	Opponent	Deponent	Year	Court	Issue Section		Conlussion
						CENTRAL EXCISE 1.Basic Concepts	
1	Commissioner	Steel Authority of India	2012	SC		Does the process of removal of foreign materials from iron ore for concentration of such ore amount to manufacture?	such activities donot result in manufacture of different commercial commodity. No Central excise duty is leviable on iron ore concentrate
2	CCE	Osnar Chemical Pvt. Ltd.	2012	SC		Whether the addition and mixing of polymers and additives to base bitumen results in the manufacture of a new marketable commodity and as such exigible to Excise duty?	The Court held that in the Schedule to the Central Excise Tariff Act, no such process or processes have been specified in the Section notes or Chapter notes in respect of Petroleum Bitumen falling under Tariff Item 27132000 or even in respect of bituminous mixtures falling under Tariff Item 27150090 to indicate that the said process amounts to manufacture. Thus, it was evident that the said process of adding polymers and additives to the heated bitumen to get a better quality bitumen, viz. PMB or CRMB, could not be given an extended meaning under the expression manufacture in terms of section 2(f)(ii) of the Act.
3	Grasim Industries LTd	UOI	2011	SC	2f	Waste generated during repair-Manufacture?	Not a process in relation to manufacture of main Product
4	Medley pharmaceuticals Ltd	CCE & C	2011	SC		Physician sample-Test of marketability	only prohibited, but is capable of being sold in open market
5	Usha rectifier Corp I Ltd	CCEx	2011	SC		Assembling of testing equipment-manufacture?	Such equipments were saleable and marketable
6	CCE	GTC Industries LTD	2011	HC Bom	2f	Aluminium foil Cutting for packing cigaratte-Manufacture	No new and distinct product arises
7	Nicholas Piramal Ltd	CCEx	2010	SC		Short Shelf Life-Marketable?	Only if with that shelf life product is not marketable
8	Bata India Ltd	CCE	2010	SC	2d	Theoritical possibility of sale is sufficent-marketable	Decided on the facts of each case. Not sufficent. Commercial capability reqd
9	CCE	Solid and correct engineering works and ORS	2010	SC		Machine not assimilated in permanents structure-Movable	if intent is to makeit permanent was absent so movable
10	CCE	Sony music Entertainment Pvt Ltd	2010	HC Bom		Packing of imported CD-Manufacture	Finishedproduct when imported, so process is not manufacture
11	CCE	Tarpaulin International	2010	SC		Conversion of tarpaulin to tarpaulin madeups-Manufacture?	No new and distinct product arises
						2.Classification of Excisable Goods	
12	CCE, Bhopal	Minwool Rock Fibres Ltd	2012	SC		In case of specific classification viz-à-viz classification based on material used/composition of goods, which one should be adopted	in a classification dispute, an entry which was beneficial to the assessee required to be applied and the same had been done by the adjudicating authority

13	CCE	Wockhardt Life Sciences Ltd	2012	SC		In case of a specific entry viz-a-viz a residuary entry, which one should be preferred for classification purpose?	The Court said that the combined factor that requires to be taken note of for the purpose ofthe classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put. In the instant case, it is not is dispute that this is used by the surgeons for the purpose of cleaning or degerming their hands and scrubbing the surface of the skin of the patient that portion is operated upon. The purpose is to prevent the infection or disease. Therefore, the product in question can be safely classified as a "medicament" which would fall under chapter sub-heading 3003 which is a specific entry and not under chapter sub-heading 3402.90 which is a residuary entry
				3.Valuation of Excisable goods			
14	CCEx Mumbai	Fiat India Pvt Ltd	2012	SC		Whether the price used for selling of a product below the cost price for penetration of market can be considered as transaction value?	Supreme Court opined that this is a case of extra commercial consideration in fixing of price,and artificially depressing it. Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent business person would continuously suffer huge loss only to penetrate market; they are expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments. It is immaterial that the cars were not sold to related persons
