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

INDIRECT TAXES – AMENDMENTS APPLICABLE FOR NOV 2010 EXAMS

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Amendments applicable for Nov 2010

1. Central Excise Law extends to "designated areas" in Continental Shelf and Exclusive Economic Zone of India: The levy extends to the whole of India. India includes the territorial waters of India. Further, the Central Government has extended the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985 to the notified "designated areas" in the Continental Shelf and Exclusive Economic Zone of India.

Accordingly, any goods produced or manufactured within –

(a) the territorial waters of India, and'
(b) the 'designated areas' of the Continental Shelf or Exclusive Economic Zone,

which are treated as part of 'India', shall be leviable to excise duty.

2. CCEx v. Sony Music Entertainment (I) Pvt. Ltd. [2010]

Facts: Sony India imported recorded audio and video discs packed in boxes of 50. After receipt of the material in its factory, it packed each individual disc in transparent plastic cases known as jewel boxes; an inlay card containing the details of the content of the compact disc was also placed. It was then wrapped and sold.

The Department alleged that the processes undertaken by the assessee in regard to the compact discs were not marketable without being packed in the jewel box with inlay card, as they would otherwise be subject to damage.

Note 6 to Section XVI of the Tariff: Conversion of an article which is incomplete or unfinished but having the essential character of a finished article into a complete finished article shall amount to manufacture.

Decision: The assessee received compact discs containing data reproducible as music or visual images or both. What the assessee sold was nothing other than such discs, except that they were packed in a box and contained details of the contents of each disc. In view of section 2(f) of the Central Excise Act, 1944, the process of packing of goods and endorsing the literature with regard to them didn't amount to manufacture, as the goods imported were complete product and no new and different product emerged as a result of packing activity carried out by the assessee.

Note 6 to Section XVI also didn't apply to the case on hand. The compact discs were complete and finished when imported.

Hence, the said activity of packing didn't amount to manufacture in absence of a specific Section/Chapter Note deeming such packing activity as manufacture.

3. Bata India Ltd v. CCEx. (2010)

- The assessee, a manufacture of footwear, used to purchase various raw material like fabrics, rubber, chemicals, chemicals, solvent, etc., which were mixed together. The thin layer of such mixture was sandwiched between two sheets of textile fabric through a calendaring machine. The resultant product "Double Textured Rubberized Fabric" (DTRF) was cut and stitched as per requirements and was used as shoe-uppers. At times, DTRF was sent to job workers for stitching purposes.
- After completing the entire process, the vulcanization of footwear was done and, then, it would be available for sale as footwear. Some of the DTRF was used in the manufacture of canvas shoes, which were exempt from excise duty.
- The Department contended that the intermediate product "Double Textured Rubberized Fabric" (DTRF), which is further used as upper material in the manufacture of footwear, was a distinct product with specific properties and character other than the original fabric used. Further, since DTRF was used in considerable quantities for making rain-coats, hand bags, etc. in the outside market, hence, it was commercially known product. Since the DTRF was 'excisable goods' and it was used in the manufacture of exempted final product being canvas shoes, therefore, it was liable to excise duty.
- Since the Department had failed to produce evidence to show that the DTRF manufactured by the assessee was 'marketable'; hence, it was not liable to excise duty.

Decision

- **Marketability:** Marketability is an essential ingredient of a product being liable to excise duty and the burden to prove that an article is marketable in the condition in which the Department wants to levy excise duty lies on the Department itself. Marketability doesn't mean hypothetical possibility of purchases and sale of commodity; there must be sufficient proof that the product is commercially known product.

- **Conclusion:** In this case, the Department didn't have sufficient evidence to prove marketability. A mere test report from a chemical examiner would not prove commercial identity. On the contrary, the evidences furnished by the assessee viz. statements of footwear consultants, a professor of IIT, assessee's production manager, and Footwear Design & Development Institute, etc. would show that the product in question (i.e. DTRF) was not a commercially known product and, hence, it was not marketable. Therefore, the same was not liable to excise duty.

4. CCEx. V. Solid & Correct Engineering Works [2010]

Affixation of Asphalt Drum/hot-mix plants by nuts and bolts on foundations on earth to ensure vibration/wobble-free operation of the plants doesn't result in immovable property.

Facts

- The assessee and its three sister units were engaged in the manufacture of parts and components for road and civil construction machinery and equipments like asphalt drum/hot-mix plants and as halt paver machine, etc. the assessee and such sister units availed of the SSI-exemption.

- A marketing company Solidmec Equipments Ltd. (Solidmec) used to procure various components manufactured by the assessee and other sister units and, then, manufacture Asphalt Drum/hot-mix plants out of such components at the sites of the purchasers of such plants. Thus, Solidmec was engaged in supplying, erection, commissioning and after-sales services.

- The Department contended that the process of assembly of various parts/components at site done by marketing company Solidmec amounted to manufacture and the result products viz. Asphalt Drum/hot-mix plants were liable to central excise duty. The SSI-exemption of the assessee was also sought to be denied on the ground that its products bore a sticker of brand-name of Solidmec.

- While the process carried by it (Solidmec amounted to manufacture, however, since the resultant product viz. Asphalt Drum/hot-mix plants were required to be embedded 1.5 feet deep into the earth to make it stable and functionable , hence, it was immovable property and, therefore, the same was not liable to excise duty.

- **Assessee's contention:** Its parts bore its own brand name in larger size, while the sticker of brand-name of marketing company was of a small size. Hence, SSI-exemption couldn't be denied.

Decision

- Solidmec liable to duty as resultant product is movable: The plants were not, by themselves, immovable property. Hence, the plants could not be regarded as "attached to earth", as the same were not necessary for beneficial enjoyment of the earth itself; the fixing of the plants to foundation was meant only to give stability to the plant itself was not intended to be permanent at a given place; the plant could be moved and was actually moved after the road construction/repair project was over.

  Therefore, mere fixation of a plant to the earth by nuts and bolts for ensuring wobble free operation of the plant would not render it immovable property.

  Hence, the Asphalt Drum/hot-mix plants manufactured at site by Solidmec were manufactured and movable property, hence, liable to duty.

- **SSI-exemption issue remanded:** The Tribunal had held that the assessee was eligible for SSI-exemption having regard to the fact that the size of the sticker giving the brand name of the assessee was bigger than that of the marketing company Solidmec. The issue whether the affixation of brand name of Solidmec constituted affixation of brand name' for SSI- exemption was remanded back to the Tribunal for consideration a fresh.

