

CASE LAWS (CUSTOMS)

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?

❖ Relevant Case –

- Tirupati Udyog Ltd. v. UOI (2011) (AP)
- CCE v. Biocon Ltd. (2011) (Kar.)

❖ High Court's Decision –

- The High Court held that –
 - A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.
 - 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 Special Economic Zone for its authorized operations.
 - A conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. 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 is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.
 - Therefore, the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under SEZ Act, 2005 or under the Customs Act, 1962.

2) 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?

❖ Relevant Case –

- Aidek Tourism Services Pvt. Ltd. v. CCus. (2015) (SC)

❖ Supreme Court's Decision –

- The Supreme Court held that –
 - The rate of additional duty leviable under section 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 countervailing duty if any notification is issued providing exemption/ remission of excise duty with respect to a like article if produced/ manufactured in India.

3) 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)?

❖ Relevant Case –

- CCE v. Decorative Laminates (I) Pvt. Ltd. (2010) (Kar.)

❖ **High Court's Decision –**

- The High Court,
 - 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.
 - The said expression cannot extend to a period after the lapse of the extended period merely because the license holder has not cleared the goods within the stipulated time.
 - Since in the given case, the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods improperly removed from the warehouse as per section 72(1)(b) read with section 71.
 - Therefore, 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.
 - Hence, 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 u/s 23.

4) 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?

❖ **Relevant Case –**

- Keihin Penalfa Ltd. v. Commissioner of Customs (2012) (SC)

❖ **Supreme Court's Decision –**

- The Apex Court held that –
 - The Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89.
 - Since, Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted for the period prior to it.

5) Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?

❖ **Relevant Case –**

- State of Punjab v. Nokia India Private Limited (2015) (SC)

❖ **Supreme Court's Observations –**

- The Supreme Court held that –
 - Mobile battery charger is not required at the time of operation. Also, the battery in the cell phone can be charged directly from the other means also like laptop.
 - 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 the users.

- As per the information available on the website of the assessee, it had invariably 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.
- Rule 3(b) of the General Rules for Interpretation of the First Schedule of the Customs Tariff Act, 1975 can also not be applied as merely making a composite package of cell phone and mobile battery charger will not make it composite goods for the purpose of interpretation of the provisions.
- Therefore, the mobile battery charger is an accessory to mobile phone and not an integral part of it. Further, battery charger cannot be held to be a composite part of the cell phone, but is an independent product which can be sold separately without selling the cell phone.

6) (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?

❖ **Relevant Case –**

- M/s CPS Textiles P Ltd. v. Joint Secretary (2010) (Mad.)

❖ **High Court's Decision –**

- The High Court held that –

i). The description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test.

The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export.

ii). While interpreting section 75A (2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback.

No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

7) 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?

❖ **Relevant Case –**

- Gira Enterprises v. CCus. (2014) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that
 - Mere existence of alleged computer printout was not proof of existence of comparable imports.

- Even if assumed that such printout 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.
- Therefore, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

8) 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 u/s 46 of the Act?

❖ **Relevant Case –**

- CCus v. Shreeji Overseas (India) Pvt. Ltd. (2013) (Guj.)

❖ **High Court's Decision –**

- The High Court held that –
 - Though section 46 does not provide for any time-limit for filing a bill of entry by an importer upon arrival of goods, section 48 permits the authorities to sell the goods after following the specified procedure, provided the same are not cleared for home consumption/ warehoused /transhipped within 30 days of unloading the same at the customs station.
 - Therefore, 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 bill of entry.

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

OR

Issue: Following questions arose before the Larger Bench of the Tribunal for consideration:-

- Whether the entire premises of 100% EOU should be treated as a warehouse?
- 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?
- Whether issue for use by 100% EOU would amount to clearance for home consumption?

❖ **Relevant Case –**

- Paras Fab International v. CCE (2010) (Tri. – LB)

❖ **Tribunal (LB) Decision –**

- The Tribunal answered the issues raised as follows:-
 - (a)** The entire premises of a 100% EOU has to be treated as a warehouse if the licence granted to the unit is in respect of the entire premises.
 - (b) and (c)** Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing in bond as authorized u/s 65 of the Customs Act, 1962 cannot be treated to have been removed for home consumption

10) 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?

