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Note-
No need to remember the name of all the case laws, but read the concept all the case laws , and find the crux in single line

According to my opinion given contents =Around 40 marks

EXCISE LAWS

Basic Concept

TEXTILE CORPN. MARATHWADA LTD. – S.C- 2008

Issue:- Whether the facilities in the factory of the assessee for carrying out bleaching, dying, printed and mercerizing of textile fabrics would invite levy of excise duty at each stage of manufacture –

Held that:-

- the assessee would be entitled to Cenvat credit if duty is paid at each stage of the manufacturing and,
- therefore, the entire exercise would be **revenue neutral** ,
- Admittedly, assessee has paid duty at the final stage.

M/S RAJPUROHIT GMP INDIA LTD. & ORS. – S.C- 2008

ISSUE:-Whether cutting and slitting of steel sheets or polyester films used for lamination purposes amounts to manufacture –
HELD:-NO.

Shanmugananda Soapnut Works – S.C- 2008

ISSUE:-
The assessee is engaged in the manufacture of Shikakai powder by crushing shikakai pods and 'Reeta' being mixed,
Whether, conversion of 'shikakai pods' in to Shikakai powder" by crushing – is **manufacture process**

HELD THAT;-- NO,
Merely powdering shikakai pods not amount to manufacture **if no any herbal material is added** therein .

Sunco Rubbers Ltd. 2008 (228) ELT 27 (Mad.) –M.imp

ISSUE- When does the manufacturing activity get completed - either at the time of clearance of goods from the premises of the job-worker or at the time of their clearance from the premises of the manufacturer?

FACTS-

- The assessee, a job worker, received raw materials required for the manufacture of strips tyres from the primary manufacturers (viz. raw material suppliers) for further processing and after undertaking the processing returned them to the suppliers.
- Thereafter, the suppliers carried on the processes of deflashing, testing and inspection on those goods.
- The Department opined that since the goods processed at the premises of the job worker were fully manufactured goods, the job worker should pay excise duty on such goods before clearing them from its premises.

HELD- that having regard to the activities like deflashing, testing, inspection etc. being undertaken by the primary manufacturers, it was evident that the goods were made ready for marketing only after the same were subjected to the above mentioned processes at the hands of the raw material suppliers.

Hence, the manufacturing process was complete only after these processes were carried out at the premises of the suppliers.

Prism Cement ltd. 2008-TRI

Waste / scrap arising in course of repair activity can not be held to be manufactured product and thus, not liable to excise duty.

Blow Plast Ltd. 2009 (236) (Del.).- M.imp

ISSUE-

- Parsavnath Furnishers Limited (PFL) is engaged in procuring the duty paid Office Furniture System/Work Stations (OFS/WS) from the suppliers an erecting and installing them at site of customers, from whom it has procured the orders.
- After receiving the orders from its clients, a team of engineers prepares a lay out on computer aided design system where ready-made furniture systems and work stations manufactured by independent manufactures/suppliers are superimposed.
- Thereafter, based on the clients' specifications, orders are placed upon the manufacturer of the furniture for each works station. After procuring the various elements of furniture system from the manufacturer, they join the same together according to the site drawing and the project code.
- The assessee contends that that they are only marketing OFS/WS. However, the Revenue alleges that PFL is liable to pay duty as the said activity amounts to manufacture.

Examine, with reference to a decided case law, if any, whether the Revenue's allegation is tenable in law?

DECISION

- The facts of the given case are similar to the case of **CCE v. Blow Plast Ltd. 2009** (236) (Del.).
- The Tribunal arrived at the conclusion that since the supplier had cleared the complete set of elements required for the work station in a knocked down condition, it could not be said that the supplier had manufactured the parts and not the complete system.
- The High Court while affirming the Tribunal's order held that the same product as known to the trade could not be manufactured twice over.
- Consequently, nothing new had come into existence so as to bring the activities of the assessee within the parameters specified in section 2(f) of the Central Excise Act, 1944.
- What the assessee received was complete OFS/WS and what it left on its clients' sites was also complete OFS/WS. Nothing new had come into existence. Hence, no duty was payable by the assessee.

Therefore, **it can be inferred that the Revenue's allegation is not tenable in law**

Indian Cine Agencies vs. CIT (2009) 233 ELT 8 (SC):

Conversion of jumbo rolls of photographic films into small flats and rolls in the desired sizes amounts to manufacture.

Karam Chand 2009 (236) E.L.T. 647 (H.P.): - Imp

ISSUE-: Does the addition of stabilizing agent, masking agent etc. amount to manufacture within the meaning of section 2(f) of Central Excise Act, 1944?

Facts: The respondent was engaged in the manufacture of liquid mosquito's destroyer. It used to obtain concentrated alletherin and convert it into diluted alletherin by adding solvent deodorized kerosene oil, perfume (as a masking agent) and DHT (as a stabilizing agent).

Decision:

- The High Court held that mere processing of goods was not manufacture and to fall within the definition of manufacture a new substance would be formed.

- In the present case, no new substance was formed and only a diluted form of original substance was packaged under a deferent brand name alletherin in its concentrated form was an insecticide.
- The final product manufactured by the respondent was a diluted form of insecticide-alletherin which would only kill small insects like mosquitoes.
- Hence only the potency of the insecticide was being reduced. Therefore it could not be termed to be manufacture.

Banswara Syntex Ltd. 2008 (221) ELT 360 (Raj.):

ISSUE: Can waste material of building construction be taken as non-dutiable, when no-credit has been availed on either inputs or capital goods?

DECISION: The High Court held that MS Scrap arising as waste material of building construction, wherein credit of duty neither as inputs nor capital goods had been availed would be non-dutiable as **it did not arise from manufacturing process.**

Valuation

SOUTHERN STRUCTURALS LTD. – S.C- 2008

- Inspection charges recovered by the assessee for any "**third party inspection**" carried out at the instance of the buyer in addition to the normal inspection of the assessee
- **is includible** in the assessable value.

PEPSICO INDIA HOLDINGS (P) LTD. – S.C- 2009- MM.imp(Fully Expected)

FACTS:-The assessee manufactured SYRUP containing soft drinks concentrate and sugar and sold the same to their MARKETING SUBSIDAITY COMPANY. A part of the syrup sold by the assessee to others also. The marketing company would sell the same to retailers.

The marketing company used to leased out DISPENSING/ VENDING MACHINE (the machine was used for dilution and carbonation of the syrup for sale of soft drinks to consumers)

ISSUE:-

- Since the assessee and the MARKETING SUBSIDAITY COMPANY were related person, therefore the A.V. shall be sale price of the marketing company, without deducting discount allowed by MARKETING SUBSIDAITY COMPANY to its buyers.
- Further, the lease rental paid by the retailers to the MARKETING SUBSIDAITY COMPANY towards DISPENSING/ VENDING MACHINE was also included in A.V.

Held that:-

- when trade discount indicated in the invoice at the time of sale and there is no flow back return of trade discount to **assessee seller** or its related person, the A.V. shall be computed after deducting such trade discount , even if ,the valuation was sought to be made based on the sale price of the related person, **the deduction of discount can not be denied.**
- Vending machine stood installed by the holding company. Nonetheless, ownership of the vending machine vested in the marketing company. The machine charges were payable to the marketing company and not to the holding company. **Hence "machine usage charges" or LEASE CHARGES were not includable in the A.V. of product**

M/S. ACCURATE METERS LTD. – S.C- 2009

Facts:-

- The assessee, a manufacture of electric meters, used to sale the meters to State Electricity Board (SEB).
- The SEBs used to call for tenders in which the value of the electric meters was to be fixed as at the factory gate. Freight and the insurance charges were to be charged on an average basis not on actual.
- There were two separate contracts; one for sale of electric meters and other governing transportation of goods. The SEBs used to make inspection of the meters. After inspection, the assessee was bound to transport the goods from the factory gate to the place of the SEBs at the rates specified in the tender.

DECISION:-The department contended that since the meters were delivered to the SEBs at their premises and not at the factory gate (factory gate being the 'place of removal'), therefore the valuation had to done at the transaction value (inclusive of average freight charges) under rule 5 of the Central Excise Valuation Rules, 2000 and only the amount of actual freight was allowable as deduction therefrom.

CRUX"- The transportation and insurance charges are not includible in the value of the excisable goods when the sale is complete at the factory gate and goods are delivered to the buyer at the place of removal (viz. factory gate) itself.

Saf Yeast company (P) Ltd. 2009-TRI

ISSUE:-Section 4A covers goods on which MRP is required to be declared under SWMA. SWMA is a self contained code in itself in the sense it contains its own provisions as to when MRP is required to be declared on the package of a commodity or not. Whether CEO is permitted to takes its own stand as to when MRP is required to be declared on the package or not?

Held that- applicability of section 4A is dependent upon the applicability of the SWMA, 1976. The authorities under the excise act have no jurisdiction to question the correct ness or otherwise of the same.

Triveni Engg. & Inds-(SC):

Facts and Issue: The assessee cleared sugar manufactured by it at prices fixed by the Government and paid excise duty on such price. Subsequently, on appeal by the trade, the Supreme Court directed increase in the price with retrospective effect. The Government paid the difference between original price and increased price.

The Department issued an Show Cause Notice seeking to levy duty on such deference contending that such deferent amounted to a consideration/additional consideration for sale.

Decision:-

- The price for assessment would be the price at which the goods were cleared, and not the price subsequently determined. Any alteration/revision in price subsequently to clearance of the goods cannot effect computation of duty especially when there is no escalation clause in the purchase order. Duty cannot be sought to be levied if and when any sum is received from the buyer.
- The amount so received could also not be regarded as additional consideration for sale. When the goods were sold, the price was the sole consideration for sale and no additional consideration was ever thought.

Lucas TVS Ltd-2009-TRI (Larger Branch)- MM.imp(Fully Expected)

Facts-

Assessee is engaged in the manufacture of excisable goods. They had removed the goods and paid duty of excise on self assessment basis in terms of rule 8 of CER, 2002. Such payments at the time of removals of goods were made on the AV based on the price originally agreed between the assessee and buyers. Subsequently, there was upward revision of price of the goods due to increase in the cost of raw material and/ or other factors and consequently , the assessee issues supplementary invoice for realizing the differential price from the buyers and paying differential duty, SUCH PAYMENT OF DUTY WAS MADE WITHOUT PAYMENT OF INTEREST.

ISSUE	HELD THAT-
Whether in the facts of these cases, the additional amount paid by the buyer towards price of the goods in terms of the supplementary invoice issued by the assessee after removal of the goods can be considered to be part of the transaction value under section 4 of the CEA,1944.	YES- since definition of TV provides that- Section 4(3)(d): Transaction Value; Transaction Value means the price actually paid or payable for goods, when it is sold, *And includes,* • Any amount, which the buyer is liable to pay to the assessee or on behalf of the assessee, • By reason of or in connection with the sale, • **WHETHER PAYBLE AT THE TIME OF SALE OR ANY TIME THEREAFTER.**
Whether on the amount of duty under the supplementary invoice, interest is leviable under section 11 AB from the first date of the month succeeding the month in which duty was paid in the first instance in terms of the original invoice.	YES- Though there was no delay in this payment with reference to the time at which the price was increased, but definitely there was delay ion payment of such duty with reference to the time of removal of the goods.
Whether the payment of duty under the supplementary invoice by the assessee is covered by section 11 (2B) of CEA, 1944.	YES- - this is a case of duty SHORT PAID.
Whether the CEA, 1944 or CER, 2002 containing any provision for recovery of interest payable U/S 11 AB on any amount of duty paid under supplementary invoice.	YES , section 11 of CEA, 1944- Recovery of SUMS DUE TO GOVT.

Central Excise Rules, 2002

Gupta Metal Sheets -2008 - (Tri.-LB).

ISSUE

Can goods lost by 'theft' or 'dacoity' be considered to be "goods lost or destroyed by natural causes or by unavoidable accident" under rule 21 of the Central Excise Rules, 2002?

Decision

The Tribunal held that 'theft' or 'dacoity' cannot be called unavoidable accident within the meaning of the rule 21 of the Central Excise Rules, 2002 and the goods lost in theft or dacoity would not be eligible for remission.

Balarampur Chini Mills Ltd. [2008] 223 ELT 34 (All.):

- Loss of sugar due to spontaneous combustion is loss due to natural causes.
- Therefore, remission of duty is available in respect thereof.
- Such remission cannot be denied on the ground that the assessee should have taken preventive measure to avoid the loss, because question of preventive measure is applicable only in case of loss due to accident; not in case of loss due to natural causes.

BDH Industries Ltd. [2008] Tri. (LB):

ISSUE:-

The assessee, by mistake, debited an amount in excess of the duty payable by him in his PLA/CENVAT Account.

- The assessee, thereafter, requested the Department to allow him to take the credit of such excess payment in his PLA/CENVAT A/C.
- The Department denied assessee's request and asked it to file claim for refund u/s. 11B.

Held that,

- There is no provision under the Central Excise Act and rules allowing suo motu taking of credit or refund without proper sanction by the Central Excise Officer. Any correction in PLA/CENVAT A/c. requires Department sanction.
- Therefore, any excess payment by mistake or on account of clerical/arithmetical error has to be claimed by way of refund application filed u/s. 11B.

Cenvat Credit Rules

GULJAG INDUSTRIES LTD. – H.C- 2008

- Asbestos sheets used for connecting equipments for passing of gas / steam are accessories to the plant, as their use is essential and adjunct to the main plant.
- Such accessories necessary for smooth running of the plant qualify as capital goods, even if such sheets are not covered under tariff chapters listed in **definition of capital goods [Rule -2 (a) (i)].**

GUJARAT STATE FERTILIZERS & CHEM. LTD. – S.C- 2008

ISSUE:- Whether the Credit on low Sulphur heavy stock (LSHS) used in the manufacture of steam which in turn was used for the manufacture of the final product, namely, fertilizer which was fully exempt from payment of excise duty , be allowed ?

Held that:-inputs used to produce steam / electricity, which is used in manufacture of exempted fertilizers, are entitled to cenvat credit because the inputs used for generation of steam / electricity used for ANY OTHER PURPOSE are also inputs.**(As per the Definition of INPUT**)

MALWA INDUSTRIES LTD.- Imp

Facts

- There was a Central-excise exemption notification in force exempting finishing agents, dye carries, etc. from excise duty if "used in the same factory" for the manufacture of textiles and textiles articles.
- The assessee imported certain finishing agents, dye carries, etc. for manufacture of textiles and textile articles and claimed exemption in respect of CVD imposed u/s 3(1) of CTA, 1975 on the ground that the similar goods manufactured in India were exempted form excise duty.
- The Department denied exemption contending that since the imported finishing agents, dye carries, etc. were not manufactured by the assessee in its own factory; therefore, the condition that the same goods should be used in the "same" factory is not satisfied.

Issue: Whether the assessee was entitled to exemption?