5. Virgo Industries (Engineers Pvt. Ltd. v. CCEx. (2009)

Facts: The assessee was engaged in manufacturing and supplying signages (illuminated signs) under a contract with M/s. IOCL and erecting them at the retail outlets of IOC located at various places. The department demanded central excise duty thereon, while the assessee denied its liability contending that the same was an immovable property', hence, not excisable.

The assessee contended that it had fabricated only the sign poles of iron and steel required for the signages. Other items such as fibre glass plastic sheets, vinyl sheets cut into signs, electrical panels, etc. had been got manufactured from third parties. The signages had been erected at the various IOC bunks. Signage came into existence only at site and the same was immovable on erection as it was fixed to earth on concrete foundation.

Decision

Signages are capable of being assembled at the premises of the assessee and then transferred to the site of its erection after dismantling it. Complete singage is movable and is installed by fixing it on a concrete foundation. These can be detached and shifted to another location without damaging them. The signage is fixed to earth and is complete before fixing on the concrete platform. The signages do not emerge as an immovable property on assembly or erection. Hence, they are liable to duty.

6. Pleasantime Products v. CCEx. [2009]

Scrabble is a 'game'. It is not a puzzle, as it involves an element of chance and skill and solution is not fixed in a scrabble, as in the case of a puzzle. It is not a 'toy', as toy is for amusement/playing and doesn't involve any skill.

Facts

- Assessee, a proprietary firm was engaged in manufacture of toys, games & puzzles of various kinds. The assessee manufactured "Scrabble", which was classified by it as a "puzzle" or in the alternative an "educational toy" under sub-heading 9503.00 of Tariff (liable of NIL rate of duty).

- **Department's contention:** "Scrabble" was neither a puzzle, nor a toy; it was a "game, having boards & pieces" and, thus, it was classifiable under sub- heading 9504.90 (liable to duty @ 16%).

- The assessee contended that –
  (i) Even if "Scrabble" is a table game still it is covered by "puzzles of all kinds" in heading 9503.00
  (ii) As per definitions under various dictionaries, internet search on the subject etc., "Scrabble" was an educational toy. As per some dictionaries, "Scrabble" was a puzzle.

  In addition, assessee produced statements of purchasers of "Scrabble" who stated that "Scrabble" was an educational toy used for imparting education to children and is treated as a puzzle by adults.

As per CETA

- Heading 9503.00: Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds – NIL

- Heading 95.04: Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment –
  9504.10: Playing cards – NIL;
  9504.90: Other – 16%.

- Whether scrabble was a 'game' as contended by Revenue (Heading: 9504.90), or, a 'toy'/ 'puzzle' as contended by the assessee (Heading: 9503.00)?

Decision

- Scrabble is a game, not a puzzle – Game v. Puzzle: The difference between a "game" and a "puzzle" is brought out by three distinct features, viz., outcome, clue, chance and skill
  (i) Outcome: In a puzzle outcome is pre- determined and fixed. For example, in crossword puzzle, there is a grid of squares and blanks into which words crossing vertically or horizontally are written according to clues and the outcome is pre-determined/fixed i.e. there is only one solution. This is not so in the case of a 'scrabble'.
  (ii) Clues: In "Scrabble" there are no clues; while in crossword, words are written as per clues.
  (iii) Chance & skill: In "Scrabble" there is an element of chance and skill, which is not present in a puzzle.

  Common Parlance Test – Scrabble is a board game: Applying test of "common parlance" or trade meaning and commercial nomenclatures, "Scrabble" is a board game. In Department store in Mumbai like Oxford or Crossword, "Scrabble" is put in the board game section and not in the section for puzzles. Therefore, even by common parlance test "Scrabble" is a game; not a puzzle.

  Scrabble is not a 'toy'/'educational toy': A "toy" is an object for a child to play with, typically a model or miniature, replica of something. The two main elements of “Scrabble” are – chance and skill. These elements are absent in a toy. Hence even a “Junior Scrabble” is not an educational toy: It is a game

Hence, scrabble was a ‘game’ classifiable under Heading 9504.90 liable to 16% duty.

7. CCEx. v. Funskool (India) Ltd. [2009

Snake & Ladder and Monopoly are ‘games’, not ‘toy’. In classification of an item as a ‘game’, ‘puzzle’ or ‘toy’, the age of the player is not a relevant test. Hence, snake & ladder and monopoly were held classifiable under Heading 95.04.

8. CCEx. v. PepsiCo India Holding (P) Ltd.

Even if the sale price of related person is taken for the purposes of assessment, the trade discount actually allowed by the related person shall be deductible in computing the assessable value.

Amounts charged for lease charges cannot be included in the assessable value of the excisable goods.

Facts

- The assessee manufactured a ‘syrup’ containing soft-drink concentrate and sugar and sold the same to their marketing subsidiary M/s. Pepsi Cola India Marketing Company. A part of the syrup was sold by the assessee to others also. The marketing company would sell the same to retailers.

- The marketing company used to lease out dispensing machines to retailers. The dispensing machine was used for dilution and carbonation of the syrup for sale of soft-drink to consumers.

- The assessee paid central excise duty on its transaction value i.e. sale price to marketing subsidiary.

- Department held that since the marketing subsidiary were related person, therefore, the assessable value shall be the sale price of the marketing subsidiary, that too without deducting discounts allowed by marketing subsidiary to its buyers. Further, the lease rental paid by the retailers to the marketing subsidiary towards dispensing machine was also held includible in assessable value.

  Decision

  - When trade discount has been indicated in the invoices at the time of sale and there is no flow back/return of trade discount to the assessee-seller or its related person, the assessable value 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 couldn't be denied.

- Sale of syrup and leasing and leasing of dispensing machine are separate activities with separate considerations. Even the definition of 'transaction value' doesn't permit the inclusion of consideration for different activity in the assessable value of excisable goods.

  Therefore, the lease charges cannot be included in the assessable value of the syrup.

9. Circular No. 915/5/2010 Dt. 19-2-2010

Samples of goods notified u/s 4A: The value of goods given away by way of free samples, or gifts/donations, etc. shall be the value computed as per Rule 4 of Central Excise Valuation Rules, 2000. Hence, in case of samples/gifts/donations of goods notified u/s 4A of the Act, the value under Rule 4 for payment of excise duty shall be the value determined under Section 4A for the similar goods (subject to adjustments for size & pack etc.).

