

Students are advised to read these case laws only after reading and understanding the relevant provisions from Act, rules etc. Mere knowing and reading the case law is of no use without knowing the law.

Excise Basic concepts

Circulars of Board cannot prevail over law laid down by Apex Court. Courts cannot direct that circulars should be given effect to when a contrary decision is expressed by a Supreme Court / High Court Decision. Hindustan Spinning and Weaving Mills Ltd. 2009 (SC0 /Bolpur v Ratan Melting & Wire Industries 2008 (12) STR 416

Circulars – Only Prospective Effect: CBEC's Circular can only have prospective effect, especially when the word "Henceforth" had been used in the Circular. **Jai Fibres Ltd (SC) 218 ELT 484**

Circular cannot amend Notification: By issuing a Circular subsequent to a Notification, the Department cannot add new condition to the Notification, thereby restricting the scope of Exemption Notification. **Inter Continental (India) (2008) 226 ELT 16**

Circular does not have overriding effect of notification *Belgaum v. Sandur Micro Circuits Ltd. 2008 (229) ELT 641 (S.C.)* SC held that a circular could not take away the effect of notifications statutorily issued. In certain earlier cases also, it had been held that the circular could not whittle down the exemption notification and restrict the scope of the exemption notification or hit it down. By issuing a circular a new condition thereby restricting the scope of the exemption or restricting or whittling it down could not be imposed

Manufacture

Conversion of Tarpaulin into Tarpaulin made-ups would not amount to manufacture. M/S. Tarpaulin International Equivalent 2010 (256) ELT 0481 (S.C.)

Process of stitching and fixing eyelets would not amount to manufacturing process, since tarpaulin after stitching and eyeleting continues to be only cotton fabrics. Purpose of fixing eyelets not to change the fabrics. Even if value addition the same minimum. To attract duty there should be a manufacture to result in different Goods and Goods sought to be subject to duty should be known in market as such. To Held that conversion of Tarpaulin into Tarpaulin made-ups would not amount to manufacture. . Tarpaulin still called tarpaulin made-ups even after undergoing the said process. Hence, cannot be said that process a manufacturing process

Duplicating Blank CD recording is a manufacture: Oracle Software India Ltd. 2010 (250) ELT 0161 (S.C.)

Assessee entitled to sub-licence the software developed by Oracle Corporation. Assessee imports Master Media of software from Oracle Corporation which duplicated on blank discs, packed and sold in market along with relevant brochures. Commercial duplication cannot be compared to home duplication. Assessee undertaken an operation which renders a blank CD fit for use for which it was otherwise not fit. Blank CD an input. By duplicating process undertaken by assessee, recordable media which unfit for any specific use gets converted into programme which embedded in Master Media. Blank CD gets converted into recorded CD by afore-stated intricate process. Marketed copies are goods and once they are goods, impugned process constitutes manufacture.

The case is relating to income tax to decide whether it is manufacture or not /industrial undertaking u/s 80 IA. The cases coated were TCS case and Grampone case. Held as manufacture.

Twisting and texturing of POY (partially oriented yarn) into yarn by thermo mechanical process is manufacture. Emtee poly yarn 2010 (SC) 250 ELT 321 Mere Twisting and texturing of marbles SC (2010)

Mere labeling or relabeling without repacking from bulk to retail does not amount to "deemed manufacture CCEx., Mumbai v. BOC (I) Ltd. 2008 (226) ELT 323 (S.C.)

The assessee, BOC, procured Helium from other manufacturers, affixed the labels and sold it under its own brand name. Revenue alleged that activity of affixing labels of their own name amounted to manufacture as per Note 10 of Chapter 28 of schedule to Central Excise Tariff SC observed that the respondent only labeled or relabeled the product and did not pack or repack from bulk packs to retail packs in the present case. Therefore, it held that the impugned activity did not amount to manufacture. The same view held in *CCEx., Mumbai v. Johnson & Johnson Ltd 2005 (188) ELT 467 (S.C.)*, SC was confirmed.

Swaging process amounts to manufacture Prachi Industries vs. CCEx., Chandigarh 2008 (225) ELT 16 (S.C.). The appellant used to purchase duty paid MS tubes from its manufacturers and cut the same into requisite length. Thereafter, put it in the swaging machine for undertaking swaging process (Bending) whereby dies fitted in the machine imparted "folds" to the flat surface of the MS tube/pipe. SC clarified that MS plane pipe/tube could carry water to the overhead tank whereas the work piece produced in the present case was useful as a decorative item or as an item which provided a strong grip in auto-rickshaw. Hence, SC held that swaging amounted to manufacture and thus, excise duty was payable by the assessee.

Cutting and slitting of steel sheets or polyester films used for lamination purposes amounts to manufacture M/S RAJPUROHIT GMP INDIA LTD. & ORS. – S.C- 2008

Addition of stabilizing agent, perfuming, masking agent etc. to the concentrated alletherin (liquid mosquito destroyer) does not amount to manufacture Karam Chand 2009 (236) E.L.T. 647 (H.P.): Held that no new substance was formed and only a diluted form of original substance was packaged under a different brand name alletherin in its concentrated form was an insecticide. The final product manufactured by the respondent was a diluted form of insecticide-alletherin which would only kill small insects like mosquitoes. Hence only the potency of the insecticide was being reduced. Therefore it could not be termed to be manufacture.

Cutting and Slitting of steel sheets and polyester films used for lamination purposes do not amount to manufacture. Rajpurohit GMP India Ltd. & Ors. (SC)

Recoding a cassette or tape is manufacture- Recoding or sound on duty paid magnetic tape is manufacture. Blank cassette is different from recorded cassette. Gramophone India Ltd (SC). Receiving a cassette from customer and recoding as per his choice can be service and will attract service tax.