Decision:

- The use of the word 'same' in the exemption notification doesn't mean that for claiming exemption, the furnishing agents, dye carries, etc. must have themselves been manufactured by assessee.
- It simply means that goods must be used in the same factory in which textiles articles are manufactured.
- The object of section 3 (1) is to ensure that the importer is not placed at some more advantageous position vis-à-vis purchaser/manufactures of similar goods India on which excise duty is imposed.
- Conversely, if no excise duty is leviable on finishing agents, dye carries, etc. for manufactured in India, there can be no question of levy of additional duty of customs u/s 3(1) of import of like goods.

Accordingly, since the imported finishing agents, dye carries, etc. were used in factory belonging to the importer-assessee where the manufacture of textiles and textile articles took place, therefore, the assessee was entitled to exemption.

Hindustan Zinc Ltd. 2008 (225) ELT 183 (Raj.)

ISSUE-1- Whether Cement, used as construction/building material in the mines is eligible as input for the purpose of availment of CENVAT credit?

HELD that- NO

ISSUE-2-whether welding roads used in maintenance, eligible for cenvat credit?

HELD that- YES

"Welding electrodes used in maintenance/ repair of capital gods are eligible as input".

ACS Hydraulics Pvt. Ltd. v. CCE 2008 (Tri.),

ISSUE:-

- Triveni Texturisers purchased inputs from Khaitani Industries and availed the CENVAT credit of the entire excise duty paid by Khaitani Industries as reflected in the invoice.
- Subsequently, Khaitani Industries gave certain amount of discount for the reason of the bulk purchases made by Triveni Texturisers during the period.
- This trade discount was given by issuing credit notes for the basic price. Department contends that Triveni Texturisers is not entitled to the CENVAT credit on the entire duty paid on the price initially invoiced and should reverse the credit proportionately.

Discuss whether the contention of the Revenue is justifiable. Removal of goods from 100% EOU to Domestic Tariff Area

Held that:--No, the contention of the Revenue is not justifiable in law.

- **In ACS Hydraulics Pvt. Ltd. v. CCE 2008 (Tri.),** the Tribunal held that there was no loss to the Revenue as far as the payment of duty was concerned by the supplier of the goods on the proper correct assessable value.
- Therefore, the Department could not direct the appellant to reverse the credit or to disallow the credit as the supplier had paid the duty and taken credit which was equivalent to duty shown in the invoice issued by the supplier.
- In view of the above discussion, it can be concluded that Triveni Texturisers is entitled to the CENVAT credit on the entire duty paid on the price initially invoiced and need not reverse the credit proportionately.

Banco Products (India) Ltd. Vadodara-I 2009 (235) (Tri-LB).- MM.imp(Fully Expected)

ISSUE:-

- 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.

Held that:--IN the case of **Banco Products (India) Ltd. Vadodara-I 2009 (235)** (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(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(k) of the CENVAT Credit Rules, 2004 , the large bench of the Tribunal referred to the case of **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.

Repro India Ltd. (2009)- (Bom.):

Facts: The assessee was engaged in the manufacture of packaged software (excise duty 8%), stationery books (excise duty 16%) and printed books (excise duty Nil). The printed books were entirely exported by it under bond without payment of duty.

The assessee claimed refund of CENVAT credit attributable to inputs used in the manufactured of printed books exported by it.

The Department contended that since the printed goods were already exempt from excise duty, they could not be exported under the bond. Further, since the assessee didn't maintain separate accounts for inputs used in dutiable and exempted goods, the department demanded 10% of the value of the printed books under the rule 6(3) of the CENVAT credit Rules, 2004.

Held that:, Rule 19 of the Central Excise Rules, 2002, uses the term 'excisable goods', therefore, both dutiable and exempted goods can be exported under the Bond.
Rule 6(6) of the CENVAT credit Rules, 2004 provides that the provisions of sub-rules (1) to (4) thereof shall not apply to "excisable goods" removed without payment of duty, which are cleared for export under bond. Since Rule 6(6) uses the term 'excisable goods', which includes exempted goods as well, therefore in case of exempted goods exported under Bond, no payment @ 10% of the value of exempted goods can be required. Therefore, the demand by the department was unsustainable.

Ambuja Cements Ltd. v. UOI 2009 (P & H). M-imp

ISSUE:- Credit of input services

- M/s Ojha Cements Limited (OCL) was engaged in the business of manufacturing and selling of cement and had been duly paying the excise duty in respect of cement produced by it. OCL supplied cement to its customers "FOR destination" and bore the freight up to the door steps of the customer i.e. the destination point.

- The assessee had taken the CENVAT credit of the service tax paid on the aforementioned freight by it. The Department contended that the payment of service tax on the freight incurred by the assessee was not input service as per rule 2(l) of the CENVAT Credit Rules, 2004 and hence the CENVAT credit was not admissible on it under the said rules.

Explain, with the help of a decided case law, if any, whether the stand taken by Department is tenable in law.

Held that - No, the stand taken by the Department is not tenable in law.

The facts of the given case are similar to the case of **Ambuja Cements Ltd. v. UOI 2009** (P & H).

- In this case, the High Court observed that the 'input service' has been defined under rule 2(l) of the CENVAT Credit Rules, 2004 to mean any service used by the manufacturer whether directly or indirectly and also includes, inter alia, services used in relation to inward transportation of inputs or export goods and outward transportation **up to the place of removal.**

In view of above discussion, it held that the assessee was entitled to the credit of the service tax paid on the freight upto the door steps of the customer.

C.K Gangadharan-2008-SC

- **It has been held that even if department does not file appeal in one case; it can file appeal in another case.**
- **Merely because in some cases, the department has not preferred appeal that does not operate as a bar for the Revenue to prefer an appeal in another case.**

Marmagoa Steel Ltd. [2008] 229 ELT 481 (SC):

In case of imported goods directly transferred by an importer from the port of the import to the factory of the assessee, the relevant document evidencing payment of duty for the purposes of Rule 9 of CENVAT Credit Rules, in such case, would be bill of entry.

Since the assessee had produced bill of entry relating to imported scrap and had taken CENVAT credit of additional duty of customs paid thereon on the strength of such bill of entry, therefore, the CENVAT credit so taken could not be denied

Innovative Tech Pack Ltd. [2008] -(SC)

Facts-

- An exemption from excise duty was available on the condition that the manufacturer shall not avail CENVAT credit in respect of the exempted products or any other products manufactured in the same factory.
- The assessee opted for such exemption in respect of his first factory; while he did not avail of such exemption in respect of his another factory and availed CENVAT credit in respect of same products manufactured in the another factory.
- The Department contended that since the assessee had opted for exemption, therefore, the exemption was to apply to all factories of the assessee and it could not avail of any CENVAT Credit.

Decision-Held that,

The said condition specifically provided that the manufacturer could not avail of Cenvat Credit in respect of all products manufactured in the same factory; such condition was not intended to apply to all factories of manufacturer. Therefore, the manufacturer had the option to not avail exemption in respect of another factory and avail CENAVT Credit in respect of products manufactured therein.

Common Topics

SICOM LTD. – S.C- 2008- Imp

Recovery of sums due to Government – Section 11 of the Central Excise Act, 1944 –

- Whether realization of the duty under the Central Excise Act will have priority over the secured debts –
- **Held that** secured debts have priority over the excise dues - there is no merit in the appeals by revenue.

MITTAL PIPES MANUFACTURING CO. – S.C- 2008

Mis-declaration of "Complete pre-fabricated buildings" as "Steel structures" – undervaluation –

- Tribunal's finding that the appellant received orders from the defence authorities for complete pre-fabricated buildings classifiable under Sub-heading 94.06, not under SH 7308.90, is a finding of fact which does not call for any interference
- **larger period is invocable**, as there was **suppression of fact –**
- demand is justified

G.T.C. INDUSTRIES LTD. – S.C- 2008

Allegation that respondents had been evading duty on cigarettes consciously & deliberately manufacturing deceptively similar version of certain regular brand showing lower sale price as compared with that of the regular brand

- allegation that appellant is receiving difference between the two S.P. by means of "flow back"
- Tribunal has not recorded any finding regarding the flow back –
- finding recorded by the Tribunal on the question of limitation is also not satisfactory – matter remanded
-

M/s Hongo India (P) Ltd. & Anr. – S.C- 2009- Imp

FACTS AND ISSUE- Whether HC has power to condone the delay in presentation of the reference application under unamended Section 35 H(1) of the CEA, 1944 beyond the prescribed period (of 180 days) by applying Section 5 of the Limitation Act, 1963 –

HELD THAT

- time limit prescribed u/s 35H(1) is absolute and NOT extendable u/s 5 of the Limitation Act, 1963 –
- Since court has to respect the legislative intent, limitation cannot be extended u/s 5 of Limitation Act by the H.C. –

Punjab Fibers Ltd.-2008-SC

ISSUE- whether the HC has power to condone the delay in filing the appeal u/s 35G of CEA, 1944, beyond the specified period of 180 days.

HELD- NO, because in the case of an appeal to HC u/s 35G of CEA, 1944, the Parliament has provided only 180 days and no further period for filing an appeal is mentioned in the Act.

Shreeji Colour Chem Industries- S.C- 2008

Interest on delayed refund –

- While the Interest on refund provided by law is to be granted to the assessee even without a written demand by the assessee in this respect,
- however, equitable interest i.e. interest claimed on equitable grounds in absence of statutory

provisions, can be granted only on written demand being made in this behalf.

In other words-

- High Court directed grant of interest from first day on which the revenue rejected the refund, irrespective of the date when Section 11 BB was inserted –
- but the refund is allowable on or after the date of insertion of section 11BB –
- order of HC is modified and the revenue's appeal is allowed.

Dharmendra textile Processors – Imp

- **Proviso to section 11 A, RELATING TO EXTENDED PERIOD OF LIMITATION** and sec. **11AC RELATING TO IMPOSITION OF PENALTY** are identically worded.
- It is for the revenue to establish that the extended period of limitation is invocable.
- Once it is established that the extended period of limitation is invocable , the LEVY PENALTY U/S 11AC IS AUTOMATIC (Mandatory penalty)
- Ie **Mens Rea is not required** for this purpose.

J.P.Tobacco Product pvt.Ltd.

- The appellate Tribunal set aside the demand and penalty raised against the assessee, which order become final on the revenue not filing the appeal against the same
- Since the demand and penalty had been finally set aside, therefore, there remained no basis for continuation of prosecution on the charge of evasion of duty by the assessee. Accordingly, the prosecution was to be dropped.

Deepak Agro Foods - 2008 - (S.C.)- M. IMP

ISSUE-Can all irregular, erroneous or illegal assessment orders be held to be null and void?

Held that –

- All irregular or erroneous or even illegal assessment orders could not be held to be null and void because there was a fine distinction between the orders which were null and void and the orders which were irregular, wrong or illegal.
- Where an authority **lacked inherent jurisdiction** in making an order, such order would be null, non est and void ab initio because the defect of jurisdiction of an authority went to the root of the matter and struck at its very authority to pass any order.
- Such defect could not be cured subsequently even with the consent of the parties.
- However, where an authority exercised jurisdiction in a wrongful manner, order would not be null. It would be an illegal order capable of being cured in a duly constituted legal proceeding.

Continental Foundation Joint Venture - 2007 (SC)

ISSUE-Can omission to give correct information be construed as 'suppression of facts' for the purpose of the proviso to section 11A of the Central Excise Act, 1944?

Held that-

- Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty.
- The Apex Court explained that an incorrect statement cannot be equated with a wilful mis-statement.
- There cannot be a non-wilful suppression or mis-statement of a fact. Mis-statement of fact must be wilful.

Shiv Kripa Ispat Pvt. Ltd. 2009- TRI

- It was held that where the goods are not available for confiscation,
- then no question of confiscation of goods. Therefore assessee can not be made to pay redemption fine.

Dabur India Ltd. -2009- SC- Imp

Facts and Issue-

- Assessee paid excise Duty as per classification approved by Department.
- Later on, classification upheld to be wrong and thus duty sought to be recovered from assessee. Department raised demand applying extended period of limitation.
- Whether extended period of limitation is applicable?

Held that- where the classification was approved by the department, the classification was with in the knowledge of the department. Therefore, **department can not**, subsequently alleged fraud / suppression by the assessee.

Sree Ayyangar SPG & WVG Mills Ltd.- 2008 (SC),- Imp

ISSUE-.

The CESTAT passed its order on 01.01.2008. The assessee filed the application for rectification of a mistake apparent from the record in the said order on 23.05.2008. However, the Tribunal could not dispose of the application till 30.06.2008. Thereafter, the Tribunal rejected the application on the ground that the six months period had lapsed.

Do you think that the stand taken by the Tribunal is valid in law?

Decision

- In case of **Sree Ayyangar SPG & WVG Mills Ltd. - 2008 (SC),** the Supreme Court while interpreting section 254(2) of the Income Tax Act, 1961 held that once the assessee had moved the application within four years from the date of order, the Tribunal could not reject that application on the ground that four years had lapsed, which included the period of pendancy of the application before the Tribunal.
- Therefore, it concluded that if the assessee had moved the application within four years from the date of the order, the Tribunal was bound to decide the application on the merits and not on the ground of limitation.
- Applying the ratio of the aforementioned case in the given situation, it can be inferred that limitation period for filing rectification of mistake is not the time limit for deciding the rectification of mistake under section 35C(2) of the Central Excise Act, 1944.
- **Hence, in the instant case, the Tribunal is not justified in rejecting the application on the ground that the six months period has lapsed as the application had been filed before the expiry of six months.**

Shree Ganesh Dyeing & Printing. Works 2008 (232) (Guj.) - Imp

ISSUE -

An appeal filed under section 35(2) of the Central Excise Act, 1944 by the Committee of Commissioners themselves and not by subordinate officer based on authorization is not maintainable. Examine, with the help of a decided case law, if any, the validity of the statement

DECISION

- The High Court clarified that when a person is statutorily entitled to delegate powers to another person to file an appeal on behalf of the first named person, it goes without saying that the power which can be delegated is the power which the first named person would be entitled to exercise.

- Hence, until and unless the Commissioner himself is entitled to file an appeal, there is no question of the Commissioner authorizing another officer to file appeal on behalf of the Commissioner.
- The language of the **latter part of section 35B (2) of the Act** itself makes this more than abundantly clear when the provision uses the phrase 'to appeal on his behalf'. Therefore, if an appeal has been preferred by Commissioner or the authorised officer, the appeal would be valid and shall be treated to be a valid appeal in eyes of law.

Rama Wood Craft P. Ltd. [2008] - (Tri. –LB)

Penalty under Rule 25 of the Central Excise Rules, 2002 cannot exceed higher of –

(1) the duty of excisable goods in respect of which any of the contravention has been committed, or
(2) Rs. 2000.

- Therefore, the penalty, as aforesaid, is the maximum penalty imposable. Accordingly, if the duty exceeds Rs. 2000, the maximum penalty shall be the amount of duty; and if the duty is less than Rs. 2000, the maximum penalty shall be Rs. 2000.
- The Central Excise Officer has the option to impose a penalty lower than the maximum.
- Further, Rule 25 is subject to the provisions of section 11AC of the Act; that is, in cases
- pertaining to fraud, collusion, wilful misstatement, etc., with an intent to evade payment of duty, penalty shall be imposable u/s. 11AC, and not under Rule 25.

