SUMMARY OF INDIRECT TAX CASE LAWS [CA-FINAL]

{Relevant For CA-Final NOV-12 Attempt}

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SR NO	ISSUE	FACTS & DECISION OF CASE	CASE NAME
1)	**Whether the metal scrap or waste generated during the repair of his worn out machineries/parts of cement manufacturing plant by a cement manufacturer amounts to manufacture?**	**FACTS:** *Mfr Assesee while repairing his machine generated waste metal & scrap, which he removed without paying excise duty. Deptt said this is liable for duty as per it tantamount to manufacture as per Sec 2(f) of Excise Act.* **DECISION:** *Apex court held that Mfr includes any process to get final product. Repairing activity cannot be said part of Mfr activity in relation to produce end product. Hence generation of waste metal & scrap during repairs does not amount to manufacture & not liable for the duty.*	***Grasim Industries Ltd 2011 (S.C.)***
2)	**Does a product with short shelf-life satisfy the test of marketability?**	**FACTS:** *In the instant case, the product had a shelf-life of 2 to 3 days. Appellant contended the product did not have shelf-life; it did not satisfy the test of marketability.* **DECISION:** *Court ruled that short shelf-life is not equal to no shelf-life. A shelf-life of 2 to 3 days was sufficiently enough for a product to be commercially marketed. Hence, product with the shelf life of 2 to 3 days was marketable & excisable*	***Nicholas Piramal India Ltd. (S.C.)***
3)	**Are the physician samples excisable goods in view of the fact that they are statutorily prohibited from being sold?**	**FACTS:** *The appellant contended that since the sale of the physician samples was prohibited under the Drugs and Cosmetics Act, 1940 and the rules made there under, the same could not be considered to be marketable.* **DECISION:** *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. Drugs Act could not lead to non-levy of excise duty under the Central Excise Act thereby causing revenue loss Therefore physician samples were excisable goods and were liable to excise duty.*	***Medley Pharmaceuticals Ltd. 2011(S.C.)***
4)	**Whether assembling of the testing equipments for testing the final product in the factory amounts to manufacture?**	**FACTS:** *The appellant was an mfr of electronics equipments During such manufacture, the appellant also manufactured machinery in the nature of testing equipments to test their final products. Balance sheet stated the addition to the plant and machinery included testing equipments. 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, not mfr also further submitted that the said project was only to avoid importing equipment from developed countries to save foreign exchange.* **DECISION:** *The Supreme Court observed 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 held that duty was payable on such testing equipments.*	***Usha Rectifier Corpn. (I) Ltd. 2011 (S.C.)***
5)	**Does the process of cutting and embossing aluminum foil for**	**FACTS**: *A roll of aluminum foil was cut to make pieces of the foil and word 'PULL' was embossed on it & Thereafter cigarettes were wrapped in it. The Aluminum foil was used as a protector for the cigarettes and to keep them dry.*	***GTC Industries Ltd. 2011***

	packing the cigarettes is mfr?	**DECISION:** *Court pronounced that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity also the nature and substance of foil is same. This process did not render any marketable value, only made it usable for packing 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 with marketable value can be called manufacture.*	
6)	**Does the fabrication, assembly and erection of waste water treatment plant amount to manufacture?**	**FACTS:** *The assessee was engaged in fabrication, assembly and erection of waste water treatment plant. The assessee said the plant could not function until wholly built including the civil construction. After builting waste water treatment plant became immovable, duty could not be levied on it. However, the Deptt alleged that the assessee had fabricated/manufactured the waste water treatment plant also plant came into existence in an unassembled form before the same was installed and assembled to the ground with civil work. It became operational after embedded in the civil work and, therefore, the excise duty was payable on it.* **DECISION:** *Court said mere bringing of the duty paid parts in an unassembled form at one place, i.e. at the site does not amount to mfr unless an excisable movable product (say a plant) comes into existence by assembly of such parts. Hence, the fabrication, assembly and erection of waste water treatment plant does not amount to manufacture.*	***Larsen & Toubro Limited***
7)	**Whether the theoretical possibility of product being sold is sufficient to establish the marketability of a product?**	**DECISION:** *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 one examine the marketability of a product.* *The Supreme Court further ruled that the burden to show that the product is marketed or capable of being bought or sold is entirely on the Revenue.*	***Bata India Ltd. (SC)***
8)	**Whether the machine which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under the Central Excise Act?**	**FACTS:** *The asseseee was engaged in the manufacture of asphalt batch mix & drum mix/hot mix plant by assembling and installing its parts and components Deptt considered to be moveable & dutiable under the Central Excise Act, 1944.* **DECISION:** *The Court observed that machine was fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine. , the Supreme Court held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.*	***Solid & Correct Engineering Works and Ors (SC)***
9)	**Does the activity of packing of imported compact discs in a jewel box along with inlay card amount to manufacture?**	**FACTS:** *The appellant imported recorded discs in boxes of 50 & packed each disc in transparent plastic cases known as jewel boxes. An inlay card containing the content of the compact disc was also placed in the jewel box. The whole thing was shrink wrapped & sold in wholesale. Deptt contended the process is mfr.* **DECISION:** *Court observed that none of the activity involved any process on the compact discs that were imported. It held that the activities carried out by the respondent did not amount to*	**Sony Music Entertainment (I) Pvt. Ltd.**

