LATEST CASE LAWS – SUMMARY

EXCISE

TAX HIERARCHY

ISSUE	DECISION	CASE LAW
Whether it is necessary that the circular must be issued under Section 37B in order to be binding on the Department? **[Important]**	It was held that any clarification issued by the Board is binding to the Central Excise Officers who are duty-bound to observe and follow such circulars, whether or not Section 37B is referred to in such circular	**Darshan Boardlam Ltd. V. UOI – 2013 – Guj. HC**

BASIC CONCEPTS

ISSUE	DECISION	CASE LAW
Does the process of removal of foreign materials from iron ore for concentration of such ore amount to manufacture?	It was 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.	**Steel Authority of India Ltd. – 2012 – S.C.**
Whether the addition and mixing of polymers and additives to base bitumen results in the manufacture of a new marketable commodity?	It was held that process of mixing polymers and additives with bitumen did not amount to manufacture as mere improvement in quality did not amount to manufacture	**Osnar Chemical Pvt. Ltd. – 2012 – S.C.**
Whether the metal scrap or waste generated during the repair of worn out machinery / parts of cement manufacturing plant by a cement manufacturer amounts to manufacture?	It was held that generation of metal scrap or waste during the repair of his worn out machinery / parts of cement manufacturing plant does not amounts to manufacture in terms of Section 2(f)(i) as the repair process cannot be said to be incidental / ancillary process to the completion of manufactured product	**Grasim Industries Ltd V. UOI – 2011 – SC**
Does the process of cutting & embossing aluminium foil for packing the cigarettes amounts to manufacture?	It was held that cutting and embossing did not transform aluminium foils into distinct and identifiable marketable commodity. Hence, the process did not amount to manufacture as per Section 2(f) of CEA, 1944. [However, now it amounts to deemed manufacture in terms of Section 2(f)(ii)]	**GTC Industries Ltd. – 2011 – Bom. HC**
Does the process of preparation of tarpaulin made ups after cutting & stitching the tarpaulin fabrics & fixing the eye lets amounts to manufacture?	It was held that stitching of tarpaulin sheets & making eyelets did not change the basis characteristics of the raw material & end product and the above said process would not amount to manufacture.	**Tarpaulin International – 2010 – SC**

Does the activity of packing of imported compact discs in a jewel box along with inlay card amounts to manufacture?	It was held that the said process did not amount to manufacture since the CD had been complete & finished when imported by the assessee	**Sony Music Entertainment (I) (P) Ltd – 2010 – Bom. HC**
Whether assembling of the testing equipment for testing the final product in the factory amounts to manufacture? And, whether such testing equipments were marketable?	It was held that process of assembling in the present case amounted to manufacture as a product was emerged out of assembling. Also, the said testing equipment were marketable as the company developed such equipments to avoid importing of such equipments with a view to save foreign exchange	**Usha Rectifier Corpn. (I) Ltd. – 2011 – SC**
Whether the theoretical possibility of product being sold is sufficient to establish the marketability of a product?	It was held that mere theoretical possibility of the product being sold is not sufficient, but there should be commercial capability of being sold to prove marketability of a product.	**Bata India Ltd – 2010 – SC**
Can the physician sample be considered to be marketable in view of the fact that they are statutorily prohibited from being sold as per Drugs and Cosmetics Act, 1940?	It was held that physician samples were marketable and were liable to excise duty as D & C Act, 1940 and CEA, 1944 operated in different fields	**Medley Pharmaceuticals Ltd. – 2011 – SC**
Does a product with a short shelf-life satisfy the test of marketability?	It was held that short-shelf life is irrelevant to test the marketability of a product. If a product with shelf-life of 2 to 3 days is capable of being bought and sold in the market, it would be excisable; else it would be non-excisable.	**Nicholas Piramal India Ltd. – 2010 – SC**
Whether the machine, which is not assimilated in permanent structure would be considered to be immoveable?	It was held that the plant in the case was not immovable property as the machine was fixed by nuts and bolts to the foundation to provide a wooble-free operation to the machine and there was no intention to permanently attach it to earth.	**Solid & Correct Engineering works & ORS – 2010 – SC**