India Thermit Corp. Ltd. [2008] (SC):

Re-agitation of same issue, not allowed: The first show-case notice relating to 1995 was dropped on adjudication. Later, second show-cause notice on the same issue for 1993 to 1996 was issued.

Held that- since the Department has accepted the earlier adjudications on the same issue for part of the period, it cannot be permitted to re-agitate the same point for a part of the remaining period. There cannot be second proceedings raising the demand for the same period.

National oxygen Ltd. Vs CC (2008) 231 ELT 410 (Mad.):

- While remanding a case back to the adjudicating authority for the fresh consideration, the Appellate Tribunal cannot impose a condition as to pre-deposit.
- Therefore, where the Appellate Tribunal remanded the case back to the adjudicating authority only if the assessee pre-deposits 50% of the duty demanded, such order was not valid in law.

SunitaDevi Singhania Hospital Trust vs. UOI (2009) 233 ELT 295 (SC):

Facts and Issue-

→ On appeal filed by the assessee, the Appellate Tribunal passed an order dated 19-1-2006 against the assessee denying the exemption in respect hospital equipments imported by it.
→ The Tribunal didn't fully consider the facts put forth by the assessee. As per the facts, the assessee had fully complied with the conditions of the exemption and was entitled to it.
→ The assessee filed an appeal before the Supreme Court, which was, latter on, withdrawn seeking a leave to file an appropriate application before the Appellate Tribunal.
→ The assessee filed an application for rectification before the Appellate Tribunal seeking proper consideration of the facts put forth by the assessee. The Tribunal rejected the said application on the ground that the same was barred by limitation, as the same was not filed within 6 months from the date of the original order viz. 19-1-2006

Decision- Tribunal has inherent power to correct any mistake committed by it, provided the application therefore is made within reasonable time. The time limit of 6 months specified (under section 129B(2) Customs/ 35C(2) of Excise) **is not applicable to such inherent power.**

Monotosh Saha - [2008] - (SC)

Requirements for stay / Dispensation of Pre-deposit:

- Petitions seeking stay of demand should not be disposed of in a routine manner; the same should be disposed of only after taking into consideration the factual scenario involved.
- Mere establishment of a prima facie case wouldn't entitle stay of demand.

The two conditions governing dispensation of pre-deposit are –

(i) It must be shown that the pre-deposit would cause 'undue' hardship to assessee i.e. the requirement of pre-deposit is excessive / disproportionate than what the circumstances warrant (an example thereof may be genuine 'economic crisis'); and

(ii) the stay should be granted subject to imposition of conditions to safeguard the interest of revenue i.e. conditions like furnishing of security, guarantees, etc., may be insisted upon depending on the facts and circumstances of each case.

Sarashtra Kutch Stock Exchange Ltd. [2008] - (SC)

Non-consideration of Supreme / High Court judgment – Mistake apparent from record:

- Non-consideration of the decision of a judicial High Court or that of the Supreme Court results into a 'mistake apparent from record'. Since the judicial decisions act retrospectively i.e. they declare the law what has been at all material times, therefore, even if such decision is rendered subsequent to the passing of original order, the same would constitute 'mistake apparent from record'.
- Therefore, if the Appellate Tribunal fails to consider any judgment of jurisdictional High Court or the Supreme Court while passing an order, then, it may rectify such order in accordance with such judgment even if such judgment was not brought to the notice of the Tribunal.

Chloritech Industries 2009 (Guj.)

ISSUE

Is the interest under section 11AB of Central Excise Act, 1944 recoverable when deferential duty is paid on account of price escalation?

Held that- interest u/s 11AB of Central Excise Act, 1944 was not recoverable when deferential duty was paid on account of price variation. In this case, at the time of undertaking the transaction, the additional price was not fixed.

- Hence, the liability of buyer to pay additional amount was not known to buyer himself. The Gujarat High Court observed that mere existence of escalation clause in contract between parties could not bring the subsequent escalation within the meaning of definition for purposes of levying interest.

- The High Court further provided that if neither side the transaction was not aware as the amount which was to be charged nor which was to be paid under the escalation clause on the date when the transaction was entered into, no liability to pay interest could arise under the provisions of section11AB.

- Section 11AB of the Act itself says that interest is to be paid on the amount short paid from the first date of the month succeeding the month in which the duty ought to have been paid under the Act.

Carpenter Classic Exim P. Ltd. vs. CC (2009)-(SC):

- Proviso to customs section 114A/ Sec. 11AC of Excise providing for reduction of penalty to 25% of duty (as against 100% of duty) is applicable if only the amount of duty demanded and interest thereon has been fully paid within 30 days.
- Therefore, where the amount of duty has not been fully paid within the 30 days period, the penalty leviable shall be 100% of duty.

Classification

Shree Baidyanath Ayurved Bhawan Ltd. – S.C- 2009

ISSUE-Classification of "Dant Manjan Lal" (DML) –

FACTS-Appellant sought classification u/sh 3003.31 as a **medicament -** Department sought classification u/ch 33.06 **as cosmetic/toiletry preparation/tooth powder** –

HELD THAT- Chapter SH 3003.31 does not contain definition of Ayurvedic Medicine and the product DML in nature, character and uses remains the same as it was prior to amendment – classification cannot be changed without change in the nature & use of the product - Department's appeals are allowed. HENCE IT WILL BE CLASSIFIED **as cosmetic/toiletry preparation/tooth powder**

M/s. Pragati Silicons (P) Ltd. – S.C- 2009 -Imp

- Nameplate, emblems and logo of plastic – whether classifiable under Heading no.87.08 and 87.14 (parts and accessories of motor vehicles) as claimed by assessee or Heading no.39.26 (articles of plastic) as claimed by revenue –
- It will be classified as parts and accessories of motor vehicles.

Calcutta Springs Ltd. 2008 (229) ELT 161 (S.C.)

ISSUE-When goods are classifiable under two headings, whether assessee should be given benefit?

HELD- that if a particular product was capable of being classified under two chapter headings of Tariff simultaneously i.e. in case of a classification dispute, **the benefit should be given to the assessee**

Mewar bartan udyog 2008 SC- Imp

Facts and Issue-

- **Section- 5 A** of CEA, 1944 empower C.G. to issue E/N in public interest. It may happen that exemption is issued in respect of parts of machinery.
- Issue is when such parts are cleared as SKD unit then, whether they shall be eligible to exemption?
- If E/N is applied literally , then exemption benefit shall be available
- On the other hand, if classification rules are applied for determining eligibility for exemption then exemption benefit shall not be available as Rule 2 (a) classification rule provides for classification of SKD unit as "Assembled product" and not as part.

Held that -an exemption notification has to be interpretated in terms of its own language. Where the language is plain and clear effect must be given to it. While interpretated exemption notification one can not go by classification rules given in CETA

Camlin Ltd. v. CCEx., Mumbai 2008 (SC)- M.imp

ISSUE-

When entries in Harmonized System of Nomenclature (HSN) and the Excise Tariff are not aligned, can reliance be placed upon HSN for the purpose of classification of goods?

ANSWER

- The Supreme Court in case of **Camlin Ltd. v. CCEx.,** Mumbai 2008 (SC) has held that-
- when the entries in the Harmonized System of Nomenclature (HSN) and the Excise Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff.
- It further added that in the instant case, the Tribunal erred in relying upon the HSN for the purpose of classification of the impugned product.
- The Tribunal failed to appreciate that since the entries under the HSN and the entries under the said Tariff are completely different, the Tribunal could not base its decision on the entries in the HSN.

Camlin Limited – ACTUAL FACTS

"Writing inks" manufactured & captively consumed in mfg. of marker pens which are exempt from excise duty –

- **assessee plea that inks used in one or other types of pens are to be considered as writing inks & hence classifiable under CSH 3215.10, is acceptable –**
- **Tribunal erred in relying upon the HSN for the purpose of marker inks in classifying them u/h 3215.90 (ROD-16%)–**
- **but Tribunal's order is confirmed in respect of inks other than marker inks**

Hence marker ink would be classified as writing ink u/h 3215.10, ie exempted.

CUSTOM LAWS

Definitions

Aban Loyd Chilies Offshore Ltd. v. UOI [2008] 227 ELT 24(SC): M.imp-

Deemed territory of India:

It was held in this judgment that though section 2(27) defines "India" to include territorial waters of India, however, -

- since the Customs Act, 1962 and Customs Tariff Act, 1975 have been extended to "designated areas" and other areas of the Continental Shelf and the Exclusive Economics Zone of India,
- therefore, by virtue of deeming fiction of the Maritime Zones Act, the said areas form part of the territory of India for the purposes of the Customs Act, 1962 and the Customs Tariff Act, 1975.

Implication of the aforesaid deeming fiction and judgment on scope of levy of customs duty:

The implication of the aforesaid deeming fiction and judgment is that since territorial waters of India or the 'designated areas' of the Continental Shelf or Exclusive Economic Zone are 'India', hence, -

- any goods produced or manufactured within such areas and brought to the mainland of India shall not be regarded as 'imported goods' and will not be liable to customs duty;

- any goods brought from any foreign country into such areas will be treated as 'import' and, hence, liable to customs duty; and
- any goods supplied from the mainland to such areas shall not be treated as 'export' and consequently, no export benefits shall be available in respect of them;

Provisions in respect of mineral oils (including petroleum or natural gas):

- Mineral oils produced in any place in Continental Shelf and Exclusive Economic Zone of India when brought to the mainland will not be liable to customs duty as 'imports'.
- Similarly, goods supplied from the mainland to such place in connection with prospecting or production of mineral oils shall not be treated as 'export'.
- Further, any goods brought other country to such place in connection with prospecting or production of mineral oils shall be treated as 'import' and would be charged to duty accordingly.

CRUX- *IN SIMPLE WORDS "**OUTSIDE THE TERRITORIAL WATER OF INDIA"** SHALL BE INTERPRETATED AS **"OUTSIDE THE TERRITORY OF INDIA"***

Basic Concepts

Indian Rayon & Industries Ltd. - S. C.-2008- M. imp

- The goods were initially exported by the respondent-assessee, which were rejected by the foreign buyer being defective and the assessee re- imported them back to India –
- Assessee has **executed bonds for re-export After repair** (therefore no payment of import duty at the of re- importation – sec. 20)– later on assessee **could not re-export the goods** –
- **Commissioner confirmed the demand and penalty** – CESTAT set aside the order of Commissioner –
- Now Apex court set aside the order of tribunal and **restored the order of commissioner**

Super Cassettes Industries Ltd. v CC [2008] 225 ELT 401 (SC): M-imp

Issue-

Goods sent abroad for repairs when re-imported into India are liable to customs duty as if they had been imported for first time in India.

Decision:

- As per Section 20 read with the definition of "import" as given u/s. 2(23) of the Customs Act, imported goods would include re-imported goods as well and therefore the goods sent / exported out of India and re-imported would also be liable to payment of duty in the same manner in which it would have been liable if imported for the first time in India.
- For levy of additional customs duty, it is not material as to after what process an article is imported or re-imported into India. The only test is whether the imported article is one which has been manufactured or produced. In the case, the product re-imported is magnetic head which is a manufactured product. Hence, the same is liable to additional duty of customs u/s. 3 of CTA, 1975.

In this connection, the Central Government has granted concessions under section 20 . The importer is liable to pay basic customs duty as well as additional customs duty only on the 'Fair cost repairs + Insurance and freight, both ways'

Valuation

MAHALAXMI GEMS - S. C.-2008

Allegation of overvaluation –

- imported rough diamonds found to be overvalued in **appraisers valuation report** and **trade panel report** –
- but department not proved by showing any contemporaneous evidence that invoices are fabricated or there was any relation between importer and exporter –
- tribunal's finding that **declared value is acceptable as transaction value** is justified.

In other words-

- The price declared in invoice is to be accepted as transaction value unless the Department shows by any contemporaneous evidence that invoices were either fabricated/fake or that any relationship existed between importer and exporter.
- Therefore, even if rough diamonds imported were found to be overvalued in appraisers valuation report and trade panel report,
- however, in absence of any contemporaneous evidence sustaining the same, the invoice value cannot be rejected.

VARSHA PLASTICS PVT. LTD. – M-imp

- The transaction value can be rejected when the nature of goods has been misdeclared or the assessee has resorted to invoice manipulation, under-invoicing, etc. However, the burden to prove the same lies on the department.
- When the transaction value is rejected, the department should proceed to determine the value on the basis of evidence relating to contemporaneous imports.
- However in absence of any evidence relating to contemporaneous imports, reference may be made to foreign journals indicating international prices, but, whether such journal indicates correct value would depend upon facts and circumstances of each case.

M/s. Atam Manohar Ship Breakers Ltd.- M.imp

Vessel imported for ship breaking - determination of the value –

- The assessee importer and the foreign –exporter entered into a Memorandum of agreement for importing the vessel for ship breaking at a price of USD9.7 lakh
- according to the respondent, an Addendum came to be inserted in the Memorandum of Agreement (MOA) by virtue of the said addendum, the price stood reduced from US$ 9.7 to US$ 8.7 lakh –
- revenue's allegation that addendum is not genuine,
- it appear that said addendum have been executed at the request of the buyer – vessel should be valued at US$ 9.7 –
- Revenue's appeal allowed. **Therefore, the value for the purpose of levy of custom duty was USD 9.7 lakh only.**

J.D. Orgochem Ltd. [2008] (SC)- M-imp

Facts:

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

Decision:

- The burden to prove that transaction value is not 'genuine' is on the Department. The Department must produce evidences of contemporaneous imports to reject invoice /transaction value.
- The contemporaneous imports have to be the imports made by other persons. The imports made earlier by the importer cannot be regarded as contemporaneous imports.
- The assessee's submission that international prices have declined was to be considered.
- Since the Department failed to produce contemporaneous evidence to reject transaction value, hence, the transaction value of US& 13.2 per Kg. was acceptable.

Import and Export Procedure

ATMA FIBRES (P) LTD. - S. C.-2008- Imp.

Release of goods –

- It is well settled that filing of the Bill of Entry is required for custom appraisal - Whatever be the reasons and whatever be the difficulties faced by the assessee(s),
- the HC ought not to have released the goods without the assessee filing the Bills of Entries –
- Department is directed to encash the Bank Guarantee, particularly, because the goods have been released –
- revenue's appeal is accordingly allowed

COSMO STEEL (P) LTD. - S. C.-2008

Non release of consignments by Commissioner of Customs (Port) –

- commissioner failed to comply with the directions issued by SC to release the goods –
- contempt of court - if there was a dispute regarding the amount of duty, he should have approached this Court for clarification –
- demurrage charges for this period are not justified as the goods were retained by the department in spite of orders passed by this Court to release the goods –
- **Commissioner of Customs (Port), is directed to pay cost**

Coastal goods and Store

Aban Lloyd Chilies Offshore Ltd. v. UOI [2008] 227 ELT 24 (SC):

Oil rigs located in Continental Shelf /Exclusive Economic Zone of India are not 'foreign going vessels' and hence, imported stores consumed thereon will not be eligible for exemption u/s. 87.

