – The entire premises of a 100% EOU has to be treated as a warehouse **if the license granted in respect of the entire premises.**

Issued II & III – Imported goods warehoused in the premises of a 100% EOU and **used for the purpose of manufacturing in bond** as authorized under section 65 of the customs act, 1962, cannot be treated to have been removed for home consumption.

DEMAND AND APPEALS

1. Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re - quantification of short-levy of customs duty?

KEMTECH INTERNATIONAL PVT LTD.

SC DECISION

The SC explain that the adjudicating authority, **following the principles of natural justice**, should supply to the assessee all the documents on which it proposed to place reliance.

Thereafter, the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.

2. Can Tribunal condone the delay in filing of an application consequent to review by the Committee of Chief Commissioners if it is satisfied that there was sufficient cause for not presenting the application within the prescribed period?

THAKKAR SHIPPING PVT LTD.

FACTS

- The **commissioner of customs (General)**, in his order-in-original dropped the proceedings which were initiated against the appellant.
- **The committee of chief commissioners of customs** reviewed his (comm of custom) order and directed him to apply to the Tribunal for determination of certain points.
- The commissioner, accordingly, made an application under section 129D(4) of the act **before the tribunal**.

- As the said application could not be made within the prescribed period and was delayed by 10 days, an application for condonation of delay was filed with a prayer for condonation.
- However, tribunal rejected the application on the ground that Tribunal had no power to condone the delay.

LAW

- As per section 129A(5) , the appellant tribunal may admit an appeal after the expiry of relevant period referred to in section 129A(3) or 129A(4), if it is satisfied that there was sufficient cause for not presenting it with that period.
- The provisions of customs act regarding appeals, **including the provision of section 129A(4) shall**, so far as may be, apply to application u/s 129D(4).

DISCUSSION & DECISION

- **As stated above, Tribunal is competent to invoke section 129A(5) and condone the delay in making application u/s 129D(4).**
- **Hence, in the present case, Tribunal can condone the delay, if it is satisfied that there was sufficient cause for not presenting the application within the prescribed period.**

CASE LAW

The facts given in the questions are similar to the facts of the decided case law – ‘Thakkar Shipping P.Ltd’ in which court have held in the similar manner.

- 3. Whether extended period of limitation for demand of customs duty can be invoked in a case where the assessee had sought a clarification about exemption from a wrong authority?**

UNI WORTH TEXTILES LTD

MAY 2014

FACTS

As the assessee was procuring furnace oil for captive power plant of another unit, it sought a clarification from the Development Commissioner seeking as to whether import of furnace oil and receipt of electricity would be liable to duty. The Development Commissioner replied in favour of the assessee quoting letter by Ministry of Commerce and thereafter, the assessee claimed the exemption.

LAW

As per section 28(4) , extended period of limitation can be invoked only when there is deliberate default on the part of the assessee.

DISCUSSION

- As stated above, extended period of limitation can be invoked only when there is deliberate default on the part of the assessee.
- However, in the present case it clear from the facts that there is no deliberate default on the part of assessee as he has sought clarification from the development commissioner regarding duty liability.

CASE LAW

The facts given in the question are similar to the facts of the decided case law 'Uniworth textiles Ltd' in which court have held in the same manner.

4. Can a writ petition be filed before a High Court which does not have territorial jurisdiction over the matter?

NEERAJ JHANJI

DISCUSSION,

- Forum shopping is the practice adopted by litigants to have their legal case heard in the court which would provide most favorable decision.
- In the present case, assessee has approached before HC which does not have territorial jurisdiction over the matter.

CASE LAW

- The facts of the case are similar to the facts of the decided case law ' NEERAJ JHANJI' in which court has disapproved the practice of forum shopping adopted by the assessee,

CONCLUSION

- As discussed above, writ petition cannot be before a High Court which does not have territorial jurisdiction over the matter

5. Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned?

MARGARA INDUSTRIAL LTD

OBSERVATION AND DECISION

- Court observed that appellant was not going to gain anything by not filing the appeal and reason for delay in filing the appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.

6. Can a writ petition be filed against an order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975?

Point of dispute - The Department contended that an appeal, and not a writ petition, would lie against the order passed by the CESTAT.

