Indirect Taxation Case Laws for November'2013 Exams

(*Source: www.icai.org*)

Central Excise

1. *Steel Authority of India Ltd. 2012(S.C.)*

The process of washing of ironore;for removal of foreign materials from such ore does not amount to manufacture.

Held that, removal of foreign materials from iron ore, i.e., mining iron ore from mines and then subjecting to process of crushing, grinding, screening and washing with a view to remove foreign materials to concentrate such ores do not result in manufacture of different commercial commodity. No Central excise duty is leviable on iron ore concentrate.

2. *Grasim Industries Ltd. 2011 (S.C.)*

The generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant does not amount to manufacture.

3. Medley Pharmaceuticals Ltd. 2011 (S.C.)

The physician samples are excisable goods and are liable to excise duty irrespective of the fact that they are statutorily prohibited from being sold.

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

4. *Usha Rectifier Corporation (I) Ltd. 2011 (S.C.)*

Assembling of the testing equipments for testing the final product in the factory amounts to manufacture and liable for excise duty.

In this particular case the 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 Supreme Court held that duty was payable on such testing equipments.

5. *Minwool Rock Fibres Ltd. 2012 (S.C.)*

In case of specific classification viz-à-viz classification based on material used/composition of goods, the classification based on material composition should be preferred.

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6. Wockhardt Life Sciences Ltd. 2012 (S.C.)

In case of a specific entry viz-a-viz a residuary entry, specific entry should be preferred for classification purpose.

Note: The combined factor that requires to be taken note of for the purpose of the 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.

7. *Tata Advanced Materials Ltd. (2011)*

The assessee claimed the CENVAT credit on the duty paid on capital goods which were later destroyed by fire. The Insurance Company reimbursed the amount inclusive of excise duty. The CENVAT credit availed by the assessee is not required to be reversed.

Note: as per CENVAT Credit Rules, 2004, CENVAT credit taken irregularly stands cancelled and CENVAT credit utilised irregularly has to be paid for.

Note: merely because the Insurance Company had paid the assessee 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 contended by the Department.

8. Tikitar Industries, 2012 (S.C.)

Once the 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.

9. Hans Steel Rolling Mill 2011 (S.C.)

The time-limit under section 11A of the Central Excise Act, 1944 is not applicable to recovery of dues under compounded levy scheme.

10. Kanyaka Parameshwari Engineering Ltd. (2012)

Under section 11BB the interest on delayed refund would be payable within 3 months from the date of receipt of application for refund.

Worth noting that, 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.

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11. Raja Mechanical Co. (P) Ltd. 2012 (S.C.)

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.

12. Rajendra Narayan (2012)

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 under exemption 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' ?

Decision:

The Court noted that Delhi Metro Rail Corporation Ltd. had contracted and called upon the respondent-assessee to construct pre-fabricated components of different segments to be used in elevated viaducts etc. For the purpose of pre-fabricating the components a specific casting yard, premises was allotted by Delhi Metro Rail Corporation 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.

Therefore, it allowed the appeal in the favour of the respondent- assessee

13. *Elex Knitting Machinery Co. 2012 (S.C.)*

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, 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.

14. *Bonanzo Engg. & Chemical P. Ltd. 2012 (S.C.)*

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.

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Custom Laws

15. Konkan Synthetic Fibres 2012 (S.C.)

In case no statutory definition is provided under law, the opinion of expert in trade who deals in those goods be considered while determining duty liability.

16. Aggarwal Industries Ltd. 2011 (S.C.)

The subsequent increase in the market price of the imported goods due to inflation would not lead to increase in customs duty when the contract price between the parties has not increased accordingly.

17. Manish Lalit Kumar Bavishi(2011)

Held that it is mandatory in part of revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized.

Note: 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.

18. O.T. Enasu (2011)

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 Custom Act.

19. Textoplast Industries(2011)

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.

Thank You

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