9A. Chewing tobacco, Jarda, scented tobacco and branded unmanufactured tobacco notified under section 3A.

Following mentioned goods manufactured with the aid of packing machine and packed in pouches have been notified for the purpose of section 3A:

- Unmanufactured tobacco bearing a brand name (tariff item heading 2401)
- Chewing tobacco (tariff item 2403 99 10)
- Jarda Scented Tobacco (tariff item 2403 99 30)

10. CCEX. V. Bhuwalka Steel Industries Ltd. [2010] (Tri. – LB)

Credit not deniable on inputs lost during transit, if loss within normal limits

Rule 3(1) of the CENVAT Credit Rules, 2004 allows CENVAT credit of duty paid on any input "received" in the factory of manufacture. Thus, in case the weight/quantity of inputs as recorded in the purchase invoice differs from the weight/quantity of inputs as received in the factory, then the CENVAT credit shall be allowed only in respect of quantity of 'input' actually received in the factory.

However, it cannot be denied that on account of volatile nature of certain goods, or, on account of difference in weighing scales, or other similar reasons, there may be difference in quantity invoiced and received. Such, or other similar reasons, there may be difference in quantity invoiced and received. Such difference is termed as ‘transit loss’ and if such loss falls within the tolerance/normal limits or industry norms, CENVAT credit will be allowed on whole of the quantity of input as stated in the invoice and no disallowance of credit shall be made in respect of inputs lost in transit.

11. Coca Cola India Pvt. Ltd. v. CCEx. [2009]

Service tax paid on advertisement service is eligible as CENVAT credit even if the advertisement was of the cold drinks manufactured out of concentrates manufactured and supplied by the assesssee.

Facts

- The assessee was manufacturer of non-alcoholic beverage bases (also known as concetrates). The concentrates were sold under brand name ‘Coca Cola’, ‘Fanta’, etc.
- The concentrate was, in turn, sold to bottling companies, who used to manufacture aerated beverages from such concentrates and sell the same to distributors.
- The assessee used to undertake advertisement and sales-promotion activities including market research. The advertisement showed brand-name, trade-drink and products.
- The asseessee availed CENVAT credit of service tax paid on “advertisement and sales-promotion” activities including market research”, contending the same to be eligible as “input service”.
- The Department denied CENVAT credit on the ground that advertisement didn’t relate to concentrates manufactured by the assessee, but related to brand-name, trade-mark and bottles.

Decision

Though the advertisement was directly of aerated water (cold drinks), but, since such advertisement promoted marketability of concentrate manufactured by the assessee, therefore, the assessee used to pay excise duty on full sale price (inclusive of advertisement cost), it proved that the advertisement was related to concentrates also.

Scope of input service: The definition of input service uses the expression “activities relating to business”, where the word ‘business’ will not only cover manufacturing but also those aspects that relate to functioning of business; and the word ‘activities’ cover all activities whether main/essential or not.

Conclusion: Service tax had been paid by the assessee on advertisement service, not on what were the contents of the advertisement. Even the contents of the advertisement had relation with the product viz. concentrate manufactured by the assessee.

Hence, input service credit was available.

12. Removal of Capital Goods after Use

The manufacture or output service provider shall pay an 'amount' equal to:

Amount of Cenvat credit taken
Less: The following percentage points calculated by straight line method for each quarter of a year or part thereof from the date of taking the Cenvat credit **–**

(i) for computers & computer peripherals:

For each quarter in the 1st year: @ 10%;
For each quarter in the 2nd year: @ 8%;
For each quarter in the 3rd year: @ 5%; and
For each quarter in the 4th & 5th year: @ 1%.

(ii) for capital goods, other than computers and computer peripherals: @ 2.5% for each quarter [w.e.f. 27-2-2010]

13. Bansal Alloys & Metals Ltd. v. CCEx. [2010] (Tri -Del)

Facts: The assessee procured inputs and availed credit of service tax paid on inward transportation of such inputs, which is eligible as "input service". Subsequently, the assessee removed those inputs 'as such' and paid an amount equal to CENVAT credit availed on inputs removed as such as per Rule 3(5). The Department contended that since transportation service pertained to whole of the inputs (including inputs removed as such), hence, the credit of service tax pertaining to such transportation service was reversible to the extent it related to 'input removed as such'.

Decision: Rule 3(1) allows credit of the duty paid on any input or capital goods and any input service. Rule 3(5) provides that the manufacturer shall pay an amount equal to the credit availed in respect of inputs or capital goods removed as such.

Hence, rule 3(5) does not require payment of equal amount in respect of credit of input service. There is no provision for payment of credit on input service. So, reversal of Credit on input service in respect of Goods Transportation Agency service was not required. Accordingly, the view of the Department was not tenable in law.

14. Full Credit on Capital Goods in the year of receipt in few cases:

(a) Capital goods removed as such: In case the capital goods are cleared as such in the year of acquisition, entire 100% of the duty credit will be allowed in that year.

(b) Units eligible for SSI- exemption: Where an assessee is eligible to avail of the exemption under a notification based on value of clearance in a financial year (i.e. where an assessee is eligible for SSI-exemption), the CENVAT credit in respect of capital goods received by such assessee shall be allowed for 100% of the duty paid on such capital goods in the same financial year.

Eligibility: An assessee shall be "eligible" if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification (Not. No. 8/2003-CE) did not exceed Rs. 400 lakhs. [w.e.f. 1-4-2010]

15. Removal of jigs, moulds, dies, fixtures and dies to vendors permitted without reversal of CENVAT credit

Prior to amendment The CENVAT credit, in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to a job worker for the production of goods on his behalf according to his specifications is allowed [Rule 4(5) (b)].

Amendment made by the *Notification No. 6/2010-CE dated 27.02.2010*
Rule 4(5)(b) has been substituted with the new clause which provides as follows: CENVAT credit is allowed, in respect of jigs, fixtures, moulds and dies sent by manufacturer of final products to:
(a) another manufacturer for the production of goods, or
(b) a job worker for the production of goods on his behalf
according to his specifications.