CLASSIFICATION OF GOODS

ISSUE	DECISION	CASE LAW
In case of specific classification viz-à-viz classification based on material used/composition of goods, which one should be adopted for classification purpose?	It was held that tariff heading specifying goods according to its composition should be preferred over specific heading	**Minwool Rock Fibres Ltd. – 2012 – S.C.**
Whether the actual use of a product should be considered for classification purpose?	Assessee's claim that the products are required to be classified as "Medicaments" was accepted over Revenue's stand that the products in question are "Detergents" as the products in question were primarily used for external treatment of the human	**Wockhardt Life Sciences Ltd. – 2012 – S.C.**

	beings for the purpose of the prevention of disease.	
Can the 'soft serve' served at McDonalds India be classified as "ice cream" for the purpose of levying excise duty? **[Important]**	It was held that soft serve would be classified as "ice cream" as (i) PFA, 1955 cannot be referred for classification under CEA, 1944 (ii) Consumer's perception would prevail over marketing strategies of manufacturer (iii) In the absence of a statutory definition or technical description, interpretation ought to be in accordance with common parlance principle (iv) Specific Heading ("Ice Cream") would prevail over General Heading ("Other Diary Produce") in terms of R-3, GIR	**Connaught Plaza Restaurant (Pvt) Ltd. – 2012 – S.C.**

VALUATION OF GOODS

ISSUE	DECISION	CASE LAW
Whether the price used for selling of a product below the cost price for penetration of market can be considered as transaction value?	Department's contention that extra commercial consideration was involved in the present case was accepted by the Supreme Court [even though the cars were sold to unrelated persons] as penetration pricing strategy was carried on 5 years. Thus, Best Judgment Assessment by Department was held to be proper and Assessee's contention of treating Assessable Value as Transaction Value was rejected	**Fiat India Pvt. Ltd. – 2012 – S.C.**
Whether the charges towards pre-delivery inspection & after sale services recovered by dealers from buyers of cars would be included in the AV of cars?	It was held that charges towards pre-delivery inspection & after sale services recovered by dealers from buyers of cars would be included in the assessable value of cars when the cars were sold by the manufacturer to the dealer irrespective of the fact that the price was the sole consideration to the manufacturer from the dealer. [This judgement is effectively overruled by **Tata Motors Ltd. V. UOI – 2012 – Bom. HC**]	**Maruti Suzuki India Ltd. – 2010 – Tri-LB**
Can the PDI and free After Sales Services charges be included in the transaction value when they are not charged by the assessee to the buyer? **[Important]**	It was held that charges towards pre-delivery inspection & after sale services recovered by dealers from buyers of cars would be included in the assessable value of cars when the cars were sold by the manufacturer to the dealer as all the conditions of Section 4(1)(a) were satisfied. Thus, referring to Section 4(1)(b) along with Rule 6 were incorrect.	**Tata Motors Ltd. V. UOI – 2012 – Bom. HC**

SSI EN

ISSUE	DECISION	CASE LAW
Whether an assessee can claim the benefit of SSI EN on the brand name of another firm if its proprietor is also a partner in such other firm?	It was held that assessee being the co-owner of the brand name, could not be said to have used the brand name of another person [Concept of Group Brand Name was recognized in the present case]	**Elex Knitting Machinery Co. – 2012 – S.C.**
Whether the clearance of two firms having common brand name, goods being manufactured in the same factory premises, having common management & accounts, etc. can be clubbed for the purposes of SSI EN?	It was held that the clearance of the common goods by both the firms under the same brand name, manufactured in the same factory premises, having common management and accounts, etc. had been rightly clubbed by Department	**Deora Engineering Work – 2010 – P&H HC**
Whether the manufacture and sale of specified goods, not physically bearing a brand name, from branded sale outlets would disentitle an assessee to avail benefit of small scale exemption? **[Important]**	It was held that once it is established that a specified good is a branded good, whether it is sold without any trade name on it, or by another manufacturer, it does not cease to be a branded good of the first manufacturer. Thus, SSI EN is not available even for such goods, not physically bearing a brand name	**Australian Foods India (P) Ltd – 2013 – S.C.**

