1) An article does not become liable to excise duty merely because of its specification in Schedule to Central Excise Tariff Act, 1985. Vendibility criterion is a litmus-test to be satisfied, before any goods can be subjected to the levy of excise duty.

Answer:

Case Law: CCEx., Chandigarh v. Gurdaspur Distillery 2008 (224) ELT 337

Supreme Court reiterated the principle that an article does not become liable to excise duty merely because of its specification in Schedule to Central Excise Tariff Act, 1985 unless it is saleable and known to market.

2) Inputs received in the factory may be removed as such for further processing to a job worker without payment of excise duty.

Answer:

The statement is absolutely valid. Rule 16A of Central Excise Rules, 2002 provides that any inputs received in a factory may be removed as such or after being partially processed to a job worker for further processing, testing, repair, re-conditioning or any other purpose subject to the fulfilment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction.

3) The date of removal of any excisable goods being captively consumed within the factory of production is the date on which the final product in the production of which such goods are being used is removed.

Answer:

The statement is not correct. The date of removal of any excisable goods being captively consumed within the factory of production is the date on which these goods are issued for such use and not the date on which the final product in the production of which such goods are being used is removed [Explanation to rule 5(2) of Central Excise Rules, 2002].

4) The assessee can pay duty on the goods, removed from the factory in the month of December 2014, electronically through internet banking till 6.01.2015.

Answer:

The statement is absolutely justified. Rule 8(1) of the Central Excise Rules, 2002 has been amended to provide that the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking.

5) With the help of a decided case law, if any, whether production of mustard oil and oil cake from mustard seeds amounts to manufacture.

Answer:

Case law: Jai Bhagwan Oil and Flour Mills v. UOI 2009 (239) E.L.T. 401 (S.C.).

In the instant case, the Apex Court held that the true test to ascertain whether a process is a manufacturing process producing a new and distinct article is whether the article produced is regarded in the trade, by those who deal in it, as a marketable product distinct in identity from the commodity/raw material involved in the manufacture.
When mustard seeds were subjected to the process of extraction whereby mustard oil and oil cake were produced, the process involved manufacture of mustard oil as also the manufacture of oil cake. It was certainly not a mere process of cleaning, repairing, reconditioning, recycling or assembling. Oil cake had a distinct and different identity from mustard seeds and it had a separate name, character and use different from mustard seed. Oil cake was not a waste to be thrown away, but was a valuable product with a distinct name, character, use and marketability. Resultantly, it can be concluded that the said process amounts to manufacture.

6) At the time of carrying out the physical stock taking, some difference was found between the physically verified stock and the stock as per the books. The assessee applied for the remission of the duty under rule 21 of the Central Excise Rules, 2002. Revenue contended that the shortage could have been avoided or minimized by the assessee, as these were neither due to natural causes, nor due to unavoidable accident. Thus, the prayer for remission was declined.
You are required to examine the veracity of the Revenue's claim.

Answer:

Case law: UOI v. Hindustan Zinc Limited 2009 (233) E.L.T. 61 (Raj.)

The Court noted that if the contention of Revenue was accepted, no loss or destruction would fall in either of these clauses because in either case, grounds might be projected, on the anvil of requirement of appropriate storage, or safety measures, and so on and so forth. Even in cases of "unavoidable accident", it could always be contended that the accident could have been avoided by taking recourse of one or more measures.
Thus, a bit liberal rather more practical approach was required to be taken in the matter. The aspect of satisfaction under rule 21 was essentially a subjective satisfaction of authority concerned and in the instant case; the Tribunal independently recorded its satisfaction about the loss, or destruction having been sustained by the assessee under the circumstances as covered by rule 21.

Therefore, merely on the basis of method of accounting of physical stock, the remission of duty could not be denied.

7) The waste or refuse or residue arising during the course of manufacture cannot be treated as excisable goods even if such waste fetches some price in the market.

Answer:

Circular No. 904/24/09-CX dated 28.10.2009
The definition of excisable goods, bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty.
"goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

8) Excise Department can challenge the reasonability of MRP printed on the package.

Answer:

The statement is not correct. The Central Excise Department cannot challenge the reasonability of MRP printed on the package. It can only satisfy itself that there is a declaration of MRP in prescribed form [ITC Ltd. v. CCEx., New Delhi 2004 (171) ELT 433 (SC)].

9) Cost of return fare of vehicles will not be added for determining assessable value.

Answer:

The statement is correct. Earlier, Circular No. 643/34/2002-CX dated 1st July 2002 as amended inter alia clarified that cost of return fare of vehicles was to be included in the assessable value of the excisable goods.
The said clarification, to this extent, has been withdrawn and it has been re-clarified vide Circular No. 923/13/2010 – CX dated 19.05.2010 that cost of return fare of vehicles is not required to be added for determining value. This clarification has been issued in view of the Tribunal's decisions in case of DCW Ltd. v. CCE 2007 (217) ELT 541 (Mad.) and Haldia Petrochemicals Limited v. CCEx. Haldia 2009 (233) E.L.T. 344 (Tri. - Kolkata).

10) Does a product with short shelf-life satisfy the test of marketability?

Answer:

Case law: Nicholas Piramal India Ltd. v. CCEx., Mumbai 2010 (260) E.L.T. 338 (S.C.)

Facts of the case: In the instant case, the product had a shelf-life of 2 to 3 days. The appellant contended that since the product did not have shelf-life, it did not satisfy the test of marketability.
Decision of the case: The Supreme Court ruled that short shelf-life could not be equated with no shelf-life and would not ipso facto mean that it could not be marketed. A shelf-life of 2 to 3 days was sufficiently long enough for a product to be commercially marketed. Shelf-life of a product would not be a relevant factor to test the marketability of a product unless it was shown that the product had absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelf-life.
Hence, product with the shelf life of 2 to 3 days was marketable and hence, excisable.

11) Are the physician samples excisable goods in view of the fact that they are statutorily prohibited from being sold?

Answer:

Case Law: Medley Pharmaceuticals Ltd. v. CCE & C., Daman 2011 (263) E.L.T. 641 (S.C.)
The question which arose for consideration was whether physician samples of patent and proprietary medicines intended for distribution to medical practitioner as free samples, satisfied the test of marketability. The appellant contended that since the sale of the physician samples was prohibited under the Drugs and Cosmetics Act, 1940 and the rules made thereunder, the same could not be considered to be marketable.
Supreme Court observed that merely because a product was statutorily prohibited from being sold, would not mean that the product was not capable of being sold. Physician sample was capable of being sold in open market.
Moreover, the Drugs and Cosmetics Act, 1940 (Drugs Act) and the Central Excise Act, 1944 operated in different fields. The restrictions imposed under Drugs Act could not lead to non-levy of excise duty under the Central Excise Act thereby causing revenue loss. Prohibition on sale of physician samples under the Drugs Act did not have any bearing or effect on levy of excise duty.
Therefore, the Court inferred that the physician samples were excisable goods and were liable to excise duty.

12) Whether assembling of the testing equipments for testing the final product in the factory amounts to manufacture?

Answer:

Case law: Usha Rectifier Corpn. (I) Ltd. v. CCEx., New Delhi 2011 (263) E.L.T. 655 (S.C.)
Facts of the case: The appellant was a manufacturer of electronic transformers, semiconductor devices and other electrical and electronics equipments. During the course of such manufacture, the appellant also manufactured machinery in the nature of testing equipments to test their final products. The appellant had stated in their balance sheet that the addition to the plant and machinery included testing equipments. The said position was further substantiated in the Director's report wherein it was mentioned that during the year, the company developed a large number of testing equipments on its own.
However, the assessee contended that such items were assembled in the factory for purely research and development purposes, but research being unsuccessful, same were dismantled. Hence, it would not amount to manufacture. The appellant further submitted that the said project was undertaken only to avoid importing of such equipment from the developed countries with a view to save foreign exchange.
Decision of the case: The Supreme Court observed that once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it could not make contrary submissions later on. Moreover, assessee's stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable. Hence, the Apex Court held that duty was payable on such testing equipments.

13) Does the process of cutting and embossing aluminium foil for packing the cigarettes amount to manufacture?

Answer:

Case Law: CCE v. GTC Industries Ltd. 2011 (266) E.L.T. 160 (Bom.)

Facts of the case: A roll of aluminium foil was cut horizontally to make separate pieces of the foil and word 'PULL' was embossed on it. Thereafter fixed number cigarettes were wrapped in it. Aluminium foil, being a resistant to moisture, was used as a protector for the cigarettes and to keep them dry. Revenue submitted that the process of cutting and embossing aluminium foil amounted to manufacture. Since the aluminium foil was used as a shell for cigarettes to protect them from moisture; the nature, form and purpose of foil were changed.
Decision of the case: The High Court pronounced that cutting and embossing did not transform aluminium foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value, only made it usable for packing. There were no records to suggest that cut to shape/embossed aluminium foils used for packing

cigarettes were distinct marketable commodity. Hence, process did not amount to manufacture as per section 2(f) of Central.
Excise Act, 1944. Only the process which produces distinct and identifiable commodity with marketable value can be called manufacture.

14) Parsvnath Music Systems Ltd. imported recorded audio and video discs in boxes each containing 50 discs. Each individual disc was then packed in transparent plastic cases known as jewel boxes. An inlay card containing the details of the content of the compact disc was also placed in the jewel box. The whole thing was then shrink wrapped and sold in wholesale. The Department contended that the said process amounted to manufacture.

Answer:

Case law: CCE v. Sony Music Entertainment (I) Pvt. Ltd. 2010 (249) E.L.T. 341 (Bom.)
The Department's contention is not justified in law. The said process does not amount to manufacture. In the instant case, the High Court observed that none of the activity that the assessee undertook involved any process on the compact discs that were imported. It held that the activities carried out by the assessee did not amount to manufacture since the compact disc had been complete and finished when imported by the assessee. They had been imported in finished and completed form.

15) Rotomac Corporations Ltd. was engaged in the assembling and installing the parts and components of asphalt batch mix, drum mix/hot mix plant. The Department alleged that the assembling and installation of asphalt batch mix, drum mix/hot mix plant amounted to manufacture. It contended that the said plant was not per se immovable. Attachment of plant with nuts and bolts was only intended to provide stability and prevent vibration. The attachment was easily detachable from foundation and was not permanent. Therefore, the assessee was liable to pay duty on the said plant.

