

CA Final: Central Excise Laws Cases Compilation 2009

CENTRAL EXCISE LAWS

Dear Students and Members,

Please find below some latest case laws of 2009 compiled specially for CA Students. This article covers 2009 series decided cases on Central Excise Law. For ready reference you may bookmark this page. Hope this compilation would be off some help in your Exam preparation:

You may also download the below case laws in the form of a handout from the link mentioned below:

Tax Case Laws Digest 2009

1. Rainbow Rubber Industries Vs. Assistant Collector of Central Excise (2009)

The Supreme Court has, a very unusual and exceptional order, modified the order of six months imprisonment in a criminal case filed by the Department U/s 9 of Central Excise Act, 1944 for evasion of Central Excise Duty, to only levy of fine of s. 2 lacs due to the fact that the accused was of about 70 years of age.

2. CCE Vs. Australia Foods Ltd. (2009)

When Cookies/Biscuits sold to bulk consumers like airlines/hotel industry and law does not require declaration of retail sale price on the package by the assessee specially under the Standards and Measurements Act, there is no reason to assess the product U/s 4A of the Central Excise Act, 1944 i.e. levy of Excise Duty on the Maximum Retail Price.

3. Neo Foods Pvt. Ltd. Commissioner of Customs (2009)

The 100% EOU is unable to utilize the Cenvat credit in respect of Service Tax so paid on input service for manufactured of their finished products which were exported, they would be entitled to seek refund of the Cenvat Credit pertaining to Service Tax so paid and the same could not be utilized.

4. Magic Fasteners Pvt. Ltd. Vs. CCE (2009)

The delay of 86 days in filing of appeal is not liable to be condoned since the fact reveal carelessness not only on the part of their Advocate but also on the part of assessee. Law expects the party to be vigilant of their rights.

5. Union of India Vs. Hindustan Zinc Ltd (2009)

Cenvat Credit of excise duty paid on cement used for construction, repair, maintenance of mines which are not connected with or coextensive with the process of manufacture, cannot be allowed.

6. CCE Vs. TPL Plastech Ltd (2009)

Cenvat Credit of Service Tax paid on the Mobile Phones sought to be disallowed by the department on the ground that they are not used in relation to manufacture of goods, is rejectable in view of the judgment of the High Court allowing the Cenvat Credit of Service Tax paid on Mobile Phones.

7. CCE Vs. Convergys India (P) Ltd (2009)

Due to late filing of declaration with the Department, substantial benefit of Cenvat cannot be denied. Input service availed for setting up premises, for repair of premises, for day to day maintenance, inputs for providing customer care services, input services utilized for procurement of other input services to be treated as input services and the Service Tax paid on such services can be claimed as Cenvat Credit.

8. CCE Vs. Agarwal Distillers (P) Ltd (2009)

The activities of packing and bottling of liquor are not liable to Service Tax.

9. CCE Vs. Metropolitan Transport Co (2009)

The activity of reclaiming usable lubricants from waste oil does not amount to manufacture within the meaning of Section 2(f) of Central Excise Act, 1944.

10. CCE Vs. Karam Chand Appliances (P) Ltd (2009)

In case the Invoices issued by the party does not matches the colour scheme provided under the Central Excise Act, then the Cenvat Credit shall not be allowed to be availed by the party.

11. CCE Vs. FDC Ltd (2009)

In case in the Invoices and other documents, the party has marked "Under Protest" and paid the duty but without forwarding a formal letter to the Department that he is paying the duty under protest, yet it shall be treated that the Excise Duty has been paid under protest.

12. CCE. Vs Uniproducts India Ltd (2009)

If the price remained firm throughout the period in question and the party has submitted copies of the Invoices to the Department and then the Department cannot allege that the duty has been recovered by the party. Unjust enrichment shall not be attracted in the facts and circumstances of this case.

13. CCE Vs. Ama Industries (2009)

The party cannot be allowed refund if the duty has been paid from Cenvat Credit account due to factory being closed or for some other reason. The refund of Cenvat Credit would be permissible only if the inputs had been used for manufacture of finished goods which has been exported.