DEMAND & RECOVERY

ISSUE	DECISION	CASE LAW
Whether time-limit under Section 11A of the CEA, 1944 is applicable to recovery of dues under compound levy scheme?	It was held that time-limit under Section 11A of CEA, 1944 is not applicable to recovery of dues under compound levy scheme as compounded levy scheme is a separate scheme from the normal scheme for collection of excise duty and importing one scheme of tax administration to a different scheme is in appropriate	**Hans Steel Rolling Mill – 2011 – SC**
Whether non-disclosure of a statutory requirement under a law would amount to suppression of facts for invoking the extended period of limitation under Section 11A?	It was held that non-disclosure of the fact, which a statutory requirement under an act, on the part of the assessee would not amount to suppression so as to call for invocation of the extended period of limitation.	**Accrapac (I) (P) Ltd – 2010 – Guj. HC**
Is assessee required to pay interest in case of voluntary payment of time-barred duty before issuance of the show cause notice? **[Important]**	It was held that the assessee was not required to pay interest in case of voluntary payment of time-barred duty before issuance of show cause notice as recovery of duty as such was not possible in such cases	**C. V. Gujarat Narmada Fertilizers Co. Ltd. – 2012 – Guj. HC**
Can Appellate Authorities or Courts permit assessee to pay reduced penalty of 25% beyond the time prescribed	It was held that Appellate Authorities or Courts permit assessee to pay reduced penalty of 25% beyond the time prescribed under Section 11AC as such powers to give	**Castrol India Ltd. – 2012 – Bom. HC**

under Section 11AC? **[Important]**	the benefit of reduced penalty by Appellate Authorities or Courts is possible only for the increased duty as per Section 11 AC	
In a case where the assessee has been issued a show cause notice regarding confiscation, is it necessary that another SCN regarding recovery of dues and penalty on the same allegations can be issued only when first SCN is adjudicated? **[Important]**	It was observed that since the subsequent show cause notice only formed prima facie view in regard to allegations, it could not be said to be issued after pre-judging the question involved in the matter. Thus, issue of second SCN regarding recovery of dues and penalty was held to be valid	**Jay Kumar Lohani – 2012 – M.P. HC**

REFUND

ISSUE	DECISION	CASE LAW
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?	It was held that interest on delayed refund will start from the expiry of three months from the date of application for refund till the actual date of refund.	**Kanyaka Parameshwari Engineering Ltd. – 2012 – A.P HC**
What is the date of commencement of the period for the purpose of computing interest on delayed refund under Section 11BB - the date of receipt of application for refund or date on which the order of refund is made?	It was held that liability of the revenue to pay interest on delayed refund under Section 11BB commences from the date of expiry of 3 months from the date of receipt of application for refund u/s 11B(1) & not from the expiry of the 3 months from the date on which order of refund is made.	**Ranbaxy Laboratories Ltd V. UOI – 2011 – SC**
Can the excess duty paid by the seller be refunded on the basis of the debit note issued by the buyer?	It was held that Doctrine of Unjust Enrichment was not be applicable in the present case and refund of excess duty paid was refunded to the seller	**Techno Rubber Industries Pvt. Ltd. – 2011 – Kar. HC**
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?	It was 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 production.	**Gem Properties (P) Ltd – 2010 – Kar. HC**

CIVIL PROCEEDINGS

ISSUE	DECISION	CASE LAW
In a case where the manufacturer clandestinely removes the goods and stores them with a firm for further sales, can penalty under R-25 of the CER, 2002 be imposed on such firm? **[Important]**	It was held that R-25 penalty cannot be imposed on such firm as Rule 25 could be imposed only on four categories of persons: (a) producer; (b) manufacturer; (c) registered person of a warehouse; or (d) a registered dealer.	**Balaji Trading Co. – 2013 – Del. HC**