Assembling of duty paid furniture parts components received in knocked down position is not a manufacture Blow Plast Ltd. 2009 (236) (Del.).

Parsavnath Furnishers Limited (PFL) is engaged in procuring the duty paid Office Furniture System/Work Stations (OFS/WS) from the suppliers and erecting and installing them at site of customers, from whom it has procured the orders. Held that assessee received was complete

Recent Case laws on indirect taxes relevant for May 2011 examination

OFS/WS and what it left on its clients' sites was also complete OFS/WS and nothing new had come into existence. Hence, no duty was payable by the assessee.

Blending and packing a tea is not manufacture. Tara Agencies (Sc) 2007

Goods/ Dutiability

Attachment of plant with nuts and bolts to foundation is movable and dutiable: Solid & Correct Engineering Works and Ors (SC)2010

Attachment of plant with the help of nuts and bolts to foundation not more than 11/2 feet deep intended to provide stability to working of plant and prevent vibration/wobble free operation does not qualify for being described as attached to earth. Because attachment of plant to foundation not comparable or synonymous to trees and shrubs rooted in earth. Hence dutiable

Unvulcanised sandwiched fabric assembly produced in the Assessee's factory and captively consumed for manufacturing of **footwear is not marketable** as the department not able prove the marketability and hence and No duty liability **Bata India Ltd.-2010-S.C.**

Fabricated sign poles made of iron and steel which installed in petrol outlets of IOC is movable. They can be removed without dismantling. Hence they are goods and liable for duty. On the other hand assessee carried activity involving huge value under a contract with IOC without intimating the activity to the Department. The extended period of 5 years will apply for demand. **VIRGO INDUSTRIES (ENGINEERS) PVT. LTD. 2009 – CESTAT-**

Water treatment plant erection and instillation is immovable and not a goods- L & T Ltd 2009 (HC) procurement, supply, transportation fabrication, of various components, making of civil construction and erection of waste water treatment plant and commissioning it at BPCL plant on erection and installation becomes an immovable property which is not excisable to tax. – SCN quashed. Showcause notice issued by Department is quashed.

Process of converting raw asfoetida into compounded asfoetida not amounts to manufacture CCEx. v. Laljee Godhoo & Co. 2007 (216) ELT 514 (S.C.) the Apex Court upheld the Tribunal's decision holding that since the essential character of the impugned goods remained constant, there was no manufacture

Ms Scrap from building construction not dutiable ? Union of India v. Banswara Syntex Ltd. 2008 (221) ELT 360 (Raj.) MS Scrap arising as waste material of building construction, wherein credit of duty neither as inputs nor capital goods had been availed would be non- dutiable as it did not arise from manufacturing process.

An article mere does not become excisable by mere mention in Excise Tariff? CCEx., Chandigarh Vs Gurdaspur Distillery 2008 (224) ELT 337 (S.C.)

The assessee was engaged in the manufacture of de-natured Ethyl alcohol. During the manufacture of de-natured Ethyl alcohol, a residue known as spent wash came into existence. The same was reacted in a closed type digester and methane gas was being produced. This methane gas was being consumed captively by the assessee as a fuel in distillery. Revenue appealed that duty should be levied on the methane gas thereby produced. Department failed to prove the marketability of the goods in question, it was held that the methane gas produced by respondent was not marketable and hence, was not liable to duty.

Excise duty not leviable on intermediate product when finding on marketability is absent *White Machines v. CCEx., Delhi 2008 (224) ELT 347 (S.C.)*

The assessee manufactured C.I. castings which were captively consumed for producing C.I. Chilled Rolls. These Chilled Rolls were exempted from payment of excise duty. Revenue alleged that C.I. castings which were intermediary product were marketable. Therefore, excise duty would be payable on them as the final product was exempt from duty. Tribunal failed to record any finding regarding marketability of the said intermediary product i.e. C.I. castings. Hence, it was held that in the absence of any findings recorded by the Tribunal regarding the marketability, duty could not be levied on the goods in question.

Aluminum dross and skimming's having become excisable consequent to amendment to goods u/s 2(d) by FA 2008 by CE Act.

The High Court observed that effect of the explanation is to get over the judgment of the Apex Court in case of *Commissioner, Central Excise v. Indian Aluminium Co. Ltd. 2006 (203) E.L.T. 3 (S.C.)* wherein the Supreme Court held that everything that can be sold is not necessarily marketable.

Cement Concrete Armour Units not marketable and not constitute excisable goods? *Board of Trustees v. Collector of Central Excise 2007 (216) ELT 513 (S.C.)*

the assessee, Vishakhapatnam Port Trust, used Cement Concrete Armour Units for installation of break waters in the outer harbour for keeping the water calm. The Department did not produce any evidence to show that impugned units were bought and sold in market as a commodity. When the goods were not capable of being sold, then the test of marketability was not fulfilled. Thus, the Apex Court rejected the claim of the Department and held not excisable and no duty.

Transmission apparatus installed in mobile tower stations is immovable and not excisable *CCEx., Mumbai- IV v. Hutchison Max Telecom P. Ltd. 2008 (224) ELT 191 (Bom.)*

The respondent was engaged in providing mobile telecommunication services based on GSM. The question that arose in this case was whether, the transmission apparatus installed at site room was goods and secondly if even so, whether they were marketable.