		manufacture since the compact disc had been complete and finished when imported by the assessee. They had been imported in finished & complete form.	
10)	**Does the process of preparation of tarpaulin made-ups after cutting and stitching the tarpaulin fabric and fixing the eye-lets amount to manufacture?**	**FACTS:** *The 'tarpaulin made-ups' was the tarpaulin cloth prepared by making solution of wax, aluminum stearate and pigments which were mixed & solution was heated in a vessel & was transferred to a tank. Grey cotton canvas fabric was then dipped into this solution and passed through two rollers, where after the canvas was dried by exposure to atmosphere. Then, the tarpaulin made-ups were prepared by cutting the cloth & stitched and eye-lets were fitted. Deptt viewed that the "tarpaulin made-ups" prepared by cutting, stitching and fixing of eye-lets amounted to manufacture and, hence, they were eligible to duty.* **DECISION:** *The Apex Court opined that stitching of tarpaulin sheets and making eyelets did not change basic characteristic of the raw material and end product. Hence, the Supreme Court, upholding the decision of the Tribunal, held that conversion of tarpaulin into tarpaulin made-ups would not amount to manufacture.*	***Tarpaulin International (S.C.)***
11)	**Is the product "Scrabble" classifiable under sub-heading 9503.00 or sub-heading 9504.90 of the First Schedule to the Central Excise and Tariff Act, 1985?**	**FACTS:** *"Scrabble" was a puzzle or in the alternative it was an educational toy falling under sub-heading 9503.00. However, Revenue alleged that "Scrabble" was not a puzzle; it was not a toy but a game. Moreover, since "Scrabble" has board(s) and pieces it was classifiable under subheading 9504.90* **DECISION:** *The Court said "Scrabble" was not a puzzle/crossword. The diff between a "game" and a "puzzle" is by 3 distinct features viz., OUTCOME, CLUE- CHANCE & SKILL. In a puzzle, the outcome is fixed or pre-determined Which is not there in "Scrabble". In a "Scrabble" there are no clues whereas in crossword Puzzle, words are written according to clues. Hence, the essential features of crossword to lay down clues & having a solution is absent from "Scrabble". Thus, "Scrabble" would not fall in the category or class mentioned in sub-heading 9503.00, namely, "puzzles of all kinds". "Scrabble" was a board game. It was not a puzzle. In the circumstances, it would fall under heading 9504 and not under sub-heading 9503.00 of the Central Excise Tariff*	***Pleasantime Products (S.C.)***
12)	**Whether the charges towards pre-delivery inspection and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars?**	**FACTS:** *The appellants manufactured various motor vehicles chargeable to duty on ad valorem basis. As per Deptt while selling vehicles to the customers, the dealers added their own margin known as the dealer's margin to the price at which the vehicles were made available. This dealer's margin contained provision for rendering pre-delivery inspection and three after sale services. Hence, the Deptt said the cost of post delivery inspection & after sale services form part of the assessable value of the automobile while discharging the duty liability* **DECISION:** *1) Transaction value includes the amount paid by reason of/in connection with sales of goods.* *2) Definition of transaction value is extensive, at the same time restrictive & exhaustive in relation to the items excluded therefrom.*	***Maruti Suzuki India Ltd.***