16. Rule 6(6) of Cenvat Credit Rules

(e) All goods which are exempt from the duties of customs (including additional duty of customs u/s 3(1) of Customs Tariff Act) when imported into India and are supplied, -

(i) Against International Competitive Bidding; or

(ii) To a power project from which power supply has been tied up through tariff based
Competitive bidding; or

(iii) To power project awarded to a developer through tariff based competitive bidding. [Amended w.e.f. 27-2-2010]

17. Confiscation and Penalty for wrong availment of CENVAT
Rule 15(1), as amended w.e.f. 27-2-2010, provides that if any person, takes or utilizes CENVAT credit in respect of input or capital goods or input services, -

(1) Wrongly, or

(2) In contravention of any of the provisions of these rules, then, -

(a) All such goods shall be liable to confiscation; and

(b) Such person, shall be liable to a penalty not exceeding –

(i) The duty or service tax on such goods or services, or
(ii) Rs. 2,000, whichever is greater.

In case of fraud, misstatement etc. [Rule 15(2) & 15(3)]: In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of –

(1) Fraud, collusion or any willful mis-statement or suppression of facts, or

(2) Contravention of any of the provisions of the Central Excise Act, 1944 (or Finance Act, 1944), or of the rules made there under,
With intent to evade payment of duty, then –
(a) the manufacture shall also be liable to pay penalty as per Section 11AC of the Excise Act;
(b) the provider of output service shall also be liable to pay penalty in terms of the provisions Section 78 of the Finance Act, 1994.

18. Treatment of CENVAT credit taken on inputs used in WIP/finished goods written off in the books of accounts

Rule 3(5B) of the CENVAT Credit Rules, 2004 provides for the payment of the CENVAT credit taken on the inputs written off in the books of accounts.

Circular No. 907/27/2009-CX dated 07.12.2009 has clarified about the treatment of the CENVAT credit taken on the inputs, which have gone into manufacture of work in progress (WIP), semi finished goods and finished goods, and have also been written off fully in the books of accounts.

In case, finished goods are written off in the books of accounts and: -

Sl. No	**Excise duty on the finished goods under rule 21 of the Central Excise Rules, 2002 has**	**Treatment**
1	Not been remitted	the manufacturer would be liable to pay excise duty. Thus, he need not reverse the CENVAT credit taken on inputs.
2	been remitted	the manufacturer would be required to either: - reverse the credit on the inputs used, - or pay the excise duty.

In case, work in progress (WIP) is written off in the books of accounts and: -

Sl. No	**Stage of Completion of WIP**	**Treatment**

1	Fully Manufactured	Same treatment as applicable to finished goods in point (i) mentioned above
2	Not fully Manufactured	the said goods should be considered as inputs and the treatment for reversal of credit applicable to inputs would be applicable.

19. Items used in ceramic tiles industry - whether capital goods or inputs

Sl. No	Issue	Clarification
1	Whether items, namely, **alumina balls/ ceramic pebbles** which are grinding media used in ball mills in the ceramic tile industry should be treated as capital goods or inputs for CENVAT credit purposes?	It is clarified that alumina balls/ ceramic pebbles should be considered as component/ part of the machines and should be classified as capital goods for CENVAT credit purposes.
2	Whether items, namely, **bolting cloth/ screens/ silicon cylinders** which carry designs and which are fitted on the machines used for printing of design over the surface of the tiles, should be considered as capital goods or inputs for CENVAT credit purposes?	It is clarified that these items are essential for operating of the machines. Therefore, being part/ component of the machines, they would be considered as capital goods for the CENVAT credit purposes.

20. Payment of Duty

(1) In case of an assessee eligible to avail of the exemption under a notification based on the value of clearances in a financial year (i.e. SSI), duty is to be **payable quarterly**
(a) If duty is paid electronically through internet banking: 6th day of month following that quarter;
(b) In any other case: 5th day of the month following that quarter.

21. Mandatory e-payment of duty [Amended w.e.f. 1-4-2010]:

Assessee, who has paid total duty of Rs.10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, shall deposit the duty electronically through internet banking.

22. ER-3 for SSI Units

ER-3	Quarterly Return for Clearance of Goods and Cenvat Credit to be filed by SSI units claiming clearance based exemption (in duplicate)	Within ***ten*** days after close of quarter to which it relates

Eligibility: Above relaxation is available to a unit who is "eligible" to claim SSI exemption regardless of whether he actually claims it or opts to pay duty.

Further, the said relaxation is available to an "eligible" unit for the entire financial year even if it crosses the limit of Rs. 400 lakh (aggregate value of clearances) in the current financial year.

An "eligible" unit is one whose aggregate value of clearances did not exceed Rs. 400 lakh in the preceding financial year.

23. Mandatory e-filing if gross duty of Rs.10 lakh or more paid last year [W.e.f. 1-4-2010]:

Where an assessee has paid total duty of Rs. 10 lakhs or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file monthly/quarterly return, electronically.

24. Exemption from filing ER-7

The manufactures of the followings goods have been exempted from the submission of the Annual Installed Capacity Statement (ER7) –

(i) Biris, manufactured without the aid of machines;
(ii) Matches manufactured without the aid of power; and
(iii) Reinforced cement concrete pipes.

25. Responsibility of ensuring that goods received at concessional rate of duty for manufacture of excisable goods being used by the manufacturer for the intended purpose cast on the Jurisdictional Assistant/ Deputy Commissioner

26. Relaxation from brand name restriction under the SSI exemption scheme extended to plastic containers and plastic bottles used as packing materials

The aforesaid exemption would be available to the plastic containers and plastic bottles also, provided that such plastic containers or plastic bottles are meant for use as packing materials by the person whose brand name such goods bear.

27. CCEx. v. International Auto Ltd. [2010] (SC)

Change in price of goods after removal – Duty leviable on transaction value and interest under section 11AB payable on differential duty.

Facts

- The assessee supplied auto parts to its customers.
- The price of the auto parts was determined by such customers having regard to the case of material, manufacturing cost, profit margin, etc.
- Some price difference arose between the price on the date of removal and the enhanced price at which the goods were ultimate sold to the customers.
- The assessee paid differential duty pertaining to the price-rise.
- The Department demanded interest u/s 11AB of the Act on the amount of such differential duty.
- The assessee contended that in view of Judgment in MRF's case the assessable value of the goods is to be determined at the time of removal of goods. Since there was no price – variation clause in the purchase orders, thereof, there was no scope for change in prices at the time of removal of goods accordingly, this was not a case of short-levy/non-levy or short-payment/non-payment of duty and, hence, no demand could be made for differential duty and interest u/s 11AB and 11AB.