14. T Prabhakara Rao Vs. CCE (2009).

If the order passed in the year 1999 has not been received by the party and the party came to know of the passing of the order when coercive proceedings have been initiated and the party was served with the order only in the year 2008 and thereafter the appeal has been filed by the party, the said Appeal would be within time unless the department is able to establish by producing AD Card that impugned order has been delivered.

15. CCE Vs. Godrej Appliances Ltd (2009)

The different MRP has been indicated on Air-conditioner valid for different areas, is permissible under Section 4A of Central Excise Act to be taken as assessable value for such areas.

16. ECE Industries Ltd Vs. CCE (2009).

The Agreement which contained price variation clause, the assessee upon upward revision of prices, paying higher duty and on lowering of price, the assessee is seeking refund as per Agreement and assessment shall be treated as provisional. Refunds arising out of down revision of prices after clearance of price, principle of unjust enrichment shall not apply.

17. CCE Vs. Kaizen Organic (P) Ltd (2009).

The goods were found kept in drums clearly shows that all process of manufacture were complete and goods were lying ready for dispatch and there is no evidence led by the

Department to show assessee wishes to clear without payment of duty clandestinely or intentional evasion of duty and, therefore, no penalty is leviable.

18. CCE Vs. Uniproduct India Ltd. (2009)

The findings of the facts as arrived by the Tribunal based on evidence cannot be disturbed by the Supreme Court in view of the settled proposition of law that the Tribunal is the last fact finding authority.

19. U.P. State Sugar Corporation Vs. CCE (2009) Tribunal – Single Member.

The Cenvat Credit is available on Welding Electrodes used for repair and maintenance of plant and machinery.

20. CCE Vs. K.K.Kadri Paper Mills Pvt. Ltd. (2009)

In case the manufacturing unit has been auctioned by the State Financial Corporation, the new purchaser would still be liable to pay the excise duty arrears of the erstwhile owner of the said manufacturing unit.

21. Cethar Vessels Ltd Vs. CCE (2009)

The component and parts of the Boiler were purchased after paying of excise duty and brought at the site and then erected piece by piece – whereafter it becomes an immoveable property and hence, no excise duty can be claimed by the Department – since the excise duty is payable only on movable goods and not on immoveable goods.

22. GMR Industries Ltd Vs. CCE (2009)

MS Angles, Channels, beams and welding electrodes used in the manufacture of storage tanks, which is a capital goods, used within the factory, the cenvat credit of Excise Duty paid on such inputs would be allowed.

23. Taurion Iron & Steel Co (P) Ltd Vs. CCE (2009)

If there is variation between one Test Report of Department Laboratory and that reputed and famous laboratory recognized by the Government and in case the party makes a request for third to be carried out, then denial of opportunity for third test would amount to violation of principle natural justice.

24. Indu Nissan OXO Chem Industries Ltd Vs. CCE (2009)

If there is no legal obligation upon the assessee to submit the Test Report of the laboratory in respect of products manufactured by the party, then it cannot be alleged by the Department

that there was a suppression about the particulars of the product and there is no mis-declaration made by the party about the nature of products.

25. Rakesh Kr Gupta Vs. CCE (2009)

Where a contractor prepare food items in their canteen of the principal who has provided space, furniture, utensils, electricity and gas, for cooking of foods items and serving to the employees of principal, such person cannot be treated as “ outdoor caterer.

26. TT Enterprises Ltd Vs. CCE (2009)

The assessing is providing to consulate of various countries services such as “ground handling agency service” and “cargo handling service” and the contention of the assessee that these are “sovereign function” outside scope of taxation by any country. The matter is debatable and part payment of service tax ordered as a condition for grant of stay.

27. Art Leasing Ltd Vs. CCE cited in (2009)

The construction service brought to net of service tax only on 15.6.2005 and the contract was entered prior to 15.6.2005 and, therefore, no service tax would be leviable on the amount so received by virtue of judgment of Tribunal.

28. CCE Vs. BSBK Pvt Ltd (2009)

The mobile phone provided to Director for use for rendering services to the company and there is evidence that the amount under the bills have been paid by the company, the company is entitled to claim cenvat credit of service tax on such mobile phones.

Best Regards