Answer:
Case law: CCE v. Solid & Correct Engineering Works and Ors 2010 (252) ELT 481 (SC)
The Department's allegation is justified in law. Wherein the Supreme Court observed that the machine was fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine.
In this regard, the Court opined that an attachment where the necessary intent of making the same permanent is absent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.
Hence, the Supreme Court held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.

16) T & T International was engaged in manufacture of 'tarpaulin made-ups'. For the purpose of preparing the tarpaulin made-ups, the tarpaulin cloth was cut into various sizes and stitched and then eye-lets were fitted. Department raised the plea that the "tarpaulin made-ups" prepared by means of cutting, stitching and fixing of eye-lets amounted to manufacture and, hence, they were eligible to duty. However, T & T International stated that the process of mere cutting, stitching and putting eyelets did not amount to manufacture and hence, the Department could not levy excise duty on tarpaulin made-up.

<u>Answer</u>:

Case law: CCE v. Tarpaulin International 2010 (256) E.L.T. 481 (S.C.).

No, the Department's plea is not justified in law. The Apex Court opined that stitching of tarpaulin sheets and making eyelets did not change basic characteristic of the raw material and end product. The process did not bring into existence a new and distinct product with total transformation in the original commodity.
The original material used i.e., the tarpaulin, was still called tarpaulin made-ups even after undergoing the said process. Hence, it could not be said that the process was a manufacturing process. Therefore, there could be no levy of Central excise duty on the tarpaulin made-ups.
Hence, the Supreme Court, upholding the decision of the Tribunal, held that conversion of tarpaulin into tarpaulin made-ups would not amount to manufacture.

17) Vibhuti Motors Ltd. was manufacturer of various types of motor vehicles chargeable to duty on ad valorem basis. Department observed that while selling the vehicles to the customers, the dealers added their own margin known as the dealer's margin to the price at which the vehicles were made available to them by Vibhuti Motors Ltd. This dealer's margin contained provision for rendering pre-delivery inspection and three after sale services.
Hence, the Department contended that the cost of pre-delivery inspection and after sale services would form part of the assessable value of the automobile while discharging the duty liability.

<u>Answer</u>:

Case Law: Maruti Suzuki India Ltd. v. CCE 2010 (257) E.L.T. 226 (Tri. – LB).

Yes, the Department's contention is valid in law.
The Larger Bench of the Tribunal drew the following propositions:-
(i) Transaction value includes the amount paid by reason of/in connection with sales of goods
The transaction value is not confined to the amount actually paid and is not restricted to flow back of consideration or part thereof to the assessee directly but even for discharge of sales obligations both in present and future. Thus, all deferred and future considerations are added to assessable value.

(ii) Definition of transaction value is extensive, at the same time restrictive and exhaustive in relation to the items excluded there from

Extensive

The use of expressions like "includes in addition to" and "including but not limited to" in the definition clause establishes that it is of very wide and extensive in nature.

Restrictive and exhaustive

At the same time, it precisely pinpoints the items which are excluded there from, with the prefix as "but does not include". Since, exclusions are defined, no presumption for further exclusions is permissible. Hence, the definition is restrictive and exhaustive in relation to the items excluded there from.

(iii) PDI and after sales service charges is a payment on behalf of the assessee to the dealer by the buyer

Any amount collected by the dealer towards pre-delivery inspection or after sale services from the buyer of the goods under the understanding between the manufacturer and the dealer or forming part of the activity of sales promotion of the goods would be a payment on behalf of the assessee to the dealer by the buyer, and hence, it would form part of the assessable value of such goods.

Hence, it was held that the charges towards pre-delivery inspection and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars.

Note: In view of the aforesaid judgment, CBEC vide Circular No. 936/26/2010-CX. Dated 27-10-2010 has also clarified that Pre-delivery Inspection charges and after-sale service charges collected by the dealers are to be included in the assessable value under section 4 of the Central Excise Act, 1944.

18) XS Ltd. was engaged in manufacture of various toilet preparations such as after-shave lotion, deo-spray, mouthwash, skin creams, shampoos, etc. XS Ltd. procured Extra Natural Alcohol (ENA) from the local market on payment of duty, to which Di-ethyl Phthalate (DEP) was added so as to denature it and render the same unfit for human consumption. As a result, an intermediate product i.e. Di-ethyl Alcohol was produced.

The Department alleged that Di-ethyl Alcohol manufactured as a result of addition of DEP to ENA, was liable to central excise duty and issued a show cause notice under section 11A.

However, XS Ltd. alleged that the notice issued is time-barred as per section 11A. In reply, Department pleaded that non-disclosure as regards manufacture of Di-ethyl Alcohol amounts to suppression of material facts thereby attracting the larger period of limitation under section 11A.

<u>Answer</u>:

Case Law: CC Ex. & C v. Accrapac (India) Pvt. Ltd. 2010 (257) E.L.T. 84 (Guj.)

No, the Department's plea is not justified in law. The issue, as to whether non-disclosure as regards manufacture of Di-ethyl Alcohol amounts to suppression of material facts thereby attracting the larger period of limitation under section 11A. In the instant case, The Tribunal noted that denaturing process in the cosmetic industry was a statutory requirement under the Medicinal & Toilet

Preparations (M&TP) Act. Thus, addition of DEP to ENA to make the same unfit for human consumption was a statutory requirement. Hence, failure on the part of the respondent to declare the same could not be held to be suppression as Department, knowing the fact that the respondent was manufacturing cosmetics, must have the knowledge of the said requirement. Further, as similarly situated assesses were not paying duty on denatured ethyl alcohol, the respondent entertained a reasonable belief that it was not liable to pay excise duty on such product.
The High Court upheld the Tribunal's judgment and pronounced that non-disclosure of the said fact on part of the assessee would not amount to suppression so as to call for invocation of the extended period of limitation.

19) A Port Trust used cement concrete armour units in the harbour for keeping water calm. Each unit weighed about 50 tons and is like a tripod and keeps water calm and tranquil. These units are essentially in prismoid form and were made to order. They are harbour or location specific. The Central Excise Department contended that the armour units are excisable goods and chargeable to duty. Examine the validity of the Department's contention in the light of decided case law.

<u>Answer</u>

Case law: Board of Trustees v. CCE 2007 (216) ELT 513 (SC).

The Supreme Court held that in order to constitute "goods", twin tests have to be satisfied, namely, process constituting manufacture and secondly marketability. In the present case, the second test of marketability was in issue. In this case, armour blocks, in prisomoid form, were made to order and were of certain specifications. They were harbour or location specific. It would depend on the water level required to be maintained in the harbour. There was no evidence to show that these blocks could be used in any other harbour. Moreover, the Department failed to prove marketability of the impugned goods. Therefore, assessee's contention, that goods are not capable or being bought and sold in the market, has to be accepted. Therefore, Department's stand is not correct and no duty is payable on the goods.

20) PQR & Co. is engaged in the business of fabrication and erection of structures of various types on contract basis. They entered into a contract with M/s. XYZ Co. for fabrication, assembly and erection on turnkey basis of a waste water treatment plant. This activity involved procurement, supply, fabrication, transportation of various duty paid components and finally putting up a civil construction and erection of the waste water treatment plant and commissioning the same. The entire fabrication is done at site. The pressure testing was carried out as such until it was wholly built. The excise department has issued a show cause notice that the fabrication at site amounted to manufacture of excisable goods since the plant came into existence in an unassembled form, as per drawings and designs approved by the client, M/s. XYZ Co. before the fabrication activity was undertaken. Therefore, according to

the department, excise duty was payable on the value of the plant excluding the value of the civil work. Briefly discus with reference to case law whether the show cause notice is sustainable in law.

Answer:

Case law: Larsen & Toubro Ltd. v. UOI 2009 (243) E.L.T. 662 (Bom.).

The High Court opined that mere bringing of the duty paid parts in an unassembled form at one place, i.e. at the site, does not amount to manufacture of a plant. Simply collecting together at site the various parts would not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts. In the present case, as the petitioner had stated that the waste water treatment plant did not come into existence unless all the parts were put together and embedded in the civil work. Waste water treatment plant did not become a plant until the process which included the civil work, was completed. Thus, the Court held that no commercial movable property came into existence until the assembling was completed by embedding different parts in the civil works. Accordingly, since waste water treatment plant was not a separate movable marketable good and came into existence only on assembly of parts in the civil work, there was no question of levying excise duty on it.

21) Gaseous Ltd., purchased helium gas in bulk from the open market and its quality control officer had conducted various tests and issued test reports stating the results of the tests. The bulk purchase was packed and filled in cylinders of various sizes and certificates were issued along with quantities. The purchases from the open market were of generic description and after test and analysis were sold to different customers based on their specific requirements with a profit margin of 40 to 60%. The Central Excise Department claimed that duty had to be paid on the sale price as there was "deemed manufacture" in terms of Note 9 to Chapter 28 of the Central Excise Tariff, 1985 which reads as follows:
"In relation to products of this Chapter, labelling or relabeling of containers or repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture." Briefly explain with a note based on case law, if any, whether:

(i) the process of filling the bulk gas into cylinders of smaller quantities after tests and quality processes with distinct grades would amount to 'treatment' as per the said chapter note.
ii) Whether it could be said that the helium gas purchased in bulk is already marketable and hence the chapter note will not be attracted in this case.

Answer:

Case law: Air Liquide North India Pvt. Ltd. v. CCE 2011 (271) E.L.T. 321 (S.C.).

i) Yes, the process of filing the bulk gas into cylinders of smaller quantities after the tests and quality processes with distinct grades would amount to ‘treatment’ as per the said chapter note In the aforesaid judgment, the Apex Court observed that if the gas purchased by the assessee had not undergone any treatment and was being sold as such, customers of the assessee could have purchased the same from the assessee’s suppliers. Further, the customers would not have paid a price 40% to 60% higher than the purchase price of assessee.

ii) No, the helium gas purchased in bulk was not already marketable and hence, chapter note will be attracted in this case. The Supreme Court observed that the marketability of the product to “the purchaser trading in it” is distinguishable from the marketability of the product to “the purchaser purchasing the same for final consumption”. The phrase “marketable to the consumer” in the Chapter note refers to the latter case. The helium gas purchased in bulk by the assessee was marketable to the “purchaser trading in it” and the helium sold by the assessee is marketable to “the person who purchases the product for his own consumption”. Hence, the product became marketable only after undergoing the said treatment. Thus, the chapter note is attracted thereby making the assessee liable to pay excise duty.

