INDIRECT TAX

COMING BATCHES	Start DATE	Timing
BATCH- 1	4TH Apr 2011(DAILY EXCEPT SUN)	6-30 to 10-30 a.m
BATCH- 2	30TH May 2010(M,W,F)	6-30 to 10-30 a.m
Satellite batch	16th March 2011 (M,W,F)	5-30 to 8-30 p.m

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Latest Cases from Nov 09 to Apr 10

Manufacture -

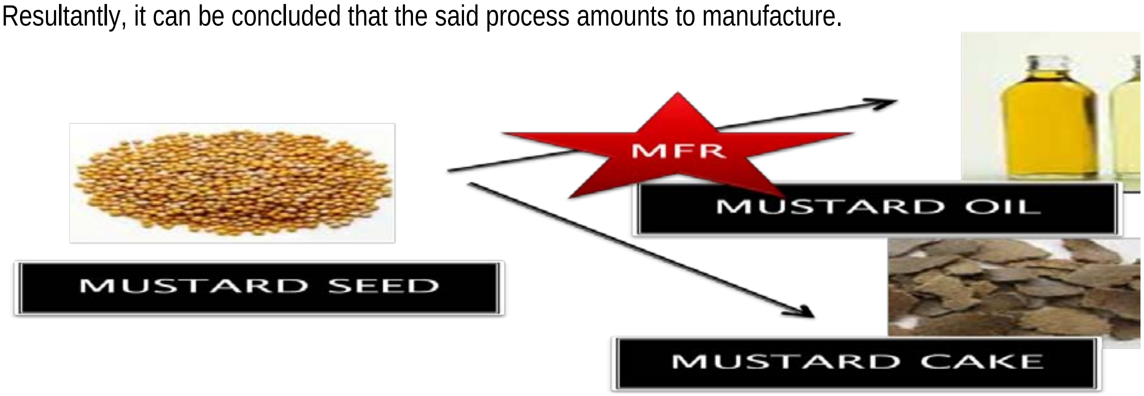
¥ *Jai Bhagwan Oil and Flour Mills (SC) (2009)—M. IMP & EXPECTED*

1. Discuss, with the help of a decided case law, if any, whether production of mustard oil and oil cake from mustard seeds amounts to manufacture.

Ans

The question as to whether the production of mustard oil and oil cake from mustard seeds amounts to manufacture has been decided by the Supreme Court in the case of *Jai Bhagwan Oil and Flour Mills v. UOI 2009 (239) E.L.T. 401 (S.C.)*. In the instant case, the Apex Court held that the true test to ascertain whether a process is a manufacturing process producing a new and distinct article is whether the article produced is regarded in the trade, by those who deal in it, as a marketable product distinct in identity from the commodity/raw material involved in the manufacture.

When mustard seeds were subjected to the process of extraction whereby mustard oil and oil cake were produced, the process involved manufacture of mustard oil as also the manufacture of oil cake. It was certainly not a mere process of cleaning, repairing, reconditioning, recycling or assembling. Oil cake had a distinct and different identity from mustard seeds and it had a separate name, character and use different from mustard seed. Oil cake was not a waste to be thrown away, but was a valuable product with a distinct name, character, use and marketability. Resultantly, it can be concluded that the said process amounts to manufacture.



2. Waste & Scrap- M.*IMP*

Bawana Sugar Mills Ltd. is engaged in the manufacture of sugar. During the course of manufacture of sugar, bagasse emerges as a residue. The Department has demanded duty on the bagasse treating it as excisable goods on the ground that bagasse is capable of being sold for consideration. However, the assessee contends that the waste or refuse or residue arising during the course of manufacture cannot be treated as excisable goods even if such waste fetches some price in the market.

You are required to examine the veracity of the demand raised by the Department in law.

Ans

The demand raised by the Department is valid in law. Circular No. 904/24/09-CX dated 28.10.2009 has clarified that in view of the amendment made by the Finance Act, 2008 in the definition of excisable goods, bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty.

In the budget of 2008, the definition of “excisable goods” in clause (d) of section 2 of the Central Excise Act, 1944 was amended by adding an explanation that for the purposes of this clause, “goods” include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. In the light of above discussion, it could be inferred that bagasse is excisable and hence, Bawana Sugar Mills Ltd. is liable to pay excise duty

3. Whether aluminium dross and skimmings have become excisable in view of the insertion of Explanation to section 2(d) of the Central Excise Act, 1944 by the Finance act, 2008?

Hindalco Industries Ltd. UOI 2009 (243) E.L.T. 481 (All.)

The assessee submitted that insertion of the explanation to section 2(d) would not change the position established in law that ‘aluminium dross and skimming,’ were neither processed or manufactured, or were marketable commodities. 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.
The High Court elucidated that, *prima facie*, the insertion of the explanation under section 2(d) providing for a fiction in law by a deeming clause in definition of "goods" to include any article, material or substance which is capable of being bought and sold for a consideration, and to treat such goods as marketable, would make the 'aluminium dross and skimming' liable to excise duty. Where the goods are specified in the Tariff, they can be subjected to duty, if they are produced, or manufactured by the person on whom duty is 'proposed'. The High Court noted that the expression has been explained by the Supreme Court to mean that the goods so produced must satisfy the test of marketability. The excise duty is levied on production and manufacture which means bringing out a new commodity, substance, and it is implicit that such goods must be usable, saleable and marketable. If the goods are marketable or are deemed to be marketable, as on now by the explanation added to section 2(d), such goods included in the Tariff would attract excise duty.

Remission of duty
Hindustan Zinc Limited 2009 (Raj)- M IMP & EXPECTED
4. Bharat Zinc Ltd. (BZ Ltd.) was engaged in the manufacture of lead and zinc concentrates. At the time of carrying out the physical stock taking, some difference was found between the physically verified stock and the stock as per the books. According to BZ Ltd., this difference was due to de-bagging, shifting of concentrates, seepage of rain water, storage and loading on trucks, accounting method adopted. The assessee applied for the remission of the duty under rule 21 of the Central Excise Rules, 2002. Revenue contended that the shortage could have been avoided or minimized by the assessee, as these were neither due to natural causes, nor due to unavoidable accident. Thus, the prayer for remission was declined.
You are required to examine the veracity of the Revenue's claim, with the help of a decided case law, if any.
ANS
No, Revenue's claim is not valid in law. The facts of the given case are similar to the case of *UOI v. Hindustan Zinc Limited 2009 (233) E.L.T. 61 (Raj.)* wherein the High Court held that the expressions "natural causes" and "unavoidable accident" were required to be given, reasonable and liberal meaning, lest the provisions of rule 21, so far as they relate to admissibility of remission, on these two grounds, would be rendered altogether ineffective. In cases of "unavoidable accident", it could always be contended that the accident could have been avoided by taking recourse of one or more measures. Thus, a bit liberal rather more practical approach was required to be taken in the matter. The aspect of satisfaction under rule 21 was essentially a subjective satisfaction of authority concerned and in the instant case; the Tribunal independently recorded its satisfaction about the loss, or destruction having been sustained by the assessee under the circumstances as covered by rule 21. Therefore, merely on the basis of method of accounting of physical stock, the remission of duty could not be denied.

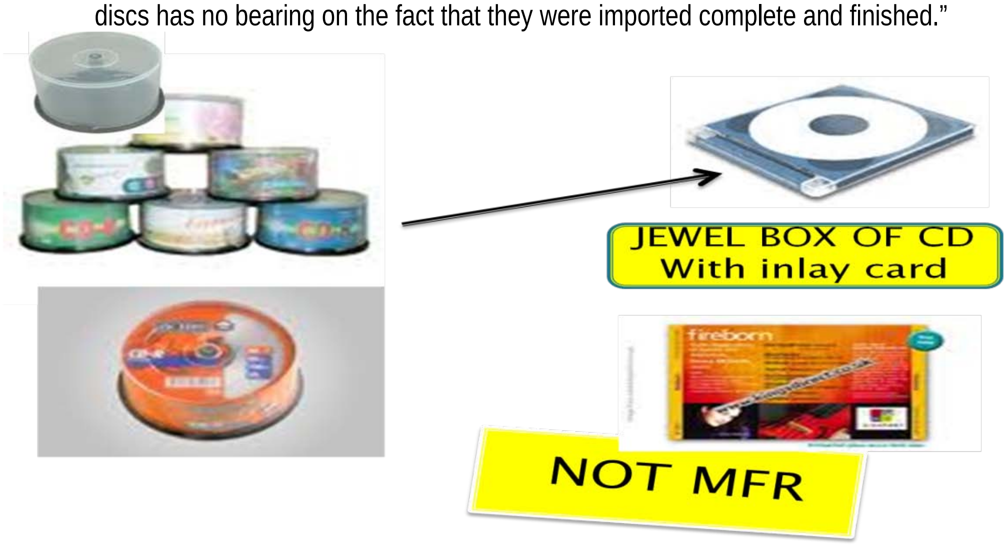
<u>5. Gupta Metal Sheets (2008)(TRI-LB)</u>
Loss by theft or dacoity cannot be termed as loss due to natural cause or due to unavoidable accident. Theft or dacoeity is a mere incident not an accident. Further the word loss implies that the goods are unavailable for consumption. <u>Whereas in case of theft or dacoity</u>, the stolen goods enter the market for consumption. Thus loss by theft or dacoity is not eligible for remission of duty.

6. SONY MUSIC ENTERTAINMENT (I) PVT LTD.(2010)(BOM)- *IMP*

1) The appellant 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 in the jewel box. The whole was then shrink wrapped. The appellant thereupon sold such packed compact discs in wholesale.
2) A show cause notice dated 12-4-2002 was issued to the appellant alleging therein that the process undertaken by the appellant in regard to the compact discs amounted to manufacture
3) "Note 6 to Section XVI of the tariff provides that in respect of goods covered by that section, 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.

It was held that

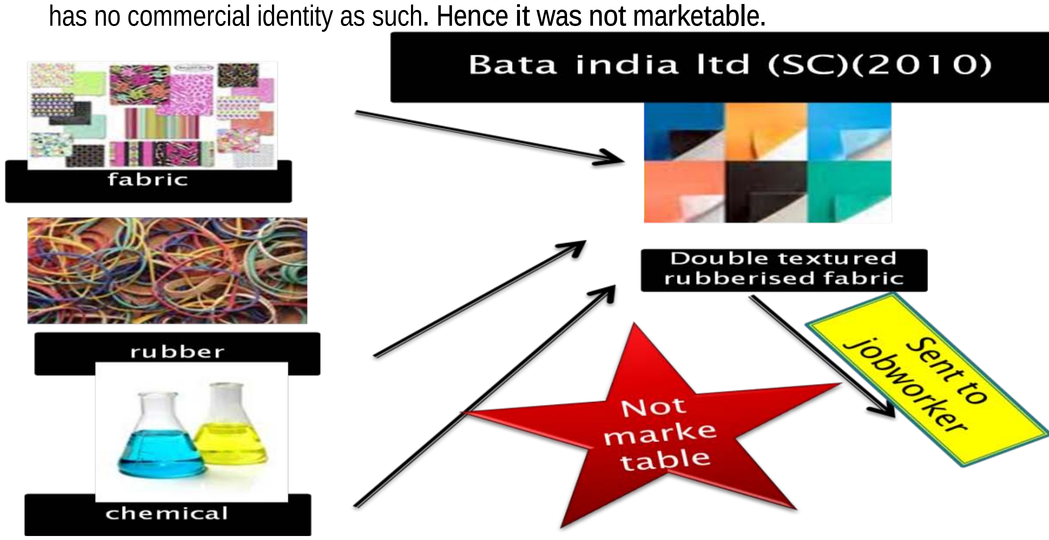
1) that the activities carried out by the respondent does not amount to manufacture since the compact disc were complete and finished when imported by the assessee. They were imported in finished and completed form.
2) Note6 clearly does not apply to the facts before us. None of the activity that the appellant undertook involved any process on the compact discs that were imported. Those compact discs were complete and finished. They could be played by any person in order to listen to the sound and view the images that they contained. They were imported in finished and completed form. The mere packing of these discs has no bearing on the fact that they were imported complete and finished."



7. Bata India Ltd (SC)(2010)- *IMP*

1) The Assessee is a well known manufacturer of foot wear. For the manufacture of foot wear, various raw materials are purchased by the assessee from the market and / or from their respective manufacturers such as fabrics, rubbers, chemicals, solvents etc. During the process of manufacturing of foot wear various chemicals / rubbers / solvents etc., are mixed together and a thin layer of such mixed materials is sandwiched in between two sheets of textile fabric, in running length, through a three bowl calendering machine. The resultant product " Double Textured Rubberized Fabric" (DTRF) is later cut and stitched according to the assessee's requirements and in-process materials are used as shoe- uppers in the foot wear. Such fabrics are also at times sent to job workers for stitching purposes only and the fabric sandwiched with the mixed materials are inputs of the intermediate stage during the course of manufacture of footwear.
2) Vulcanisation of the foot wear takes place only after completing the entire process and then it would be a finished product as a footwear, made available in the market and acquires commercial identity and turns out to be a commercially known product.
3) The department, came to the conclusion that this double textured fabrics are marketable
4) Asssessee contended that the Revenue has not discharged their burden of proof to establish that the product is excisable and marketable and capable of being marketed

5) In Cipla Limited (supra) this Court was examining the question whether Benzyl Methyl Salycylate (BMS) is marketable it was held that-
Mere transfer of BMS by the appellant from its factory at Bangalore to its own unit at Patalganga for manufacture of final product is not marketable."
6) The mere fact that the product in question was entrusted outside for some job work such as stitching is not an indication to show that the product is commercially distinct or marketable product. Without proof of marketability the intermediate product would not be goods . Such a product is excisable only if it is a complete product having commercial identity capable of being sold to a consumer which has to be established by the Revenue.
7) The test report of the Chemical Examiner, SPB hand book of rubber products and the statement of the Superintendent (Supply and Transportation) of the assessee's company do not show that the product in question is capable of being marketed. The mere theoretical possibility of the product being sold is not sufficient but there should be commercial capability of being sold. Theory and practice will not go together when we examine the marketability of a product.
8) On the other hand materials produced by the assessee i.e. affidavit of Consultant - Rubber and Plastic Technology, affidavit of the Production Manager of the assessee Company, certificate of Prof. C.K.Das, IIT, Kharagpur, affidavit of Ms. Parvati Pada Mukherjee, certificate from Footwear Design and Development Institute, Ministry of Commerce, Government of India and The Vanderbilt Rubber Handbook, would show that the product in question is only an intermediary product generally used for captive consumption which has no commercial identity as such. Hence it was not marketable.



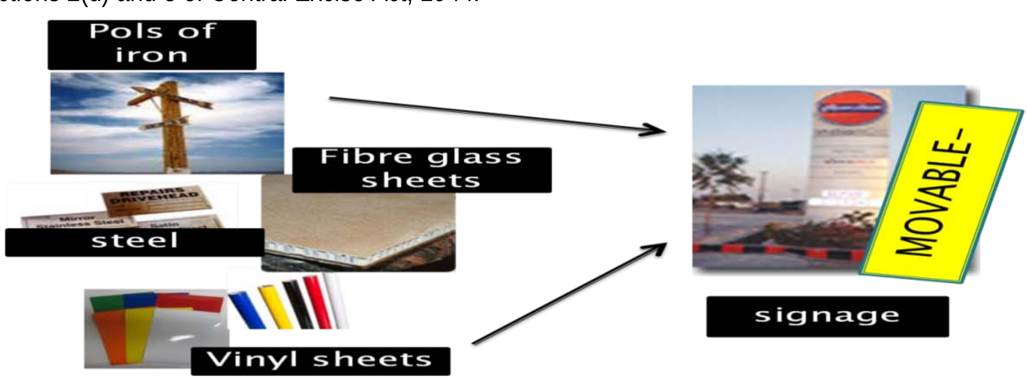
8. Solid & Correct Engineering Works(2010(SC)- imp

M/s Solid and Correct Engineering Works, M/s Solid Steel Plant Manufacturers and M/s Solmec Earthmovers Equipment are partnership concerns engaged in the manufacture of parts and components for road and civil construction machinery and equipments like Asphalt Drum/Hot Mix Plants and Asphalt Paver Machine etc. M/s Solex Electronics Equipments is, however, a proprietary concern engaged in the manufacture of Electronic Control Panels Boards.
M/s Solidmec Equipments Ltd. the fifth unit with which we are concerned in the present appeals is a marketing company engaged in the manufacture of Asphalt Drum/Hot Mix Plants at the sites provided by the purchasers of such plants
The assessee contended that it is immovable-that the plant is required to be fixed to a foundation that is 1 and 5 ft. deep for the sake of stability of the plant which causes heavy vibrations while in operation. of the plant was such as made its fixing to the ground essential. The drier at one time holds 40MT of raw material.
Two questions in our opinion arise for our determination:
1. Whether setting up of an Asphalt Drum Mix Plant by using duty paid components tantamounts to manufacture , movable and liable to duty.
2. Whether the respondents engaged in the manufacture of parts and components used for setting up of Asphalt Drum/Hot Mix Plant were entitled to the benefit of SSI exemption.
It was held that

that assembling, installation and commissioning of Asphalt Drum/Hot Mix Plants amounted to manufacture inasmuch as the plant that eventually came into existence was a new product with a distinct name, character and use different from what went into its manufacture.
The fixing of plants to a foundation was meant only to give stability to the plant and keep its operation vibration/wobble free. Futher, the setting up of 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. The machine could not be regarded as part and parcel of the earth permanently. Hence, the Asphalt Drum/ hot-mix plants manufactured at site by Solidmec were manufactured and movable property hence excisable goods liable to duty.
The tribunal 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 that of the marketing company Solidme. The SSI exemption issue remanded back to the Tribunal for passing fresh orders on the subject .

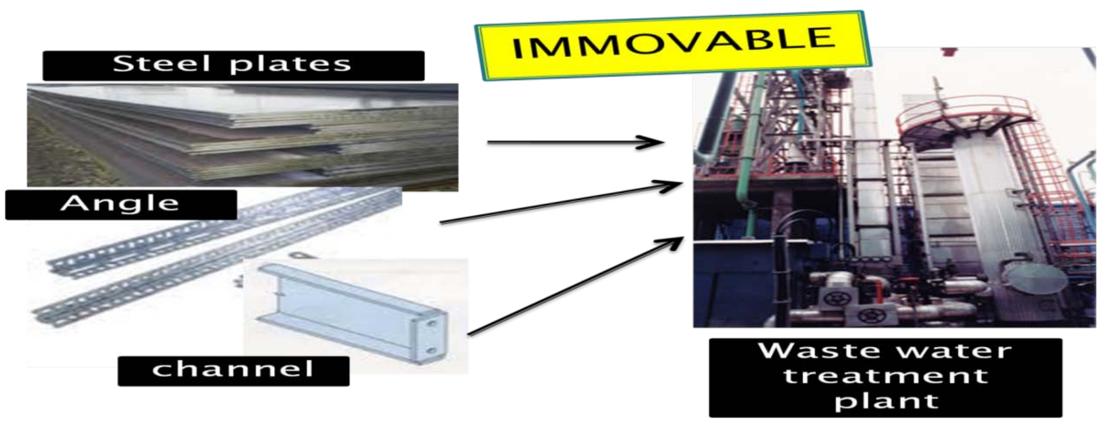
9. VIRGO INDUSTRIES (ENGINEERS) PVT. LTD.

1) It was observed that Virgo had been manufacturing and supplying signages (illuminated signs) under a contract with M/s. Indian Oil Corporation Ltd. (IOC) and had erected them at the retail outlets of IOC located at various places in the south.
2) It was contended by assessee that Signage came into existence only at site and the same was immovable on erection as it was fixed to earth on concrete foundation. .
3) It was held that Signages erected at various petrol bunks of IOC - Excisability of - Complete signage is movable and is installed by fixing it on a concrete foundation - These can be detached and shifted to another location without damaging them - Signage is fixed to earth and is complete before fixing on the concrete platform - Signages do not emerge as an immovable property on assembly or erection - Signages are excisable goods - Sections 2(d) and 3 of Central Excise Act, 1944.
4) Excisability - Item which is fixed in the earth can continue to be movable and excisable if the same is capable of being shifted from one place to another without having to dismantle the same into the constituent components - Sections 2(d) and 3 of Central Excise Act, 1944.



10. Larsen & Tourbo Ltd. (2009)(Bom)

1) The assessee engaged in the business of fabrication and erection of structures of various types on contract basis. it entered into a turn key contract with Bharat Petroleum Corporation Ltd. (for short “BPCL”) for fabrication, assembly and erection of waste water treatment plant. The activities involved in the contract were procurement, supply, fabrication, transportation of various components, making of civil construction and erection of waste water treatment plant and commissioning it. By that plant, water polluted with oil, bacteria and chemicals and deficient in oxygen was required to be treated to remove oil, neutralize bacteria and harmful chemicals and supply oxygen to the water and treat it before it was discharged in the pipeline.
2) A SCN issued alleging that the petitioner had fabricated/manufactured the waste water treatment plant in the premises of BPCL valued at Rs. 5,32,37,123/- without payment of central excise duty thereon. The notice further alleged that the waste water treatment plant fell under Chapter Heading No. 8419.00 on which excise duty was payable. The notice further alleged the plant came into existence in unassembled form as per the drawings and designs approved by the BPCL before the same was installed and assembled to the ground with civil work. According to the notice, the excise duty was payable on the value of the plant excluding the value of the civil work.
3) In the petition, the petitioner has explained in detail the procedure for erection of the waste water treatment plant. According to the petitioner, carbon steel tanks, various platforms, walkways and ladders are fabricated at site by process of rolling, welding, grinding etc. of duty paid steel plates, flats, angles, channels and beams. This fabrication is done at site. Civil work is also done at site and various parts are put together by embedding in the civil work and are affixed to the ground. Pressure testing is then carried out. The plant cannot function as such until it is wholly built including the civil construction.
4) In our view, mere bringing of the duty paid parts in an unassembled form at one place, i.e. at the site does not amount to manufacture of a plant.
5) However, simply collecting together at site the various parts would not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts. In the present case, as the petitioner has stated that the waste water treatment plant does not come into existence unless all the parts are put together and embedded in the civil work. In our view, therefore, no commercial movable property came into existence until the assembling was completed by embedding different parts in the civil works. No excise duty on immovable property.



Latest cases from May 09 to OCT 09

11. TEXTILE CORPN. MARATHWADA LTD.(2008)(SC)

The point involved in the present case is as to whether the facilities in the factory of the assessee-respondent for carrying out bleaching, dying, printed and mercerising of textile fabrics would invite levy of excise duty at each stage of manufacture.

1) The Tribunal by its impugned order has accepted the appeal of the assessee and set aside the orders of the Commissioner (Appeals) and Assistant Commissioner levying excise duty at each stage relying upon its

own judgment in the case of *Indian Rayon and Industries Ltd*. In *Indian Rayon and Industries Ltd.* (supra), the Tribunal had relied upon a judgment of this Court in the case of *Empire Industries Ltd.* v. *UOI* - 1985 (20) E.L.T. 179 (S.C.) and held that the assessee would be entitled to Modvat credit if duty is paid at each stage of the manufacturing and, therefore, the entire exercise would be revenue neutral.

2) Admittedly, against the decision of the Tribunal in *Indian Rayon and Industries Ltd*. (supra), Revenue did not file any appeal and accepted the decision and in our view rightly so. Admittedly, assessee has paid duty at the final stage. If assessee has to pay the excise duty at each and every stage of manufacturing, it would be entitled to Modvat credit and the whole exercise would be revenue neutral.

Note- hence assessee has rightly paid duty at final stage.

VALUATION

IMPortant- Henna Export Corporation gets its product manufactured on job work basis from Meltex Ltd. - an independent processor. The details of the transaction are as follows:-

Particulars	Amount(Rs.)
Cost of material sent to job worker for processing	2,500
Processor charges (including Rs.700 as processing charges and Rs.500 as his profit)	1,200
Transport charges for receiving goods at the premises of the processor	100

After processing, goods are sold by Henna Export Corporation at Rs.5,800 from the premises of Meltex Ltd. You are required determine the assessable value of the goods under section 4 of the Central Excise Act.

ANS As per rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, where the excisable goods are produced or manufactured by a jobworker, on behalf of a person (hereinafter referred to as principal manufacturer) and the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer. Hence, in the instant case, the assessable value of the goods shall be Rs.5,800.

1) <u>Rtp may 2010- M imp & expected</u>

MB Motors manufactures motor vehicles. It gets complete motor vehicles manufactured by sending the chassis of the motor vehicles to BD Works, independent body builders (job-worker), for building the body as per the design/specification given by it. The practice followed is that the chassis is transferred to BD Works on payment of appropriate central excise duty on stock transfer basis and is not sold to them. BD Works avails the CENVAT credit of the duty paid on the chassis and clears the same on payment of duty to the Depot of MB Motors. The duty is discharged by BD Works on the assessable value comprising the value of chassis and the job charges. The Depot of MB Motors sells the vehicles at a higher price than the price on which duty had been paid. Discuss whether the practice followed is correct in terms of Central Excise Valuation

(Determination of Price of Excisable Goods) Rules, 2000.

<u>Ans-</u>

As per rule 10A (ii) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 the assessable value for the purpose of charging central excise duty, in cases where the job-worker transfers the excisable goods to the Depot/Sale office/Distributor and/or any other sale point of the principal manufacturer, shall be the transaction value on which goods are sold by the principal manufacturer from such a place. Accordingly, after the insertion of Rule 10A, the practice of discharging the duty on cost construction method by BD Works is not legally correct.

<u>*Circular No. 902/22/2009 CX dated 20.10.2009*</u> also clarifies that wherever goods are manufactured by a person on job work basis on behalf of a principal, then value for the purpose of payment of excise duty may be determined in terms of the provisions of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 subject to fulfilment of the requirements of the said rule.

Thus, BD Works should pay the duty on the transaction value on which vehicles are sold by MB Motors from its depot.

Classification

1) Pleasanttime Products(2009)(SC)- imp

(1) Assessee is a proprietary firm engaged *inter alia* in the business of manufacture and trade of toys, games and puzzles of various kinds falling under Chapter 95 of the First Schedule to the CETA. The goods are manufactured by the assessee either under their own brand name of "United Toys" or under different brand names. One of the items manufactured by the assessee is "Scrabble" which is a registered brand name owned by M/s. J.W. Spears & Sons Ltd., U.K. According to the assessee, "Scrabble" is a puzzle or in the alternative it is an educational toy falling under sub-heading 9503.00 of the CETA which **is liable to Nil rate of duty.** Assessee holds a licence from M/s. J.W. Spears & Sons Ltd., U.K., to use the brand name(s) "Scrabble" and to manufacture the product in India. Assessee pays royalty to M/s. J.W. Spears & Sons Ltd., U.K., on sale of "Scrabble" in India.

(1) **according to department Scrabble was neither a puzzle, nor a toy; it was a game having boards & pieces and thus classifiable under sub-headng 9504.90- liable to duty @ 16%.**

(2) the assessee replied that even if "Scrabble" would be treated as a table game still it would be covered by the genus "puzzles of all kinds" in sub-heading 9503.00. On the basis of definitions under various dictionaries, internet search on the subject etc., the assessee submitted that in any event "Scrabble" was an educational toy. Assessee also relied upon various dictionary meanings to show that "Scrabble" was a puzzle and, therefore, classifiable under subheading 9503.00 of the CETA. Assessee also furnished affidavits of purchasers of "Scrabble" who deposed that "Scrabble" was an educational toy.

(3) The difference between a "game" and a "puzzle" is brought out by three distinct features, viz., outcome, clue-chance and skill.

(i) In a puzzle outcome is pre-determined and fixed. It is not so in "Scrabble". For example, in **crossword, outcome is pre-determined or fixed.** In a crossword puzzle, there is a grid of squares and blanks into which words crossing vertically or horizontally are written according to clues . A person solving a puzzle, unlike games, does not aim at wining by scoring more points but aims at arriving at the solution by finding the correct answer or by putting it together properly, and winning or losing can only come by way of time taken in solving the puzzle.

(ii) The other important difference is that in a "Scrabble" there are no clues whereas in crossword puzzle, as stated above, **words are written according to clues.**

(iii) One more distinguishing feature to be kept in mind is, **in "Scrabble" there is an element of chance and skill.** The player in ".Scrabble" gets lettered tiles to create words by chance. "Scrabble" is defined as a board game in which players use lettered tiles to create words in crossword fashion. These tiles are initially kept in a pouch from which every player picks up the tiles. This is pure matter of chance. Further, apart from the element of chance there is also an element of skill involved in "Scrabble". Each lettered tile has an assigned value and the player has to create words. He tries to create words which attain maximum value; tries to gain maximum value from the lettered tiles which come by chance to him. This is where skill comes in. if a player has command over language, he can coin or create words with highest maximum value. Thus, these two elements of chance and skill are the key elements of a "Scrabble".

(4) Hence, in our view, "Scrabble" will not fall in the category or class mentioned in sub-heading 9503.00, namely, "puzzles of all kinds".

(5) <u>Applying the dictionary meaning</u>, "Scrabble" is a board game in which players use lettered tiles to create words in a crossword fashion. [See: The Concise Oxford English Dictionary, Tenth Edition, Revised].

(6) <u>trade Parlance-</u> Applying the said test of "common parlance" or trade meaning and commercial nomenclatures, we are of the view that "Scrabble" is a board game. If one attends any departmental 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 the test of common parlance "Scrabble" is not the puzzle. It is a game.

Whether scrabble is Puzzle or game

Game because
⇒ Outcome- predetermined in Puzzle not in game
⇒ Chance& skill - in scrabble

2) Godrej Industries Ltd(2008)(SC)- imp

(1) The appellant is a public limited company which manufactures a variety of cosmetics and toilet preparations, including hair dyes

(2) The assessee classified the liquid hair dyes as 'other goods' under Tariff item 68 attracting duty @ 8% whereas department contending that it is classified as 'Hair lotion' under Tariff item 14F chargeable to duty @105%.

(3) The expression "lotion" has been described in Collins English Dictionary as "a liquid preparation having a soothing, cleansing or antiseptic action applied to the skin, eyes etc." It has also been indicated that the word "lotion" had been derived from the Latin word "lotio" meaning - a washing. Nothing has been disclosed from any of the technical information gleaned from standard text-books that the appellant's product was anything more than a hair colouring agent From the chemical analysis of the appellant's product nothing has also been shown as to whether the same could be applied to the scalp for restoration or nourishment of hair

(4) Apart from the above, even in common parlance or trader's jargon a hair dye, unless it had other properties besides the capacity to darken hair, could not be equated with hair lotion. Although, not much weight has been given to the affidavits filed on behalf of the appellant's company, the same cannot be brushed aside in determining what a common man or a trader would understand by the expressions "hair lotion" and "hair dye". <u>While in a generic sense a hair dye may also be referred to as hair lotion, for the purposes of a taxing statute, its chemical composition and actual usage become relevant.</u>

(5)

Hence hair dye cannot be classified as hair lotion under tariff Item 14F.

CLASSIFIED UNDER
OTHER GOODS- 8%

HAIR DYE

HAIR LOTION

3) Que- whether the carpet, in which jute is predominant by weight, but the surface is entirely of polypropylene, should be classified as jute carpet or polypropylene carpet

CHAMPDANY INDUSTRIES LIMITED (2009)(SC)- M. Imp & Expected

The assessee was engaged in the manufacture of carpets in which jute predominated by weight over every other single textile material. However, revenue contended that the same should be classified as polypropylene carpet.

In this regard, the Apex court considered the following points

1) Relying on note 1 to chapter 57, revenue argued that the surface of the carpet being entirely of polypropylene, the same should be classified as polypropylene carpet. The SC viewed that role of chapter note is limited to decide whether the goods in question are "carpets and other textile floor coverings" for the puposes of chapter 57 or not. Once the goods are carpets and falling under chapter 57, the role of chapter note 1 comes to an end

   Further referring to the relevant statutory provisions laid down in section notes 2(A) and 14(A) of Section XI, the Apex court held since the impugned goods admittedly fell under chapter 57 and consisted of more than two textile materials, it had to be classified on the basis of that textile material which predominated by weight over any other single textile material. As, in the goods in question, jute admittedly predominated by weight over each other single textile material, the said carpet could only be classified as jute carpets and nothing else. The contrary interpretation given by the revenue was incorrect

2) Relying on the concept of essentiality test, revenue argued that the exposed surgace of the carpet was polypropylene fiber and not jute, these goods could not be classified as jute carpets. The court held the said argument of he revenue t be erroneous because it was against the principle of predominance test

3) Learned counsel for the revenue further argued that the common parlance test should be applied for classidfying the carpets and the carpets, to the common man, would not appear to be jute carpet but polypropylene carpet. The SC observed that it is already established principle that while interpreting statutes like the Excise Tax Acts or Sales Tax Acts, the common parlance test can be accepted only if any term or expression is not properly defined in the Act. Therefore, going by the aforesaid principle, the court held that common parlance test did not have any application here.

4) Learned Counsel for the revenue argued that for the purpose of classification in this case, rule 3 of the 'rules for the interpretation of the first schedule to the CEA 1985 should be applied. Applying the said rule revenue wanted to classify the carpets under the residuary sub-heading 5702.90 of heading 57.02 – "others". In this regard, the Apex court observed that revenue stand in this case was contrary to the decisionof SC in HPL Chemicals Ltd. (2006) wherein it was held that rule 3(a) of the interpretative rules provides that if the goods are covered by a specific heading, the same cannot be classified under the residuary heading at all.

   Apart from that, the court noted that the point of rule 3, which had been argued by the learned counsel for the revenue, was not part of its case in SCN. It is well settled that in court, Revenue cannot argue a case not made out in its show-cause notice.

   In the light of the above discussion, the Apex Court pronounced that the said carpets shall be classified as jute carpets and note as polypropylene carpet.

1 the note 1 to chapter 57 of the Excise tariff is reproduced as below-

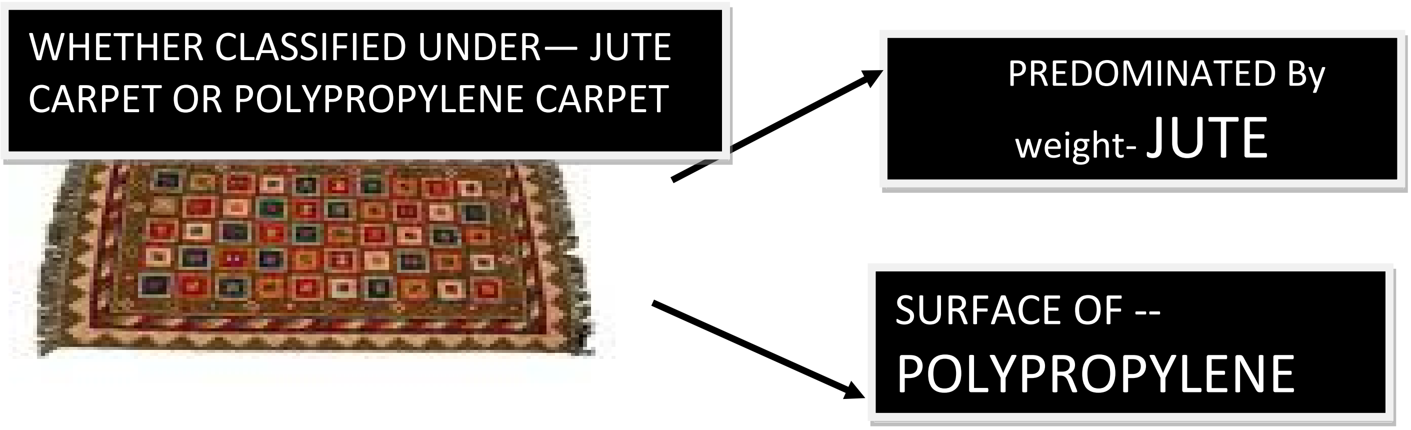
" for the purposes of this chapter, the term 'carpets and other textile floor coverings' meaning floor coverings in which textile materials serve as the exposed surface of the article when in use and includes article having the characteristics of textile floor coverings but intended for use for other purposes.

2. section Notes 2(A) and 14(A) of Section XI of the Central Excise Tariff Act, 1985 is set out as follows-

2(A) goods classifiable in chapter 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over any other single textile material.

14(A) products of Chapter 56 to 63 containing two or more textile materials which would be selected under note 2 to this section for the classification of a product of chapter 50 to 55 or of heading 5809 consisting of the same textile materials

Note- the heading cited in some of the case laws mentioned above may not co-relate with the heading of the present Excise Tariff as these cases relate to an earlier point of time.



4) Frito Lay India (SC)(2009)

The assessee manufacturer of “cheetos Masala Balls”, Cheetos Cheese Puff” and “cheetos X&O” classified them under heading 2108

Headings-1904- food preparation obtained by swelling/ roasting of cerals in graing form (for e.g corn flakes)
Heading 2108 – edible preparation not included else where

Subject products neither obtained by swelling/roasting of cereals nor made from cereals in grain form.
The statutory illustration of product covered under Heading 19 04 is corn flakes. They are classifiable under 2108.

5) Whether classification of the imported product changes if it undergoes a change after importation and before being actually used? - Imp

Atherton Engineering Co. Pvt. Ltd. v. UOI 2010-TIOL-271-HC-Kol-Cus

The assessee imported artemia cyst (brine shrimp eggs). It classified it as ‘prawn feed’ under the heading 2309 which includes products used as animal feed. However, the Department contended that this product was classifiable under the heading 0511.99 which refers to other products in the category of non edible animal products. The contention of importer was that these imported cysts contained little organisms/embryos which later became larva that prawns feed on. Therefore, according to them, the nature and character of the product was not changed by nurturing or incubation.

The Court noted that it was the use of the product that had to be considered in the instant case. If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the instant case, it examined whether the nature and character of the product remained the same.

The Court opined that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. This larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.

Hence, the Court held that if the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.

Cenvat credit

1) M. IMP & EXPECTED

Q 1 What is the quantum of CENVAT credit that can be availed in respect of inputs and capital goods cleared on or after 07.09.2009 from an export-oriented undertaking or by a unit in electronic hardware technology park or in a software technology park?

Ans-

Sub-rule (7) of the CENVAT Credit Rules, 2004 *inter alia* provides that credit in respect of inputs and capital goods cleared on or after 07.09.2009 from an export-oriented undertaking or by a unit in electronic hardware technology park or in a software

technology park, as the case may be, on which such undertaking or unit has paid –

A. excise duty leviable under section 3 of the Excise Act read with serial number 2 of the *Notification No. 23/2003 CE, dated 31.03.2003*; and

B. the education cess and the secondary and higher education cess on the excise duty referred to in (A), shall be the aggregate of –

   (i) that portion of excise duty referred to in (A), as is equivalent to -
   the additional duty leviable under section 3(1) of the Customs Tariff Act, which is equal to the duty of excise under section 3(1)(a) of the Excise Act;

   (ii) the additional duty leviable under section 3(5) of the Customs Tariff Act; and

   (iii) II. the education cess and the secondary and higher education cess referred to in (B).

2) Rokasa Ltd. was engaged in the manufacture of a pharmaceutical product, viz. Rovamox Pediatric Drops. Rokasa Ltd. contended that the plastic droppers supplied along with the bottle containing the drops were inputs used in or in relation to manufacture of the final product and hence, claimed CENVAT credit of the duty paid on the droppers. However, the Revenue argued that CENVAT credit was not admissible as these droppers were kept separately in the cartons along with the sealed bottle of the pediatric drops and were neither used in the manufacture of pediatric drop nor used in relation to its manufacture.

Briefly discuss whether the stand taken by the Department is correct or not with the help of a decided case law.- [M. IMP & EXPECTED]

Ans- No, the stand taken by the Department is not correct. The facts of the given case are similar to the case of *CCEx., Mumbai v. Okasa Ltd. 2009 (241) E.L.T. 359 (Bom.)*. In the instant case, the High Court has observed that for the purpose of dispensation or administration of the drugs in proper quantity as per the medical prescription, dropper has to be supplied along with the bottle containing the drug. Further, since as per the directions given by the Controller of Drugs for India, such droppers were mandatory for sale of the drug, they would be considered as "packing material".

Therefore, the High Court held that the plastic dropper packed with the pediatric drops should be construed to be an input used in or in relation to the manufacture of the final product.

Treated as Input

Dropper

3) Bhuwalka Steel Industries (2010)(Tri)

1) Rule 3(1) of the Cenvat Credit Rules allow credit in respect of input or capital goods actually received in the factory of manufacturer of the final product. In a case where either the entire quantity of goods not received

in the factory of manufacturer of the final product, there cannot be any question of allowing any credit in respect of such goods not received.

2) However, it cannot be denied that some goods are susceptible to transit loss on account of such goods being of hygroscopic nature or of volatile nature. There can also be cases of difference in weight on account of difference in the weighing scales at both ends, i.e., at the point of despatch and at the point of receipt. Whether CCR allowed in that case?
3) There may be difference in quantity received and invoiced. Such difference is termed as 'transit loss' and if such loss falls within the tolerance/normal limits or industry norms, CCR will be allowed on whole of the quantity of input as stated in the invoice and no disallowance of CCR.

4) BANSAL ALLOYS & METALS LTD.(2010) (Tri)

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Iron and Steel Ingots classifiable under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. They were availing Cenvat credit benefit on final product. They also paid service tax on the transportation of goods by road. The appellants removed the inputs as such after reversal of Cenvat credit on input availed by them under Rule 3(5) of Cenvat Credit Rules, 2004 during the period January, 2005 to October, 2005. It has been alleged that the appellants had not reversed the Cenvat credit of service tax availed in respect of transportation of goods by road.

From the plain reading of Rule 3(5) it is clear that the manufacturer shall be required to pay an amount equal to the credit in respect of such input or capital goods. On the other hand, Rule 3(1) allowed the manufacturer to take credit on any input or capital goods and any input service. Rule 3(5) does not indicate for payment of equal amount in respect of credit of input service. It is well settled that while interpreting the statute no addition or subtraction can be made and the words used therein must be given their plain meaning. So, the appellants are required to reverse equal amount of input credit on removal of the inputs as such under Rule 3(5) of the Rules. 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 is not justified.**

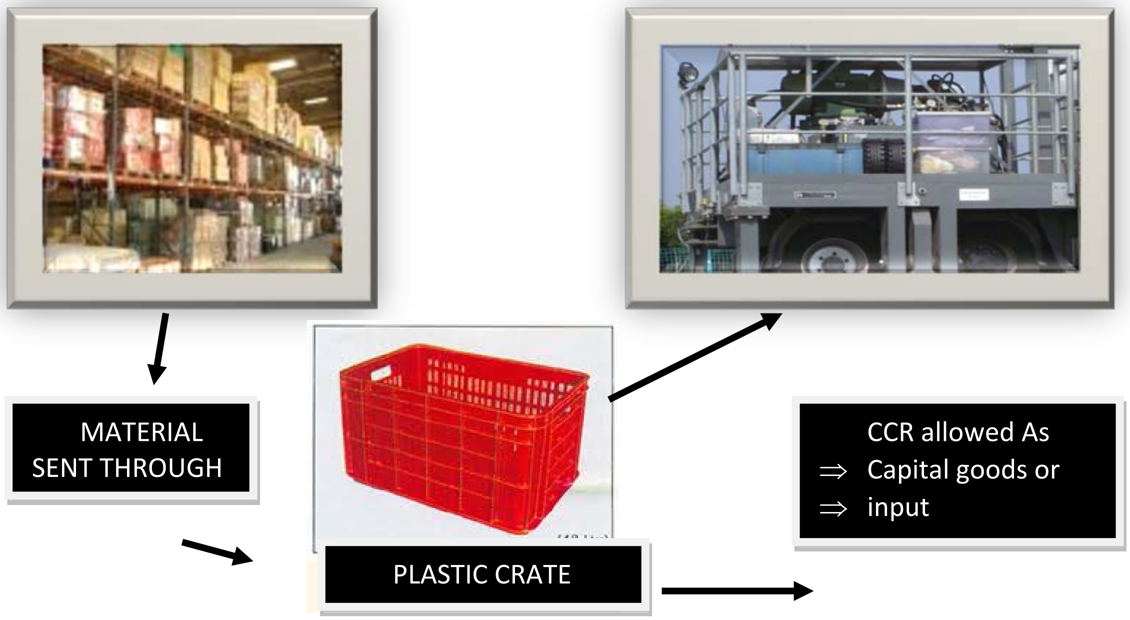
5) Banco products (india) Ltd.(2009)(Tri-LB)- M. IMP

If the plastic crates are held to be an accessory to the main machine, appearing against Sr. No. (i) of the definition of the capital goods, as contained in Rule 2(b) of the Cenvat Credit Rules, 2002, they would earn the status of the eligible capital goods for the purposes of Modvat.

The appreciation of the various judgments on expression "accessory" as discussed above, leads us to observe that an accessory may or may not be required for essential working of the main unit, but is an object which is used for the convenience and effectiveness of that unit. The plastic crates in question are used for transportation of the raw material to the processing machine and all the finished goods from the machine to the storage area. It can be argued that instead of using such plastic crates as material handling device, the various components or the inputs can be carried manually also. However, the question is as to whether such transportation of the inputs or semi-finished goods in the factory would be convenient way of dealing, and whether the same would not hamper the continuous working of the machine on account of delays in the delivery of the raw material etc. It may be possible in theory to do so, but is neither practical nor possible to do in the actual manner. The delivery of the raw material in time for increasing the effective working of the same and then removal of the finished goods from the vicinity of the machine contributes may be in a subordinate degree to attain a general result or effect. Same adds to definition of effectiveness of the machinery, and when viewed and judged in the light of interpretation of the term "accessory" by various Courts, the plastic crates are required to be held as accessory only. **Hence, plastic crates would be eligible as cenvat credit as capital goods.**

It is their contention that inasmuch as the plastic crates are used "in relation to the manufacture" of their final product and as the said expression is of very wide import, SC held in *M/s. Rajasthan State Chemical Works* - 1991 (55) E.L.T. 444 (S.C.) that - The expression "in the manufacture of the goods" takes within its encompass all processes which are directly related to the actual production" Accordingly, it was held that use of powers in handling raw material prior to commencement of actual process was held as use for powers in any process in or in relation to manufacture of final product. Accordingly, Hon'ble Supreme Court observed that the process of handling/lifting/pumping/transfer/transportation of the raw material is also a process in or in relation to manufacture, if integrally connected with further operation leading to manufacture of the goods.

By applying the ratio as enacted by Hon'ble Supreme Court to the issue disputed before us, it has to be held that the process of manufacture starts with the process of handling of the raw material and resultant use of plastic crates for movement of such raw material, in which case, the plastic crates would earn their status as inputs. Hence tribunal opined that the plastic crates would also be eligible for cenvat credit as input.



6) Can CENVAT credit be taken on the basis of private challans?

CCEx. v. Stelko Strips Ltd. 2010 (255) ELT 397 (P & H)

The issue under consideration before the High Court in the instant case was that whether private challans other than the prescribed documents are valid for taking MODVAT credit

The High Court placed reliance on its decision in the case of *CCE v. M/s. Auto Spark Industries (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.

The High Court also relied on its decision in the case of *CCE v. Ralson India Ltd. 2006 (200) ELT 759 (P & H)* wherein it was held that if the duty paid character of inputs and their receipt in manufacturer's factory and utilization for manufacturing a final product is not disputed, then credit cannot be denied.

Thus, the High Court held that MODVAT 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.

7) Fibre Foils Ltd.(2009)(Bom)- IMP

<u>Whether tribunal is empowered to reduce penalty imposable under rule 15 of CCR 2004</u>

The Bombay High Court noted that from the plain or literal reading of the said sub-rule, it would be clear that the language used is shall. Hence the court pronounced that undoubtedly the language is mandatory and there is no discretion vested in the authorities in the mantter of imnposition of penalty. The penalty had to be imposed by the A.O based on the material available and not on the defence which the assessee might have thaken. Hence the cout held that the penalty has to be equal to the amount of duty which is payable and not less than that.

8) COCA COLA INDIA PVT. LTD.

Whether CCR ALLOWED ON service tax paid on advertisement of CocaCola and Fanta, whereas assessee manufacturing and paying duty on concentrate

Cenvat credit of Service tax - Input service - Credit admissibility of Service tax to concentrate manufacturer on advertising service used for marketing of soft drink removed by bottlers - All and any activity relating to business covered under input service provided there is relation between manufacture of concentrate and such activity.

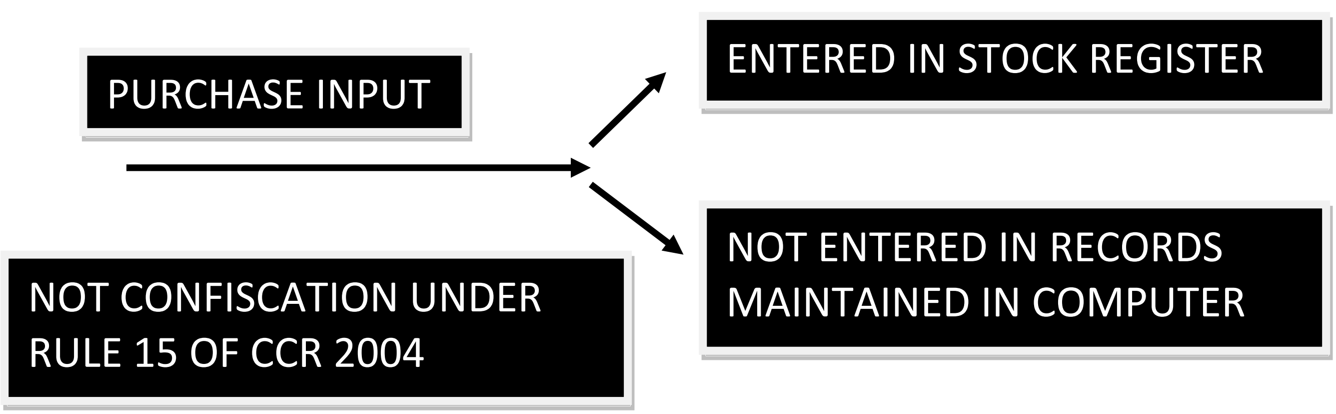
The assessee was manufacturer of non-alcohlic beverage known as concentrate. The concentrate were sold under brand name of Coca Cola and fanta

The concentrate was sold to bottling companies who used to manufacturer aerate beverages from such concentrates and sell the same to distributors. The assesee availed cenvat on advertisewment expense incurred for bottles though thery are manufactureing concentrates. The excise duty was paid on concentrate after including advertisement expense.since department not disputes payment of excise duty on full sale price inclusive of advertisement cost, it proved that the advertisement was related to concentrate. Hence CCR allowable on advertisement.

9) Green Alloys Pvt. Ltd.(2009)(P&H)-IMP

<u>Whether input can be confiscated under rule 15 of CCR 2004 on the ground of non-accountal of inputs in the records maintained in computer.</u>

The goods seized have been found to be entered in the stock register. In these circumstances, it cannot be held that there was a clear case for confiscation only on the ground that in the computer in excel sheet, some of the goods were not entered. There is nothing to show that in respect of the goods, there was wrongful availment of Cenvat credit or even in respect of goods which were entered in the register but not entered in the computer, there was wrongful availment of Cenvat credit. Presumption of wrongful availment of Cenvat credit is sought to be drawn from the fact that there was little value addition to the finished product over and above the value of the raw material, which was a debatable issue. Thus, it could not be held that there was strong *prima facie* case for confiscation of goods which would justify continued detention of goods or demand of security for the value of goods. Procedure for seizure has to be reasonable and fair and there has to be some basis for continuing to detain the goods. Mere allegation or mere initiation of investigation does not justify detention of goods.



5. Rolex Ltd. was engaged in the manufacture of electricity using naptha as fuel for generation of electricity. The electricity was partly used captively and partly sold outside to its joint ventures, vendors or given to the grid for distribution. Rolex Ltd. claimed the CENVAT credit on the naptha used in the manufacture of the electricity. However, Department denied the credit on the ground that CENVAT credit on naptha could not be admitted because part of the electricity was cleared outside the factory to the joint ventures, vendors etc. Examine the veracity of the action taken by the Department with the help of a decided case law.

10) Maruti SuZuki (SC) (2009)- V. Imp

(a) assessee are using naphtha as fuel to run the gas turbines and they are availing CENVAT Credit on naphtha used for generation of electricity in gas turbines. Assessee also uses diesel generating set (DG set) for generation of electricity with the use of diesel for which they had not availed any credit.
(b) assessee cleared a part of electricity generated in the factory to its joint ventures, vendors etc. In addition, assessee met its electricity requirements by electricity captively generated by the assessee in their turbines.

It may be noted that even the joint ventures, vendors etc. to whom excess electricity is wheeled out in turn manufacture final products.

Whether CCR allowed on naptha used for generation electricity cleared to Joint venture/Vendors?

Decision- NO

(1) Coming to the statutory definition of the word "input" in Rule 2(g) in the CENVAT Credit Rules, 2002, it may be noted that the said definition of the word "input" can be divided into three parts, namely :

(i) specific part
(ii) inclusive part
(iii) place of use

(2) As stated, the definition is in three parts, namely, specific part, inclusive part and place of use. All the three parts are required to be satisfied before an input becomes an eligible input.

However, to the extent the excess electricity **is cleared to the grid for distribution or to the joint ventures, vendors, and that too for a price (sale) the "process and the use test" fails.** In such a case, it cannot be said that electricity generated is "used in or in relation to the manufacture of final product, within the factory". Therefore, to the extent of the clearance of excess electricity outside the factory to the joint ventures, vendors, grid etc. would not be admissible for CENVAT credit as such wheeled out electricity, cleared for a price, would not fall within the definition of "input" in Rule 2(g) of the CENVAT Credit Rules, 2002.

<u>Nov 08 to April 09</u>

11) Repro india LTd.(2009)(Bom)- imp & expected

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

~~The assessee claimed refund of CCR attributable to inputs used in the manufacture of printed books exported by it.~~

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

~~Held that, rule 19 of CER 02 uses the term excisable goods therefore both dutiable and exempted goods can be exported under bond.~~

~~Rule 6(6) of CCR 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. Thefefore, the demand by the department was unsustainable~~.

This case overruled – see Rule 19 of CER 2002- amendment

<u>Latest cases from May 09 to OCT 09</u>

12) Ambuja Cement Ltd. (P&H)(2009)- imp

Cenvat credit of Service tax - Input service - Goods Transport Agency service - Outward freight whether an input service when freight paid by manufacturer upto customer's doorstep - C.B.E. & C. Circular No. 97/6/2007-S.T., dated 23-8-2007 clarifying impugned issue, binding on Department –

⇒ Credit admissible **if ownership of goods remain with seller**
⇒ **till delivery at customer's doorstep** –
⇒ Transit insurance borne by appellant and property in goods not transferred to buyer till delivery - Freight charges forming part of value of excisable goods and borne by appellant as sale on FOR destination basis –
⇒ Outward transportation upto place of removal defined as input service during material period - All three conditions in circular satisfied –
⇒ Credit admissible - Interest not payable - Rules 2(l) and 14 of Cenvat Credit Rules, 2004.

13) ALIDHARA TEXTOOL ENGINEERS PVT. LTD.(Tri)(2009)

1) Cenvat credit of Service tax - **Input service - Erection, Commissioning and Installation services received at premises of buyer of machines manufactured by assessee** - Erection and commissioning cost included in transaction value of machine - Process undertaken at buyer's premises incidental to manufacturing activity undertaken in manufacturer's premises as what is sold is complete machine duly erected and commissioned and operational - **Rule 2(l) of Cenvat Credit Rules, 2004 not requires service to be rendered at factory of manufacturer** - Service not post removal/post manufacturing as whole transaction of manufacture, erection and commissioning and supply treated as one - Service provided to assessee as sub-contractor and not to buyer of machine - Credit eligible -
2) *In the case of Service tax what is required to be examined is whether the service has been used in or in relation to manufacture directly or indirectly. While the eligibility for Service tax credit on outward transport services is to be examined in connection with place of removal, there is no such requirement as regards other services. In respect of other services what is to be examined is whether they can be held to be rendered in or in relation to manufacture directly or indirectly.*
3) Cenvat credit of Service tax - Input service - Place of rendering of service - Rule 2(l) of Cenvat Credit Rules, 2004 **not requires that service to be rendered at factory of manufacturer** for purpose of eligibility for Service tax credit. - *While the eligibility for Service tax credit on outward transport services is to be examined in connection with place of removal,* ***there is no such requirement as regards other services.***

4) Cenvat Credit of Service tax - Service provider, credit eligibility - Erection, Commissioning and Installation service provided at premises of buyer of machine - Credit of Service tax, availability to manufacturer of machine - Responsibility for erection and commissioning with manufacturer/seller - Agency for the work nominated by seller - Service not provided to buyer but to seller - **Credit available to assessee** - Rules 2(l) and 3 of Cenvat Credit Rules, 2004

6) TATA ADVANCE MATERIALS(2009)(Tri)

1) The appellants purchased Capital Machinery in 1998 and availed Cenvat credit on the said Capital Goods. They were put to use in manufacturing the final products. However, in 2003, a fire accident occurred and the goods were destroyed. They were cleared as scrap without payment of duty. Insurance was also claimed.
2) Revenue proceeded against the appellants for the reversal of the Cenvat credit taken on the Capital Goods. The Original Authority confirmed the demand. He further imposed penalty under Section 11AC along with demand of interest.
3) On a very careful consideration of the issue, I find that the goods have been put to use from 1998 upto 2003. The appellants had legally availed the Cenvat credit and further used the same for payment of duty on the final products. The goods were destroyed in 2003 due to a fire accident. There is no legal provision for demanding the Cenvat credit taken on the said goods during the relevant period. The fact that the appellants claimed insurance, which is inclusive of Excise Duty, is not at all relevant.

No reversal of CCR

Author note- but presently if cleared as waste and scrap then duty leviable on transaction value.

14) Jaya Mills Ltd.(2009)(Tri)

Confiscation of goods - Stock of cotton yarn seized from factory - No evidence on record to show that the goods were likely to be removed clandestinely - Confiscation not justifiable - Rule 25 of Central Excise Rules, 2002.

Confiscation of goods seized from vehicle - Duty paid by party - Goods not to be confiscated - Rule 25 of Central Excise Rules, 2002.

Cenvat/Modvat - Capital goods - Wrong availment of credit on capital goods on which depreciation claimed for income-tax purposes - Assessee rectified the mistake of claiming depreciation of value of capital goods in relevant income-tax return - Assessee filed revised income-tax return without claiming depreciation - CENVAT credit of duty paid on capital goods admissible - Rule 14 of Cenvat Credit Rules, 2004.

15) GUJARAT NARMADA FERTILIZERS CO. LTD.(2009)(SC)- IMP

Rule 6(1) restates a principle in-built in the very structure of Cenvat Scheme that credit not admissible of duty paid on inputs used in manufacture of exempted products - Sub-rule (1) ibid covers all inputs including fuel - Credit not admissible on LSHS used as fuel for producing steam and electricity which in turn used in or in relation to manufacture of exempted goods - Rule 6 of Cenvat Credit Rules, 2004. –

Sub-rule (1) is plenary, hence, it cannot be said that because sub-rule (2) is inapplicable to fuel-input(s), Cenvat credit is automatically available to such inputs even if they are used in the manufacture of exempted goods. Legal effect of sub-rule (1) has to be applied to all inputs including fuel-inputs, only exception being non-fuel-inputs, for which one has to maintain separate accounts or in its absence pay 5% / 6% of the total price of the exempted final products. ***Therefore, sub-rule (1) shall apply in respect of goods used as "fuel" and on such application, the credit will not be permissible on such quantity of fuel which is used in the manufacture of exempted goods.***

Small Scale Industry

Nov 08 to April 09

Unison Electronics Pvt. Ltd. (2009)(SC)

The assessee, a manufacturer of ice-cream makers and popcorn makers, used to avail of the benefit of SSI exemption. The said goods were s0ld under their own brand name "cremica". However, in case of sale to Unite Tele-Shopping (UTS) and tele-Shopping Network (TSN), the supervisors ofr UTS and TSN used to examine the goods and affix a sticker thereon containing the names of UTS/TSN. The department denied SSI-exemption in respect of goods bearing the names/symbols of UTS/TSN contending that the same amounts to affixation of brand name so as to disentiltle the exemption.

Held that, the sticker containing names/symbols of UTS/TSN wer fixed after quality checking. Thefefore, the same was a brand name used for the purpose of indicating a connection in the course of trade between the goods and UTS/TSN. Accordingly, the assessee was not entitled to SSI-exemption in respect of goods sold to UTD/TSN.

May 08 to Oct 08

Superior Products (2008)(SC)

Where the 2 unit have separate legal identity with separate capital, premises, machinery and labour; the fact that they are managed by same person or that their products are same cannot mean that they are dummy units and their clearances should be clubbed for the purposed of SSI-exemption.

Facts

1. The assessee, a partnership firm engaged in manufacture of Pet bottles, had 2 partners Mrs. R and Mrs. T. M/s Superior Pet Pvt. Ltd. Was also engaged in manufacture of pet bottles and the major shareholders and directors of the company were Mrs. R and Mrs. T (Mrs. R had 18% and other major part with Mrs. T). Both assessee firm and company were being managed by Mrs. R.

2. The firm and company had separate operations. Both of them were claiming SSI exemption.

3. Department contended that since both the company and the firm were being managed by Mrs. R, hence, the actual manufacturer was Mrs. R. The creation of corporate veil was only with a view to avid excise duty. Therefore, clearance of firm and company were liable to be clubbed and since the aggregate exceeded SSI-eligible limit, hence, no exemption was available to them.

