***LEGEND*** ***Academy for*** **CA**

# INDIRECT TAXES – AMENDMENTS APPLICABLE FOR MAY 2010 EXAMS


## - CA. Alok Agarwal



**LEGEND ACADEMY FOR CA**
Maitreyi Degree College, Opposite: ESI Bus Stop, Hyderabad.
Ph: 90004 64672, 90000 13135, e-mail: legendzforca@gmail.com
www.legendzca.com

# Amendments applicable for May 2010

1. **Process of adding or mixing certain ingredients to betel nut amounts to manufacture**

In respect of 'betel nut product known as supari', it is prescribed that the process of adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients other than lime, katha (catechu) or tobacco to betel nut, in any form would be a process amounting to manufacture. Thus, as per Note 6 to Chapter 21 of Tariff, this process amounts to deemed manufacture w.e.f . 7-7-2009.

2. **CCEx. V. Shanmugananda Soapnut Works [2008] SC**

Crushing of 'shigekai pods and rita' mixed in proportion of 10: 1 and marketing in retail packs, as it does ot bring into existence a new product; the product continues to retain its original character though in a modified form.

3. **CCEx. V. Textile Corpn Marathwada Ltd. [2008] SC**

**Where more than one processes are carried out on goods, each process independently amounting to manufacture, the duty may be paid after completion of the last of such processes i.e. at the final stage**

- Assessee was carrying out bleaching, dyeing, printing & mercerizing of textile fabric. It used to buy fabric, subject them to any one or more of said processes and pay duty at one time & clear them.
- The expression "any one or more of these processes" makes clear that if the fabric is subjected to one process, it amounts to manufacture. If, however, it is subjected to more than one process in the hands of the same manufacturer, the totality of the processes involved amounts to manufacture. Therefore, in case more than one processes are involved, duty will be payable only after all the processes amounting to manufacture are completed.
- Even if it is held that the assessee has to pay excise duty at each and every stage of manufacturing, it would be entitled to CENVAT credit and the whole exercise would be revenue neutral.

Hence, the assessee has rightly paid the duty at the final stage.

4. **Mauri Yeast India Pvt. Ltd. v. State of UP [2008] (SC)**

Residual entry to be used as a last resort only: In the matter of classification of goods, if there is conflict between two entries, the residual entry should be resorted to only if the goods do not come within a basic tariff entry.

## 5. CCEx. v. Champdany Industriesm Ltd. [2009] (SC)

**Carpets made predominantly of jute (with jute content more than 50%) are classifiable as 'jute carpets' as per predominance test**

- Assessee manufactured carpets by using three different inputs i.e. jute, cotton & polypropylene.
- Since jute predominated other textile materials viz. Cotton and polypropylene by weight (i.e. the jute content in the carpets was more than 50%), therefore, the carpets were classifiable as jute carpets and were liable to duty under sub-heading 5803.20 "Floor coverings of jute" at NIL rate.
- The Department contended that since the surface of the carpets was entirely of polypropylene, therefore, in view of: (a) Chapter Note 1 to Chapter 57: (b) Common parlance test; and (c) Essentiality test contained in Rule 3(b) of Interpretative Rules, the carpets were classifiable as 'polypropylene carpets' under residuary heading 5703.90 and liable to duty at 25%.
- Section Note 2(A) read with 14A of Section XI of Tariff: Products of Chapter 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material, which predominates by weight over any other single textile material.

**Decision**

Effect of Section Note 2(A) and 14A: Since the carpets contained three textile materials, therefore, by application of these notes, they are to be regarded as consisting wholly of that jute, because jute predominates by weight over any other single textile material (viz. Cotton or polypropylene). Therefore, the carpets could only be classified as jute carpets; more so, in view of specific terms of sub-heading 5703.20 "Floor covering of jute".

## 6. CCEx. v. Frito Lay India [2009] 242 ELT 3 (SC)

"Cheetos Masala Balls", "Cheetos Cheese Puff" & "Cheetos X & O", which contain masala/choco etc. in addition to cereals, cannot be classified as 'cereals' under 1904.10; they are sort of 'namkeens' / 'mixtures' and are covered by heading 2108.99.

**Facts**

- The assessee, a manufacturer of "Cheetos Masala Balls","Cheetos Cheese Puff" and "Cheetos X & O" classified the said products under 2108.99 as'Edible preparation not elsewhere specified and put up in retail containers' and claimed exemption from duty.