22) Assessees are the manufacturers of motor cars. They were selling the cars much below the cost price continuously for five years and the reason attributed was for the purpose of ‘penetration of market’ and to compete with other manufacturers of similar cars, actually incurring loss.

The Department after due verification as per Section 14A of Central Excise Act, 1944, refused to accept the assessable value declared by the assessees and contended that the ‘wholesale’ price declared by the assessees cannot be considered as ‘normal price’ under Section 4(1)(a) of the Act for the purpose of quantification of assessable value. Further, the Department opined that the ‘penetration price’ is to be considered as an extra consideration and therefore the concept of ‘price is the sole consideration’ as argued by the assessees, cannot be accepted. In that view, assessing authority found justice in invoking Section 4(1)(b) of the Act and resorted to best judgment assessment.

You are required to answer the following questions relevant to the above problem by analyzing the provisions of law and also referring to decided case law, if any:

(i) Whether the selling price which is below the cost price can be accepted or rejected?

(ii) Does the ‘penetration price’ be considered as an extra commercial consideration?

<u>Answer</u>:

Case law: CCEx., Mumbai v. Fiat India Pvt. Ltd. 2012 (283) E.L.T. 161 (SC)

As per section 4(1)(a) of the Central Excise Act, 1944, the assessable value of the excisable goods is the transaction value where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale. If any of these ingredients is missing, the price cannot be considered as transaction value.
In the instant case, the Supreme Court observed that full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production.
Therefore, selling price which is below the cost price cannot be accepted since such a price cannot be considered as the sole consideration for sale.
The value for purpose of excise duty under such circumstances will have to be determined in accordance with Section 4(1)(b) read with the Central Excise (Determination of Price of Excisable Goods) Rules, 2000.
The Supreme Court further elucidated that no prudent business person would continuously suffer huge loss only to penetrate market. They are expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments.
The Supreme Court held that selling cars at a price lower than the manufacturing cost and profit to penetrate the market will constitute extra commercial consideration. The assessment in such a case will have to be done on the basis of best judgement as prescribed under the Rules.

23) State the situations in which duty can be remitted under Rule 21 of Central Excise Rules. Also discuss whether remission of duty shall be granted or not in the following cases, with reason:
(a) Finished goods are destroyed in fire due to spontaneous combustion.
(b) Finished goods (fully manufactured) were lost before removal from the factory and the assessee has received a claim from the insurance company.

<u>Answer</u>:
As per Rule 21 of the Central Excise Rules, 2002, the Commissioner may remit the duty payable on goods if it is shown to his satisfaction that:-
(1) goods have been lost or destroyed by natural causes or,
(2) goods have been lost or destroyed by unavoidable accident or
(3) the goods have become unfit for consumption or for marketing at any time before removal.
(a) Remission of duty shall be granted if goods are destroyed in fire due to spontaneous combustion as destruction by spontaneous combustion is a natural cause and question of negligence does not arise [CCEx v. Balrampur Chini Mills 2008 (223) ELT 34 (All. HC)].
(b) Remission of duty shall be granted even if the assessee has received insurance claim in respect of fire accident [Sarda Plywood Industries Ltd. v CCEx 1987 (32) E.L.T. 116(Tri.).or CCEx v Jai Bhavani SSK (2008) 222 ELT 370 (CESTAT)].

24) Healthcare Ltd. is manufacturer of patent and proprietary medicines. Physician samples were distributed to medical practitioners as free samples. The Central Excise Department raised the demand of excise duty on such samples. The assessee contended that since the sale of the physician samples was prohibited under the Drugs and Cosmetics Act, 1940 and the rules made thereunder, the same could not be considered to be marketable and hence were not liable to excise duty. Examine with the help of a decided case law whether the contention of the assessee is valid in law.

Answer:

Case law: Medley Pharmaceuticals Ltd. v. CCE & C., Daman 2011 (263) E.L.T. 641 (S.C.).
In the instant case, the Supreme Court observed that merely because a product was statutorily prohibited from being sold would not mean that the product was not marketable. Sale is not a necessary condition for charging duty as excise duty is payable in case of free supply also. The Supreme Court observed that since physician samples were capable of being sold in open market, the same were marketable and thus, liable to excise duty. Moreover, since the Drugs and Cosmetics Act, 1940 (Drugs Act) and the Central Excise Act, 1944 operated in two different fields, the restrictions imposed under Drugs Act could not lead to non-levy of excise duty under the Central Excise Act.
Therefore, in view of the above-mentioned ruling of the Supreme Court, the contention of the assessee is not valid in law.

25) The assessee was carrying on construction of metro railway. He manufactured prefabricated components of metro rail at one site to be used at different interconnected metro construction sites. The assessee claimed exemption under Notification No. 1/2011-C.E.(N.T.) dated 17-2-2011 which exempts the goods covered under specified chapter headings for a specified period, manufactured at the site of construction for use in construction work at such site. Department contended that the assessee was not entitled to exemption as he did not fulfil the condition of manufacture at the site of the construction.
Examine the validity of the Departmental contention citing a decided case, if any.

Answer:

Case law: CCEx v. Rajendra Narayan 2012 (281) E.L.T. 38 (Del.).

No, the contention of the Department is not valid in law. The assessee is entitled to exemption under Notification No. 1/2011 CE (NT) dated 17.02.2011 as all the metro construction sites were inter-connected.
In the instant case, the assessee constructed pre-fabricated components at the construction site allotted to it by the metro railway from where the components had been moved to different inter-connected metro construction sites. The High

Court observed that construction site was not located at one place but spread all over.

26) M/s Ganga Marketing supplies 12 bottles of mineral water in a single package to Speed Airways (Airline Company). Maximum retail price was printed on the package. However, individual bottle of 200 ml. each did not carry such maximum retail price (M.R.P) as these were to be distributed to the passengers by the airline company and not intended for resale. M/s Ganga
Marketing pays duty of excise assessing the goods under section 4 of the Central Excise Act, 1944.
The Department has taken a view that the package of 12 bottles is not a wholesale package. The airline company itself is the ultimate consumer. Hence, the package of 12 bottles itself is a 'retail package' and duty is payable on the basis of MRP under section 4A of the Central Excise Act, 1944.
Examine briefly, with the help of decided case law, if any, whether the stand taken by the Department is correct in law.

<u>Answer</u>

No, the stand taken by the Department is not valid in law. Section 4A(2) of the Central Excise Act, 1944 stipulates that value of the goods notified by the Central Government under section 4A(1) of the Act shall be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow. For the purpose of valuation under section 4A of the Central Excise Act, 1944, there should be requirement under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made there under or any other law to declare the retail price of such goods on the package. With effect from 14.01.2007, Standards of Weights and Measures (Packaged Commodity) Rules, 1977 have been amended to provide inter alia that MRP is not required to be printed in case of sale to institutional consumers. Institutional consumers have been defined as those consumers who buy packaged commodities directly from the manufacturers/packers for service industry like airways, railways etc. Thus, Speed Airways, being an institutional consumer, package of mineral water bottles meant for them is not required to bear any MRP. Hence, in the present case, the goods are to be valued under section 4 and not under section 4A of the Central Excise Act, 1944.

27) M/s Om Processors, a job worker, was engaged in the processing of manmade fabrics received from the principal supplier. The job worker (assessee) had undertaken to discharge all the duty liabilities under the Central Excise Act, 1944. The assesse received manmade fabrics on declaration from the principal supplier that the said fabrics had polyester content below 70%; processed the same and cleared the processed fabrics claiming the benefit of concessional rate of duty available to manmade fabrics containing polyester below 70%. On the basis of chemical examination by the Department, it was found that the fabrics contained polyester in excess of 70% and thus would attract higher rate of duty. A show cause notice was issued invoking the extended period of limitation under section 11A of the Central Excise Act, 1944

demanding differential duty and penalties on the ground of mis-declaration on the part of the assessee. Briefly discuss, with reference to decided case law, whether the stand taken by the Department is correct in law.

Answer:

Case law: Padmini Products v. CCE (1989) 43 ELT 195 (SC)

Proviso to section 11A(1) of the Central Excise Act, 1944 stipulates that the extended period of limitation can be invoked only in case of short payment of duty by reason of fraud, collusion, or willful mis-statement or suppression of facts with the intention to evade the payment of duty it was held that failure to pay duty might not necessarily be due to fraud or collusion or willful misstatement or suppression of facts or contravention of any of the provisions of the Act. If facts of the case revealed that the appellant had acted bona fide, such act would not attract the penal provisions under section 11A of the Act. If the facts were otherwise, then the penalty would be levied. In the given case, there was no requirement for the assessee (processor) to verify the correctness of the declaration filed by the principal (suppliers). Further, there was no allegation that the assessee was a party to such mis-declaration by the principal supplier. Therefore, extended period of limitation could not be invoked against the assessee. Thus, the action taken by the Department is not valid in law.

28) M/s Raj Fibres had filed an appeal to the High Court on Aug. 11, 2008 under section 35G of the Central Excise Act, 1944 aggrieved by an order passed by the Appellate Tribunal. The order appealed against was received by the assessee on Jan. 1, 2008. The High Court dismissed the appeal petition on the ground that the same had been filed beyond the period provided for filing an appeal under section 35G of the Act and the court had no power to condone the delay. M/s Raj Fibres urged before the High Court that the provisions of the Limitation Act, 1963 should be made available and the delay in presenting the appeal ought to be condoned. State briefly, with reference to decided case law, if any, whether the High Court could condone the delay in presenting the appeal pursuant to the provisions of the Limitation Act, 1963 as urged by M/s Raj Fibres.