Decision:

- ***Oil rigs continental shelf/EEZ, not foreign going vessels:*** The goods imported by the assessee for consumption on board on 'oil rigs' were 'stores', as they were for use on oil rigs, which are vessels. However, the oil rigs proceeding to or carrying out operations in, continental shelf/ exclusive economic zones of India, which are deemed to be a part OF Indian territory, would not be a foreign going vessels, as the oil rigs proceed from the territory of India to an area which also deemed to be a part of the territory of India.
- ***Imported stores consumed on 'oil rigs' liable to import duty:*** Since the oil rigs were located in within the territory, which is deemed to be a part of India, therefore, the stores consumed on such oil rigs were consumed in "India' to which the Customs Act has been extended. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty.

Consumption of 'oil rigs' not entitled to benefit of section 87: Neither the 'oil rigs' nor the ship employed for transhipment of the goods to the oil rigs were 'foreign going vessel'. Therefore, the stores transhipped to the oil rigs and consumed thereon were not entitled to exemption u/s. 87.

COMMON TOPICS

ORGANAN (INDIA) LTD. - S. C.-2008

Duty paid under protest - refund claim –

- in the invoices, it was clearly mentioned that the sale price did not include the customs duty –
- there was no change in price post-levying of the duty - auditor's certificate certifying that **assessee had not passed on the customs duty to customers –**
- considering all the facts finding of tribunal that principle of unjust enrichment is not applicable, require no interference –
- revenue's appeal is dismissed - assessee would be entitled to the refund

Aafloat Textile(I) Pvt. Ltd.

ISSUE: The assessee-importer acquired a special import license (SIL) from certain brokers and imported gold and silver thereunder. Afterwards the SIL found to be forged and fake. On account of fraud, the department invoked extended period of limitation to demand **custom duty** along with interest, penalty and confiscation.

HELD THAT:-

- The maxim "caveat emptor" (Let the buyer beware) requires the buyer to be cautions. Accordingly, assessee importer had to be cautions at the time of purchasing the SIL.
- It was for the buyer to establish that he had no knowledge about the genuineness of the SIL –

Since the SIL have been established to be forged, **obviously fraud was involved and that was sufficient to extend the period of limitation** - Therefore extended period of limitation was invocable.

H. B. Fiber Ltd. -2009-PUNJ & HAR- M.imp

FACTS-

- Importer, imported the goods and, cleared them and sold them, Confiscation proceedings on valid ground were finalized against him. In those proceedings, option to pay redemption fine was given to him.
- The importer contended that since he had sold the goods, he has no longer the owner. sec. 125 provides for payment of redemption fine by the owner (or the person who is in possession of goods) and hence, as per importer, demand of the fine shall not be made4 from him, rather it shall be made from the purchaser (he being the present owner).
- The department contended that at the time of invalid importation, he was owner and thus liability to pay redemption fine shall vest upon importer only, notwithstanding purchaser is the owner at present.

ISSUE- upon him lie the liability to pay redemption fine – original owner (importer) or subsequent owner (purchaser)?
HELD- Original owner (importer)

Shabir Ahmed Abdul Rehman (Bom.),

ISSUE-

Whether custom authorities are authorized to auction the confiscated goods during the period of pendency of appeal?

DECISION-

- Bombay High Court, in case of **Shabir Ahmed Abdul Rehman (Bom.),** decided the similar issue in favour of assessee.
- In this case, Revenue confiscated the gold carried by the petitioner from Muscat. The petitioner informed the custom authorities that he was filing an appeal against the order of confiscation.
- Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods.
- The High Court held that handing over the confiscated gold immediately after serving the order of confiscation itself was improper. In any event, after receiving letter from the petitioner, the custom authorities ought to have stopped the auction sale of the confiscated gold.
- The action of the custom authorities in selling the gold during the pendency of the appeal was not justified.

Hence, it can be concluded that the custom authorities are not authorized to auction the confiscated goods during the period of pendency of appeal.

Dinkar Khindria 2008 - (Del.)

ISSUE-

Can there be a difference in the final order issued by Tribunal and the handwritten order in the order sheet?

DECISION-

The High Court in case of **Dinkar Khindria - 2008 (Del.)** held that-

- a difference in the Final Order issued by Tribunal and the Handwritten Order in Order Sheet i.e. a change of order by Members of the Tribunal, amounts to tampering with the judicial records.
- Once an order is passed and it is signed by the members, the same cannot be altered unless law provides for a review of the same and that too only after hearing the parties.
- The High court held that Tribunal should ensure that such unsavory incidents should not occur in the course of their conduct of judicial proceedings.

Arun kumar gupta vs. DRI, Delhi 2009(235) E.L.T 457 (Del.)

Issue- Can Custom Authorities take the petitioner into custody for custodial interrogation?

Decision-The custom Authorities unlike the police authorities couldn't take the petitioner in to the custody for custodial interrogation

Classification

PRECISE LABORATORIES PVT. LTD. - S. C.-2008

- Tooth powder - whether the product 'Dant Mukta' imported by the respondent is classifiable under SH 3306.90 or 3306.10 and whether the exemption under Notification No. 6/03-C.E. and Notification No. 40/2002-Cus., is available –
- 'Dant Mukta' are used as raw materials for manufacture of 'Lal Dant Manjan' - Tribunal decided in favour of assessee that it is classifiable under SH 3306.10 –
- order of tribunal is correct – revenue's appeal is dismissed

Sony India Ltd. - S. C.-2008 – M. imp- Expected

FACTS-

- The assessee engage in manufactures of CTV'S (colour Telivisions) out of imported components, placed purchase order on its foreign holding company for purcaase of various components, which were to be acquired by the foreign holding company from various manufactures across the world.
- The assessee imported 94 consignment of various components of CTV (during 22 months on different dates). the custom Authorities SCN proposing to treat the 94 consignment of components as CTVin completely knocked Down (CKD)form ; seeking to recover duty of Rs. 43 crore along with inrerest and penalty.

ISSUE- Whether import of several parts of Colour Television (CTV) can be treated as import of complete CTV Sets –

held that-

- classification shall be done according to headings & relevant sector or chapter Notes –
- If no clear picture emerges then only can one resort to the subsequent rules –
- Rule -2 (a) of tariff interpretation Rules, applies only if all components required to make final product are presented at the same time for custom clearance. Various components imported on various dates are not covered by Rule -2 (a).
- In the instance case components of CTV (imported during 22 months on different dates) shall not be considered complete CTV.
- HENCE Demand, interest & penalty are not justified

M/s Reliance Petroleum Ltd. - S. C.-2008

Exemption under notification no. 55/97 customs to various imported goods including EOT mobile crane required for setting up crude petroleum refinery subject to fulfilment of certain conditions -

- The terminologies used in the notification would have an important role to play.
- Where the exemption notification ex facie applies, there is no reason as to why the purport thereof would be limited by giving a strict construction thereto.
- Revenue appeal dismissed with cost.

M/s. Deepak Agro Solution Ltd Versus Commissioner of Customs, Maharashtra - S. C.-2008

Applicability of Chapter Note 1 of Chapter 25 for Classification of Imported Goods –

- Appellant imported 200 MT of "Brimstone 90".
- The certificate of analysis available on record shows
  - the Sulphur content of the imported goods was 90.10 % ,
  - inert filler (Bentonite) at 9.60 % and,
  - the moisture content was 0.30 %. –
- "Brimstone 90" was classified by the CESTAT under the Customs Tariff under "Heading 3808.19 (sic) 3808.90" – Order of CESTAT set aside –
- correct classification is "Heading 25.03"

Sky cell Communications Ltd-2008-TRI

Facts-

- Assessee had imported software from M/S Nokia Telecommunications Ltd, Finland for the purpose of operating telecom equipments in India
- They filed bill of entry dated 6/2/1998 for clearance of goods and claimed exemption from payment of duty under E/N 11/97,. The said notifications exempt **computer software.**

- However, this explanation has been added in the said notification excluding software required for operation of any machine performing a specific function from the ambit of computer software.
- This explanation was added to the E/N as on 6/2/1998 (after the date of presentation of B/E) .because of the explanation, telecom software can not be treated as computer software for the purpose of entitlement of exemption.

ISSUE- whether the importer entitled to exemption.

HELD-YES, because the E/N is prospective in operation. Hence, Importer is entitled to exemption**.**

Miscellaneous

Gian Chand and others v. State of Punjab

Issue-: What is the difference between detention and seizure?

Supreme Court referred to case of **Gian Chand and others v. State of Punjab** wherein it was stated that the seizure meant to take possession of the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right.

- **Seizure** involved not merely the custody of the goods but also a deprivation of possession of goods
- Whereas in case of **detention**, the custody of goods was taken; but it would not involve a deprivation of possession of goods.

M/S HOTEL LEELA VENTURE LTD. - S. C.-2009

- Appellant claims exemption under Notification No. 30/88 saying that items imported were "heat pumps" –
- tribunal recorded categorical finding that the Operational Manual of the manufacturer (for the said Items) describe them as "air-conditioner" and not "heat pumps" –
- concurrent findings recorded by tribunal –
- appellant had failed to discharge burden placed on it while claiming the benefit of Exemption, that the terms and conditions of the Notification are satisfied –
- **exemption not allowed**

Exim Rajathi India Pvt. Ltd. - S. C.-2008

- Imported goods (garlic) was found infected with fungus –
- goods lying in the bonded warehouse, were permitted to clear upon payment of necessary duties –
- before the garlic was loaded for import, it was treated with methyl bromide fumigation –
- such treated garlic is dangerous for human consumption & for Indian Agriculture - articles shall be destroyed by fire in the presence of an authorized officer –
- **cost of the transportation from Warehouse to destruction place shall be borne by importer**

INTERNATIONAL TOBACCO CO. LTD. - S. C.-2008

- Whether the 'Tipper-Gold Tipped' brand manufactured by the assessee is "**other than Filter Cigarettes"** falling under CSH-2403.11 as contended by assessee or whether it falls under CSH-2403.13 (Filter Cigarette) as contended by Department –
- assessee had led the evidence of an expert - 'Tipper-Gold Tipped' brand manufactured by the **respondent (assessee**) would fall in the category of cigarettes "other than filter cigarettes" –
- there is no merit in this civil appeal of revenue, hence it is dismissed
- Hence classified as "**other than Filter Cigarettes"** falling under CSH-2403.11

Service TAX

HALEEMA ZUBAIR Versus STATE OF KERALA -SC-2008

Service tax vis-à-vis sales tax –

- dealer of ceramic tiles providing services to various exporters as regards inspection/certification of quality of the items sought to be exported –
- HC confirming addition to taxable turnover of the commission received for professional services –
- **held that** element of transaction of sale is perquisite for levy of sales tax – impugned professional services not constitutes sales –
- impugned services are liable to service tax, not to sales tax – **HC's order set aside**

New Look cosmetic Laser Centre-2009-TRI

- Held that Laser hair treatment given for removal of facial and body hair has to be held "cosmetic surgery" in view of admitted facts that it has to be given by doctors or under their supervision and guidance.
- Though it may not also improve the appearance of the person, but just on account of that reason it shall not be treated as "Beauty treatment service"

FAQIR CHAND GULATI Versus UPPAL AGENCIES PVT. LTD. SC-2008

Issue-

- Agreement between land owner and builder to construct a house for a consideration –
- agreement of sharing of such area – builder alone responsible for penalties –
- sharing of profit/loss is absent in agreement –

Held that- land owner is a "consumer" and builder is a "service provider" –

- hence their dispute on deficiency in construction service is a consumer dispute –
- if obligation is breached by builder, relief is obtainable by owner as "consumer" under Consumer Protection Act

Kulcip Medicines (P)Ltd. 2009- PUNJ.& HAR HC.

Issue:-Whether the word "AND" in the expression "Clearing AND Forwarding agent" shall be literally interpretated to mean "AND" only or it shall be interpretated "OR"?

HELD"-that, it shall be interpretated "AND"

Era Infra Engineering Ltd. v. U.O.I. 2008 (11) STR 3 (Del.)

ISSUE-Whether value of materials supplied free of charge by service recipient is includible in gross amount?

Held that- any material which is supplied free of charge by NTPC would not be included in gross amount charged.

Wipro GE Medical Systems Pvt. Ltd. v. Commr. Of S.T., Bangalore 2008 (11) STR 142 (Tri. – Bang.)

ISSUE-Whether value of spares and parts is includible to arrive at service tax liability in case of an Annual Maintenance Contract?

Held that- while computing the service tax liability in case of Annual Maintenance Contract, value of spares and parts would not be included in the gross amount charged and service tax was payable only on commission received in terms of AMC.

Krishana coaching institute 2009- TRI – M.imp

Held that tribunal taxable event is **rendering of taxable service not raising of invoice or payment**. Therefore all services rendered after imposition of service tax shall only be liable to service tax.

Administration staff College of India 2009-TRI

Held that, as long as an institute is registered under society Registration Act and also exempt from income tax, it can not be considered as "Commercial Concern" And therefore, service tax not leviable on all such assessee.

M/s Martin Lottery Agencies Ltd. 2009 - (SC)- M.imp

Issue-.

Taxable services

Discuss, with the help of a decided case law, if any, whether the explanation inserted by Finance Act, 2008 to the definition of `business auxiliary service' under section 65(19)(ii)of the Finance Act, 1994 as amended can be construed having retrospective effect and retroactive operation.

Decision-

- In a recent case, the Apex Court in the case of **M/s Martin Lottery Agencies Ltd. 2009 - (SC)** ruled that by reason of an explanation, a substantive law may also be introduced. If a substantive law is introduced, it will have no retrospective effect. Subject to the constitutionality of the Finance Act, 2009 as amended in view of the explanation appended to this, the Supreme Court opined that the service tax, if any, would be payable only with a prospective effect and not with retrospective effect.
- It further opined that in a case of this nature, the Court must be satisfied that the Parliament did not intend to introduce a substantive change in the law.
- As stated hereinbefore, for the aforementioned purpose, the expressions like 'for the removal of doubts' are not conclusive.
- The said expressions appear to have been used under assumption that organizing games of chance would be rendition of service.

It held that the explanation is not clarificatory or declaratory in nature. Hence, it could not be construed having retrospective effect and retroactive operation.