The Department classified the same under 1904.10 as "prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals, other then maize(corn), in grain from, pre-cooked or otherwise prepared.. put up in unit containers" liable to duty @ 10%.

**Decision**

- Heading 1904.10: This heading covers food preparations obtained by swelling or roasting of cereals in the grain form, in the form of flakes or worked grain. It also covers corn flakes. However, the products of the assessee are neither obtained by swelling or roasting of cereals; nor are they made from cereals in grain form. They are made from cereals in grounded form. Plain corn flakes, which are obtained by swelling or roasting, are covered by Heading 1904.10. But, in case of choco corn flakes, or, masala corn flakes, there is an element of choco / masala-frying and, hence, the same will not fall under heading 1904.10.
- Heading 2108.99: Heading 21.08 covers edible preparations not elsewhere specified. In view of Chapter Note 10 to Chapter 21, which has an overriding effect, the products are covered by the term 'namkeens', 'mixtures', bhujia', 'chabena', or. 'others'. Such products are covered under this heading irrespective of their nature of ingredients. Since products are not classifiable under Heading 19.04, they will be covered by residuary heading 21.08.

The products, in question, are classifiable under 2108.99 as contended by assessee.

**7. CCEx. v. Shree Baidyanath Ayurved Bhavan Ltd. [2009] SC**

For a product to be classified as "medicament", it must satisfy common parlance test (i.e. it must be used for medicinal purposes by the users) and ingredients test (i.e. it must have medicinal content). Since Dant Manjan Lal (DML) fails to satisfy common parlance test, therefore, it is not a medicament, but merely "tooth-power" liable to duty.

**Facts**

- The assessee was engaged in manufacture of medicines adopting Indian systems, one such product manufactured by it was Dant Manjan Lal (DML). DML was a tooth-powder manufactured as per specifications and formulae given in Ayurved Sar Sangraha (an authoritative text on Ayurved system of medicine); the said book was listed in First Schedule to the Drugs and Cosmetics Act, 1940.
- The Department contended that the said product was a cosmetic / toiletry preparation / tooth powder classifiable under Chapter Heading 33.06, under which duty of excise of imposable. The Department contended that in the common parlance, DML was not purchased for medicinal uses, but was purchased and known as 'tooth-powder'.

Conclusion: DML is used routinely for dental hygiene. Hence, qualifies as tooth powder and not medicament.

8. **Circular No. 890/10/2009-CX 3rd June, 2009**

**Classification of Coconut Oil packed in small containers.**

There are two contenting classification. Chapter 15 covers various types of vegetable oil including coconut oil and Chapter 33 covers cosmetics including hair oil.

The disputes have arisen in respect of coconut oil when it is sold in small packs say of 50 ml. or 100 ml. When the Coconut oil is sold in small containers, following indications have been found on containers or labels.
A. 'hair oil'
B. 'edible oil'
C. 'pure coconut oil' or 'coconut oil'

**Conclusion:** Hence, in view of the amendments/insertion of Chapter Note and Section Note, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product. Therefore, if coconut oil is packed in packages which are generally meant for sale in retail as hair oil, in that case the said product would be classified as hair oil under heading 3305, even though few consumers may use it as edible oil. Coconut oil packed in containers upto 200 ml may be considered as generally used as hair oil. This would bring uniformity in assessment in respect of coconut oil sold in small containers irrespective of the fact as to whether its use as hair oil is indicated on containers/labels or not.

Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product. Therefore, if coconut oil is packed in packages which are generally meant for sale in retail as hair oil, in that case the said product would be classified as hair oil under Heading 3305, even though few consumers may use it as edible oil.

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***9. CC v. Precise Laboratories P. Ltd. [2008] (SC)***

"Dant Mukta", which is used as raw material for manufacture of Dant Lal Manjan, is itself akin to tooth powder and is, therefore, classifiable as tooth powder under heading 3306 10 10. The same cannot be classified as 'ayurvedic medicine' under Heading 3003.

