**INDIRECT TAX- UPCOMING BATCHES**

| | Start DATE | Timing |
|---|---|---|
| **FACE 2 FACE (IN DELHI)** | | |
| BATCH- 1 | 29TH Nov 2013(M,W,F) | 6-30 to 10-30* a.m |
| **SATELLITE BATCH** | | |
| BATCH- 2 | Last week Nov 2013(M,W,F) | 5-15 to 8-45* p.m |
| Batch-3 | 1st week of DEC 2013 | |

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# Index

## Latest Cases

**(1) SAIL extracts iron ore from mines in the form of blasted mass/rocks which are then crushed and screened into small sizes and washed with a view to remove foreign materials. Iron ore extracted from SAIL mines has iron content of 60% or more. By reason of the said washing/sizing activities the iron contents of iron ore do not increase in any way.**

**The Revenue wants to levy duty on the iron ore excavated by the SAIL on the ground that the mined iron ore on being subjected to crushing, grinding, screening and washing becomes iron ore concentrate which is covered by Heading 26.01 of the Tariff. Heading 26.01 of the Central Excise Tariff applies to "Iron Ore and concentrates, including roasted iron by rites." The Revenue has relied on the Explanatory Notes of HSN according to which the term "concentrates" applies to ores which have had part or all of the foreign matter removed by special treatment.**
**On the other hand the assessee contends that the processes undertaken by them do not convert iron ore into iron ore concentrates as no special treatments are undertaken by them nor the iron content increases after the processes undertaken by them. It is the contention of the assessee that the activities of crushing, grinding, screening and washing do not amount to manufacture of any goods attracting levy of Central Excise duty.**

**Explain, with the help of a decided case law, whether Department's** stand is justified in law.

**OR**

**DOES THE PROCESS OF REMOVAL OF FOREIGN MATERIALS FROM IRON ORE FOR CONCENTRATION OF SUCH ORE AMOUNT TO MANUFACTURE**

## *STEEL AUTHORITY OF INDIA LTD. 2012 (S.C.)*

Ans- No, the Department's stand is not justified in law.
The issue for consideration is whether the processes ( i.e of crushing, grinding, screening and washing) undertaken by SAIL convert iron ore into iron ore concentrates (i.e manufacture )
The facts of the question are similar to ***STEEL AUTHORITY OF INDIA LTD. 2012 (S.C.)***

Assesse was mining iron ore from mines and subjecting the same to crushing, grinding, screening and washing with an aim to concentrate the ores; department was of the opinion that in case of SAIL, mining activity is done by fully mechanized system; that they are mining iron ores from mines and then ores are subjected to process of crushing, grinding and screening and washing with a view to remove foreign materials and to concentrate such ores; that the Respondents resorts to washing with an aim to concentrate the ores; that the purpose of washing is to increase the flowability/fluidity of iron ore after it has been mined as mined ore has very little flowability; that at each stage of washing water is added to improve the flowability of material by removing the sticky particles; that the processes undertaken by them definitely involve removal of parts of foreign material from the ores and increase the "Fe" content (i.e. iron content); that goods obtained by such process would qualify as concentrate

SAIL(assesse) contended that the washing of iron ore by itself could never convert it into concentrates and hence washing will not amount to manufacture. He further contended that the concentrates are manufactured by increasing the concentration of Fe content of the mineral by removing and separating different impurities; ; that in the present matters neither they undertake any such process nor there is any variation in the Fe content of Iron Ore extracted from its mines and the Fe content of seized iron ore. Even as per HSN the term "concentrates" applied to ores which have had part or all of the foreign matters removed either because such foreign matter might hamper subsequent metallurgical operations or for economical transport.
in order to amount to "manufacture" a new commercial product must emerge, different from the ore on which different processes applied.

It was held by SC that process of removal of foreign materials from iron ore for concentration of such ore doesn't amount to manufacture because final product are not different from that of the blasted ore. The use of iron ore as mined or iron ore after the process undertaken by the assessee remain the same.

**AUTHOR NOTE- Presently this process is covered as deemed manufacture.**

## (2) 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?

***OSNAR CHEMICAL PVT. LTD. 2012 (276) E.L.T. 162 (S.C.)***

The assesse is engaged in the supply of Polymer Modified Bitumen (for short "PMB"). The assessee entered into a contract with one M/s. Afcons Infrastructure Ltd. (for short "Afcons") for supply of PMB at their work site IN Bangalore. As per the agreement, the base bitumen and certain additives were to be supplied by Afcons to the assessee directly at the site, where the assessee, in its mobile polymer modification plant, was required to heat the bitumen at a temperature of 160°C with the help of burners. To this hot bitumen, 1% Polymer and 0.2% additives were added under constant agitation, for improving its quality by increasing its softening point and penetration. The process of agitation was to be continued for a period of 12 to 18 hours till the mixture becomes homogenous and the required properties were met. The said bitumen in its hot agitated condition was mixed with stone aggregates which was then used for road construction. The Osnar paid duty on PMB processed at their factory in Mumbai but had not paid the same for the conversion done at their work site. The resultant product was considered to be a superior quality binder with enhanced softening point, penetration, ductility, viscosity and elastic recovery.
DEPARTMENT contended that the above process carried out by the assessee (i.e Osnar chemicals ) amounted to manufacture of PMB. It was submitted that the end products, *viz*. PMB and CRMB are different from bitumen, inasmuch as polymers and additives are the raw materials consumed in the process of manufacture of the said final products and are therefore, covered by the definition of the term "manufacture" in Section 2(f) of the Act. To buttress his submission that PMB and CRMB are exigible to Excise duty, both falling under a specific entry, learned counsel referred to the Tariff Act, whereunder, while bitumen is classifiable under Chapter Sub heading 271320.00, and polymer is classifiable under Chapter Sub Heading 390190.00, the finished products, PMB and CRMB are classifiable under Chapter Sub Heading 271500.90. In support of his submission that PMB and CRMB are commercially known in the market for being bought and sold and therefore, satisfy the test of marketability which is one of the essential conditions for the purpose of levy of Excise duty

ASSESSEE argued that the mechanical process of adding polymer and additives to heated bitumen to bring into existence the so-called new substance, known as PMB, **DID NOT AMOUNT TO 'MANUFACTURE'** in terms of Section 2(f) of the Act. It was explained that **BY THE SAID PROCESS, ONLY THE GRADE OR QUALITY OF BITUMEN IS IMPROVED** by raising its softening point and penetration, for improving the quality of the road; but even with the improved quality, bitumen remained bitumen with the same end use. It was the say of the learned counsel that a mere improvement in the quality did not amount to manufacture
IT WAS HELD that the process of mixing polymers and additives with bitumen does not amount to manufacture. There was no change in the characteristics or identity of bitumen and only its grade or quality was improved. The said process did not result in transformation of bitumen into a new product having a different identity, characteristic and use. No such process has 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. Hence it can't be treated as deemed manufacture.

**(3)** Grasim Industries was the manufacturer of the white cement. He repaired his worn out machineries/parts of the cement manufacturing plant at its workshop such as damaged roller, shafts and coupling with the help of welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams, etc. In this process of repair, M.S. scrap and Iron scrap were generated. Grasim cleared this metal scrap and waste without paying any excise duty. The Department issued a show cause notice demanding duty on the said waste contending that the process of generation of scrap and waste amounted to the manufacture in terms of section 2(f) of the Central Excise Act. Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.

**Ans-** No, the show cause notice is not sustainable in law.
The issue for consideration is whether the process of generation of scrap and waste during repair of his worn out machineries/part amounted to the manufacture
The facts of the given case are similar to case of **GRASIM INDUSTRIES LTD 2011 (S.C.).**

1) It was held that manufacture in terms of section 2(f) includes any process incidental or ancillary to the completion of the manufactured product. This 'any process' can be a process in manufacture or process in relation to manufacture of the end product, which involves bringing some kind of change to the raw material at various stages by different operations.

   The process in relation to manufacture means a process which is so integrally connected to the manufacturing of the end product without which, the manufacture of the end product would be impossible or commercially inexpedient.

**2)** Further welding welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams, etc which are used in process of repair and maintenance are not raw material used in the manufacturing of end product i.e cement, **HENCE THE PROCESS OF REPAIR AND MAINTENANCE** of the machinery of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, **HAS NO CONTRIBUTION OR EFFECT ON THE PROCESS OF MANUFACTURING OF THE CEMENT, (WHICH IS THE END PRODUCT).** The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process.

   Hence, it was held that 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.

**(4) 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' ?**

***Rajendra Narayan 2012 (Del.)***

**Facts of the Case:**

The assesse was carrying on construction of the Delhi Metro. They had manufactured pre-fabricated components, which have been used in the construction of the Delhi Metro. The assessee claimed the exemption under *Notification No. 1/2011-C.E. (N.T.) dated 17-2-2011* which exempts the goods covered under specified chapter headings for a specified period, *manufactured at the site of construction for use in construction work at such site*.
The Department contended that assessee is not entitled to exemption sbecause goods were not manufactured at the site of the construction for use in the construction work at the site.
It was held 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,assesse is allowed exemption.

**(5) Whether it is necessary that the circular must be issued under section 37B in order to be binding on the Department?**

***Darshan Boardlam Ltd. v. UOI 2013 (287) E.L.T. 401 (Guj.)***

It was held that **ANY CLARIFICATION ISSUED BY THE BOARD** is binding to the Central Excise Officers Whether section 37B is referred to in such circular or not, is not relevant. When other Central Excise authorities of equal and higher rank have followed and acted as per the clarifications, jurisdictional Commissioner could not have taken a contrary view on the assumption that the clarifications are only letters and not orders under section 37B.

**Marketability –**

**(6) [Nicholas Piramal India Ltd 2010 (SC)]**

The assessee produced "Crude Vitamin–A", which is consumed for producing animal feed supplements. The assessee did not market "Crude Vitamin–A". The product has a life of 2 to 3 days.

**Decision:**

Where the product is commercial known and is capable of being marketed, then such goods shall be liable for excise duty, subject to other conditions. It is not necessary that the goods should be actually marketed by the manufacturer.

Further, only where a product has NO shelf life or the shelf life is insufficient to market the product, then only it is considered as "Not Marketable". In the given case, since the product has a life of 2 to 3 days, the same shall be considered as marketable.

**(7) MEDLEY PHARMACEUTICALS LTD.(SC)(2011)**

Assessee a pharmaceutical company distributed free samples of medicines. The medicine samples were cleared by printing thereon "Physian sample- Not to be sold". **Assessee is of the view that samples can't be sold hence not marketable and no duty payable**. Excise duty being a levy on manufacture or production of goods, payable on manufacture whether or not goods are sold **- Marketability does not requires require actual sale**, it is capability if being bought and sold, - Physician sample capable of being sold in open market - Primary reason for distribution of free physician samples is to advertise and enhance sale of product in market **- Drugs Act and Central Excise Act, 1944 operate in different fields and restrictions under Drugs Act not applicable to Central Excise Act for non-levy of excise duty causing revenue loss** - Prohibition on sale of physician samples under Drugs Act having no bearing or effect on levy of excise duty. **Hence excise duty leviable on physicians sample**

**(8) THE THEORETICAL POSSIBILITY OF PRODUCT BEING SOLD IS SUFFICIENT TO ESTABLISH THE MARKETABILITY OF A PRODUCT. CRITICALLY EXAMINE THE SAID STATEMENT.**

**Bata India Ltd (SC)(2010)- *IMP***

1) The Assessee is a well known manufacturer of foot wear. For the manufacture of foot wear, various raw materials are purchased by the assessee from the market and / or from their respective manufacturers such as fabrics, rubbers, chemicals, solvents etc. During the process of

manufacturing of foot wear various chemicals / rubbers / solvents etc., are mixed together and a thin layer of such mixed materials is sandwiched in between two sheets of textile fabric, in running length, through a three bowl calendering machine. The resultant product " Double Textured Rubberized Fabric" (DTRF) is later cut and stitched according to the assessee's requirements and in-process materials are used as shoe- uppers in the foot wear. Such fabrics are also at times sent to job workers for stitching purposes only and the fabric sandwiched with the mixed materials are inputs of the intermediate stage during the course of manufacture of footwear.

2) Vulcanisation of the foot wear takes place only after completing the entire process and then it would be a finished product as a footwear, made available in the market and acquires commercial identity and turns out to be a commercially known product.
3) The department, came to the conclusion that this double textured fabrics are marketable
4) **Without proof of marketability the intermediate product would not be goods** . Such a product is excisable only if it is a complete product having commercial identity capable of being sold to a consumer which has to be established by the Revenue.
5) **The test report of the Chemical Examiner, SPB hand book of rubber products and the statement of the Superintenden**t (Supply and Transportation) of the assessee's company **do not show** that the product in question is **capable of being marketed**. 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 we examine the marketability of a product.
6) **Hence it was not marketable.**

## (9) USHA RECTIFIER CORPN. (I) LTD.(2011)(SC)- M IMP & EXPECTED

The assessee is a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronics equipments. During the course of such manufacture the appellant also manufactured machinery in the nature of testing equipments to test the final products of the assessee company. The assessee contending that assembly of testing equipments from various parts and components bought from outside is not manufacture. Further he contended that even if it is treated as manufacture, as it ie not engaged in manufacture and it will be disassembled after completion of research. it is not marketable since testing equipments were not removed outside the factory

It was held that testing equipments having different name and use, hence it is manufacture. Further the profuct will be treated as marketable because assessee have clearly taken a stand in their reply to show cause notice that they bought various parts and components to develop the testing equipments for use within the factory and that such steps were undertaken **to avoid importing of such equipments from the developed countries with a view to save foreign exchange**. Hence it is marketable. As pe Explanation to Rule 5 of CER 2002, Rate of duty for captiley consumed goods will be date of issue for such use.

**(10) GTC Manufacturers was a manufacturer of cigarettes. It used duty paid paperback aluminum foil in the roll form for the purpose of packing cigarettes. In the process, the roll of aluminum foil was cut horizontally to make separate pieces of the foil and word 'PULL' was embossed on it. Thereafter, fixed number cigarettes were wrapped in it. An aluminium foil being resistant to moisture was used as a protector for the cigarettes and to keep them dry. Revenue issued a show cause notice to GTC Manufacturers alleging that the process of cutting and embossing aluminum foil amounted to manufacture. Since the aluminum foil was used as a shell for cigarettes to protect from them moisture; the nature, form and purpose of foil were changed. Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.**

or

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

***GTC Industries Ltd. 2011 (Bom.)***

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

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

**It was held** that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity. There were no records to suggest that cut to shape/embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Since, foil was cut to size in a continuous process, **process did not amount to manufacture as per** section 2(f) of Central Excise Act, 1944. because the process which produces distinct and identifiable commodity will amount to manufacture.

**Author Note- By F. Act 2012 cutting & embossing treated as Deemed Manufacture.**

***(11)*** **Rotomac Corporations Ltd. was engaged in the assembling and installing the parts and components of asphalt batch mix, drum mix/hot mix plant. The Department alleged that the assembling and installation of asphalt batch mix, drum mix/hot mix plant amounted to manufacture. It contended that the said plant was not per se immovable. Attachment of plant with nuts and bolts was only intended to provide stability and prevent vibration. The attachment was easily detachable from foundation and was not permanent. Therefore, the assessee was liable to pay duty on the said plant.**

**Explain, with the help of a decided case law, if any, whether Department's allegation is justified in law.**

**Ans**

The Department's allegation is justified in law. The facts of the given case are similar to the case of *Solid & Correct Engineering Works and Ors 2010 (SC) It was held*

*that assembling, installation and commissioning of Asphalt Drum/Hot Mix Plants amounted to manufacture inasmuch as the plant that eventually came into existence* ***was a new product with a distinct name, character and use different from what went into its manufacture.***

*The fixing of plants to a foundation was meant only to give stability to the plant and keep its operation vibration/wobble free****. Futher, the setting up of the plant itself was not intended to be permanent at a given place; the plant could be moved and was actually moved after the road construction/ repair project was over****.*

*Therefore, mere fixation of a plant to the earth by nuts and bolts for ensuring wobble free operation of the plant would not render it immovable property. The machine could not be regarded as part and parcel of the earth permanently.*

*Hence, the Asphalt Drum/ hot-mix plants manufactured at site by Solidmec were manufactured and movable property* ***hence excisable goods liable to duty.***

**(12) Parsvnath Music Systems Ltd. imported recorded audio and video discs in boxes each containing 50 discs. Each individual disc was then packed in transparent plastic cases known as jewel boxes. An inlay card containing the details of the content of the compact disc was also placed in the jewel box. The whole thing was then shrink wrapped and sold in wholesale. The Department contended that the said process amounted to manufacture.**

**Explain, with the help of a decided case law, if any, whether Department's contention is justified in law.**

***Ans-*** The Department's contention is not justified in law. The facts of the given case are similar to the case of *CCE v. Sony Music Entertainment (I) Pvt. Ltd. 2010 (Bom)* "Note 6 to Section XVI of the tariff provides that in respect of goods covered by that section, conversion of an article which is incomplete or unfinished but having the essential character of a finished article into a complete finished article shall amount to manufacture.

It was held that

1) that the activities carried out by the respondent does not amount to manufacture since the compact disc were complete and finished when imported by the assessee. They were imported in finished and completed form.
2) Note 6 clearly does not apply to the facts before us. None of the activity that the appellant undertook involved any process on the compact discs that were imported. Those compact discs were complete and finished. They could be played by any person in order to listen to the sound and view the images that they contained. They were imported in finished and completed form. The mere packing of these discs has no bearing on the fact that they were imported complete and finished."

Hence, the said process does not amount to manufacture.

## (13) VIRGO INDUSTRIES (ENGINEERS) PVT. LTD.

1) It was observed that Virgo had been manufacturing and supplying signages under a contract with M/s. Indian Oil Corporation Ltd. (IOC) and had erected them at the retail outlets of IOC located at various places in the south.
2) **It was contended by assessee that** Signage came into existence only at site and the same was immovable on erection as it was fixed to earth on concrete foundation. .
3) It was held that Signages erected at various petrol bunks of IOC - Excisability of - Complete signage is movable and is installed by fixing it on a concrete foundation - These can be detached and shifted to another location without damaging them - Signage is fixed to earth and is complete before fixing on the concrete platform - Signages do not emerge as an immovable property on assembly or erection - Signages are excisable goods - Sections 2(d) and 3 of Central Excise Act, 1944.
4) Excisability - Item which is fixed in the earth can continue to be movable and excisable if the same is capable of being shifted from one place to another without having to dismantle the same into the constituent components - Sections 2(d) and 3 of Central Excise Act, 1944.

## (14) MEHTA & CO. (2011)(SC)

whether the items like chairs, beds, tables, desks, etc., affixed to the ground could be said to be immoveable assets and not liable to excise duty. It was held that in case of *Craft Interiors* (supra) has clearly laid down that ordinarily furniture refers to moveable items such as desk, tables, chairs required for use or ornamentation in a house or office. So, therefore, the furniture could not have been held to be immoveable property

## Miscellaneous que

**(1) Discuss briefly whether excise duty is attracted on the excisable goods manufactured :**

**a) In jammu & kashmir**

**b) In special economic Zone**

**c) In 100% EOU**

**d) Beyond Indian territorial waters (within 150 NM from the shore line)**

**Ans-**

(a) As Per Section 1(2) of Central Excise Act, 1944, Excise duty is attracted on the excisable goods manufactured in Jammu & Kashmir, Since Central Excise Act, 1944 extends to the whole of India

(b) Goods manufactured in special economic zone are not exigible to excise duty as they are excluded from the scope of charging provisions of section 3 of Central Excise Act, 1944.

(c) As per Proviso to Sec 3 of CEA 1944, Excise duty on the goods manufactured in 100% export oriented undertaking will be attracted only when they are brought to any other place in India.

(d) Excise duty is attracted since Central Excise Act, 1944 has been extended to the designated areas in the Continental Shelf and Exclusive Economic Zone of India which extends up to 200 nautical miles Inside the sea from the base line.

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**(2) May 2008**

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**Explain briefly with reference to rule 21 of CER 2002 relating to remission of duty the following**

**(i) can remission of duty be granted on goods cleared from the factory after payment of duty, but which were destroyed by fire in transit.**

**(ii) upon grant of remission of duty the cenvat credit on inputs used in final product has to be reversed.**

Ans

**(i)** remission of duty cannot be granted as goods have already been cleared from the factory after payment of duty.

**(ii)** As per sub-rule (5C) of rule 3 of CENVAT Credit Rules, 2004, where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

**(3) May 2003/nov 2002/nov2003**

**Discuss whether remission of duty shall be granted or not, in the following cases, under the central excise rules 2002;**

**(i) excisable goods manufactured in the factory are claimed by the manufacturer as unfit for consumption or marketing**

**(ii) duty paid goods were damaged due to breakage in handling.**

**(iii) Finished goods entered in Daily stock Account (DSA) were stolen from the factory.**

**Ans- provisions regarding remission of duty are contained in Rule 21 of CER 2002.**

(I) Remission of duty can be granted, because as per rule 21 of CER 2002, if goods are unfit for consumption of marketing then remission of duty can be granted

(II) If the breakage took place before removal then remission shall be granted. Since the goods were duty paid goods, it implies that they have been removed from the factory. Hence remission shall not be granted.

(III) Remission shall not be allowed, since it is not covered by Rule 21 of CER 2002. Further it was held in **Gupta Metal Sheets (2008) (TRI-LB)** Loss by theft or dacoity cannot be termed as loss due to natural cause or due to unavoidable accident. Theft or dacoeity is a mere incident not an accident. Further the word loss implies that the goods are unavailable for consumption. **Whereas in case of theft or dacoity**, the stolen goods enter the market for consumption. Thus loss by theft or dacoity is not eligible for remission of duty.

Hence remission of duty shall not be allowed.

**Q Discuss whether remission of central excise duty will be granted in the following cases under the central excise rules 2002;**

**I. Goods were not fully manufactured and lost by natural causes before entry in " Daily Stock Account"**

II. **Goods (fully manufactured were lost during transportation of the same to the customer's business premises due to unavoidable accident.**
III. **goods ( fully manufactured) were lost by fire before removal from the factory and the assessee has received a claim from the insurance company**.

**Ans- provisions regarding remission of duty are contained in Rule 21 of CER 2002.**

(I) there is no question of claiming remission on such goods, because no duty can be levied, **i)** duty is levied only if a new product emerges.

(II) Remission can not be granted. As per Rule 21 of CER 2002, remission can be claimed only if the loss arises at any time before removal. And in present case the loss has taken place after removal, during transit.

(III) Remission can be claimed as the loss has taken place in factory before removal.
Honwever if insurance claim is also made of duty, then remission can't be claimed.

**(4) Nov 08 old**

**Discuss whether remission of duty will be granted under the Central Excise Rules, 2002, in the following cases:**

**(i) Loss of molasses due to auto combustion in sugar factory.**

**(ii) Normal evaporation, storage and handling losses of petroleum products.**

**(iii) There was natural calamity in the factory, but the department was not intimated in time.**

**Ans**

(i) Yes. Loss of molasses due to auto combustion in sugar factory is an unavoidable accident and hence, remission is admissible

(ii) Yes. Remission can be granted in case of normal evaporation, storage and handling losses of petroleum products.

(iii) Yes. Remission cannot be denied simply because there was delay in giving intimation to the Department. If there is a natural calamity in the factory, procedural lapse cannot come in the way of benefit.

# VALUATION

***(1) Can the pre-delivery inspection (PDI) and free after sales services charges be included in the transaction value when they are not charged by the assessee to the buyer?***

*Tata Motors Ltd. v. UOI 2012 (286) E.L.T. 161 (Bom.)*

Assessee (Tata Motors Ltd.- Petitioners) were the manufacturers of cars. They sold their cars to their subsidiary companies-M/s TMLD which in turn sold cars to the dealers

Between the petitioners and each dealer, an agreement is executed thereby appointing such a person as a dealer on terms and conditions mentioned in the said agreement. According to the petitioners, the petitioners decide the maximum price at which the dealer has to sell the car. On account of this, the dealer cannot sell the car for an amount more than the one which is specified by the petitioners. The dealer pays to the petitioners a particular price quoted by the petitioners and according to the petitioners it is that price on which excise duty is paid. According to the petitioners that is the price which will have to be termed as assessable value. According to the petitioners on account of the dealership agreement, the dealer is required to carry out Pre Delivery Inspection (For short PDI) before the car is actually delivered to the customer. These services are referred to as free after sales services. Department issued SCN to the petitioners alleging that costs incurred by the dealer towards PDI and said services was also includible in the assessable value because of *Circular No. 643/34/2002*

However, Assessee contended that *Circular No. 643/34/2002-CX,* contrary to the provisions of section 4(1)(a) and section 4(3)(d) of the Central Excise Act, 1944. Further the dealer had to incur the expenses to conduct PDI and said services without reference to them. Tata Motors (Assessee) did not reimburse such expenses incurred by the dealer. Hence PDI & After sale service will not be included in Assessable value.

It was held that

**(1)** Pre-delivery inspection as well as free after sales services during the warranty period are rendered by dealers as part of their dealer's responsibility cast on them as per the dealership agreement. The manufacturers do not charge the dealers for expenses incurred by the dealers towards such pre-delivery inspection and after sale services.

**(2)** It further stated that when a car was sold by the manufacturer ( Tata Motors) to dealer, price was the sole consideration and the petitioners and dealer were not related to each other. Hence, since the requirements of section 4(1)(a) were being complied with, the assessable value would be the transaction value [determined as per section 4(3)(d)]. Accordingly, the expenses incurred for PDI and said services should not be included in the transaction value of the car.

**(3)** CBEC Circular is contrary to sec 4(1)(a). valuation will be as per Sec 4(1)(a) and not covered in sec 4(1)(b) Further, Court was of the opinion that the linkage of the expenses incurred for PDI and said services with expenses for advertisement or publicity in the said circular was not correct.

**(4)** The Court held that the said circular wrongly held that in case where the assessee (manufacturer) sold the motor vehicles to a dealer (buyer) at a given price and the dealer in turn sold the said motor vehicles to a customer at a price with dealers margin which included the PDI charges and after sales service charges, then, the assessable value would include the PDI and after sales service charges even if they were not been charged by the assessee (manufacturer) to the dealer. It was contrary to the provisions of section 4(1)(a) read with section 4(3)(d).

## (2) Ford India Pvt. Ltd. (SC)(2010)

(1) appellants are engaged in the manufacture of motor vehicles (cars).

(2) They sell their cars, on a principal-to-principal basis, to their dealers against payment of full sale consideration which includes mandatory warranty charges for one year. The applicable duty on the transaction value (including mandatory warranty charges) is levied at the time of removal of cars from the factory to the dealers.

(3) There is no direct sale from the factory to the customers, who purchase the cars from the dealers.

(4) When the dealers sell the cars to the customers, an option is given to the customers to obtain warranty for a further period of 2 years against payment of separate charges. This extended warranty is optional and not mandatory. Usually, only about 15% of the customers opt for it. Such extended warranty not included in assessable value of manufactured cars.

It was held that

(1) The extended warranty was optional, it was not a condition of sale. The sale of car and sale of extended warranty Are two different businesses, which had no direct or proximate connection.

(2) Hence extended warranty charges were not includible in the assessable value of cars.

**(3) Maruti Suzuki Ltd. was manufacturer of various types of motor vehicles chargeable to duty on *ad valorem* basis. Department observed that while selling the 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 to them by Maruti Suzuki Ltd. This dealer's margin contained provision for rendering pre-delivery inspection and three after sale services. Hence, the Department contended**

**that the cost of pre-delivery inspection and after sale services would form part of the assessable value of the automobile while discharging the duty liability.**
**Decide whether contention of department is valid**

**Maruti Suzuki India Ltd.(2010)(Tri-LB)**

(1) The assessee, a manufacturer of motor cars sells the motor car to dealers who in turn sells them to ultimate customer. The assessee pays duty on price charged from dealers and **dealer margin** = [price charged from customer—price paid to Maruti ]
(2) Under Dealership agreement, the dealer was required to carry out pre-delivery inspection and three after sale services. Dealer margin consist of [ PDI & after sale sevice and margin of dealer]
(3) MSL was not paying duty on PDI & after sale service whereas department contending that these charges form part of assessable value.
It was held that

The definition of the expression "transaction value" undoubtedly uses the expression "any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including.......servicing, warranty, commission or any other matter,......"

The definition clause defines the transaction value to be the price paid or payable for the goods when sold. It then explains that the inclusion of identified items does not mean that they are restricted or limited to those which are specifically identified. In this 'inclusion' part of definition, the legislature has used the word 'any amount' at two places, thereby clearly disclosing the extensive nature of the definition. Thereafter, the definition clause specifically identifies the items which stand excluded from the transaction value, which is absolutely restrictive in nature.

**The pre-delivery inspection and after sale services are carried by dealer under the terms of dealership agreement between assessee and dealer. These charges are paid by buyer to dealer on behalf of assessee and the same is payable by reason of or in connection with sale of car by assessee to dealers. Hence these charges will be included in assessable value of motor cars and therefore liable to excise duty.**

# Classification

***Connaught Plaza Restaurant (Pvt) Ltd. 2012 (286) E.L.T. 321 (S.C.)***

***(1) Can the 'soft serve' served at McDonalds India be classified as "ice cream" for the purpose of levying excise duty?***

McDonalds India [M/s Connaught Plaza Restaurant (Pvt) Ltd.] manufactured and served 'soft serves' dispensed through vending machines at its restaurants. The Department contended that 'soft serve' was classifiable under 2105.00-"ice cream and other edible ice, whether or not containing cocoa" and thus, would attract excise duty @ 16%. However, assesse conteded that the 'soft serve' was classifiable under Heading 04.04 as "other dairy produce" chargeable to nil rate of duty.

**ASSESSEE CONTENTION- as per the definition of "ice cream" under Prevention of Food Adulteration Act, 1955 , the milk fat content of "ice-cream" and "softy ice-cream" shall not be less than 10%.**
**Hence soft serve cannot be classified as ice cream under heading 2105 as it contains only 5% milk fat content.**

**SC HELD- definition of one statute (Prevention of Food Adulteration Act, 1955) having a different object, purpose and scheme could not be applied mechanically to another statute (Central Excise Act).**

**ASSESSEE CONTENTION- "soft serve" could not be considered as "ice-cream" as it was marketed by the assessee the world over as 'soft serve**

**SC HELD- the manner in which a product might be marketed by a manufacturer, did not necessarily play a decisive role in affecting the commercial understanding of such a product. What matters was the way in which the consumer perceived the product notwithstanding marketing strategies. Hence a person entering the "McDonalds" outlet with the intention of enjoying an "ice-cream", 'softy' or 'soft serve, unaware of its milk fats contents.**
**ASSESSEE CONTENTION- The assessee pleaded that in the matters pertaining to classification of a commodity, technical and scientific meaning of the product was to prevail over the commercial parlance meaning**

**SC HELD- none of the terms in Heading 04.04, Heading 21.05 and Heading 2108.91 had been defined and no technical or scientific meanings had been given in the chapter notes. in the absence of a statutory definition or technical description, meaning of the product will be taken as per common parlance principle**

**ASSESSEE CONTENTION- "Rule 3(a) of the General Rules of Interpretation which stated that a specific entry should prevail over a general entry, 'soft serve' would fall under Heading 04.04 since it was a specific entry.**

**SC - rejecting this contention it was held that Heading 21.05 (ice cream & other edible rice), while Heading 04.04 covers – other dairy products. Heading 21.05 is a specific entry and soft serve classified under heading 2105 applying the rule 3(a) of General Rules of interpretain which specifies "Specific heading prevail over General Heading".**

***(2) In case of specific classification viz-à-viz classification based on material used/composition of goods, which one should be adopted?***

***MINWOOL ROCK FIBRE LTD.2012 (S.C.)***

A SCN was issued to the assesse (Minwool Rock Fibres Ltd.) directing them to show cause as to why ROCKWOOL AND SLAGWOOD using more than 25% of blast furnace should not be classified under Chapter sub-heading No. 6807.10 and duty of 18% should not be charged and recovered from them

ASSESSEE (Minwool Rock Fibres Ltd) Contended that they started manufacturing rockwool and slagwool using more than 25% of blast furnace slag by weight right from 1993 onwards. And were classifying them under Tarriff heading 6803.00 (i.e. Slagwool, Rockwool and similar mineral wools) and had been filing classification declarations mentioning this fact. Such declarations so filed prior to 1997-98 were accepted by the Department. However, another specific sub-heading 6807.10 of Central Excise Tariff was introduced vide Budget 1997 for *'Goods having more than 25% by weight blast furnace slag'.* Accordingly, they claimed that the goods manufactured by them, namely, slagwool and rockwool should henceforth be classified under Chapter sub-heading 6807.10 of the Tariff

That they are manufacturing 'Min wool' using more than 25% of blast furnace slag by weight, right from 1993 onwards and they have been filing classification declarations mentioning this fact and such declarations so filed prior to 1997-98 are accepted by the department and, therefore, the goods in question requires to be classified under Chapter sub-heading No. 6807.10 of the Act.

**(3) *In* case of a specific entry viz-a-viz a residuary entry, which one should be preferred for classification purpose?**

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

**Assessee manufactured** Povidone Iodine Cleansing Solution USP and Wokadine Surgical Scrub. The only difference between these two products was that Wokadine was a branded product whereas Povidone Iodine Cleansing Solution was a generic name. and classified under Chapter Heading 3003 of Tariff Act.

**The Revenue contended** that the said products were not medicament in terms of Chapter Note 2(i) of the Tariff Act as it neither had "Prophylactic" nor "Therapeutic" usage and hence it is classified as 'DETERGENTS' under heading 3402.90. Department contendend that in order to qualify as a medicament, the goods must be capable of curing or preventing some disease or aliment

The assessee stated that the Revenue, in their show cause notices, had admitted that the products in issue were antiseptic and used by surgeons for cleaning or de-germing their hands and scrubbing surface of skin of patient before operation. Therefore, it would fall under chapter sub-heading 3003 and not under chapter 34.

**Decision of the Case:**

The Court said that 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. 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.

Thus, on the basis of the above observation by the Court the Revenue's appeal was rejected.

### (4) In case no statutory definition is provided under law, can the opinion of expert in trade who deals in those goods be considered?

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

The assessee an importer imported one unit of the equipment which was declared as "Kari Mayer High Speed Draw Warping Machine with 1536 ends along with essential spares". The importer claimed that these goods are covered under an exemption notification.

Under said notification, exemption was available in respect of the High Speed Warping Machine with yarn tensioning, pneumatic suction devices and accessories.

But the assessee imported High Speed Warping Machine, which has drawing unit and not the pneumatic suction device. The textile commissioner, who was well conversant with these machines, had stated that the goods imported by the assessee were covered under the exemption notification. He further stated that drawing unit was just an essential accessory to the machines imported by assessee and, therefore, was covered under said notification.

Customs department refused to give exemption had directed the assessee to pay the duty under the provisions of the Customs Act, 1962.

**It was held that** it is 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. The Supreme Court on referring to the case of *Collector of Customs v. Swastic Woollens (P) Ltd. 1988 (37) E.L.T. 474 (S.C.),* held that when no statutory definition was provided in respect of an item in the Customs Act or the Central Excise Act, the trade understanding, i.e. the understanding in the opinion of those who deal with the goods in question was the safest guide.

Hence Imported goods were covered under the exemption notification.

**(5) Where a classification (under a Customs Tariff head) 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?**

***Keihin Penalfa Ltd. 2012 (S.C.)***

Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas assesse contended that the goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3-2002 exempted the disputed goods classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 1-3-2002.

**It was held by SC** 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.

**(6) *M/s CPS Textiles P Ltd. 2010 (Mad.)***

company is engaged in manufacture and export of Knitted Garments. After completion of the exports, petitioner-company claimed drawback on the export of the goods. Department issued notice/letter stating that excess drawback was claimed and paid due to wrong classification and called upon the petitioner to repay the excess amount

**the following 2 issues for consideration are**

1. **Whether 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?**
2. **Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?**

It was held that

1. Description of goods as per the documents submitted along with shipping bill will be a relevant criteria for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test - Petitioner cannot plead that exported goods should be classified under different headings contrary to description given in the invoice and the shipping bill which have been assessed and cleared for export

2. insofar as the interest is concerned Section 75A(2) of the Customs Act, 1962 reads as follows :-

Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28-AB and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback."

**On reading of Section 75A(2) of the Customs Act, it is clear 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**

# Cenvat credit

## (1) 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?

CADILA HEALTHCARE LTD. 2013 (30) S.T.R. 3 (Guj.)

Assessee is engaged in the manufacture of P. & P. medicines. Department denied CCR taken in respect of the following input services : (1) Technical Testing and Analysis (2) Commission paid to the foreign agents

***TECHNICAL TESTING AND ANALYSIS SERVICES -*** The assessee had availed of CENVAT credit on Technical Testing and Analysis services in respect of clinical samples tested by various Testing Agency. Medicines can be manufactured only upon approval of the regulatory authority which is based on technical testing and analysis Report further it was observed that the assessee had not started commercial production of products of which clinical samples were got tested by various agencies. Samples were manufactured in small trial batches and removed after payment of excise duty. The department contended that unless goods reached the commercial production stage, CENVAT credit was not admissible

**COMMISSION PAID TO FOREIGN AGENTS FOR THE SALE -**Further, the assessee also availed CENVAT credit of service tax paid by it on commission paid to foreign agents for the sale of such medicaments. Credit was taken as per the inclusive part of the definition of input service, which included services in relation to sales promotion. However, the department contended that there was a clear distinction between sales promotion and sale and a commission agent is directly concerned with sales rather than sales promotion. Therefore, service provided by commission agent would not fall within the purview of the main or inclusive part of the definition of input service.