SOME OTHER CASES

S. N.	ISSUE	HELD	CASE LAWS
1	**Whether hospitality services rendered at executive lounge at the airport come within the purview of airport services?**	The Tribunal explained that a service **would not be treated** as airport service just because it is rendered in airport.	Oberoi Flight Services 2007 (Tri. – Del.)
2	**Does port service cover repair of vessels in dry docks?**	The Tribunal held that repairing of vessel in dry docks **was not connected** with the movement of vessel in any manner and thus such service **would not be classified under port service.**	Homa Engineering Works 2007 (Tri.-Mum)

3	**Is the activity of collecting human blood samples and separating serum from it covered within the ambit of business auxiliary service?**	It would **not become part of** the definition of 'business auxiliary service'.	Dr. Lal Path. Lab (P) Ltd. 2007 (P&H)
4	**Whether 'retainer fee' is liable to service tax?**	The Tribunal held that since this basic requirement was not satisfied in this case the demand of service tax **was liable to be vacated.**	S. Maruthappan 2007 (8) (Tri-Chennai)
5	**Whether the activity of powder coating on furniture supplied by the customers is covered under the ambit of business auxiliary service?**	it was held by the Tribunal that the said activity did **not fall within the definition** of business auxiliary service	A.G. Shibu. 2007 (Tri-Bang)
6	**Whether sale of lottery tickets is liable to service tax under the category of business auxiliary service?**	Thus, the High Court held that if the lottery tickets **were not goods**, the petitioner could not be said to be rendering any service in relation to the promotion of their client's goods, or marketing of their client's good, or sale of their client's goods.	Martin Lottery Agencies Ltd. I 2007
7	**Whether supplying of computers and other hardware items on hire and generation of MIS reports would come under the ambit of 'business auxiliary service'?**	The Tribunal held that except billing all other services rendered by the appellant were related to information technology service and **hence were excluded** from the scope of the 'business auxiliary service'. Thus,	Bellary Computers 2007 ((Tri.-Bang.)
8	**Whether sale of ready built flats is taxable under 'construction of complex service'?**	Tribunal held that sale of ready built flats in the **instant case was not taxable** under 'construction of complex service'.	Greenview Land & Buildcon limited 2008 ((Tri – Del.)
9	**Whether making hoardings/signboards without preparing advertisement liable under 'advertising agency service'?**	It was held that there could be no demand of service tax on a person in the category of 'advertising agency service' unless it was established that such person conceptualized and designed the advertisement matter displayed on the hoardings, signboards etc. Mere making hoarding/signboards for display of advertisements **was not covered** within the ambit of 'advertising agency service'.	Hitech Publicities 2008 (Tri. – Chennai)

10	**11. Is the promotion of any service which is not taxable liable to service tax?**	It was held that in respect of 'business auxiliary service', promotion of any service would be covered and it was not necessary that the service which was being promoted should be a taxable service only. The promotion of any service, **whether taxable or non-taxable, would be taxable as a 'business auxiliary service'.**	The Financers 2008 (Tri. Del.)
11	**Whether loading and unloading in a mine is covered under 'cargo handling service'?**	Tribunal held that the activities undertaken by the respondents were primarily in the nature of mining activities comprising of excavation, transportation and feeding of iron ores to the crusher plant and even though these activities might incidentally involve some loading and unloading, the **same could not be covered** under the category of 'cargo handling service' because the iron ore which was being carried could not be commercially called 'cargo' in impugned case.	B.K. Thakkar 2008 (Tri. – Kolkatta)
12	**Whether port services cover stevedoring, tug hire & labor supply**	Tribunal was of firm view that activities undertaken by the **appellant did not fall** under the category of 'port services'.	Velji P. & Sons (Agencies) P. Ltd. 2007 (Tri. - Ahmd.)
13	**Does Management Consultant Service cover marketing know-how?**	The Tribunal held that Revenue's contention was not tenable. Know-how for marketing the products could not be considered to be in relation to the working system of the organization**. It could never be considered as falling within the definition of 'management consultant'**.	Castrol Ltd. 2007 (Tri. Mumbai)
14	**Does the 'tourist operator service' cover tourist vehicle used for non-tourist purpose?**	In its view, what was important was whether the vehicles were capable of being used as 'Tourist Vehicle' and whether same had been permitted by the appropriate authorities for such use as 'Tourist Vehicle'. Considering these factors, **it held that assessee was liable to pay service tax under 'tourist vehicle service'**	Pandit Motor Service 2007 (Tri. - Del.)
15	**Whether vocational training institute requires registration with AICTE for exemption?**	It was held that notification did not envisage registration of the institute with AICTE as a 'Vocational Institute'. Hence, the assessee **could not be denied** the benefit of exemption merely on the ground that appellant was not registered with AICTE.	Wigan & Leigh College (India) Ltd. (Tri. Bang.)

16	**Is service tax leviable on hire purchase finance?**	The respondent - assessee was engaged in providing finance for vehicle purchase. SC pronounced in the present case that **service tax was not leviable** on hire purchase finance.	Bajaj Auto Finance Ltd. 2008 (S.C.)
17	**Whether rubber packaging amounts to manufacture or providing service?**	Tribunal held that, prima facie, the plea of the assessee, that carrying on the process of rubber packing and rubber edging of polypropylene carpets and bringing the goods into existence was an activity of manufacture.	Jayanthi Rubbers (Tri. – Bang.)
18	**Is the photography for elector identity card covered under 'photography service'?**	Held that activity of preparing elector photo identity **cards could not be considered** to fall within the ambit of **photographic services** as per section 65(78) as well as section 65(79) of the Finance Act.	C.S. Software Enterprises Ltd. 2008 (Tri – Bang.)
19	**Can penalty be imposed simultaneously under section 76 and section 78 of the Finance Act, 1994?**	The Tribunal held that these two provisions were **mutually exclusive and therefore there was no scope** for imposing double penalty.	Opus Media and Entertainment 2007 (Tri-Del.)
20	**Whether clearances of two units, where there is no clear demarcation between the activities of two firms, should be clubbed?**	In such a case, clearances **were to be clubbed.**	Rao industries 2008 (Tri. Bang.)
21	**Can outdoor catering services provided to the employees within the factory premises be regarded as input service?**	The Tribunal held that the credit of the service tax paid on the outdoor catering (canteen) service **was admissible as input service** under rule 2 (l) of the CENVAT Credit Rules, 2004.	Victor Gaskets India Ltd. 2008 (Tri – Mumbai)
22	**Whether booking of orders for foreign supplier for supply of goods in India can be treated as "Export of Services" under Export Services Rules, 2005?**	It was held that since condition provided under Export Services Rules, 2005 was not satisfied, the impugned service **could not be treated as export of service** and no rebate in this regard was admissible.	Cani Merchandising Pvt. Ltd. 2008 (Tri. - Del.)

23	**Whether Non commercial is also liable for service tax.**	**YES**	
24	**Whether renting of theater by theater owner to distributor of film is taxable.**	**NO**	
25	**Whether service tax on renting of immovable property is valid**	**Held invalid**	

STATE LEVEL-VAT

Larsen & Tourbo Ltd. & Ors. SC-2008 -M.IMP

- AP VAT - Once the work is assigned by the contract to its sub-contractor(s),
- Main contractor ceases to execute the works contract because property passes by accretion and there is no property in goods with the contractor which is capable of a retransfer, whether as goods or in some other form.
- **Therefore, the turnover of sub-contractor is not required to be included into the turnover of the main contractor.**
- **Only sub-contractor will be liable to pay vat.**

OLD CASE LAWS-

EXCISE LAWS

BASIC CONCEPTS

Question:

- XYZ Ltd. Manufactured crayons. During the course of production an intermediate product know as crayplas compound was manufactured.
- The Department had evidence to show that one of the competitors of XYZ Ltd. i.e. ABC Ltd. Had been importing into India a product identical to the crayplas manufactured by the assessee and hence, crayplas was marketable. Is the department's contention correct?

Ans.

Yes, the contention raised by department is correct.In the famous case of **DCM** Supreme Court held that

to attract duty the goods must be **marketable**. The word marketable signifies that capability of being bought and sold.The department has evidence to prove that one of the major manufacturers was importing the same

In the case of Hindustan Poles Corporation Supreme Court held that,

The process of mere **joining of three pipes of different diameters** with one another to obtain the desired length does not amount to manufacture.

In the case of Virdi Brothers **in which the Supreme Court held that,**

Refrigerator, air-conditioner is basically systems and not machines. They come into existence only by assembly and connection of various components and parts. **Though each component is dutiable**, the **refrigerator/ air-conditioning system cannot be considered to be excisable goods.(ie assembly of such components does not amount to manufacture.)**

Very recently the Apex Court held in the case of Mahavir Aluminium Ltd.

That, conversion of Aluminium **Ingots into Aluminium Billets** during the intermediate stage will amount to manufacture.

The Supreme Court in the case of A. P. Products **where it was held that;**

After grinding and mixing, ingredients loose their own identity/ character and a new product separately known to commercial world comes into existence. Thus, such **preparation of 'masala powder' would amount to manufacture** and hence shall be liable to excise duty.

- **The Supreme Court has recently decided in the case of** Tara Agencies that,

  Blending of tea is not manufacture but is mere processing of tea.

....

ISSUE:-

- A show cause notice demanding customs duty was issued in case of clearances made by 100% Export Oriented Undertaking (EOU) to Domestic Tariff Area (DTA).
- Is the show-cause notice defective in law?

DECISION: Yes, the show cause notice is defective in law.

SURESH SYNTHETIC

In respect of clearances made by a 100% EOU in DTA, duty to be paid by a 100% Export Oriented Unit is the duty of Excise and not Customs duty. Thus the show cause notice was defective in law and accordingly demand was not maintainable.

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White Machines – SC -2008 (Regarding dutiability of intermediate goods)

- Held that even though final product is exempt from duty ,
- the intermediate product will be liable to excise duty only if the same is marketable in the condition in which the department seeks to levy duty thereon.

  In other words

  It was held that where there is no record regarding the marketability of the product, excise duty could not be levied on intermediate product.

Ratan Melting and Wire Industries -SC-2008 (Regarding position of Circular)

- Circulars binding on department authorities; not on assessee, appellate tribunal or Court.
- Circular contrary in provisions of Act- will be void.
- Revenue can file appeal REGARDLESS of the interpretation placed by circular.
- The circulars of the board can not prevail over the law laid down by S.C. , H.C. ,

GURDASPUR DISTILERY

- Where it was held that since the **Revenue had not been able to lead any evidence to show that the goods in question are marketable,**
- **in the absence of the same, it cannot be held that Methane gas was marketable and consequently was not liable to duty**.

SKB DRYFRUITS MARKETING CO. PVT LTD

- The process undertaken by assessee viz. roasting of dry fruits and repacking the same in smaller packs, which bears the brand name of the assessee, is a process to render the product marketable to the consumer and,
- Therefore, in the view of specific chapter note, the same amount to DEEMED MANUFACTURE.

VALUATION

BHARTI TELECOM LTD.

- If goods sold to related person at or about the same time at which they are sold to unrelated person i.e. the relationship does not influence the price,
- the price at which goods are sold to related will be acceptable as assessable value

Question:

- The assessee used to pack hair dye sachet each containing 3 gms hair-dye. 3 such pouches were sold in a single packet.
- The net weight of each sachet, as also the net weight of the packet and the maximum rate were duly printed on sachets as well as on the packet.
- Assessee claimed that since the net weight of each packet does not exceed 10 gms, there is no requirement to declare MRP thereon and hence, same is assessable under section 4 (and not under Sec 4-A of CEA).

Whether the assessee's contention is correct in law?

ANSWER: YES

KRAFTECH PRODUCTS - 2008- SC [

- **Under SWMA, there is no requirement to declare MRP on any package containing a commodity if the net weight or measure of commodity is upto 10 gm, or 10 ml if it is sold by weight or measure.**
- **In the given case, the packet is intended to be sold by weight or measure. The packet in this case is containing hair dye less than 10 gm. Thus, there is no requirement under SWMA to declare MRP on the package and thus, the same shall be valued under Sec 4".**

Question:

- **Assessee cleared package containing 72 pieces of lips smoothers (each such piece containing 4.3 ml) – thus, weight of individual piece was less than 10 ml but weight of packet as a whole was in excess of 10 ml.**

whether the valuation shall fall under section 4 of 4-A?

<u>ANSWER:</u> YES

Under SWMA, there is no requirement to declare MRP on any package containing a commodity if the net weight or measure of commodity is upto 10 gm, or 10 ml if it is sold by weight or measure.

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<u>INSULATION ELECTRICAL (P) LTD. - 2008 - SC.</u>

- **In this case, the items manufactured by the assessee were only adjuncts affixed on the floor of motor vehicles to improve efficiency and convenience as the seats were complete in themselves without rail assembly or other impugned goods.**
- **Thus, these goods were not essential parts of the seats but accessories to motor vehicles provided for better convenience of passengers/drivers traveling in a car.**
- **Therefore, these goods would not be classified under sub-heading 9401.00 as it only covered parts of seats and not accessories thereof. These would rightly be classified under sub-heading 8408.00 as it covered accessories i.e. they are classifiable as parts and accessories.**

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- **The Supreme Court in the case of** <u>Mazagaon Dock Ltd</u>**<u>. Held that,</u>**

  Where the subsidy received from **<u>the buyer</u>** (And not from the Govt. or otherwise) directly/indirectly was included in the assessable value.

- In the case of <u>Bisleri International Pvt. Ltd</u>**<u>.</u>** Supreme Court held that,

  The levy of rent did not form part of the price of the aerated water and therefore, **rent of containers was not includible in the assessable value.**

- In the case of **<u>Tyota Kirloskar</u>** where it was held that,

  When the assessee has charged lower charges for transportation of goods from place of removal (i.e. either factory or depot) to the place of delivery ie godown of purchaser, as compared to the actual amount incurred for such transportation, the **<u>difference cannot be added to the transaction value.</u>**

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<u>Question:</u>

- The assessee has four factories located at four different places. They have a practice of giving 20% discount to bulk buyers. However some of the bulk buyers i.e. 10% have been given a discount of only 8%.
- The assessee contends that it shall be allowed a deduction of discount @ 20%. Whereas the

department is of the opinion that they should be given a deduction of 8% as the additional 12% is given to those bulk buyers who are related with the assessee. Give your opinion.

ANSWER:

ELGI Equipments Ltd.- S.C,-

- Where it was held that the department did not have evidence to prove that the additional 12% discount is given for those buyers who are related to the assessee.
- The discount of 20% is given to 90% of buyers, so the normal rate of discount shall be 20% and not 8% and hence, discount of 20% shall be allowed as deduction.

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WHIRLPOOL OF INDIA – SC -2008

- Where it was held that **where the goods are covered under SWMA Act,**
- **the assessee is required to declare the Retail sale price on the package and the valuation of such goods shall be done as per section 4A**.

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ISSUE:-

- An assessee is engaged in the manufacture of Ayurvedic medicines which are covered under the SWMA and sold by him to hotels.
- The hotels in turn, don't sell but, distribute it to their customers individually. The contention of the department is that since the medicines manufactured by him are covered under the SWMA, Retail sale price is required to be declared on it and the valuation of these medicines shall be done under section 4A. But the assessee is of the opinion that since the medicine is not sold in retail but is sold to hotels; section 4A shall not apply to these medicines.
- Is the contention of the assessee correct?

DECISION: No, the contention of the assessee is not correct.

ISHAAN RESEARCH LABORATORIES P. LTD.

- Where it was held that **for goods to be covered under section 4A, the goods need not actually be sold in retail**.
- **In the given case the hotels don't use the medicines as their raw material. The hotel merely distributes the medicines. Since there was no special exclusive packing or servicing of hotel industry the sale of medicines to hotels will be termed a retail sale. Thus, Section 4A of Central Excise Act, 1944 shall be applicable.**

[CER & CCR]

Question:

- Assessee closed down his factory. He was having unutilized cenvat credit in his books of accounts. There is no express prohibition in Cenvat Credit Rules, 2004 regarding refund of cenvat credit.