***10. CCEx. v. E. Merck India Ltd. [2009] (SC)***

**Facts**

- The assessee classified the product manufactured by it (viz. Fixed Dose Combination (FDC) of vitamin $B_1$, $B_6$ and $B_{12}$) as medicament under sub-heading 3003.10 (liable to NIL rate of duty).
- The Department sought to classify the same under sub-heading 2936.00 (liable to duty of excise) as "pro-vitamins and vitamins" on the ground that specific entry should prevail over general entry.

- In the trade, FDC was being classified as medicament by several other manufacturs at the relevant point of time and even the Drug Controller General (India) (DCGI) had issued letter directing the assessee to claim product as 'medicament'

The department raised a demand invoking extended period of limitation alleging willful misdeclaration.

**Decision**

- When FDC was being classified as medicament by several other manufacturers and even DCGI had issued letter directing the assessee to claim the same as medicament, then, it could not be alleged that by classifying the FDC as medicament, assessee had willfully misdeclared the goods.
- Since the assessee's claim was in consonance with directions of DCGI, therefore, there was no willful misdeclaration on part of assessee.
- Accordingly, the extended period of limitation was not invocable and demand was not sustainable.

**11. Yamaha Motors India Pvt. Ltd. v. CCEx. [2008] Tribunal - Delhi**

**Free after-sales services provided by auto dealers – Reimbursement by Manufacturer to auto dealer, not includible in value.**

The transaction value includes any amount, which the buyer is liable to pay to the manufacturer, or, on his behalf, by reason of, or in connection with, sale. The additional consideration under Rule 6 is required to flow from the buyer to the manufacturer.

However, in case of free-services by the auto-dealers, either the price charged already includes cost of free services, or, the auto-delers are reimbursed for the free services by the manufacturers. In this case, the amount of reimbursement flows from the manufacturer to buyer / auto –dealer. Hence, such reimbursement cannot be regarded as sale consideration / additional consideration and the same cannot be added to the assessable value of the goods.

At present, reimbursement by a manufacturer to auto-dealer for free after-sales services is liable to service tax under 'Authorised Service Station' Service in the hands of auto-dealers.

**12. CCEx. v. Central Arecanut & Cocoa Marketing & Processing Co-Op Ltd. [2008] (SC)**

The assessee, a job-worker, used to manufacture 'Eclairs' brand chocolate, which was cleared in packs / jars containing about 100 pieces of 'Eclairs'. Chocolates were notified u/s 4A.
Assessee discharged duty on transaction value, while the Department demanded RSP-based duty u/s 4A.

Held that, as per SWM Rules, a package containing 10 or more than 10 retail packages is defined as 'wholesale package' and there is no need to declare retail sale price on a wholesale package. Further, the packs / jars containing Eclairs were not intended for retail sale to consumers.
Therefore, there was no need to declare RSP on the packs / jars containg 100 Eclairs. Accordingly, the packs / jars were assessable u/s 4 at transaction value; not u/s 4A on the basis of RSP.

**13. Maruti Suzuki Ltd. v. CCEx. [2009] (SC)**

**'Naptha' used for generation of electricity cleared for a price to grid / vendors or joint-ventures, shall not qualify as "input"**

**Facts**

- The assessee-manufacturer had installed gas turbines in its factory for generation of electricity. The assessee was using naptha as fuel for generation of electricity and was availing CENVAT credit in respect of excise duty paid thereon.
- The assessee used to clear a part of electricity generated in the factory to its joint ventures, vendors and sister units for a consideration. Further, all the electricity requirements of the assessee were met out of the electricity captively generated.

The Department denied CENVAT credit on the quantity of naptha used for generation of electricity sold to their Joint Venture and Vendors

**Decision**

- Since generation of electricity is a process integrally connected with manufacture of final products, hence, the 'goods' used in generation of such electricity used for manufacture of final products shall be regarded as 'used in relation to' manufacture of final products and shall qualify as "inputs".
- However, the 'goods' used for generation of electricity shall be eligible as "input" only if the use of electricity has some nexus with the manufacture of final products and the electricity, so generated, is used within the factory of production.
- Even if 'naphta' is regarded as "goods used as fuel", which is an independent category under inclusive part of the definition of input, then also, the same must have some nexus with the manufacture of final product. Therefore, the requirement of "used in or in relation to manufacture" has to be complied with even in respect of the inclusive part of the definition of 'input'.