Reference to judgment in MRF Ltd v. CCEx. (SC): Duty is chargeable at the rate and on the price prevailing on the date of actual removal of goods from the factory gate and subsequent reduction in the price even at the behest of the Government does not create a right in favour of the assessee for refund of duty on the reduction in price.

- The assessee was able to demand from its customers the balance of the higher prices by virtue of revision of the prices. Therefore, it followed that, at the time of sale/removal, the goods carried a higher value; the value adopted at the time of removal was incorrect/under-stated and the goods were cleared on short payment of duty or short-levy of duty. Hence, such price-rise was liable to duty. The differential duty arises on account of corrected value of the goods on the date of removal.

- All short-payment of duty – Liable to interest: All cases of non-levy or short-levy, etc. are classified under two categories u/s 11A: one involving fraud, etc; and others not involving any fraud. In both the cases, the assessee are given opportunity to make amends;

  (1) Cases, which do not involve any fraud, collusion, etc, i.e. where short-payment is unintentional or due to oversight: Section 11A(2B) provides for non-issuance of SCN if differential duty, as ascertained by assessee, is paid in full along with interest u/s 11AB.

  (2) Cases, which involve fraud, collusion, etc., where short-payment is intentional: Section 11A(1A) provides for conclusion of proceedings if payment of differential

duty, as stated in the SCN, is made along with interest and penalty equal to 25% of such differential duty.

While penalty u/s 11AC is attracted only in case of fraud, collusion, etc., interest u/s 11AB is attracted on delayed/deferred payment of duty for whatever reasons (intentional or unintentional).

- Interest payable in the present case: The differential duty was paid only later when the assessee issued supplement invoices to its customers demanding the balance amounts. Thus, it was clearly a case of short payment of duty, though complete unintended and without any element of fraud etc. Accordingly, the same fell u/s 11A(2B) and was liable to interest u/s 11AB.

- Judgment in CCEx.v. SKF India Ltd. [2009] (SC) followed: The Supreme Court followed its own recent judgment in SKF India's case, which upheld levy of interest on differential duty arising on retrospective revision of prices.

28. CCEx. v. Manjunath Food & Packaging P.Ltd. [2009] (Kar.)

When the prices before and after demand of duty remains the same on account of buyer denying to bear the burden of any additional duty, the principle of unjust enrichment cannot apply to deny the refund.

Facts

- The assessee, a manufacturer of packaged drinking water, was availing of SSI-exemption and was clearing its goods to its buyer at a price of Rs. 43 per case of 12 bottles of 500 ml.
- Proceedings were initiated against the assessee for denying SSI-exemption; hence, the assessee started paying duty under protest.
- When the assesse sought to claim increase in price from its buyer to bear the burden of duty, the buyer, by way of a letter, made it clear that:
  "We wish to inform you that we cannot absorb any additional duties and levies etc. on the agreed prices. In view of this, you have to us at the same prices which were charged/billed earlier."
  Therefore, the assessee continued to clear its product at earlier rate of Rs.43 per case of 12 bottles.
- The assessee informed the Department that they are not passing the burden of duty paid under protest to their buyer and they will be claiming the refund in due course, if the proceedings against them were dropped subsequently.
- Later on, the adjudicating authority dropped the proceedings initiated against the assessee. Accordingly, the assessee filed a claim for refund of duty paid under protest, which was rejected on the ground of unjust enrichment.

Decision

- Even through the assessee had to pay the duty under protest, the buyer had made it clear that they would not absorb any additional duties and levies. The price was kept at the same level as earlier. Hence, the burden of duty was not, and could not have been, passed onto the buyer. The burden of duties paid under protest was born by the asseessee itself.

- Therefore, there is no bar of unjust enrichment at all. Hence, the Department couldn't deny refund.

29. Kushal Fertilizers Pvt. Ltd. v. CCEx. [2009] (SC)

The extended period of limitation cannot be invoked from the) date when all material facts are brought to notice of Department.

Facts

- The assessee, a manufacture of MS Conduit pipes, availed of the exemption available in respect of the said goods under the relevant exemption notification.
- The assessee, initially, didn't inform the Department about its manufacturing activities and availment of exemption, but, when an inspection was carried out of its premises, it gave all the relevant details. By way of a letter dated 22-1-1991, the assessee informed the Department about its manufacturing activities and the fact regarding availment of exemption notification by it.
- The department denied exemption to the assessee and raised a demand against it invoking extended period of limitation.
- The tribunal, on facts, decided that there was no willful suppression of facts after 22-1-1991, on which date all material facts were disclosed by letter and, therefore, extended period of limitation was not invocable against the assessee after that date.
- The High Court reversed the order of Appellate Tribunal and held in favour of the Department.

- The question here is whether the demand raised by the department is sustainable in law?

Decision

- A 'substantial question of law' would mean something which is not merely 'technical', of no substance or consequence, or academic'. Whether non furnishing of information amounts to 'willful suppression of material fact' so as allow invocation of extended period of limitation is not a 'substantial question of law'. The finding of fact arrived at by the Tribunal is final and it would be binding on the High Court while exercising its appellate jurisdiction.
- By letter dated 22-1-91, the department had acquired knowledge that the appellants are manufacturing tubes and pipes and are availing the benefit of

exemption. Nothing prevented the department from conducting investigation or seeking further information from the assessee.

- Further, the officer of the Central Excise Department made inspection of the factory and the books maintained by the assessee, including the production register, which must have disclosed the nature of the products from the factory.
- Therefore, the finding of fact arrived at by the Tribunal that there was no willful suppression of facts by the assessee was correct. That being so, the extended period of limitation was not invocable against the assessee and, thus, the demand was barred by limitation.

CUSTOMS ACT

1. Essar Steel Ltd. v. UOI [2010] (Gujarat)

No export duty leviable on goods cleared from DTA to SEZ: In case of goods cleared from DTA (Domestic Traiff Area i.e. Non-SEZ area) to SEZ, the said goods are 'deemed to be exported' but only for the limited purpose of allowing export incentives to the seller. The same cannot be deemed to be export incentives to the seller. The same cannot be deemed to be export for the purpose of levy of export duty.

Section 2(18) of the Customs Act, 1962 defines export : "export" means taking out of India to a place outside India. SEZ located in India is not a 'place outside India'. Hence, goods cleared from DTA to SEZ cannot be regarded as 'exported' out of India.