Answer

Case law: CCE v. Punjab Fibres Ltd. (2008) 223 ELT 337 (SC)

It has held that there is no provision for condonation of delay in section 35H of the Central Excise Act, 1944 i.e., the High Court was not empowered to condone delay in filing reference application. The Court also observed that the right or privilege to claim benefit of a provision for condonation of delay could be governed only by the law in force at the time of delay.
Though the above-mentioned case pertains to a reference application under section 35H of the Central Excise Act, 1944, the principle enunciated therein

may also be applied to an appeal filed under section 35G of the Act as section 35G also does not provide for any condonation of delay in filing an appeal. Hence, in the instant case, the High Court is justified in holding that the Court has no power for condonation of delay in filing an appeal.

29) The assessee manufactured compressors and filters and removed them as "stand alone" items. He also manufactured and removed safety valves and filters on payment of duty. The assessee also supplied bought out items like V belts, motor, pulley etc. to their buyers. The Excise Department relying on rule 2(a) of the General Interpretative Rules for classification has decided to include the value of safety valves and filters together with value of bought out items in the value of compressors for purposes of duty under section 4 of the Central Excise Act, 1944. Write a brief note, with any decided case law, whether the stand taken by the Department is correct.

<u>Answer</u>

Case law: CCEx., Delhi v. M/s Frick India Ltd. 2007 (216) ELT 497 (S.C).

In the instant case, the Supreme Court observed that rule 2(a) of the General Interpretative Rules for classification could not be applied in this case as:
(i) The compressors manufactured by assessee were removed as 'standalone' item and not in an unassembled or disassembled condition; and
(ii) Section and Chapter notes in Tariff and the Interpretative Rules do not provide guidelines for valuation of excisable goods because they decide the classification, and valuation is different from classification.
Thus, the Supreme Court held that the parts and accessories could not be classified as 'compressors' and therefore, were independently classifiable under respective headings applicable to them. The concept of 'classification' is different from that of 'valuation'.
Therefore, the contention of the Department is not correct in law.

30) An assessee had cleared goods without payment of excise duty. However, on coming to know from his sources that a show cause notice demanding duty on such clearances is likely to be issued but before actual issue of such notice the assessee made full payment of excise duty with interest. A show cause notice was issued subsequently as to why the assessee should not be subject to mandatory penalty equal to the excise duty sought to be evaded under section 11 AC of the Central Excise Act, 1944. Briefly examine, with a note, the conditions for levy of penalty under section 11AC and state whether there is any discretion to reduce such penalty.

<u>Answer</u>

Case law: UOI v. Rajasthan Spinning and Weaving Mills 2009 (238) ELT 3 (SC).

In the instant case, the Apex Court, overruling the decision of the Tribunal, held that mandatory penalty under section 11AC of the Central Excise Act, 1944 is not applicable to every case of non-payment or short-payment of duty.

In order to levy the penalty under section 11AC, conditions mentioned in the said section should exist. Supreme Court ruled that the Tribunal was not justified in striking down the levy of penalty against the assessee on the ground that the assessee had deposited the balance amount of excise duty (that was short paid at the first instance) before the show cause notice was issued.
The Apex Court elaborated that the payment of the differential duty, whether before/ after the show cause notice is issued, cannot alter the liability for penalty. The conditions for penalty to be imposed are clearly spelt out in section 11AC of the Act.
Supreme Court clarified that both section 11AC as well as proviso to sub-section (1) of section 11A use the same expressions : "...............by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.....".
Hence, it drew the inference that the penalty provision of section 11AC would come into play only if the notice under section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under section 11A(2), there is a legally tenable finding to that effect.
Further, Central Board of Excise and Customs vide Circular No. 889/09/2009 CX dated 21.05.2009 has clarified that when the conditions spelled out under section 11AC are fulfilled, there is no discretion to reduce the mandatory penalty which is equal to duty even though the duty is paid before the issuance of show cause notice.

31) Hand blender manufactured by the assessee was cleared as gift along with each unit of juicer, mixer and grinder (JMG). The MRP of Rs. 750 though printed on the 'hand blender box' contains clear indication that it is supplied free of cost. The package of JMG also shows this. The hand blender is not sold separately. The Department has issued a show cause notice that duty should be paid on the hand blender. Write a brief note with reference to section 4A of the Central Excise Act, 1944 whether the notice is sustainable in law.

<u>Answer</u>:

No, the notice issued by the Department is not sustainable in law. In this case, though the MRP of Rs. 750 is printed on the 'hand blender box', there is a clear indication that it is supplied free of cost. This is merely a sale promotion measure in order to augment the demand.
In Sony India Ltd. v. CCE 2004 (167) ELT 385 (SC), Supreme Court held that the offer of gifts was only incidental benefit and not the part of the consideration to be paid in regard to television sets (main product) as such. Similar view has been expressed by Tribunal in case of Gujtron Electronics Pvt. Ltd. v. CCEx. & Cus. 2009 (241) E.L.T. 371 (Tri. - Ahmd.).
It is also clear that hand blender would be given free with every purchase of JMG and there is no sale of the same.
Hence, it can be concluded that the duty under section 4A will have to be paid on the JMG and the 'hand blender' provided as a gift will not be again subject to duty on the MRP because there is no sale of the hand blender.

32) M/s XYZ Co. Ltd is engaged in the manufacture and sale of machine parts for sugar machinery. The goods were sold at certain prices on the basis of which excise duty was paid at the time to removal from the factory. Following certain negotiations with the customers the price of goods already cleared were retrospectively revised upward. Consequently M/s XYZ Co. Ltd issued supplementary invoices to its customers and realized the differential price as per the said invoices. Differential excise duty consequent upon the said revision in prices was also calculated and remitted to the Government account. A show cause notice has been issued on M/s XYZ Co. Ltd by the excise department demanding interest on delayed payment of duty under section 11AB of the Central Excise Act, 1944. Discuss with a brief note whether the stand taken by the central excise department is correct in law. You may refer to decided case law if any in support of your answer.

Answer:

Case law: CCE v. International Auto Ltd. 2010 (250) E.L.T. 3 (S.C.)

As per section 11A(2B) of the Central Excise Act, 1944, the assessee in default is not served with the demand notice under section 11A(1) of the Act if he makes payment of the unpaid duty on the basis of his own ascertainment or as ascertained by a Central Excise Officer. Further, Explanation 2 to this sub-section provides that such payment is not exempt from interest chargeable under section 11AB. Section 11AB which deals with interest on delayed payment of duty also reiterates the same position.
In the given case, the assessee has paid the enhanced duty on the increased prices of the goods on account of negotiations with the customers, on his own ascertainment. Therefore, in view of the above provisions, interest would be leviable on the differential duty paid by the assessee. Wherein it has held that it becomes clear from the scheme of section 11A(2B) and section 11AB of the Act that interest is levied for loss of revenue caused on any count. In this case also, the price, on the date of removal/clearance of the goods, was not correct i.e., it was understated. The enhanced duty was leviable on the corrected value of the goods on the date of removal. When the differential duty was paid after the date of clearance, it indicated shortpayment/ short-levy on the date of removal, hence, interest which was for loss of revenue, became leviable under section 11AB of the Act.
In view of the above discussion, the stand taken by the Central Excise Department is correct in law.

33) The assessee M/s T& Co. Ltd were engaged in the manufacture of 'tarpaulin made ups'. This was nothing but tarpaulin cloth prepared by making a solution of wax, aluminium stearate and pigments that were mixed. The solution was heated in a vessel and was transferred to a tank. Grey cotton canvas fabric was then dipped into the solution and passed through two rollers, whereafter the canvas was dried by exposure to sun. The tarpaulin made ups were prepared by cutting the cloth into various sizes and stitched and eyelets were fitted. The

central excise department has issued a show cause notice to M/s T & Co. Ltd. that the tarpaulin made ups prepared by means of cutting, stitching and fixing eyelets amounts to manufacture under the Central Excise Act, 1944. Write a brief note with reference to decided case law if any whether the department's view in the matter is legally sustainable.

Answer:

Case law: CCE v. Tarpaulin International. 2010 (256) E.L.T. 481 (S.C.)

In this case, the Apex Court has observed that stitching of tarpaulin sheets and making eyelets does not change the basic characteristic of the raw material as the process does not bring into existence a new and distinct product different from the original commodity. The original material used i.e., the tarpaulin, is still called tarpaulin made-ups even after undergoing the said process. Hence, the Supreme Court has held that process of making tarpaulin made ups by cutting, stitching the tarpaulin fabric and fixing eyelets therein cannot be said to be a manufacturing process liable to excise duty.
Therefore, in view of the above-mentioned judgement, the Department's view in the matter is not legally sustainable.

34) M/s. Amar Ltd. is a manufacturer of cement. It carried out repair and maintenance of its worn out cement manufacturing plant by use of welding electrodes, mild steel, cutting tools, angles etc. In this process of repair/maintenance, some metal scrap and waste were generated, which were cleared by the assessee without paying any excise duty.
The Department issued a notice demanding excise duty on such metal scrap and waste contending that these were 'excisable goods' as these were marketable and movable and since it arose during a process incidental/ancillary to manufacture viz., repair of plant, the process of generation of scrap and waste amounted to manufacture in terms of section 2(f) of the Central Excise Act, 1944.
You are required to answer the following questions:

(i) What is 'manufacture' in central excise as per section 2(f)(i) and (ii) of the Act?
(ii) What are the major conditions for levy of duty on waste & scrap?
(iii) Whether waste & scrap resulting from repair/maintenance of plant is excisable and liable to duty?

Answer:

Case law: Grasim Industries Ltd v. UOI 2011(273) ELT 10 (SC).

(i) As per clause (i) and (ii) of section 2(f) of the Central Excise Act, 1944, manufacture includes any process-
a) incidental or ancillary to the completion of a manufactured product;
b) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture.