		3) PDI and after sales service charges is a payment on behalf of the assessee to the dealer by the buyer. Hence, *it was held that the charges towards pre-delivery inspection and after-sale service recovered by dealers from buyers of the cars would be included in the assessable value of cars.*	
13)	**The assessee claimed the CENVAT credit on the duty paid on capital goods (CG) which were later destroyed by fire. The Insurance Company reimbursed the amount inclusive of excise duty. Is the CENVAT credit availed by the assessee required to be reversed?**	**FACTS:** *The assessee purchased some CG & paid excise duty. The said CG were used in the manufacture of excisable goods, He claimed the CENVAT credit of the duty paid. Ater 3 years the said CG (which were insured) destroyed by fire. Insurance Co. reimbursed the amount to the assessee, which included the excise duty, which assessee had paid on CG. Excise Department demanded reversal of CENVAT credit on the ground that assessee had availed a double benefit.* **DECISION:** *The HC as per CENVAT Credit Rules, 2004, CENVAT credit taken irregularly stands cancelled and CENVAT credit utilized irregularly to be paid for but Insurance Co, in terms of the policy, had compensated the assessee. The HC said merely because the Insurance Co had paid the value of goods including the excise duty paid, it would not render the availment of the CENVAT credit wrong or irregular. It was not a case of double benefit as said by the Deptt. The HC answered in favour of the assessee and against the Revenue.*	***Tata Advanced Materials Ltd. 2011***
14)	**Head office (HO) distributed the CENVAT credit of the service tax (ST) paid on the services received to its various units. Can the CENVAT credit be denied to a particular unit on the ground that input services were obtained by another unit belonging to the same manufacturer?**	**FACTS:** *The assessee manufactured excisable goods in Malur. Its HO in Chennai was registered as 'Input Service Distributor. HO paid ST for services received by the head office & its units from various service providers & then distributed the credit to various units including Malur unit. The assessee utilized the credit at Malur unit. Revenue said that ST paid by Cuttack unit, the credit of the said service tax paid could not be utilized by Malur unit* **DECISION***: Considering rules 2(k), 2(l), 2(m), 3(1) and 7 of the CENVAT Credit Rules, 2004, HC said ST paid on the input service at a particular unit & availment of credit by another unit is not prohibited under law. However, the HO should register as an input service distributor and then can distribute the credit of such input services. The HC held that Malur unit had rightly availed credit.*	***Ecof Industries Pvt. Ltd. 2011***
15)	**In case of combo-pack of bought out tooth brush sold alongwith tooth paste manufactured by assessee; is tooth brush eligible as input under the CENVAT Credit Rules, 2004?**	**FACTS:** *The assessee manufactured tooth paste. It was sold as a combo pack of tooth paste with a bought out tooth brush. He availed CENVAT credit of central excise duty paid on the tooth brush. Revenue said the tooth brush was not an input for the mfr of the tooth paste & cost of tooth brush was not added in the M.R.P. of the combo pack. Hence, assessee availed wrong CENVAT credit of duty paid on tooth brush.* **DECISION***: The HC said process of packing and re-packing the input, that was, toothbrush and tooth paste in a unit container would fall within the ambit of "manufacture" [as per section 2(f) (iii) of the Central Excise Act, 1944].Further, the word "input" was defined in rule 2(k) of the CENVAT Credit Rules, 2004 this also included accessories of the final products cleared along with final product. There was no dispute about the fact that on toothbrush, excise duty had been paid. Considering the*	***Prime Health Care Products 2011***

		definition given in the rules of "input" and the provisions contained in rule 3, the HC said that the credit was admissible.	
16)	**Whether CENVAT credit can be denied on the ground that the weight of the inputs recorded on receipt in the premises of the manufacturer of the final products shows a shortage as compared to the weight recorded in the relevant invoice?**	**DECISION:** *The Larger Bench of the Tribunal held that each case had to be decided according to merit and no hard and fast rule can be laid down for dealing with different kinds of shortages. Decision to allow or not to allow credit under rule 3(1), in any particular case, will depend on various factors such as the following:-* ***(i)*** *Whether the inputs/capital goods have been diverted en-route or the entire quantity with the packing intact has been received and put to the intended use at the recipient factory.* ***(ii)*** *Whether the impugned goods are hygroscopic in nature or are amenable to transit loss by way of evaporation etc.* ***(iii)*** *Whether the impugned goods comprise countable number of pieces or packages and whether all such packages and pieces have been received and accounted for at the receiving end.* ***(iv)*** *Whether the difference in weight in any particular case is on account of weighment on different scales at the despatch and receiving ends and whether the same is within the tolerance limits with reference to the Standards of Weights and Measures Act, 1976.* ***(v)*** *Whether the recipient assessee has claimed compensation for the shortage of goods either from the supplier or from the transporter or the insurer of the cargo.* *Tolerances in respect of hygroscopic, volatile and such other cargo has to be allowed as per industry norms excluding, however, unreasonable and exorbitant claims. Similarly,minor variations arising due to weighment by different machines will also have to be ignored if such variations are within tolerance limits.*	***Bhuwalka Steel Industries Ltd.***
17)	**Whether penalty can be imposed on the directors of the company for the wrong CENVAT credit availed by the company?**	**DECISION:** *It was held that words "any person" used in rule 13(1) of the 15(1) of the CENVAT Credit Rules, 2004 clearly indicate that the person who has availed CENVAT credit shall be liable to the penalty. The Court said CENVAT credit had availed by the CO. & 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*	***Ashok Kumar H. Fulwadhya***
18)	**Can CENVAT credit be taken on the basis of private challans?**	**DECISION:** *The High Court placed reliance on its decision in the case of* ***M/s. Auto Spark Industries*** *wherein it was held that once duty payment is not disputed & it is found that documents are genuine & not fraudulent, the mfr would be entitled to MODVAT credit on duty paid on inputs also HC relied on its decision in the case of* ***Ralson India Ltd*** *. Where it said that duty paid character of inputs & their receipt in manufacturer's factory and utilization for manufacturing a final product is not disputed, credit cannot be denied. Thus, HC held MODVAT credit could be taken on strength of PVT challans as same were not found fake & there was certification that duty had been paid.*	***Stelko Strips Ltd.***