15	Maruti suzuki India Ltd	CCE	2010	Tri	4(3)d	Charges towards PDI and after sales service recovered by dealers from buyers of car included in assessable Value	Transaction value includes any amount paid by reason of/in connection with sale of goods. Value Inclussive is extensive, exclussions are exhaustive
				4. CENVAT Credit			
16	Flex Engineering Ltd	CCE UP	2012	SC		In case the testing is critical to ensure marketability of manufactured product i.e. the manufacture is not complete without testing; is CENVAT credit of the testing material allowed?	The Supreme Court held that the process of manufacture would not be complete if a product is not saleable as it would not be marketable. Thus, the duty of excise would not be leviable on it. The process of testing the customized F&S machines was inextricably connected with the manufacturing process. Manufacturing process in the present case gets completed on testing of the said machines. Hence, the afore-stated goods viz. the flexible plastic films used for testing the F&S machines are inputs used in relation to the manufacture of the final product and would be eligible for CENVAT credit under rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) of the CENVAT Credit Rules, 2004]
17	CCE	Tata Advanced Materials Ltd	2011	HC Kar		Cenvat availed to be reversed if insurance reimbursement is received on account of destrucion	Reimbursement is as per terms of policy, and would not render the availment of credit wrong or irregular.

18	CCus	Prime Healthcare products	2011	HC Guj	2k, Notn 3/2011	Wheather input credit can be claimed in respect of toothbrush cleared along with toothpaste	No extra amount was recovered on the toothbrush. New definition states input includes accessories cleared with final product and the vlaue is to be added with final product.
19	CCE	Bhuwalka Steel Industries	2010	Trib	Rule3(1)	Cenvat be denied if inaccuracy is felt	Each case has to be decided according to merit. Normal differences has to be ignored
20	Ashok Kumar H Fulwadhya	UOI	2010	HC Bom	Rule 15(1)	Wheathr Penality can be imposed on directors for wrng credit availment	Impossible only on the person who had availed CENVAT credit, in the given case Company.
21	CCEx	Stelko Strips	2010	HC P & H		Cenvat credit be taken on the basis of privat challan	If duty payment is not disputed, then manufacturer entitled for credit
						5.Demand, Adjudication and Offences	
22	Raghunath International Ltd	UOI	2012	All		Whether Additional Director General, Directorate General of Central Excise Intelligence can be considered a central excise officer for the purpose of issuing SCN?	Central Excise Officer is defined under section 2(b) of the Central Excise Act, 1944. As per the said definition, Central Board of Excise and Customs is empowered to invest any person (including an officer of the State Government) with any of the powers of a Central Excise Officer under this Act. Pursuant to the powers conferred under this section, CBEC vide Notification No. 38/2001-C.E. (N.T) dated 26-6-2001 as amended has invested the Additional Director General, Directorate General of Central Excise Intelligence with the powers of Commissioner of Central Excise.
23	Amidev Agrocare Pvt Ltd	UOI	2012	Bom		Is the copy of the order mandatory to be served via “registered post” or a speed post would also suffice?	As per section 37C(1)(a) of the Central Excise Act, 1944, it was obligatory on the part of the Revenue, either to tender a copy of the decision to the assessee or to send it by ‘registered post with due acknowledgment’ to the assessee or its authorized agent.
24	CCEx, Mumbai	Tikitar Industries	2012			If Revenue accepts judgment of the Commissioner (Appeals) on an issue for one period, can it be precluded to make an appeal on the same issue for another period?	Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it may not be open for the Revenue to contend this issue further by issuing the impugned show cause notices on the same issue for further periods
25	Hans Steel Rolling Mlll	CCEx	2011	HC Chand	11A	Wheather time limit u/s 11A is applicable to Compounded Levy Scheme	This scheme is comprehensive scheme in itself, so general provisions are excluded.
