LATEST AMENDMENTS

CENTRAL EXCISE
Laminated Rolls included in packing materials for exemption to SSIs under Notification No.8/2003 **[Circular No.9/2009 dt. 07.07.2009]**
W.e.f. 01.04.2009, a Chartered Accountant with in the meaning of the Chartered Accountants Act, 1949 can also be nominated by the Chief Commissioner for Valuation Audit u/s 14A and 14AA.
Conditions for bringing duty paid packing materials into the export warehouse: • The exporters shall be allowed to bring the duty paid packing materials into the export warehouse. • The exporter must submit a written request to the Jurisdictional AC/DC who may grant the permission for one year. • The exporter has to maintain proper account of such goods and shall not claim any export benefit like rebate of duty paid on the said material.**[Circular No.900/20/2009 dated 06.10.2009]**
Capital Goods manufactured for Captive Consumption within the 100% EOU shall be liable for duty at the time of clearance of such capital goods outside the 100% EOU or debonding or exit from the EOU Scheme. **[Circular No.22/2009 dt.19.08.2009]**
Compounded Levy Scheme based on Annual Production [Sec 3A of CEA]
Deemed Marketability in case of any article, material or substance which is capable of being bought and sold for a consideration. **[Explanation to Sec. 2(d)]**
Deemed Manufacture – Labeling or re–labeling, packing or repacking on Notified Goods
Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008
Contents of an Invoice in case of a Proprietary concern
Collection of Duty in excess from the Customer
Scrutiny of records by a Proper Officer in case of goods manufactured in 100% EOU/ EPZ but sold to DTA
Annual Statement to be submitted by persons who have paid through PLA and / or CENVAT Credit.
Exemption from filing Annual Financial Information Return available to Indian Ordinance Factories, Department of Defence Production, Ministry of Defence.

CUSTOMS

Competent Authority	Powers of Adjudication	
	Cases involving suppression of facts	Other Cases
Inspector	No power	No power
Superintendent	No power	No Power
Asst. / Dy. Commissioner	**Value of goods** up to Rs.2 Lakhs	**Value of goods** up to Rs.2 Lakhs
Addl. Commissioner/ Joint Commissioner	**Duty amount involved** up to Rs.50 Lakhs	**Value of goods** upto Rs.50 Lakhs
Commissioner	Without limit	Without limit

W.e.f. 01.04.2009, Where the Central Government has notified Tariff Value for similar products manufactured in India, the same value shall be considered for imported goods for computation of ACD. **[Sec.3 of CETA]**
Provisions of the Customs Act, rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non–levy, short levy, refunds, interest, appeals, offences and penalties shall apply to Safeguard Duty u/s 8B/ Specific Safeguard Duty u/s 8C/ Counter Vailing Duty u/s 9 / Anti Dumping Duty u/s 9A of the Customs Tariff Act.
Penalty for contravention of Rule or Regulation is Rs.50,000 **[Sec.158 of CUA]**
Conveyances: Imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in the manner prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed. **[Sec.141 of CUA]**

SERVICE TAX
W.e.f. 01.09.2009, Services amounting to manufacture of **only excisable goods** shall not come under Business Auxiliary Services u/s 65(19).
W.e.f. 01.09.2009, Transport of Goods by Rail shall be liable for service tax u/s 65(zzzp).
W.e.f. 01.09.2009, Central Government shall have power to specify the date of determination of rate of service tax and the place of provision of taxable service **[Sec.94]**.
W.e.f. 01.09.2009, Stock Brokers shall not include Sub–Brokers u/s 65(105)(a).
The limit for Registration of Small Service Providers is increased to Rs.9,00,000
Powers vested on officials of the department to access the registered premises and the documents records maintained thereat. **[Rule 5A of Service Tax Rules, 1994]**
The limit for Exemption to Small Service Providers is increased to Rs.10,00,000
Exemption relating to Business Chit funds and GTA
Meaning of "Associated Enterprise" as per Section 92A of Income tax Act, 1961 **[Sec.65(7b)]**
Value of Taxable Service includes Suspense Account Transactions
Category of Imports and Exports in respect of Newly introduced Services
Provision of Services through Internet
Services by Overseas Booking Agents
Exemption to Business Exhibition of Goods by the organizer of Business Exhibition to a manufacturer of goods. **[Notfn No. 43 / 2007 dt 29.11.2007]**
Exemption benefits to Exporter of Goods for procure taxable input services without payment of Service Tax. **[Notfn 41 / 2007 dt. 06.10.2007]**
Payment of Advance Service Tax. **[Rule 6(1A)]**
Adjustment against excess Service Tax paid. **[Rule 6(3)]**
Service Tax Return Preparer
Penalties u/s 77
Best Judgment Assessment
Monetary limit for Adjudication of Service Tax liabilities to CEOs
Service Tax Dispute Resolution Scheme, 2008
Refund of Pre–deposit **[Sec.35FF of CEA, 1944]**
Inclusion of Forex Broking in Banking and Financial Services.
Inclusion of Information Technology Software in Business Auxiliary Service
Taxable service of Cargo Handling Service
Services provided by a Consulting Engineer in the discipline of Computer software Engineering is taxable.
Specific Exemption in case of services provided to a GTA [**Notfn 1/2009 – ST / 05.01.2009]**
Taxability as GTA if– **[Circular No.104/07/2008 – ST / 06.08.2008]** • GTA provides ancillary and intermediary services such as loading / unloading, packing / unpacking, transshipment, temporary warehousing etc. • GTA undertakes packing as an integral part of the service provided. • Time sensitive transportation of goods by road.
Technical Testing & Analysis of software is taxable
Technical Inspection & Certification of Information Technology Software is taxable
Tour Operator's Service does not include Stage Carrier & tours organized by an educational body.