Question
Were clearances of the firm & company liable to be clubbed and whether exemption was available?
Decision

1. In case of professionally managed business, the management remains entirely separated from ownership, not the management, is a criteria.

2. Since Mrs. R's holding in the company was around 18%, therefore, the company could not be said to belong to her. Since both the firm and the company had separate capital, premises, machinery and labour and both were carrying out separate operations, therefore, none of them was a dummy unit. The commonality of the products, shareholders and partners and a common manager could not destroy the separateness of the two.

3. Therefore, neither two units could be treated as a single unit: nor could Mrs. R, who managed the units, be held to be the manufacturer in both units. Accordingly, the clearances of the firm and the company could not be clubbed and they were eligible for SSI-exemption separately.

CCR 2004

Whether penalty can be imposed on the directors of the company for the wrong CENVAT credit availed by the company?

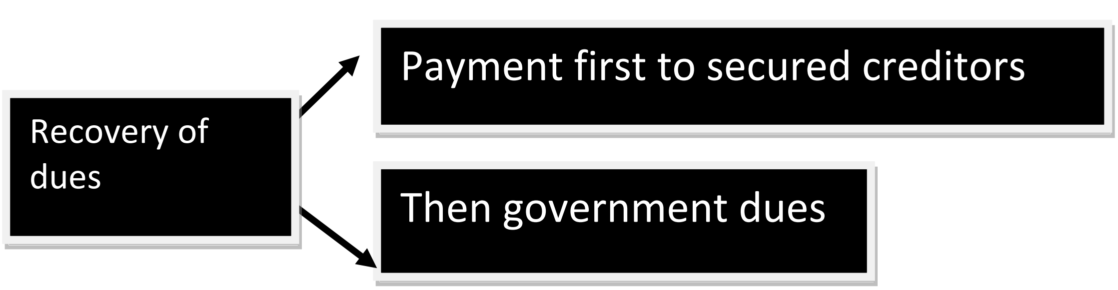
Ashok Kumar H. Fulwadhya v. UOI 2010 (251) E.L.T. 336 (Bom.)

It was held that words "any person" rule 15(1) of the CENVAT Credit Rules, 2004] clearly indicate that the person who has availed CENVAT credit shall only be the person liable to the penalty. The Court observed that, in the instant case, CENVAT credit had been availed by the company and the penalty under rule 15(1)] was imposable only on the person who had availed CENVAT credit [company in the given case], who was a manufacturer. The petitioners-directors of the company could not be said to be manufacturer availing CENVAT credit.

Demand & Refund-

(1) Sec -11-- Sicom Ltd.(SC)(2009)- M. IMP

Recovery of Government dues - Central Excise duty realization whether to have priority over rights of secured creditors - Assessee mortgaged its property to state financial corporation to borrow and also owed Central Excise duty to Revenue/State - Right of a State Financial Corporation is statutory - Statutory provision to prevail over central excise dues which is an unsecured debt - Section 46B of State Financial Corporation Act, 1951 having non-obstante clause which shall prevail over other laws -



(2) Aafloat Textiles (I) P. Ltd.(SC)(2009)

Demand - Limitation - Import of gold and silver under forged Special Import Licence (SIL) – subsequently SIL FOUND to be forged or fake. Since documents forged, obviously fraud involved - Sufficient to extend period of limitation TO Demand custom duty along with interest, penalty and confiscation.

Import licence - Genuineness of - Burden of proof - Forged Special Import Licence (SIL) bought from market, burden of proof to establish genuineness - Buyer according to maxim "Caveat emptor" to be cautious, as the risk is his and not that of seller - Buyer to establish that he had no knowledge about genuineness or otherwise of SIL in question - He has to establish that he made enquiry and took requisite precautions - Consequences to follow if same not done.

(3) SKF INDIA LTD.(2009)(SC)

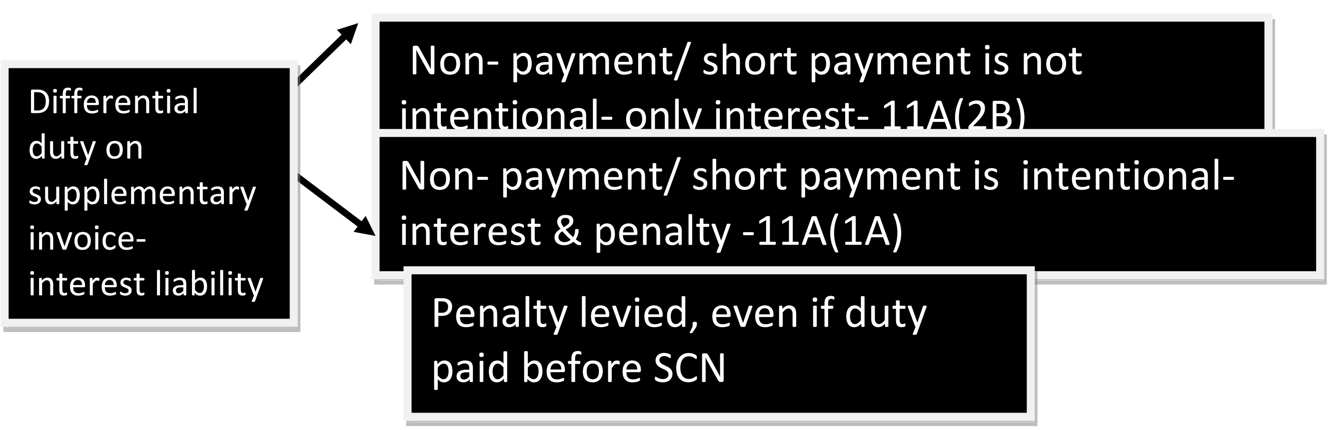
The facts of the case are fairly simple and admitted by both sides. The respondent-assessee is engaged in the manufacture and sale of ball-bearings and textile machine parts. It sold goods manufactured by it on certain prices on payment of excise duty leviable on the price on which the goods were sold. Later on, there was a revision of prices with retrospective effect. Following the revision the assessee demanded from its customers the balance of the higher prices and issued to them supplementary invoices. At the same time it also paid the differential duty on the goods sold earlier. The Revenue took the view that the assessee was liable to pay interest on differential duty. The assessee was given a notice dated April 4, 2006 demanding Rs. 95, 590/- as interest on delayed payment of duty under Section 11AB of the Central Excise Act and further asking it to show cause why penalty may also not be imposed.

<u>Decision -- U/S 11AB in following 2 cases interest is payable</u>

(1) Where fraud, collusion is involved- 11A(1A) – after issue of SCN, option to pay [duty + interest + 25% penalty]
(2) Where fraud, collusion is not involved- 11A(2B)- Before issue of SCN, [pay duty +interest]

It is to be noted that: the assessee was able to demand from its customers the balance of the higher prices by virtue of retrospective revision of the prices. It, therefore, follows that at the time of sale the goods carried a higher value and those were cleared on short payment of duty. The differential duty was paid only later when the assessee issued supplementary invoices to its customers demanding the balance amounts. Seen thus it was clearly a case of short payment of duty though indeed completely unintended and without any element of deceit etc. The payment of differential duty thus clearly came under sub-section (2B) of Section 11A and attracted levy of interest under Section 11AB of the Act.

(1) Penalty can't be imposed.



5) RAJASTHAN SPINNING & WEAVING MILLS(SC)(2009)

1) u/s 11A(2B), SCN not issued if asseseee pays duty along with interest. As per explanation to sec 11A(2B), interest is payable even when duty paid before issue of SCN. 11A (2B) is not applicable in case of fraud. Therefore even if duty & interest paid before issue of SCN, department has the right to issue SCN in case of fraud, collusion etc.

2) whenever Extended Period of Limitation is applicable, 11AC penalty is automatic.
3) In Dharmendra Textile processor case, it can't be said that Sec 11AC is applicable in every case of non-payment or short payment. Sec 11AC would apply only in case of fraud, collusion etc.
4) Penalty u/s 11AC is imposable even if duty paid before issue of SCN.

11 AC Penalty

Not every case of Non-payment/ short payment

Penalty If SCN under 11A (1) state that duty escaped due to conscious & deliberate doing and order u/s 11A(2) confirms this i.e fraud

Penalty levied, even if duty paid before SCN

3) INTERNATIONAL AUTO LTD. (SC)(2010)

In this case, Department seeks to recover interest on differential duty, paid by the assessee, under Section 11AB of the Central Excise Act, 1944, which is disputed by the assessee.

1) assessee supplied auto parts to their customers [manufacturers of motor vehicles], such as Tata Motors, Mahindra and Mahindra and Piaggio Vehicles Private Limited –
2) Tata Motors, Mahindra and Mahindra and Piaggio Vehicles Private Limited determined the prices of auto parts having regard to the cost of raw material, manufacturing cost, profit margin, etc. and placed orders with the assessee.
3) Since price difference arose between the price on the date of removal and the enhanced price at which the goods stood ultimately sold, the Department issued a show-cause notice proposing to levy interest on the differential duty, paid by the assessee, under Section 11AB of the Central Excise Act, 1944.
4) The case of the assessee, before us, was that such interest was not leviable under Section 11AB of the Act, particularly in view of the fact that prices indicated in the purchase orders were final during the period of supply of goods.
5) According to the assessee, in the present case, the Department has accepted the position that the prices in the purchase orders were final. Further, according to the assessee herein, there was no price variation clause in the purchase orders, therefore, there was no scope for increase in prices subsequently and that too, retrospectively. In short, according to the assessee, prices indicated in the purchase orders were final and not liable to change at the time of removal of goods. It was submitted that, in the circumstances, the present case was not a case of short-levy or non-levy of the goods removed by the assessee calling for recovery under Section 11A of the Act, hence, this was not a case for charging of interest under Section 11AB of the Act.
6) Learned counsel appearing on behalf of the assessee submitted that this case is squarely covered by the judgement of three learned Judges of this Court in the case of *M.R.F. Limited* v. *Collector of Central Excise, Madras*, reported in 1997 (92) E.L.T. 309.

Decision

1) It is to be noted that the assessee was able to demand from its customers the balance of the higher prices by virtue of retrospective revision of the prices. It, therefore, follows that at the time of sale the goods carried a higher value and those were cleared , on short payment of duty.

What does differential price signify? It signifies that value, which is the function of the price, on the date of removal/clearance of the goods was not correct. That, it was understated.

2) Therefore, the price indicated by the supplementary invoice is directly relatable to the value of the goods on the date of clearance, hence, enhanced duty. This enhanced duty is on the corrected value of the goods on the date of removal
3) The differential duty was paid only later when the assessee issued supplementary invoices to its customers demanding the balance amounts. Seen thus it was clearly a case of short payment of duty though indeed completely unintended and without any element of deceit etc. The payment of differential duty thus clearly came under sub-section (2B) of Section 11A and attracted levy of interest under Section 11AB of the Act."
4) Section 11A of the Act deals with recovery of duty not levied or not paid or short-levied or short-paid. The said section, which stood inserted by Act 1978, underwent a sea-change when Parliament inserted major changes in that section in 2001 [with effect from 11th May, 2001] and [with effect from 14th May, 2003]. It needs to be mentioned that simultaneously in 2001 also made changes to Section 11AB of the Act.
5) In the case of ***S.K.F. India Limited***, it has been, *inter alia*, held, as can be seen from the below-quoted paragraphs, that sub-section 2(B) of Section 11A provides that the assessee in default may make payment of the unpaid duty *on the basis of his own ascertainment* or as ascertained by a Central Excise Officer and, in that event, such assessee in default would not be served with the Demand Notice under Section 11A(1) of the Act.
6) However, Explanation (2) to the sub-section makes it clear that such payment would not be exempt from interest chargeable under Section 11AB of the Act. What is stated in Explanation (2) to sub-section 2(B) is reiterated in Section 11AB of the Act, which deals with interest on delayed payment of duty. From the Scheme of Section 11A(2B) and Section 11AB of the Act,

7) We quote hereinbelow relevant observations made in the case of *SKF India Limited* , which reads as follows :

" Section 11A puts the cases of non-levy or short levy, non-payment or short payment or erroneous refund of duty in two categories.

One involving fraud and other not involving fraud. Section 11A, however allow the assessees in default in both kinds of cases to make amends, subject of course to certain terms and conditions.

(i) The one in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty"; that is to say, it is intentional, deliberate and/or by deceitful means. --. are dealt with under sub-section (1A) of section 11A and
   - ⇒ 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.

(ii) Second in which the non-payment or short payment etc. of duty is for a reason other than deceit; the default is due to oversight or some mistake and it is not intentional. --- are dealt u/s 11A (2B).
   - ⇒ Sec 11A (2B) provides for non issuance of SCN if differential duty, as ascertained by assessee or by CEO is paid in full along with interest u/s 11AB

8) Since the present case falls u/s 11A(@B). hence interest will be payable.
9) <u>MRF Case NOT APPLICABLE-</u>

When the differential duty is paid after the date of clearance, it indicates short-payment/short-levy on the date of removal, hence, interest which is for loss of revenue, becomes leviable under Section 11AB of the Act. In our view, with the entire change in the Scheme of recovery of duty under the Act, particularly after insertion of Act 14 of 2001 and Act 32 of 2003, the judgement of this Court in the case of *M.R.F. Limited* [supra] would not apply. That judgement was on interpretation of Section 11B of the Act, which concerns claim for refund of duty by the assessee. That judgement was in the context of the price list approved on 14th May, 1983. In that case, assessee had made a claim for refund of excise duty on the differential between the price on the date of removal and the reduced price at which tyres were sold. The price was approved by the Government. In that case, the assessee submitted that its price list was approved, by the Government on 14th May, 1983, but subsequent thereto, on account of consumer resistance, the Government of India directed the assessee to roll back the prices to pre-14th May, 1983 level and on that account, price differential arose on the basis of which the assessee claimed refund of excise duty which stood rejected by this Court on the ground that once the assessee had cleared the goods on classification, the assessee became liable to payment of duty on the date of removal and subsequent reduction in the prices for whatever reason cannot be made a matter of concern to the Department insofar as the liability to pay excise duty was concerned. In the present case, we are concerned with the imposition of interest which, as stated above, is charged to compensate the Department for loss of revenue. Be that as it may, as stated above, the Scheme of Section 11A of the Act has since undergone substantial change and, in the circumstances, in our view, the judgment of this Court in the case of *M.R.F. Limited* [supra] has no application to the facts of this case. In our view, the judgment of this Court in the case of *SKF India Limited* [supra] is squarely applicable to the facts of this case.

REFUND OF EXCISE DUTY

Section 27 of the Customs Act, 1962

4. Can a refund claim be filed under section 27 of the Customs Act, 1962 if the payment of duty has not been made pursuant to an assessment order?

Aman Medical products Ltd. v. CCus., Delhi 2010 (250) ELT 30 (Del.)

The assessee filed a Bill of Entry and paid the higher duty in ignorance of a notification which allowed him the payment of duty at a concessional rate. There was no assessment order for being challenged in the appeal which was passed under section 27(1)(i) of the Act. The Revenue contended that a refund in appeal can be asked for under section 27 of the Customs Act, 1962 only if the payment of duty had been made pursuant to an assessment order. The High Court, referring to the language of section 27, interpreted that it is not necessary that the duty paid by the importer must be pursuant to an order of assessment. The duty paid by the importer can also be 'borne by him'. Clauses (i) and (ii) of sub-section (1) of section 27 are clearly in the alternative because the expression 'or' is found in between clauses (i) and (ii). The object of section 27(i) and (ii) is to cover those classes of case where the duty is paid by a person without an order of assessment.

The High Court held that the refund claim of the appellant was maintainable under section 27 and the non-filing of the appeal against the assessed bill of entry did not deprive the appellant to file its claim for refund under section 27 of the Customs Act, 1962. The refund claim, in the case on hand, would fall under clause (ii) of sub-section (1) of section 27.

Note: Section 27 of the Customs Act, 1962, inter alia, provides as follows:-

Any person claiming refund of any duty and interest, if any, paid on such duty -

(i) paid by him in pursuance of an order of assessment; or

(ii) borne by him,

may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Customs or Deputy Commissioner of Customs.

Section 27 of the Customs Act, 1962

5. Can the assessee be denied the refund claim only on the basis of contention that he had produced the attested copy of TR-6 challan and not the original of the TR-6 challan?

Narayan Nambiar Meloths v. CCus. 2010 (251) E.L.T. 57 (Ker.)

In the instant case, the refund application filed by the assessee was not entertained on the ground that the petitioner had not produced original of the TR-6 Challan and what was produced was only an attested copy. According to

repondents, production of original of the TR-6 challan was a mandatory requirement for processing the refund application.
The Kerela High Court decided that the petitioner could not be denied the refund claim on account of following mentioned grounds:-
Firstly, the Court opined that the only contention raised against the petitioner was that TR 6 Challan he produced was only an attested copy, which was purely a technical contention and could not be accepted.
Secondly, as per clarification issued vide *F.No. 275/37/2K-CX. 8A, dated 2-1-2002,* a simple letter from the person who made the deposit, requesting for return of the amount, along with the appellate order and attested Xerox copy of the Challan in Form TR-6 would suffice for processing the refund application. Evidently, in the instant case, the petitioner had fully complied with the requirement laid down in this clarification.

(M.Imp) - ". AP SPINTEX LTD- 2009- RAJSTHAN HC

ED recovered from buyer – credit notes issued subsequently – Applicability of Doctrine of Unjust Enrichment

Sec 11-B of CEA, 1944 provides that any refund of excise duty shall be credited to the Consumer Welfare Fund. However, it shall be given to the applicant if duty of excise has been paid and borne by the manufacturer. In a case where assessee manufacturer initially recovered excise duty from the buyer and then subsequently issued credit note to the buyer, then whether this can be treated as equivalent as "excise duty paid and borne by the manufacturer.
it was held that "When debit note is issued by the buyer and corresponding credit note is issued by the seller, price of goods stand reduced to the extent of debit note and credit note. When debit note and credit note are issued and effected, it cannot be assumed that incidence of duty has been passed on the purchaser. In other words, „doctrine of unjust enrichment‟ shall not be applicable in such situation and the appellant shall be entitled to the refund‟.

Appeals

1. WHETHER THE APPEAL FILED BY COMMISIONER HIMSELF AND NOT BY SUBORDINATE OFICER BASED ON AUTHORIZATION UNDER SECTION 35B, IS MAINTAINABLE ?

Shree Ganesh Dyeing & Ptng. Works 2008 (Guj.)- M. IMP

In the instant case, the assessee raised objection as to maintainability of the appeal on the ground that the appeal had been filed by Commissioner himself, instead of by the Central Excise Officer authorized by the Commissioner, as required by section 35B(2) of the Central Excise Act, 1944.

The Court, while analyzing sec 35B(2) of the Central Excise Act, 1944, held that section 35B(2) of the Act is made up of two parts or two stages. The first stage is formation of an opinion by Commissioner that the order made by the appellate authority is not legal proper. The Second stage is filing of an appeal against order of appellate authority by directing any Central Excise Officer authorized by the Commissioner in this behalf to file an appeal on behalf of the Commissioner. Thus, the Commissioner is vested with a discretion, in the first instance to form an opinion as to whether appellate order is legal or proper and then exercise the discretion to decide whether an appeal should be preferred or not, having come to the conclusion that the order is not proper or legal.
The High Court further clarified that when a person is statutorily entitled to delegate powers to another person to file an appeal on behalf of the first named person, it goes without saying that the power which can be delegated is the power which the first named person would be entitled to exercise. Hence, until and unless the Commissioner himself is entitled to file an appeal, there is no question of the Commissioner authorizing another officer to file appeal on his behalf. The language of the latter part of sub-section (2) of Section 35 B of the Act itself makes this more than abundantly clear when the provision uses the phrase to appeal on his behalf."

2. DISCUSS THE INTERPRETATION OF PHRASE "A MISTAKE APARENT FROM RECORD"?

Saurashtra Kutch Stock Exchange Ltd. 2008 (230)ELT 385(SC)- IMP

Supreme Court, while interpreting the phrase "any mistake apparent from record" under section 254(2) of the Incometax Act, 1961, stated that a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of the record and can be connected while exercising certiorari jurisdiction. An error apparent on the face of the record means an error which strikes on mere looking and does not need long drawn-out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness.

Thus an error can not be said to be apparent on the face of the record if one has to travel beyond the records to see whether the judgment is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

To put it differently, it should be so manifest and clear that no Court would permit it to remain on record. If the view accepted by the Court in the original judgment is one of the possible views, the case can not be said to be covered by an error apparent on the face of the record.

Mistake apparent from Record

⇒Don't require elaborate discussion
⇒No 2 opinion possible
⇒SC decision even if came subsequently

3. Whether the Department is not required to state any reason while filing an application for condonation of delay in filing the appeal to CESTAT- IMP
CCEx Vs Chennai Vs CESTAT(2009)(Mad)- in the absence of sufficient cause, the tribunal could not by itself invent reason and grant the relief as sought by the petitioner.

Department file appeal late

Application for condonation of delay filed with CESTAT- but no reason specified for delay

Whether Department also to give reason for delay - yes

4. Can a writ petition be filed against the order of waiver of pre-deposit under first proviso to sec 35F.
Cisco Systems India Pvt. Limited (2009)(Del)- IMP
as long as discretion is not excercised in an arbitrary manner, a writ court would not interfere with order of waiver of pre-deposit.

5. Whether non-filing of appeal for some assessment years is a bar in filing appeal for other assessment years?- IMP
SC held that there may be cases where because small amount of revenue involve, no appeal is filed. Policy decisions may be teken out to prefer appeal where the revenue involved is below a certain amount.
In case of C.K Ganfa dharan's (2008)(SC)- it was held the merely because in some cases revenue has not preferred an appeal, that does not operate as a bar for the Revenue to prefer an appeal in another case where there is just cause for doing so, or it is in public interest to do so, or for a pronouncement by the higher court when divergent views are expressed by the different High courts. The court further provide that if the assessee takes a stand that the revenue acted malafide in not preferring appeal in one case and filing the appeal in other case , it has to be established.
In present case, it was accepted by the department that the fact situation in all the assessment years was same. Under the circumstances, the court concluded that since fact situation not changed, revenue could not prefer appeal and htus, the court dismissed the appeal filed by the department.

Non- filing of appeal by Department- whether bar on subsequent appeal

if facts are same for all assessment years, Revenue Couldn't file appeal

If revenue of department involved is less, then it may not file, it is policy decision of Dept. and can file appeal in another case

6. Can the judgement of courts be construed as legislation- IMP
Srikumar Agencies (2008)(SC)- No

Judgement of Courts

Not statute becasue
⇒ Judgement Fact Based
⇒ Court explain not define

Advance Ruling

1) Can a writ petition be invoked against advance rulings?- V. IMP
Ans

Recently, the Delhi High Court, in case of *UAE Exchange Centre Ltd. v. UOI 2009 (236) E.L.T. 223 (Del.)*, has held that the ruling by Advance Rulings Authority is binding on the applicant, transaction on which the ruling is sought and the departmental officers concerned. It does not exclude the jurisdiction of the Courts either expressly or by implication. There is no provision which gives finality to the decision of the Authority.

The High Court viewed that the Courts would have jurisdiction to entertain actions under Article 226 of the Constitution (writ petition) impugning the ruling given by the Authority. Therefore, a writ petition can be invoked against advance rulings.

SETTLEMENT COMMISSION

M. IMP & EXPECTED

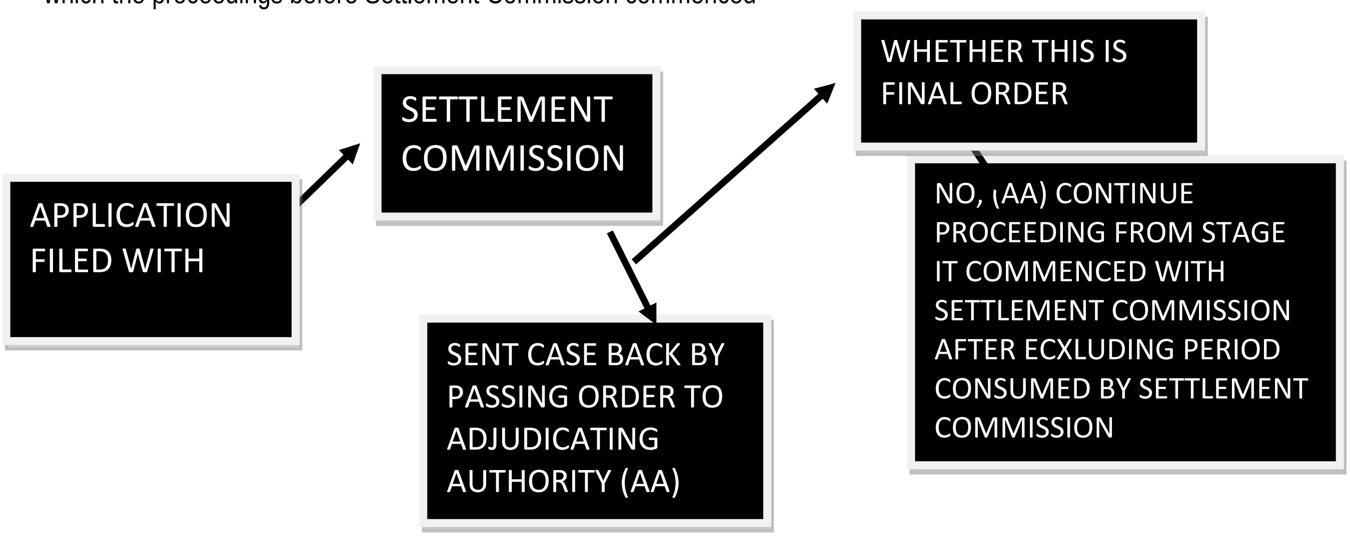
2) Bawa Traders Pvt. Ltd. filed an application with the Settlement Commission under section 32E of the Central Excise Act, 1944. However, as the applicant was not willing to accept the duty liability settled by the Commission, it sent the case back to the adjudicating authority in terms of section 32L(1) of the Act. It directed the adjudicating officer to dispose the case in accordance with the provisions of the Act as if no application had been made to Settlement Commission. When case came up before Revenue for adjudication, it decided that since as per section 32M, any order made by the Settlement Commission was conclusive; the figure of duty liability fixed by the Settlement Commission had attained finality. Hence, Bawa Traders Pvt. Ltd. was required to make payment of the said amount along with penalty and interest.

Do you think that, in the light of facts and circumstances of the instant case, Revenue was justified in considering the order passed by the Settlement Commission to be the final order of adjudication?

Ans- No, in the light of facts and circumstances of the instant case, Revenue was not justified in considering the order passed by the Settlement Commission to be the final order of adjudication. The facts of the given case are similar to the case of *Vishwa Traders Pvt. Ltd. v. UOI 2009 (241) E.L.T. 164 (Guj.)* wherein the High Court held that under section 32L(1), once the Settlement Commission forms an opinion that any person who made an application for settlement under section 32E of the Act has not cooperated in the proceedings before the Commission, the Settlement Commission may send the case back to the adjudicating authority to dispose of the case in accordance with provisions of the Act, as if, no application under section 32E has been made. If there is no application before Settlement Commission, there can be no question of any final order of adjudication. Consequently, the order passed by the Settlement Commission under section 32L(1) cannot be considered to be the final order of adjudication.

The High Court, while interpreting section 32L(3), held that for working out the time limit prescribed under section 11A for recovery of duties, the period commencing from the date of application to the Settlement Commission to the date of receipt of the order under section 32L by the adjudicating authority, shall be excluded. Therefore, the balance period available from the date of making of application before Settlement Commission shall be available to the adjudicating authority for making an order assessing duty liability of an assessee.

Hence, the High Court pronounced that Revenue shall continue the adjudication proceedings from the stage at which the proceedings before Settlement Commission commenced



3) ZUARI CEMENT LTD – 2009 – AAR Facts: Assessee, a 100% subsidiary of a foreign company, was manufacturing cement in its registered factory. It proposed to expand its capacity by installing another plant. It sought advance ruling on the question whether cenvat credit of excise duty paid on cement and steel used in building foundation for plant and machinery will be eligible in either capacity (i.e., either as inputs or as capital goods. Issue: Whether application for advance ruling is maintainable?

It was Held that NO application is maintainable

– "In order to be eligible for a ruling, the activity of production or manufacture of goods for which advance ruling is sought, has to be a "proposed activity" and not an ongoing one. In this case, creation of additional capacity for manufacture of cement by expanding the plant cannot be considered to be a "proposed activity" eligible for procurement of a ruling. Production of the same goods, namely cement, in the expanded plant is only a repletion or continuation of a past activity."

4) Is the Settlement Commission empowered to grant the benefit under the proviso to section 11AC in cases of settlement? - IMP

Ashwani Tobacco Co. Pvt. Ltd. v. UOI 2010 (251) E.L.T. 162 (Del.) The Court ruled that benefit under the proviso to section 11AC could not be granted by the Settlement Commission in cases of settlement.

It elucidated that the order of settlement made by the Settlement Commission is distinct from the adjudication order made by the Central Excise Officer. The scheme of settlement is contained in Chapter-V of the Central Excise Act, 1944 while adjudication undertaken by a Central Excise Officer is contained in the other Chapters of the said Act. Unlike Settlement Commission, Central Excise Officer has no power to accord immunity from prosecution while determining duty liability under the Excise Act.

Once the petitioner has adopted the course of settlement, he has to be governed by the provisions of Chapter V. Therefore, the benefit under the proviso to section 11AC, which could have been availed when the matter of determination of duty was before a Central Excise Officer was not attracted to the cases of a settlement, undertaken under the provisions of Chapter-V of the Act.

5) **Can the order of the Settlement Commission be considered to be a judicial proceeding?**

UOI v. East and West Shipping Agency 2010 (253) ELT 12 (Bom.)

The Custom House Agent License of the respondents was suspended on the ground that authorised agent of the respondents had committed misconduct by taking active part in the act of smuggling and has thus violated the Custom House Agent Licensing Regulations, 2004. During pendency of the misconduct proceedings, respondents approached Settlement Commission. The Settlement Commission after hearing all the parties held that Revenue had failed to prove that the authorised agent of the respondent Custom House Agent (CHA) had a conscious knowledge of mis-declaration of goods. On the basis of said order of the Settlement Commission, Tribunal decided the case in favour of the respondents and dropped the misconduct proceedings against them. The appellants challenged the Tribunal's order alleging that the order passed by the Settlement Commission was ab-initio, null and void being without jurisdiction.

The High Court observed that as per section 127M of the Customs Act, 1962, the order passed by the Settlement Commissioner is in judicial proceedings and it is a judicial order. Further, the appellants had not challenged the said order. Hence, the order passed by the Settlement Commissioner could not be brushed aside considering the scheme of Chapter XVIA. It must be held good in law so long as it is not set aside. Considering the facts and circumstances of the case, the High Court answered the question of law in affirmative in favour of the respondents and against the appellant.

6) **In case of a Settlement Commission's order, can the assessee be permitted to accept what is favourable to them and reject what is not?**

Sanghvi Reconditioners Pvt. Ltd. V. UOI 2010 (251) ELT 3 (SC)

The Apex Court held that the application under section 127B of the Customs Act, 1962 is maintainable only if the duty liability is disclosed. The disclosure contemplated is in the nature of voluntary disclosure of concealed additional customs duty. The Court further opined that having opted to get their customs duty liability settled by the Settlement Commission, the appellant could not be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not.

7) **Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue?**

Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)

The above question was the issue for consideration in a writ petition filed by the Union of India to challenge an order passed by the Settlement Commission in respect of a proceeding relating to recovery of drawback. The Commission vide its majority order overruled the objection taken by the Revenue challenging jurisdiction of the Commission and vide its final order settled the case. The aforesaid order of the Settlement Commission was the subject matter of challenge in this petition.

The contention of the Revenue was that the recovery of duty drawback does not involve levy, assessment and collection of customs duty as envisaged under section 127 A(b) of the Customs Act, 1962. Therefore, the said proceedings could not be treated as a case fit to be applied before the Settlement Commission. However, the contention of the respondent was that the word "duty" appearing in the definition of "case" is required to be given a wide meaning. The Customs Act provides for levy of customs duty as also the refund thereof under section 27. The respondent contended that the provisions relating to refund of duty also extend to drawback as drawback is nothing but the return of the customs duty and thus, the proceedings of recovery of drawback would be a fit case for settlement before the Commission.

The High Court noted that the Settlement Commission while considering the aforesaid question of its jurisdiction for taking up the cases relating to drawback had considered the definition of "drawback" as defined in rules relating to drawback as also the definition of the word "case" as defined in section 127A(b) and after referring to the various judgments of the Tribunal came to the conclusion that the Commission had jurisdiction to deal with the application for settlement. The High Court stated that the reasons given by the Settlement Commission in support of its order are in consonance with the law laid down by the Supreme Court in the case of *Liberty India v. Commissioner of Income Tax* (2009) 317 ITR 218 (SC) wherein the Supreme Court has observed that drawback is nothing but remission of duty on account of statutory provisions in the Act and Scheme framed by the Government of India.

The High Court thus, concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty may be as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act. Thus, the High Court held that the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.

8) Is settlement commission entitled to reject the 'rectification of mistake' application, filed on the basis of a Supreme court judgement, holding the issue debatable- IMP

CIT V Settlement Commission (2009)(Ker)

The Kerla High court held that when an application for rectification is filed before settlement commission, within the permitted time limit, based on a subsequent decision of the Apex court, directly on the point, normally, it has to be entertained. However, in this case, the settlement commission had rejected the application on the groumd that the issue raised was a debatable issue.

The cout observed that when there is a decision of the Apex court on a particular issue, no inferior court or Tribunal can say that the issue is a debatable issue for the reason that a bench of two judges of the Apex court has doubted the correctness of the decision of the ocnstition bench. The infrerior courts and tribunals are bound to follow the decision of constitution Bench. So, the rejection of application was unjustified.

10)(Guj) - I

onomic Zones - Export duty whether leviable under Customs Act, 1962 on goods supplied from DTA to SEZ Developers/Units - Customs Act defining export as taking out of India to a place outside India - Definition of 'export' or charging Section 12 ibid not amended and charging provision not inserted contemplating movement of goods from Domestic Tariff Area to Special Economic Zone as taxable event entailing export duty as in the case of export - Levy of export duty cannot be justified under Customs Act - Export duty not payable on movement of goods from DTA to SEZ units or developers -

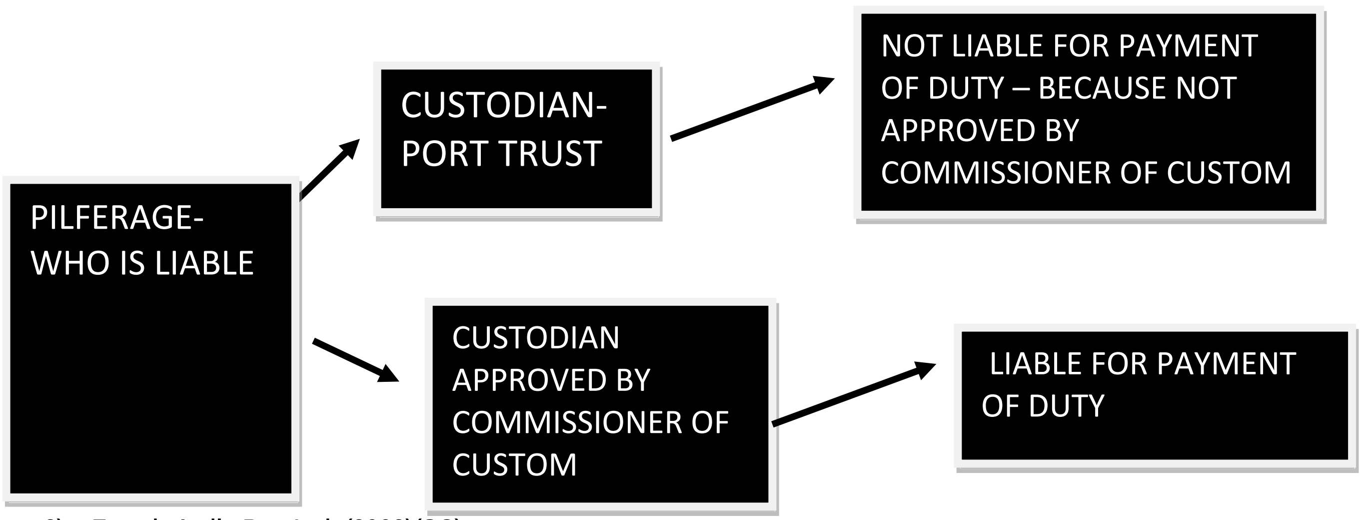
Latest cases from May 09 to OCT 09

2) BOARD OF TRUSTEES OF THE PORT OF BOMBAY(2009)(Bom)- M. IMP & EXPECTED

Pilfered goods - Duty liability - Goods pilfered before clearance while in possession of Port Trust as custodian - Demand on Port Trust assailed submitting that goods coming into their possession not as an approved person but by virtue of Section 43 of Major Port Trusts Act, 1963 supported by Section 160(9) of Customs Act, 1962 - Section 45(3) of Customs Act, 1962 asks for payment of duty on pilfered goods by custodians - Section 45(1) of Customs Act, 1962 contemplates two situations i.e. custody pursuant to any law and custody in hands of approved person - Person referred to in Section 45(1) ibid can only be person approved by Commissioner having warehouses under Sections 9 and 10 ibid - Possession of goods by Port Trust is by virtue of powers conferred under Port Trusts Act - Port Trust neither approved person nor can be notified one, hence not liable - Port Trust a statutory body controlled by G.O.I., hence no purpose served by imposition of duty on one arm of Govt. by another discharging statutory duties - Section 45(3) ibid. - *Under Section 45 of the Customs Act, the person referred to in sub-section (1) thereof can only be the* *person approved by the Commissioner of Customs. It excludes a body of persons who by virtue of a law for the time being in force is entrusted with the custody of goods by incorporation of law under another enactment, i.e. Port Trusts Act. [paras 13, 15]*

Section 45(3) of Customs Act, 1962 inserted to provide for recovery of duty from person incharge of such imported goods in Customs area - Liability only of persons approved by Commissioner of Customs - Port Trust a statutory body under control of G.O.I. - No purpose served by one arm of Govt. imposing duty on another arm which is discharging statutory duties - Section 45(3) ibid.

Hence if pilfered goods, if under the custody of major port, the port trust not liable to duty.



3) Ferodo India Pvt. Ltd. (2008)(SC)

Royalty and license fees for use of know-how/secret formula supplied by foreign supplier, which was based on net sales value of licensed products manufactured out of components imported from such supplier, is not includible in the value of imported components, if the same is not related to imported components and is not paid as a condition of import.

Facts

1. the assessee, a manufacturer of brake liners and brake pads, imported raw material and capital goods from the foreign licensor. Under a Technical Assistance & Trade Mark Agreement entered into with the foreign licensor, the foreign licensor agreed to permit use of secret formula owned by him for the manufacture of brake liners and brake pads by the the assessee, for which royalty and licence fees based on net sale value of licensed products (viz brake liners & brake pads) was payable by assessee.
2. the department sought to include the said royalty and licence fee in the value of imported goods either under rule 10(1)(c) or 10(1)(e) contending that the said royalty and license fee was related to the imported goods and was payable as condition of the sale of such imported goods

question

whether such royalty was includible in the value of such imported components

decision

1. whenever the department intends to apply rule 10(1)(C) contending that royalty/license fee for know-how is includible in the value of imported goods, the department should not only look at the consideration clause of the technical assistance agreement but also at the pricing arrangement/agreement between the importer and the foreign supplier.
2. if, on examination of the pricing arrangement along with the consideration clause of the technical assistance agreement, it is found that the importer has misled the department by adjusting the price of the imported goods in guise of increased royalty/license fees, then, such royalty/license fees will be includible in the value of the imported goods. In that case too, the principle of attribution shall apply and royalty can be added to the price of the imported goods only to that extent as brings the value of imported goods equivalent to its

arm's length price. It is only in absence of pricing arrangement that the consideration clause of the technical assistance agreement can solely be relied upon.

3. therefoe, in this case, the mere fact that the consideration for technical assistance i.e the royalty/license fee was bassed on the sale value of licensed products (which of course, included the cost of imported goods) would not be sufficient. The pricing arrangement was also to be examined.
4. in this case, the payment of royalty/license fee was entirely relatable to the manufacture of brake liners and brake pads (licensed product); not to the imported goods. Such payment had no nexus with working of the imported goods. Further since pricing arrangement was not examined by department, the question whether such payment was made a condition of sale could not be answered.
5. rule 10(1)(e) is a residuary clause, which is invocable only when payment doesn't fall within rule 10(1)(c). when royalty/license fees for know-how is covered under rule 10(1)(c), invocation of 10(1)(e) in the alternate is not sustainable.
6. accordingly, the royalty/license fees paid by the importer was not includible in the value of the goods imported by him under rule 10(1)(c) of the customs import valuation rules 2007.

Miscellaneous

M. IMP & EXPECTED

Section 125 of the Customs Act, 1962

1. Whether, under section 125 of the Customs Act, 1962, discretion vests with the Adjudicating Authority to give option to redeem the goods even though the said goods are liable to absolute confiscation (since the importation of said goods is prohibited)?

CCus v. Alfred Menezes 2009 (242) E.L.T. 334 (Bom.)

The High Court observed that section 125(1) deals with two situations:-

(1) Importation and exportation of prohibited goods and

(2) Importation and exportation of any other goods

(1) Importation and exportation of prohibited goods

In case of importation or exportation of prohibited goods, where the goods were confiscated, the word used is "may". Hence, in case of prohibited goods, there is discretion in the officer to release the confiscated goods in terms as set out therein.

(2) Importation and exportation of any other goods

In the case of any other goods, which are confiscated, the word used is "shall". Thus, in case of other goods, the officer is bound to release the goods.

The High Court held that in the instant case, the adjudicating officer's action was justified. He had exercised his discretion and had given an option to redeem the goods even though the said goods were liable for absolute confiscation as the importation of said goods was prohibited.

Section 111 and 125 of the Customs Act, 1962

2. In case the imported goods are confiscated, and goods are not redeemed by paying fine, whether the importer is bound to pay the customs duty?

Poona Health Services v. CCus. 2009 (242) E.L.T. 335 (Bom.)

The primary question, in the instant case, was that in case where the imported goods were confiscated, and goods were not redeemed by paying fine, whether the appellant is bound to pay duty. The High Court answered the question in affirmative.

The appellant contended that once the imported goods were confiscated under section 125 of the Customs Act, 1962, and the option to release them was not exercised, no duty was payable. He placed reliance on section 23 which provides that if the owner of imported goods relinquishes his title to the goods, he shall not be liable to pay the duty thereon.

The High Court elucidated the distinction between section 23 and section 125. Under section 23, the person who imports the goods, surrenders his title in the goods. By surrendering title in the goods, the person importing the goods or the owner of the goods ceases to have a right to claim the goods.

On the other hand, the order of confiscation is passed in respect of the person who has claimed to import or export the goods. It implies that he claims title or right in the property. The fine under section 125 is payable by the person who seeks redemption of the goods. If the goods are not redeemed, then they vest in the State. The person however, who had imported the goods does not cease to have liability for payment of duty because he continues to be the person who had imported the goods and claims title of the goods. The two sections therefore, operate in two different situations and are mutually exclusive. Therefore, section 23 cannot be considered for the purpose of interpreting section 111.

Section 111 confers the power to confiscate and applies only when the goods are improperly imported and or the other provisions are satisfied. The fine payable to get possession of the goods under section 125 is distinct and different from the duty of goods which are to be imported or exported. The fine is the nature of recompensation to the state for goods which are vested in it and on sale would have realized the value of the goods and from that to recover the duty which is unpaid as also fine.

Section 111 and section 125 of the Customs Act, 1962

3. Whether the goods held to be improperly imported are liable for confiscation under section 111 of the Customs Act, 1962, even though the same are cleared and not available for seizure? Whether redemption fine can be imposed with regard to such goods?

CCus v. Finesse Creation Inc. 2009 (248) E.L.T. 122 (Bom.)

The Court opined that the concept of redemption fine arises in the event when the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods.

Under section 125, a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed, no fine can be imposed.

Consequently, the Court held that in the absence of the goods being available no fine in lieu of confiscation could have been imposed.

1) Section 104 of the Customs Act, 1962

1) CAN THE COURT GRANT ANTICIPATORY BaiL FOR AN ARREST UNDER SECTION 104 OF CUSTOMS ACT, 1962 ?

Union of India v. Padam Narain Aggarwal 2008(231) ELT 397(SC)

The respondent – Padam Narain Aggarwal filed an anticipatory bail in the session's court which dismissed it but he later moved to the High Court which granted him anticipatory bail with a direction to the authorities that he should not be arrested without giving a ten days' prior notice to him. Revenue contended that the order passed by the High Court was illegal and erroneous.

Supreme Court observed that power to arrest a person by a Custom Officer under section 104 of the Customs Act, 1962, is statutory in character and can not be interfered with. Supreme Court further noted that the law, on one hand, allows a Custom Officer to exercise power to arrest a person who has committed certain offences, and on the other hand, takes due care to ensure individual freedom by laying down norms and providing safeguards so that the power of arrest is not abused or misused by the authorities. "Blanket" order of bail may amount to an invitation to commit an offence of a passport to carry on criminal activities.

Supreme Court pronounced that on the facts and in the circumstances of the present case, above directons, could not be said to be legal or in consonance with law. Firstly the order passed by the High Court was a blanket one and granted protection to respondents in respect of any non-bailable offence. Secondly, it illegality obstructed, interested and curtailed the authority of Custom Officers from exercising statutory power of arresting a person said to have committed a non-bailale offence by imposing a condition of giving ten days prior notice, a condition not warranted by law. Hence, the order granting the anticipatory bail to the accused was set aside.

In case of the goods liable to confiscation under section 111, issuing of a notice to the owner-original importer of the goods is enough or whether notice is also required to be issued to the person from whose custody the goods are seized?

Gawar Construction Ltd. v. UOI 2009 (243) E.L.T. 484 (Bom.)

The High Court held that customs authorities are empowered to seize goods in custody of person other than importer without notice, but show cause notice proposing confiscation is required to be issued within 6 months or extended period.

The word "or" used in the expression "the owner of the goods ***or*** such person" in section 124 has been used conjunctively and not disjunctively. Hence, the notice for confiscation is required to be issued to owner when owner is in possession of goods and goods are seized from his custody. In case of seizure of goods from the custody of person other than importer, notice must also be given to person from whose custody goods were seized. Opportunity must be given to the person in possession of the goods because their confiscation would affect his civil right to possess the goods which were seized from his custody. Thus, the person from whose custody goods are seized is also entitled to notice and hearing before order of confiscation is passed.

2) Is the want of evidence from foreign supplier enough to cancel the confiscation order of goods undervalued? - IMP

CCus. v. Jaya Singh Vijaya Jhaveri 2010 (251) E.L.T. 38 (Ker.)

In the instant case, the High Court held that in a case of confiscation of goods because of their under valuation, Tribunal could not cancel the confiscation order for the want of evidence from the foreign supplier. The Court considered it be illogical that a person who was a party to undervaluation would give evidence to the Department to prove the case that the invoice raised by him on the respondent was a bogus one and that they had received underhand payment of the differential price. Resultantly, the Court upheld the confiscation order.

3) Whether the action of custom authorities in selling the confiscated goods during the period of pendency of appeal is justified?- imp
Shabir Ahmed Abdul Rehman(2009)(Bom)

Ans- NO, in this case gold was confiscated from the assessee and the assessee intimated the department that he is filing appeal against the confiscation order. Department handed over the goods for auction. It was held that the custom authorities action of selling the gold during pendency of appeal is not justified.

4) Where the importer clears the imported goods on the basis of classification which was upheld by commissioner of customs (A), is the seizure of such goods and collecting any amount in excess of what is assessed by te custom authorities justified?
Vodafone Essar South Ltd(2009)(Bom)- IMP
The commissioner of Custom (A) in petitioner own case, on 25-3-2008 held that Optic Fibre Cables (OFC) classified under Heading 85.44. the department filed appeal aginst the order claiming classifiable under heading 90.01
The Bombay high court held that

Since commissioner appeal order was neither stayed by CESTAT nor by any othe competent authority. Assessee is right in classifying the goods. Since importer has paid the duty classifying under 85.44, the customs authorities could not seize the goods tull the assessment was set aside. There was no question of recovering differential duty.

5) Que- whether revenue can prefer an appeal against the consent order

<u>Trilux Electronix (2010)(HC)- imp</u>

It was held that if an order passed by CESTATbased on the consentand matter was remanded at the instance of revenue, then revenue could not pursue appeal in higher forum. It was held by High court that that appeal against the consent order can not be filed by revenue.

A consent order is a judicial decreeexpressing a voluntary agreement between parties to suit, especially an agreement by defendant to cease activities alleged by the government to be illegal in return for an end to charges.

6) Que- whether conveyance of goods in custom area are under control of officer of customs

SECTION 141. Conveyances and goods in a customs area subject to control of officers of customs. –

(1) All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of customs.

(2) The imported or export goods may be received, stored, delivered, despatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.]

7) Nov 2002

Write a note on power of customs authorities to stop and search conveyances

Or

whether custom officer has the authority to stop and search conveyances if it expected that it carries smuggled goods.

SECTION 106. Power to stop and search conveyances. –

(1) Where the PO has reason to believe that
- ⇒ any aircraft, vehicle or animal in India or any vessel in India or
- ⇒ within the Indian customs waters has been, is being, or is about to be,
- ⇒ used in the smuggling of any goods or in the carriage of any goods which have been smuggled,
- ⇒ he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and -

(a) rummage and search any part of the aircraft, vehicle or vessel;
(b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;
(c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

(2) Where for the purposes of sub-section (1) -

(a) it becomes necessary to stop any vessel or

- ⇒ compel any aircraft to land,
- ⇒ it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the CG to summon
- ⇒ such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and
- ⇒ thereupon, such vessel shall forthwith stop or such aircraft shall forthwith land; and
- ⇒ if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and
- ⇒ if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;

(b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

Service tax

(1) Is service tax leviable on hire purchase finance?

CCEx. V. Bajaj Auto Finance Ltd. 2008 (10) STR 433 (S.C.)

The respondent - assessee was engaged in providing finance for vehicle purchase. SC pronounced in the present case that service tax was not leviable on hire purchase finance.

(2) Era Infra Engineering Ltd.[2008][Del] - IMP

1) The petitioner entered inot a construction contract with NTPC. The petititoner contended that materials that were supplied free of cost by NTPC to him for the purposes of completing the contract could not be included in the gross amount charged. Therefore, it could not be included in the value of taxable service.
2) The High Court held that *Prima facie* it appears to us that the Respondents cannot include in the gross amount charged any material that is supplied free of charge by NTPC or by any other party in respect of a contract of service.
3) Our attention has been drawn to an order passed by the Madras High Court in *M/s. Larsen and Toubro Ltd.* v. *Union of India*, Writ Petition No. 12691/2007 [2007 (7) S.T.R. 123 (Mad.)] wherein the Madras High Court has come to the *prima facie* view that insistence on value of goods supplied and provided free by the client of an assessee cannot be included for the purposes of calculating taxable service.
4) in view of above discussion, the high court opined that for the purposes of determining the value of taxable service, the value of supply of free material to the Petitioner and to this extent the Explanation appearing against Serial No. 7 in NN- 1/2006 will not be applied to the detriment of the Petitioner.

Also Refer this case

(3) JAIHIND PROJECTS LTD.(2010)(Tri)

1) As per the arrangement with the customers, the appellants have not only to provide the construction services, but also supply various materials such as cement, steel, cables, valves, etc. Pipes are, however, provided by the customer/service receiver to the appellants.
2) Rule 3 : Manner of determination of value.
    i. Subject to the provisions of Section 67, the value of taxable service, where the consideration received is not wholly or partly consisting of money, shall be determined by the service provider in the following manner :-
    ii. (a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider for similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration.
    iii. (b) where the value cannot be determined in accordance with the Clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.
3) In this case, in our opinion, Rule 3 squarely applies to the present case and supply of pipes by the receiver which is an essential component and is essentially required for providing pipeline laying service, has to be treated as consideration other than in the form of money and therefore the value has to be included. Rule also provides that if such value cannot be determined, service provider has to determine equivalent money value of such consideration. .
4) What the explanation does is once an assessee opts for availment of abatement, he has to include the value of all the goods used for the purpose of contracts without availing Cenvat credit on inputs of capital goods, without availing benefit of exclusion if the goods have been sold and the explanation is basically provides that even if some goods have been supplied or provided by the service provider, their value also has to be included. It also makes it clear that irrespective of the source of supply, if some material or goods have been used in providing the service, the value of such goods also has to be included. Used means goods supplied by receiver.

(4) A.P FEDERATION OF CHIT FUNDS(2009)(AP)

(1) CHIT FUND NOT COVERED

Service tax levy on chit funds after deletion of exclusion to cash management from 1-6-2007 challenged - Specific statutory definition of 'cash management' or 'asset management' absent and wider interpretation to include or exclude transactions not arises - Definition of financial institution in RBI Act not relevant as tax not levied using such definition before 1-6-2007 - No policy decision or statutory legislative act to levy Service tax on chit funds mentioned -

Finance Act, 1994 not includes or excludes chit business - Chit funds not covered in view of absence of inclusive definition in statute - Levying Service tax based on C.B.E. & C. Circular not permissible.

(2) Bajaj auto finance Ltd.(SC)(2008)

Hire purchase finance-not liable to service tax.

The appellants' contention is that there is a fundamental difference between a hire purchase agreement and hire purchase finance agreement, namely that in the case of the former, the title to the goods remains with the hire vendor which bails the goods to the hirer in return for periodical payments and the title to the goods is transferred to the customer/hirer only if he exercises the option to purchase the same on full payment to the hire vendor, while in the case of the latter,(I,e Hire Pur. Finance) the title to the goods vests in the purchaser right from the beginning and the hire purchase finance company who has only a right to seize the goods for non-payment of the loan, is not the owner of the goods.

Whether the levy of service tax on hire purchase and leasing transactions falling under section 65(12) of the Finance Act, 1994 is constitutionally valid?

Madras Hire Purchase Association v. UOI 2009 (16) S.T.R. 3 (Mad.)

The High Court, in the impugned judgment, had upheld the constitutional validity of service tax levy on hire purchase and lease services after noting that service charge @ 1% was admitted as collected and service tax was levied on service and not on sale or purchase of goods.

The High Court rejected the plea that levy of service tax on hire purchase/leasing transaction is violative of Articles 14 and 19(1)(g) of the Constitution after observing that a taxing statute was not *per se*, a restriction of the freedom under Article 19(1)(g) and policy of a tax, in its effectuation, might, bring in some hardship in some individual cases but that was inevitable.

(3) PUDUKOTTAI DISTRICT CENTRAL CO-OP. BANK LTD.

the bank gave loans to their customers and, in connection therewith, availed the services of jewellery appraisers. These appraisers appraised the purity and value of gold jewellery offered to the bank by the borrowers, for which services they (appraisers) charged fees from the borrowers. These amounts were deposited with the bank by the appraisers. Each appraiser was allowed to withdraw their deposit at the month-end when the bank would recover 30% of the amount towards stationery expenses.

It was held that appraisers charges were not collected by bank, but were collected by appraisers directly from the borrowers. Since the said amount didn't relate to money lent by the bank and was not even charged by the bank, the same can't be charged to service tax in hands of bank.

(4) Federal Bank Ltd.(2008)(tri)

Business Auxiliary Services - Commission for telephone bill collection - Appellant-bank received commission from telephone service provider for enabling customers to pay telephone bills in its bank - Operation of account by customers not related to activities defined in Business Auxiliary Services - Mere deposit of cheques into client's account not covered under BAS as customer care service - Cash management excluded from Banking and Other Financial services and hence, not covered under BAS - Sections 65(19) and 65(12) of Finance Act, 1994.

Banking and Other Financial Services - Cash management - Appellant-bank permitting deposit of cheques towards telephone bills in the account of telephone service provider - Impugned activity one of cash management and the same excluded from Banking and Other Financial services during material period - Cash management not covered under Business Auxiliary Services - Sections 65(12) and 65(19) of Finance Act, 1994.

Note- presently it is taxable under Banking & financial service.

(5) Whether mere forwarding service without clearing liable to service tax

(i) Medpro pharma(2006)(CESTAT) – S.tax leviable
a person providing mere clearing or mere forwarding services will also get covered. It is not necessary that both clearing and forwarding services must be provided.

(ii) KULCIP MEDICINES (P) LTD. (2009)(P&H)- S.tax not leviable- M. IMP

The assessee-respondent entered into an agreement with M/s. Cipla for handling and distribution of their products and were entrusted with the job of receiving, storing and distributing Cipla products to their authorised stockists and distributing centres. For the service so rendered, the assessee-respondent was entitled for commission based on agreed percentage of sales figures and also for reimbursement of recurring expenses.

> "The matter has been examined. Normally, a C&F agent receives goods from the factories or premises of the Principal or his agents, stores these goods, dispatches these goods as per orders received from the Principal or owner, arranges transport etc. for the purpose and prepares invoices on behalf of the Principal. For this service, the C&F agents receives commissions on the basis of agreed terms. Therefore, an essential characteristic of any services, to fall in the category of C&F agent, is that the relationship between the service provider and receiver should be in the nature of principal (owner) and agent. *The C &F agent carries out all activities in respect of goods right from stage of their clearance from the premises of the principal to its storage and deliver to the customers.*"
>
> (emphasis added)

5. On the basis of the afore-mentioned para, the Tribunal concluded that even the circular clarified that levy would be attracted only when clearing and forwarding agent carries out both clearing and forwarding operations

the Tribunal proceeded to hold that once there is no clearing activity taken by the dealer therefore the service rendered by him would not satisfy the requirement of clearing and forwarding agent and consequently it set aside the demand.

.

"It is clear from the terms of the agreement that appellant herein does not attend to the clearing of the medicines manufactured by Cipla. Consignments of medicines are cleared from the factory by the manufacturer and delivered to the appellant at his premises. In this factual situation, it has to be held that there is no clearing by the appellant and for that reason, the service rendered by the appellant does not satisfy the requirement of clearing and forwarding. We, therefore, are of the view that the demand is not sustainable. To the same effect is our earlier decision in the case of *M/s. Mahavir Generics*".

(6) Whether a sales agent of independent dealer can be regarded as a clearing and forwarding agent- IMP

Valli Inc. v CCEx Trichirappali 2009 (tri0

(i) As per the agreement, the appellant has to maintain a showroom, display the products of ITC and remit the proceeds promptly to ITC. The appellant is not an agent of ITC but an independent dealer dealing in ITC's branded goods. The appellant does not receive goods of ITC, store them and consign them to different destinations for ultimate sale. Merely receiving the goods in order to sell them from its own premises will not amount to clearing of the goods as a C & F Agent. In *Medpro Pharma Pvt. Ltd* (supra) relied upon by the ld. SDR, the appellant therein received, stored and distributed the stocks of the products of M/s. Cipla Ltd. and forwarded them to parties at several destinations within the country as per the directions of M/s. Cipla Ltd. The ratio of the above decision of the Tribunal is that in order to assess as a C & F Agent, it was not essential that a person undertook all the operations encompassed in clearing and forwarding. In the instant case, the appellants received goods from ITC and disposed them on sale from its own outlet. The appellant is not engaged in clearing and forwarding of the branded goods of ITC. The appellant does not satisfy the definition of a consignment agent as clarified in the Circular of the CBEC dated 20-6-03. The Board had clarified that a consignment agent's job was to receive the goods from the principal and dispatch them on the directions of the principal. Though the agreement between ITC and Valli described the appellants as a consignment agent, the activities Valli is to undertake in terms of the agreement do not make it a consignment agent as clarified by the CBEC. A consignment agent receives and dispatches goods on behalf of the principal. In the instant case, Valli receives the goods and sells them on its own as a dealer.

(ii) three agents are normally involved when C & F Agent's service is rendered, i.e., the principal, the ultimate recipient of goods in business and the C & F Agent that forwards the goods after taking delivery to dealers. Here the dealer receives the goods and sells them in retail to consumers. He has Sales Tax registration and issues bills for sales. No third agency is involved. The exclusivity clause, other conditions of agency agreement and the commission paid to Valli gives the arrangement the complexion of a franchise. These are dictated by the power of the brand involved. In the circumstances, the activity the appellant undertakes as per the agreement cannot be held to be Clearing and Forwarding Agent's service.

(7) Can a commission agent also acting as a consignment agent be covered under the definition of 'clearing and forwarding agent'?

CCE v. Mahaveer Generics 2010 (17) S.T.R. 225 (Kar.)

The assessee contended that activity carried on by him came within purview of 'commission agent' and not under the 'clearing and forwarding agent'. The Court elucidated that assessee in question had not restricted its activities to business of commission agency, but had also carried on business as consignment agent. Since the consignment agent had been brought under statutory definition of 'clearing and forwarding agent' by inclusive clause, the High Court held that the assessee falls under the definition of 'clearing and forwarding agent' after considering the following points:-

- Agreement itself termed the assessee as a consignment agent.
- Price was mutually decided by the principal and the agent (assessee). Had the assessee been merely a commission agent, price determination would not have been within his domain.
- Since assessee had been given the authority and power to appoint dealers, stockists and distributors, it implied that it was not merely a commission agent.
- Mere procurement of purchase orders was not involved, but stored goods were also cleared and forwarded to stockists and dealers by the assessee.