SERVICE TAX

BASIC CONCEPTS

ISSUE	DECISION	CASE LAW
Whether the service tax liability created under law can be shifted by a clause entered in the contract?	It was held that service tax being an indirect tax may be passed on. Thus, assessee can contract to shift their liability. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under contract between them.	**Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran – 2012 – S.C.**
Is the service tax & excise liability mutually exclusive?	It was held that the excise duty is levied on the aspect of manufacture & service tax is levied on the aspect of service rendered. Hence, it would not amount to payment of tax twice & the assessee would be liable to pay service tax on the value of services.	**Lincoln helios (I) Ltd. – 2011 – Kar. HC**
In case where rooms have been rented by Municipality, can it pass the burden of service tax to the service receivers, [i.e. tenants]?	It was held that service tax burden can be passed on to the service recipient by the service provider even if the under the agreement, there was no provision for payment of service tax as service tax is an indirect tax and all indirect taxes are passed on to the ultimate consumers	**Kishore KS v. Cherthala Municipality – 2011 – Ker. HC**
Were services provided to the pilgrims taxable under short term accommodation service?	It was held that the assessee, a religious and charitable institution, 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 and pay service tax on the same.	**Tirumala Tirupati Devasthanams, Tirupati – 2012 – AP HC**
Can a software be treated as goods and if so, whether its supply to a customer as per an “End User Licence Agreement” would be treated as Sale or Service?	It was held that though software is goods, the transaction of supplying software to customer may not amount to sale in all cases and it may vary depending upon the terms of “End User Licence Agreement”	**Infotech Software Dealers Association v. UOI – 2010 – Mad HC**
Whether service tax is chargeable on the buffer subsidy provided by the Government for storage of free sale sugar, under the category of “Storage & Warehousing Services”?	It was held that the service tax cannot be charged as one cannot provide “Storage & Warehousing Services” to himself and amount paid by the Government represents the compensation for keeping the buffer stock and not the service charges for “Storage Services”	**Nahar Industrial Enterprises Ltd – 2010 – P & H HC**
A society, running renowned schools, allows other schools to use a specific name, its logo and motto and receives a non-refundable amount and	It was held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing ‘franchise service’	**Mayo College General Council – 2012 – Raj HC**

annual fee as a consideration. Whether this amounts to a taxable service? **[Important]**		

VALUATION

ISSUE	DECISION	CASE LAW
Whether expenditure like travel, hotel stay, transportation and the like incurred by service provider in course of providing taxable service should be treated as consideration for taxable service and included in value for charging service tax? **[Important]**	It was held that such out-of-pocket expenses cannot be considered to be consideration for taxable service in terms of R-5 of STVR, 2006 as Rule 5, STVR, 2006 is ultra-vires Section 66-B & Section 67 of FA, 1994, which tells that value of a service shall be Gross Amount Charged ***"for such service"***	**Intercontinental Consultants & Technocrats (P) Ltd. V. UOI – 2013 – Del. HC**

EXPORTER OF SERVICE EN

ISSUE	DECISION	CASE LAW
Whether filing of declaration of description, value etc. of input services used in providing IT enabled services (call centre/BPO services) exported outside India, after the date of export of services will disentitle an exporter from rebate of service tax paid on such input services? **[Important]**	It was held that assessee was entitled to refund of service tax paid on such input services as in the present case it was impossible to not only determine the date of export but also anticipate the call so that the declaration could be filed "prior" to the date of export. And, it was impossible to comply with the conditions of EN which imposes a condition of describing the input service, value and specify the amount of service tax payable on input services **actually required** to be used in providing taxable service to be exported "prior" to the date of export	**Wipro Ltd. V. UOI – 2013 – Del. HC**

PENAL PROVISIONS

ISSUE	DECISION	CASE LAW
Whether the penalty is payable even when service tax and interest has been paid before issue of show cause notice?	It was held that the authorities had no authority to initiate proceedings for recovery of penalty under Section 76 when the tax payer paid service tax along with interest for delayed payments promptly. Section 73(3) gives the benefit of not paying any penalty if service tax and interest is paid before issue of show cause notice	**Adecco Flexione Workforce Solutions Ltd. – 2012 – Kar HC**

