CASE LAWS – EXCISE DUTY

TAX HIERARCHY

Subject & Issue	Case Law & Decision	Key Points
CBEC Circular Where a circular issued under Section 37B of the CEA, 1944 clarifies a classification issue, can a demand alleging misclassification be raised under Section 11A of the Act for a period prior to the date of the said circular?	*S & S Power Switch Gear Ltd. – 2013 – Mad. HC* It was held that once re-classification Notification / Circular is issued, the Revenue cannot invoke Section 11A of the Act to make demand for a period prior to the date of said classification notification/circular. (i.e. CBEC Circulars prejudicial to the assessee will have prospective effect. However, if they are beneficial to the assessee, they will have retrospective effect).	

BASIC CONCEPTS

Subject & Issue	Case Law & Decision	Key Points
Movability Whether the machine, which is not assimilated in permanent structure would be considered to be immoveable?	*Solid & Correct Engineering Works & Ors – 2010 – SC* It was held that the plant in the case was not immovable property as the machine was fixed by nuts and bolts to the foundation to provide a wooble-free operation to the machine and there was no intention to permanently attach it to earth.	
Marketability & Manufacture Whether assembling of the testing equipment for testing the final product in the factory amounts to manufacture? And, whether such testing equipment were marketable?	*Usha Rectifier Corporation (I) Ltd. – 2011 – SC* It was held that process of assembling in the present case amounted to manufacture as a product was emerged out of assembling. Also, the said testing equipment were marketable as the company developed such equipment to avoid importing of such equipment with a view to save foreign exchange.	
Marketability Can the physician sample be considered to be marketable in view of the fact that they	*Medley Pharmaceuticals Ltd. – 2011 – SC* It was held that physician samples were marketable and were liable to excise duty as Drug & Cosmetics Act, 1940 and CEA, 1944 have	

are statutorily prohibited from being sold as per Drugs and Cosmetics Act, 1940?	different objectives and they operated in different fields. Also, distributing free samples being a marketing strategy was always discretionary to the company.	
Marketability & Manufacture Whether bagasse which is a marketable product but not a manufactured product can be subjected to excise duty?	***Balrampur Chini Mills Ltd. V. UOI – 2014 – All. HC*** It was held that though bagasse is an agricultural waste of sugarcane, it is a marketable product. However, duty cannot be imposed thereon simply by virtue of the Explanation added under Section 2(d) as it does not involve any manufacturing activity. The High Court quashed the CBEC's Circular dated 28-10-2009.	
Marketability Does a product with a short shelf-life satisfy the test of marketability?	***Nicholas Piramal India Ltd. – 2010 – SC*** It was held that short-shelf life is irrelevant to test the marketability of a product. If a product with shelf-life of 2 to 3 days is capable of being bought and sold in the market, it would be excisable; else it would be non-excisable.	
"Includes" Part in Definition Whether the word 'include' used in a statutory definition enlarges the scope of preceding words or restricts their scope?	***Ramala Sahkari Chini Mills Ltd. – 2016 – SC*** It was held that that the word "include" in a statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.	***Nov 2016***
Manufacture – General Meaning Does the activity of packing of imported compact discs in a jewel box along with inlay card amounts to manufacture?	***Sony Music Entertainment (I) (P) Ltd – 2010 – Bom. HC*** It was held that the said process did not amount to manufacture since the CD had been complete & finished when imported by the assessee	
Manufacture – General Meaning Does printing on jumbo rolls of GI paper as per design and specification of customers with logo and name of product in colourful form, amount to manufacture?	***Fitrite Packers – 2015 – SC*** It was held that the process of aforesaid particular kind of printing resulted into a product i.e., paper with distinct character and use of its own which it did not bear earlier. The printing was not merely a value addition but had transformed the general wrapping paper to special wrapping paper.	***May 2016***

Manufacture – General Meaning Whether the addition and mixing of polymers and additives to base bitumen results in the manufacture of a new marketable commodity?	***Osnar Chemical Pvt. Ltd. – 2012 – S.C.*** It was held that process of mixing polymers and additives with bitumen did not amount to manufacture as mere improvement in quality did not amount to manufacture	
Manufacture – General Meaning Does the process of preparation of tarpaulin made ups after cutting & stitching the tarpaulin fabrics & fixing the eye lets amounts to manufacture?	***Tarpaulin International – 2010 – SC*** It was held that stitching of tarpaulin sheets & making eyelets did not change the basis characteristics of the raw material & end product and the above said process would not amount to manufacture.	
Manufacture – General Meaning Will the process of crushing of coal amount to manufacture under the CEA, 1944?	***Dhunseri Petrochem Ltd – 2016 – AAR*** It was held that neither the coal crushing activity would amount to 'manufacturing activity' nor the crushed coal would be a manufactured product.	***May 2017***
Manufacture – Section 2(f)(i) Whether the metal scrap or waste generated during the repair of worn out machinery / parts of cement manufacturing plant by a cement manufacturer amounts to manufacture?	***Grasim Industries Ltd V. UOI – 2011 – SC*** It was held that generation of metal scrap or waste during the repair of his worn out machinery / parts of cement manufacturing plant does not amounts to manufacture in terms of Section 2(f)(i) as the repair process cannot be said to be incidental / ancillary process to the completion of manufactured product	

CLASSIFICATION OF GOODS

Subject & Issue	Case Law & Decision	Key Points
Classification – Tariff Rate How will a cream, which is available across the counters as also on prescription of dermatologists for treating dry skin conditions, be classified if it has subsidiary pharmaceutical contents - as medicament or as cosmetics?	***Ciens Laboratories – 2013 – SC*** It was held that owing to the pharmaceutical constituents present in the cream 'Moisturex' and its use for the cure of certain skin diseases, the same would be classifiable as a medicament under Heading 30.03.	

Classification – Tariff Rate Whether the actual use of a product should be considered for classification purpose?	***Wockhardt Life Sciences Ltd. – 2012 – SC*** Assessee's claim that the products are required to be classified as "Medicaments" was accepted over Revenue's stand that the products in question are "Detergents" as the products in question were primarily used for external treatment of the human beings for the purpose of the prevention of disease.	
Classification – Tariff Rate In case of specific classification viz-à-viz classification based on material used/composition of goods, which one should be adopted for classification purpose?	***Minwool Rock Fibres Ltd. – 2012 – SC*** It was held that tariff heading specifying goods according to its composition should be preferred over specific heading.	
Classification – Tariff Rate Can the 'soft serve' served at McDonalds India be classified as "ice cream" for the purpose of levying excise duty?	***Connaught Plaza Restaurant (Pvt) Ltd. – 2012 – SC*** It was held that soft serve would be classified as "ice cream" as (i) PFA, 1955 cannot be referred for classification under CEA, 1944 (ii) Consumer's perception (common parlance) would prevail over marketing strategies of manufacturer (iii) In the absence of a statutory definition or technical description, interpretation ought to be in accordance with common parlance (iv) Specific Heading ("Ice Cream") would prevail over General Heading ("Other Diary Produce") in terms of R-3, GIR	
Classification – Exemption Notification Can the benefit of exemption notification be granted to assessee where one of the conditions to avail the exemption is not strictly followed?	***Honda Siel Power Products Ltd. – 2015 – SC*** It was held that conditions and limitations are to be strictly followed. However, mere procedural lapse would not deny the benefit of exemption / concession to the assessee.	***May 2016***