HC observed that, firstly, whenever the site had to be relocated, all the equipments like BTS/BSC, microwave equipment, batteries, control panels, air-conditioners, UPS, tower antennae were required to be dismantled into individual components, then they were to be moved from the existing site and reassembled at new site. This involved damages to certain parts like cable trays, etc. which were embedded/fixed to the civil structure as also the BTS microwave equipment itself. Held no duty liable.

Completion of manufacture only when the goods are saleable in the market. Then only duty liability. *Sunco Rubbers Ltd. 2008 (228) ELT 27 (Mad.)*

a job worker, received raw materials required for the manufacture of strips tyres from the primary manufacturers for further processing and after undertaking the processing returned them to the suppliers. thereafter, the suppliers carried on the processes of deflashing, testing and inspection on those goods. Held manufacturing process complete only after testing and inspection. Hence there is no duty liability on Job worker.

Intermediate goods produced and used for captive consumption are **not liable to duty if not marketable**, even if they are specified in the Tariff Schedule. *White Machines (2008) 224*

Even if an article is mentioned in Tariff there is no liability of duty unless it is manufactured *Gurdaspur Distillery (2008) 224 ELT 337 (SC)*

Waste / scrap arising in course of repair activity cannot be held to be manufactured product and thus, not liable to excise duty. **Prism Cement Ltd. 2008** Waste arising from manufacturing process only is dutiable. Banswara Syntex Ltd (2008) 221 ELT 360 (Raj.)

Excisability: Excise duty is not concerned with ownership or sale. Liability under Excise Law is event based (manufacture) and irrespective of whether goods are sold or captively consumed. Moriroku UT India P Ltd vs. State of UP 2008 (224) ELT 365 (SC)

Mere transfer of a good by an assessee from its factory to its another unit for manufacture of final product does not show that the product was either marketed or was marketable. CIPLA Ltd 2008 (225) ELT 403 (SC)

Cess other acts is payable even goods is exempt from duty **Indo Farm Tractors & Motors Ltd. v Union of India 2008 (222) ELT 184 (H.P)** The assessee manufactured tractors. Such tractors were exempt from payment of whole of the all duties of excise. However held that on notional valuation cess under acts is payable as these cess do not refer to Finance Acts

Classification

Nameplate, emblems and logo of plastic are to be classifiable under Heading no.87.08 and 87.14 (parts and accessories of motor vehicles) and not under Heading no.39.26 (articles of plastic) as claimed by revenue –Held that It will be classified as parts and accessories of motor vehicles **M/s. Pragati Silicons (P) Ltd. – S.C- 2009.**

Exemption to parts is applicable even they cleared in SKd Condition **Mewar bartan udyog 2008**

There is an exemption to parts of machinery u/s 5A notification. Held that is applicable to parts of machinery even they cleared under SKD condition. It was also held that Classification rules for classifying parts of machinery as machinery under rule 2 is not applicable in availing the benefit of exemption notification

Processed cashew nuts, peanuts, almonds etc. manufactured by dry roasting, oil roasting, salting, and seasoning would be classifiable: Chapter 20 - Chapter 20 – Preparation of Vegetables, Fruit, Nuts or Other Parts of Plants” of the Central Excise Tariff and not under or Chapter 8 Edible Fruit and Nuts; Peel of Citrus Fruit or Melons” of the Central Excise Tariff and chargeable to nil rate of duty. **of the Central Excise Tariff? CCus. & CEx. v. Phil Corporation Ltd. 2008 (223) ELT 9 (SC). The classification is to be done under Chapter 20 in view of view of HSN explanatory notes to Chapter 20.**

Common Parlance test is one of the determinative tests for classification of a product whether medicament or cosmetic. A product being a tooth powder and there being no change in nature, character and uses of the said product, it has to be a cosmetic/toiletry preparation and not a medicament Baidyanath Ayurved Bhawan Ltd. 2009 (SC)

If Section and Chapter notes are clear: other rules of classification not relevant **Champdany Industries Ltd. (2009) 241 ELT 481 (SC)**

Marker ink classifiable only in the tariff entry relevant for Marker Pens. Marker inks are different from other writing inks (water based), which can be used for other products as well. **Camlin Ltd 2008 (230) ELT 193 (SC)**

Hair-dye vs. Lotion: A hair dye may also be referred to as hair lotion, for purposes of taxing statute, its chemical composition and actual usage becomes relevant **Godrej Industries Ltd 2008 (228) ELT 321 (SC)**

Seating Capacity for Classification: The seating capacity relevant for classification is the capacity for which RC has been given and not the opinion of the manufacturer **Vinayaga Body Building Indus. Ltd. (2008) 224 ELT 3 (SC)**

Scrabble is classifiable under toys as it is toy game, and not under puzzle as contended by assessee. There is a difference between puzzle and game. **Pleasantime Products v. CCE 2009 (243) E.L.T. 641 (S.C.)**

Erroneous claim made by the assessee earlier did not preclude him from subsequently making a claim for correct classification. **Guljag Industries Ltd (2008) 224 ELT 38 (Raj.)**

The definition as per Internet sources like Wikipedia cannot be used for the purpose of interpreting a taxing statute or classification of a product. **Ponds India Ltd (2008) 227 ELT 497 (SC)**

When goods are classifiable under two chapter headings of Tariff simultaneously, the benefit should be given to the assessee. **Calcutta Springs Ltd. (2008) 229 ELT 161 (SC)**

Latex (rubber) based adhesive would be classified under tariff heading Chapter 40 on "rubber and articles thereof and not under 35.06 falling under Chapter 35 on "enzymes, modified starches, glues and albuminoidal substances **CCEx. v. Mannampalakkal Rubber Latex Works 2007 (217) ELT 161 (SC)**