(8) Aakar advertising (2009)(Raj.)- M/ IMP & EXPECTED

Penalty (Service tax) - Quantum of - Whether under Section 76 of Finance Act, 1994 reducible below the minimum prescribed therein - Minimum amount of penalty prescribed in Section 76 by use of expression 'not less than' –

If reasonable cause is not shown, and penalty is required to be levied, then, the minimum penalty prescribed cannot be further reduced, under the garb of any existing discretion; assumed to be vesting with the authority, including the Tribunal. Where the two limits have been prescribed, being the minimum and upper limit, then obviously the free play is available between the two limits only, and the discretion can be exercised within those limits, but then that does not mean, that the authorities have any power to impose penalty less than the minimum prescribed by the section.

(9) BUSINESS AUXILIARY SERVICE - . ROSHAN MOTORS LTD- 2009- TRI

ST is applicable on "business auxiliary service". "Business Auxiliary service" covers up "promoting or marketing any service provided by client"". An assesse, an authorized dealer of a vehicle manufacturer, eneterd into agreements with certain financial companies for the purpose of arranging finance for the buyers of vehicles sold by it. The prospective buyers were introduced by the assessee to the finance companies and service was rendered in processing the documents and obtaining loan and then vehicles were sold by them. For this activity, the assessee was receiving service fees from the finance companies

Held that "the assessee had undertaken additional responsibility/functions and entered into agreements with the finance companies. The terms of the agreement clearly indicated that the assessee was definitely promoting the finance scheme of the finance companies. He had been paid for his services, led to the clear conclusion that it was rendering marketing services to the finance companies and thus, was liable to ST under category of "Business Auxiliary Service".

(V.Imp)

(10) BUSINESS AUXILIARY SERVICE - TRIHUVAN MOTORS LTD- 2010- TRIBUNAL,

Business Auxiliary Service covers „Service of promoting or marketing of service of client‟. In a case where the dealer of Motor Vehicle provides TABLE SPACE to bank/financial institutions and charges rent for the same, whether it can be said that he was promoting the services of the bank and taking rent as consideration of that service.

it was held that "mere fact of financial institutions being provided with space by the assessee (appeallant) and the appellant receiving some money for lease of table space cannot be brought within the definition of "Business Auxiliary Service"..

4. Whether the value of SIM cards sold by the mobile phone companies to their subscribers has to be included in value of taxable service under 'telecommunication service' or it is taxable as sale of goods under the Sales Tax Act?

CCE v. Idea Mobile Communications Ltd. 2010 (19) STR 18 (Ker.)

The High Court, while examining the functioning of a SIM card, admitted that SIM card is a computer chip having its own SIM number on which telephone number can be activated. SIM card is a device through which customer gets connection from the mobile tower. Unless the SIM card is activated, service provider cannot give service connection to the customer because signals are transmitted and conveyed through towers and through SIM card communication signals reach the customer's mobile instrument. Hence, it can be inferred that it is an integral part required to provide mobile service to the customer.

Further, SIM card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider. Thus, the Court accepted the view that SIM cards were not goods sold or intended to be sold to the customer, but supplied as part of service. Consequently, it held that the value of SIM card supplied by the assessee would form part of the value taxable service on which service tax was payable by the assessee.

5. Whether service tax is chargeable on the buffer subsidy provided by the Government for storage of free sale sugar, under the category of `storage and warehousing services'?

*CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H)*The assessee was engaged in the manufacture of sugar. The Central Government directed him to maintain buffer stock of free sale sugar for the specified period. In order to compensate the assessee, the Government of India extended buffer subsidy towards storage, interest and insurance charges for the said buffer stock of sugar.

Revenue issued a show cause notice to the assessee raising the demand of service tax alleging that amount received by the assessee as buffer subsidy was covered within the definition of `storage and warehousing services'. The High Court noted that apparently, service tax could be levied only if service of `storage and warehousing' was provided. Nobody can provide service to himself. In the instant case, the assessee stored the goods owned by him. After the expiry of storage period, he was free to sell them to the buyers of its own choice. He had stored goods in compliance to directions of Government of India issued under Sugar Development Fund Act, 1982. He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. Hence, the act of assessee could not be called as rendering of services.

The High Court upheld the Tribunal's decision that just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the assessee becomes `storage and warehouse keeper' nor the Government of India becomes their 'client' in this regard. Therefore, the storage of specific quantity of free sale sugar could not be treated as providing `storage and warehousing' services to the Government of India.

PAST cases from Nov 08 to April. 09- Excise

Valuation

1) Shakti Tubes LTd.(2008) (SC)

Facts

1) The assessee respondent used to manufacture black pipes of different specification and clear the same on payment of duty to M/s Shakti steel Pipes Ltd. Which was the sister concern of assessee.
2) m/s shakti steel pipes ltd. Used to galvanise the black pipes and clear the same without payment of duty, inasmuch as the process of galvanization does not amount to manufacture.
3) The department contended that both the units (viz the assessee and its sister concern) were one and the same entity and assessee was liable to pay duty on the value of pipes after galvanization.

Decision

The first adjudication order relating to earlier period and holding the assessee and its sister concern to be 'one unit' was set aside in appeal before the appellate tribunal on the basis of findings of facts. No appeal was filed against the same. The second adjudication order relating to subsequent period was also set-aside in appeal before the appellate tribunal

The findings of fact arrived at by the tribunal cannot be interfered with. Even otherwise, once the revenue has accepted the earlier decision of the appellate tribunal byu not filing the appeal against the same, the revenue cannot challenge the same decision in subsequent proceeding . hence the department's appeal was to be dismissed..

2) <u>Pepsico India Holdings (P) Ltd. (SC)(2009)</u>

<u>Facts</u>

1) 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(Related person).
2) A part of the syrup was sold by the assessee to other also. The marketing company would sell the same to retailers.
3) 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.
4) The assessee paid c3entyral excise duty on it s transaction value i.e sale price to marketing subsidiary.
5) Department held that since the assessee and 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 market6ing subsidiary towards dispensing machine was also held includible in assessable value.

<u>Held that,</u>

1) When trade discount has been indicated in te invoices at the time of sale and there is no flowback/return of trade discount to the assessee-seller or its related person, the4 assessable value shall be computed after deducting such trade discount
2) Sale of syrup 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 assessab le value of escisable goods. 'Transaction value' includes any additional amount charged as price, by reason of or in connection with or by reason of sale of other goods or provision of other services. Therefore, the lease charges cannot be included in the assessable value of the syrup.

3) <u>Sec 4A- Central Arecanut & Cocoa Marketing & Processing Co-operative Ltd. (2008)(SC)</u>

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

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

4) <u>Cadila pharmaceuticals Ltd. (2008)(Tri)</u>

In view of overriding provisions of Sec 4A, in case of goods notified u/s 4A, the value thereof as defined in Rule 2(c) of the valuation rules 2000 shall be deemed to be the 'retail sale price' of such goods less specified percentage of abatment.

In case goods notified u/s 4A (i.e pharmaceutical products) are given as free samples, though there is no requirement to declare MRP thereon, however, the value thereof shall be determined as per rule 11 read with rule 4 of the valuation Rules 2000. Therefore, in case of physician's samples distributed free of cost, the value as per rule 4 shall be the based on the value of comparable goods sold by the assessee.

Rule 8 applies in case where there is no sale and goods arew captively consumed. Since samples are not captively consumed for production or manufacture of any article; they are final product themselves, therefore, they cannot be valued as per rule 8.

Cenvat credit

CCR if price reduced after clearance

Circular 877/15/08 dt. 17-11-08 that the entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise. However, if the duty paid is also reduced, alongwith the reduction in price, the reduced excise duty would only be available as credit. It may however be confirmed that the supplier, who had paid duty has not filed/claimed the refund on account of reduction in price.

Custom

1) Super Cassettes Indus. Ltd. V. CC(2008) 225 ELT 401(SC) - IMP

Goods sent abroad for repairs when reimported into India are liable to customs duty as if they had been imported for first time in India. Sec 20

Facts

1) The assessee used to import magnetic head for the purposes of recording on audio cassettes on payment of custom duty including additional duty of customs u/s 3 of Customs Tariff Act (CTA), 1975. When such magnetic heads got worn out, they were sent abroad for repairs.
2) When magnetic heads were re-imported into India after carrying out repairs abroad, the customs authorities demanded basic customs duty along with additional duty of customs u/s 3 of CTA.
3) The assessee paid the requisite basic customs duty but contested levy of additional duty of customs contending that since the magnetic heads were only repaired outside India and the process of repairing did not amount to manufacture, therefore, no additional duty of customs was leviable.

It was held

For levy of additional customs duty, it is not material as to after what process an article is imported or reimported into india. The only test is whether the importedarticle is one which has been manufactured or produced. In this case, the product reimported is magnetic head which is a manufactured product. Hence, the same is liable to additional duty of customs u/s 3 of CTA 1975.

Past cases from May 08 to oct. 08

Basic Concept

1) Rattan Melting & Wire industries (SC)(2008)- M. Imp

a) CBEC circular binding on Departmental authorities and not on assessee or appellate authority.
b) Judgement of courts binding on all authority and not the circular
c) Revenue can file appeal against circular

2) Cipla Ltd.(2008)(SC)- IMP

mere transfer to another captive unit of the assessee doesn't establish marketability of the product.

Facts

1. Assessee used to clear Benzyl Methyl Salicylate(BMS), an intermediate product from its factory at banglore to its another unit at patalganga for manufacture of medicines, being the final product.

2. It was contended by the assessee that BMS was a non-excisable item, as the same was neither sold by it nor purchased by any other party and was, therefore, non-marketable.

3. Department contended that since BMS was being transported to another unit of assessee after being packed in drums and BMS had a shelf life, hence it was marketable. It was also contended that BMS finds mention as an intermediate product in a chemical weekly drug directory.

Que
Whether BMS was a marketable commodity.
Decision

1. Simply because a product is mentioned in chemical weekly drug directory as an intermediate product doesn't mean that the product is marketable. Mere trqansfer of BMS by the appellant from its factory to another unit doesn't show that the product was either marketed or was marketable.

2. Since the department failed to produce any evidence of either buying or selling, it couldn't be held that BMS was marketable or was capable of being marketed. Hence BMS was not dutiable.

<u>Valuation</u>

<u>Rule 9/10</u>

3) Bharti Telecom ltd. (2008)(SC)- imp

If goods are sold to 'related persons' at or about the same price at which they are sold to unrelated persons .e the relationship doesn't influence the price, the price at which goods are sold to 'related' will be acceptable as assessable value.

Facts

1. Assessee, a manufacturer of 'electronic push botton telephones' used to sell the same as follows

    a. Around 75% of its products to department of telecommunications (DOT) and Mahanagar Telephone Nigam Ltd. (MTNL) and

    b. Balance 25% to M/s Siemens telecom ltd. (STL), a joint venture marketing-company of the assessee and M/s Siemens Ltd. (SL) having 49% and 51% sharing respectively. The joint venture company, STL, used to distribute and sill those products in the open market.

2. The department contended that the assessee and STL, the joint venture company, were 'related persons' having mutuality of interest, and , thus the price at which the goods were sold by STL in the open market should be taken to be the assessable value of the goods in the hands of the assessee.

3. The assessee contended that it was not 'related' to STL in terms of sec 4 of the Act. Even if it was assumed to be related to STl, since the price at which goods were sold to STL were compatable with the price at which goods were sold to DOT and MTNL, there fore, no addition could be made.

Que
Whether the price at which goods were sold to STL was the 'assessable value'.
Decision

1. The supreme court found that the assessee sold the goods to STL at or about the same price at whichg it sold the gods to DOT or MTNL.

2. Therefore, without recording any finding as to whether assessee and STL were related persons, the SC held that even if the assessee and "STL are assumed to be related persons since

    a. Goods were being sold to STL at or about the same price at which it was sold to DOT & MTNL &

b. The relationship of the assessee and STL didn't influence the sale price.

Therefore, the transasction value between the assessee and STL was acceptable.

3. The question of law, whether the assessee and STL were 'related persons' was left open.

Cenvat credit

1) q- whether 8% or 10% can be recovered . whether buyer can avail ccr of that
ans- (i) yes (ii) no
que- whether sec 11D can be invoked for the amount recovered from the buyer.
Ans- sec 11D provides that any amount which has been collected as excise duty and not paid to the credit of the CG shall be liable to be recovered. The scheme of the law is that manufacturers shall not collect amounts falsely representing them as central excise duty and retain them, thus unjustly benefitting themselves. However, in case of recovery of amounts referred to in rule 6 of CCR 2004, from the buyer, sec 11D is not applicable since the amount of 8% or 10% of value of exemptyed goofs/ services has already been paid to the revenue and no amount is retained by the assessee. (unison metals Ltd.(2006) (tri)

2) <u>SLOVAK INDIA TRADING CO. LTD – 2008 - SC – imp.</u>

Assessee closed down his factory. He was having unutilized cenvat credit in his books of accounts. There is no express prohibition in Cenvat Credit Rules, 2004 regarding refund of cenvat credit. But at the same time, there is no express provision allowing refund of cenvat credit. [Under CCR, 2004, only Rule 5 and Rule 5-A deals with situations where refund is permissible and none of these cover this situation].

Whether cenvat credit shall be refundable to the assessee or shall it lapse?

<u>Held</u>: YES

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

.

3)

BDH INDUSTRIES LTD (2008)(TRI)

THE assessee, by mistake, debited an amount in excess of the duty payable by him in his PLA/Cenvat Account. The assessee, thereafter, requested the department to allow him to take the credit of such excess payment in his PLA/Cenvat A/c. The department denied assessee's request and asked it to file claim for refund u/s 11B. held that, there is no provision under the CEA and rules allowing suo motu taking credit or refund without proper sanction by the CEO. Any correction in PLA/Cenvat A/c requires department sanction. Therfore any excess payment by mistake or on account of clerical/arithmetical error has to be claimed by way of refung application filed u/s 11B.

<u>Central excise rules</u>

1) Rule 21

Ccex v Balrampur Chini Mills Ltd. (2008)(all.)

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

Rule 25

2) Rama Wood Craft P. ltd. (2008)(Tri)

Penalty under rule 25 of CER 2002 cannot exceed higher of

1. The duty on excisable goods in respect of which any of the contravention has been committee or

2. Rs 2000

Therefore, the penalty as aforesaid, is the maximum penalty imposable. Accordingly, if the duty exceed rs 2000 the maximum penalty shall be the amount of duty; and if the duty is less than Rs 2000, the maximum penalty shall be Rs. 2000. The CEO has the option to impose a penalty lower than the maximum.

Further, rule 25 is subject to the provisions of sec 11AC of the Act; that is, in cases pertaining to fraud, collusion, willful misstatement etc. with an intent to evade payment of duty, penalty shall be imposable u/s 11AC and not under rule 25

custom

1) DEEMED TERRITORY OF INDIA- LANDMARK IN ABAN LOYD CHILES OFFSHORE LTD. V. UOI (2008)227 ELT 24 (SC) : It was held in this judgement that though section 2(27) defines 'India' to include territorial waters of India, however,-

1. Since the customs Act, 1962 and Customs Tariff Act, 1975 have been extended to ''designated areas'' and other areas of the continential shelf and the Exclusive Economic Zone of India,

2. Therefore, by virtue of deeming fiction of the Maritime Zones Act, the said areas from part of the territory of India for the purposes of the Customs Act, 1962 and the Customs Tariff Act. 1975.

Implication of the aforesaid deeming fiction and judgement on scope of levy of customs duty: The implication of the aforesaid deeming fiction and judgement is that since territorial waters of India or the 'designated areas' of the Continential Shelf or Exclusive Economic Zone are 'India', hence,-

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

2. Any goods brought from any foreign country into such areas will be treated as 'import' and hence, liable to customs duty; and

3. Any Goods supplied from the mainland to such areas shall not be treated as 'export' and consequently, no export benefits shall be available in respect of them;

CC V. INDIAN RAYON & INDUSTRIES LTD. (2008) 229 ELT 3 (SC)

When the assessee avails of the conditional exemption under a particular notification, then, it cannot, thereafter, contend that the condition in such notification need not be fuilfilled, be it on the ground that the benefit under another notification is available to him or otherwise.

Therefore, when the goofs re-imported into Indi for repairs without payment of customs duty u/s 20 are not exported within 6 months from the date of their re-importation, then, the exemption granted to the assessee can be withdrawn.

DEMAND AND RECOVERY

GEO TECHNOLOGY FOUNDATIONS AND CONSTRUCTION – 2008 – SC-

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

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

Held: NO

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

Amendments for MAY 2011

Clean Energy Cess levied from 01.07.2010

(1) Clean energy cess has been levied on coal @ Rs.50 per tonne with effect from 01.07.2010.

(2) Exemption has been granted in respect of education cess and secondary higher education cess leviable on such products. Further, exemption has been granted in respect of goods produced or extracted as per traditional and customary rights enjoyed by local tribals in Meghalaya without any license or lease.

(3) CG exempts all goods falling under Central Excise Tariff headings 2701, 2702, 2703 of the First Schedule to the Central Excise Tariff Act, 1985, other than raw coal, raw lignite and raw peat, from the clean energy cess.
Provided that the said exemption shall be applicable subject to the condition that applicable clean energy cess has been paid at the stage of raw coal, raw lignite or raw peat from which the said goods are produced or manufactured.

(4) The Sections 5A, 6, 9, 9A, 9AA, 9C, 9D, 9E, 11, 11A, 11AA, 11AB, 11AC, 11B, 11BB, 11C, 11D, 11DD, 11DDA, 12A, 12B, 12C and 12D; Chapters III, VI, VIA and VIB. Of Central Excise Act, 1944 Relating to exemption, registration, recovery, demand, interest, refund, offences, penalty etc. shall be applicable in regard to like matters in respect of Clean Energy cess .

(5) Clean Energy Cess Rules, 2010 have been notified which prescribe the procedures relating to registration, payment of cess, filing of returns, maintenance of records etc. All coal producers would have to register with the designated officer within 30 days and pay cess on the removal of the produce from their mines. The new levy will be paid on the basis of self assessment. The cess should be shown separately in the invoice or bill issued by the producers.

(6) As per Proviso to rule 3(4) of CCR 2004 " CENVAT credit of any duty specified in sub-rule (1) shall not be utilized for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010

Pickiling and oiling is not manufacture -*[Circular No. 927/17/2010-CX dated 24.06.2010]*

It has been clarified that the process of pickling and oiling does not amount to manufacture.
"Pickling is removing surface oxides from metals by chemical or electro chemical reaction" and pickle means "the chemical removal of surface oxides (scale) and other contaminants such as dirt from metal by immersion in an aqueous acid solution." Therefore it can be said that the process of pickling is only a chemical cleaning process to remove scales and dirt from the metal by immersion in chemical solution and does not result in emergence of any new commercially different commodity.
The Tribunal has also in the case of *Resistance Alloys [1996 (84) ELT 507 (T)] & Bothra Metal Industries [1998 (99) E.L.T. 120 (Tribunal)]* held that the process of pickling being preparatory process to drawing of wire does not amount to manufacture.
Therefore it has been clarified that mere undertaking the process of oiling and pickling as preparatory steps do not amount to manufacture.

Valuation

Cir 936/26/2010- Pre-delivery Inspection charges and After-sale Service

The larger bench of CESTAT in Maruti Udyog ltd. vide its order dated 13.8.2010 in appeal in the aforesaid case, has now held that Pre-delivery Inspection charges and After-sale Service charges collected by the dealers are to be included in the assessable value under Section 4 of the Central Excise Act, 1944.

'These services are provided free by the dealer on behalf of the assessee, the cost towards this is reimbursed to him and thus is a consideration to him for the sale of the goods, therefore will be includible in the assessable value'.

Cir- 923/13/2010- Cost of return fare of vehicles not to be added for determining assessable value

The Tribunal has in case of *DCW Ltd*. v. *CCE* [2007 (217) ELT 541 (Mad.)] held that " where onward freight was not includible in the assessable value of the excisable goods, there was no Question of return freight being included in the assessable value, whether or not the return freight was mentioned in the relevant invoices. The principle stated by the Tribunal in the cited decision is squarely applicable in respect of such return freight also.

Hence it is clarified that cost of return fare of vehicles is not required to be added for determining value.

Case law- ACCURATE METERS LTD.(2009)(SC)

Whether 'freight' and 'insurance charges' constitute the value of the goods for the purpose of computation of Excise Duty in terms of Central Excise Act, 1944 (for short, "the Act") and the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000

1) Respondent is engaged in the manufacture of 'electric meters' and parts . Its customers, *inter alia*, are various State Electricity Boards constituted and incorporated under the Electricity (Supply) Act, 1948. Indisputably, the State Electricity Boards in terms of advertisements issued in this behalf called for quotation for supply of electric meters. The value of the electric meters was to be fixed as at the factory gate. Freight and the insurance charges, however, as stipulated therein, were to be charged on an average basis and not on actuals.
2) that the manufactured goods were actually delivered to the purchasers at their premises and not at the factory gate, a notice dated 6-2-2003 was issued to the assessee asking it to show cause as to why excise duty amounting to Rs. 9,13,260/- not paid on freight and insurance should not be demanded under Section 11A of the Act along with interest as payable under Section 11AB thereof as also as to why the penalty in terms of Rule 25 of Central Excise (No. 2) Rules, 2001/Central Excise Rules 2002 should not be imposed upon it.
3) Indisputably, goods were supplied by the assessee to the State Electricity Boards in terms of the stipulations contained in the advertisements issued by them. Two separate contracts have been entered into by and between the respondent and State Electricity Boards therefor; one in respect of the supply of the electric meters and another for transportation and transit insurance thereof.
4) Indisputably, a place where excisable goods are sold can be a place of removal. The question, therefore, what would constitute a place of removal will depend upon the fact of each case.

   In the demand-cum-show cause notice issued by the Assessing Officer itself, it has been noted :

   "...In the invoices raised to Government buyers, mainly to Electric Boards, amount of freight and insurance, which is to be recovered from such buyers is shown separately. It is at a fixed rate i.e. equalized freight. It indicates that if the goods are cleared to government buyers, the 'freight and insurance' amounts are borne by the supplier party but it is recovered from the buyer at a fixed rate irrespective of freight amount, which has been incurred by the supplier party on sending the goods to the buyers."

5) Rule 5 of the valuation Rules would apply in a case where clause (a) of sub-section (1) of Section 4 of the Act has no application.
6) The machinery, handed over to the carrier/transporter is as good as delivery to the buyer in terms of Section 39 of the Sale of Goods Act apart from terms and conditions of sale. Section 39 of the Sale of Goods Act reads as

under :

39. Delivery to carrier :

(1) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to carrier for sale custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

Since meters delivered at factory gate. transportation charges and insurance cannot be considered for determining the value of the electric meters supplied.

Cenvat Credit Rules 2004

Rule 2 – Definition of Capital goods

capital goods definition amended to include following-

(1) Dumpers or tippers, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985, registered in the name of provider of output service for providing specified taxable services which are
   - ⇒ site formation and clearance, excavation and earthmoving and demolition,
   - ⇒ mining of mineral oil or gas

(2) components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide taxable services as specified in sub-clauses (B) and (C);"

Author note- Dumper or Tippers and Components, spares and accessories of motor vehicles, dumpers or tippers used for providing SPECIFIED TAXABLE SERVICES eligible for CENVAT credit as capital goods

Departmental Instruction -- No.267/11/2010-CX8

Subject: Availability of cenvat credit on inputs used in the manufacture of capital goods-

Vandana Global Ltd. [2010- CESTAT-DEL-LB] held that on admissibility of credit on capital goods and inputs that 'capital goods' defined in the CENVAT Credit Rules, in the context of providing credit of duty paid, have to be excisable goods. Whether a particular plant or structure embedded to earth can be considered as excisable goods or not has to be determined in the light of settled decisions of Supreme Court on the issue. The Tribunal has further ruled that goods like cement and steel items used for laying 'foundation' and for building 'supporting structures' cannot be treated as either inputs for capital goods or as inputs in relation to the final products and therefore, no credit of duty paid on the same can be allowed under the CENVAT Credit Rules. It has also been stated by Tribunal that amendment to Explanation 2 to Rule 2(k) of CENVAT Credit Rules, 2004 inserted vide Notification No. 16/2009-CE (NT) dated 07.07.09, is clarificatory in nature and has retrospective effect.

2. Attention is also drawn to the Tribunal's judgement in the case of Vikram Cement V/s CCE, Indore [2009(242)ELT545(Tri-Del)], where the Tribunal held that credit on welding electrodes used for repair and maintenance, is not available as input. It may also be noted that in the case of Vikram Cements V/s CCE, Indore [2005(187)ELT145(SC)], it has been conclusively held by the Apex Court that the definition of capital goods is not inclusive and only the items covered under the definition and used in the factory of the manufacturer can be treated as capital goods.

3. It thus follows from the above judgements that credit on capital goods is available only on items, which are excisable goods covered under the definition of 'capital goods' under CENVAT Credit Rules, 2004 and used in the factory of the manufacturer. As regards 'inputs', they have to be covered under the definition of 'input' under the CENVAT Credit Rules, 2004 and used in or integrally connected with the process of actual manufacture of the final product for admissibility of cenvat credit. The credit on inputs used in the manufacture of capital goods, which are further used in the factory of the manufacturer is also available, except for items like cement, angles, channels, CTD or TMT bars and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods. Further, credit shall also not be admissible on inputs used for repair and maintenance of capital goods.

Author note- Recently in case of Ambuja **CEMENTS EASTERN LTD (2010)(chattisgarh)**

It was held that welding electrodes used in repairs and maintenance of plant and machinery are inputs as defined under Rule 2(g) of the Cenvat Credit Rules, 2002 and thus, entitled for Cenvat credit.

Rule 3(5B)

Cir 930/20/2010- Tolerance of breakage of bottles due to handling during storage and clearance

It has been brought to the notice of the Board that some of the manufacturers of bottled beverages are claiming the benefit of duty exemption in respect of breakage of PET bottles upto 0.5% citing the Board's Instruction letter No. ID/3/70-CX8, as amended vide letter F.No. 261/ID/1/75-CX8 dated 17.09.1975. As per the letter dated 17.09.75, tolerance of 0.5% is allowed on account of breakage of bottles due to handling in the course of movements from the manufacturing area to bonded store rooms and breakages during storage and clearance there-from. It has also been observed that in some judicial pronouncements, this benefit has been allowed to the parties, on the limited ground that the said instruction has not been rescinded/ modified by the Board and further the cenvat credit taken on bottles as input have been allowed to be retained by the assessee.

2. The matter has been examined. The instructions mentioned above were issued primarily in the context of use of glass bottles. At the relevant time, the scheme of Modvat/CENVAT credit was not available to the assessees and, therefore, there was no issue of reversal of credit taken on bottles, which were subsequently broken/ destroyed. After the introduction of MODVAT and subsequent replacement of the same with CENVAT, any circular, instruction or provision inconsistent with the same has no relevance. As per the provisions of Rule 21 of Central Excise Rules, 2002, remission of duty before removal can be claimed on any goods lost or destroyed by natural causes or unavoidable accident, claimed by manufacturer to be unfit for consumption or marketing. The said remission is granted subject to the condition of reversal of cenvat credit taken on inputs used in the final product, as per the CircularNo.800/33/2004-CX dated 01.10.2004. Rule 3(5C) was also inserted in CENVAT Credit Rules, 2004, w.e.f 07.09.07, to specifically provide for the same. Further, as per Rule 3(5B) of CENVAT Credit Rules, 2004, if the value of any input is written off, the cenvat availed on the same is required to be reversed. Therefore, if the final product (i.e bottled beverage) is broken/ destroyed then remission can be claimed and if the bottle (input) is written off by the assessee as destroyed, the same is required to be dealt with as per the provisions of Rule 3(5B) of CENVAT Credit Rules, 2004.

Author Note-

if FP destroyed (i.e Bottled Beverage), Remission of duty on FP claimed under rule 21 0f CER 2002	Reverse CCR on IP as per rule 3(5C) of CCR 2004
If the input (bottle) is written off by the assessee as destroyed,	Reverse CCR on IP as per Rule 3(5B) of CCR 2004

Rule 6(6) Credit allowed even if final product is exempt

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

supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of notification No. 6/2006- Central Excise dated the 1st March, 2006, ;

Author Note- CCr can be taken even if FP is exempt, no requirement to maintain separate accounts, no need to pay 5% of value of exempted goods, when the goods are supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents.

Rule 9(8)

1. A first stage or a second stage dealer, as the case may be, shall submit within 15 days from the close of each quarter of a year to the superintendent, a return in prescribed form.

"Provided that the first stage dealer or second stage dealer, as the case may be, shall submit the said return electronically."

Author note- first/second stage dealer submit Quarterly return of CENVATABLE invoices electronically.

INFORMATION RELATING TO PRINCIPAL INPUTS Rule 9A

1) A manufacturer of final products shall furnish to the superintendent, **annually** by 30th April of each financial year, a declaration in the form ER-5
   - → in respect of each of the excisable goods manufactured or to be manufactured by him
   - → the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products:

"Provided further that where a manufacturer of final products 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, he shall file such declaration electronically."

2) if a manufacturer of final products intends to make any alteration, he shall furnish information together with the reasons for such alteration before the proposed change or within 15 days of such change in the form specified.
3) A manufacturer of final products shall submit, **within 10 days from the close of each month** to the superintendent of central excise,

a monthly return in the form ER-6 in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him.

"Provided that where a manufacturer of final products 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, he shall file the said monthly return electronically:"

Explanation-
"principal inputs" means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw-materials for the manufacture of unit quantity of a given final products.

But this rule is applicable only to those assessees who are manufacturing goods specified under this rule and who have paid duty of one crore or more through account current and CCR during the preceding financial year.

Author note-
following statements/returns shall be filed electronically if the manufacturer of final products has paid total excise duty of Rs.10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding F.Y
(i) Information relating to principal inputs - ER-5
(ii) Monthly return of receipt and consumption of each of principal inputs - ER-6

But the amendment seems to be illogical, because ER-5 & ER-6 is required to be filed if duty paid 1 crore or more in P.Y, whereas E-filing made mandatory, when duty paid more than 10 lakh in preceding F.Y.

Central Excise Rules 2002

Annual Financial Information Statement Rule 12(2)

Every assessee shall submit to the superintendent, an Annual Financial Information statement for the preceding financial year to which the statement relates in the specified form ER-4 by 30th day of November of the succeeding year.

1. Any assessee who paid duty less than 1 crore from (account current/PLA+CCR) have been **exempted** from such statement.
2. Indian ordnance factories, Department of defence production, Ministry of defence have also been exempted from filing annual information financial statement.

"Provided that where an assessee has paid total duty of rupees 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file the said Annual Financial Information Statement electronically [NN- 20/2010]- [for May 2011]

Author note- Annual Financial Information Statement - ER-4 shall be filed electronically if the manufacturer of final products has paid total excise duty of Rs.10,00,000 or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year. But amendment seems to be illogical because assessee who has paid duty less than 1 crore not required to file ER- 4.

Rule 17 - Monthly Return by 100% EOU

- → The unit shall submit a monthly return to the Supdtt. Within 10 days from the close of the month to which the return relates, In respect of excisable goods manufactured in, and
- → Receipt of inputs and capital goods in, the unit in notified form.(ER-2)

"Provided that where an assessee 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, he shall submit the said monthly return electronically

Author Note- 100% EOU shall file monthly return electronically if duty paid 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year.

Export procedure

Export without Payment of duty Rule 19

- ➢ Any excisable goods may be exported without payment of duty from a factory of manufacturer or warehouse or any other premises, as may be approved by the commissioner.
- ➢ Any material may be removed without payment of duty from a factory of manufacturer or warehouse or any other premises,

For use in manufacture of goods which are exported, as may be approved by the commissioner.

EXPORT of Final product without duty- Notification No. 42/2001 amended

Export of all excisable goods, except to Nepal and Bhutan without payment of duty

Conditions

(i) The exporter shall furnish a general bond in the prescribed form (B-1) to the AC/DC or the Maritime commissioner or the authorized officer, Equal to the duty chargeable on the goods with such surety or sufficient security, For the due arrival thereof at the place of export and their export there from.

(ii) The manufacturer-exporter may furnish a letter of undertaking in specified form (UT-1) instead of bond.

(iii) Goods shall be exported within 6 months or extended period, from the date on which these were cleared for export from the factory.

(iv) that export of excisable goods which are chargeable to nil rate of duty or are wholly exempted from payment of duty, other than goods cleared by a hundred per cent export-oriented undertaking, shall not be allowed under this notification;"

Amendment to Notification no. 42/2001-CE (NT) dated 26.06.2001

It has been brought to the notice of the Board that some of the manufacturers of exempted goods are exporting such goods under bond. Subsequently, they claim refund of accumulated input credit under Rule 5 of the CENVAT Credit Rules, 2004. The department had objected to this procedure on the ground that if the goods are exempted from payment of excise duty, in that case the goods cannot be exported under bond for the reason that bond is executed only when goods are liable for payment of excise duty and if there is no excise duty, there is no Question of exporting under bond. However, it has been observed that in some cases, the judicial pronouncements on the issue have been against the department.

2. The matter has been examined. The policy of the govt. is not to tax the exports. There are different methodologies and procedures for refund in different situations. If the goods are exempted, then the department has prescribed a detailed procedure for refund of input taxes through Notification No. 21/2004-CE (NT) dated 06.09.2004, wherein a detailed procedure requiring verification of details like manufacturing process, input-output ratio, wastages etc., by the departmental officer is prescribed. The reason for the same is that in case of exempted goods, the department does not exercise control. It appears that the exporters are exporting the exempted goods under bond to avoid detailed verification and scrutiny by the department for claiming of refund of input taxes. Accordingly, it was felt necessary to correct the anamoly.

3. In view of above, an amendment to the conditions for exporting under bond under the Notification No. 42/2001-CE (NT) dated 26.06.01, has been notified through Notification No. 24/2010-CE (NT) dated 26.05.10, wherein, goods which are exempted from payment of duty or chargeable to nil rate of duty, have been disallowed to be exported under bond. Since, 100% EOU's are also required to export the goods under bond, in terms of Customs and Excise notifications, the exports from 100% EOU's have been specifically excluded from the purview of this amendment

Author note-

1. Excisable goods which are wholly exempt or chargeable to Nil rate of duty can't be exported under Bond/LUT under rule 19. But after amendment such goods can be exported u/r 18 (under rebate of duty claim)
2. CCR on Input used for exempted excisable goods to be exported can't be claimed [R- 6(1) + R- 6(6)- CCR 2004]
3. Refund on CCR not allowed under Rule 5 of CCR 04, because CCR not allowed- no Que of Refund
4. 100 % EOU can export Exempted goods under Bond, CCR allowed on IP to 100% EOU, can claim refund of CCR on input, input service under rule 5 of CCR 04.

Offences & Penalties

Superintendents empowered to adjudicate cases involving duty and/or CENVAT credit upto Rs. 1 Lakh in individual show cause notices - *[Circular No. 922/12/ 2010-CX dated 18.05.2010]*

Circular No. 752/68/2003-CX dated 01.10.03 as amended has been further amended to confer the power of adjudication on Superintendents for cases involving duty and/or CENVAT credit upto Rs.1 Lakh in individual show cause notices. However, they would not be eligible to decide cases which involve excisability of a product, classification, eligibility of exemption, valuation and cases involving suppression of facts, fraud etc. Consequently, the Assistant/Deputy Commissioners are now empowered to adjudicate cases involving duty upto Rs.5 lakh (except the cases where Superintendents are empowered to adjudicate).

CEO- who is entitled	Adjudication- Amount of demand in SCN
SCE	Upto 1 lakh- EXCEPT excisability of a product, classification, eligibility of exemption, valuation and cases involving suppression of facts, fraud (EPL)
AC/DC	Upto 5 lakh except the cases where Superintendents are empowered to adjudicate
JC	>5 lakh **≤ 20 lakh**
ADDL COMM	>20 lakh **≤ 50 lakh**
CCE	>50 lakh

Central Government empowered to make rules for withdrawal of facilities/imposition of restrictions on CENVAT credit [Section 37(2)(xiiia) inserted]

Section 37 empowers the Central Government to make rules generally to carry into effect the purposes of the Central Excise Act, 1944. Clause (xiiia) has been inserted after clause (xiii) to section 37(2) so as to empower the Central Government to make rules for withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of CENVAT credit) on manufacturer or exporter or suspension of registration of dealer, for dealing with evasion of duty or misuse of CENVAT credit.

Demand & Refund

Sec 11A(2B)- EXPLANATION 3 INSERTED

where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded the person chargeable with the duty

- may pay the duty,
    - ✓ on .the basis of his own ascertainment of such duty or
    - ✓ on the basis of duty ascertained by central excise officer,
    - ✓ Before_ service of notice on him and
    - ✓ inform the CEO of such payment in writing,
- who, on receipt of such information shall not serve any notice (SCN) under sub-section (1) in respect of the duty so paid.

Provided that the CEO may

- determine the amount of short payment of duty, if any, which in his opinion has not been paid by such person and,
- then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and
- the period of "one year" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

<u>Waiver not allowed</u>

<u>Explanation 1</u>. - Nothing contained in this sub-section shall apply in a case where the duty was not levied or was not paid by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention o provisions of this Act or the rules with an intent to evade payment of duty.

<u>Explanation 2.</u> - The interest u/ s 11AB shall be payable on

- the amount paid by the person under this sub-section and
- also on the amount of short-payment of duty, if any, as may be determined by the CEO, but for this sub-section.

Explanation 3. - For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of duty under this sub-section and interest thereon. [FA 2010]

Author note-

1) Explanation 3 inserted to clarify that IF duty short paid and interest thereon is paid under section 11A(2B) before service of SCN. THEN penalty under any of the provisions of CEA 1944 or the rules (CER 2002) SHALL NOT be imposed
2) Under CEA 1944, Sec 11AC Penalty levied equal to duty, when excise duty not levied/short levied/ not paid/ short paid DUE TO FRAUD. Under CER 02, Rule 25 Person covered- manufacturer/ WH keeper, FSD/SSD- Goods confiscated and penalty (duty or 2000) w.i greater for following -- Non- registration, clandestine removal, not entered in DSA, intentional evasion
3) If Sec 11AC applicable then Rule 25 not applicable.
4) Sec 11A(2B) applicable for other than Fraud cases. Hence if payment made for other than fraud cases befor issue of SCN then penalty u/s 11AC or Rule 25 shall not be imposed.
5) However it should be noted that penalty u/s 11AC in case of Fraud levied even if duty paid before issue of SCN (Rajastjan Spinning & Weaving Mills- SC- 2009)
6) SIMILAR AMENDMENT made in service tax, but no such amendment in Custom Act 1962.

Settlement commission

Before amendment

(1) in Excise, applications for the settlement of cases could not be admitted in cases where an assessee admitted short-levy for goods in respect of which he had not maintained proper records in his daily stock register (i.e. cases of misdeclaration, clandestine removal etc.).
IN CUSTOM applications for the settlement of cases could not be admitted in cases where assessee admitted short levy in respect of the goods which were not included in the Bill of entry or Shipping Bill, as the case may be.

(2) The time-limit for passing the settlement order is 9 months from the last day of the month in which the application was made. Earlier, no extension in the said time-limit was allowed.

(3) Earlier, as per section 32-O, the assessee was allowed to apply for settlement under section 32E not more than once.

After Amendment made by Finance Act, 2010

(1) In excise, applications for the settlement of cases can be made where an assessee admits short-levy for goods in respect of which he has not maintained proper records in his daily stock register (i.e. cases of misdeclaration, clandestine removal etc.).
In Custom applications for the settlement of cases can be made where assessee admits short levy in respect of the goods which were not included in the Bill of entry or Shipping Bill, as the case may be.

(2) The proviso added to the said sub-section provides that the aforesaid period may be extended, for reasons to be recorded in writing, by the Settlement Commission for a further period not exceeding three months.

(3) The said section has been amended so as to provide that now the assessee can apply for settlement more than once which provides as follows-

Bar on subsequent application for settlement in certain cases.

he shall not be entitled to apply for settlement under section 32E in relation to any other matter if

(i) an order of settlement passed for the imposition of a penalty on the person who made the application under section 32E for settlement, on the ground of concealment of particulars of his duty liability; or
(ii) after the passing of an order of settlement in relation to a case, such person is convicted of any offence under this Act in relation to that case; or

(iii) the case of such person is sent back to the Central Excise Officer having jurisdiction by the Settlement Commission

Que- A show cause notice dated 09.08.2010 demanding duty to the tune of Rs.10,00,000 with interest as applicable has been received by AB Ltd. on the ground of clandestine removal of the products manufactured by it in the month of July, 2009. Penalty equal to duty demanded was also imposed. AB Ltd. had filed the ER-1 for the month of July on time. AB Ltd. wants to approach the Settlement Commission for this matter and accept the additional duty liability of Rs.10,00,000. In the year 2006, AB Ltd. had one of its case settled at Settlement Commission. Neither any penalty was imposed on it nor was it convicted for any offence in relation to this case. AB Ltd. has approached you as a counsel for advising it in this regard. You are required to give your views with particular reference to the amendments made in the provisions of Settlement Commission by the Finance Act, 2010.

Ans The advice to AB Ltd. would be two fold. First would be regarding the eligibility to make an application before Settlement Commission and second would be regarding the conditions to be fulfilled by AB Ltd. for making an application to the Settlement Commission.

Eligibility to make an application before Settlement Commission: AB Ltd. can make an application to Settlement Commission as the following conditions prescribed under section 32E of the Central Excise Act, 1944 are being fulfilled in this case:

(i) A show cause notice has been received by AB Ltd.

(ii) The additional amount of duty which AB Ltd. would be accepting in the application to the Settlement Commission exceeds Rs.3,00,000.

(iii) AB Ltd. has filed ER-1 showing production, clearance and central excise duty paid for the month of July, 2009.

(iv) Prior to 08.05.2010, cases involving short levy of duty on goods in respect of which no proper record were maintained by the assessee in his daily stock register could not be settled in the Settlement Commission. However, with effect from, 08.05.2010, the Finance Act, 2010 has amended section 32E so as to remove the prohibition on filing of applications for the settlement of cases where an assessee admits short-levy for goods in respect of which he has not maintained proper records (i.e. cases of misdeclaration, clandestine removal etc.).

(v) Prior to 08.05.2010, the assessee was allowed to apply for settlement under section 32E only once. However, with effect from, 08.05.2010, the Finance Act, 2010 has relaxed this restriction. Now, the assessee can apply for settlement more than once if it does not fall in any of the three cases mentioned in section 32-O of the Central Excise Act, 1944. The said three cases where the assessee cannot apply for settlement more than once are:

(a) where the order of settlement provides for imposition of penalty on the ground of concealment of particulars of duty liability; or

(b) where after passing of the settlement order, the applicant is convicted of any offence under the Central Excise Act in relation to that case; or

(c) the case of the applicant is sent back to the Central Excise Officer by the Settlement Commission.

The case of AB Ltd. does not fall in any of the three cases mentioned in section 32-O.

Conditions to be fulfilled by AB Ltd. for making an application to Settlement Commission:

(i) AB Ltd. will have to make full and true disclosure of his duty liability not disclosed before the Central Excise Officer, the manner in which such liability has been derived and the particulars of the goods in respect of which it admits short levy on account of clandestine removal.

(ii) Application will have to be accompanied with a fees of Rs.1000.

(iii) AB Ltd. will have to pay Rs.10,00,000 (additional amount of excise duty accepted by him) along with applicable interest.

AB Ltd. will be informed that once it makes an application under section 32E, it will not be allowed to withdraw the same.

Classification

Polyester Staple Fibre manufactured out of PET scrap and waste bottles is a textile material classifiable under Section XI of the Central Excise Tariff - *[Circular No. 929/19/2010*

It has been clarified that polyester staple fibre manufactured out of PET scrap and waste bottles is nothing but a textile material and hence will be classified as textile material under heading 55032000 under Section XI and not as article of plastic in Chapter 39.

Classification of TEA fortified with Vitamins

TEA fortified with Vitamins comprises tea along with stabilizers and vitamins.
Chapter Note 1 (c) of chapter 21- this chapter will not cover flavoured Tea.

1. Preparation of tea and preparation with the basis of tea are classifiable under the chapter heading 2101 20. Preparation of tea as well as preparation with a basis of tea is a product containing tea as one of the major component and has other added ingredients to it. Flavoured tea contains tea along with at least one flavouring agent and is a preparation of tea, though not classifiable under this chapter by virtue of Chapter Note 1(c) to the Chapter 21. However all other preparations of tea not specifically excluded by virtue of any Section/Chapter Note will get classified in this chapter only.
2. The issue has been examined, the samples of the product were perused and the commercial understanding of the product and the details of the product mentioned on the packing materials were taken note of. The tea fortified with vitamins as described in para 1 is nothing but a preparation of tea having added ingredients like stabilizers and vitamins in addition to tea. Since no Section/Chapter Note excludes this preparation from the purview of Chapter 21, it is clarified that such preparations of tea namely tea fortified with vitamins will be classified under Chapter 21.

Subject: Classification of rice parboiling machinery – Cir 924/14/2010

It has been brought to the notice of the Board that classification of Rice parboiling machinery is being disputed in certain jurisdictions. Two tariff headings under consideration for its classification are 8419 or 8437. It has been represented by the Rice Mill Machinery Manufacturers Association that the practice so far followed by the department was not to charge excise duty for many years but suddenly it has been sought to charge duty on these machines by proposing classification under heading 8419. The matter has been examined by the Board.

4.1 On examination of the issue, the Board observes that the General rules for interpretation of Central Excise Tariff provide that "*for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require*". Therefore the classification of these goods should be determined in terms of the headings read with the relevant section and chapter notes. Section Note 3 & 4 to Section XVI and chapter Note 2 to Chapter 84 are relevant for present issue and these are reproduced below:

Section Note 3 and 4 to Section XVI

"3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

Chapter Note 2 to Chapter 84:

"Subject to the operation of Note 3 to Section XVI and subject to Note 9 to this Chapter, a machine or appliance which answers to a description in one or more of the headings 8401 to 8424, or heading 8486 and at the same time to a description in one or other of the headings 8425 to 8480 is to be classified under the appropriate heading of the headings 8401 to 8424 or under the heading 8486, as the case may be, and not under the headings 8425 to 8480.

Heading 8419 does not, however, cover :

(a) germination plant, incubators or brooders (heading 8436);
(b) grain dampening machines (heading 8437);
(c) ....
(d) ...
(e) ....."

4.2 Parboiling machinery, drier plant and rice mill in conjunction form the paddy processing. Thus such a plant can be considered as composite machines fitted together to perform the function of rice milling which is the principal function of such a combination. Thus in terms of the Section Note 3 & 4 even if one of the component/ machinery is performing complementary functions, the classification of such component/ machinery will be governed by the principal function being performed, and that in this case is rice milling.

4.3 Chapter Note 2 provides that if a machine can be classified based on description under heading 8419 and also under 8437, in that case it should be classified under 8419 only. Therefore, it would be seen that as per Chapter Note 2, the parboiling machine merit classification under heading 8419 but as per Section Note 3 and 4, the machinery merit classification under heading 8437. The Board observes that this controversy has been perceived by the HSN and at pages 1235 it has been mentioned that Chapter Note 2 which is known as rule of precedence for heading 8401 to 84.24 applies only to machines considered as whole. Composite machines or multifunction machines are required to be classified in accordance with Note 3 and Note 4 of Section XVI. As per this clarification available in the HSN, the parboiling machine and dryers which are part of composite machine (rice mill) would be correctly classified in terms of Section Notes 3 and 4 and therefore, the correct classification should be under heading 8437. Further, grain dampening machine has been excluded from the purview of heading 8419 and placed under heading 8437. One of the functions of Rice parboiling machinery is soaking of grain, which is in nature of dampening; hence this also support the classification of parboiling machinery under heading 8437.

5.0 Therefore, Board is of the view that Rice parboiling machinery and drier which are essentially for use in conjunction with the rice mill will merit classification under heading 8437.

Custom

[Notification No. 33/2010 CE dated 19.10.2010]

Goods supplied to UN or an international organisation exempted from additional and special additional duty of excise

All goods falling under the Schedule to the Central Excise Tariff Act, when supplied to the United Nations or an international organisation for their official use, have been exempted from the whole of the additional and special additional duty of the excise.

Condition to be satisfied

Above exemption will be available only if the manufacturer produces a certificate before the jurisdictional Assistant /Deputy Commissioner of Central Excise from the United Nations or the international organisation that the goods are intended for such use.

Meaning of international organization

"International organisation" means an international organisation to which the Central Government has declared, in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947, that the provisions of the Schedule to the said Act shall apply.

Duties of custom

Valuation of imported goods for CVD requiring MRP based assessment under Medicinal and Toilet Preparations (Excise Duties) Act, 1955

First proviso to section 3(2)(ii) of the Customs Tariff Act, 1975 has been amended to provide that the value of the imported goods for the purpose of charging countervailing duty (CVD) in respect of goods chargeable to excise duty on the basis of Maximum Retail Sale Price under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 shall be deemed to be the retail sale price declared on such imported goods less the amount of abatement, if any, from such retail price as the Central Government may, by notification in the Official Gazette, allow in respect of such like article. Moreover, where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section

Refund of 4% Additional Duty of Customs (4% Special CVD) - Applicability to manufacturers in textile sector – Circular 34/2010- dated 15 sep 2010

Your kind attention is invited to the Notification No. 102/2007-Customs dated 14th September 2007 whereby exemption from Special CVD of 4% leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 has been provided subject to the fulfillment of certain conditions.

2. Representations have been received from trade and industry (especially the textile sector) through the Department of Commerce to allow the benefit of this exemption to manufacturer-importers, especially those who have opted out of the CENVAT Credit Scheme and do not pay excise duty on their final products.

3. The matter has been examined. Special CVD is one of the duties specified under sub-rule (1) of rule 3 of the CENVAT Credit Rules, 2004. Credit of this duty, when paid on inputs (imported) used in or in relation to the manufacture of excisable goods, is available. This credit can be used for payment of duty on the final product.

- ⇒ Hence a textile manufacturer who opts to pay excise duty on his final product can avail of CENVAT credit of 4% Special CVD paid on his inputs.
- ⇒ But this benefit obviously cannot be extended to a manufacturer who opts to avail of full exemption (and hence not pay excise duty) on his final product. Further, if the imported inputs on which 4% Special CVD has been paid are used by such a manufacturer for the manufacture of final products, the benefit of exemption (by way of refund) under Notification No. 102/2007-Customs dated 14th September 2007 would also not be available. This is because the condition regarding payment of State VAT on imported inputs cannot be fulfilled in this situation where inputs are consumed and not sold as such.

Valuation

[Circular No. 933/23/2010 CX dated 16.08.2010]

Goods cleared from an EOU for sale in DTA, when actual sale transaction does not take place at the time of clearance but on a subsequent date, to be valued by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007

The value of goods cleared from an 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

The same view has been expressed by the CESTAT in following cases

(a) Endress Hauser Flowtec (I) Pvt Ltd. [2009 (237) ELT 598 (T)]

(b) Morarjee Brembana Ltd. [2003 (154) ELT 500 (T)]

(c) Uniworth Textile Ltd. [2009 (244) ELT 401 (T)]

The earlier clarification issued vide *Circular No 268/85-CX.8 dated 29. 09.1994* clarifying that valuation of goods in such situations will have to be done in accordance with the Rule 8 of the Customs Valuation Rule (Determination of Price of Imported Goods), 1988 as it existed then has been withdrawn.

Clarification on determination of assessable value in case of sale of warehoused goods before being cleared for home consumption - *[Circular No.11/2010 dated 03.06.2010]*

The following issue has been clarified:

Issue: Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

Clarification: With effect from 10.10.2007, section 14 of the Customs Act has been amended to provide that the value of the imported goods shall be the transaction value of goods. Transaction value is defined to mean the price actually paid or payable for the goods *when sold for export to India* for delivery at the time and place of importation. In the instant case, the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete and thus the sale of warehoused goods cannot be considered a *sale for export to India*. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14.

However, as per erstwhile section 14, applicable to period prior to October 2007, the value of the imported goods is deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, or as the case may be, *in the course of international trade.* In this case also, the sale of imported goods made after warehousing cannot be considered to have been made *in the course of international trade* and hence, the price at which such sale takes place cannot be the assessable value in terms of erstwhile section 14.

Duty drawback

Notifications:
1. Extension of time period for filing drawback claim under rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 - *[Notification No. 48/2010 Cus. (N.T.) dated 17.06.2010]*

Proviso to rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 has been substituted with a new proviso. Rule 5(1) provides that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.
The new proviso lays down that the said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less and a further period of six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or Rs. 2000/- whichever is less.

2. Change in time periods available under rules 6, 7, 15 and 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

Rule 6 cases where amount or rate of drawback has not been determined.

If No AIR is specified, the manufacturer or exporter has to apply
To CCE/CC&CE for fixation of rate or amount of DDB
Within ~~60~~ 3 months of the relevant date

Authority for extension	Period of extension	Fees payable with application for extension
Assistant or Deputy Commissioner	Further 3 months	1% of the FOB value of exports or Rs. 1000/- whichever is less
commissioner	Further 6 months	2% of the FOB value or Rs. 2000/- whichever is less

Note- AC or DC or commissioner may on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;

Provisional amount may be granted to him as DDB pending the determination of such rate or amount.

Rule 7 cases Where amount or rate of drawback determined is low
Even if AIR is fixed, special brand rate can be claimed. This is when AIR is lower than 4/5 of the duty or tax paid. Application can be submitted to CCE/CC&CE within ~~60~~ 3 months .
Amended by NN 49/2010

Authority for extension	Period of extension	Fees payable with application for extension
Assistant or Deputy	Further 3 months	1% of the FOB value of

Commissioner		exports or Rs. 1000/- whichever is less
commissioner	Further 6 months	2% of the FOB value or Rs. 2000/- whichever is less

Note- AC or DC or commissioner may on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;

Rule 15

Supplementary Claim

Where an exporter finds that the amount of DBK paid to him is less than what he is entitled to on the basis of amount/rate of DBK as dertermined by CG/CCE/ CC & CE, he may prefer a supplementary claim in prescribed form.

The claim shall be made within 3 months (+ **Extension – see Note**) of following dates:-

- Where rate of DBK is determined/revised under Rule 3 / 4 : date of publication of such date.
- Where rate is determined under Rule 6 / 7 : the date of Communication of rate to person.

Note – amended by NN 49/2010

Authority for extension	Period of extension	Fees payable with application for extension
Assistant or Deputy Commissioner	Further 9 months	1% of the FOB value of exports or Rs. 1000/- whichever is less
commissioner	Further 6 months	2% of the FOB value or Rs. 2000/- whichever is less

Note- AC or DC or commissioner may on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;

Author note

*The time period for the following has been extended **from 60 days to 3 months:***

(a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback [Rule 6].
*(b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low (**i.e Where the exporter finds that the drawback rate fixed under Rule 3 or Rule 4 is less than 4/5th of the duty or taxes paid on inputs or input services)** [Rule 7].*
Further extension of period allowed with payment of fees.

Rule 16A Recovery of DDB where export proceeds are not realized
Where amount of DDB has been paid to exporter (or his authorized person) but the sale proceeds in respect of such goods have not been realized by the exporter within the period permissible under FEMA (including the extension), such DDB shall be recovered in the following manner;
AC/DC shall cause notice to be issued to the exporter for production of evidence of realization of sale proceeds within 30 days from receipt of notice.
Where the exporter fails to produce such evidence, AC/DC shall pass an order to recover the said amount and thereupon, the exporter shall repay the amount of DDB within 30 days of receipt of the said order.
Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds :

Where the exporter fails to repay the amount under within said period of [thirty days] , it shall be recovered in the manner laid down in rule 16.

Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him and the exporter produces evidence about such realisation [within a period of three months from the date of realisation of sale proceeds], the amount of drawback so recovered shall be repaid by the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] to the claimant.] [,provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India]

[Provided that

(i) the Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be, may extend the aforesaid period of three months by a period of nine months provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India;

(ii) an application fee equivalent to 1% of the FOB value of exports or Rs. 1000/-whichever is less, shall be payable for applying for grant of extension by the Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be.]

Cir. issued in 2010-

The time limits for filing applications for fixation of Brand Rate of Drawback, supplementary claims of Drawback and for claiming drawback under section 74 of the Customs Act, 1962 have been revised as under:

Type of claim	Previous time limits	Revised time limits
Brand rate claim(Rules 6 and 7 of Customs, Central Excise & Service Tax Drawback Rules, 1995)	The claim was required to be filed within 60 days from the date of Let Export Order. This time limit could be extended by 30 days by the Commissioner if he was satisfied that the exporter was prevented by sufficient cause from filing the application within the aforesaid time period.	The claim may be filed within 3 months from the date of Let Export Order. This time limit may be extended by 3 months by the AC / DC and by another 6 months by the Commissioner.
Supplement-ary claim(Rule 15 of Customs, Central Excise & Service Tax Drawback Rules, 1995)	The claim has to be filed within 3 months from the date of publication of All Industry Rate (AIR) of Drawback or from the date of communication of the brand rate of drawback. This period may be extended by another 9 months by the AC/DC if he is satisfied that the exporter was prevented by sufficient cause from filing application within the aforesaid time period.	The claim may be filed within 3 months from the date of publication of All Industry Rate (AIR) of Drawback or from the date of communication of the brand rate of drawback. This period may be extended by 9 months by the AC/DC and by another 6 months by the Commissioner.
Drawback on Re-export of imported goods [Rule 5 of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995]	This claim has to be filed within 3 months from the date of Let Export Order. The period may be extended further by 3 more months by the AC/DC in case he has satisfied that the exporter was prevented by sufficient cause from filing the case in time.	This claim may be filed within 3 months from the date of Let Export Order. The period may be extended by 3 months by the AC/DC and by another 6 months by the Commissioner.

3. It may be seen from the above that under the amended rules an exporter can file an application for fixation of Brand Rate of Drawback under Rule 6 and 7 within a maximum period of 1 year including the extensions. Similarly, he can file supplementary claim of drawback within a maximum period of 18 months including extensions and a claim of drawback under Section 74 of the Customs Act, 1962 within a maximum period of 1 year including extensions.

4. In all the above cases, the AC/DC or the Commissioner may grant the extension on the basis of an

application and after making such enquiry as they think fit. The condition that the exporter should have been prevented by sufficient cause from applying within the prescribed time period has been removed. In case, the AC/DC or the Commissioner decide not to grant extension, they may do so after recording in writing the reasons for such refusal and the same may be communicated to the applicant through a speaking order. However, as advised by the Board vide Circular No. 14/2003-Cus dated 06.03.2003, delays may generally be condoned on receipt of the exporter's application in this regard.

5. A new feature that has been incorporated in the Rules is that in all the above cases an application fee equivalent to 1% of the FOB value of exports or Rs. 1000/-, whichever is less, shall be payable for applying for grant of extension by the AC/DC and an application fee of 2% of the FOB value of exports or Rs. 2000/-, whichever is less, shall be payable for applying for grant of extension by the Commissioner.

6. The applications for fixation of Brand Rate of drawback have to be filed in the office of the Commissioner of Central Excise (or Customs & Central Excise) as provided in rules 6 and 7 of the Customs, Central Excise & Service Tax Drawback Rules, 1995 and as already advised vide the above mentioned circular. If there is a delay in making the application, the Assistant/Deputy Commissioner of Central Excise (Technical) or such other Assistant/Deputy Commissioner in the office of the Commissioner of Central Excise who has been assigned the work relating to fixation of Brand Rate of drawback, may grant the first extension of upto 3 months. If the delay is of more than 3 months, extension may be granted only by the Commissioner. The applications for supplementary claims of drawback, drawback under section 74 of the Customs Act, 1962 and for repayment of drawback in terms of rule 16A(4) of the Customs, Central Excise & Service Tax Drawback Rules, 1995 may be made to the Assistant Commissioner of Customs at the port of export.

7. Further, Rule 16A (4) of the Customs, Central Excise & Service Tax Drawback Rules, 1995 has been amended to provide that in cases where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him under Rule 16A (1) of the Drawback Rules, 1995 due to non realization of export proceeds, he shall be allowed to produce evidence of such realization within a period of 3 months from the date of realization of export proceeds instead of the previous provision of one year from the date of recovery of amount of drawback provided the foreign exchange has been realized within the period permitted by RBI.. The period may be extended by the Commissioner of Customs by 9 months subject to the condition that the amount has been realized on a date covered by the extensions of time limit given by the RBI for realizing export proceeds. Application fee equivalent to 1% of the FOB value of exports or Rs. 1000/-, whichever is less, shall be payable for applying for grant of extension by the Commissioner.

Baggage

Rule 3 of the Baggage Rules, 1998 --- Circular No. 25/2010-CX dated 4.8.2010

It has been clarified that Rule 3 shall apply in case of persons returning from Hong Kong. As Hong Kong is a separate Customs Territory from China.

Amendments under Service Tax

(1) Circular No. 125/7/2010-ST dated 30.7.2010

Subject: Services provided by state governments under Centrally Sponsored Schemes (CSS)

In the recent past, instances have come to the notice of the Board, where field formations have demanded service tax from State governments or their departments/ agencies, for providing certain services under the centrally sponsored schemes (CSS). To cite an illustration, in the case of the centrally sponsored National Biogas and Manure Management Program operating under Ministry of New and Renewable Energy, State government agencies were involved in setting up of bio-gas plants in villages. Certain expenses incurred by the State governments or their departments/ agencies during the course of setting up of such bio-gas plants were reimbursed by the central government by way of a grant under the CSS. Jurisdictional service tax authorities demanded service tax from the State government department/agency, saying that the reimbursements received by the concerned State government department/agency (as service provider) are nothing but ***consideration for installation and commissioning service*** *received from the central government (service receiver).*

2. Implicit in this service tax demand is an assumption that the relationship between Central government and the State government is an equivalent of a relationship between principal and the agent. This assumption is questionable as under administrative arrangement, State governments are bound to implement the centrally sponsored schemes on receipt of a grant. ***The fact that State governments are implementing agencies for the Central government within the framework of CSS does not make them service providers****. Consequently, Central government cannot be taken as service receiver.* ***Grant released by the Central government under a centrally sponsored scheme cannot be presumed as consideration for providing a taxable service.***

3. Levy and collection of service tax on State government agencies/departments implementing CSS under a central grant, is not legally tenable and therefore in such cases service tax should not be demanded.