(ii) The Supreme Court in the case of Grasim Industries Ltd. held that the following conditions must be satisfied conjunctively for levy of excise duty on waste and scrap:-
a) Waste and scrap ought to be excisable goods under section 2(d) of the Central Excise Act, 1944; and
b) Waste and scrap should be manufactured goods i.e., they should arise as a result of manufacture in terms of section 2(f) of the Central Excise Act, 1944.
In other words, it ought to be a by-product of the final product
(iii) The Supreme Court in the Grasim Industries Ltd. case observed that a process incidental or ancillary to manufacture can be a process in manufacture or process in relation to manufacture of the excisable end product, which involves bringing some kind of change to the raw material at various stages by different operations.
The Apex Court held that since the repair and maintenance of plant has no contribution/effect on the process of manufacturing of cement (the end product), the same cannot be called as part of manufacturing activity in relation to the production of end-product. Thus, the metal scrap and waste generated from repair/ maintenance of plant cannot be said to be a by-product of the final product but the by-product of repairing process.
Therefore, in view of the above discussion, it can be inferred that waste and scrap resulting from repair/maintenance of plant (not being a process incidental to the manufacture of end-product) is not liable to excise duty.

35) Surbhi Textile Ltd. (the assessee) is manufacturer of synthetic yam and is availing benefit of Sales Tax Incentive Scheme of State Government wherein it is allowed to retain 75% of sales tax amount collected from its customers and pay balance 25% to the State Government. The Central Excise Department has demanded inclusion of 75% portion of sales tax collected from customers and retained by the assessee, in transaction value of the goods whereas the assessee is contending that 75% portion of sales tax amount is an incentive to promote the industries and it has nothing to do with 'transaction value'. Examine with the help of a case law (if any), whether Surbhi Textile Ltd. is liable to include 75% amount of sales tax in transaction value of the goods.

<u>Answer</u>:

Case law: CCEx v. Super Synotex (India) Ltd. 2014 (301) E.L. T. 273 (S.C.)

As per section 4(3)(d) of the Central Excise Act, 1944, transaction value, inter alia, excludes the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods. Hence, the amount of sales tax is excludible from the transaction value of goods only when such amount is actually paid/payable on such goods.
In the given case, since 75% of the sales tax amount collected from the customers had been retained by the assessee and not paid to the State Government (owing to a benefit under Sales Tax Incentive Scheme), same should form part of the transaction value of the goods.

It has held that what is not payable/not to be paid as sales tax/VAT, should not be charged from the third party/customer, but if it is charged and is not payable or paid, it should not be excluded from the transaction value. Hence, unless the sales tax is actually paid to the Sales Tax Department of the State Government, no benefit towards excise duty can be given under the concept of "transaction value" i.e., it is not excludible.

Thus, Surbhi Textile Ltd. is liable to include 75% of the sales tax retained by it, in terms of the Sales Tax Incentive Scheme, in transaction value of goods.

CENVAT

1) Adecco Corporation Limited (ACL) was a manufacturer of polypropylene bags. It shifted its factory located at Kalyanpuri to Greater Kailash. ACL transferred a quantity of 20,000 kg of inputs (plastic granules) and one capital good i.e. automatic bag machine to the new site. These were the only available inputs and capital goods with ACL at the time of transfer. The inputs, capital goods and the balance of unutilized CENVAT credit were duly received and accounted for in the registers of the new unit.
The said balance of unutilized CENVAT credit transferred was Rs 6,00,000. However, the CENVAT credit corresponding to inputs and capital goods transferred to the new site amounted to Rs. 4,50,000 only. The Department raised the plea that assessee was entitled to transfer only Rs 4,50,000 of CENVAT credit and not the entire balance of unutilised credit of Rs. 6,00,000. Explain, with the help of a decided case law, if any, whether Department's plea is justified in law.

Answer:

Case law: CCE, Pondicherry v. CESTAT 2008 (230) ELT 209 (Mad.).

In this case, Madras High Court decided that erstwhile rule 8 of the CENVAT Credit Rules, 2002 [now rule 10 of the CENVAT Credit Rules, 2004*] did not provide that the assessee could transfer the CENVAT credit corresponding only to the quantum of inputs or capital goods transferred to the new factory, but permitted the assesse to transfer the entire balance of unutilised CENVAT credit along with inputs and capital goods in stock at the factory to the new location provided the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise. Thus, requirement of erstwhile rule 8 of the CENVAT Credit Rules, 2002 [now rule 10 of the CENVAT Credit Rules, 2004*] had been fulfilled by the assessee. Hence, he could avail the CENVAT credit transferred by him.
Thus, in the given question, Adecco Corporation Limited (ACL) can avail the entire balance of unutilized CENVAT credit of Rs.6,00,000 available with him.
*Note – Relevant portion of rule 10 of CENVAT Credit Rules, 2004 reads as follows:-

If a manufacturer of the final products shifts his factory to another site, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred factory.
Such transfer of the CENVAT credit shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of, are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

2) Amiga Tank and Manufacturing Company (ATMC), a manufacturer of storage tank, wrongly classified the said product under Chapter Heading 73.09 by taking it to be the storage of general use. Later on, it realized that since storage tank concerned was actively used for manufacturing activity of the plant and was an integral part of the manufacturing process, therefore, it ought to be classified under Chapter Heading 84.19. So, he claimed the correct classification under Chapter Heading 84.19. Adjudicating Authority disallowed the assessee's claim of CENVAT credit, in respect of the input/capital goods used for the construction of storage tank, by taking the classification of the product under Chapter 73. Its primary contention was that classification once opted by the manufacturer could not be altered subsequently. Examine the validity of the proposed action of Adjudicating Authority, with reference to a decided case law, if any.

<u>Answer</u>:

Case law: Guljag Industries Ltd. v. Union of India 2008 (224) ELT 38.

In this case, learned counsel for appellant contended that earlier claim to a particular classification by the manufacturer did not stop him from claiming correct classification under different head by pointing out that the classification earlier claimed was erroneous. Rajasthan High Court held that the assessee's contention was justified. Erroneous claim made by the assessee earlier did not preclude him from subsequently making a claim for correct classification. Hence, in view of above pronouncement, the proposed action of Adjudicating Authority is not valid. ATMC is entitled to alter the earlier classification and claim the classification of the said product under Chapter heading 84. Note - The headings cited in the case law mentioned above may not co-relate with the headings of the present Excise Tariff as this case relates to an earlier point of time.

3) Rokasa Ltd. was engaged in the manufacture of pharmaceutical product-Rovamox pediatric drops. Rokasa Ltd. claimed the CENVAT credit of the duty paid on the plastic droppers supplied along with the bottle containing drops on the ground that the droppers were inputs used in or in relation to manufacture of such final product. However, the Revenue argued that CENVAT credit was not admissible because these droppers were separately kept in the cartons along with the sealed bottle of the pediatric drop. These droppers were neither used in the manufacture of pediatric drop nor used in relation to its

manufacture. Briefly discuss whether the stand taken by the Department is correct, with the help of a decided case law.

Answer:

Case law: CCEx., Mumbai v. Okasa Ltd. 2009 (241) E.L.T. 359 (Bom.).

No, the stand taken by the Department is not correct.
In the instant case, the High Court agreed with the contention of the assessee that for purpose of dispensation or administration of the drugs in proper quantity as per the medical prescription, dropper had to be affixed on the bottle containing the drug. Further, as the droppers were necessary packaging material for marketing of the drug (as per the directions given by the Controller of Drugs for India), they would be covered by the words "packing material" in the definition of inputs under explanation to rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) of the CENVAT Credit Rules, 2004]. The Tribunal, while allowing the appeal in the instant case, had relied upon the decision taken in Heal Well Pharmaceutical v. Collector 1994 (72) E.L.T. 446 (Tribunal) wherein it was held that where dropper was provided in the carton along with bottle containing the drug, it amounted to manufacture and the manufacturer was entitled to credit of duty paid on such product being input of the firm product.
Considering the all the facts, circumstances and the legal position, the High Court, upholding the Tribunal's decision, held that the plastic dropper packed in the pediatric drops and marketed at the factory gate should be construed to be an input used in or in relation to the manufacture of the final product.

4) Briefly explain, with reference to a decided case law, can CENVAT credit be taken on the basis of private challans other than the prescribed documents?

Answer

Case law: CCEx. v. Stelko Strips Ltd. 2010 (255) ELT 397 (P & H).

Yes, CENVAT credit can be taken on the basis of private challans other than the prescribed documents. The issue whether private challans other than the prescribed documents are valid for taking MODVAT credit under the Central Excise Rules, 1944 has been decided by the High Court.
The High Court placed reliance on its decision in the case of CCE v. M/s. Auto Spark Industries CEC No. 34 of 2004 decided on 11.07.2006 wherein it was held that once duty payment is not disputed and it is found that documents are genuine and not fraudulent, the manufacturer would be entitled to MODVAT credit on duty paid on inputs. The High Court also relied on its decision in the case of CCE v. Ralson India Ltd. 2006 (200) ELT 759 (P & H) wherein it was held that if the duty paid character of inputs and their receipt in manufacturer's factory and utilization for manufacturing a final product is not disputed, credit cannot be denied. Thus, the High Court held that MODVAT credit could be taken on the strength of private challans provided the same were not found to be fake and there was a proper certification that duty had

been paid. Although, the principle enunciated in the aforesaid judgment is with reference to the erstwhile Central Excise Rules, 1944, the same may apply with regard to the CENVAT Credit Rules, 2004.

5) Rolex Ltd. was engaged in the manufacture of electricity using naptha as fuel for generation of electricity. The electricity was partly used captively and partly sold outside to its joint ventures, vendors or given to the grid for distribution. Rolex Ltd. claimed the CENVAT credit on the naptha used in the manufacture of the electricity. However, Department denied the credit on the ground that CENVAT credit on naptha could not be admitted because part of the electricity was cleared outside the factory to the joint ventures, vendors etc. Examine the veracity of the action taken by the Department with the help of a decided case law.

Answer:

Case law: Maruti Suzuki Ltd. v CCE (2009) 240 ELT 641 (SC).

In the said case, the Court observed that the statutory definition of the word "input" in rule 2(g) in the erstwhile CENVAT Credit Rules, 2002 [now rule 2(k) in the CENVAT Credit Rules, 2004], can be divided into three parts, namely :
(i) Specific part
(ii) Inclusive part
(iii) Place of use
All the three parts of the definition, namely, specific part, inclusive part and place of use, are required to be satisfied before an input becomes an eligible input.