Parts of compressor cleared as a 'stand alone item' should not be classified along with the compressor? **CCEx. v. Frick India Ltd. 2007 (216) ELT 497(S.C.)**

The assessee manufactured and cleared on payment of duty complete compressors, safety valves and filters under Heading 84.14, Heading 84.81 and Heading 84.21 respectively of the Central Excise Tariff. The assessee also supplied bought-out items like V belt, motor, pulley, belt guard, gauge etc. to their buyers, as a package. The Department contended that as per Rule 2(a) of the General Interpretative Rules for Classification, safety valves and filters should be classified along with the compressors as they were essential parts of the compressors. Consequently, the Department contended that the value of the safety valves and filters together with the value of bought-out items should be includible in the assessable value of the compressor

The Supreme Court observed that Rule 2(a) of the General Interpretative Rules for Classification could not be applied in this case as:

- (i) The compressors manufactured by assessee were removed as 'stand-alone' item and not in an unassembled or disassembled condition; and
- (ii) Section and Chapter notes in Tariff and the Interpretative Rules did not provide guidelines for valuation of excisable goods because they decided the classification as valuation is different from classification.

Thus, the Apex Court upheld the Tribunal's decision holding that parts/accessories could not be classified as 'compressors' under Heading 84.14.

However, the Apex Court remanded back the matter relating to valuation to the Commissioner for denovo consideration so as to examine the pricing aspect of entire package supplied by the assessee to its buyers.

Valuation

Printing and decoration etc. on bottles carried out in a premises different from that in which bottles were manufactured, the value, of the printing will not be includible while determining assessable value of excisable goods for computing the excise duty. Alembic Glass Industries Ltd. 2010 (259) ELT 0008 (S.C.)

Secondary packing normally not used in whole sale trade at the time of removal of goods from factory not includible in valuation. National Leather Cloth Mfg. Co. 2010 (256) ELT 0321 (S.C.)

Fabric manufactured by Assessee was sold by the Assessee to wholesalers at the factory gate only in polythene bags. Additional packing in nature of secondary packing was done for the purpose of convenience of up-country customers in transportation of goods manufactured by Assessee. Cost of secondary packing in hessian cloth cannot be included in value of the good.

Thus, the test laid down was that it is only the cost of packing ordinarily required for selling the goods in the course of wholesale trade to a wholesale buyer at the factory gate which would be includible in the value of the goods and not the cost of any additional or special packing

Repair and Maintenance Charges: Assessee is entitled to deductions for repair & maintenance and rental charges for PMX machine from the assessable value. Dhillon Kool Drinks & Beverages 2009 (238) ELT A26 (SC)

Inspection charges recovered by the assessee for any —third party inspection carried out at the instance of the buyer in addition to the normal inspection of the assessee **is includible** in the assessable value. SOUTHERN STRUCTURALS LTD. – S.C- 2008

Interest on Receivables – not deductible if not established: Assessee is not entitled to claim deduction of any “interest on receivables” from the sale price for determining Assessable Value if the assessee had failed to establish that price charged on goods sold to customers on credit basis contained an element of interest in-built therein as a precondition **Castrol India Ltd. 2009 (236) ELT A89 (SC)**

Inclusion of drawings, designs: The charges for drawings, designs etc. have to be added to the assessable value of the machines manufacture, based on use of such drawings, designs, jigs, fixtures, tooling etc. However, before adding the value of drawings etc, it has to be established that the consideration had a nexus with the negotiated price of the assessable **Mysore Kirloskar Ltd, (2008)226 E.L.T. 161 (S.C.)**

Transportation Charges for transport of goods from the factory to the site for erection and installation is not required to be included in the Assessable Value of the goods **Blue Star Ltd 2008 (225) ELT A129 (SC)**

Valuation of Physician’s Samples: Physician’s samples are not sold but cleared exclusively for free distribution for the purpose of advertisement. These should be valued as per Valuation Rule No 5 and not as per MRP Valuation Indian Drug Manufacturer’s Association (2008) 222 ELT 22 (Bom)

Trade discount to relative when there is no flowback of money- deductible. And lease rental paid by retailers to marketing Company not includible in valuation PEPSICO INDIA HOLDINGS LTD. SC 2009 234 ELT 0385

The assessee manufactured SYRUP containing soft drinks concentrate and sugar and sold the same to their MARKETING SUBSIDIAITY COMPANY. A part of the syrup sold by the assessee to others also. The marketing company would sell the same to retailers after giving trade discount.

The marketing company used to leased out DISPENSING/ VENDING MACHINE (the machine was used for dilution and carbonation of the syrup for sale of soft drinks to consumers) Department contended that Since the assessee and the MARKETING SUBSIDIAITY COMPANY were related person, therefore the A.V. shall be sale price of the marketing company, without deducting discount allowed by MARKETING SUBSIDIAITY COMPANY to its buyers. Further, the lease rental paid by the retailers to the MARKETING SUBSIDIAITY COMPANY towards DISPENSING/ VENDING MACHINE was also included in A.V.

Held that

when trade discount indicated in the invoice at the time of sale and there is no flow back return of trade discount to **assessee seller** or its related person, the A.V. shall be computed after deducting such trade discount, even if, the valuation was sought to be made based on the sale price of the related person, **the deduction of discount cannot be denied.**

Vending machine stood installed by the holding company. Nonetheless, ownership of the vending machine vested in the marketing company. The machine charges were payable to the marketing company and not to the holding company. **Hence —machine usage charges or LEASE CHARGES were not includable in the A.V. of product**

Transport and insurance in case of FOB contracts not includible in valuation Accute Meter Limited (SC)2009

The assessee, a manufacture of electric meters, used to sale the meters to State Electricity Board (SEB). The SEBs used to call for tenders in which the value of the electric meters was to be fixed as at the factory gate. Freight and the insurance charges were to be charged on an average basis not on actual.