- But at the same time, there is no express provision allowing refund of cenvat credit. [Under CCR, 2004, only Rule 5 and Rule 5-A deals with situations where refund is permissible and none of these cover this situation]. **Whether cenvat credit shall be refundable to the assessee or shall it lapse?**

ANSWER: YES
SLOVAK INDIA TRADING CO. LTD – 2008 - SC

If the assessee opts out of the Cenvat Scheme or its unit is closed, then, the assessee is eligible for refund of unutilized Cenvat credit, which is to be made in cash. There is no express prohibition in Rule 5 and 5-A of CCR in that regard."

- The Bombay High Court in the case of Manibhadra Processors where it was held that,

  The person holding earlier registration certificate **must surrender** registration certificate in respect of that premises, **then only, a new person could get registration** in respect of that premises.

  Ie until the old RC is not surrendered iro of a particular premises, no fresh registration shall be granted iro that premises to another person.

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SSI NOTIFICATION

Question:

- Assessee used to sell the goods manufactured by it under its own brand names/trade names, which were affixed/printed on corrugated boxes.
- A hexagonal artist design was also printed on corrugated boxes. The same hexagonal shape/design was also printed on VISITING CARDS of executives of marketing company through which the goods of the assessee were promoted.
- The department denied SSI exemption to the assessee on the ground that the said hexagonal design/shape was a brand/trade name of another person i.e. the marketing company.

Whether the assessee was entitled to SSI exemption?

ANSWER: YES
NIRLEX SPARES PVT LTD. – 2008 - SC

- **The fact that the marketing company had used the same hexagonal design/shape on the visiting cards of its executives would not mean that it owned such design/shapes.**
- **Further, the company had itself denied the ownership of such design/shape as its brand/trade name. In view thereof, the said hexagonal design/shape could not be**

regarded as a brand/trade name of the marketing company.

- **Accordingly, the assessee had not used the brand/trade name of another person i.e. marketing company.**
- **The assessee had not violated any of the conditions of the SSI exemption. Therefore, the assessee was entitled to SSI exemption.**

Question

- The appellant were selling biscuits under the brand name “meghraj”. A SCN was issued alleging that the appellant had sold the biscuits under the brand name “Meghraj”, which was a registered trade mark of Kay Aar Biscuits (P) Ltd. Who was using the said trade mark on manufacture of biscuits themselves, and therefore, the appellant were not eligible to the benefit of SSI notification.

- The appellant had contended that he had applied for ownership of the brand name “Meghraj” and the registrar had issued registration certificate with retrospective effect. Discuss.

Answer:

The Supreme Court also gave a similar judgment in the case of **Meghraj Biscuits Industries Ltd**. Where it was held that issuance of registration certificate with retrospective effect cannot allow the benefit of SSI exemption.ie here depatt. is correct.

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- Recently. Supreme Court in the case of **Emkay investments (P) Ltd.** Held that assessee using brand/logo “MERINO” along with his own brand name “Pelican” on plywood manufactured by him **cannot avail the benefit of SSI Exemption even though product also contained brand name/trade name/logo of manufacturer.**

  NEBULAE HEALTH CARE LTD. (Tri. Chennai)

  In SSI notification, while defining the term “aggregate value of clearances” for the purpose of determination of exemption, as well as eligibility limit (i.e. value of clearances during the preceding financial year), the value of clearances of the specified goods, bearing the brand names of other persons had been excluded, for the reason that manufactures were required to pay full duty on such goods. Therefore, the Notification itself recognized that a manufacturer while availing the benefit of exemption under the said Notification could also manufacture goods bearing the brand name of other persons on which full rate of duty was payable. The assessee had correctly availed the exemption under the notification and the impugned order is passed on incorrect reasoning.

SSI unit not prohibited from:-

- **availing CENVAT benefit for goods cleared under the brand name of third parties and**
- **full exemption for other specified goods under the SSI notification.**

- The Supreme Court held in the case of **Super Delicacies** that,

  Merely because the owner of the **brand name manufactured goods**, which were exempt from excise duty, it did not mean that **such owner (brand name owner)** was a small scale industry entitled to the benefit of the notification.

  Further, it could not be presumed that just because the owner of the brand name was not registered during the disputed period, it was a small scale industry during the period in question.

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Question:

- M/s. Electro Mechanical Engineering Corporation (for short, 'M/s. EMEC') was engaged in the manufacture of iron and steel structure, steel doors, windows and structure etc.
- On a surprise visit undertaken by the officers of the Central Excise Division, it was found that M/s. EMEC had floated two front units, viz., M/s. Cold Steel Corporation and M/s. Super Steel Corporation in order to fraudulently avail the benefit of SSI exemption.
- The revenue contended that since M/s EMEC had fraudulently claimed the SSI exemption, the same shall be withdrawn and penalty be levied. M/s EMEC stated that all the three units were in existence and were independent of each other.
- Each of the units was separately registered and there was no flow back of money from one unit to another and that they had not suppressed any facts from the Department.
- Also, the proprietor of M/s. EMEC was partner in the other two firms which were undertaking their business independently. Discuss.

Ans. M/s EMEC shall be allowed the benefit of SSI

As per the provisions applicable to a small scale industry, where a manufacturer clears the goods from one or more factories, the exemption in his case shall apply to the aggregate value of clearances and not separately for each factory..

ELECTRO MECHANICAL ENGG. CORPN.

In the given case M/s EMEC and the other two units have common partner. The fact that the units have common partner is not enough to club the clearance.

- Where it was held that **two or more units cannot be clubbed simply for the reason that they have common employees or adjoining premises**.

DEMAND AND RECOVERY

DAGUR TETENAL INDIA –SC-2008

- WHERE, IN ORDER TO AVAIL EXEMPTION, the assessee had wrongly declared that brand name used on goods cleared by it, it was evident that the assessee had willfully misstated / suppressed the facts with intent to evade payment of duty.
- Hence, extended period of limitation was invocable in this case.

RUCHA ENGINEERING PVT. LTD. -2008- BOM..

- In the instant case, the High Court observed that section 11AB comes into play if the duty paid/levied is short.
- In this case, the assessee paid the duty on its own accord immediately when the revised rates became known to them. The differential duty became due only at the time i.e., when the revised rates applicable with retrospective effect, which was much after the clearance of the goods.
- The question of payment of interest would not arise as the duty was paid as soon as it was learnt that it was payable.

It was not a case where duty of excise has not been paid or short-paid.

Therefore, the provisions of section 11A(2) and 11A(2B) were not applicable. Section 11AB(1) was not at all applicable, and therefore, the assessee was not required to pay interest.

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- Recently in the case of **Pahwa Chemicals Private Limited** the Apex Court held that,

  Since all facts were in knowledge of the department, there was no willful mis-declaration or willful suppression of facts. Therefore, extended period of limitation could not be applied.

- Recently in the case of **Continental Foundation It. Venture,** the Apex Court held that,

  There cannot be suppression or mis-statement of fact, which is not willful and yet constitute a permissible ground for purpose of proviso to Section 11A ibid. **Mis-statement of fact must be willful.**

Question

- The assessee manufactured goods and cleared them on payment of excise duty. After the clearance of the goods the assessee came to know about the enhancement of the duty rate with retrospective effect.
- The assessee therefore calculated and paid the differential duty by issuing the supplementary invoice to the customer. The Department contented that since the goods were cleared earlier the entire duty was payable on the date of clearance of the goods.
- Therefore, interest u/s 11AB would be payable on the differential duty paid by the assessee voluntarily. Is the department correct?

Answer:

MARIS SPINNERS LTD.

The instant case was not a case where duty of excise has not been paid or short-paid. Therefore the provisions of Section 11A were not applicable and hence section 11AB was not at all applicable. Therefore, interest cannot be levied.

- Where it was held that **no interest would be payable on delayed payment of duty when differential duty is paid on own accord on retrospective revision of duty rate.**

Question

- Assessee manufactured PSC girders at site to be used in the construction of railway bridges. The articles were cleared without payment of central excise duty under the Central Excise Act, 1944.
- A SCN was issued invoking normal period of limitation (i.e., 1 year) but withdrawn/drop. Subsequently, second SCN was issued invoking extended period of limitation (i.e., 5 years). Assessee challenged SCN on the ground of limitation.

: Can the extended period of limitation be invoked in a second notice, where the first notice did not resort to same?

ANSWER: NO

GEO TECHNOLOGY FOUNDATIONS AND CONSTRUCTION – 2008 - SC

"When in the first SCN, allegation of suppression had not been made; the same could not have been made subsequently as the facts alleged to be suppressed by the assessee were known to them. Extended period of limitation has no application in the instant case.

CLASSIFICATION

- The Supreme Court gave a decision in the case **of Pragati Silicons Pvt. Ltd.** held that, The plastic nameplates are **parts and accessories** of motor vehicles.
- The Apex Court in the case of **Hewlett Packard India Sales (P) Ltd.** held that,
  When a laptop is imported with in-loaded operating system recorded on HDD, the said item forms a part of laptop.
- **ACER INDIA LTD.-2007-SC::** (Define WIKIPEDIA)
  WIKIPEDIA is an online encyclopedia and information can be entered therein by any person--- and as such, it may not be authentic.

GODREJ INDUSTRIES LTD –SC-2008

- “Hair dye’ which is used to colour hair, can not be regarded as Hair lotion, which is used to soothing, cleaning, or antiseptic action while washing out once hair.

……………………………………………………………………………………………………

Question:

- The assessee was a manufacturer of petroleum jelly and cleared his final product classifying it as a cosmetic. The department contended that petroleum jelly is not a cosmetic but a drug.
- The department issued a SCN to the assessee asking why the petroleum jelly should not be classified as a drug.
- As per the Wikipedia “Petroleum jelly, vaseline, petrolatum or soft paraffin…………. it is recognized by the U.S. Food and Drug Administration (FDA) as an approved over-the-counter (OTC) skin protectant and remains widely used in cosmetic skin care.” On the basis, the assessee contended that it should be classified as a cosmetic. Is the assessee justified?

Answer:

No, the assessee is not right in contending that the petroleum jelly is a cosmetic.

As per the General Rules of Interpretation

Dictionary meaning or meaning in technical literature can be looked into if conclusion cannot be derived from trade parlance.

Also if the tariff entry is used in a scientific or technical sense or when there is conflict between entries in the tariff, common parlance would not prevail, but technical meaning will prevail.

Like all other external aids to construction, like dictionaries, etc. wikipedia not an authentic source, although it may be looked at for gathering information. Where an express statutory definition of a word exists, a Wiki definition cannot be preferred. It cannot normally be used for the purpose of interpreting a taxing statute or classification of a product vis-à-vis an entry in statute.

PONDS INDIA LTD.

- Where it was held that **petroleum jelly is not a cosmetic but a drug**.

Question:

- M/s ATMC, a manufacturer, wrongly classified its products under Chapter Heading 73.09. Later on, it realized that the products ought to be classified under Chapter Heading 84.19. So, he claimed the correct classification under Chapter Heading 84.19.
- Department disallowed the assessee’s claim of CENVAT credit, in respect of the input/capital goods used in the manufacture of final product, by taking the classification of the product under Chapter 73. Revenue contended that classification once opted by the manufacturer could not be altered subsequently.
- Is the department correct?

Answer:

No, the department is not justified in rejecting the claim of the assessee.

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. Hence, the credit in respect of the input/capital goods used in the manufacture of final product shall be allowed.

Recently the Gujarat high Court also gave a similar judgment in the case of

Guljag Industries Ltd.

Where it was held that **erroneous claim made by the assessee earlier did not preclude him from subsequently making a claim for correct classification**.

CUSTOMS LAWS

VALUATION OF GOODS

WEP PERIPHERALS- SC.- 2008

- In case price of imported goods is lowered on account of bulk orders, this fact should be taken into consideration and the value of imported goods should be computed accordingly.
- Further royalty payment for technical assistance, which is not relatable to imported goods, in any

Question

- Ferdoo India (P) Ltd (FIL,) entered into a Technical Assistance and Trade Mark Agreement (TAA) with its foreign collaborator for the manufacture of goods in India.
- It paid royalty and license fees under the TAA to the foreign company. It imported goods from its foreign collaborator and paid customs duty on its value.
- The Department sought to include the value of royalties and license fees paid by FIL for the purposes of calculating the customs duty liability. FIL challenged the addition.

Whether the royalty and license fee is includible in the AV?

ANSWER: NO

FERDOO INDIA (P) LTD – 2008 –

- Rule 10(1)(c) stipulates that payment made towards technical know-how must be a condition pre-requisite for the supply of imported goods by the foreign supplier and if such condition exists then such royalties and license fees have to be included in the price of the imported goods.
- Such inclusion shall be made even if payment is made directly or indirectly.
- At this stage, we would like to emphasize the word indirectly in Rule 10(1)(c). As stated above, the buyer/importer makes payment of the price of the imported goods. He also incurs the cost of technical know-how.

- Therefore, the department in every case is not only required to look at TAA, but also required to look at the pricing arrangement/agreement between the buyer and his foreign collaborator.

Question

- The assessee-importer imported certain goods at US $ 15 p.u. from a foreign supplier, who has holding 30% equity in assessee-company. On account of increase in orders placed by the assessee, the import price was reduced to US $ 14.10 p.u. Thereafter, the assessee entered into an agreement with the foreign supplier to import 100% of its annual requirements from such foreign supplier only and accordingly, the price was reduced to US $ 10 p.u.

On imports being made at US $ 10 p.u., the Department rejected the transaction value contending that the price was influenced by relationship and valued the imports at transaction value of earlier imports i.e. US $ 14.10 p.u. under Rule 4.

Whether rejection of transaction value is proper in the instant case?

NSWER: NO.

INITIATING EXPLOSIVES SYSTEMS– 2008- SC

- **Merely because the foreign supplier held 30% equity in the assessee-company the same would not mean that assessee and foreign supplier was related.**
- **Rule 4 provides for assessment on the basis of identical goods imported by some another importer. The imports earlier made by the importer can not be termed as "identical goods" or "contemporaneous imports" and therefore, no assessment can be made on the basis of the same.**
- **The fact that the assessee had made bulk imports could be a reason for reduction of import price.**
- **In the absence of any evidence from the Department to prove under-valuation, the price declared by the assessee was acceptable."**

…………………………………………………………………………………………………

- The Apex Court in the case of **M.S. Shoes East Ltd**. Where it was held that,

  The **post import depreciation cannot be taken into account**, despite the fact that while Bill of Entry was presented earlier but the clearance was given after 9 years.

- The Supreme Court also gave a judgment in the case of **Matasuhita Television & Audio**, where it was held that,

  The **royalty** payments were included in the assessable value.

- In the case **Galaxy Entertainment (I) P. Ltd.** Where it was held that,

  Technical and installation charges agreement was a post clearance revenue generation agreement which had no nexus with the sale proceeds of the equipment hence not includible.

ASSOCIATED CEMENT COMPANIES LTD.

- Where it was held that Technical advice or information technology, though an intangible asset, but the moment the information or advice was put on a media, whether paper or cassettes or diskettes or any other thing, that what is supplied becomes movable property and is goods and hence drawings, designs, manuals and technical material are goods liable to customs duty.
- Hence duty shall be levied on the total value and not on the nominal value of paper only.