(I) SPECIFIC PART
"Input" is defined to mean all goods, except light diesel oil, high speed diesel oil and petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not.
Therefore, the crucial requirements, as per this part, are as follows:-
(a) All goods "used in or in relation to the manufacture" of final products qualify as "input".
(b) Presupposition that the element of "manufacture" must be present.
On account of the use of the expression "used in or in relation to the manufacture of final product", use of input in the manufacturing process, be it direct or indirect and the absence of the input in the final product become irrelevant. Electricity may not have any concern with the manufacture of the finished product, but it is an ancillary activity which is anterior to the process of manufacture of the final product. It is on account of the use of the above expression "used in relation to manufacture" that such an activity of electricity generation comes within the ambit of the definition.

(II) INCLUSIVE PART

Input includes:
(a) Lubricating oils, greases, cutting oils and coolants;
(b) Accessories;
(c) Paints;
(d) Packing materials;
(e) Input used as fuel;
(f) Input used for generation of steam or electricity.

The Court elucidated that, in each case, it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product". Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input.

(III) PLACE OF USE

Supreme Court held that the definition of "input" brings within its fold, inputs used for generation of electricity or steam, provided such electricity or steam is used within the factory of production for manufacture of final products or for any other purpose.

The excess electricity cleared to the grid for distribution or to the joint ventures, vendors, and that too for a price (sale), electricity generated cannot be said to be "used in or in relation to the manufacture of final product, within the factory".

Hence, from the above discussion, it could be inferred that Rolex Ltd. was entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which they were using the produced electricity within their factory (for captive consumption).

However, it was not entitled to CENVAT credit to the extent of the excess electricity sold to joint ventures, vendors etc.

6) Upon grant of remission of duty, does the CENVAT credit on inputs used in final product need to be reversed?

<u>Answer</u>:

Yes, as per sub-rule (5C) of rule 3 of the CENVAT Credit Rules, 2004, where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

7) The assessee claimed the CENVAT credit on the duty paid on capital goods which were later destroyed by fire. The Insurance Company reimbursed the amount inclusive of excise duty. Is the CENVAT credit availed by the assessee required to be reversed?

Answer

Case law: CCE v. Tata Advanced Materials Ltd. 2011 (271) E.L.T. 62 (Kar.)

Facts of the case: The assessee purchased some capital goods and paid the excise duty on it. Since, said capital goods were used in the manufacture of excisable goods, he claimed the CENVAT credit of the excise duty paid on it. However, after three years the said capital goods (which were insured) were destroyed by fire. The Insurance Company reimbursed the amount to the assessee, which included the excise duty, which the assessee had paid on the capital goods. Excise Department demanded the reversal of the CENVAT credit by the assessee on the ground that the assessee had availed a double benefit

Decision of the case: The High Court noted that the as per CENVAT Credit Rules, 2004, CENVAT credit taken irregularly stands cancelled and CENVAT credit utilised irregularly has to be paid for.

In the instant case, the Insurance Company, in terms of the policy, had compensated the assessee. The High Court observed that merely because the Insurance Company had paid the assessee the value of goods including the excise duty paid, it would not render the availment of the CENVAT credit wrong or irregular. It was not a case of double benefit as contended by the Department.

The High Court therefore answered the substantial question of law in favour of the assessee and against the Revenue.

8) Vardhman Ltd., engaged in manufacturer of excisable goods at Delhi, is registered as 'Input Service Distributor'. It has its units situated at Meerut and Moradabad also. It pays the service tax of Rs. 12,50,000 for services received by it and its units from various service providers. Thereafter, it distributes credit of the service tax to its various units. The unit situated at Meerut availed and utilized the said credit for payment of central excise duty on its final products. Revenue denies the credit availed and utilised by the Meerut unit. It contends that credit utilised by Meerut unit is in respect of the advertising services which were obtained by Moradabad unit.

Examine the veracity of the Department's contention with reference to a decided case law.

Answer:

Case law: CCE v. Ecof Industries Pvt. Ltd. 2011 (271) E.L.T. 58 (Kar.).

No, Department's contention is not valid in law. Considering rules 2(k), 2(l), 2(m), 3(1) and 7 of the CENVAT Credit Rules, 2004, the High Court elucidated that merely because the service tax on the input service was paid at a particular unit and the benefit was sought to be availed at another unit, the same was not prohibited under law. However, the head office must register himself as an input service distributor and thereafter, he would be entitled to distribute the credit of such input in the manner prescribed under law. Hence, in the instant case, Meerut unit has rightly availed the CENVAT credit of the service tax paid by Vardhman Ltd.

9) Examine the validity of the following statements with reference to Cenvat Credit Rules, 2004 as amended:
(i) All motor vehicles are eligible as capital goods used in the factory of the manufacturer of the final products for availing Cenvat Credit.
(ii) Cenvat credit on inputs cannot be taken without bringing them into the premises of output service provider.

Answer:

(i) The said statement is not valid. As per Rule 2(a) of the CENVAT Credit Rules, 2004, although motor vehicles used in the factory of the manufacturer of the final products are now eligible as capital goods, but following motor vehicles are still not eligible:-
(a) Motor vehicles for the transport of 10 or more persons, including the driver
(b) Motor cars and other motor vehicles principally designed for the transport of persons (other than those covered in (i) above), including station wagons and racing cars
(c) Motor vehicles for transport of goods
(d) Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars.

(ii) The said statement is not valid. Rule 4 of the CENVAT Credit Rules, 2004 has been amended vide Notification No. 18/2012-CE (NT) dated 17.03.2012 to provide that CENVAT credit on inputs can be taken without bringing them into the premises of the output service provider.
Credit can be taken when the inputs are delivered to the service provider subject to the maintenance of documentary evidence of delivery and location of the inputs.

10) With reference to CENVAT Credit Rules, 2004, examine the validity of the following statements with the help of a decided case law:-

(a) Service provided by foreign commission agent for sale of goods is an input service.
(b) Testing of trail batches prior to commercial production is not an eligible input service.

Answer

(a) The said statement is not valid. The aforementioned question was examined by the High Court in the case of CCEx v. Cadila Healthcare Ltd. 2013 (30) S.T.R. 3 (Guj.). In the instant case, with respect to the services provided by foreign commission agents, the High Court held that since the agents were directly concerned with sales rather than sales promotion, the services provided by them were not covered in main or inclusive part of definition of input service as provided in rule 2(1) of the CENVAT Credit Rules, 2004.

(b) The said statement is not valid. The aforementioned question was also examined by the High Court in the case of CCEx v. Cadila Healthcare Ltd. 2013 (30) S.TR, 3 (Guj.). In the instant case, the High Court held that the activity of testing and analysis of the trial batches was in relation to the manufacture of final product as unless such trial batches were tested and approval from the regulatory authority was obtained, the final product could not be manufactured. Therefore, such testing would constitute input service eligible for CENVAT credit.

11) Tanco Products Ltd. was using plastic crates as a material handling device within their factory premises. Such plastic crates were used for internal transportation of the raw material from stores to the processing machine, semi-finished goods from one machine to other machine and finished goods to their storage area. The appellant contended that the plastic crates were eligible capital goods for the purposes of CENVAT credit and alternatively as input. Department rejected the assessee's claim of CENVAT credit in respect of the duty paid on such plastic crates.
Explain, with the help of a decided case law, if any, whether the stand taken by Department is sustainable in law.

Answer:

Case law: Banco Products (India) Ltd. v. CCEx., Vadodara-I 2009 (235) ELT 636 (Tri-LB)

The Tribunal first analyzed the definition of "accessories" in order to decide whether plastic crates got covered under in the definition of capital goods under erstwhile rule 2(b) of the CENVAT Credit Rules, 2002 [now rule 2(a) of the CENVAT Credit Rules, 2004]. After meticulous consideration of various relevant judgments, the Tribunal observed that the only criteria for an object to be held as an accessory is that that a particular item should be capable of being used with a machine and should advance the effectiveness of working of that machine. The plastic crates in question were used for transportation of the raw material to the processing machine and all the finished goods from the machine to storage area. If instead of using plastic crates manual transportation of the inputs or semi-finished goods had been opted for, practically, it would have hampered the continuous working of the machine on account of delays in the delivery of the raw material/semi-finished goods etc. Hence, viewed and judged in the light of the interpretation of the term "accessory" by various Courts, the Tribunal concluded that the plastic crates could be held as accessory. While dealing with the expression "in the manufacture of the goods" in the definition of inputs under erstwhile rule 2(g) of the CENVAT Credit Rules, 2002 [now rule 2(k) of the CENVAT Credit Rules, 2004], the large bench of the Tribunal referred to the case of Collr. of C.E. v.
M/s. Rajasthan State Chemical Works 1991 (55) E.L.T. 444 (SC) wherein the Apex Court had observed that the said expression encompassed all processes which were directly related to the actual production. The process of handling/lifting/pumping/transfer/transportation of the raw material was also a process in or in relation to manufacture, if integrally connected with further operation leading to manufacture of the goods.
By applying the ratio as enacted by the Supreme Court to the issue in dispute, the Tribunal held that process started with the issuance of the inputs from the stores and their further transportation to the production platform was only a

part of the process of manufacture integrally related to the final production. In absence of the delivery of the raw material to the manufacturing platform, the process could not start. Such delivery of the goods included transportation of the goods by plastic crates. Similarly, finished products were required to be stored in a bonded store room. The plastic crates were again used for such transportation.

Hence, the Tribunal opined that the plastic crates would also be eligible for CENVAT credit as input.

In the light of aforesaid discussion, the large bench of the Tribunal held that CENVAT credit was available on the plastic crates used as material handling equipment in the factory premises as capital goods as also as input.

Hence, the stand taken by Department is not sustainable in law.

12) State the validity of the following statements with reference to the CENVAT Credit Rules, 2004:-

(a) CENVAT credit of the service tax paid can be claimed in a case where a service receiver does not pay the full invoice value and the service tax indicated thereon due to certain reasons.

(b) Where the finished goods are written off in the books of accounts and the amount of excise duty has been remitted, the manufacturer would not be required to reverse the credit on the inputs used.

(c) Items, namely, bolting cloth/ screens/ silicon cylinders which carry designs and which are fitted on the machines used in ceramic tiles industry for printing of design over the surface of the ceramic tiles, cannot be considered as capital goods/inputs for CENVAT credit purposes.