It was held that the final product can be manufactured only upon approval of the regulatory authority after the product undergoes technical testing and analysis. Unless such testing and analysis is carried out, it would not be possible to produce the final product. Besides trail batches were removed on payment of excise duty. Hence the services availed in respect of technical testing and analysis services are directly related to the manufacture of the final product. The contention of the department that unless the goods have reached the commercial production stage, CENVAT credit is not admissible in respect of the technical testing and analysis services availed in respect of the product at trial production stage, does not merit acceptance. Therefore CCR allowed on Technical Testing service.

Further, there is nothing to indicate that such commission agents were actually involved in any sales promotion activities or advertising. This service is not directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal. Hence CCR not allowed on Service tax paid on commission service of commission agent.

## (2) 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?

***Sintex Industries Ltd. vs. CCEx 2013 (287) ELT 261 (Guj.)***

The appellant is a company incorporated under the Companies Act, 1956. The appellant has, *inter alia*, 2 divisions, The Textile Division and Plastic Division. The present appeals relate to the Textile Division of the appellant. Both these units having separate Registration number and are owned by Syntex Industries Ltd., having a common PAN under the Income Tax Act. Both the above units are located on the common ground surrounded by a common boundary wall and adjoining to each other.

**The appellant, in order to receive continuous and uninterrupted supply of electricity, installed DG sets/electricity generation plant to be used in the factory of the appellant and it has been using furnace oil as fuel in the generation of electricity.**

**The appellant has been availing Cenvat credit on the inputs, viz. furnace oil, used as fuel for the generation of electricity, which is used for captive consumption in their own factory. Whenever there is lower utilization of electricity and/or when the appellant's other unit, *i.e.* the Plastic Division, requires electricity, the appellant supplies part of the electricity so generated to its own Plastic Division.**

Department requiring the appellant to reverse the credit taken on furnace oil used in the generation of electricity and supplied to the Plastic Division

**Assesse submitted** that both the units of the appellant are located in the same premises surrounded by a common boundary wall adjoining to each other, the electricity supplied **to the other unit COULD NOT BE TREATED AS BEING supplied to a different entity BUT WITHIN ITS OWN FACTORY**. He further contended that separate central excise registration does not make it two separate factories as would appear from the definition of the "factory" as contained in Section 2(e) of the Act.

**It was held** that, the **Appellant** itself having **described the factory of its Plastic Division as a separate place of business BY APPLYING FOR SEPARATE REGISTRATION** and having obtained such separate registration, **Hence Credit On Inputs Utilized To Produce Electricity** which was **supplied to** a factory registered as a different unit **(plastic division) would not be allowed.**

## (3) MADRAS CEMENTS LTD. (2010)(SC)

Capital goods used in mines - Mines if captive mines so as to constitute one integrated unit with concerned cement factory, Cenvat/Modvat credit available - Mines if not captive mines but supply to various other cement companies of different assessees and goods used in mines outside factory of assessee, credit not available under appropriate Rules

Cenvat/Modvat - Input used in mines - Explosives, lubricating oil, etc. used in mines - Issue squarely covered by decision of Apex Court in case of Vikram Cement [2006 (194) E.L.T. 3 (S.C.)] – cenvat credit on input allowed even if they are not used in the factory of production but are used in mines.

## (4) M/S IND–SWIFT LABORATORIES LTD 2011 TIOL 21 (SC)]

~~**Interest on Wrong Availment of CENVAT Credit** – Interest has to be charged from the date of availing credit and not from the date of utilization. Hence, interest has to be charged even in a case where CENVAT is wrongly availed and is reversed before utilization of such credit.~~

~~**Reasoning:**~~

~~As per Rule 14, where CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest would be recovered from the manufacturer or the provider of the output service. There is no reason to read the word "OR" in between the expressions 'taken' or 'utilized wrongly' or `has been erroneously refunded' as the word "AND".~~

~~On the happening of any of the three aforesaid circumstances such credit becomes recoverable along with interest.~~

Author note- now this case has been overruled by amendment in Rule 14

## (5) 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. Is the CENVAT credit availed by the assessee required to be reversed?

### (1) TATA ADVANCE MATERIALS(2009)(Tri)

1) The appellants purchased Capital Machinery in 1998 and availed Cenvat credit on the said

Capital Goods. They were put to use in manufacturing the final products. However, in 2003, a fire accident occurred and the goods were destroyed. They were cleared as scrap without payment of duty. Insurance was also claimed. The Insurance Company reimbursed the amount to the assessee, which included the excise duty, which the assessee had paid on the capital goods.

2) Revenue proceeded against the appellants for the reversal of the Cenvat credit taken on the Capital Goods. The Original Authority confirmed the demand. He further imposed penalty under Section 11AC along with demand of interest.
3) On a very careful consideration of the issue, I find that the goods have been put to use from 1998 upto 2003. The appellants had legally availed the Cenvat credit and further used the same for payment of duty on the final products. The goods were destroyed in 2003 due to a fire accident. There is no legal provision for demanding the Cenvat credit taken on the said goods during the relevant period. The fact that the appellants claimed insurance, which is inclusive of Excise Duty, is not at all relevant.

No reversal of CCR

**Author note-** but presently if cleared as waste and scrap then as per rule 3(5A) – AMT PAYABLE = ( reduced amt or duty leviable on transaction value.) Whichever is higer.

## (6) 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?

**Prime Health Care Products 2011(Guj)**

The assessee was engaged in the manufacture of tooth paste. It was sold as a combo pack of tooth paste and a bought out tooth brush. - No extra amount recovered from consumer on toothbrush - *The assessee availed CENVAT credit of central excise duty paid on the tooth brush*

*IT WAS HELD:* Combo-pack reached its final stage of marketability only after packet containing tooth brush was placed with tooth paste - Also, re-packing, labelling etc. amounted to manufacture - In that view, tooth brush was an input on which assessee was entitled to credit of duty paid.

## (7) RAJASTHAN SPINNING & WEAVING MILLS LTD. (SC)(2010)

Steel plates and M.S. channels used in fabrication of chimney for diesel generating set falling under chapter 85 of CETA 1985. - User test evolved in Jawahar Mills judgment [2001 (132) E.L.T. 3 (S.C.)] applicable to instant case - No case that steel plates and M.S. channels not required for fabrication of chimney as integral part of diesel generating set - Mandatory under pollution control laws that all plants emitting effluents to be equipped with apparatus to get rid of effluent gases and any equipment used therefor to be **treated as accessory to goods** specified as capital goods - Impugned Tribunal order holding steel plates and M.S. channel was accessory to diesel generating set and hence capital goods under rule 2(a)(A) of CCR 2004 and credit thereon admissible

## (8) 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?

**(1) Bhuwalka Steel Industries (2010)(Tri)**

**(2)** Rule 3(1) of the Cenvat Credit Rules allow credit in respect of input or capital goods actually received in the factory of manufacturer of the final product. In a case where either the entire quantity of goods not received in the factory of manufacturer of the final product, there cannot be any question of allowing any credit in respect of such goods not received.

**(3)** However, it cannot be denied that some goods are susceptible to transit loss on account of such goods being of hygroscopic nature or of volatile nature. There can also be cases of difference in weight on account of difference in the weighing scales at both ends, i.e., at the point of despatch and at the point of receipt. Whether CCR allowed in that case?

**(4)** **There** may be difference in quantity received and invoiced. Such difference is termed as 'transit loss' and if such loss falls within the tolerance/normal limits or industry norms, CCR will be allowed on whole of the quantity of input as stated in the invoice and no disallowance of CCR.

## (9) Can CENVAT credit be taken on the basis of private challans?

***Stelko Strips Ltd. 2010 (P & H)***

The issue under consideration before the High Court in the instant case was that whether private challans other than the prescribed documents are valid for taking MODVAT credit

Document for taking credit - Private challans - Credit can be taken on the strength of private challans, as the same was not found to be taken and there was a proper certification that duty had been paid - Rule 9 of Cenvat Credit Rules, 2004.

## (10) BANSAL ALLOYS & METALS LTD.(2010) (Tri)

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Iron and Steel Ingots classifiable under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. They were availing Cenvat credit benefit on final product. They also paid service tax on the transportation of goods by road. The appellants removed the inputs as such after reversal of Cenvat credit on input availed by them under Rule 3(5) of Cenvat Credit Rules, 2004 during the period January, 2005 to October, 2005. It has been alleged that the appellants had not reversed the Cenvat credit of service tax availed in respect of transportation of goods by road.

From the plain reading of Rule 3(5) it is clear that the manufacturer shall be required to pay an amount equal to the credit in respect of such input or capital goods. On the other hand, Rule 3(1) allowed the manufacturer to take credit on any input or capital goods and any input service. Rule 3(5) does not indicate for payment of equal amount in respect of credit of input service. It is well settled that while interpreting the statute no addition or subtraction can be made and the words used therein must be given their plain meaning. So, the appellants are required to reverse equal amount of input credit on removal of the inputs as such under Rule 3(5) of the Rules. There is no provision for payment of credit on input service. **So, reversal of Credit on input service in respect of Goods Transportation Agency service is not justified.**

## (11) whether penalty can be imposed on the directors of the company for the wrong CENVAT credit availed by the company?

***Ashok Kumar H. Fulwadhya v. UOI 2010 (Bom.)***

It was held that words "any person" rule 15(1) of the CENVAT Credit Rules, 2004] clearly indicate that the person who has availed CENVAT credit shall only be the person liable to the penalty.

It was held that, CENVAT credit had been availed by the company and the penalty under rule 15(1)] was imposable only on the person who had availed CENVAT credit [in present case company], who was a manufacturer. The petitioners-directors of the company could not be said to be manufacturer availing CENVAT credit.

# Small Scale Industry

## (1) 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?

***CCEx vs. Australian Foods India (P) Ltd 2013 (287) ELT 385 (SC)***

that the assessee was engaged in the manufacture and sale of cookies from branded retail outlets of "Cookie Man". The assessee had acquired this brand name from M/s. Cookie Man Pvt. Ltd., Australia (which in turn acquired it from M/s. Auto-bake Pvt. Ltd., Australia). The brand name used the words "Cookie Man" accompanied with a logo depicting the smiling face of a mustachioed chef.

The assessee was selling some of these cookies in

1. Plastic pouches/containers on which the brand name described above was printed. No brand name was affixed or inscribed on the cookies. Excise duty was duly paid, on the cookies sold in the said pouches/containers.
2. However, on the cookies sold loosely from the counter of the same retail outlet, with plain plates and tissue paper, duty was not paid.

The retail outlets did not receive any loose cookies nor did they manufacture them. They received all cookies in sealed pouches/containers. Those sold loosely were taken out of the containers and displayed for sale separately. **Assessee claimed that SSI exemption available to them FOR LOOSE COOKIES SOLD which are sold without any Brand name.**

COURT observed that The test of whether the goods is branded or unbranded, must not be the physical presence of the brand name on the goods, but whether it is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of the person."

In case of goods like liquids, soft drinks, milk, dairy products, powders etc. which cannot physically bear the brand name, a scrutiny of surrounding circumstances is necessary to decide whether it is branded or not.

Factors likepackaging/wrapping, accessories, uniform of vendors, invoices, menu cards, hoardings and display boards of outlet are to be considered

the most important of these factors being the specific outlet from which the goods is sold. If goods sold from Exclusive Branded Outlet then it is often conclusive factor to hold goods as Branded.

once it is established that a specified goods is a branded goods, whether it is sold without any trade name on it, or by another manufacturer, it does not cease to be a branded goods of the first manufacturer. Therefore, soft drinks of a certain company do not cease to be manufactured branded goods of that company simply because they are served in plain glasses, **WITHOUT ANY INDICATION OF THE COMPANY,** in a private restaurant. The goods will continue to be a branded goods of the company that manufactured it. The same principle would apply in the case of potato chips, chocolates, biscuits, wafers, powders and other such goods often sold from various locations.

Hence in present case SSI exemption not available for Cookies sold loosely without any brand name, because from same Branded Outlet Cookies sold in plastic pouches and containers on which duty is paid.

## (2) 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?

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

The Assessee was engaged in the manufacture of flat knitting machines. They had been availing the SSI exemption under 8/2003.

Department contended that they are using the brand name "ELEX" on those machines which belonged to M/s. Elex Engineering Works and hence they were not entitled to avail exemption.

Assessee contended that he is co-owner of brand name "ELEX" as he [being properitor of Elex knitting machinery] is also a partner in Elex engineering works.

It was held by SC that the assessee was eligible to claim benefit of the SSI exemption as the proprietor of Elex Knitting Machinery Co. was one of the partners in Elex Engineering Works. And hence being the co-owner of the brand name of Elex, he could not be said to have used the brand name of another person, in the manufacture and clearance of the goods in his individual capacity.

### (3) 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?

P Ltd. manufactures goods 'A' and 'B'. Goods 'A' are wholly exempt from excise duty vide an exemption notification. However, P Ltd. has mistakenly paid excise duty on goods 'A' and has also not claimed refund of the same. P Ltd. wants to claim SSI exemption for Goods 'B'. For the purposes of computing the eligible turnover for SSI exemption, P Ltd. has excluded Goods 'A' being exempt goods, although duty has been paid mistakenly on them. However, the Revenue contends that clearances of Goods 'A' should be included while computing the eligible turnover. P Ltd. satisfies all the other conditions for claiming the SSI exemption.
Explain, with the help of a decided case law, whether stand taken by P Ltd. is correct in law?
**Ans- Yes, P Ltd. is correct in excluding the turnover of exempted goods**

***BONANZO ENGG. & CHEMICAL P. LTD. 2012(S.C.)***
**Facts of the case:** The assessee was a manufacturer of PRODUCT A FALLING UNDER 84 ( EXEMPT) OF Rs 50 Lac in month of April **And** PRODUCT B falling under Chapter headings 32 ( DUTIABLE- 12%)of the first schedule to the Central Excise Tariff Act, 1985. But the appellant by mistake paid the excise duty on PRODUCT A and not even claim refund of the same. For goods falling under Chapter heading 32 PRODUCT B was cleared of Rs 130 lac from May to March, the assessee wanted to claim SSI exemption. For the purposes of computing the eligible turnover for SSI exemption, the assesse excluded the goods which were exempted although duty was paid mistakenly on them. However, Department contended that clearances of such goods should be included while computing the eligible turnover and hence demanded duty on Rs 30 lakh.

**It was held that** 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. **It was further observed that value** of clearances in the SSI exemption notification needs to be computed after excluding the value of exempted goods. Duty not payable on 30 lakh.

### (4) 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?

***CCE v. Deora Engineering Works 2010 (255) ELT 184 (P & H)***

The respondent-assessee was using the brand name of "Dominant" while clearing the goods manufactured by it. One more manufacturing unit was also engaged in the manufacture and clearance of the same goods under the same brand name of "Dominant" in the same premises. 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.

The High Court held that indisputably, in the instant case, 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, High Court was of the considered view that **the clearance of the common goods under the same brand name manufactured by both the firms had been rightly clubbed**.

# CENTRAL EXCISE RULES – OFFENCES AND PENALTIES

**(1) In a case where the manufacturer clandestinely removes the goods and stores them with a firm for further sales, can penalty under rule 25 of the Central Excise Rules, 2002 be imposed on such firm?**

***CCEx. v. Balaji Trading Co. 2013 (290) E.L.T. 200 (Del.)***

The allegation against ***Balaji Trading Co.*** was that they were storing and selling *zarda* which had the brand name of "Ratna" and which had been manufactured by Prabhat Zarda Factory. It is alleged that the said Prabhat Zarda Factory had clandestinely cleared the said quantities of 'Ratna' Zarda and that the same were being stored with the ***Balaji Trading Co.*** for further sales. It is also contended that the said respondents, were related concerns of Prabhat Zarda Factory.

***It was held that Rule 25 does not apply to Balaji Trading Co. BECAUSE Rule 25(1) specifically mentions 4 categories of persons :- (a) producer; (b) manufacturer; (c) registered person of a warehouse; or (d) a registered dealer. These four categories of persons are also mentioned at the end of Rule 25, where the liability of penalty has been spelt out i.e duty or 2000 whichever is greater. It is, therefore, clear that the penalty can be imposed on such persons only. The respondents are neither producers nor manufacturers of the said Prabhat Zarda nor are they the registered persons of a warehouse in which the said zarda had been stored. The respondents are also not the registered dealers. That being the case, no penalty can be imposed under Rule 25 on Balaji Trading Co.***

# Demand & Refund-

**(1) 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?**

***Jay Kumar Lohani v. CCEx 2012 (28) S.T.R. 350 (M.P.)***

***A SCN was issued as to why excise duty and penalty as mentioned in the said notice should not be jointly and severally demanded and recovered from them by invoking extended period of 5 years.***

***According to assesse A SCN was earlier issued for confiscation of goods and penalty.*** The assessee contended that since no decision was taken in respect of Earlier SCN, the Commissioner could not pre-judge the issue involved in the matter and issue another SCN for recovery of duty and penalty. Therefore Second notice is invalid.

It was held that having regard to the fact that it is not a case of prejudging of the issue and that it is not a case of the show cause notice being without jurisdiction. and there was no legal provision requiring authorities to first adjudicate the notice issued regarding confiscation and, only thereafter, issue show cause notice for recovery of dues and penalty.

**(2) Is assessee required to pay interest in case of voluntary payment of time-barred duty before issuance of the show cause notice?**

***C.C.E. & C. v. Gujarat Narmada Fertilizers Co. Ltd. 2012 (285) E.L.T. 336 (Guj.)***

Assesse is engaged in the manufacture of excisable goods. He has paid the duty voluntarily before issuance of SCN. **BUT THE DEMAND HAS BECOME TIME-BARRED**. The question is whether he can be called upon to pay interest on duty so paid.

It was held that The recovery of the unpaid or short paid duty would become time-barred. If the manufacturer does not pay it voluntarily, it would not be possible for the Department to recover the same. But if he does it voluntarily despite completion of period of limitation, he would, further be saddled with the liability to pay statutory interest. While introducing section 11A(1)(b), intention of the Legislature was not to impose interest on the voluntary payment of time-barred duty.

Hence he is not liable to pay interest on voluntary payment of time-barred duty.

**(3) Whether Additional Director General, Directorate General of Central Excise Intelligence can be considered a central excise officer for the purpose of issuing SCN?**

***Raghunath International Ltd. v. Union of India, 2012 (280) E.L.T. 321 (All.)***

The assessee was engaged in the manufacture and clearance of Gutkha and Pan Masala. Search and seizure was conducted at the appellant's premises by the officers of the Directorate General of Central Excise. A SCN was issued by Additional Director General, Directorate General of Central Excise Intelligence, asking as to why the duty, penalty and interest were not to be imposed.

ASSESSEE contended that Additional Director General, Directorate General of Central Excise Intelligence had no jurisdiction to issue the Show Cause Notice, Since he is not a "Central Excise Officer" within the meaning of section 2(b) of the Central Excise Act, 1944. Further assesse contended that the authority who had issued the show cause notice ought to have obtained prior permission from the adjudicating authority before issuing the SCN.

SEC 2(B) OF CEA 1944- CEO- defined as Chief CCE, CCE, CCE(A), Additional commissioner, Joint commissioner, AC.dc or any other officer of Central Excise Department or any person ( including an office of the State Government) invested by CBEC with any of the powers of a CEO under this Act.

It was held that the Additional Director General, Directorate General of Central Excise Intelligence having been specified as a Commissioner of Central Excise was fully entitled to issue the show cause notice under section 11A, being a Central Excise Officer.

The Board(CBEC) issued notification dated 26-6-2001 in exercise of power under section 2(b) of the Central Excise Act, 1944 read with sub-rule (1) of rule 3 of the Central Excise Rules, 2002, appointing the Director General of central Excise officers as ( COMMISSIONER OF CENTRAL EXCISE) Central Excise Officer and investing them with all the powers, to be exercised by them Hence,SCN issued in valid.

**(4) 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?**

***Uniworth Textiles Ltd. vs. CCEx. 2013 (288) ELT 161 (SC)***

***Uniworth textiles an 100% EOU claimed an exemption wrongly. However before claiming the exemption it intimated its doubt for availing exemption to Development Commissioner. The development commissioner allowed to claim exemption by quoting letter of ministry of commerce in support of its opinion***

***Department issued a SCN demanding duty for the period during which exemption wrongly claimed by invoking extended period of limitation of 5 years. Whether the department action is valid.***

Assessee, an EOU, purchased electricity generated by the captive power plant of its sister unit. Sister unit procured furnace oil required for running the captive power plant. This purchase of furnace oil was exempted from payment of Customs duty. later sister unit informed the appellant that it would require the arrangement for running the captive power plant for its own use, and hence, would be compelled to stop the supply of electricity to the appellant. Consequently, as a temporary measure, for overcoming this difficulty, the assessee imported furnace oil and supplied the same to sister unit for generation of electricity, which it continued to receive as before. The assessee also claimed exemption on import of furnace oil under the same notification as was claimed by its sister unit.

As the assessee was procuring furnace oil for captive power plant of another unit, it sought a clarification from the Development Commissioner seeking as to whether import of furnace oil and receipt of electricity would be liable to duty. The Development Commissioner replied in favour of the assessee quoting letter by Ministry of Commerce and **THEREAFTER, THE ASSESSEE CLAIMED THE EXEMPTION.**

Department issued SCN by invoking extended period of limitation (i.e 5 Years period) demanding duty on imported furnace oil on behalf of it sister unit. The contention of the Revenue was that the entitlement of duty free import of fuel for its captive power plant lies with the owner of the captive power plant, and not the consumer of electricity generated from that power plant

The Apex Court held that section 28 of the Customs Act clearly contemplates two situations, viz. inadvertent non-payment and deliberate default. For inadvertent non-payment of duty section 28 prescribes limitation period of 1 year (earlier it was 6 months), whereas for deliberate default section provides limitation period of 5 years. For this the intention to deliberately default is a mandatory prerequisite.

In the present case, from the evidence adduced by the appellant, one will draw an inference of *bonafide* conduct in favour of the appellant. The appellant was under doubt decided to address it to the concerned authority, the Development Commissioner, thus, in a sense offering its activities to assessment. The Development Commissioner answered in favour of the appellant and in its reply, even quoted a letter by the Ministry of Commerce in favour of an exemption the appellant was seeking, which anybody would have found satisfactory. Only on receiving this satisfactory reply did the appellant decide to claim exemption. **EVEN IF** one were to accept the argument that the **Development Commissioner** was perhaps **not the most suitable repository of the answers to the queries** that the appellant laboured under, it does not take away from the *bona fide* conduct of the appellant. It still reflects the fact that the appellant made efforts in pursuit of adherence to the law rather than its breach.

The Supreme Court held that mere non-payment of duties could not be equated with collusion or willful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. The Apex Court opined that something more must be shown to construe the acts of the assessee as fit for the applicability of extended period of limitation (I.e 5 years)

**(5) 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?**

***Ankleshwar Taluka ONGC Land Loosers Travellers Co. OP. v. C.C.E., Surat-II 2013 (29) STR 352 (Guj.)***

**Ankleshwar Taluka, a Co-operative Society, rendered rent-a-cab service to M/s. GPCL. The members of the society were essentially agriculturists who formed the society after they lost their land when GPCL plant was being set up.**
**At the time, when Ankleshwar Taluka started rendering the service to GPCL, there was no service tax levy on rent-a-cab service. However, service tax was imposed on rent-a-cab service subsequently. There had been a confusion regarding the liability of Ankleshwar Taluka as GPCL denied to pay the service tax for the want of any clause to this effect in the service contract. However, with due negotiation and arbitration, it was decided that the disputed amount would first be paid by Ankleshwar Taluka and the same would then be reimbursed by GPCL.**
**A show cause notice was issued on Ankleshwar Taluka proposing to recover service tax with applicable penalty and interest. Ankleshwar Taluka paid the entire disputed amount but refused to pay the penalty. Ankleshwar Taluka contended that they did not pay service tax at the relevant point of time as it being a new levy; they were unaware of legal provisions. Also, there were**

**divergent views of different Benches of Tribunal, which had added to the confusion, and the issue was debatable. Further, there had also been confusion regarding their liability as initially GPCL denied to pay service tax.**
**Discuss, with the help of a decided case law, whether penalty can 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.**

ANS- No, penalty cannot 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.
The facts of the given case are similar to the case of ***Ankleshwar Taluka*** *ONGC Land Loosers Travellers Co. OP.(Guj.).* In the instant case, the High Court made the following three important observations:

(i) The levy was comparatively new and therefore, both unawareness and confusion were quite possible particularly when the members of the appellant society were essentially agriculturists.

(ii) There were divergent views of different benches of Tribunal, which may have added to such confusion.

(iii) The fact that the appellant had persuaded their right of reimbursement of payment of service tax with the service recipient by way of conciliation and arbitration **Cannot Deprive Them Of The Defence Of Bona Fide Belief** of applicability of service tax.

It was held that There Could Be No Justification In Levying The Penalty In Absence Of Any Fraud, Misrepresentation, Collusion Or Wilful Mis-Statement Or Suppression even if the appellants were aware of the levy of service tax and were not paying the amount on the ground of dispute with the service recipient,. Further in the present case the entire issue for levying of the tax was debatable

Hence Penalty could not be imposed.

**(6) 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?**

***DBOI Global Service Pvt. Ltd. v. UOI 2013 (29) S.T.R. 117 (Bom.)***

The adjudicating authority had disallowed the refund claim filed by the assessee and called for certain additional documents, **ALTHOUGH SIMILAR REFUND CLAIMS FILED BY THE ASSESSEE FOR THE EARLIER PERIODS HAD BEEN ALLOWED** by the adjudicating authority **Without These Additional Documents**. The assessee failed to furnish the additional documents despite being given several opportunities to produce the same. The adjudicating authority passed an order rejecting the refund claim but failed to record any reason as to why it differed with the earlier decisions

The assessee contended that no reason given by the adjudicating authority for differing with the earlier decisions, its order must be quashed.

Department contended that the adjudicating authority was justified in passing the non-speaking order since assese failed to produce additional documents inspite of several opportunities given to produce additional documents.

The High Court held that 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 and accordingly set aside the order of Adjudicating Authority.

**(7) Can the directors of the company be held liable for the recovery of customs dues on the company?**

***Anita Goel v. CCEx. 2013 (288) E.L.T. 63 (Del.)***

The petitioner was a director in the company "Shri Ram Casting P. Ltd" (hereafter "the company"), and she resigned from the Board of the company on 2-4-1993. She received the demand notice dated 3-8-2012 in respect of the custom duty payable by the company- Shri Ram Casting P. Ltd. The Customs Department sought to attach the properties belonging to the petitioner for recovery of the dues to the company. The petitioner contended that the action of the Department was not justified as the said properties belonged to her and not the company.

Department contended that as director, the petitioner could not distance herself from the company's acts and omissions; she had to shoulder its liabilities. It was in furtherance of such obligation that the authorities acted within their jurisdiction in issuing the impugned notice.

**It was held that** Considering the provisions of section 142 of the Customs Act, 1962 and the relevant rules make it clear beyond doubt that it is only the defaulter against whom steps may be taken under Rules. The defaulter is the person from whom dues are recoverable under the Act, which in the present case undoubtedly is the company. There is no averment that the company has been or is being wound up. In that case, there cannot be any question about the separate juristic personality of an existing company and its former director; **the dues recoverable from the COMPANY cannot, in the absence of a statutory provision, be recovered from the DIRECTOR.** There is no provision in the Customs Act, 1962 corresponding to Section 179 of the Income Tax Act, 1961 or Section 18 of the Central Sales Tax, 1956 which enable the revenue authorities to proceed against directors of companies who are not defaulters.

## (8) Is the copy of the order mandatory to be served via "registered post" or a speed post would also suffice?

***Amidev Agro Care Pvt. Ltd.2012 (Bom.)***

Department contended that a copy of the order of the CCE (A) dated 31st March 2008 was in fact dispatched on 1st April 2008 by speed post and, therefore, the assessee must have received the order

And appeal was not filed within the stipulated time of 3 months from 31st March 2008 while the assessee contended that the appeal filed was within 3 months of serving of the order on 26 February 2010.

Assesee contended that A copy of the order passed by the CCE (Appeals) dated 31st March, 2008 was not served upon him. It is only when the recovery proceedings were initiated, the assessee sought a copy of the order dated 31st March 2008 and the same was made available to the assessee on 26th February 2010. Immediately thereupon the assessee filed an appeal before the CESTAT on 17th May 2010. Hence, it is contended that the appeal filed is in time.

**It was held that under** section 37C of the Central Excise Act, 1944, a copy of the decision to the assesse sent by 'registered post with due acknowledgment' to the assessee or its authorized agent.
Accordingly, the contention of the assessee that a copy of the order of Commissioner of Central Excise (Appeals) was received for the first time on 26th February 2010 would have to be accepted.

## (9) 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?

***Nanumal Glass Works v. CCEx. Kanpur, 2012 (284) E.L.T. 15 (All.)***

The Assistant Commissioner of Central Excise passed an order confirming central excise duty amounting to Rs. 2,04,816/- and imposing penalty of the same amount. An appeal was filed by the appellant before the Commissioner (Appeals). An appeal filed with CCE (A) and penalty set asided. Then department filed appeal with CESTAT against order of CCE (A). The Tribunal vide its order dated 22nd July, 2010 given an option to pay 25% of the penalty imposed amount to Rs. 51204/- within 30 days from the date of its order (viz. 22nd July, 2010). The appellant deposited on 30th August, 2010 and stated that the counsel who appeared and argued the case before the Tribunal informed the local counsel of the appellant but the local counsel could not inform the appellant about the direction of the Tribunal giving an option of paying 25% of the penalty within 30 days due to which 9 days' delay had occasioned.

The **ASSESSEE** contended that the order could not be said to be tendered to him on 22nd July, 2010 as it was **not received by the assessee** in person and that he had deposited the amount of 25% of penalty within 30 days from the date of communication of the order to him and there had been no delay.

Whereas Department contended that as the advocate of the assessee was present at the time of passing of the order, the order would be deemed to have been communicated to him on the same date (22nd July, 2010) and 30 days time will be counted from that date.

A perusal of Section 37C(a) indicates that in case the decision is tendered to the person **OR HIS AUTHORISED AGENT,** the same shall be deemed to be served in accordance with the Act. In the present case, **the Advocate of the appellant who is authorised agent** within the meaning of Section 37C, **being present on the date of the order, the service of the order shall be deemed to be made to the authorised agent on the same date.** Thus, when the order was passed by the Tribunal on 22nd July, 2010 in presence of advocate of the assessee, the order would be deemed to be communicated to the authorized agent of the assessee (i.e. his advocate) on the same date and 30 days period would start from 22nd July, 2010.

## (10) Can Appellate Authorities or Courts permit assessee to pay reduced penalty of 25% beyond the time prescribed under section 11AC?

***CCEx. v. Castrol India Ltd. 2012 (286) E.L.T. 194 (Bom.)***

The assessee paid the duty sought to be evaded and interest payable thereon before the passing of the Demand order. The penalty under section 11AC was imposed on the assessee. But assessee did not pay penalty within 30 days from the date of the communication of the order of Central Excise Officer. If he has paid the penalty within 30 days then penalty payable would be 25% of the duty, But the assessee chose to file an appeal against imposition of penalty under section 11AC to Tribunal. And Tribunal allowed reduced penalty of 25% of duty. Department filed appeal against the order of Tribunal to High Court.

It was held that for benefit of reduced 25% penalty under section 11AC (1)(c) it was required to be paid within 30 days from the date of communication of the order of the Central Excise Officer, The Appellate authorities/ court cannot permit the assesse to pay 25% penalty beyong time period prescribed u/s 11AC. The incentive in this section is intended to encourage payment of tax due to Revenue at the earliest without resorting to unwarranted litigation and is not an incentive for violating the provisions of law. Thus if appellate authority is allowed to permit assesse to pay 25% of penalty within 30 days of communication of appeal order, it would defeat the object of which incentive under this section is given.

However where Duty was increased by the appellate authority in the appellate proceedings, Then Reduced Penalty i.e 25% of the increased Duty allowed if paid within 30 days of the communication of the order for the appellate authority.

## (11) 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?

***Kanyaka Parameshwari Engineering Ltd. v. Comm of Cus & Cx 2012 (26) STR 380 (A.P)***

Kanyaka Parameshwari Engineering Ltd. was engaged in business of manufacture and sale of LPG cylinders. The appellant had paid excise duty under protest for the financial year 1999-2000 Since the price was not finalized by the oil companies, Superintendent, Central Excise directed to pay differential duty under protest with a view to claim refund of excess duty paid after final assessment

The appellant undertook to pay the differential duty, if any, on fixation of exact price. Pursuant to the reduction in the prices of LPG cylinders, the appellant filed applications for finalization of assessments and for refund of excess duty so paid by them. The Department refunded the excess duty paid by the appellant with interest from 3 months after the application for refund filed till the date of payment. Assessee contended that interest on refund on the excess duty so paid by him as per section 11BB of Central Excise Act from the date of payment as duty was paid under protest.

**It was held that as per sec** 11BB of the Central Excise Act, 1944, if any duty is not refunded within 3 months from the date of receipt of application, 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.

**(12) 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**

or

**Que- Ranbaxy ltd. filed claim for rebate of duty, amounting to Rs. 6,00,00,000/- on 21st May 2003. to AC u/s 11B. However, the Assistant Commissioner vide order dated 23rd June 2004, rejected the claim. Ranbaxy filed an appeal before the CCE(A), who by his order dated 30th Dec 2004 allowed the appeal and sanctioned the rebate claim. Being aggrieved by the said order, the revenue filed an appeal before the Joint Secretary, Government of India, Ministry of Finance, but without any success. Ultimately rebate was sanctioned on 21th FEBURARY, 2005.**

**RANBAXY filed a claim for interest under Section 11BB of the Act on account of delay in payment of rebate. While Department contends that no interest will be payable because rebate had been sanctioned to them within 3 months of the receipt of order of the CCE(A) dated 30th Dec, 2004 by applying EXPLANATION TO Sec 11B. Discuss whether the contention of department is correct or not**

**Ans- The contention of Department is not correct.**

**The issue for consideration is**

**What is 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**

**The facts of the question are identical to**

**RANBAXY LABORATORIES LTD. V. UOI 2011 (273) E.L.T. 3 (SC)**

It was held that interest under the section 11BB

becomes payable on the expiry of a period of 3 months from the date of receipt of the application under section 11B(1).

**Section 11BB READS as under:**

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within 3 months **from the date of receipt of application** under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below 5% and not exceeding 36% P.A as is for the time being fixed by the CG, on such duty from the date immediately **AFTER THE EXPIRY OF 3 MONTHS FROM THE DATE OF RECEIPT OF SUCH APPLICATION TILL THE DATE OF REFUND OF SUCH DUTY**

**Explanation -** Where any order of refund is made by the

- → Commissioner (Appeals),
- → Appellate Tribunal or
- → any court

against an order of the AC/DC, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.

**IT WAS HELD that Explanation to section 11BB** introduces a deeming fiction that

- → where the order for refund of duty is **NOT MADE BY THE AC/DC**
- → **BUT BY AN APPELLATE AUTHORITY** or the Court, then for the purpose of this section

THE ORDER MADE by such higher Appellate Authority or by the Court **SHALL BE DEEMED TO BE AN ORDER MADE UNDER SECTION** 11B(2). It is apparent that the explanation does not bearing or connection with the date from which interest under section 11BB becomes payable and does not postpone the said date.

**HENCE APEX COURT HELD 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 under section 11BB commences from the date of expiry of three months from the date of receipt of application for refund under section 11B(1) and not on the expiry of the said period from the date on which order of refund is made.

**INTEREST WILL BE PAYABLE – 1 ½ year**
FROM 21st Aug 2003 (i.e after 3 m from application date 21 may 2003)
Till 21st Feb 2005 (i.e till date of Refund)
6 crore * 6% * 1 ½ =54,00,000

**(13) Whether the penalty is payable even when service tax and interest has been paid before issue of show cause notice?**

***Adecco Flexione Workforce Solutions Ltd. 2012 (Kar)***

Assesse has paid both the service tax and interest for delayed payment before issue of show cause notice under the Act. And intimated in writing
Department issued SCN to the appellant for delay in payment of service tax and levied Penalty.
Assessee contended that SCN CAN'T BE ISSUED when they had already paid the service tax along with interest for delayed payment of service tax.
It was 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.

