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Case Laws

1. CIT v Dabur India Ltd. [2006] 283 ITR 197 (Delhi)

Printing of labels on corrugated boxes did not require any special skill or involve any confidence or secrecy and in the circumstances the predominant object underlying the contract was one for sale of goods which took the contract out of the purview of Section 194C.

2. CIT v Poompuhar Shipping Corpn. Ltd. [2006] 282 ITR 0003 (Mad.)

The assessee-company was carrying on the business of transporting coal. It entered into a contract with the State Electricity Board for transporting coal from various ports. Since the ships owned by the company were not sufficient for executing the contracts, the company hired ships from other shipping companies and paid hire charges for use of ships. The company did not deduct tax at source under section 194C from payment of hire charges to the shipping companies. Therefore, the Assessing Officer treated the company as an "assessee-in-default". The High Court held that the hiring of ships for the purpose of using the same in assessee's business would not amount to a contract for carrying out any work as contemplated in section 194C and therefore, payment of hire charges would not attract tax deduction under section 194C.

3. CIT v. Mandovi Hotel (P.) Ltd. [2006] 152 Taxman 361 (Bom.)

The assessee, along with two other entities, was a partner in a firm, which was engaged in hotel business. A memorandum of understanding was executed by which it was decided that the other partners would disassociate from the firm and the assessee would continue the business of the firm.

Accordingly, a dissolution deed was executed by which it was agreed that the assessee would take over all the assets of the firm and in consideration, the assessee would pay to the retiring partners, 30% of the net profits of the business, subject to a minimum amount of Rs. 60,000 for a period of 7 years.

During the relevant previous year, as per the terms of dissolution deed, the assessee paid the said sum to the retired partners and claimed deduction of such sum as business expenditure. The Assessing Officer disallowed the amount paid by the assessee to the retired partners on the ground that the payment was capital in nature.

The Bombay High Court observed that the payment of 30% of net profits was related to annual profits that flowed from the business activities of the assessee-company and not to the capital value of the assets. Further, the dissolution deed did not specify any capital sum payable to the retiring partners.

The payment so made was also not related or tied up in any way to any fixed sum agreed between the parties as part of the consideration to the retiring partners for disassociating from the firm. Hence, the expenditure cannot be construed as a capital expenditure.

4. CIT v. V. Natarajan 203 CTR 37 (Mad.)

In the previous year relevant to the A.Y. 1990-91, the assessee had sold a house property at Bangalore and had purchased a house property in the name of his wife. The house property income from the new property was assessed to tax in the hands of the assessee. The assessee claimed exemption u/s.54 of the Income-tax Act, 1961 in respect of the investment in the house property in the name of his wife. The AO rejected the claim.

The Madras High Court held that the assessee sold a property and purchased another property in the name of his wife, which is assessed in the hands of the assessee, the assessee is entitled to exemption u/s.54.

5. Kerala State Stamp Vendors Association v Office of the Accountant- General [2006] 282 ITR 7 (Ker.)

The assessee, licensed stamp vendors, engaged in the purchase of stamp paper from the treasury and sale of the same in accordance with the Kerala Manufacture and Sale of Stamp Rules,1960. The stamp papers were sold to the assessee by the treasury at a discounted price. A demand was made by the Income-tax Department to the Treasury Officers to recover income-tax from the discount allowed to the petitioners on the sale of the stamp paper to them in terms of section 194H. The assessee contended that they were not agents of the Government and were independent dealers in stamp papers and so much so, deduction of income-tax on discount allowed is not authorized under section 194H.

The High Court ruled that no doubt, payment of commission or brokerage in relation to sale or purchase of goods would also attract deduction of tax at source under section 194H. However, such situation arises only when there is involvement of services of a third party on payment, other than the seller and the purchaser of goods or when the recipient of the benefit markets goods as ágent'of the owner and not as independent dealer. Thus, a discount given on price by the seller to the purchaser cannot be termed as 'commission' or 'brokerage' for services rendered in the course of buying and selling of goods as the act of buying does not constitute rendering of any service. So much so, the discount given on sale of stamp by the treasury to the stamp vendor is outside the scope of TDS provisions under section 194H. Wherever the Legislature wanted to levy tax on trade discount, it has specifically provided for the same which is clear from provisions of section 194H which provide for deduction of tax on discount paid to lottery dealers in the form of commission. Accordingly there would not deduction of tax at source from such payments.

6. United Airlines v CIT 152 Taxman 516 (Del)

The assessee airlines had to pay landing and parking charges for its aircrafts. The question as to whether the landing and parking charges would be deemed to be rent u/s. 194I Explanation (i) of the Income-tax Act, 1961, the Delhi High Court held as under:

(i) A perusal of the provision of Explanation (i) to S. 194I shows that the word 'rent' in common parlance. It includes any agreement or arrangement for use of land.

(ii) When the wheels of an aircraft coming into an airport touch the surface of the air-field, use of land of the airport immediately begins. Similarly, for parking the aircraft in that airport again, there is a use of the land. Hence, the landing and parking fee is definitely 'rent' within the meaning of the definition in Explanation (i) to S. 194I, as they are payments made for use of land of the airport.

(iii) The definition of the word 'rent' in Explanation (i) of S. 194I is very clear and the plain meaning of that provision shows that even the landing of aircraft or parking of aircraft amounts to user of land of the airport. Hence, the landing fee and parking fee will amount to 'rent' within the meaning of aforesaid provision, even if it could not have such a meaning in common parlance.

7. Sandvik Asia Ltd. v CIT [2006] 150 Taxman 591 (SC)

The Act recognizes the principle that a person should only be taxed in accordance with law and hence, where excess amounts of tax are collected from an assessee or any amount is wrongfully withheld from an assessee without authority of law, Department must compensate assessee.

Pursuant to CIT's direction, AO passed an order paying amounts of interest on refund to assessee upto date of refund of tax and assessee received said amount after delay of very long period. Assessee filed revision petition asking for interest on delayed payment of interest, upto date of payment of same. The Supreme Court ruled that since interest on refund was granted to assessee after a substantial lapse of time, assessee was entitled to interest on interest as claimed by the assessee.

8. CIT v. Hoogly Mills Co. Ltd. (2006) 287 ITR 333 (SC)

M/s. Hooghly Mills Co. Ltd. (HMCL) had by an agreement dated March 24, 1988, with the vendor, purchased an undertaking and by the same agreement had also taken over the accrued and future gratuity liability of the vendor, which amounted to Rs.3.5 crores. HMCL claimed that since this amount of Rs.3.5 crores towards gratuity was capital expenditure, it was entitled to depreciation on the sum u/s.32 of the Income-tax Act. The Commissioner of Income-tax (Appeals) as well as the Tribunal allowed the HMCL's claim and their orders were upheld by the High Court.

Before the Supreme Court, the Department contended that the expenditure on taking over the gratuity liability of the employees of the vendor is not capital expenditure but revenue expenditure. The gratuity liability was a revenue expenditure, which was allowable as revenue expenditure in the year in which it had accrued (if the assessee maintained its accounts on mercantile basis). In the present case, in the agreement dated March 24, 1988, between the vendor (Fort Gloster Industries Ltd.) and HMCL, it was mentioned that the vendor shall purchase the industrial undertaking with effect from March 26, 1988, as a going concern for a price of Rs.2 crores and shall also take over the gratuity liability.

Thus, in the same agreement of sale of the undertaking, it was not only mentioned that the vendee would pay to the vendor the sum of Rs.2 crores as a consideration, but in addition to this, it would also take over the accrued and future gratuity liability of the employees. An agreement had to be read as a whole. Hence the consideration for the sale was not only Rs.2 crores, but in addition the gratuity liability of the vendor as well. Thus, the entire amount of consideration was a capital expenditure, because it was an expenditure incur-red for acquiring an asset of an enduring nature.

The Supreme Court further held that though the expenditure on taking over the gratuity liability was a capital expenditure, yet no depreciation was allowable on the same, because S. 32 of the Income-tax Act states that depreciation is allowable only in respect of buildings, machinery, plant or furniture, being tangible assets, and know-how patents, copyrights, trademarks, licences, franchises or other business or commercial rights of similar nature being intangible assets and the gratuity liability taken over by HMCL did not fall under any of those categories specified in S. 32.

