SHRI GURU KRIPA LEARNING CENTRE

LATEST CASE LAWS

Gist of Case	Citation
LEVY	
1. **Deemed Manufacture:** Labeling or relabeling without repacking from bulk to retail amounts to "deemed manufacture".	**BOC (I) Ltd (2008) 226 ELT 323 (SC)**
CLASSIFICATION	
2. **Seating Capacity for Classification:** The seating capacity relevant for classification is the capacity for which RC has been given and not the opinion of the manufacturer.	**T.N.vs Vinayaga Body Building Indus. Ltd. (2008) 224 ELT 3 (SC)**
3. Erroneous claim made by the assessee earlier did not preclude him from subsequently making a claim for correct classification.	**Guljag Industries Ltd (2008) 224 ELT 38 (Raj.)**
4. The definition as per Internet sources like Wikipedia cannot be used for the purpose of interpreting a taxing statute or classification of a product.	**Ponds India Ltd (2008) 227 ELT 497 (SC)**
5. When goods are classifiable under two chapter headings of Tariff simultaneously, the benefit should be given to the assessee.	**Calcutta Springs Ltd. (2008) 229 ELT 161 (SC)**
VALUATION OF GOODS	
6. **Sale to Related Parties:** When the goods are sold to related parties at a price which is not influenced by the related party relationship, then the transaction value should be taken as the assessable value.	**Bharti Telecom Ltd. (2008) 226 ELT 3 (SC)**
7. **Under–valuation:** There is no case of under–valuation of goods when goods are sold to related parties at or about the same price at which they are sold to third parties.	**India Thermit Corporation Ltd. (2008) 226 ELT 164 (SC)**
8. **Additional Consideration:** The Department should establish that additional consideration had a connection with the negotiated price of assessable goods under clearance in order to tax the additional consideration.	**Mysore Kirloskar Ltd. (2008) 226 ELT 161 (SC)**
CUSTOMS	
STORES	
9. **Foreign going Vessel:** No duty is payable on import of Stores, if the vessel is a foreign going vessel whether or not Stores is consumed on Board in the Indian Port.	**Jaisu Shipping Co. Pvt. Ltd (2008) 229 ELT 3 (SC)**
WAREHOUSING	
10. **Relinquishment of title to goods:** (a) It is not necessary to fulfill the conditions for clearance of warehoused goods for relinquishment of title to goods. (b) On relinquishment of title, the importer is absolved only of the liability to pay Customs duty but he is liable to pay other dues like rent, interest etc. (c) Even if order for clearance of goods for home consumption is passed, proper authorization and payments are to be made before relinquishment of title.	**J.K.Cement Works (2008) 223 ELT 138 (Raj.)**
11. The right of warehouse keeper to recover warehousing charges from the sale proceeds is in priority to the right to recover Customs Duty.	**Associated Container Terminal Ltd. (2008) 226 ELT 169 (Del.)**
SERVICE TAX	
ABATEMENT [Notfn No.1/2006 – ST]	
12. For claiming abatement under Notfn No. 1/2006 – ST, Value of materials supplied free of charge by service recipient is not includible in the value of taxable service.	**Era Infra Engineering Ltd. (2008) 11 STR 3 (Del.)**