26	CCEx	Accrapac India Pvt Ltd	2010	HC Guj	11A	Non-Disclossure of statutory reqt would it amount to suppression of fact? Wheather extended time limit can be invoked in such cases	Dept is supposed to have knowledge on statutory reqt.Assesse had reasonable belief that it was not liable to duty. Hence this failure of disclossure is not suppression

6.Refund							
27	CCEx	Kanyaka Parameshwari Engineering Ltd	2012	AP		Whether the interest on delayed refund under section 11BB would be payable from the date of deposit of tax or from the date of receipt of application for refund?	Under section 11BB of the Central Excise Act, 1944, if any duty is not refunded within three months from the date of receipt of application under sub-section (1), the interest shall be paid on such duty from the date immediately after expiry of three months from the date of receipt of such application till the date of refund of such duty
28	Ranbaxy Laborataries Ltd	UOI	2011	SC	11BB	Which date to be taken for calculating interest	Date of application is to be considered not the date of order U/s 11B on which 11BB comes into play
29	CCE	Techno Rubber Industries Pvt Ltd	2011	HC Kar		Can refund be claimed on the basis of Debit notes received from Customer?	Department is bound to refund the excess duty received to the person who actually paid it.
30	CCE	Gem Properties Pvt Ltd	2010	HC Kar		Loss is sufficent reason to claim it as not an unjust enrichment	colud not be granted relief as such
7.Appeals							
31	Raja Mechanical Company	CCEx Delhi		SC		The issue under consideration is that in case the first appellate authority had rejected the appeal filed by the assessee on the ground of limitation, whether the orders passed by the original authority would merge with the orders passed by the first appellate authority	The Court observed that if for any reason an appeal is dismissed on the ground of limitation and not on merits that order would not merge with the orders passed by the first appellate authority. Apex Court opined that the High Court was justified in rejecting the request made by the assessee for directing the Revenue to state the case and also the question of law for its consideration and decision. In view of the above discussion, Supreme Court rejected the appeal.
32	CCEx	Rajendra Narayan	2012	HC Del		Whether the construction of pre-fabricated components at one site to be used at different inter-connected metro construction sites in Delhi would get covered underexemption Notification No. 1/2011-C.E.(N.T.) dated 17-2-2011 exempting the 'goods manufactured at the site of construction for use in construction work at such site' ?	For the purpose of pre-fabricating the components a specific casting yard, premises was allotted by DMRC Ltd. The said casting yard constituted the construction site. From the said construction site, components had been moved to different locations where elevated viaducts of the tunnel were being constructed. The Court held that keeping in view the facts of the present case and that the construction was done virtually all over Delhi and construction sites were interconnected, practically prefabrication was done on construction site only
33	CCE	RDC Concrete(India) P Ltd	2011	SC	35C(2)	Can Re-appreciation of evidences be made in rectification of mistake by CESTAT	In pursuance of rectification application CESTAT cannot re-appreciate the evidences and reconsider the view taken earlier.
34	CCE	Gujchem Distillers	2011	HC bom		Can CESTAT dispose an order of an adjudicating authority on a totally new ground	If CESTAT not been satisfied the matter should have remanded back to adj authority. It could not have assumed to itself the juridiscation to decide the appeal on a ground which wasnot raised before lower authority.

						8.Exemption Based on Value of Clearances(SSI)	
35	Commissioner	Elex knitting Machinery Co	2012	SC		Whether an assessee can claim the benefit of SSI exemption on the brand name of another firm if its proprietor is also a partner in such other firm?	Held that the benefit of exemption could be availed only when the company is manufacturing the goods under its own brand name or the brand name being used belonged to a sister concern of that company.