As a result, the appeal was allowed with a direction that HMCL was not entitled to any depreciation allowance on the gratuity liability, nor on the value of the land in respect of the concern purchased by it.

9. CIT v. Ralson Industries Ltd. (2007) 288 ITR 322 (SC)

The assessee filed its return of income which was assessed under section 143(3). Thereafter the AO had issued a notice u/s 154, however, no modification / amendment was made in the income. The CIT then invoked his jurisdiction under section 263 by setting aside the assessment order for excluding the same amount which the AO had purported to exclude by issuing the notice u/s 154. The assessee contended before the Court that the CIT had no jurisdiction to invoke section 263 as the assessment order u/s 143(3) had merged with the rectificatory order u/s 154.

On appeal Supreme Court ruled that initiation of a proceeding under section 263 cannot be held to have become bad in law only because an order of rectification was passed. Only because an order of assessment has undergone rectification at the hands of the Assessing Officer, the same would not mean that revisional authority shall be denuded of exercising its revisional jurisdiction. The action of the CIT was well within the jurisdiction.

10. ACIT v. Rajesh Jhaveri Stock Brokers P. Ltd (2007) 291 ITR 500 (SC)

The respondent, a private limited company, filed its return of income for the A.Y. 2001-02 on October 30, 2001, declaring total loss of Rs.2,70,85,105. The said return was processed u/s 143(1) of the Act, accepting the loss returned by the respondent. Notice u/s.148 of the Act was issued on the ground that claim of bad debts as expenditure was not acceptable. On May 12, 2004, a return of income declaring the loss at the same figure, as declared in the original return, was filed by the respondent under protest, stating that the AO had merely changed

On an appeal, the Supreme Court after considering the history of the provisions of S. 143(1) held that the intimation u/s.143(1)(a) cannot be treated to be an order of assessment. There being no assessment u/s.143(1)(a), the question of change of opinion for the purposes of S. 147, as contended, did not arise. Under Section 147, if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment, it confers jurisdiction to reopen the assessment.

11. CIT v. K.K. Spun Pipe (2006) 284 ITR 0301 (P&H)

The assessee filed its return after the specified due date for the relevant assessment years under section 139(4). It filed its returns along with the audit reports under section 44AB. The Assessing Officer levied penalty under section 271B for failure on the part of the assessee to file audit reports along with the return of income within the due date for filing return under section 139(1). However, the Tribunal deleted the penalties. The High Court observed that penalty under section 271B was not attracted in this case since the audit report under section 44AB had been obtained on or before the specified date and it was filed along with the return of income under section 139(4) and no notice had been issued to the assessee by the Assessing Officer under section 142(1)(i).

Therefore, penalty under section 271B is not attracted in a case where audit report is filed after the due date for filing return of income but before issue of notice by the Assessing Officer under section 142(1)(i).

12. S.A. Builders Limited vs. CIT (A) Chandigarh (SC) [2007 (158) TAXMAN 74

Assessee borrowed the fund from the bank and lent some of it to its sister concern (a subsidiary) on interest free loan - Assessing Officer disallowed proportionate interest relating to the amount out of the total interest paid to the bank since the assessee had diverted its borrowed funds to a sister concern without charging any interest - On appeal, the CIT partially accepted the claim of the assessee - Both the assessee as well as the revenue filed appeals before the Tribunal and the Tribunal allowed the appeal of the revenue – Appeals filed by the assessee in the High Court were dismissed - Appellant submitted that there is no direct nexus between the amount borrowed by the appellant-assessee from the bank and the loans advanced by the appellant assessee to its sister concern, as no amount was so advanced by raising an interest bearing loan - Held, an expenditure is allowable as a business expenditure, if it was incurred on grounds of commercial expediency – Neither the High Court nor the Tribunal nor other authorities have examined whether the amount advanced to the sister concern was by way of commercial expediency - Where a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would ordinarily be entitled to deduction of interest on its borrowed loans -Impugned orders set aside.

13. CIT, Chennai v. Alagendran Finance Limited (SC)

The assessee is a company incorporated under the Indian Companies Act, 1956. In the orders of assessment, the assessee's return under the Head 'Lease Equalisation Fund' was accepted. However, proceedings for reassessment were initiated by the assessing officer and orders of reassessment were passed. The Commissioner of Income Tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalisation fund.
The Supreme Court held that having regard to the fact that the Commissioner of Income Tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalisation fund which being not the subject 5. of the reassessment proceedings, the period of limitation provided for under Section 263(2), Income Tax Act, 1961 would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having been invoked by the Commissioner beyond the period of limitation, was wholly without jurisdiction rendering the entire proceeding a nullity.

14. CIT, Salem v. A.G.Granites Private Limited (Mad)

The assessee is a Company exporting granite blocks to foreign countries. It had filed the return of income after claiming deduction under Section lOB. On verification of the records, it was noticed that the assessee had offered interest income on fixed deposit made under the head 'other income: but the same was required to be assessed under the head 'income from other sources: Hence a notice under Section 154 was issued to the assessee. The assessing officer after considering the reply has rectified the assessment order.
The High Court held that the issue as to the head under which the 'interest income' has to be assessed is a debatable issue. A decision on a debatable point of law is not a mistake apparent from the record, which is not amenable for rectification under Section 154, Income Tax Act.

15. Hindustan Coca Cola Beverage Private Limited v CIT (SC) 16 Aug 2007

The appellant-assessee is engaged in the manufacture and sale of soft drinks. It entered into an agreement with another company for use of their premises for receipt, storage and dispatch of goods belonging to the appellant-company. The appellant had paid the warehousing charges on which tax was deducted under Section 194C, Income Tax Act, 1961 @ 2%. The Assessing Officer held the appellant to be 'assessee in default' for failure to deduct tax at source in respect of warehousing charges and further held that the warehousing charges were in the nature of rent as defined in Explanation to Section 194-1 and, therefore, tax ought to have been deducted at 20%.

16. CIT v Century Building Industries Private Limited (SC)

The assessee is a company engaged in the business of real estate and construction. The lender had advanced the loan to the assessee-company and debit was made by the assessee-company to the'lnterest Account'for a specific amount calculated with reference to the deductor's liability to a creditor. There was no resolution of the assessee-company placed before the A.a. whereby the company has agreed to act as a medium for routing the borrowings and repayments.

The issue under consideration is whether there was no obligation on the part of the assessee- company to comply with the statutory requirements of Section 194A,I ncome Tax Act, 1961 by deducting tax deductible at source (TDS) on interest paid by it for loans availed of by the assessee and repaid by it with interest on the ground that the loans were meant for the directors of the assessee-company and not for the assessee-company.
The Court held that when interest is debited to 'Interest Account: the debit is for a specific amount calculated with reference to the liability of the deductor to a particular creditor in accordance with the terms and conditions of the loan. Therefore, whenever interest is credited to the account of the payee the payer has to deduct the TDS. Hence, in the circumstances of the case, it cannot be said that the assessee-company was in charge of disbursing the repayments made by directors in their individual capacities.

17. Golden Insulation and Engineering Limited vs CIT

The assessee was valuing its closing stock at estimated realisable value or at market value of the stocks. The assessee stopped following the earlier method adopted for valuing the closing stock as it was defective and did not correctly reflect the profit and loss for each accounting year. The assessee started following a new method of valuing the closing stock at cost price adequately reflected the profit and loss position in regard to the previous year's operations.

The issue that arose for consideration was whether the Tribunal was right in law in holding that the change in the method of valuation adopted by the assessee was neither for any valid reasons nor bonafide and in consequentially sustaining an addition to the total income.

The High Court held that the assessee may file a revised return if it discovers any omission or any wrong statement. There is no omission or wrong statement which required the assessee to file a revised return. The result of change in the method of valuation was that the assessee showed a increase in loss. It was not a legally valid reason nor was it bona fide. The change was not justified or legally permissible.

18. CIT and Others vs. All India Films Corporation and Others (Del)

The assessee took on lease two cinema halls. It was exhibiting films in them and earning a part of its income from that activity. Due to an internal arrangement, the assessee handed over possession of the cinema halls to the lessor. The assessee has been compensated by the landlord towards the business loss resulting from it having to vacate premises which did not belong to it but which was in its possession pursuant to a lease.