❖ **Relevant Case –**

- Kemtech International Pvt. Ltd. v. CCus. (2013) (SC)

❖ **Supreme Court's Decision –**

- The Apex Court held that –
 - For the purpose of re-quantification of short-levy of customs duty, 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.

11) 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?

OR

Whether it was competent for the Tribunal to invoke section 129A(5) where an application under section 129D(4) had not been made by the Commissioner within the prescribed time and to condone the delay in making such application if it was satisfied that there was sufficient cause for not presenting it within that period?

❖ **Relevant Case –**

- Thakker Shipping P. Ltd. v. CCus. (General) (2012) (SC)

❖ **Supreme Court's Decision –**

- The High Court held that –
 - Parliament intended that entire section 129A, as far as applicable, should be supplemental to section 129D(4).
 - For the sake of brevity, instead of repeating what had been provided in section 129A as regards the appeals to the Tribunal, it had been provided that the applications made by the Commissioner under section 129D(4) should be heard as if they were appeals made against the decision or order of the adjudicating authority and the provisions relating to the appeals to the Tribunal would apply in so far as they might be applicable.
 - The expression, —**including the provisions of section 129A(4)** was by way of clarification and had been so said expressly to remove any doubt about the applicability of the provision relating to cross objections to the applications made under section 129D(4). The use of expression “**so far as may be**” was to bring general provisions relating to the appeals to Tribunal into section 129D(4).
 - Consequentially, section 129A(5) also stood incorporated in section 129D(4) by way of legal fiction and must be given effect to.

- Therefore, the Tribunal was competent to invoke section 129A(5) where an application under section 129D(4) had not been made within the prescribed time and condone the delay in making such application if it was satisfied that there was sufficient cause for not presenting it within that period.

12) 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?

❖ Relevant Case –

- Uniworth Textiles Ltd. vs. CCEx. (2013) (SC)

❖ Supreme Court's Decision –

- The Apex Court held that –
 - Section 28 of the Customs Act clearly contemplates two situations, viz. inadvertent non-payment and deliberate default.
 - The assessee had shown bona fide conduct by seeking clarification from the Development Commissioner and only on receiving a satisfactory reply from the Development Commissioner did the assessee claim the exemption.
 - Even if the Development Commissioner was not the most suitable repository of the answers sought by the assessee, it did not negate the bona fide conduct of the assessee. It still showed that assessee made efforts to adhere to the law rather than its breach.
 - Therefore, mere non-payment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. Something more must be shown to construe the acts of the assessee as fit for the applicability of the proviso.

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

❖ Relevant Case –

- Neeraj Jhanji v. CCE & Cus. (2014) (SC)

❖ Supreme Court's Decision:

- The Supreme Court observed that
 - The very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching Delhi High Court which had no territorial jurisdiction in matter.
 - The filing of the writ petition before Delhi High Court was not at all bona fide.

❖ Note:

- The Apex Court has disapproved the practice of Forum Shopping as adopted by the petitioner. Forum Shopping is the practice adopted by the litigants to have their legal case heard in the Court which would provide most favourable decision.

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

❖ **Relevant Case –**

- Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) (2013) (All.)

❖ **High Court's Decision –**

- The High Court held that
 - The Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.

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

❖ **Relevant Case –**

- Rishiroop Polymers Pvt. Ltd. v. Designated Authority (2013) (Bom.)

❖ **High Court's Decisions –**

- The High Court held that
 - section 9A(8) of the Customs Tariff Act, 1975 specifically incorporates all the provisions of the Customs Act, 1962 relating to appeal as far as may be, in their application to the anti-dumping duty chargeable under section 9A.
 - The order of the CESTAT passed in appeal would, clearly be subject to appeal, either to this Court u/s 130 or to the Supreme Court u/s 130E of the Customs Act, 1962 if the appeal relates to the rate of duty or to valuation of goods for the purposes of assessment.
 - Therefore, it would not be appropriate to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law. Thus, the petition is dismissed leaving it open to the assessee to take recourse to the appellate remedy.

16) Can customs duty be demanded u/s 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?

❖ **Relevant Case –**

- CCus. v. Dinesh Chhajer (2014) (Kar.)

❖ **High Court's Decision –**

- The High Court held that -
 - Section 28 applies to a case where the goods are imported by an importer and the duty is not paid in accordance with law, for which a notice of demand is issued on the person.
 - The assessee was not the owner of the goods but only a dealer of the smuggled goods and therefore, there was no obligation cast on him under the Act to pay duty. Thus, the notice issued under section 28 of the Act to the assessee is unsustainable as he is not the person who is chargeable to duty under the Act.