36	Bonanzo Eng & Chemical P Ltd	CCEx	2012	SC		Whether the exempted goods on which duty has been paid by mistake by the assessee and refund thereof has also not been claimed would be excluded while computing turnover for preceding year for claiming SSI exemption?	The Supreme Court opined that SSI exemption would be allowable to the assessee, as they meet all the conditions thereof. The amount of clearances in the SSI exemption notification needs to be computed after excluding the value of exempted goods. Merely because the assessee by mistake paid duty on the goods which were exempted from the duty payment under some other notification, did not mean that the goods would become goods liable for duty under the Act. Secondly, merely because the assessee had not claimed any refund on the duty paid by him would not come in the way of claiming benefit of the SSI exemption
37	CCE	Deora Engineering works, (Contradictin dcsn with Jagjivandas & Co 1985 SC)	2010	HC P & H		clearance of two firms having common management and accounts can be clubbed?	Clearing the goods under common brandname ,management accounts etc. can be clubbed, if there is a flow back of profit to common pool
						9.Settlement Commision	
38	Maruthi Tex Print & Processors Pvt. Limited	CCEx Settl Com	2012	Mad		Can the Settlement Commission decline to grant immunity from prosecution after confirming the demand and imposing the penalty?	Settlement Commission can be approached if a person, who suffered a show cause notice on the charge of evasion of duty, finally wants to settle the matter, by making full disclosure admitting certain omissions/commissions. The Settlement Commission, by looking at the onus upon the Department to prove about the nature of goods cleared without payment of duty, should decide the matter
39	Icon Industries	UOI	2011	Del	32E(1)	Can settl comm reject application if consolidated reurns are filed instead of periodic return	Concept of return specified in section 32E is to be understood in the context of rule 12 of central excise rules,2002, so for the purpose prescribed periodic returns are necessary.
40	Ashwani Tobacco Co. Pvt. Ltd.	UOI	2010	Del		Is the Settlement Commission empowered to grant the benefit under the proviso to section 11AC 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

						CUSTOMS 1. Basic Concepts	
41	CCus	Konkan Synthetic Fibres	2012	SC		In case no statutory definition is provided under law, can the opinion of expert in trade who deals in those goods be considered?	The Supreme Court stated that it was a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance
42	Tirupati Udyog Ltd	UOI	2011	HC AP		clearance of good from DTA to SEZ chargeable to export Under Sez act or Customs Act?	SEZ act doesnot contains provision for Levy and collecion of duty. Customs act provides for goods import in/export to- from outside/within. Sez and DTA both are located with in India, so no duty
						2.Levy Of And Exemptions From Customs Duty	
43	CCE	Decorative Laminates Pvt Ltd	2010	HC Kar	23	Remission of duty permissible after warehousing period?	Remission of duty can be considered only when the goods have been lost,destroyed at any time before clearance for home consumption .
						3.Classification of Goods	
44	Keihin Penalfa Ltd	CCus	2012	SC		Where a classification (under a Customs Tariff head) is recognized by the overnment in a notification any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?	The Apex Court observed that the Central Government has issued a exemption notification dated 1-3-2002 and in the said notification it has classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself has classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification need to be accepted
45	Atherton Engineering Co PVt Ltd	UOI	2010	HC Cal		Whether classification changes if product undergoes change after import but before actual use	only if the purpose for which importation is made changes
46	CPS textiles P vt Ltd	Joint Secretary	2010	HC Mad	75A(2)	Desription in shipping bill relevant for classification	yes, if not otherwise disputed by any technical opinion or test
47						Wheather notice is to be issued for payment of interest for excess recovery of drawback	This section provides for payment of interest automatically along with excess drawback. No notice is to be issued separately for interest payment.
						4.Valuation Under Customs Act	
48	CCus	Aggarwal Industiries Ltd	2011	SC		Whether subsequent increase in the market price of the imported goods due to inflation would lead to increase in customs duty although the contract price between the parties has not increased accordingly?	There was no allegation of the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the respondent- assessee.