VALUATION OF GOODS

Subject & Issue	Case Law & Decision	Key Points

Exclusion Part of Transaction Value Is the amount of sales tax/VAT collected and retained by the assessee with him in accordance with State Sales Tax Incentive Scheme, includible in assessable value?	***Super Synotex (India) Ltd. – 2014 – SC*** It was held that such retained amount of sales tax under State Sales Tax Incentive Scheme is includible as tax under remission scheme it neither paid nor payable to the State Government (unlike deferment scheme where tax is payable to the State Government).	
Exclusion Part of Transaction Value Should a part of sales tax retained by the manufacturer from its customers under a tax concession granted to it, be included in the transaction value of such goods under Section 4(3)(d) of CEA, 1944?	***Maruti Suzuki India Limited – 2014 – SC*** It was held that since assessee retained 50% of the sales tax collected from customers which was neither actually paid to the exchequer nor actually payable to the exchequer, transaction value under Section 4(3)(d) of CEA, 1944, would include the amount of such sales tax.	
Inclusion Part of Transaction Value Can the value of gunny bags, returned by the buyers, be excluded from the assessable value in the absence of any agreement between the seller and the buyer?	***Tata Chemicals Ltd – 2016 – SC*** It was held that the value of gunny bags returned by the buyers has to be included in assessable value as there is NO contractual obligation (or arrangement) on the seller to return the value of the packing material to the buyer on return of gunny bags to him.	***Nov 2016***
Inclusion Part of Transaction Value Can the PDI and free After Sales Services charges be included in the transaction value when they are not charged by the assessee to the buyer?	***Tata Motors Ltd. V. UOI – 2012 – Bom. HC*** It was held that as per Section 4(3)(d), the PDI and free After Sales Services charges could be included in the transaction value ONLY when they were charged by the assessee to the buyer. Thus, in the present case, they are not includible as they are not charged by the assessee to the buyer and reference to Section 4(1)(b) along with Rule 6 were incorrect.	
Inclusion Part of Transaction Value Whether the pre-delivery inspection charges (PDI) and after sales service (ASS) charges are to be included in the assessable value?	***TVS Motors Co. Ltd. – 2016 – SC*** It was held that PDI and free ASS would not be included in the assessable value under Section 4 of CEA, 1944, for the purpose of paying excise duty as no amount is paid or payable by the buyer to or on behalf of the assessee in the present case for PDI and free ASS	***Nov 2016***

CENTRAL EXCISE RULES, 2002

Subject & Issue	Case Law & Decision	Key Points
Remission of Duty – Rule 21 Can excise duty be remitted for the loss of molasses where the molasses were stored in an open pit instead of being stored in a steel storage tank?	***U.P. State Sugar Corporation Ltd. – 2016 – All. HC*** It was held that the assessee was duty bound to keep the molasses in the three tanks to their fullest capacity. Since assessee had not utilized the three tanks to the fullest capacity, the Tribunal had been justified in granting remission of only part of the quantity of the molasses and refusing to grant remission on the balance quantity which could have been stored in the steel tank.	***Nov 2016***

EXPORT PROCEDURES

Subject & Issue	Case Law & Decision	Key Points
Production of Documents – Rule 18 Rebate Can export rebate claim be denied merely for non-production of original and duplicate copies of ARE-1 when evidence for export of goods is available?	***UM Cables Limited V. UOI – 2013 – Bom. HC*** It was held that non-production of ARE-1 forms ipso facto cannot invalidate rebate claim. In such a case, exporter can demonstrate by cogent evidence that goods were exported and duty paid and satisfy the requirements of Rule 18 of CER, 2002 read with NN 19/2004.	
Inputs & Final Product – Rule 18 Rebate Whether Rule 18 of CER, 2002 allows export rebate of excise duty paid on both inputs as well as the final product manufactured from such inputs?	***Spentex Industries Ltd. – 2015 – SC*** It was held that normally the two words 'or' and 'and' are to be given their literal meaning. However, wherever use of such a word, viz., 'and'/'or' produces unintelligible or absurd results, the Court has power to read the word 'or' as 'and' and vice versa to give effect to the intention of the Legislature which is otherwise quite clear. The Apex Court held that the exporters are entitled to both the rebates under Rule 18 and not one kind of rebate.	***May 2016***
DBK on Inputs / IS & Rule 18 Rebate on FP Can rebate under Rule 18 be claimed of the ED paid on FP exported when the duty	***Raghav Industries Ltd V. UOI – 2016 – Mad. HC*** It was held that the Department had rightly rejected the rebate claim filed by the petitioner because when the petitioners had availed duty	***Nov 2016***

drawback of ED on inputs and ST on input services used in manufacture of such export goods has already been availed?	drawback with respect to the exported goods, they were not entitled for the rebate under Rule 18 of CER, 2002 as it would result in double benefit.	

SSI EN

Subject & Issue	Case Law & Decision	Key Points
Clubbing of Turnover – 2 Factories Should the clearances of two divisions of the assessee having separate central excise registration, be clubbed for determining the turnover for claiming SSI exemption?	***Premium Suiting (P) Ltd – 2016 – All. HC*** It was held that clubbing the clearances of the goods of the two divisions of the assessee having same PAN is as per EN 8/2003 and thus, the assessee could not avail the SSI exemption.	***Nov 2016***
Clubbing of Turnover – Dummy Unit Whether the clearance of two firms having common brand name, goods being manufactured in the same factory premises, having common management & accounts, etc. can be clubbed for the purposes of SSI EN?	***Deora Engineering Work – 2010 – P&H HC*** It was held that the clearance of the common goods by both the firms under the same brand name, manufactured in the same factory premises, having common management and accounts, etc. had been rightly clubbed by Department	
Penalty on Dummy Unit – Not Possible Where clearances of a dubious company are clubbed with clearances of the original company, whether penalty can be imposed on such dubious company if all the clearances have been made by the original company?	***Xenon – 2013 – Jhar. HC*** It was held that when it had been established that dubious company did not undertake any transactions, penalty could not be levied on the same for the transactions undertaken by the original company. HC emphasized that penalty could not be imposed upon the company who did not undertake any transaction.	
Common BN – Allowed Whether an assessee can claim the benefit of SSI EN on the brand name of another firm if its proprietor is also a partner in such other	***Elex Knitting Machinery Co. – 2012 – SC*** It was held that assessee being the co-owner of the brand name, could not be said to have used the brand name of another person (Concept of Group Brand Name was recognized in the present case).	

firm?	SC held that the benefit of exemption could be availed only when the company is manufacturing the goods under its own brand name or the brand name being used belonged to a sister concern of that company. The assessee was entitled to SSI EN.	
Assignment of BN – Allowed Whether an assessee using a foreign brand name, assigned to it by the brand owner with right to use the same in India exclusively, is eligible for SSI exemption?	***Otto Bilz (India) Pvt. Ltd. – 2015 – SC*** It was held that the assessee was using the trade mark in its own right as its own trade mark and therefore, it could not be said that it was using the trade mark of another person. The assessee was entitled to SSI EN.	***May 2016***
Physical Bearing of BN – Not Necessary 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?	***Australian Foods India (P) Ltd – 2013 – SC*** It was held that once it is established that a specified good is a branded good, whether it is sold without any trade name on it, or by another manufacturer, it does not cease to be a branded good of the first manufacturer. Thus, SSI EN is not available even for such goods, not physically bearing a brand name.	