There were two separate contracts; one for sale of electric meters and other governing transportation of goods. The SEBs used to make inspection of the meters. After inspection, the assessee was bound to transport the goods from the factory gate to the place of the SEBs at the rates specified in the tender.

Department contended that since the meters were delivered to the SEBs at their premises and not at the factory gate the valuation had to done at the transaction value (inclusive of average freight charges) under rule 5 of the Central Excise Valuation Rules, 2000 and only the amount of actual freight was allowable as deduction there from. Held that sale was complete transaport and insurance not includable in valuation.

Price increase on sugar not an additional consideration No duty on increased price, if no escalation clause in purchase order.. Triveni Engg. & Industries Ltd -(2009 (236) ELT A056 (S.C.)

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

Held that The price for assessment would be the price at which the goods were cleared, and not the price subsequently determined. Any alteration/revision in price subsequently to clearance of the goods cannot effect computation of duty especially when there is no escalation clause in the purchase order. Duty cannot be sought to be levied if and when any sum is received from the buyer SCN Quashed.

Escalation price received along with duty- Interest is payable – sec 11 for recovery of amount of duty will apply. SKF Ltd 2009 (SC)/ Lucas TVS Ltd-2009-TRI (Larger Branch)- International Auto Ltd. [2010] (SC):

Assessee removed the goods and paid duty on self assessment basis on the price. Subsequently there was upward revision of price of the goods due to increase in the cost of raw material and/ or other factors and consequently , the assessee issues supplementary invoice for realizing the differential price from the buyers and paying differential duty, SUCH PAYMENT OF DUTY WAS MADE WITHOUT PAYMENT OF INTEREST

Held that duty.transaction price means price paid or payable by buyer to seller before or after sale. Hence the increased price is for part of transaction value hence interest payable u/s 11 AB on the duty paid on increased price

Loading and handling charges incurred by seller for and on behalf by buyer is includible in the valuation of goods. However if they are not paid or borne by buyer , they are not includible in valuation. **SUPREME PETROCHEM LTD.- 2009 (Tri.-LB)**

Difference between parts and accessories, Delhi v. Insulation Electrical (P) Ltd. 2008 (224) ELT 512 (S.C.)

The assessee was engaged in the manufacture of Rail Assembly front seat (Omni), Adjuster Assembly slider seat, YF-2, Rear Back Lock Assembly(seat adjuster for convenience) and 1000 CC Rear Lock Assembly. The assessee was classifying it under Chapter Heading no. - 8708.00 - Parts and Accessories of Motor Vehicles - attracting 15% rate of duty. The Department, after physically examining above mentioned goods, contended that goods manufactured by the assessee were integral parts of seats and hence were classifiable under Chapter heading no. – 9401.00 – Seats - attracting 18% rate of duty.

Held that Rear Back Lock Assembly is an accessory without that seat will function. It is not form part of seat, hence to be classified under 8708.00 as - Parts and Accessories of Motor Vehicles

A part is an essential component of the whole without which the whole cannot function whereas accessory is supplementary or subordinate in nature and need not be essential for actual functioning of the product. Rail assembly, front seat adjuster/assembly slider and rear back lock assembly are not parts of seats but are accessories to motor vehicle. **Insulation Electrical (P) Ltd. 2008 (224) ELT 512 (SC)**

Carton Packages containing Individual Units: When products are packed in a carton keeping in view the quantity (weight) contained therein, the same cannot be said to be for retail sale. Hence, such carton cannot be considered as a multi-piece package for application of Section 4A. Therefore, carton boxes containing 500 Sachets of Shampoo cannot be considered as Multi Piece Package for retail sale. **Kraftech Products 2008 (224) ELT 504 (SC)**

Sale to Related Parties at market price: When the goods are sold to related parties at a price which is not influenced by the related party relationship, then the transaction value should be taken as the assessable value. **Bharti Telecom Ltd. (2008) 226 ELT 3** / There is no case of under-valuation of goods when goods are sold to related parties at or about the same price at which they are sold to third parties. Company selling the gppds at price both railways and relative. **India Thermit Corporation Ltd. (2008) 226 ELT 164 (SC)**

The Department should establish that additional consideration had a connection with the negotiated price of assessable goods under clearance in order to tax the additional consideration. **Mysore Kirloskar Ltd. (2008)226 ELT 161 (SC)**

When Declaration of MRP is not required under law they are no assessable under MRP: in his case Individual toffees weighing 5.5 gms per piece as well as packs of 100 such do not attract assessment u/s 4A of CEA, 1944. Ex. Éclairs chocolate

Two parties cannot be deemed to be 'related persons' if the registered offices of both the parties are located in the same premises? CCEx. v. Damnet Chemicals Pvt. Ltd. 2007 (216) ELT 3 (SC)

The registered offices of the assessee and one of the bulk buyers of the assessee were located in the same premises. Further, the factory of the assessee was located in the industrial area owned by the bulk buyer of the assessee, for which the assessee used to pay a suitable rent. The assessee gave 40% discount to the said bulk buyer. The Department questioned this discount on the ground that the two parties were related persons