						5.Warehousing	
49	Paras Fab International	CCE	2010	Tri LB		Wheather 100% EOU be treated as warehouse	yes, if license grantedu/s58. Imported good warehoused in the premises and used for the purpose of bond as authorised cannot be treated to have been removed for home consumption.
						6.Demand and Appeals	
50	CCUs	Trilux Electronics	2010	HC Kar		Wheather revenue can prefer an appeal in case of a consent order?	Appeal to CESTAT order cannot be made as the order was made at the instance of revenue.

7.Refund							
51	CCUs,chennai	BPL Ltd	2010	HC Mad	27	CA's certificate alone is sufficent to rule out unjust enrichment?	It is merely a piece of evidence acknowledging certain facts so not sufficent enough to prove.
52	Aman Medical Products Ltd	CCus	2010	HC Del	27	Refund can be claimed if the payment pursuant to order not made	"Duty Borne" refers to cover those classes of case where the duty is paid by a person without an order of assesment
53	Narayan Nambiar Meloths	CCus	2010	HC ker	27	Can refund be claimed by producing TR-6(GAR-7) attested copy?	Cannot be disallowed on the basis of technical contention. Vide Clarification F.No 275/37/2K-CX 8A dated 2-2002. Simple Letter+copy of TR-6 Sufficent
8. PROVISIONS RELATING TO ILLEGAL IMPORT,ILLEGAL EXPORT, CONFISCATION, PENALTY &ALLIED PROVISIONS							
54	Wringley India Pt Ltd	CCus	2011	KC mas		Whether discharge of liability on indicated value would still make the assesse liable for confiscation of goods if he has initially made a mis-declaration of the value thereof?	The High Court held that since the appellant made an attempt to mis-declare the value of the imported goods and to misguide the Customs Department,which was also evident from the fact that when the Customs Department directed the appellant to obtain the certificate from the local Chartered Engineer, even at that time they did not disclose the true value assessed by the load port Chartered Engineer
55	In re: Hemal K Shah	Before Govt of India	2011			Whether the smuggled goods can be re-exported from the customs area without formally getting them release from confiscation?	The Government noted that the passenger had grossly misdeclared the goods with intention to evade duty and smuggle the goods into India. As per the provision of Section 80 of Customs Act, 1962 when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under Section 77, the proper officer on request of passenger detain such article for the purpose of being returned to him on his leaving India. As there was no true declaration or request for detention re-export cannot be allowed
56	S J Fabrics P Ltd	UOI	2011	HC cal	110	Can goods be detained indefinitely without any formal order	No specific provision, 110(2) provides that goods shall be returned with in six months is no notice as per 124(a) is given
57	Manish Lalit Kumar Bhavishhi	Addl Dir Gen DRI	2011	Bom		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?	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
58	O T Enasu	UOI	2011	HC ker	112(a) ii	Under what circumstances penality can be imposed under this section	Liability to penaity is determined on the basis of duty sought to be evaded. Evading invloves conscious exercise by the person who evades
59	Textoplast Industries	Addl CCus	2011	HC Bom	112	Can separate penality be imposed on the partners when same has imposed on partnership Firm	Sec 140 brings in purview of "company" partner, director,etc. Deeming provision are not confined to penal provisions, but also to adjudication proceeding as well.
60	CCUs	Jaya Singh Vijaya Jhaveri	2010	Ker HC	111	Wheather confiscation order in respect of goods undervaued can be cancelled for want of evidence from foreign supplier?	Court considered it to be illogical that a person who was a party to undervaluation would give evidence to department to prove that the invoice raised by him was a bogus one and he had received underhand payt.

61	CCus	M.Ambalal&Co	2010	SC		wheather benefit of exemption available for smuggled goods	Smuggled goods cannot be equated with imported good for benefit of exemption. Principal function of this law is to curb smuggling. Act defines smuggled goods separately, so no benefit
9.Settlement Commision							
62	Sanghvi Reconditioner Pvt ltd	UOI	2010	SC	127B	Can assesse select only the favourable item in Settlement commission order.	Having opted to get their liability settled by Settlmt Comm appelant could not be permitted to dissect the settlement commission order.