**(14) the** assessee is engaged in manufacture of various toilet preparations such as after-shave lotion, deo-spray, mouthwash, skin creams, shampoos, etc. One of the main ingredients used in the manufacture of various items is Extra Natural Alcohol (ENA). The assessee procures ENA from the local market on payment of duty, to which Di-ethyl Phthalate (DEP) is added so as to denature it and render the same unfit for human consumption. The officers of DGCEI visited the factory of the respondent on 29-8-2001 and found that the addition of DEP to ENA results in the manufacture of an intermediate product i.e. Denatured-ethyl Alcohol, which is a specified product liable to central excise duty

**DEPARTMENT CONTENDED THAT non-disclosure as regards manufacture of Denatured Ethlyl Alcohol amounts to suppression of material facts and hence it attracts the larger period of limitation under section 11A. whether contention of department is valid?**

**The contention of department is not valid**

**The issue for consideration is that non-disclosure as regards manufacture of Denatured Ethlyl Alcohol amounts to suppression of material facts and hence it attracts the larger period of limitation under section 11A.**

**The facts of the question are identical to ACCRAPAC (INDIA) PVT. LTD. 2010 (GUJ.) wherein,**
**it was held that,** As regards invocation of the extended period of limitation, the Tribunal noted that

→ denaturing process in the Cosmetic Industry is 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.**

The fact that the respondent was manufacturing cosmetics, was admittedly **KNOWN TO THE DEPARTMENT.** Hence, failure on the part of the ASSESSEE to declare that it was adding DEP to ENA **cannot be held to be suppression, since this was a well known fact, which the excise authorities are required to be in knowledge of.** That such facts known to the both sides would not render omission, if any, on the part of the assessee into suppression or mis-statement with an intention to evade payment of duty. The Tribunal also noted that 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 excise duty on such product. The Tribunal was accordingly of the view that the department was not justified in invoking the larger period of limitation

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

***Hans Steel Rolling Mill v. CCEx., Chandigarh 2011 (S.C.)***

It was held that compounded levy scheme is a separate scheme from the normal scheme for collection of excise duty on goods manufactured. Since the compounded levy scheme is comprehensive scheme in itself, general provisions of the Central Excise Act and rules are excluded. Hence, it held that the time-limit under section 11A of the Central Excise Act, 1944 is not applicable to recovery of dues under compounded levy scheme.

**Author Note- but presently the above case has no relevance i.e time limit u/s 11A applicable in case of** duty based on production capacity

**Earlier sec 3A** was introduced **by F. Act 1997,** subsequently it was deleted**. W.e.f F.ACT 2008 sec 3A was re- introduced** and for products notified under this sec, assesee is liable to pay duty compulsory on that basis and pan masala & Tobacco packing machine rules made for the purpose of sec 3A provide that

**Provisions to apply mutatis mutandis**. - Except as herein provided, **all provisions of the Central Excise Act 1944** and the Central Excise Rules, 2002, including those relating to maintenance of daily stock account, removal of goods on invoice, filing of returns **and recovery of dues shall apply *mutatis mutandis***.

**(16) 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?**

Or

The assessee is engaged in the manufacture of HDPE sacks, falling under Chapter 6307 of Central Excise Tariff Act, 1985. The assessee had paid duty amounting to Rs. 7,11,039/- on HDPE tapes which is an intermediary product in the manufacture of HDPE sacks. The assessee contended that the assessee was not liable to pay the duty and therefore an application came to be filed claiming refund of Rs. 7,11,039/-. **Assessee was of the view that he has sustained loss more than the refund claim, hence unjust enrichment not applicable even though the assessee failed to prove that duty in the cost of production is not included.**

**The claim of the assessee was rejected by the department that he was not entitled to claim refund as it would amount to unjust enrichment**

Discuss, whether refund can be granted considering assessee plea.

Ans- the claim of assesse is rightly rejected by the Department and hence assessee can't be granted refund.

**The issue for consideration is** that Merely because assessee has sustained loss more than the refund claim, whether proves that it is not a case of unjust enrichment even though the assessee failed to prove that duty in the cost of production is not included?

**The facts of the question are identical to**

***Gem Properties (P) Ltd. 2010 (Kar)***

***Wherein, It was held that***

The Chartered Accountant certificate clearly shows that the

→ cost of the duty is also included while computing the cost of production of the material

Further, It is no doubt that the assessee has sustained loss during relevant assessment year.

Merely because the assessee has sustained the loss, cannot be a ground to hold it is not a case of any unjust enrichment as long as the assessee proves before the authorities that assessee has sustained loss on account of non-inclusive of the duty. Hence assessee will not be entitled to refund.

**(17) 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?**

**The above issue has been decided in case of Aman Medical products 2010 (Del.)**

Facts of the case are that, The assessee filed a Bill of Entry and paid the higher duty without considering exemption notification. There was no assessment order for being challenged in the appeal which was passed under section 27(1)(i) of the Act. Department is of the view 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.

Section 27 of the Customs Act, 1962, inter alia, provides as follows:-

Any person claiming refund of any duty and interest, if any, paid on such duty -

(i) paid by him in pursuance of an order of assessment; or

(ii) borne by him,

may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Customs or Deputy Commissioner of Customs.

The High Court, held that refund u/s 27 can be granted in 2 cases, firstly refund arising due to order of assessment and secondly duty is borne by the person claiming refund.hence refund can be granted 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 even if appeal is not filed against the assessed bill of entry,appellant can make claim for refund under section 27 of the Customs Act, 1962. In present case refund claim can be made u/s 27(1)(ii).

**(18) 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 and not the original of the TR-6 challan?**

**Narayan Nambiar Meloths v. CCus. 2010 (251) E.L.T. 57 (Ker.)**

Facts of the case are that assessee made application for refund alongwith attested copy of TR-6 Challan

Department denied to grant refund on the reasoning that production of original of the TR-6 challan was a mandatory requirement for processing the refund application.

The Kerela High Court held that assessee will be entitled to refund claim because of following reasons-

1. attested copy of TR 6 Challan was purely a technical contention and could not be accepted.
2. as per clarification issued vide F.No. 275/37/2K , 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 Form TR-6 would suffice for processing the refund application.

**Hence it can be concluded that assesee can't be denied for claim of refund.**

**Author Note- Now TR-6 challan replaced by GAR-7 challan.**

**(19) . AP SPINTEX LTD- 2009- RAJSTHAN HC**
**ED recovered from buyer – credit notes issued subsequently – Applicability of Doctrine of Unjust Enrichment – not applicable**

Sec 11-B of CEA, 1944 provides that any refund of excise duty shall be credited to the Consumer Welfare Fund. However, it shall be given to the applicant if duty of excise has been paid and borne by the manufacturer. In a case where assessee manufacturer initially recovered excise duty from the buyer and then subsequently issued credit note to the buyer, then whether this can be treated as equivalent as "excise duty paid and borne by the manufacturer.

it was held that "When debit note is issued by the buyer and corresponding credit note is issued by the seller, price of goods stand reduced to the extent of debit note and credit note. When debit note and credit note are issued and effected, it cannot be assumed that incidence of duty has been passed on the purchaser. In other words, „doctrine of unjust enrichment‟ shall not be applicable in such situation and the appellant shall be entitled to the refund‟.

**(20) Raja Ltd. imported certain parts of a machine and filed a Bill of Entry. Raja Ltd. paid the higher duty in ignorance of a notification which allowed him the payment of duty at a concessional rate. Later Raja Ltd filed a refund claim under Section 27 of the Customs Act,1962 by producing the certificate issued by the Chartered Accountant (CA) 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. The refund claim was rejected by the department as there was no other evidence other than the certificate issued by CA.**

**Discuss with reference to decided case law if any whether the stand taken by the Department is correct in law.**

**or**

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

**Ans- The stand taken by the Department is correct in law**

**The issue for consideration is**

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

***The facts of the question are identical to BPL Ltd. 2010 (Mad.)***

Assessee 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.

**(21) Can the excess duty paid by the seller be refunded on the basis of the debit note issued by the buyer?**

**Techno Rubber Industries Pvt Ltd. 2011(Kar.)**

**The assessee cleared the goods paying higher rate of excise duty in the month of March, although the rate of duty on the said goods had been reduced in the budget of the same financial year. 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 month of June of the same year. The assessee applied for the refund of excess excise duty paid. Revenue rejected his claim on the ground that incidence of the duty had been passed by him to the buyer.**

**Department contended that since the debit note was issued in the month of June and not March, it could not be the basis for refund.**

**It was held that, when the buyer had refused to pay excess duty claimed and had raised a debit note, it means that the assessee had not received that excess duty which he had paid to the Department. Hence Department was bound to refund to the assessee the excess duty paid.**

# Appeals

**(1) Can Tribunal condone the delay in filing application 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?**

***Thakker Shipping P. Ltd. v. Commissioner of Customs (General) 2012 (285) E.L.T. 321 (S.C.)***

The proceedings were initiated against the assessee under the Customs Act, 1962. However, Commissioner of Customs (General), in his order-in-original, dropped the said proceedings.

***The Committee of Chief Commissioners of Customs reviewed the order of Commissioner and directed him to apply to the Tribunal***

***The Commissioner, accordingly, made an application under Section 129D(4) of the Act before the Tribunal. As the said application could not be made within the prescribed period and was delayed by 10 days, an application for condonation of delay was filed with a prayer for condonation***

But Tribunal rejected the application for condonation of delay on the ground that Tribunal had no power to condone the delay caused in filing application under section 129D(4) by the Department beyond the period of 3 months

This appeal raises the question, whether it is competent for the Tribunal to invoke Section 129A(5) of the Act where an application under Section 129D(4) has not been made by the Commissioner within the prescribed time and condone the delay in making such application if it is satisfied that there was sufficient cause for not presenting it within that period.

It was held that

Parliament intended entire Section 129A, as far as applicable, to be supplemental to Section 129D(4) and that is why it provided that the provisions relating to the appeals to the Tribunal shall be applicable to the applications made under Section 129D(4). The expression, "including the provisions of sub-section (4) of Section 129A" is by way of clarification and has been so said expressly to remove any doubt about the applicability of the provision relating to cross objections to the applications made under Section 129D(4) or else it may be said that provisions relating to appeals to the Tribunal have been made applicable and not the cross objections. The use of expression "so far as may be" is to bring general provisions relating to the appeals to Tribunal into Section 129D(4). Once the provisions relating to the appeals to the Tribunal have been made applicable, Section 129A(5) stands incorporated in Section 129D(4) by way of legal fiction and must be given effect to. Seen thus, it becomes clear that the Act has given express power to the Tribunal to condone delay in making the application under Section 129D(4) if it is satisfied that there was sufficient cause for not presenting it within that period

Hence it can be concluded that it is competent for the Tribunal to invoke Section 129A(5) where an application under Section 129D(4) has not been made within the prescribed time and condone the delay in making such application if it is satisfied that there was sufficient cause for not presenting it within that period.

Note- ***Section129A(5):*** *The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.*

***Section 129D(4):*** *Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or any officer of customs authorised in this behalf by the Commissioner of Customs, makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of 1 month from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by* *the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals,* ***including the provisions of section 129A(4)*** *shall,* ***so far as may be****, apply to such application.*

**(2) 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?**

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

**T**he assessee was a manufacturer of the 'Bitulux Insulation Board' known as 'TikkiExjo Filler'. The 'TikkiExjo Filler' is obtained by the process of bituminization of the Insulation board. The adjudicating authority concluding that the above process amounts to manufacture, levied excise duty on it. Assesse filed an appeal against this order to Commissioner (Appeals), who held that the above process does not amount to manufacture.

Department did not appealed against the order of CCE(A).

In the meantime, the Revenue issued several Show Cause Notices to the assesse directing the assessee to pay the differential duty contending that the process amounts to manufacture, but for a time period different from the period covered in the said appeal.

**Assesse contended** that the process of bituminization of the Insulation Board doesn't resulted in manufacture and further when the appeal was not made by department in earler case, the issue attained finality.

**It was held by SC** 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.

**(3) Whether doctrine of merger is applicable when appeal dismissed on the grounds of limitation and not on merits?**

***Raja Mechanical Co. (P) Ltd. 2012 (SC)***

**ASSESSEE wrongly filed an appeal before adjudicating authority. Nearly afer a year's time realizing his mistake, the assesse filed appeal with CCE (A) BUT it was** rejected on the ground of limitation.

Assesse filed appeal with CESTAT against the above order and tribunal also confirmed the order of CCE(A). Aggrieved by order of Tribunal it filed an reference application with HC, WHICH was also rejected. Finally assesse filed an appeal with SC and contended that the orders passed by the original authority would merge with the orders passed by the first appellate authority and, therefore, the Tribunal should consider the appeal filed by the assessee.

And further Tribunal ought to have considered the assessee's appeal not only on the ground of limitation but also on merits of the case. Assese was of the view that the "doctrine of merger" theory would apply in the sense that though the first appellate authority had rejected the appeal filed by the assessee on the ground of limitation, the orders passed by the original authority would merge with the orders passed by the first appellate authority and, therefore, the Tribunal ought to have considered the appeal

Department contended that the doctrine of merger would not apply to a case where an appeal was dismissed only on the ground of the limitation.

The SC 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. Hence doctrine of merger is not applicable when appeal is dismissed on the frounds of limitation and not on merits.

### (4) Can the deposit of 50% of tax amount be made a condition for condoning the delay in filing of an appeal?

***Mihani Network v. CCus. & CEx. 2012 (285) ELT 182 (MP)***

In the instant case, the assessee had filed an appeal along with an application for stay before the CESTAT. However, since there had been a delay in filing the appeal of 259 days, the assessee also filed an application for condonation of delay. In the application for condonation of delay, the petitioner stated that matter was handed over to Shri Arup K. Das, Advocate, for the purposes of filing the appeal who, due to problems in his matrimonial life, did not pay attention as a result of which the appeal could not be filed within the prescribed period of limitation. The petitioner also stated that Arup K. Das ultimately returned the papers to the petitioner and the appeal was filed through another counsel. The **CESTAT ordered** that the **delay would be treated as condoned, if the assessee deposits 50% of the amount of tax.**

**It was held that there is no legal provision which provides for condoning the delay in filing the appeal on a condition of depositing 50% of the tax amount.** The delay in filing the appeal is condoned or refused depending upon the sufficiency of cause for delay. If the party is found to be prevented by a sufficient cause to the satisfaction of the Appellate Authority/Tribunal, the delay is condoned and if not found to be prevented by a sufficient cause, the delay is not condoned. The condition of depositing 50% of the tax amount for condoning the delay is apparently illegal.

### (5) VOLVO INDIA LTD. (2011)(kar)

**Appeal to High Court in Service tax matter –**

**Royalty charges for transfer of know-how - Whether Service tax is leviable on it as Consulting Engineer service.** the question that arises for our consideration in this appeal is whether the assessee is liable to pay service tax under the aforesaid agreements. In other words, the question relates to payment of rate of duty/tax. Whether Against CESTAT order appeal can be made to High court.

**IT WAS *HELD* : Question relates to rate of tax, for which appeal from CESTAT order lies to Supreme Court, and High Court has no jurisdiction over it –**

Because, the said question falls squarely within the exception carved cut in Section 35G, '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',

### (6) Is the CESTAT order disposing appeal on a totally new ground sustainable?

**CCE v. Gujchem Distillers 2011 (270) E.L.T. 338 (Bom.)**

The High Court elucidated that in the instant case, the CESTAT had disposed of the appeal on a ground which was not urged by the respondents before the adjudicating authority. Thereby the CESTAT had disposed of the appeal on a totally new ground which was not laid before the adjudicating authority and which would entail a finding on facts.

The High Court explained that had the CESTAT not been satisfied with the approach of the adjudicating authority, it 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.

### (7) Whether Revenue can prefer an appeal in case of a consent order?

**CCus v. Trilux Electronics 2010 (KAR)**

The assessee contended that the appeal aginst tribunal order can't be filed 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.

Revenue can NOT prefer an appeal in case of an order passed by CESTAT remanding back the matter to revenue for recomputation of duty based on consent and the matter was remanded at the instance of Revenue, then

The High Court held that an appeal against the consent order cannot be filed by the Revenue.

**Note: A consent order is a judicial decree expressing a voluntary agreement between parties to a suit, especially an agreement by a defendant to cease activities alleged by the Government to be illegal in return for an end to the charges.**

## Advance Ruling

**Can a writ petition be invoked against advance rulings?- IMP**

**Ans**

It was held by high court in in case of *UAE Exchange Centre Ltd. v. UOI 2009* , that the ruling by Advance Rulings Authority is binding on the applicant, the departmental officers concerned and transaction on which the ruling is sought.

The decision of the Authority is not final.

The High Court is of the opinion that the Courts would have jurisdiction to entertain actions under Article 226 of the Constitution for writ petition. Therefore, a writ petition can be invoked against advance rulings.

# SETTLEMENT COMMISSION

**(1)** Can the Settlement Commission decline to grant immunity from prosecution after confirming the demand and imposing the penalty?

***Maruthi Tex Print & Pr ocessors P. Ltd.2012 (Mad.)***

During search AT factory, registered office premises, their godown and dealers' premises, recovery of certain records relating to delivery of processed fabrics, and seizure of certain quantities of grey and processed fabrics. The Department issued SCN confirming demand at the higher rate of duty and interest and penalty thereon and seized goods also. However, there was no clear evidence to hold that the fabrics mentioned in all delivery challans were attracting higher rate of duty. The assessee approached the Settlement Commission. The Settlement Commission confirmed the entire demand, penalty, seizure and denied the immunity from the prosecution. The assessee approached the High court.

IT WAS HELD

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.

However, in the present case, without placing the burden on the department to prove their case, the Settlement Commission confirmed the demand on the assessee. Settlement Commission should not have refused the benefit of immunity from prosecution.

**M. IMP & EXPECTED**

**(2) 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)?**

OR

**Excise department conducted search on the factory of ICON INDUSTRIES. after few days of the search conducted in its units ASSESSEE got its units registered. Thereafter, it filed consolidated return with the Department for the period prior to search. After that, it filed a settlement application in respect of the proceedings issued by the Commissioner.**

**SETT. COMM. rejected the application on the ground that return submitted could not be considered as valid return which is the pre- condition for filing application with sett. comm. since prior to search there was no registration and no returns. Whether application to settl comm. is maintainable or not.**

ans- the application made to settl. comm. is not maintainable

the facts of the question are identical to

**Icon Industries v. UOI 2011 (273) E.L.T. 487 (Del.)**

The High Court held that as per Clause (a) of first proviso

→ unless the applicant has filed returns, showing production, clearance and 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. wherein it was held that 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 and clearance to be filled in such belated returns. Consolidated return filed either just before filing of application/along with it, by covering all the past periods will not be valid return filed under rule 12 of CER 2002. Hence, it held that the order passed by the Settlement Commission was valid.

**(3) Is the Settlement Commission empowered to grant the benefit under the proviso to section 11AC in cases of settlement? - IMP**

The Court, in case of *Ashwani Tobacco Co. Pvt. Ltd. v. UOI 2010 (251) E.L.T. 162 (Del.)*, held that benefit under the proviso to section 11AC could not be granted by the Settlement Commission in the cases of settlement.

Settlement is in distinct from adjudication before Central Excise Officer - Scheme of provisions in Chapter V of Central Excise Act, 1944 is settlement and not adjudication - Powers of Central Excise Officer vested in Settlement Commission to give finality to its orders - Order of settlement different from adjudication order as adjudicating Central Excise Officer not empowered to grant immunity from prosecution while determining duty liability - Therefore, the benefit under the proviso to section 11AC, which could have been availed when the matter of determination of duty was before a Central Excise Officer would not be attracted to the cases of a settlement, undertaken under the provisions of Chapter-V of the said Act.

**Section 127M of the Customs Act, 1962**

**(4) 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.

**The above is sue has been decided in case of East and West Shipping Agency 2010-HC-MUM**

Facts of the case are that The Custom House Agent License of the respondents was suspended on the ground that authorized agent of the respondents had committed misconduct by taking active part in the act of smuggling and has 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 authorized 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.

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. Further, the appellants had not challenged the said order. Hence, the order passed by the Settlement Commissioner could not be brushed aside considering the scheme of Chapter XVIA. It must be held good in law so long as it is not set aside.

**(5) 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?**

***Sanghvi Reconditioners Pvt. Ltd. V. UOI 2010 (251) ELT 3 (SC)***

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.

# CUSTOM

***(1) 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?***

***CCus v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.)***

Upon combined reading of the above-mentioned statutory provisions, it can be seen that Section 46 nowhere provides for any time-limit for filing a bill of entry by an importer upon arrival of goods. It is, of course, true that Section 48 permits the authorities to sell the goods after following the procedure if within 30 days of unloading the same at the customs station, the same are not cleared for home consumption or warehoused or transshipped. It was held that the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit prescribed for filing of bill of entry.

### *(2) Essar Steel Ltd (2010)(Guj) –*

Export duty - Special Economic Zones - Export duty whether leviable under Customs Act, 1962 on goods supplied from DTA to SEZ Developers/Units - Customs Act defining export as taking out of India to a place outside India - Definition of 'export' or charging Section 12 ibid not amended and charging provision not inserted contemplating movement of goods from Domestic Tariff Area to Special Economic Zone as taxable event entailing export duty as in the case of export - Levy of export duty cannot be justified under Customs Act - Export duty not payable on movement of goods from DTA to SEZ units or developers -

### *(3) DECORATIVE LAMINATES (I) PVT. LTD. 2010 (257) E.L.T. 61 (KAR.)*

**Assesse Imported resin impregnated paper and plywood for manufacture of furniture warehoused from the date of its import and application for extension of period of warehousing was made. warehousing period extended and goods not cleared even after expiry of such extended period. Subsequently, the assessee made application 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.**

**Application for Remission of duty not allowed as u/s 23 as the goods have neither been: [i] lost nor [ii] destroyed nor[iii] title to the goods has been relinquished at any time before clearance for home consumption. There will be no remission of duty if the goods had become unfit for use on account of non-availability of orders for clearance within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.**

**Under Section 23 the expression "at any time before clearance for home consumption" would mean the time period as per the initial order during which the goods are ware housed or before the expiry of the extended date for clearance and not any period after the lapse of the afore said periods. The said expression cannot extend to a period after the lapse of the extended period merely because the licence holder has not cleared the goods within the stipulated time.**

**It was held that, the fact that since the goods were not removed for home consumption they 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 of the Act. We have to hold that in the instant case, the circumstances made out under Section 23 of the Customs Act are not applicable to the present case since the destruction of the goods or loss of the goods has not occurred in the instant case before the clearance for home consumption within the meaning of that section. 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.**

### *(4) Relevant Date for removal of warehoused goods after permitted period*

Normally the relevant date for CD rate shall be date of filing Bill of Entry (BoE) for Home Consumption if the warehoused goods are removed u/s 68 within the permitted period.

If warehoused goods are removed from Warehouse after the permitted period, then such goods shall be deemed to be improperly removed u/s 72. Hence such goods are not removed u/s 68. In such case, the relevant date shall be the date of the expiry of the permitted warehousing period and the date of filing BoE for Home Consumption.

**[SBEC Sugars Limited 2011 (SC)]**

1) **Ferodo India Pvt. Ltd. (2008)(SC)**

**Royalty and license fees for use of know-how/secret formula supplied by foreign supplier, which was based on net sales value of licensed products manufactured out of components imported from such supplier, is not includible in the value of imported components, if the same is not related to imported components and is not paid as a condition of import.**

### (5) *Paras Fab International v. CCE 2010 (256) E.L.T. 556 (Tri. – LB)*

1) Whether the entire premises of 100% EOU should be treated as a warehouse?
2) Whether the imported goods warehoused in the premises of 100% EOU is to be held to have been removed from the warehouse before the same is issued for manufacture/production/processing by the 100% EOU?
3) Whether issue for use by 100% EOU would amount to clearance for home consumption?
4) Whether non-filing of ex-bond bill of entry before using the goods by the 100% EOU makes the goods as not cleared for home consumption?

The facts of the case are that the Assessee is a 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 Departmental Authorities at Kandla as well at Alwar have separately demanded Additional Customs duty imposed under Section 128 of the Finance Act, 2003

the contention of the Assessee that since (i) the entire premises of the 100% EOU has been licensed as a warehouse under the Customs Act; (ii) the impugned goods have been warehoused therein and subsequently utilized for manufacture of finished goods in bond; and (iii) the impugned goods have not been removed from the warehouse, there cannot be any question of demanding duty on the same.

The manufacturing is also required to be done within the bonded premises. Hence, we find support for the contention of the appellants that the entire premises of 100% EOU is a bonded warehouse. Neither the Manual nor the Customs Act speaks of any requirement to pay any duty on the warehoused goods which are used for manufacture in bond nor it requires filing of any ex-bond bills of entry at that stage. Section 65 of the Act which deals with manufacturing in bond on the other hand, does not require any filing of ex-bond bills of entry or payment duty before taking warehoused goods for manufacture inside the bonded premises. it is thus clear 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 Customs Act, 1962.

**It was held that,** The entire premises of a 100% EOU has to be treated as a (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.

## Miscellaneous

### (1) 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?

***Wringley India Pvt.Ltd. v. Commr.of Cus.(Imports), Chennai 2011 (274) E.L.T. 172 (Mad.)***

**Facts of the Case:** Wringley India Pvt. Ltd. had imported second-hand machinery along with spare parts from its sister concern located at Spain as per Bill of Entry dated 28-4-2006. There was indication in the invoice that the machinery was certified by M/s. S.G.S. Spain, the load port Chartered Engineer at Euro 35876.49. However, the certificate issued by M/s. S.G.S. Spain, the load port Chartered Engineer was not enclosed along with the Bill of Entry and only the invoice was submitted. Since the appellant didn't submit the valuation report, the Custom authorities referred the matter for valuation to local valuer. It entrusted the valuation to the local Chartered Engineer-M/s S.G.S. India Pvt. Ltd. During the process of valuation, M/s. S.G.S. India Private Limited found that the report originally issued by M/s. S.G.S. Spain was showing a higher value of goods than the value declared by the appellant to the customs authorities. Wringley India then paid duty on that high value indicated as per the original report of M/s. S.G.S. Spain.

**Department** contended that since the appellant had mis-declared the value of the goods imported, therefore the imported goods should be confiscated under section 111(m) of the Customs Act, 1962.

**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 M/s. S.G.S. Spain. Even after obtaining the valuation certificate from M/s. S.G.S. India Private Limited, the appellant had no grievance. In fact the valuation so done by the local Chartered Engineer was readily accepted by the appellant as evident from the letter issued by them to the Customs Department and the subsequent payment made by them. The High Court was thus convinced 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.

### (2) Whether the smuggled goods can be re-exported from the customs area without formally getting them release from confiscation?

***Hemal K. Shah 2011***

Hemal K. Shah, a passenger, who arrived at AHMEDABAD Airport,on 20-6-2009, had declared the total value of goods as ` 13,500 in the disembarkation slip. On detailed examination of his baggage, it was found to contain Saffron, Unicore Rhodium Black, Titan Wrist watches, Mobile Phones, assorted perfumes, Imitation stones and bags. Since, the said goods were in commercial quantity and did not appear to be a bona fide baggage, the said goods were placed under seizure. The passenger in his statement admitted the offence and showed his readiness to pay duty on seized goods or re-shipment of the said goods. The adjudicating authority determined total value of seized goods as ` 8,39,760/- (CIF) and ` 10,91,691/- (LMV); ordered confiscation of seized goods u/s 111(d) and (m) of the Customs Act, 1962; imposed penalty of ` 2,50,000/- on Hemal K. Shah; confirmed and ordered for recovery of customs duty on the goods with interest and gave an option to redeem the goods on payment of fine of ` 2,00,000/- which should be exercised within a period of 3 months from date of receipt of the order. On appeal by Hemal K. Shah, the Commisisoner(Appeals) allowed re-export of the confiscated goods. Now aggrieved with the order of the Commissioner of Customs (Appeals), department filed Revision Application before the Revisionary Authority under Section 129DD of the Customs Act,

**Whether Re-export of goods can be allowed**

**It was held** 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. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs at the time of his arrival at Airport. So the re-export of said goods cannot be allowed under Section 80 of Customs Act.

**(3) 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?**

**Textoplast Industries 2011 (Bom.)**

As per 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. IN CASE OF Standard Chartered Bank v. Directorate of Enforcement, 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, t**he 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.**

**(4) Can the goods be detained indefinitely without any formal order under section 110 of the Customs Act, 1962?**

**S.J. Fabrics Pvt. Ltd. v. UOI 2011 (268) E.L.T. 475 (Cal.)**

Decision of the case: 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 6 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 6 months on sufficient cause being shown.

**(5) Under what circumstances can the penalty be imposed in terms of section 112(a)(ii) of the Customs Act, 1962?**

**Mr. Henry was the managing director of a company, which had set up a unit in the Cochin Export Processing Zone for manufacture of certain equipments for cent percent export. On the basis of the relevant notifications, the company was entitled to import capital goods and claim benefit of duty exemption on proof of total export. With the passage of time, the business of the company fell and it went into liquidation. In the**

**mean while, the customs authorities issued a notice to show cause against confiscation, in terms of Section 111(o) of the Customs Act, 1962, and in terms of the bond executed by them and also against imposition of penalty, on the company and its directors under Section 112 of the Act. This was on the premise that the Assistant Commissioner of Customs had reported that neither the capital goods nor the raw materials and other goods were used in the production of goods for export in terms of Notification No. 340/86, dated 13-6-1986 and in terms of the bond executed by the company. Briefly discuss, with reference to case law, whether the show cause notice imposing penalty under section 112 is sustainable in law.**

**No, the show cause notice imposing penalty under section 112 of the Customs Act, 1962 is not sustainable in law. The facts of the given case are similar to case of O.T. Enasu v. UOI 2011 (272) E.L.T. 51 (Ker.)**

**It was held that under section 112, the liability to penalty is determined on the basis of duty sought to be evaded. Hence the deciding factor to impose penalty under sec 112(a)(ii) is "duty was sought to be evaded". 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. The non-observance of the conditions of import of the goods in question gives the jurisdiction to impose an order of confiscation in terms of Section 111(o) of the Act. However, while considering the question as to whether penalty has to be imposed on any person for any commission or omission, which has rendered the goods liable for confiscation under Section 111(o), it has to be decided as to whether the goods became liable for confiscation on account of any act of omission or commission attributable to the person in question. Merely because a person is the Managing Director of a company, he would not be fastened with penalty, unless it is shown that he had, by his commissions or omissions, led the goods to be liable for confiscation. 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. Hence Mr. Henry, the managing director could not be made liable to penalty under section 112 of customs Act, 1962.**

## (6) Is the want of evidence from foreign supplier enough to cancel the confiscation order of goods undervalued?

**CCus. v. Jaya Singh Vijaya Jhaveri 2010 (251) E.L.T. 38 (Ker.)**

in order to sustain confiscation order for misdeclaration, the Tribunal wanted evidence from the Singapore supplier and for failure of the department to prove the excess payment of invoice value by the respondent to the Singapore supplier, the Tribunal cancelled the confiscation order. In our view, it is illogical that a person who is a party to undervaluation and sale of car at lower than the actual price will give evidence to the department to prove the case that the invoice raised by him on the respondent is a bogus one and that they received underhand payment of the differential price. It is also to be noted that the respondent has not produced evidence for payment of even the invoice value. The only reasonable inference possible is that it is an arranged transaction between the Singapore supplier and the respondent for import of the car by misdeclaring it's actual value in the invoice. We, therefore, reverse the order of the Tribunal and uphold the order of confiscation and release on redemption fine.

**(7) Ambalal & Co. had smuggled rough diamonds ( like uncut gems like rubies, emeralads) into the country clandestinely without payment of duty. T** During search conducted by customs officer, in the office premises of Ambalal, a large quantity of uncut rubies were recovered. **The Department issued a notice to Ambalal & Co. proposing confiscation of the diamonds under clause (d) of section 111 of the Customs Act, 1962 and imposing penalties on various persons concerned.**

**However, the said goods were unconditionally exempted from the payment of the import duty vide an exemption notification. So, Ambalal & Co. contended the benefit of the said exemption notification. However, the Department denied to give the benefit of exemption meant for imported goods to be given to the smuggled goods.**

**Do you think that Department's action is valid in law?**

**Ans- the action of Department is valid in law.**

**The issue for consideration is whether benefit of exemption meant for imported goods to be given to the smuggled goods.**

**The facts of the question are identical to the case of**

**[ M.Ambalal & Co. 2010 (SC)]**

Fact: The assessee imported rough diamonds into India, which were not disclosed at the time of imports. Hence, the Department treated them as Smuggled Goods and levied duties and penalties on them. However, such rough diamonds are exempt from payment of import duty as per a specific notification. The question is whether the assessee can claim such exemption in respect of such smuggled goods.

It was held that The Customs Act treats imported goods and smuggled goods as two different set of goods. Hence, only those goods which are imported into India based on a valid declaration and as per the provisions of the Act shall alone be considered as Imported Goods and eligible for exemption. **Smuggled Goods not eligible for exemption.**

**(8) Que- The Customs Department seized some documents from the office premises of the assessee, M/S Manmohan under panchnama. The assessee sought copies of the documents seized from his office premises 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. Discuss with reference to decided case law if any whether the stand taken by the Department is correct in law.**

**Ans- Refer Manish Lalit Kumar Bavishi**

**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?**

**Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI 2011 (272) E.L.T. 42 (Bom.)**

Facts of the case: 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 of the case:** 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.

# Service tax

## (1) A society, running renowned schools, allows other schools to use a specific name, its logo and motto and receives a non-refundable amount and annual fee as a consideration. Whether this amounts to a taxable service?

***Mayo College General Council v. CCEx. (Appeals) 2012 (28) STR 225 (Raj)***

the petitioner is a Society established solely for educational purposes. It has been running international renowned schools namely Mayo College, Mayo College Girls School and Mayoor School in Ajmer. The object of the petitioner Society is to establish schools/colleges in India on the lines of the progressive independent schools/colleges established in England and other countries. it allowed other schools to use the name 'Mayoor School', its logo and motto, and as a consideration thereof received collaboration fees from such schools which comprised of a non-refundable amount and annual fee.

Department issued SCN for recovery of service tax, interest and penalty contending that the assese was engaged in providing 'franchise service' to various parties/schools, who were running their institutes using its school name "Mayoor School.

Assessee contended that they did not provide any franchise service to any of the aforesaid four institutions, rather they provided their expertise for the establishment and development of these schools. Neither the franchise fees was collected by the petitioner from these schools nor there is any whisper of the word franchise in the whole agreement and the petitioner does not fall in the net of service tax and thus, is not liable to pay service tax. Further It was contended by the petitioners that they were a non-profit society carrying on non-commercial activities and that their main obligation was to maintain the high standard of the education in the said schools.

The High Court held that when the petitioner permitted other schools to use their name 'Mayoor School', its logo as also its moto. It will amount to providing franchisee service. And 'collaboration fees' was nothing but the 'franchise fees' and it clearly liable to pay service tax.

## (2) 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?

***Wipro Ltd. v. Union of India 2013 (29) S.T.R. 545 (Del.)***

This is an appeal by Wipro Ltd., which was formerly known as Wipro BPO Solutions. It was at the material time engaged in the rendering of IT-enabled services such as technical support services, back-office services, customer-care services etc. to its various clients all of whom were situated outside India, i.e., in UK, USA and Australia. It involved attending to cross-border telephone calls relating to a variety of queries from existing or prospective customers in respect of the products or services of multinational corporations Every call centre requires an employee-strength to attend to the calls. First they have to be recruited and then they have to be trained in following and speaking in different accents peculiar to different countries. **This involves COSTS OF RECRUITMENT AND TRAINING**. Once recruited, the staff has to be brought to the call centres. This **involves costs on transportation** and since most of the work, as stated earlier, is performed from late evening to the early hours in the next morning, the transportation of the staff is at night and that is the reason why the **APPELLANT CALLS IT "NIGHT TRANSPORTATION SERVICES**". When remittances are received from the client-corporations abroad through banks, **THERE ARE BANK CHARGES**. For rendering such services, the appellant used input services such as night transportation services, recruitment services, bank charges etc.

The appellant claimed rebate of the service tax paid by it on such input services, used in providing the output services which were exported during a particular time period, under the said notification. However, the declaration required under para 3.1 of the notification was filed only after the export of the services

The appellant filed two claims under the said notification claiming rebate in respect of service tax paid on such input services. The rebate claims were rejected by the Department on the ground that the prescribed procedure, as laid down in *Notification No.12/2005*, for obtaining the rebate was not followed by the appellant

Notification No. 12/2005-S.T. rebate is granted of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all taxable input services used in providing taxable service exported out of India.

Condition 3.1 of the Notification stipulated that **The provider of taxable service to be exported shall, PRIOR TO DATE OF EXPORT OF TAXABLE SERVICE, FILE A DECLARATION with the jurisdictional Assistant or Deputy Commissioner of Central Excise, describing the taxable service intended to be exported with,-**

**(b) description, value and the amount of service tax and cess payable on input services ACTUALLY REQUIRED to be used in providing taxable service to be exported. Before the** date of export of such taxable service.

**It was held that**

The nature of the services is such that they are rendered on a continuous basis without any commencement or terminal points; it is a seamless service. It involves attending to cross-border telephone calls relating to a variety of queries from existing or prospective customers in respect of the products or services of multinational corporations, it was impossible for the appellant 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.

The High Court noted that the appellant was also required to describe, value and specify the amount of service tax payable on input services actually required to be used in providing taxable service to be exported. The High Court opined that except the description of the input services, the appellant could not provide the value and amount of service tax payable as any estimation was ruled out by the use of the word "actually required" and the bill/invoice for the input services were received by the appellant only after the calls were attended to.

Further, the High Court also observed that one-to-one matching of input services with exported services was impossible since every phone call was export of taxable service but the invoices in respect of the input-services were received only at regular intervals, viz. monthly or fortnightly etc. Thus, the High Court was of the view that in the very nature of things, and considering the peculiar features of the appellant's business, it was difficult to comply with the requirement "prior" to the date of the export.

Furthermore, the High Court elaborated that if particulars in declaration were furnished to service tax authorities within a reasonable time after export, along with necessary documentary evidence, and were found to be correct and authenticated, object/purpose of filing of declaration would be satisfied.