The assessee showed the sum of Rs.1, 24, OOO/-in the credit side of the profit and loss account under the heading 'compensation for premature closure of the cinema halls. The ITO treated the entire sum as revenue receipt.
The issue that arises for consideration is whether the sum realised by the assessee by way of compensation for the termination of the lease of the two cinemas by the lessor constituted a revenue receipt.

The High Court observed that there was no complete cessation of the assessee's business activity. Further, no part of the profit-making apparatus of the assessee had been extinguished so as to render the amount of compensation received for the said purpose a capital receipt.Held that the compensation amount received by the assessee towards the business loss was in fact a revenue receipt.

19. CITv. Woodward Governor India P. Ltd. (2007) 295 ITR 1 (Delhi)

The assessee-company is a joint venture in which 74% of the shareholding is with an American collaborator. The assessee company deducted tax at source on the salary paid by it to its Managing Director. The Managing Director of the assessee company received salary from the American collaborator also, which the assessee-company was not aware of. The Managing Director paid advance tax on his global salary. which included the salary received from the assessee and salary received from the American collaborator. The Revenue contended that the assessee was required to deduct tax at source even on the salary component paid by the American collaborator.

On this issue, the High Court observed that the assessee was liable to deduct tax at source only on the payment made by it to its Managing Director and it cannot be burdened with the liability of deducting tax at source on any other payment either by way of salary or otherwise. received by the Managing Director from some other source. Therefore, the Court held that the assessee was not liable to deduct tax at source on salary received by its Managing Director from the American collaborator.

20. CIT v. Bisauli Tractors (2007) 16 Taxman 1 (All)

The assessee filed its return of income for the relevant assessment years without attaching trading account, profit and loss account and balance sheeL Since the turnover of the assessee had exceeded Rs.40 lakh during each of these years, penalty under section 271B was levied.

The High Court observed that separate penalty has been provided under section 2 71A for non-maintenance of accounts and under section 2 71B for non-furnishing of audit report. If a person has not maintained books of account, the question of its audit does not arise. In such an event, the imposition of penalty under section 271A for non-compliance of section 44AA may arise but the provisions of section 44AB do not get violated in a case where the accounts have not been maintained at all. Hence, penalty under section 271B would not get attracted in such a case. The High Court, therefore, held that the Tribunal was justified in holding that the question of getting the accounts audited did not arise as the assessee was not maintaining any books of account.

21. CIT v HINDUSTAN ZINC LTD. (2007) 161 TAXMAN 162 (SC)

The assessee was a Government company engaged in the business of producing zinc concentrate, which was utilized by the assessee captively. During the assessment year 1996-97, certain stock of zinc concentrate got accumulated. It was not possible to consume the said quantity as the accumulated stock contained low metal content and height impurity level of silica.

Since domestic consumption of the accumulated stock was not possible, the assessee decided to explore the possibilities of exporting the accumulated stock. Thereafter, the assessee with the permission of the Government, estimated/valued the stock by adopting the London Metallic Exchange Price (LME Price), which was lower than the Weighted Average Cost (Domestic Price) by 27.08 crores on 31-3-1996 while in past, it had been valuing the zinc concentrate for captive consumption at it had been valuing the zinc concentrate for captive consumption at it had been valuing the zinc concentrate for captive consumption at it had been valuing the zinc concentrate for captive consumption at weighted average cost. The Assessing Officer observed that the auditors' report indicated that if the accounting policy of the earlier years was to be followed, then in that event, the profits would have increased by Rs.27.08 crores and, accordingly, added back Rs.27.08 crores to the income of the assessee for the financial year ending 31-3-1996. On appeal, the Commissioner (Appeals) partly allowed the case of the assessee.

On further appeal, the Tribunal deleted the addition. On writ, the Division Bench of the High Court upheld the order of the Tribunal. Revenue appealed to the Supreme Court.

It is a well-recognized principle of commercial accounting to enter in the profit and loss account, the value of the stock-in-trade at the beginning and at the end of the accounting year at cost or market price, whichever is the lower. Where the market value has fallen before the date of valuation and where the market value of the article on that date is less than its actual cost, the assessee is entitled to value the articles at mark4t value and, thus, anticipate the loss, which he may incur at the time of the sale of the goods. The Supreme Court, has, further, held that the correct principle of accounting is to enter the stock in the books of account at cost unless the value is required to be reduced by reason of the fall in the market value of the goods below the original cost. Ordinarily, therefore, the goods should not be written down below the cost price except where there is an actual or anticipated loss. On the other hand, if the fall in the price were only such as it would reduce merely the prospective profit; there would be no justification to discard the initial valuation at cost.

The narrow controversy involved in the instant case was whether the assessee was right in writing down the inventory (Zinc concentrate) below the cost price by estimating its net realizable value at LME price and not by estimating its net realizable value at the domestic price. There was no estimating its net realizable value at the domestic price. There was no dispute in the instant case that as on 31-3-1996, the international price of zinc concentrates were lower than the domestic prices thereof. Further, in the past, the assessee had been valuing zinc concentrates at net realizable value at the domestic prices. It was for that reason that auditors in their report categorically stated that if the net realizable value stood estimated in accordance with the past accounting policy (at domestic prices), the profits of the company would have been higher by Rs.27.08 crores. The report of the auditors was not erroneous as it sought to be urged on behalf of the assessee. There was no rectification of the said report.
In British paints India Ltd.'s case, the Supreme Court has held that if the fall in the price has the effect of merely redoing the prospective profits (which appeared to be the instant case if one looked at the auditors' report), there would be no justification to discard the valuation at cost. Therefore, the instant case was not the case of anticipated loss, but was the case of reduction in the prospective profits.

For the above reasons, the Tribunal had erred in deleting the additions made. Accordingly, the appeal is allowed and the impugned judgment of the High Court is set aside.

22. CIT v. Bisauli Tractors (2007) 16 Taxman 1 (All.)

The assessee filed its return of income for the relevant assessment years without attaching trading account, profit and loss account and balance sheeL Since the turnover of the assessee had exceeded Rs.40 lakh during each of these years, penalty under section 271B was levied.
The High Court observed that separate penalty has been provided under section 2 71A for non-maintenance of accounts and under section 2 71B for non-furnishing of audit report. If a person has not maintained books of account, the question of its audit does not arise. In such an event, the imposition of penalty under section 271A for non-compliance of section 44AA may arise but the provisions of section 44AB do not get violated in a case where the accounts have not been maintained at all. Hence, penalty under section 2 71B would not get attracted in such a case. The High Court, therefore, held that the Tribunal was justified in holding that the question of getting the accounts audited did not arise as the assessee was not maintaining any books of account.

23. Radha Krishna Jalan v. CIT (2007) 294 ITR 28 (Gauhati)

The question which arose in this case was whether the share income of a partner received by a sub-partnership firm from the main partnership firm is exempt under section 1 O(2A) in the hands of the sub-partnership firm.

The High Court observed that the pre-requisite for claiming exemption under section 1O(2A) is that a person should be a partner of a firm which is separately assessed. Though sub- partnership has not been defined under the Indian Partnership Act, 1932 or in the Income-tax Act, 1961, it has been recognised in India and registration concurred under the [ndian Income- tax Act, 1922. The diversion of income of a partner in the main partnership at source to the sub-partnership [on account of the overriding obligation created by the sub-partnership vests an enforceable right upon the sub-partnership to claim a share in the profits accruing to, or received by, a partner. Therefore, a sub-partnership which is in receipt of the share of profit of a partner in the main partnership, has to be deemed to be a partner in the main partnership for the limited purpose of section 1 O(2A).

24. CIT v. Guru Nanak Construction Co. (2007) 294 ITR 294 (P&H)

The issue involved in this case is regarding the admissibility of deduction in respect of expenditure incurred prior to formation of a firm. The firm came into existence on 1 st April of the relevant assessment year and expenses were incurred prior to that date. Receipts against the contract work done prior to 1 st April were received after that date. Therefore, the assessee contended that since such expenses could not be claimed until the receipts were booked, the same had to be carried forward and allowed in the succeeding accounting period commencing from the relevant assessment year.