DEMAND & RECOVERY

Subject & Issue	Case Law & Decision	Key Points
Suppression of Facts + Intention to Evade In case the revenue authorities themselves have doubts about the dutiability of a product, can extended period of limitation (EPL – 5 Yrs.) be invoked alleging that assessee has suppressed the facts?	***Sanjay Industrial Corporation – 2015 – SC*** It was held that since Revenue authorities themselves had the doubts relating to excisability of process of profile cutting, the bonafides of the appellant could not be doubted. Hence, extended period of limitation could not be invoked and penalty was set aside. (Mere suppression of fact cannot invoke EPL (5 Yrs.); there should also be intention of the assesse to evade ED)	
Recovery for Composition Scheme Whether time-limit under Section 11A of the CEA, 1944 is applicable to recovery of dues under compound levy scheme?	***Hans Steel Rolling Mill – 2011 – SC*** It was held that time-limit under Section 11A of CEA, 1944 is not applicable to recovery of dues under compound levy scheme as compounded levy scheme is a separate scheme from the normal scheme for collection of excise duty and importing one scheme of tax	

	administration to a different scheme is in appropriate	
Recovery Proceedings & Civil Proceedings 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 – 2012 – M.P. HC*** It was observed that since the subsequent show cause notice only formed prima facie view in regard to allegations, it could not be said to be issued after pre-judging the question involved in the matter. Thus, issue of second SCN regarding recovery of dues and penalty was held to be valid even when the first SCN for confiscation was still pending and converted into confiscation order. (i.e. Recovery Proceedings, Civil Proceedings and Criminal Proceedings can run simultaneously)	
Recovery of Erroneous Refund Can Department recover such refund under Section 11A without review of the refund order in terms of Section 35E of the Act?	***Eveready Industries India Ltd. – 2016 – Mad. HC*** It was held that once an application for refund is allowed under Section 11B, the expression 'erroneous refund' appearing in Section 11A(1) cannot be applied. If an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable the order of refund to be revoked under Section 11A(1). One authority cannot be allowed to say in a collateral proceeding that what was done by another authority was an erroneous thing. Therefore, recovery of such refund Section 11A is not possible without review of refund order in terms of Section 35E.	***May 2017***

REFUND

Subject & Issue	Case Law & Decision	Key Points
Re-Booking of CCR – Section 11B is NA Whether filing of refund claim under Section 11B of Central Excise Act, 1944 is required in case of suo moto availment of CCR which was reversed earlier (i.e., the debit in the CCR Account is not made	***ICMC Corporation Ltd. – 2014 – Mad. HC*** It was held that this process involves only an account entry reversal and factually there is no outflow of funds from the assessee by way of payment of duty. Thus, filing of refund claim under Section 11B of the Central Excise Act, 1944 is not required. Further, it held that on a technical adjustment made, the question of unjust enrichment as a	

towards any duty payment)?	concept does not arise.	
State Undertakings – DOUE is NA Does the principle of unjust enrichment apply to State Undertakings?	***Superintending Engineer TNEB – 2014 – Mad. HC*** It was held that the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State as State represents the people of the country. No one can speak of the people being unjustly enriched.	

CIVIL PROCEEDINGS

Subject & Issue	Case Law & Decision	Key Points
Unregistered Firm – Rule 25 is NA In a case where the manufacturer clandestinely removes the goods and stores them with a firm for further sales, can penalty under R-25 of the CER, 2002 be imposed on such firm?	***Balaji Trading Co. – 2013 – Del. HC*** It was held that R-25 penalty cannot be imposed on such firm as Rule 25 could be imposed only on four categories of persons: (a) producer; (b) manufacturer; (c) registered person of a warehouse; or (d) a registered dealer.	

CASE LAWS – SERVICE TAX

BASIC CONCEPTS & CHARGING SECTION

Subject & Issue	Case Law & Decision	Key Points
Shifting of Tax Burden is Possible (even if Contract is silent about it) In case where rooms have been rented by Municipality, can it pass the burden of service tax to the service receivers, (i.e. tenants)?	***Kishore KS v. Cherthala Municipality – 2011 – Ker. HC*** It was held that service tax burden can be passed on to the service recipient by the service provider even if the under the agreement, there was no provision for payment of service tax as service tax is an indirect tax and by default all indirect taxes are passed on to the ultimate consumers (unless there is a contact otherwise)	
Shifting of Tax Burden by Contract is Possible Whether the service tax liability created under law can be shifted by a clause entered in the contract?	***Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran – 2012 – SC*** It was held that service tax being an indirect tax may be passed on. Thus, assessee can contract to shift their liability. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under contract between them.	
Shifting of Tax Burden by Contract is Not Possible Based on the contractual arrangement, can the assessee ask the Department to recover the tax dues from a third party or wait till the assessee recovers the same?	***Delhi Transport Corporation – 2015 – Del. HC*** It was held that undoubtedly, the service tax burden can be transferred by contractual arrangement to the other party. However, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party (the other party) or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors (the other party).	***May 2016***
No TDS on Service Tax Whether tax is to be deducted at source under Section 194J of the Income-tax Act, 1961 on the amount of service tax if it is paid separately and is not included in the fees for professional / technical services?	***Rajasthan Urban Infrastructure – 2013 – Raj. HC*** It was held that the service tax component would not be subject to TDS under Section 194 J of the Income-tax Act, 1961. The view taken in the said judgment has been incorporated by CBDT (Income Tax) in Circular No. 1/2014.	

Franchise Service – Taxable Service 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 is taxable?	*Mayo College General Council – 2012 – Raj HC* It was held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing 'franchise service'. The fact that it is non-profit society is not relevant.	
Supply of RMC – Non-Taxable Service Does preparation of ready mix concrete (RMC) along with pouring, pumping and laying of concrete amount to provision of service?	*GMK Concrete Mixing Pvt. Ltd. – 2015 – SC* It was held that the contract between the parties was to supply RMC and not to provide any taxable services. Therefore, since the Finance Act, 1994 is not a law relating to commodity taxation, the adjudication was made under mistake of fact and law fails.	