19)	**Whether time-limit under section 11A of the Central Excise Act, 1944 is applicable to recovery of dues under compounded levy scheme (CLS)?**	**DECISION:** *The Apex Court said CLS is a separate scheme from the normal scheme for collection duty . Rules under CLS stipulate method, time and manner of payment of duty, interest & penalty. Since CLS is comprehensive scheme so general provisions of Central Excise Act and rules do not apply here. S.C declared that importing one scheme of tax administration to a different scheme is inappropriate & would disturb smooth functioning of such unique scheme. Hence, the time-limit under section 11A is not applicable under compounded levy scheme.*	***Hans Steel Rolling Mill 2011 (S.C.)***
20)	**Whether non-disclosure of a statutory requirement under law would amount to Suppression for invoking the larger period of limitation under section 11A?** (non-disclosure as regards manufacture of Denatured Ethyl Alcohol amounts to Suppression of material facts attracting the larger period of limitation u/s 11A).	**FACTS:** *The assessee manufactured various toilet preparations such as after-shave lotion, deo-spray, mouthwash, skin creams, shampoos, etc. He procured Extra Natural Alcohol (ENA) from the local market on payment of duty, to which Di-ethyl Phthalate (DEP) is added so as to denature it & render the same unfit for human consumption. The Deptt alleged that intermediate product i.e. Di-ethyl Alcohol manufactured as a result of addition of DEP to ENA, was liable to central excise duty.* **DECISION:** *In cosmetics Industry denaturing process was a statutory requirement under the Medicinal & Toilet Preparations (M&TP) Act. Thus, addition of DEP to ENA to make the same unfit for human consumption was a statutory requirement. Hence, failure on the part of the respondent to declare the same could not be held to be suppression as Deptt, knowing the fact that the person was mfr cosmetics, must have the knowledge of the said req. Further, as similarly situated assesses were not paying duty on denatured ethyl alcohol, the respondent entertained a reasonable belief that it was not liable to pay duty on such product. The HC upheld the Tribunal's judgment & pronounced non-disclosure of the said fact on the part of the assessee would not amount to suppression so as to call for invocation of the extended period of limitation*	***Accrapac (India) Pvt. Ltd.***
21)	**What is the date of commencement of the period for the purpose of computing interest on delayed refunds under section 11BB- the date of receipt of application for refund or date on which the order of refund is made?**	**DECISION:** *The Apex Court said that interest under section 11BB becomes payable,on an expiry of a period of three months from the date of receipt of the application for refund, the interpretation can be arrived that interest becomes payable on the expiry of a period of 3 months from the date of receipt of the refund application under section 11B(1). In the light of the aforesaid discussion, the Supreme Court elucidated that section 11BB of the Central Excise Act, 1944 comes into play only after an order for refund has been made under section 11B. However, the liability of the revenue to pay interest u/s 11BB commences from the date of expiry of 3 months from the date of receipt of application for refund u/s 11B(1) & not on the expiry of the said period from the date on which order of refund is made.*	***Ranbaxy Laboratories Ltd. 2011 (SC)***