(2) Sec 65A provisions shall not apply to any service when the same is rendered wholly within the port or other port or the airport or civil enclave- [For Detail refer respective service.]

(3) Exemption to services provided for transmission of electricity

CG exempts the taxable service provided to any person, by any other person for transmission of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act. *[Notification No. 11/2010-]*

(4) Exemption to services provided for DISTRIBUTION of electricity

The CG exempts the taxable service provided to any person, by a distribution licencee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003(36 of 2003), for distribution of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act. [NN 32/2010]

Note- the above exemptions for transmission and distribution of electricity have been given retrospective effect. i.e service tax exempt before issue of notification.

(5) Exemptions to advance received before 1-7-2010

Advance received prior to 1-7-2010 towards 8 new services introduced and specified existing services expanded by Finance Act, 2010 are exempt to the extent of amount of advance payment received before 1-7-2010 in respect of them.

However any advance payment relating to retrospective amendments in **Commercial Training & Coaching Centre and Renting of immovable property** shall not be exempt.

CBEC Clarification- 334/03/2010

Vide Finance Act, 2010, 8 new services were added to the list of taxable services while the scopes of 9 existing services were modified. As these changes become effective from 01.07.2010, activities that are covered under taxable service categories due to above additions or modifications, would start attract service tax from this date. It is however, possible that a part or full payment of the consideration for such services provided after the appointed date has already been received prior to that date, i.e. advance payments. The examples are: where a domestic air journey performed after 1st July 2010, but the ticket is issued on payment prior to such date or where a construction activity falls within the taxable service only after the said date but the payment (full or in part) has been made before this date. While legally tax is payable on such amounts received, it has been decided to specifically exempt service tax on that partial or full amount which is received by the service provider/ person liable to pay the tax (and not by an agent, who in turn transfers such amount to such person after this date) before 01.07.2010, pertain to a service which has become taxable on account of the provisions of the Finance Act, 2010 and is provided on or after 01.07.2010. Any amount received after 01.07.2010 by the service provider/ person liable to pay the tax would be subjected to tax. (Refer Notification No.36/2010)

New services Introduced by Budget 2010

(1) Lottery service
(2) Maintenance of health record service
(3) Health care and treatment service
(4) Promotion of brand service
(5) Permitting commercial use or exploitation of an event service
(6) Electricity exchange service
(7) Copyright service
(8) Preferential location or development service

Scope of existing services extended

(1) Commercial or industrial construction service
(2) Residential complex construction service
(3) Air travel service
(4) Sponsorship service
(5) Commercial training or coaching centre service
(6) Port (other port) service
(7) Airport service
(8) Renting of immovable property service
(9) IT software service

CBEC CLARIFICATION

Subject: Service tax on commercial training and coaching – clarification whether 'donation' is 'consideration' - NO

whether donations and grants-in-aid received from different sources by a charitable Foundation imparting free livelihood training to the poor and marginalized youth, will be treated as 'consideration' received for such training and subjected to service tax under 'commercial training or coaching service'.

The important point here is regarding the presence or absence of a link between 'consideration' and taxable service. It is a settled legal position that unless the link or nexus between the amount and the taxable activity can be established, the amount cannot be subjected to service tax. Donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. Between the provider of donation/grant and the trainee there is no relationship other than universal humanitarian interest. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training

Promotion of lottery

(1) Rule 6(7C) The distributor or selling agent, liable to pay service tax for the taxable service of promotion, marketing, organising or in any other manner assisting in organising lottery, shall have the option to pay an amount at the rate specified in column (2) of the Table given below, subject to the conditions specified in the

corresponding entry in column (3) of the said Table, instead of paying service tax at the rate specified in section 66 of Chapter V of the said Act:

Table

Sl. No.	Rate	Condition
(1)	(2)	(3)
1.	Rs 6000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2.	Rs 9000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%

Face value -- it is the amount mentioned on the lottery ticket.

Aggregate Face Value -- face value of lottery x the number of tickets printed

Guaranteed Prize Payout -- the agreed aggregate prize money distributed to all the winners

Provided that in case of ONLINE LOTTERY, the aggregate face value of lottery tickets for the purpose of this sub-rule shall be taken as the aggregate value of tickets sold, and service tax shall be calculated in the manner specified in the said Table.

Provided further that the distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

Provided also that the distributor or selling agent shall exercise such option for financial year 2010-11, within a period of one month of the publication of this sub-rule in the Official Gazette or, in the case of new service provider, within one month of providing of service under the said sub-clause and such option shall not be withdrawn during the remaining part of that financial year.

Explanation.- For the purpose of this sub-rule-

(i) "distributor or selling agent" shall have the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India and shall include distributor or selling agent authorised by the lottery organising State.

(ii) "draw" shall have the meaning assigned to it in clause (d) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India

(iii) "online lottery" shall have the meaning assigned to it in clause (e) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India

(iv) "organising state" shall have the meaning assigned to it in clause (f) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India

Exemption notification

CG exempts persons marketing the lottery tickets (hereinafter referred to as 'such person'), OTHER THAN the distributors or selling agents appointed or authorised by the lottery organising State (hereinafter referred to as 'such distributor or selling agent'), from the whole of service tax leviable thereon on the taxable service of marketing of lottery, if the optional composition scheme under sub-rule (7C) of rule 6 of Service Tax is availed of by such distributor or selling agent, in respect of such lottery during the financial year:

Provided that if such person also markets lottery tickets for distributors or selling agents who have not so opted, then nothing contained in this notification shall apply to the value of service provided to the distributors or selling agents who have not so opted.

Explanation.- For the purpose of this notification, "distributor or selling agent" shall have the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India and shall include distributor or selling agent authorised by the lottery organising State.

Following is the detail of lotteries of a distributor to be organized by state of Maharashtra

	Maha Laxmi- Printed	Golden laxmi- online
No. of tickets proposed	25,00,000	3,00,000
Face value of ticket	10	300
Value of guaranteed pay out	70%	90%
Actual No. of ticket sold	23,00,000	2,50,000

Calculate service tax under composition scheme

	Maha Laxmi- Printed	Golden laxmi- online
No. of tickets proposed	25,00,000	2,35,000
Face value of ticket	10	300
Total face value	2,50,00,000	7,05,00,000
Value of guaranteed pay out	70%	90%
	25	71
Service tax payable for every 10 lakh or part	9000	6000
service tax	225000	426000
Aggregate service tax of lotteries		651000
Education cess- 2%		13020
Secondary and higher education cess- 1%		6510
Total service tax		670530

(9) Rule 4A of Service Tax Rules, 1994

"Provided also that in *case the provider of taxable service is aircraft operator providing the service of air transport of passenger, an invoice, a bill or as the case may be, challan shall include ticket in any form by whatever name called and whether or not containing registration number of the service provider, classification of the service received and address of the service receiver but containing other information in such documents as required under this sub-rule.".*

Amendments for Nov 2010

Circular 910/30/2009

Subject : Clarification regarding labelling and repacking etc. amounting to manufacture.

It has been brought to the notice of Board that certain dealers are receiving liquid chemicals in bulk in containers and offloading the same at the dealers' premises or godown into drums of 200 ltrs for subsequent marketing of these materials to customers. Doubts have been raised as to whether such activity would amount to manufacture in terms of Chapter Note 10 to Chapter 29. As the said Chapter Note has been amended in 2008 budget, it has been contested that the said activity is covered by the present wordings of the Chapter note.

Activity of transferring the goods from tankers into smaller drums not amounts to manufacture
As per note 10 to Chapter 29, the activity of repacking products mentioned in the said Chapter from bulk packs to retail packs shall amount to manufacture under section 2(f)(iii) of the Central Excise Act, 1944.
In this regard, it has clarified that the activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said chapter note 10 because the tankers cannot be termed as bulk packs.

Valuation

(1) [Circular No. 902/22/2009- for job work – refer in expected case law

(2) Valuation of petroleum products sold by one oil company to another Circular No. 913/3/2010

THE decision on the same subject in the case of *BPCL* v. *Commissioner of Central Excise Nasik,* CESTAT has held that price as per MOU cannot be considered as 'transaction value' under section 4 and decided the case in favour of the department. M/s. BPCL, have reportedly filed an appeal against this order of CESTAT before the Supreme Court after obtaining COD clearance. In view of the aforesaid developments, it has been decided to withdraw the Board's instructions dated 14-2-2007. However, as the appeal of BPCL is pending before the Supreme Court, field formations are directed to consign all the pending show cause notices on the issue to the call book pending a final verdict from the Supreme Court. Further, for the cases within the review/appeal period necessary action to file appeal may be taken immediately.

(3) Samples — Valuation of free samples when product assessed under MRP- Circular No. 915/5/2010 – V. imp

CESTAT in its majority decision in the case of M/s. *Cadila Pharmaceuticals Ltd.* v. *Commissioner of Central Excise Ahmedabad-II*, reported at 2008 (232) E.L.T. 0245 (Tri.-LB), has held that even after the pharmaceutical products have been notified for MRP assessment under Section 4A of the Central Excise Act, the assessment of free physician samples of these products, is appropriately required to be done under Rule 4 of the valuation rules by taking into consideration the deemed value under Section 4A(1) notwithstanding the non availability of normal price under Section 4(1)(a) of the Act. Accordingly, the value for payment of excise duty for physician sample would be the value determined under Section 4A for the similar goods (subject to adjustment for size & pack etc.)

(4) Que- A company manufacturing Tobacco – unmanufactured and chewing, whether pay duty on the basis of value u/s 4(1)(a)

Ans- no duty payable on basis of production capacity u/s 3A of CEA 1944

PRODUCTS NOTIFIED UNDER SECTION 3A-EXCISE DUTY CHARGED ON THE BASIS OF CAPACITY OF PRODUCTION

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 of the First Schedule to Central Excise Tariff Act, 1985)
- ⇒ Chewing tobacco (tariff item 2403 99 10 of the said Act)
- ⇒ Jarda scented tobacco (tariff item 2403 99 30 of the said Act)

Cenvat credit

1. Cir 911/1/2010 Subject: Irregular availment of Cenvat credit on certain activities not amounting to manufacture-reg.

Reference has been received from field formations stating that though certain activities including connectorising, testing, repacking and relabeling of feeder cables, cutting of HR/CR coils into sheets or slitting into strips do not amount to manufacture, such processors are taking Cenvat credit and justifying their Cenvat availment on ground that they are paying duty on final products.

2. The matter has been examined. As per the provisions of Rule 3 of the CENVAT Credit Rules, 2004, read with Rule 6, credit of duty paid on the inputs is allowed only if these inputs are used in the manufacture of a final product. The Board vide circular dated 26.09.07 issued from F.No.93/1/2005-CX3, had clarified that if the process does not amount to manufacture, duty is not required to be paid and hence no Cenvat credit of duty paid on inputs is admissible. Attention is also invited to the provisions of Section 5B of the Central Excise Act, 1944, where an assessee, who has paid excise duty on a product under the belief that the same is excisable, but subsequently the process of making the said product, is held by the Court as not amounting to manufacture, in such cases, the Central Government may issue an order for non-reversal of such credit in past cases.

3. In view of above, following instructions are issued:-

(i) In cases where the process undertaken by an assessee indisputably does not amount to manufacture, the department should inform the assessee about the correct legal position and advise him not to pay duty and not to avail credit on inputs.

(ii) If the assessee has already paid duty, and in a situation where there is no manufacture as held by the Courts subsequently, and facts of the case are covered by the provisions of Section 5B of the Central Excise Act, 1944, the assessee is at liberty to approach the Central Govt. for issue of appropriate notification for regularization of the Cenvat credit availed.

2. Que- whether bottling clothes or screens or silicon cylinder which carry design to be fitted in machines used in ceramic industry for printing of design over ceramic tiles can be considerd as capital goods or input

Ans- capital goods

Cir 920/10/2010- Subject: Items used in Ceramic Tiles Industry - whether capital goods or input - reg.

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Representations have been received from field formations and industry seeking clarification as to 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 input under the provisions of CENVAT Credit Rules. On the other items too, 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, doubts have arisen as to whether these should be considered as capital goods or inputs. Classification of these items as capital goods or inputs is also relevant because a concessional rate of excise duty is available to a tile manufacturer subject to the condition that no cenvat credit on inputs used in the manufacture of ceramic tiles is taken.

2. The issue has been examined. It has been reported that alumina balls/ ceramic pebbles are essential to run the ball mill in the ceramic tile factory and the ball mill cannot function without the grinding media. Therefore, alumina balls/ ceramic pebbles which are grinding media should be considered as component/ part of the machines to be classified as capital goods for cenvat credit purposes. Similarly, bolting cloth/ screens/silicon cylinders which carry designs and which are fitted on the machines used for printing of designs are also essential for operating of the machines. Therefore, these items would also be considered as capital goods for the purpose of CENVAT Credit Rules, being part/ component of the machines.

Credit on capital goods

Rule 4(2)

(a) The cenvat credit in respect of capital goods

→ Received in a factory or in the premises of the provider of output service at any point of time in a given financial year

→ Shall be taken only for amount not exceeding 50% of the duty paid on such capital goods in the same financial year.

100% CCR IN FIRST YEAR

(i) Provided credit of additional duty of Customs u/s 3(5) of Customs Tariff Act shall be allowed immediately on receipt of the capital goods in the factory of manufacturer.

(ii) Provided further that credit in respect of capital goods shall be allowed For the whole amount of the duty paid on such capital goods in the same financial year If the said capital goods are cleared as such in the same financial year

(iii) [Provided also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year.

Explanation. - For the removal of doubts, it is hereby clarified that 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 did not exceed rupees four hundred lakhs.]*

Author note- Full CENVAT credit on capital goods in one installment in the year of receipt of such capital goods in the factory to an SSI

Prior to amendment

CENVAT credit in respect of capital goods could be taken only for an amount not exceeding **50% of the duty** paid on such capital goods in the year of receipt of such capital goods in the factory in case of both SSI and non-SSI

After Amendment

SSI is allowed to take the CENVAT credit in respect of capital goods for the **whole amount of the duty** paid on such capital goods in the same financial year.

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.

Removal of inputs/ capital goods as such Rule 3(5)

→ Where inputs or capital goods,

→ On which cenvat credit has been taken

→ **Are removed as such** from the factory, or premises of the provider of output service

→ **The manufacturer or provider of output service**

→ Shall **pay an amount**

→ **Equal to the credit availed** in respect of such inputs or capital s goods and

→ Such removal shall be made under the cover of an invoice referred to in rule 9

Provided that **such payments shall not be required** to be made where any **inputs *or capital goods*** are **removed outside** the premises of provider of output service for providing output service:

~~"**Provided also** that if the capital goods, on which CENVAT Credit has been taken, are removed after being used, the manufacturer or provider of output service shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by 2.5 per cent for each quarter of a year or part thereof from the date of taking the Cenvat Credit;".~~

[**Provided** further that if the capital goods, on which CENVAT Credit has been taken,

⇒ are removed after being used,

⇒ the manufacturer or provider of output services

⇒ shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely :-

(a) **for computers and computer peripherals :**

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @5%

for each quarter in the fourth and fifth year @1%

(b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter.]

Author Note- Lower percentage of CENVAT credit reversal required in case of used computers and computer peripherals

Prior to amendment

Earlier, if the capital goods, on which the CENVAT credit has been taken, are removed after being used, the manufacturer/output service provider was required to pay an amount equal to CENVAT credit taken on the said capital goods reduced by 2.5% for each quarter of the year or part thereof from the date for taking the CENVAT credit

AFTER Amendment

THE percentage 2.5% has been changed in case of computers & computer peripherals but for other goods the percentage 2.5% is retained.

b) Circular dated 7-12-09

c) *Leviability of duty on capital goods cleared after being put into use for over 10 years* - It is clarified that in view of specific provisions under Rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods, on which Cenvat credit has been taken, are cleared as waste and scrap, even after a period of 10 years, an amount equal to the duty leviable on the transaction value for such capital goods cleared as waste and scrap, would be payable.

Que- Solidmec Ltd. purchased 25 computer systems, eligible as capital goods under the CENVAT Credit Rules, 2004, on 01.07.2008 paying a duty of Rs. 2,600 on each computer system. However, since these systems became outdated, it sold 20 computer systems out of 25 on 30.06.2010 at a residual value of Rs. 2,000 each. Determine the amount of CENVAT credit required to be reversed in the financial year 2010-11.

Ans- As per ICAI RTP

26000 credit taken on 1-7- 2008

26000 credit taken on 1-7-2009

Amount payable as proviso to Rule 3(5)=

	Year 1		26000	
Less				
Year- 1- 26000* 10% * 4		10400		
Year—2 - 26000*8%*4		8320	18720	
				7280
Year 1	26000			
Less				
Year- 2- 26000* 10% * 4	10400			15600
				22880
Total amount payable				

Alternatively

Pay amount=

(52000—72% of 52000) = 14560

Author Note- solve the Que by giving working notes and Format as suggested during the class, However author is of personal opinion that the solution as given in ICAI RTP is not correct.

Cenvat credit for goods sent for job work Rule 4(5)

1. Removal for job work

CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final product to

(i) another manufacturer for the production of goods; or

(ii) a job worker for the production of goods on his behalf,

according to his specifications.]

Author note- Removal of jigs, moulds, dies, fixtures and dies to vendors permitted without reversal of CENVAT credit

Earlier The CENVAT credit, in respect of jigs, fixtures, moulds and dies sent by a manufacturer to a job allowed.

After Amendment
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.

Rule 3(5C) of CCR 2004

Reversal of cenvat credit

Where on any goods manufactured or produced by an assessee, The payment of duty is ordered to be remitted under rule 21 of CER 2002.

→ The CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

Que whether Cenvat credit is required to be reversed if finished goods are fully written off and excise duty remitted under rule 21 of CER 2002

Ans- yes

Circular 907/27/2009

Reversal of CCR on WIP/F.goods written off in books of accounts

(1) As far as finished goods are concerned, it is stated that excise duty is chargeable on the activity of manufacture or production. Even though liability for payment of tax has been postponed to the time of removal of goods for the factory, but still the legal liability to pay the excise duty has been fastened on the goods, when it has been manufactured or produced. Therefore, normally all goods manufactured suffer excise duty at the time of removal, but if the manufactured goods are destroyed due to natural causes etc., Rule 21 of Central Excise Rules, 2002, provides for remission of duty. Further, Rule 3(5C) of CENVAT Credit Rules, 2004, also requires reversal of credit on the inputs when the duty is ordered to be remitted under the said Rule 21. Therefore, if the goods have been manufactured, in that case, a manufacturer is liable to pay excise duty unless duty is remitted under Rule 21. Therefore, if the value of finished goods is written off, the manufacturer would be liable to pay excise duty or he would be required to reverse the credit on the inputs used, if duty has been remitted on finished goods.
(2) As regard writing off work in progress (WIP), it is stated that if the WIP has reached the stage, when it can be considered as manufactured goods, in that case, the same treatment as applicable to finished goods, discussed above would apply. However, if the activity carried out on the WIP goods cannot be considered

as amounting to manufacture, in that case, the said goods should be considered as input and the treatment for reversal of credit applicable to input would be applicable.

Author note

Case 1 – excise duty remitted on Final product u/r 21 of CER 2002	CCR reversal on input
Case 2 – excise duty not remitted on Final product u/r 21 of CER 2002	No CCR reversal

For Work-in progress

Case 1 -- WIP can be considered as manufactured goods	Treatment as in above table
Case 2 – excise duty not remitted on Final product u/r 21 of CER 2002	Treatment considering as Input

Rule 6(6) Credit allowed even if final product is exempt

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

- **(i)** Cleared to a unit in a special economic Zone or to a developer of a SEZ for their authorized operations or
- **(ii)** Cleared to a 100% EOU or
- **(iii)** Cleared to a unit in EHTP or Software Technology parks or
- **(iv)** Supplied to the united nations pr an international organization for their official use or supplied to projects funded by them on which exemption of duty is available under notification of Central Government or
- **(v)** Cleared for export under bond in terms of the provisions of Central Excise Rules.
- **(vi)** Gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting.

~~(i) Goods exempted from BCD and CVD supplied against international competitive bidding.~~

[(vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, —

a) against International Competitive Bidding; or
b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
c) to a power project awarded to a developer through tariff based competitive bidding, in terms of notification No. 6/2006-Central Excise, dated the 1st March, 2006.].

Author note

CENVAT credit admissible on the inputs and input services used in the manufacture of exempted goods supplied to specified mega power projects

Prior to amendment

Earlier CCR allowed for the goods supplied against International Competitive Bidding if such goods are exempt from customs duty when imported into India.

After Amendment

Now CCR allowed on all the excisable goods exempt from customs duty when imported in India and are supplied:-
(a) against International Competitive Bidding; or
(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
(c) to a power project awarded to a developer through tariff based competitive bidding.

Records of principal inputs to be maintained for deterring the evasion of duty - *Notification No. 32/2006 CE (NT) dated 30.12.2006* amended

Notification No. 32/2006 CE (NT) dated 30.12.2006 provides that if a manufacturer, first stage or second stage dealer, or an exporter is found to be knowingly involved in any of the specified contraventions, certain facilities would be withdrawn or certain restrictions would be imposed on them.

The above notification has been amended in the following manner:

(i) Following contravention also added to the list of specified contraventions:

If a manufacturer, first stage or second stage dealer, or an exporter is found to be knowingly involved in the removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit availed on such inputs in terms of rule 3(5) of the CENVAT Credit Rules, 2004, withdrawal of facilities or impose certain restrictions may be ordered.

(ii) Two more restrictions imposed

Following restrictions may also be imposed if a manufacturer is prima facie found to be knowingly involved in committing the specified offences:-

(a) the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken.

(b) the assessee may be required to intimate the Superintendent of Central Excise regarding the receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order.

Meaning of principal inputs

Principal inputs means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw materials for the manufacture of unit quantity of a given final product.

[*Notification No. 15/2009 CE (NT) dated 10.06.2009*]

RULE 15 Confiscation and penalty.

(1) If any person,

⇒ takes or utilises CENVAT credit in respect of input or capital goods or input services,

- wrongly or
- in contravention of any of the provisions of these rules,

⇒ then, all such goods shall be liable to confiscation and

⇒ such person, shall be liable to a penalty

⇒ not exceeding the duty or service tax on such goods or services, as the case may be, or 2000, whichever is greater.

(2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of Section 11AC of the Excise Act.

(3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of Section 78 of the Finance Act.

(4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice.]

Small Scale Industry

SSI exemption not available if the goods bear brand name of other

However in following 5 cases exemption available even if goods bear BN of others

(i) Branded component to be used in the machinery:-

If the specified goods, being components or parts of any machinery or equipment or appliances, are cleared for use as equipment in the manufacture of the said machinery, equipment etc. by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 or

Provided that

Manufacturers, whose aggregate value of clearances of the specified goods for use as original equipment

→ Does not exceed rupees 100 lakh

→ In the preceding financial year

→ May submit a declaration regarding such use

→ Instead of following the procedure laid down in the said Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 or

(ii) Specified brand names

Where the specified goods bear brand name of KVIC, NSIC, SSIDC, and SSIC OR

(iii) Factory in rural area

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

(iv) where the specified goods are registers, file folders, writing pads and account books

~~(v)~~ where the specified goods are in the nature of Packing Materials~~, namely printer cartons of paper/paper Board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP Caps, crown corks, metal label, plastic bags, printed laminated rolls,~~ ~~**plastic containers and plastic bottles"**~~

~~*"Provided that in respect of plastic containers and plastic bottles, the exemption under this notification shall apply only where such plastic containers or plastic bottles*~~ *are meant for use as packing materials by the person whose brand name such goods bear".*

Author note- Relaxation from brand name restriction under the SSI exemption scheme extended to plastic containers and plastic bottles used as packing materials on 27 feb 2010 by NN 4/2010 and then amendment made on 30th april 2010 and now word only packing material mentioned meaning thereby every type of packing material eligible for exemption

CER 02

Rule 11 Goods to be removed on invoice (PROCEDURE FOR CLEARANCE OF GOODS)

~~(1) The owner or working partner or managing director or company secretary shall authenticate each foil of the invoice book, before being brought into use.~~

Author Note- Pre-authentication of invoices dispensed with
Prior to amendment
Earlier, each foil of the invoice had to be pre-authenticated by the assessee-i.e. by owner, working partner, Managing Director or the Company Secretary or any person duly authorized for this purpose, before being brought to use [Rule 11(5)].
After Amendment
Now it has been deleted. Hence pre-authentication of invoices is not required now.

Rule 8 Manner of payment

Author note-
(1) QUANTUM OF EXCISE DUTY REDUCED FOR E-PAYMENT FROM RS. 50 LAKH TO RS. 10 LAKH

Prior to amendment
Earlier, an assessee was required to deposit the excise duty electronically through internet banking if he had paid the total duty of Rs. 50 lakh or more in the preceding financial year
After Amendment
Presently Rs. 50 lakh has now been reduced to Rs. 10 lakh. Now an assessee shall deposit the excise duty electronically through internet banking if he has paid the total duty of Rs. 10 lakh or more (including the amount of duty paid by utilisation of CENVAT credit) in the preceding financial year.

(2) PAYMENT OF DUTY ON QUARTERLY BASIS RATHER THAN ON MONTHLY BASIS BY AN SSI

Prior to amendment
Earlier SSI, the duty on goods cleared during a *calendar month* was to be paid:
(i) E-payment: by the 16th day of the following month.
(ii) Other than E-payment : by the 15th day of the following month.
(iii) In the case of goods removed during the month of March: by the 31st day of March.

After Amendment
Now in case of SSI, the duty on goods cleared during a *quarter* shall be paid:
(i) E-payment: by the 6th day of the month following that quarter.
(ii) Other than E-payment: by the 5th day of the month following that quarter.
(iii) In the case of goods removed during the month of March: by the 31st day of March.

Availability of the relaxation
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.

Que- if excise duty liability for a company for April month is Rs 35000, but for financial year 2009-10 duty paid in cash was Rs. 3.5 lac and through Cenvat credit was 6.7 lac. Whether E-Payment and E-filing for April month mandatory
Ans- yes

Rule 12 Filing of return

Author note-
(1) E-filing of returns made mandatory for assessees paying excise duty of Rs. 10 lakh or more in the previous year
Earlier E-filing was optional for the assessees.
After amendment
Third proviso inserted to rule 12(1) has now made the electronic filing of returns mandatory for the 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.

(2) Date of filing of quarterly returns by SSI units aligned with non-SSI units

Prior to amendment
Earlier SSI was required to file a quarterly return of production and removal of goods **within 20 days** after the close of the quarter to which the return relates [
After Amendment
SSI shall file a quarterly return of production and removal of goods **within 10 days** after the close of the quarter to which the return relates.
Availability of the relaxation
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.

Que- whether a Company engaged in manufacture of Bidi or matches without aid of machine required to furnish annual installed capacity statement
Ans- No
Rule 12(2A)
(a) Every assessee shall submit to the SCE,

→ an annual installed capacity statement

→ declaring the annual production capacity of the factory

→ for the financial year to which the statement relates

→ in the form (ER-7) by 30th day of April of succeeding financial year:

(b) The CG may, by notification and subject to such conditions or limitations as may be specified in such notifications, specify assessee or class of assesses who may not require to submit such an annual installed capacity statement

Exemption from annual installed capacity statement-NN 26/09
Exempts the assessees, from the submission of the Annual Installed Capacity Statement, who manufacture the following goods, namely,-
(i) biris, manufactured without the aid of machines falling under tariff item 2403 10 31

(ii) matches manufactured without the aid of power falling under heading 3605

(iii) reinforced cement concrete pipes falling under heading 6810

AUTHOR NOTE- in above 3 cases now there is no requirement to file annual installed capacity statement

Export procedure

Que- whether Rebate under Rule 18 of CER 2002 is admissible when the goods are supplied from unit in DTA to SEZ
Ans- yes

Circular 6/2010- cus dated 19-3-2010

A view has been put forth that rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification 19/2004-C.E. (N.T.), dated 6-9-2004 is admissible only when the goods are exported out of India and not when supplies are made to SEZ.

The matter has been examined. The Circular No. 29/2006-Cus., dated 27-12-2006 [2007 (207) E.L.T. T35] was issued after considering all the relevant points and it was clarified that rebate under Rule 18 is admissible when the supplies are made from DTA to SEZ. The Circular also lays down the procedure and the documentation for effecting supply of goods from DTA to SEZ, by modifying the procedure for normal export. Clearance of duty free material for authorised operation in the SEZ is admissible under Section 26 of the SEZ Act, 2005 and procedure under Rule 18 or Rule 19 of the Central Excise Rules is followed to give effect to this provision of the SEZ Act, as envisaged under Rule 30 of the SEZ Rules, 2006.

Therefore, it is viewed that the settled position that rebate under Rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ does not warrant any change even if Rule 18 does not mention such supplies in clear terms.

Rule 20- warehousing

Permission to bring the duty-paid packing materials into export warehouse under rule 20 of Central Excise Rules, 2002

Circular No. 581/18/2001-CX dated 29.06.01 provides that duty paid goods are not permitted to be brought into the warehouse. In this regard, it has been clarified that duty paid packing material can be brought into the export warehouse subject to the fulfillment of following three conditions:-

(i) Exporter submits a written request to the jurisdictional AC/DC of the Division, who may grant the permission for a period of one year at a time.

(ii) Exporter maintains proper account of such goods.

(iii) Exporter does not claim any export benefit like rebate of duty paid on the said material.

Reason for grant of such permission- [*Circular No. 900/20/2009-CX dated 06.10.2009*]

The reason for granting such permission is that a number of times packing material in small quantity is required at a short notice and the supplier may not be interested to follow the detailed procedure of removal of goods without payment of duty.

Appeals

The Hon'ble Supreme Court in its judgement dated 1.3.2007 in Civil Appeal No. 6988/2005 in the case of MIL India Ltd. [2007(210) ELT.188(SC)] has observed that "in fact, the power of remand by the Commissioner(Appeals) has been taken away by amending Section 35A with effect from 11.5.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the power of the Commissioner(A) to remand matters back to the adjudicating authority for fresh consideration."

Cbec clarification- Feburary 2010

It may also be brought to their notice that Hon'ble Supreme Court in the case of MIL India Ltd., while noting that the powers of remand had been taken away, has also categorically stated that the Commissioner (A) continues to exercise the power of adjudicating authority in the matter of assessment and the Commissioner(A) can add or subtract certain items from the order of assessment made by the adjudicating authority and the order of Commissioner (A) could also be treated as an order of assessment

CLARIFICATIONS ON SECTION 11AC OF THE CENTRAL EXCISE ACT, 1944

1. No discretion to reduce the mandatory penalty under section 11AC even though the duty paid before the issuance of show cause notice

It is clarified that *when the conditions spelled out under section 11AC are fulfilled*, there is no discretion to reduce the mandatory penalty which is equal to duty even though the duty is paid before the issuance of show cause notice.
[*Circular No. 889/09/2009 CX dated 21.05.2009*]

2. Benefit of reduced penalty under provisos to section 11AC not available at the appeal stage

It is clarified that a combined reading of all the four provisos to section 11AC makes it clear that the benefit of reduced penalty of 25% is available only if the assessee has paid duty, interest and the reduced penalty *within 30 days of communication of the order passed by the adjudicating authority*.

However, aforesaid benefit is not available at appeal stage, i.e. if assessee pays duty, interest and the reduced penalty, benefit of reduced penalty is not available *within 30 days of the communication of the order of appellate authority*.

[*Circular No. 898/18/09 CX dated 15.09.2009*]

Custom

Drawback

Rules- [Custom, central excise duties and Service tax drawback rules 1995]

Circular 7/2010--Sub: Recovery of drawback amount on the portion of the FOB value of export not realized by the exporter but compensated by ECGC - reg.

Section 75 of the Customs Act provides that where any drawback has been allowed on any goods and the sale proceeds in respect of such goods are not realized within the time allowed under the Foreign Exchange Management Act, 1999 such drawback shall be deemed never to have been allowed.

Hence, 'Drawback' would not be payable in cases where export proceeds have not been realised in accordance with the provisions of the Foreign Exchange Management Act, 1999 even if the claim has been settled by ECGC or realisation waived by RBI. Action should be taken for recovery of drawback amount in such cases.

Service tax

~~NN-- 1/2002- in exercise of the powers conferred by sec 7(7) of the Territorial waters, Continental Shelf, Exclusive economic Zone and other Maritime Zones Act 1976, the CG hereby extends the provisions of chapter V of Finance Act 1994 to the designated areas in in the Continental Shelf and exclusive economic zone of India as declared by the notifications of the Government of India.~~

~~NN- 2009-- in exercise of the powers conferred by sec 7(7) of the Territorial waters, Continental Shelf, Exclusive economic Zone and other Maritime Zones Act 1976, the CG hereby extends the provisions of chapter V of Finance Act 1994 to the **Installations, Structures and vessels in the continental shelf and exclusive economic zone of India.**~~

NN- 14/2010
the Central Government hereby extends the provisions of Chapter V of the Finance Act, 1994 (32 of 1994), to the areas specified in column (2) of the Table below, in the continental shelf and exclusive economic zone of India for the purposes as mentioned in column (3) of the said Table

Sl. No.	The areas in the Continental Shelf and the Exclusive Economic Zone of India	Purpose
(1)	(2)	(3)
1.	Whole of continental shelf and exclusive economic zone of India	Any service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.
2.	The installations, structures and vessels 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	Any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity.

Rule 6 STR 1994- payment of service tax

Provided that where an assessee has paid a total service tax of rupees ten lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking."

Author note

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

Earlier E-payment was required if Service tax paid is 50 lakh or more. After amendment 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.

Rule 7 STR 1994-furnishing of return

"Provided that where an assessee has paid a total service tax of rupees ten lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he shall file the return electronically".

Author note

E-filing of returns made mandatory for assessees paying service tax of Rs. 10 lakh or more in the previous yearbEarlier e-filing of returns was optional for the assessees. After amendment electronic filing of returns mandatory for the assessee who has paid total service tax of Rs. 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

<u>In valuation Rules 2006</u>
<u>Rule 6 – sub-rule (2) (v)</u>
(2) The value of any taxable service does not include

i. initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or leased circuit ;

ii. the airfare collected by air travel agent in respect of service provided by him;

iii. the rail fare collected by rail travel agent in respect of service provided by him; and

iv. interest on loans

v. the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger."

<u>Misc issue</u>

<u>Activity performed by Sovereign/Public authority not service</u>

Sovereign/public authorities perform functions assigned to them under the law in force, known as "statutory functions". For example,

a) Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments;

b) Regional Transport Officers (RTO) issue fitness certificate to motor vehicles;

c) Directorate of Boilers inspects and issues certificates for boilers; or

d) Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws.

Authorities providing such functions, required to be performed as per law, may collect specific amount or fee and the amount so collected is deposited into government account.

Whether such activities of a sovereign/public authority, performed under a statute, can be considered as 'provision of service' for the purpose of levy of service tax and the amount or fee collected, if any, for such purposes can be treated as consideration for the services provided?

<u>Ans-</u> Activities assigned to and performed by the sovereign/public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and are deposited into the Government account.

Such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. Therefore, such activities assigned to and performed by a sovereign/public authority under the provisions of any law, do not constitute taxable services. Any amount/fee collected in such cases are not to be treated as consideration for the purpose of levy of service tax.

However, if a sovereign/public authority provides a service, which is not in the nature of statutory activity and the same is undertaken for a consideration (not a statutory fee), then in such cases, service tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined.

NN- 18/09- No service tax on certification by Central Board of Film Certification because it is a statutory function.

CBEC- 334/1/2008

Classification of taxable services :

3.1 Taxable services are defined separately under clause (105) of Section 65 of the Finance Act, 1994. For the purpose of levy of service tax, a single composite service is to be classified under any one of the specified taxable services.

3.2 For the purpose of classification of a service covering number of separate services, a view has to be taken as to whether an individual service is merely a component of the overall supply or is itself a distinct and independent supply i.e., whether the component is merely ancillary to the principal supply or the component can be considered as separate taxable service in its own right. A service, which does not constitute for a customer an aim in itself but a means of better enjoying the principal supply, is considered as a supply ancillary to the principal supply.

3.3 Section 65A states the principles for classification of taxable services. Classification of a composite service is based on that component of the service ***which gives the essential character****. In the case of a transaction containing a major and ancillary elements, classification is to be* ***determined based on the essential features*** *or the dominant element of the transaction. A supply which comprises a single supply from an economic point of view should not be artificially split. The method of charging or invoicing does not in itself determine whether the service provided is a single service or multiple services. Single price normally suggests a single supply though not decisive. The real nature and substance of the transaction and not merely the form of the transaction should be the guiding factor for deciding the classification.*

3.4 Seven services are being separately defined as taxable services. ***Specifying a service separately as a taxable service does not necessarily mean or suggest that services falling within the scope of newly specified service were not earlier classifiable under any one of the existing taxable services****. Grouping of services under a specific taxable service may change. The scope and coverage of a taxable service are to be determined strictly in accordance with the language of the relevant statutory provision existing during the material period.*

1) Exemption to services provided for transmission of electricity

CG exempts the taxable service provided to any person, by any other person for transmission of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act. *[Notification No. 11/2010-]*

Export of services rules 2005

Export of taxable services Rule 3

The export of taxable service shall mean

3(1)(i)	Immovable property Specified taxable services e.g Renting of immovable property, Architect, interior decorator,	Provided or to be provided in relation to an immovable property situated outside India

	construction, works contract	
3(1)(ii)	<u>Physical performance</u> Specified taxable services e.g ~~CA/CS/ICWA~~, technical testing and analysis, technical inspection& certification, management & repair service	When performed outside India Provided that where such taxable service is partly performed outside India, it shall be treated as performed outside India. *Provided further that* *Where* ➢ *Management, maintenance or repair service or* ➢ *Technical testing and analysis service or* ➢ *Technical inspection and certification service* o are provided in relation to any goods or material or any immovable property, as the case may be, o *situated* outside India at the time of provision of service, o through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed outside India, shall be treated as the taxable service performed outside India;].
3(1)(iii)	<u>Residuary</u> Other taxable services e.g. CA/CS/ICWA , manpower recruitment, Banking and financial service, business auxiliary service, life/general ins Except (i) Service of international air transport of passengers (ii) Service of transport of persons by cruise	(i) if such service provided in relation to business or commerce- the recipient of service is located outside India (ii) if not relating to business or commerce-the recipient of service is located outside India at the theme of receipt of such service. Provided that where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when o order for provision of such service is made from any of his commercial establishment or office located outside India

(2) The provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied, namely:-

~~a) such service is provided from India and used outside India; and~~

b) payment for such service is received by the service provider in convertible foreign exchange.

Explanation- ~~for the purposes of this rule " India" includes the designated areas in the continental shelf and exclusive economic zone of India.~~

"India" includes the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.".

Author Note- export & import rules amended in respect of following

1. India definition amended
2. CA/CS/CWA category changed from performance category to Residuary category
3. After the amendment made by the *Notification No. 6/2010-S.T. dated 27-2-2010*

Now, the condition (1) i.e. service to be provided from India and used outside India has been omitted.
After deletion of this condition onsite services provided to the foreign clients by the Information Technology companies eligible as export of service.

Goods transport agency

Exemption

1) Taxable service provided by Goods transport agency to any person in relation to transporting fruits, vegetables, eggs, milk, foodgrains or pulses by road in goods carriage is fully exempt.(NN 33/2004 amended w.e.f 27-2-2010)

business auxiliary

(i) [Notification No. 13/2010-S.T., dated 27-2-2010]

Business Auxiliary Services and Online Information service — Exemption to specified Indian news agencies

CG exempts the taxable service provided in relation to on-line information and database access or retrieval services and business auxiliary services by any Indian news agency, from the whole of service tax subject to the fulfilment of the following conditions, namely :-

(a) If such new agency is notified as a news agency set up in India solely for collection and distribution of news :
Provided that this exemption shall be available only to news agencies which are specified under clause (22B) of section 10 of the Income Tax Act, 1961 (43 of 1961); and,

(b) such news agency applies its income or accumulates it for collection and distribution of news and does not distribute its income in any manner to its members.

(ii) NN42/2009

Business Auxiliary Services — Exemption to specified processes in relation to manufacture of cycles and sewing machines upto aggregate value of Rs. 150 lakhs in a financial year- *[NN 42/2009-*

CG exempts the taxable service provided by a person (hereinafter called the 'service provider') to any other person (hereinafter called the 'service receiver'), in relation to one or more of the specified process during the course of manufacture of parts of cycles or sewing machines, subject to the following conditions, namely :-

(a) the aggregate value of taxable service in relation to one or more of the specified process provided by a service provider, does not exceed 150 lakhs during the preceding financial year;

(b) the exemption shall be restricted to the first clearances, wherein the aggregate value of taxable service in relation to one or more of the specified process provided by a service provider does not exceed 150 lakhs, made on or after the 1st day of April in any financial year; and

(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, such service provider shall maintain separate accounts of receipt, production and clearance of exempted and dutiable goods and services.

2. Notwithstanding anything contained in sub-para (b), exemption shall be restricted to the clearances, wherein the aggregate value of taxable service in relation to one or more of the specified process provided by a service provider, does not exceed 63 lakhs during the remaining part of the current financial year.[2009-10]

Explanation. - For the purposes of this notification, "specified process" means electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black.

Circulars

Refund of service tax paid on foreign agent commission by exporters – Notification No.18/2009 dated 07/07/2009 – clarification - Reg. – not important for Exam

Representations have been received from exporters, seeking clarification whether ten per cent of free on board (FOB) value of export goods allowed as foreign agency commission vide Notification 41/2007-ST dated 06/10/2007 as amended, has been reduced to one per cent vide Notification 18/2009-ST dated 07/07/2009 .

2. In the context of refund of service tax paid on foreign agency commission, Notification 18/2009 dated 07/07/2009 (in the table, sl.no.2 , condition no. 2) says "exemption shall be limited to one percent of the free on board value of export goods for which the said service has been used". This means that amount of service tax paid, which can be refunded to the exporter, is restricted to one percent of the FOB value of export goods in relation to which the taxable service of the foreign agent was used.

3. The current rate of service tax being ten per cent and the maximum allowable limit of foreign agency commission being ten percent of FOB, one percent of the FOB value of export goods is the maximum exemption of service tax. To settle all doubts to rest, for the purpose of service tax refund, maximum allowable foreign agency commission on export goods continues to be at the pre-budget level of ten percent of the fob value of export goods till further changes are notified.

Cir 120 a/2010 Subject: Service tax on re-insurance commission – regarding

Re-insurance commission not liable to service tax

Meaning of re-insurance commission

When an insurance company re-insures the insurance business with another insurance company, it deducts a part of the premium paid to the reinsurance company for meeting the administrative expenses, i.e. they jointly bear the expenses for running the insurance/reinsurance business. This shared expense is commonly known as 'commission' though strictly it is not in the nature of a commission.

Service tax liability on re-insurance commission

The demand was being raised on this amount deducted alleging it to be the consideration paid to the insurance companies for promoting the business of re-insurers, thereby providing them the 'business auxiliary service'. It has been clarified that the arrangement between the insurance company and the reinsurer is only sharing of expenses. The insurance company is not promoting the business of re-insurer because the the policy holder may not even be aware of the operations of the re-insurer. Resultantly, no service tax liability arises in the given case.

Cir 121/2010- Subject: Service tax on Container Detention Charges – regarding

Container detention charges not liable to service tax

Meaning of container detention charges

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.

Service tax liability on container detention charges

Container detention charges are actually the 'penal rent' for retaining the containers beyond the pre-determined period. The retention of the container beyond the pre-determined period is not a 'business auxiliary service' because:-

⇒ it is not a service provided on behalf of the client

⇒ it is not an infrastructural support in the business of either the shipping lines or the customer

Therefore, the amount collected as 'detention charges' is not chargeable to service tax.

Cir- 122/2010 Subject: Clarification regarding availment of credit on input services - reg

Author note

Case 1 – Whether associated enterprise can take CENVAT credit of the service tax paid under rule 4(7) of the CCR, 2004 if S. tax paid on basis of, debit/credit entries in books of account	CCR allowed because rule 4(7) doesn't prescribe mode of payment
Case 2 – Whether CENVAT credit of the service tax paid can be claimed where a service receiver does not pay full invoice value and service tax.	CCR availed proportionately if amt paid less due to discount or unsatisfactory service

4. Transport of goods by rail service

Exemption from service tax on transport of goods by Government railway excluding transport of containerized goods by others withdrawn- *[NN-. 7/2010-ST dated 27.02.2010 and NN. 20/2010 ST dated 30.03.2010]*

(a) Exemption from service tax on service provided in relation to 'Transport of Goods by Rail' by *Notification No. 33/2009 ST dated 01.09.2009* has been withdrawn.

Effect 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.

The said amendment is effective from 1st July, 2010.

Abatement of 70% of the gross value of the freight charged in relation to 'transport of goods by rail' service- *[N N. 9/2010-ST dated 27.02.2010 and N N- 22/2010 ST dated 30.03.2010]*

(b) *Notification No. 1/2006 dated 01.03.2006* has been amended to provide an abatement of 70% of the gross value of the freight charged on goods (other than exempted goods), in case of 'transportation of goods by rail whether in container or otherwise'. Consequently, the service provider has to pay the service tax on only 30% of the value of the service subject to the fulfillment of the following conditions:-

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004 and

(ii) the service provider has not availed the benefit under *Notification No. 12/2003-ST dated 20.06.2003.*

(c) Exemption for transport of specified goods by rail

Service provided to any person in relation to transport of certain specified goods by rail has been exempted from the service tax. Few such specified goods are as follows:-

⇒ Defence/ military equipments

⇒ Railway equipments/ materials

⇒ Postal mail bags

⇒ Relief material for victims of natural calamities

⇒ Kerosene oil meant for supply through public distribution system

The said amendment is effective from 1st July, 2010.

Exclusion of the service charges recovered by the custom house agent to be excluded from the value of the 'custom house agent service'- [*Circular No. 119/13/2009-S.T. dated 21-12-2009*]

Issue

The principal job of a custom house agent (CHA) is to get the import/export consignments cleared through customs. However, at times they 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 CHAs. Similar arrangement can occur for payment of statutory levies like custom duties, port charges, cesses etc. leviable on the said goods. Whether the charges which are said to be paid by the CHAs and later recovered from the customers (i.e. reimbursable charges) should be added to the value for charging service tax from CHAs?- <u>m. imp & expected</u>

Clarification

It is clarified that the aforesaid reimbursable charges would be excluded from the value of taxable service if all the following conditions are satisfied, -

(a) The activity/service for which a charge is made should be in addition to provision of CHA service.

(b) There should be arrangement between the customer & the CHA which authorizes or allows the CHA to:-

(i) arrange for such activities/services for the customer; and

(ii) make payments to other service providers on his behalf;

(c) The CHA does not use the activities/services for his own benefit or for the benefit of hisother customers;

(d) The CHA recovers the reimbursements on 'actual' basis i.e. without any mark-up or margin.

(e) CHA should provide evidence to prove nexus between such other (than CHA) services provided and the reimbursable amounts. Similar would be the case for statutory levies, charges by carriers and custodians, insurance agencies and the like.

(f) Each charge for separate activities/services is to be covered either by a separateinvoice or by a separate entry in a common invoice.

Any other miscellaneous/out of pocket expenses charged by the CHA would not be excluded.

Amendments for May 2010

Cenvat Credit

(1) Explanation 2 of Input

Inputs include goods used in the manufacture of capital goods, which are further used in the factory of the manufacturer. *[but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods];*

Author comments- there was lot of disputes regarding CCR, for cement, angle, channels used for construction of building or laying foundation for installation of capital goods. Now by amending the explanation it has been made clear that no CCR will be allowed.

(2) Rule 3(5B) of CCR 2004 Reversal of cenvat credit

If the value of any

(i) inputs or

(ii) capital goods before being put to use

→ on which CENVAT credit has been taken

→ is fully written off or any provision has been made in books of account to write it off

→ then, the manufacturer ***or service provider, as the case may be,*** shall pay an amount equivalent to the CENVAT credit taken on such inputs or capital goods.

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

AUTHOR COMMENTS

A loophole has been plugged, earlier Service provider word was not in sec 3(5B). now after amendment service provider has also to reverse the cenvat credit.

(3) RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. —

Where the CCR wrongly taken or utilized wrongly or has been erroneously refunded, CCR shall be recovered along with interest from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply *mutatis mutandis* for effecting such recoveries.

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

Interest liability where Cenvat credit wrongly taken but reversed before utilisation

In case of *Maruti Udyog Ltd.* [2007 (214) E.L.T. 173 (P & H)], has upheld the order of Tribunal wherein it was held that assessee is not liable to pay interest in the case where credit was only taken and not utilized. The SLP against this order has been dismissed by the Hon'ble Supreme Court. On the other hand, Rule 14 of The Cenvat Credit Rules, 2004, provides for recovery of credit taken or utilized wrongly with interest. In view of this conflict in legal provisions and the decision of Hon'ble Supreme Court, a clarification has been requested from the Board.

2. The matter has been examined. It is seen that the Tribunal decision and the High Court judgement referred to above, was delivered in the context of erstwhile Rule 57-I of the Central Excise Rules, 1944 and that the Supreme Court order under reference is only a decision and not a judgement. Since, the Rule 14 of the CENVAT Credit Rules, 2004, is clear and unambiguous in the position that interest would be recoverable when CENVAT credit is taken or utilized wrongly, it is clarified that the interest shall be recoverable when credit has been wrongly taken, even if it has not been utilized, in terms of the wordings of the present Rule 14.

SPECIAL AUDIT

Section 14 A Special audits in certain cases (Valuation audit)
Section 14AA Special audit if credit availed or utilized is not within the normal limit etc. (Cenvat credit audit)

Author comments
Now Chartered accountant is also authorized to conduct Special audit.

Removal of goods at concessional rate of duty for manufacture of excisable goods Rules 2001

Rule 6 Recovery of duty in certain case

~~1. Where the subject goods are not used~~

[The said Assistant Commissioner or Deputy Commissioner shall ensure that the goods received are used by the manufacturer for the intended purpose and where the subject goods are not used]

→ by the manufacturer for the intended purpose,

Author comments-Notification No. 14/2009 CE (NT) dated 10.06.2009 has amended rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 so as to cast a responsibility on the said Assistant or Deputy Commissioner of Central Excise of ensuring that the goods received are used by the manufacturer for the intended purpose.

Offences and penalties

Certain offences to be non-cognisable Sec 9A

(1) Offences u/s 9 shall be deemed to be non-cognisable i.e arrest of a person can be made with an arrest warrant only and there can be no arrest without warrant.

(2) any offence, either before or after the institution of prosecution, be compounded by the chief commissioner on payment of such compounding amount *and in such manner of compounding* as may be prescribed.

Provided that nothing contained in this sub-section shall apply to —

a) a person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of sub-section (1) of section 9;

b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

c) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

d) a person who has been convicted by the court under this Act on or after the 30th day of December, 2005."

Author comments- proviso inserted that in following cases compounded under CEA 1944 NOT allowed.

Rule 24A. Return of records. –

The books of accounts or other documents,

→ seized by the Central Excise Officer or produced by an assessee or any other person,

→ which have not been relied on for the issue of notice under the Act or the rules made thereunder, shall be returned within 30 days of the issue of said notice or

→ within 30 days from the date of expiry of the period for issue of said notice:

Provided that the Commissioner of Central Excise may order for the retention of such books of accounts or documents, for reasons to be recorded in writing and the Central Excise Officer shall intimate to the assessee or such person about such retention.

Central excise Rules 2002

Rule 20

Circular No. 900/20/2009 CX dated 06.10.2009

has been issued to permit bringing of duty-paid packing materials into export warehouse under Rule 20 of Central Excise Rules. Para 7.2 of the Board's Circular No. 581/18/2001-CX dated 29.06.01 provides

⇒ that duty paid goods are not permitted to be brought into the warehouse.

- ⇒ However, it is a fact that number of times packing material in small quantity is required at a short notice and the supplier may not be interested to follow the detailed procedure of removal of goods without payment of duty.
- ⇒ Therefore, it has been decided that duty paid packing material can be brought into the export warehouse,
- ⇒ but exporter would not be allowed to claim export benefit like rebate for the duty paid on the said packing material.
- ⇒ In view of above, in the above referred Circular, after para 7.2, following is inserted,-

"However, an exporter desirous of bringing duty paid packing material required

- ⇒ for packaging of other material in the warehouse, may submit a written request to the jurisdictional AC/DC of the Division, who may grant the permission for a period of one year at a time
- ⇒ . The exporter will maintain proper account of such goods and shall not claim any export benefit like rebate of duty paid on the said material."

Common Topics

SECTION [35H. Application to High Court. —

Author comments- SC has decided in Hongo India case that HC has not the power to extend the appeal period, but now the judgement has been overruled by making amendment. That HC can extend time limit.

Revision of orders by the Commissioner of Central Excise .-: Section 84-

(1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter

- ⇒ for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals)
- ⇒ for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

(2) Every order under sub-section (1) shall be made within a period of 3 months from the date of communication of the decision or order of the adjudicating authority.
(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of 1 month from the date of communication of the order under sub-section (1) to the adjudicating authority,

- ⇒ such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority
- ⇒ and the provisions of this Chapter regarding appeals shall apply to such application.

Section 86: Appeals to Appellate Tribunal

1. Appealable order

Any assessee aggrieved by an order passed by a CCE, or an order passed by a CCE(A) (except u/s-84) may appeal to the Appellate Tribunal against such order.

(1A). The Board, may by notification, constitute such committees (each consisting two Chief CCE or two CCE) as may be necessary for the purpose of Appeal.

Provided that where the committee of chief CCE differs

- ⇒ in its opinion against the order of the CCE,
- ⇒ it shall state the point on which it differs and make a reference to the board which shall,
- ⇒ after considering the facts of the order,
- ⇒ if it is of the opinion that the order passed by the CCE is not legal or proper,
- ⇒ direct the CCE to appeal to the Appellate Tribunal against the order.

2. Departmental Appeal

The Committee of Chief CCE may, if it objects to any order passed by the CCE (except u/s-84), direct the CCE to appeal to the Appellate Tribunal against the order. The Committee of Commissioners may, if he objection to any order passed by the CCE(A), direct the AC/DC to appeal to the Appellate Tribunal against the order.

[Provided that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.

Explanation. — For the purposes of this sub-section, "jurisdictional Chief Commissioner" means the Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.]

(3) Every appeal under sub-section (1) [or sub-section (2) or sub-section (2A)] shall be filed within three months of the date on which the order sought to be appealed against is received by the assessee, the [Committee of Chief Commissioners or the Committee of Commissioners], as the case may be.

(4) [The Commissioner of Central Excise or [any Central Excise Officer subordinate to him] or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2A)] by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the [Commissioner] of Central Excise or the [Commissioner] of Central Excise (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period.

[(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of service tax and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, —

(a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees :

Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2A) or a memorandum of cross-objections referred to in sub-section (4).

(6A) Every application made before the Appellate Tribunal, —

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees :

Provided that no such fee shall be payable in the case of an application filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be under this sub-section.]

(7) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the [Central Excise Act, 1944]

Advance Ruling

Author comments- now public sector company and importer making import for **[project import]** can make application for advance ruling. (these are the persons notified by CG) and authority for advance ruling under income tax will function and advance ruling under central excise, customs and service tax.

Classification

(1) **Circular No. 890/10/2009 CX dated 03.06.2009** has been issued to settle the classification dispute relating to coconut oil sold in small packs say of 50 ml or 100 ml. The two contending classifications are: Chapter 15 covering various types of vegetable oil including coconut oil and Chapter 33 covering cosmetics including hair oil. When the coconut oil is sold in small containers, following indications have been found on containers or labels.

A. 'hair oil'

B. 'edible oil'

C. 'pure coconut oil' or 'coconut oil'

When 'hair oil' is printed on the container/label, there is no dispute and it is classified as 'hair oil' under chapter 33. Disputes arise in respect of other two categories ('edible oil', 'pure coconut oil' or 'coconut oil'). Department contends

that coconut oil falling under these two categories are meant for sale as 'hair oil', therefore, it shall be classified as 'hair oil' under Chapter 33. The manufacturers plead that as they are not printing the specific use of such oil as 'hair oil' it should be classified as 'vegetable oil' under Chapter 15, irrespective of the fact that consumer may use it as 'hair oil'.
The circular explains that the Chapter Note 2 of Chapter 33 prescribes a condition that Heading No.3305 (which covers hair oil also) applies to products put up in packing of a kind sold by retail for such use. Thus, if a particular packing of coconut oil is generally sold in retail as hair oil, in that case, the said product would be classified under heading 3305.
Further, the Section Note 2 to Section VI also provides that goods classifiable in Heading 3305 by reason of being put up for retail sales are to be classified in the said heading and in no other heading of the schedule. This Section Note further supports the interpretation that though a product is capable of being classified under more than one heading, even then because of the nature of its retail packing, which is indicative of its use as hair oil, the classification under heading 3305 would get priority.
However, if the same coconut oil is packed in say 1 litre or 2 litre packages, which are generally used by consumers for edible purposes (even though some customers may use it as hair oil), it would be classified under Chapter 15.
Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product. Therefore, if coconut oil is packed in packages which are
generally meant for sale in retail as hair oil, in that case the said product would be classified as hair oil under Heading 3305, even though few consumers may use it as edible oil.
Thus, the circular settles that coconut oil packed in containers upto 200 ml may be considered as generally used as hair oil and shall be classified under Heading 3305.

<u>Author note</u>

When 'hair oil' is printed on the container/label	As 'hair oil' under Chapter 33
When 'edible oil' and 'pure coconut oil/ 'coconut oil' is printed on the container/label (i) Coconut oil packed in packages which are generally **meant for sale in retail** as hair oil (packed in containers upto 200 ml) **(ii)** Coconut oil packed in say 1 liter or 2 liter packages, which are generally **used by consumers for edible purposes**	Hair oil under heading 3305 Vegetable oil under Chapter 15

(2) Circular No. 891/11/09-CX. Subject: Eligibility of exemption Notification No 6/2006- to pipe fittings (joints, sleeves, elbow, couplings, etc.)

It has been brought to the notice of the Board that the manufacturers of pipe fittings (joints, sleeves, elbow, couplings, etc.) are claiming the benefit of the Notification No. 6/2006-.

It is also reported that some units are manufacturing pipes and pipe fittings and claiming benefit of notification for pipe fittings which are cleared along with pipes.

The issue is whether the 'pipe fittings' in the water supply network are also exempted.

Board is of the view that exemption Notification No. 6/2006- is not available to 'pipe fittings' used in the pipe network for supply of drinking water. The intention behind the notification is to provide exemption only to pipes as understood in the common parlance and not to fittings which is a separate commodity and known differently in the market.

(3) <u>Circular No. 903/23/2009 CX dated 20.10.2009</u> has clarified that textile quilted products like quilts, quilted bed spreads, etc. will be classified under heading 9404 and not under heading 5811 as heading 5811 covers quilted textile products which are further used in the manufacture of quilts, quilted bedspreads, etc. while it is heading 9404 which covers the final finished products like quilts and other articles of bedding and furnishing.

The HSEN to Chapter Heading 5811 reads as follows:

'These materials are commonly used in the manufacture of quilted garments, bedding or bedspreads, mattress pads , clothing, curtains, place-mats, underpads (silencers) for table linen etc.

The heading does not cover:

a. Plastic sheets quilted, whether by stitching or heat sealing to a padded core (generally Chapter 39);

b. Stitches or quilted textile products in which the stitches constitute designs giving them the character of embroidering;

c. Made up goods of this Section;

d. Articles of bedding or similar furnishing of Chapter 94 padded or internally fitted.'(emphasis supplied).

The made up goods are defined by Section Note 7 of Section XI.

In this context, the term 'used in the manufacture' is important to note. It means that heading 5811 covers only materials which are further used in making of quilted final products like bedding or bedspreads. Further HSEN to this Chapter Heading also state that the heading does not cover made up goods of this Section (Section Note 7) and articles of bedding or similar furnishing of Chapter 94 which are padded or internally fitted. Thus, the articles of bedding and furnishing fall in Chapter 94.

The HS explanatory notes to Chapter 9404 clarify that the heading covers:

'A. Mattresses supports,…

B. Articles of bedding and similar furnishing which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibers etc or are of cellular rubber or plastics (whether or not covered with woven fabrics, plastics. etc). For example:

1. Mattresses, including mattresses with a metal frame:

2. Quilts and bedspread (including counterpanes and also quilts for baby - carriages) eiderdowns and duvets (whether of down or any other filling/mattress protectors, bolsters, pillows/cushions, pouffes, etc.'

Quilts, quilted bedspread etc. are articles of bedding and are covered under the Explanation (B)

(2) as mentioned above.