PLACE OF PROVISION OF SERVICE RULES, 2012

Subject & Issue	Case Law & Decision	Key Points
Payment Processing Service – Rule 3/Rule 9 The applicant proposes to provide payment processing service to a US company which in turn provides name registration, web hosting, designing and other services to customers in India. (i) Whether the place of provision of payment processing service proposed to be provided by the applicant, is outside India in terms of Rule 3 of POPOSR, 2012? (ii) Whether services proposed to be provided by applicant would qualify as 'export of service'?	*Universal Services India (P) Ltd. – 2016 – AAR* It was held that (i) POP proposed to be provided by applicant would be location of recipient of service, i.e., location of WWD, i.e. outside India, in terms of Rule 3 of POPOSR as the applicant was providing service on his own account and thus, he cannot be called as an "intermediary" for application of Rule 9 of POPOSR. (ii) Since all the conditions enlisted under Rule 6A of STR, 1994, are satisfied, said service will also qualify as export of service.	*May 2017*

EXPORTER OF SERVICE EN

Subject & Issue	Case Law & Decision	Key Points
Non-Compliance of Impossible Condition 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. UOI – 2013 – Del. HC*** It was held that the condition of the notification must be capable of being complied with as if it could not be complied with, there would be no purpose behind it. Thus, the rebate claims filed by the appellants was allowed. (It was impossible to not only determine the date of export but also anticipate the call so that the declaration could be filed "prior" to the date of export. Also, it was impossible to describe the input service, value and specify the amount of service tax payable on input services **actually required** to be used in providing taxable service to be exported "prior" to date of export)	

SEZ EN

Subject & Issue	Case Law & Decision	Key Points
Receipt of Sr. before Commercial Prodn. Is exemption in relation to service provided to the developer of SEZ or units in SEZ available for a period prior to actual manufacture (which is the authorized operation) of final products considering these services as the services used in authorised operations of SEZ?	***Zydus Technologies Limited – 2014 – Guj. HC*** It was held that the assessee shall be entitled to refund; as though the operations of the assessee did not reach to the commercial production stage, the input services of scientific and technical consultancy procured by them were in relation to the manufacture which would take place at a later date.	

DEMAND & REFUND

Subject & Issue	Case Law & Decision	Key Points
No Recovery without SCN Can service tax be demanded by a speaking order without issuing a SCN but after issuing a letter and giving the assessee an opportunity to represent his case along with	***Vijaya Consultants, Engineers & Consultants – 2015 – AP HC*** It was held that by no stretch of imagination, the said letter could be treated as a show cause notice satisfying the requirement of Section 73. HC further held that the procedural requirement of issuance of notice and calling for explanation cannot be dispensed with as	***May 2016***

personal hearing?	otherwise the demand of money in the name of tax would be in violation of the very procedure prescribed under the Act.	
No Recovery without DO Is it justified to recover service tax during search without passing appropriate assessment order?	***Chitra Builders Private Ltd. – 2013 – Mad. HC*** It was observed that it is a well settled position in law that no tax can be collected from the assessee, without an appropriate assessment order being passed by the authority concerned and without following the procedures established by law. However, in the present case, no such procedures had been followed. Thus, the recovery was not valid in law.	
No Recovery without SCN & DO Whether recovery provisions under Section 87 of FA, 1994 can be invoked without an adjudication proceeding under Section 73?	***UOI V. Prashanthi – 2016 – Kar. HC*** It was held that the submission that the power under Section 87 is independent and irrespective of the procedure under Section 73, is not viable. The contention that when the power under Section 87 is to be invoked, no procedure under Section 73 can be undertaken, is not acceptable. Accepting such submissions and contentions would result in a situation that the power under Section 87 be without an adjudication mechanism under Section 73, which is neither conceived by the legislature nor can be the accepted position.	***May 2017***
Divergent Views – Bona-fide Case 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 Losers Travellers Co. Op. – 2013 – Guj. HC*** It was held that penalty cannot be imposed for the following reasons: (i) Levy was comparatively new and therefore, both unawareness and confusion were quite possible. Also, The service providers were essentially agriculturists, who lost their lands when plant of ONGC was set up (ii) There were divergent views of different benches of Tribunal (iii) Right to get reimbursement from service recipients does not means that the service providers had mala-fide intentions	

Contravention of Pro. + Intention to Evade Can extended period of limitation be invoked for mere contravention of statutory provisions without the intent to evade service tax being proved?	***Infinity Infotech Parks Ltd. V. UOI – 2013 – Cal. HC*** It was held that mere contravention of provision of Chapter V or rules framed thereunder does not enable the service tax authorities to invoke the extended period of limitation. The contravention necessarily has to be with the intent to evade payment of service tax.	
Suppression of Facts + Intention to Evade Can the expression 'suppression of facts' be interpreted to include in its ambit, mere failure to disclose certain facts unintentionally?	***Naresh Kumar & Co. Pvt. Ltd V. UOI – 2014 – Cal. HC*** It was held that wilful suppression cannot be assumed and / or presumed merely on failure to declare certain facts unless it is preceded by deliberate non-disclosure to evade the payment of tax. The non-disclosure of the fact which, even if, disclosed would not have attracted the charging section cannot be brought within the ambit of suppression of fact for the purpose of extension of limitation period.	
No Provisional Attachment with PONJ Can the order directing the provisional attachment of property be made without giving any opportunity of being heard to the assessee?	***Kunj Power Projects V. UOI – 2016 – All. HC*** It was held that the respondents need to be careful while resorting to exercise the powers contemplated under Rule 3 of the Service Tax (Provisional Attachment of Property) Rules, 2008. Such exercise of power has to be resorted to with utmost circumspection and with maximum care and caution. In the light of the aforesaid discussion, order for provisional attachment of property was quashed.	***May 2017***
Amt. Paid Mistakenly is NOT Service Tax Can an amount paid under the mistaken belief that the service is liable to service tax when the same is actually exempt, be considered as service tax paid?	***KVR Construction – 2012 – Kar. HC*** It was held that refund of service tax paid mistakenly (although actually not taxable), is payment made without authority of law. Mere payment of amount would not make it 'service tax'. In view of the above, it was held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under Section 11B of the Central Excise Act, 1944.	
Service Recipient can also apply for Refund Whether the recipient of taxable service having borne the incidence of service tax is	***Indian Farmers Fertilizers Coop. Limited – 2014 – All. HC*** It was that since the burden of tax has been borne by the respondent as a service recipient, question of unjust enrichment will not arise as	

entitled to claim refund of excess service tax paid consequent upon the downward revision of charges already paid, and whether the question of unjust enrichment arises in such situation?	per Section 11B of CEA, 1944 read with Section 83 of FA, 1994. Further, once the finding of the adjudicating authority that the claim for refund was filed within the period of limitation was not challenged by the Revenue before the CCE(A) & CESTAT, Revenue could not assert to contrary and first time urge a point in an appeal before HC which was not raised in grounds of appeal before authorities below.	