DEMAND & REFUND

ISSUE	DECISION	CASE LAW
Will service tax paid mistakenly arouse service tax liability?	It was held that refund of service tax paid mistakenly [although actually exempt], is payment made without authority of law. Mere payment of amount would not make	**KVR Construction – 2012 – Kar. HC**

	it 'service tax' payable by the respondents. 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 the Central Excise Act, 1944.	
In a case where the assessee has acted bona fide, can penalty be imposed for the delay in payment of service tax arising on account of confusion regarding tax liability and divergent views due to conflicting court decisions? **[Important]**	It was held that penalty cannot be imposed for the following reasons: (i) Levy was comparatively new and therefore, both unawareness and confusion were quite possible. Also, The service providers were essentially agriculturists, who lost their lands when plant of ONGC was set up (ii) There were divergent views of different benches of Tribunal (iii) Right to get reimbursement from service recipients does not means that the service providers had mala-fide intentions	**Ankleshwar Taluka Ongc Land Loosers Travellers Co. Op. – 2013 – Guj. HC**
Whether non-filing of additional documents despite several opportunities to the assessee to produce the same, could be a sufficient ground for passing a non-speaking order? **[Important]**	It was held that refund has to be given to the assessee and passing of non-specking order was not valid as if the assessee had failed to furnish additional information, it had been obligatory on the part of the adjudicating authority to record a finding as to why the documents furnished by the assessee were not sufficient to allow his claim and why additional documents were necessary	**DBOI Global Service Pvt. Ltd. V. UOI – 2013 – Bom. HC**

CENVAT CREDIT

MANUFACTURER

ISSUE	DECISION	CASE LAW
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?	It was 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. And, thus CENVAT credit on the testing material will be allowed as those materials are used for the manufacture of final tested product	**Flex Engineering Ltd. – 2012 – S.C.**
The assessee claimed the CENVAT credit on the duty paid on capital goods, which were later destroyed by fire. The Insurance co. reimbursed the amount including excise duty. Is the CENVAT credit	It was held that the CCR availed by the assessee need not be reversed as it was not a case of double benefit as contended by the Department.	**Tata advanced Material Ltd. – 2011 – Kar. HC**

availed by the assessee required to be reversed?		
In case of combo pack of brought out tooth brush sold along with tooth paste manufactured by assessee; is tooth brush eligible as input under the CCR, 2004?	It was held that the credit was admissible as in terms of Section 2(f)(iii) manufacture includes packing of Section 4A [MRP] products and thus, the combo pack of tooth paste and tooth brush was the final product and not just the tooth paste	**Prime Health Care Products – 2011 – Guj. HC**
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?	It was held that tolerances in respect of hygroscopic, volatile and such other cargo has to be allowed as per industry norms, however, unreasonable and exorbitant claims. Similarly, minor variation arising due to weighment by different machines will also have to be ignored if such variations are within tolerance limits.	**Bhuwalka Steel Industries Ltd – 2010 – Tri-LB**
Whether penalty can be imposed on the director of the company for the wrong CENVAT credit availed by the company?	It was held that penalty under Rule 15 was imposable only on the person who had availed CENVAT credit, who was a manufacturer. The director of the company could not be said to be manufacturer availing CENVAT credit	**Ashok Kumar Fulwadhya v. UOI – 2010 – Bom. HC**
Can CENVAT credit be taken on the basis of private challans?	In the present case it was held that credit be taken on the strength of private challans as the same were not found to be fake & there was a proper certificate that duty had been paid.	**Stelko Strips Ltd – 2010 – P&H HC**
Whether (i) technical testing and analysis services availed by the assessee for testing of clinical samples prior to commencement of commercial production and (ii) services of commission agent are eligible input services for claiming CENVAT? **[Important]**	It was held that (i) availing of CCR on technical testing and analysis services for testing of clinical samples prior to commencement of commercial production was valid as these services were used in or in relation to manufacture of final product (ii) availing of CCR on services of commission agent was not valid as theses services were neither covered by the means part [used for manufacture of final products or clearance of final products upto place of removal] nor covered by the includes part [covering only sales promotion & not sales]	**Cadila Healthcare Ltd. – 2013 – Guj. HC**
Will two units of a manufacturer surrounded by a common boundary wall be considered as one factory for the purpose of CENVAT credit if they have separate central excise registration? **[Important]**	It was held that each unit was an independent factory as the assessee itself had described the factory of its 2nd division as a separate place of business from 1st division by applying for separate central excise registration	**Sintex Industries Ltd. – 2013 – Guj. HC**