Custom

Sec 26A. Refund of import duty in certain cases. —

(1) Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if —

(a) the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods :

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) the importer does not claim drawback under any other provisions of this Act; and

(d) (i) the goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of PO

→ in such manner as may be prescribed and

→ within a period not exceeding 30 days

→ from the date on which the PO makes an order for the clearance of imported goods for home consumption under section 47 :

Provided that the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding 3 months :
Provided further that nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

(2) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such form and in such manner as may be prescribed.

Explanation. — For the purposes of this sub-section, **"relevant date" means, —**

(a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;
(b) in cases where the title to the goods is relinquished, the date of such relinquishment;
(c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

(3) No refund under sub-section (1) shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

(4) The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund under sub-section (1) may be allowed.'.

Author comments- now refund of import duty is allowed if goods are defective and these are exported or destroyed or life of goods Is over or title is relinquished.

Calculation of CVD/ADC u/s 3 of CTA if tariff value is fixed

Value in case of Tariff Value Fixed u/s 3(2) of CEA 1944
"Provided further that in the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under sub-section (2) of section 3 of the Central Excise Act, 1944 , the value of the imported article shall be deemed to be such tariff value."

Author comments-
Now CVD can be calculated on 3 basis
1) Assessable value + BCD or
2) MRP – abatement on MRP
3) Tariff Value fixed

Sec 8B Safeguard duty

Type of duties

<u>Provisions of custom Act 1962 apply (Amendment w.r.e.f 14-5-97)</u>

"(4A) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.".

Sec 8C Specific safeguard duty

<u>Provisions of custom Act 1962 apply (Amendment w.r.e.f 11-5-02)</u>

"(5A) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act."

Sec 9 Countervailing duty on subsidised articles

<u>Provisions of custom Act 1962 apply (Amendment w.r.e.f 1-1-95)</u>

"(7A) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act."

Author comments- now SEC 8B, 8C, 9, 9A amended retrospectively with regard to recovery of duty and granting refund , appeals etc. now this lacuna plugged, earlier there was no provision relating to this.

<u>Anti dumping duty sec 9A</u>

1. Where [any article is exported ***by an exporter or producer***] from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

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

Provided *that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.]*

<u>Provisions of custom Act 1962 apply (Amendment w.r.e.f 1-1-95)</u>

"*(8) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act."*

SERVICE TAX

Exemptions

2) E/N 9/09- SEZ EXEMPTION

the CG exempts the taxable services which are provided in relation to the authorised operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone, from the whole of the service tax

conditions

a) the developer or units of Special Economic Zone **shall get the list of services** as are required in relation to the authorised operations in the Special Economic Zone, **approved from the Approval Committee** (hereinafter referred to as the specified services);

b) the developer or units of Special Economic Zone claiming the exemption **actually uses the specified services** in relation to the authorised operations in the Special Economic Zone;

c) the **exemption** claimed by the developer or units of Special Economic Zone **shall be provided by way of refund of service tax** paid on the specified services used in relation to the authorised operations in the Special Economic Zone; *except for services consumed wholly within the Special Economic Zone;"(AMENDED BY NN15/09)*

d) the developer or unit of a Special Economic Zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed." (AMENDED BY NN15/09)

(1) Export of Services Rules, 2005 — Applicability clarified

Circular No. 111/5/2009-S.T., dated 24-2-2009

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

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

E.G

For example, under Architect service (a Category I service [Rule 3(1)(i)]), even if an Indian architect prepares a design sitting in India for a property located in U.K. and hands it over to the owner of such property having his business and residence in India, it would have to be presumed that service has been used outside India.

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

E.G Similarly, if an Indian event manager (a Category II service [Rule 3(1)(ii)]) arranges a seminar for an Indian company in U.K. the service has to be treated to have been used outside India because the place of performance is U.K. even though the benefit of such a seminar may flow back to the employees serving the company in India.

(iii) Category III [Rule 3(1)(iii)] : For the remaining services (that would not fall under category I or II), which would generally include knowledge or technique based services, which are not linked to an identifiable immovable property or whose location of performance cannot be readily identifiable (such as, Banking and Other Financial services, Business Auxiliary services and Telecom services), it has been specified that they would be 'export', -

(a) If they are provided in relation to business or commerce to a recipient located outside India; and

(b) If they are provided in relation to activities other than business or commerce to a recipient located outside India at the time when such services are provided.

For the services that fall under Category III [Rule 3(1)(iii)], the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India.

E.G

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

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

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

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

(2) Export of goods — Exemption from Service tax on specified taxable services used therein — NN-17/09

following taxable services provided by exporter of goods and used for export of goods are exempt from service tax u/s 66 and 66A subject to conditions

1) GENERAL INSURANCE SERVICE in relation to insurance of said goods.
2) PORT SERVICES in respect of the export of said goods.
3) TECHNICAL TESTING AND ANALYSIS SERVICE in relation to technical testing and analysis of said goods.
4) TECHNICAL INSPECTION AND CERTIFICATION in relation to inspection and certification of export goods.
5) OTHER PORT SERVICE in respect for export of said goods.
6) TRANSPORT OF GOODS BY ROAD- transport of goods from the inland container depot to the port of export; transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported

7) TRANSPORT OF GOODS IN CONTAINER BY RAIL – transport of goods from the inland container depot to the port of export; transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported
8) CLEANING ACTIVITY namely disinfecting, exterminating, sterilising or fumigating of containers used for export of said goods provided to an exporter.
9) STORAGE AND WAREHOUSING- Service provided for storage and warehousing of said goods.
10) COURIER AGENCY'Service in relation to transportation of time-sensitive documents, goods or articles relating to export, to a destination outside India.
11) CUSTOM HOUSE AGENT- Service provided by a custom house agent in relation to export goods exported by the exporter.

12) BANKING AND OTHER FINANCIAL SERVICE
    a. Service provided in relation to collection of export bills;
    b. Service provided in relation to export letters of credit such as advising commission, advising amendment, confirmation charges;
    c. Service of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.
13) FOREIGN EXCHANGE BROKING BY INDIVIDUALS- Service of purchase or sale of foreign currency including money changing provided to an exporter in relation to export goods.
14) SUPPLY OF TANGIBLE GOODS FOR USE without transferring right of possession and effective control of tangible goods, provided to an exporter in relation to goods exported by the exporter.
15) CLEARING AND FORWARDING AGENT service in relation to export goods exported by the exporter.
16) classified under any TAXABLE SERVICE- Payment of service tax paid on services commonly known as terminal handling charges
17) Transport of coastal goods or goods through national/inland waterway- service provided for transport of goods through national waterway, inland water and costal shipping.- Service provided for transport of export goods through national waterway, inland water and coastal shipping

Conditions

1) *The exemption shall be claimed by the exporter for the specified services received and used by him for export of the said goods*
2) *The exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified service used for export of the said goods.*
3) *The exporter claiming the exemption has actually paid the service tax on the specified service to its provider*
4) *No cenvat credit of service tax paid on the specified service used for export of the said goods has been taken under the CCR 2004.*
5) *Exporter should be registered with central excise or service tax department. If he is not registered the before getting refund, the exporter has to file a declaration with AC/DC. The authority shall grant STC to exporter within 7 days.*
6) *Exporter shall file refund claim within 1 year from date of export alongwith necessary documents such as invoice, shipping bill etc.*

(3) Exemption to Goods Transport Agency service and Foreign Commission Agent service received by exporters NN18/09- following taxable services provided by exporter of goods and used for export of goods are exempt from service tax u/s 66 and 66A subject to the conditions

1) Transport of goods by road- Service provided to an exporter for transport of the said goods by road from any container freight station or inland container depot to the port or airport, as the case may be, from where the goods are exported; or

Service provided to an exporter in relation to transport of said goods by road directly from their place of removal, to an inland container depot, a container freight station, a port or airport, as the case may be, from where the goods are exported.

2) Business auxiliary service- Service provided by a commission agent located outside India and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him.

Conditions

the exemption shall be available to an exporter who,-

(i) informs the AC/DC having jurisdiction over the factory or the regional office or the head office, as the case may be, in Form EXP1, before availing the said exemption;
(ii) is registered with an export promotion council sponsored by the Ministry of Commerce or the Ministry of Textiles, as the case may be;
(iii) is a holder of Import-Export Code Number;
(iv) is registered under section 69 of the said Act;
(v) is liable to pay service tax UNDER REVERSE CHARGE)
(vi) the invoice, bill or challan, or any other document issued by the service provider to the exporter, on which the exporter intend to avail exemption, shall be issued in the name of the exporter, showing that the exporter is liable to pay the service tax

(c) the exporter availing the exemption shall file the return in Form EXP2 every 6 months of the financial year, within 15 days of the completion of the said six months;

(d) the exporter shall submit with the half yearly return, after certification, the documents in original specified in clause (b) and the certified copies of the documents specified in column (4) of the said Table;

Author comments-

In case of 2 taxable services

a) transport of goods by Road
b) business auxiliary service in respect of commission paid to foreign agent

in respect of which the exporters of goods were liable to pay service tax under reverse charge mechanism have been exempted from levy of service tax. This has been welcome step because first paying service tax and then claim refund was difficult task.

However under NN 17/09 first of all service tax is paid and then refund is claimed. And it is quite interesting that the taxable service 'transport of goods by Road" also appear in NN 17/09. Hence in respect of only this service either of the option can be claimed i.e either 17/09 or 18/09.

Miscellaneous Que

Basic concept

Discuss briefly, whether excise duty is attracted on the excisable goods manufactured in the following cases:

(i) in the State of Jammu and Kashmir;

(ii) by or on behalf of the Government.

Ans (i) Yes, excise duty is attracted on the excisable goods manufactured in the State of Jammu and Kashmir. Though originally the Central Excise Act, 1944 did not apply to Jammu and Kashmir, its application was extended to the same with the enactment of Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.

(ii) Section 3(1A) of the Central Excise Act, 1944 provides that the excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government. Thus, **excise duty will be payable on goods manufactured by, or on behalf of, the Government (both Central & State) also.**

Remission of duty- Rule 21

Explain briefly, with reference to rule 21 of the Central Excise Rules, 2002 relating to remission of duty, the following:-

(i) Can remission of duty be granted on goods cleared from the factory after payment of duty, but which were destroyed by fire in transit?

(ii) Upon grant of remission of duty, does the CENVAT credit on inputs used in final product need to be reversed?

Ans (i) Remission of duty is granted when the goods are lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption, at any time before removal.

Hence, in this case remission of duty cannot be granted under rule 21 of the Central Excise Rules, 2002 as goods have already been cleared from the factory after payment of duty.

(ii) Yes, as per sub-rule (5C) of rule 3 of the CENVAT Credit Rules, 2004, where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

Valuation

3. Examine the validity of the following statements:-

(i) Excise Department can challenge the reasonability of MRP printed on the package.

(ii) Legal/penal actions can be taken in case the retail sale price is not mentioned or is unduly tampered after the removal.

Ans (i) **The statement is not correct.** The Central Excise Department cannot challenge the reasonability of MRP printed on the package. It can only satisfy itself that there is a declaration of MRP in prescribed form ***[ITC Ltd.2004 (SC)].***

(ii) The statement is correct. If the retail sale price is not mentioned on the excisable goods or is unduly tampered after the removal, then

(i) such goods shall be liable to confiscation and

(ii) the retail sale price of such goods shall be ascertained in the manner prescribed by the Central Government and such price shall be deemed to be the retail sale price.

Small scale industries

<u>Practical que</u>

Following is detail for the year 2009- 10 of X ltd. Determine whether small scale industry or not for the F.Y 2010-11

Rs.

(1) Total value of clearances of goods with brand name of X ltd .75,00,000

(2) Total value of clearances of goods with brand name of PQR Ltd. 90,00,000

(3) Value of clearance of packing material manufactured by X ltd. With brand name of KISAN Industries used by them for their final product 80,00,000

(4) Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances) 35,00,000

(5)	Clearance of non excisable goods	40,00,000
(6)	Clearance of excisable goods to SEZ unit	20,00,000
(7)	Jobwork under NN- 214/86	70,00,000
(8)	Jobwork under NN- 84/94	60,00,000
(9)	Total exports during the year including to Nepal & Bhutan – 30 lakh	200 lakh

Ans- 75,00,000 + 80,00,000 + 35,00,000 + 30,00,000 =210 lakh
The unit is small scale unit because total value of clearance doesn't exceed 400 lakh.
Authors Note- Solve the question with proper working notes as suggested in the class.

Registration under central excise

6. Examine whether the following categories of persons are exempted from obtaining registration under rule 9(2) of the Central Excise Rules, 2002.

(a) Sambhav Ltd. is a small scale unit exempt under Notification No. 8/2003 dated 01.03.2003.

(b) Central Government undertakings manufacturing excisable goods.

(c) Arahnath Enterprises is engaged in the manufacture of the excisable goods which are chargeable to nil rate of duty.

Ans CG has exempted the small scale units on basis of value of clearances under a notification from obtaining registration. However, they have to give the declaration when their clearances touch Rs. 90 lakh. Hence, Sambhav Ltd. is exempt from obtaining registration provided it gives the declaration when its clearances touch Rs. 90 lakh.

(b) No, the Central Government undertakings manufacturing excisable goods are not exempted from obtaining registration.

(c) CG has exempted the persons who manufacture the excisable goods, which are chargeable to nil rate of duty or are fully exempt from duty by a notification subject to the declaration to be made in a specified form, from obtaining registration. Hence, Arahnath Enterprises is exempt from obtaining registration provided it furnishes the declaration in the specified form.

Value added Tax

(1) RTP

R ltd. Of Gujrat made a total purchase of input and capital goods of Rs 55 lac during the month of Jan 2010. Further information is

(1) Goods worth Rs. 15 lac purchased from Assam on which CST @ 2% paid
(2) Purchase made in January include purchase made from unregistered dealer Rs. 18.5 lac
(3) It purchased capital goods (not eligible for credit) worth Rs. 6.5 lac and eligible for credit is Rs. 9 lac
(4) Sale made in gujrat during January 2010 is 10 lac on which vat 12.5% is payable.

Assume all purchase are exclusive of VAT 4%% paid on them
Calculate

(1) Amount of input tac credit available for January 2010
(2) VAT payable for the month of JANUARY 2010 AND
(3) Input tax credit carried forward

Note- input vat on capital goods is eligible in 36 equal monthly instalments.

Solution

Total purchase made in January 2010		55 lac
Less-		
(1)	Goods purchased from Assam i.e interstate purchase	15 lac
(2)	purchase made from unregistered dealer	18.5 lac
(3)	purchased capital goods (not eligible for credit)	6.5 lac
	total purchase eligible for credit	15 lac

input tax credit available
4% on [15 lac- 9 lac] 24000

Vat credit on eligible capital goods [4% of 9lac * 1/36]   1000
Input credit available for January 2010   25000

Vat on sale of 12.5 % of 10 lac   125000
Less – input tax credit   25000
Net vat payable   100000

Input tax credit carried forward   == nil

(2) RTP

Compute VAT at each stage using invoice method from the particulars given below

Stage	particulars	Profit as % of cost price
I	Sambhad mediclaim sold the medicine manufactured by it to distributor of medicine- Rishabh Pharmacy – at Rs. 4000	
II	Rishabh pharmacy sold the medicine to wholesaler Suhani Traders	56.25%
III	Suhani Trader sold the medicine to Retailer Galaxy Medicine	25%
IV	Galaxy Medicine sold the medicine to ultimate consumer	25%

Assume that VAT Rate is 4% and there was no value addition at various stages of sale except profit margin

Solution

Stage	particulars	VAT liability	Less vat credit	Tax to government
I	Sambhad mediclaim sold the medicine manufactured by it to distributor of medicine- Rishabh Pharmacy – at Rs. 4000	4000*4%= 160	---	160
II	Rishabh pharmacy sold the medicine to wholesaler Suhani Traders	6500*4%= 260	160	100
III	Suhani Trader sold the medicine to Retailer Galaxy Medicine	8250*4%= 330	260	70
IV	Galaxy Medicine sold the medicine to ultimate consumer	10400*4%= 416	330	86

Que- what are disadvantage of composition scheme?

Vat chain under composition scheme

Loss to seller-he can't avail input tax credit on purchase, which will add to the cost of goods. He can't pass ITC to buyer at time of sale

Loss to buyer- buyer can't take credit for purchase from composition dealer. Therefore on option of composition scheme, Vat chain is broken.

RTP may 2010 old

(1) Banking and other financial services

With reference to banking and other financial services, state whether service tax is applicable in the following cases:

(i) Services provided by State Bank of India to the Central Board of Direct Taxes in relation to collection of advance income-tax.

(ii) Discount charged by SB Ltd., a non-banking financial company, on the facility of bill discounting provided by it. Such discount is shown separately in the bill issued for this purpose.

(iii) Rich Bank, a Scheduled Bank, purchases foreign currency from Generous Bank, another Scheduled Bank.

(2) Construction services in respect of residential complexes

With reference to construction services in respect of residential complexes, answer the following questions:

(i) What does a "residential complex" mean?
(ii) Which activities are covered within "construction of complex"?
(iii) Does the service tax law provide for any exemption for this service? Explain.

(3) Business auxiliary services
With reference to business auxiliary services state whether service tax is applicable in following cases:
(i) Manufacture of non-excisable goods on behalf of the client.
(ii) Services provided by commission agents in relation to sale of jute.
(iii) Commission received by distributors for distribution of mutual fund units.

(4) Appeals
The Finance (No. 2) Act, 2009 has substituted section 84 of the Finance Act, 1994 with a new section 84. Explain the provisions of new section.

Ans

(1)

(i) Service tax will not be applicable in this case as *Notification No. 13/2004 ST dated 10.09.2004* exempts the taxable services provided by a banking company or a financial institution including a non-banking financial company, or any other body corporate or ay other person to the Government of India or a State Government in relation to collection of any duties or taxes levied by the Government of India or a State Government from the whole of service tax leviable thereon.

(ii) Service tax will not be applicable in this case as *Notification No. 29/2004 ST dated 22.09.2004* exempts the value of taxable service provided to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person, in relation to,-
   a. overdraft facility;
   b. cash credit facility; or
   c. discounting of bills, bills of exchange or cheques,

which is equivalent to the amount of interest on such overdraft, cash credit or, as the case may be, discount from the service tax subject to the condition that the said interest amount is shown separately in an invoice, a bill or, as the case may be, a challan issued for this purpose.

(iii) Service tax will not be applicable in this case as *Notification No 19/2009 ST dated 07.07.2009* exempts taxable services of the nature referred to in sub-clause (zm) or (zzk), as the case may be, of clause (105) of section 65 of the Finance Act, provided to a Scheduled bank, by any other Scheduled bank, in relation to interbank transactions of purchase and sale of foreign currency from the whole of the service tax leviable thereon.

(2)

(i) As per section 65(91a) of the Finance Act, 1994, a "residential complex" means any complex comprising of—
   a. a building or buildings, having more than twelve residential units;
   b. a common area; and
   c. any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an

authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Here,
   a. "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;
   b. "residential unit" means a single house or a single apartment intended for use as a place of residence.

(ii) As per section 65(30)(a) of the Finance Act, 1994, "construction of complex" means—
(a) construction of a new residential complex or a part thereof; or

(b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or

(c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex.

(iii) Yes. *Notification No. 1/2006 ST dated 01.03.2006* exempts 67% of the value of the taxable service provided to any person by any other person in relation to construction of complex from the service tax leviable thereon. This exemption shall not apply in cases where the taxable services provided in relation to a residential complex are only completion and finishing services. Further, this exemption is not available in cases where,

(i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004; or

(ii) the service provider has availed the benefit under *Notification No. 12/2003 ST dated 20.06.2003*.

The "gross amount charged" shall include the value of goods and materials supplied or provided or used for providing the said taxable service by the service provider.

(3)

(i) The Finance (No. 2) Act, 2009 has amended the definition of business auxiliary service under section 65(19) of the Finance Act, 1994 so as to exclude any activity that amounts to manufacture of excisable goods. Therefore, manufacture of nonexcisable goods for or on behalf of the client shall attract service tax.

(ii) *Notification No. 13/2003 ST dated 20.06.2003* exempts the business auxiliary services provided by commission agents in relation to sale or purchase of agricultural produce from service tax.

Agricultural produce means any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but makes it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food and processed tobacco.

Therefore, services provided by commission agents in relation to sale of jute shall not attract service tax.

(iii) Distributors receive commission from mutual fund for providing services relating to purchase and sale of mutual fund units. Services provided by such distributors are in the nature of commission agent and are, thus, liable to service tax under business auxiliary service *[Circular No. 96/7/2007 ST dated 23.08.2007].*

(4) The Finance (No. 2) Act, 2009 has amended section 84 of the Finance Act, 1994 to abolish the revision procedure prescribed therein and to prescribe the procedure of filing departmental appeals before the Commissioner (Appeals) in service tax cases similar to the central excise procedure. Accordingly, section 84 pertaining to revision by Commissioner has been substituted with a new section relating to appeals to Commissioner of Central Excise (Appeals). The provisions of new section 84 are:

(1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

(2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

Explanation — For the removal of doubts, it is hereby declared that above mentioned provision would come into effect from 19.08.2009. All cases decided before this date would continue to be governed by the existing provisions only.

RTP may 2010 new

(1) Penalty for failure to pay service tax

Examine, with the help of a decided case law, if any, whether the Tribunal could reduce the penalty imposable under section 76 of the Finance Act, 1994 as amended, below the minimum limit prescribed under that section?

(2) Clearing and forwarding agent's services

Tulip Medicines entered into an agreement with M/s. Sipla for handling and distribution of their products and was entrusted with the job of receiving, storing and distributing Sipla products to their authorised stockists and distributing centres. For the services so rendered, the Tulip Medicines was entitled to commission based on agreed percentage of sales figures and also to reimbursement of recurring expenses. Revenue contended that the services provided by the assessee attracted service tax under the category "clearing & forwarding agent's services". On the other hand, the assessee pleaded that service tax could be levied under the said category only when clearing and forwarding agent would have carried out both clearing and forwarding operations and in the given case, the assessee had not rendered any clearing services. Examine, whether the contention of the Department is justified in law.

(3) Appeals

Discuss the provisions relating to the filing of appeals to Commissioner of Central Excise (Appeals) under section 84 of the Finance Act, 1994 as amended by Finance (No. 2) Act, 2009.

(4) Taxable services

Explain the validity of the following statements:-

(a) Money changer services provided by one Scheduled bank to another Scheduled bank in relation to sale and purchase of foreign currency is liable to service tax.

(b) Services provided by a clearing and forwarding agent in relation to clearing and forwarding operations to a goods transport agency for transportation of goods by road are exempt from whole of the service tax.

(5) Banking and other financial services

Explain, with the help of a decided case law, if any, whether the chit fund activity falls within the expression "cash management" under "banking and other financial services"?

(6) Stock transfer

Briefly explain whether the input tax credit of the VAT paid on the purchases of goods which are stock transferred, is available.

(7) Computation of VAT

Compute the net VAT liability of Rishabh using the information given as follows:-

Particulars	Rupees
Raw material purchased from foreign market (including duty paid on imports @ 20%)	12,000
Raw material purchased from local market (including VAT charged on the material @ 4%)	20,800
Raw material purchased from neighbouring state (including CST paid on purchases @ 2%)	7,140
Storage, transportation cost and interest	2,500
Other manufacturing expenses incurred	600

Rishabh sold the goods to Rajul and earned profit @ 10% on the cost of production. VAT rate on sale of such goods is 12.5%.

(8) Subtraction method

Briefly discuss, under what circumstances subtraction method of computing VAT is normally applied?

(9) Demerits of VAT
Illustrate the demerits of VAT system.

(10) Works Contract
Is a works contract liable to VAT? What are the points that should be borne in mind to ascertain whether a transaction is a works contract as contemplated in Article 366(29A)(b) of the Constitution?

Ans

(1) The question as to whether the Tribunal could reduce the penalty imposable under section 76 of the Finance Act, 1994 as amended, below the minimum limit prescribed under that section was decided by the Rajasthan High Court in case of *UOI v. Aakar Advertising 2008 (11) S.T.R. 5 (Raj.).* The High Court held that if the assessee proves that there is reasonable cause for failure to pay service tax, the penalty shall not be imposed. However, if reasonable cause is not shown, and penalty is required to be levied, then, the minimum penalty prescribed cannot be further reduced, under the garb of any existing discretion, assumed to be vesting, with the authority, including the Tribunal. Where the two limits have been prescribed, being the minimum and maximum limit, then obviously the free play is available between the two limits only, and the discretion can be exercised, within those limits. However, that does not mean, that the authorities have any power to impose penalty less than the minimum prescribed by the section. Accordingly, the question was answered in favour of the Revenue, and against the assessee.

(2) No, the contention of the Department is not justified in law. The facts of the given case are similar to the case of *CCEx., Panchkula v. Kulcip Medicines (P) Ltd. 2009 (14) S.T.R. 608 (P & H).* In this case, the Tribunal held that as per the facts of the case, there was no clearing activity being undertaken by the dealer. Therefore, the services rendered by him would not satisfy the requirement of clearing and forwarding agent and consequently, no service tax liability would arise. The High Court, affirming the decision taken by the Tribunal, held that since no clearing activity was directly undertaken by the agent from the manufacturer's (Principal) premises, he was not liable to pay the service tax under the category "clearing and forwarding agent's services". Service tax is leviable under the said category only if an agent renders both clearing and forwarding services. The High Court further elaborated the question - whether word 'and' used after the word 'clearing' but before the word 'forwarding' in section 65(105)(j) can be considered in a conjunctive (combined) sense or disjunctive (separating) sense. The Court elucidated that if one person who has rendered service only as 'forwarding agent' without rendering any service as 'clearing agent' would be deemed to have rendered both services, it would amount to replacing the conjunctive 'and' by a disjunctive which is not possible. Besides, the learned counsel for the Revenue failed to bring on record any material to show that the word 'and' should be construed as disjunctive. Further, Revenue had also not shown any 'trade practice' which might lead to a necessary inference that service of one kind rendered was invariably considered to comprise both. Therefore, the word 'and' should be understood in a conjunctive sense.

(3) Refer que 4 of old RTP May 2010

(4) (a) No, the statement is incorrect. *Notification No. 19/2009 – ST dated 07.07.2009* has exempted the money changer services provided by one Scheduled bank to another Scheduled bank in relation to sale and purchase of foreign currency.

(b) Yes, the statement is absolutely correct. *Notification No. 1/2009 ST dated 05.01.2009* provides that services provided by a clearing and forwarding agent in relation to clearing and forwarding operations to a goods transport agency for transportation of goods by road has been exempted from the whole of the service tax subject to the condition that the invoice issued by such service provider, providing services should mention the name and address of the goods transport agency and also the name and date of the consignment note, by whatever name called, issued in his behalf.

(5) The High Court, in case of *A.P. Federation OF Chit Funds v. UOI 2009 (13) S.T.R. 350 (A.P.)*, has decided the issue as to whether the chit fund activity falls within the expression "cash management" under "banking and other financial services". In this case, the petitioner was engaged in the business of chit funds. The petitioner questioned the correctness of *CBEC Master Circular No. 96/7/2007-S.T. dated 23-8-2007.* Considering the

definition of "chit fund" and Supreme Court decision in case of *M/s. Shriram Chits & Investment (P) Ltd. v. Union of India AIR 1993 SC 2063*, the High Court held that in the absence of a specific statutory definition of 'cash management' or even 'asset management', the question of its wider interpretation either by seeking to include or exclude any other transactions or business (chit fund activity in the given case) is not permissible. Therefore, it is amply clear that in the absence of any such inclusive definition available in the statute, it cannot be said that the petitioners would fall within the mischief of "banking and other financial services". The entire action of the respondents of levying the service tax for the first time by way of a circular is merely an executive fiat, which is not permissible under the law.

In the light of the foregoing reasons, High Court set aside the impugned *Circular No. 96/7/2007-S.T dated 23-8-2007.* As a result, the High Court held that the chit fund activity does not fall within the expression "cash management" under "banking and other financial services".

(6) Yes, the tax paid on purchases of goods which are stock transferred will be available as input tax credit after retention of 4% of such tax by the State Governments.

(7) Computation of Sale Price and VAT payable thereon;

Particulars	Rupees
Raw material purchased from foreign market (Note – 1)	12,000
Raw material purchased from local market (Rs. 20,800 – Rs. 800) (Note – 2)	20,000
Raw material purchased from neighbouring state (Note – 3)	7,140
Storage, transportation cost and interest	2,500
Other manufacturing expenses incurred	600
Cost of production	42,240
Add: Profit earned @10% on Rs. 42,240	4,224
Sale Price	46,464
VAT @ 12.5% on sales	5,808

Net VAT liability of Rishabh:-

VAT on sale price	5,808
Less: Set-off of VAT on purchases	
On imports	Nil
On local purchases	800
Net VAT payable by Rishabh	5,008

Notes:-

(i) Since, the duty paid on imports is not a State VAT; it will form part of cost of input.
(ii) VAT charged by the local suppliers is Rs. 800. Since, the credit of this would be available; it shall not be included in the cost of input.
(iii) Credit/set-off for tax paid on inter-State purchases (inputs) is not allowed.

(8) The subtraction method of computing VAT is normally applied where:-
(a) the tax is not charged separately and
(b) the same rate of tax is attracted on all, including consumables and services, added at all the stages of production/distribution.

(9) Demerits of VAT system:-
(1) The merits accrue in full measure only under a situation where there is only one rate of VAT and VAT applies to all commodities without any question of exemptions whatsoever. Once concessions like differential rates of VAT, composition schemes, exemption schemes, exempted category of goods etc. are built into the system, distortions are bound to occur.
(2) In the federal structure of India in the context of sales-tax, so long as Central VAT is not integrated with the State VAT, it is difficult to put the purchases from other States at par with the State purchases. Therefore, the advantage of neutrality is confined only for purchases within the State.
(3) For complying with the VAT provisions, the accounting cost increases. The burden of this increase does not commensurate with the benefit to traders and small firms.

(4) Since VAT is imposed or paid at various stages and not on last stage, it increases the working capital requirements and the interest burden on the same. In this way, it is considered to be non-beneficial as compared to the single stage-last point taxation system.
(5) VAT is a form of consumption tax. Since, the proportion of income spent on consumption is larger for the poor than for the rich, VAT tends to be regressive.
(6) As a result of introduction of VAT, the administration cost to the State increases as the number of dealers to be administered goes up significantly.

(10) The works contract is a deemed sale, which involves the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

Under State VAT laws, works contract transactions too is subject to VAT within the purview of Entry 54 of the List II of the Seventh Schedule of the Constitution. To ascertain whether a transaction is a works contract as contemplated in Article 366(29A)(b), the following points should be kept in mind:

(1) There must exist an individual works contract; divisible contracts are out side the scope.
(2) Goods must be involved in the execution of the works. Transfer of property in goods does qualify as works contract when it is incorporated in the works.
(3) Transfer of property in goods must pass as goods or in some other form. Form of goods has no relevance (may have a relevance for determination of rate of tax).
(4) Property in goods must pass during the execution of works not before or after the execution of works.
(5) Some work has to be done on the property of the contractee by the contractor.
(6) In the works contract, transfer of property must be an integral part of its execution.
(7) Pure labour contracts or service contracts are out side the purview of the sales tax/VAT law.
(8) If during the execution of works contract goods are consumed and their identity is lost then no transfer of property occurs in those goods.
(9) There must be a dominant intention to effect the transfer of property in goods in execution of works contract. However, even if the dominant intention of the contract is rendering of a service, and in that process if there is a transfer of property in goods, the contract will amount to a works contract.

RTP may 11

Registration and SSP exemption

12. Examine the validity of the following statements:-

(a) Exemption for small service providers under *Notification No. 6/2005 ST dated 01.03.2005* as amended is not applicable to the taxable services provided by a person under a brand name or trade name of another person.

(b) An assessee providing more than one taxable service is required to make a separate application of registration for each of the taxable services provided by him.

Valuation of taxable services

13. Dolby Ltd. is engaged in providing services of renting of immovable property. For the month of March 2011, its receipts are as follows:-

Receipts Amount (Rs.)

Rent of the building (including property tax of Rs. 1,50,000) 12,00,000

Vacant land, given on lease for construction of building at a later stage (Such building would be used for commercial purpose) 7,00,000

Let out vacant land solely used for farming purposes 15,00,000

Let out land to Dharmesh Circus 2,25,000

On the basis of the above information, compute the service tax payable by Dolby Enterprises under the category of 'renting of immovable property services' for the month of March 2011.

Note: All the receipts are exclusive of service tax.

Composition scheme

14. Who are not eligible for composition scheme under the VAT regime? Discuss briefly.

VAT in special transactions

15. Write a brief note to explain the impact of VAT on lease transactions.

Computation of VAT

16. Compute the invoice value to be charged, amount of tax payable under VAT and input tax credit to be carried forward, if any, from the following information for the month of May, 2011:-

Particulars

Purchase price of the goods (excluding VAT) Rs. 1,20,000
Expenses incurred Rs. 10,000
Profit earned Rs. 15,000
VAT rate on purchase of goods 12.5%
VAT rate on sale of goods 4%

Ans

12. (a) The statement is absolutely valid. Exemption for small service providers under *Notification No. 6/2005 ST dated 01.03.2005* as amended is not applicable to taxable services provided by a person under a brand name or trade name, whether registered or not, of **another** person.

(b) The statement is not valid. As per rule 4(4) of the Service Tax Rules, 1994, where an assessee is providing more than one taxable service, he may make a single application mentioning therein all the taxable services provided by him.

13. Computation of service tax payable by Dolby enterprises for the month of March, 2011:-

Particulars		**Amount (Rs.)**
Rent of the building	12,00,000	
Less: Property tax **(Note – 1)**	1,50,000	10,50,000
Vacant land, given on lease for construction of building at a later stage to be used for commercial purpose		7,00,000
Value of taxable services		17,50,000
Service tax @ 10% = Rs. 17,50,000 × 10%		1,75,000
Add: Education cess payable @ 2% = Rs. 1,75,000 × 2%		3,500
Add: Secondary and education cess payable @ 1% = Rs. 1,75,000 × 1%		1,750
Amount of service tax payable		1,80,250

Notes:

1. As per ***Notification No. 24/2007 ST dated 22.05.2007***, deduction of property tax is allowed from the gross amount to arrive at the value of taxable service of renting of immovable property.
2. As per **explanation 1 to section 65(105)(zzzz)**, immovable property does not include vacant land solely used for farming purposes and land used for circus. Hence, receipts of Rs. 15,00,000 and Rs. 2,25,000 are not liable to service tax.

14. Small dealers having gross turnover exceeding Rs 5 lakhs but less than Rs 50 lakhs have option of composition scheme. They will have to pay a small percentage of gross turnover. They will not be entitled to any input tax credit. However, the following are **not eligible** for the composition scheme:

(i) a manufacturer or a dealer who sells goods in the course of inter-State trade or commerce; or
(ii) a dealer who sells goods in the course of import into or export out of territory of India; or
(iii) a dealer transferring goods outside the State otherwise than by way of sale or for execution of works contract; or
(iv) a manufacturer/dealer who makes inter-State purchases; or
(v) a dealer/manufacturer who issues vatable invoices.

15. Impact of VAT on lease transactions:-

1. Lease is chargeable to tax by virtue of sub – clause (d) of clause 29A of Article 366 of the Constitution of India. This is a tax on the transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
2. The **taxable event is the transfer of right to use** any goods and hence immovable property is not covered.
3. The **taxable turnover** means the valuable consideration paid or payable for any sale in a given period. Certain States have provided for deduction of interest or finance charges for the purpose of determination of taxable turnover.
4. Lease of an asset in the course of inter-State trade cannot be subject to VAT.

5. **Transfer of right to use does not presuppose ownership** of the goods. A sublease of an asset also is taxable unless specifically exempt under the State VAT Law.
6. **Sale of leased asset** after the end of the lease period is taxable as a **normal sale.**
7. The maintenance of leased asset involving supply of materials for maintenance/ repair by the lessor will not amount to a works contract as there would be no transfer of property in such materials to the lessee. Hence, there should would be **no VAT on the value of materials supplied during maintenance/repair** of the leased asset.
8. The assets given on lease will be **generally capitalized** by the lessor in his books and will be treated as capital assets. Thus, provision relating to input tax credit on capital goods will apply.
9. The lessor would pay VAT at the time of procurement of goods. However, liability to pay VAT on lease rentals will be spread over the tenure of the lease. Therefore, some States have provided for utilization of input credit for paying output tax only over the entire period of lease

16. Computation of invoice value:-

Particulars	**Rs.**	**Rs.**
Cost of goods purchased		1,20,000
Add: VAT (Since credit of VAT paid is available, it is not added to the cost)		Nil
Add: Expenses	10,000	
Add: Profit margin	15,000	25,000
Product Sale Value		1,45,000
Add: VAT @ 4%		5,800
Invoice Value		1,50,800

Computation of amount of tax payable under VAT:-

VAT charged on sales	5,800
Less: Input credit of VAT paid on purchases @ 12.5% on1,20,000	15,000
Tax Payable under VAT	Nil

Input tax credit of Rs. 9,200 (Rs. 15000-Rs. 5,800) is carried forward to the next month i.e. June, 2011.

custom

Re-importation of goods produced/manufactured in India

17. Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the said proposition correct? Has any concession been provided on such import? Discuss briefly.

Importation, exportation and transportation of goods

18. Explain in brief the duty exemption to baggages under section 79(1) of the Customs Act, 1962.

Valuation under Customs Act, 1962

20. Fraternity Corporations imported some goods by air at CIF price of 10,000 US$. Freight paid was 3,000 US$ and insurance cost was 1,000 US $. The banker realized the payment from Fraternity Corporations at the exchange rate of Rs.45 per dollar. Central Board of Excise and Customs notified the exchange rate as Rs.44.50 per US $. Find the value of the imported goods for the purpose of levying duty.

Ans

The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India **[Section 20 of the Customs Act, 1962].**

However in the case of re-import following exemptions are available under notifications

(i) <u>No duty re-imported for repairs, reprocessing</u>

Goods manufactured in India and reimported into India (i) for repairs or for reconditioning. within 3 years from the date of exportation Provided that such re-importation takes place within 10 years from the date of exportation in case of Nepal." (ii) For (a) reprocessing; or (b) refining; or(c) re-making; or(d) similar process within 1 year from the date of exportation	<u>No duty if</u> (i) Goods are reexported within six months of the date of reimportation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow; and **(ii)** The Assistant Commissioner of Customs is satisfied as regards identity of the goods;

<u>(ii)Re-imported within 3 years by same person</u>

if the same gods which were exported are re-imported within 3 years by same person, custom duty payable is equal to duty drawback and excise duty(which was exempted)

(iii) <u>goods exported for repairs</u>

goods exported for repairs abroad and reimported by the same person with in 3 years or extended period if any without being re-manufactured or re-processed

then duty leviable on value –

fair cost of repairs carried out	XXX
add- cost of materials used in repairs (whether such costs are actually incurred or not)	XXX
Add- insurance and freight both ways	XXX

18. Section 79(1) of the Customs Act, 1962 exempts the bona fide baggage of the passengers. Following baggage is passed free of duty-
(i) articles in use by passenger/crew for the minimum period prescribed by the Baggage Rules, 1998. These Rules, as on date, do not prescribe any minimum period for use of articles by the passenger/crew. However, totally unused articles may not be held as bona fide baggage.
(ii) articles for use by passenger or his family or bona fide gifts or souvenirs within the limits prescribed in the aforesaid Baggage rules.

20. Computation of assessable value:-

CIF value	10,000 US $
Less: Freight	3,000 US $
Less: Insurance	1,000 US $
Therefore, FOB value	6,000 US $

Assessable value for customs purpose:
FOB value 6,000 US $
Add: Freight (20% of FOB value) 1,200 US $
Add: Insurance (actual) 1,000 US $
CIF for customs purpose 8,200 US $
Add: 1% for landing charges 82 US $
Value for Customs purpose 8,282 US $
Exchange rate as per CBEC Rs. 44.50 per US $
Assessable value = Rs. 44.50 x 8,282 US $
= Rs. 3,68,549

From the following particulars, determine the assessable value of the imported equipment giving explanation for each item:

Rs.

(1) FOB cost of equipment (Japanese Yen) 2,00,000 Yen
(2) Freight charges in Japanese Yen 20,000 Yen
(3) Charges for development connected to equipment paid in India Rs. 60,000
(4) Insurance charge paid in India for transportation from Japan Rs. 15,000
(5) Commission payable to agent in India Rs. 15,000

Exchange rate as per RBI is 1 Yen = Rs. 0.45
Exchange rate as per CBEC is 1 Yen = Rs. 0.50
Landing charges: one percent of CIF cost (5 Marks)

<u>Answer</u>

Computation of assessable value:-

FOB value		2,00,000 Yen
Add: Freight from Japan (Note – 1)	20,000 Yen	
Total (in yen)		2,20,000 Yen
Exchange rate applicable is 1 Yen = Rs. 0.50 (Note – 4)		
Total (in rupees)	Rs. 1,10,000	
Add : Insurance charges	Rs. 15,000	
Total		Rs. 1,25,000
Add : Commission (Note – 2)	Rs. 15,000	
CIF value		Rs. 1,40,000
Add : Landing charges @ 1% of CIF value	Rs. 1,400	
Assessable value	Rs. 1,41,400	

<u>Notes:</u>

1) Freight from Japan is includible in the assessable value.
2) Agency commission paid in India is not a buying commission and hence will be added to CIF value.
3) Charges for development paid in India do not from part of assessable value because as per rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, only the development undertaken at a place other than India shall form a part of assessable value.
4) Currency conversion rate as notified by CBEC is to be taken into consideration.

Applicability of services for May 2011 & Nov 2011- CA Final

1. **Copy right service**
2. **Transport of air passenger service**
3. **Transport of coastal goods and other goods through inland water including national waterways**
4. **Port (Major port & other port) service**
5. **Airport service**
6. **Tour operator**
7. **Health care service**
8. **Promotion of brand**
9. **Erection, commissioning & installation service**
10. **Services of renting of immovable property**
11. **Advertising service**
12. **Preferential location service**
13. **Asset management including portfolio management and all forms of fund management**
14. **Mining service**
15. **Management, maintenance or repair service**
16. **Telecommunication service**
17. **Service provided in execution of works contract**
18. Intellectual property services
19. Banking & other financial services
20. Goods transport agency's services
21. Transport of goods by air services
22. Transport of goods by rail
23. Construction of commercial or industrial buildings or civil structures
24. Construction services in respect of residential complexes
25. Site preparation and clearance, excavation, earthmoving and demolition services
26. Clearing and forwarding services
27. Business auxiliary services
28. Business support services

Note- The services in shaded portion are newly inserted for may 2011 by ICAI

(1) Copyright services

(i) Taxable service

Means any service provided or to be provided
to any person, by any other person, for—

(a) transferring temporarily; or
(b) permitting the use or enjoyment of,

any copyright defined in the Copyright Act, 1957
EXCEPT the rights covered under sub-clause (a) of clause (1) of section 13 of the said Act;

(ii) The provisions relating to copyrights are governed by the Indian Copyright Act, 1957. Section 13(1) of the Indian Copyrights Act, 1957 provides that the copyright subsists in the following classes of works:- (a) Original literary, dramatic, musical and artistic works; (b) Recording of cinematographic films; (c) Sound recordings.

Author note- Category (a) above has been kept out of the tax net WHILE Category (b) and (c) have been made taxable under this service.

Following activities have been brought under the service tax net:-

⇒ transferring the right of recording of the cinematographic film and recording of sound track or
⇒ permitting the use of cinematographic film and sound track by another person (say distributor) for consideration

(iii) *department clarification*

Services related to two types of copyrights hitherto not covered under existing taxable service 'Intellectual Property Right (IPR)', namely, that on (a) cinematographic films and (b) sound recording. – 334/1/2010

(1) The right to temporarily transfer or permit the use of Intellectual Property Rights (IPR), namely, trademarks, designs and patents was brought under tax net in 2004. However, one of the IPRs, i.e. copyright has been specifically kept out of the purview of the tax with an intent to encourage authors and artists, as it involves creative works, such as literary work, musical work and artistic work. In Budget 2008, Information Technology (IT) Software Service was also brought under tax net, which apart from involving development, upgradation, assistance etc. also covered the IPR aspect i.e. right to use the information technology.

(2) A cinematographic film means any work of visual recording on any medium (emphasis added) produced through a process from which a moving image may be produced. The same may be accompanied with sound reproduction also.

Both the recording of the cinematographic film and the accompanying sound track are the property of the producer, who can temporarily transfer it or permit its use by another person for a consideration. It is this activity, which is being taxed under this service.

It would have an impact on the royalty payments on both imported and indigenously produced films when the producer/right holder allows such use to another person, say the distributor.

(3) Similarly, song, its music, lyrics and composition also enjoy the copyright protection to its owner who can commercially exploit it in the manner stated above. Normally, the copyright of music vests in the composer and the copyright of music recorded vests in the producer of the sound recording. It is possible that a lyricist or a singer may hold copyright for the words of a song or the song itself.

Merely allowing that song to be recorded is a copyright, which would fall under category (a) of section 13 of the Copyright Act and thus would not be subject to service tax.

However, after the performer has transferred his rights to a sound recording company, the sound recording company acquires the copyright mentioned in category (c) of section 13 supra. It is the transfer or allowing use of this right, which would be subjected to tax under the new service.

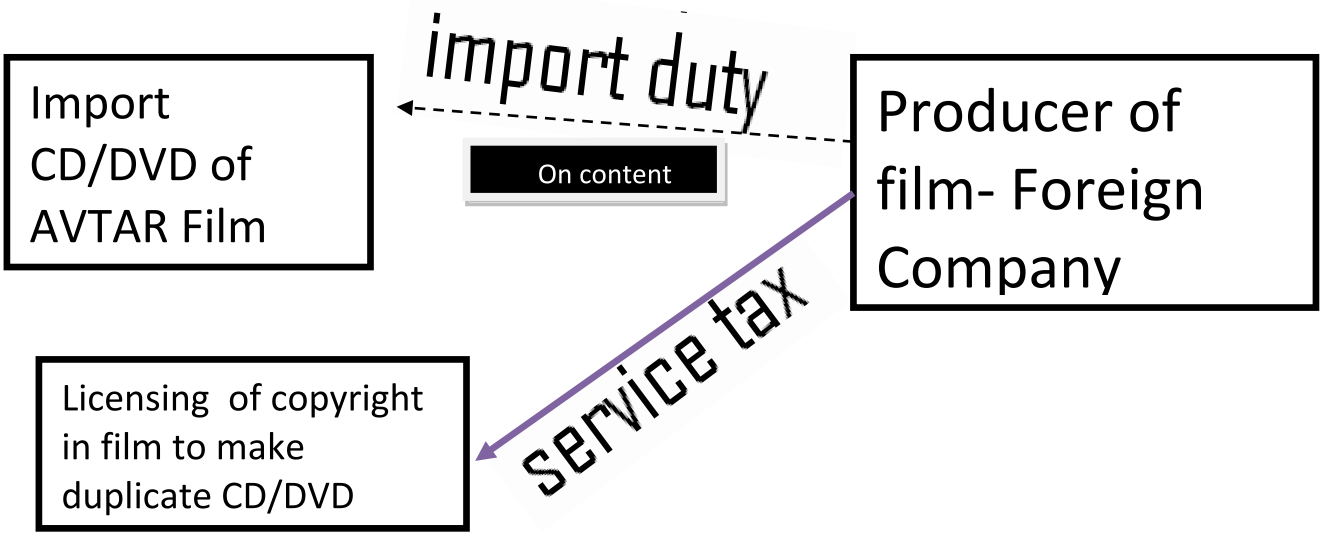
As such, depending upon the nature and conditions of the contract, companies distributing music, owners of copyright of cinematographic films etc. would be prospective taxpayers. It may be noted that this taxable service will not cover individual artists, composers, performers etc. as their copyrights fall under clause (a) of Sec. 13 of the Copyright Act.

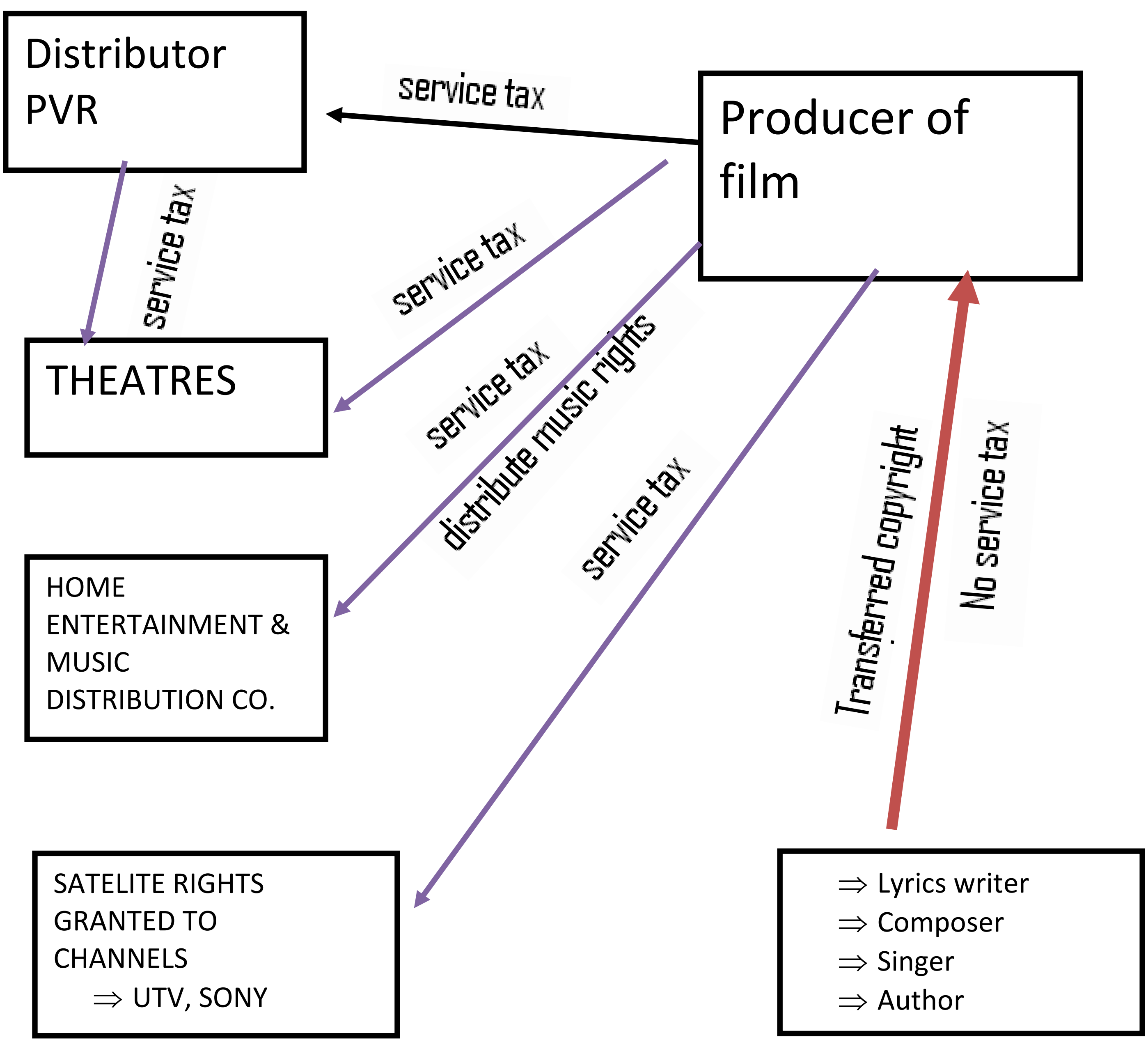
Particulars	Rs. In Lakh
PVR Produced Film " Tare Zameen Par" and leased to various distributor for	75
PVR taken over the distribution rights of " Ghajni", Don" for Rs. 300 lakh and allowed use or enjoyment to various theatres on sharing basis for	400
PVR have taken rights of Aviator from Foreign company to make CD/DVD for	200
PVR has recorded songs for various singers like Lata Mangeshkar, Sonu Nigam and allowed to use to Internet sites 5 lakh Music distribution company 23 lakh Bala ji Telefilms to use the sound in its serial 2 lakh To channel to broadcast to various home viewers 25 lakh	55
	730

Calculate Value of taxable service

Ans

Particulars	Rs. In Lakh
PVR Produced Film " Tare Zameen Par" and leased to various distributor for	75
PVR taken over the distribution rights of " Ghajni", Don" for Rs. 300 lakh and allowed use or enjoyment to various theatres on sharing basis for	400
PVR have taken rights of Aviator from Foreign company to make CD/DVD for	200
PVR has recorded songs for various singers like Lata Mangeshkar, Sonu Nigam and allowed to use to Internet sites 5 lakh Music distribution company 23 lakh Bala ji Telefilms to use the sound in its serial 2 lakh To channel to broadcast to various home viewers 25 lakh	55
Value of taxable service	730


Import CD/DVD of AVTAR Film
import duty
On content
Producer of film- Foreign Company
service tax
Licensing of copyright in film to make duplicate CD/DVD


Distributor PVR
service tax
Producer of film
service tax
THEATRES
service tax
service tax
distribute music rights
service tax
HOME ENTERTAINMENT & MUSIC DISTRIBUTION CO.
Transferred copyright
No service tax
SATELITE RIGHTS GRANTED TO CHANNELS
⇒ UTV, SONY
⇒ Lyrics writer
⇒ Composer
⇒ Singer
⇒ Author

18) **INTELLECTUAL PROPERTY SERVICE**

(i) Taxable Service means
⇒ any service provided or to be provided
⇒ to any person
⇒ by the holder of intellectual property right, in relation to intellectual property service.

(ii) Intellectual property service means
→ Temporarily transferring or
→ permitting the use or enjoyment of
→ Any intellectual property right.

(i) Intellectual Property right means
→ Any right to intangible property, namely
→ trade marks designs patents, or any other similar intangible property
→ under any law for the time being in force

But does not include
→ Copyright

(iii) Exemption- NN 17/2004 dtd. 10-9-2004

CG hereby exempts the taxable service provided by the holder of intellectual property right to any person, in relation to intellectual property service, from so much of the service tax leviable thereon under section 66 of the said Act, as is equivalent to the amount of cess paid towards the import of technology under the provisions of section 3 of the Research and Development Cess Act, 1986 in relation to such intellectual property service.

(iv) CBEC Clarificaion

1) IPRs like integrated circuits or undisclosed information(not covered by Indian law) not liable to service tax. (Cir 80/10/2004 dtd. 17-9-04)
2) A permanent transfer of intellectual property right does not amount to rendering of service. On such transfer, the person selling these rights no longer remains a 'holder of intellectual property right' so as to come under the purview of taxable service. Thus, there would not be any service tax on permanent transfer of IPRs. (Cir 80/10/2004 dtd. 17-9-04)

3) "Holder of IPR" shall be a person who has the right over the IPR right may be as owner as user, or otherwise by which he can transfer such right to other or can give other person right to use it.

4) *The Brand Licensing Arrangement*

Many alcoholic beverages bear brand names. The Brand Owners (herein after called the BO), which includes Indian subsidiaries of International brand owners, hold the intellectual property rights over such brand names. The Licences (who holds the licence by the State government to manufacture such alcoholic beverages) manufactures alcoholic beverages under authority to use such brand name granted by the BO. The BO may also provide technical staff/assistance to maintain required quality. The alcoholic beverages, so manufactured are directly sold (after paying State excise duty) by licencee/manufacturer. Property, risk and reward of the products so manufactured rest with the licencee/manufacturer and not with the BO, who is paid an agreed sum for grant of permission to use such brand name and the technical know how. In such cases the BO provides taxable service, namely 'Intellectual Property Service' to the licencee/manufacturer. The tax is chargeable on the gross amount charged by the BO from the licencee/manufacturer (cir 249/2/2006)

Que1- whether sale of IPR liable to Service Tax

Que 2 whether royalty paid by appellants to their foreign collaborators for transfer of technical know-how for manufacture and distribution of Mercantile Identification system is covered by IPR or Consulting Engineer service?
Ans- Shore to Shore MIS Pvt. Ltd. (2007)(tri) – Royalty for technical know-how taxable under IPR & not under Consulting Engineer

Practical Que
Samsung provides following details for calculating service tax payable Rs in Lakh

1) Received payment for allowing use of patented technology	2
2) Received payment for allowing use of design of AC to local manufacturer.	5
3) Samsung (India) imported technology from USA on which cess paid u/s 3 Of R & D Cess Act 1986.	1
4) Samsung allowed use of integrated circuits developed	7
5) Amount received for allowing copies of film for which having copyright	4
6) Royalty for allowing copies of audio/ video recording for which having	3
7) Amount received for sale of know-how developed	9

Calculate the taxable value of service
Solution for students appearing in Nov 2010

	Rs in lakh
1) Received payment for allowing use of patented technology	2
2) Received payment for allowing use of design of AC to local manufacturer.	5
3) Samsung (India) imported technology from USA on which cess paid u/s 3 Of R & D Cess Act 1986.	----
4) Samsung allowed use of integrated circuits developed	----
5) Amount received for allowing copies of film for which having copyright	----
6) Royalty for allowing copies of audio/ video recording for which having	----
7) Amount received for sale of know-how developed	----
Value of taxable service	7

Students appearing in May 2011

	Rs in lakh
1) Received payment for allowing use of patented technology	2
2) Received payment for allowing use of design of AC to local manufacturer.	5
3) Samsung (India) imported technology from USA on which cess paid u/s 3 Of R & D Cess Act 1986.	----
4) Samsung allowed use of integrated circuits developed	----
5) Amount received for allowing copies of film for which having copyright	4
6) Royalty for allowing copies of audio/ video recording for which having	3
7) Amount received for sale of know-how developed	----
Value of taxable service	14

(2) TRANSPORT OF PASSENGERS FOR JOURNEY (DOMESTIC OR INTERNATIONAL) BY AIR

(i) Taxable service

Means any service provided or to be provided
to any passenger, by an aircraft operator, in relation to scheduled or non-scheduled air transport of such passenger embarking in India for domestic journey or international journey;]

Non- scheduled flight means that do not leave at a fix time **or** flights that are being flown at short notice, like chartered flights, military flights or for Tour

Explanation 1. — For the purposes of this sub-clause, economy class in an aircraft meant for scheduled air transport of passengers means, —

(i) where there is more than one class of travel, the class attracting the lowest standard fare; or
(ii) where there is only one class of travel, that class.

Explanation 2. — For the purposes of this sub-clause, in an aircraft meant for **non-scheduled** air transport of passengers, **no class** of travel shall be treated as **economy class;**

(ii) DEFINITIONS

"INTERNATIONAL JOURNEY", in relation to a passenger, means his journey from any customs airport on board any aircraft to a place outside India;]
"PASSENGER" means any person boarding an aircraft in India for performing domestic journey or international journey;]

(iii) Exclusion from Value- Rule 6 (2)(v) of Service Tax (Determination of value) rules 2006

The value of any taxable service, as the case may be, **does not include** -
the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger.]

(iv) EXEMPTIONS

(1) Travel by Air service — Exemption to in-transit international passenger and other specified persons w.e.f. 1-7-2010--- *[Notification No. 25/2010-S.T., dated 22-6-2010]*

CG exempts air transport of passengers in respect of persons specified below, from the whole of the service tax leviable thereon under section 66 of the Finance Act,-

(i) a person who has arrived at a customs airport from a place outside India and is in transit through India, provided that he does not pass through immigration and does not leave customs area and continues his journey to a place outside India; and
(ii) a person employed or engaged by the aircraft operator in any capacity on board the aircraft;

(2) Travel by Air service — Exemption providing effective rate for domestic journey in any class and international journey in economy class w.e.f. 1-7-10--- *[Notification No. 26/2010-S.T., dated 22-6-2010]*

CG Exempts from so much of service tax as is in excess of,-

(a) ten percent of the gross value of the ticket or rupees one hundred per journey, whichever is less, for passengers travelling in any class, WITHIN INDIA;
(b) ten percent of the gross value of the ticket or rupees five hundred per journey, whichever is less, for passengers embarking in India for an international journey in ECONOMY CLASS :

Provided that this exemption shall not apply in cases where -

the credit of duty paid on inputs used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004;

Explanation, - For the purposes of this notification, economy class in an aircraft means, —

(i) where there is more than one class of travel, the class attracting the lowest standard fare; or
(ii) where there is only one class of travel, that class.

(3) Travel by Air service — Exemption to passengers from/to North East and Baghdogra w.e.f. 1-7-2010--- [Notification No. 27/2010-S.T., dated 22-6-2010]

CG exempts the taxable service for passengers embarking on a journey originating or terminating in an airport located in the state of Arunachal Pradesh or Assam or Manipur or Meghalaya or Mizoram or Nagaland or Sikkim or Tripura or at Baghdogra located in West Bengal, from the whole of service tax leviable thereon under section 66 of the said Act.

(v) CBEC CLARIFICATION

a) *Transport of passenger by Air service :* 334/3/2010

(1) As stated in 334/1/2010-TRU, dated 26th February 2010, in Budget 2010, service tax on transport of passengers by air was extended to cover all domestic and international air passengers embarking in India with effective tax rates as given below :

(a) 10% service tax of the gross value of the ticket or rupees 100 per journey, whichever is less, for passengers travelling in any class, within India;
(b) 10% service tax of the gross value of the ticket or rupees 500 per journey, whichever is less, for passengers embarking in India for an international journey in economy class :

The aforesaid rates are subject to non-availment of Cenvat credit. (Refer Notification No. 26/2010-Service Tax dated 22nd June 2010). All charges except statutory levies (levied under a law for time being in force), if any mentioned in a ticket is to be taken as 'gross value of the ticket' for this purposes.