Amendments (1st Nov. 2008 to 30th April 2009)

NOTE: - AMENDED OR NEWLY INSERTED PART – BLUE COLOUR PRINTING(bold)

BASIC CONCEPTS

CIR.NO.- 879/17/2008 – Activities held to be manufacturing activity

- **Conversion of sugar into bura, makhana, mishri, hardas and battasas (patashas) - Amount to manufacture.**
- **However such resultant products (bura, makhana, mishri, hardas and battasas /patashas) will be classified AS SUGUR**

CENVAT CREDIT RULES, 2004

Rule 3(7)(a) -Credit in respect of goods purchased from 100% EOU

CENVAT credit in respect of inputs or capital goods,

- Produced or manufactured in, EHTP, STP or 100% EOU and
- Used in the manufacture of the final products *In any other place in India*

Shall be admissible equal to the following amount.

Cenvat Credit = [AV * {(1 + BCD/200) * CVD/100}]

Where BCD = the ad valorem rate of basic customs duty

CVD = the ad valorem rate of additional duty of customs.

Rule 6: Obligation of Manufacturer of Dutiable and Exempted Goods

(6) INAPPLICABILITY OF ABOVE SUB-RULES ON CERTAIN EXEMPTED GOODS

The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either –

(i) Cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations; or"

(ii) Cleared to a **100% EOU**; or

(iii) Cleared to a Unit **EHTP or STP**; or

(iv) Supplied to the **United Nations** or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under N/N 108/95 or

(v) Cleared for **export under bond** in terms of the provisions of the CER, 2002; or

(vi) All goods **supplied against International Competitive Bidding.**

CIR NO. 877/15/2008:

Clarification regarding reversal of Cenvat Credit in case of trade discount

Issue:-

- Whether proportionate credit should be reversed in cases -where a manufacturer avails credit of the amount of duty paid by supplier as reflected in the excise invoice,
- but subsequently the supplier allows some trade discount or reduces the price, without reducing the duty paid by him.

The issue has been examined.

- Since, the discount in such cases are given in respect of the value of inputs and not in respect of the duty paid by the supplier, the effect of reduction of value of inputs may be that the duty required to be paid on the inputs was less than what has been actually paid by the inputs manufacturer.
- However, the fact remains that the inputs manufacturer had paid the higher duty.
- Rule 3 of Cenvat Credit Rules, 2004 allows credit of duty "paid" by the inputs manufacturer and not duty "payable" by the said manufacturer.

In view of above,

- It is clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise.

- However, if the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit.
- It may however be confirmed that the supplier, who has paid duty, has not filed/claimed the refund on account of refund in price.

SMALL SCALE INDUSTRIES

(iv) No credit on inputs upto Rs. 150 lakhs

- The manufacturer shall, NOT AVAIL the credit of duty, paid on inputs used in the manufacturer of the specified goods cleared for home consumption, the aggregate value of first clearances of which does not exceed 150 lakhs.
- **Provided that nothing contained in this clause shall apply to- the inputs used in manufacture of specified goods, bearing the brand name or trade name of another person, which is ineligible for grant of this exemption.**

Note: - Assessee can take the credit of "duty paid" on *capital goods* ***under E/N 8/2003***.*(Refer to rule 6(4) of CCR 2004)*

"SPECIFIED CLEARANCES" bearing BRAND NAME / TRADE NAME

(Which is ***ELIGIBLE CLEARANCES*** for computing the limit of **Rs. 150/ 400** lakhs).

a) Clearances bearing B/N or T/N **of the manufacturing unit itself.**

b) Clearances bearing B/N or T/N-

- **Where the Goods being in the nature of components/parts of any Machinery/Equipment or Appliances; are cleared for use as OE (Original Equipment) in the manufacture of the said Machinery/Equipment or Appliances;** by following End – use based exemption procedures laid down in C.E.R. 2001.
- **Where the Goods bear the Brand Name Or Trade Name of -**
  - Khadi and Village Industries Commission (KVIC),
  - State Khadi and Village Industry Board (SKVIB),
  - National Small Industries Corporation (NSIC),
  - State Small Industries Development Corp (SSIDC),
  - State Small Industries Corporation (SSIC).

c) If SSI is manufacturing ***accounts books, registers, writing pad file folders***, even if they bear brand name of others.

d) Factory in rural area:-

Where the branded goods are manufactured in a factory located in rural area.

e) Where the specified goods are in nature of PACKING MATERIALS, namely, Printed cartons of Paper/Paper Board, Metal Containers, HDPE **Woven sacks**, Adhesive Tapes, Stickers, PP caps, crown corks, Metal label, **PLASTIC BAGS.**

CUSTOMS LAWS

WAREHOUSING

Circular No.15/2009

Doubt:-

Whether the interest under Section 47 (2) is payable on goods deposited in a warehouse and for which a Bill of entry for home consumption is filed under Section 68 of the said Act, if the importer fails to pay the duty within 5 working days from the date on which such Bill of Entry filed under Section 68 is returned to him for payment of duty.

Clarification:

It is clarified that

- The provisions of Section 47 (2) are not attracted in case of clearances made under Section 68
- Consequently, no interest is liable to be paid on goods deposited in a warehouse and being cleared for home consumption by filing the Bill of Entry prescribed under Section 68 of the Act, for

delayed payment of duty i.e. if the importer fails to pay the duty within 5 working days from the date on which such Bill of Entry is returned to him for payment of duty.

- However, interest on warehoused goods is payable when they remain in a warehouse beyond the period specified in sub-section (1) of Section 61 as per provisions of sub-section (2) of Section 61.

SERVICE TAX

N/N:-01/2009-ST--

Following services provided to a Goods Transport agency shall be fully exempt from Service Tax-

- Manpower recruitment or supply agency service
- Business Auxiliary Services
- Storage and Warehousing Service
- Business Support Services
- Packing Activity service
- Supply of Tangible goods Service
- Clearing and Forwarding Agent Service
- Cargo Handling Service

N/N:- 09/2009-ST:-

- Any taxable services, which are provided in relation to the **Authorized Operations** in a Special Economic Zone,
- and received by a developer or units of a Special Economic Zone,
    - *whether or not the said taxable services are provided inside the Special Economic Zone,*
- shall be exempt from the whole of the service tax.

Conditions have been specified w.e.f 3/3/2009. The conditions are:-

- The services should be received only in relation to the authorized operations in the SEZ.
- The services should be actually used in relation to the authorized operations in the SEZ.
- The exemption shall be provided by way of refund only.
- The service tax on the services received should have been actually paid.
- Cenvat credit of the service tax paid on the said services shall not be allowed.
- The benefit of any other exemption notification has not been availed in respect of these services.

CIR. NO. 111/05/2009- ST, DT. 24/02/2009

Applicability of the provisions of the Export of Services Rules, 2005 in certain situations

Doubt:-

- **As In terms of rule 3 (2) (i) of the Export of Services Rules 2005, a taxable service shall be treated as export of service if "such service is provided from India and used outside India"**
- **Now the issue is - Whether the following services provided by a person in India to a person in India can also come within the ambit of " Export of service"**

(i) **Call centres** engaged by foreign companies who attend to calls from customers or prospective customers from all around the world including from India;

(ii) **Medical transcription** where the case history of a patient as dictated by the doctor abroad is typed out in India and forwarded back to him;

(iii) **Indian agents** who undertake marketing in India of goods of a foreign seller. In this case, the agent undertakes all activities within India and receives commission for his services from foreign seller in convertible foreign exchange;

(iv) **Foreign financial institution** desiring transfer of remittances to India, engaging an Indian organisation to dispatch such remittances to the receiver in India. For this, the foreign financial institution pays commission to the Indian organization in foreign exchange for the entire activity being undertaken in India.

Clarification: - YES

THE ABOVE SAID SERVICES DO NOT FALL WITHIN THE AMBIT OF FIRST TWO CATEGORIES, BUT THESE FALL IN CATEGORY- III [RESUDAIRY CATEGORY]

The matter has been examined. Rule 3 (1) of the Export of Services Rule, 2005 categorizes the services into three categories:

Category (I):- Immovable property Based category:-

- [Rule 3(1)(i)] : For services (such as Architect service, General Insurance service, Construction service, Site Preparation service) that have some nexus with immovable property, it is provided that the provision of such service would be 'export'
- **If they are provided in relation to an immovable property situated outside India.**

Category (II) Physical Property based category:-

- Rule 3(1)(ii) : For services (such as Rent-a-Cab operator, Market Research Agency service, Survey and Exploration of Minerals service, Convention service, Security Agency service, Storage and Warehousing service) where the place of performance of service can be established, it is provided that provision of such services would be 'export'
- **If they are performed (or even partly performed) outside India**.

Category (III)- Residuary category

- Rule 3(1)(iii) : For the remaining services (that would not fall under category I or II), which would generally include knowledge or technique based services, which are not linked to an identifiable immovable property or whose location of performance cannot be readily identifiable (such as, Banking and

Other Financial services, Business Auxiliary services and Telecom services), ➢ it has been specified that they would be 'export'- ➢ **If they are provided to a recipient located outside India at the time when such services are provided.** ***In this context, the phrase "used outside India" is to be interpreted to mean that the benefit of service should accrue outside India.***

CIR. NO. 111/04/2009-- Road construction & Road maintenance

Road Construction Service	**Not liable to Service Tax-** ➢ Laying of new Road ➢ Widening of narrow road to broader road ➢ Changing road surface(such as graveled road to metal led road)
Road maintenance/ Repair	**Liable to service tax under " MAINTENANCE / REPAIR SERVICE"-** ➢ Strengthening ➢ Relaying ➢ Filling of potholes. ➢ Resurfacing ➢ Renovation

Amendments (1st May. 2008 to 31th Oct 2008) (equally imp)

EXCISE LAWS

BASIC CONCEPTS

Proviso to section 3:- Special procedure for removal from 100% EOU

- But on excisable goods which are produced or manufactured by a 100%EOU,
- ……………………..

Exemption: -

Goods manufactured produced by a 100% EOU/STP/EHTP and sold in Domestic Tariff Area, are exempt from

- **50% of Basic Custom Duty and**
- 100% of CVD 3(5).

EXCISABLE GOODS: SEC. 2(d)

Goods specified in the first and the second schedule to CETA on which duties of excise is levied and **includes salt.**

EXPLANATION: Goods includes 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.
[Effect of amendments: - case of Indian Aluminium co. -nullified]

Examples of "Deemed Manufacturing Processes": u/s 2(f) (ii)

1. Labelling or Re-labelling of containers OR repacking (from bulk packs to retail packs) of -
- natural or artificial mineral waters
- Pan Masala
- soaps, waxes etc.

2. Recording of sound or other phenomena on audio or video tapes.
3. Making of wire from wire rod.
4. Bleaching, Mercerizing, Dyeing, Printing, Shrink-proofing etc. of fabrics.

CENTRAL EXCISE RULES,2002

AFTER RULE 9(3)

"Provided further that

- **if such person manufactures Compressed Natural Gas and has more than one premises requiring registration, which fall within the jurisdiction of one Chief Commissioner of Central Excise,**

- **he may obtain a single registration for all such premises with any of the Commissioner of Central Excise falling within the entire jurisdiction of the said Chief Commissioner, by submitting the details of all such premises along with the application for registration,**

- **subject to the condition that prior intimation shall be given before starting any additional premises subsequent to obtaining such registration:**
- **Provided also that**

- **if the assessee is registered under the existing provision, he may apply for fresh registration or file amendment to the registration as the case may be, in accordance with provisions of this notification."**

RULE: 12- FILING OF RETURN

(2)Annual Financial Statement

- Every assessee shall submit, an Annual Financial Information Statement for the every financial year
- in the specified form[ER-4]

by ***30 day of November*** of the succeeding year.

Exemption from filing Annual Financial Statement

- *Any assessee who paid duty* ***less than one crore.[from account current (PLA) or by utilizing Cenvat credit or both]*** *has been exempted from such statement*
- *Indian Ordnance Factories, Department of Defence Production, Ministry of Defence have also been exempted from filing annual information financial statement.*

(2A) Annual Installed Capacity statement : [in form ER-7]

- **Every assessee shall submit to the SCE, an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the financial year to which the statement relates in the form specified by notification by the Board by 30th day of April of the succeeding financial year.**
- **If capacity increased by 25% during the year----file an amendment, with in 30 days, from commencement of production of the new machinery.**
- **The Central Government may, by notification, and subject to such conditions or limitations as may be specified in such notification, specify assessee or class**

<u>of assessee</u> who may not require to submit such an Annual Installed Capacity Statement."

<u>Rule 17: Removal of Goods by A 100% EOU for Domestic Tariff Area</u>

(1) Where any goods are removed from 100% EOU, to domestic tariff area**, such removal shall be made**

- Under an **invoice** by following the procedure specified in Rule 11.
- **and the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8.";**

(2) The unit shall maintain in proper form appropriate account relating to production description goods, quantity removed, duty paid.

(3) The unit shall submit a monthly **return to the SCE, within 10 days from the close of the month** to which the return relates, in respect of
the goods manufactured in & receipt of inputs and capital goods.

(4) The proper officer may on the basis of information contained in the return filed by the unit under sub-rule (3), and after such further enquiry as he may consider necessary, scrutinise the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board.

(5) Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

<u>CENVAT CTEDIT RULES, 2004</u>

<u>Rule 2 (p) Output service</u>

Means: any taxable service, **excluding the "Goods Transport Agency" service,**

provided by the provider of taxable service, to a customer, client or any other person.

Effect of amendment:-

- ***The recipient of service has to pay the service tax IN CASH, on the amount equal to 25% of value of such service.***
- ***Assessee can not utilize his Cenvat credit for the payment of this amount, as it is not his output service, though he is liable to pay service tax.***
- ***However, once the person receiving the service pays the service tax. He can avail credit of service tax paid, if it is his input service.***

REGARDING RULE 3(1)

<u>CBEC Circular 97/8/2008:</u> W.E.F. 10-9-2004, credit of service tax paid in respect of 'mobile telephone service' is admissible, provided the mobile phone is used in or in relation to <u>manufacture of finished goods</u> or <u>used for providing output service</u>.

<u>Rule 3(4)- GENERAL UTILISATION</u> *[Read with Rule 3(7)(b)]*

<u>Provided also that,</u>

- ✓ **In case of NCCD PAYBLE ON MOBILE PHONES,**
- ✓ **credit of any duty of excise other than NCCD will not be utilized for payment of the said NCCD.**

<u>Rule 9A: INFORMATION RELATING TO PRINCIPLE INPUTS</u>

(4) <u>Applicability:-</u>

But this rule is applicable only to those assesses

(i) who are manufacturing goods specified under this rule and

(ii) who have paid duty of one crore or more during the preceding F/Y.[from account current (PLA) or by utilizing Cenvat credit or both]

<u>SMAL SCALE INDUSTRIES</u>

<u>Computation of 150/400 Lakhs Limit</u>

4. <u>CLEARANCES OF STRIPS OF PLASTIC</u>

- ✓ **(Used for weaving of Fabrics or Manufacture of Sacks & Bags)**

As per Finance Act 2008: CLEARANCES OF STRIPS OF PLASTIC are ELIGIBLE clearance

<u>APPEALS</u>

<u>SECTION -35B</u>: <u>APPEALS TO APPELLATE TRIBUNAL</u>

<u>Appealable order</u>

(1) Any person aggrieved of any of the following orders may appeal to the Appellate Tribunal **-**

(a) An order **passed by the commissioner** of Central Excise as an adjudicating authority.