The High Court observed that the expenditure incurred by the assessee was a genuine business expenditure. The assessee incurred expenditure during the previous year in which there were no receipts from business. Therefore, there was no question of such expenditure being set-off against any income. Hence, such expenditure had to be carried forward to the next year when the firm got receipts from the contract, and allowed as deduction in that year.

25. Enterprising Enterprises v. DCIT (2007) 293 ITR 437 (SC)

The assessee had taken a quarry on lease for 10 years. It paid a one-time lease rental for acquiring such leasehold rights for extracting minerals from mineral bearing land. The assessee claimed proportionate lease rental for acquiring such leasehold rights as revenue expenditure. The issue under consideration is whether the proportionate lease rent paid by the mining lessee for acquiring such leasehold rights would be a capital expenditure or revenue expenditure. The Supreme Court observed that there is a distinction between a case where royalty or rent is paid and a case where the entire amount of lease is paid either one-time or in installments. The Apex Court observed that in the former case. ii would be a revenue expenditure but in the latter case. it would be a capital expenditure. Therefore. in the case on hand. the one-time lease rental paid is a capital expenditure.

26. Bajrang Oil Mills v ITO [2007] 163 TAXMAN 154 (RAJ.)

Assessee filed its return declaring total receipts from sales and receipts for job work done by it. Assessing officer opined that assessee was under an obligation to get its accounts audited under section 44AB and levied penalty under section 271B. Assessee's case was that it was under bona fide belief that it was not required to get its account audited under section 44AB in as much as its sales and job work receipts on being considered separately did not exceed Rs.40 lakhs.

The High Court ruled that the expressions sales, turnover and gross receipts used in section 44AB are not words of art used in relation to any individual transaction independently but have been used as 'sales', 'turnover' or 'gross receipts'. Expression total qualifies all other three expressions, viz, 'sales' turnover' and 'gross receipts', total sales indicate aggregate price of sales, of commodities carried out by assessee as a trading business. Receipts of an assessee by way of sale or trading business and receipts for doing job work can be clubbed for purpose of finding out whether limit of Rs.40 lakhs prescribed for attracting provisions of section 44AB is made out. Thus penalty in this case cannot be maintained.

27. CIT v Idhayam Publications Ltd. [2007] 163 TAXMAN 154 (RAJ.)

The assessee is running a company in the name of M/s. Idhayam Publicatons Private limited for Publicaton of books. The relevant assessment year is 1992-93 in the assessment proceeding, the assessing officer noted that the assessee had accepted a cash loan of Rs.2,94,000 from M/s Maniyan Creations, a sister concern, in violtion of the provisions of section 269SS of the Act. With the above information the Deputy Commissioner of Income-tax initiated penal proceedings under section 271D and issued a show-cause notice dated 19-9-1997 to the assessee. In response, the assessee filed a letter dated 27-9-1997 stating that the transaction between the assessee and Mr. S.V.S. Manian, proprietor of Manian Creation, was current account in nature and was not a loan or deposit.

The High Court ruled that the order of the lower authority clearly shows that there was a running current account in the books of account of the assessee in the name of Mr. S.V.S. Manian Mr. S.V.S. Manian used to pay the money in the current account and used to withdraw the money also from the current account. The deposit and the withdrawal of the money from the current account could not be considered as a loan or advance.

Further it was also found that the assessee filed a letter dated 29-9-1997 and in that letter he explained that the amount received from Mr. S.V.S. Manian had been shown as "unsecured loan from directors" in the balance sheet. As per the Companies Act, under Companies (Acceptance of Deposit) Rules 1975, under rule 2(b)(ix), deposit does not include any amount received from a Director or a shareholder of a Private Limited Company. Therefore, the transaction between the appellant and the Director-cum-Shareholder is not a loan or deposit and it is only current account in nature and no interest being charged for the above transaction. In the foregoing conclusions, we are of the view that, since the said transaction does not fall within the meaning of loan or advance.

28. CWT v Giridhar G. Yadalam [2007] 163 TAXMAN 154 (RAJ.)

The assessee owned certain land which was given to a company for the construction of residential flats thereon. The Assessing Officer holding that the assessee, being the owner of the vacant land, was liable to wealth-tax in terms of the provisions governing such assessment brought the same to tax by creation the said land as urban land. The assessee's case was that since the building is being constructed, the same was exempt for the purpose of wealth-tax in terms of the meaning to be given to an urban land.

The High Court observed that on perusal of the definition of 'urban land' under section 2(ea)(b) would show that certain lands are not includible for the purpose of 'urban land' in the instant case, the land were occupied by a building which had been constructed with the approval of the appropriate authority. The approval by the appropriate authority was not disputed. The High Court ruled that Building in process of construction cannot be understood as a building which had been constructed, in terms of meaning given to 'urban land'. Constructed would mean 'fully constructed' as understood in common parlance.

What was argued was that since the building was being constructed, the same was exempt for the purpose of wealth-tax in terms of the meaning to be given to urban land. A careful reading of the said definition would show that what is excluded is the land occupied by any building which has been constructed. Admittedly, in the instant case, the building was not fully constructed. It was in the process of construction. A building in the process of constructed. Admittedly, in the instant case, the building was not fully constructed. It was in the process of construction. A building in the process of construction can not be understood as a building which has been constructed as sought to be argued.

The Courts have to interpret any definition in a reasonable manner for the purposes of fulfilling the object of the Act and they cannot interpret a term in such an unreasonable manner making Act unworkable as sought to be argued. Constructed has its own meaning. Constructed would mean fully Constructed as understood in the common parlance. The argument advanced by the assessee could not be accepted. On the other hand, the reasonable argument of the revenue would be accepted. In the matter of proper understanding of the expression 'land occupied by any building which has been constructed', since that would fulfill the intention of the Legislature.

One cannot forget that the Parliament in its wisdom has chosen to provide an exemption only under certain circumstances. The exemption cannot be extended without any legal compulsion in terms of the Act. Since the wording 'urban land' would mean a land on which complete building stands, such a land alone would qualify for exemption.

29. Mustaq Ahmed (AAR) [2007]163 TAXMAN 638(AAR-NEW DELHI)

Assessee/applicant made claim for relief/exemption under provisions of Act for first time in revised return subsequent to filing of application before AAR seeking advance ruling on issue of said claim for relief/exemption, no question or issue can be said to be pending before Assessing Officer on date of filing application before AAR, so as to reject application in terms of proviso to section 245R(2).

The applicant was the sole proprietor of a business under the name and style of 'M Mart' at chennai engaged in the purchase, manufacture and sale of gold jewellery. The applicant was also the managing director of Mustafa Pte. Limited having its registered office in Singapore. Apart from the business as above, the applicant was also engaged in the activity of purchasing gold jewellery in India for the purpose of export. The applicant had been submitting its returns of business income derived from local sales and export sales with Assistant Director (International Taxation), Chennai. The returns for the assessment years 2005-06 and 2006-07 were filed on 30-10-2005 and 31-10-2006, respectively. In the returns, the income in cluded the income derived from purchase and export of gold ornaments. However, the applicant filed revised returns on 30-3-2007 claiming exemption of the income relating to putchase of gold ornaments for export under section 9(1)(i).

He also filed advance ruling application on 26-3-2007 seeking advance ruling on the question as to whether the income derived by the applicant on the purchase in India and export of gold jewellery accrues or arises in India and is taxable in India. Before authority applicant submitted that the income arising from the operations confined to purchase of gold ornaments and gold converted into ornaments for the export purpose does not accrue or arise in India and, therefore, not liable to be included in his total income assessable to tax. The revenue raised objection that the application is liable to be rejected in terms of proviso to section 245R(2) on the ground that the question raised in the application is already pending for adjudication before the assessing authority.

The embargo laid down in the proviso to section 245R(2) is not attracted in the instant case. In order to decide whether the question raised in the application is already pending before the income-tax authority, the crucial point of time to be taken into account is the date on which the application was filed before the authority. It is on that date, that the factual position as regards the pendency of the question has to be decided. If on the date of filing the application, the assessee and the revenue were at issue as regards the question raised in the application, the bar under the proviso does operate.