The Supreme Court observed that since there was no evidence of any mutuality of interest between the two parties, they would not be deemed to be related persons just because their registered offices were situated in same premises and manufacturing unit of the assessee was situated in industrial area owned by the buyer. There was no evidence that the assessee received anything extra from the bulk buyer other than the price charged. Also, there was no evidence that profit made by the bulk buyer had flown into the assessee company. Thus, the Apex Court held that there was nothing wrong in giving 40% discount to the bulk buyer

When the price includes local taxes- only effective rate of tax is only deductible in computing the assessable value. Turnover tax normal rate was 2% and when the goods sold to backward areas it is 0.5%. Held only 0.5% is deductible when goods sold to backward districts. **Modipon Fibre Company v. CCEx. 2007 (218) ELT 8 (SC)**

Refrigerator a pre-packed commodity for the purpose of valuation under section 4A Whirlpool of India Ltd. v. Union of India 2007 (218) ELT 167 (SC)

Apex Court elaborated that even if the package of refrigerator was required to be opened for testing, the refrigerator would still continue to be a pre-packed commodity and its sale would be a retail sale under Standards of Weights and Measures Act, 1976 and Standards of Weights and Measures (Packaged Commodities) Rules, 1977. The Supreme Court observed that MRP would have to be printed on package and the plea that MRP would be different depending on the area of sale would not absolve the manufacturer from displaying the MRP.

To cover goods under MRP, goods should cover both under SWM Act and Sch III of CE act. CEO cannot question on the applicability of SWM Act and he cannot decide on his own whether MRP to be declared on package is or not. **Saf Yeast company (P) Ltd. 2009-TRI**

Cenvat Credit

Bansal Alloys & Metals Ltd. [2010] (Tri.)- No need to reversal of input service –when the inputs removed as such: assessee paid service tax on the inward transportation on the goods. These inputs were not used and removed as such. The assessee reversed the Cenvat credit on input. Held, reversal of input service not required

Cenvat credit when both the original and duplicate copy is lost. Credit can be availed on the certified invoice by jurisdictional superintendent of excise **KATARIA WIRES LTD.- 2009-(H.C)-**

Manufacturer (Cooldrink concentrate manufacture) incurred advertisement on behalf of buyer (bottler- who is also another manufacturer) paid for advertisement along with service tax. Held that bottler eligible to take Cenvat credit on input service on service tax paid to concentrate manufacturer. **COCA COLA INDIA PVT. LTD- Tri**

Duty paid but not borne by buyer – buyer eligible for Cenvat credit- Suntech glasses pvt ltd-H.C.-2010

The assessee purchased inputs from the manufacturer thereof. The assessee did not pay full duty stated in the invoice and a part of the excise duty was borne by the supplier. As per Rule 3(1) the only requirement for availment of CENVAT credit is that the duty must have been paid on inputs/capital goods; there is no requirement that the duty must have been borne by the assessee. Hence, even if a part of duty was borne by the supplier, the assessee was eligible to avail of whole of the credit of excise duty as stated in the invoice.

Export of goods under bond Rule 6(6) of CCR 2004- reversal not applicable Repro India Ltd. (2009)- (Bom.):

When Assessee not maintaining separate records for inputs used for dutiable and exempted goods and if he export goods under bond without payment of duty, payment of 5% on exempted goods not applicable. Rule 19 of the Central Excise Rules, 2002, uses the term 'excisable goods', therefore, both dutiable and exempted goods can be exported under the Bond.

Rule 6(6) of the CENVAT credit Rules, 2004 provides that the provisions of sub-rules (1) to (4) thereof shall not apply to —excisable goods removed without payment of duty, which are cleared for export under bond. Since Rule 6(6) uses the term 'excisable goods', which includes exempted goods as well, therefore in case of exempted goods exported under Bond, no payment @ 5% of the value of exempted goods can be required. Therefore, the demand by the department was unsustainable

Normal allowable handling losses /losses due to evaporation etc in transit is eligible for Cenvat credit BHUWALKA STEEL INDUSTRIES LTD.- (Tri. - LB) -2010

Asbestos sheets used for connecting equipments for passing of gas / steam are accessories to the plant, as their use is essential and adjunct to the main plant. Such accessories necessary for smooth running of the plant qualify as capital goods, even if such sheets are not covered under tariff chapters listed in definition of capital goods [Rule -2 (a) (i)]. GULJAG INDUSTRIES LTD. – H.C- 2008

Second part of definition of inputs used for exempted goods credit is available ?. GUJARAT STATE FERTILIZERS & CHEM. LTD. – S.C- 2008 Low Sulphur heavy stock (LSHS) used in the manufacture of steam which in turn was used for the manufacture of the final product, namely, fertilizer which was fully exempt from payment of excise duty. **Held that:-**inputs used to produce steam / electricity, which is used in manufacture of exempted fertilizers, are entitled to cenvat credit because the inputs used for generation of steam / electricity used for ANY OTHER PURPOSE are also inputs

Cement used in constructing foundation for machinery not qualify as an eligible input for the purpose of availing CENVAT

The High Court observed that cement used as building material for laying foundation could not be directly or indirectly said to be an integral part in connection with the manufacture of final product. Further, the High Court opined that foundation made of cement would not fall under the category of capital goods **Union of India v. Hindustan Zinc Ltd. 2007 (218) ELT 503 (Raj.)**

CENVAT credit be taken on the basis of private challans if they are genuine

The High Court placed reliance on its decision in the case of *CCE v. M/s. Auto Spark Industries CEC No. 34 of 2004 decided on 11.07.2006* wherein it was held that **once duty payment is not disputed** and it is found that **documents are genuine and not fraudulent** then the manufacturer would be entitled to MODVAT credit on duty paid on inputs

Thus, the High Court held that Cenvat credit could be taken on the strength of private challans as the same were not found to be fake and there was a proper certification that duty had been paid.