In view of the above, to the extent the excess electricity generated by the assessee gets cleared to the grid for 'sale', or, to the joint-ventures / vendors for a consideration, the test of: "used in or in relation to manufacture….. within the factory of production" fails. Therefore, the 'naptha' used in generation of electricity cleared to grid / vendors or joint-ventures for a consideration shall not qualify as "input" and shall not be eligible for CENVAT Credit

**14. CCEx. v. Alidhara Textool Engineers Pvt. Ltd. [2009] (Tri-Ahmd)**

**Erection, Commissioning at buyer's premises – Eligible for input service credit**

- The assessee, a manufacturer of machines, got machines sold by it erected, commissioned and installed at buyer's premises under the terms of contract of sale of machines. The assessee availed of CENVAT credit of service tax paid on Erection, Commissioning and Installation Service.

The Department denied CENVAT credit on the ground that such service was post-removal / post-manufacturing service, not eligible for credit.

**Decision**

- Erection, Commissioning & Installation Charges: The erection and commissioning charges have been included in the transaction value of the machines sold. The contract of sale provided for erection, commissioning and installation and the manufacturer was liable to undertake the same. Since erection, commissioning and installation charges have been included in transaction value, therefore, the processes undertaken in the buyer's premises were incidental to manufacturing activity undertaken in the manufacturer's premises. Hence, such erection and commissioning service was used directly in relation to manufacture of machines.
- Place of provision of service – Not relevant: Rule-2(1) of Cenvat Rules does not require that "input service" has to be rendered at the factory of the manufacturer for being eligible. While the eligible for service tax credit on outward transport services is to be examined in connection with place of removal, there is no such requirement as regards other services. Therefore, what has to be examined is whether the service provided is in or in relation to manufacture. If it is so, it will be eligible for CENVAT credit even if the service was provided at the buyer's premises. The Department's contention regarding post-removal service is not tenable in law.

***15.* Rule 2(k) - Amendment in the definition of "inputs" *[Notification No. 16/2009 - CE (NT) dated 07.07.2009]***

Explanation 2 to rule 2(k) has been amended so as to exclude cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods from the definition of 'inputs'.

**Now, Explanation 2 to rule 2(k) reads as follows:-** Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods.

**16. <u>Rule 3(5B)</u>: Writing off of inputs and capital goods [Notification No. 16/2009, 7-7-2009]**

If the value of any,
- input, or
- capital goods before being put to use,

on which CENVAT credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then ***<u>the manufacturer or service provider</u>***, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:

Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable services, ***<u>the manufacturer or output service provider,</u>*** as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.”.

As a result of amendment, now a service provider shall also reverse the amounts of credit taken on inputs/ capital goods fully written off. Earlier it was restricted only to manufacturer.

**17. Goods Cleared by 100% EOU to DTA**

<u>Rule 3(7)</u>: Notwithstanding anything contained in sub-rule (1) and sub-rule (4), -
[Notification No. 22/2009 date, 7-09-09]

CENVAT credit in respect of inputs and capital goods cleared on or after the 7 – 09-2009 from an export-oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park shall be the aggregate of –

I. the excise duty paid, as is equivalent to –
- the additional duty leviable u/s. 3(1) of the Customs Tariff Act., which is equal to the duty of excise;
- the additional duty leviable u/s. 3(5) of the Customs Tariff Act; and

II. the Education Cess and the Secondary and Higher Education Cess paid thereon.

**18. CCEx. v. India Cements Ltd [2009] 238 ELT 193 (Tri. – Chennai)**

Dumpers and excavators used in mines for, or in connection with, mining of limestone, one of the raw materials required for manufacture of cement (final product), are eligible as capital goods. They can be regarded as “used within the factory of manufactuerer’ if the mines are captive mines, which are integrally connected with the cement factory of assessee. Accordingly, they are eligible for CENVAT Credit.

**19. Tata Advance Materials v. CCEx. [2009] (Tri. – Bang)**

**Capital goods destroyed by fire – Credit not deniable**

If the capital goods are destroyed by fire, the Department cannot seek reversal of CENVAT credit availed in respect thereof. The provisions of the CENVAT Rules seek reversal of credit only when capital goods are removed: as such, or, as such after being used, or, as waste or scrap. Since destruction by fire doesn't fall in any of the said cases, therefore, there can't be any liability of payment of any duty / CENVAT credit.

The fact that the assessee has claimed insurance compensation, which is inclusive of excise duty, is not at all relevant.