- In case of notice demanding duty under section 125(2), the goods should have been confiscated and the duty demandable is payable in respect of confiscated goods.
- Since no goods were seized, there could not be any confiscation and in the absence of a confiscation, question of payment of duty by the person who is the owner of the goods or from whose possession the goods are seized, does not arise.
- Therefore, no duty is leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.

17) 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?

❖ **Relevant Case –**

- KSJ Metal Impex (P) Ltd. v. Under Secretary (Cus.) M.F. (D.R.) (2013) (Mad.)

❖ **High Court's Decision –**

- The High Court held that –
 - It would be a misconception of the provisions of the Customs Act, 1962 to state that notification issued under section 25 of the Customs Act, 1962 does not have any specific provision for interest on delayed payment of refund.
 - When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and CETA.
 - Paragraph 4.3 of the Circular No. 6/2008 Cus. dated 28.04.2008 being contrary to the statute has to be struck down as bad.

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

❖ **Relevant Case –**

- Parimal Ray v. CCus. (2015) (Cal.)

❖ **High Court's Decision –**

- The High Court observed that –
 - In the given case, tunnel boring machines imported were not liable to any duty. So, any sum paid into the exchequer by them was not duty or excess duty but simply money paid into the Government account.
 - Therefore, there was no question of refund of any duty by the Government. The money received by Government could more appropriately be called money paid by mistake by one person to another, which the other person is under obligation to repay under section 72 of the Indian Contract Act, 1872.
 - As per section 72 of the Contract Act, 1872, when the said amount was paid by mistake by the petitioner to the Government of India, the latter instantly became a trustee to repay that amount to the petitioner.

- The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it.

19) Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?

❖ Relevant Case –

- CCus. (Prev.), Mumbai v. M. Ambalal & Co. (2010) (SC)

❖ Supreme Court's Observations:

- The Apex Court held that –
 - The smuggled goods could not be considered as imported goods for the purpose of benefit of the exemption notification.
 - If the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962. Also, one of the principal functions of the Customs Act was to curb the ills of smuggling in the economy.
 - Therefore, it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

20) 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?

❖ Relevant Case –

- Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI (2011) (Bom.)

❖ High Court's Decision –

- The High Court held that –
 - As per provisions of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the copies asked for. It was the party concerned who had the choice of either asking for the document or seeking extract, and not the officer.
 - If any document was seized during the course of any action by an officer and relatable to the provisions of the Customs Act, that officer was bound to make available copies of those documents. The denial to make the documents available was an act without jurisdiction.
 - Therefore, the Revenue have to make available the copies of the documents asked for by the assessee which were seized during the course of the seizure action.

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

❖ Relevant Case –

- In Re: Hemal K. Shah (2012) (GOI)

❖ 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 neither made true declaration nor requested for detention of goods for re-export, before customs authorities at the time of his arrival at airport, the re-export of said goods could not be allowed under section 80 of the Customs Act.

22) 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?

❖ **Relevant Case –**

- Caravel Logistics Pvt. Ltd. v. Joint Secretary (RA) (2013) (Mad.)

❖ **High Court's Decision –**

- The High Court noted that
 - Section 116 of the Act imposes a penalty on the person-in-charge of the conveyance inter alia for short-landing of the goods at the place of destination and if the deficiency is not accounted for to the satisfaction of the Customs Authorities.
 - Section 2(31) defines “person-in-charge” to inter alia mean in relation to a vessel, the master of the vessel.
 - Section 148 provides that the agent appointed by the person-in-charge of the conveyance and any person who represents himself to any officer of customs as an agent of any such person-in-charge is held to be liable for fulfillment in respect of the matter in question of all obligations imposed on such person-in-charge by or under this Act and to penalties and confiscation which may be incurred in respect of that matter.
 - The conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him. Hence, duly appointed steamer agent of a vessel, would be liable to penalty.
 - Further, in view of section 42 under which no conveyance can leave without written order, there is an automatic penalty for not accounting of goods which have been shown as loaded in terms of Import General Manifest. There is no requirement of proving mens rea on part of person-in-charge of conveyance to fall within the mischief of section 116 of Customs Act.

23) Where goods have been ordered to be released provisionally u/s 110A of the Customs Act, 1962, can release of goods be claimed u/s 110(2) of the Customs Act, 1962?