NEGATIVE LIST, DECLARED SERVICES & EXEMPTIONS

Subject & Issue	Case Law & Decision	Key Points
Educational Services Whether the course completion certificate / training offered by approved Flying Training Institute and Aircraft Engineering Institutes is recognized by law (for being eligible for exemption from service tax) if the course completion certificate / training is only for the purpose of eligibility for obtaining ultimate licence / approval for certifying repair / maintenance / airworthiness of aircrafts?	*Garg Aviations Limited – 2014 – All. HC* It was held that the term expression "recognized by law" is a very wide one. The legislature has not used the expression "conferred by law / statute". Thus, even if the certificate / degree / diploma / qualification is not the product of a statute but has approval of some kind in "law", it would be exempt.	
Outdoor Catering Services Whether supply of food, edibles and beverages provided to the customers, employees and guests using canteen or guest house of the other person, results in outdoor caterer service?	*Indian Coffee Workers' Co-Operative Society Ltd. – 2014 – All. HC* It was held that the assessee is a caterer. The assessee is a person who supplies food, edibles and beverages to cater to persons who use the facility of a canteen, which is provided by NTPC or by LANCO within their own establishments. NTPC and LANCO have engaged the services of the assessee as a caterer. Further, since the assessee provides the services as a caterer at a place other than his own, he is an outdoor caterer. The fact that the food is consumed by employees or guest of NTPC and LANCO is not relevant as service	

	recipient (NTPC / LANCO) need not be always the beneficiary of the service (employees / guests).	
Food Services – Deemed Sales/Declared Srs. Whether Section 66E(i) of FA, 1994 **[i.e. Declared Service]** which levies service tax on the service portion of activity wherein goods being food or any other article for human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of activity, is ultra vires the Article 366(29A)(f) of the Constitution **[i.e. Deemed Sales]**?	***Hotel East Park V. UOI – 2014 – Chhatisgarh HC*** It was held that Section 66E (i) of FA, 1994 is intra vires the Article 366(29A)(f) of the Constitution of India. Further, no VAT can be charged over the amount meant for service and that the amount over which service tax has been charged should not be subject to VAT. HC directed the SG to frame such rules and issue clarifications to this effect to ensure that the customers are not doubly taxed over the same amount. The rules may be in conformity with the bifurcation as provided under FA, 1994 to ensure that the Commercial Tax authorities do not charge VAT on that part of the value of the food and drink on which service tax is being assessed.	
Food Services – Deemed Sales/Declared Srs. Whether Section 66E(i) of FA, 1994 to the extent it seeks to constitute the service portion in an activity of supply of food or other articles as 'declared service' and Rule 2C of STVR, 2006, constitutionally valid?	***Federation of Hotel & Restaurants Association of India V. UOI – 2016 – Del. HC*** It was held that Section 66E(i) of FA, 1994 read with Section 65B(22) and Section 65B(44) is constitutional valid (as Parliament has the right to levy in terms of Constitution of India) It was also held that Rule 2C of STVR, 2006 is constitutionally valid (as machinery provisions including valuation can be provided by CG as a matter of administrative convenience)	***May 2017***
Complex Construction – Levy & Collection Whether levy of service tax on construction of complex services and on preferential location charges is constitutionally valid?	***Suresh Kumar Bansal V. UOI – 2016 – Del. HC*** It was held that to ***levy*** of service tax on construction of complex services and preferential location charges is constitutionally valid. However, it was also held that service tax cannot be ***collected*** on such charges as contracts are composite including the ***value of immovable property*** in the present case.	***May 2017***

CASE LAWS – CENVAT CREDIT

CENVAT CREDIT – MANUFACTURER & SERVICE PROVIDER

Subject & Issue	Case Law & Decision	Key Points
CCR on Inputs Whether CCR of the testing material can be allowed when testing is critical to ensure the marketability of the product?	***Flex Engineering Ltd. – 2012 – SC*** It was held that the process of manufacture would not be complete if a product is not saleable as it would not be marketable. Thus, the duty of excise would not be leviable on it. And, thus CENVAT credit on the testing material will be allowed as those materials are used for the manufacture of final tested product	
CCR on Inputs & Capital Goods Is a cellular mobile service provider entitled to avail CENVAT credit on tower parts & pre-fabricated buildings (PFB)?	***Bharti Airtel Ltd – 2014 – Bom. HC*** It was held that the mobile towers and parts thereof and shelters / prefabricated buildings are neither Capital Goods under Rule 2(a) nor "Inputs" under Rule 2(k). Hence, CCR of the duty paid thereon by a cellular mobile service provider was not admissible. Tower / Parts thereof & PFB are not Inputs as Inputs includes only goods and they are not goods as they are immovable. Tower / Parts thereof & PFB are not Capital Goods as (i) They are immovable (**NOT** goods); thus, not Capital Goods. (ii) BTS (Base Trans-receiver Station) **CANNOT** be taken single integrated / composite system classifiable under Chapter 85 (Eligible CG) as various components had independent functions (iii) Tower **CANNOT** be called as an accessory of Antenna (Eligible CG) as Antenna can be installed without tower (iv) Even in the CKD or SKD condition, the tower and parts thereof would fall under the Chapter 73 (Ineligible CG)	
CCR on Inputs Services Is the assessee entitled to avail CCR of	***Haryana Sheet Glass Ltd. – 2015 – P & H HC*** It was held that outward transportation **up to the place of removal**	***May 2016***

service tax paid on outward transportation of goods cleared from factory?	falls within the expression "Input Service". If a manufacturer is to deliver the goods to the purchaser, the place of removal would not be a factory gate of the manufacturer but that of the purchaser. In the given case, there is no evidence that the property in goods stood transferred to the purchaser at the factory door of the assessee. Therefore, the assessee is entitled to avail CCR.	
CCR on Inputs Services Whether assessee is entitled to claim CCR of service tax paid on house-keeping and landscaping services availed to maintain their factory premises in an eco-friendly manner?	***Rane TRW Steering Systems Ltd. – 2015 – Mad HC*** It was held that landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. Also, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises. The environmental law expects the employer to keep the factory without contravening any of those laws. Also, the concept of corporate social responsibility is also relevant.	***May 2016***
CCR on Inputs Services Can a commercial training and coaching institute claim CCR in respect of the input services of catering, photography and tent services used to encourage the coaching class students, maintenance and repair of its motor vehicle and travelling expenses?	***Bansal Classes – 2015 – Raj. HC*** It was that the assessee is not eligible for CCR of the service tax paid on Catering, Photography and Tent Services, Maintenance and Repair of its Motor Vehicle and Travelling Expenses as they are not connected to provision of output service.	***May 2016***
CCR on Inputs Services In case the assessee pays the service tax that he was not liable to pay, can it claim the CENVAT credit of such service tax?	***Tamil Nadu Petro Products Ltd. – 2015 – Mad. HC*** It was held that if upon a misconception of the legal position, the assessee had paid the tax that it was not liable to pay and such assessee also happens to be an assessee entitled to CCR, the availing of the said benefit cannot be termed as illegal.	***Nov 2016***
Supporting Document for CCR Can CENVAT credit be taken on the basis of private challans?	***Stelko Strips Ltd. – 2010 – P&H HC*** It was held that CCR could be taken on the strength of private challans as the same were not found to be fake and there was a proper certification that duty had been paid.	