Viewed from another angle, the income-tax authority has no means of knowing on the date of filing the application, that a question similar to the one raised in the application will come up for consideration before him. In such a situation, it cannot be said that the question was pending before him on the date of filing the application.

On the facts presented by the revenue, it was crystal clear explicitly or by necessary implication on the crucial date of filing the application i.e., 26-3-2007. It was only the claim for exemption made a few days later in the revised return that could have possibly set the department in motion to dispute the claim. Till then, the question did not figure in the mind of the income-tax authority. The question could not, therefore, be said to be pending on 26-3-2007.

The mere fact that the assessee, by the date of filing of the application, made up his mind to claim the relief was no ground to conclude that the controversy or point at issue between the application and the department had arisen on or before the date of filing the application.

In the instant case the original return was filed before the filing of application under section 245Q, no exemption was claimed therein nor the question of exigibility of income-tax under the Explanation to section 9(1)(i) was put in issue. It was only in the revised return filed subsequent to the filing of the application that the claim for exemption/excusion was made, albeit without mentioning the details.

To put in other words, as the claim for exemption was made for the first time on 30-3-2007 along with the revised return, no question or issue could be said to be pending before the assessing officer on 26-3-2007.

In the light of the foreing discussion, the bar under any of the clauses of the proviso to section 245R(2) was not attracted and the application deserved to be allowed for the purpose of pronouncement of advance ruling.

Indirect Tax – May 2008

Case Laws

1. CCE v APOLLO TYRES LTD 2005 (184) ELT 115 (SC)

X Ltd. for manufacturing tyre purchases stainless steel wires. These wires are cut then cut into sizes which are used for the manufacture of rubberized bead wire. In the process of cutting the wire some scrap arises which is sold as scrap wire. In manufacture of rubberised bead wire, there is again some waste, which is also sold as waste. The good rubberised bead wire is used for manufacture of tyre. However, if the tyre is defective it is cut to make it unusable. In course thereof the company removes the rubberized bead from such tyre and is sells as metal scrap. The Superintendent however, was of the view that it was rubber scrap as obtained from defective tyre and accordingly liable to duty at the rate applicable to rubber scrap.

The SC ruled that the product to start with is steel wire. In the initial stage when it is cut and waste arises, it is sold as scrap of steel wire. Thereafter all that happens is that the stainless steel wire gets coated with rubber, merely because it is then coated with rubber that does not mean that is loses its characteristic of steel wire. The main item remains as steel wire.
In the process of coating steel wire with rubber, the rubberized bead wire, would be classifiable as scrap metal waste and not rubber waste due to the fact that the waste was predominantly of metal. Waste arising from the process of rubberizing a stainless steel wire is not a rubber waste or rubber scrap. Accordingly the rubberised bead wire taken out of defective tyre was also scrap of metal.

2. CCE v S.R. TISSUES PVT. LTD. 2005 (186) ELT 385 (SC)

Slitting or cutting of jumbo rolls of plain tissue paper/aluminium foil into smaller size not amount to manufacture as character and end-use did not undergo any change on account of winding, cutting/slitting and packing. Value addition on account of transport charges, sales tax, distribution and selling expenses and trading margin without any change in name, character or end-use by mere cutting/slitting of jumbo rolls cannot constitute criteria to decide what is manufacture.

Mere mention of a product in a tariff heading not necessarily implies that said product was obtained by process of manufacture. Just because raw material and finished product come under two different headings, it cannot be presumed that process of obtaining finished product from such raw material automatically constitute manufacture. Slitting/cutting of jumbo rolls of toilet tissue paper or aluminium foils into various shapes and sizes, not amount to manufacture merely because tissue paper in jumbo roll of size exceeding 36cms fell in a different CETA entry.

As process of slitting and cutting of toilet tissue paper or aluminium foil finds no mention in the CETA, it cannot be treated as deemed manufacture.

3. Siddhartha Tubes Ltd. v CCE 2006 (193) ELT 3 (SC)

(i) Cost of bought out items viz. sockets, which are fitted to m.s./g.i. pipes before their removal from factory gate is includible in the assessable value of the pipes. The reason for the inclusion being the essentiality of the sockets for the functioning of the pipes as these sockets join the pipes to each other.

(ii) Service charges paid to Madhya Pradesh Laghu Udyog Nigam Ltd., the selling agent, for supplying goods to various departments of State Government are also includible in the assessable value because they are not in nature of trade discount. Trade discount is admissible as deduction only if discount is given to a customer or the trader.

(iii) Galvanization cost is includible in assessable value of m.s. galvanized pipes even though galvanization does not amount to manufacture. The concept of valuation is different from concept of manufacture. In the instant case, the process of galvanization took place before product was cleared from place of removal. Galvanization adds to quality of product and increases the value of pipes. The cost of the process of galvanization, being incidental to the manufacture of pipes, is includible in the assessable value of pipes.

4. Tarai Foods Ltd v CCE 2006 (198) ELT 323 (SC)

The assessee manufactures French Fries and sells the same sometimes under the name “Inland Valley” and sometimes without any such name. The assessee cleared the goods with the name, under the heading “Preparations of vegetables put in unit containers and bearing name” - @ 8% duty and without brand name, under the heading “Other” - @ nil rate of duty.

The Department was of the view that the second lot of goods (removed under the category – Others) should also have been cleared by paying 8% duty.

The Supreme Court pointed out that brand name connotes such a mark, symbol, design or name which is unique to particular manufacturer which when used on a particular product would establish a connection between the product and manufacturer. Such name or mark cannot be identity of a person itself. It has to be something else which is appended to product and which establishes link. Mere mention of name of the manufacturer on packets of goods is not sufficient to classify them as goods bearing a name.

The Court ruled that if the assessee opts not to take advantage of brand name in its trade, it could have benefit of rate of duty applicable to unbranded product. Hence the assessee was entitled to remove the second category og goods without duty.

5. Alembic Glass Industries Ltd. v. CCEx. 2006 (201) ELT 161 (SC)

On account of a prolonged strike in the factory of the appellant, it was decided to cut down expenditure incurred on labour, packing, inventory advertising etc. One of the bulk buyers of the appellant’s products started advertising the products purchased from the appellant in order to boost its sales. The department contended that the appellant had gradually transferred the expenditure on sales promotion/advertisement of its products to the said buyer and thus such expenditure should be treated as additional consideration and should be included in the assessable value of the appellant’s products.

The Supreme Court observed that where advertisement cost is incurred by the manufacturers/customers compulsorily or mandatorily and where manufacturer has enforceable right against the customers to insist on incurring of such advertisement expenditure by the customers, the advertisement cost would be includible in the assessable value.

The Apex Court stated that in the instant case there was no finding recorded by the CEGAT that the appellant had any enforceable legal right. However, circumstances under which the buyer gave an assurance of bulk purchase and commenced advertising the appellant's product indicated that it was a package outlay for the revival of the appellant's factory arrived at between them as a part of cost reduction exercise of the appellant. There was no material before that CEGAT to conclude that there was any tacit understanding between the appellant and the buyer. The factual position showed that the transaction was on principal-to-principal basis. Hence, the Supreme Court held that there was no scope for making any addition in the assessable value.

6. Super Delicacies (P) Ltd. v. CCEx, New Delhi 2006 (199) ELT 387 (SC)

Notification No. 175/86-CE grants exemption from excise duty to small scale industries provided they do not use the brand name of another person who is not entitled to exemption under that notification. The appellant were using the brand name of the person who was not paying excise duty as his goods were exempt and was not registered with the excise department during the disputed period. The appellant contended that they were eligible to the small-scale exemption under Notification No.175/86 as they were using the brand name of the person who, according to the appellant, was also entitled to the small-scale exemption under the said notification.

The Supreme Court held that merely because the owner of the brand name manufactures goods which are exempt from excise duty, it does not mean that such owner is a small scale industry entitled to the benefit of the notification. Further, it cannot be presumed that just because the owner of the brand name was not registered during the disputed period, it was a small-scale industry during the period in question.

7. CC v J K Corporation Ltd 2007 (208) ELT 485 (SC)

The assessee entered into an agreement with a foreign company for supply of Plant and Machinery. The agreement was entered into two parts. Part A provides for payment of License, Knowhow and Technology, while Part B provides for supply of equipment as a part of necessary plant and machinery and equipment. The Department is of the view that supply of License and Know How and Plant forms part of an integrated contract , the value of License and know how should be added to the cost of the Plant and Machinery to arrive at the assessable value.