If there are any 'remains' of such capital goods, which are actually sold, then, duty shall be payable on transaction value, as the same will fall under capital goods cleared as 'waste or scrap' under Rule 3(5A).]

**20. Rule 6(3) / Rule 6(3A) of CENVAT Credit Rules**

**(A) Amount to be paid / reversed:** The amount payable / reversible shall be computed by opting for either of the following two options –

| Assessee | Option II |
|---|---|
| Manufacturer of goods | 5% of value of the exempted goods (w.e.f. 7-7-2009, earlier 10%) |
| Provider of output service | 6% of value exempted services (w.e.f. 7-7-2009, earlier it was: 8%) |

**21. Circular No. 904/24/09 CX dated 28.10.2009**

Circular has clarified that in view of the amendment made by the Finance Act, 2008 in the definition of excisable goods, bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty.

It is further clarified that in case the rate of duty in respect of such products is Nil in the tariff or they are exempt from duty in terms of any exemption notification, and if CENVAT credit has been taken on the inputs which are used for manufacture of dutiable and exempted goods, then in terms of rule 6 of CENVAT Credit Rules, 2004, the assessee is required to reverse the proportionate credit or pay 5% amount.

Excisability of bagasse and similar waste products arising during the course of manufacture has been under dispute for a long period of time.

Generally, the courts have been taking a view that the waste or refuse or residue arising during the course of manufacture cannot be treated as excisable goods even if such waste fetches some price in the market. However, all these matters pertain to the period prior to 2008.

In the budget of 2008, the definition of “excisable goods” in clause (d) of Section 2 of the Central Excise Act, 1944 was amended by adding an explanation that for the purposes of this clause, “goods” include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

**22. CCEx. v. Gujarat Narmada Fertilizers Co. Ltd [2009] (SC)**

**CENVAT credit cannot be allowed in respect of ‘goods used as fuel’ in manufacture of exempted goods.**

- The assessee was manufacturer of various products, out of which fertilizers were exempt from duty.
- The assessee used Low Sulphur Heavy Stock (LSHS) as ‘fuel’ for generation of electricity, which was used in manufacture of various final products (including the exempted fertilizers)

The Department denied CENVAT credit in respect of LSHS used in electricity used for manufacture of exempted fertilizers in terms of Rule 6(1) of the CENVAT Credit Rules, 2004

- Rule 6(1) states that the CENVAT credit of duty paid on inputs used in the manufacture of exempted goods is not allowable. This principle is in-built in the very structure of the CENVAT Scheme. Therefore, the credit will not be permissible on such quantity of fuel (LSHS), which is used in the manufacture of exempted goods (i.e. exempted fertilizers).

Accordingly, the Department action is correct in law.

**23. UOI v. Kataria Wires Ltd. [2009] (MP)**

**Copy of invoice certified by Superintendent – Eligible document for availing CENVAT**

Where the original and duplicate copies of the invoice, both, have been lost, then, credit can be claimed on certified copy of invoice issued by jurisdictional Superintendent of Central Excise, particularly when, there is no dispute about receipt of goods, duty paid character of such goods and use of such goods in the manufacture of final product. The claim of CENVAT credit cannot be defeated when certification by Superintendent is available.

**24. UOI v. Slovak India Trading Co. Pvt. Ltd. [2008] (SC)**

Refund of CENVAT when assessee moves out of CENVAT Scheme:

When the assessee moves out of CENVAT Scheme on account of stoppage of production due to closure of factory, then, he is entitled to unutilized balance of CENVAT credit lying in his account. Rule 5 of the CENVAT credit Rules, 2004 doesn't expressly prohibit such refund. Hence, such refund is to be made in cash u/s 11B.

**25. Ind-Swift Laboratories Ltd. v. UOI [2009]**

**CENVAT Credit taken but not utilized – No interest chargeable, as no loss to Revenue**

Interest liability arises only when duty is not levied or is not paid or there is delay in payment of duties. There is no liability to pay duty at the time of availamentof Cenvat credit; the liability to pay duty rises only at the time of utilization of Cenvat credit. Therefore, even if the CENVAT credit has been wrongly taken, no interest can be demanded, if the same remains unutilized.

Interest can be charged only on the amount of CENVAT credit wrongly availed "and" utilized and that too, only from the date when such credit was utilized.