CUSTOMS

BASIC CONCEPTS

ISSUE	DECISION	CASE LAW
Are the clearances of goods from DTA to SEZ chargeable to export duty under the SEZ Act, 2005 or the Custom Act, 1962?	It was inferred that the clearance of goods from DTA to SEZ is not liable to export duty either under the SEZ Act, 2005 or under Custom Act, 1962.	**Tirupati Udyog Ltd. V. UOI – 2011 – AP HC**
In case no statutory definition is provided under law, can the opinion of expert in trade who deals in those goods be considered?	It was held that when no statutory definition was provided in respect of an item in the CA, 1962 or the CEA, 1944 the trade understanding, i.e. the understanding in the opinion of those who deal with the goods in question was the safest guide.	**Konkan Synthetic Fibres – 2012 – S.C.**
Whether classification of imported product changes if it undergoes a change after importation & before being actually used?	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 changes after importation & before being actually used, it is immaterial, provided it remains the same product & it is used for the purpose specified in the classification.	**Atherton Engineering Co. (P) Ltd v. UOI – 2010 – Cal. HC**
Where a classification is recognized by the Government 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?	It was 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 even for period before 1-3-2002	**Keihin Penalfa Ltd. – 2012 – S.C.**

VALUATION OF GOODS

ISSUE	DECISION	CASE LAW
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?	It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion. Thus, the declared value by the assessee was accepted	**Aggarwal Industries Ltd. – 2011 – S.C.**

IMPORT PROCEDURES

ISSUE	DECISION	CASE LAW
Can the time-limit prescribed under Section 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under Section 46 of the Act? **[Important]**	It was held that that the time-limit prescribed under Section 48 for clearance of the goods within 30 days cannot be read into Section 46	

WAREHOUSING PROCEDURES

ISSUE	DECISION	CASE LAW
Whether the issue of the imported goods warehoused in the premises of 100% EOU for manufacture / production / processing in 100% EOU would amount to clearance for home consumption?	It was held that imported goods warehoused in the premises of a 100% EOU (which is licensed as a custom bonded warehouse) & used for the purpose of manufacturing in bond as authorized under Section 65 of the Custom Act, 1962, cannot be treated to have been removed for home consumption and thus, no import duty can be taken	**Paras Fab International – 2010 – Tri-LB**

CONFISCATION & PENALTY

ISSUE	DECISION	CASE LAW
Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?	It was held held that the smuggled goods could not be considered as "Imported Goods" for the purpose of benefit of the exemption notification.	**M. Ambalal & Co. - 2010 – SC**
Whether discharge of liability on indicated value would still make the assessee liable for confiscation of goods if he has initially made a mis-declaration of the value thereof?	It was held that there was clear mis-declaration of value by the appellant and as per Section 111(m) of the Customs Act, the revenue was asked to confiscate the goods so imported.	**Wringley India Pvt.Ltd. – 2011 – Mad. HC**
Whether the smuggled goods can be re-exported from the customs area without formally getting them release from confiscation?	It was noted that the passenger had grossly mis-declared the goods with intention to evade duty and smuggled the goods into India. So the re-export of said goods cannot be allowed under Section 80 of CA, 1962.	**Hemal K. Shah – MOF, GOI**
Is the want of evidence from foreign supplier enough to cancel the confiscation order of goods undervalued?	It was held that in a case of confiscation of goods because of this under valuation, tribunal could not cancel the confiscation order for the want of evidence from foreign supplier.	**Jaya Singh Vijaya Jhaveri – 2010 – Ker. HC**
Under what circumstance can the penalty be imposed in term of sec. 112(a)(ii) of the CA, 1962?	It was inferred that unless it is established that a person has, by his omission or commission, led to a situation where duty is "sought to be evaded", there cannot be	**O. T. Enasu v. UOI – 2011 – Kar. HC**