(2) Exemption from service tax has also been provided on journeys to and from North-Eastern States (i.e. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura) from the service tax (Refer Notification 27/2010-Service Tax date 22nd June 2010). Considering that Bagdogra airport, though located in West Bengal being the gateway airport for Sikkim, has also been accorded this benefit.
(3) Doubts have been raised that in case a ticket covers more than one domestic journey/flight/sector (say Mumbai-Delhi-Mumbai), whether Rs. one hundred would be charged for each journey/flight/sector (i.e. in the aforementioned example one for Delhi-Mumbai flight and one for Mumbai-Delhi flight) or would it be charged once for the entire ticket. In this regard, it is clarified that since the taxable activity relates to 'embarkation in India for domestic journey....', each time such embarkation in India takes place the tax is chargeable. In other words tax would be separately chargeable for each journey/flight/sector. In this regard the clarifications issued vide circular No. 96/7/2007-S.T. dated 23-7-2007 has no application as the said circular did not cover situations of multiple embarkations in India. Similarly, in round trip tickets involving multiple journies/flights/sectors with one of the sector involving embarkation or disembarkation at North-Eastern States/Bagdogra, the journey/flight/sector that involves embarkation or disembarkation at North-Eastern States/Bagdogra would alone be covered under aforesaid exemption.
(4) Since the scope of air transport of passenger service has been modified vide Finance Act, exemption, which were available earlier to crew of the aircraft operator, and international transit passengers by way of definition in the Act have been retained vide Notification (Refer Notification No. 25/2010-Service Tax).
(5) The scheme of tax on passengers embarking in India for an international journey in higher classes (i.e. other than economy class) remains unchanged.
(6) As per the provisions of Rule 4A of the Service Tax Rules,1994, invoice/bill/challan is required to be issued by the provider of taxable service within 14 days of the provision of the taxable service or the receipt of the consideration. In case of air-travel, the airlines or the agent may not issue a separate invoice to the passenger but may issue the ticket showing the price of such ticket as well. In such a case, the requirement of an invoice would cast an additional compliance burden on the service provider. Hence the said rule is amended to provide that in case of this taxable service, the ticket (in any form, including electronic form whatever may be the name) showing the name of the passenger, description of the journey (details like place of embarking and disembarking, class of travel, flight number, etc.,) and the amount of service tax

collected would be deemed to be the invoice/bill/challan for the purposes of the rule (Refer Notification No. 39/2010-Service Tax as corrected vide corrigendum dated 30th July 2010).

b) 96/7/2007

An international journey commencing from an Indian airport involves stopover/ transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York). Whether service tax would be liable in such case on the value indicated in the ticket for the entire journey or only on that part of the value attributable to the first sector (Mumbai-Dubai) of the journey?	Aim of the passenger is to travel from Mumbai to New York. Actual destination of the international journey is the criterion to decide the value of the service (in this case, New York). Stopover/transfer at intermediate airports, being merely incidental and part of the main journey, is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66. Service tax in such cases is leviable on the total consideration of a single composite service relating to the entire journey. i.e., value indicated on the ticket for the entire journey.
An international journey (say Delhi-Mumbai-London) includes travel in a domestic sector (Delhi – Mumbai) as part of the international journey. Whether service tax is liable on the value of whole journey or after excluding the value attributable to the domestic sector from the total value of the ticket?	In this case, the journey is a single composite journey. The aim of the passenger is to travel from India to a place outside India. Part of the travel in the domestic sector cannot be segregated from the single journey. Service tax is, therefore, leviable on the total value of the ticket treating the domestic sector as integral part of the international journey without excluding the value attributable, if any, to travel in the domestic sector.
An international journey commences from an airport outside India and completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney). Whether service tax is liable for Mumbai-Dubai sector only or on the total value of the ticket?	In this case, the journey being a single one and the aim of the passenger is not to travel from India to a place outside India, service tax is not leviable under section 65(105)(zzzo).
Whether ticket issued outside India for an international journey commencing from India (say Delhi–London) is liable to service tax?	Service tax is payable by the service provider, namely aircraft operator, for the taxable service provided. Place of purchase/issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with section 66. Service tax is leviable as long as the passenger embarks in India for an international journey, in any class other than economy class.
Whether service tax is liable on the total value of the ticket or only half the value of the ticket in the case of round trip/return ticket (say Delhi-London-Delhi)?	Service tax is leviable on the total value of the ticket.

c) International Air Travel — Inclusion of YQ and YR charges clarified

Commissionerate of Service Tax, Delhi, dated 24-9-2007

the Board has clarified that *YQ and YR charges collected by the Airlines from the passengers are includible in the value of taxable service provided by aircraft operator to passenger embarking in India for international journey.*

The clarification reads as under

" As per section 67 of the Finance Act, 1994, value of a taxable service shall be the gross amount charged by the service provider for the services provided and includes any amount received towards the taxable service before, during or after provision of such service. Provisions relating to determination of the value of taxable service contained in Service Tax (Determination of Value) Rules, 2006 are clear and unambiguous. As YQ and YR charges are integral part of the consideration received for the services provided, method of vivisecting may not be of any relevance as long as the amount is in the nature of the consideration paid for the services provided."

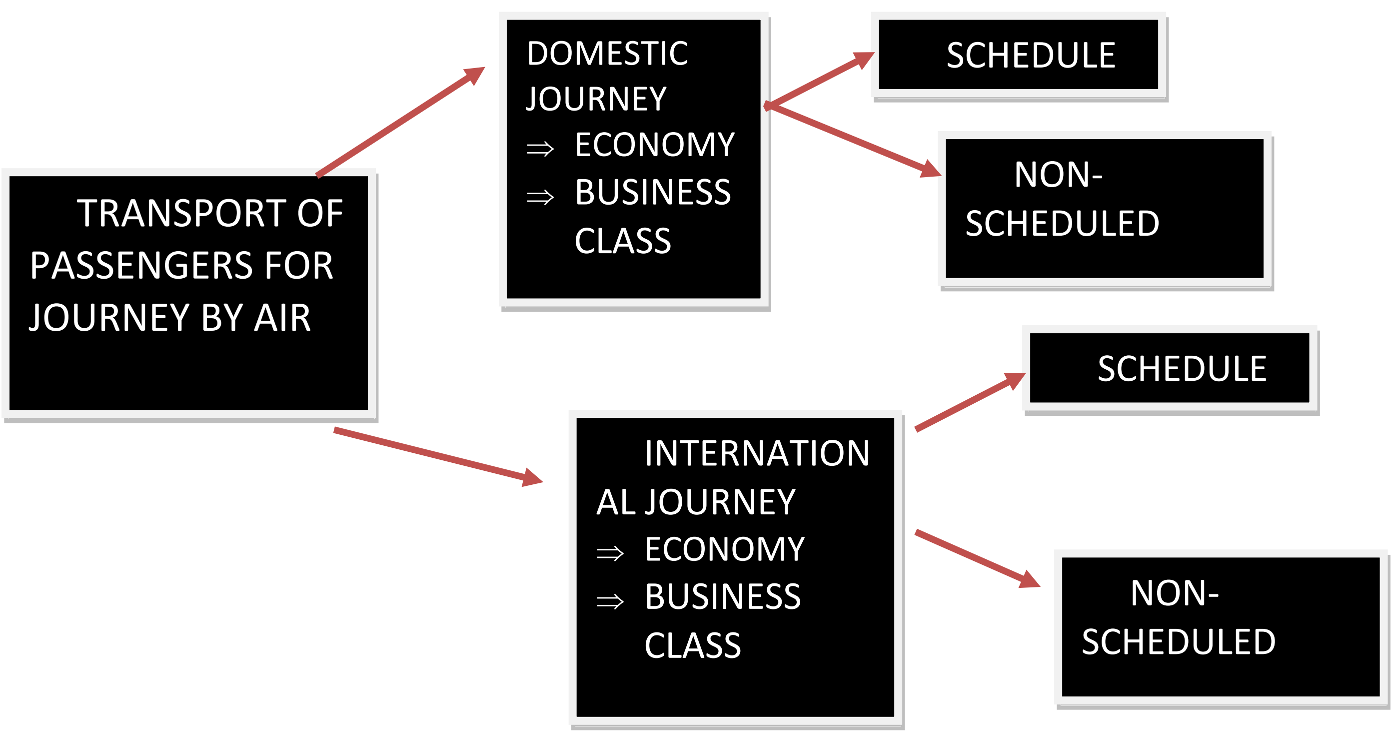
M/s kingfisher Airlines provides following details
2000 Passenger travelling from Delhi to Mumbai in economy class. Gross value per ticket Rs 1050 Tax on ticket Rs. 100 included in above.
3000 Passenger travelling from Delhi to Mumbai in business class. Gross value per ticket Rs 1050 Tax on ticket Rs. 100 included in above.
4000 Passenger travelling from Delhi to Mumbai in economy/ business class. Gross value per ticket Rs 1100. Tax on ticket Rs. 100 not included in above.
1000 Passenger embarking from Delhi to U.S.A in economy class. Gross value per ticket Rs 4950
1000 Passenger embarking from Delhi to U.S.A in BUSINESS class. Gross value per ticket Rs 4950 YQ, YR Charges Rs. 2000 included in gross value of ticket
2500 passenger booking for Round Trip MUMBAI — DELHI — MUMBAI Gross value of ticket Mumbai- Delhi Rs 950 Delhi – Mumbai Rs 950
2500 passenger booking for Round Trip MUMBAI — DELHI — MUMBAI Gross value of ticket Mumbai- Delhi Rs 1100 Delhi – Mumbai Rs 1100
2000 passenger booking from Manipur to Delhi. Gross value per ticket Rs 950
2000 passenger booking from Delhi to Sikkim. Gross value per ticket Rs 1100
2500 passenger booking for Round Trip MUMBAI — DELHI — London in economy class. Gross value of ticket Mumbai- Delhi Rs 1100 Delhi – London Rs 5500

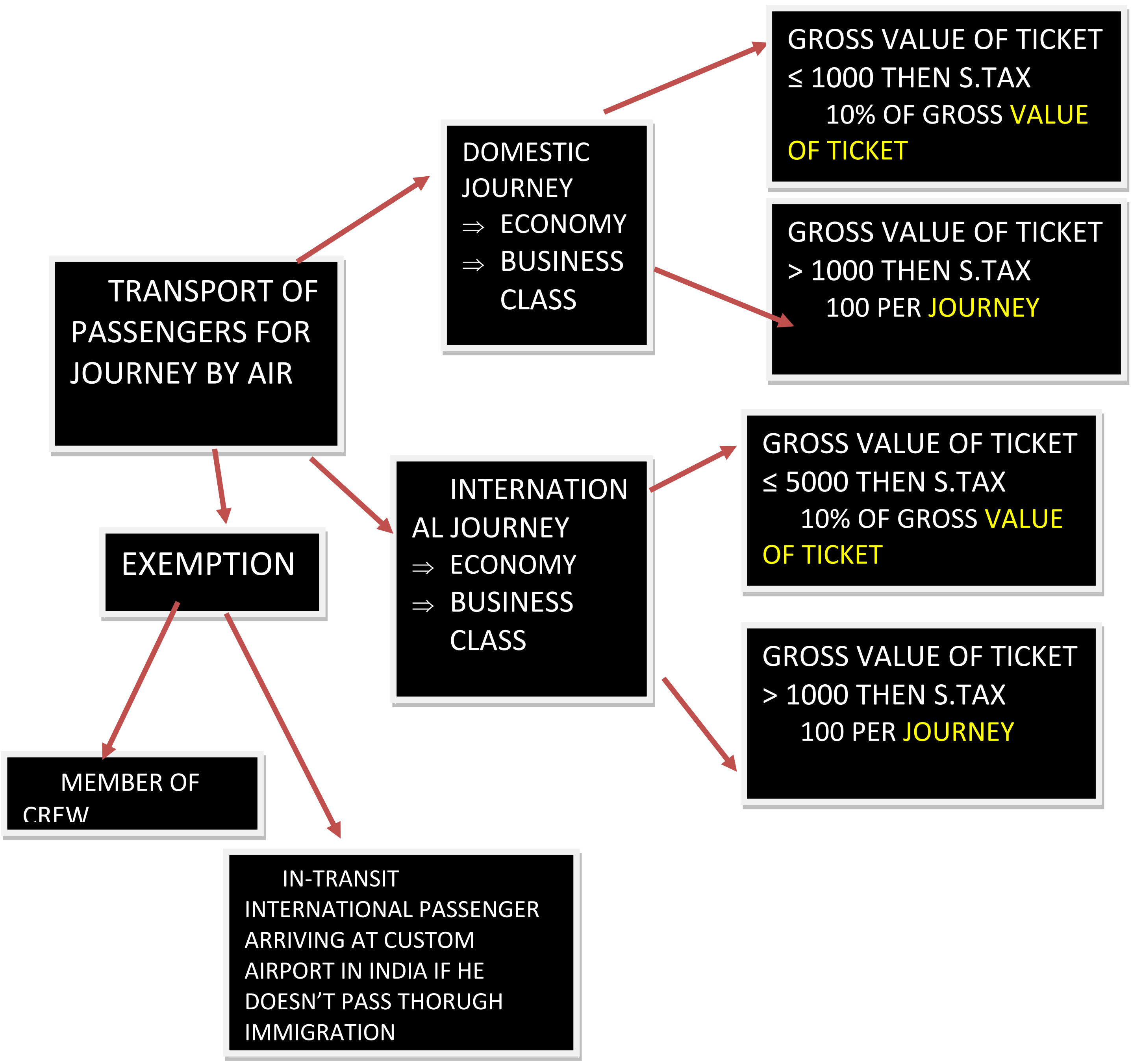
Calculate Value of taxable service

Ans

Particulars	Amt
2000 Passenger travelling from Delhi to Mumbai in economy class. Gross value per ticket Rs 1050 Tax on ticket Rs. 100 included in above. [95 × 2000]	190000
3000 Passenger travelling from Delhi to Mumbai in business class. Gross value per ticket Rs 1050 Tax on ticket Rs. 100 included in above. [95 × 3000]	285000
4000 Passenger travelling from Delhi to Mumbai in economy/ business class. Gross value per ticket Rs 1100. Tax on ticket Rs. 90 not included in above. [4000 × 100]	400000
1000 Passenger embarking from Delhi to U.S.A in economy class. Gross value per	495000

ticket Rs 4950 [495 × 1000]	
1000 Passenger embarking from Delhi to U.S.A in BUSINESS class. Gross value per ticket Rs5950 YQ, YR Charges Rs. 50 not included in gross value of ticket [600 × 1000]	600000
2500 passenger booking for Round Trip MUMBAI — DELHI — MUMBAI Gross value of ticket Mumbai- Delhi Rs 950 Delhi – Mumbai Rs 950 [2500 × 190]	475000
2500 passenger booking for Round Trip MUMBAI — DELHI — MUMBAI Gross value of ticket Mumbai- Delhi Rs 1100 Delhi – Mumbai Rs 1100 [2500 × 200]	500000
2000 passenger booking from Manipur to Delhi. Gross value per ticket Rs 950	------
2000 passenger booking from Delhi to Sikkim. Gross value per ticket Rs 1100	------
2500 passenger booking for Round Trip MUMBAI — DELHI — London in economy class. Gross value of ticket Mumbai- Delhi Rs 1100 Delhi – London Rs 5500 [2500 × 100 + 500 × 2500]	1500000
Value of taxable service	4445000





(3) TRANSPORT OF COASTAL GOODS OR TRANSPORT OF GOODS THROUGH NATIONAL OR INLAND WATERWAYS

(i) Taxable service

Means any service provided or to be provided
to any person, by any other person, in relation to transport of —

(i) coastal goods;
(ii) goods through national waterway; or
(iii) goods through inland water.

Explanation. — For the purposes of this sub-clause,—

(a) "coastal goods" has the meaning assigned to it in clause (7) of section 2 of the Customs Act, 1962
(b) "national waterway" has the meaning assigned to it in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985
(c) "inland water" has the meaning assigned to it in clause (b) of section 2 of the Inland Vessels Act, 1917

(ii) <u>EXEMPTION</u>

Transport of goods through national waterway & inland waterway & transport of coastal goods — Exemption to specified goods w.e.f. 1-9-2009-*[Notification No. 30/2009-S.T., dated 31-8-2009]*

CG exempts the taxable service provided to any person in relation to the transport of goods, OF the FOLLOWING description, through national waterway, inland water and coastal shipping from the whole of service tax leviable thereon under Section 66 of the said Act.

TABLE

Sl. No.	Description of Goods
(1)	(2)
1.	Foodstuffs including edible oil seeds and edible oils; food grains (cereals and pulses) and flours; fruits, vegetables and flowers; agricultural, fishery, marine produce; meat and poultry; water; tea and coffee; salt, sugar, sugarcane; grocery; milk and milk products; livestock and cattle fodder; dhoties, sarees and voils; Long cloth, sheeting
2.	Fertilizer whether inorganic, organic or mixed;
3.	Petroleum and petroleum products;
4.	Hank yarn made wholly from cotton;
5.	Raw jute and jute textile;
6.	Seeds of food crops and seeds of fruits and vegetables; seeds of cattle fodder and jute seeds;
7.	Medicine/pharmaceutical products;
8.	Relief materials meant for victims of natural or manmade disasters, calamities, accidents and mishap;
9.	Defence/military equipments.
10.	Luggage of passengers, whether carried as personal luggage in the ship or booked separately as consignment/postal mail/mail bags/Household effects
11.	Newspaper/magazines registered with Registrar of Newspapers

M/s ABC Shipping Company charges for transport of goods thought national or inland waterways Rs. 250 lakh. It includes the following.

Particulars	Rs. In Lakh
Transport of edible oils, cereal and pulses	25
Transport of vegetable, fruits, tea & coffee, salt, sugar, water and milk	40
Transport of petroleum products	70
Transport of machinery	35
Transport of raw jute & jute textile	10
Transport of medicintes	15
Transport of defence & Military equipments	5

Calculate value of taxable service

Particulars	Rs. In Lakh	Rs. In Lakh
Gross amount recovered Less-		250
Transport of edible oils, cereal and pulses	25	
Transport of vegetable, fruits, tea & coffee, salt, sugar, water and milk	40	
Transport of petroleum products	70	
Transport of machinery	----	
Transport of raw jute & jute textile	10	
Transport of medicintes	15	
Transport of defence & Military equipments	5	165
Value of taxable service		85

India has an extensive network of inland waterways in the form of rivers, canals, backwaters and creeks. The total navigable length is 14,500 kilometres (9,000 mi), out of which about 5,200 km (3,231 mi) of river and 485 km (301 mi) of canals can be used by mechanised crafts.[118] Freight transport by waterways is highly underutilised in India compared to other large countries. The total cargo moved by inland waterways is just 0.15% of the total inland traffic in India, Cargo transport in an organised manner is confined to a few waterways in Goa, West Bengal, Assam and Kerala. The Inland Waterways Authority of India (IWAI) is the statutory authority in charge of the waterways in India. It does the function of building the necessary infrastructure in these waterways, surveying the economic feasibility of new projects and also administration and regulation. The following waterways have been declared as National Waterways:

1. National Waterway 1 - Allahabad - Haldia stretch of the Ganges - Bhagirathi - Hooghly river system with a total length of 1,620 kilometres (1,010 mi) in October 1986.[120]
2. National Waterway 2 - *Saidiya* - Dhubri stretch of the Brahmaputra river system with a total length of 891 kilometres (554 mi) in 1988
3. National Waterway 3 - Kollam - Kottapuram stretch of the West Coast Canal along with Champakara and Udyogmandal canals, with a total length of 205 kilometres (127 mi) in 1993.
4. National Waterway 4 - Bhadrachalam - Rajahmundry and Wazirabad - Vijaywada stretch of the Krishna - Godavari river system along with the Kakinada - Puducherry canal network, with a total length of 1,095 km (680 mi) in 2007.
5. National Waterway 5 - *Mangalgadi* - Paradeep and Talcher - *Dhamara* stretch of the Mahanadi - Brahmani river system along with the East Coast Canal, with a total length of 623 km (387 mi) in 2007
6. *National Waterway 6 (India)* Lakhipur to Bhanga of river Barak. {**Proposed** }**Length** = 121 km

(4) Port (Major port & other port) service

(i) Taxable service in respect of Major port

Means any service provided or to be provided
to any person, by any other person, in relation to port services in a port, in any manner :
Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within the port;]

Taxable service in respect of other port

Means any service provided or to be provided
to any person, by any other person, in relation to port services in other port, in any manner :
Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within other port;]

(ii) DEFINITIONS

"port" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963 i.e port means any Major port to which the Major Port Trusts Act, 1963 applies.

"other port" has the meaning assigned to "port" in clause (4) of section 3 of the Indian Ports Act, 1908 but does not include MAJOR PORT

"port service" means any service rendered within a port or other port, in any manner;]

The ports are the main centres of trade. In India about 95% of the foreign trade by quantity and 70% by value takes place through the ports. Mumbai Port & JNPT(Navi Mumbai) handles 70% of maritime trade in India. There are 12 major ports: Navi Mumbai, Mumbai, Kolkata (including Haldia), Paradip, Vishakapatnam, Ennore, Chennai, Tuticorin, Kochi, New Mangalore, Mormugao and Kandla.
Other than these, there are 187 minor and intermediate ports, 43 of which handle cargo.

The distinction between major and minor ports is not based on the amount of cargo handled. The major ports are managed by port trusts which are regulated by the central government. They come under the purview of the Major Port Trusts Act, 1963. The minor ports are regulated by the respective state governments and many of these ports are private ports or captive ports.

(iii) <u>EXEMPTIONS</u>

(i) Airport Service/Port Services — Exemption to specified services provided within airport or port w.e.f. 1-7-2010 -- *[Notification No. 41/2010-S.T., dated 28-6-2010]*

CG exempts the following services when provided wholly within the port or other port or airport namely :-

(i) taxable service provided by a cargo handling agency in relation to, agricultural produce of goods intended to be stored in a cold storage;
(ii) taxable service provided by storage or warehouse keeper in relation to storage and warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage;
(iii) taxable service in relation to transport of export goods in an aircraft by an aircraft operator;
(iv) taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

(ii) Airport service/Port services — Exemption to specified services provided within a port or an airport w.e.f. 1-7-2010-- *[Notification No. 31/2010-S.T., dated 22-6-2010]*

CG exempts the following services when provided within a port or an airport : -

(i) repair of ships or boats or vessels belonging to the Government of India including Navy or Coast Guard or Customs but does not include Government owned Public Sector Undertakings;
(ii) repair of ships or boats or vessels where such process of repair amounts to 'manufacture' and has the meaning assigned to it in clause (f) of Section 2 of the Central Excise Act, 1944;
(iii) supply of water;
(iv) supply of electricity;
(v) treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (except cosmetic or plastic surgery service);
(vi) services provided by a school or centre to provide formal education other than those services provided

by commercial coaching or training centre;
(vii) services provided by fire service agencies.
(viii) pollution control services

from the whole of the service tax leviable thereon under section 66 of the Finance Act.

(iii) Effective rate of Service tax for specified services — Percentage of abatements

By finance Act 2010 any service rendered within port will be classified as port service. Hence the abatements which are individually applicable in respective service will also be allowed under port service.

		abatement
Renting of a Cab		60
Transport of goods by road in a goods carriage.		75
Erection, commissioning or installation, under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment	This exemption is optional to the commissioning and installation agency. *Explanation.* - The gross amount charged from the customer shall include the value of the plant, machinery, equipment, parts and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service.	67
Commercial or industrial construction service.	This exemption shall not apply in such cases where the taxable services provided are only completion and finishing services in relation to building or civil structure, *Explanation.* - The gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service	67 /75 as the case may be
Construction of complex	This exemption shall not apply in cases where the taxable services provided are only completion and finishing services in relation to residential complex, referred to in sub-clause (b) of clause (30a) of section 65 of the Finance Act. *Explanation.* - The gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.	67 /75 as the case may be
Transport of goods by rail		70

Provided that this notification shall not apply in cases where, -

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or

(ii) the service provider has availed the benefit under the notification No. 12/2003- in respect of value of goods and materials sold by him to receipient of service.

(iv) <u>CBEC CLARIFICATION</u>

<u>334/1/2010</u> The definitions of the taxable services, namely the 'Airport Services' [section 65 (105) (zzm)], the 'Port Services' [section 65 (105) (zn)] and the 'Other Port Services' [section 65 (105) (zzl)] are being amended to provide that,-

(a) all services provided *entirely* within the airport/port premises would fall under these services; and

(b) an authorization from the airport/port authority would not be a precondition for taxing these services.

REPAIR OF SHIPS OR BOATS OR VESSELS
- ⇒ GOVT OF INDIA
- ⇒ NAVY, COAST GUARD
- ⇒ CUSTOMS

REPAIR OF SHIP EQUAL TO MANUFACTURE

SUPPLY OF WATER OR ELECTRICITY

SERVICE PROVIDED BY FIRE AGENCIES OR POLLUTION CONTROL SERVICE

PORT OR AIRPORT SERVICE

TREATMENT BY DISPENSARY OR HOSPITAL OR NURSING HOME OR MULTI-SPECIALITY CLINIC

BUT PLASTIC SUGERY OR COSMETIC SURGERY -- TAXABLE

EDUCATION PROVIDED BY SCHOOL OR CENTRE – FORMAL EDUCATION

BUT EDUCATION BY COMMERCIAL COACHING CENTRE -

AGR. PRODUCE TO BE STORED IN COLD STORAGE IN PORT

SERVICE PROVIDED BY CARGO HANDLING AGENCY

SERVICE PROVIDED FOR STORAGE & WAREHOUSING

TRANSPORT OF EXPORT GOODS IN AIRCRAFT BY AIRCRAFT OPERATOR

TRANSPORT OF EXPORT GOODS IN AIRCRAFT BY AIRCRAFT OPERATOR

ABATEMENT

1. RENTING OF CAB -60%
2. ERECTION, COMMISIONING & INSTALLATION – 67%
3. COMMERCIAL OR INDUSTRIAL CONSTRUCTION – 67 % OR 75%
4. COSTRUCTION OF COMPLEX – 67 % OR 75%
5. TRANSPORT OF GOODS IN CONTAINM BY RAIL – 70%
6. GTA- 75%

(5) AIRPORT SERVICE

(i) Taxable service

Means any service provided or to be provided
to any person, by airports authority or by any other person, in any airport or a civil enclave :
Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within the airport or civil enclave;]

“airport” has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994
“airports authority” means the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 and also includes any person having the charge of management of an airport or a civil enclave;]
“civil enclave” has the meaning assigned to it in clause (i) of section 2 of the Airports Authority of India Act, 1994
CIVIL ENCLAVE means the area, if any allotted at an airport belonging to any armed force of the Union for use by persons availing of any air transport services from such airport or for the handling of baggage or cargo by such service, and includes land comprising of any building and structure on such area.

Calculate taxable value under port service

Particulars	Rs. In Lakh
Recovered port and dock charges a) Berthing charges 5 b) Mooring charges 4 c) Port dues 8 d) Pilotage 3 e) Water supply charges 2 f) Salvage and diver charges 2 g) Anchorage charges 1	25
Recovered cargo handling charges a) Wharfage for general cargo/ petroleum products 20 b) Carnage charges 5 c) Ore handling charges 2 d) Weighment charges for lorries and goods 3 e) Traffic appliance charges 10	40
Recovered warehousing and storage charges	70
Cargo handling charges for agriculture produce to be stored in cold storage	35
Warehousing charges for agriculture produce to be stored in cold storage	10
Container handling charges Transshipment wharfage on containers Container storage charges	15
Repair of ships of PSU in port	5
Repair of ships of Navy in port	6
Repair of ships of ‘K Line ship’ in port	3
Repair of ships of CUSTOM in port	2
Repair of ships of PSU amounting to manufacture in port	4
Pollution control services.	3
	218

Calculate Value of taxable service

ANS

Particulars	Rs. In Lakh
Recovered port and dock charges a) Berthing charges 5	23

b) Mooring charges 4 c) Port dues 8 d) Pilotage 3 e) Water supply charges --- (W.n-1) f) Salvage and diver charges 2 g) Anchorage charges 1	
Recovered cargo handling charges a) Wharfage for general cargo/ petroleum products 20 b) Carnage charges 5 c) Ore handling charges 2 d) Weighment charges for lorries and goods 3 e) Traffic appliance charges 10	40
Recovered warehousing and storage charges	70
Cargo handling charges for agriculture produce to be stored in cold storage (W.N-2)	----
Warehousing charges for agriculture produce to be stored in cold storage (W.N-2)	----
Container handling charges Transshipment wharfage on containers Container storage charges	15
Repair of ships of PSU in port (W.N-3)	5
Repair of ships of Navy in port (W.N-3)	-----
Repair of ships of 'K Line ship' in port	3
Repair of ships of CUSTOM in port (W.N-3)	----
Repair of ships of PSU amounting to manufacture in port (W.N-3)	---
Pollution control services. (W.N-3)	----
Value of taxable service	156

WORKING NOTES

1) As per NN 22/2010 supply of water is exempt
2) CG exempts the following services when provided wholly within the port or other port or airport namely :-
   taxable service provided by a cargo handling agency in relation to, agricultural produce of goods intended to be stored in a cold storage;
   taxable service provided by storage or warehouse keeper in relation to storage and warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage;

3) CG exempts the following services when provided within a port or an airport : -
   (i) repair of ships or boats or vessels belonging to the Government of India including Navy or Coast Guard or Customs but does not include Government owned Public Sector Undertakings;
   (ii) repair of ships or boats or vessels where such process of repair amounts to 'manufacture' and has the meaning assigned to it in clause (f) of Section 2 of the Central Excise Act, 1944;
   (iii) pollution control services

Mooring charges	नौकादि बाँधने का रस्सा शुल्क
Pilotage	मार्गदर्शन शुल्क
Water supply charges	पानी की आपूर्ति शुल्क
Salvage and diver charges	गोताखोर बचाव शुल्क
Anchorage charges	लंगर शुल्क
Wharfage	Wharfage refers to a fee ports impose on ships against the amount of cargo handled there

Que- whether service tax levied, if yes, then under which service when provided in port.

1) Fire fighting service agency providing service for fire fighting
2) Pollution control service provided
3) Amount charged for education provided by school at airport.
4) Amount charged for education provided by Commercial coaching centre at Airport.
5) Service provided by dispensary, hospital, nursing home.
6) Cosmetic or plastic surgery provided by hospital, multi- speciality clinic.
7) Supply of water or electricity
8) Repair of ship of Navy at port

ANS-

(1) CG exempts the following services when provided within a port or an airport when services provided by fire service agencies
(2) CG exempts the following services when provided within a port or an airport when pollution control services provided

(3) CG exempts the following services when provided within a port or an airport when services provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre;
(4) Services provided by commercial coaching centre **not exempt** because CG exempts services when provided within a port or an airport provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre
(5) TaxBLE, BECAUSE CG exempts services when provided within a port or an airport provided for treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (**except cosmetic or plastic surgery service**);
(6) CG exempts services when provided within a port or an airport supply of water or supply of electricity;
(7) CG exempts the following services when provided within a port or an airport for repair of ships or boats or vessels belonging to the Government of India including Navy or Coast Guard or Customs

Que- whether service tax levied, if yes, then under which service when provided in port. And determine value of taxable service

1) DLF has constructed canteen, Restaurant, public booth office at a cost of Rs. 20 Lakh
2) L & T erected, installed, telephone equipments, cold storage equipments and charged Rs 50 lakh.
3) M/s ABC charged from Aioport Rs. 30 lakh for renting a cab being operated in Airport.
4) M/s XYZ, a GTA bringing the goods from landing place to Port Gate by Road in its vehicles nd charging Rs. 25000.
5) M/s PQR, a Cargo handling agency providing loading, unloading, packing service within Port & charged Rs. 70000.

Ans

(1) The construction of canteen, restaurant, public booth will not be classified under commercial construction service rather it will be classified in port service because after amendment by Finance Act 2010, when services entirely provided in port will be classified in port service. And abatement provided in commercial construction i.e 67% if cost of land not include or 75% when cost of land included will be given from Gross amount charged.
(2) erected, installed, telephone equipments, cold storage equipments and charged Rs 50 lakh will not be classified under Erection, commissioning & installation service rather it will be classified in port service because after amendment by Finance Act 2010, when services entirely provided in port will be classified in port service. And abatement provided in Erection, commissioning & installation i.e 67% will be given.
(3) Renting of cab will not be classified under Renting of cab service rather it will be classified under port service.

(4) GTA service provided will not be classified under GTA service but classified under port service and abatement of 75% of value of taxable service will be given.
(5) Cargo handling service provided within port will not be classified under cargo handling agency service rather it will be classified under port service.

(6) TOUR OPERATOR

(i) Taxable service

Means any service provided or to be provided
to any person, by a tour operator in relation to a tour;

(ii) DEFINITIONS

(a) **"tour operator"** means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or the rules made thereunder.

Explanation. — For the purposes of this clause, the expression "tour" does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field;]

(b) **"tour"** means a journey from one place to another irrespective of the distance between such places;

(c) **"tourist vehicle"** has the meaning assigned to it in clause (43) of section 2 of the Motor Vehicles Act, 1988

Tourist vehicle means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf.

(d) Contract carriage—sec 2(7) of Motor Vehicle Act

Means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therin and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum-

(a) On a time basis, whether or not with reference to any route or distance or
(b) From one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and include—
   (i) A maxi-cab and
   (ii) A Motor cab nothwithstanding that separate fares are charged for its passengers.

(e) Stage carriage sec 2(40) of Motor Vehicle Act

means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

(iii) EXEMPTIONS

Tour Operator service — Exemption to tour operators with contract carriage permit for specified services-- *[Notification No. 20/2009-S.T., dated 7-7-2009]*

CG exempts the taxable service provided or to be provided to any person, by a tour operator having a contract carriage or tourist vehicles with a permit" for inter-state or intrastate transportation of passengers, excluding tourism, conducted tours, charter or hire service, from whole of the service tax leviable thereon under section 66 of the said Finance Act.

Reason of Exemptions :- Clarification

Private bus operators, who operate buses on specific inter-state (e.g Delhi to Haryana) or intra-state routes (e.g ITO to Pitampura- within Delhi), are required to pay service tax as they ply their buses having 'contract carriage permits' and thus fall within the definition of tour operators. On the other hand the State Undertakings run buses, which run on the same route carrying passengers, are not subjected to service tax as these buses bear 'stage carriage permit'. In order to bring parity between the two, the services provided by the tour operators undertaking point-to-point transportation of passengers in a vehicle bearing contract carriage permit is being fully exempted from service tax, provided such transportation is not in relation to tourism or conducted tours, or charter or hire. (Notification No. 20/2009-S.T., dated 7-7-2009 refers).

(iv) Abatement

Tour operator service — Abatement percentage for package tour increased to 75% — Notification No. 1/2006-S.T. amended- *[Notification No. 38/2007-S.T., dated 23-8-2007]*

Following abatements prescribed

DESCRIPTION	CONDITIONS	% OF abatement
(i) Services provided or to be provided to any person, by a tour operator in relation to a package tour. *Explanation.* - The expression "package tour" means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour.	The bill issued for this purpose indicates that it is inclusive of charges for such a tour.	75
(ii) Services provided or to be provided to any person, by a tour operator in relation to a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour.	(a) The invoice, bill or challan issued indicates that it is towards charges for such accommodation, and (b) this exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.	90
(iii) Services, other than services specified in (i) and (ii) above, provided or to be provided to any person, by a tour operator in relation to a tour.	The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.	60"

Provided that this notification shall not apply in cases where, -

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or

(ii) the service provider has availed the benefit under the notification No. 12/2003- in respect of value of goods and materials sold by him to receipient of service.

(v) CBEC CLARIFICATION

Trade notice 6/98

Under Section 65(52) of the Finance Act, 1994 the definition of `tour operator' has been revised to mean any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 or the rules made thereunder. **With this change, `non-permit holders' who operate as tour operators by using tourist vehicles**, which may have been leased or hired from persons who hold tourist permits are also now covered under the definition of a tour operator and liable to pay service tax.

B2/8/2004

Means part of Tour operator covers Packaged Tour. In case of a package tour (which are planned, scheduled, organized or arranged by tour operators), **the scope of the levy is being extended by removing the limitation regarding transportation by tourist vehicles only**. Such tourist operators would be subjected to service tax **irrespective of the mode of transport used during such tours**.

334/1/2008

(a) Services provided in relation to a journey from one place to another in a tourist vehicle having contract carriage permit is leviable to service tax under tour operator service. Tour in a vehicle covered by the following categories of permits granted under the Motor Vehicles Act (MVA), 1988 and rules made thereunder are clearly leviable to service tax under tour operator service:

(i) Contract Carriage permit granted under section 74 of the MVA, 1988 and authorisation certificate issued under Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993; and

(ii) Permit granted under section 88(9) in accordance with the provisions of section 74 of the MVA, 1988 in respect of tourist vehicles, for the purpose of promoting tourism.

Since the permits under the above two categories are granted only for tourist vehicle, service tax is leviable if the tour is provided in the above categories of vehicles.

(b) Section 65(115) defining tour operator is being amended so as to include services provided in relation to a journey from one place to another, generally known as point-to-point tour, **in a vehicle having contract carriage permit**, even if the vehicle does not meet the criteria specified for tourist vehicles. With this amendment, journey from one place to another conducted in a vehicle having contract carriage permit shall be leviable to service tax under tour operator service. Service tax is not leviable under tour operator service only if the tour is conducted in a vehicle having stage carriage permit.

(c) It may be noted that services provided in relation to a journey from one place to another conducted in a tourist vehicle having contract carriage permit for use by educational bodies shall be excluded from the scope of the taxable service. Educational bodies do not include commercial training or coaching centres.

Trade notice 1/2000

(a) As per rule 82 of the Central Motor Vehicle Rules, 1989 a tourist permit is granted only for a 'tourist vehicle'. As per the Motor Vehicle Act, Section 2 (43) a tourist vehicle means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed. The term 'tour operators' covers any person who holds a tourist permit in respect of any vehicle. The service tax on tour operators is on operators who run/operate a tour on motor vehicle provided that the tour operator holds a tourist permit under the Motor Vehicles Act, 1988 in respect of any motor vehicle**. Service Tax will be chargeable on all domestic and inbound tourist services provided by a tour operator holding a tourist permit**. Service Tax will also be chargeable on journeys/tours undertaken by tourist taxis and tourist buses or contract carriage other than stage carriage permit.

(b) The tour operator can be all self-employed, single vehicle owner individual or a well organized firm providing a vast range of professional services in the field of tourism whether organized as a sole proprietorship, partnership, a private or a public limited company. Even public sector undertakings operating tours such as Indian Tourism Development Corporation, Delhi Tourism Development Corporation etc. are covered under this levy. However, State Roadways Corporations who fly the passengers in the neighbouring State will not be covered by the levy as they do not require a tourist permit but operate on the strength of agreements between the concerned state authorities.

(c) The services rendered by the tour operator may be only for providing transport service within or outside, the town, city or State's territorial limits. The services rendered by the tour operators may only be limited to providing transport services in relation to a tour or it may also include a **host of other services** as in case of a package tour. The services provided by such a tour operator may also include, apart from providing the basic service of transportation from one place to another, services of providing **boarding and lodging arrangements, local sight seeing and guide services and a wide range of other value added services** provided by the tour operators such as **providing for porters, booking or arranging accommodation, reservation for entertainment/amusement parks, theatres and museums, providing health and baby sitting services etc.**

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, (Circular No. 111/05/2009-S.T., dated 24-2-2009), the service in respect of tour operator is export if such service is performed outside India. It is also provided therein that where such taxable service is partly performed outside India, it shall be treated as 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 export as provided in Export of Service Rules.

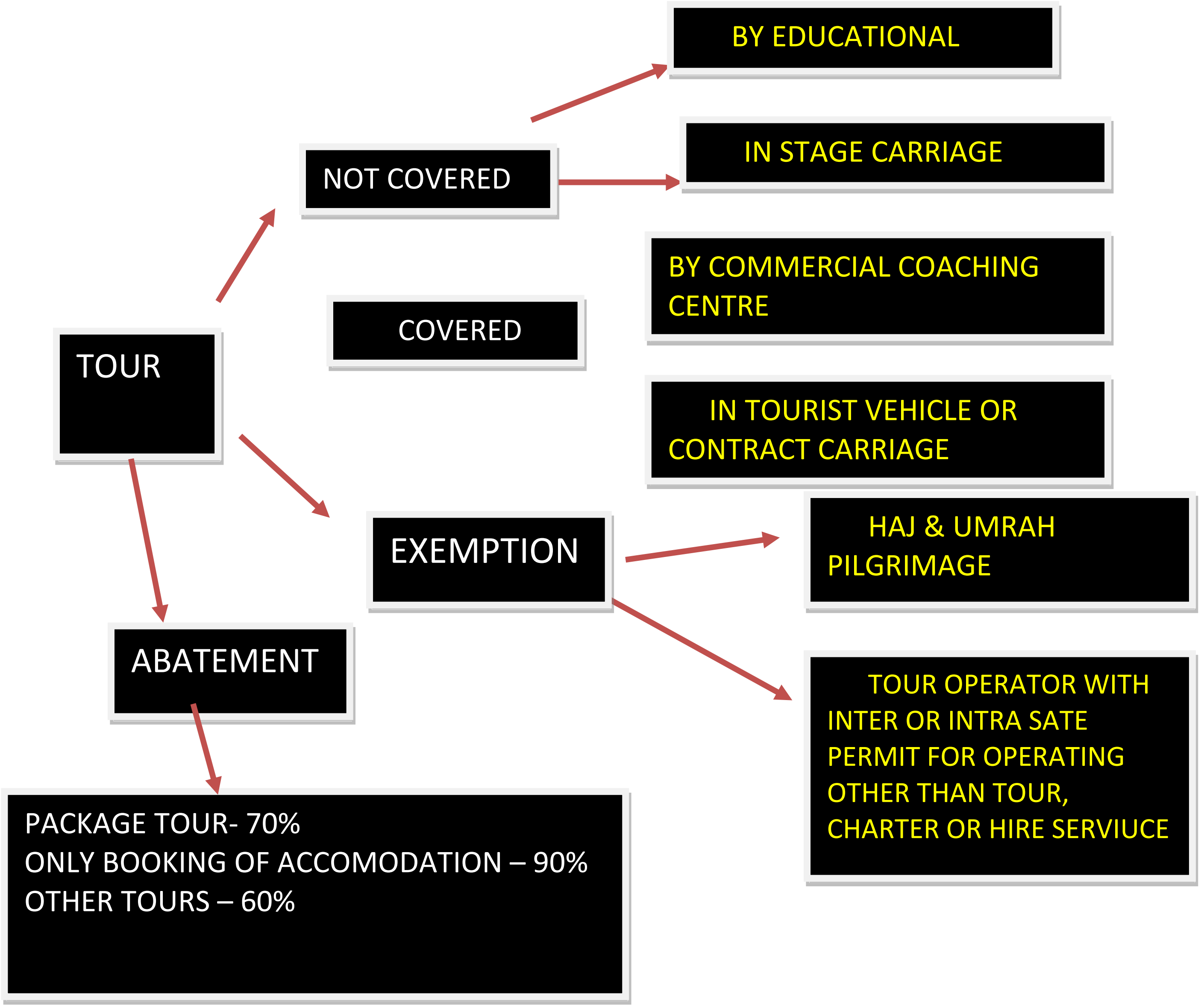
Que- M/s ABC Tours & Travels arranged following Tours

1) Package Tour include Transportation, sight seeing, accommodation, food, tour guide etc. for which amount charged Rs. 200 lakh
2) Only service provided regarding booking of accommodation. For which amount charged Rs 30 lakh
3) Service provided regarding transportation and accommodation for which amount charged Rs. 80 lakh.
4) Amount charged by tour operator between delhi to Haryana other than for tour Rs. 25 lakh.

Calculate Value of taxable service

Ans

Particulars	Amt in lakh
Package Tour [200 – 75% of 200]	50
service provided only booking of accommodation.[30 – 90% of 30]	3
Service provided regarding transportation and accommodation [80 – 60% of 80]	32
tour operator between delhi to Haryana other than for tour exempt	------
Value of taxable service	85



(7) HEALTH CHECK-UP SERVICE

(i) Taxable service

Means any service provided or to be provided
by any hospital, nursing home or multi-speciality clinic,—

(i) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-specialty clinic; or
(ii) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-specialty clinic;

"business entity" includes an association of persons, body of individuals, company or firm but does not include an individual;]

(ii) CBEC CLARIFICATION

334/1/2010 Health services undertaken by hospitals or medical establishments for the employees of business organizations and health services provided under health insurance schemes offered by insurance companies.

(1) With the change in the style of functioning of the business organizations, health check up is a routine facility provided by the employers to their employees. The main purpose is to ensure that the productivity of the organization is not adversely affected due to ill health of its employees. Such activities, commonly known as corporate health check up schemes, are undertaken by designated hospitals in order to detect any medical indicator or to ensure timely diagnosis of any disease so that prophylactic measures can be taken. In such cases, the hospital providing these services charge the employer i.e. the business organization and it constitutes expenditure for the latter. In certain cases (for example, in case of flight crew) pre-flight check ups are conducted not only to test the fitness levels but also to rule out the possibility of the flying crew being under intoxication. Such health check up schemes are being brought within the ambit of service tax under the new service.

(2) A large number of health insurance schemes are being offered by the insurance companies under which charges for hospitalization, surgery, post-surgical nursing etc. are generally paid by the insurance company. Such insurance policies, which fall under the category of general insurance service, are already taxable. Under general insurance service, an insurance company is a service provider to its clients. Under the proposed new service, tax is also being imposed on the medical charges paid by the insurance companies to the hospitals on behalf of a business entity for its employees. As such, the insurance company would be the service receiver and the tax paid by the hospital would be available to the insurance companies as credit.

(3) The tax on the above mentioned health services would be payable only if and to the extent the *payment for such medical check up or treatment etc. is made directly by the business entity or the insurance company to the hospital or medical establishment.* Any additional amount paid by the individual (i.e. the employee or the insured, as the case may be) to the hospital would not be subjected to service tax. This is to ensure that an individual is not required to pay a tax for which he cannot take credit.

Que – Tata Hospital provided following service

Particulars	Amt in lakh
Health check/ Preventive check of employees of companies for which payment made by companies	25
Health treatment of employees of companies for which payment made by companies	75
Health check/ Preventive check of employees of companies for which payment made directly by individuals to Hospital	30
Health treatment of employees of companies for which payment made by individuals directly to hospital	45
Health check of employees of Proprietorship firm for which payment made by proprietorship firm	25
Health check of employees of Proprietorship firm for which payment made by employees directly.	10
Health check up of individuals insured under cash-less insurance schemes, where payment made directly by insurance company	20
Preventive check up of individuals insured under cash-less insurance schemes, where payment made directly by insurance company	70
Health check up of individuals insured under health insurance schemes, where payment made directly by individuals which is later on reimbursed by insurance company to individuals	15
	315

Calculate Value of taxable service

Ans

Particulars	Amt in lakh
Health check/ Preventive check of employees of companies for which payment made by companies	25
Health treatment of employees of companies for which payment made by companies [w.n-1]	----

Health check/ Preventive check of employees of companies for which payment made directly by individuals to Hospital [w.n-2]	----
Health treatment of employees of companies for which payment made by individuals directly to hospital [w.n-3]	----
Health check of employees of Proprietorship firm for which payment made by proprietorship firm [w.n-4]	----
Health check of employees of Proprietorship firm for which payment made by employees directly. [w.n-4]	----
Health check up of individuals insured under cash-less insurance schemes, where payment made directly by insurance company	20
Preventive check up of individuals insured under cash-less insurance schemes, where payment made directly by insurance company [w.n-5]	----
Health check up of individuals insured under health insurance schemes, where payment made directly by individuals which is later on reimbursed by insurance company to individuals [w.n-6]	----
Value of taxable service	45

Working notes

1) Health treatment is not covered
2) Since no direct payment made by business entity, hence it is not taxable.
3) Since the payment made by employees directly and the payment is for health treatment. Hence not taxable.
4) Since the employee is not of business entity, hence not taxable.
5) Preventive check for which payment made by insurance company is not covered, hence not taxable.
6) Since payment not made by insurance company directly, hence it is not taxable.

(8) BRAND PROMOTION SERVICE

(i) Taxable service

Means any service provided or to be provided
to any person, by any other person, through a business entity or otherwise, under a contract for promotion or marketing of a brand of goods, service, event or endorsement of name, including a trade name, logo or house mark of a business entity by appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event.

Explanation. — For the purposes of this sub-clause, "brand" includes symbol, monogram, label, signature or invented words which indicate connection with the said goods, service, event or business entity;

"business entity" includes an association of persons, body of individuals, company or firm but does not include an individual;]

(ii) CBEC CLARIFICATION

334/1/2010 Promoting a 'brand' of goods, services, events, business entity etc.

(1) Commercial advertisement has taken different shapes and forms. Apart from the advertisements in print and visual media and sponsorship, one of the recent trends is to advertise a brand (i.e. of goods, services, events, business houses bearing a particular brand name or house name) usually by using a celebrity (such as sportsperson, film stars, etc.) to associate him/her with the brand. The intended impression that is created in the minds of customers or users is that the products and services of that brand have the level of excellence comparable to that of the celebrity. Unlike in case of advertisements using models, a brand ambassador works under a contract of a reasonably long period, where under he is not only required to advertise the goods or service in different media but also to attend promotional, product launching events, make appearances in public activities related to the brand or the brand holder or use such goods or services in public. The contractual amounts are substantial and it may not only involve an individual celebrity but a group of celebrities such as a cricket team or the actors of a successful film.

(2) It is important to note that promotion or marketing of sale of goods produced, provided or belonging to a client and promotion or marketing of services provided by the client are already covered under Business Auxiliary Services (BAS). Such activities would continue to remain classified under BAS. The difference between the services classifiable under BAS and the newly proposed service is that the latter has a wider coverage in the sense that mere promotion of a brand would attract tax under this service even if such promotions cannot be directly linked to promotion of a particular product or service. Many companies/corporate houses (for example Sahara, ITC or Tatas) are associated with a range of activities including production/marketing/sale of goods, provision of services, holding of events, undertaking social activities etc. If the brand name/house mark etc. is promoted by a celebrity without reference to any specific product or services etc., it is difficult to classify it under BAS. Such activities, like mere establishing goodwill or adding value to a brand would fall under this newly introduced service.

Que- M/s Sahara India/ DLF signed an agreement with BCCI for Promotion of Brand of Sahara/ DLF without directly reference to any individual product. For Rs. 100 crore.
Ans- taxable under brand promotion and not under business auxiliary service.

Que Bahara Group of Industries is engaged in manufacture of a range of products and providing variety of services. The brand name of Bahara Group of Industries is being promoted by a well known celebrity without reference to any of its specific product or services. The Department contends that the services provided by the celebrity to Bahara Group of Industries would be classified under 'business auxiliary services'.

Examine whether the contention of the Department is correct?

Ans **The contention of the Department is not correct.** ***D.O.F. No. 334/1/2010-TRU dated 26.02.2010*** clarifies that if the brand name / house mark etc. is promoted by a celebrity without reference to any specific product or services etc., it is difficult to classify it under 'business auxiliary services'. Such activities, like mere establishing goodwill or adding value to a brand would fall under the newly introduced service of promoting a 'brand' of goods, events, business entity etc. under section 65(105)(zzzzq)].

(9) ERECTION, COMMISSIONING OR INSTALLATION SERVICE

(i) Taxable service

Means any service provided or to be provided
to any person], by a [erection, commissioning and installation] agency in relation to commissioning or installation;

(ii) DEFINITION

"erection, commissioning or installation" means any service provided by a commissioning and installation agency, in relation to, —

(i) erection, commissioning or installation of plant, [machinery, equipment or structures, whether pre-fabricated or otherwise]; or
(ii) installation of —
(a) electrical and electronic devices, including wirings or fittings therefor; or
(b) plumbing, drain laying or other installations for transport of fluids; or
(c) heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work; or
(d) thermal insulation, sound insulation, fire proofing or water proofing; or
(e) lift and escalator, fire escape staircases or travelators; or
(f) such other similar services;]

commissioning and installation agency" means any agency providing service [in relation to erection, commissioning or installation;]

(iii) EXEMPTION

Erection, Commissioning or Installation service — Exemption to specified food grain handling system, cold storage and agricultural processing units- *[Notification No. 12/2010-S.T., dated 27-2-2010]*

CG exempts the taxable service in relation to the following from the whole of the service tax, namely :-

(i) erection, commissioning or installation of mechanised food grain handling systems;

(ii) erection, commissioning or installation of equipment for setting up or substantial expansion of cold storage;

(iv) installation and commissioning of machinery or equipment for initial setting up or substantial expansion of units for processing agricultural, apiary, horticultural, dairy, poultry, aquatic and marine products and meat.

(v) ABATEMENT- 1/2006

Erection, commissioning or installation, under a contract for supplying a plant, machinery, equipment or structure and erection, commissioning or installation of such plant, machinery , equipment Or structure	This exemption is optional to the commissioning and installation agency. *Explanation.* - The gross amount charged from the customer shall include the value of the plant, machinery, equipment, structure, parts and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service.	67

Provided that this notification shall not apply in cases where, -

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or

(ii) the service provider has availed the benefit under the notification No. 12/2003- in respect of value of goods and materials sold by him to receipient of service.

Note- if services of erection, commissioning and installation are rendered wholly within port or other port or airport then this abatement shall continue to be available even though these are classified under port or other port or airport service respectively.

(vi) CBEC CLARIFICATION

Erection would refer to the civil works to installation/commissioning of a plant or machinery. In this year's budget, the scope of service tax under installation and commissioning is being extended to include erection also. Erection involves civil works, which would otherwise fall under the category of construction services. However, in case of a composite contract for erection, commissioning and installation, the erection charges would be taxed as part of this category of service.

B 1/6/2005 --Erection, commissioning or installation services

Erection, commissioning or installation of plant, machinery or equipment is already covered under service tax. The scope of this taxable service has been expanded by including specified installation services such as installation of electrical and electronic devices including their wirings and fittings, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work, and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases and travelators [refer clause (39a) of section 65].

Cable laying under or alongside roads — Service tax liability- Circular No. 123/5/2010-TRU, dated 24-5-2010

2.*Scope of certain taxable services in brief;*

'Commercial or industrial construction services', in brief,

(i) cover construction of and the completion, finishing, repair, alteration, renovation, restoration or similar activities pertaining to buildings, civil structures, pipelines or conduits. Therefore, only such electrical works that arc parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits, are covered under the definition of this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.

Under '
(ii) Erection, commissioning or installation services', the activities relevant to the instant issue are
- (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and
- (b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.

3.*The taxable status of various activities, on which disputes have arisen*

Based on the foregoing, the following would be the tax status of some of the activities in respect which disputes have arisen,

S. No.	Activity	Status
1.	Shifting of overhead cables/ wires for any reasons such as widening/renovation of roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.
2.	Laying of cables under or alongside roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
3.	Laying of electric cables between grids/sub-stations/ transformer stations en route	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.
4.	Installation of transformer/ substations undertaken independently	Taxable service, namely Erection, commissioning or installation services [section 65(105)(zzd)].
5.	Laying of electric cables up to distribution point of residential or commercial localities/ complexes	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.
6.	Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service, namely commercial or industrial construction' or 'construction of complex' service [section 65(105)(zzq)/(zzzh)], as the case may be.
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service, namely Erection, commissioning or installation services [section 65(105)(zzd)].
8.	Railway electrification, electrification along the railway track	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994

Que - M/s L & T providing Erection, commissioning and installation service

particulars	Amt in lakh
Centralized AC System installed at site of Tata for which amount charged 40 lakh. It includes transfer of property in goods Rs. 25 lakh liable to VAT in State	
Centralized AC System installed at site of Tata for which amount charged 40 lakh. It includes transfer of property in goods Rs. 25 lakh not liable to VAT in State	
Lift, escalator and fire escape staircase installed at site of Delhi Metro site for which amount charged . material is supplied by Delhi Metro	15
Erection, commissioning , installation of Mechanised Food grains Handling system for Basmati. It includes the value of matrial Rs 40 lakh liable to vat	75
Erection, commissioning , installation of cold storage plant for Basmati. It includes the value of material Rs 40 lakh not liable to vat	75
Pumbing, drain laying or other installation for transportation of fluid for Gail. Matrial supplied by GAIL.	45
Heating, ventilation , AC installed in a shopping Mall. Material value included is 10 lakh not liable to VAT.	25
Erection, commission and installation of Thermal insulation, Sound insulation installed in port	10
	245

Calculate Value of taxable service

Ans

particulars	Amt in lakh
Erection, commissioning & installation	
Centralized AC System installed at site of Tata for which amount charged 40 lakh. It includes transfer of property in goods Rs. 25 lakh liable to VAT in State	------
Centralized AC System installed at site of Tata for which amount charged 40 lakh. It includes transfer of property in goods Rs. 25 lakh not liable to VAT in State	15
Lift, escalator and fire escape staircase installed at site of Delhi Metro site for which amount charged . material is supplied by Delhi Metro	15
Erection, commissioning , installation of Mechanised Food grains Handling system for Basmati. It includes the value of matrial Rs 40 lakh not liable to vat	-----
Erection, commissioning , installation of cold storage plant for Basmati. It includes the value of material Rs 40 lakh not liable to vat	-----
Pumbing, drain laying or other installation for transportation of fluid for Gail. Matrial supplied by GAIL.	45
Heating, ventilation , AC installed in a shopping Mall. Material value included is 10 lakh not liable to VAT.	25
Erection, commission and installation of Thermal insulation, Sound insulation installed in port	-----
	100
Works contract service	
Centralized AC System installed at site of Tata for which amount charged 40 lakh. It includes transfer of property in goods Rs. 25 lakh liable to VAT in State	15
Port service	
Erection, commission and installation of Thermal insulation, Sound insulation installed in port	10
Value of taxable service	125

Note- if transfer of property in goods involved then it will be classified as works contract service. If service is rendered in port, then from amendment made by budget 2010, it will be classified in Port service.

Of Mechanised food grain handling system

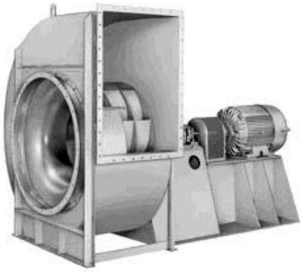
Of equipment for setting up or substantial expansion of cold storage

Erection commissioning & installation

Of machinery or equipment for initial setting up or substantial expansion of units for processing agricultural, apiary, horticultural, dairy, poultry aquatic and marine products and meat

ABATEMENT

ERECTION, COMMISIONING & INSTALLATION under a contract for supplying a plant, machinery, equipment or structure and erection , commissioning or installation of such plant, machinery or equipment or structure – 67%



Installation of machine

Installation of pre-fabricated structure

Installation of electronic device

Plumbing

Drain laying

Drain laying for transport of fluids

Under floor heating

ventilation

Installation of Centralised AC with ventilation

Thermal insulation with fire proofing

Sound insulation

Elevator, fire escape staircase, travelator

(10) RENTING OF IMMOVABLE PROPERTY

(i) Taxable service

Means any service provided or to be provided
to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce.]

Explanation 1. — For the purposes of this sub-clause, "immovable property" includes —

(i) building and part of a building, and the land appurtenant thereto;
(ii) land incidental to the use of such building or part of a building; [**e.g land given for installing tent for lunch]**
(iii) the common or shared areas and facilities relating thereto; and **[e.g lift, repair, electricity back up]**
(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,
(v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;]**- [Refer- letter TRU- 334/1/2010]**

but does not include —

(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
(c) land used for educational, sports, circus, entertainment and parking purposes; and
(d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2. — For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce AND partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;

(ii) DEFINITION

"renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

(i) renting of immovable property by a religious body or to a religious body; or
(ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Explanation [1]. — For the purposes of this clause, "for use in the course or **furtherance of business or commerce**" includes use of immovable property as **factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings;]**

Explanation 2. — For the removal of doubts, it is hereby declared that for the purposes of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property;]

(iii) Renting of Immovable Property Service — Abatement of Property Tax levied and collected by local bodies-- *[Notification No. 24/2007-S.T., dated 22-5-2007]*

CG exempts the taxable service of renting of immovable property, from so much of the service tax leviable thereon as is in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies :

Provided that any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons shall not be treated as property tax for the purposes of deduction from the gross amount charged :

Provided further that wherever the period for which property tax paid is different from the period for which service tax is paid, property tax proportionate to the period for which service tax is paid shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

Example :

Property tax paid for April to September	=	Rs. 12,000/-
Rent received for April	=	Rs. 1,00,000/-
Service tax payable for April	=	Rs. 98,000/- (1,00,000 – 2,000) × applicable rate of service tax

This notification shall come into force on the 1st day of 2. June, 2007.

(iv) Service Tax Rules, 1994 — Fourth Amendment of 2007

RULE 6(4C). Notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services provided or to be provided in relation to renting of immovable property, has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within one year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment,".

(v) CBEC CLARIFICATION

334/1/2008

Renting of immovable property service : Renting of immovable property for use in the course or furtherance of business or commerce [section 65(105)(zzzz)] is the taxable service. Renting includes letting, leasing, licensing or other similar arrangement. The contract is for right-to-use an immovable property for a consideration. Immovable properties excluded from the scope of this service are :

- ⇒ residential properties
- ⇒ residential accommodation such as hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities
- ⇒ vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes
- ⇒ vacant land, whether or not having facilities clearly incidental to the use of such vacant land
- ⇒ land used for educational, sports, circus, entertainment and parking purposes

Similarly, renting of immovable property in the following cases is also excluded from the scope of this taxable service, namely :-

(i) renting of immovable property by a religious body

(ii) renting of immovable property to a religious body,

(iii) renting of immovable property to an educational body, other than commercial training or coaching centre

Commercial coaching or training centre is defined under section 65(27).