**26. CCEx. v. Maruti Udyog Ltd. [2007] (SC)**

No interest if wrong availed credit not utilized: No interest is payable on Cenvat Credit, which was wrongly taken in Cenvat records but was not, in fact, utilized. In absence of utilization of wrongly availed Cenvat Credit, there can be no liability to pay interest thereupon, as the assessee had paid full duty otherwise payable.

**27. Circular No 897/17/2009 – CX, dated 3-9-2009**

**Liability of interest where CENVAT credit was wrongly taken but reversed by assessee before utilization.**

*Rule 14 of The CENVAT Credit Rules, 2004, provides for recovery* ***<u>of credit taken or utilized</u>*** *wrongly with interest.* In view of this conflict in legal provisions and the decision of Hon'ble Supreme Court, a clarification has been requested from the Board.

**Conclusion:** The Supreme Court order under reference is only a decision and not a judgement. Since, the Rule 14 of the CENVAT Credit Rules, 2004, is clear and unambiguous in the position that interest would be recoverable when CENVAT credit is taken **or** utilized wrongly, it is clarified that the interest shall be recoverable when credit has been wrongly taken, even if it has not been utilized, in terms of the wordings of the present Rule 14.

**28. Circular No. 894/14/2009-CX dated 20-8-2009**

Special procedure for removal of liquid gases-pass-out system

Pre-authentication in clearance documents by Centrral Excise Officer is required for removal of liquid gases. However, an assessee desirous of exemption from the pre-authentication by the Central Excise Officer may submit a written request to the jurisdictional AC/DC, who may grant the exemption for a period of one year at a time after satisfying that the internal control system followed by the assessee is reasonable and adequate to ensure determination of correct quantity of liquid gases sold to customer, subject to the condition that the permission is liable to be withdrawn in case of misuse of the facility by the assessee.

**29. Return of Records: (Rule 24A) w.e.f. 7-7-2009**

The books of accounts or other documents, seized by the Central Excise officer or produced by an assessee or any other person, which have not been relied on for the issue of notice under the Act or rules made thereunder, shall be returned within 30 days of the issue of said notice or within 30 days from the date of expiry of the period for issue of said notice.
However, the Commissioner of Central Excise may order for retention of such books of accounts or documents, for reasons to be recorded in writing and the CE officer shall intimate to the assessee or such person about such retention.

**30. Goods bearing brand name but eligible for exemption**

(e) Where the goods are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDFC woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels, plastic bags ***and printed laminated rolls*** (inserted w.e.f. 7-7-2009).

**31. Nirlex Spares Pvt. Ltd. v. CCEx. [2008] (SC)**

SSI exemption cannot be denied merely because the assessee has used a specific shape / design on the pack of its goods, which is same as the design / shape appearing on the visiting cards of executives of another company, since a mere design / shape used on visiting cards cannot amount to 'brand / trade name' of another company.

**32. Section 14A: Chartered Accountants can also be nominated for conducting the valuation audit (w.e.f 19.08.2009)**

**33. Section 14AA: Chartered Accountants can also be nominated for conducting the CENVAT audit (w.e.f 19.08.2009)**

**34. Circular No.889/09/2009-CX 21st May, 2009.**

Subject: Imposition of mandatory penalty equal to duty under Section 11AC even though duty is paid before the issue of Show Cause Notice.

The circular provides that the judgements of Hon'ble Supreme Court in the case of U.O.I Vs. Rajasthan Spinning & Weaving Mills and CCE Vs. Lanco Industries Ltd. have clarified that when the conditions spelled out under section 11AC of the Central Excise Act, 1944 are fulfilled, there is no discretion to reduce the mandatory penalty equal to duty even though the duty is paid before the issue of show cause notice.

## Customs Act

**1. Additional duty of customs - Second proviso inserted to section 3(2):**

Section 3 of the Customs Tariff Act, 1975 levies on any article which is imported into India, an additional duty of customs, equal to the excise duty for the time being leviable on a like article if produced or manufactured in India.