Recent Case laws on indirect taxes relevant for May 2011 examination

Note: Though, the principle enunciated in the above judgment is with reference to erstwhile Central Excise Rules, 1944, the same may apply in respect of CENVAT Credit Rules, 2004.

Welding electrodes used in maintenance/ repair of capital goods are eligible as input. **Credit is available Hindustan Zinc Ltd. 2008 (225) ELT 183 (Raj.)**

Plastic crates used for inward transportation of material within factory from store to machine room and from one machine to other machine, Held that these crates are necessary to handle the material and they are accessories. Cenvat credit can be availed as an input or Capital goods. of **Banco Products (India) Ltd. Vadodara-I 2009 (235) (Tri-LB).**

Machinery Not Used for Production: Credit not available for gases, welding electrodes used for repairs of machinery which is not used in production. **SAIL Ltd 2008 (229) ELT A127 (SC)**

Capital Goods destroyed in fire: Such Capital Goods are neither cleared nor removed for sale, and, are being used for a number of years. Therefore, there need not be any reversal of credit availed on them. **Biopack India Corporation Ltd 2008 (224) ELT 548 (CESTAT)– Ahm.)**

Cenvat credit in case of freight FOR contract sale: Assessee engages in the manufacture of cement and clear goods on FOR basis to customers. As per FOR contract title of goods passed to buyer only on receipt of goods by buyer. Service tax paid on transportation up to the place of buyer is eligible for Cenvat credit. **Ambuja Cements Ltd. v. UOI 2009 (P & H). M-imp**

Bill of entry in case of import of goods eligible document to avail Cenvat credit on CVD **Marmagao Steel Ltd. [2008] 229 ELT 481 (SC):**

In case of conditional exemption , assessee can avail it for one factory and cannot avail for the other factory. Innovative Tech Pack Ltd. [2008]-(SC)

An exemption from excise duty was available on the condition that the manufacturer shall not avail CENVAT credit in respect of the exempted products or any other products manufactured in the same factory. Held that The said condition specifically provided that the manufacturer could not avail of Cenvat Credit in respect of all products manufactured in the same factory; such condition was not intended to apply to all factories of manufacturer. Therefore, the manufacturer had the option to not avail exemption in respect of another factory and avail CENAVT

Revise return on correcting depreciation claimed on duty portion in income tax- Cenvat credit eligible: **Jaya mills ltd-**

If assessee pays duty on each stage of process when intermediate products are used in the manufacturing, The assessee entitled Cenvat credit when duty payable on final stage. The assessee carrying out bleaching, dying, printed and mercerizing of textile fabric paid excise duty at each stage of manufacture – the assessee would be entitled to Cenvat credit if duty is paid at each stage of the manufacturing **TEXTILE CORPN. MARATHWADA LTD. – S.C- 2008**

If the assessee had wrongly claimed depreciation on duty element of capital goods in its income tax return and subsequently rectified the same by adding back the depreciation claim on duty element of capital goods ,He is eligible for Cenvat credit

Cenvat credit taken but not utilized, no interest chargeable, as no loss to Revenue. Ind –swift Laboratories Ltd. 2009-(P&H) Whereas interest can be charged only the amount of cenvat credit wrongly availed AND wrongly utilised and that to only, from the date when such credit was utilized

*However /Rule 12 of old CCR 2202 & Rule 14 New CCR 2004 clearly provides Credit **taken or utilized, wrongly interest is payable.** Circular No. 897/17/2009-CX Dated 3/9/2009 also provides the same.*

100% EOU – Eligible for Input credit: 100% EOUs are entitled to take Cenvat credit of duty on inputs procured indigenously and when they were not in a position **ANZ International 2009 (240) ELT A16 (SC)**

Procedures:

Interest under sec 11 AB levied for the price and duty realized through supplementary invoice: International Auto Ltd 2010 (250) ELT 0003 (S.C.).

Assessee supplied auto parts to customers. According to assessee, prices indicated in purchase orders final and not liable to change at the time of removal of goods. Subsequently supplementary invoice raised and realized price and duty. Held that, when differential duty paid after the date of clearance, indicates short-payment/short-levy on date of removal, hence, interest which is for loss of revenue becomes leviable under Section 11AB of Act

Classification accepted by dept, later held as wrong extended period not applicable. Dabur India Ltd. -2009.

Assessee paid excise Duty as per classification approved by Department. Later on, classification upheld to be wrong and thus duty sought to be recovered from assessee. Department raised demand applying extended period of limitation **Held that-** where the classification was approved by the department, the classification was within the knowledge of the department. Therefore, **department can not**, subsequently alleged fraud / suppression by the assessee

Doctrine of unjust enrichment when the duty paid under protest: MITTAL PIPES MANUFACTURING CO. – S.C- 2008

In case of duty paid under protest, where the burden is borne by supplier, Doctrine of unjust enrichment not applicable in case of refund.

Omission to give correct information not a suppression of facts'Continental Foundation Joint Venture - 2007 (SC)

Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty .An incorrect statement cannot be equated with a willful mis- statement. Mis statement of fact must be willful, then only suppression of facts.

No Suppression of facts if Interpretation involved: There is no suppression of facts if interpretation of Tariff Entries involved or when conflicting court decisions exist.**Nestle India Ltd. – 2009 (237) ELT A102 (SC)**

Goods lost by 'theft' or 'dacoity' cannot be considered to be —goods lost or destroyed by natural causes or by unavoidable accident under rule 21 of the Central Excise Rules, 2002 hence not eligible for remission of duty. Gupta Metal Sheets -2008 - (Tri.-LB).