## (3) 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?

***Intercontinental Consultants & Technocrats Pvt. Ltd. v. Union of India 2013 (29) S.T.R. 9 (Del.)***

The petitioner is a company providing consulting engineering services. The petitioner receives payments not only for its service but is also reimbursed expenses incurred by it such as air travel, hotel stay, etc. It was paying service on value of services rendered to its clients. But not paying any service tax on reimbursable expenses under rule 5 of Service tax Determination of value Rules 2006.

Department contended that reimbursable expenses will be included in the value for paying service tax.

the petitioner challenges the constitutional validity of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to the extent it includes re-imbursement of expenses in the value of taxable services for the purposes of levy of service tax.

As per sec 66B service tax is levied at 12% on Value of taxable service. And as per Section 67, value of the taxable service for the purpose of charging service tax under Section 66B as the gross amount charged by the service provider *for such service* provided or to be provided by him. HENCE such expenditure/ costs reimbursed cannot be considered as charged by service provider for such service provided by him.

The High Court elaborated that power to make rules could not exceed or go beyond the section which provides for charge or collection of service tax. The High Court clarified that even though section 94 prescribes to lay every rule framed by Central Government before each House of Parliament, which have power to modify them; the same cannot add any greater force to the Rules than what they ordinarily have as species of subordinate legislation.

It was held that rule 5(1) may also result in double taxation, if expenses like air travel tickets, had already been subjected to service tax. Further double taxation can be imposed only when it is clearly provided for and intended. It can never be enforced by implication.

## (4) Will service tax paid mistakenly arouse service tax liability?

***KVR Construction 2012 (Kar.)***

M/s. KVR Construction is a construction company rendering services under category of "Construction of Residential Complex Service" and are paying the Service Tax in accordance with Finance Act, 1994. They have undertaken the construction of following works **on behalf of** Shri Adichunchanagiri Shikshana Seva **Trust** by virtue of an agreement dated 7-12-2004 :

(a) Medical college (b) AIMS Hospital (c) SJBIT Engineering college (d) SJBIT Engineering Boys Hostel

**and paid service tax** accordingly. However, **later they filed refund claim** for the service tax so paid contending that they were not actually liable to pay service tax as it was exempt.

Department rejected the refund claim on the ground that the refund application filed by the respondent-assessee was beyond the limitation period as stated in section 11B of Central Excise Act. Department did not dispute the

**It was** held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. When once there was no compulsion to pay this service tax, the amount of Rs. 1,23,96,948/- paid by petitioner under mistaken notion, would not be a duty or "service tax" payable in law. Therefore, once it is not payable in law there was no authority for the department to retain such amount. By any stretch of imagination, it will not amount to duty of excise to attract Section 11B. Therefore, it is outside the purview of Section 11B of the Act.

Hence 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.

## (5) Can a software be treated as goods and if so, whether its supply to a customer as per an "End User Licence Agreement" (EULA) would be treated as sale or service?

***Infotech Software Dealers Association (ISODA) v. Union of India 2010 (20) STR 289 (Mad.)***

**Facts:**

⇒ Infotech Software Dealers Association ("ISODA")is a society registered under the Societies Registration Act

⇒ It is engaged in the business of reselling of computer software products falling under 3 categories – (i) Shrink Wrap Software; (ii) Multiple User Software/Paper License and (iii) Internet Download

The writ petitions raised the following three questions:

- Whether software is 'goods'
- Whether supply of software pursuant to the End User License Agreement is to be treated as "sale or service'

- Whether the Parliament has the legislative competency to levy Service Tax on Information Technology Software Services

⇒ Software is 'goods' as defined in Article 366(12) of the Constitution of India

⇒ On the issue as to whether the transaction would amount to sale or service, the High Court was of the view that it would depend upon the nature of individual transaction. The High Court stated that as a transaction could be exclusive sale or exclusive service or composite one i.e., where the element of sales and service both are involved. the **Nature Of Transaction AND The Dominant Intention On Such Transaction** would be relevant.

In the present case, the terms of EULA indicated the dominant intention of parties whereby the developer retained the copyright of each software, be it canned, packaged or customised, and only the right to use with copyright protection was transferred to the subscribers or the members. The High Court opined that in the transactions taking place between the members of ISODA with its customers, **The Software Is Not Sold As Such, BUT ONLY THE CONTENTS OF THE DATA STORED IN THE SOFTWARE ARE SOLD** which would **ONLY AMOUNT TO SERVICE AND NOT SALE.** Further, the High Court was of the view that such transactions could also not be treated as deemed sale under Article 366(29A)(d) of the Constitution of India as that requires a transfer of right to use any goods and in the instant case, the goods as such are not transferred.

⇒ The Parliament has the legislative competency to bring in enactments to include certain services provided or to be provided in terms of Information Technology Software for use in the course or furtherance of business or commerce to mean a taxable service, in terms of the residuary Entry 97 of List I of Schedule VII

The challenge to the amended provision cannot be accepted so long as the residuary power is available. The question as to whether a transaction would amount to sale or service depends upon the individual transaction and on that ground, the vires of a provision cannot be questioned

## (6) Whether the provisions of deemed registration under rule 4(5) of the Service Tax Rules, 1994 are attracted in case of centralized registration?

***Karamchand Thapar & Bros. (Coal Sales) Ltd. v. UOI 2010 (20) STR 3 (Cal.)***

**Decision of the case:**

**The Court observed that every person liable to pay service tax is required under rule 4(1) of the Service Tax Rules, 1994, to apply to the Superintendent of Central Excise for registration in Form ST-1. The deeming provision in rule 4(5) is applicable to registration granted by the Superintendent of Central Excise.**

**The Hon'ble High Court held as under:**

a) The deeming provision under Rule 4(5) of Service Tax Rules, 1994 providing that registration certificate deemed to have been granted if not granted within seven days from the date of receipt of application is applicable only to registration granted by Superintendent of Central Excise and not to centralized registration granted under Rule 4(2).
b) Though no time limit is specified for grant of centralized registration, however the same cannot be indefinitely delayed and be granted within reasonable time and seven days can be considered as reasonable time.
c) The Commissioner or Superintendent is not empowered to grant registration in category other than the category in which registration can be sought by the service provider. Further, they are not empowered to refuse application for registration if the same is properly filled up.
d) The circulars prescribe appropriate action against officers who delay registration

**(7) Mr. Shyam alongwith his family entered into agreement with a Municipality and had taken rooms on rent from it. The Municipality wanted to pass on the burden of Service Tax leviable on room rent to Mr. Shyam. However, Mr. Shyam challenged the validity of the demand for service tax. The primary contentions of Mr. Shyam were as follows:-**

**(a) Under the agreement, there was no provision for payment of service tax. Therefore, the demand for payment of service tax was illegal. Further, service tax was payable by the Municipality and there was no authority with which the Municipality could pass it on to the Mr. Shyam.**
**(b) Since they were small tenants, the Municipality must be treated as units of the State within the meaning of Article 289 of the Constitution of India and, therefore, levy of service tax on the property or on the income of the Municipality was unsustainable.**
**The Revenue contended that service tax was an indirect tax. Though primarily the person liable to pay the tax was Municipality, there was nothing in the law which prevented passing of the liability to Mr. Shyam.**
**You are required to examine whether liability to pay service tax can be passed on to Mr. Shyam in the instant case, with the help of a decided case law.**

**ANS**

Yes, the liability to pay service tax can be passed on to Mr. Shyam in the instant case.
The issue for considerations are

- **(a) Whether demand for payment of service tax was illegal because Under the agreement, there was no provision for payment of service tax**
- **(b) Whether levy of service tax on the property or on the income of the Municipality was unsustainable.**

The facts of the question are similar to the case of Kishore K.S. v. Cherthala Municipality 2011 (Ker.)
As regards to first issue that there was no mention of the service tax liability in the contract, the Court held that this is a statutory right of the service provider/Municipality by virtue of the provisions under law to pass it on to the tenants. It is another matter that they may decide not to pass it on fully or partly. It is not open to the petitioners to challenge the validity of the demand for service tax, in view of the fact that service tax is an indirect tax and the law provides that it can be passed on to the beneficiary. Hence, the service tax can be passed on by the service provider i.e. Municipality.
(b) As regards to Second issue The word "State" in Article 289 does not embrace within its scope the Municipalities. Hence, when service tax is levied on the Municipality there is no violation of Article 289. Moreover, Municipality has not raised the contention that there was a violation of Article 289.
Hence, it was held that Municipality can pass on the burden of service tax to the assessee. Thus, in case where rooms have been rented out by Municipality, it can pass the burden of service tax to the service receivers, that is Mr. Shyam, in the present case.

**(8) Were services provided to the pilgrims taxable under short term accommodation service?**

***Tirumala Tirupati Devasthanams, (2012-HC-AP)***
**Assesse** was running guest houses for the pilgrims. the department issued S.C.N stating that the assesse were liable to get service tax registration under "short term accommodation service" and thus liable to pay service tax. The assesse, on the other hand submitted that they were not club or any other association and thus, were not liable get registered under service tax.
**:** Assessee contested that since they were running guest houses without any profit motive hence they were not liable to pay service tax.
The Andhra Pradesh High Court 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.
***Note:*** *after introduction of negative list, this case would fall in short accommodation service.*

**(9) 10. M/s Mehta Enterprise Limited was engaged in the manufacture of sugar. The Central Government directed him to maintain buffer stock of free sale sugar for the specified period. In order to compensate M/s Mehta Enterprise Limited, the Government of India extended buffer subsidy towards storage, interest and insurance charges for the said buffer stock of sugar.**

**Revenue issued a show cause notice to M/s Mehta Enterprise Limited raising the demand of service tax alleging that amount received by M/s Mehta Enterprise Limited as buffer subsidy was for the services covered within the definition of `storage and warehousing services'.**

**Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.**

**Ans- No, the show cause notice is not sustainable in law. The facts of the given case are similar to case of CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H).**

**It was held that service tax could be levied only if service of `storage and warehousing' was provided to any other person. Nobody can provide service to himself. In the instant case, the assessee stored the goods owned by him. After the expiry of storage period, he was free to sell them to the buyers of its own choice. He had stored goods in compliance to directions of Government of India issued under the Sugar Development Fund Act, 1982. He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. Hence, the act of assessee could not be called as rendering of services.**

**It was further held that just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the assessee becomes `storage and warehouse keeper' nor the Government of India becomes their 'client' in this regard. . Hence service tax is not chargeable on the buffer subsidy provided by the Government for storage of free sale sugar, under the`storage and warehousing service'.**

**(10) LINCOLN HELIOS (INDIA) LTD.(2011)(KAR.)**

The assessee is a manufacturer and supplier of centralized lubrication system and it also undertakes erection and commissioning at site as a part of their business activity. Customer charged for services rendered as well as value of goods. THE assessee has paid the Excise duty paid on whole value including that for services. But The assessee did not pay the service tax on the value of commission and erection services on the ground that it forms part of the finished product and that they have paid the excise duty on the same. However, the authorities held that the assessee is liable to pay the service tax on the value of erection and commissioning services.

**Decision-**

It was held that the excise duty was levied on the aspect of manufacture and service tax is levied on the aspect of services rendered. Therefore, it will not amount to payment of tax twice. Hence assessee will be liable to pay service tax on value of services.

**(11) 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?**

***Idea Mobile Communication Ltd. 2010 (19) STR 18 (Ker.)***

*The question that arose before the Bench in this matter was: whether the value of SIM cards sold by the respondents to their clients was includible in the value of telecommunication service or whether the same would be taxable as sale of goods under the Sales Tax Act.*

*The High Court observed that the telephone connection could not be given without the activation of SIM card and it was impossible for the customer to get service without the SIM card and hence the SIM card is an essential part of the service. The SIM card has no intrinsic value or purpose other than use in mobile phone and therefore, the SIM cards are not sold but supplied as part of service. Hence, the value of the SIM card supplied by the respondent was held to be includible in the taxable value for Service tax purposes.*

### (12) Aakar advertising (2009)(Raj.)- IMP

Penalty (Service tax) - Quantum of - Whether under Section 76 of Finance Act, 1994 reducible below the minimum prescribed therein - Minimum amount of penalty prescribed in Section 76 by use of expression 'not less than' –

*If reasonable cause is not shown, and penalty is required to be levied, then, the minimum penalty prescribed cannot be further reduced, under the garb of any existing discretion; assumed to be vesting with the authority, including the Tribunal. Where the two limits have been prescribed, being the minimum and upper limit, then obviously the free play is available between the two limits only, and the discretion can be exercised within those limits, but then that does not mean, that the authorities have any power to impose penalty less than the minimum prescribed by the section.*

# AMENDMENT FOR NOV 13

## EXCISE

### CENVAT CREDIT RULES, 2004

**Recovery under rule 14 in case OF FAILURE TO PAY the amount**

**(i) ON REMOVAL OF INPUTS/CAPITAL GOODS AS SUCH,**
**(ii) REMOVAL OF CAPITAL GOODS AFTER USE AND**
**(iii) WRITING OFF THE VALUE OF THE INPUTS/CAPITAL GOODS**

***"Explanation. -*** If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken."

**Following are the Rules 3(5), 3(5A), 3(5B)**

### (i) Removal of inputs/ capital goods as such Rule 3(5)

- → Where inputs or capital goods,
- → On which cenvat credit has been taken
- → **Are removed as such** from the factory, or premises of the provider of output service
- → **The manufacturer or provider of output service**
- → Shall **pay an amount**
- → **Equal to the credit availed** in respect of such inputs or capital goods and

→ Such removal shall be made under the cover of an invoice referred to in rule 9

## (ii) Rule 3(5A)

**If the capital goods, on which CENVAT credit has been taken,**
**are REMOVED After Being Used,**

→ **whether as capital goods or**

→ **as scrap or waste,**

**the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CEVAT Credit, namely:-**

**(a) for computers and computer peripherals :**

| |
|---|
| **for each quarter in the first year @ 10%** |
| **for each quarter in the second year @ 8%** |
| **for each quarter in the third year @5%** |
| **for each quarter in the fourth and fifth year @1%** |

**(b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:**

**PROVIDED THAT If the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.‖.**

## (iii) Rule 3(5B) of CCR 2004 Reversal of cenvat credit

If the value of any

(i) inputs or

(ii) capital goods

Before Being Put To Use

→ on which CENVAT credit has been taken

→ is fully written off **or partially** OR any provision has been made in books of account to write it off fully or **partially**

→ then, the manufacturer ***or service provider, as the case may be,*** shall pay an amount equivalent to the CENVAT credit taken on such inputs or capital goods.

**Provided that** if the said input or capital goods is SUBSEQUENTLY USED in the manufacture of final products or the provision of **[output]** services the manufacturer ***or output service provider, as the case may be,*** shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to other provisions of these rules.

## CENTRAL EXCISE RULES 2002

AMENDMENT IN **Time period for computing interest on refund arising out of finalization of provisional assessment**

Mr. Raja, a manufacturer was unable to determine the value or Rate of duty applicable to his product in the month of April 2013. Therefore, he applied for provisional assessment and paid excise duty provisionally. However, subsequently on finalization of the provisional assessment on 20.08.2013, Mr. Raja was eligible for refund. So he filed the refund application on 25.08.2013.

Mr. Shubh received the refund along with interest on 31.08.2013. Interest on delayed refund was computed from 01.05.2013 till 31.8.2013. Discuss the correctness or otherwise of the manner of computation of interest.

***Ans- the computation of interest is wrong.*** No interest will be paid on the refund as the refund is paid before the expiry of three months from the date of refund application. ( Now **Amended w.e.f- 1-3-2013)**

## Rule 7 Provisional assessment

1. **Order of provisional assessment:-**

   Where the assessee is Unable To Determine

   → **the value** of excisable goods or

   → **the rate of duty** applicable thereto,

   He may request AC/DC, in writing giving reasons for payment of duty on provisional basis and AC/DC, may order allowing payment of duty on provisional basis at such rate or on such value as may be specified by him.

2. **Furnishing of bond:-= (Duty on final assessment ---- duty on prov. Assessment)**

   → **The payment of duty on provisional basis may be allowed,**

   → **If assessee executed a bond in proper form ( Form B-2)**

   → **With such surety or security in such amount as AC/DC deem fit,**

   → **Binding the assessee for payment of difference between the amounts of duty as may** be finally assessed and the amount of duty provisionally assessed.

3. **Final Assessment:-=(with in 6 months + Extension)**

   AC/DC shall pass order for final assessment, as soon as the relevant information, required for finalizing the assessment, is available,

   But within a period not exceeding six months from the date of the communication of the order issued under sub-rule (1).

   **Provided that this period may be extended**

   a) by the Commissioner for a further period not exceeding six months and
   b) by Chief Commissioner for such further period as he may deem fit.

4. **Interest payable by assessee:-( final duty more than provisionally assessed)**

   The assessee shall be liable to pay interest

   a) On any amount payable to Central Government, consequent to order for final assessment
   b) At the rate of 18% p.a.

c) From the first day of the month succeeding the month for which such amount is determined till the date of payment.

**5. Interest payable to assessee:-(final duty less than provisionally assessed)**

~~Where assessee is entitled to refund consequent to final assessment, subject to sub-rule (6), there shall be paid an interest~~

~~a) on such refund~~

~~b) At the rate of 6% p.a.~~

c) ~~From the first day of the month succeeding the month for which such refund is determined, till the date of refund.~~

"(5) Where the assessee is entitled to a refund consequent to an order of final assessment under sub-rule (3), then, subject to sub-rule (6), there shall be paid an interest on such refund as provided under section 11BB of the Act." **( Amended w.e.f- 1-3-2013)**

## ADVANCE RULING

**(i) Benefit of advance ruling extended to Resident Public Limited Companies**

**(ii) EARLIER Application for Advance Ruling in CUSTOM can be made by Resident public limited company. NOW can also make application in relation to EXCISE AND SERVICE TAX MATTERS w.e.f 1-3-2013**

***Explanation***.— For the purposes of this notification.-

**(1)** "public limited company" shall have the same meaning as is assigned to "public company" in clause (iv*)* of sub-section (1) of section 3 of the Companies Act , 1956 and shall include a private company that becomes a public company by virtue of section 43A of the said Companies Act, 1956;

**(2)** "resident" shall have the same meaning as is assigned to it in clause (42) of section 2 of the Income-tax Act, 1961 in so far it applies to a company.

Examine the validity of the following statements:

Only public sector companies are notified as the class or category of residents who can apply for advance ruling in case of specified matters relating to central excise.

**Ans- the statement is invalid.**

## APPEALS

**RECOVERY PROCEDURE AGAINST CONFIRMED DEMAND ORDERS – CBEC AMENDS THE EXISTING PROCEDURES**

CBEC has amended the procedure of initiation of recovery proceedings against a confirmed demand in the following manner:

**(a) Where NO appeal is filed with Commissioner (Appeals)/ CESTAT**

Recovery to be initiated after the expiry of statutory period for filing appeal i.e 60 days / 90 days.

**(b) Where an appeal is filed with Commissioner (Appeals)/ CESTAT, WITHOUT a stay application**

Recovery to be initiated after filing of such appeal, without waiting for the statutory period of filling an appeal to be exhausted.

**(c) Where an appeal is filed WITH a stay application with Commissioner (Appeals)/ CESTAT**

Recovery to be initiated ***30 days after the filing of appeal***, if no stay is granted, otherwise as per the conditions of the stay order.

Further, apart from above, recovery proceedings will be initiated IMMEDIATELY in the following cases :

• Where Commissioners (Appeals) confirms demand in the order in original

• Where Tribunal or High Court confirms the demand, with no stay in operation.

**Note- however various courts have given stay against this circular.**

## DEMAND & REFUND

<table>
<tr><td>28AAA</td><td>(1) Issued instrument to PAPPU under FTA 1992 – under any reward/incentive scheme or duty exemption/remission bestowing financial benefits (2) HE has obtained that instrument by means of Fraud, misrepresentation of fact/ suppression of Facts (3) the instrument is transferred to another person say IMPORTER ( Ms. PARO) (4) Ms PARO imported goods against such instrument without payment of import duty (5) now w.e.f F. ACT 2012- DUTY can be recovered from person ( Pappu) to whom instrument was inssued alongwith interest 18% p.a- SCN issued for recovery. If he fails to pay then recovery action taken against him. (6) if however recovery action has already been taken against IMPORTER (PARO) then sec 28AAA will not be invoked against PAPPU.</td></tr>
<tr><td colspan="2"><u>PROVISIONS OF SECTION 28AAA OF THE CUSTOMS ACT, 1962 MADE APPLICABLE TO EXCISE DUTY ALSO</u><br>Provisions of section 28AAA of the Customs Act, 1962 shall be applicable in regard to like matters in respect of the duties imposed by section 3 of the Central Excise Act, 1944, subject to the necessary modifications and alterations which the Central Government considers necessary and desirable to adapt those provisions to the circumstances.</td></tr>
</table>

## *CUSTOM LAW-- BAGGAGE*

<table>
<tr><td>Rule 6</td><td>Passenger returing to india shall be allowed clearance free of duty of the jewellery in his bonafide baggage – returning after residing abroad over 1 year<br>For gentleman passenger- Rs 50000<br>For lady passenger- Rs 100000</td></tr>
<tr><td>Rule 8</td><td>Permanent transfer of residence<br>IN addition to general free allowance under rule 3 and 4, following other exemptions<br>(1) used personal effect (2) jewellery upto 50000 for gentleman and 100000 for lady passenger<br>Conditions
<table>
<tr><th>conditions</th><th>relaxation</th></tr>
<tr><td>Minimum stay of 2 years abroad,<br>Immediately preceding the date of his arrival on transfer of his residence</td><td>Short fall of upto 2 months in stay abroad can be condoned by AC<br>If the early return is on account of<br>- terminal leave being availed by the passenger<br>- or any other special circumstances.</td></tr>
<tr><td>Total stay in India on short visit during the 2 preceding years should not exceed 6 months and</td><td>Commissioner may condone short visit in excess of 6 months in deserving cases</td></tr>
<tr><td>Passenger has not availed this concession in preceding 3 years</td><td>No relaxation</td></tr>
</table></td></tr>
<tr><td colspan="2">Further exemption allowed on Jewellery taken out earlier by the passenger or by a member of his family from India.- if AC is satisfied regarding jewellery taken outside india.</td></tr>
<tr><td colspan="2">Rule 10- A crew member of a vessel/aircraft is allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use while returning from a foreign journey upto a value of ` 1500.</td></tr>
</table>

***Mr. Ajay, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2013. His wife also joined him in London on 01.12.2013. The following details are submitted by them with the Customs authorities on their return to India on 30.04.2014.-***

***(a) used personal effects worth ` 80,000***

***(b) a music system worth ` 35,000***

***(c) the jewellery brought by Mr. Ajay for ` 48,000 and the jewellery brought by his wife worth ` 20,000***

***Determine their eligibility with regard to duty free allowance.***

***Ans***

***As per rule 3 of Baggage Rules, 1998, used personal effects is exempt and general free allowance is ` 35,000 per passenger. Therefore no duty on personal effects and a music system is also exempt due to GFA.***

***However DUTY ON jewellery is exempt if the person is of Indian origin who had stayed abroad for period exceeding one year.***

***Exemption for jewellery is as follows:-***

***Gentleman Passenger - ` 50,000/-***

***Lady Passenger - ` 1,00,000/-***

***Thus, there is no duty liability on the jewellary brought by Mr. Ajay as his stay abroad is more than 1 year. However, duty on jewellery of his wife will be leviable as she stayed abroad for a period less than 1 year. She has to pay custom duty on jewellery.***

## *SERVICE TAX*

***CONSTRUCTION SERVICE***

**WITH EFFECT FROM MARCH 01, 2013,** service tax abatement i) for **Residential Unit** having carpet area upto 2000 square feet **OR** where the **amount charged is less than rupees 1 crore;- 75%**

(ii) for **other than the (i) above** -70%.

**FROM MAY 8, 2013**

Service tax abatement has been decreased from 75% to 70% in case of commercial construction and high-end residential construction. However, abatement of 75% would be available in case of residential units which fulfil the following **two conditions cumulatively**:

(i) the carpet area of the unit is less than 2000 square feet; and

(ii) the amount charged for the unit is less than `1 crore;

Thus, residential units having carpet area of 2000 sq ft or more or where the amount charged is `1 crore or more would be considered as high-end construction eligible for lower abatement of 70%.

Que- Examine the applicability of Service tax for the month of April, 2013 in the following cases:-

(a) A residential unit whose carpet area is less than 2000 sq. ft. and the amount charged is ` 1 crore.

(b) Delhi Public School provides transport facility to its students through a fleet of buses and cabs owned by it.

Ans-

(i) Before 8 may – no service tax, after 8 may 2013 - service tax @ 12.36% on `30 lakh (i.e 1crore less 70% abatement)

(ii) W.e.f- 1-4-2013 liable to pay service tax on the transport facility provided by it to its students

| AMENDMENT IN MEGA EXEMPTION | ANALYSIS |
|---|---|

| | |
|---|---|
| **(1)** Services Provided To ~~**Or By**~~ **(W.E.F 1-4-2013)** An Educational Institution In Respect Of Education Exempted from service tax, **BY WAY OF**,-<br>(a) Auxiliary Educational Services; or<br>(b) Renting of immovable property; | <br>w.e.f. 01.04.2013- service tax leviable on auxiliary educational services and renting of immovable property provided **BY** an educational institution. |
| **(2)** ~~Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957, relating to original literary, dramatic, musical, artistic works or cinematograph films~~;<br>**(W.E.F 1-4-2013)**<br>Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright,-<br>(a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 , relating to original literary, dramatic, musical or artistic works; or<br>(b) of cinematograph films **for exhibition in a cinema hall or cinema theatre;”;** | <br>After amendment, exhibition of cinematograph films in a place other than cinema hall or theatre, will be taxable. |
| **(3)** Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, ~~**AND** (ii) a licence to serve alcoholic beverages~~; **(W.E.F 1-4-2013)** | w.e.f – 1-4-2013 - only non air-conditioned/non-centrally air-heated restaurants can claim exemption. |
| **(4)** Services by way of transportation by rail or a vessel from one place in India to another of the following goods -<br>~~**(a)** petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);~~<br>**(b)** relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;<br>**(c)** defence or military equipments;<br>~~**(d)** postal mail or mail bags;~~<br>~~**(e)** household effects;~~<br>**(f)** newspaper or magazines registered with the Registrar of Newspapers;<br>**(g)** railway equipments or materials;<br>**(h)** agricultural produce;<br>**(i)** foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or<br>**(j)** chemical fertilizer and oilcakes; |  |

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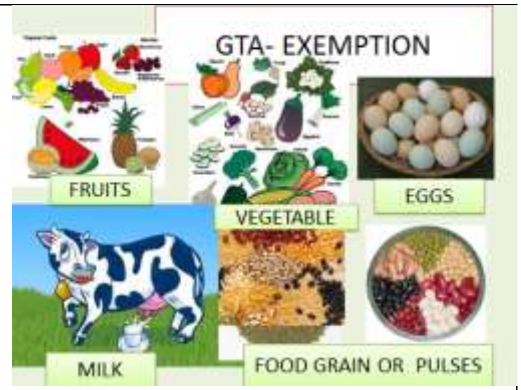
<td>
~~(5) Services provided by a goods transport agency by way of transportation of -~~<br>
~~(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;~~<br>
~~(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed Rs 1500/- ; or~~<br>
~~(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed Rs 750/- ;~~<br>
**(W.E.F 1-4-2013)**<br>
Services provided by a goods transport agency, by way of transport in a goods carriage of,-<br>
(a) agricultural produce;<br>
(b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs 1500/;<br>
(c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed Rs 750/;<br>
(d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;<br>
(e) chemical fertilizer and oilcakes;<br>
(f) newspaper or magazines registered with the Registrar of Newspapers;<br>
(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or<br>
(h) defence or military equipments;”;
</td>
<td>


</td>
</tr>
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<td>
~~(6) Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;~~<br>
-**(W.E.F 1-4-2013)**
</td>
<td>


**w.e.f -1-4-2013- Exemption to parking of vehicles withdrawn**
</td>
</tr>
<tr>
<td>
**(7)** Services provided to Government, a local authority or a governmental authority BY WAY OF -<br>
**(a)** carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or<br>
**(b)** repair or maintenance of a vessel ~~or an aircraft;~~
</td>
<td>
With effect from 01.04.2013, service tax leviable **repair or maintenance of Government aircrafts.**
</td>
</tr>
</table>

| | |
|---|---|
| (W.E.F 1-4-2013) | |
| ("26A). Services of life insurance business provided under following schemes – (INSERTED W.E.F-24-12-12)<br>(a) Janashree Bima Yojana (JBY); or<br>(b) Aam Aadmi Bima Yojana (AABY) | |
| **(8)** Services by way of slaughtering of ~~BOVINE~~ animals; [DELETED W.E.F 7-8-12] |  |
| | |

**Exemption upto `25 lakh available to entity registered under section 12AA of the Income tax Act, 1961 providing services for advancement of "any other object of general public utility" withdrawn**

The exemption available to entity registered under section 12AA of the Income tax Act, 1961 providing services for advancement of "any other object of general public utility" up to ` 25 lakh has been withdrawn. The said amendment has been given effect to by modifying the definition of "**charitable activities**". The threshold exemption as available to all other taxable services will continue to be available up to ` 10 lakh.

***Example***

*Answer with respect to applicability of service tax in the following cases during the month of June, 2013:*

*(i) Transport facility provided by a School to its students through a fleet of buses and cabs owned by the School.*

*(ii) Transport facility provided by a School to its students through a private Bus/Cab Operator.*

*(iii) Service provided by a private transport operator to a School in relation to transportation of students to and from a School.*

*(iv) Services provided by way of vehicle parking to general public in a shopping mall.*

*(v) Service provided in relation to repair or maintenance of aircraft owned by a State Government.*

*(vi) Services of a NGO registered under section 12AA of the Income tax Act, 1961 working for the rehabilitation of disabled. The aggregate value of taxable services of the NGO is ` 20 lakh.*

*(vii) Exhibiting movies on television channels.*

*(viii) Transport of foodstuff, agricultural produce, chemical fertilizers and newspaper registered with the Registrar of Newspapers by a goods transport agency in a goods carriage.*

*(ix) Transportation of petroleum and petroleum products and household effects by railways.*

*(x) Transportation of postal mails or mail bags by a vessel.*

*Ans-* (i) Taxable. (ii) Taxable (iii) Exempt (iv) Taxable (v) Taxable (vi) Taxable (vii) Taxable (viii) Exempt (ix) Taxable (x) Taxable

**Exemption to specified export promotion schemes-Focus Market Scheme, Focus Product Scheme and Vishesh Krishi and Gram Udyog Yojana**

The taxable services provided or agreed to be provided against the following duty credit scrips by a person located in the taxable territory are exempt from service tax:-

(i) Focus Market Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance the Foreign Trade Policy.

(ii) Focus Product Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with the Foreign Trade Policy.

(iii) Vishesh Krishi and Gram Udyog Yojana (Special Agriculture and Village Industry Scheme) duty credit scrip issued to an exporter by the Regional Authority in accordance with the Foreign Trade Policy.

***[Notification No.s 6/2013 to 8/2013-ST dated 18.04.2013]***

**Clarification in respect of notices/ reminder letters issued for life insurance policies -regarding.**

It has been represented by life insurance companies that in terms of the practice followed, reminder notices/letters are being issued to the policy holders to pay renewal premiums. Such reminder notices only solicit furtherance of service which if accepted by policy holder by payment of premium results in a service. Clarification has been desired whether service tax needs to be paid on the basis of such reminders.

The matter has been examined. Under the Point of Taxation Rules 2011, the point of taxation generally is the date of issue of invoice or receipt of payment whichever is earlier. The invoice mentioned refers to the invoices as issued under Rule 4A of the Service Tax Rules 1994. No tax point arises on account of such reminders. Thus it is clarified that reminder letters/notices for insurance policies not being invoices would not invite levy of service tax. In case of issuance of any invoice, point of taxation shall accordingly be determined.

The above clarification is issued only for life insurance sector.

***Subject: Tax on service provided by way of erection of pandal or shamiana - regarding.***

*Several representations have been received seeking clarification on the levy of service tax on the activity of preparation of place for organizing event or function by way of erection/laying of pandal andshamiana. The doubt that has been raised is that this may be a transaction involving "transfer of right to use goods" and hence deemed sale.*

*2. The issue has been examined. "Service" defined in section 65B (44) of the Finance Act, 1994, includes a 'declared service'. Activity by way of erection of pandal or shamiana is a declared service, under section 66E 8(f). The process of erection of Pandal or shamiana is a reasonably specialized job and is carried out by the supplier with the help of his own labour. In addition to the erection of pandal or shamianathe service is generally coupled with other services like supply of crockery, furniture, sound system, lighting arrangements, etc.*

*3. For a transaction to be regarded as "transfer of right to use goods", the transfer has to be coupled with possession. Andhra Pradesh High Court in the case of Rashtriya Ispat Nigam Ltd. Vs. CTO [1990 77 STC 182] held that since the effective control and possession was with the supplier, there is no transfer of right to use. This decision of the Andhra Pradesh High Court was upheld by the Supreme Court subsequently [2002] 126 STC 0114. In the matter of Harbans Lal vs. State of Haryana – [1993] 088 STC 0357 [Punjab and Haryana High Court], a view was taken that if pandal, is given to the customers for use only after having been erected, then it is not transfer of right to use goods.*

*4. In the case of BSNL Vs. UOI [2006] 3 STT 245 Hon'ble Supreme Court held that to constitute the transaction for the transfer of the right to use the goods, the transaction must have the following attributes:-*

*a. There must be goods available for delivery;*
*b. There must be a consensus ad idem as to the identity of the goods;*
*c. The transferee should have a legal right to use the goods and, consequently, all legal consequences of such use including any permissions or licenses required therefor should be available to the transferee;*
*d. For the period during which the transferee has such legal right, it has to be the exclusion of the transferor : this is the necessary concomitant or the plain language of the statute, viz., a "transfer of the right to use" and not merely a license to use the goods:*
*e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.*

*5. Applying the ratio of above judgments and the test formulated by Hon'ble Supreme Court, the activity of providing pandal and shamiana along with erection thereof and other incidental activities do not amount to transfer of right to use goods. It is a service of preparation of a place to hold a function or event. Effective possession and control over the pandal or shamiana remains with the service provider, even after the erection is complete and the specially made–up space for temporary use handed over to the customer.*

*6. Accordingly services provided by way of erection of pandal or shamiana would attract the levy of service tax.*

# AMENDMENT FOR MAY 13

## Excise

### (1) Sec 4(3) (b) Related Person

Persons shall be **deemed to be related** if

i. They are ICU or **(Refer Note)**
ii. They are relatives or **( refer Sec 2(41) of Companies Act)**
iii. Amongst them the buyer is a relative **and** a distributor of the assessee **or** a sub- distributor of such distributor, or

**Bombay tyres international (SC)** these words mean that only that distributor who is relative also shall be treated as related person.

iv. They are so associated that they have interest directly or indirectly in the business of each other

***Explanation.*** — In this clause -

(i) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manners, namely :-

(A) if one owns or controls the other;
(B) where the undertakings are owned by firms, if such firms have one or more common partners;
(C) where the undertakings are owned by **BODIES CORPORATE,**-
  (I) if one body corporate manages the other body corporate; or
  (II) if one body corporate is a subsidiary of the other body corporate;
  (III) or
  (IV) if the bodies corporate are under the same management; or
  (V) if one body corporate exercises control over the other body corporate in any other manner;

(D) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm, —
   (I) hold, directly or indirectly, not less than fifty per cent. of the shares, whether preference or equity, of the body corporate; or
   (II) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate;
(E) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management;
(F) if the undertakings are owned or controlled by the same person or by the same group;
(G) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the foregoing sub-clauses.

***Explanation 1.*** — For the purposes of this clause, two bodies corporate shall be deemed to be under the same management, -

(i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or
(ii) if the managing director or manager of one such body corporate is the managing director or manager of the other; or
(iii) if one such body corporate holds not less than one-fourth of the equity shares in the other or controls the composition of not less than one-fourth of the total membership of the Board of directors of the other; or
(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with relatives of such directors or employees of the first mentioned body corporate) one-fourth of the directors of the other; or
(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in the other; or
(vi) if the same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares in one body corporate, also hold not less than one-fourth of the equity shares in the other; or
(vii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or
(viii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or
(ix) if the directors of one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

***Explanation II.***— If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of, or controlled by, the group shall be deemed to be under the same management.

***Explanation III.*** — If two or more bodies corporate under the same management hold, in the aggregate, not less than one-fourth equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

***Explanation IV.*** — In determining whether or not two or more bodies corporate are under the same management, the shares held by financial institutions in such bodies corporate shall not be taken into account.

***Illustration***

Undertaking B is inter-connected with undertaking A and undertaking C is inter-connected with undertaking B. Undertaking C is inter-connected with undertaking A; if undertaking D is inter-connected with undertaking C, undertaking D will be inter-connected with undertaking B and consequently with undertaking A; and so on.

***Explanation V.*** — For the purposes of this clause, "group" means a group of—

(i) two or more individuals, associations of individuals, firms, trusts, trustees or bodies corporate (excluding financial institutions), or any combination thereof, which exercises, or is established to be in a position to exercise, control, directly or indirectly, over any body corporate, firm or trust; or

(ii) associated persons.