63	UOI	East & West Shipping Agency	2010	Bom		Can the order of the Settlement Commission be considered to be a judicial proceeding	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
64	UOI	Cus& C Ex Settlement Commn	2010	Bom		Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue?	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 he 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
SERVICE TAX 1. Preliminary legal Provisions							
65	Rashtriya Ispat Nigam Ltd	Dewan Chand Ram Saran	2012	SC		Where the law places liability to pay service tax on the service recipient, can the service provider be made liable to pay service tax on account of such clause providedin the contract?	The SC observed that reading the agreement between the parties as a whole and harmonizing various provisions thereof, it can be inferred that service provider (contractor) accepted liability to pay service tax, since it arose out of discharge of their obligations under contract. With regard to the submission of shifting of tax liability, Supreme Court held that service tax is indirect tax which may be passed on. Thus, assessee can contract to shift their liability.
66	CCE	KVR Constructions	2012			Will service tax paid mistakenly arouse service tax liability? Whether eligible for refund	Held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. Mere payment of amount would not make it 'service tax' payable by the respondents. When once there is lack of authority to collect such service tax from the respondent, it would not give authority to Department to retain such amount and validate it. In view of the above, it was held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under Section 11B of Central Excise Act 1944
67	Comm of Service Tax	Lincoln Helios(India) Ltd		HC Kar		Is service Tax and excise liability mutually exclusive.	No, Excise duty is levied on the aspect of manufacture and service tax is levied on aspect of services rendered.
68	Kishore K S	Cherthala Municipality	2011	HC Ker		in case rooms have been rented out by municipality, can it pass the tax burden to service receivers.	not in violation of constitution and agrement signed between tenant and municipality. So can pass on the tax burden.
69	Tirumala Tirupati Devasthanams, Tirupati	Supr Cus, Excise, Service Tax				Were services provided to the pilgrims taxable under short term accommodation service?	Held that the petitioner was religious and charitable institution and was running guest houses by whatever name they were called, whether it was a shelter for pilgrims or any other name for a considerable time and thus was liable to get itself registered under 'Short term accommodation service' and pay service tax on the same

70	Infotech software Dealers association	UOI	2010	HC Mad		Software Goods? End user License agrement(EULA) be treated as Sale or Service?	Software is goods as per article 366(12) of the constitution, however nature of transcation will decide the levy of tax. In EULA depending on the terms of agrement, nature will vary. Further held that amended provision as to include software service in Residual Enry 97 is not unconstituional
71	CCE	Nahar Industrial Enterprise Ltd	2010	HC P & H	65(105	Service tax chargeable on buffer subsidy provided by Govt for storage of sugar under storage and warehousing services?	Service tax could be levied only If service was provided. Nobody can can provide service to himself. Assesse stored goods owned by him. He has received subsidy on account of compensation for loss of interest
2.Demand, Adjudication and Offences							
72	CCE & ST	Adecco Flexione Workforce Solutions Ltd	2012	Kar		Whether the penalty is payable even when service tax and interest has been paid before issue of show cause notice?	held that the authorities had no authority to initiate proceedings for recovery of penalty under section 76 of the Act when the tax payer paid service tax along with interest for delayed payments promptly. As per section 73(3), no notice shall be served against persons who had paid tax with interest; the authorities can initiate proceedings against defaulters who had not paid tax and not to harass persons who had paid tax with interest on their own. If the notices were issued contrary to this section, the person who had issued notice should be punishable and not the person to whom it was issued
3.Other Provisions							
73	CCEx & ST	VOLVo India Ltd	2011	HC Kar		Can appeal be filed to high court deciding the question relating to taxablity of service tax	HC is of the view that it falls squarely with the Exception laid in 35G of CEx Act,1944. Appeal is not yet decided by SC