	an imposition of penalty in terms of Section 112(a) (ii) of the CA, 1962.	
Can separate penalty under Section 112 of the CA, 1962 be imposed on the partner when the same has already been imposed on partnership firm?	It was held that for the purpose of imposing penalty, the adjudicating authority under CA, 1962 might in an appropriate case, impose a penalty both upon a partnership firm as well as on its partner.	**Textoplast industries – 2011 – Bom. HC**
Can the goods be detained indefinitely without any formal order under Section 110 of the CA, 1962?	It was held that goods cannot be indefinitely detained without any order under Section 110 as Section 110(2) provides that seizure notice under Section 124 (a) should be passed within 6 months of detention, failing to which the goods shall be returned	**S. J. Fabrics Pvt. Ltd. v. UOI – 2011 – Cal. HC**
Is it mandatory for the revenue officer to make available the copies of the seized documents to the person from whose custody such documents were seized?	It was held that the revenue had to make available the copies of the documents asked for by the assessee, which was seized during the course of the seizure action as per Section 110(4).	**Manish Lalit kumar Bavishi – 2011 – Bom. HC**

REMISSION OF DUTY

ISSUE	DECISION	CASE LAW
Whether remission of duty is permissible under Section 23 of the Custom Act, 1962 when the remission application is filled after the expiry of W/H period (including extended warehousing period)?	It was held that when the goods are not cleared within the period or extended period as given by the authorities, they were improperly removed from warehouse as per Section 72. Thus, Section 23 remission cannot be made in such cases	**Decorative Laminates (I) (P) Ltd – 2010 – Kar. HC**

DEMAND & REFUND

ISSUE	DECISION	CASE LAW
Whether Chartered Accountants certificate alone is sufficient evidence to rule out the unjust enrichment under custom?	It was held that refund cannot be not be granted refund merely on the basis of the said certificate.	**BPL Ltd. – 2010 – Mad. HC**
Can a refund claim be filed under Section 27 of CA, 1962 if the payment of duty has not been made pursuant to an assessment order?	It was held that the refund claim of the appellant was maintainable under Section 27	**Aman Medical Products Ltd – 2010 – Del. HC**
Can the assessee be denied the refund claim only on the basis of contention that he had produced the attested copy of TR-6 Challan & not the original of the TR-6 Challan?	It was held that the assessee could not be denied the refund claim & attested copy of TR-6 challan would suffice for processing the refund application.	**Narayan Nambiar Meloths – 2010 – Ker. HC**

Whether extended period of limitation for demand of customs duty can be invoked in a case where the assessee had sought a clarification about exemption from a wrong authority? **[Important]**	It was held that extended period of limitation for demand of customs duty cannot be invoked as there was not mala-fide intention [i.e. deliberate default] to for non-payment the duty	**Uniworth Textiles Ltd. – 2013 – SC**
Can the directors of the company be held liable for the recovery of customs dues on the company? **[Important]**	It was held that directors cannot be held liable for the recovery of customs dues on the company in the absence of a statutory provision to recover the duty from the directors	**Anita Goel – 2013 – Del. HC**

COMMON TOPICS

SETTLEMENT COMMISSION

ISSUE	DECISION	CASE LAW
Can the Settlement Commission decline to grant immunity from prosecution after confirming the demand and imposing the penalty without placing the burden on the Department to prove the clandestine manufacture and removal of goods?	It was held that the Settlement Commission should not have refused the benefit of immunity from prosecution. Thus, the Court set aside the order relating to non-grant of immunity for prosecution and resultantly, the assessee was granted immunity from being prosecuted.	**Maruthi Tex Print & Processors P. Ltd. – 2012 – Mad. HC**
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 the first proviso to Section 32E (1)?	It was held that concept of return has to be understood in context of Rule 12 of CER, 2002. Thus, the court rejected the submission of the petitioner that filing of consolidated return coving all the past period would serve the purpose.	**Icon Industries v. UOI – 2011 – Del. HC**
Is the Settlement Commission empowered to grant the benefit under the proviso to Section 11AC in cases of settlement?	It was held that benefit under the proviso to Section 11AC could not be granted by the Settlement Commission in cases of settlement as settlement order made by the Settlement Commission is distinct from the adjudication order made by the Central Excise Officer	**Ashwani Tobacca Co. (P) Ltd v. UOI – 2010 – Del. HC**
In case of a settlement commission's order, can the assessee be permitted to accept what is favorable to them & reject what is not?	It was held that the assessee could not be permitted to dissect the settlement commission's order with a view to accept what is favorable to them & reject what is not	**Sanghvi Reconditioners (P) Ltd v. UOI – 2010 – SC**
Can the order of the settlement commission be considered to be a judicial proceedings?	It was held that as per Section 127-M of CA, 1962, the order passed by the settlement commission is in judicial proceedings & it is a judicial order.	**UOI v. East & West Shipping Agency – 2010 – Bom. HC**