Section 12 creates charge of customs duty only on goods "exported from India", which cannot be applied to goods which are transferred from DTA (located in India) to SEZ (located in India), thereby, not amounting to export.

Special Economic Zones (SEZ) Act, 2005 doesn't provide for levy of customs duty. Therefore, the definition of export under SEZ Act, 2005, which provides that goods/services provided from DTA to SEZ will be regarded as 'exported', cannot be taken for the purpose of levy of export duty under the Customs Act, 1962.

Hence, no export duty can be levied on goods cleared from DTA to SEZ.

2. Radhey Shyam Ratalal v. CC [2009] (SC)

Facts

- The assessee- importer imported 300 MT "cloves" of Indonesian origin (a food spice) at USD 2600 per MT from Singapore during Jan-Feb., 2001. The bills of entries were filed declaring price of USD 2600 as the transaction value for the purpose of getting the goods cleared.

- The department alleged undervaluation of the goods on the ground that during Jan-Feb., 2001, the prevailing international price was USD 5500 per Mt, which rose to USD 6500 per MT. It was also found that during the year 2000 also the cloves were not traded at a price below 4200 per MT. It was submitted that M/s. Species Trading Corporation of India had imported cloves of Indonesian origin from Singapore at USD 5500 per MT during May 2001. Further, the international bulletin showing prices of similar cloves provided a range of USD 4500 to USD 6000 during relevant period.

- When the department called for invoices/contract from the importer-assessee in support of the price of USD 2600 per MT, the contract/ invoices were not produced.

- Accordingly, the Department rejected the transaction value and enhanced the value of the imports to USD 5500 per MT/ USD 5600 per MT.

- The question here is whether the Department's action in rejection of transaction value and enhancing the value of imports sustainable in law?

Decision

- The assessee-importer had failed to produce contract/invoices in support of price/transaction value of USD 2600 per MT. The contemporaneous imports made by Spices Trading Corporation of India and other importers as well as international bulletins established a price of USD 550/5600 per MT. The Bulletin published by Spices Board of India also declared a price of USD 6000 per MT.
- Further, the records showed that the nature of business of the foreign exporter (from whom goods had been purchased by the assessee-importer) was primarily dealing with sport goods and not cloves
- Therefore, the evidence available clearly supports the finding and the conclusions arrived at by the Department. Accordingly, the rejection of the transaction value by the Department and consequent enhancement of the value of imports was correct in law.

[Explanation to Rule 12 allows the proper officer to doubt accuracy of transaction value when the identical or similar goods are sold at significantly higher value. Since, in this case, contemporaneous imports were made at goods are sold at significantly higher value, therefore, proper officer could rightly doubt the accuracy of transaction value. Further, since the importer didn't have relevant material to substantiate the transaction value, therefore, the rejection thereof and consequence enhancement of the value was correct in law.]

3. Board of Trustees of the Port of Bombay v. UOI [2009]

Port-trust is not covered by section 45. Therefore, it is not liable to pay customs duty in case of pilferage of goods occurring while such goods are in their custody.

Facts

- The petitioner-port is a major port trust constituted under Major Port Trusts Act, 1963 for the purpose of acting as port for various customs and non-customs purposes specified in the said Act. The roles and responsibilities of the port-trust are also specified in said Act.

- While the imported goods were in the custody of the port-trust, there was some pilferage of such goods. The Department demanded duty u/s 45(3) on such pilferage.

- The port-trust denied such demand contending that it was not an approved custodian falling u/s 45; it was constituted under an Act of Parliament. Therefore, section 45 didn't apply to it.

Decision

- **Section 45(1):** Section 45(1) provides for approval of custodians by the Commissioner of Customs. The provisions of section 45(1) apply 'save as otherwise provided in any law for the time being in force'. Accordingly, the major Ports notified under the Major Port Trusts Act, 1963 and airports notified under the Airports Authority of India Act, 1994, who are authorized to function as custodians under their respective Acts, do not require any approval before acting as custodians. Therefore, provisions of section 45(1) do not apply to them.
- **Section 45(3):** Section 45(3) casts liability on the custodians to pay customs duty in case of any pilferage taking while the goods are under their custody. However, section 45(3) applies to 'perosns referred to in section 45(1)'. Therefore, section 45(3) applies only to the private custodians who are required to be approved u/s 45(1). Accordingly, the major ports and airports, who do not require any approval u/s 45(1), are not covered by section 45(3).

In case any pilferage takes place while the goods are under the custody of a major port (or airport), the said major port/airport shall not be liable to pay any customs duty u/s 45(3).

4. Drawback not payable where export proceeds not realized (i.e. bad debts of export proceeds) even if claim settled by ECGC or realization waived by RBI

Circular No. 7/2010-Cus., dated 23-3-2010	The Customs Act, 1962 read with drawback rules provide for recovery of drawback in case of the export proceeds are not realized within the time allowed under the FEMA Act, 1999. Hence, no drawback would be payable in cases where export proceeds have not been realized in accordance with the provisions of FEMA, 1999 even if the claim has been settled by EGCC or realization of export proceeds has been waived by RBI.

5. No drawback in respect of rice, cement and cotton yarn [Rule 3,6 and 7]:

No drawback shall be allowed on export of rice, cement and cotton yarn. Further, no amount or rate of drawback shall be determined in respect of such goods. (amended w.e.f. 29-4-2010).

6. Clarification on whether rebate under rule 18 of the Central Excise Rules, 2002 is admissible for clearance to SEZ

Issue	Clarification
Whether the rebate under rule 18 of the Central Excise Rules, 2002 read with *Notification 19/2004- CE (NT) dated 06.09.2004* is admissible when the goods are supplied from units in Domestic Tariff Area (DTA) to Special Economic Zone (SEZ) ?	The circular affirmed that rebate under rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ even though rule 18 does not refer to such supplies in clear terms.