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22)	**Can the excess duty paid by the seller be refunded on the basis of the debit note issued by the buyer?** **ROD = Rate of Duty.**	**FACTS:** *The assessee cleared the goods paying higher ROD , although the ROD been reduced in the budget of the same FY. However, the buyer refused to pay the higher duty which the assessee had paid by mistake. The customer raised a debit note in his name in the same year. The assessee applied for the refund of excess excise duty paid. Revenue rejected his claim saying that incidence of the duty had been passed by him to the buyer. While claiming refund, the assessee relied on the debit note raised by the buyer in his name to demonstrate that his customer had not paid the excess duty to him. The adjudicating authority argued that since the debit note was issued in the later month & not in relevant month, it could not be the basis for refund.* **DECISION:** *The High Court said that once Dept t has received excess duty, they are bound to refund it to the person who has paid the excess duty. If the buyer of the goods has paid that excess duty, he would have been entitled to the said refund.Deptt was bound to refund to the assessee the excess duty calculated on basis of Debit Note. Hence, the decision was answered in favour of the assessee.*	***Techno Rubber Industries Pvt Ltd. 2011***
23)	**Merely because assessee has sustained loss more than the refund claim, is it justifiable to hold that it is not a case of unjust enrichment even though the assessee failed to establish non-inclusion of duty in the cost of production?**	**DECISION**: *The HC answered in favour of Revenue. The Court observed that indisputably, the assessee was not liable to pay the duty and was entitled to the refund of the excise duty wrongly paid by it. The claim of the assessee had been rejected on the ground that if the application was allowed, it would be unjust enrichment because all the materials sold by the assessee were including duty Therefore, the burden was on the assessee to prove while computing the cost of the material it had not included the duty paid by it. It was evident from the Chartered Accountant's certificate that the cost of the duty was included while computing the cost of production of the material. Therefore the HC held that assessee could not be granted relief since it had failed to establish that the cost of the duty was not included while computing the cost of the products.*	***Gem Properties (P) Ltd.***
24)	**Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944?**	**DECISION**: *In the instant case, earlier arguments were not accepted but later on accepted by the CESTAT while hearing the application for rectification of mistake & it arrived at conclusion different from earlier one.The Apex Court said that re-appreciation of evidence on a debatable point cannot be said to be rectification of mistake apparent on record. The Supreme Court observed that arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.Submissions made before Tribunal while arguing rectification of mistake application had also been advanced before Tribunal when appeal heard at earlier stage. The Apex Court held that CESTAT had reconsidered the arguments which it had rejected earlier Hence, the Court opined that CESTAT exceeded its powers under section 35C (2) of the Act. In pursuance of a rectification application, it cannot re-appreciate the evidence and reconsider its legal view taken earlier.*	***RDC Concrete (India) Pvt. Ltd. 2011 (S.C.)***
25)	**Is the CESTAT order disposing appeal on a totally new ground sustainable?**	**DECISION**: *The CESTAT disposed of appeal on a new ground which was not laid before adjudicating authority (A.A) & which would give a finding on facts The HC said if CESTAT was not satisfied with the AA, it should refer matter back to AA. it can not assumed itself jurisdiction to decide appeal on new ground.*	***Gujchem Distillers 2011***

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26)	**Whether the clearances of two firms having common brand name, goods being manufactured in the same factory premises, having common management and accounts etc. can be clubbed for the purposes of SSI exemption?**	**FACTS:** *The respondent-assessee was using the common brand name of "Dominant" while clearing the goods manufactured by it in 2 units. Both the firms had common partners, the brand name was also common and the machines were cleared from both the units under common serial number having common accounts. Department clubbed the clearance of the goods from the both the units for the purposes of SSI exemption because both the units belong to same persons and they had common machinery, staff and office premises etc.* **DECISION:** *The HC said that the partners of both the firms were common and belonged to same family. They were manufacturing and clearing the goods by the common brand name, manufactured in the same factory premises, having common management and accounts etc.Therefore, HC said the clearance of goods is rightly clubbed*	***Deora Engineering Works***
27)	**Whether a consolidated return filed by the assessee after obtaining registration, but for the period prior to obtaining registration, could be treated as a return under clause (a) of first proviso to section 32E(1)?**	**FACTS:** *The petitioner got its units registered after few days of search conducted in its units. Thereafter, it filed consolidated return with the Deptt for the period prior to search. After that, it filed a settlement application in respect of the proceedings issued by the Commissioner. The Settlement Commission opined that the units were registered only after the search was conducted and prior to that there was no registration and no returns as mandated by clause (a) of first proviso to section 32E(1) of the Central Excise Act, 1944 were filed.Consequently, the Commission rejected the settlement application on the ground that the application did not conform to the parameters as stipulated under section 32E(1) of the Act.* **DECISION:** *The High Court noted that certain riders have been provided in section 32E(1) for entertaining applications for settlement. Clause (a) of first proviso clearly lays down that unless the applicant has filed returns, showing production, clearance & Central Excise duty paid in the prescribed manner, no such application shall be entertained. The Court referred the case of M/s. Emerson Electric Company India Pvt. Ltd. Where it held , although section 32E(1) does not refer to rule 12 of the Central Excise Rules, 2002 under which ER-1/ER-3 returns are prescribed, since the said returns contain details of excisable goods manufactured, cleared and duty paid in the prescribed manner, the said return can be deemed to be the 'return' referred to in section 32E(1). Hence, the concept of return has to be understood in context of rule 12 of the Central Excise Rules, 2002. However, in case of consolidated returns filed in the instant case, the applicant would not be able to indicate 'duty paid' in the prescribed manner (or even in any manner) and question would continue to agitate about the details of production & clearance to be filled in such belated returns.*	***Icon Industries v. 2011***
28)	**Is the Settlement Commission empowered to grant benefit under proviso to Sec 11AC in settlement cases?**	**DECISION**: *The Court ruled that benefit under the proviso to Sec 11AC could not be granted by the Settlement Commission in cases of settlement. As settlement commissions order & Adjudicating officers order are covered by different chapters & A.O has no power to grant immunity from prosecution.*	***Ashwani Tobacco Co. Pvt. Ltd.***