LAW

- It is well settled position of law that writ petitions should not be entertained by the HC under the article 226 of the constitution of India when alternate remedies are available under the relevant statute.
- The order of CESTAT would be subject to appeal, either to HC **u/s 130 OR** to the SC **u/s 130E** of the customs act, 1962 if the appeal relates to rate of duty or to valuation of goods for the purposes of assessment.
- **Section 9A(8) of the customs tariff act, 1975** specifically incorporates all the provisions of the customs act, 1962 relating to appeal in their application to the anti-dumping duty chargeable u/s 9A

FACTS

- Assessee filed a writ petition against the order u/s 9C of the custom tariff act, 1975 passed by CESTAT.

DISCUSSION

- A writ is a directive from a **higher** court ordering a lower court to take a certain action in accordance with the law. However, as stated above, when alternate remedies are available under the relevant statute, recourse to writ petition cannot be made

CONCLUSION

- As discussed above, assessee shall first take recourse to the alternate remedy by way of appeal either to HC or SC.

7. Can customs duty be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?

DINESH CHHAJER

MAY 2015

LAW

- **As per section 28,** notice of demand is issued to the person **who has imported goods** but failed to pay duty in accordance with the law.
- **As per section 125(2),** notice of demand is issued to the person whose goods are confiscated and duty demandable is in addition to the fine payable u/s 125(1) in respect of confiscated goods.

FACTS

- Assessee was dealing in smuggled goods though no smuggled goods were seized from the assessee.
- Assessee did not import the goods.

DISCUSSION

- As stated above, it is seen that neither assessee has imported goods nor goods in question were confiscated.
- Hence , in the present case provisions of section 28 and 125(2) are not applicable to assessee.

CASE LAW

- Facts of the question are similar to the facts of a decided case law 'DINESH CHHAJER' in which court have held in the same manner.

CONCLUSION

As discussed above, custom duty cannot be demanded from the assessee.

REFUND

1. Whether interest is liable to be paid on delayed refund of special CVD arising in pursuance of the exemption granted vide *Notification No. 102/2007 Cus dated 14.09.2007*?

KSJ METAL IMPEX (P) LTD

FACTS

- The exemption under the N NO 102/2007 is being granted by way of refund of special CVD.
- The assessee paid the special CVD and applied for the refund of the same under section 27 of the Customs Act, 1962 along with interest in pursuance of the above-mentioned notification.

LAW

- Provisions applicable to normal refund of duty applies to refunds of special CVD arising as a result of exemption granted by way of exemption notification.
- Any delay in grant of refund would attract interest as per provisions of section 27A of the Customs Act, 1962.

DISCUSSION

- As stated above, provisions applicable to normal refund of duty applies to refunds of special CVD.
- Hence, in the present case, interest on delayed refunds of special CVD is payable to the assessee as per section 27A.

2. Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods?

PARIMAL RAY

HC DECISION

- The HC held that law of limitation under the customs act is *applicable to duty or interest paid under the act.*
- However, any sum paid into the exchequer by the assessee is not duty or excess duty **but is simply money paid into the account of Government.**
- Therefore, the assessee is entitled to refund of the sum paid by it to the custom authorities.

NOTE-

- In the present case, money received by government could more appropriately be called money paid by mistaken by one person to another, which the other person is under obligation to repay under section 72 of the Indian Contract Act, 1872.

PROVISION RELATING TO ILLEGAL EXPORT, ILLEGAL IMPORT, CONFISCATION, PENALTY AND ALLIED PROVISIONS.

- 1. Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?**

M. AMBLAL CO.

MAY 2012

SC OBSERVATION AND DECISION

- The court observed that one of the principle functions of the customs act is to curb the ills of smuggling in the economy.
- SC held that smuggled goods could not be considered as imported goods for the purpose of benefit of exemption notification.
- If it treated as imported goods, then there would have been no need for two different definitions

- 2. Is it mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized?**

MANISH LALIT KUMAR BAVISHI

HC DECISION

- It was **mandatory** for revenue officer to make available the copies of the seized documents.
- It was **party concerned who had the choice** of either asking for the documents or seeking extract and not the officer.
- The denial of revenue was clearly an act without jurisdiction.