Where renting of immovable property is a single composite contract involving part of property for use in commerce or business and part of it for residential/accommodation purposes, for the purpose of levy of service tax under this sub-clause, entire property under the contract is treated as property for use in commerce or business and accordingly the total value of the contract shall be the taxable value.

Renting of immovable property and Works contract services — Clarifications thereto and amendment to Circular No. 96/7/2007-S.T., dated 23-8-2007

Circular No. 98/1/2008-S.T., dated 4-1-2008

Issue	Clarification
(2)	(3)

Commercial or industrial construction service [section 65(105)(zzq)] or works contract service [section 65(105)(zzzza)] is used for construction of an immovable property. Renting of an immovable property is leviable to service tax [section 65(105)(zzzz)]. Whether or not, commercial or industrial construction service or works contract service used for construction of an immovable property, could be treated as input service for the output service namely renting of immovable property service under the Cenvat Credit Rules, 2004?	Right to use immovable property is leviable to service tax under renting of immovable property service. Commercial or industrial construction service or works contract service is an input service for the output namely immovable property. Immovable property is neither subjected to central excise duty nor to service tax. Input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property is neither 'service' or 'goods' as referred to above, input credit cannot be taken.

(ii) after Reference Code 097.01/23-8-07, the following Reference Codes and corresponding issues and clarifications shall be inserted, namely :-

Services provided in relation to execution of a works contract is leviable to service tax [section 65(105)(zzzza)]. VAT/sales tax is payable on the transfer of property in goods involved in the execution of a works contract. Service tax is leviable on the value equivalent to the gross amount charged for the works contract less value of the transfer of property in goods involved in the execution of the works contract which is leviable to VAT/sales tax [Rule 2A of the Service Tax (Determination of Value) Rules, 2006]. Whether or not, excise duty paid on goods, subjected to levy of VAT/sales tax under works contract service, can be taken as credit under the Cenvat Credit Rules, 2004?	Value for the purposes of levy of service tax under works contract service does not include the value pertaining to transfer of property in goods involved in the execution of a works contract leviable to VAT/sales tax. Works contract service provider is, therefore, not eligible to take credit of excise duty paid on such goods involved in the execution of works contract.

334/1/2008 Renting of immovable property service :- possession of IP not transferred

(1) Use of immovable property is allowed for placing vending / dispensing machines in malls and other commercial premises and erection of communication towers on buildings. In such cases, there may or may not be transfer of right of possession or control of the immovable property in favour of the person using such property.

(2) It is proposed to clarify by way of removal of doubts that renting of immovable property service includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the immovable property. Field formations may ensure that service tax is collected in all such cases.

<u>*109/3/2009---Subject : Service tax on movie theatres - Regarding.*</u>

Normally a producer of a movie sells the rights of showing the movies in a region to a distributor. The distributor in turn enters into agreement with theatre owners. This agreement can be that the distributor leases out the hall for screening of the movie. Here, the theatre owner gets a fixed rent from the distributor. The profit or loss from exhibiting the film is borne by the distributor. In such a case, the theatre owner provides the taxable service of 'Renting of immovable property for furtherance of business or commerce' and is accordingly liable to pay service tax.

<u>334/1/2010</u>

Amendments are being made in the definition of the taxable service 'Renting of immovable property' [section 65 (105) (zzzz)] to,-

(i) provide explicitly that the activity of 'renting' itself is a taxable service. *This change is being given retrospective effect from 1-6-2007;* and
(ii) provide that renting of vacant land, where the agreement or contract between the lessor and lessee provides for undertaking construction of buildings or structures on such land for furtherance of business or commerce during the tenure of the lease, shall be subjected to service tax.

Export of Service Rules, 2005 have been amended as follows :

- The taxable service, namely 'Mandap Keeper Service' has been shifted from the list under rule 3(1) (ii) [i.e. performance related services] to the list under rule 3(1)(i) [immovable property related services] and three taxable services, namely 'Chartered Accountant Services', 'Cost Accountant Services' and 'Company Secretary's Services', have been shifted from the list under rule 3(1) (ii) [i.e. performance related services] to the list under rule 3(1)(iii) [residual category of services]. Notification No. 6/2010-ST, dated 27th February 2010 refers. Identical changes have been made under the Taxation of services (Provided from Outside India and Received in India) Rules, 2006 as well *[Notification No. 16/2010-ST, dated 27th February 2010 refers]*;
- The condition prescribed under rule (2) (a) i.e. 'such service is provided from India and used outside India' has been deleted *[Notification No. 6/2010-ST, dated 27th February 2010 refers]*.

Renting of Immovable Property service

9.1 This service was introduced in 2007 with a view to tax the commercial use of immovable property hired on rent. The tax on rent paid is available as input credit if the commercial activity involves provision of taxable service or manufacture of dutiable goods. However, the Hon'ble High court of Delhi in its order dated 18-4-2009 in the case of *Home Solutions Retail India Ltd. & Others* v. *UOI* has struck down this levy by observing that the renting of immovable property for use in the course of furtherance of business or commerce does not involve any value addition and therefore, cannot be regarded as service. Apart from the revenue loss caused to the exchequer, the judgment has placed the landlords in a very precarious situation. In view of this judgment, the commercial tenants have stopped them reimbursing the tax element. However, the landlords are receiving regular demand notices from the department issued to protect government's revenue for the interim period.
9.2 In order to clarify the legislative intent and also bring in certainty in tax liability the relevant definition of taxable service is being amended to clarify that the activity of renting of immovable property *per se* would also constitute a taxable service under the relevant clause. This amendment is being given retrospective effect from 1-6-2007.

10. Renting of vacant land- 334/1/2010

10.1 Under the definition of taxable service pertaining to renting of immovable property, the renting of vacant land used for agriculture, farming, forestry, animal husbandry, mining, education, sports, circus, entertainment and parking purposes, is excluded from the purview of service tax. Further, '*vacant land', whether or not having facilities clearly incidental to the use of such vacant land* has also been excluded from the tax net.
10.2 It has been reported that in many states, the local industrial corporations or PSUs or even private organizations rent vacant land on a long term leases with an explicit understanding that lessee would construct factory or commercial building on that land. In such cases the ownership of the land is not transferred to the lessee and thus it is a service provided by the lessor to the lessee. The situation is similar to renting out a constructed structure for commercial purposes except that at the time of executing the lease agreement the land is in a vacant state and that later the lessee constructs commercial structure thereon after executing the lease deed. Such lease agreements escape service tax because of the exclusion mentioned above.
10.3 Suitable amendment in the definition of taxable service relating to renting to immovable property is being made so as to provide that tax would be charged on rent of a vacant land if there is an agreement or contract between the lessor and lessee that a construction on such land is to be undertaken for furtherance of business or commerce during the tenure of the lease.

M/s ABC has recd Rs 300 lakh on account of renting of Property. It includes the following

Particulars	Amt in lakh
Land let out for parking Purpose	5
Land let out for Agriculture	10
Land let out to IPL for Sports	12
Land given on lease to Tata where Building will be constructed	15
Land given on lease to School where Building will be constructed	13
Building given to temple on rent	25
Building given to University on rent	12

Building given to Bright Institute (Commercial coaching centre) on rent	35
Building given to Hotels	45
Airtel telephone tower was installed in the premises of M/s ABC for which rent charged without transfer of possession.	20

Calculate Value of taxable service

Particulars		Amt in lakh
Total amount received		300
<u>Less</u>		
Land let out for parking Purpose	5	
Land let out for Agriculture	10	
Land let out to IPL for Sports	12	
Land given on lease to Tata where Building will be constructed	-----	
Land given on lease to School where Building will be constructed	13	
Building given to temple on rent	25	
Building given to University on rent	12	
Building given to Bright Institute (Commercial coaching centre) on rent	----	
Building given to Hotels	----	
Airtel telephone tower was installed in the premises of M/s ABC for which rent charged without transfer of possession.	----	77
Taxable value of service		223

Renting of immovable property

Not included

⇒ Vacant land
⇒ Vacant land solely used for agricultural, aquaculture, farming, forestry, animal husbandry, mining purpose

Land used for educational, sports, circus, entertainment and parking purposes

Building used solely for residential purposes

Building used for purpose of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities

Renting of immovable property by religious body or to religious body

Renting of immovable property to educational body other than commercial coaching centre

Included
Let out to

Use for
Factory, office building, warehouses, theatres, exhibition halls and multiple use buildings

Renting of Immovable property without transfer of possession e.g placing vending/ dispensing machines in malls, erection of communication tower in buildings

Renting (leasing) of vacant land by PSU or Local industrial corporation etc. That lesee will construct factory or commercial building on that land. Renting will be liable to service tax.

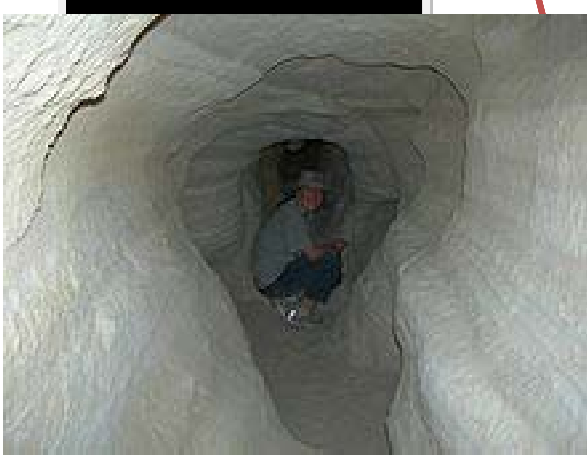
Not covered

Renting of LAND FOR

AGRICULTURE , FARMING

AQUACULTURE

MINING



FARMING

ANIMAL HUBANDRY

Renting of LAND FOR

Not covered

EDUCATION

SPOR

CIRCUS, ENTERTAINMENT

PARKING

Renting of BUILDING FOR

Not covered

RESIDENTIA

HOTE

HOSTEL/ BOARDING HOUSE

TENT/ CAMP

HOLIDAY ACCOMODATION

(11) ADVERTISING SERVICE

(i) Taxable service

Means any service provided or to be provided
to any person], by an advertising agency in relation to advertisement, in any manner;

"advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas;
"advertising agency" means any [person] engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

Persons/agencies canvass advertisements for publishing, on commission basis. Such persons/ agencies do not provide any other services like making, preparation, display or exhibition of advertisement. Whether merely canvassing advertisement for public-shing on a commission basis by persons/agencies is classifiable as Advertising Agency service [section 65(105)(e)] or not?	Merely canvassing advertisements for publishing, on commission basis, is not classifiable under the taxable service falling under section 65(105)(e). Such services are liable to service tax under business auxiliary service [section 65(105)(zzb)].

Free Commercial Time to advertising agencies, not leviable

Circular No. 78/08/2004-S.T., dated 23-3-2004

the television serial producers, who either

(i) sell TV serial episodes to the TV channels, or
(ii) allow such episodes to be telecasted by the channels in lieu of procurement of Free Commercial Time (FCT), which is sold by them to advertising agencies for showing advertisements.

Similarly, in case of FCT, selling the time allotted to a producer does not fall within the purview of "advertisement service" since this activity is not connected to making, preparation, display or exhibition of advertisement. This is akin to providing space in a newspaper or magazine for publishing an advertisement and has nothing to do with actual presentation of the advertisement.

Note- however presently new service sale of space or time for advertisement introduced.

Service Tax — Compilation, printing and publishing of Telephone Directories, yellow pages and business directories covered under the definition of 'advertising agency' and liability to pay Service Tax

Trade Notice No. 99 dated 16-9-1999 of the Calcutta Commissionerate

in the case of persons, who are printing and publishing telephone directories, Yellow pages or business directories, their activity is essentially of printing a readymade advertisements from the advertisers and publishing the same in the directory. Their activities are similar to those carried out by newspapers or periodicals. As such, this activity shall not attract service tax. However, if these persons also undertake any activity relating to making or preparation of an advertisement, such as designing, visualising, conceptualising etc., then they will be liable to pay service tax on the charges made thereon.

<u>334/4/2006</u>

Sale of Advertising Space or Time : Sale of media in television and radio by a broadcasting agency or organization is taxable under Section 65(105)(zk). Services provided by advertising agencies are taxable under Section 65(105)(e).

This entry proposes to levy service tax on sale of time or space for advertisement, excluding sale of space for advertisement in print media. Sale of advertising time in television and radio by any person other than broadcasting agency or organization is also covered under this sub-clause. Some of the other modes of advertisement covered under this mode are internet advertisement, advertisement on buildings, vehicles, etc., advertisement in motion pictures, television serials, video and music albums, mobile phones, ATMs, films and television serials (known as product placement). It may be noted that advertisement in print media is excluded.

Service Tax on advertising

Trade Notice No. 114/96, dated 1-11-1996 of the Mumbai-II Commissionerate

Advertising Agencies

(1) It is to be noticed that the scope of the service which is included in the tax net extends not only to any service connected with making, preparation of advertisements but also includes any service connected with display or exhibition of advertisements.
(2) It is further to be clarified that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the making or preparation of advertisement or gets it done through another person.
(3) It has been represented that in many cases the . advertising agency gets a documentary or film prepared by an independent film producer on behalf of the client. In such cases, the film producer deals with the advertising agency and the payment to him is also made by the advertising agency and not by the client directly. Ultimately, however, the advertising agency charges the client for the amount paid to the film producer. the advertising agency will no doubt include the expenses incurred on getting the film or documentary produced on behalf of the client in the gross amount charged from the client on which service tax will be collected by the agency. it goes without saying that if the film producer chooses to charge the client directly for the film or documentary produced by him then the film producer is to be regarded as having rendered service to the client in relation to advertisement and he will, therefore, be liable to pay service tax accordingly.
(4) Directorate of Audio and Visual Publicity (DAVP) in the Ministry of Information and Broadcasting is liable to pay service tax on services rendered by it to the different Departments of the Central Government in relation to Government advertisements.

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1) Mr. S prepares Signboard for which amount charged Rs. 2000
2) Yellow pages displays the advertisement of Manoj Batra IDT classes for which amount charged Rs. 3000.
3) Bright Professional has approached to Mr. Roni an agent of Yellow Pages which will be displayed in yellow pages. Roni charged Rs. 3000 including 500 as his commission.
4) PVR cinema hall displaying advertisement of Manoj Batra IDT classes in the beginning and during interval the display of film Rs 7 lakh.
5) Manoj Batra IDT classes approaching to Delhi Metro For display of advertisement at various Metro Stations and in Metro Rs. 25 lakh
6) Google/ CA Club India displaying advertisement of Manoj Batra Coaching institute by charging Rs 25 lakh.
7) Manoj Batra IDT Classes approached Lintas to prepare and display advertisement at Television for which charged Rs. 70 lakh.
8) Directorate of Audio and Visual Publicity (DAVP) in the Ministry of Information and Broadcasting providing advertising service to Department of Central Government in relation to government advertisement. For Rs 25 lakh.

Ans

1) Mr. S can't be considered as advertising agency as he is engaged only in making & preparation activity and not in exhibition/ display activity. No service tax liability. [STAR NEON SIGNS 2002- CESTAT]

2) Yellow pages is only displaying advertisement and not involved in making, preparation. Hence not liable to pay service tax in advertising agency. But presently new service sale of space or time for advertisement has been introduced but still outside the scope of service tax, because advertisement in print media has been specifically excluded.
3) Mr. Roni is not an advertising agent. Only booking advertisement for displaying. Hence not liable to pay service tax in advertising service. But it is taxable under business auxiliary service.
4) PVR is only displaying advertisement and not involved in making, preparation. Hence not liable to pay service tax in advertising agency. But presently new service sale of space or time for advertisement has been introduced. Hence this service will be taxable under sale of space or time for advertisement.
5) Delhi Metro is only displaying advertisement and not involved in making, preparation. Hence not liable to pay service tax in advertising agency. But presently new service sale of space or time for advertisement has been introduced. Hence this service will be taxable under sale of space or time for advertisement.
6) Google/ CA Club India is only displaying advertisement and not involved in making, preparation. Hence not liable to pay service tax in advertising agency. But presently new service sale of space or time for advertisement has been introduced. Hence this service will be taxable under sale of space or time for advertisement.
7) Lintas is engaged in making, preparation and displaying activity also. Hence liable to service tax in advertising agency service.
8) DAVP is liable to pay service tax because advertising agency can be any person whether having profit motive or not.

(12) ASSET MANAGEMENT

(i) Taxable service

Means any service provided or to be provided
to any person, by any other person, except

⇒ a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern referred to in BANKING AND OTHER FINANCIAL SERVICE]

in relation to asset management including portfolio management and all forms of fund management;

Portfolio management- The investor gives the amount to portfolio manager who makes purchase & sale on behalf of investor. In return portfolio manager gets management fees. The profit on purchase or sale will be of investor.

Fund management – this is similar to portfolio management. However instead of managing individual investor funds , here the management of certain funds like Army Navy funds, Ex army funds, Ex service funds etc.

(ii) CBEC *CLARIFICATION*

Ministry clarification – 334/1/2007

Asset management including portfolio management and all forms of fund management provided by a banking company or a financial institution including a NBFC or any other body corporate or commercial concern is leviable to service tax under banking and financial service. Similar services are also provided by individual service providers essentially to high net worth individuals. This taxable service proposes to cover separately, similar service provided by person other than those already covered under banking and financial service.

334/1/2010--- Unit Linked Insurance Plans

3.1 Tax on insurers issuing Unit Linked Insurance Plans (ULIP) was imposed w.e.f. 1-6-2008. The taxable service is the "Management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plans (ULIP) scheme" by an insurer carrying life insurance business.

3.2 ULIPs are broadly similar to the mutual funds, except that they are required to segregate a certain part of the premium towards the life insurance of the plan holder. Further, unlike in the mutual fund industry, where the funds are managed by an independent Asset Management Company (which is a separate legal entity), in case of ULIP the funds are managed by the insurance company itself. Thus, it is difficult to ascertain the component of the total charges that is attributable to the management of investment.

3.3 Accordingly, for the purpose of valuation for charging of Service tax, an Explanation was prescribed which in brief, explained that the taxable value for the purpose of this service is the difference between the (a) premium paid by the policy holder for the Unit Linked Insurance Plan policy; and (b) the sum of premium paid for or attributable to risk cover, whether for life, health or other specified purposes, and the amount segregated for actual investment. In other words the differential amount was considered as the charges for asset management.

3.4 It is however a fact that the amount appropriated by the insurance company is not only asset management but for various activities, such as,-

(a) Premium Allocation Charge : is an upfront deduction from the policy premium, which is generally more than 10% in the first year of ULIP, and continues to be very high for the initial three years. This amount is used for following purposes :

(i) Initial expenses in marketing the issue, including commission paid to distributors.

(ii) Cost of conducting medical check up of the ULIP holder and other miscellaneous charges.

(b) Policy administration charges; monthly charges for managing the paperwork and other formalities for the insurance, and are not related to asset management. It is chargeable to Service tax under insurance services.

(c) A number of other charges are also charged by the insurance companies, which, *inter alia,* include, policy surrender charges, switching charges, partial withdrawal charges, miscellaneous charges etc.

(d) Fund management charges: *This is the amount charged by the insurance company for managing the investible funds, which is intended to be taxed under this service.* This amount has been capped for ULIPs by Insurance Regulatory and Development Authority (IRDA) at 1.5% of the gross yield for schemes below 10 years, and 1.25% for schemes above 10 years.

3.5 Since the charge pertaining to asset management alone should form the value for taxable purpose, the explanation provided under the definition of the taxable service is being suitably amended to provide that that the value of the taxable service for any year of the operation of policy shall be the actual amount charged by the insurer for management of funds under ULIP or the maximum amount of fund management charges fixed by IRDA, whichever is higher.

3.6 The method of computation for monthly payment of tax by such service providers, would be prescribed at the appropriate time.

(13) MINING OR MINERAL OIL OR GAS SERVICE

(i) Taxable service

Means any service provided or to be provided
to any person, by any other person in relation to mining of mineral, oil or gas;

(ii) CBEC CLARIFICATION

(a) 334/1/2007—

(1) Mining Service [section 65(105)(zzzy)] : Presently, geological, geophysical or other prospecting, surface or sub-surface surveying or map-making services relating to location or exploration of deposits of mineral, oil or gas are leviable to service tax under “survey and exploration of mineral service” [section 65(105)(zzv)]. Services such as -

⇒ site formation and clearance, and excavation and earth moving, drilling wells for production/exploita-tion of hydrocarbons (development drilling)

⇒ well testing and analysis services

⇒ sub-contracted services such as deploying workers and machinery for extraction/breaking of rocks into stones, sieving, grading, etc.

⇒ outsourced services,

provided for mining are individually classified under the appropriate taxable service. Services provided in relation to mining of mineral, oil and gas are comprehensively covered under this proposed service. With this, services provided in relation to both exploration and exploitation of mineral, oil or gas will be comprehensively brought under the service tax net.

Particulars	Taxable service before Mining service taxability	Presently taxable in
Excavation/drilling and removal of the overburdens (i.e. stratum, layer of mud, boulders, etc, that needs to be removed during or prior to extraction of coal/minerals).	site formation and clearance, excavation and earth-moving and demolition	Mining service
Coal cutting or mineral extraction and lifting them up to the pithead.	------------------------	Mining service
Handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mines.	cargo handling service	Mining service

Que

Particulars	Amt in lakh
Excavation/drilling and removal of the overburdens (i.e. stratum, layer of mud, boulders, etc, that needs to be removed during or prior to extraction of coal/minerals).	5
Coal cutting or mineral extraction and lifting them up to the pithead	5
Handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mines.	8
well testing and analysis services	6
sub-contracted services such as deploying workers and machinery for extraction/breaking of rocks into stones, sieving, grading,	11
geological, geophysical or other prospecting, surface or sub-surface surveying or map-making services relating to location or exploration of deposits of mineral, oil or gas	5
Total value	40

Calculate value of taxable service under mining service

Ans- after introduction of mining service, any service provided in relation to mining will be classified under mining service.

Particulars	Amt in lakh
Excavation/drilling and removal of the overburdens (i.e. stratum, layer of mud, boulders, etc, that needs to be removed during or prior to extraction of coal/minerals).	5
Coal cutting or mineral extraction and lifting them up to the pithead	5
Handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mines.	8
well testing and analysis services	6
sub-contracted services such as deploying workers and machinery for extraction/breaking of rocks into stones, sieving, grading,	11
geological, geophysical or other prospecting, surface or sub-surface surveying or map-making services relating to location or exploration of deposits of mineral, oil or gas	5
Total value	40

(14) MANAGEMENT, MAINTENANCE OR REPAIR

(i) Taxable service

Means any service provided or to be provided
[to any person], by any person in relation to [management, maintenance or repair];
management, maintenance or repair” means any service provided by —

(i) any person under ~~a maintenance~~ contract or an agreement; or [F Act 2004, 2005]
(ii) a manufacturer or any person authorised by him, in relation to, — [
   a. management of properties, whether immovable or not; [FA 2006]
   b. maintenance or repair of properties, whether immovable or not; or
   c. maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;]

[***Explanation.*** — For the removal of doubts, it is hereby declared that for the purposes of this clause, —
(a) "goods" includes computer software; [FA 2007]
(b) "properties" includes information technology software [FA 2008]

(ii) EXEMPTION

Roads — Exemption from Service Tax to management, maintenance or repair of roads-- *[Notification No. 24/2009-S.T., dated 27-7-2009]*

CG exempts the taxable service, provided to any person by any other person in relation to management, maintenance or repair of roads, from the whole of the service tax leviable thereon under section 66 of the said Finance Act.

(iii) CBEC CLARIFICATION
96/7/2007

Services provided by any person to a customer in relation to management, maintenance or repair is liable to service tax [section 65(105)(zzg)]. "Manage-ment, maintenance or repair" includes main-tenance or repair of any goods, excluding motor vehicle [section 65(64)]. Whether maintenance or repair of software is liable to service tax?	Explanation to section 65(64) provides that "goods" includes computer software. Since, maintenance or repair of any goods is liable to service tax, services provided in relation to maintenance or repair or servicing of computer software is liable to service tax under "management, maintenance or repair" service [section 65(105)(zzg)].

B 1/6/2005--- Maintenance or repair service
(1) Prior to 16-6-2005, such services covered maintenance or repair or servicing of any goods or equipment, excluding motor vehicles. However, since 16-6-2005, services relating to maintenance or management of immovable property (such as roads, airports, railways, buildings, parks, electrical installations and the like) have also been covered under the purview of service tax. Such services would be taxable when provided under a contract or an agreement by any person or by a manufacturer or any person authorized by a manufacturer.
(2) Maintenance is to keep a machine, building etc. in a good condition by periodically checking and servicing or repairing. While repair is a one time activity, maintenance is a continuous process of which repairing may be incidental or ancillary.
(3) Prior to 16-6-2005, maintenance or repair carried out under a maintenance contract or agreement was covered under service tax. Repair or servicing carried out under a contract other than a maintenance contract or agreement was not covered within the purview of service tax. Maintenance or repair, including reconditioning or restoration or servicing of any goods or equipment, except motor vehicle (which is taxable under the category of authorized service station), undertaken as part of any contract or agreement (not

necessarily maintenance contract or agreement) is now liable to service tax under this category of taxable service. To attract service tax under this category, the contract or agreement need not necessarily be a maintenance contract/ agreement.

59/8/2003 Maintenance and repair Services :

Certain doubts have been raised in case of maintenance and repair services as to whether service tax on maintenance and repair would be charged in cases where during the guarantee period, the services are provided to the buyer of the goods while the payments for the same are received from the supplier of the goods. In this regard it is clarified that irrespective of the fact that the receiver of the service is different from the person making payments for such services, the service tax is leviable on the services provided towards maintenance and repair. Therefore, for the services provided during the warranty period by the dealer or any other authorized person, service tax would also be leviable on any amount received by such dealer or such other authorized person from manufacturer of such goods.

Particulars	Amt in lakh
Repair of ship/Machine/ Transformer from Manufacturer	5
Repair of Samsung TV after warranty period from person authorized by Manufacturer	5
Repair of Motor Vehicle by authorized service station	8
Management of Power-Plant of Tata Power	6
Amount charged by Owner of building received rent of building Rs It includes maintenance charges for Building Rs 2 lakh in addition to rent.	11
Reaire, maintenance of Road	5
Maintenance of RESIDENTIAL complex	10
Repair of old cylinder for IOCL/ BPCL/ HPCL	1
Repair of machinery during guarantee period free of cost to customers for which reimbursement given by manufacturer	2
Super computer –warranty period over, now AMC agreement with authorized service centre HP	4
Super computer –warranty period over, now AMC agreement with Mr RAJA not authorized service centre HP-	6
Repair of equipment for which was no maintenance agreement was entered into	3
Maintenance of computer software	2
Maintenance of IT software. [E.G MOBILE SOFTWARE]	5
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Calculate the value of taxable service under management, maintenance or repair service.

Ans

Particulars	Amt in lakh
Repair of ship/Machine/ Transformer from Manufacturer	5
Repair of Samsung TV after warranty period from person authorized by Manufacturer	5
Repair of Motor Vehicle by authorized service station (w.n-1)	----
Management of Power-Plant of Tata Power- mainagement of immovable property	6
Amount charged by Owner of building received rent of building Rs It includes maintenance charges for Building Rs 2 lakh in addition to rent.	2
Repair, maintenance of Road (W.N- 2)	----
Maintenance of RESIDENTIAL complex- Maintenance of immovable property	10
Repair of old cylinder for IOCL/ BPCL/ HPCL	1
Repair of machinery during guarantee period free of cost to customers for which reimbursement given by manufacturer- Not free service	2
Super computer –warranty period over, now AMC agreement with authorized service centre HP- maintenance Service by authorized person	4
Super computer –warranty period over, now AMC agreement with Mr RAJA not authorized service centre HP- maintenance Service by any person	6

Repair of equipment for which was no maintenance agreement- Repair by any person	3
Maintenance of computer software	2
Maintenance of IT software. [E.G MOBILE SOFTWARE]	5
Value of taxable service	50

Working notes
(1) Repair of motor vehicle not covered under Management, maintenance or repair service but it is covered under authorize service station service.
(2) Repair, maintenance of road is exempt but in respect of bridge is taxable.

(15) TELECOMMUNICATION SERVICE

(i) Taxable service
⇒ Means any service provided or to be provided
⇒ to any person, by the telegraph authority in relation to telecommunication service;

"telecommunication service" means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 (13 of 1885) and includes —

(i) voice mail, data services, audio tex services, video tex services, radio paging;
(ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;
(iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;
(iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;
(v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic callback, call answer, voice mail, voice menus and video conferencing;
(vi) private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;
(vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and
(viii) communication through facsimile, pager, telegraph and telex,

but does not include service provided by —

(a) any person in relation to on-line information and database access or retrieval or both referred to in sub-clause (zh) of clause (105);
(b) a broadcasting agency or organisation in relation to broadcasting referred to in sub-clause (zk) of clause (105); and
(c) any person in relation to [internet telecommunication service] referred to in sub-clause (zzzu) of clause (105);]

Author note- on-line information and database access or retrieval or both, broadcasting, internet telecommunication service are taxable under respective service. But these are not in CA final course [presently 28 services are in course]

"telegraph" has the meaning assigned to it in clause (1) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885);
"telegraph authority" has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885) and includes a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of that Act;
"telex" means a typed communication by using teleprinters through telex exchanges;
"pager" means an instrument, apparatus or appliance which is a non-speech, one way personal calling system with alert and has the capability of receiving, storing and displaying numeric or alpha-numeric messages;
"facsimile (FAX)" means a form of telecommunication by which fixed graphic images, such as printed texts and pictures are scanned and the information converted into electrical signals for transmission over the telecommunication system;

As per rule 6(1)(ii) of Valuation Rules 2006

The value of taxable service shall include the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application **for telephone connection or pager** etc.

As per rule 6(2)(i) of Valuation Rules 2006

The value of any taxable service **does not include initial deposit made by the subscriber** at the time of application for telephone **connection or pager or facsimile (FAX) or telegraph or telex or leased circuit** ;

CBEC CLARIFICATION

(i) 334/1/2008 *Internet Telecommunication Service :*

(1) In budget 2007-08, six separate taxable services (telephone, pager, leased circuit, telegraph, telex and fax) related to telecommunication were merged into a single taxable service namely telecommunication service. Telecommunication service was comprehensively defined so as to include all services provided in relation to telecommunication.
(2) Telecommunication services are also provided through internet. Services provided by any person in relation to internet telephony is leviable to service tax *[Section 65(105)(zzzu)]*.
(3) Proposal is to define comprehensively internet telecommunication service and omit the present definition of internet telephony service. It may be noted that,-

   (a) the present 'internet telephony service' shall get subsumed with in the proposed 'internet telecommunication service' *[Section 65(105)(zzzu)]*;
   (b) Internet telecommunication service includes,-

      (i) internet backbone services, including carrier service of internet traffic by one Internet Service Provider (ISP) to another ISP,
      (ii) internet access services, including provision of a direct connection to the internet and space for the customer's web page, and
      (iii) telecommunication services, including fax, telephony, audio conferencing and video conferencing, provided over the internet.

(4) Service provided by ISPs for accessing the internet through the computer network shall be specifically covered under the proposed service. At present, this service is covered under 'On-line information and database access or retrieval service'.

(ii) NN 96/7/2007

Whether service tax is liable on the amount collected as surcharge for delayed payment of telephone bills?	An amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and, therefore, does not form part of the value of taxable service under section 67 read with Service Tax (Determination of Value) Rules, 2006.

(iii) Interconnect Usage Charges (IUC) — Clarifications on Service tax applicability

Circular No. 91/2/2007-S.T., dated 12-3-2007

service tax on interconnection service provided by one telecom operator to another

The interconnection service is provided by one telegraph authority to another to enable the telephone subscribers of these telegraph authorities to connect with each other. Interconnection in technical terms means the commercial and technical arrangements under which service providers connect their equipment, networks, and services to enable their customers to have access to the customers, services, and networks of other service providers. For providing interconnection, the telegraph authority collects interconnect usage charges (IUC). A question has been raised as to whether this service is taxable and accordingly, whether service tax is applicable to IUC.

2. In past, divergent clarifications/instructions have been issued on this matter. However, in view of representations and submissions of service provider, the issue of taxability of IUC has been examined a fresh, in consultation with service providers through the Cellular Operators Association of India.

3. As stated above, the interconnection usage service is provided by one telegraph authority to another telegraph authority. In terms of the existing definition, in the Finance Act, 1994, "**telephone service" means any service provided to a subscriber** by the telegraph authority in relation to a telephone connection. The **subscriber means a person to whom any service of a telephone connection** has been provided by the telegraph authority. Therefore, a subscriber in respect of telephone service is the person who avails of service of telephone connection. While providing service of interconnection usage, no service of telephone connection is provided to recipient telegraph authority. No doubt, it is a service in relation to a telephone connection; however, as long as service is not provided directly to a subscriber (as mentioned above), the service may not fall in the category of telephone service. Therefore, IUC would not be taxable under the category of service.

4. However, vide Finance Bill, 2007, a new definition of 'tele-communication service' has been incorporated vide clause (104) of section 65 of the Finance Act, 1994 **and IUC has been specifically incorporated in the definition of 'telecommunication service' to make it a taxable service**. Further, any service provided or to be provided, to any person, by a telegraph authority in relation to 'telecommunication service' has been made taxable. This amendment will come into effect from a date to be notified by the Government after enactment of Finance Bill, 2007. Therefore, after this amendment comes into effect, service tax would be applicable to IUC charges.

334/1/2007

1. **Telecommunication Service :** Following telecommunication related services, which are presently specified as separate taxable services, namely :

   (i) telephone connection [sub-clause (b) of section 65(105)]
   (ii) pager [sub-clause (c) of section 65(105)]
   (iii) leased circuit [sub-clause (zd) of section 65(105)]
   (iv) communication through telegraph [sub-clause (ze) of section 65(105)]
   (v) communication through telex [sub-clause (zf) of section 65(105)]
   (vi) facsimile communication [sub-clause (zg) of section 65(105)]

are being merged under the proposed "telecommunication service" [sub-clause (zzzx) of section 65(105)], and the term "telecommunication service" [section 65(109a)] is being defined comprehensively. Specific inclusion and exclusion of telecom services may be seen in the definition.

2. Services provided by the telegraph authority to any person in relation to telecommunication are covered under this service. It may be noted that the present condition namely, recipient of service needs to be a subscriber, under telecommunication related services has been changed under the proposed Telecommunication Service. Telecommunication Service includes services provided to any person and not confined only to subscriber.

International in-bound roaming liable to Service tax under Telephone Service — Clarifications

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During the period of roaming, the Indian telecom service provider provides telephone service to an international in-bound roamer. This service to in-bound roamers is delivered and consumed in India and, therefore, it is not an export of service. International practice treats the telephone service provided to an in-bound roamer by the visited network, for purposes of taxation, in the same manner as a telephone service provided to any home subscriber.

Accordingly, the domestic telecom operators providing roaming service to international in-bound roamers are liable to pay service tax on the amount received through the home network on account of service provided to such international roaming subscriber.

Que

Particulars	Amt in lakh
SMS/ VOICE SMS service provided	5
Amount charged as initial deposit from fixed land line phones Rs 15 lakh but amount adjusted with the bill out of initial deposit	5
Amount charged for cellular mobile telephone service	33
Charges for leased circuits Speech circuit 4 Data circuit i.e broad band service 11 Telegraph circuits – VSAT 25	40
Amount recovered for call management service like call waiting, call forwarding, caller identification, conferencing, call display, call blocking, video conferencing etc.	12
Fax and pager service provided	8
Surcharge for delayed payment of telephone bills	10
Inter connection usage charges	1
Amount recovered from foreign telecom companies for services provided to clients of such foreign companies while they were in india on international roaming	2
On-line information and database access or retrieval service provided	3
Internet telecommunication charges	2
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CALCULATE VALUE UNDER TELECOMMUNICATION SERVICE

Particulars	Amt in lakh
SMS/ VOICE SMS service provided	5
Amount charged as initial deposit from fixed land line phones Rs 15 lakh but amount adjusted with the bill out of initial deposit	5
Amount charged for cellular mobile telephone service	33
Charges for leased circuits Speech circuit 4 Data circuit i.e broad band service 11 Telegraph circuits – VSAT 25	40
Amount recovered for call management service like call waiting, call forwarding, caller identification, conferencing, call display, call blocking, video conferencing etc.	12
Fax and pager service provided	8
Surcharge for delayed payment of telephone bills	---
Inter connection usage charges	1
Amount recovered from foreign telecom companies for services provided to clients of such foreign companies while they were in india on international roaming	2
On-line information and database access or retrieval service provided	---
Internet telecommunication charges	---
Value of taxable service	106

WORKING NOTES

1. AS per rule 6(2)(i) of valuation rules 2006 initial deposit will not form part of value, whereas as per Rule 6(1)(ii) of valuation rules 2006, adjustment with bill out of initial deposit form part of value of taxable service
2. Fax, pager, leased circuit are taxable under telecommunication service.
3. As per circular No. 96/7/2007, surcharge for delayed payment of telephone bill is not a consideration charged for provision of telecom service and not liable to service tax.
4. As per circular 91/7/2007, interconnect usage charges are liable to service tax.
5. International roaming is also liable to service tax are per circular 91/7/2007.

6. On-line information and database access or retrieval service and internet telecommunication are not taxable under this service but they are taxable under respective services. Since in present question value under telecommunication service is asked, hence they will not form part of value.

Site formations services

NN- 41/2010- CG exempts the services when provided wholly within the port or other port or airport, namely,-

taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

Construction of Residential complex services

(i) "Construction Of Complex" Means —

(a) construction of a NEW residential complex or a part thereof; or
(b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
(c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;]

explanation -

The construction of a **complex** which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) is deemed to be service provided by the builder to the buyer.

(ii) "Residential Complex"
means any complex comprising of —
(i) a building or buildings, having *more than 12 residential units*
(ii) a common area; and
(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,

located within a premises and the layout of such premises is approved by an authority under any law for the time being in force,

But does not include

⇒ a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and
⇒ the construction of such complex is intended for personal use as residence by such person.

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) **"personal use" includes** permitting the complex for use as residence by another person on rent or without consideration;
(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;]

(iii) Abatement

There is option to pay tax on 33% of gross amount charged.

Commercial of complex	The gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.	~~67%~~
	The gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider. Cost of land included in gross amount charged.	~~75 %~~

Note-

1) Abatement shall not apply in such cases where the taxable services provided are only completion and finishing services in relation to residential complex,
2) Abatement will be available even when construction of complex wholly within port or other port or Airport,

Conditions

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004; or
(ii) the service provider has not availed the benefit of exemption in respect of value of goods and materials sold by him to the recipient of service under NN. 12/2003-

Departmental Clarification:- D.O.F. No. 334/1/2010-TRU dated 26.02.2010 illustrates the types of agreements that are covered under the 'commercial or industrial construction service/construction of residential complex service':-

➢ Where the buyer and the builder enter into an agreement called 'agreement to sell' to ultimately sell the property under settled terms without transferring the ownership of the property to the buyer. At the conclusion of the contract and completion of the payments relating thereto, property is transferred from promoter to buyer by executing a 'Sale Deed' on payment of appropriate stamp duty.

➢ Where, at the initial stage, the promoter and all the prospective buyers enter into agreement by executing the 'Sale of Undivided Portion of The Land' which transfers the property right to the buyers without demarcating a part of land, which can be associated with a particular buyer. In many cases, an instrument called 'Construction Agreement' is simultaneously executed under which the obligations of the promoter to get property are constructed and that of the buyer to pay the required consideration are incorporated.

EN- 28/2010 CG exempts the taxable service of construction of complex, when provided to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana, from the whole of the service tax leviable thereon under section 66 of the Finance Act.

(i) CBEC Clarification

(i) B1/6/2005

(a) Common area would include roads, staircases and other similar areas where residents of the residential complex have easement rights. The list of facilities prescribed is merely illustrative and not exhaustive. Some residential complexes may also contain other facilities such as market or shopping complex, schools, security, banks, gymnasium, health club, sports facilities, power back up and the like.

(b) The taxable service is the service provided in relation to construction of a residential complex. Service tax would be payable only on the gross amount charged by the service provider for the construction service provided and it would not include the cost of land and stamp duty paid for registration of land. However, notification No. 18/2005-S.T., dated 7-6-2005 provides option to avail abatement and pay service tax only on 33% of the gross amount charged, subject to fulfillment of conditions specified in the notification.

(ii) Master circular 96/7/2007

Whether service tax is liable under construction of complex service on builder, promoter, developer or any such person,-

(a) who gets the complex built by engaging the services of a separate contractor, and

(b) who builds the residential complex on his own by employing direct labour

Ans- a) In a case where the builder, promoter, developer or any such person builds a residential complex, having more than 12 residential units, by engaging a contractor for construction of the said residential complex, the contractor in his capacity as a taxable service provider (to the builder/promoter/ developer/any such person) shall be liable to pay service tax on the gross amount charged for the construction services under 'construction of complex' service [section 65(105)(zzzh)].

(b) If no other person is engaged for construction work and the builder/promoter/developer/any such person undertakes construction work on his own without engaging the services of any other person, then in such cases,-

(i) service provider and service recipient relationship does not exist,

(ii) services provided are in the nature of self-supply of services.

Hence, in the absence of service provider and service recipient relationship and the services provided are in the nature of self-supply of services, the question of providing taxable service to any person by any other person does not arise.

(iii) **Service tax liability of builders, promoters, developers and contractors clarified====**Circular No. 108/2/2009-S.T., dated 29-1-2009

2. A view has been expressed that once an agreement of sale is entered into with the buyer for a unit in a residential complex, he becomes the owner of the residential unit and subsequent activity of a builder for construction of residential unit is a service of 'construction of residential complex' to the customer and hence service tax would be applicable to it.

A contrary view has been expressed arguing that where a buyer makes construction linked payment after entering into agreement to sell, the nature of transaction is not a service but that of a sale. Where a buyer enters into an agreement to get a fully constructed residential unit, the transaction of sale is completed only after complete construction of the residential unit. Till the completion of the construction activity, the property belongs to the builder or promoter and any service provided by him towards construction is in the nature of self service. It has also been argued that even if it is taken that service is provided to the customer, a single residential unit bought by the individual customer would not fall in the definition of 'residential complex' as defined for the purposes of levy of service tax and hence construction of it would not attract service tax.

CLARIFICATON- The matter has been examined by the Board.

a) Generally, the initial agreement between the promoters/builders/developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax.

b) Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter/builder/developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'.

c) However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

Classification

B1/16/2007- where to classify (Works contract vs Residential complex or commercial const)

The Contracts which are treated as works contract for the purpose of levy of VAT/ Sales tax shall also be treated as works contract for the purpose of levy of service tax. Therefore, where a works contract has been charged to Sales-tax/VAT, the service element therein shall be charged to service tax under works contract service only not under 'Commercial or industrial construction service' or 'construction of residential complex'.

F.NO 332/16/2010- Leviability of service tax on construction of residential houses by National Building Construction Corporation Limited (NBCC) for Central Government officers-regarding

The matter has been examined. The activity of building new residential complexes falls within the definition of taxable service, namely, 'Construction of Complexes'. Normally, the type of complex proposed to be built by NBCC falls within the definition of residential complexes. However, as per definition, the residential complex (for service tax purposes) does not include a complex which is constructed by a person directly engaging any other person for designing/planning/construction and is intended for personal use as residence by such person. The definition also explains that personal use includes promoting use of such property as residence by another person on rent or even without consideration.

3. As per the information provided , the Ministry of Urban Development (GOI) has directly engaged the NBCC for constructing residential complex for central government officers. Further, the residential complexes so built are intended for the personal use of the GOI which includes promoting the use of complex as residence by other persons (i.e. the Government officers or the Ministers). As such the GOI is the service receiver and NBCC is providing services directly to the GOI for its personal use. Therefore, as for the instant arrangement between Ministry of Urban Development and NBCC is concerned, the service tax is not leviable. It may, however, be pointed out that if the NBCC, being a party to a direct contract with GOI, engages a sub-contractor for carrying out the whole or part of the construction, then the sub-contractor would be liable to pay service tax as in that case, NBCC would be the service receiver and the construction would not be for their personal use.

Commercial Or Industrial Construction ~~Service~~ [f. act 2010]

1) Taxable Service

Means any Service provided or to be provided to any person, by ~~commercial concern~~ [any other person], in relation to [commercial or industrial construction ~~service~~

2) "commercial or industrial construction ~~service~~" means — **[f. act 2010]**

(a) construction of a new building or a civil structure or a part thereof; or
(b) construction of pipeline or conduit; or

(c) Completion & finishing services such as

glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit,

which is —

(i) used, or to be used, primarily for; or
(ii) occupied, or to be occupied, primarily with; or
(iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, *(educational, religious, government buildings not covered)*

But does not include

such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;]

F.Act 2010

explanation - The construction of a **new building** which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) is deemed to be service provided by the builder to the buyer.

334/1/2010-TRU letter- why explanation inserted

In order to achieve legislative intent and bring in parity in tax treatment, an explanation is inserted to provide that unless the entire payment for the property is paid by the prospective buyer or on his behalf after the completion of construction (including its certification by the localauthorities), the activity of construction would be deemed to be a taxable service provided by the builder/ promoter/ developer to prospective buyer and the service tax would becharged accordingly. This if the entire consideration is paid after the construction has been completed, then it is in the nature of outright sale of immovable property and no service tax is chargeable on such transfer, in all other cases, service tax is payable.

Authority competent to issue completion certificate

For the purposes of "commercial or industrial construction and construction of residential complex service the expression 'authority competent' includes, besides any Government authority,-

(i) architect registered with the Council of Architecture constituted under the Architects Act, 1972 or
(ii) chartered engineer registered with the Institution of Engineers (India); or

licensed surveyor of the respective local body of the city or town or village or development or planning authority;

who is authorised under any law for the time being in force, to issue a completion certificate in respect of residential or commercial or industrial complex, as a precondition for its occupation.

Notes

1. If govt.get them constructed for letting it on rent- liable to service tax
2. Pipeline for municipal water supply not covered- because should be used primarily in commerce or industry.

3) Exemption notification

(i) NN—25/2007-

Commercial or Industrial Construction and Works Contract Services — Exemption to construction of port or other port

the Central Government, exempts commercial or industrial construction service, referred to in and services provided in relation to the execution of works contract provided to any person by any other person in relation to construction of port or other port, from the whole of the service tax leviable thereon under section 66 of the Finance Act.

Explanation. – completion and finishing service not exempt

For the purposes of this notification, it is hereby declared that, -
commercial or industrial construction service or services provided in relation to the execution of works contract in relation to construction of port or other port shall not include services of completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port;

Note-

Notification No. 38/2010
Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of commercial or industrial construction referred to in sub-clause (zzq) of clause 105 of section 65 of the Finance Act, when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways, from the whole of service tax leviable thereon under section 66 of the Finance Act.
Notification No. 42/2010-Service Tax
the CG exempts the taxable service of commercial or industrial construction when provided wholly within the airport, from the whole of service tax leviable thereon under section 66 of the Finance Act.

4) Abatement

Commercial or industrial construction service.	The gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service. .	67%

	The gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service. Cost of land included in gross amount charged.	75 %

Note-

1. Abatement shall not apply in such cases where the taxable services provided are only completion and finishing services in relation to building or civil structure,
2. Abatement will be available even when commercial construction wholly within port or other port or Airport.

Conditions

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004; or

(ii) the service provider has not availed the benefit of exemption in respect of value of goods and materials sold by him to the recipient of service under NN. 12/2003-

3) CBEC clarification

(i) Whether commercial or industrial construction

a) constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.

b) In case of multi-purpose buildings such residential-cum-commercial construction, tax would be leviable in case such immovable property is treated as a commercial property under the local/municipal laws.

c) Construction of pipeline running within such an industrial and commercial establishment such as a factory, refinery and similar industrial establishments are long distance pipelines is within the scope of the levy.

Logic of abatement

d) The gross value charged by the building contractors include the material cost, namely, the cost of cement, steel, fittings and fixtures, tiles etc. Under the Cenvat Credit Rules, 2004, the service provider can take credit of excise duty paid on such inputs. However, it has been pointed out that these materials are normally procured from the market and are not covered under the duty paying documents. Further, a general exemption is available to goods sold during the course of providing service (Notification No. 12/2003-S.T.) but the exemption is subject to the condition of availability of documentary proof specially indicating the value of the goods sold. In case of a composite contract, bifurcation of value of goods sold is often difficult. Considering these facts, an abatement of 67%/ 75% has been provided in case of composite contracts where the gross amount charged includes the value of material cost. *(refer Notification No. 15/2004-S.T., dated 10-9-2004)*. This would, however, be optional subject to the condition that no credit of input goods, capital goods and no benefit (under Notification No. 12/2003-S.T.) of exemption towards cost of goods are availed

(ii)

a) Road repair and maintenance — Clarifications on Service tax liability

Circular No. 110/4/2009-S.T., dated 23-2-2009

2. Commercial or industrial construction service [section 65(105)(zzq)] specifically excludes construction or repairs of roads. However, management, maintenance or repair provided under a contract or an agreement in relation to properties, whether immovable or not, is leviable to service tax under section 65(105)(zzg) of the Finance Act, 1994. There is no specific exemption under this service for maintenance or repair of roads etc. Reading the definitions of these two taxable services in tandem leads to the conclusion that while construction of road is not a taxable service,

management, maintenance or repair of roads are in the nature of taxable services, attracting service tax.

3. The next issue requiring resolution is the types of activities that can be called as "construction of road" as against the activities which should fall under the category of maintenance or repair of roads. In this regard the technical literature on the subject indicate that the activities can be categorized as follows, -

(A) Maintenance or repair activities :

I. Resurfacing
II. Renovation
III. Strengthening
IV. Relaying
V. Filling of potholes

(B) Construction Activities :

I. Laying of a new road
II. Widening of narrow road to broader road (such as conversion of a two lane road to a four lane road)
III. Changing road surface (graveled road to metalled road/ metalled road to blacktopped/blacktopped to concrete etc.

b) Roads — Exemption from Service Tax to management, maintenance or repair of roads

the Central Government, hereby exempts the taxable service, provided to any person by any other person in relation to management, maintenance or repair of roads, from the whole of the service tax leviable thereon under section 66 of the said Finance Act.

[Notification No. 24/2009-S.T., dated 27-7-2009]

(iii) Canals constructed by Govt. or under Govt. projects not liable to Service tax under Commercial or Industrial Construction service Circular No. 116/10/2009-S.T., dated 15-9-2009

Subject : Leviability of Service tax on construction of canals by Government agencies –

the essence of the definition is that the "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. As the canal system built by the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal system is built by private agencies and is developed as a revenue generating measure, then such construction should be charged to service tax.

(iv) B1/6/2005- composite construction of commercial complex alongwith Road

At present, services rendered for construction of commercial or industrial buildings is taxable. However, construction of roads is not liable to service tax. A point has been raised that if a commercial complex is constructed which also contains roads whether the value of construction of roads would be liable to service tax.

If the contract for construction of commercial complex is a single contract and the construction of road is not recognized as a separate activity as per the contract, then the service tax would be leviable on the gross amount charged for construction including the value of construction of roads.

When services provided under a contract consist of a number of different elements, a view has to be taken on the basis of the facts and circumstances of each case as to whether the service provider has made a single overall supply or a supply of different services which are to be treated differently

Circular no 123/5/2010

S.No.	Activity	Status
1.	Shifting of overhead cables/wires for any reasons such as widening/renovation of roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
2.	Laying of cables under or alongside roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
3.	Laying of electric cables between grids/sub-stations/transformer stations en route	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
4.	Installation of transformer/ sub-stations undertaken independently	Taxable service, namely Erection, commissioning or installation services [section 65 (105] (zzd].
5.	Laying of electric cables up to distribution point of residential or commercial localities/complexes	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
6.	Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service, namely commercial or industrial construction' or 'construction of complex' service [section 65(105) (zzq)/(zzzh)], as the case may be.
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service, namely Erection, commissioning or installation services [section 65 (105] (zzd].
8.	Railway electrification, electrification along the railway track	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994

334/03/2010-TRU

6.1 In the Finance Act, changes have been made in the construction services, both commercial construction and construction of residential complex, using 'completion certificate' issued by 'competent authority'. Before the issuance of completion certificate if agreement is entered into or any payment is made for sale of complex or apartment in residential complex, service tax will be leviable on such transaction since the builder provides the construction service. Completion certificate issued by a Government authority was prescribed as demarcation by introducing an Explanation in the Finance Act. During the post budget discussions, it was pointed that practice regarding issuance of completion certificates varies from state to state. Considering the practical difficulties, the scope of the phrase 'authority competent' to issue completion certificate has been widened by issuing an order for removal of difficulty (Refer M.F.(D.R) Order No.1/2010 dated 22nd June 2010). **Completion certificate issued by an architect or chartered engineer or licensed surveyor can be now taken to determine the service tax liability.**

6.2 After the Budget was introduced views were expressed that the tax liability on construction sector has been tightened at a time when the sector was recovering after recession. After considering the issue, abatement available for construction of industrial or commercial complex and also residential complex has been prescribed as seventy five per cent. This means now tax incidence will be the rate of service tax applied on twenty five per cent of gross value of commercial or residential complex or unit, broadly representing the service component in the construction, subject to conditions (Refer Notification 29/2010-Service Tax, dated 22nd June 2010). Importantly seventy five percent abatement will be applicable only if the gross value of commercial or residential complex or unit includes cost of land. Otherwise the existing rate of abatement of 67% would continue to apply.

6.3 Exemption has been provided for construction of residential complex service, when the same is rendered as part of Jawaharlal Nehru national Urban Renewal Mission (JNNURM) and Rajiv Awaas Yojana (Refer Notification No.28/2010- Service Tax, dated 22nd June 2010). These are flagship schemes of the Government of India to provide shelter for the poor and the disadvantaged and hence taxable service of construction of complex in the context of these two development schemes have been kept out of the ambit of service tax.

Practical que

M/ s Unitech had made total turnover of Rs. 1500 crore which includes

	Amt in crore
1) Construction of Mall at Netaji Subhash place	15
2) Construction of 2 floor office for Chartered Accountant	2
3) Construction of building at Vishwas Nagar for ICAI	25
4) Construction of pipeline for GAIL	5
5) Only completion & finishing services provided	6
6) Construction of Road	10
7) Construction of commercial complex alongwith Road	25
8) Construction of airport & Railway Station	10
9) Construction of Bridge, tunnel & Dams for Govt.	16
10) Construction of Bridge, Tunnel for Reliance Industries	1
11) Construction of Canal for Delhi Govt	2
12) Construction of Canal for Pepsico India Ltd.	3
13) Construction of temple, school & college	50
14) Construction of office for Income tax Department.	10

Calculate taxable value of service

Ans

	Amt in crore
Total turnover Less-	1500

1) Construction of Mall at Netaji Subhash place	----
2) Construction of 2 floor office for Chartered Accountant	----
3) Construction of building at Vishwas Nagar for ICAI	25
4) Construction of pipeline for GAIL	---
5) Only completion & finishing services provided	6
6) Construction of Road	10
7) Construction of commercial complex alongwith Road	---
8) Construction of airport & Railway Station	10
9) Construction of Bridge, tunnel & Dams for Govt.	16
10) Construction of Bridge, Tunnel for Reliance Industries	1
11) Construction of Canal for Delhi Govt	2
12) Construction of Canal for Pepsico India Ltd.	---
13) Construction of temple, school & college	50
14) Construction of office for Income tax Department.	10
GROSS AMOUNT CHARGED	1370
LESS- ABATEMENT – 75% UNDER NN- 1/06	1027-50
VALUE AFTER ABATEMENT	342-50
ADD- COMPLETION AND FINISHING SERVICE	6-00
	348-50

Calculate service tax liability under various alternatives

1. Amount charged for Residental Complex Construction – 700 lakh
2. The above amount includes value of material – 400 lakh (Cost- of Material – 360 lakh & Profit on Mat- 40 lakah)
3. Cost of land not included above 300 lakh

Other information is

1. No Vat is payable on transfer of property in goods
2. Excise duty paid on material is 10.3% on 360 lakh
3. Excise duty paid on capital goods is 10 lakh (Cess 3% not included in 10 lakh)
4. Service tax paid on input service is 5 lakh (cess 3% not included)

Ans- Option-1 – Avail Cenvat Credit

GAC (excluding land)			700 lakh
	S. tax	EC	SHEC
Service tax	70	1.40	0.7
Less CCR			
Input	36	0.72	0.36
Capital goods	10	0.2	0.1
Input service	5	0.1	0.05
Service tax payable	19	0.38	0.19

Option-2 Avail NN- 12/2003

GAC (excluding land)	700 lakh

Less- value of mat. Taxable value of service			<u>400 lakh</u> 300 lakh
	S. tax	EC	SHEC
Service tax	30	0.6	00.3
Less CCR			
Input	------	-------	-------
Capital goods	10	0.2	0.1
Input service	5	0.1	0.05
Service tax payable	15	0.3	0.15

Option-3 – Abatement – 67%

GAC (excluding land) Less- abatement 67% Taxable value of service			700 lakh <u>469 lakh</u> 231 lakh
	S. tax	EC	SHEC
Service tax	23.10	0.462	0.231
Less CCR			
Input	------	-------	-------
Capital goods	-------	-------	-------
Input service	-------	------	-------
Service tax payable	23	0.462	0.231

Option-3 – Abatement – 75%

GAC (excluding land) Less- abatement 75% Taxable value of service			1000 lakh <u>750 lakh</u> 250 lakh
	S. tax	EC	SHEC
Service tax	25	0.50	0.25
Less CCR			
Input	------	-------	-------
Capital goods	-------	-------	-------
Input service	-------	------	-------
Service tax payable	25	0.50	0.25

Building

Pipeline

An **electrical conduit** is an electrical piping system used for protection and routing of electrical

Taj Hotel

Crossriver

Not covered in – commercial or ind. Const

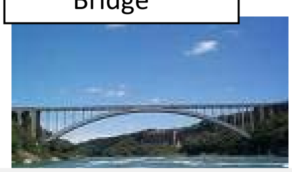
Airport

Road

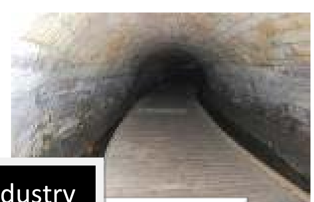
Transport

Railway

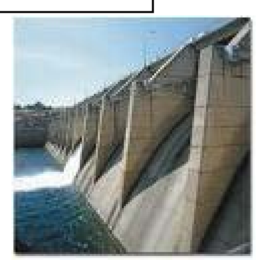
Bridge



Tunnel



DAM

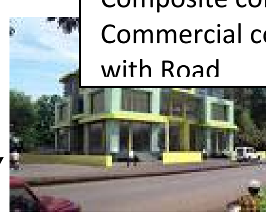


Not covered- because not use for commerce or industry

Govt

Completion & Finishing service- commercial or industrial construction

Composite contract of Commercial complex with Road



DIVIS

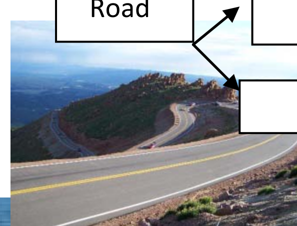
GAC OF Road not taxable

INDIVIS

Value = GAC OF Road & comm. Complex

CBEC CLARIFICATION

Road



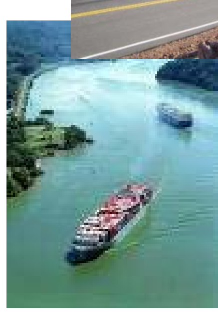
Cons

Not construction service

repair

Covered in management , maintenance service- presently exempt

Canal



For

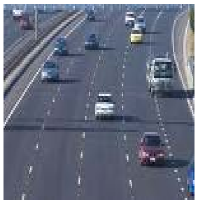
Not taxable

For PVt

Taxable

Construction of Road- not taxable

Laying of new road

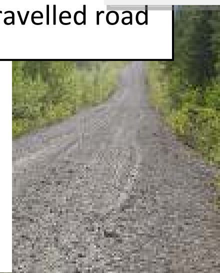


Widening of narrow road to broader Road

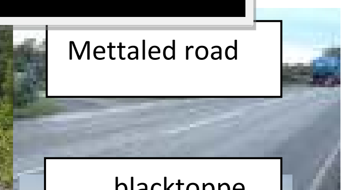
Four lane road

Changing Road surface- gravelled to metalled road or black topped road or concrete

Gravelled road

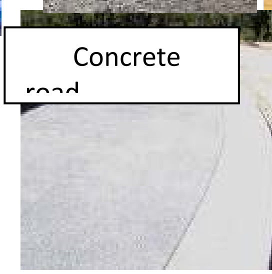


Mettaled road



blacktoppe

Concrete road

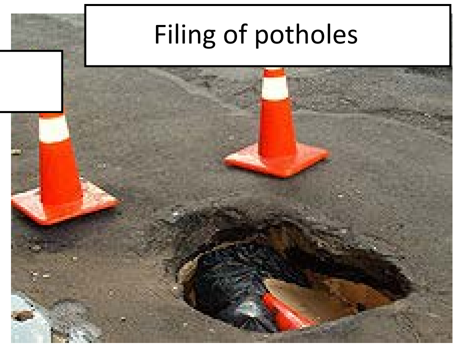


Repair of Road- MMR- exempt

Resurfacing /

Renovation/

Filing of potholes



Construction of port

Completion and finishing services or repair, alteration, renovation, restoration.- **not exempt**

Exemption

Service wholly in port

Service wholly in Airport

Service tax in case of works contract service

Sec 65(105) (zzzza)

Taxable service means any service provided or to be provided

- ⇒ to any person, by any other person
- ⇒ in relation to the execution of a works contract,
- ⇒ excluding works contract in respect of
- ⇒ roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation. — For the purposes of this sub-clause, "works contract" means a contract wherein,

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out, —

- (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
- (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
- (c) construction of a new residential complex or a part thereof; or
- (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
- (e) turnkey projects including engineering, procurement and construction or commissioning *(EPC)* projects;

Service tax determination of value Rules 2006- Rule 2A

Determination of value of services involved in the execution of a works contract. —

(1) Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract shall be determined by the service provider in the following manner :-

(i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract

- ✓ Less the value of transfer of property in goods involved in the execution of the said works contract.