CASE LAWS ON CUSTOMS

29)	**Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?**	**DECISION:** *The HC made following observations:-* **1)** *A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words he cannot be taxed at all.* **2)** *SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier by implication.* **3)** *With regard to the Customs Act, 1962, a conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, Section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone. The High Court thus inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962.*	***Tirupati Udyog Ltd. 2011***
30)	**Whether remission of duty is permissible under section 23 of the Customs Act, 1962 when the remission application is filed after the expiry of the warehousing period (including extended warehousing period)?**	**FACTS:** *The respondent imported resin impregnated paper and plywood for mfr of furniture. The said goods warehoused from the date of import. The respondent opted extension of the warehousing period which the authorities granted. However, even after the expiry of the said date, it did not remove the goods from the warehouse. Subsequently, the assessee applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had become unfit for use on account of non-availability of orders for clearance.* **DECISION:** *H.C said Sec 23 states only when imported goods are lost or destroyed before clearance for home consumption then only application for remission of duty can be considered. Moreover, since in the given case, the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods improperly removed from the warehouse as per section 72(1)(b) read with section 71. The HC, overruled decision of the Tribunal, & held that the circumstances u/s 23 were not applicable to the present case since destruction of the goods or loss of the goods had not occurred before the clearance for home consumption. When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.*	***Decorative Laminates (I) Pvt. Ltd.***
31)	**Whether classification of the imported product changes if it undergoes a change after importation and before being actually used?**	**DECISION:** *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*	***Atherton Engineering Co. Pvt. Ltd.***

		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 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.	
32)	**Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test? Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?** **DECISION:** *The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criteria for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export. Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice need be issued separately as the payment of interest become automatic, once it is held that excess drawback has to be repaid.*		***M/s CPS Textiles P Ltd.***
33)	**Whether the issue of the imported goods warehoused in the premises of 100% EOU for mfr/prodn/processing in 100% EOU would amount to clearance for home consumption?**	**FACTS:** *The appellants were 100% EOU in Alwar. They imported the impugned goods namely HSD oil through Kandla Port and filed 'into Bond Bill of Entry' for warehousing the imported goods. The impugned goods were warehoused in their 100% EOU in Alwar and subsequently used in the factory within the premises of the 100% EOU for manufacture of the finished goods. The Department demanded customs duty on the impugned goods. The contention of the appellants was that since (i) the entire premises of the 100% EOU had been licensed as a warehouse under the Customs Act; (ii) the impugned goods had been warehoused therein and subsequently utilized for manufacture of finished goods in bond; and (iii) the impugned goods had not been removed from the warehouse, there could not be any question of demanding duty on the same. Department contended that the entire premises of the 100% EOU could not be treated as a warehouse. The Appellants had executed a common bond B-17 for fulfilling the requirements under the Customs Act, 1962 and the Central Excise Act, 1944. Under the Central Excise Law, the removal of goods for captive consumption would be treated as removal of goods and the assessee were required to pay duty on such removal.* **DECISION:** *The Tribunal observed that as per Customs manual, the premises of EOU are approved as a Customs bonded warehouse under the Warehousing provisions of the Customs Act. It is also stated therein that the manufacturing and other operations are to be carried out under customs bond. The goods are required to be imported into the EOU premises directly and prior to undertaking import, the unit is required to get the premises customs bonded. The imported goods, except capital goods and spares are required to be utilized within a period of*	***Paras Fab International***

		one year or within such period as may be extended by the Customs authorities and the importer is required to maintain a proper record and proper account of the import, consumption and utilization of all imported materials and exports made and file periodical returns. The EOUs are licensed to manufacture goods within the bonded premises for the purpose of export. Tribunal held that neither the scheme of the Act nor the provisions contained in the Manual require filing of ex-bond bills of entry or payment of duty before taking the imported goods for manufacturing in bond nor there is any provision to treat such goods as deemed to have been removed for the purpose of the Customs Act, 1962. The Tribunal answered the issues raised as follows:- ***(a)*** *The entire premises of a 100% EOU has to be treated as a warehouse if the licence granted under section 58 to the unit is in respect of the entire premises.* ***(b), (c) and (d)*** *Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing in bond as authorized under section 65 of the Customs Act, 1962, cannot be treated to have been removed for home consumption.*	
34)	**Whether Revenue can prefer an appeal in case of a consent order?**	**DECISION***: High Court held that if an order was passed by CESTAT based on consent and the matter was remanded at the instance of Revenue, then Revenue could not pursue an appeal against such order in a higher forum. In the instant case, the Tribunal had remanded the matter in order to re-compute the duty payable by the assessee on the basis of representation of Revenue. Thereafter, the Revenue filed an appeal against the said order. The assessee contended that the appeal filed by the Revenue was not maintainable since the order had been passed by the Tribunal on the submission of the representative of the Revenue. Further, since it is a consent order, no appeal would lie. The High Court held that an appeal against the consent order cannot be filed by the Revenue.*	***Trilux Electronics***
35)	**Whether Chartered Accountant's certificate alone is sufficient evidence to rule out the unjust enrichment under customs?**	**DECISION***: 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*	***BPL Ltd.***