3. Whether the smuggled goods can be re-exported from the customs area without formally getting them released from confiscation?

HEMAL SHAH

FACTS

- On appeal by Hemal K. Shah, the appellate authority allowed re-export of the confiscated goods. Against this order, the Department filed a revision application before the Revisionary Authority under section 129DD of the Customs Act, 1962.

REVISIONARY AUTHORITY'S DECISION

- The Government noted that the passenger had **grossly mis-declared the goods** with intention to evade duty and to smuggle the goods into India.
 - **As per the provisions of section 80** of the Customs Act, 1962 when the baggage of the passenger **contains article which is dutiable or prohibited** and in respect of which the declaration is made under section 77, the proper officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India.
 - Since passenger had grossly mis-declared the goods and tried to smuggle them into India, **Benefit of temporary detention of baggage and re-export thereof u/s 80 cannot be allowed.**
- 4. Can penalty for short-landing of goods be imposed on the steamer agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962?**

CARAVEL LOGISTICS PVT LTD.

NOV 2015

LAW

- Section 148 provides that agent is held to be liable for fulfillment of all the obligation including penalties and confiscation that can be imposed on person-in-charge

DISCUSSION

In case of short-landing of goods, if penalty is to be imposed on the person-in-charge of conveyance, it can also be imposed on the agent appointed by him.

Hence, duly appointed steamer agent of a vessel, would be liable to penalty.

However, the steamer agent if innocent, could work out his remedy against the shipper for short-landing.

CONCLUSION

Penalty can be imposed on the steamer agent , but he can claim his remedy from the person-in-charge ,for short landing.

- 5. Where goods have been ordered to be released provisionally under section 110A of the Customs Act, 1962, can release of goods be claimed under section 110(2) of the Customs Act, 1962?**

AKANSHA SYNTEX (P) LTD.

Facts

- In the instant case, **an order for provisional release of the seized goods had been made under section 110A of the Act pursuant to an application filed by the petitioner in this regard.**
- However, the **petitioner claimed unconditional release of its seized goods in terms of sections 110(2) and 124 of the Act as no show cause notice had been issued within the extended period of six months (initial period of six months was extended by another six months by the Commissioner of Customs in this case).**

LAW

- According to section 110(2) of the customs act, 1962 the goods which have to be seized cannot be retained beyond the stipulated period of six months **if no show cause notice in respect of the goods proposed to be confiscated is given before expiry of 6 months.**

DISCUSSION

- As stated above, if no SCN is issued within the prescribed time, then the person from whose possession the goods were seized becomes entitled to return.
- In the present case, since no SCN is issued within the prescribed time assessee can claim unconditional release of goods u/s 110(2)

CASE LAW

Facts of the present question are similar to the facts of a decided case law 'Akansha Syntex Pvt Ltd' in which court have held in the same manner.

CONCLUSION

As discussed above. The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid during the period of limitation or extended limitation prescribed u/s 110(2).

NOTE

In 'Jayant Hansraj Shah's case the HC took a contrary view and rejected the plea of the petitioner of unconditional release of the seized goods .

6. Whether mere dispatch of a notice under section 124(a) would imply that the notice was “given” within the meaning of section 124(a) and section 110(2) of the said Customs Act, 1962?

PURUSHOTTAM JAJODIA

FACTS

- In the present case, SCN U/S 124(a) was dispatched by registered post on the date of expiry of stipulated period u/s 110(2) and received by the petitioner after the expiry of such period.

LAW

- According to section 110(2) of the customs act, 1962 where no SCN is **GIVEN** within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.
- According to section 124(a) of the customs act, 1962, no order confiscating any goods or imposing any penalty on any persona shall be made **unless the owner of goods or such person is GIVEN notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty**

DISCUSSION

- Mere dispatch of notice will not imply that notice was 'given'
- Instead 'giving' of notice would be complete **if notice reached the person concerned or having been tendered, had been refused by the concerned person.**
- Since in the given case SCN to the assessee was given only on last day of limitation and it was received by the assessee after expiry of limitation period, it could not be treated as 'given' within the stipulated period.