Reversal of CCR on Capital Goods The assessee claimed the CENVAT credit on the duty paid on capital goods, which were later destroyed by fire. The Insurance co. reimbursed the amount including excise duty. Is the CENVAT credit availed by the assessee required to be reversed?	***Tata Advanced Material Ltd. – 2011 – Kar. HC*** It was held that CCR availed by the assessee need not be reversed as it was not a case of double benefit as contended by the Department.	
Reversal of CCR on Inputs Can CCR availed on inputs (contained in the work-in-progress destroyed on account of fire) be ordered to be reversed under Rule 3(5C) of CCR, 2004?	***Fenner India Limited – 2014 – Mad. HC*** It was held that CCR would need to be reversed under Rule 3(5C) only when the payment of excise duty on final product is ordered to be remitted under Rule 21 of CER, 2002, which deals with the remission of duty. In the present case, the assessee has not claimed any remission and no final product has been removed, hence, assessee need not reverse the CCR taken on inputs (contained in the work-in-progress) destroyed in fire.	
Refund under Rule 5 by Unregd. Person Can the Department deny the claim for refund of CCR available under Rule 5 of the CCR, 2004 on the ground that the person claiming the refund is not registered?	***Tavant Technologies India Pvt Ltd. – 2016 – Kar. Hc*** It was held that Department could not deny the claim for refund of CCR available under Rule 5 of the CCR, 2004 on the ground that the person claiming the refund was not registered.	***May 2017***
Residuary Penalty on Director – Rule 15 Whether penalty can be imposed on the director of the company for the wrong CCR availed by the company?	***Ashok Kumar Fulwadhya v. UOI – 2010 – Bom. HC*** It was held that penalty under Rule 15 was imposable only on the person who had availed CCR, who was a manufacturer. The director of the company could not be said to be manufacturer availing CCR.	

CASE LAWS – CUSTOMS DUTY

BASIC CONCEPTS

Subject & Issue	Case Law & Decision	Key Points
Import of Goods In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading (quantity exported from outside India) or on the actual quantity received into shore tanks in India?	***Mangalore Refinery & Petrochemicals Ltd. – 2015 – SC*** It was held the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty as the taxable event in the case of imported goods is "import" whereas the taxable event in the case of a purchase tax is the purchase of goods. A bill of lading quantity, therefore, could only be validly looked at in the case of a purchase tax but not in the case of an import duty.	***May 2016***
Export of Goods Whether export duty can be levied on goods supplied by DTA unit to SEZ unit (a) Under the provisions of Customs Act, 1962? (b) Under the provisions of SEZ Act, 2005?	***Essar Steel Ltd – 2010 – SC*** It was held that export duty cannot be levied on goods supplied by DTA Unit to SEZ Unit (a) **Under CA, 1962:** "Export" under Section 2 means "taking goods out of India to a place outside India" and "India" under Section 2 includes "Territorial Waters of India". Therefore, as per Section 12 of CA, 1962 only taking the goods out of Territorial Waters of India will attract export duty. Thus, supply from DTA Unit to SEZ Unit cannot be taken as Export under CA, 1962. (b) **Under SEZ Act, 2005:** The objectives of the SEZ include making available to the unit goods and services free of taxes and duties for export production, which is supported by integrated infrastructure. Thus, supply from DTA Unit to SEZ Unit cannot be taken as Export under SEZ Act, 2005.	

TYPES OF CUSTOMS DUTIES

Subject & Issue	Case Law & Decision	Key Points
Excise EN for CVD Would countervailing duty (CVD) on an imported product be exempted if the excise duty on a like article produced or manufactured in India is exempt?	***Aidek Tourism Services Pvt. Ltd. – 2015 – SC*** It was held that rate of additional duty leviable under Section 3(1) of CTA, 1975 would be only that which is payable under the CEA, 1944 on a like article. Therefore, the importer would be entitled to payment of concessional / reduced / nil rate of countervailing duty if any notification is issued providing exemption / remission of excise duty with respect to a like article if produced / manufactured in India.	

CLASSIFICATION OF GOODS

Subject & Issue	Case Law & Decision	Key Points
Classification – Tariff Rate Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?	***Nokia India Private Limited – 2015 – SC*** SC held that mobile battery charger is an accessory to mobile phone and not an integral part of mobile phone as (i) it is actually operated without battery charger, (ii) battery can be charged from other means like laptop, (iii) website of the company shows it as accessory, (iv) in common parlance it is understood as accessory, (v) it is compatible with many models of cell phone Further, battery charger cannot be held to be a composite part of the cell phone, but is an independent product which can be sold separately without selling the cell phone. Thus, Rule 3(b) of GIR cannot be applied	
Classification – Exemption Notification Where a classification is recognized by the Government in a notification any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?	***Keihin Penalfa Ltd. – 2012 – SC*** It was observed that the CG has issued an EN dated 1-3-2002 and in the said notification it has classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself has classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification need to be accepted even for period before 1-3-2002	

Classification and Interest on DBK (i) Will the description of 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 technical opinion or test? (ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applicable for recovery of excess drawback?	***CPS Textiles (P) Ltd. – 2010 – Mad HC*** (i) It was held that the description of 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 technical opinion or test (ii) It was held that a separate notice is not required to be issued for payment of interest as interest payment is automatic.	

VALUATION OF GOODS

Subject & Issue	Case Law & Decision	Key Points
Rejection of Declared Value – Rule 12 Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?	***Gira Enterprises – 2014 – SC*** It was held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, value of imported goods could not be enhanced on the basis of value of identical goods.	

IMPORT PROCEDURES

Subject & Issue	Case Law & Decision	Key Points
Time Limit for filing BE – Section 46 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-	***Shreeji Overseas (India) Pvt. Ltd. – 2013 – Guj. HC*** It was held that that the time-limit prescribed under Section 48 for clearance of the goods within 30 days cannot be read into Section 46 and it cannot be inferred that Section 46 prescribes any time-limit	

limit for filing of bill of entry under Section 46 of the Act?	prescribed for filing of bill of entry	

BAGGAGE

Subject & Issue	Case Law & Decision	Key Points
Re-export of Smuggled Goods – Section 80 Whether the smuggled goods can be re-exported from the customs area without formally getting them released from confiscation?	***Hemal K. Shah – 2012 – GOI*** It was held that 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, the re-export of said goods cannot be allowed under Section 80 of CA, 1962. Moreover, the passenger had grossly mis-declared the goods with intention to evade duty and smuggled the goods into India.	

DEMAND & REFUND

Subject & Issue	Case Law & Decision	Key Points
Principles of Natural Justice Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short-levy of customs duty?	***Kemtech International Pvt. Ltd. – 2013 – SC*** It was held that for the purpose of re-quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.	
Import Duty on Smuggled Goods Can customs duty be demanded under Section 28 and / or Section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?	***Dinesh Chhajer – 2014 – Kar. HC*** It was held that no duty is leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods. Section 28 is not applicable as it is applicable only where the goods are imported by an ***importer (i.e. owner)*** and the duty is not paid in accordance with law, for which a notice of demand is issued on the person. Section 125 is not applicable as it is applicable only for	