Explanation. - For the purposes of this rule, -

(a) gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
- (vi) cost of establishment of the contractor relatable to supply of labour and services;
- (vii) other similar expenses relatable to supply of labour and services; and
- (viii) profit earned by the service provider relatable to supply of labour and services;

(ii) Where Value Added Tax or sales tax, as the case may be, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i).]

Works contract----composition scheme for payment of service tax rules 2007- RULE 3.

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

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

(a) including -

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

(b) excluding -

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

(2) The provider of taxable service shall not take CENVAT (2) credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

(4) The option under sub-rule (3) shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.]

Exemption Notification

1. NN- 25/2007- Works contract service in relation to port or other port
   Services provided in relation to execution of works contract provided to any person by any other person in relation to construction of port or other port is exempt.
   Finishing or repair service not exempt- For the purpose of this exemption notification services provided in relation to execution of works contract in relation to construction of port or other port shall not include services of completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port.
2. NN-41/2009- Canals other than those for commerce & Industry
   Taxable services in relation to execution of a works contract in respect of canals, other than those primarily used for the purposes of commerce or industry is exempt from whole of service tax.

CBEC Clarification

1. B1/16/2007- where to classify (Works contract vs Residential complex or commercial const)
   The Contracts which are treated as works contract for the purpose of levy of VAT/ Sales tax shall also be treated as works contract for the purpose of levy of service tax. Therefore, where a works contract has been charged to Sales-tax/VAT, the service element therein shall be charged to service tax under works contract service only not under 'Commercial or industrial construction service' or 'construction of residential complex'.

2. <u>Cir- 116/10/2009- construction of Dams, Buildings etc. by Government</u>
   If Government takes up construction activity of dams, buildings or infrastructure construction etc. through EPC (Engineering procurement & construction) mode, the said service is covered under "works contract service". The Works contract service itself excludes works contract in respect of dams, road, airports, railways, transport terminals, bridges & tunnels executed through EPC mode. Hence works contract in respect of above works even if done through EPC mode are exempt from service tax.

<u>RTP June 09</u>

Ramakrishna development corporation (RDC), a real estate developer, is engaged in construction of a residential complex (consisting of more than 20 houses) named Apple county for almeco Builders.

Contracted price (excluding VAT, if leviable) 25,00,000
Steel supplied by almeco builders to RDC 1,00,000
Excise duty paid on

- Capital goods used in providing construction service 40,000
- Inputs used in relation to construction service 17,000
- Service tax paid on input services used in construction 25,000

You are required to calculate the net service tax payable by RDC IN FOLLOWING 2 CASES

A) The aforesaid contract for construction of residential complex involves the transfer of property in goods and materials involved in the construction of residential complex of worth Rs. 2,50,000. VAT of Rs. 10,000 has been paid on the said goods and materials. RDC has opted to pay the service tax under composition scheme.
B) The aforesaid contract for construction of resiential complex does not involve any transfer of property in goods and materials used in the construction of residential complex. It is to be noted that RDC has opted to avail the abatement of service tax equal to 67% under NN-1/2006 dated 1-03-06

Ans

<u>TRANSFER OF PROPERTY- LIAB LE TO SALES TAX- composition scheme</u>

GAC (Excluding VAT)	25,00,000		
Add- Value of material supplied			
By M/s Almeco Builders	1,00,000		
		26,00,000	
Service tax 4.12%		1,07,120	
Less- Cenvat credit			
input		not allowed	
Capital goods (50%)			20000
Input service			25000
Service tax payable			62120

<u>TRANSFER OF PROPERTY- not LIAB LE TO SALES TAX- RESIDENTIAL COMPLEX</u>

GAC (Excluding VAT)		25,00,000		
Add- Value of material supplied				
By M/s Almeco Builders		1,00,000		
				26,00,000
LESS ABATEMENT 67%		17,42,000		
VALUE OF SERVICE			8,58,000	
Service tax 10.3 %			88,374	
Less- Cenvat credit				
input		not allowed		
Capital goods	NOT ALLOWED			
Input service	NOT ALLOWED			
Service tax payable			88,374	

<u>Nov 2008 new</u>

Calculate the net service tax payable under the provision of rule 2A of the Service tax (Determination of Value) Rules, 2006 relating to determination of value of services in the execution of a works contract from the following particulars:

(i) Gross amount for the works contract (excluding VAT) Rs 1,00,000
(ii) Value of goods and materials sold in the execution of works contract Rs. 70,000
(iii) CENVAT credit on (ii) above Rs. 1,000
(iv) Service tax paid on input services Rs. 1,000
(v) CENVAT credit on capital goods issued in the provision Rs. 1,000 of works contract service
(vi) Service tax rate 4.12%

Make suitable assumptions and provide explanations where required.

Ans

Gross amount charged (excluding VAT)		1,00,000
Less: Value of goods and materials	70,000	
	30,000	
Service tax @ 10.3%	3090	
Less: CENVAT credit of service tax paid on input service + CENVAT credit of excise duty paid on capital goods (50%) [Rs 1,000 + (50% of Rs 1,000)] [Note 2]		1,500
Net service tax payable	1590	

Notes –

1. CENVAT credit of Rs.1,000 on value of goods and materials sold in the execution of works contract shall not be available to the assessee.
2. CENVAT credit in respect of capital goods shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% shall be available in the subsequent financial year [Rule 4(2) of the CENVAT Credit Rules, 2004].

Nov 09

Determine the taxable turnover, input tax credit and net VAT payable by a works contractor from the details given below on the assumption that the contractor maintains sufficient records to quantify the labour charges. Assume output VAT at 12.5%:

	Particulars Rs.(in lakh)
(i) Total contract price (excluding VAT)	100
(ii) Labour charges paid for execution of the contract	35
(iii) Cost of consumables used not involving transfer of property in goods	5
(iv) Material purchased and used for the contract taxable at 12.5% VAT (VAT included)	45

The contractor also purchased a plant for use in the contract for Rs. 10.4 lakhs. In the VAT invoice relating to the same, VAT was charged at 4% separately and the said amount of Rs. 10.4 lakhs is inclusive of VAT. Assume 100% input credit on capital goods.

Make suitable assumption wherever required and show the working notes. (5 Marks)

Ans

Under the works contract, the turnover for imposition of VAT is the sale price of the goods in which there is a transfer of property. The amount representing the labour & other charges incurred for such execution is deductible. Computation of the taxable turnover, input tax credit and net VAT payable by the works contractor:-

Particulars	Rs.	
Total contract price		1,00,00,000
Less : Deductions admissible		
1. Labour charges paid for executing the contract	35,00,000	
2. Cost of consumables in which no property is transferred	5,00,000	
Total deductions	40,00,000	
Taxable turnover	60,00,000	
Output VAT payable @ 12.5% (on Rs. 60,00,000)		7,50,000 (A)

Less : Input tax credit admissible
1. On the material purchased (on Rs. 45,00,000 x 12.5/112.5) 5,00,000
2. On the plant purchases (on Rs. 10,40,000 x4/104) 40,000
Input tax credit 5,40,000 (B)
Net VAT payable 2,10,000 (A-B)

Que Answer the following questions:-

(i) Examine whether the following statements are true:-

(a) Unless the entire payment for the property is paid by the buyer after the completion of construction, the activity of construction would be deemed to be taxable under construction of residential complex service provided by the builder/promoter/developer.

(b) Works contract service provided in respect of canals, other than those primarily used for the purposes of commerce or industry is liable to service tax.

(c) Transport of petroleum and petroleum products through national waterway, inland water and coastal shipping is exempt from the service tax

Ans

(i) (a) The statement is true. Explanation inserted in section 65(105)(zzzh) by Finance Act, 2010 provides as follows:-

The construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) is deemed to be service provided by the builder to the buyer.

(b) The statement is false. *Notification No. 41/2009 ST dated 23.10.2009* has exempted the works contract service provided in respect of canals, other than those primarily used for the purposes of commerce or industry.

(c) The statement is true. *Notification No. 30/2009 ST dated 31.08.2009* exempted the taxable service provided to any person in relation to the transport of petroleum and petroleum products through national waterway, inland water and coastal shipping from whole of the service tax leviable thereon.

(16) CONSTRUCTION SERVICE – PREFERENTIAL LOCATION OR DEVELOPMENT SERVICES

(i) Taxable service

Means any service provided or to be provided
to a buyer, by a builder of a residential complex, or a commercial complex, or any other person authorised by such builder, for providing preferential location or development of such complex but does not include services

Covered under sub-clauses

(zzg), MANAGEMENT, MAINTENANCE OR REPAIR SERVICE

(zzq), COMMERCIAL OR INDUSTRIAL CONSTRUCTION

(zzzh) CONSTRUCTION OF COMPLEX SERVICE

and in relation to parking place.

Explanation. — For the purposes of this sub-clause, ''preferential location'' means any location having extra advantage which attracts extra payment over and above the basic sale price;]

(ii) CBEC CLARIFICATION

334/1/2010----Special services provided by builder etc. to the prospective buyers such as providing preferential location or external or internal development of complexes on extra charges.

(1) Construction of commercial or industrial structures was brought under service tax net in 2004 while construction of residential complexes became a taxable service in 2005. The scope of the existing services includes construction, completion and finishing, repairs, alterations, renovation or restoration of complexes. It has been reported that in addition to these activities, the builders of residential or commercial complexes provide other facilities and charge separately for them and these charges do not form part of the taxable value for charging tax on construction. These facilities include,-

  (a) prime/preferential location charges for allotting a flat/commercial space according to the choice of the buyer (i.e. Direction- sea facing, park facing, corner flat; Floor- first floor, top floor, Vastu- having the bed room in a particular direction; Number- lucky numbers);

  (b) internal or external development charges which are collected for developing/maintaining parks, laying of sewerage and water pipelines, providing access roads and common lighting etc; (c) fire-fighting installation charges; and (d) power back up charges etc.

(2) Since these charges are in the nature of service provided by the builder to the buyer of the property over and above the construction service, such charges are being brought under the new service. *Charges for providing parking space have been specifically excluded from the scope of this service*. Development charges, to the extent they are paid to State Government or local bodies, will be would be excluded from the taxable value levy. Further, any service provided by Resident Welfare Associations or Cooperative Group Housing Societies consisting of residents/owners as their members would not be taxable under this service.

Que

Amount charged for providing Sea-Facing/ park- facing Flat by Builder of a residential complex having 10 Flats.	5
Amount charged for providing Sea-Facing/ park- facing Flat by Builder of a residential complex having 13 Flats.	8
Amount charged for providing lucky number shop by Builder of a commercial complex	6
Amount charged for providing parking place provided by Builder	7
Amount charged for developing/ maintain parks/ laying of sewrage & water pipelines, common lighting.	5
Amount charged for fire- fighting installation & Power Back up	10
Development charges paid to municipality	1
	42

Calculate Value of taxable service

Ans

Amount charged for providing Sea-Facing/ park- facing Flat by Builder of a residential complex having 10 Flats.	----
Amount charged for providing Sea-Facing/ park- facing Flat by Builder of a residential complex having 13 Flats.	8
Amount charged for providing lucky number shop by Builder of a commercial complex	6
Amount charged for providing parking place provided by Builder	----
Amount charged for developing/ maintain parks/ laying of sewrage & water pipelines, common lighting.	5
Amount charged for fire- fighting installation & Power Back up	10
Less- Development charges paid to municipality	(1)
Value of taxable service	28

Business auxiliary service

(i) "<u>business auxiliary service"</u> means any service in relation to, —

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
(ii) promotion or marketing of service provided by the client; or
~~[*Explanation.* — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo;]~~ { by F. Act 2010 see note below]
(iii) any customer care service provided on behalf of the client; or
(iv) procurement of goods or services, which are inputs for the client; or
[*Explanation.* — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]
(v) production or processing of goods for, or on behalf of, the client;]
(vi) provision of service on behalf of the client; or
(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent,
[but does not include any activity that amounts to manufacture of excisable goods].

[*Explanation.* — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person —

(i) deals with goods or services or documents of title to such goods or services; or
(ii) collects payment of sale price of such goods or services; or
(iii) guarantees for collection or payment for such goods or services; or
(iv) undertakes any activities relating to such sale or purchase of such goods or services;

[(b) "excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944

(c) "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944

<u>Miscellaneous</u>

~~1. does not include any information technology service~~
~~information technology service" means any service in relation to designing or maintaining of computer software or computerized data processing or system networking, or any other service in relation to operation of computer systems.~~

2. *<u>services provided by call centres or medical transcription centres</u>* <u>are not exempt now</u>
<u>call</u> centre means a commercial concern which
a) provides assistance help or information or
b) contacts customer including prospective customer
* for the purposes of sales, telemarketing, payments
- through telephone, leased lines, satellite links, mail, fax, web chat and

- use of information system for monitoring and recording information
- on behalf of another person

ii) medical transcription centre means a commercial concern which transcribes medical history, treatment, medical observations and the like.

Customer care

promoting goods

(ii) Abatement

Business auxiliary service in relation to production or processing of parts and accessories used in the manufacture of cycles, cycle rickshaws and hand-operated sewing machines, for, or on behalf of, the client.	The gross amount charged from the client is inclusive of the cost of inputs and input services, **whether or not supplied by the client.**	30

conditions

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, **has not been taken** or
(ii) the service provider **has not availed** the benefit of exemption in respect of value of goods and materials sold by him to the recipient of service under NN. 12/2003-

Departmental Clarification:- D.O.F. No. 334/1/2010-TRU dated 26.02.2010 further explains:-

Lotteries are conducted by various State Governments and are regulated by a Central legislation, i.e. the Lotteries (Regulation) Act, 1998. The said Act provides the conditions, restrictions and prohibitions pertaining to organization of lotteries conducted by the State Governments. Section 4 of the said Act enjoins upon the State Governments to print lottery tickets bearing the imprint and the logo to ensure authenticity of the lottery ticket. It also provides that 'the State Government shall sell tickets either itself or through distributors or selling agents'. The State Governments appoint distributors to advertise, promote and sell lottery tickets. Besides the State Governments organizing lotteries, some other games of chance are also being organized. The services provided for promotion or marketing or organizing such games of chance have now been covered by introducing a separate taxable service to cover the services in connection with games of chance, organized, conducted or promoted by the client, in whatever form or by whatever name called (such as lottery, lotto) under the 'games of chance' service. Consequently, the Explanation appearing under 'business auxiliary service' has been deleted.

(iii) Exemption

(iii) Business Auxiliary Services — Exemption to taxable service provided by sub-broker to stock-broker *Notification No. 31/2009-S.T., dated 1-9-2009]*

exempts the taxable service provided by a sub-broker, to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange from the whole of the service tax leviable thereon under section 66 of the said Finance Act.

(iv) Business Auxiliary Services — Exemption to taxable service provided in relation to manufacture of specified goods charged to excise duty under M & TP (ED) Act, 1955 *[Notification No. 32/2009-S.T., dated 1-*

9-2009]

exempts the taxable service provided by any person, to a client in relation to the manufacture of pharmaceutical products, medicines, perfumery, cosmetics or toilet preparations containing alcohol, which are charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 from the whole of the service tax leviable thereon under section 66 of the said Finance Act.

(v) Business Auxiliary Services — Exemption to value of inputs used for providing taxable service during manufacture/processing of alcoholic beverages *[Notification No. 39/2009-S.T., dated 23-9-2009]*

the Central Government, exempts the taxable service provided by service provider' to 'service receiver' during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, from so much of value which is equivalent to the value of inputs, excluding capital goods, used for providing the same service, subject to the following conditions, namely :-

(a) that no Cenvat credit has been taken under the provisions of the Cenvat Credit Rules, 2004;
(b) that there is documentary proof specifically indicating the value of such inputs; and
(c) where the service provider also manufactures or processes alcoholic beverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accounts of receipt, production, inventory, despatches of goods as well as financial transactions relating thereto.

Explanation.- For the purposes of this notification, the words or phrase 'input', or as the case may be, 'capital goods' shall have the meaning as is assigned to them under rule 2 of the Cenvat Credit Rules, 2004.

(vi) NN42/2009

Business Auxiliary Services — Exemption to specified processes in relation to manufacture of cycles and sewing machines upto aggregate value of Rs. 150 lakhs in a financial year- *[NN 42/2009-*

CG exempts the taxable service provided by a person (hereinafter called the 'service provider') to any other person (hereinafter called the 'service receiver'), in relation to one or more of the specified process during the course of manufacture of parts of cycles or sewing machines, subject to the following conditions, namely :-

(a) the aggregate value of taxable service in relation to one or more of the specified process provided by a service provider, does not exceed 150 lakhs during the preceding financial year;
(b) the exemption shall be restricted to the first clearances, wherein the aggregate value of taxable service in relation to one or more of the specified process provided by a service provider does not exceed 150 lakhs, made on or after the 1st day of April in any financial year; and
(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, such service provider shall maintain separate accounts of receipt, production and clearance of exempted and dutiable goods and services.

2. Notwithstanding anything contained in sub-para (b), exemption shall be restricted to the clearances, wherein the aggregate value of taxable service in relation to one or more of the specified process provided by a service provider, does not exceed 63 lakhs during the remaining part of the current financial year.[2009-10]

Explanation. - For the purposes of this notification, "specified process" means electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black.

(vii) [Notification No. 13/2010-S.T., dated 27-2-2010]

Business Auxiliary Services and Online Information service — Exemption to specified Indian news agencies

CG exempts the taxable service provided in relation to on-line information and database access or retrieval services and business auxiliary services by any Indian news agency, from the whole of service tax subject to the fulfilment of the following conditions, namely :-

(a) If such new agency is notified as a news agency set up in India solely for collection and distribution of news :

Provided that this exemption shall be available only to news agencies which are specified under clause (22B) of section 10 of the Income Tax Act, 1961 (43 of 1961); and,

(b) such news agency applies its income or accumulates it for collection and distribution of news and does not distribute its income in any manner to its members.

(viii) NN 13/2003 as amended

CG exempts the business auxiliary services provided by a commission agent in relation to sale or purchase of agricultural produce from the service tax

(ix) NN14/2004 as amended

CG exempts taxable service provided to a client by any other person in relation to the business auxiliary service, insofar as it relates to, -

(a) procurement of goods or services, which are inputs for the client;

(b) "production or processing of goods for, or on behalf of, the client;"

(c) provision of service on behalf of the client; or

(d) a service incidental or auxiliary to any activity specified in (a) to (c) above.

and provided in relation to agriculture, printing, textile processing or education, from the whole of service tax".

(x) NN 8/2005

Job work — Service tax exemption to goods produced on behalf of client

CG exempts the taxable service of "production or processing of goods for, or on behalf of, the client" from the whole of service tax

Provided that the said exemption shall apply only in cases where such goods are produced OR Processed using raw materials or semi-finished goods supplied by the client and goods so produced or Processed are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 on which appropriate duty of excise is payable.

Explanation. - For the purposes of this notification, -

(i) the expression "production or processing of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production, subject to the condition that such production or processing does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(ii) "appropriate duty of excise" shall not include 'Nil' rate of duty or duty of excise wholly exempt.

[Notification No. 8/2005-S.T., dated 1-3-2005]

(xi) NN 21/2005

Gem & jewellery — Production or processing of goods services — Service tax exemption

CG exempts the taxable service of production or processing of goods for, or on behalf of, the client, referred to in sub-clause (v) of clause (19) of section 65 of the said Finance Act, provided by any person, in the course of manufacture of, -

(a) cut and polished diamonds and gem stones; or

(b) plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986), from the whole of service tax leviable thereon under section 66 of the said Finance Act.

[Notification No. 21/2005-S.T., dated 7-6-2005]

CBEC CLARIFICATION

1) *59/8/2003- •* *While it is not possible to give an exhaustive list of business auxiliary services, the following are illustrations of services that are covered under this category viz. evaluation of prospective customers, processing of purchase orders, customer management, information and tracking of delivery schedules, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, managing distribution & logistics.*

   The services provided in relation to getting a customer, verification of prospective customer, processing of purchase order etc would also be covered under service tax, as the law specifically provides for inclusion of such services as business auxiliary support services.

2) DGST ORDER 2004

   The matter has arisen on account of the doubt raised by the Air Cargo Agents Association of India – whether services such as billing, collection or recovery of payments, issuing airway bills, marketing or canvassing of cargo, managing distributions and logistics etc. rendered by Air Cargo Agency Agreement (herein after referred to as 'agreement') are liable to service tax and if so, whether these are covered within the definition of the "Business Auxiliary Services" provided under the Finance Act, 1994 and the rules made thereunder ?

   ANS- under the IATA Cargo Agency Agreement by the members of the Association (The Air Cargo Agents), are covered within the scope of "Business Auxiliary Services" and the Air Cargo Agents are liable to pay service tax on the remuneration/consideration received by the agents for such activities.

3) *87/5/2006*

   In some cases, the automobile dealers help the buyers of the vehicles for arranging the finances. For this, they have a tie-up with Banks / Non-banking Finance Companies. The customers are advised by the dealers to approach such financial companies for taking loans. The automobile dealers get commission from such financial companies for directing the customers to the latter. By this activity, the automobile dealers 'promote or market the services provided by their customer (i.e., the financial institution), and are therefore covered under 'taxable service', namely, the "Business auxiliary service". The tax is payable on the gross commission received by the automobile dealer. In some cases, the dealers share part of their commission with their customers to attract them. However, this is an independent transaction between the automobile dealer and the purchaser of the vehicle, and does not involve the service rendered by the automobile dealer to the finance company. Therefore, the tax payable by the dealer would be on the gross amount received from the financial company and not on the balance amount, i.e., after excluding the amount that he passes on to the customer.

4) Production of alcoholic beverages on job work basis —

   249/1/2006- dated 27-10-2008

   Lease Arrangement

   Under such agreement the distillery of the lessor is taken on lease by the lessee (who has the licence to produce alcoholic beverages and may be the brand owner) who pays rent for the same. In such a case the rent collected by the lessor/distillery owner is chargeable to service tax under 'renting of immovable property service'.

Contract manufacturing- Exemption i.r.t input- Refer

Brand Licensing- covered in IPR - Refer

FOR MAY 2010

Modification in Business Auxiliary Service (BAS) [section 65(19)] :- It may be recalled that production or processing of goods for or on behalf of a client falls within the purview of this service. However, if any such activity amounts to manufacture within the meaning of section 2(f) of the Central Excise Act, the same is excluded from its purview. This exclusion has been modified to state that it would apply only if the activity results in manufacture of 'excisable goods'. Both the words/phrases i.e. 'manufacture' and 'excisable goods' would have the same meaning as defined under the Central Excise Act. The impact of this change would be that even if a process of manufacture is undertaken for the client, but the resultant product does not fall under the category of excisable goods, such as alcoholic beverages, the service tax would be attracted. Certain other goods which would also fall under BAS on account of the proposed change would be kept outside the tax net by way of exemption notification, to be issued at the appropriate time.

5) MASTER circular 96/7/2007

a) Department of Posts also provides a number of services such as courier services (Speed Post), insurance services (Postal Life Insurance), agency or intermediary services on commission basis (distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills), which are also provided by other commercial organizations. Such services are liable to service tax
b) Merely canvassing advertisements for publishing, on commission basis, is not classifiable under advertisement service but under business auxiliary service
c) *Que*- Whether commission received by distributors for distribution of mutual fund units is liable to Service Tax under business auxiliary service?

Ans- Distributors receive commission from mutual fund for providing services relating to purchase and sale of Mutual fund units. Services provided by such distributors are in the nature of commission agent and are, thus, liable to service tax under business auxiliary service [section 65(105)(zzb)].

6) 334/1/2008

(a) Packaged software sold off the shelf, being treated as goods, is leviable to excise duty @ 8%. In this budget, it has been increased from 8% to 12% vide notification No. 12/2008-C.E., dated 1-3-2008. Number of IT services and IT enabled services (ITeS) are already leviable to service tax under various taxable services:

⇒ Consulting engineer's service - advice, consultancy or technical assistance in the discipline of hardware engineering *[Section 65(105)(g)]*.
⇒ Management or business consultant's service - procurement and management of information technology resources *[Section 65(65)]*.
⇒ Management, maintenance or repair service - maintenance of software, both packaged and customized and hardware *[Section 65(64)]*.
⇒ Banking and other financial services - 'provision and transfer of information and data processing' *[Section 65(12)]*.
⇒ Business support service - various outsourced IT and IT enabled services *[Section 65(105)(zzzq)]*.
⇒ Business auxiliary service - services provided on behalf of the client such as call centres *[Section 65(19*
⇒ *IT Software Service*
⇒ *Technical testing and analysis*
⇒ *Technical inspection and certification service*

(b) *Business Auxiliary Service :*

⇒ Services provided in relation to promotion or marketing of service provided by the client is leviable to service tax under business auxiliary service. Organization and selling of lotteries are globally treated as supply of service. Lotteries (Regulation) Act, 1998 enables State Governments to organize, conduct or promote lotteries. Lottery tickets are printed by the State governments and are sold through agents or distributors. Tickets are delivered by the State Government to the distributors at a discounted price as compared to the face value of the tickets. Services provided by the distributors or agents in relation to promotion or marketing of lottery tickets are leviable to service tax under the existing business auxiliary service.

⇒ <u>Lotteries fall under the category of games of chance</u>. Games of chance are known under various names like lottery, lotto, bingo etc. and are also conducted through internet or other electronic networks.

⇒ To clarify as removal of doubts, an explanation is added under business auxiliary service stating that services provided in relation to promotion or marketing of games of chance organized, conducted or promoted by the client are covered under the existing definition of business auxiliary service. Amendment is only for removal of doubts and field formations are, therefore, requested to ensure that service tax is collected on such services.

7) Circular No. 115/9/2009-S.T., dated 31-7-2009

Subject : Service tax on commission paid to Managing Directors/Directors by the company

Below mentioned issues have been referred to the Board seeking clarifications, -

(i) applicability of service tax under 'Business Auxiliary service' on commission paid to Managing Directors/Directors (whole time, or Independent) by the company,

(ii) applicability of service tax on Independent Directors who are part of the Board of Directors under 'Management Consultant service'.

2. Both the matters have been examined by the Board and the clarifications are as under. -

(i) Some Companies make payments to Managing Directors/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' that is within the scope of business auxiliary service and hence service tax would not be leviable on such amount.

(ii) 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 definition of management consultant service makes it clear that what is envisaged from a consultant is advisory service and not the actual performance of the management function. The payments made by Companies, to Directors cannot be termed as payments for providing management consultancy service. Therefore, it is clarified that the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category '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.

3. In view of the above, it is clarified that remunerations paid to Managing Directors/Directors of companies whether whole-time or independent when being compensated for their performance as Managing Directors/Directors would not be liable to service tax.

8) <u>NN 1/2009</u>

Business auxiliary service is provided to GTA for use in GTA service will be exempt.

PRACTICAL QUE

M/S ARUNDHATI charged from its customers Rs 70 lakh which includes the following

		RS IN LAKH
1)	Amt charged from Tata Teleservices for conducting a seminar of Top executives of different targeted customer (companies) for promoting the service of Tata Teleservices.	2
2)	Amt charged from SAIL for securing purchase orders for SAIL	1
3)	Commission recovered for acting as del- credre agent.	5
4)	Amt charged from Bharti Airtel for running a call centre for Airtel through which queries of customers of Airtel are answered	2
5)	Amt charged as commission for procuring the inputs for Jindal steels	1
6)	Promotion of service provided by Raj Transports	5
7)	Charges for jobwork made i.e manufacturing for Jindal Steels of excisable goods by not following E/N- 214/86	4
8)	Charges for jobwork made i.e manufacturing for Jindal Steels of excisable goods by following E/N- 214/86	2
9)	Charges for jobwork made i.e manufacturing for Jindal Steels of non- excisable goods	3
10)	Amt charged for billing, Collection of cheques, maintenance of accounts for SAIL in regard to point 2	1

Calculate taxable value of service

ANS

		RS IN LAKH
	Total amount charged Less-	70
1)	Amt charged from Tata Teleservices for conducting a seminar of Top executives of different targeted customer (companies) for promoting the service of Tata Teleservices.	-----
2)	Amt charged from SAIL for securing purchase orders for SAIL	----
3)	Commission recovered for acting as del- credre agent.	----
4)	Amt charged from Bharti Airtel for running a call centre for Airtel through which queries of customers of Airtel are answered	----
5)	Amt charged as commission for procuring the inputs for Jindal steels	-----
6)	Promotion of service provided by Raj Transports	5
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8)	Charges for jobwork made i.e manufacturing for Jindal Steels of excisable goods by following E/N- 214/86	2
9)	Charges for jobwork made i.e manufacturing for Jindal Steels of non- excisable goods	---
10)	Amt charged for billing, Collection of cheques, maintenance of accounts for SAIL in regard to point 2	----
	Taxable value of service	59

Que 2

		Amt in lakhj
1)	Charges for commission of sale of lottery tickets	1

2) Commission on purchase or sale of Food grains	2
3) Processing charged for job work for jindal steels of intermediate goods which are further used by Jindal for manufacture of dutiable goods.	5
4) Processing charged for job work for jindal steels of intermediate goods which are further used by Jindal for manufacture of exempted excisable goods.	1
5) Processing charges for jobwork for printing work for J. G glass industries	3
6) Processing charges for jobwork for polishing diamond and gemstones work for jai Jewelleries.	6
7) Processing charges for jobwork for manufacture of medicines	2
8) Processing charges for jobwork for manufacture of alcoholic beverges which are liable to excise duty . it include value of input- 5 lakh	25
9) Amt charged for production of parts to be used in manufacture of cycles from Atlas Cycles. it include value of input- 2 lakh. Further customer supplied input of 1 lakh	9

Ans

	Amt in lakh
1) Charges for commission of sale of lottery tickets	1
2) Commission on purchase or sale of Food grains [w.n-1]	---
3) Processing charged for job work for jindal steels of intermediate goods which are further used by Jindal for manufacture of dutiable goods.	----
4) Processing charged for job work for jindal steels of intermediate goods which are further used by Jindal for manufacture of exempted excisable goods.	1
5) Processing charges for job work for printing work for J. G glass industries	-----
6) Processing charges for job work for polishing diamond and gemstones work for jai Jewelleres.	-----
7) Processing charges for jobwork for manufacture of medicines	---
8) Processing charges for jobwork for manufacture of alcoholic beverges which are liable to excise duty . it include value of input- 5 lakh	20
9) Amt charged for production of parts to be used in manufacture of cycles from Atlas Cycles. [9+1] * 70%	7
10)	

<u>Working notes</u>

1) Commission in relation to agriculture produce is exempt
2) Charges for manufacture of excisable goods is not covered even if they are exempted.
3) Charges for printing and processing in relation to diamond and gemstones is exempt
4) Jobwork in relation to manufacture of medicine is exempt

Transport of goods by Air

(i) <u>Taxable Service</u>

means

Any services provided or to be provided to any person

→ By an aircraft operator

→ In relation to *transport of goods* by aircraft.

(ii) <u>Aircraft operator means</u>

any ~~commercial concern~~ any person who provides the service of transport of goods or passengers by aircraft)

(iii) <u>exemption Notification</u>

1) <u>Exemption to service in relation to export cargo</u>

Service provided by an aircraft operator to any person in relation to transport of export cargo by aircraft is fully exempt from service tax. (NN—29/2005)

<u>NN- 41/2010-</u> CG exempts the services when provided wholly within the port or other port or airport, namely,-
taxable service in relation to transport of export goods in an aircraft by an aircraft operator;

(iv) <u>CBEC Clarification</u>

2) In addition to the actual air freight charges, all charges collected towards storing, handling, loading/unloading (done in relation to air transportation of cargo) by an airlines are also taxable. (Cir 80/10/2004)

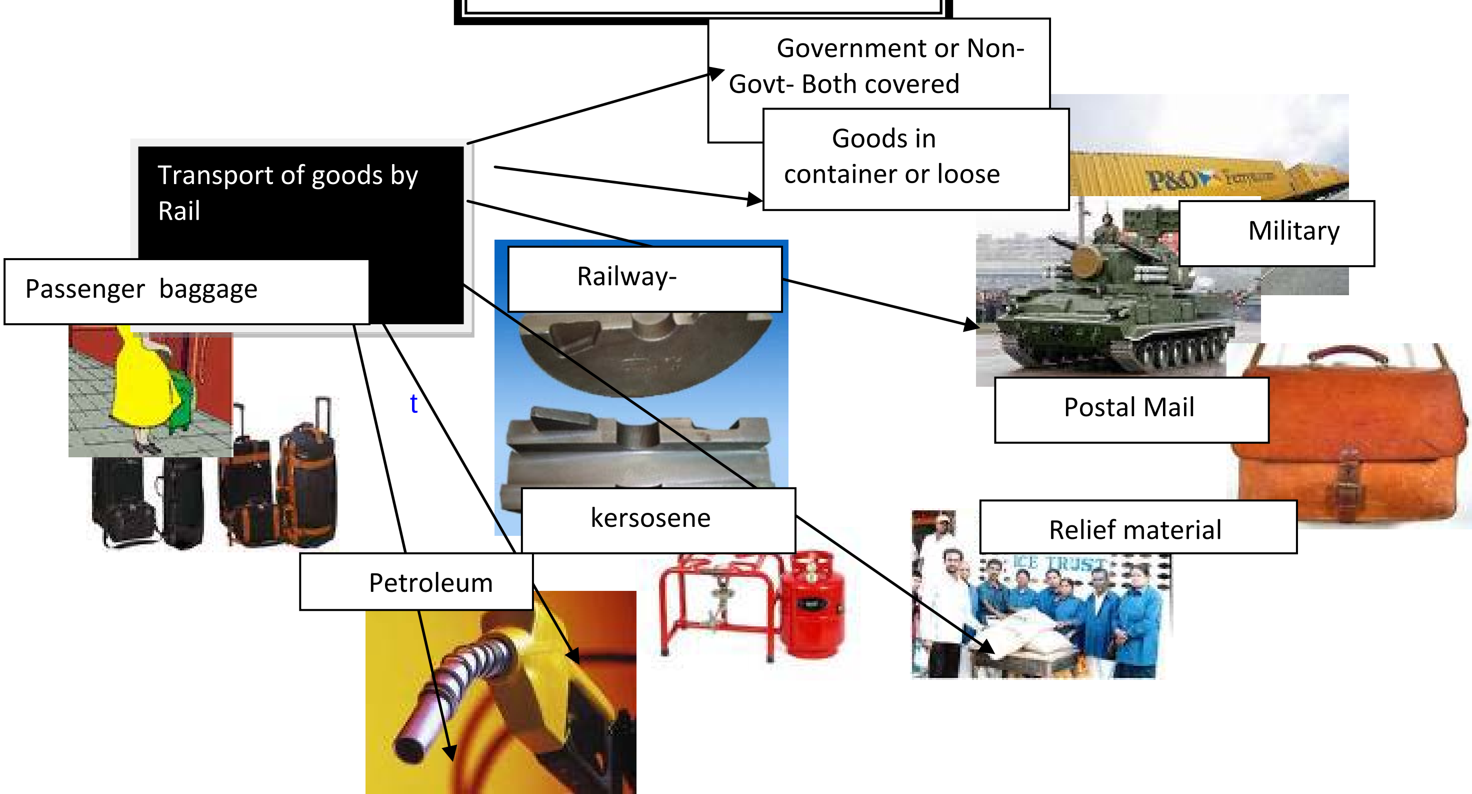
practical que

	Rs in lakh
1) Charges recovered by Air India to client for sending goods to Mumbai	5
2) Charged recovered from GPO, New Delhi who collected various consignments of client and forwarded to Air India for delivery to Kolkata	8
3) Charges recovered from clients for storage, handling, loading and unloading	1
4) Charges recovered from Samsung for sending goods to USA	1.5

Ans

	Rs in lakh
1) Charges recovered by Air India to client for sending goods to Mumbai	5
2) Charged recovered from GPO, New Delhi who collected various consignments of client and forwarded to Air India for delivery to Kolkata	8
3) Charges recovered from clients for storage, handling, loading and unloading	1
4) Charges recovered from Samsung for sending goods to USA	Exempt
Taxable value of service	14

Transport of goods by rail



Basic concepts

Clean energy cess [CEC]	Rs 50 per tonne levied on raw coal, raw lignite and raw peat No EC,SHEC will be leviable. CEC exempt on goods produced or extracted as per traditional and customary rights enjoyed by local tribals in the state of Meghalya without any license or lease No CCR of CEC, For payment of CEC, CCR can't be utilised, CEC only paid through PLA.
Cir 927/17/2010	Pickling and oiling of metals as preparatory steps not manufacture.

VALUATION

Cir 936/26/2010	Pre-delivery Inspection charges and After-sale Service includible in Assessable value
Rule 5	- Actual/average cost of transportation deductible except from factory to branch. Forward / return journey – both transport deductible. Profit on transport includible, in case transportation charged more in invoice than actual incurred.

Accurate meters Ltd- if deemed delivery at factory gate as sec 39 of sale of goods act, then transport is irrelevant for TV.

	Bolting Cloth/screens/Silicon cylinders which carry design fitted on machine used in ceramic tile industry for priming of design on tiles are part/ component of machinery- CCR allowed.

Cenvat credit

Capital goods for specified service providers	Dumper, tippers & its component, spares and accessories for Site formation service and mining service are capital goods. Similarly Motor vehicle and its component, spares and accessories are capital goods for specified services
No.267/11/2010-	1. No CCR on cement, angles, channels, CTD or TMT bars and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods because cannot be treated as either inputs for capital goods or as inputs in relation to the final products 2. CCR allowed on welding electrodes.
Cir- 930/20/2010	if FP destroyed (i.e Bottled Beverage), Remission of duty on FP claimed under rule 21 0f CER 2002 → Reverse CCR on IP as per rule 3(5C) of CCR 2004 If the input (bottle) is written off by the assessee as destroyed, → Reverse CCR on IP as per Rule 3(5B) of CCR 2004
Rule 6(6)	CCr can be taken even if FP is exempt, no requirement to maintain separate accounts, no need to pay 5% of value of exempted goods, when the goods are supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents.
Rule 9(8)	first/second stage dealer submit Quarterly return electronically.
Rule 9A	I(i) nformation relating to principal inputs - ER-5 (ii) Monthly return of receipt and consumption of each of principal inputs - ER-6 Filed electronically if duty paid Rs 10 lakh or more in Previous year
Rule 12(2)	ER-4 shall be filed electronically if the manufacturer of final products has paid total excise duty of Rs.10,00,000 or more in P.Y
Rule 17	100% EOU shall file monthly return (ER-2) electronically if duty paid 10 lakh or more in Previous year.

Note- E- Filing of Return mandatory (ER-1 to ER-6) if in P.Y duty paid **≥ 10 lakh (PLA+ CCR)**

Rule 19	that export of excisable goods which are chargeable to nil rate of duty or are wholly exempted from payment of duty, other than goods cleared by a hundred per cent export-oriented undertaking, shall not be allowed under this notification;"
Sec 33	Power of adjudication — Amt of duty involved Superintendent — upto 1 lakh (excluding ROD/Value and cases involving EPL

	AC/DC upto 5 lakh except where superintendent empowered to adjudicate JC above 5 lakh upto 50 lakh Addl. Commisioner above 20 lakh and upto 50 lakh Commissioner without limit
Sec 37(2)(xiiia)	Central Government empowered to make rules for withdrawal of facilities/imposition of restrictions on CENVAT credit
Explanation to sec 11A (2B)	IF duty short paid and interest thereon is paid under section 11A(2B) before service of SCN. THEN penalty under any of the provisions of CEA 1944 or the rules (CER 2002) **SHALL NOT** be imposed
	(4) In excise, applications for the settlement of cases can be made where an assessee admits short-levy for goods in respect of which he has not maintained proper records in his daily stock register (i.e. cases of misdeclaration, clandestine removal etc.). In Custom applications for the settlement of cases can be made where assessee admits short levy in respect of the goods which were not included in the Bill of entry or Shipping Bill, as the case may be. (5) EXTENSION of order by the Settlement Commission for a further period by **3 months.** (6) Now the assessee can apply for settlement more than once he CAN'T apply for settlement under section 32E in relation to any other matter if (iv) an order of settlement passed for the imposition of a penalty **On the ground of concealment of particulars of his duty liability; or** (v) after the passing of an order of settlement in relation to a case, such person is **convicted of any offence** under this Act in relation to that case; or (vi) the case of such person is **sent back to the Central Excise Officer** having jurisdiction by the Settlement Commission
[Circular No. 929/19/2010	**Polyester Staple Fibre manufactured out of PET scrap and waste bottles is a textile material classifiable under Section XI of the Central Excise Tariff -**
	Classification of TEA fortified with Vitamins will be classified under chapter 21
Cir 924/14/2010	**Rice parboiling machinery and drier which are essentially for use in conjunction with the rice mill will be classified under heading 8437.**
NN. 33/2010	**Goods supplied to UN or an international organisation exempted from additional and special additional duty of excise**
	Goods notified under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 Assessable value for CVD = MRP less abatement
– Circular 34/2010-	**manufacturers in textile sector will not be allowed refund of special CVD**
Cir 933/23/2010	goods cleared from an 100% Export Oriented Undertaking to a depot which are subsequently sold in DTA will be valued as per Rule 3 to 9 of imported goods valuation Rules 2007
Circular No.11/2010	Sec 14 of CA 1962- value of the imported goods shall be the transaction value of goods. the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14.
rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules,	*claim for drawback shall be filed within 3 months from the date on which an order permitting clearance and loading of goods for exportation* *the said period of 3 months may be extended by a period of three months by AC/DC on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less and a further period of 6 months by Commissioner on an application accompanied with a fees of 2% of the*

<table>
<tr><td>1995</td><td>FOB value or Rs. 2000/- whichever is less.</td></tr>
<tr><td>rules 6, 7, 15 Customs, Central Excise Duties and Service Tax Drawback Rules, 1995</td><td>The time period for the following has been extended from 60 days to 3 months:
(a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback [Rule 6].
(b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low (i.e Where the exporter finds that the drawback rate fixed under Rule 3 or Rule 4 is less than $4/5^{th}$ of the duty or taxes paid on inputs or input services) [Rule 7].</td></tr>
<tr><td colspan="2"><table>
<tr><td>Authority for extension</td><td>Period of extension</td><td>Fees payable with application for extension</td></tr>
<tr><td>Assistant or Deputy Commissioner</td><td>Further 9 months</td><td>1% of the FOB value of exports or Rs. 1000/- whichever is less</td></tr>
<tr><td>commissioner</td><td>Further 6 months</td><td>2% of the FOB value or Rs. 2000/- whichever is less</td></tr>
</table></td></tr>
<tr><td>RULE 16A of DDB Rules 1995</td><td>Where sale proceeds are realized by exporter and duty drawback has been recovered from him , the exporter produce evidence of realization with in ~~1 year~~ [3 months] from date of such realization.

The period may be extended by the Commissioner by 9 months subject to the condition that the amount has been realized on a date covered by the extensions of time limit given by the RBI for realizing export proceeds. Application fee equivalent to 1% of the FOB value of exports or Rs. 1000/-, whichever is less, shall be payable for applying for grant of extension by the Commissioner.</td></tr>
<tr><td>Rule 3 of the Baggage Rules, 1998</td><td>Rule 3 shall apply in case of persons returning from Hong Kong. As Hong Kong is a separate Customs Territory from China.</td></tr>
<tr><td>Circular No. 125/7/2010-</td><td>Services provided by state governments under Centrally Sponsored Schemes (CSS) not leviable to service tax. Grant cannot be presumed as a consideration for providing a service.</td></tr>
<tr><td>N.No. 36/2010</td><td>Exemption to advances received prior to 1-7-2010 towards 8 new services introduced and specified existing services expanded by Finance Act, 2010 are exempt to the extent of amount of advance payment received before 1-7-2010 in respect of them.
However any advance payment relating to retrospective amendments in Commercial Training & Coaching Centre and Renting of immovable property shall not be so exempt.</td></tr>
<tr><td>NN 11/2010</td><td>CG exempts the taxable service provided to any person, by any other person for transmission of electricity, from</td></tr>
<tr><td>NN- 32/2010</td><td>CG exempts the taxable service provided to any person, by a distribution licencee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003(36 of 2003), for distribution of electricity,</td></tr>
<tr><td>CBEC CLARIFICATION</td><td>Service tax on commercial training and coaching – clarification whether ‘donation’ is ‘consideration’ - NO</td></tr>
<tr><td>Rule 6(7c)- promotion of Lottery ticket- optional S. Tax Rate</td><td><table>
<tr><td>Rs 6000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw</td><td>If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%</td></tr>
<tr><td>Rs 9000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw</td><td>If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%</td></tr>
</table></td></tr>
<tr><td>Rule 4A of Service Tax Rules, 1994</td><td>“Provided also that in case the provider of taxable service is aircraft operator providing the service of air transport of passenger, an invoice, a bill or as the case may be, challan shall include ticket in any form by whatever name called and whether or not containing registration number of the service provider, classification of the service received and address of the service receiver but containing other information in such documents as required under this sub-rule.”.</td></tr>
</table>

Old amendment

Cir- 910/30/2009	the activity of transferring the goods from tankers into smaller drums cannot be said to be deemed manufacture because the tankers cannot be termed as bulk packs.
Cir- 915/5/2010	the value for payment of excise duty for physician sample (Free Sample) would be the value determined under Section 4A for the similar goods
Sec 3A	Chewing tobacco, jarda scented tobacco and branded unmanufactured tobacco notified under section 3A- duty paid on basis of production capacity
Cir 911/1/2010	Regularisation of CCR taken If the assessee has already paid duty, and in a situation where there is no manufacture as held by the Courts subsequently, and facts of the case are covered by the provisions of Section 5B of the Central Excise Act, 1944, the assessee is at liberty to approach the Central Govt. for issue of appropriate notification for regularization of the Cenvat credit availed.
Rule 4(2)	SSI can take Full (100%) CENVAT credit on capital goods in one installment in the year of receipt of such capital goods in the factory.
	For computer & its peripherals – if removed after use shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the for each quarter in the first year @ 10% for each quarter in the second year @ 8% for each quarter in the third year @5% for each quarter in the fourth and fifth year @1% for capital goods, other than computers and computer peripherals @ 2.5% for each quarter.]
Cbec clarification	if the capital goods, on which Cenvat credit has been taken, are cleared as waste and scrap, even after a period of 10 years, an amount equal to the duty leviable on the transaction value for such capital goods cleared as waste
Rule 4(5)	CENVAT credit is allowed, in respect of jigs, fixtures, moulds and dies sent by manufacturer of final products to:- another manufacturer for the production of goods, or
Cir 907/27/09-	Input Written off fully- pay amt equal to CCR taken WIP Written off fully – if not considered as manufactured goods - pay amt equal to CCR taken
	Finished goods Written off fully, duty remitted u/r 21 CER 02- Reverse CCR WIP Written off fully – if considered as manufactured goods - duty remitted u/r 21 CER 02- Reverse CCR
Rule 6(6)	CCR allowed on all the excisable goods exempt from customs duty when imported in India and are supplied:- (a) against International Competitive Bidding; or (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or (c) to a power project awarded to a developer through tariff based competitive bidding.
Rule 5	IP/IS ~~(C. GOODS)~~USED in or i.r.t FP/OS exported
Principal input	provides that if a manufacturer, first stage or second stage dealer, or an exporter is found to be knowingly involved in any of the specified contraventions, certain facilities would be withdrawn or certain restrictions would be imposed on them.

Rule 15	<u>Other than fraud-</u> Confiscation and penalty (duty or 2000) w.i greater Under Excise- Fraud- additional penalty equal to duty for manufacturer u/s 11AC Under S. Tax- Fraud- additional penalty equal to 100% to 200% of service tax for service provider u/s 78
<u>Fibre Foils Ltd-</u> penalty imposable u/r 15 can't be reduced. Green Alloys Ltd – input can't be confiscated, If entered in stock register but not accounted in computer sheet. Ashok Kumar H. Fulwadhya – penalty can't be imposed on directors, where CCR wrongly availed by company.	
	Small Scale Industry
NN- 8/03	Relaxation from brand name restriction under the SSI exemption scheme extended to plastic containers and plastic bottles used as packing materials on 27 feb 2010 by NN 4/2010 and then amendment made on 30th april 2010 and now word only packing material mentioned meaning thereby every type of packing material eligible for exemption
	CER 2002
Rule 11	pre-authentication of invoices is not required now.
Rule 8	1. E-payment mandatory if <u>total duty paid of Rs. 10 lakh or more</u> (including the amount of duty paid by utilisation of CENVAT credit) in the preceding financial year. 2. Now SSI can PAY DUTY ON QUARTERLY BASIS RATHER THAN ON MONTHLY BASIS upto 5th of next Quarter. For the Quarter of March – 31st march
Rule 12	if E- payment mandatory then ER- 1 (For Non- SSI) , ER- 3 for SSI also E- Filing Mandatory
Rule 12(2A)	Annual installed capacity statement Exempt for assessee who manufactures biris, manufactured without the aid of machines falling under tariff item 2403 10 31 matches manufactured without the aid of power falling under heading 3605 reinforced cement concrete pipes falling under heading 6810
Rule 16	Indian Aluminum Co Ltd (2009)(Kerla)- there is no requirement for manufacturer to clear the returned goods to same party who returned the goods *Circular 267/44/2009- dtd 25-11-09* 1) *CCR of duty paid on returned final product can be taken on basis of self-invoice issued at time of initial removal of final product* *goods are sold on 1-7-2010 of value of Rs 100000 by Raja by which duty payable is 10300, which are returend by customer on 6-7-2010. Duty will be paid by 5-8-2010, whether CCR can be taken on 6-7-2010 and on basis of which document.- yes*
Rule 18	Rebate under Rule 18 of CER 2002 is admissible when the goods are supplied from unit in DTA to SEZ
Sec 9A	Offences – non cognisable i.e no arrest without warrant Compounding of offences- Any offence can be compounded by application to Chief CCE <u>No compounding in following cases</u> 1) If compounded allowed once to certain offences of sec 9 2) Any person who accused of offence under CEA 1944 & which is also offence in Narcotic Drugs Act. 3) Allowed to compound once for Value exceeding 1 crore 4) Who is convicted by court under CEA 1944 on or after 30th dec 2005
Rule 24A	Return of records seized, if not relied upon- then return within 30 days of issue of SCN (or expiry of period permissible for issue of SCN) Note- CCE has power to further retain by reasons recording in writing and CEO intimate to assessee for such further retention
	CCE (A) can't remand the case back to Central excise officer
Cir- 889/09/2009	No discretion to reduce the mandatory penalty under section 11AC even though the duty paid

	before the issuance of show cause notice
Cir No. 898/18/09	Benefit of reduced penalty under provisos to section 11AC not available at the appeal stage
Cir – 7/2010	Recovery of drawback amount on the portion of the FOB value of export not realized by the exporter but compensated by ECGC -
NN- 14/2010	Any service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof. Or services provides to such installations in continental shelf and EEZ liable to service tax
Rule 6 STR 1994	E-payment mandatory if 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.
Rule 7	If E-payment mandatory then E-filing of return also mandatory.
Rule 6(2)(v)	**- value of Taxable service not include** the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger."
NN- 18/09-	No service tax on certification by Central Board of Film Certification because it is a statutory function
NN-11/2010	CG exempts the taxable service provided to any person, by any other person for transmission of electricity,
Export & import Rules for service tax	export & import rules amended in respect of following 4. India definition amended 5. CA/CS/CWA category changed from performance category to Residuary category

Jai Bhagwan oil and Flour Mills	Production of mustard oil and oil cake from mustard seeds amount to manufacture
Cir 904/24/09	Baggase. Aluminium/zinc dross and other product termed as waste are capable of being sold for a consideration. Hence marketable and liable to excise duty.
Hindustan Zinc Limited	Remission can be claimed on loss of goods due to de-bagging, shifting of concentrates, seepage of rain water, storage and loading on trucks, accounting method adopted.
Gupta metal sheets	No remission of duty u/r 21 in case of theft or dacoity
Sony Music Entertainment (I) Pvt Ltd.	Importing recorded audio and video discs in boxes each containing 50 discs. Each individual disc then packed in jewel boxes not amounting to manufacture.
Bata India Ltd	Theoretical possibility of product being sold is not sufficient to establish marketability of product. The fact that product is sent outside for job work doesn't establish its marketability.
Bemcee Ltd	Process of Slitting and cutting coils to produce steel sheets and polyster films does not amount to manufacture.
Karnatka Vidyuth Karkhane Ltd.	Repair of Transformers by replacing coils not manufacture.
Solid & Correct engineering Works (2010)(sc)	Affixation of Asphalt Drum/ Hot-mix Plant by nuts and bolts on foundation on earth to ensure wobble-free operation of the plant – Movable
Larsen & Tourbo Limited (2009)(Bom)	Fabrication, assembly, erection of waste water treatment is immovable. Merely bringing of duty paid parts at site doesn't amount to manufacture.
Virgo industries	Signage Erected at Various petrol bunks of IOC are movable because capable of being shifted from

(Engineers) Pvt. Ltd.	one place to another without dismantling them.
Textile corpn marathwada Ltd	If assessee has to pay the excise duty at each and every stage of manufacturing, but not paid. No duty recovered because it would be entitled to Cenvat credit.
Remission of duty= R 21 CER 02	if FP lost or destroyed or unfit for consumption for marketing before removal- Duty Remitted. As per rule 3(5C) CCR 04, CCR reversed on IP, if duty remitted on FP.
Valuation	
Cir – 902/22/2009	In case of job work value shall be determinder as per Rule 10 A on transaction value of Goods sold by Raw material supplier.
Classification	
Pleasanttime products	Scrabble cannot be said to be a puzzle —rather it is a GAME.
Godrej industries	hair dye cannot be classified as hair lotion under tariff Item 14F.
Chamdany industries	Carpet classifiable as Jute Carpet. In view of chapter note as per Rule 1
Frito Lay India	cheetos Masala Balls", Cheetos Cheese Puff" and "cheetos X&O" classified under heading 2108
Atherton Engineering Co Pvt Ltd	imported artemia cyst (brine shrimp eggs) classified as 'prawn feed' under the heading 2309
Cenvat credit	
Rule 3 (7)	100% EOU can take CCR of CVD, Special CVD, (EC, SHEC of excise0
Okasa Ltd	The plastic dropper packed with the pediatric drops should be construed to be an input used in or in relation to the manufacture of the final product.- CCR allowed
Bhuwalka Steel Industries	Transit loss- normal- CCR allowed as per industry norms for volatile and hygroscopics nature. Minor variation due to weighment difference by different machine ignored
BANSAL ALLOYS & METALS LTD.	No reversal of Credit on input service in respect of Goods Transportation Agency service
Banco products (india) Ltd.	CCR allowed on Plastic crates either as input or capital goods.
Stelko Strips Ltd.	CENVAT credit be taken on the basis of private challans
Coca cola India Pvt. Ltd.-	CCR allowed on service tax paid on advertisement service, even if advertisement was of cold drinks manufactured out of concentrate on which duty has to be paid.
Maruti suzuki	CCR not allowed on naptha used for generation of electricity cleared to joint venture.
Ambuja cement	Credit admissible on GTA serviceif ownership of goods remain with seller till delivery at customer's doorstep –
Alidhara Textool Engineers Pvt. Ltd.	CCR allowed on Erection, commissioning and installation service received at premises of buyer of machine, but not rendered at factory of manufacturer.
Tata Advance Material	If capital goods destroyed after 5 years, no CCR Reversal. But if cleared as waste then as per rule 3 (5A) pay amount equal to duty leviable on transaction value.
Jaya mills	If depreciation and CCR both claimed, subsequently if income tax return revised by withdrawing depreciation. CCR not required to be reversed.
Rajasthan Spinning & Weaving Mills Ltd.	CCR allowed on M.S channel, steel plates being accessory to Diesel Generating set i.e (accessory of capital goods.
Bipac India Corporation Ltd	No reversal of CCR on Capital goods destroyed after many years of use. But if cleared as waste & scrap, then duty leviable on transaction value.
Karnatka Soaps & Detergents Ltd-	CCR allowed on supplementary invoice issued due to fraud by one unit to another unit of same manufacturer in case of captive consumption
Raymond Ltd-	CCR allowed even if different name of manufacturer indicated in invoice, so long as there is no discrepancy in description or quatilty or value of goods and no fraud.

SMALL SCALE INDUSTRY	
Unison Electronics Pvt. Ltd	in case of sale to Unite Tele-Shopping (UTS) and tele-Shopping Network (TSN), the supervisors ofr UTS and TSN used to examine the goods and affix a sticker thereon containing the names of UTS/TSN. SSI exemption not allowed.
Superior Products	Where the 2 unit have separate legal identity with separate capital, premises, machinery and labour; the fact that they are managed by same person or that their products are same cannot mean that they are dummy units and their clearances should be clubbed for the purposed of SSI-exemption.
Demand, Refund & Appeal	
SICOM LTD	Secured creditors have preference over Governemnt dues
Aafloat Textiles (I) P. Ltd.	Import of gold and silver under forged Special Import Licence (SIL) – Sufficient to extend period of limitation TO Demand custom duty along with interest, penalty and confiscation
SKF India Ltd	**Differential duty is paid immediately upon the recovery of price difference through issuance of supplementary invoice, interest shall still be payable on such differential duty.**
RAJASTHAN SPINNING & WEAVING MILLS	11 AC Penalty Not applicable to every case of Non- payment/ short payment Penalty If SCN under 11A (1) state that duty escaped due to conscious & deliberate doing and order u/s 11A(2) confirms this i.e fraud **Penalty levied, even if duty paid before SCN in case of fraud**
INTERNATIONAL AUTO LTD.	**Duty will be payable in case of retrospective recovery of increased value. Interest will also be payable. MRF case not applicable.**
Aman Medical products Ltd.	refund claim of the appellant was maintainable under section 27 and the non-filing of the appeal against the assessed bill of entry did not deprive the appellant to file its claim for refund under section 27 of the Customs Act, 1962.
Narayan Nambiar Meloths	**refund claim can't be denied only on the basis of contention that he had produced the attested copy of TR-6 challan and not the original of the TR-6 challan?**
AP SPINTEX LTD	ED recovered from buyer – credit notes issued subsequently – Doctrine of Unjust Enrichment not applicable
Trilux Electronics	an appeal against the consent order cannot be filed by the Revenue.
Advance Ruling	
UAE Exchange Centre Ltd.	a writ petition can be invoked against advance rulings.
Settlement commission	
Vishwa Traders Pvt ltd	If case referred back to Department then Revenue shall continue the adjudication proceedings from the stage at which the proceedings before Settlement Commission commenced
Ashwani Tobacco Co. Pvt. Ltd.	Benefit under the proviso to section 11AC could not be granted by the Settlement Commission in cases of settlement.
East and West Shipping Agency	order of the Settlement Commission be considered to be a judicial proceeding
Sanghvi Reconditioners Pvt. Ltd.	the appellant could not be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not.
Cus. & C. Ex. Settlement Commission	Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue
Miscellaneous - custom	
Alfred Menezes	in case of prohibited goods, there is discretion in the officer to release the confiscated goods
Poona Health Services	**In case the imported goods are confiscated, and goods are not redeemed by paying fine, the importer is bound to pay the customs duty**
Finesse Creation Inc.	**improperly imported goods are liable for confiscation under sec 111 of the Customs Act, 1962, if the same are cleared and not available for seizure. Redemption fine cannot be imposed with regard to such goods.**

Gawar Construction Ltd.	the notice for confiscation is required to be issued to owner when owner is in possession of goods and goods are seized from his custody. In case of seizure of goods from the custody of person other than importer, notice must also be given to person from whose custody goods were seized
Jaya Singh Vijaya Jhaveri	**Is the want of evidence from foreign supplier enough to cancel the confiscation order of goods undervalued?- No**
Mahavir generics	**commission agent also acting as a consignment agent be covered under the definition of 'clearing and forwarding agent'**
Madras Hire Purchase Association	**levy of service tax on hire purchase and leasing transactions falling under section 65(12) of the Finance Act, 1994 is constitutionally valid**
Infotech Software Dealers Association (ISODA)	in the transactions taking place between the members of ISODA with its customers, the software is not sold as such, but only the contents of the data stored in the software are sold which would only amount to service and not sale.
Idea Mobile Communications Ltd.	the value of SIM card supplied by the assessee would form part of the value taxable service on which service tax was payable by the assessee.
Nahar Industrial Enterprises Ltd.	**service tax is not chargeable on the buffer subsidy provided by the Government for storage of free sale sugar, under the category of `storage and warehousing services**