***Explanation VI.***— For the purposes of this clause,—

(I) a group of persons who are able, directly or indirectly, to control the policy of a body corporate, firm or trust, without having a controlling interest in that body corporate, firm or trust, shall also be deemed to be in a position to exercise control over it;

(II) "associated persons" —
- (a) in relation to a director of a body corporate, means —
  - (i) a relative of such director, and includes a firm in which such director or his relative is a partner;
  - (ii) any trust of which any such director or his relative is a trustee;
  - (iii) any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of directors;
  - (iv) any other body corporate, at any general meeting of which not less than one-fourth of the total number of directors of such other body corporate are appointed or controlled by the director of the first mentioned body corporate or his relative, whether acting singly or jointly;
- (b) in relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm; and
- (c) in relation to the trustee of a trust, means any other trustee of such trust;

(III) where any person is an associated person in relation to another, the latter shall also be deemed to be an associated person in relation to the former;]

# CENVAT CREDIT RULES 2004

## (1) Define capital goods -- Rule 2

### (a) Capital Goods means

#### (A) The following goods namely

(i) All goods falling under Chapter 82, 84, 85, 90 heading no. 6805, grinding wheels and the like, and parts thereof falling under heading 6804 Of the first Schedule to central excise tariff act 1985

(ii) Pollution control equipment

(iii) Components, spares and accessories of the goods specified at (i) and (ii) above;

**Author Note-** "The components, spares and accessories may fall under any chapter but they should be components, spares and accessories of the capital goods.

(iv) Moulds and dies, jigs and fixtures;

(v) Refractories and refractory materials;
(vi) Tubes and pipes and fittings thereof;
**(vii)**Storage tank **AND**
**(viii) MOTOR VEHICLES OTHER THAN THOSE FALLING UNDER TARIFF HEADINGS 8702, 8703, 8704, 8711 AND THEIR CHASSIS,‖; [BUT INCLUDING DUMPERS AND TIPPERS],]**

## USED

(1) IN THE FACTORY OF THE MANUFACTURER of the final products, **but does not include any equipment or appliances used in an office or**

**[(1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or [for Nov 11]**

**(2) FOR PROVIDING OUTPUT SERVICES**

**Author note-** *"Air conditioner and refrigeration equipment and computers would be eligible to cenvat credit as capital goods. The only condition is that the manufacturers should use them in the manufacturer of final product. For e.g. an air-conditioner used in the office premises or a computer used in the office premises of the factory shall not be eligible for cenvat credit."*

~~[(B)~~ **~~Motor vehicle FALLING UNDER TARIFF HEADINGS 8702, 8703, 8704, 8711 AND THEIR CHASSIS~~**

**~~registered in the name of provider of output service for providing specified taxable service~~** ~~which are courier agency, tour operator, Rent a cab Schedule, cargo handling agency, goods transport agency, outdoor caterer and pandal and shamiana contractor.~~

(B) motor vehicle Designed For Transportation Of Goods including their chassis registered in the name of the service provider, WHEN USED FOR -
- (i) providing an output service of Renting Of Such Motor Vehicle; or
- (ii) Transportation of inputs and capital goods used for providing an output service; or
- (iii) providing an output service of Courier Agency;]

**(C) motor vehicle Designed To Carry Passengers including their chassis, registered in the name of the provider of service, WHEN USED FOR providing output service of -**
- **(i) transportation of passengers; or**
- **(ii) renting of such motor vehicle; or**
- **(iii) imparting motor driving skills;]**

**~~[(C) dumpers or tippers, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985, registered in the name of provider of output service for providing specified taxable services which are~~**
- **~~⇛ site formation and clearance, excavation and earthmoving and demolition,~~**
- **~~⇛ mining of mineral oil or gas~~**

**(D) COMPONENTS, SPARES AND ACCESSORIES OF MOTOR VEHICLES WHICH ARE CAPITAL GOODS FOR THE ASSESSEE;‖;**

**Author note- Limited availability of CENVAT credit on Motor vehicles to manufacturers as CG.**

**8702 = MOTOR VEHICLES FOR THE TRANSPORT OF 10 OR MORE PERSONS,**

**8703 = MOTOR CARS AND OTHER MOTOR VEHICLES PRINCIPALLY DESIGNED FOR THE TRANSPORT OF PERSONS**

**8704 = MOTOR VEHICLES FOR THE TRANSPORT OF GOODS**

**8711 = MOTORCYCLES (INCLUDING MOPEDS) AND CYCLES FITTED WITH AN AUXILIARY MOTOR, WITH OR WITHOUT SIDE- CARS;**

## (2) Define input

## Rule 2(k) "input" means –

(i) All Goods used in the factory by the manufacturer of the final product; or

(ii) Any Goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing ANY OUTPUT SERVICE;

**BUT EXCLUDES -**

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

~~(B) any goods used for -~~

~~(a) construction of a building or a civil structure or a part thereof; or~~

~~(b) laying of foundation or making of structures for support of capital goods,~~

~~except for the provision of any taxable service specified in sub-clauses (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;~~

**~~[ Port services , Other port services , Airport services , Construction in respect of commercial or industrial buildings or civil structures , Construction services in respect of residential complexes , Works contract services ]~~**

**[(B) Any Goods Used For -**

**(a) construction or execution of works contract of a building or a civil structure or a part thereof; or**

**(b) laying of foundation or making of structures for support of capital goods,**

**EXCEPT for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]**

(C) capital goods EXCEPT when used as parts or components in the manufacture of a final product;

(D) Motor Vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are Used Primarily For Personal Use Or Consumption Of Any Employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

***EXPLANATION.*** - For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;]

## 943/4/2011----How is the "no relationship whatsoever with the manufacture of a final product" to be determined?

Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression "no relationship whatsoever with the manufacture of a final product" must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.

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| **CIRCULAR NO.964/07/2012-CX** |
| **CLASSIFICATION OF STRUCTURAL COMPONENTS OF BOILER AND ADMISSIBILITY OF CENVAT CREDIT ON THESE STRUCTURAL COMPONENTS** |
| **CBEC vide Circular No 964/07/2012-CX dated 02.04.2012 clarified that those structural components which are to be used essentially as a part of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff. It is further clarified that since these structural components are nothing but the parts and accessories of the Boiler, they would be covered by the definition of inputs under rule 2(k)(iii) of the CENVAT Credit rules, 2004 (i.e. all goods for generation of electricity & steam). Further these structural components shall not be hit by the exclusion clause to the said definition of inputs, as these are not used for laying of foundation or making of structures for support of capital goods, but are essentially the part of said Boilers.** |
| **Author note- In personal opinion of author parts & components of Boiler treated as Capital goods.** |

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|---|
| **Circular No 966/09/ 2012-CX** |
| **Sub: Clarification regarding classification of Structural Components of Boiler and Admissibility of CENVAT Credit on these Structural Components, reg-** |
| Clarifications have been sought as to whether in view of the said circular, CENVAT Credit will be admissible on structural components used for the support of the Capital Goods. |
| **it is once again reiterated that in terms of the Rule 2(k) of the CENVAT Credit Rules, 2004, while CENVAT Credit is available in respect of parts of Boiler, the same is not admissible in respect of the structural components used for laying of foundation or making of structures for support of capital goods/ Boiler. The above clarification is in conformity with the views expressed in the judgments of the Hon'ble Supreme Court/ different benches of the CESTAT.** |

## (12) 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?

**FLEX ENGINEERING LTD.(2012)(sc)**

(1) The appellant-assessee, is engaged in the manufacture of various types of packaging machines, marketed as Automatic form fill and seal machines (for short "F&S machines"). According to the assessee, the machines are 'made to order', in as much as all the dimensions of the packaging/sealing pouches, for which the F&S machine is required, are provided by the customer.
**(2)** The purchase order contains the following inspection clause:"**Inspection/Trial will be carried out at your works in the presence of our Engineer before dispatch of equipment for the performance of the machine.**"
(3) Flexible Laminated Plastic Film in roll form & Poly Paper which are duty paid are used for testing, tuning and adjusting various parts of the F&S machine in terms of the afore-extracted condition in the purchase order.

THE assessee was availing cenvat credit of these.

Department contended that the manufacture of F&S machine was complete without testing and re-adjusting and the process of tesing was not manufacture and therefore cenvat credit in respect of flexible laminated plastic film & poly film will not be allowed because these are not input.

It was held that the process of testing the customised F&S machines is inextricably connected with the manufacturing process, in as much as, until this process is carried out in terms of the afore-extracted covenant in the purchase order, the manufacturing process is not complete; the machines are not fit for sale and hence not marketable at the factory gate. We are, therefore, of the opinion that the manufacturing process in the present case gets completed on testing of the said machines and 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

## (3) define output service

~~Output Service means~~
- ~~Any taxable service ***(excluding GTA service)***~~
- ~~Provided by the provider of taxable service~~
- ~~To a customer, client, subscriber, policyholder or any other person.~~

### Section 2(p)- Output Service

"Output Service" means
Any Service provided by a provider of service located in the taxable territory
BUT SHALL NOT INCLUDE A SERVICE, -
(1) specified in section 66D of the Finance Act; or
(2) where the whole of service tax is liable to be paid by the recipient of service.]

## (4) Define INPUT SERVICE

## -Rule 2(l) "input service" MEANS

## Any Service, -

(i) used by a provider of ~~taxable service~~ **OUTPUT SERVICE** for providing an output service; or
(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

And Includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

BUT EXCLUDES ~~SERVICES,-~~

~~(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services),[~~ ~~**Architect's services , Port services, Other port services, Airport services , Construction in respect of commercial or industrial buildings or civil structures, Construction services in respect of residential complexes ,Works contract services ]**~~

~~**IN SO FAR AS THEY ARE USED FOR -**~~

~~(a) construction of a building or a civil structure or a part thereof; or~~

~~(b) laying of foundation or making of structures for support of capital goods,~~

~~except for the provision of one or more of the specified services; or~~

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are Used For -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

EXCEPT for the provision of one or more of the specified services; or]

~~(B) specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act, [~~~~**Rent-a-cab scheme operator's services, Supply of tangible goods services]**~~

~~IN so far as they relate to a motor vehicle which is not a capital goods; or~~

[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or

~~(BA) specified in sub-clauses (d) and (zo) of clause (105) of section 65 of the Finance Act,[~~ ~~**General insurance business, Repair etc of motor vehicles in so far as they relate to a motor vehicle which is not a capital goods**~~ ~~except when used by —~~

~~**(a)** a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by him; or~~

~~**(b)** a provider of output service as specified in sub-clause (d) of clause (105) of section 65 of the Finance Act, ,[~~ ~~**General insurance business]**~~ ~~in respect of a motor vehicle insured or reinsured by him; or~~

[(BA) service of General Insurance business, Servicing, Repair And Maintenance, in so far as they relate to a motor vehicle which is not a capital goods,

EXCEPT WHEN USED BY -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]

(C) Such As those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used Primarily For Personal Use Or Consumption Of Any Employee;]

## (5) Utilization of CCR- rule 3(4)

**Rule 3(4)** The CENVAT credit **may be utilized** for payment of

a) **ANY DUTY** of excise on any final product; or
b) An amount equal to credit taken on inputs
   if such inputs are removed as such or after being partially processed; or
c) An amount equal to the CENVAT credit taken on capital goods
   if such capital goods are removed as such; or
d) An amount under rule 16(2) of central excise Rules 2002
e) **SERVICE TAX** on any output service

**Provided** that while paying duty of excise **or service tax**, the cenvat credit shall be utilized only to the extent such credit is **available on the last day of the month or quarter** as the case may be for payment of duty or **tax relating to such month or quarter**.

**[Provided further that CENVAT credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under notification No. 1/2011-C.E., dated the 1st March, 2011 is availed :]**

**Provided also** that the CENVAT credit of the duty or service tax paid on the inputs or input services, used in the manufacture of final products cleared after availing area based exemption notification shall be utilized **only** for payment of duty on final product in respect of which exemption under said respective notifications is availed of.

**"Provided also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilized FOR payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010**

***[EXPLANATION.*** **- CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.]**

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| **RULE 3(4)- WHETHER CCR CAN BE UTILISED FOR ARREAR OF DUTY U/S 11A- Circular No. 962/05/2012- YES** |
| **ANS- CBEC has clarified that a harmonious reading of rule 8 of the Central Excise Rules, 2002 and first proviso to rule 3(4) of the CENVAT Credit Rules, 2004 indicates that the restriction with regard to the utilization of CENVAT credit is relating to the normal payment of duty in terms of rule 8 of the Central Excise Rules, 2002, where duty for a particular month or quarter is to be discharged by the 5th of the next month or duty paid late in terms of rule 8. Unlike rule 8 where the duty is paid after self-** |

**determination, under section 11A, duty is determined by the Central Excise Officer and the payment is mandated after such determination. Further, there is no time limit prescribed under section 11A i.e., monthly or quarterly unlike the date prescribed under rule 8. Therefore, the restriction on the utilization of the CENVAT credit is not applicable to the demands confirmed under Section 11A of the Central Excise Act, 1944.**

## “Exempted goods”

**Means** excisable goods which are exempt from the whole of the duty of excise leviable thereon,

**And includes** goods which are chargeable to “NIL” rate of duty

[and goods in respect of which the benefit of an exemption under notification No. 1/2011 **or under entries at serial numbers 67 and 128 of Notification No. 12/2012-CE, dated the 17th March, 2012** is availed;]

## Exempted Services

~~**means** taxable services which are exempt from the whole of the service tax leviable thereon, **and includes** services on which No service Tax is leviable under sec 66 of the Finance Act~~

~~[and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.~~

~~***Explanation.***- For the removal of doubts, it is hereby clarified that “exempted services” includes trading;]~~

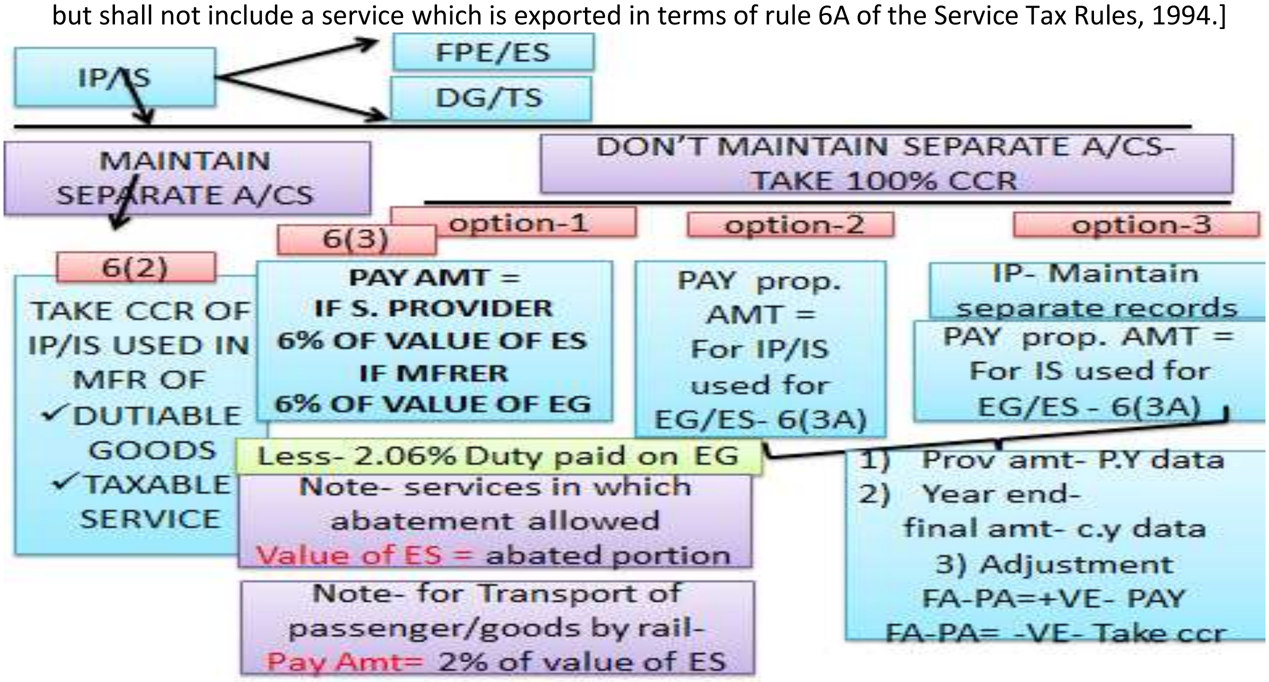
[(e) “EXEMPTED SERVICE” means a -

(1) taxable service which is exempt from the whole of the service tax leviable thereon; or

(2) service, on which no service tax is leviable under section 66B of the Finance Act; or

(3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.]



1) CCR OF IPEG
2) CCR OF IPES
[CCR OF IP – CCR OF IPEG] * VALUE OF ES / VALUE OF [DG+ES +TS]
3) CCR OF IS USED FOR EG & ES
CCR OF IS * VALUE OF [EG +ES] / VALUE OF [EG+DG+ES +TS]

Value for trading OF GOODS = HIGHER OF 2
1. 10 % of COGS
2. [S.P-COGS]

Value for trading OF Security = HIGHER OF 2
1. 1 % of purchase price
2. [S.P-PP]

## (6) Rule 5 Refund of CENVAT Credit

**(1) A manufacturer who clears a final product or an intermediate product for**
**→ Export without payment of duty under bond or letter of undertaking, or**
**a service provider who provides an output service**
**→ which is exported without payment of service tax,**

**shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:**

$$\text{Refund amount} = \frac{\text{(Export turnover of goods+ Export turnover of services)}}{\text{Total turnover}} \times \text{Net CENVAT credit}$$

**Where,-**

**(A) "REFUND AMOUNT" means the maximum refund that is admissible;**

**(B) "NET CENVAT CREDIT" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;**

**(C) EXPORT TURNOVER OF GOODS means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;**

**(D) EXPORT TURNOVER OF SERVICES means the value of the export service calculated in the following manner, namely:-**

**EXPORT TURNOVER OF SERVICES = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;**

**(E) TOTAL TURNOVER means sum total of the value of -**
**(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;**
**(b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and**
**(c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.**

**(2) THIS RULE SHALL APPLY TO EXPORTS MADE ON OR AFTER THE 1ST APRIL, 2012:**

**Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement:**

**Provided further that NO REFUND OF CREDIT SHALL BE ALLOWED**
**if the manufacturer or provider of output service**

- → **avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or**
- → **claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or**
- → **claims rebate of service tax under the ~~Export of Services Rules, 2005~~ "Service Tax Rules, 1994" in respect of such tax.**

**Explanation 1.- For the purposes of this rule,-**

**(1) EXPORT SERVICE means a service which is provided as per the ~~provisions of Export of Services Rules, 2005, whether the payment is received or not;~~** "rule 6A of the Service Tax Rules 1994"

**(2) RELEVANT PERIOD means the period for which the claim is filed.**

**Explanation 2.-For the purposes of this rule, the value of services, shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.‖**

## (7) RULE [5B. Refund of CENVAT credit to service providers providing services taxed on reverse charge basis. —

**A PROVIDER OF SERVICE PROVIDING SERVICES**

- ✓ **notified under sub-section (2) of section 68 of the Finance Act AND**
- ✓ **being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services,**

**shall be allowed refund of such**

→ **UNUTILISED CENVAT CREDIT**

**subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.]**

## (8) Whether Cenvat credit allowed even if Final product is exempt

### Rule 6(6) Credit allowed even if final product is exempt

The provision of sub-rule (1), (2), (3) and (4) shall not be applicable in case of EXCISABLE GOODS removed without payment of duty are either

(i) Cleared to a unit in a special economic Zone ***or to a developer of a SEZ for their authorized operations or***

(ii) Cleared to a 100% EOU or

(iii) Cleared to a unit in EHTP or Software Technology parks (STP) or

(iv) Supplied to the united nations(UN) or an international organization for their official use or supplied to projects funded by them on which exemption of duty is available under notification of Central Government or

"(iva) **supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of notification No. ~~6/2006- Central Excise dated the 1st March, 2006,~~ [12/2012-Central Excise, dated the 17th March, 2012; or"**

(v) Cleared for export under bond in terms of the provisions of Central Excise Rules.

(vi) Gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting.

[(vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, —

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding,

in terms of notification No. 6/2006-Central Excise, dated the 1st March, 2006.].

**[(viii) supplies made for setting up of solar power generation projects or facilities.]**

*As per Notification No. 22/2003*

Goods supplied from DTA TO EHTP, STP, 100% EOU are exempt from excise duty.

~~**Rule 6(6A)** The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone or to a Developer of a Special Economic Zone for their authorised operations.]~~

**[(7) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to A Unit in a Special Economic Zone or to a Developer of a Special Economic Zone for their authorised operations or when a service is exported.**

**(8) For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when :-**

**(a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and**

**(b) such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision.**

## (9) "INPUT SERVICE DISTRIBUTOR" MEANS

1. An office of the manufacturer of final products or provider of output service,
2. Which receives invoices issued under rule 4A of the Service Tax Rules, 1994
3. Towards purchases of input service
4. And issues invoice, bill or, as the case may be, challans
5. For the purposes of distributing the credit of service tax paid
6. On the said service to service to such manufacturer or producer or provider, as the case may be.

# RULE '7. Manner of distribution of credit by input service distributor. -

The input service distributor **may distribute the CENVAT credit** in respect of the **Service Tax** paid on the input service to its

→ manufacturing units or

→ units providing output service,

subject to the **FOLLOWING CONDITIONS,** namely:—

**(a)** the credit distributed against a document referred to in rule 9 **DOES NOT EXCEED THE AMOUNT OF SERVICE TAX PAID** thereon;

**(b)** credit of service tax attributable to service used in a **unit exclusively** engaged in manufacture of **exempted goods** or providing of **exempted services SHALL NOT BE DISTRIBUTED;**

**(c)** credit of service tax attributable to service **used wholly in a unit** shall be **DISTRIBUTED ONLY TO THAT UNIT;** and

~~**(d)** credit of service tax attributable to service used in more than one unit shall be **distributed prorata** on the **BASIS OF THE TURNOVER OF THE CONCERNED UNIT TO THE SUM TOTAL OF THE TURNOVER OF ALL THE UNITS** to which the service relates.~~

**(e)** credit of service tax attributable to service used in more than one unit shall be distributed *pro rata* on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period

**Explanation 1.-** For the purposes of this rule, —unit includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

**Explanation 2.-** For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.'

***[Explanation 3. –***

**(a) The relevant period shall be the month previous to the month during which the CENVAT credit is distributed.**

**(b) In case if any of its unit pays tax or duty on quarterly basis as provided in rule 6 of Service Tax Rules, 1994 or rule 8 of Central Excise Rules, 2002 then the relevant period shall be the quarter previous to the quarter during which the CENVAT credit is distributed.**

**(c) In case of an assessee who does not have any total turnover in the said period, the input service distributor shall distribute any credit only after the end of such relevant period wherein the total turnover of its units is available.]**

# Offences and penalties

## Sec 9 of CEA

**Offences**

Whoever commits any of the following offences:-

1. contravenes any **provisions of registration** or transit of goods of the act or rules
2. **evades** payment of any duty payable
3. **removes** any excisable goods **in contravention** of the provisions or rules
4. **acquires possession** of or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing or in any other manner deals with any excisable goods which he knows or **has reason to believe are liable to confiscation**.
5. **contravenes** any of **the provisions of credit** of any duty allowed to be utilized
6. **fails to supply any information** which he is required to supply or(unless with a reasonable belief the burden of proving which shall be upon him, that the information supplied by him is true) **supplies false information**.
7. attempts to commit, or abets the commission of any of the offences

**Punishment for the first time**

| **Duty leviable on excisable goods** | **punishment** |
|---|---|
| Up to **30** lakh [F.ACT 2012] | imprisonment up to 3 years or with fine or With both |
| Exceeding **30** lakh [F.ACT 2012] | imprisonment which may extend to 7 years And with fine.<br><br>**NOTE-** Such imprisonment shall not be for a term of less than 6 months except in case of special and adequate reasons to be recorded in the judgement of the court |

**Punishment for subsequent offences**

If any person is again convicted of any offence, then he shall be punishable for the second and for every subsequent offence with imprisonment upto 7 years and fine

Such imprisonment shall not be for a term of less than 6 months except in case of special and adequate reasons to be recorded in the judgement of the court.

**Reasons not to considered special and adequate**

The following shall not be considered as special and adequate reasons for awarding imprisonment of less than 6 months

1. that the accused has been convicted for the first time under this act.
2. that the accused has been ordered to pay penalty or the goods has been confiscated or any other action has taken against him for the same act.
3. that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence.
4. the age of accused.

# COMMON TOPICS

## SEC 11A(8)

~~(8) In computing the period of one year referred to in clause (*a*) of subsection (1) or five years referred to in sub-section (4) or sub-section (5), the period during which there was any stay by an order of the court or Tribunal in respect of payment of such duty shall be excluded.~~

**F.ACT 2012[(8) Where the service of notice is stayed by an order of a court or tribunal, the PERIOD OF such stay shall be excluded in computing the period of 1 year referred to in clause (a) of sub-section (1) or 5 years referred to in sub-section (4) or sub-section (5), as the case may be.**

## SEC 11AC- PENALTY FOR SHORT-LEVY OR NON-LEVY OF DUTY IN CERTAIN CASES.—

(1) The amount of penalty for non-levy or short-levy or non-payment or short payment or erroneous refund shall be as follows :—

**If Transaction Was not Captured Transaction (NOT Recorded In Specified Records)**

(a) where any duty of excise has not been levied or paid or **Has Been**[F.ACT 2012] short-levied or short paid or erroneously refunded,

- ✓ **by reason of fraud or collusion or any willful mis-statement** or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,

the person who is liable to pay duty as determined under sub-section (10) of section 11A

- ✓ shall also be liable to **PAY A PENALTY EQUAL TO THE DUTY** so determined;

**If Transaction Was Captured Transaction (Recorded In Specified Records)**

(b) where details of any **TRANSACTION AVAILABLE IN THE SPECIFIED RECORDS,** reveal that any duty of excise has not been levied or paid or **Has Been**[F.ACT 2012] short-levied or short-paid or erroneously refunded

- ✓ as referred to in sub-section (5) of section 11A,

the person who is liable to pay duty as determined under sub-section (10) of section 11A

- ✓ shall also be liable to pay a penalty equal to 50% of the duty so determined;

**Penalty 25% if paid within 30 days ( only for Captured Transaction)**

(c) where any **DUTY** as determined under sub-section (10) of section 11A **AND**

- ✓ the Interest payable thereon under section 11AA in respect of **transactions referred to in clause (*b*)**

- ✓ is paid within 30 days
- ✓ of the date of communication of order of the CEO who has determined such duty,
- ✓ the amount of Penalty liable to be paid by such person **shall be 25% of the duty** so determined;

***Only in a case where the penalty is paid within the period so specified];*** F.ACT 2012

**PENALTY AND INTEREST TO BE MODIFIED IF EXCISE DUTY (DETERMINED BY CEO) IS MODIFIED BY THE APPELLATE AUTHORITY OR TRIBUNAL OR COURT**

(d) where the appellate authority modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10) of section 11A, then, the amount of penalties and interest payable shall stand modified accordingly and after taking into account the amount of duty of excise so modified, the person who is liable to pay duty as determined under subsection (10) of section 11A shall also be liable to pay such amount of penalty or interest so modified.

***Explanation.—***For the removal of doubts, it is hereby declared that in a case where a notice has been served under sub-section (4) of section 11A and subsequent to issue of such notice, the Central Excise Officer is of the opinion that the transactions in respect of which notice was issued have been recorded in specified records and the case falls under sub-section (5), Penalty Equal To 50% Of The Duty shall be leviable.

**IF DUTY MODIFIED IS MORE THAN DUTY DETERMINED BY CEO**

(2) Where the amount as modified by the appellate authority is more than the amount determined under sub-section (10) of section 11A by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority in respect of such increased amount.".

| | |
|---|---|
| ***"12F. Power of search and seizure.—*** | (1) Where the JC /AC has reasons to believe that any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any CEO to search and seize or may himself search and seize such documents or books or things.<br>[(2) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Commissioner of Central Excise" were substituted |
| **Author Note- under sec 165(5)- Police officer submits report to Magstrate relating to search. Now after amendment, copies of record shall be submitted to CCE.** | |

## SECTION [28AAA. Recovery of duties in certain cases. — [F.ACT 2012]

(1) Where an instrument issued to a person has been obtained by him by means of —

(a) collusion; or

(b) wilful misstatement; or
(c) suppression of facts,

for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued :

**Provided** that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.

**Explanation 1.— For the purposes of this sub-section, "instrument" means** any scrip or authorisation or licence or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992, with respect to a reward or incentive scheme or duty exemption scheme or duty remission scheme or such other scheme bestowing financial or fiscal benefits, which may be utilised under the provisions of this Act or the rules made or notifications issued thereunder.

**Explanation 2.** — The provisions of this sub-section shall apply to any utilisation of instrument so obtained by the person referred to in this sub-section on or after the date on which the Finance Bill, 2012 receives the assent of the President, whether or not such instrument is issued to him prior to the date of the assent.

(2) Where the duty becomes recoverable in accordance with the provisions of sub-section (1), the person from whom such duty is to be recovered, shall, in addition to such duty, be liable to pay interest at the rate fixed by the Central Government under section 28AA and the amount of such interest shall be calculated for the period beginning from the date of utilisation of the instrument till the date of recovery of such duty.

(3) For the purposes of recovery under sub-section (2), the proper officer shall serve notice on the person to whom the instrument was issued requiring him to show cause, within a period of 30 days from the date of receipt of the notice, as to why the amount specified in the notice (excluding the interest) should not be recovered from him, and after giving that person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty or interest or both to be recovered from such person, not being in excess of the amount specified in the notice, and pass order to recover the amount of duty or interest or both and the person to whom the instrument was issued shall repay the amount so specified in the notice within a period of 30 days from the date of receipt of the said order, along with the interest due on such amount, whether or not the amount of interest is specified separately.

(4) Where an order determining the duty has been passed under section 28, no order to recover that duty shall be passed under this section.

(5) Where the person referred to in sub-section (3) fails to repay the amount within the period of 30 days specified therein, it shall be recovered in the manner laid down in sub-section (1) of section 142.].

**SECTION [28BA. Provisional attachment to protect revenue in certain cases. –**

(1) Where, during the pendency of any proceeding under section 28 [or section 28AAA or section 28B], the proper officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Customs, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 28 [or sub-section (3) of section 28AAA or sub-section (2) of section 28B], as the case may be, in accordance with the rules made in this behalf under section 142.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1) :

Provided that the Chief Commissioner of Customs may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years :

Provided further that where an application for settlement of case under section 127B is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 127C is made shall be excluded from the period specified in the preceding proviso.]

## ASSESSMENT UNDER SERVICE TAX

SECTION [73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. — (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, [Central Excise Officer] may, within "~~1 year~~ 18 MONTHS" F ACT 2012 from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

**Provided** that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

(a) fraud; or
(b) collusion; or
(c) wilful mis-statement; or
(d) suppression of facts; or
(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words **"~~1 year~~ 18 MONTHS" F ACT 2012**, the words "5 years" had been substituted.

***Explanation.*** — Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of **"~~1 year~~ 18 MONTHS" F ACT 2012** or five years, as the case may be.

**"(1A) Notwithstanding anything contained in sub-section (1) (except the period of 18 months of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.";**[F ACT 2012]

# CUSTOM

**Custom airport Sec 2(10)**

means any airport appointed under clause (a) of section 7 to be a customs airport **[and includes a place appointed under clause (aa) of that section to be an air freight station];**

**Land custom station- Sec 2(29)**

Means any place appointed under sec 7 to be a land customs station.

Note- sec 7 of custom act 1962 empowers CBEC to appoint by notification in official gazette inland container depot or air freight station for unloading of import goods or loading of export goods or any class of such goods.

## CLEARANCE OF GOODS FOR HOME CONSUMPTION SECTION 47

(i) if the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has Paid The Import Duty, the proper officer may make an order permitting clearance of the goods for home consumption.

(ii) if importer fails to pay the import duty within 5 days(excluding holidays) from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest at prescribed rate. (presently %)

**Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically :**[F.ACT 2012]

However if the Board is satisfied that it is necessary in the public interest to do so, it may waive such interest.

CIR-33/2011 & NN-83/2012- in order to reduce the transaction cost of the importers and expedite the time taken for customs clearance the Board has decided to make E-PAYMENT OF DUTY MANDATORY for following classes of importers namely:-

(i) Importers (Accredited Clients) registered under Accredited Clients Programme irrespective of any amount of duty.

(ii) Importers paying customs duty of 1 lakh rupees or more per bill of entry.

## SECTION 104. POWER TO ARREST. –

(1) If an officer of Customs empowered in this behalf by general or special order of the Commissioner of Customs
- ⇒ has reason to believe that any person in India or within the Indian customs waters has
- ⇒ committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136,
- ⇒ he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.]

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

(3) Where an officer of customs has arrested any person under sub-section (1),
- ⇒ he shall, for the purpose of releasing such person on bail or otherwise,
- ⇒ have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to under the Code of Criminal Procedure, 1898 .

~~(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 , an offence under this Act shall not be cognizable.~~

**[(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973), any offence relating to —** **F.ACT 2012**
**(a) prohibited goods; or**
**(b) evasion or attempted evasion of duty exceeding fifty lakh rupees,**
**shall be cognizable.**

(5) Save as otherwise provided in sub-section (4), all other offences under the Act shall be non-cognizable. **F.ACT 2012**

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under the Act shall be bailable.] **F.ACT 2012**

**Explain the provisions for adjudication of cases relating to confiscation and penalties.**

## SECTION 122. ADJUDICATION OF CONFISCATIONS AND PENALTIES. –

In every case
- ⇒ in which anything is liable to confiscation or
- ⇒ any person is liable to a penalty,
- ⇒ such confiscation or penalty may be adjudged, by –

| <u>**value of goods**</u> | **Authorized officer** |
|---|---|
| **Value upto 50000/-** | Gazetted Officer of Customs lower in rank than an [3][AC or DC |
| Value exceeding 50000 but upto 5 lakh | AC/DC |
| Value exceeding Rs. 5 Lakh | Comm./joint comm.. of Custom |

**SECTION 153. SERVICE OF ORDER, DECISION, ETC. –**

Any order or decision passed or any summons or notice issued under this Act, shall be served -

(a) by tendering the order, decision, summons or notice or sending it by ~~registered post to the person for whom it is intended or to his agent;~~ **[registered post or by such courier as may be approved by the Commissioner of Customs;]** F.ACT 2012 or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

## SERVICE TAX

| | | |
|---|---|---|
| **BESIDES THIS MATERIAL IN THIS AMENDMENT BOOK ON S.TAX READ** | **POINT OF TAXATION**<br>**VALUATION OF SERVICES**<br>**SERVICE TAX RULES-** Registration/Return/Payment of S.Tax/ | |
| **SECTION- DELETED** | Sec 65/65A/66/66A/ | **Sec 65-** Definition<br>Sec- 65A- classification<br>Sec-66- charging section<br>Sec 66A-Import of service |
| **AMENDED SECTION** | 68/73/83/85/86/89/93A | **Sec 68-** Person liable to pay service tax<br>**Sec 73-** Issue of SCN<br>**Sec 83-** provisions of settlement commission and Revision by CG provision applicable as that of excise<br>**Sec 85-** Appeal to CCE(A)- 2 month<br>Condonation of Delay- 1 month<br>**Sec 86-** appeal to CESTAT- 4 Months if appeal filed by department<br>**Sec 89-** offences & prosecution<br>**Sec 93A-** Grant of rebate- earlier rebate of duty paid on input/input service used in manufacture of goods or provision of service was allowed. Now rebate of input/input service used in export of such goods also allowed. |
| | | |
| **NEWLY INTRODUCED SECTION** | 66B/66C/66D/66E/66F/67A/72A | **Sec 66B-** charging section<br>**Sec 66C-** Place of provision<br>**Sec 66D-** Negative list<br>**Sec 66E-** Declared Service<br>**Sec 6F-** Interpretation(classification)<br>**Sec 67A-** relevant date for Rate of S. tax/ Rate of exchange<br>**Sec 72A-** Special Audit |
| **AMENDED RULES STR-1994** | Rule 2(1)(d) /4 /6/ 4A/6A | **Rule-4-Registration-** reverse charge<br>**Rule-4-Registration-** sec 66 replaced with sec 66B<br>**Rule-6-payement of S. tax-** sec 66 replaced with sec 66B [ and little bit amendment- need n't read]<br>**Rule-4A-** issue of invoice- particulars to be mentioned in Invoice- Now classification of service needn't be mentioned<br>Earlier relaxation to Banking co./financial Institution/ Boady corporate for invoice in respect of serially |

| | | |
|---|---|---|
| | | numbered/address etc. now relaxation has been withdrawn from Body corporate<br>**Rule- 6A-** export of service<br>Earlier written in Proviso to Rule 6- deleted |
| **NEWLY INSERTED VALUATION RULES 2006** | 2A/2C | **Rule-2A-**Composition scheme of works contract<br>**Rule-2C-** Supply of Food/Drinks for consumption |
| **AMENDED RULES VALUATION RULES 2006** | 3/6 | **Rule-3-** manner of determination of value<br>**Rule-6-** Inclusion/exclusion of certain expenses |
| **RULE DELETED OF VALUATION RULES** | 7 | **Rule-7 – Valuation in case of import of service.** |

**Que-** *Are repair, maintenance of airports, ports and railways liable to tax with effect from 01.07.2012?*

**Answer-** Yes.

**Question 3-** *Whether the exemption provided in the Exemption Notification No. 25/2012 dated 20.06.2012 to services by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide input service to these main contractors in relation to such construction?*

**Answer- REFER SEC 66F**

## MISCELLANEOUS QUE

**Bar on subsequent application for settlement in certain cases.**

**Que- A show cause notice dated 09.08.2010 demanding duty to the tune of Rs.10,00,000 with interest as applicable has been received by AB Ltd. on the ground of clandestine removal of the products manufactured by it in the month of July, 2009. Penalty equal to duty demanded was also imposed. AB Ltd. had filed the ER-1 for the month of July on time. AB Ltd. wants to approach the Settlement Commission for this matter and accept the additional duty liability of Rs.10,00,000. In the year 2006, AB Ltd. had one of its case settled at Settlement Commission. Neither any penalty was imposed on it nor was it convicted for any offence in relation to this case. AB Ltd. has approached you as a counsel for advising it in this regard. You are required to give your views with particular reference to the amendments made in the provisions of Settlement Commission by the Finance Act, 2010.**

**Ans** The advice to AB Ltd. would be two fold. First would be regarding the eligibility to make an application before Settlement Commission and second would be regarding the conditions to be fulfilled by AB Ltd. for making an application to the Settlement Commission.