	smuggled goods where firstly the goods should have been seized and confiscated from ***importer (i.e. owner) or person who is having possession of goods*** and then, the duty demandable is in addition to the fine payable under Section 125(1) in respect of confiscated goods.	
Extended Period of Limitation –Fraud Case 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. – 2013 – SC*** It was held that extended period of limitation for demand of customs duty cannot be invoked as there was not mala-fide intention (i.e. deliberate default) to for non-payment the duty	
Recovery from Directors Can the directors of the company be held liable for the recovery of customs dues on the company?	***Anita Grover – 2013 – Del. HC*** It was held that directors cannot be held liable for the recovery of customs dues on the company in the absence of a statutory provision to recover the duty from the directors	
Refund of Wrong Payment of Duty Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods?	***Parimal Ray – 2015 – Cal. HC*** It was held that law of limitation under CA, 1962 is applicable to duty or interest paid under the Act. However, any sum paid into the exchequer by the assessee is not duty or excess duty but is simply money paid into the account of Government. Therefore, the assessee is entitled to refund of the sum paid by it to the customs authorities. Also, when the said amount was paid by mistake to CG, CG instantly became a trustee to repay that amount to the assessee. The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it.	
Interest on Refund of Special CVD Whether interest is liable to be paid on delayed refund of Special CVD arising in pursuance of the exemption granted vide Notification No. 102/2007?	***KSJ Metal Impex (P) Ltd. – 2013 – Mad. HC*** It was held that: (i) It would be a misconception of the provisions of the CA, 1962 to state that notification issued under Section 25 does not have any specific provision for interest on delayed payment of refund. (ii) When Section 27 provides for refund of duty and Section 27A	

	provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the CA, 1962.	
Interest on Refund of Surplus Sale Proceeds Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of Section 150 of the Customs Act, 1962?	***Vishnu M Harlalka V. UOI – 2013 – Bom. HC*** It was held that Department cannot plead that the CA, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission. HC clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Dept. to grant a refund, the Dept. can wait for an inordinately long period to grant the refund.	
Service of SCN to CHA – NOT Allowed In case of seizure of goods under Section 110 of CA, 1962, can the show cause notice [required to be issued under Section 124(a) within six months of seizure] be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself?	***Santosh Handlooms – 2016 – Del. HC*** It was held that SCN served on CHA [now Custom Broker] is not tenable in law as CHA has no general authority to act in respect of every act that the owner, importer/exporter is called upon to do or may be required to do under the provisions of the Act. Keeping in view of this object and/or the purpose, the legislature has consciously provided that service of orders, decisions or summons or notices, can only be effected in the manner provided in Section 153(a) by serving it upon the person for whom it is intended, in this case, the noticee. The intention for notice being served only on the intended person is to enable him to take a decision as to who would thereafter be entitled or authorized to appear for him before the concerned statutory authority.	***Nov 2016***

CONFISCATION & PENALTY

Subject & Issue	Case Law & Decision	Key Points

SCN for Confiscation – Dispatch v. Given Whether mere dispatch of a notice under Section 124(a) would imply that the notice was "given" within the meaning of Section 124(a) and Section 110(2) of the said CA, 1962?	*Purushottam Jajodia – 2014 – Del. HC* It was held that since the assessee did not receive the notice under Section 124(a) within the time stipulated in Section 110(2), such notice will not considered to be "given" by the Department within the stipulated time, i.e. before the terminal date. Consequently, the Department was directed to release the goods seized.	
Copies of Seized Documents Is it mandatory for the revenue officer to make available the copies of the seized documents to the person from whose custody such documents were seized?	*Manish Lalit kumar Bavishi – 2011 – Bom. HC* It was held that if any document was seized during the course of any action by an officer and relatable to the provisions of the CA, 1962 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.	
Provisional Release v. Final Release Where goods have been ordered to be released provisionally under Section 110A of the Customs Act, 1962, can release of goods be claimed under Section 110(2) of the Customs Act, 1962?	*Akanksha Syntex (P) Ltd. V UOI – 2014 – P & H HC* The remedy of provisional release under Section 110A is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under Section 110(2). Thus, final release under Section 110(2) is possible.	
Smuggled Goods & Exemption Notification Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?	*Ambalal & Co. - 2010 – SC* It was held held that the smuggled goods could not be considered as "Imported Goods" for the purpose of benefit of the exemption notification.	
Smuggled Goods v. Prohibited Goods Whether the expression 'goods in respect of which any prohibition is in force' refers to smuggled goods or prohibited goods?	*Gopal Saha V. UOI – 2016 – Cal. HC* It was held that 'goods in respect of which any prohibition is in force' in the context of Section 112 implies goods which are prohibited from being imported and not goods which have been smuggled into the country in contravention of the procedure established by law for the import thereof. Consequently, the order imposing penalty on the petitioner was set aside and the matter was remanded for such limited purpose for the imposition of other	*May 2017*

	permissible penalty. **Note:** Smuggled Goods are treated as Prohibited Goods for the purpose of confiscation under Section 111 whereas Smuggled Goods are NOT treated as Prohibited Goods for the purpose of penalty under Section 112.	

MISCELLANEOUS CONCEPTS

Subject & Issue	Case Law & Decision	Key Points
Penalty on Shipping Line & Steamer Agent Can penalty for short-landing of goods be imposed on the steamer agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962?	***Caravel Logistics Pvt. Ltd. – 2013 – Mad. HC*** It was held that conjoint reading of Sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him. Hence, duly appointed steamer agent of a vessel, would be liable to penalty. However, steamer agent, if innocent, could work out his remedy against the shipper for short-landing.	

CASE LAWS – COMMON TOPICS

SETTLEMENT COMMISSION

Subject & Issue	Case Law & Decision	Key Points
Second Application for Settlement (i) Where a settlement application filed under Section 32E(1) of the CEA, 1944 is not accompanied with the additional amount of excise duty along with interest due, can Settlement Commission pass a final order under Section 32F(1) rejecting the application and abating the proceedings before it? (ii) In the above case, whether a second application filed under Section 32E(1), after payment of additional excise duty along with interest, would be maintainable?	***Vadilal Gases Limited V UOI – 2014 – Guj. HC (Excise)*** It was held that (i) Applications, which are defective and non-maintainable in terms of the first proviso to Section 32E(1) cannot be decided or rejected or declared to have abated under Section 32F(1). (ii) Since the earlier application was dismissed on technical defect for non-compliance of the provisions of clause (d) of the proviso to Section 32E(1) of the Act and the same was not considered and decided on merits, the second application filed after depositing the additional excise duty and interest would be maintainable.	
Order of Settlement Commission In case of a settlement commission's order, can the assessee be permitted to accept what is favorable to them & reject what is not?	***Sanghvi Reconditioners (P) Ltd v. UOI – 2010 – SC (Customs)*** It was held that the assessee could not be permitted to dissect the settlement commission's order with a view to accept what is favorable to them and reject what is not	
Recovery of DBK – Settlement Commission Does the settlement commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the revenue?	***UOI v. Settlement Commission – 2010 – Bom. HC (Customs)*** It was held that the settlement commission has jurisdiction to deal with the questions relating to the recovery of drawback erroneously paid by the revenue as drawback is nothing but remission of duty on account of statutory provisions	

Judicial Review of Sett. Comm.'s Order Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition / special leave petition, permissible?	***Saurashtra Cement Ltd. – 2013 – Guj. HC (Customs)*** It was held that the scope of court's inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.	