36)	**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?**	**FACTS:** *The assessee filed a Bill of Entry and paid the higher duty in ignorance of concessional rate notification . There was no assessment order for being challenged in the appeal which was passed under erstwhile section 27(1)(i) [now clause (a) of sub-section (1) of section 27].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.* **DECISION***: 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 erstwhile sub-section (1) of section 27 (now clause (a) and (b) of sub-section (1) of section 27) are clearly in the alternative because the expression ‘or’ is found in between the two clauses. The object of section 27(ii) [now section 27(b)] 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 erstwhile sub-section (1) of section 27 [now clause (b) of sub-section (1) of section 27].*	***Aman Medical products Ltd.***
37)	**Can the assessee be denied the refund claim only on the basis of contention that he had produced the attested copy of GAR-7 challan* and not the original of the GAR-7 challan*?**	**FACTS***: 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 GAR-7 and what was produced was only an attested copy. According to repondents, production of original of the GAR-7 was a mandatory requirement for processing the refund application.* **DECISION:** *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 GAR-7 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 GAR-7 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.*	***Narayan Nambiar Meloths***

38)	**Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?**	**DECISION:** *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.*	***M. Ambalal & Co. (SC)***
39)	**Can the goods be detained indefinitely without any formal order under section 110 of the Customs Act, 1962?**	**DECISION:** *The High Court held that there is no time limit for issuance of an order under section 110 and/or the proviso thereof. However, such notice should ordinarily be issued immediately upon interception and detention of the goods. The goods cannot indefinitely be detained without any order under section 110. The High Court observed that section 110(2) provides that when any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession, the goods were seized. The proviso to Section 110(2), however, empowers the Commissioner of Customs to extend the aforesaid period of six months by a further period of not exceeding six months on sufficient cause being shown.*	***S.J. Fabrics Pvt. Ltd. 2011***
40)	**Is it mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized?**	**FACTS:** *The assessee sought copies of the documents seized from his office premises under panchanama and print outs drawn from the Laptop during his attendance in DRI. However, Revenue officers replied that the documents would be provided to him on completion of the investigation.* **DECISION:** *The High Court held that from the language of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the copies asked for. It was the party concerned who had the choice of either asking for the document/seeking extract and not the officer. If any document was seized during the course of any action by an officer and relatable to the provisions of the Customs Act, that officer was bound to make available copies of those documents. The denial by the Revenue to make the documents available was clearly an act without jurisdiction. The High Court directed the Revenue to make available the copies of the documents asked for by the assessee which was seized during the course of the seizure action.*	***Manish Lalit Kumar Bavishi 2011***

41)	**Under what circumstances can the penalty be imposed in terms of section 12(a)(ii) of the Customs Act, 1962?**	**FACTS:** *The High Court noted that under sub-clause (ii) of clause (a) of section 112, the liability to penalty is determined on the basis of duty sought to be evaded. Therefore, the jurisdictional fact to impose a penalty in terms of section 112(a)(ii) includes the essential ingredient that "duty was sought to be evaded". Being a penal P rovision, it requires to be strictly construed. "Evade" means, to escape, slip away, to escape or avoid artfully, to shirk, to baffle, elude. The concept of evading involves a conscious exercise by the person who evades. Therefore, the process of "seeking to evade" essentially involves a mental element and the concept of the status "sought to be evaded" is arrived at only by a conscious attempt to evade.* **DECISION:** *In view of the above discussion, the High Court inferred that unless it is established that a person has, by his omissions or commissions, led to a situation where duty is sought to be evaded, there cannot be an imposition of penalty in terms of section 112(a) (ii) of the Act.*	***O.T. Enasu 2011***
42)	**Can separate penalty under section 112 of the Customs Act be imposed on the partners when the same has already been imposed on partnership firm?**	**DECISION:** *The High Court noted that Explanation to section 140 of the Customs Act, 1962 brings within purview of "Company", a firm or an association of individuals, and "Director" in relation to firm, includes its partner. The High Court observed that in case of Apex Court judgment of Standard Chartered Bank , there emerged the principle that the deeming fiction is not confined to a criminal prosecution but will also extend to an adjudication proceeding as well. Hence, the High Court, in the instant case, held that the deeming fiction in section 140(2) making Director, Manager, Secretary or other officer of company liable to penalty, would not be confined to criminal prosecution but extends to adjudication proceeding as well. The High Court explained that had it been otherwise, it would have led to strange situation where, for criminal prosecution, partner as well as person in charge responsible for conduct of business of partnership firm would be liable whereas for adjudication purposes, a narrower construction had to be adopted. There was no reason to exclude penalty on partnership firm, particularly when it was consistent with overall scheme and object of the Act. In view of the above discussion, the High Court held that for the purpose of imposing penalty, the adjudicating authority under Customs Act, 1962 might, in an appropriate case, impose a penalty both upon a partnership firm as well as on its partners*	***Textoplast Industries 2011***
43)	**Whether, under section 125 of the Customs Act, 1962, discretion vests with the A.A to give option to redeem the goods even though the goods are liable to absolute confiscation (since importation of said goods is prohibited)?**	**DECISION:** *The High Court observed that section 125(1) deals with two situations:-* **(1) Importation and exportation of prohibited goods** *In this case , where the goods were confiscated, the word used is "may". Hence, in case of prohibited goods, there is discretion in the officer either to release the confiscated goods in terms as set out therein or not.* **(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 pronounced 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*	***Alfred Menezes***

