Significant Legal Decisions

Indirect Tax Laws

CUSTOMS

1. **Can separate penalty under section 112 of the Customs Act be imposed on the partners when same has already been imposed on partnership firm?**

   CCE & C, Surat-II v. Mohammed Farookh Mohammed Ghani 2010 (259) E.L.T. 179 (Guj.)

   The High Court observed that once penalty was levied on the firm for contravention of any provision of the Act or the Rules framed thereunder, it amounted to levy of penalty on the partners. Hence, there was no question of penalizing the partners separately for the same contravention, unless the intention of the legislature to treat the firm and partners as distinct entities was borne out from the statute itself, i.e., expressly provided in the statute. For instance, Explanation to section 140 of the Customs Act equated partnership firm with company (which stands as separate entity distinct from its shareholders) in respect of commission of offences.

   However, there was no such corresponding provision in relation to imposition of penalty under section 112. In the light of the above discussion, the High Court pronounced that separate penalty could not be imposed on the partners in addition to the penalty on the partnership firm.

2. **Whether Chartered Accountant's certificate alone is sufficient evidence to rule out the unjust enrichment under customs?**

   CCus., Chennai v. BPL Ltd. 2010 (259) E.L.T. 526 (Mad.)

   The High Court noted that section 27 of the Customs Act mandates on the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.

   However, in the given case, the respondent had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim. The certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the respondent could not be granted refund merely on the basis of the said certificate.

   Thus, the High Court, overruling the Tribunal's decision, answered the question of law in favour of revenue.

3. **Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?**

   CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)

   The question which arose before the Apex Court for consideration was whether goods that were smuggled into the country could be considered as 'imported goods' for the purpose of granting the benefit of the exemption notification.

   The Apex Court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification. It opined that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

   The Court observed that one of the principal functions of the Customs Act was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

EXCISE

4. Does a product with short shelf-life satisfy the test of marketability?

Nicholas Piramal India Ltd. v. CCEx., Mumbai 2010 (260) E.L.T. 338 (S.C.)

Facts of the case:

In the instant case, the product had a shelf-life of 2 to 3 days. The appellant contended that since the product did not have shelf-life, it did not satisfy the test of marketability.

Decision of the case:

The Supreme Court ruled that short shelf-life could not be equated with no shelf-life and would not *ipso facto* mean that it could not be marketed. A shelf-life of 2 to 3 days was sufficiently long enough for a product to be commercially marketed. Shelf-life of a product would not be a relevant factor to test the marketability of a product unless it was shown that the product had absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelf-life.

Hence, product with the shelf life of 2 to 3 days was marketable and hence, excisable.

5. Are the physician samples excisable goods in view of the fact that they are statutorily prohibited from being sold?

Medley Pharmaceuticals Ltd. v. CCE & C., Daman 2011 (263) E.L.T. 641 (S.C.)

The question which arose for consideration was whether physician samples of patent and proprietary medicines intended for distribution to medical practitioner as free samples, satisfied the test of marketability. The appellant contended that since the sale of the physician samples was prohibited under the Drugs and Cosmetics Act, 1940 and the rules made thereunder, the same could not be considered to be marketable.

Supreme Court observed that merely because a product was statutorily prohibited from being sold, would not mean that the product was not capable of being sold. Physician sample was capable of being sold in open market.

Moreover, the Drugs and Cosmetics Act, 1940 (Drugs Act) and the Central Excise Act, 1944 operated in different fields. The restrictions imposed under Drugs Act could not lead to non-levy of excise duty under the Central Excise Act thereby causing revenue loss. Prohibition on sale of physician samples under the Drugs Act did not have any bearing or effect on levy of excise duty.

Therefore, the Court inferred that the physician samples were excisable goods and were liable to excise duty.

6. Whether assembling of the testing equipments for testing the final product in the factory amounts to manufacture?

Usha Rectifier Corpn. (I) Ltd. v. CCEx., New Delhi 2011 (263) E.L.T. 655 (S.C.)

Facts of the case:

The appellant was a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronics equipments. During the course of such manufacture, the appellant also manufactured machinery in the nature of testing equipments to test their final products.

The appellant had stated in their balance sheet that the addition to the plant and machinery included testing equipments. The said position was further substantiated in the Director's report wherein it was mentioned that during the year, the company developed a large number of testing equipments on its own.

However, the assessee contended that such items were assembled in the factory for purely research and development purposes, but research being unsuccessful, same were dismantled. Hence, it would not amount to manufacture.

The appellant further submitted that the said project was undertaken only to avoid importing of such equipment from the developed countries with a view to save foreign exchange.

Decision of the case:

The Supreme Court observed that once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it could not make contrary submissions later on. Moreover, assessee's stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable. Hence, the Apex Court elucidated that duty was payable on the testing equipments.

7. **Whether the interest on irregular credit under rule 14 of the CENVAT Credit Rules, 2004 arises from date of availing such credit or date of utilization of the credit?**

   UOI v. Ind-Swift Laboratories Ltd. 2011 (265) E.L.T. 3 (S.C.)

   The Supreme Court elucidated that rule 14 is clear and unambiguous. It specifically provides for interest when CENVAT credit is taken or utilized wrongly or erroneously refunded. Thus, credit is recoverable with interest on happening of any of the three specified circumstances.

   It held that High Court misinterpreted rule 14 to mean that interest is payable from date of utilization of irregular credit and not from the date of availing such credit.

8. **Does the process of cutting and embossing aluminum foil for the purpose of packing of the cigarettes amount to manufacture?**

   CCE v. GTC Industries Ltd. 2011 (266) E.L.T. 160 (Bom.)

   Facts of the case:

   A roll of aluminum foil was cut horizontally to make separate pieces of the foil and word 'PULL' was embossed on it. Thereafter fixed number cigarettes were wrapped in it. An aluminium foil being a resistant to moisture was used as a protector for the cigarettes and to keep them dry.

   Revenue's submitted that the process of cutting and embossing aluminum foil amounted to manufacture. Since the aluminum foil was used as a shell for cigarettes to protect from them moisture; the nature, form and purpose of foil were changed.

   Decision of the case:

   The High Court pronounced that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value, only made it usable for packing. There were no records to suggest that cut to shape/embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Since, foil was cut to size in a continuous process, process did not amount to manufacture as per section 2(f) of Central Excise Act, 1944. Only the process which produces distinct and identifiable commodity and renders marketable value can be called manufacture.

9. **Whether time-limit under section 11A of the Central Excise Act, 1944 is applicable to recovery of dues under compounded levy scheme?**

   Hans Steel Rolling Mill v. CCEx., Chandigarh 2011 (265) E.L.T. 321 (S.C.)

   The Apex Court elucidated that compounded levy scheme is a separate scheme from the normal scheme for collection of excise duty on goods manufactured. Rules under compounded levy scheme stipulate method, time and manner of payment of duty, interest and penalty. Since the compounded levy scheme is comprehensive scheme in itself, general provisions of the Central Excise Act and rules are excluded.

The Supreme Court affirmed that importing one scheme of tax administration to a different scheme is inappropriate and would disturb smooth functioning of such unique scheme. Hence, it held that the time-limit under section 11A of the Central Excise Act, 1944 is not applicable to recovery of dues under compounded levy scheme.