**Finance (No.2) Act, 2009 has inserted second proviso to section 3(2) after first proviso. It reads as under:-** In the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value. ***(Effective from 19.08.2009)***

**2. Section 9A amended - Anti-Dumping Duty**

**(i) Sub section (1) amended**

Sub-section (1) provides that where ***any article is exported*** from any country or territory to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Finance (No.2) Act, 2009 has substituted the words "***any article is exported by an exporter or producer***" for the words "any article is exported" in sub-section (1). ***(Effective from 19.08.2009)***

**(ii) Sub-section (6A) inserted after sub-section (6)**

The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer.

However, where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available. ***(Effective from 19.08.2009)***

3. ***Aban Lloyd Chiles Offshore v. UOI***

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

## Service Tax

1. **Amendment in the "Taxation of Service (Provided from Outside India and Received in India) Rules, 2006**

Notification No. 21/2009-ST dated 07.07.2009 has brought the services provided to or from installations, structures and vessels in the entire Continental Shelf of India and Exclusive Economic Zone of India within the ambit of service tax.

Definition of "India" prior to amendment: Rule 2(e) defined India as follows:

India includes the designated areas in the Continental Shelf and Exclusive Economic Zone of India as declared by the notifications of the Government of India.

Definition as amended: New rule 2(e) which defines "India" as follows:

India includes the installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone of India.

2. **CCE Vs. C.S. Software Enterprises (2008)**

   The assessee prepared voter identity cards under the order of District Collectors. Held that, it is a sovereign activity which not liable to service tax.

3. **Business auxiliary service**

(i) Prior to amendment, the service/process that amounts to **manufacture as defined under section 2(f) of the Central Excise Act, 1944** was excluded under the category of 'business auxiliary services'.

**Amendment made by Finance (No.2) Act, 2009**
The definition of business auxiliary service under section 65(19) of the Finance Act, 1994 has been amended to exclude any activity that amounts to **manufacture of excisable goods**. Therefore, manufacture of non-excisable goods for or on behalf of the client shall attract service tax. Besides, clause (b) and (c) have been inserted in the Explanation to section 65(19) so as to define the terms – 'manufacture' and 'excisable goods'.

Now, the **clause (vii) of section 65(19) of the Finance Act, 1994** reads as follows:-
"Business auxiliary service" means any service in relation to a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, ***but does not include any activity that amounts to manufacture of excisable goods***.

**(ii) Services provided by sub-brokers to stock brokers in relation to sale or purchase of securities on a recognized stock exchange is exempt from Service Tax. (w.e.f 1-9-2009)**

4. **Banking and Financial Services**

The taxable services provided to a scheduled bank by any other scheduled bank in relation to inter-bank transactions of purchase and sale of foreign currency is exempt.

5. **Stock broker services:**

**Before amendment:** The definition of a stock broker included the sub-broker as well.

**After Amendment:** The definition of stock-broker (in stock-broker service) under section 65(101) has been amended to exclude sub-broker from its ambit. Consequently, sub-brokers would be outside the purview of service tax.

6. **Transport of goods in containers by rail services**

**Before amendment;** Any service provided or to be provided to any person, by any other person, other than Government railway, in relation to transport of goods in containers by rail is taxable under section 65(105)(zzzp).

**After Amendment:** Finance (No.2) Act, 2009 has imposed service tax on goods transported by railways **including Government railways, whether in containers or otherwise**.

**Exemption (w.e.f. 1-9-2009):** The taxable service provided to any person in relation to transport of goods by rail, by government railway, is fully exempt from Service Tax.

7. **Notification No. 32/07 ST dated 22-05-2007 Notified works Contract (Composition Schemes for Payment of Service tax) Rules, 2007 w.e.f 01-06-2007.**

Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to 4% of the gross amount charged for the works contract.

"Explanation.-For the purposes of this sub-rule, gross amount charged for the works contract shall be the sum,-

(a) including-
(i) the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and
(ii) the value of all the services that are required to be provided for the execution of the works contract;

(b) excluding-
(i) the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and
**(ii) the cost of machinery and tools used in the execution of the said works contract except for the charges for obtaining them on hire:**

Provided that nothing contained in this Explanation shall apply to a works contract, where the execution under the said contract has commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before the 7th day of July, 2009.";

**[Substituted the earlier Explanation Vide Notification No. No.23/2009 – ST Dated, the 7th July, 2009]**

The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

The option shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.

8. **ITW India Limited v. CCE (2009)**

For being classified as Cargo handling service, transportation of goods is a must. While mere transportation of goods is not covered, but, packing/unpacking along with transportation is covered.