Does the settlement commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the revenue?	It was held that the settlement commission has jurisdiction to deal with the questions relating to the recovery of drawback erroneously paid by the revenue as drawback is nothing but remission of duty on account of statutory provisions	**UOI v. Cus. & C. Ex Settlement commission – 2010 – Bom. HC**

APPEALS & REVISION

ISSUE	DECISION	CASE LAW
Is the copy of the order mandatory to be served via registered post or a speed post would also suffice?	It was held that copy of the order cannot be sent by speed post as per Section 37C(1)(a), CEA, 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.	**Amidev Agro Care Pvt. Ltd. v. UOI – 2012 – Bom. HC**
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?	It was held that since 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.	**Tikitar Industries – 2012 – S.C.**
Whether doctrine of merger is applicable when appeal dismissed on the grounds of limitation and not on merits?	It was held that if for any reason an appeal is dismissed on the ground of limitation and not on merits, those orders would not merge with the orders passed by the first appellate authority.	**Raja Mechanical Co. (P) Ltd. – 2012 – S.C.**
Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on records under Section 35C (2) of the CEA, 1944?	It was held that in pursuance of a rectification application, it cannot re-appreciate the evidence & reconsider its legal view taken earlier.	**RDC Concrete (I) Pvt. Ltd. – 2011 – SC**
Is the CESTAT order disposing appeal on a totally new ground sustainable?	It was held that CESTAT should have remanded the matter back to the adjudicating authority. However, it could not have assumed to itself the jurisdiction to decide the appeal on a ground which had not been urged before the lower authorities.	**Gujchem Distillers – 2011 – SC**
Can appeal be filed to High Court for deciding the question relating to the taxability of service tax?	It was held that High Court has not jurisdiction to decide the question relating to taxability along with questions relating to valuation and classification	**Volvo India Ltd – 2011 – Kar. HC**
Whether revenue can prefer an appeal in case of consent order?	It was held that an appeal against the consent order cannot be filed by the revenue.	**Trilux Electronics – 2010 – Kar. HC**

Can the deposit of 50% of tax amount be made a condition for condoning the delay in filing of an appeal? **[Important]**	It was held that condition for condoning the delay in filing the appeal in the present case was not valid as delay is condoned or refused depending upon the sufficiency of cause for delay	**Mihani Network – 2012 – Mp HC**
Can a decision pronounced in the open court in the presence of the advocate of the assessee, be deemed to be the service of the order to the assessee? **[Important]**	It was held that decision pronounced in the open court in the presence of the advocate of the assessee shall be deemed to be the service of order as Section 37C(a) of the CEA, 1944 provides that an order is deemed to be served on the person if it is tendered to the person for whom it is intended or **his authorized agent**	**Nanumal Glass Works – 2012 – All. HC**
Can Tribunal condone the delay in filing application by Commissioner consequent to review by the Committee of Chief Commissioners if it is satisfied that there was sufficient cause for not presenting it within the prescribed period by invoking Section 129A(5) for an application filed under Section 129D(4)? **[Important]**	It was held that Tribunal can condone the delay in filing application by Commissioner consequent to review by the Committee of Chief Commissioners Section 129A(5) [Normal Appeal by Commissioner to Tribunal] stood incorporated in Section 129D(4) [Appeal to Tribunal by Commissioner in case of Review of Order of Commissioner by Committee of Chief Commissioners] by way of legal fiction	**Thakker Shipping P. Ltd. – 2012 – S.C.**

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