44)	**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?**	**DECISION:** *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 was 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 ecompensation 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. Hence, in case the imported goods are confiscated, and goods are not redeemed by paying fine, the importer is bound to pay the customs duty.*	***Poona Health Services***
45)	**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?**	**DECISION:** *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.*	***Finesse Creation Inc.***

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46)	**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?**	**DECISION:** *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.*	***Gawar Construction Ltd.***
47)	**Is the want of evidence from foreign supplier enough to cancel the confiscation order of goods undervalued?**	**DECISION**: *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.*	***Jaya Singh Vijaya Jhaveri***
48)	**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?**	**DECISION**: *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.*	***Sanghvi Reconditioners Pvt. Ltd. (SC)***
49)	**Can the order of the Settlement Commission be considered to be a judicial proceeding?**	**FACTS:** *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 had 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.* **DECISION**: *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.*	***East and West Shipping Agency***

		Further, the appellants had not challenged the said order. Hence, the order passed by the Settlement Commissioner could not be brushed aside onsidering 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.	
50)	**Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue?**	**FACTS:** *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 127A(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.* **DECISION:** *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 (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.*	***Union of India***

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CASE LAWS ON SERVICE-TAX			
51)	**Is the service tax and excise liability mutually exclusive?**	**FACTS:** *The assessee undertook not only manufacture and sale of its Products, but also erected and commissioned the finished products. The customer was charged for the services rendered as well as the value of the manufactured products. The assessee had paid the excise duty on whole value including that for services, but did not pay the service tax on the value of services on the ground that there could not be levy of tax under two parliamentary legislations.* **DECISION:** *The High Court held that the excise duty is levied on the aspect of manufacture and service tax is levied on the aspect of services rendered. Hence, it would not amount to payment of tax twice and the assessee would be liable to pay service tax on the value of services.*	***Lincoln Helios (India) Ltd. 2011***
52)	**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?**	**DECISION:** *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*	***Idea Mobile Comunications Ltd.***
53)	**Can appeal be filed to High Court for deciding the question relating to the taxability of service tax?**	**DECISION:** *The High Court held that the question as to whether the assessee is liable to pay service tax falls squarely within the exception carved cut in section 35G of the Central Excise Act, 1944, 'an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment', and the High Court has no jurisdiction to adjudicate the said issue. The appeal lies to the Apex Court under section 35L of the Central Excise Act, 1944, which alone has exclusive jurisdiction to decide the said question.*	***Volvo India Ltd. 2011***
54)	**Can the option for composition scheme under works contract service be exercised after payment of service tax on a particular works contract?**	**DECISION:** *The High Court held that on a true and fair construction of rule 3(3) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, unambiguously, it was clear that where in respect of a works contract service tax had been paid, no option to pay service tax under the composition scheme could be exercised. The entitlement to avail the benefits of the composition scheme is only after an option is exercised under rule 3(3) of the said rules and this provision specifically enjoins a disqualification for exercise of such option where service tax has been paid in respect of a works contract. In other words, where service tax has been paid in respect of a works contract, the eligibility to*	***Nagarjuna Construction Company Ltd***

		exercise an option to avail the benefits of the composition scheme is excluded. The benefit of the composition scheme is available [subject to the exercise of option and the conditions of eligibility for exercise of such option as spelt out in rule 3(3)] only in relation to "works contract service", as defined in rule 2(c) [Rule 2(c) defines "works contract service" as meaning service provided in relation to execution of the works contract referred to in sub-clause (zzzza) of clause 105 of section 65 of the Act].