CASELAW

Facts of the given questions are similar to the facts of a decided case law 'Purushottam Jajodia' in which court have held in the same manner.

CONCLUSION

As discussed above, department was directed to release the goods. The petition was allowed.

SETTLEMENT COMMISSION

1. In case of a Settlement Commission's order, can the assessee be permitted to accept what is favorable to them and reject what is not?

SANGHVI RECONDITIONERS PVT LTD

SC DECISION

- Application u/s 127B is maintainable only if duty liability is disclosed.
- The disclosure contemplated is in the nature of voluntary disclosure of concealed additional customs duty.
- The court opined that having opted to get their customs duty liability settled by the Settlement commission, the appellant could not be permitted **to dissect the settlement commission's order with a view to accept what is favorable to them and reject what is not.**

2. Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible?

SAURASHTRA CEMENT LTD

Facts of the given question are similar to the facts of a decided case law 'Saurashtra Cement Ltd' in which court have held that

- Settlement commission is set up under a statute for settlement of revenue claims.

- The decision of settlement commission is final & it also has power to grant immunity from prosecution, subject to satisfaction of certain conditions.
- Although the decision of settlement commission is final, **finality clause would not exclude the jurisdiction of the HC (writ petition to HC) under article 226 of the constitution OR that of SC under article 32 or 136 of the constitution (writ petition or special leave petition to SC).**
- The court would ordinarily interfere **if the settlement commission has acted without jurisdiction.**
- The court held that, **judicial review is concerned with the decision making process & NOT with decision of settlement commission.**

CONCLUSION

As discussed above, judicial review of the order of the settlement commission by the HC or SC under writ petition or special petition is permissible.

3. Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue?

UNION OF INDIA VS. SETTLEMENT COMMISSION

LAW

- As per section 127A(b) of the customs act, 1962 'CASE' with reference to settlement cases mean
 - Any proceeding under this act or any other act,
 - For the levy, assessment and collection of excise duty/custom duty,

- Pending before adjudicating authority on the date on which an application for settlement is made.
- 'Duty drawback' is an export incentive scheme where duties paid on any imported materials or excisable materials or input services is allowed as refund to the exporter.

DISCUSSION

- As stated above, drawback is nothing but remission of duty on account of statutory provisions in the act.
- Considering the definition of 'CASE', settlement commission has jurisdiction to deal with question relating to the recovery of drawback erroneously paid by revenue.

MISCELLANEOUS PROVISIONS

1. Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of section 150 of the Customs Act, 1962?

VISHNU M HARLAKA

NOV 15

HC OBSERVATIONS

- The High Court observed that though no period was stipulated in the order of the Settlement Commission for the grant of refund, the entire exercise ought to have been carried out within a reasonable period of time.
- All statutory powers have to be exercised within a reasonable period even when no specific period is prescribed by the provision of law.
- The High Court noted that there was absolutely no reason or justification for the delay in payment of balance sale proceeds.

DECISION

- The High Court held that Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission.
- Thus, interest from the date of proposal for sanctioning the refund of the sales proceeds of sales auction of seized goods after adjustment of expenses and charges in terms of section 150 till the date of refund would be payable.

2. Can a former director of a company be held liable for the recovery of the customs dues of such company?

ANITA GROVER

LAW

- As per section 142 of the customs act, 1962 read along with the Customs Rules, 1995, Central Government could recover dues belonging only to defaulter.

FACTS

- A demand notice was raised against the director of a company in respect of the customs duty payable by a company of which she was a former director.

DISCUSSION

- As stated above, it was only the defaulter against whom steps might be taken for the recovery of dues.
- In the present case, it was the company who was defaulter.
- Hence, provision of section 142 is applicable to company.

CASE LAW

Facts of the given question are similar to the facts of a decided case law 'ANITA GROVER' in which court have held in the same manner.

CONCLUSION

As discussed above, custom dues of company cannot be recovered from its directors.

NOTE

HC has taken a similar view in case of 'VANDANA BIDYUT CHATTERJEE'.