On appeal the Supreme Court has ruled that the basic principle of levy of customs duty, is that the value of the imported goods has to be determined at the time and place of importation. The value to be determined for the imported goods would be the payment required to be made as a condition of sale. Assessment of customs duty must have a direct nexus with the value of the goods which was payable at the time of importation. If any amount is to be paid after the importation of the goods is complete, inter alia by way of transfer of License or technical know how for the purpose of setting up of a plant from the machinery imported or running thereof, the same would not be computed for the said purpose. Any amount paid for post-importation service or activity, would not, therefore, come within the purview of determination of assessable value of the imported goods so as to enable the authorities to levy customs duty or otherwise. What is necessary is that a separate identifiable amount be charged for the same. It has been a factual finding by the Tribunal that no part of the know how fee was to be incurred by the assessee company either for the purpose of fabrication of the Plant or Machinery or designing thereof.

Further in this case the additional amount towards the License Fee and Know how was separate and over and above the cost of the plant. Had the additional payment be towards the cost of the plant as in the case of Essar Gujarat, the conclusion would have been different.

Thus, the additional payment by the assessee company would not be included in the assessable value of the imported machinery.

8. Crane Betel Nut Powder Works v CCE 2007 (210) ELT 171 (SC)

Crushing betel nuts into smaller pieces and sweetening the same with essential / non-essential oils, menthol, sweetening agents etc., did not result in manufacture of a new and distinct product having a different character and use as end product continues to retain its original character though in a modified form.

9. Amrit Agro Industries Ltd v CCE 2007 (210) ELT 183 (SC)

The assessee manufactures items like aloo bhujia, chholey masala, roasted peanuts and moogfali masala. The assessee was of the contention that all the four items fell under heading 21.08 as Namkeen. Heading 21.08 refers to bhujia and chabena as namkeens. Notification 4/97 dated 1-3-1997 exempts namkeen items from duty. Assessee relying on heading 21.08 treated even roasted peanuts and moongfali masala as namkeens and climed them as exempt from duty.

The department was of the contention that roasted peanut and moongfali masala were namkeens in common parlance and therefore would not be eligible for exemption. As goods were removed by the assessee considering the exemption, on recalculation of duty (based on the Supreme Court verdict) it cannot be said that the sale value was inclusive of duty to as to entitle the assessee to calculate duty on the basis of cum duty price.

On appeal Supreme Court ruled that roasted peanuts is not a product commonly known an namkeen and is not comparable to bujia. In case of roasted peanuts assessee merely applies salt to roasted peanuts which does not obliterate essential character of peanuts. Therefore they cannot be treated as namkeen and therefore would not be entitled to the benefit of the exemption notification.

Moongfali masala is a mixture of materials other than nuts and is an oil preparation which makes use of gram flour and undergoes the process of deep frying. In the process, capacity to germinate is obliterated. Predominance of material test cannot be applied here. Therefore these would be classified as namkeens and not peanuts and accordingly would be eligible for exemption.

10. Pragati Silicons Pvt Ltd v CCE 2007 (211) ELT 534 (SC)

The assessee is a small scale unit manufacturing plastic name plates for motor vehicles in accordance with the specifications and designs supplied by the customers, who are the vehicle manufacturers. The entire production is sold to the vehicle manufacturers alone. The dispute is on the classification – whether these plastic name plates are to classified as parts and accessories of motor vehicles or as other articles of plastic.

The Supreme Court ruled that an accessory by its very definition is something supplementary or subordinate in nature and not be essential for the actual functioning of the product. It cannot be denied that name plates add to the convenient use of the motor vehicles. Nam plates serve a very useful purpose in as much as it gives an identity to the vehicle. Each vehicle comes with a different brand name and in different models having distinct features. The manufacturers of different type of models of vehicles market them under a name and the vehicles are recognized and referred to by the name plate affixed on them. Name plates convey to the consumers the distinct features it carries. Undoubtedly they add effectiveness and value to the vehicle to the vehicle and are in the nature of accessories and classifiable as such.

11. CC v. Galaxy Entertainment (I) P. Ltd. 2007 (214) ELT 14 (SC)

The assessee had imported certain equipment from a foreign supplier after a hectic bargain for US $ 15000, records to that effect was also produced by the assessee. The equipment imported required specialized knowledge for its installation. Such expertise was available with the subsidiary of the said foreign supplier which signed Technical and Installation Charges Agreement with the importer. The agreement provided that the importer would pay Rs.59 lakh as technical and installation fee to the said subsidiary of the foreign supplier over a period of three years.

The Department contended that the whole practice of separate agreement was undertaken to bifurcate the cost of the equipment in order to pay less duty. In order to consider and verify Department relied on nine imports of similar equipments during the relevant period so as consider the transaction value of the identical goods. However, none of the transactions relied by the Department were of the same technical specification as that of the one imported by the assessee.

The Apex Court did not accept the Department's plea that technical and installation charges were a disguise to cover the true cost of equipment as there was no evidence of any flowback or extra-consideration deflating the price. The Supreme Court held that the Technical and Installation Charges Agreement was a post clearance revenue generation agreement which had no nexus with the sale proceeds of the equipment, more so that it could not be established that payment of technical and installation charges was incidental to import.. Thus, the Court held that in this case, the transaction value under rule 4(1) should be accepted and the transaction value of identical goods.

12. CIT v. Tara Agencies 2007 (214) ELT 491(SC)

The assessee was purchasing various categories and grades of tea. Based on its experience and market acceptability it started mixing various grades of tea so as to obtain different flavours.

The issue under consideration in this case was that whether the blending of tea amounts to manufacture. The Supreme Court has held that blending of different qualities of tea to smoothen its marketability is not manufacture but processing. The production of tea happens in the tea gardens. Manufacture happens when tea leaves are plucked from the tea bushes and by mechanical process, converted to tea. Blending of different qualities of tea is its processing.

The Apex Court explained that the word 'production' when used in juxtaposition with the word 'manufacture' covers bringing into existence new goods by a process which may or may not amount to manufacture. It covers all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods. Processing is only an intermediate stage of production and/or manufacture.

It was explained by the Supreme Court that manufacture means processing of goods resulting in an alteration or change in them leading to production of a commercially new article. The Court elaborated that no hard and fast rule can be applied for determining as to whether a process amounts to manufacture in every case and thus each case must be decided on its own facts.

13. Jayanti Food Processing (P) Ltd. v. CCE 2007 (215) ELT 327 (SC)

The assessee is engaged in manufacturing of Ice-cream falling under S.H.: 2105, Central Excise Tariff Act, 1985. It used to supply the ice-cream in four litres pack to the Catering industry or hotels, the hotel used to sell the said ice-cream in scoops. The assessee used to specifically display on the said packs that the pack was not meant for retail sale'. The ice-cream used to be sold in unpacked form by the hotel to which the said ice-cream used to be supplied. The contention of the assessee was that since the pack which could be described as the bulk pack of four litres, was not meant to be sold in retail, it was bound to be treated as a wholesale transaction and as such the assessee was not required under SWM Act and the Rules made thereunder to print the Maximum Retail Price (MRP) which was a pre-condition for application of Section 4A for the purposes of valuation and assessment.

The Court held that the package in question would certainly come within the definition of 'wholesale package' as defined in Rule 2(x)(ii) as it contained the commodity (ice-cream) and was sold to intermediary (Hotel) for selling the same to the consumer in small quantities. Then Rule 29 would apply to such package which does not require the price to be displayed on the package.

The Court further held that the words 'or for the purposes of servicing any industry' are broad enough to include the transaction in question, i.e., the sale of a pack of ice-cream to the retail industry. Hotel does not manufacture the ice-cream and is depended entirely upon the sale of ice-cream to it by the assessee for ultimately catering the commodity in the package, i.e. ice-cream to the ultimate consumer. The supply by way of sale of ice-cream which is ultimately sold to the 'ultimate consumers' would be covered in the term 'servicing the hotel industry'. The assessment would have to be under Section 4 of the Act and not under Section 4A.