**Eligibility to make an application before Settlement Commission**: AB Ltd. can make an application to Settlement Commission as the following conditions prescribed under section 32E of the Central Excise Act, 1944 are being fulfilled in this case:

(i) A show cause notice has been received by AB Ltd.

(ii) The additional amount of duty which AB Ltd. would be accepting in the application to the Settlement Commission exceeds Rs.3,00,000.

(iii) AB Ltd. has filed ER-1 showing production, clearance and central excise duty paid for the month of July, 2009.

(iv) Prior to 08.05.2010, cases involving short levy of duty on goods in respect of which no proper record were maintained by the assessee in his daily stock register could not be settled in the Settlement Commission. However, with effect from, 08.05.2010, the Finance Act, 2010 has amended section 32E so as to remove the prohibition on

filing of applications for the settlement of cases where an assessee admits short-levy for goods in respect of which he has not maintained proper records (i.e. cases of misdeclaration, clandestine removal etc.).
(v) Prior to 08.05.2010, the assessee was allowed to apply for settlement under section 32E only once. However, with effect from, 08.05.2010, the Finance Act, 2010 has relaxed this restriction. Now, the assessee can apply for settlement more than once if it does not fall in any of the three cases mentioned in section 32-O of the Central Excise Act, 1944. The said three cases where the assessee cannot apply for settlement more than once are:
(a) where the order of settlement provides for imposition of penalty on the ground of concealment of particulars of duty liability; or
(b) where after passing of the settlement order, the applicant is convicted of any offence under the Central Excise Act in relation to that case; or
(c) the case of the applicant is sent back to the Central Excise Officer by the Settlement Commission.
The case of AB Ltd. does not fall in any of the three cases mentioned in section 32-O.

**Conditions to be fulfilled by AB Ltd. for making an application to Settlement Commission:**

(i) AB Ltd. will have to make full and true disclosure of his duty liability not disclosed before the Central Excise Officer, the manner in which such liability has been derived and the particulars of the goods in respect of which it admits short levy on account of clandestine removal.
(ii) Application will have to be accompanied with a fees of Rs.1000.
(iii) AB Ltd. will have to pay Rs.10,00,000 (additional amount of excise duty accepted by him) along with applicable interest.
AB Ltd. will be informed that once it makes an application under section 32E, it will not be allowed to withdraw the same.

***Theoretical questions- Must do***

**(1) Explain briefly the following with reference to Central Excise Act 1944:-**
- **(a)** Excisable goods
- **(b)** Assessee
- **(c)** related person
- **(d)** adjudicating authority
- **(e)** "Place of Removal".
- **(f)** Taxable event
- **(g)** Assembly would amount to manufacture

**(2) Explain briefly with reference to the provisions of the Central Excise Act the term "Deemed Manufacture".**

**(3) Briefly explain any two of the following with reference to the provisions of Central Excise Act, 1944:**
- **(i)** Wholesale dealer
- **(ii)** Factory
- **(iii)** Dutiability of waste and scrap

***(4) Discuss briefly, whether excise duty is attracted on the excisable goods manufactured in the following cases:***
- ***(i)*** *in the State of Jammu and Kashmir;*
- ***(ii)*** *by or on behalf of the Government*

***(5) State briefly whether the following circumstances would constitute "manufacture" for purposes of section 2(f) of the Central Excise Act, 1944:***

*(i)* *Both inputs and the final product fall under the same tariff heading under the first schedule to the Central Excise Tariff Act, 1985 (Tariff Act.)*
*(ii)* *Inputs and final product fall under different tariff headings of the Tariff Act.*

***Classification***

*(6)* *Does the maxim "Latter the Better" apply in classifying the excisable goods?*
*(7)* *Short note on*
   a. *harmonized system of nomenclature*
   b. *power of CG to amend first and second sch to CETA 1985.*

***VALUATION***

*(1)* *State the procedure for valuing excisable goods that are to be sold from depot/branch or premises of a consignment agent under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.*

*(2)* *Short note on- Compounded levy scheme under rule 15 of CER 2002 or sec 3A of CEA 1944.*

*(3)* *Determine the total amount of excise duty payable under section 4 of the Central Excise Act,*
*1944 from the following information:*
*Particulars Rs.*
*(i) Price of machinery excluding taxes and duties 5,50,000*
*(ii) Installation and erection expenses 21,000*
*(iii) Packing charges (primary and secondary) 11,500*
*(iv) Design and engineering charges 2,000*
*(v) Cost of material supplied by buyer free of charge 8,500*
*(vi) Pre-delivery inspection charges 500*
*Other information:*
*(a) Cash discount @ 2% on price of machinery was allowed as per terms of contract since full payment was received before dispatch of machinery.*
*(b) Bought out accessories supplied along with machinery valued at Rs. 6,000.*
*(c) Central excise duty rate 10% and educational cess as applicable @ 3%.*
*Make suitable assumptions as are required and provide brief reasons.*
***Ans- AV = 550000 + 11500 + 2000 + 8500 + 500 – 11000 = 561500, DUTY= 57835***

**(4) ABC Limited is engaged in the manufacture of Product 'X' for the purpose of captive**
**consumption Determine the assessable value of Product 'X:-.**
**Direct Wages & Salaries 19,500**
**Consumbale stores and repairs 5,700**
**Research and Development Costs 3,800**
**Direct Material (including excise duty of `1800) 35,000**
**Administrative overheads (relating to production activities) 5,300**
**Selling and Distribution Costs 1,500**
**Realisable Value of Scrap 1,300**
**Amortised cost of fixtures2,500**
**ANS- (35000- 1800) i.e 33200 + 19500 + 5700 + 3800 + 5300 + 2500 – 1300= 68700**
**AV = 110 % OF 68700 = 75570**

*(5)* *Determine the total amount of excise duty payable on a machine using the details given*

*below:*

*(I) Sale price of the machine excluding taxes and duties 2,00,000*

*(ii) Sales tax 20,000*

*(iii) Cost of durable and returnable packing included in the sale price given at (i) above 5,000*

*(iv) Design and development charges paid by buyer on behalf of seller to a third party 20,000*

*(v) Warranty charges charged separately by the seller 5,000*

*Rate of excise duty 10%*

*Education cess 3%*

*Calculations should be supported by notes, wherever required*

***ANS- AV= 2,00,000 + 20000 + 5000 - 5000 = 220000, E. DUTY = 22660***

***(6)*** *RAJA Ltd. is engaged in the manufacture of water Purifiers. Such cameras are notified by the under section 4A of the Central Excise Act, 1944 and 30% abatement has been prescribed on the same. Raja Ltd. manufactured 3000 units of water purifiers and declared ` 2,000 as retail sale price on each package of water Purifiers. Determine the assessable value for the purpose of excise duty from the following information provided by RAJA Ltd.- `*

| | |
|---|---|
| Cost of raw material | 28,000 |
| Commission payable to dealers | 12,000 |
| Warranty charges | 2,500 |
| Advertisement charges | 2,000 |
| Packing charges | 6,000 |
| Cost of durable and returnable charges | 5,000 |
| Freight charges paid for bringing raw material into the factory | 4,000 |
| Outward Transportation of Final product for forward journey | 1,000 |
| Profit | 30,000 |

*Retail sale price of 3000 package = 3000 x 2,000- 60,00,000 Less: Abatement @ 30%- 18,00,000, Assessable Value- 42,00,000*

***(7)*** *How will the assessable value under the subject transaction be determined under section 4 of the CEA, 1944? Give reasons with suitable assumptions where necessary.*

*Contracted sale price for delivery at buyer's premises as Rs. 9,00,000.*

*The contracted sale price includes the following elements of cost:*

(i) Cost of drawings and designs Rs. 4,000

(ii) Cost of primary packing Rs. 3,000

(iii) Cost of packing at buyer's request for safety during transport Rs. 7,000

(iv) Excise duty Rs.1,11,200

(v) VAT (Sales tax) Rs. 37,000

(vi) Octroi Rs. 9,500

(vii) Freight and insurance charges paid from factory to 'place of removal' Rs. 20,000

(viii) Actual freight and insurance from 'place of removal' to buyer's premises Rs. 42,300

**ANS- AV = 900000 – 111200 – 37000 – 9500 – 42300 = 7,00,000**

**(8)** Asha Ltd. supplies raw material to a job worker Kareena Ltd. After completing the job-work, the finished product of 5,000 packets are returned to Asha Ltd. putting the retail sale price as ` 20 on each packet. The product in the packet is covered under MRP provisions and 40% abatement is available on it. Determine the assessable value under Central Excise law from

the following details:

`

| | |
|---|---|
| Cost of raw material supplied | 30,000 |
| Job worker's charges including profit | 10,000 |
| Transportation charges for sending the raw material to the job worker | 3,000 |
| Transportation charges for returning the finished packets to Asha Ltd. | 3,000 |

*Ans- AV= 1lac- 40000 = 60000*

(9) Surat **coth Mills delivered 1000 meters of cloth to Purvanchal Readymade grarments on 10-1-09 from its depot located at ahmedabad @ rs. 110 per meter. The goods were dispatched to the depot from the factory located in Surat on 5-1-09. Ex-factory price on 5-1-09 was Rs. 90 per meter. The sale of identical variety of cloth effected from Ahmedabad depot on the two relevant dates is as follows:**

| On 05-01-09 | | On 10-01-09 | |
|---|---|---|---|
| **Cloth sold (in mtrs.)** | **Rate per meter (Rs.)** | **Cloth sold (in mtrs.)** | **Rate per meter (Rs.)** |
| **100** | **135** | **200** | **120** |
| **850** | **125** | **1000** | **110** |
| **500** | **120** | **550** | **115** |
| **450** | **115** | **375** | **108** |

**Calculate assessable value of 1000 meters of clothe sold by Surat cloth Mills**

**Ans** Assessable value of the goods = 1,000 mtrs. × Rs.125 = Rs. 1,25,000

***(10)*** *What are the situations where transaction value under section 4 of the Central Excise Act does not apply?*

***(11)*** *A trader supplies fabrics to independent processor. Cost of fabrics is Rs.1,150. The processor charges Rs.450 which includes Rs.350 as processing charges and Rs.100 as his profit. After processing, goods are sent back to the trader who sells them at Rs.1,800. Transport charges for receiving goods at the premises of the processor is Rs.50 and the transport charges for sending goods after processing is Rs.60.Please determine the assessable value of the goods under Section 4 of the Central Excise Act.*

As per rule 10A of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000, the assessable value of the goods in question would the price at which the manufacturerultimately sells them to the consumer, i.e. Rs. 1,800 in the given case.

**ANS- AV = 1800**

## Small scale industry

1) **Euro Ltd. Is a small scale industrial unit which is producing 'Keplin', a tonic for growing children under the annual report for the year 2011-12, the SSI unit shows a gross sales turnover of Rs. 18920000. Te product 'Keplin' attracts excise duty @ 14% and sales tax @ 10%. Calculate the duty liability under notification No. 8/03. FOR The year 2010-11, value of clearance were 1,90,00,000**

**Ans-** Calculation of duty liability under *Notification No. 8/2003.*

Gross sales turnover is Rs. 1,89,20,000 which includes excise duty and sales tax.

sales excluding sales tax but including excise duty

18920000 – 1720000 [10/110* 18920000] =1,72,00,000

For first 150 lakh clearances , excise duty is Nil. Hence cum duty price after exemption = 17200000-15000000=22,00,000

Excise duty payable = 2200000* 14.42/112.42= Rs.2,77,259.22

Total duty payable = Rs.2,77,259.22 or Rs.2,77,260

**2) Que**

*A small scale unit manufacturer had achieved a sales of ` 89 lakh during the year 2011-12. Turnover achieved during 2012-13 was ` 1.52 crores. Normal duty payable on the product is 12% plus applicable education cesses. Find the total excise duty paid by the manufacturer during 2012-13 in each of the following cases:-*

*(A) If the unit has availed CENVAT Credit.*

*(B) If the unit has not availed CENVAT Credit*

**Answer**

**(A) If the unit has availed CENVAT Credit**: In this case the unit is required to pay duty at normal rates on the entire turnover i.e. 12.36% [consisting of Excise Duty @ 12%, Primary Education Cess @ 2% on Excise Duty and Secondary and Higher Education Cess @ 1% on Excise Duty] on 1.52 crores which works out to be ` 18,78,720/-

**(B) If the unit has not availed CENVAT Credit:** In this case duty payable will be computed as under:

(i) On ` 150 lakhs = NIL

(ii) On subsequent sales= Normal duty @ 12.36% i.e. 12.36% on ` 2,00,000 which works out to be ` 24,720/-

**3) CTL Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2006-07, the total value of clearances from the unit was Rs. 450 lakh. The break up of clearances is as under:**

**(i) Clearances worth Rs. 50 lakh of certain non-excisable goods manufactured by it.**

**(ii) Clearances worth Rs. 50 lakh exempted under specified job work notification.**

**(iii) Exports worth Rs. 100 lakh (Rs. 75 lakh to USA and Rs. 25 lakh to Nepal).**

**(iv) Clearances worth Rs. 50 lakh which were used captively to manufacture finished products that are exempt under notifications other than Notification No. 8/2003-CE dated 1.3.2003 as amended.**

**(v) Clearances worth Rs. 200 lakh of excisable goods in the normal course. Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefits of exemption under Notification No. 8/2003-CE dated 1.3.03 as amended for the year 2007-08. (7 Marks)**

**ans-**

For the year 2006-07, the turnover of CTL Ltd. will be:-

= Rs.450 lakh – (Rs.50 lakh + Rs.50 lakh + 75 lakh) = Rs.275 lakh

**4) Choti ltd, a small scale industry, provides the following details. Determine the eligibility for exemption based on value of clearances for the financial year 2011-12 in terms of Notification No. 8/2003-CE dated 1.3.2003 as amended:**

**Particulars `. (Lakhs)**

**(i) Total value of clearances during the f.y 2010-11 (including VAT ` 50 lakhs) 870**

**(ii) Total exports (including for Nepal and Bhutan `.200 lakhs) 500**

**(iii) Clearances of excisable goods without payment of duty to a unit in Software Technology Park 20**

**(iv) Job work under Notification No. 84/94-CE - 50**

**Job work under Notification No. 214/86-CE -- 50**

**(v) Clearances of excisable goods bearing brand name of Khadi and Village Industries ommission**

**200**

**Make suitable assumptions and provide brief reasons for your answers where necessary.**

**Ans- 870-50- (500-200) - 20 – 100= 400 choti lts. Is SSI.**

***5)** MNO Ltd. is in the manufacture of both excisable and non-excisable goods in their factorybuilding rented by them from October 1, 2012 and have been occupying the same as a tenant.From the following particulars for the period October 1, 2012 to March 31, 2013,* *state brieflywith suitable explanations, whether MNO Ltd. could claim the benefit of exemption in terms ofNotification No. 8/2003-CE dated 1-3-2003 for the financial year 2013-14.*

| | ` (in lakhs) |
|---|---|
| (i) Clearances of branded goods | 60 |
| (ii) Export Sales to Nepal | 80 |
| (iii) Export Sales to USA and Canada | 120 |
| (iv) Clearances of goods (duty paid based on Annual capacity of production under section 3A of the Central Excise Act, 1944) | 70 |
| (v) Clearances of goods subject to valuation based on retail sale price under section 4A of the Central Excise Act, 1944(said goods are eligible for 30% abatement) | 200 |
| (vi) Job work under Notification No. 214/86-CE dated 25-3-86 | 60 |

*During the period April 1, 2012 to Sept 30, 2012 the previous tenant of the building presentlyoccupied by MNO Ltd. had cleared excisable goods of the aggregate value of` 120 lakhs.*

**6)** *Choti Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2012. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 1-3-2003 as amended for the financial year 2012-13. The following details are provided:*
`

*15,000 kg of inputs purchased @ ` 992.70 per kg 1,48,90,500 (inclusive of Central excise duty @ 12.36%)*
*Capital goods purchased on 28-6-2012 44,12,000 (inclusive of excise duty at 12.36%)*
*Finished goods sold (at uniform transaction 2,50,00,000 value throughout the year)*
*Calculate the amount of excise duty payable by M/s. Choti Ltd. in cash, if any, during the year 2012-13. Rate of duty on finished goods sold may be taken at 12.36% for the year and you may assume that the selling price is exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Show your workings and notes with suitable assumptions as required.*

**7)** **Aggarwal** *& Company is a manufacturing company. In the financial year 2012-13, the details of its clearances of excisable goods are as follows:-*

| **Particulars `.** | **(Lakhs)** |
|---|---|
| (i) Total exports (including for export to Bhutan `50 lakhs) | 600 |
| (ii) Clearances of excisable goods without payment of duty to a 100% EOU | 10 |
| (iii) Job work under Notification No. 84/94-CE dated 11.4.94 | 50 |
| (iv) Job work under Notification No. 214/86-CE dated 25.3.86 | 50 |
| (v) Clearances of goods bearing brand name of National Small Industries Corporation | 100 |
| (vi) Clearances of corrugated boxes bearing the brand name of Sugar & Spice Confectioners. Sugar & Spice Confectioners use these corrugated boxes for packing the bakery products produced by them. | 200 |

*On the basis of above information, you are required to ascertain the eligibility of Aggarwal and Company for exemption based on value of clearances in terms of Notification No. 8/2003-CE dated 1.3.2003 as amended for the financial year 2013-14.*

# Miscellaneous Que

## Valuation

3. Examine the validity of the following statements:-

(i) Excise Department can challenge the reasonability of MRP printed on the package.

(ii) Legal/penal actions can be taken in case the retail sale price is not mentioned or is unduly tampered after the removal.

Ans (i) **The statement is not Valid**. The Central Excise Department cannot challenge the reasonability of MRP printed on the package. As held by Supreme court in ***ITC Ltd.2004 (SC)***

**(ii) The statement is valid**

If the retail sale price is not mentioned on the excisable goods or is unduly tampered after the removal, then such goods shall be liable to confiscation and the retail sale price of such goods shall be determined in the manner prescribed by the Central Government and such price shall be deemed to be the retail sale price.

Mahavir Manufacturers, engaged in the manufacture of machines, sold a machine to Highland Enterprises. Cum-duty sales price of the machine excluding sales tax is ` 3,50,000. Rate of excise duty is 10%, education cess is 2% and secondary and higher education cess is 1%. Sales price includes the following charges:-

| S.No. Particulars | Amount (`) |
|---|---|
| (i) Secondary packing | 5,500 |
| (ii) Design and development charges of machine | 20,000 |
| (iii) Warranty charges | 35,000 |
| (iv) Cost of return fare of vehicles | 2,000 |
| (v) Trade discount | 3,000 |
| (vi) Advertisement and publicity expenses borne by Highland Enterprises | 15,000 |
| (vii) Pre-delivery inspection charges | 20,000 |

**Ans -**Calculation of assessable value of the machine for the purposes of the levy of the excise duty

| Particulars Amount (`) | |
|---|---|
| Cum-duty sales price of the machine excluding sales tax | 3,50,000 |
| Less: Cost of return fare of vehicles | 2,000 |
| Less: Trade discount | 3,000 |
| Cum-duty price for excise duty purposes | 3,45,000 |
| Less- excise duty 10.3/110.3 *345000 | |
| Assessable value= | 3,12,783.30 |

While computing the assessable value:-

1. amount charged from the buyer in relation to packing, whether primary or secondary, will be included [Circular No. 643/34/2002 dated 01.07.2002].
2. design and engineering charges will be included as such payment is 'in connection with sale'.
3. advertisement and publicity expenses borne by the buyer shall not be excluded [Circular No. 643/34/2002 dated 01.07.2002]
4. As per the definition of the transaction value under section 4(3)(d) of the Central Excise Act, 1944, warranty charges are includible.
5. cost of return fare of vehicles is not includible [Circular No. 923/13/2010 – CX dated 19.05.2010].
6. Trade discount is allowable as deduction.
7. pre-delivery inspection charges are includible [Circular No. 936/26/2010-CX. dated 27-10-2010].

## Valuation

Compute the assessable value of the goods manufactured by Bharat Enterprises, under section 4 of the Central Excise Act, 1944, with the help of the following particulars:-

| Particulars | Amount (` ) |
|---|---|
| Contracted sale price for delivery at buyer's premises | 2,42,000 |
| The contracted sale price includes the following elements of cost:- | |

| | |
|---|---|
| (i) Cost of containers supplied by the buyer | 15,200 |
| (ii) Design and engineering charges | 22,400 |
| (iii) Loading and handling charges incurred after removal from the factory | 6,000 |
| (iv) Cost of after sale service | 10,000 |
| (v) Dharmada charges | 2,100 |

**Ans- AV= 242000—6000 =236000**

**Small scale industries**

**Practical que**

Following is detail for the year 2009- 10 of X ltd. Determine whether small scale industry or not for the F.Y 2010-11

Rs.

**(1)** Total value of clearances of goods with brand name of X ltd .75,00,000
**(2)** Total value of clearances of goods with brand name of PQR Ltd. 90,00,000
**(3)** Value of clearance of packing material manufactured by X ltd. With brand name of KISAN Industries used by them for their final product 80,00,000
**(4)** Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances) 35,00,000
**(5)** Clearance of non excisable goods 40,00,000
**(6)** Clearance of excisable goods to SEZ unit 20,00,000
**(7)** Jobwork under NN- 214/86 70,00,000
**(8)** Jobwork under NN- 84/94 60,00,000
**(9)** Total exports during the year including to Nepal & Bhutan – 30 lakh 200 lakh

**Ans**- 75,00,000 + 80,00,000 + 35,00,000 + 30,00,000 =210 lakh

The unit is small scale unit because total value of clearance doesn't exceed 400 lakh.

**Authors Note- Solve the question with proper working notes as suggested in the class.**

## Registration under central excise

6. Examine whether the following categories of persons are exempted from obtaining registration under rule 9(2) of the Central Excise Rules, 2002.

(a) S Ltd. is a small scale unit exempt under Notification No. 8/2003 dated 01.03.2003.

(b) Central Government undertakings manufacturing excisable goods.

(c) Arahnath Enterprises is engaged in the manufacture of the excisable goods which are chargeable to nil rate of duty.

**Ans** Every Manufacturer is liable to get registered but CG has exempted the small scale units for taking registration. However, they have to file the declaration when their clearances in preceding financial year eaual to or more than Rs. 90 lakh. Hence,S Ltd. is exempt from obtaining registration if it gives the declaration when their clearances in preceding financial year eaual to or more than Rs. 90 lakh.

**(b) No, the Central Government undertakings manufacturing excisable goods are not exempted from obtaining registration.**

**(c)** CG has exempted , for taking registration the persons who manufacture the excisable goods, which are chargeable to nil rate of duty or are fully exempt from duty by a notification subject provided declaration is filed. Hence, Arahnath Enterprises is exempt from obtaining registration provided it furnishes the declaration in the specified form.

## CENVAT CREDIT RULES

RaJA & Co. is engaged in the manufacture of Inverters. From the following information, you are required to compute the amount of CENVAT credit available to Raja & Co. under CENVAT Credit Rules, 2004:

**(1) Determine the amount of CENVAT credit available to Raja Manufacturing Ltd. in respect of the following items procured by them in the month of October, 2011:-**

| Items | Excise duty paid (including EC and SHEC) (₹) |
|---|---|
| Raw materials | 52,000 |
| Pollution Control Equipment | 55,000 |
| Capital goods used for generation of electricity for captive use within the factory | 1,00,000 |
| Storage Tank | 20,000 |
| Grease & Oil | 25,000 |
| Light Diesel Oil | 5,000 |
| Motor spirit | 40,000 |
| Inputs used for construction of a building | 1,00,000 |
| Dairy and bakery products consumed by the employees | 5,000 |
| Air Conditioner in the office of Manager | 15,000 |
| Motor vehicle | 4,50,000 |

(Note: The aggregate value of clearances of Gangotri Manufacturing Ltd. for the financial year 2010-11 is ₹ 350 lakh)

**Ans- 52000 + 55,000 + 1,00,000 + 20,000 + 25,000 + 50000 + 450000**
**Note- it is assumed that MOTOR VEHICLE IS other than chapter 8702/03/04/11.**

| | Excise duty paid (including cess) (`) |
|---|---|
| Raw material | 4,80,000 |
| Pollution Control Equipment | 1,25,000 |
| Storage Tank | 60,000 |
| Grease & Oil | 25,000 |
| Light Diesel Oil | 15,000 |
| Air Conditioner in the office of Manager | 35,000 |
| Food items consumed by the employees | 18,000 |
| Inputs used for construction of a building | 2,50,000 |

**Question**

Discuss in detail whether interest can be recovered from an assessee who firstly wrongly takes and subsequently reverse CENVAT Credit before its utilisation.

Answer

**NO, INT CAN'T BE RECOVERED AFTER AMENDMENT BY BUDGET 2012.**

**Question**

Based on the following particulars, arrive at the CENVAT credit available on clearance of goods to Domestic Tariff Area (DTA) from an Export Oriented Unit (EOU):

Assessable value ` 20 lakhs
Basic customs duty 10%
Excise duty 10%
Education cess 2%
Secondary and Higher Education cess 1%
VAT payable under State VAT law 4%

Answer

As per Notification No. 23/2003 CE dated 31.3.2003, 50% of basic customs duty is exempt in case of clearance of goods by an EOU to DTA. The amount of excise duty payable by EOU is calculated as under:

(i) Assessable value 20,00,000
(ii) Customs duty @ 5% of `20,00,000 1,00,000
(iii) Additional customs duty (CVD) @ 10% of (`20,00,000 + `1,00,000) 2,10,000
(iv) Education cess of customs @ 2% of `(1,00,000 + 2,10,000) 6,200
(v) S & H education cess of customs @ 1% of `(1,00,000 + 2,10,O00) 3,100

Add: Special additional customs (SAD) (It is exempt since VAT is payable) Nil

Excise duty payable in terms of proviso to section 3(1)
=`(1,00,000+2,10,000+6,200+3,100) 3,19,300

Education cess of excise=` (3,19,300×2%) 6,386
Secondary and higher education cess of excise=` (3,19,300×1%) 3,193

Total Excise duty liability of EOU=`(3,19,300+6386+3,193) 3,28,879
As per second proviso to rule 3(7)(a) of CENVAT Credit Rules, 2004, the amount of CENVAT credit will be as under:

`

Additional duty of customs (CVD) 2,10,000
Education cess of excise 6,386
S & H education cess of excise 3,193
Total amount of credit 2,19,579
Note. Notification No. 23/2003-CE dated 31-03-2003, granting partial exemption to EOU, states that 'duty of excise' under section 3(1) in excess of duty of customs reduced by 50% is exempt. Some authors are of the opinion that EC & SHEC will not be levied on total of [BCD + cvd +Custom cess + SP. CVD]

**Question**

Madan Gopal Ltd. acquired the following assets on 1-4-2009:-

| Kinds of Capital Assets | Amount excluding excise duty (`) | Amount of Excise Duty (`) |
|---|---|---|
| Computers and Computer Peripherals | 5,00,000 | 50,000 |
| Capital Assets other than Computers & Computer Peripherals | 20,00,000 | 2,00,000 |

The company removed of above capital Assets after use on 4th May 2012. Computer sold for 1,50,000 and other cap. Asset sold for 14 lakh. Compute the amount to be paid by the company separately in case of disposal of Computer and Computer Peripherals and other capital assets respectively.

Answer

As per rule 3 (5A) – higher of 2 payable

(i) Reduced amount as per % specified or
(ii) Duty payable on transaction value.

Madan Gopal Ltd will pay the following amounts:-

| Date of Acquisition of Assets | Date of Disposal of Assets |
|---|---|
| 01-04-2008 | 4-05-2012 |

Time Gap in terms of number of quarters/part thereof between above two dates 12 quarters

**(A) Case of Computer & Computer Peripherals:-**

| | |
|---|---|
| Total CENVAT availed in case of Computers & Computer Peripherals: | 50,000 |
| Amount reduced for each quarter in the first year @ 10% i.e.4 x 10%=40% | 20,000 |
| Amount reduced for each quarter in the second year @ 8% i.e. 4x 8%=32% | 16,000 |
| Amount reduced for each quarter in the third year @ 5% i.e. 4 x 5%=20% | 10,000 |

| | |
|---|---|
| Amount reduced for quarter in the 4th year @ 1% i.e. 1 x 1%=1% | 500 |
| Total amount to be reduced | 46,500 |
| Note- since duty on TV is 18540 (i.e 150000* 12.36%). Hence as per rule 3 (5A)- amt payable – higher of 2 i.e 18540 OR Amount PAYABLE AS PER % BASIS BY Madan Gopal Ltd.(`` 50,000 – `` 46,500) =3500<br>HIGHER OF 2 PAYABLE IS 18540 | |

(B) Case of disposal of other Capital Assets:-

**Question**

M/s TCCL, providing management consultancy to its client, does not maintain any separate accounts and have paid `1,00,000 as service tax and excise duty towards input services and input material/capital goods used by them. It is assumed for the sake of simplicity that out of aforementioned ` 1,00,000 they have used the inputs for exempted and taxable services to the extent of ` 40,000 & ` 60,000 respectively. They are providing the output services amounting to ` 14,00,000 and exempted services amounting to ` 7,00,000. How much credit out of `1,00,000 can be availed by them for paying output service tax liability, if they do not maintain any separate accounts?

Answer

w.e.f. 01-04-2011 Rule 6(3) of the CENVAT Credit Rules, 2004 inter alia provides that where common input/input services are used for providing taxable as well as exempted services and separate accounts are not maintained, the output service provider has the following options at his disposal:-

(i) Pay an amount equal to 6% of the value of exempted services;

OR

(ii) Pay an amount as determined under Rule 6(3A) of CCR, 2004 i.e. Reverse the CENVAT Credit attributable to the inputs and input services used for providing exempted services

(iii) Maintain separate accounts for inputs as provided for in Rule 6(2)(a) of CCR, 2004 and take credit of only those inputs which are used for provision of output services excluding exempted services. In addition, a service provider has to pay an amount determined in accordance with Rule 6(3A) in respect of input services.

Accordingly, in the present case if the above options are applied then:-

(i) M/s TCCL has to pay ` 42,000/- (6% on ` 7,00,000) on value of exempted services. After making aforementioned payment, it can take entire CENVAT Credit of ` 1,00,000 available to it.

(ii) TCCL has to reverse CENVAT Credit attributable to inputs and input services used for providing exempted services which are given as ` 40,000/- .

(iii) In the absence of complete information for maintaining separate accounts for inputs, this option can not worked out in this case. Consequently, proportionate reversal option only in r/o input services can not be worked out.

**Question**

Whether CENVAT Credit can be availed in respect of service paid under section 66A of Finance Act, 1994?

**Answer**

As per Rule 3(1)(ixa), a manufacturer or producer of final products or a provider of taxable service can take cenvat credit of the service tax leviable under section 66A of the Finance Act.

**Question**

Punjab National Bank provides the following information for the month of June 2011:

CENVAT Credit available on Inputs ` 2,00,000

CENVAT Credit available on Input Services ` 4,00,000

Service Tax liability before availing eligible CENVAT ` 10,00,000

Determine the amount of CENVAT Credit available to Punjab National Bank for the month of June, 2011 in view of Rule 6(3B) of CENVAT Credit Rules, 2004. Also determine the net service tax liability of the Bank after availing the eligible CENVAT Credit.

**Answer**

**service tax liability will be computed as under:**

| | |
|---|---|
| CENVAT Credit available on Inputs ` | 2000000 |
| Less: Payment of 50% of CENVAT Credit available on Input by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed ` | 1000000 |
| Net CENVAT Credit available on Inputs ` | 1000000 |

| | |
|---|---|
| CENVAT Credit available on Input Services ` | 4,00,000 |
| Less: Payment of 50% of CENVAT Credit available on Input Services by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed. ` | 2,00,000 |
| Net CENVAT Credit available on Input Services ` | 2,,00,000 |

**Determination of Net Service Tax liability of Bank for the month of June, 2011-07-09**

| | |
|---|---|
| Service Tax liability of bank before availing eligible CENVAT Credit ` | 10,00,000 |
| Less: Net/Eligible CENVAT Credit available on Inputs ` | 1,00,000 |
| Less: Net/Eligible CENVAT Credit available on Input Services ` | 2,00,000 |
| Net Service Tax liability of bank after availing eligible CENVAT Credit ` | 7,00,000 |

**Question**

PQR Ltd, a manufacturer of excisable goods purchases in the month of September, 2011 inputs of ` 1,00,000/- on which it pays excise duty of ` ,10,300/- . The company availed the aforementioned CENVAT of ` 10,300/- while discharging its excise duty liability for the month of September, 2011. In Dec. 2011 before the said inputs are put into use, the company has written off ` 20,000 against the said inputs. What economic consequences the company has to face for foregoing writing off of ` 20,000/- However, subsequently, in the month of March, 2012 the company put to use the entire inputs of ` 1,00,000/-. Can the company get some economic benefit now?

**Answer**

Finance Act, 2011 has amended Rule 3(5B) of CENVAT Credit Rules, 2004 w.e.f. 08.04.2011 to require a manufacturer or service provider to pay an amount equivalent to the CENVAT Credit taken in respect of inputs or capital goods even where the value of such inputs or capital goods is written off partially before being put to use. Until 07.04.2011 this provision used to apply only when the value was written off fully.

In view of the above-mentioned amendment in CCR, 2004 PQR Ltd. will have to pay an amount equivalent to the CENVAT Credit taken in respect of inputs [which are ` 10,300 in the present case] consequent upon partial writing off to the extent of ` 20,000/- in respect of said inputs.

However, proviso to Rule 3(5B) provides that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable service, the manufacturer or output service provider, shall be entitled to take credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of CCR, 2004.

Thus, in the present case, by virtue of proviso to Rule 3(5B) when in March 2012, the company puts to use entire inputs of ` 1,00,000 to use; the company will be entitled to take credit of the amount equivalent to the CENVAT Credit paid earlier i.e. ` 10,300/-.

Question 9

Naman Ltd. is registered under Central Excise Act, 944. It has paid the following amounts under Central Excise Act, 1944:

| | |
|---|---|
| Central Excise Duty ` | 1600000 |
| Amount of Interest ` | 100000 |

In addition, it is liable under the following Acts for the amounts indicated against each Act:

| | |
|---|---|
| The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ` | 3,00,000 |
| The Securitization and Reconstruction of Financial Assets and the Enforcement of ` Security Interest Act, 2002 | 2,00,000 |

| | |
|---|---|
| Factories Act, 1948 ` | 3,00,000 |
| Customs Act, 1962 | ` 6,00,000 |

The company has a property worth ` 20 lakhs. What legal remedy is available to Central Excise Department for recovery of its above-mentioned dues of ` 17 lakhs.

**Answer**

According to provisions of Section 11E of Central Excise Act, 1944

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the

rules made thereunder shall be the first charge on the property of the assessee or the concerned. However, aforementioned first charge shall be subject to the amounts payable under the following Acts:

1. Companies Act, 1956 [Section 529A].
2. The Recovery of Debts Due to Banks and the Financial Institutions Act, 1993.
3. The Securitisation Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002.

In view of above-mentioned provisions of Section 11E of Central Excise Act, 1944, the Department can create first charge on the property of defaulting assessee Naman Ltd.

However, aforementioned first charge shall be subject to amounts payable under the following Acts:

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ` 3,00,000

The Securitization and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 ` 2,00,000

Thus, the Department will be able to create first charge of ` 15 lakh [` 20 lakh less 5 lakh payable under above Acts] only by virtue of Section 11E of Central Excise Act, 1944.