APPEALS & REVISION

Subject & Issue	Case Law & Decision	Key Points
Writ for Time Barred Appeals to CCE(A) In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred, can a writ petition be filed to High Court against the order-in-original?	***Khanapur Taluka Co-Op. Shipping Mills Ltd. – 2013 – Bom. HC (Excise)*** It was held that where the appeal filed against the order-in-original was dismissed as time-barred, HC in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ in the instant case.	
Writ for Time Barred Appeals to CCE(A) Can the High Court condone the delay - beyond the statutory period of 90 days prescribed under Section 35 of the CEA, 1944 - in filing an appeal before the Commissioner (Appeals)?	***Texcellence Overseas V. UOI – 2013 – Guj. HC (Excise)*** It was held that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non-interference at that stage would cause gross injustice to the petitioner. Thus, HC by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. HC held that such powers are required to be exercised very sparingly and in extraordinary circumstances in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.	
Time Limit for Appeals to CCE(A) Can the period of limitation be computed from the date of forwarding of the order where such order has not been received by the assessee?	***Enestee Engineering Pvt. Ltd. V. UOI – 2016 – Bom. HC (Service Tax)*** It was held that the period of limitation prescribed under Section 85(3A) to prefer an appeal against order-in-original (2 months) begins from the date of receipt of the decision or the order of adjudicating authority. Thus, period of limitation be cannot be	***Nov 2016***

	computed from the date of forwarding of the order where such order has not been received by the assessee.	
Time Limit for Appeals to CCE(A) Whether the period of limitation or the period within which delay in filing an appeal can be condoned, specified in terms of months in a statute, means a calendar month or number of days?	***Ashok Kumar Tiwari – 2015 – All. HC (Service Tax)*** It was held that that where the legislature intends to define the period of limitation with regard to the number of days, it does so specifically. Section 85 of FA, 1994 has defined the period of limitation as well as the power to condone the delay with regard to a stipulation in terms of months and such a stipulation can only mean a calendar month. Once the legislature has used the expression "three months", it would not be open for HC to substitute the words "3 months" by the words "90 days". **Note:** Time Limit to file the Appeals to CCE (A) is 60 days (+30 days) in Excise whereas it is 2 months (+1 month) in Service Tax.	
Filing of Appeal to CCE(A) Can the appeal filed in time but to wrong authority be rejected by the appellate authority being time barred?	***Chakiat Agencies V. UOI – 2015 – Mad. HC (Service Tax)*** It was observed that the appeal had been preferred in time, but reached different wing of the same building. Since the appeal was received by the adjudicating officer who has passed the original order, he ought to have sent it to the other wing of the same building, but he had not done the same. Therefore, the order passed by the appellate authority cancelling the appeal on the ground that it was not received in time, could not be accepted.	
Remanding Back of Case by CCE(A) Can the Commissioner (Appeals) remand back a case to the adjudicating authority under Section 85 of the Finance Act, 1994?	***Associated Hotels Ltd. – 2015 – Guj. HC (Service Tax)*** It was held that held that Section 85(4) of FA, 1994 gives ample powers to the Commissioner while hearing and disposing of the appeals and such powers inherently contain the power to remand a proceeding for proper reasons to the adjudicating authority. **Note:** CCE (A) cannot remand back the case to CEO in Excise whereas CCE (A) can remand back the case to CEO in Service Tax.	
Delay in Filing of Appeal to CESTAT Can delay in filing appeal to CESTAT for	***Habib Agro Industries – 2013 – Kar. HC (Excise)*** It was observed that there did not appear to be any deliberate latches	

the reason that the person dealing with the case went on a foreign trip and on his return his mother expired, be condoned?	or neglect on the part of the authorised representative to file the appeal. It held that the reason for delay in filing appeal to CESTAT, that the person dealing with the case went on a foreign trip and on his return his mother expired, could not be considered as unreasonable for condonation of delay.	
Delay in Filing of Appeal to CESTAT Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned?	***Margara Industries Ltd. – 2013 – All. HC (Customs)*** It was held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.	
Delay in Filing of Appeal to CESTAT Can Tribunal condone the delay in filing application by Commissioner consequent to review by the Committee of Chief Commissioners if it is satisfied that there was sufficient cause for not presenting it within the prescribed period by invoking Section 129A(5) for an application filed under Section 129D(4)?	***Thakker Shipping P. Ltd. – 2012 – SC (Customs)*** It was held that Tribunal can condone the delay in filing application by Commissioner consequent to review by the Committee of Chief Commissioners. As Section 129A(5) ***(Normal Appeal by Commissioner to Tribunal)*** stood incorporated in Section 129D(4) ***(Appeal to Tribunal by Commissioner in case of Review of Order of Commissioner by Committee of Chief Commissioners)*** by way of legal fiction, condonation of delay by CESTAT mentioned under Section 129A(5) is equally applicable for Section 129D(4).	
Rectification of Order by CESTAT Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on records under Section 35C (2) of the CEA, 1944?	***RDC Concrete (I) Pvt. Ltd. – 2011 – SC (Excise)*** It was held that in pursuance of a rectification application, it cannot re-appreciate the evidence & reconsider its legal view taken earlier.	
Writ Petition to HC or Appeals to HC Can a writ petition be filed against an order passed by the CESTAT under Section 9C of the Customs Tariff Act, 1975?	***Rishiroop Polymers Pvt. Ltd. – 2013 – Bom. HC (Customs)*** It was held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution (i.e. Writ Petition), since an alternate remedy by way of an appeal was available in accordance with law (Section 9A(8) clarifies that order of CESTAT	

	under Section 9C is appealable). Thus, HC dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.	
Write Petition to HC Can a writ petition be filed before a High Court, which does not have territorial jurisdiction over the matter?	***Neeraj Jhanji – 2014 – SC (Customs)*** It was observed that the very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi, which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.	
Appeals to SC against CESTAT Order Can an appeal be filed before the Supreme Court against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods?	***Fact Paper Mills Private Limited – 2014 – SC (Excise)*** It was held that the appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court under Section 35L of CEA, 1944. **<u>Note:</u>** Only matters dealing with Valuation, Classification or Taxability / Excisability directly are appealable to SC from CESTAT.	
Acceptance of judgment of CCE(A) by Dept. 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 – SC (Excise)*** It was held that since the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it may not be open for the Revenue to contend this issue further by issuing the impugned show cause notices on the same issue for further periods. **<u>Note:</u>** The above decision will not apply in cases where Department had not preferred an Appeal before CESTAT or HC or SC because of CBEC Instructions stating the Monetary Limits for filing Appeals fixed by CBEC under Section 35R of the CEA, 1944.	
Service of Decision, Notices, etc. 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	***Nanumal Glass Works – 2012 – All. HC (Excise)*** It was held that decision pronounced in the open court in the presence of the advocate of the assessee shall be deemed to be the service of order as Section 37C(a) of the CEA, 1944 provides that an	

order to the assessee?	order is deemed to be served on the person if it is tendered to the person for whom it is intended or **his authorized agent**	
Service of Decision, Notices, etc. Whether the order served on a member of the family of the assessee, is a proper service of order?	***Jyoti Enterprises – 2016 – All. HC (Service Tax)*** It was observed that if the order is served on a member of the family of the assessee, it is duly served and there is sufficient service of the order. No assertion was made by the assessee that person receiving the order was not a family member or that he was not connected with the business. Further, nothing has been stated that the address where the service of the original order was made was incorrect.	***Nov 2016***