❖ **Relevant Case –**

- Akanksha Syntex (P) Ltd. v Union of India (2014) (P&H)

❖ **High Court's Decision –**

- The High Court observed that
 - Section 110(2) strikes a balance between the Revenue's power of seizure and an individual's right to get the seized goods released by prescribing a limitation period of six months from the date of seizure if no show cause notice within that period has been issued under section 124(a) for confiscation of the goods.
 - A plain and combined reading of sections 110(2), 124 and 110A spells out that any order for provisional release shall not take away the right of the assessee u/s 110(2) read with section 124 of the Act. Where no action is initiated by way of issuance of show cause notice u/s 124(a) of the Act within six months or extended period stipulated u/s 110(2) of the Act, the person from whose possession the goods were seized becomes entitled to their return.
 - Hence, the remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.

24) Whether mere dispatch of a notice under section 124(a) would imply that the notice was "given" within the meaning of section 124(a) & 110(2) of the said Customs Act, 1962?

❖ **Relevant Case –**

- Purushottam Jajodia v. Director of Revenue Intelligence (2014) (Del.)

❖ **High Court's Decision:**

- The High Court held that –
 - Section 124(a) of the Customs Act, 1962, inter alia, stipulates that no order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person is **given** a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty.
 - Section 110(2) of the Act stipulates that where no such notice 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.
 - Therefore, since the petitioners did not receive the notice under section 124(a) within the time stipulated in section 110(2) of the Act, such notice will not be considered to be "given" by the Department within the stipulated time, i.e. before the terminal date.
 - Consequently, the Department was directed to release the goods seized.

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

❖ **Relevant Case –**

- Sanghvi Reconditioners Pvt. Ltd. V. UOI (2010) (SC)

❖ **Supreme Court's Decision –**

- The Apex Court held that –
 - The application under section 127B of the Customs Act, 1962 is maintainable only if the duty liability is disclosed.

- The disclosure contemplated is in the nature of voluntary disclosure of concealed additional customs duty.
- Therefore, 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 favourable to them and reject what is not.

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

❖ Relevant Case –

- Saurashtra Cement Ltd. v. CCus. (2013) (Guj.)

❖ High Court's Decision –

- The High Court held that –
 - Although the decision of Settlement Commission is final, finality clause would not exclude the jurisdiction of the High Court under Article 226 of the Constitution (writ petition to a High Court) or that of the Supreme Court under Articles 32 or 136 of the Constitution (writ petition or special leave petition to Supreme Court).
 - The Court would ordinarily interfere if the Settlement Commission has acted
 - without jurisdiction vested in it or
 - its decision is wholly arbitrary or perverse or mala fide or
 - is against the principles of natural justice or
 - when such decision is ultra vires the Act or the same is based on irrelevant consideration.
 - Therefore, the scope of court's inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.

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

❖ Relevant Case –

- Union of India v. Cus. & C. Ex. Settlement Commission (2010) (Bom.)

❖ High Court's Observations –

- The High Court held that –
 - Supreme Court in the case of Liberty India v. Commissioner of Income Tax (2009) held that –
 - Drawback is nothing but remission of duty on account of statutory provisions in the Act and Scheme framed by the Government of India.
 - Therefore, Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.

28) 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?

❖ **Relevant Case –**

- Vishnu M Harlalka v. Union of India (2013) (Bom)

❖ **High Court's 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.
 - All statutory powers have to be exercised within a reasonable period even when no specific period is prescribed by the provision of law. There was absolutely no reason or justification for the delay in payment of balance sale proceeds.
 - Therefore, the Department have to pay interest from the date of approval of proposal for sanctioning the refund.

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

❖ **Relevant Case –**

- Anita Grover v. CCEx. (2013) (Del.)

❖ **High Court's Decision –**

- The High Court held that –
 - As per section 142 of the Customs Act, 1962 read along with the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995, it was only the defaulter against whom steps might be taken for the recovery of the dues i.e. the company.
 - Therefore, since the company was not being wound up, the juristic personality the company and its former director would certainly be separate and the dues recoverable from the former could not be recovered from the latter, in the absence of a statutory provision.
 - There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income-tax Act, 1961 or section 18 of the Central Sales Tax, 1956 which might enable the Revenue authorities to proceed against directors of companies who were not the defaulters.