In another appeal, the appellants were engaged in the manufacture of wafers covered with milk chocolate under the brand name 'KIT KAT The product was a specified product under the provisions of Section 4A and was included in the notification and accordingly the duty was being paid on the said Chocolate in terms of Section 4A based upon the 'retail sale price' after claiming the deductions on account of abatements.

The appellant entered into a contract with M/s.Pepsico India Holdings Ltd., where the agreed price of the KITKAT packet was RsA.80 and the chocolate so purchased at that price by M/s.Pepsico was meant for free supply of the same along with one bottle of Pepsi of 1.5 litres in pursuance of their Sales Promotion Scheme. The appellant cleared the disputed goods after payment of duty at RsA.80 per chocolate in terms of Section 4 of the Act after filing the due declaration on the premise that since the chocolates were being sold to M/s.Pepsico, this was not a 'retail sale' and on such chocolates supply there was no requirement to display the maximum retail price and as such the chocolates could not be covered under Section 4A and would eventually be assessable under Section 4.

The Court observed that printing of the price on the labels of Pepsi would be of no consequence for the simple reason that it is clearly meant for the advertisement of Pepsi and the MRP is not printed on the chocolate.

It may be a move on the part of the Pepsi for advertising its product but that cannot be said to be binding vis-a-vis Nestle. What is required is the requirement under the Rules of printing the price. Therefore, the true test is not as to whether the price is printed on the labels ofthe accompanying product like Pepsi but whether there was a requirement under the SWM Act or the Rules made thereunder to print the MRP on the wrappers of KITKAT chocolates.

It was further held that merely because the goods are specified items under Section 4A (1), that by itself will not be a be all and end all of the matter as before such goods are brought in the arena of Section 4A (1), there would have to be the satisfaction of a particular condition that the packages of such goods are 'required' under the SWM Act and the Rules made thereunder to declare the MRP. The Court opined that unless there is an element of sale, as contemplated in Section 2(v), Rule 6(1) (f) will not be attracted and thus such package would not be governed under the provisions ofSWM (PC) Rules which would clearly take such package out of the restricted arena of Section 4A (1) of the Act and would put it in the broader arena of Section 4. After- all if the contract of the chocolates was for the purpose of advertising of a particular product ofthe particular industry, it would be covered within the expression 'servicing any industry.

14. CCEx. v. Bombay Dyeing & Mfg. Co. Ltd. 2007 (215) ELT 3 (SC)

The assessee has two textile mills known as the Spring Mills and the Textile Mills. Spring Mills is a composite name of the mill in whichthere is a spinning section where yarn is spun from raw cotton, and a weaving section where grey fabrics is woven from such yarn.

The grey fabrics woven in the Spring Mills are not processed at Spring Mills. Most of the grey fabrics manufactured by the assessee are processed by the Textile Mill though some quantity thereof is sold to third parties.

Notification No. 14/2002-CE granted exemption, both full and partial to a range of goods. As the assessee was not in a position to ascertain the variety and quantity of yarn entering into the manufacture of export production of "grey fabrics" and grey fabrics meant for home consumption, it was not in a position to pay duty on yarn at spindle stage. Hence, it opted to pay duty on yarn on deferred basis at the time of clearance of grey fabrics for home consumption along with interest at the rate prescribed. According to the Department, the assessee had failed to pay duty on yarn at the spindle stage and, secondly, it had taken credit for the duty paid on inputs under Cenvat Credit Rules, 2002, therefore was not entitled to claim nil rate of duty.

The Court observed that under Exemption Notification no. 14/2002-CE, the requirement was that exemption on grey fabrics was admissible subject to the assessee paying duty on yarn before claiming exemption and subject to the assessee not claiming CENVAT credit before claiming exemption. As payment of duty on yarn on deferred basis took place before clearance of grey fabrics on which exemption was claimed, payment was made before the stage of exemption. On payment of duty on the input (yarn) the assessee got the credit which was never utilized. Hence, Item no. 1 of the table to notification no. 14/2002-CE would apply and accordingly the grey fabrics would attract nil rate of duty.

15. CCE v Ballarpur Industries Ltd. 2007 (215) ELT 489 (SC)

As per Cenvat Credit Rules, where common inputs, on which credit is taken, are used to manufacture dutiable and exempted final products and separate accounts are not maintained, the manufacturer has to pay an amount equal to 10% of the price (excluding sales tax and other taxes, if any, payable on such goods) of the exempted final goods charged for sale of such goods at the time of clearance of such goods from the factory. The contention of the assessee was the provisions of Rule 6 of the CCR would not apply in case of stock transfer but only in case of sale of goods.

The Tribunal, when the issue was brought before it, ruled in favour of the assessee and opined that rule 6 would not apply in case of stock transfer as it applies only in case of sale. However, the Supreme Court rejected the Tribunal's view. The Apex court observed that the rule is a provision which sought to recover presumptive amount @ 10% of the price of exempted final goods at the time of removal for sale. Thus, rate of 10% was the measure to calculate the presumptive sum. The Court opined that since the entire rule was based on "deemed price" and "recovery of presumptive amount" hence, the words "price charged at the time of sale" must be read as "ten percent of the value of exempted goods".

Thus, the Supreme Court held that rule 6 applied in cases of stock transfers also.

16. CCus v Hewlett Packard India Sales (P) Ltd. 2007 (215) ELT 484 (SC)

The assessee had imported laptops containing pre loaded Hard Disc Drives (HDD). The said drives were preloaded with operating system (software). The department claimed that the said laptop along with the operating software was classifiable as a machine under Heading 84.71. However, the assessee contended that software loaded hard disc drive should be classified separately from the laptop under Heading 85.24. The assessee classified the software separately and claimed exemption from the duty payable on the same vide an exemption notification.

The Supreme Court observed that the pre-loaded operating systems recorded in Hard Disc Drive in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. The computer cannot even open without the operating system. A laptop without an operating system is like an empty building.

The Apex Court held that when a laptop is imported with in- built pre-loaded operating system recorded on HDD, the said item forms an integral part oflaptop (Computer system). Hence, laptop should be treated as one single unit classifiable under Heading 84.71 of Customs Tariff Act, 1975. However, if the operating system is imported as packaged software like an accessory, then it would be classifiable under Heading 85.24.

17. PRAGATI SILICONS PVD. LTD v CCE 2007 (213) E.L.T. 513 (S.C.)

The appellant was a small-scale unit, manufacturing plastic name plates for motor vehicles in accordance with the specifications and designs supplied by the customers, who are the vehicle manufacturers. The entire production of the appellant is sold to the vehicle manufacturers alone.

The classification lists filed by the appellant claimed the classification of name plates under headings 87.08 and 87.14 – parts and accessories of motor vehicles and the same were approved by the Department. A show cause notice was issued by the AC proposing to re-classify the name plates under heading 39.26 as articles of plastics. The issue arising before the Supreme Court:

(a) Whether plastic name plates are classifiable under headings 87.08 and 87.14 by falling within the scope of term parts and accessories of motor vehicles;

(b) Alternatively even if they do fall within the scope of parts and accessories of motor vehicles, whether there is any provision in the Explanatory Notes that specifically excludes ‘plastic name plates’ from headings 87.14?

It is evident therefore, that an ‘accessory by its very definition is something supplementary or subordinate in nature and need not be essential for the actual functioning of the product. It cannot be denied that name plates add to the convenient use of the motor vehicle. Name plates serve a very useful purpose inasmuch as it gives an identity to the vehicle.

Each vehicle comes with different brand name and in different models having distinct features. The manufacturers of different type of models of vehicles market them under a name and the vehicles are recognized and referred the distinct feactures it carries. Undoubtedly they add effectiveness and value to the vehicle and are at the very least accessories of the vehicle.

Thus, even if there was any difficulty in the inclusion of the plastic name plates as parts of the motor vehicles, they would most certainly have been covered by the broader term accessory. The Supreme Court opined that the plastic name plates are parts and accessories of motor vehicles and classifiable under the heading 87.08 and 87.14.

In conclusion, since plastic name plates are ‘parts and parts and accessories’ of motor vehicles and since they are not excluded from the section XVII, the appropriate classification is under headings 87.08 and 87.14.