VALUATION	
13. **Annual Maintanence Services:** Value of spares and parts is not includible in the gross amount charged in case of AMC and service tax is payable only on the amount of commission.	**Wipro GE Medical Systems Pvt. Ltd. (2008) 11 STR 142 (Tri–Bang)**
14. **Mandap Keeper's Services:** Parking Charges are included as part of taxable value in case of Mandap Keeper's services.	**Desert Inn Ltd.(2008) 10 STR 573 (Tri–Del)**
PROCEDURES	
15. The penalty for non–payment of Service tax and penalty u/s 76 of FA and penalty for suppressing value of taxable service u/s 78 are mutually exclusive and cannot be imposed simultaneously.	**Opus Media and Entertainment (2007) 8 STR 368 (Tri–Del)**
16. If the activities show that in the actual running of the units, there was no distinction or demarcation, then the clearances of such units is to be clubbed.	**Rao Industries (2008) 9 STR 581 (Tri–Bang)**
EXPORT OF SERVICES	
17. Booking of orders for foreign supplier for supply of goods in India cannot be treated as Export of Services because service was not provided outside India and not used outside India.	**Cani Merchandising Pvt. Ltd. (2008) 11 STR 10 (Tri–Del.)**
TAXABLE SERVICES	
18. **Port Services:** Repair of vessels in dry docks is not covered under Port Services.	**Homa Engineering Works (2007)7STR546 (Tri–Mum)**
19. **Business Auxiliary Service:** Activity of powder coating on furniture supplied by the customers amounts to manufacture and hence not covered under Business Auxiliary Service.	**A.G.Shibu (2007) 8 STR 228 (Tri–Chennai)**
20. **Business Auxiliary Services:** The amount charged for hiring hardware and information technology services is not included in the taxable value of Business Auxiliary Service.	**Bellary Computers (2007) 8 STR 470 (Tri–Bang)**
21. **Construction Services – Residential:** Sale of ready built flats by the Developer / Promoter without engaging the services of any other person is not covered under Construction Services.	**Greenview Land & Buildcon Ltd. (2008) 11 STR (Tri–Del.)**
22. **Advertising Agency Services:** Making hoardings / signboards without preparing advertisement is not covered under Advertising Agency Services.	**Hitech Publicities (2008) 11 STR 140 (Tri–Chennai)**
23. **Business Auxiliary Service:** Promotion of any service, whether or not taxable is covered under Business Auxiliary Services.	**The Financers (2008) 11 STR 140 (Tri–Chennai)**
24. **Cargo Handling Services:** Loading and unloading of iron ore in a mine is not covered under Cargo Handling Service because iron ore cannot be commercially called "Cargo".	**B.K.Thakkar (2008) 9 STR 542 (Tri–Kolkatta)**
25. **Port Services:** Stevedoring, Tug hire and labour supply is not covered under Port Services.	**Velji P. & Sons (Agencies) P. Ltd (2007) 8 STR 236 (Tri–Ahmd)**
26. **Commercial Training or Coaching Centre Services:** The benefit of exemption available to a Vocational Institute cannot be denied on the ground that assessee was not registered with AICTE.	**Wigan & Leigh College (India) Ltd. (2007) 8 STR 475 (Tri–Bang)**
27. **Business Auxiliary Services:** Rubber packing amounts to manufacture and hence not covered under Business Auxiliary Services.	**Jayanthi Rubbers (2008) 9 STR 153 (Tri–Bang.)**
28. **Photography Services:** Preparing elector photo identity cards on behalf of Election Commission of India is not liable to Service tax because activities performed by Sovereign / Public Authorities are exempt from Service tax.	**C.S.Software Enterprises Ltd. (2008) 10 STR 367 (Tri–Bang)**

29. Outdoor catering services provided to the employees within the factory premises are input services.	**Victor Gaskets India Ltd. (2008) 10 STR 363 (Tri–Mumbai)**
CENVAT CREDIT	
30. CENVAT Credit can be taken in respect of duty paid on inputs lost in transit before receipt in the factory when the entire goods received under the consignment are used for manufacture. Only when invoice is found to be wrong or diversion of input received under the invoice, lesser CENVAT Credit is admissible.	**Bhilwara Spinning Ltd. (2008) 222 ELT 362 (Raj.)**
31. **Quantum of Credit:** (a) Recipient unit is entitled to avail the benefit of duty paid by Supplier unit. (b) Quantum of credit determined by the Jurisdictional officers of Supplier unit cannot be denied or challenged by the Jurisdictional officers in charge of Recipient unit.	**MDS Switchgear Ltd. (2008) 229 ELT 485 (SC)**
PENALTIES	
32. Only one set of Penalty is imposable on the Proprietorship firm or the Proprietor. Where the proprietor is the appellant, the Penalty is imposable on him.	**Anil Kumar Mahensaria (2008) 228 ELT 166 (Del.)**
APPEALS	
33. **Illegular vs. Illegal orders:** • **Irregular Orders:** Where an authority lacked jurisdiction in making an order, such order is null and void ab initio. They cannot be rectified even with the consent of the parties. • **Illegal Orders:** When an authority exercised jurisdiction in a wrong manner, order would not be null. It can be cured in a duly constituted legal proceeding.	**Deepak Agro Foods (2008) 228 ELT 510 (SC)**
34. CESTAT is not correct in dismissing an appeal without stating any reason.	**Nagreeka Foils Ltd (2008) 227 ELT 348 (Bom.)**
35. Order passed by CESTAT without considering case laws relied on by the party is not proper.	**Stanlek Engineering Pvt. Ltd. (2008) 229 ELT 61 (Bom.)**
36. An order passed and signed cannot be changed on any circumstances, particularly without any notice to any of the parties to the case.	**Dinker Khinderia (2008) 229 ELT 63 (Del.)**
SETTLEMENT COMMISSION	
37. Only when the Settlement Commission is satisfied that the applicant had made full and true disclosure, the application could be admitted and proceeded with. Else, it can reject the application.	**Mars Theapeutics & Chem. Ltd. (2008) 223 ELT 363 (HC)**