7. Refund of import duty in certain cases (Section 26A of Customs Act)

<table>
<tr><td>Pre requisites</td><td colspan="3">Goods are found defective or not as per the specification given by the importer to the supplier
Goods are not used by the importer; but the goods may be used to ascertain whether the goods are fit for use
The goods are identifiable to the satisfaction of AC/DC that the (goods are same as imported good)</td></tr>
<tr><td>Conditions for claiming refund</td><td colspan="2">The importer does not claim drawback on such goods
The goods are exported or
The title on such goods are relinquished
The goods are destroyed to render them commercially unfit</td><td>Within 30 days from which the PO makes order for clearance to Home consumption</td></tr>
<tr><td>Condonation of delay</td><td colspan="3">The AC/DC may grant on sufficient cause Condonation not exceeding 3 months</td></tr>
<tr><td>Goods offence</td><td colspan="3">This section shall not apply in relation to goods regarding which offence has been is likely to be committed
The case need not to be booked reasonable apprehension is enough.</td></tr>
<tr><td rowspan="4">Application for refund</td><td>Time</td><td colspan="2">Before 6 months from the end of relevant date</td></tr>
<tr><td rowspan="3">Relevant date</td><td>Where the goods are exported</td><td>The date from LEO(let export order)</td></tr>
<tr><td>If the title has been relinquished</td><td>The date of relinquishment</td></tr>
<tr><td>If the goods have been destroyed</td><td>The date from such destruction</td></tr>
<tr><td>No refund</td><td colspan="3">Perishable goods
Goods which have exceeded their shelf life
Goods which have exceed their storage before use life</td></tr>
</table>

8. Sanghvi Reconditioners Pvt. Ltd. v. UOI [2010] (SC)

An application u/s 127B of Customs Act, 1962 for settlement of cases would be maintainable only if it discloses duty liability, which had not been disclosed to the proper officer. Obviously, a disclosure contemplated by the said Section is in the nature of voluntary disclosure of the concealed additional customs duty.

Thus, where the Settlement Commission, based on the report of the Commissioner, finds that the applicant has not made full and true disclosure of his duty liability before Settlement Commission, the application for settlement is not maintainable.

SERVICE TAX

1. Century Club v. CST [2010]

Facts: The assessee-club was registered under Service Tax under the category of "Health and Fitness Services" under which the services provided by health club and fitness centre were liable to service tax. It was charging and paying service tax, but, subsequently filed refund claim contending that since it was providing service to own members, hence, it was not liable to service tax on principle of mutuality.

Decision:

The assessee-club had employed various employees who were engaged in provision of health and fitness services to the members. The members were being charged fee and out of the fess so collected, the employees were paid their salaries. Accordingly, the assessee-club was a health club/establishment liable to service tax. Every club will have members to whom the club provides various services and if services provided to members are held outside the scope of "health club and fitness centre", then, the charge of service tax will be rendered nugatory.

Further, when the assessee was a health club, specifically covered under 'health and fitness service', the service could not be classified as 'club or association service'.

Hence, the service provided by the assessee-club were liable to service tax.

2. Trade Notice No. 18/2009 (Service Tax No. 10/2009), dated 13-3-2009

Certification of films by Central Board of Film Certification (CBFC)-Not liable to service tax, being a statutory function:

The certification by CBFC is done to ensure that film is suitable for exhibition and not against interest of sovereignty and integrity of India, the security of the State, friendly relation with foreign states, public order, decency or morality or involves defamation, contempt of court, etc. it is a mandatory requirement under the provisions of Cinematographic Act, 1952. Any person who exhibits a film other than that as per the requirements of the Act, is punishable for such offence with fine and/or imprisonment.

Hence, such certification by CBFC is a statutory requirement and any amount/fee collected in such cases is not to be treated as consideration for the purpose of levy of service tax. Hence, the same cannot be charged to service tax under 'Technical Testing and Analysis Service' and/or 'Technical Inspection and Certification Service'.

3. CCEx. v. Cochin International Airport Ltd. [2010] (SC)

Charges recovered from selected category of customers for augmenting revenue, which do not relate to service provided, cannot amount to consideration for services, hence, not liable for service tax.

- The assessee-airport used to collect "users fee" @ Rs. 500/- for every outgoing international passenger. No user's fee was payable by domestic passengers and/or international passengers reaching the Airport from any foreign destination.

- The Department sought to levy service tax thereon under 'Airport Services'.

- The assessee-airport contended that the users' fee is not for any service rendered, as the same is not charged from all passengers (to whom equivalent services are provided) but is charged only from outgoing international passenger. The assessee submitted that the same is charged in view of Board of Directions' decision to collect users development fee "for enhancing the revenue of the Airport to cope up with the expenditure and debt servicing".

Decision

- It was clear from decision of the Board of Directors that purpose of users fee was to augment revenue for the Airport and was not towards consideration for any service rendered t the outgoing international passenger (incoming and outgoing-domestic and international) while the users fee was charged only from outgoing international passengers.

- Section 67 defining value of taxable services for charging service tax says that the value of service shall be gross amount charged by the service provider for the service provided to the recipient. Since collection of users fee was not for any specific service rendered by them, but was a flat rate of charge to one category of passengers namely, outgoing international passengers, it could not be said that the amount so collected was by way of service charge. Hence, no service tax was payable.

4. Exemption to services provided for transmission of electricity [Notification No. 11/2010-ST., dated 27-2-2010]:

The taxable service provided to any person, by any other person for transmission of electricity, is exempt from service tax.

5. Tour operator service – Exemption to Haj & Umrah pilgrimage under Export of Services Rules, 2005 clarified /Circular No. 117/11/2009 – S.T ., dated 30-10-2009]:

The amount charged to the pilgrims in India undertaking Haj and Umrah pilgrimage, is for services provided by the Government of Saudi Arabia and the tour takes place outside

India. As per Rule 3(1)(ii) of the Export of Services Rules, 2005, the service in respect of tour operator is export if such service is performed outside India. Therefore, it is clarified that service tax is not chargeable on the services provided in respect of tour undertaken for carrying out Haj and Umrah Pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service, provided they fulfill the other conditions of exports as provided in Export of Service Rules.

6. CCEx. v. Amitdeep Motors [2010]

Facts: The assessee, an authorized dealer of Maruti, was also registered as authorized service station under Service Tax. In the case of sale of vehicles of Govt. agencies, the assessee received commission from Maruti for sourcing/ executing sale-orders directly through Maruti. The assessee was only arranging for documents from Govt. agencies and arranging documents for dispatch of vehicles The Department sought to tax such commission under "Clearing and Forwarding Agent" services.

Sale of goods not liable to service tax: The assessee was engaged in the business of selling cars (including Maruti Cars). The nature of transaction between Marti Udyog and buyer/Govt. agencies were sales of cars upon order procured by the assessee-dealer.