<u>Answer</u>

(a) The statement is absolutely valid. Circular No. 122/03/2010 – ST dated 30.04.2010 clarifies that CENVAT credit of service tax can be availed where a service receiver does not pay the full invoice value and the service tax indicated thereon due to reasons like discount, unsatisfactory service etc. provided he has paid the amount of service tax (whether proportionately reduced or the original amount) to the service provider. The credit tak en would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would have to be altered accordingly.

(b) The statement is absolutely incorrect. Circular No. 907/27/2009 -CX dated 07.12.2009 has clarified that where the finished goods are written off in the books of accounts and the amount of excise duty has been remitted, the manufacturer would be required to reverse the credit on the inputs used.

(c) The statement is absolutely incorrect. Circular No. 920/10/2010 -CX dated 01.04.2010 clarifies that these items are essential for operation of the machines. Therefore, being part/component of the machines, they would be considered as capital goods for the CENVAT credit purposes.

13) Examine the validity of the following statements, with reference to the CENVAT Credit Rules, 2004:-

(a) Credit of capital goods can be availed when such capital goods are exclusively used in manufacture of dutiable goods on which benefit under Notification 1/2011-CE is availed.

(b) The credit of input services used for repair or renovation of factory or office is available.

Answer:

(a) The said statement is not valid. Circular No. 943/04/2011-CX dated 29.04.2011 clarifies that as per rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of exempted goods or in providing exempted service.

Since, goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE dated the 01.03.2011 is availed are exempted goods [Rule 2(d)], credit of capital goods used exclusively in manufacture of such goods is not allowed.

(b) The said statement is absolutely valid. Circular No. 943/04/2011-CX dated 29.04.2011 clarifies that credit of input services used for repair or renovation of factory or office is allowed because services used in renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.

14) Whether (i) (i) technical testing and analysis services availed by the assessee for testing of clinical samples prior to commencement of commercial production and

(ii) services of commission agent are eligible input services for claiming CENVAT?

Answer:

Case law: CCEx v. Cadila Healthcare Ltd. 2013 (30) S.T.R. 3 (Guj.)

In the instant case, the assessee was engaged in the manufacture of medicaments. Since, the medicament could be manufactured only upon approval of the regulatory authority after the product undergoes technical testing and analysis, the assessee availed the services of various technical testing and analysis agencies for testing of clinical samples prior to commencement of commercial production. These samples were manufactured in small trial batches and removed after payment of excise duty. The assesee availed CENVAT credit of service tax paid by it on such testing services. However, the department alleged that unless goods reached the commercial production stage, CENVAT credit was not admissible.

Further, the assessee also availed CENVAT credit of service tax paid by it on commission paid to foreign agents for the sale of such medicaments. Credit was taken as per the inclusive part of the definition of input service, which included services in relation to sales promotion. However, the department contended that there was a clear distinction between sales promotion and sale and a commission agent is directly concerned with sales rather than sales promotion. Therefore, service provided by commission agent would not fall within the purview of the main or inclusive part of the definition of input service.

Observations of the Court: The High Court observed that the activity of testing and analysis of the trial batches was in relation to the manufacture of final product as unless such trial batches were tested and approval from the regulatory authority was obtained, the final product could not be manufactured.

The High Court did not find any merits in the contention of the department that CENVAT credit was not admissible in respect of the technical testing and analysis services availed in respect of the product at trial production stage as the goods had not reached the commercial production stage. It was more so as the trail batches were removed on payment of excise duty and thus, CENVAT credit of service tax paid in respect of such services could not be denied.

As regards the commission paid to foreign agents, the High Court observed that there was nothing on record to indicate that the foreign agents were actually involved in any sales promotion activities like advertising which was covered in inclusive part of definition of input service. The High Court further elaborated that neither were such services used directly or indirectly, in or in relation to manufacture of final products or clearance of final products from (now upto) place of removal nor were they analogous to illustrative activities mentioned in the Rule 2(l) viz., accounting, auditing, etc.

Decision: The High Court held that technical testing and analysis services availed for testing of clinical samples prior to commencement of commercial production were directly related to the manufacture of the final product and hence, were input services eligible for CENVAT credit.

With respect to the services provided by foreign commission agents, the High Court held that since the agents were directly concerned with sales rather than sales promotion, the services provided by them were not covered in main or inclusive part of definition of input service as provided in rule 2(l) of the CENVAT Credit Rules, 2004.

15) Will two units of a manufacturer surrounded by a common boundary wall be considered as one factory for the purpose of CENVAT credit if they have separate central excise registration?

<u>Answer</u>

Case law: Sintex Industries Ltd. vs. CCEx 2013 (287) ELT 261 (Guj.)

Facts of the case: The assessee, a company incorporated under the Companies Act, 1956, had two divisions namely, textile division and plastic division situated adjacent to each other on a common ground and surrounded by a common boundary wall. Both the units had separate central excise registrations but the assessee, a single entity, had a common PAN under the Income-tax Act. In order to receive continuous and uninterrupted supply of electricity, the assesse installed DG sets/electricity generation plant to be used in the factory of the textile division and it used furnace oil as fuel in the generation of electricity. The assesse availed CENVAT credit on furnace oil, used as fuel for the generation of electricity, which was used for captive consumption in their own factory. When the assessee's other unit required electricity, the assessee supplied part of the electricity so generated to its other unit.

The contention of the Revenue was that the assessee ought to reverse the credit taken on furnace oil used in the generation of electricity and supplied to the other unit.

However, the assessee contended that since both the units were situated within a common boundary wall, the electricity supplied to the other unit could not be treated as being supplied to a different entity but within its own factory. The assessee further contended that separate registration of the plastic unit would not make it a different factory.

Observations of the Court: The High Court observed that though both the separately registered factories/divisions are situated within a common boundary wall, it could not be said that the other division is also within the factory of the assessee wherein the electricity is generated. The reason given by the High Court for such an observation was that the assessee itself had described the factory of its other division as a separate place of business by applying for separate central excise registration and had obtained such separate registration.

Decision: The High Court held that credit could be availed on eligible inputs utilized in the generation of electricity only to the extent the same were used to produce electricity within the factory registered for that purpose (textile division). However, credit on inputs utilized to produce electricity which was supplied to a factory registered as a different unit (plastic division) would not be allowed. The High Court rejected the contention of the assessee that separate registration of two units situated within a common boundary wall would not make them two different factories.

16) Mr. Satnarain, a manufacturer having three registered premises, registrations for which has been obtained on the basis of a common Permanent Account Number, wants to transfer unutilized CENVAT credit of additional duty leviable under sub section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises to the other one. Examine whether Mr. Satnarain can do so and if yes, then explain whatis the procedure for such transfer.

<u>Answer</u>:

Yes, Mr. Satnarain can do so. W.e.f. April 01, 2012 Rule 10A has been inserted in CENVAT Credit Rules, 2004 vide Notification No. 18/2012-CE (NT) dated 17.03.2012, which provides that a manufacturer or producer of final products, having more than one registered premises, registrations for each of which have been obtained on the basis of a common Permanent Account Number, may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act(SAD), lying in balance with one of his

registered premises at the end of a quarter, to his other registered premises by—
(i) making an entry for such transfer in the documents maintained under rule 9;
(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i), and such recipient premises may take CENVAT credit on the basis of the transfer challan.
However, nothing contained in this rule will apply if the transferring and recipient registered premises are availing the benefit of certain specified notifications providing exemption to units located in specified areas.
The manufacturer or producer has to submit the monthly return, as specified, separately in respect of transferring and recipient registered premises.

17) M/s ABC Ltd. was a cement manufacturer. The company used ropeway system for bringing crushed limestone from the mines located 4 - 5 kms away from the factory. A part of ropeway system was installed in the factory and the system was controlled from the factory. M/s ABC Ltd. availed CENVAT credit on parts / spares for ropeway system treating the same as capital goods. The Central Excise Department denied CENVAT credit on the ground that ropeway is used for transporting raw materials from the mines to the factory and cannot be considered as material handling system within the factory premises. Examine, with the help of a decided case law, whether the stand taken by the Department is correct in law.

<u>Answer</u>

Case law: M/s. Birla Corporation Ltd. v. CCE 2005 (186) ELT 266 (SC).

No, Department's stand is not correct in law. Rule 2(a) of CENVAT Credit Rules, 2004, inter alia, provides that capital goods means goods "used in the factory of the manufacturer of final products". The Department's contention is that ropeway is used for transporting raw material from mines located 4-5 kms away and hence it cannot be said to have been used in the factory.
In the instant case, the Apex Court followed the principle laid down in case of J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II 2001 (130) E.L.T. 996 wherein the same question arose for consideration and the facts were almost identical.
Therefore, the assessee was entitled to the CENVAT credit of the spares of the ropeway system because the ropeway system, used to bring the crushed lime stone from the mines to the factory, could be covered under the expression 'precincts of the premises' in the definition of the factory under section 2(e) of the Central Excise Act, 1944. Thus, ropeway system is used within the factory. Therefore, parts/spares for ropeway system are covered under the definition of capital goods. Hence CENVAT credit is admissible.

18) C & C Co. Ltd. manufactured non-alcoholic beverage bases known as concentrates. These were sold to bottling companies who in turn sold the aerated beverages manufactured from the concentrates to distributors. These were then sold to retailers and thereafter to the ultimate consumers. The advertisement and market research activities were undertaken by M/s. C & C Co. Ltd. Input credit of service tax paid on the advertising service used for marketing of soft drinks removed by bottlers was claimed by M/s. C & C Co. Ltd. This credit was denied on the ground that advertisements did not relate to the concentrates manufactured by M/s. C & C Co Ltd. Discuss briefly with reference to decided case law.
whether M/s. C & C Co. Ltd. is eligible to avail CENVAT credit paid on advertising services which was utilised towards payment of excise duty on concentrates.

<u>Answer</u>:

Case law: Coca Cola India Pvt. Ltd. v. CCE (2009) 15 STR 657 (Bom).