**Determine the amount of CENVAT credit available to PQR Manufacturing Ltd. in respect of the following items procured by them in the month of October, 2011:-**

| Items | Excise duty paid (including EC and SHEC) (`) |
|---|---|
| Raw steel | 52,000 |
| Goods for providing Free warranty | 5000 |
| Plastic pipe making machine | 20,000 |
| Spare parts for the above machine | 8,000 |
| Parts and components for used in the manufacture of final product | 16000 |
| Office equipment | 30,000 |
| Capital goods used for generation of electricity for captive use within the factory | 1,00,000 |
| Input used exclusively in manufacture of goods for which NN- 1/2011 is availed | 15000 |
| Capital goods used exclusively in manufacture of goods for which NN- 1/2011 is availed | 60000 |
| Grease and oil | 2000 |
| Motor spirit & High Speed Diesel Oil | 40,000 |
| Inputs used for construction of a building or making structure for support of CG. | 1,00,000 |
| Dairy and bakery products consumed by the employees or in guest house for personal use. | 5,000 |
| Motor vehicle falling under tariff heading 8705 | 4,50,000 |
| Motor vehicle falling under tariff heading 8702 | |

**(Note: The aggregate value of clearances of PQR Manufacturing Ltd. for the financial year 2010-11 is ` 450 lakh)**

**Ans- 52000 + 5000 + 10000 +4000 +16000+ 50000 +2000 + 225000**

**(a) Discuss whether the following statements true or false w.r.t Cenvat Credit Rules,2004 with Explanation.**

**(i) Dumpers or tippers used by Manufacturer or for providing mining services are not treated as capital goods.**

(ii) CENVAT credit cannot be used for paying Clean Energy Cess
(iii) Credit of duties of excise on inputs can be availed irrespective of whether payment is made or not against the invoice, whereas credit of service tax on input services can be availed only after making payment of the invoice.
(iv) Materials used by a manufacturer for maintaining factory building are eligible for CENVAT credit.
(v) manufacturer or service provider shall be allowed to take credit of the service tax leviable under section 66A of the Finance Act, 1994.
(vi) If the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to the duty leviable on transaction value.
(vii) Rule 4 of CENVAT Credit Rules, 2004 allows credit of inputs/CG without bringing them into the premises of output service provider subject to due documentation regarding their delivery and location.
(viii)CCR not allowed on Motor vehicle falling under 8702/03/04/11 to Maufacturer but allowed to specified service provider
(ix) credit of the service tax paid on supply of tangible goods through the motor vehicles and hiring of the motor vehicles, insurance and repair etc. where such motor vehicles are eligible as capital goods, is available.
(x) Credit of the service tax paid on insurance and repair etc. of the motor vehicle, even if not a capital good, is available to the following:- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by him; or (b) a general insurance service provider in respect of a motor vehicle insured or reinsured by him.
(xi) Manufacturer or the service provider, in respect of common input/input services - opting not to maintain separate accounts, had the option to pay an amount equal to 6% of the value of the exempted goods and exempted services.
(xii) If wrongly availed CCR reversed before utilization, interest will be payable as decided by SC in case of IND SWIFT
(xiii)Arrears of duty under section 11A can be paid by utilizing the CENVAT credit which has accrued subsequent to the period to which the arrears pertained.
(xiv)Cenvat credit on inputs can't be taken without bringing them into the premises of output service provider.

ANS- (i) false (ii) True (iii) partially true- Refer Rule 4(7) (iv) false (v) true (vi) false (vii) true (viii) true (ix) true (x) true (xi) true (xii) false overrule by amendment in rule 14 (xiii) true (xiv) false

## Value added Tax

**(1)**

R ltd. Of Gujrat made a total purchase of input and capital goods of Rs 55 lac during the month of Jan 2010. Further information is

1. Goods worth Rs. 15 lac purchased from Assam on which CST @ 2% paid
2. Purchase made in January include purchase made from unregistered dealer Rs. 18.5 lac
3. It purchased capital goods (not eligible for credit) worth Rs. 6.5 lac and eligible for credit is Rs. 9 lac
4. Sale made in gujrat during January 2010 is 10 lac on which vat 12.5% is payable.

Assume all purchase are exclusive of VAT 4%% paid on them

Calculate

1. Amount of input tac credit available for January 2010
2. VAT payable for the month of JANUARY 2010 AND
3. Input tax credit carried forward

Note- input vat on capital goods is eligible in 36 equal monthly instalments.

**Solution**

| | |
|---|---|
| **Total purchase made in January 2010** | **55 lac** |
| **Less-** | |
| **(1)** Goods purchased from Assam i.e interstate purchase | 15 lac |
| **(2)** purchase made from unregistered dealer | 18.5 lac |
| **(3)** purchased capital goods (not eligible for credit) | 6.5 lac |
| **total purchase eligible for credit** | **15 lac** |

input tax credit available

4% on [15 lac- 9 lac] 24000

| | |
|---|---|
| Vat credit on eligible capital goods [4% of 9lac * 1/36] | 1000 |
| **Input credit available for January 2010** | **25000** |

| | |
|---|---|
| **Vat on sale of 12.5 % of 10 lac** | **125000** |
| **Less – input tax credit** | **25000** |
| **Net vat payable** | **100000** |

**Input tax credit carried forward == nil**

**Nov 09**

**Determine the taxable turnover, input tax credit and net VAT payable by a works contractor from the details given below on the assumption that the contractor maintains sufficient records to quantify the labour charges. Assume output VAT at 12.5%:**

| | **Particulars Rs.(in lakh)** | |
|---|---|---|
| (i) | Total contract price (excluding VAT) | 100 |
| (ii) | Labour charges paid for execution of the contract | 35 |
| (iii) | Cost of consumables used not involving transfer of property in goods | 5 |
| (iv) | Material purchased and used for the contract taxable at 12.5% VAT (VAT included) | 45 |

**The contractor also purchased a plant for use in the contract for Rs. 10.4 lakhs. In the VAT invoice relating to the same, VAT was charged at 4% separately and the said amount of Rs. 10.4 lakhs is inclusive of VAT. Assume 100% input credit on capital goods.**

**Make suitable assumption wherever required and show the working notes. (5 Marks)**

**Ans**

Under the works contract, the turnover for imposition of VAT is the sale price of the goods in which there is a transfer of property. The amount representing the labour & other charges incurred for such execution is deductible.

Computation of the taxable turnover, input tax credit and net VAT payable by the works contractor:-

| Particulars | Rs. | Rs. | Rs. |
|---|---|---|---|
| Total contract price | | 1,00,00,000 | |
| Less : Deductions admissible | | | |
| 1. Labour charges paid for executing the contract | 35,00,000 | | |
| 2. Cost of consumables in which no property is transferred | 5,00,000 | | |
| Total deductions | | | 40,00,000 |
| Taxable turnover | | | **60,00,000** |
| Output VAT payable @ 12.5% (on Rs. 60,00,000) | | 7,50,000 (A) | |
| Less : Input tax credit admissible | | | |
| 1. On the material purchased (on Rs. 45,00,000 x 12.5/112.5) | 5,00,000 | | |
| 2. On the plant purchases (on Rs. 10,40,000 x4/104) | 40,000 | | |
| Input tax credit | 5,40,000 (B) | | |
| Net VAT payable | **2,10,000 (A-B)** | | |

**Que- what are disadvantage of composition scheme?**

**Vat chain under composition scheme**

**Loss to seller-**he can't avail input tax credit on purchase, which will add to the cost of goods. He can't pass ITC to buyer at time of sale
**Loss to buyer-** buyer can't take credit for purchase from composition dealer. Therefore on option of composition scheme, Vat chain is broken.

Determine the taxability of the following activities as per the provisions of the Finance Act, 1994.
(a) M/s Omi Limited is engaged in providing service in relation to collection of tolls and for security of the toll road in Gurgaon.
(b) A house is given on rent at Paschim Vihar, Delhi on a single rent deed, One floor of the said house will be used as residence and the other for housing a printing press.

**Valuation of taxable service**

PQR LTD has entered into a contract with RAJA in FEB 2013 for installation of electrical fittings in a building owned by RAJA. The material required for such installation is also required to be supplied by PQR LTD.

As per the contract, the amount payable (excluding all taxes) by RAJA to PQR LTD is ` 50,00,000 in addition to the electric cables to be supplied by RAJA for which it charged ` 5,00,000 from PQR LTD. Fair market value of the electric cables (excluding VAT) is ` 15,00,000.

Whether the foregoing installation services are subject to service tax and if so, how will the service tax liability be computed?

Ans- yes liable to service tax
Value of taxable service = (50,00,000 + 15,00,000 – 5,00,000) * 60% = 36,00,000
SERVICE TAX – 12.36% ON 36,00,000

**RTP may 2010 new**

**(1) Penalty for failure to pay service tax**

**Examine, with the help of a decided case law, if any, whether the Tribunal could reduce the penalty imposable under section 76 of the Finance Act, 1994 as amended, below the minimum limit prescribed under that section?**

**(2) Stock transfer**

**Briefly explain whether the input tax credit of the VAT paid on the purchases of goods which are stock transferred, is available.**

**(3) Computation of VAT**

**Compute the net VAT liability of Rishabh using the information given as follows:-**

| **Particulars** | **Rupees** |
|---|---|
| **Raw material purchased from foreign market (including duty paid on imports @ 20%)** | **12,000** |
| **Raw material purchased from local market (including VAT charged on the material @ 4%)** | **20,800** |
| **Raw material purchased from neighbouring state (including CST paid on purchases @ 2%)** | **7,140** |
| **Storage, transportation cost and interest** | **2,500** |
| **Other manufacturing expenses incurred** | **600** |

**Rishabh sold the goods to Rajul and earned profit @ 10% on the cost of production. VAT rate on sale of such goods is 12.5%.**

**(4) Subtraction method**

**Briefly discuss, under what circumstances subtraction method of computing VAT is normally applied?**

**(5) Demerits of VAT**

**Illustrate the demerits of VAT system.**

**(6) Works Contract**

**Is a works contract liable to VAT? What are the points that should be borne in mind to ascertain whether a transaction is a works contract as contemplated in Article 366(29A)(b) of the Constitution?**

**Ans**

**(1)** Yes, the tax paid on purchases of goods which are stock transferred will be available as input tax credit after deduction of 4% of such tax by the State Governments.

**(2) Computation of Sale Price and VAT payable thereon;**

| Particulars | Rupees |
|---|---|
| Raw material purchased from foreign market (Note – 1) | 12,000 |
| Raw material purchased from local market (Rs. 20,800 – Rs. 800) (Note – 2) | 20,000 |
| Raw material purchased from neighbouring state (Note – 3) | 7,140 |
| Storage, transportation cost and interest | 2,500 |
| Other manufacturing expenses incurred | 600 |
| Cost of production | 42,240 |
| Add: Profit earned @10% on Rs. 42,240 | 4,224 |
| Sale Price | **46,464** |
| VAT @ 12.5% on sales | 5,808 |

**Net VAT liability of Rishabh:-**

| | |
|---|---|
| VAT on sale price | 5,808 |
| Less: Set-off of VAT on purchases | |
| On imports | Nil |
| On local purchases | 800 |
| Net VAT payable by Rishabh | **5,008** |

*From the following information provided by M/s RA Ltd., registered under the VAT law in the State of Gujarat as dealer in consumer goods, compute the amount of VAT payable for the month of July 2012:*

**Purchase of raw material (within the State)**

| *Item* | *Amount (`)* | *Rate of VAT* |
|---|---|---|
| *Goods 'X'* | *7,50,000* | *Exempt* |
| *Goods 'Y'* | *25,00,000* | *1%* |
| *Goods 'Z'* | *35,00,000* | *12.5%* |

| ***Particulars of finished goods sold*** | ***State in which goods are sold*** | ***Value*** | ***VAT/CST Rate %*** |
|---|---|---|---|
| *Produced from goods 'X'* | *Gujarat:* | *5,00,000* | *12.5% VAT* |
| | *Interstate sales to Maharashtra* | *6,00,000* | *2% CST* |
| *Produced from goods 'Y'* | *Gujarat* | *30,00,000* | *Exempt* |
| *Produced from goods 'Z'* | *Gujarat* | *40,00,000* | *4% VAT* |

*Raw materials valued at ` 5 lakhs of goods 'Z' have been transferred to the branch in Madhya Pradesh during the month. Assume 2% reduction in input credit on account of such transfer.*

*ANS- OUTPUT VAT- 222500, ITC- 427500, EXCESS ITC- 205000, ITC C/F - 193000*

**Composition scheme under VAT**

14. Who are not eligible for composition scheme under the VAT regime? Discuss briefly

**Registration under VAT**

15. Under what circumstances registration can be cancelled under VAT?

**Computation of VAT**

16. Mr. Ram, a dealer in Tamil Nadu dealing in consumer goods, submits the following information pertaining to the month of October, 2011:
Details of purchases of goods:-

| Particulars (raw material purchased from within the State) | Amount (`) | Rate of VAT |
|---|---|---|
| Goods 'A' | 10,00,000 | Exempt |
| Goods 'B' | 20,00,000 | 1% |
| Goods 'C' | 30,00,000 | 12.5% |

**Detail of sale of goods**

| Particulars (Sale of finished goods) | State in which goods are sold | Amount (`) | Rate of VAT |
|---|---|---|---|
| Produced from Goods 'A' | Tamil Nadu | 5,00,000 | 12.5% |
| Gujarat | 7,00,000 | 1% | |
| Produced from Goods 'B' | Tamil Nadu | 24,00,000 | Exempt |
| Produced from Goods 'C' | Tamil Nadu | 35,00,000 | 4% |

Compute the amount of Value Added Tax (VAT) payable by Mr. Ram for the relevant month. There was no opening or closing inventory.

**16. Computation of invoice value:-**

| **Particulars** | **Rs.** | **Rs.** |
|---|---|---|
| Cost of goods purchased | | 1,20,000 |
| *Add:* VAT (Since credit of VAT paid is available, it is not added to the cost) | | Nil |
| *Add:* Expenses | 10,000 | |
| *Add:* Profit margin | 15,000 | 25,000 |
| Product Sale Value | | 1,45,000 |
| *Add:* VAT @ 4% | | 5,800 |
| Invoice Value | | 1,50,800 |

**Computation of amount of tax payable under VAT:-**

| | | |
|---|---|---|
| VAT charged on sales | | 5,800 |
| *Less:* Input credit of VAT paid on purchases @ 12.5% on1,20,000 | | 15,000 |
| Tax Payable under VAT | | Nil |

**Input tax credit of Rs. 9,200 (Rs. 15000-Rs. 5,800) is carried forward to the next month i.e. June, 2011.**

**20. Computation of assessable value:-**

| | |
|---|---|
| CIF value | 10,000 US $ |
| *Less:* Freight | 3,000 US $ |
| *Less:* Insurance | 1,000 US $ |
| Therefore, FOB value | 6,000 US $ |

Assessable value for customs purpose:
FOB value 6,000 US $
*Add:* Freight (20% of FOB value) 1,200 US $
*Add:* Insurance (actual) 1,000 US $
CIF for customs purpose 8,200 US $
*Add:* 1% for landing charges 82 US $
Value for Customs purpose 8,282 US $
Exchange rate as per CBEC Rs. 44.50 per US $
**Assessable value = Rs. 44.50 x 8,282 US $**
= Rs. 3,68,549

Compute the invoice value and VAT payable by Mr. Mayank who purchases goods within the state for ` 4,50,000 (including VAT) and earns 20% profit on sale price. VAT rate on purchases and sales is 12.5%.

**VAT procedures**

16. "Under VAT, barring the items covered by the negative list and subject to retention rules, the dealers are entitled to set off on capital goods like any other purchases."Examine the validity of the statement and discuss the procedural requirements for claim of set off of capital goods.

**Baggage Rules**

**Calculate the amount of duty drawback allowable under section 74 of the Customs Act 1962 in following cases:**

**(a)** **Salman imported a motor car for his personal use and paid Rs. 5,00,000 as import duty. The car is re-exported after 6 months and 20 days.**
**(b)** **Nisha imported wearing apparel and paid Rs. 50000 as import duty. As she did not like the apparel, these are re-exported after 20 days.**
**(c)** **Super Tech Ltd. Imported 10 computer systems paying customs duty of Rs. 50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.**
***(d)*** XYZ Ltd. exported 1000 kgs of a metal of FOB value of ` 1,00,000. Rate of duty drawback on such export is ` 60 per kg. Market price of goods is ` 40,000 (in wholesale market).

**Ans**

Amount of duty drawback

**(a)** Period of personal use = 6 months and 20 days i.e 3 quarters
DDB admissible [5lac—4%*3*5lac]= 440000
**(b)** No drawback admissible on wearing apparel
**(c)** Drawback= 98% of 50 lakh = 49 lakh
**(d)** No DDB allowed because As per Sec 76 of CA 1962, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is ` 40,000, which is less than the amount of duty drawback, i.e. 1,000 kgs x ` 60 = ` 60,000.

**From the following particulars, determine the assessable value of the imported equipment giving explanation for each item:**
**Rs.**

**(1)** **FOB cost of equipment (Japanese Yen) 2,00,000 Yen**
**(2)** **Freight charges in Japanese Yen 20,000 Yen**
**(3)** **Charges for development connected to equipment paid in India Rs. 60,000**
**(4)** **Insurance charge paid in India for transportation from Japan Rs. 15,000**
**(5)** **Commission payable to agent in India Rs. 15,000**

**Exchange rate as per RBI is 1 Yen = Rs. 0.45**
**Exchange rate as per CBEC is 1 Yen = Rs. 0.50**
**Landing charges: one percent of CIF cost** **(5 Marks)**

**Answer**

Computation of assessable value:-

| | | |
|---|---|---|
| FOB value | | 2,00,000 Yen |
| Add: Freight from Japan (Note – 1) | 20,000 Yen | |
| Total (in yen) | | 2,20,000 Yen |
| Exchange rate applicable is 1 Yen = Rs. 0.50 (Note – 4) | | |
| Total (in rupees) | Rs. 1,10,000 | |
| Add : Insurance charges | Rs. 15,000 | |
| Total | | Rs. 1,25,000 |
| Add : Commission (Note – 2) | Rs. 15,000 | |

| | | |
|---|---|---|
| CIF value | | Rs. 1,40,000 |
| Add : Landing charges @ 1% of CIF value | Rs. 1,400 | |
| Assessable value | Rs. 1,41,400 | |

**1) May 2001/ Nov 2008 (New)**

**A consignment of 800 metric tons of skimmed milk powder of US origin was imported by a non-profit making organization for free distribution of milk to the children in a tribal area under a scheme designed by the Food and Agricultural Organisation. This being a special transaction of nominal price of US $ 10per metric ton was charged for the consignment to cover freight and insurance charges. The customs department found out at or about the time of importation of this gift consignment there were the following imports of skimmed milk powder of US origin**

| S.No. | Quantity imported In metric tons | unit price in US $ C.I.F |
|---|---|---|
| 1. | 20 | 260 |
| 2. | 100 | 220 |
| 3. | 500 | 200 |
| 4. | 900 | 175 |
| 5. | 400 | 180 |
| 6. | 780 | 160 |

**The rate of exchanges on the relevant date was 1 US $= Rs. 43 and the rate of BCD was 15% advalorem. There is no CVD and Special CVD. Calculate the amount of duty leviable on the consignment under the customs Act, 1962 with the appropriate assumption and explanations where required.**

**Answer**

**Determination of transaction value of the subject goods:-**

**Computation of amount of duty payable:-**

| | | |
|---|---|---|
| CIF value of 800 metric tonnes:=800 x 160 | | = US $ 1,28,000 |
| At the exchange rate of $ 1 | = Rs.43 | |
| CIF Value (in Rupees) | | = Rs.55,04,000 |
| *Add*: Landing Charges at 1% | | = Rs.55,000 |
| | | = Rs.55,59,040 |
| 15% of Ad Valorem duty on Rs.55,59,040 | = Rs.8,33,856 | |
| *Add*: Education cess @ 2% (rounded off) | = Rs.16,677 | |
| *Add*: Secondary and higher education cess @ 1% (rounded off) | = Rs.8,339 | |
| Total custom duty payable | = Rs.8,58,872 | |

**Compute the assessable value and customs duty payable from the following information:**

(i) **F.O.B. value of machine 8,000 UK Pounds**
(ii) **Freight paid (air) 2,500 UK Pounds**
(iii) **Design and development charges paid in UK 500 UK Pounds**
(iv) **Commission payable to local agent @ 2% of F.O.B., in Indian Rupees**
(v) **Date of bill of entry 24.10.2007 (Rate BCD 20%; Exchange rate as notified by CBEC Rs.68 per UK Pound)**

(vi) **Date of entry inward 20.10.2007 (Rate of BCD 18%; Exchange rate as notified by CBEC Rs.70 per cent UK Pound)**
(vii) **C.V.D. is payable @ 16% plus education cess as applicable**
(viii) **Special C.V.D. – as applicable**
(ix) **Insurance charges have been actually paid but details are not available.**
**(6 Marks)**

**Ans** Computation of assessable value and duty thereon:

| | |
|---|---|
| FOB value | 8000 UK pounds |
| Add: Design and development charges | 500 UK pounds |
| Add: Freight (air) (Note-1 | 1,600 UK pounds |
| Add: Insurance 1.125% of FOB (Note-2) | 90 UK pounds |
| Total | 10,190 |
| Total in Rupees @ Rs. 68 per pound (Note-3) | Rs. 6,92,920 |
| Add: Local agency commission (2% of 8000 UK pounds)= 160 UK pounds × Rs. 68 | Rs. 10,880 |
| C.I.F value | 7,03,800 |
| Add: Landing charges @1%of CIF value | 7,038 |
| Assessable value | 7,10,838 |
| Add: Basic custom duty @ 20% (Note-4) | 1,42,167.60 |
| Total Rs | . 8,53,005.60 |
| Add: CVD @16% [ **EC & SHEC EXEMPT ON CVD]** | 1,36,480.90 |
| Add: Education cess (3% of custom duty)<br>= 3% of (Rs. 1,42,167.60+ Rs. 1,36,480.90)=Rs. 2,78,648.50 | Rs. 8,359.45 |
| Total for Special CVD | 9,97,845.95 |
| Special CVD @4% | Rs. 39,913.83 |

Total duty payable: Rs. 1,42,167.60 + Rs. 1,36,480.90 + Rs. 8,359.45 + Rs. 39,913.83
= Rs. 3,26,921.78
or Rs. 3,26,922

Jagat Corporation Limited imported some goods from US .The details of the transaction are as follows:-
Rate of exchange OF CBEC - 1 US $=Rs 50
Rate of exchange OF RBI - 1 US $=Rs 49.10
CIF value of the goods is $ 1,50,000
Rate of basic custom duty is 10%
Rate of education cess is 2%
Rate of secondary and higher education cess is 1%
If similar goods were manufactured in India, excise duty payable as per Tariff is 12%.
Calculate assessable value and total duty payable thereon.
**ANS- AV = 75,75,000, BCD- 757500, CVD- 999900, CUSTOM- EC-35148, SHEC- 17574**

Que- calculate DDB as per sec 75 read with rules of CA 1962

| | FOB VALUE OF EXPORT GOODS | RATE OF DDB | IMPORTED MATERIAL VALUE | MKT PRICE OF GOODS |
|---|---|---|---|---|
| | 2,00,000 | 0.5% | 70000 | 1,00,000 |
| | 48000 | 1% | 35000 | 40000 |
| | 80000 | 0.5% | 50000 | 60000 |
| | 50000 | 30% | 25000 | 30000 |
| | 4000 | 1.2% | 2000 | 3500 |
| | 1,00,000 | 5 % | 125000 | 135000 |

| | | | | |
|---|---|---|---|---|
| | 50000 | 70% | 25000 | 30000 |
| | 160001 | 3% | 100000 | 150000 |

Suppose in case 8 Minimum value addition to be achieved fixed by CG is 60%

ANS

1. DDB allowed, because 0.5% of 2 lac i.e 1000 is more than 500, even though less than 1% of FOB.
2. DDB allowed, because 1% of 48000 i.e 480 though less than 500, but DDB allowed if it is 1% or more of FOB.
3. DDB not allowed, because 0.5 % of 80000 i.e 400 less than 500,and also less than 1% of FOB.
4. DDB allowed will be restricted to Rs. 10000 (i.e 1/3rd of Mkt price) even though originally DDB comes to Rs 15000 ( i.e 30% of 50000). Hence DDB allowed is Rs 10000.
5. DDB not allowed as it comes to Rs 48 which is less than Rs 50
6. No DDB allowed as the export value of goods is less than vale of imported material used
7. DDB not allowed as market price is less than amount of Duty Drawback. Hence no DDB allowed.
8. DDB allowed , because as per sec 75 No DDB allowed if export value of such goods is not more than such percentage of value of imported material used in the manufacture.

## THEORETICAL QUESTIONS
## CENVAT CREDIT

***(8)*** *Briefly explain any two of the following with reference to the provisions of Cenvat Credit Rules, 2004 :*
*(i) Exempted goods*
*(ii) Final products*
*(iii) First stage dealer*

***(9)*** *Briefly explain EA 2000 and Special Audit u/s 14A & 14AA*

### *Central Excise Rules 2002*

***(10)*** *Que- short note on*
*Provisional assessment*
*Annual financial Information*
*Large taxpayer unit*
*Daily stock account*
*Prototypes*
*Types of Bonds*
*CT-1 certificate*

***(11)*** *Briefly explain the procedure for removal of goods by a unit which is an 100% EOU for Domestic Tariff Area.*

### *Offences and penalties*

***(12)*** *State briefly the provisions of the Central Excise Act, 1944 relating to arrest of a person.*

***(13)*** *Residuary penalty u/r 27 of CER 2002*
***(14)*** *Describe power to summon persons under the Central Excise Act.*
***(15)*** *State the various circumstances where goods are liable for confiscation under the Central Excise Law. Can the assessee get back the confiscated goods and if so how?*

***(16)*** *Short note on*

*(i)* *Provisional attachment u/s 11DDA*
*(ii)* *Unjust enrichment and when unjust enrichment not applicable.*
*(iii)* *Duty under protest*
*(iv)* *Sec 11D of CEA 1944*
*(v)* *Consumer welfare fund*

Custom
Short note on

| | | |
|---|---|---|
| Bill of export | Rules and regulation | Adjudicating authority |
| Import report | Person-in charge | residual method of valuation |
| *Entry* | *Smuggling* | first appraisement/second appraisement system |
| *Prohibited goods* | *Custom area* | boat notes |
| *Goods* | *Indian customs waters* | *Provisional assessment in custom* |
| *stores* | *Foreign going vessel or aircraft* | Inland container depot and CFS |
| *Project import* | | |

*State the requirements to be satisfied to accept 'transaction value' under rule 3(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007.*
*Discuss the provisions regarding 'transit of goods' and 'transhipment of goods' without payment of duty under the Customs Act*

## *VAT- IMPORTANT QUESTIONS*

*(1) SHORT NOTE ON GST (2) TYPES OF AUDIT (M. IMP) (3) DIFFERENT MODES OF INCENTIVE OF VAT ( 4) BROAD PRINCIPLES CONSIDERED BY STATES WHILE FRAMING VARIOUS SALES TAX INCENTIVE SCHEMES (4) GUDIELINES OF WORKS CONTRACT (5) VAT AND LEASE TRANSACTION OR HIRE PURCHASE TRANSACTION*

## AMENDMENT FOR NOV 12-

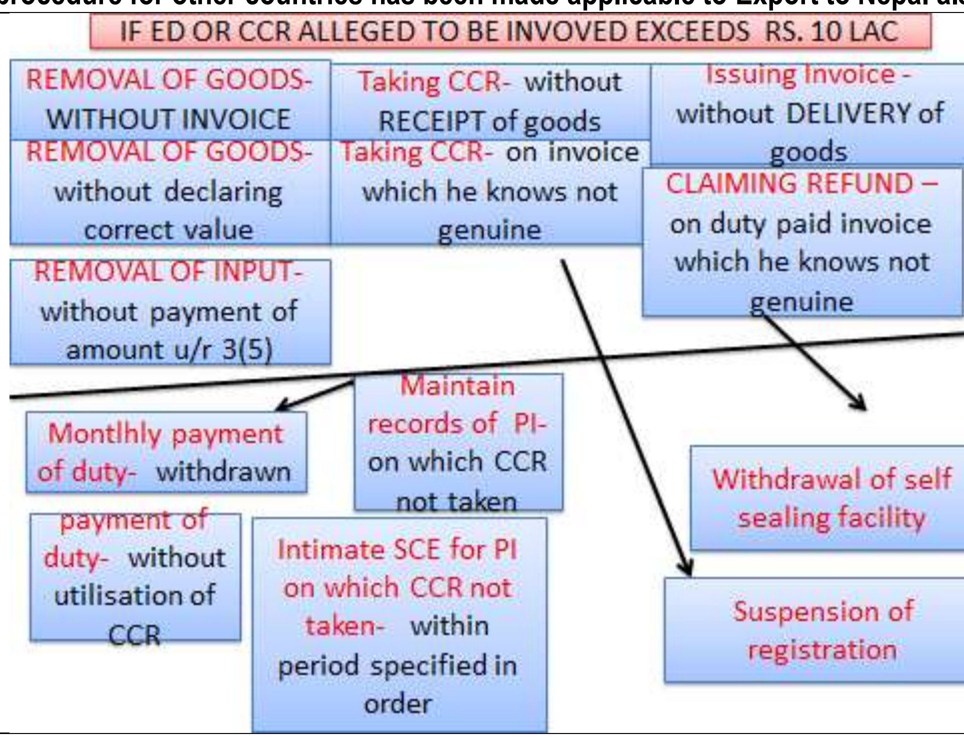
| | |
|---|---|
| **4 (1) & 4(2)** | CCR allowed on inputs/cg without bringing in premise of s.provider subject to documentation of their delivery & location. |
| CBEC Clarification | sturctural component of BOILER- CCR allowed as Capital goods. |
| 3(4) | **Arrears of duty under section 11A can be paid by utilizing the CENVAT credit which has accrued subsequent to the period to which the arrears pertained.** |
| 3(5**A**)<br>Capital goods removed as SECOND HAND CAPITAL GOODS OR scrap/ waste | the manufacturer/provider of output services shall pay an amount equal to:-<br>(i) CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method for each quarter of a year or part thereof from the date of taking the CENVAT Credit. or<br>(ii) Duty leviable on transaction value.<br>whichever is higher |

| | |
|---|---|
| Rule 6 | if common IP/IS used in providing EG/ES, and separate records not maintained then pay 6% of value of exempted goods or exempted service |
| Rule-5 | a manufacturer exporting goods without payment of duty under BOND/LUT OR S. Provider exporting services without payment of S. tax shall be allowed refund of Cenvat credit. |
| | REFUND = EXPORT TO OF GOODS + EXPORT TO OF SERVICE * NET CCR<br>TOTAL TURNOVER<br><br>NET CCR = [ CCR AVAILED ON IP& IS – AMT REVERSED IN 3(5C) ]<br><br>EXPORT TO OF GOODS = VALUE OF FP & INT. PRODUCT EXPORTED UNDER BOND OR LUT<br><br>EXPORT TO OF SERVICE = PAYMENT RECD DURING RELEVANT PERIOD FOR EXPORT OF SERVICE +<br>EXPORT OF SERVICE WHOSE PROVISION COMPLETED BUT PAYMENT RECD IN PERIOD PRIOR TO RELEVANT PERIOD<br>(-) ADVANCE RECD FOR WHICH SERVICE NOT PROVIDED YET<br><br>TOTAL TO = [VALUE OF EXPORT + DUTIABLE + EXEMPTED GOODS] +<br>[ VALUE OF EXPORT SERVICE ( as above) + OTHER SERVICE]<br>(+) VALUE OF IP REMOVED AS SUCH |
| Mr.Raja, a manufacturer having three registered premises, registrations for which has been obtained on the basis of a common Permanent Account Number, wants to transfer unutilized CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises to the other one. Examine whether Mr. Raja can do so and if yes, then explain what is the procedure for such transfer | |

| | |
|---|---|
| **RULE 10A** | RULE 10A- MANUFACTURER अपनी एक FACTORY से दूसरी FACTORY में ADDITIONAL DUTY U/S 3(5) OF CTA का CREDIT DISTRIBUTE कर सकती है<br>MANUFACTURER – ने एक से ज्यादा PREMISES का REGISTRATION COMMON PAN के BASIS पर ले रखा है<br>MANUFACTRER – QUARTERLY एक REGISTRED PREMISES से दूसरी REGISTERED PREMISES में ADDITIONAL DUTY U/S 3(5) OF CTA का BALANCE जो QTR END को AVAILABLE है - DISTRIBUTE **कर सकती है**<br>CCR TRANSFER करने के लिए -<br>✓ TRANSFER की ENTRY करनी होगी – DOCUMENT में जो R-9 में maintain कर रखा है<br>✓ TRANSFER CHALLAN ISSUE करो – जिसमे NAME, ADDRESS TRANSFERRER AND RECIEVER का , AMT TRANSFERRED लिखना होगा<br>RECIPIENT PREMISES- TRANSFER CHALLAN के BASIS पर CREDIT ले लेगी<br>CREDIT TRANSFER नहीं कर सकते- अगर TRANSFERRER AND RECIPIENT PREMISES AREA BASED EXEMPTION ले रही है<br>MANUFACTURER MONTHLY RETURN FILE करेगा - TRANSFERRER AND RECIPIENT PREMISES के लिए |
| Rule 9 | CCR can be claimed when s. tax is paid under reverse charge. |
| **RULE 12** | Buyer of goods from specified North east regions etc. can take credit of duty paid on exempted goods. But NO CCR ALLOWED, if goods purchased are of specified in NN- 1/2011 or sl. No. 67/128 of 12/ 2012 |
| Rule 12A | **Procedure and facilities for LTU not applicable to unit availing exemption under Notification No. 01/2010** |
| **R- 14** | IF CCR wrongly availed AND Utilised wrongly or erroneously refunded then CCR recovered along with interest. |
| Note- if CCR wrongly availed is reversed before utilization, then there is no liability of interest. (IND- SWIFT Case overruled by amending Rule- 14 of CCR 2004 by replacing "or" with "and" | |
| **REMOVAL OF GOODS AT CONCESSIONAL RATE OF DUTY RULES 2001** | |
| **R-5** | Manufacturer receiver shall submit quarterly return by the 10th day of following month. |

**CER 2002**

| | Return | due date |
|---|---|---|
| ER-1 | Monthly return for Non-SSI | within 10 days after the close of the Month |
| ER-2 | Monthly return by 100% EOU | within 10 days after the close of the Month |
| Er-3 | Quarterly return for SSI within 20 days after the close of the | Within 10 days after the close of the Quarter |
| ER 4 | Annual Financial information statement / Form to be filed by assesses paying duty of 1 crore or more from PLA+CCR | 30th day of November of Succeeding year |
| ER 5 | ANNUAL RETURN of information relating to principal inputs –To be filed by assessee paying duty of Rs 1 crore or more than PLA+CCR | 30th April of each financial year |
| ER 6 | Monthly return of information relating to principal inputs to be filed by assesses paying duty of Rs. 1 crore or more than PLA+CCR | With in 10 days after the close of the month |

<table>
<tr><td>ER-7</td><td>Annual installed capacity statement-annual return – EVERY ASSESSEE EXCEPT – BIRI, MATCH BOXES, REINFORCED CEMENT CONCRETE PIPES.</td><td>By 30th april of succeeding year</td></tr>
<tr><td>ER-8</td><td>130 ITEM ON WHICH DUTY 2%- QUARTERLY</td><td>WITH IN 10 FROM CLOSE OF QUARTER</td></tr>
<tr><td colspan="3">NOTE- ER-1 TO ER-8 FILED ELECTRONICALLY EXCEPT PERSON AVAILING AREA BASED EXEMPTION IN HIMANCHAL PRADESH AND UTRAKHAND.</td></tr>
<tr><td>R-22</td><td colspan="2">To demand specified records form regd assessee (including FSD/SSD) BY AUDIT OFFICER APPOINTED BY CCE/CAG, CWA/CA APPOINTED U/S 14A/14AA<br>1. Record maintained for receipt/purchase/manufacture/ storage/sale or delivery of gooods including input/CG<br>2. Record maintained for receipt/ procurement/ payment of input service<br>3. Financial records<br>Cost audit report, Tax audit report</td></tr>
<tr><td>Notification No 8/2012</td><td colspan="2">In case of Job Work on jewellery, only the principal manufacturer shall be liable for registration,<br>payment and all other compliances under the Central Excise. Further, the jewellery need not contain the brand name or trade name, to be affixed or embossed on them.<br>Note: Earlier, option was given to Job Worker to get registration and payment and otherl compliances under Excise. Such option is now withdrawn implying that only the principal manufacturer has to carry<br>out such procedures.</td></tr>
<tr><td>R-18 & 19</td><td colspan="2">EXPORT PROCEDURE TO NEPAL AMENDED<br>Export procedure for other countries has been made applicable to Export to Nepal also.</td></tr>
<tr><td>R-12AAA OF CCR 2004 AND 12CCC OF CER 02 IMPOSE certain restriction</td><td colspan="2"></td></tr>
<tr><td></td><td colspan="2"></td></tr>
<tr><td colspan="3">SERVICE TAX</td></tr>
<tr><td colspan="3">Rate of service tax- 12%</td></tr>
<tr><td>R- 6 STR 1994</td><td colspan="2">IN CASE OF EXPORT OF service, if the payment is received within the period specified by RBI including extended period- R-6 will not be applicable.<br><u>INDIVIDUALS/PARTNERSHIP FIRMS HAVING VALUE SERVICES OF ` 50 LAKH OR LESS IN P.Y ALLOWED TO PAY S.TAX ON PAYMENT BASIS IN CURRENT YEAR UPTO A TOTAL OF ` 50</u></td></tr>
</table>

| | |
|---|---|
| | **LAKH** |
| **POINT OF TAXATION RULES 2011** | |
| **R-2A** | Date of payment =[ Book entry or Credit in Bank ]**w.i. earlier**<br>**Note- Date of Payment = Credited in Bank**<br>**(i) there is a CHANGE IN EFFECTIVE RATE OF TAX or when a service is taxed for the first time during the period BETWEEN SUCH ENTRY IN BOOKS OF ACCOUNTS AND ITS CREDIT IN THE BANK A/C; AND**<br>**(ii) the CREDIT IN THE BANK ACCOUNT IS AFTER 4 WORKING DAYS FROM THE DATE when there is CHANGE IN EFFECTIVE RATE OF TAX or a service is taxed for the first time; AND**<br>**(iii) the PAYMENT IS MADE BY WAY OF AN INSTRUMENT WHICH IS CREDITED TO A BANK ACCOUNT,** |
| **R-3 - POT** | **If Timely Invoice Issued I.E 30/45 Days-** [DOI OR DOP ] w.i. earlier<br>**If Timely Invoice NOT Issued I.E 30/45 Days-** [DOCOS* OR DOP ] w.i. earlier<br>NOTE-IN Case of Continuous service- "DOCS" [ DATE OF COMPLETION OF SERVICE replaced by "DOCOE"- DATE OF COMPLETION OF EVENT ] |
| **CONTINUOUS SUPPLY OF SERVICE" means** any service provided, or to be provided continuously **OR ON RECURRENT BASIS**,, under a contract,<br>⇒ for a period exceeding 3 months **OR NOTIFIED SERVICES BY**CG<br>***FOLLOWING SERVICES NOTIFIED- )-*** commercial or industrial / residential complex construction, telecommunication service, internet telecommunication service and works contract service | |
| **R-4 – RATE OF S. TAX W.E.F- 1-4-2012- 12%** | **POT IN CASE OF Change in effective Rate of service tax**<br>**(i) Taxable service provided BEFORE change in rate of s. tax**<br>IF INVOICE ISSUED & payment recd after change in rate of s.tax**- [DOI OR DOP ] w.i. earlier**<br>IF INVOICE already ISSUED & payment recd after change in rate of s.tax **-DOI**<br>IF payment already recd but invoice issued after change in rate of s.tax**- DOP**<br>**(ii) Taxable service provided after change in rate of s. tax**<br>IF INVOICE ISSUED & payment recd before change in rate of s.tax**- [DOI OR DOP ] w.i. earlier**<br>IF INVOICE already ISSUED & payment recd after change in rate of s.tax**- DOP**<br>IF payment already recd but invoice issued after change in rate of s.tax**-DOI** |
| FOR RULE- 4 OF POT 2011-SIMPLE FORMULA- FIRST OF ALL DETERMINE<br>(i) Date on which taxable services have been provided;<br>(ii) Date of issue of invoice;<br>(iii) Date of receipt of payment<br>if any *two events* out of 3 above takes place prior to 31.03.2012, old rate i.e. 10.3%<br>if any *two events* out of 3 above takes place on or after 01.04.2012, new rate i.e. 12.36% | |