Refund claim for excess interest paid by the assessee can be filed under section 11B of the Central Excise Act, 1944 CCEx. v. Northern Minerals Ltd. 2007 (216) ELT 198 (P & H)- Even the wordings in sec 11 B talks about refund of duty

Loss of sugar due to spontaneous combustion is loss due to natural causes. Remission cannot be denied on the ground that the assessee should have taken preventive measure to avoid the loss, because question of preventive measure is applicable only in case of loss due to accident; not in case of loss due to natural causes. **Balarampur Chini Mills Ltd. [2008] 223 ELT 34 (All.):**

CESTAT cannot dismiss appeal without stating reason? *Nagreeka Foils Ltd. v. CCEx. & Cus. Vapi 2008 (227) ELT 348 (Bom)* Tribunal was not correct in dismissing the appeal (without assigning any reason) merely by stating that since the Commissioner (Appeals) had already granted substantial relief to the appellant, further reduction or setting aside of the penalty was not called for.

Excess debit to PLA by mistake. Cenvat credit cannot be availed. Only refund can be claimed u/s 11 B **BDH Industries Ltd. [2008] Tri. (LB)**

Penalty cannot be imposed simultaneously on both proprietor and his proprietorship firm *Anil Kumar Mahensaria v. CCus. 2008(228) ELT 166 (Del.)*

Since the proprietor was the appellant before us, the penalty amount was required to be paid by him and not by the proprietorship firm.

No discretion under section 11AC of the act to impose penalty less than the amount equal to duty evaded- the penalty under sec 11 AC of CE Act is fixed equal to duty evades, it is neither less nor more. ***Godavari Manar Sahakari Sakhar Karkhana Ltd. 2008 (228) ELT 172 (Bom.)***

A quantum of duty already accepted by jurisdictional officers of the supplier unit cannot be contested by the officers in charge of recipient unit *CCEx. & Cus. v. MDS Switchgear Ltd. 2008 (229) ELT 485 (S.C.)*

Manufacturer No 1 supplied material to manufacturer No 2 at an agreed value and paid duty. Manufacturer 2 can claim Cenvat on duty paid to M 1. Ms. Jurisdictional CEO cannot question the value of M1 which is accepted by his jurisdictional CEO

Non-filing of appeals in similar cases did not bars filing of appeal in other cases *C.K. Gagadharan v. CIT, Cochin 2008 (228) ELT 497 (S.C.)*

Merely because in some cases the Department had not preferred appeal that did not operate as a bar for the Department to prefer an appeal in another case where there was just cause for doing so or it was in public interest to do so or for a pronouncement

Order passed by CESTAT without considering case laws relied on by the party is not proper *Stanlek Engineering Pvt. Ltd. v. CCEx., Mumbai – II 2008 (229) ELT 61 (Bom.)*

The appellant had filed appeal before the CESTAT, Mumbai. While that appeal was pending, appellant filed written submissions claiming that the appeal of the appellant was covered by two decisions of the Tribunal. The Tribunal, relying upon a SC judgment and without referring to judgments of the Tribunal which were relied upon by the appellant, disposed of the appeal. The appellant, therefore, filed an application for rectification pointing this fact out. His application was also disposed of without referring to the said two judgments. the order was set aside and the appeal was remanded back to the Tribunal for de novo consideration and decision in accordance with the law.

Settlement Commission not empowered to grant the benefit under the proviso to section 11AC in cases of settlement *Ashwani Tobacco Co. Pvt. Ltd. v. UOI 2010 (251) E.L.T. 162 (Del.)*

Proviso provides that duty u/s 11 A and interest under Section 11AB, is paid within 30 days from the date of communication of the Order of the Central Excise Officer determining such duty, the

Recent Case laws on indirect taxes relevant for May 2011 examination

amount of penalty liable to be paid by such person under this Section be 25 per cent of the duty so determined- Held SC cannot give immunity from these provision.

SSI

Printing of a design on the corrugated box/ visiting cards of 2 executives is not a brand name. SSI benefit is available. **Nirlex Spares Pvt. Ltd. v. CCEX. 2008 (222) ELT 3 (S.C)**

Apex Court ruled that the alleged monogram could not be said to be the brand name or trade name of company 'X' who itself disowned the said brand name. Therefore, the Supreme Court held that the printing of hexagonal design on packing of the goods of assessee, where such hexagonal design was not owned by company 'X' would not disentitle the assessee from the benefit of small scale exemption.

Clubbing of Clearances: Demand based on two units having common Directors and one person looking after affairs of both and second not having complete machinery to manufacture final product, cannot be a base for clubbing of clearances. Especially, if accounts of both units managed separately and capital, premises, machinery, labour and operations are separate for both the units **Superior Products (2008) 230 ELT 3 (SC)**

Even if there was commonality of use of office premises, telephone, staff etc. when there are separate management, separate financial control and financial funding the units shall be treated as independent. **Electro Mechanical Engg. Corpn. (2008) 229 ELT 321(SC)**

Apart from Logo of the Assessee, logo of the Marketing Firm was also affixed on the product. Therefore, clearance by the Assessee not entitled for SSI exemption under the notification. **Amit Engg. Works (2008) 223 ELT 166 (Bom.)**

Affixing the Stickers with words UTS and TSN on the excisable goods would be treated as affixing other person's brand name and so exemption for SSI not applicable. **Unison Electronics Pvt. Ltd. (2009) 235 ELT 206 (SC)**