(b) An order **passed by the Commissioner (Appeals)** under section 35A.

……………………………………………………………………………

(2) Departmental Appeal

If the **Committee of Commissioners** (as constituted by the Board and consisting of two commissioners and **two** chief commissioners) is of the opinion that,

- an **order passed by the Commissioner (Appeals)** under section 35A/128A **is not legal or proper,**
- **it may direct** any proper officer authorized by it to appeal on its behalf to the Appellate Tribunal against such order.

Provided that where the Committee of Commissioners of Central Excise differs in its opinion regarding the appeal against the order of the Commissioner (Appeals),

- **It shall state the point or points on which it differs and make a reference to the "*jurisdictional Chief Commissioner*" of Central Excise**
- **who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper,**
- **direct any Central Excise Officer to appeal to the Appellate Tribunal against such order.**

Section 35 FF: Interest on pre-deposit

- ✓ **If the amount deposited u/s 35F refundable pursuance to order passed by CCE(A) or Tribunal, the amount should be refunded with in 3 months from the date of communication of the order to adjudicating Authority.**
- ✓ **If not so refunded, interest is payable at the rate specify in section 11 BB.**

SECTION 35E: Review by Committee of chief commissioner or commissioner:

(NOTE: This section is not applicable to order involving determination of rate of duty or valuation of goods).

(1) Review by Committee of chief commissioner

The Committee of Chief Commissioners of Central Excise may of its own motion,

- Call for and examine the record of any proceeding in which a Commissioner of Central Excise has passed any order, so as to **satisfy itself upon the legality or propriety** of the order.
- Thereafter the Committee of Chief Commissioners may direct such Commissioner or any other Commissioner to **apply to the Appellate Tribunal to determine such points** as may be specified by it;
- **If there is difference of the opinion between two chief commissioners, the matter will be referred to board who will decide whether to file appeal.**

DEMAND AND RECOVERIES

SEC. 11-D: - Duties of Excise collected from buyer to be deposited With the CG.

Notwithstanding anything to the contrary contained in any order/direction of the Appellate Tribunal or any Court or in any other provision of this Act/Rules,

(1) Every person who is liable to pay duty and **has collected** any amount from buyer as duty of excise **in excess of duty** must pay the amount immediately to the Central Government.

(1A)

- **every person who has collected from the buyer any amount in excess of the "duty assessed or determined and paid"**
- **on any excisable goods, which are wholly exempt or are chargeable to *nil* rate of duty,**
- **representing as duty of excise , must pay the amount immediately to the credit of C.G.**

Sec 11-DD: - Interest on the amount collected in excess of duty

- Where an **amount** has been collected in excess of the "duty assessed or determined ,and paid" on any excisable goods (under this Act or the rules)
- from the "buyer of such goods **or**
- **from any person or where a person has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to *nil* rate of duty, the person"**
- who is liable to pay such amount as determined u/s 11D, shall, in addition to the amount, be liable to pay interest @ 15% p.a.
- from the first day of the month succeeding the month in which the amount ought to have been paid under this Act, till the date of payment of such amount

REFUND

Sec 11 B: Claim for Refund of Duty

(1) Application for Refund:

- Any person claiming the refund of excise duty **AND INTEREST paid on such duty, IF ANY**, may make an application for refund of such duty to the AC/DC
- ***before the expiry of 1 year from the relevant date***.

Provided that limitation of "1 Year" shall not apply where any duty **AND INTEREST paid on such duty, IF ANY**, ***has been paid under protest.***

(2). Refund Order (**subject to doctrine of unjust enrichment**)

- If, on the receipt of such applications,
- the AC/DC is satisfied that the whole or any part of duty of excise **AND INTEREST paid on such duty, IF ANY**, paid by the applicant is refundable,
- he may make an order accordingly

And the amount so determined ***shall be credited to consumer welfare fund.***

Provided that in the following cases the excise duty **AND INTEREST paid on such duty, IF ANY**, as determined by the AC/DC as above, shall instead of being credited to the fund, **be paid to the applicant** *i.e. doctrine of unjust enrichment will not be applicable.*

1. Rebate of duty on excisable goods exported out of India, OR on excisable material used in manufacture of goods which are exported out of India.
2. Refund of Credit of duty paid on excisable goods used as input in accordance with the rules.
3. Unspent advance deposit lying in the balance in PLA (Account Current), but can not be used.
4. The duty **AND INTEREST paid on such duty, IF ANY**, borne by the buyer, if he has **not passed on incidence** to any other person.
5. The duty **AND INTEREST paid on such duty, IF ANY**, borne by manufacture, if he has **not passed on incidence** to any other person.

Sec.11BB. Interest of Delayed Refund

- If any duty **and interest thereon** ordered to be refunded u/s 11B(2) to any applicant,
- is not refunded within 3 months from the date of receipt of application,
- interest @ 6% p.a. (5% to 30%) shall also be paid from the date immediately after the expiry of said 3 months till the date of refund of such duty.

Customs Laws

BASIC CONCEPTS

Projects Imports

(3) Simplification with flat rate (5%):-

VALUATION

CBEC Circular (Year 2008):- valuation of IInd Hand Machinery

If all parameters (conditions) of Sec 14(1) are satisfied, then declared TV shall be accepted as AV in terms of Sec 14(1) read with Rule 3 of CVR, 2007.

However, if TV is rejected (on account of non-fulfillment of any of the parameter), then valuation of IInd Hand Machinery can be done under Rule 9 of CVR, 2007, on the basis of VALUE OF NEW MACHINERY, by allowing depreciation commensurate with the period of usage.

DUTY DRAWBACK

Third Notification:- In respect of **all other goods used after their importation** and which have been out of custom control, DBK shall be granted as per the following rates:-

AMENDED TABLE:

Period of Usage	**Notified Rate of Drawback**
Upto 3 months	95%
More than 3 months, BUT upto 6 months	85%
More than 6 months, BUT upto 9 months	75%
More than 9 months, BUT upto 12 months	70%
More than 12 months, BUT upto 15 months	65%
More than 15 months, BUT upto 18 months	60%
More than 18 months……	NIL

NOTE :- GENERAL PENALTY IN CUSTOMS:-Any contravention of any provision of the Act for which no penalty is specified under the act, he shall be liable ton a penalty of not exceeding Rs. 1,00,000.

SERVICE TAX

SERVICE TAX RULES, 1994

Rule: 6 (1A):- option to pay service tax in advance & adjust the same against future service tax liability

- **Without prejudice to the provisions contained in sub-rule (1),**
- **every person liable to pay service tax, may, on his $\boxed{\text{own volition,}}$ pay an amount as service tax in advance, to the credit of the Central Government**
- **and adjust the amount so paid against the service tax ,which he is liable to pay for the subsequent period:**

Provided that the assessee shall,-

(i) $\boxed{\text{Intimate}}$ the details of the amount of service tax paid in advance, to the Superintendent $\boxed{\text{within a period of 15 days}}$ from the date of such payment; and

(ii) $\boxed{\text{Indicate the details}}$ of the advance payment made, and its adjustment, if any in the $\boxed{\text{subsequent return}}$ to be filed under section 70 of the Act."

Other Provisions Relating to Payment of Service Tax:-

(A) Amount payable to Associates Enterprise credit / debit to suspense account :-

Deemed to be payment received

For the removal of doubts, it is hereby declared that;

- **where the transaction of taxable service is with any associated enterprise,**
- **any payment received towards the value of taxable service, shall include any amount credited or debited, as the case may be,**
- **to any account, whether called 'Suspense account' or by any other name, in the books of account of a person liable to pay service tax.";**

Scheme for submission of Returns through service tax prepares [SECTION:- 71].

(*1*) The board is empowered to **frame a scheme** providing that, **specified class of persons may furnish their service tax returns** through an authorized service tax return preparer.

(*2*) A Service Tax Return Preparer shall assist,

- The person or class of persons to prepare and furnish the return
- in such manner as may be specified in the Scheme framed under this section.

(*3*) **For the purposes of this section,—**

(*a*) **"Service Tax Return Preparer" means** any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section;

(*b*) "person or class of persons" means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.

Best judgment assessment. [SECTION:- 72].

If any person, liable to pay service tax,—

(*a*) fails to furnish the return under section 70;

(*b*) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

The Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary

- and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment
- and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

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<u>Sec 77::</u> Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere (Residuary Penalty)

	Contravention/Default	**Penalty Leviable** **Maximum Amount shall be:**
(a)	***Failure to take registration*** *in accordance with relevant provisions*	*Higher of following 2:* ➢ ***Rs 5,000/- or*** ➢ ***Rs 200/- for every day*** *during which such failure continues.*
(b)	***Failure to keep, maintain or retain books of account and other documents*** *as required in accordance with relevant provisions*	***Rs 5,000/-***

(c)	***Failure to*** *i) **Furnish Information Called** by an officer; or* *(ii) **Produce Documents Called** for by a CEO; or* *(iii) **Appear Before The CEO**, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,*	*Higher of following 2:* ➢ ***Rs 5,000/- or*** ➢ ***Rs 200/- for every day** during which such failure continue.*
(d)	***Failure to pay tax electronically when he was so required***	***Rs 5,000/-***
(e)	***Issues Invoice With Incorrect Or Incomplete Details** or fails to account for an invoice in his books of account*	***Rs 5,000/-***
(f)	***Any other default for which no penalty is separately provided elsewhere***	***Rs 5,000/-***

Sec 78: -Penalty for suppression of taxable value

Sec 78:: Penalty for suppression of taxable value

Levy of penalty ranging from 100% to 200% of ST in defualt

Where any ST has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of —

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

→ the person, liable to pay such service tax or erroneous refund, as determined /s 73 [*this is similar to Sec 11-A of CEA, 1944], shall also be liable to pay

a **PENALTY** which shall ***not be less than*** 100% of the amount of ST

but which ***shall not exceed*** 200% of the amount of ST

Benefit of reduction of penalty on timely clearance of dues

Provided that where **ST** as determined u/s 73 **and the interest** payable thereon u/s 75 is **paid within 30 days** of communication of order**, the penalty** leviable shall be ***reduced to 25% of the ST*** so determined.

Provided that *the benefit of reduced penalty shall be available only if* **the amount of penalty has also been paid within said 30 days.**

Levy of penalty when final ST liability is determined in Appeal

Provided also that where **the ST** determined to be payable **is REDUCED or INCREASED** by the Comm.(Appeals), Appellate Tribunal, the Court, then, for the purposes of this section**, the ST so reduced or increased shall be taken into the account.**

Benefit of reduction of penalty on timely clearance of dues determined in Appeal

Provided also that in that case the **benefit of reduced penalty** shall be available,

⇒ ***if*** the amount of **ST so increased** *and* **the interest payable** thereon and the **consequential penalty**

⇒ paid **within 30 days** of the communication of the order by which such increase takes effect.

No Sec 76 penalty if Sec 78 penalty levied (No double jeopardy)

Provided also that *if the penalty is payable under this section,*

➔ the provisions of Section 76 shall not apply.

Sec 76. *Penalty for failure to pay service tax*

Any person, liable to pay service tax, who fails to pay such tax, shall pay, *in addition to such tax and the interest,*

➔ a **PENALTY** which shall ***not be less than***

- Rs 200/- for every day during which such failure continues or
- @ 2% of such tax, per month,

whichever is higher.

Provided that the total amount of penalty shall not exceed ST payable.

Circular No. 104/ 07 /2008-ST

Subject: - Service tax levy on goods transport by road services -reg.

Issue 1: GTA provides service to a person in relation to transportation of goods by road in a goods carriage. The service provided is a single composite service which may

include various intermediary and ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing.
For the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In such a case, whether the intermediary or ancillary activity is to be treated as part of GTA service and the abatement should be extended to the charges for such intermediary or ancillary service?

Clarification: Such intermediate and ancillary services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., which are provided in the course of transportation by road are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification.
A composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified
Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it.

Issue 2: Whether time **sensitive transportation of goods by road** in a goods carriage by a GTA shall be classified under courier service and not GTA service?
Clarification: On this issue, it is clarified that so long as, (a) the entire transportation of goods is by road; and (b) the person transporting the goods issues a consignment note, it would be classified as ‘GTA Service’.

Circular No. 105/08/2008

Non-payment of service tax by SEZ units providing taxable service outside SEZ

There is no exclusion to SEZs in the Chapter V of the Finance Act, 1994 (Service Tax law). Taxable services received by SEZ units and SEZ developers for consumption within the SEZ are exempt for service tax under notification No. 4/2004-ST. However, service tax is applicable on taxable services provided by SEZ units, except such services which are exempt by notification No. 4/2004-ST.

TAXABLE SERVICES

Consulting Engineer

Statutory coverage

- Advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering.
- **Explanation:- For the purpose of the above, services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this sub clause.**

Technical testing and analysis

Statutory coverage

- Service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material **or information technology software** or any immovable property.
- Clinical testing of drugs and formulations.

Banking and Financial services

Statutory coverage

- Service by a banking company or financial institution including NBFC, or any other body corporate or *commercial concern*, is taxable.
- Financial leasing services including equipment leasing and hire-purchase.
- Merchant banking services.
- **Securities and foreign exchange (forex) broking; and purchase or sale of foreign currency including money changing.**
- **……………..**

Special point:-

Option to pay service tax @ 0.25%o f gross amount of currency, in case of purchase / sale of currency or money changing

- The person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer,
- shall have the option to pay an amount calculated at the rate of 0.25% of the gross amount of currency exchanged towards discharge of his service tax liability instead of paying service tax at the rate specified

in section 66 of the Act:

However such option shall not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider.

Illustration

Buying rate $US 1 = Rs.38, selling rate $US 1 = Rs.40
(i) Person exchanged $100 for equivalent rupees:-
Transaction value = Rs.3800 (Rs.38 x 100)
Service tax payable = Rs.9.5 (0.25% x 3800)

(ii) Person exchanged equivalent rupees for $100
Transaction value = Rs.4000 (40 x 100)
Service tax payable = Rs.10 (0.25% x 4000)."

Business auxiliary services

Statutory coverage

- Promotion or marketing or sale of goods produced or provided by or belonging to the client.
- Promotion or marketing of service provided by the client.

Explanation:-service i.r.t. to promotion or marketing of service provided by the client includes any service provided i.r.t. promotion or marketing of games of chance, organized, conducted, or prompted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery , bingo.

- Any customer care service provided on behalf of the client.
- ……………………

Cargo handling

Statutory coverage

- Loading, unloading, packing or unpacking of cargo.
- Cargo handling services provided for freight in special containers or for non-containers freight.
- Services provided by a container freight terminal or any other freight terminal, for all modes of transport.
- **Service of packing together with transportation of cargo or goods, with or without one or more of other services like Loading, unloading, unpacking**.
- Cargo handling services incidental to freight.