**Change of Rate: W.E.F- 1-4-2012 – 12.36%.------- UPTO 31-3-2012- 10.3%**

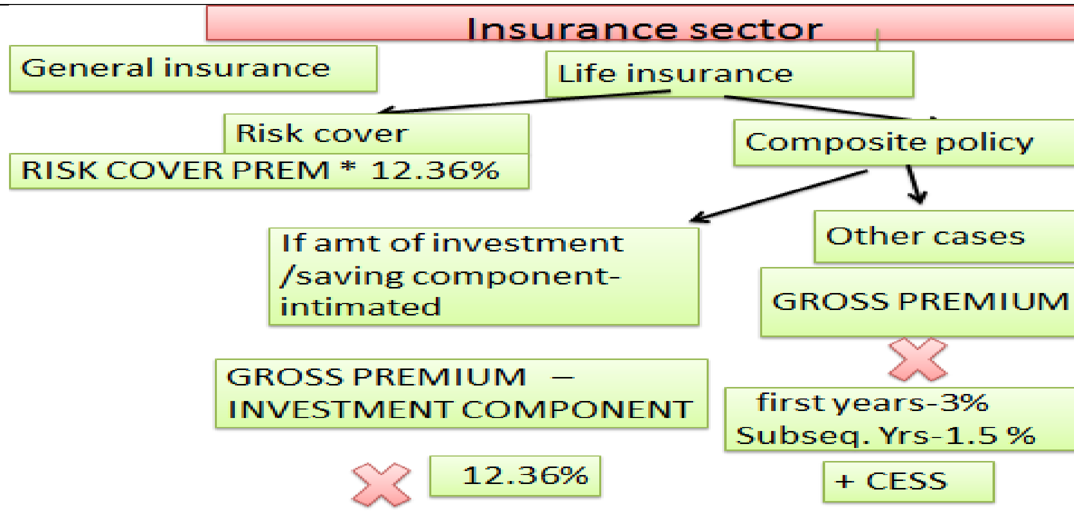
| **Date of Service** | Date of Invoice | Date of Payment | Rate of Tax | POT |
|---|---|---|---|---|
| **28/3/2012** | 9/4/2012 | 25/5/2012 | 12.36% | 9/4/2012 |
| **28/3/2012** | 28/3/2012 | 25/5/2012 | 10.3% | 28/3/2012 |

| | | | | |
|---|---|---|---|---|
| **28/3/2012** | 9/4/2012 | 26/3/2012 | 10.3% | 26/3/2012 |
| **10/4/2012** | 28/3/2012 | 25/5/2012 | 12.36% | 25/5/2012 |
| **10/4/2012** | 28/3/2012 | 16/3/2012 | 10.3% | 16/3/2012 |
| **10/4/2012** | 9/4/2012 | 28/3/2012 | 12.36% | 9/4/2012 |

**IN CASE AIRLINE OR AGENT ISSUES TICKET BEFORE 1-4-2012- RATE OF S. TAX- 10.3% LEVIED AND TICKETS ISSUED ON OR AFTER 1-4-12. S.TAX RATE – 12.36% LEVIED.**

| | |
|---|---|
| **R-5** | **NO S. TAX FOR NEW SERVICE- IF**<br>**(I) INVOICE OR PAYMENT ALREADY ISSUED/ RECD BEFORE service become taxable**<br>**(II) PAYMENT ALREADY RECD BUT INVOICE ISSUED WITHIN 14 DAYS OF service become taxable** |
| **R-7 –POT** | **REVERSE Charge-**<br>**(i) POT = DATE OF PAYMENT ( if payment made within 6 months)**<br>**(ii) Note- if if payment not made within 6 months, then as per rule 3**<br>**ASSOCIATED ENTERPRISE**<br>**(i) IF S. PROVIDER OUTSIDE INDIA- [Date of debit in books or DOP ] w.i. earlier**<br>**(ii) Note- if S. provider in India- then as per Rule 3** |
| **R- 8 - POT** | POT FOR PATENT, COPYRIGHT, TRADEMARK, DESIGNS- **[DOI OR DOP ] w.i. earlier**<br>**Conditions-**<br>(i) Total amt of consideration not ascertainable at time of provision of service<br>(ii) Use or benefit of these services by a person other than S. provider |
| **R- 8A** | Where the point of taxation cannot be determined as per these rules<br>→ as the date of invoice or the date of payment or both are not available,<br>the Central Excise officer, may, require the concerned person<br>→ to produce such accounts, documents or other evidence as he may deem necessary and<br>→ after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.”. |
| | **SERVICE TAX RULES 1994** |
| **SELF ADJ- R- 6(4A &4B)** | Adjustment of S.tax **OF ANY AMT**- for centralized Registration & other assessees<br>**NO NEED FOR INTIMATION** of adjustment to SCE. |
| **R-4(1A)-STR 1994** | CBEC may specify documents to be submitted within 15 days of application of Registration- **PAN, Proof of Residence, Constitution of the Applicant., Power of Attorney in respect of authorised person (s).**<br>Time limit of 7 days will be counted from the date of application of registration is complete in all respect. |
| **R-4A STR 1994** | Time limit of issue of invoice- raised from 14 days to 30 days<br>Note-<br>in case of Banking co./ fin. Inst. / NBFC- Time limit raised to 45 days.<br>For small amt **RECEIVED** upto Rs. 1000 in excess of amt indicated in invoice- No need to issue invoice, further as per R- 3 of POT- No need to Pay S. tax in this case at the time of receipt, but can pay whenever subsequent period invoice is issued. |

**R- 6(7B)**




**R- 6(7A)- Optional composition scheme for payment of s.tax instead of 12% to money changer**

| Gross Amt Of Currency Exchanged | S. Tax | SUBJECT TO |
|---|---|---|
| Upto Rs 1 lac | 0.12% | Minimum Rs 30 |
| More than 1 lac but upto Rs 10 lac | Rs 120 + 0.06% of excess over Rs I lac | --- |
| More than 10 lac | Rs. 660 + 0.012% of excess over Rs 10 lac | Maximum Rs 6000 |

**R-6(7C)- Distributor or selling agent of lottery**

| Sl. No. | Rate | Condition |
|---|---|---|
| (1) | (2) | (3) |
| 1. | Rs ~~6000~~/-**7000/-** on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw | If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80% |
| 2. | Rs ~~9000~~/-**11000/-** on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw | If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80% |

## CUSTOM LAW

**PAYMENT OF IMPORT DUTY**

**ACCREDITED IMPORTERS-** E-PAYMENT MANDATORY
**OTHER IMPORTERS- IMPORT DUTY MORE THAN 1 LAKH-** E-PAYMENT MANDATORY

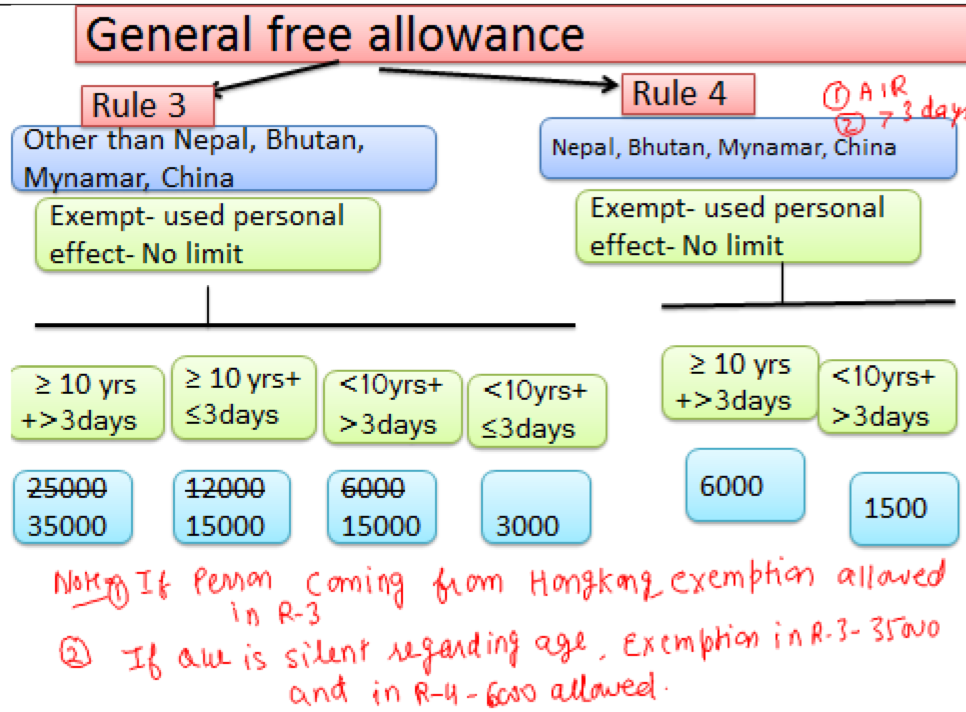
**NN-.81/2011 Conditions for Provisional Assessment of Goods**

**The Proper Officer may assess the goods at provisional duty if following conditions are satisfied –**
**(a) The Importer / Exporter shall execute a bond for the difference between the duty that may be finally assessed and the duty provisionally assessed, along with the surety or security as required.**
**(b) The Bond should contain the undertaking to pay the differential duty or produce the relevant document within the time prescribed by the Proper Officer.**
**(c) He should deposit such sum as the Proper Officer deems fit (not exceeding 20% of Provisional Duty).**
**(d) Violation of the above conditions will be punishable with penalty**

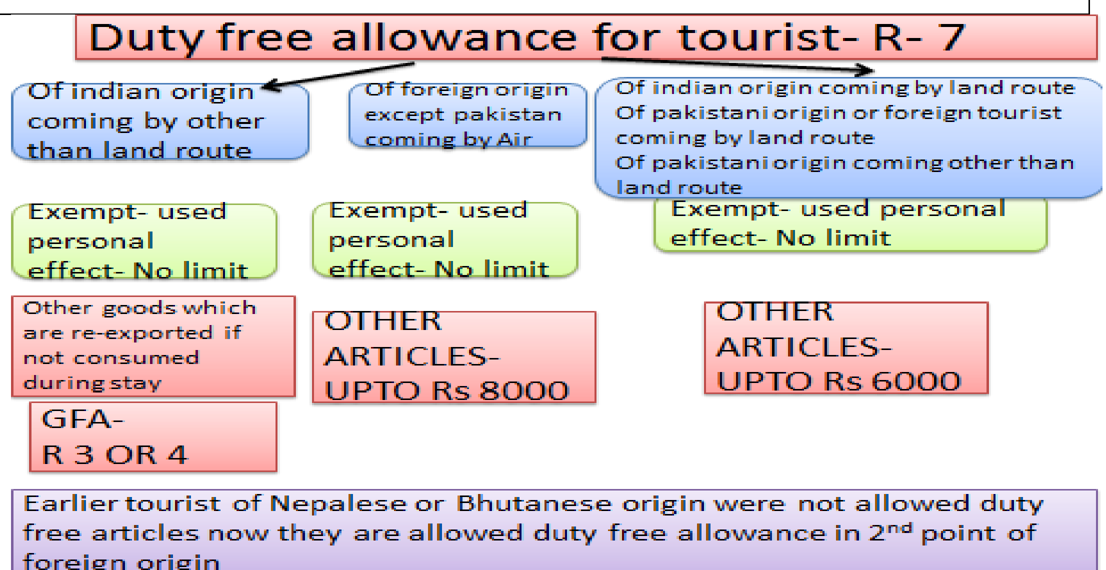
**CALCULATION OF CVD**

**EC & SHEC EXEMPTED ON CVD – [ STUDENTS ARE ADVISED TO DO PRACTICAL QUESTION GIVEN IN AMENDMENT BOOK ]**

**R-3 OF BAGGAGE RULES**




**R-7 OF BAGGAGE RULES**




**<u>QUESTION ON SMALL SERVICE PROVIDER WITH CONCEPT OF POINT OF TAXATION</u>**

**M/S RAJA LTD. has a practice of raising invoice immediately on the date of completion of service OR payment received whichever is earlier. ON the basis of following data for April 2012 onwards, advice M/S RAJA LTD. as to due date of payment of tax and SERVICE tax payable thereon and after claiming SSP exemption, if any. service tax rate is 12.36%. M/S RAJA LTD.has provided the service in 2011-12 was 8.5 lakh.**

| Date | Services Provided | comment | Payment Received |
|---|---|---|---|
| April, 2012 | NIL | ( Pertaining to March 12, invoice issued in March) | 3 LAKH |
| May, 2012 | 3 lakhs | 2 lakh advance recd (invoice issued in may- 5 lakh) | 5 lakhs |
| June, 2012 | 8 lakhs | s. Reciever liable to pay s. tax under reverse charge | 8 lakhs |

| | | | |
|---|---|---|---|
| July, 2012 | 9 lakhs | Exempt service provided | 9 lakhs |
| Aug, 2012 | 6 lakh | | Nothing recd in Aug |

**ANS-**
**SERVICE TAX- 12360 - CALCULATION AS FOLLOWS----..........**
**Amount received in APRIL 2012-** Pertaining to MARCH 2012- NO S. TAX BECAUSE OF PRECEDING YEAR.. AND TAX HAS BEEN PAID IN P.Y OR EXEMPTED IN P.Y
**FOR MAY 2012-** EXEMPTION CLAIMED UPTO 5 LAKH.. ON INVOICE BASIS…
**FOR JUNE 2012-** S. RECIEVER WILL PAY SERVICE TAX, RAJA LTD S. PROVIDER SSP EXEMPTION LIMIT NOT BE EFFECTED DUE TO THIS…
**FOR JULY 2012-** SINCE THE SERVICE IS EXEMPTED, IT WILL NOT EFFECT THE SSP EXEMPTION LIMIT.
**FOR AUG 2012-** BALANCE 5 LAKH EXEMPTION TAKEN AND SERVICE TAX WILL BE PAYABLE ON 1 LAKH * 12.36% =12360

**Que- 2** M/S PQR LTD. has a practice of raising invoice immediately on the date of completion of service. Therefore, for the services provided in the month of April, May and June the invoices were raised in the respective months. ON the basis of following data, advice M/S PQR LTD. as to due date of payment of tax and SERVICE tax payable thereon. Assume that M/S PQR LTD. cannot avail SSP exemption during the current year and tax rate as 12.36%.
ALSO CALCULATE SERVICE TAX IF M/S PQR LTD. IS ELIGIBLE FOR SMALL SERVICE PROVIDER EXEMPTION.

| Date | Services Provided | Payment Received |
|---|---|---|
| April, 2012 | 20 lakhs | nil |
| May, 2012 | 10 lakhs | 20 lakhs |
| June, 2012 | 30 lakhs | 10 lakhs |
| July, 2012 | 40 lakhs | 30 lakhs |

**ANS-**
**<u>IF SSP EXEMPTION NOT AVAILABLE-</u> FOR APRIL 2012-** UPTO 5/6 MAY 12- 247200, **FOR MAY 2012-** UPTO 5/6 JUNE 12- 123600, **FOR JUNE 2012-** UPTO 5/6 JULY 12-370800, **FOR JULY 2012-** UPTO 5/6 AUG 12- 494400
**<u>IF SSP EXEMPTION AVAILABLE-</u> FOR APRIL 2012-** UPTO 5/6 MAY 12- 123600, **FOR MAY 2012-** UPTO 5/6 JUNE 12- 123600, **FOR JUNE 2012-** UPTO 5/6 JULY 12-370800, **FOR JULY 2012-** UPTO 5/6 AUG 12- 494400
**STUDENTS PLEASE NOTE-** THAT OPTION PAYMENT ON CASH BASIS UPTO 50 LAKH WILL NOT BE APPLICABLE IN THIS CASE... BECAUSE i.e applicable only in case of INDIVIDUAL AND PARTNERSHIP FIRM...
**<u>FURTHER,, FROM BUDGET 2012....</u>** SMALL SERVICE PROVIDER EXEMPTION IS AVAILABLE ON THE BASIS OF INVOICES ISSUED.... HENCE WHERE COMPANY WAS ELIGIBLE FOR SSP EXEMPTION... IN THAT CASE IN APRIL 2012 10 LAKH TREATED AS EXEMPT.....

## *SUMMARY OF CASE LAWS*

| | |
|---|---|
| **OSNAR CHEMICAL PVT LTD.(2012)(SC)** | **Mixing polymers and additives to Bitumen results in emergence of Polymer Modified Bitumen and Crumbled Rubber Bitumen doesn't amt to manufacture because no new product emerged but only its grade or quality improved.** |
| ***Steel Authority of India Ltd. 2012 (SC)*** | **process of removal of foreign materials from iron ore for concentration of such ore doesn't amount to manufacture** |
| **Grasim Industries Ltd 2011 (S.C.)** | **Metal scrap or waste generated during the repair of his worn out machineries/parts of cement manufacturing plant by a cement manufacturer doesn't amounts to manufacture** |

| | |
|---|---|
| *Rajendra Narayan 2012 (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 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' ?- yes since sites are inter- connected.** |
| ***[Nicholas Piramal India Ltd 2010 (SC)]*** | CRUDE vitamin A has a life of 2 to 3 days, the same shall be considered as marketable. |
| ***MEDLEY PHARMACEUTICALS LTD.(SC)(2011)*** | On Physician Samples Printed- Not for sale because of Drug & cosmetic Act 1940. These are marketable. |
| **Bata India Ltd** | Theoretical possibility of product being sold is not sufficient to establish marketability of product. The fact that product is sent outside for job work doesn't establish its marketability. |
| **USHA RECTIFIER CORPN. (I) LTD.(2011)(SC)-** | Testing Equipment manufactured and not imported to save Foreign exchange Are marketable. |
| ***GTC Industries Ltd. 2011 (Bom.)*** | the roll of aluminum foil was cut horizontally to make separate pieces of the foil and word 'PULL' was embossed on it Doesn't amount to manufacture. |
| **Solid & Correct engineering Works (2010)(sc)** | Affixation of Asphalt Drum/ Hot-mix Plant by nuts and bolts on foundation on earth to ensure wobble- free operation of the plant – Movable |
| **Orissa Bridge & construction corpn. Ltd (2011)(SC)** | **Fabrication of cutting edge, plain shuttering plates, well steening shuttering plate, vertical props from steel angle, MS plates, MS Sheets, HR sheets and pipes amount to manufacture.** |
| **Sony Music Entertainment (I) Pvt Ltd.** | **Importing recorded audio and video discs in boxes each containing 50 discs. Each individual disc then packed in jewel boxes not amounting to manufacture.** |
| **Cir 904/24/09** | Baggase. Aluminium/zinc dross and other product termed as waste are capable of being sold for a consideration. Hence marketable and liable to excise duty. |
| **Larsen &Tourbo Limited (2009)(Bom)** | Fabrication, assembly, erection of waste water treatment is immovable. Merely bringing of duty paid parts at site doesn't amount to manufacture. |
| **Virgo industries (Engineers) Pvt. Ltd.** | Signage Erected at Various petrol bunks of IOC are movable because capable of being shifted from one place to another without dismantling them. |
| **MEHTA & CO.** | chairs, beds, tables, desks, etc., affixed to the ground ARE movable |
| ***AIR LIQUIDE NORTH INDIA*** | ***Testing and grading the procured Gas, packing in different cylinders alongwith test certificate amounts to deemed manufacture u/s 2(f)(ii)*** |
| | |
| **Remission of duty= R 21 CER 02** | **if FP lost or destroyed or unfit for consumption for marketing before removal- Duty Remitted. As per rule 3(5C) CCR 04, CCR reversed on IP, if duty remitted on FP.** |
| **Hindustan Zinc Limited** | Remission can be claimed on loss of goods due to de-bagging, shifting of concentrates, seepage of rain water, storage and loading on trucks, accounting method adopted. |
| **Gupta metal sheets** | No remission of duty u/r 21 in case of theft or dacoity |
| **Jai Bhagwan oil and Flour Mills** | Production of mustard oil and oil cake from mustard seeds amount to manufacture |
| **TARPAULIN INTERNATIONAL** | tarpaulin made-ups which are prepared after cutting and stitching the tarpaulin fabric and fixing the eye-lets would NOT manufacture |
| | **Valuation** |
| *Fiat India Pvt.Ltd. 2012 (SC)* | **If goods sold below the cost price for penetration of market , then price will not be treated as sole consideration.** |
| **Ford India Pvt. Ltd.** | Extended warranty charges were not includible in the assessable value of cars. |
| **MarutiSuzuki India Ltd.** | **cost of pre-delivery inspection and after sale services would form part of the assessable value** |

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| ***Electronics & control power system(p) ltd*** | ***Value of Bought out Batteries supplied with manufactured UPS included in Value of UPS because battery is part of UPS.*** |
| ***Royal Enfield*** | ***Packing of motorcycle done at factory removed to depot will be included in value evenif packing removed before sale at depot.*** |
| | **Classification** |
| **MINWOOL ROCK FIBRES** | In case of specific viz a viz classification based on material used/composition goods, classification according to composition should be prefereed. |
| **Wockhardt Life sciences Ltd** | Specific viz a via residuary entry – specific should be preferred. |
| **Pleasanttime products** | Scrabble cannot be said to be a puzzle —rather it is a GAME. |
| **Chamdany industries** | Carpet classifiable as Jute Carpet. In view of chapter note as per Rule 1 |
| **CPS Textiles P Ltd** | **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**<br>**separate notice is not required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback** |
| **Xerox India Ltd** | **Xerox Regal classified under heading 8471** |
| | **Cenvat credit** |
| **FLEX ENGEENERING LTD** | FLEXIBLE PLASTIC FILM USED FOR TESTING THE F & S MACHINE ARE INPUTS USED IN RELATION TO MANUFACTURE OF FP AND ELIGIBLE FOR CCR . |
| **Madras cement Ltd** | Capital goods used in mines - Mines if captive mines so as to constitute one integrated unit with concerned cement factory, Cenvat credit available - Mines if not captive mines but supply to various other cement companies of different assessees and goods used in mines outside factory of assessee, credit not available |
| **ECOF INDUSTRIES PVT. LTD. (2011)(Kar** | Service tax distributed by head office u/r 7 of CCR 2004 TO KOLAR UNIT IN RESPECT OF ADVERTISING SERVICE WHICH IS RECD BY CUTTACK UNIT.- CAN BE DISTRIBUTED |
| NOTE- NOW THIS CASE HAS BEEN OVERRULED BY AMENDMENT IN R-7 OF CCR 2004. Meaning thereby now service tax can be distributed to the unit using service. | |
| **Ind–Swift Laboratories Ltd 2011 (SC)]** | **Interest on Wrong Availment of CENVAT Credit** – Interest has to be charged from the date of availing credit and not from the date of utilization. Hence, interest has to be charged even in a case where CENVAT is wrongly availed and is reversed before utilization of such credit. |
| NOTE- NOW THIS CASE HAS BEEN OVERRULED BY AMENDMENT IN RULE 14 OF CCR 2004, meaning thereby that if the wrongly availed credit is reversed before utilization, then no interest will be recovered. | |
| **TATA ADVANCE MATERIALS** | CCR NOT TO BE REVERSED IN CASE O F CG IF DESTROYED BY FIRE IN SUBSEQUENT YEARS AFTER CLAIMING CCR, EVEN IF INSURANCE CLAIMED FROM INS COMPANY |
| **Note-**<br>If capital goods destroyed after 5 years, no CCR Reversal. But if cleared as waste then as per rule 3 (5A) pay amount equal to [ duty leviable on transaction value. Or reduced amt ] whichever is higher | |
| **Prime Health Care Products 2011(Guj)** | **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? – YES** |
| **Rule 3 (7)** | 100% EOU can take CCR of CVD, Special CVD, (EC, SHEC of excise0 |
| **Rajasthan spinning & Weaving Mills Ltd** | steel plates and M.S. channel was accessory to diesel generating set and hence capital goodsand credit thereon admissible |
| **Bhuwalka Steel Industries** | **Transit loss- normal-** CCR allowed as per industry norms for volatile and hygroscopics nature. Minor variation due to weighment difference by different machine ignored |
| **BANSAL ALLOYS & METALS LTD.** | No reversal of Credit on input service in respect of Goods Transportation Agency service |
| ***Stelko Strips Ltd.*** | CENVAT credit be taken on the basis of private challans |

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| **Marutisuzuki** | CCR not allowed on naptha used for generation of electricity cleared to joint venture. |
| **Jaya mills** | If depreciation and CCR both claimed, subsequently if income tax return revised by withdrawing depreciation. CCR not required to be reversed. |
| **Ashok kumar h Fulwadhya** | Penalty can't be imposed on directors of company for wrong availment of CCR. |
| **SMALL SCALE INDUSTRY** | |
| ***Elex Knitting Machinery Co. 2012(sc)*** | **Assessee can claim the benefit of SSI exemption on the brand name of another firm (ELEX) if its proprietor is also a partner in such other firm. Exemption allowed,** being the co-owner of the brand name of Elex. |
| ***Bonanzo Engg. & Chemical P. Ltd. 2012(SC)*** | **Exempted goods on which duty has been paid by mistake by the assessee and refund thereof has also not been claimed would be included while computing turnover for preceding year for claiming SSI exemption.** |
| **Unison Electronics Pvt. Ltd** | in case of sale to Unite Tele-Shopping (UTS) and tele-Shopping Network (TSN), the supervisors ofr UTS and TSN used to examine the goods and affix a sticker thereon containing the names of UTS/TSN. SSI exemption not allowed. |
| ***Deora Engineering Works*** | **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** |
| **Superior Products** | Where the 2 unit have separate legal identity with separate capital, premises, machinery and labour; the fact that they are managed by same person or that their products are same cannot mean that they are dummy units and their clearances should be clubbed for the purposed of SSI-exemption. |
| **Demand, Refund & Appeal** | |
| ***Raghunath International ltd. 2012 (All)*** | Additional Director General, Directorate General of Central Excise Intelligence can be considered as CEO for purpose of issuing SCN. it has been specified as commissioner of central excise (vide NN- 38/2001) and fully authorized to Issue SCN. |
| **AMIDEV AGRO CARE PVT LTD (2012)(Bom)** | Copy of order to be served via Registered Post.<br>If sent through Speed post, then it is not a valid mode. |
| ***BPL Ltd. 2010 (Mad.)*** | **Chartered Accountant's certificate alone is NOT sufficient evidence to rule out the unjust enrichment** |
| ***Kanyaka Parameshwari Engineering Ltd. 2012 (A.P)- if duty paid under Protest, then interest u/s 11BB after 3 months from the date of application and not from the date of payment of duty till the date of refund.***<br>**Ranbaxy Laboratories Ltd.2011 (SC) liability 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 by Appellate authority.** | |
| ***Ranbaxy Laboratories Ltd. 2011 (SC)*** | liability 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. |
| ***Accrapac (India) Pvt. Ltd.*** | that non-disclosure as regards manufacture of Denatured Ethly Alcohol will not amounts to suppression of material facts and hence it will not attract the larger period of limitation under section 11A.because Dept. was aware of Facts. |
| ***HANS STEEL ROLLING MILL*** | SEC 11A is not applicable to recovery under dues under compounded levy scheme. |
| Note- however sec 3A amended w,e.f F.ACT 2008- sec 11 A made applicable in case of duty based on production capacity. | |
| ***Gem Properties (P) Ltd*** | **Merely because assessee has sustained loss more than the refund claim, it is not a case of unjust enrichment sincethe assessee failed to prove that duty in the cost of production is not included** |
| **SKF India Ltd** | **Differential duty is paid immediately upon the recovery of price difference through issuance of supplementary invoice, interest shall still be payable on such differential duty.** |

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| **INTERNATIONAL AUTO LTD.** | **Duty will be payable in case of retrospective recovery of increased value. Interest will also be payable. MRF case not applicable.** |
| ***Aman Medical products Ltd.*** | 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. |
| ***Narayan NambiarMeloths*** | **refund claim can't be denied only on the basis of contention that he had produced the attested copy of TR-6 challan and not the original of the TR-6 challan?** |
| **AP SPINTEX LTD** | ED recovered from buyer – credit notes issued subsequently – Doctrine of Unjust Enrichment not applicable |
| ***Trilux Electronics*** | an appeal against the consent order cannot be filed by the Revenue. |
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| **Techno Rubber Industries Pvt Ltd. 2011 (Kar.)** | **excess duty paid by the seller be refunded on the basis of the debit note issued by the buyer** |
| | **Appeals** |
| ***Raja Mechanical Co. (P) Ltd. 2012 (S.C.)*** | **doctrine of merger is NOT applicable when appeal dismissed on the grounds of limitation and not on merits.** |
| ***Tikitar Industries, 2012 (S.C.)*** | **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?- YES** |
| **RDC CONCRETE (INDIA) P. LTD. (SC)(2011)** | **Re-appreciation of evidence by CESTAT CAN'T BE CONSIDERED AS RECTIFICATION OF MISTAKE.** |
| **VOLVO INDIA LTD. (2011)(kar)** | **Royalty charges for transfer of know-how - Whether Service tax is leviable on it as Consulting Engineer service. T**he question relates to payment of rate of duty/tax.<br>Whether Against CESTAT order appeal can be made to High court.<br>NO, BECAUSE RATE OF DUTY/TAX MATTER CAN'T BE APPEALED TO HIGH COURT. |
| ***Electronics Corponation of India Ltd.*** | **One cannot possibly expect timely clearance by CoD for filing appeal by PSU. In such cases, grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility. In the changed scenario,**<br>**time has come to recall the directions of the Supreme Court in its various earlier Orders setting up the said mechanism** |
| **Gujchem distillers** | **CESTAT Orded disposing appeal on totally new ground not sustainable.** |
| ***Gurukripa resins*** | ***Turpentine oil if manufactured with the aid of power liable to duty @16% because exemption is available to the oil if manufactured wihout the aid of power.*** |
| ***Jocil ltd*** | ***Assesse imported crude palm stearlin classifying under 15119090 as other palm oil wheras dept contended that classifieable under 38231112 as RBD palm sterlin by applying rule 3(a). department contention is right.*** |
| | **Advance Ruling** |
| ***UAE Exchange Centre Ltd.*** | a writ petition can be invoked against advance rulings. |
| | **Settlement commission** |
| ***MARUTHI TEX PRINT & PROCESSORS P. LTD.*** | Settlement commission can't decline to grant immunity from prosecution while confirming the demand and imposing the penalty without placing the burden on the department to prove the clandestine removal of goods. |
| ***Icon Industries*** | consolidated return filed by the assessee after obtaining registration, but for the period prior to obtaining registration, Can't be treated as a return for filing application to settl. Comm. |
| ***Vishwa Traders Pvt ltd*** | If case referred back to Department then Revenue shall continue the adjudication proceedings from the stage at which the proceedings before Settlement Commission commenced |

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| ***Ashwani Tobacco Co. Pvt. Ltd.*** | Benefit under the proviso to section 11AC could not be granted by the Settlement Commission in cases of settlement. |
| ***East and West Shipping Agency*** | **order of the Settlement Commission be considered to be a judicial proceeding** |
| ***SanghviReconditioners Pvt. Ltd.*** | 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. |
| ***Cus. & C. Ex. Settlement Commission*** | **Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue** |
| **custom** | |
| **Essar steel ltd** | **Export duty can't be levied on goods supllied from DTA to SEZ** |
| ***Decorative Laminates (I) Pvt. Ltd.*** | **If imported goods warehoused and then extension taken and goods not cleared even after expiry of extended period. application for remission of duty under section 23 of the Customs Act, 1962 not allowed on the ground that the said goods had become unfit for use on account of non-availability of orders for clearance.** |
| ***Paras Fab International*** | **issue for use by 100% EOU would not amount to clearance for home consumption.** |
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| ***Living Media India ltd*** | ***Royalty payable shall be added to the Cost of Imported audio CD because royalty becomes due as soon as CD distributed & sold (hence royalty was a condition of sale.)*** |
| ***Sayed ALI (2011)(SC)*** | ***SCN issued by commissioner of custom Preventive in not valid.***<br>***Note- however this case has been overruled – REFER SEC 28(11).*** |
| **Miscellaneous - custom** | |
| **[ M.Ambalal & Co. 2010 (SC)]** | Imported Rough Diamond THROUGH smuggling<br>But if diamond imported on import licencse- import duty exempt<br>Dept levied duties and penalties. Assessee contending that import duty exempt<br>Smuggled goods not eligible for exemption. |
| Textoplast Industries 2011 (Bom.) | **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?**<br>**YES, In an appropriate case, impose a penalty both upon a partnership firm as well as on its partners.** |
| S.J. Fabrics Pvt. Ltd. 2011 (Cal.) | **Can goods be detained indefinitiely- NO** |
| **o.t enasu** | SCN imposing penalty u/s 112 of CA 1962, is not sustainable because deciding factor for penalty u/s 112 is " duty was sought to be evaded" |
| ***Alfred Menezes*** | in case of prohibited goods, there is discretion in the officer to release the confiscated goods |
| ***Poona Health Services*** | **In case the imported goods are confiscated, and goods are not redeemed by paying fine, the importer is bound to pay the customs duty** |
| ***Gawar Construction Ltd.*** | 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 |
| ***Jaya Singh VijayaJhaveri*** | **Is the want of evidence from foreign supplier enough to cancel the confiscation order of goods undervalued?- No** |
| ***SanghviReconditioners Pvt Ltd*** | *the appellant cannot be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not* |
| ***Finesse Creation Inc.*** | **improperly imported goods are liable for confiscation under sec 111 of the Customs Act, 1962, if the same are cleared and not available for seizure. Redemption fine cannot be imposed with regard to such goods.** |
| **Manish Lalit Kumar Bavishi (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?<br>YES, AS PER SEC s 110(4)- the person from whose custody any documents were seized u/s |

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| | 110 shall be entitled to makes copies therefrom or take extracts in presence of custom officer |
| **SERVICE TAX** | |
| ***Infotech Software Dealers Association (ISODA)*** | in the transactions taking place between the members of ISODA with its customers, the software is not sold as such, but only the contents of the data stored in the software are sold which would only amount to service and not sale. |
| ***KaramchandThapar& Bros. (Coal Sales) Ltd.*** | e) The deeming provision under Rule 4(5) of Service Tax Rules, 1994 providing that registration certificate deemed to have been granted if not granted within seven days from the date of receipt of application is applicable only to registration granted by Superintendent of Central Excise and not to centralized registration granted under Rule 4(2).<br>f) Though no time limit is specified for grant of centralized registration, however the same cannot be indefinitely delayed and be granted within reasonable time and seven days can be considered as reasonable time. |
| ***Kishore. K. s.*** | Municipality can pass the burden of service tax to assessee. There is no violation of Article 289. |
| ***Nahar Industrial Enterprises Ltd.*** | **service tax is not chargeable on the buffer subsidy provided by the Government for storage of free sale sugar, under the category of `storage and warehousing services** |
| ***Idea Mobile Communications Ltd.*** | 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. |

*NOTE- SUMMARY OF CASE LAWS is not complete - DO IT BY YOURSELF.*