Such sale of cars was subjected to CST/VAT. The assessee didn't act as a consignee of the goods by the consignor Maruti Udyog. A sale transaction cannot be converted into a service provided under the category of C&F assessee could not be regarded as a provider of any taxable service in the matter.

7. Transport of food grains and pulses by road carriage has been made fully exempt. Exemption is already available to transport of fruits, vegetables, eggs and milk (27-2-2010)

8. Exemption for Seed Testing

Exemption from service tax is being provided to the 'Technical testing and Analysis Service' provided by Central and State seed testing laboratories, and Central and State seed certification agencies.

9. The exemption provided to transport of goods by rail, by government railway has been withdrawn.

However, exemption is being granted from 1-4-2010 for transport of specified goods like Defence/ military equipments, Railway equipments/ materials, Postal mail bags, Relief materials meant for victims of natural or manmade disasters, calamities, accidents and mishap, Luggage of train passengers (whether carried as personal luggage in the train compartments or booked separately in the luggage van), Household effects, Parcels [including newspaper/magazines] and essential food items.

An abatement of 70% of gross value of freight charged on goods is provided vide notification No. 9/2010.

Implication of the Amendment

Now services provided in relation to goods transported by railways including Government railways, whether in containers or otherwise are liable to service tax.

10. Exclusion of the service charges recovered by the custom house agent to be excluded from the value of the 'custom house agent service'.

At times CHA's also provide services for packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for their customers (i.e. importers or exporters). CHAs initially pay the service charges to these agencies and later recover these charges from the customer along with their own charges.

It is clarified that the aforesaid reimbursable charges would be excluded from the value of taxable service

11. Services provided by news agency eligible for Income tax exemption

Exemption from service tax has been provided to Indian news agencies under 'online information and database retrieval service' and 'business auxiliary service' only if such news agency:-

(i) is notified as a **news agency set up in India** solely for collection and distribution of news,

(ii) is **specified under section 10 (22B)** of the Income Tax Act, 1961, and

(iii) applies its income or accumulates it for collection and distribution of news and **does not distribute its income in any manner to its members**. **[*Notification No. 13/2010 ST dated 27.02.2010*]**

12. Exemption to value of inputs used for providing business auxiliary service during manufacture/processing of alcoholic beverages

13. Exemption to specified processes in relation to manufacture of cycles

Business auxiliary service provided by a person to any other person in relation to one or more of the **specified process*** during the course of manufacture of parts of cycles or sewing machines, if all the following conditions are satisfied:-

(a) The aggregate value of aforesaid service does not exceed Rs. 150 lakh during the preceding financial year.

(b) The exemption shall be restricted to the first clearances, wherein the aggregate value of aforesaid taxable service does not exceed Rs. 150 lakh, made on or after the 1st April in any financial year

(c) Where the service provider also undertakes one or more of the specified process in relation to manufacture of parts or whole of goods leviable to central excise duty, he shall maintain separate accounts of receipt, production and clearance of exempted and dutiable goods and services.

***Meaning of specified process:**

- Electroplating
- zinc plating
- anodizing
- heat treatment
- powder coating
- painting including spray painting or auto black.

[*Notification No. 42/2009-ST dated 12.11.2009*]

Amendments/Clarifications in Service Tax Rules, 1994:

1. Quantum of service tax reduced for e-payment from Rs. 50 lakh to Rs. 10 lakh

It is provided that an assessee shall deposit the service tax electronically through internet banking if he has paid the total service tax of Rs. 10 lakh or more (including the amount of service tax paid by utilisation of CENVAT credit) in the preceding financial year.

Also, E-filing of returns made mandatory for assessees paying service tax of Rs. 10 lakh or more in the previous year.

2. Condition, of service to be provided from India and used outside India to qualify as export of service, relaxed

Prior to amendment

Earlier, conditions to be satisfied for the provision of any taxable service to be treated as 'export of service' ware as follows:
(1) Such service is provided from India and used outside India.
(2) Payment for such service is received by the service provider in convertible foreign exchange.

After the amendment made by the *Notification No. 6/2010*, the condition (1) i.e. service to be provided from India and used outside India has been omitted.

Note: It may be noted that earlier the onsite services provided to the foreign clients by the Information Technology companies were not eligible as export of service. With the aforesaid amendment, such services have now become eligible as export of service.

3. Commission/remuneration paid to directors (whole-time or independent) and Managing Director not liable to service tax

Issue	Clarification
Whether service tax is payable on commission paid to Managing Director/Directors (whole time, or Independent) by the company under business auxiliary service?	Some Companies make payments to Managing Director/Directors (Whole-time or Independent), terming the same as 'commissions'. The said amount paid by a company to their Managing Director/Directors (Whole-time or Independent) even if termed as commission, is not the 'commission' within the scope of business auxiliary service, hence service tax would not be leviable on such amount.
Whether service tax is payable by Independent Directors who are part of the Board of Directors under management consultant's service?	The Managing Director/Directors (Whole-time or Independent) being part of Board of Directors perform management function and they do not perform consultancy or advisory function. The payments made by Companies, to Directors cannot be termed as payments for providing management consultancy service. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax.

4. Container detention charges not liable to service tax

Container detention charges are imposed by shipping companies for marine containers kept beyond the pre-determined period and not returned to the designated location within that period.

Container detention charges are actually the 'penal rent' for retaining the containers beyond the pre-determined period and hence not chargeable to service tax.

5. Service Tax extends to the Continental Shelf & Exclusive Economic Zone (CS & EEZ) of India [Notification No. 14/2010-S.T., dated 27-2-2010]:

The Central Government has extended provisions of Chapter V of the Finance Act, 1994 (32 of 1994), to the following areas in the continent shelf and exclusive economic zone of India for the following purposes mentioned correspondingly –

Area	Purpose for which service tax law extended
1. Whole of continental shelf and exclusive economic zone of India	Any service provided for all activities pertaining to construction of installations, structure and vessels for the purpose of prospecting or extraction or production of mineral oil and natural gas and supply thereof.
2. Installations, structures and vessels	Any service provided or to be provided by

within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas	or to such installations, structures and vessels and for supply of any goods connected with the said activity.

Definition of India for import/export: The definition of "India" under Import and Export Rules pertaining to taxable services has, accordingly, been amended to included installations, structure and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purpose of prospecting or extraction or production of mineral oil and natural gas and supply thereof.