The Bombay High Court held that though the contents of advertisements made by the appellants (the manufacturer of 'concentrates') essentially featured the 'bottle of aerated waters' (the bottles being the final products manufactured by bottlers and not by the appellants), the credit on advertising services received by the appellant could not be denied on the ground that the advertisement was not of the final product of the appellants (viz. 'concentrates'), but of the final product of the bottlers (viz. 'aerated waters') (Rule 2(l) of CENVAT Credit Rules, 2004).
The High Court observed that any input service that forms a part of value of final product should be eligible for the benefit of CENVAT credit. In the said case, since the advertising cost formed part of the assessable value, the assessee was eligible to take credit of tax paid on advertising services. So long as the manufacturer can demonstrate that the advertisement services availed have an effect or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of final product, credit must be allowed. In the present case, the Court held that the advertisement of soft-drink enhanced the marketability of the concentrate.
In view of the above-mentioned judgment, C & C Co Ltd. is eligible to avail CENVAT credit paid on advertising services.

19) Whether the value of material supplied by the contractee to the contractor for use in the execution of the works contract shall be included in the value of works contract for payment of service tax under the composition scheme? What is the present rate of service tax under this scheme? Can the service provider avail CENVAT credit also?

Answer:

Yes, according to amended explanation to rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, the gross amount charged for the works contract shall include the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise.
Present rate of service tax under the composition scheme is 4.12% (inclusive of education cess and secondary and higher education cess) of gross amount charged for the works contract. The assessee cannot avail CENVAT credit of inputs. However, he can avail CENVAT credit of input services and capital goods.

20) The assessee is engaged in the manufacture of various types of packaging machines known as F & S machine. The machines are made to order according to the specification of individual customers and such machines, before dispatch, are to be tested at the customer's premises* for their satisfaction. On being satisfied by the customer, assesse makes entry in the RG-1 register (DSA) declaring the machine as manufactured and ready for clearance. For the proper testing, assessee procures flexible laminated plastic film in roll form and poly paper (termed as inputs) which are excisable, and are used for testing, turning and adjusting various parts of F & S machine. Assessee filed a declaration and availed the benefit of CENVAT credit for the duty paid on the said inputs.
Department contented that the said materials were used only for testing and as such, they cannot be treated as inputs for manufacturing final product. Further, the Department opined that testing takes place only after manufacturing of final product and any goods used in the process subsequent to manufacture cannot be termed as inputs under Rule2(k) of CENVAT Credit Rules, 2004. Assessee's contention is that the manufacturing process would be completed only after testing and such inputs are used in or in relation to manufacturing and that the inputs need not be present in the final product and therefore, they have the right to claim CENVAT credit.
Discuss whether the contention of the Department in denying the CENVAT credit is justified. You may refer to decided case law, if any, in support of your decision.
Note: Customer's premises may be read as manufacturer's premises

Answer

Case law: Flex Engineering Ltd. v. Commissioner of Central Excise, U.P. 2012 (276) E.L.T. 153 (S.C.).

No, the contention of the Department to deny the CENVAT credit is not justified. In this case, the Supreme Court held that the process of manufacture would not be complete if a product is not saleable, as a non-saleable product is not marketable. The Apex Court held that the process of testing the customized F&S machines was inextricably connected with the manufacturing process. Until this process was carried out as per customer's satisfaction, in terms of

the covenant in the purchase order, the manufacturing process was not complete and the machines were not fit for sale.
Therefore, manufacturing process was completed only after testing of the said machines.
Thus, in the given case, the flexible laminated plastic films in roll form and poly paper used for testing the F&S machines are inputs used in relation to the manufacture of the final product and the assessee is eligible for CENVAT credit under rule 2(k) of the CENVAT Credit Rules, 2004.

21) If a manufacturer manufactures various products, can he avail CENVAT credit on some products and exemption under Notification No. 8/2003-CE dated 1.3.03 on some other products?

Answer:

No, if a manufacturer manufactures various products, he has to avail CENVAT for all items or opt for exemption for all products.
This view has been upheld in CCE v. Ramesh Foods Products (2004) 174 ELT 310 (SC), where it has been held that simultaneous availment of CENVAT credit on some products and exemption on some other products is not permissible.

22) I Ltd. was a manufacturer of excisable goods such as polyester yarn. A ground plan of the factory was provided by the assessee to the jurisdictional Central Excise Officer and the same was approved. The ground plan showed the area in which the manufacturing is carried out as also the areas occupied for purpose of storage godowns, cycle sheds, canteen as well as the housing complex for staff and workers. The assessee had a captive power plant in the approved area. The electricity generated was supplied to the housing complex as well as for use in the manufacturing activity. I Ltd. claimed Cenvat credit on the duty paid on furnace oil used for generation of electricity as it was used within the factory and was covered by the expression "for any other purpose" in rule 2(k) of the Cenvat Credit Rules, 2004. The Central Excise Department wanted to deny the Cenvat credit on the duty paid on furnace oil for generation of electricity which in turn is supplied to the housing complex on the ground that it was not used in relation to manufacture of the final product. Examine, with the help of a decided case law, if the stand of the Department is correct in law.

Answer:

Case law: M/s Indorama Synthetics (I) Ltd. v. CCEx. (2008) 226 ELT A181(SC).

In this case, the Supreme Court maintained the judgment of the Bombay High Court wherein it was held that the CENVAT credit of the duty paid on furnace oil used in the generation of electricity in turn used in the residential complex was not allowable. The assessee submitted that "factory" under section 2(f) of the Central Excise Act, 1944 is wide enough to cover precincts thereof, even if the manufacturing is carried out only in a part of such premises. Therefore, the electricity supplied to the residential complex situated within the factory premises must be covered within the meaning of the word 'for any other purpose' set out in the erstwhile rule 57(B)(w) of the Central Excise Rules, 1944 [similar to present rule 2(k) of the CENVAT Credit Rules, 2004]. The assessee's submission was rejected by the High Court observing that credit of duty would be available on inputs used in the generation of electricity, provided the electricity is used for manufacture of final products or for any other purpose connected with or related to manufacture of final products. In other words, the use of electricity must have nexus with the goods manufactured in the factory. The mere fact that the residential complex is situated within the licensed premises would not entitle the assessee to avail the credit of duty paid on the furnace oil used in the manufacture of electricity supplied to the residential complex. Thus, the stand taken by the Department of disallowing the CENVAT credit is correct in law.

23) XYZ Co. engaged in the service of over burden removal in mines had acquired some tipper trucks and taken CENVAT credit to the extent of the excise duty paid on the said trucks acquired by them. Subsequently, on becoming aware that the said trucks do not qualify as capital goods or inputs under the CENVAT Credit Rules, 2004, the said XYZ Co. reversed the credit taken, all of which had remained unutilized. The Department has issued a show cause notice that interest under section 11AB on the amount of credit taken, but not utilised should be paid. Write a note whether the action of the Department is correct in law.

<u>Answer</u>:

Yes, the action of the Department is correct in law. Rule 14 of the CENVAT Credit Rules, 2004 provides for recovery of CENVAT credit wrongly taken or utilized wrongly or erroneously refunded. Earlier, there was a view that if an assessee had taken the credit but not utilised the same for payment of taxes or duty, then no interest payment is required. The Central Board of Excise and Customs has clarified that where credit is taken or wrongly utilised or erroneously refunded, the same along with interest should be recovered from the manufacturer or provider of output service. Hence, in this case, XYZ Co. having taken the credit wrongly will have to pay interest under section 11AB even if the credit has not been utilised.

24) Discuss with a brief note the validity of the following statements with reference to the Cenvat Credit rules, 2004.

(i) Credit of input services used in the repairs or renovation of factory or office is not available.

(ii) Credit of capital goods can be availed where such capital goods are exclusively used in the manufacture of dutiable goods with respect to which benefit under Notification No. 1/2011-CE dated 1-3-2011 is availed.

(iii) Cenvat Credit of duty paid on capital goods used outside the factory of manufacturer for generation of electricity for captive use within the factory is allowed.

Answer:

(i) The given statement is **not valid** as the definition of input service under rule 2(l) of the CENVAT Credit Rules, 2004 specifically includes services used in relation to renovation or repairs of a factory or an office relating to such factory. Thus, credit on such services is available.
(ii) The said statement is **not valid**. No credit can be availed on capital goods which are used exclusively in manufacture of exempted goods or in providing exempted service. Since, goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE dated the 01.03.2011 is availed are exempted goods (as per the amended definition of exempted goods), credit of capital goods used exclusively in manufacture of such goods is not allowed [Circular No. 943/04/2011- CX dated 29.04.2011].
(iii) The said statement is **valid**. Capital goods used outside the factory of manufacturer for generation of electricity for captive use within the factory are capital goods eligible for CENVAT credit. Such capital goods have been specifically included in the amended definition of capital goods as provided under rule 2(a) of the CENVAT Credit Rules, 2004.

25) With reference to amendments effected recently in CENVAT Credit Rules, 2004, explain the following:
(i) Manner of distribution of CENVAT credit by input service distributor.
(ii) The amount payable in respect of capital goods, on which Cenvat credit has been availed and is removed as scrap or waste.

Answer:

(i) Manner of distribution of CENVAT credit by input service distributor:-
As per rule 7 of the CENVAT Credit Rules, 2004, an input service distributor may distribute the CENVAT credit in respect of the service tax to its manufacturing units or service providing units, subject to the following conditions:—
(a) the credit distributed does not exceed the amount of service tax paid thereon;
(b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;
(c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and
(d) credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.

(ii) As per rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods are removed as scrap or waste, the manufacturer/provider of output services shall pay an amount equal to:-

(I) CENVAT Credit taken on the said capital goods reduced by certain specified percentage points calculated by straight line method for each quarter of a year or part thereof from the date of taking the CEVAT Credit.
or
(II) Duty leviable on transaction value.
whichever is higher.

26) State the procedure for availment of CENVAT credit when the duty paid goods returned to the factory are put through a process not amounting to manufacture and a process amounting to manufacture under rule 16 of Central Excise Rules, 2002.

Answer:

As per rule 16 of the Central Excise Rules, 2002, when duty paid goods are returned to the factory for being re-made, refined etc., the assessee can avail and utilize CENVAT credit of the duty paid if he states the particulars of such return in his records.
If the duty paid goods returned to the factory are subjected to a process which:-
(i) does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken at the time when such goods are returned. Such amount shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.
(ii) amounts to manufacture, the manufacturer shall pay duty on such returned goods at the rate applicable on the date of removal and on the value as determined under the relevant provisions.