18. MATSUSHITA TELEVISION & AUDIO (I) LTD v CC 2007 (211) E.L.T. 513(SC)

M/s. Salora International Ltd. (SIL) has entered into an agreement with M/s. Matsushita Electric Industrial Co. Ltd. (MEI) for obtaining technical assistance and know-how. The technical assistance and know-how was assigned by M/s. SIL to the appellants - MEI. Appellants were required to pay royalty at 3% on net ex-factory sale price of the colour TV manufactured by them towards technical assistance rendered by MEI. In addition to royalty the appellants were also sequired to pay USD 2 lakhs, as lump-sum payment to assist the appellants by selling the equipment at commercial prices.

The Adjudicating authority loaded the value of the said components by 2% and 1.58% in terms of Rule 4(2) and Rule 9(1) (c) of the Customs Valuation Rules.

The Supreme Court observed that payment of continuing royalty was payable at the rate of 3% of the net ex factory sale price of colour T.V. exclusive of taxes, freight and insurance but including the cost of imported components. Further, royalty payment was to be computed not only on domestic element of net sale price of colour T.V. but also on cost of imported components. Supreme Court ruled that cost of imported components was expressly included in net ex-factory sale price of colour T.V when payment to foreign collaborator was @ 3% of sales turnover of final product, including cost of imported components (which was a condition of sale of finished goods) Therefore such royalty payment is includible in assessable value.

19. MEGHRAJ BISCUITS INDUSTRIES LTD. V CCE 2007 (210) E.L.T. 161 (S.C.)

If SSI unit wrongly affixes a trade mark of another person, be it registered or not, or if it uses trade mark of an ineligible person then such default would not be eliminated by principle of deemed equivalence by grant of registration certificate with retrospective effect under Trade Marks Act, 1999 and will not automatically provide Benefit of exemption to SSI unit. Effect of making registration certificate applicable from retrospective date is based on principle of deemed equivalence to public user of such mark. This deeming fiction cannot be extended to excise Law and is confined to provisions of Trade Marks Act, 1999.

Assessee using brand name Meghraj of another manufacture (KA) who is also Director of assessee company. KA entered into agreement dated 22-11-1989 with another company (RF) declaring himself to be owner of registered trade mark ‘Meghraj’. There was no deed of assignment of the brand from KA in favour of assessee. Assessee took the plea that as KA is non – functional since long the brand automatically stood abandoned and thus stood assignment in its name. The contention of the assessee was not acceptable by the Department since discontinuation of business in respect of a product does not necessarily amount to abandonment of trade mark.

Although issuance of registration certificate in favour of assessee proved by assessee. Issuance of the same with retrospective effect from 30-9-1991 will not tantamount conferment of exemption benefit under Excise Law. Supreme Court that the assessee was not entitled to SSI benefit retrospectively but only prospectively, from the date of grant of registration certificate.

20. CC, New Delhi vs Phoenix International Limited and Another (SC) 20 Sep 2007

M/s. Phoenix International Ltd. (M/s. PIL) were the holders of Quantity Based Advance Licence under which it was entitled to import synthetic shoe uppers, PVC compounds and natural rubber. M/s. PIL imported synthetic shoe uppers. On the same day Phoenix Industries Ltd. (M/s. PIND) imported soles and insoles. M/s. PIL had imported synthetic uppers under DEEC Scheme whereas soles were imported by M/s. PIND under para 22 of the EXIM Policy 1992-97. Both the companies imported respective items as components/ parts.

On preliminary enquiry, the Department was satisfied that there was an attempt to mislead by importing the above items separately through two different companies as uppers and soles constituted complete synthetic shoes in SKD form.

The issue under consideration is whether shoe uppers, outer soles, insoles and sock liners imported by M/s. Phoenix Industries Ltd.

(PIND) in the same container could be clubbed so that it could be considered as import of the shoe itself in semi knocked down (SKD) condition? and whether the importer was guilty of mis-declaration when the importer declared SKD goods as components?

The Supreme Court observed that the device of importation of one item by M/s. PIL and three items by M/s. PIND was a subterfuge/ fictitious arrangement intended to deceive the Department and fraud on para 156(A) of the EXIM Policy 1992-97. The entire device was undertaken to show that what was imported were parts and not the footwear in the SKD condition. Therefore, M/s. PIL was the only real importer of all the four items and, in the circumstances, the Department was right in clubbing.

The Court further observed that the importer was liable to be assessed under tariff Heading 64.04 and consequently not entitled to the benefit of exemption Notification No.45/94- Cus dated 1.3.94. The Department was right in invoking r. 8, Customs Valuation Rules.

21. CCEx v Padmashri v.v. Patil Sahakari Sakhar Karkhana Limited

The issue under consideration is whether the authorities have discretion to exempt penalty under Section 11-AC and interest under Section 11-AB of Central Excise Act, 1944, while confirming the demand for evaded excise duty and also whether such exemption can be justified merely because the evaded excise duty is paid before issuance of show cause notice by the department.

The assessee is engaged in the manufacture of denatured spirit falling under the category of excisable goods. The contention of the department was that the respondent had undervalued the excisable goods and evaded excise duty. The assessee paid the duty in two installments itself, upon deficit being pointed out by the audit party. Major portion of the short duty was paid before issuance of show cause notice and a small chunk was paid, although after issuance of notice, before service of notice upon the assessee. The Commissioner confirmed the demand and ordered appropriation of amount already paid. He also ordered imposition of equal amount of penalty u/s 11 AC, Central Excise Act, 1944 read with Rule 173Q, Central Excise Rules, 1944.

The High Court held that the interest chargeable u/s 11 AB, Central Excise Act, 1944 was a sort of civil liability of the assessee, who has failed to pay the duty or who has short paid the duty. This was irrespective of the fact whether such non payment/short payment is innocent or mala fide.

The Court was of the opinion that in cases where the finding of fact regarding existence of fraud, collusion, wilful misstatement/suppression of facts or contravention of any provisions of the Act or Rules with intent to evade the payment of duty is confirmed, it may not be open to the assessee to claim that no penalty is imposable upon him, because of payment of evaded duty before issuance of show cause notice, after amendment as inserted by Act No.14/2001 with effect from 11.5.2001. There is no discretion with the authorities to impose any lesser penalty than 100% and 25% in case duty after being determined u/s 11 A(2), the assessee pays it within 30 days.

The Court further held that as the basic requirement of Section 11 AC was non-existent, as there were no mala fide intentions on the part of the assessee and also that short paid duty was paid before issuance of show cause notice, penalty was not imposable. On the question of interest, the Court held that ordinarily, the interest is payable till payment of short duty as adjudicated, but in view of 11 (2B), which gives liberty to the party to pay the short duty even before determination or without determination by the officer of Central Excise, the interest would stop to run to the extent of amount deposited by self ascertainment and on the date such amount is so deposited. Hence, interest u/ s 11 AB is chargeable in case the short duty or unpaid duty is deposited with the Government before issuance of show cause notice.

22. CCEx & Others v. Solaris Chemtech Limited & Others (SC)

The issue under consideration was whether the assessee is entitled to CENVAT credit on Low Sulphur Heavy Stock (LSHS) and furnace oil used for generating electricity captively consumed for the manufacture of the final products such as caustic soda, cement etc.

The assessee contended that that LSHS fell within the ambit of input used as fuel. The Department contended that as LSHS generates electricity but that process does not result into manufacture of cement and caustic soda, therefore, CENVAT credit was not admissible for the duty paid on LSHS.

The Supreme Court held Explanation clause (c) referring to 'input used as fuel' was introduced by Notification NoA/94, wherein it was made clear that inputs used as fuel were entitled to CENVAT credit. The Court further held that without utilisation of LSHS, it was not possible to manufacture cement/caustic soda and the electrolysis process was dependent on continuous flow of electricity. If there is disruption in the supply of electricity from the Electricity Board, then the entire plant of the assessees would fail and the manufacture of cement/caustic soda would not take place.

Therefore, LSHS would come within the ambit of the expression 'used in or in relation to the manufacture of the final product: Hence, CENVAT credit on LSHS used in production of electricity cannot be denied.

However, the Court was also of the view that where electricity generated is consumed by the residential colony of the factory's workers' families, schools etc., to that extent CENVAT credit will not be admissible.