COMMON TOPICS

CENVAT CREDIT

Input excludes [Notification No.16/2009 dated 07.07.2009] –

Cement, Angles, Channels, Centrally Twisted Deform Bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods.

Payment of Duty / Tax on Exempted Clearances / Services (when Books of accounts not maintained): [Notification No.16/2009 dated 07.07.2009]

Manufacture of exempted goods	**Pay 5%** of Basic Sale Price (Excluding sales tax and other taxes) of such exempted goods [either by debit to CENVAT or PLA] i.e. value of exempted clearances / removals
Provider of Exempted Service	**Pay 6%** of value of exempted services

Writing off of Work in progress (WIP): [Circular No.907/27/2009 – CX / 07.12.2009]

WIP	Treatment as applicable to
Considered as manufactured goods	Finished goods – Liable to pay ED unless remitted u/r 21.
Considered as not manufactured goods	Inputs – CENVAT credit taken shall be reversed.

In case CENVAT credit has been wrongly taken even if such wrong credit has been reversed without utilizing the credit, interest under Rule 14 shall apply. *(since the rule uses the words "taken or utilized wrongly")* **[Circular No.897/17/2009 dated 03.09.2009]**

Importer shall be entitled to avail of the Drawback or CENVAT credit of additional duty leviable u/s 3 of CUA against the amount debited in the Duty Free Entitlement Credit Certificate.

Input Service – Clearance upto the place of removal for a manufacturer

CENVAT Credit Rules in respect of Input Service Distributor. **[Rules 7 and 7A]**

Duty paid on Debonding of a unit

CENVAT credit eligible for 100% EOU, units located in EHTP / STP. **[Rule 3(7)].**

Obligations of Manufacturers or Service Providers of both Excisable and Exempted Goods providing Taxable and Exempted Services **[Rule 6]**

General Penalty for contravening the provisions of CENVAT Credit Rules, 2004.

AUTHORITY FOR ADVANCE RULINGS

From the date notified by the Central Government, the AAR under the Income Tax Act, 1961 shall exercise the powers of the AAR under Central Excise Act, 1944 **[CUA S.28F]**

DEMAND & RECOVERY OF DUTY, REFUND AND DRAWBACK

Non–Deduction of air freight charges from FOB Value:

1. **Situation:** The buyer and the exporter have contracted the goods on FOB basis and the same is reflected in the contract and the LC. But due to an exigency such as delivery time limit, the exporter is forced to send such goods by air at his own expense.
2. **Drawback:** Such air freight charges need not be deducted from the contracted FOB value. However, such benefit shall be limited to only **3% of the shipments in a Financial Year**.
3. **Procedure:** The exporter should declare the fact of exigency upfront to the AC/DC before filing the shipping bills. The AC/DC should satisfy himself about the bonafides of the claim. In case of dispute, the drawback shall be released after deducting air freight.

W.e.f. 1.04.2009, Procedure for refund of import duty in case of defective goods **[CEA S.26A]**

The reduced Penalty of 25% u/s 11AC shall apply only if the duty, interest and the penalty of 25% is paid within 30 days after the communication of the order by the adjudicating authority and not the Appellate Authority **[Circular No.898/18/09 dated 15.09.2009]**

Deposit of excess duty / tax collected **[CEA S.11D, CUA S.28B, ST(FA) S.73A]**

Payment of interest on duty demanded. **[CEA S.11AB, CUA S.28AB(1), ST (FA) S.75]**

Procedures to be adopted for claim of refund. **[CEA S. 11B, CUA S.27]**

SEARCH, SEIZURE AND CONFISCATION
Return of Records [Rule 24A of CE Rules] [Notification No.17/2009 dt. 07.07.2009]: (a) The books of accounts or other documents, seized by the Central Excise Officer or produced by an assessee or any other person, which have not been relied on for the issue of notice shall be returned within 30 days of the issue of said notice or within 30 days from the date of expiry of the period for issue of notice. (b) **Retention of books:** CCE may order for retention of such books of accounts or documents, for reasons to be recorded in writing and the CEO shall intimate to the assessee or such person about such retention.
Power to summon persons to give evidence and produce documents. **[Sec.108 of CUA]**
OFFENCES, PROSECUTIONS AND PENALTIES
W.e.f. 01.04.2009, Persons ineligible for compounding of offences are specified u/s **[S.9A of CEA, S.137 of CUA**]
Service Tax Publication of Names Rules, 2008
Provisional attachment of Property if adjudication is pending.
Provisions relating to penalty payable u/s. 114AA and 117.
APPEALS AND REVISIONS
W.e.f. 01.09.2009, The Commissioner of Central Excise can only review the order passed by any Subordinate Authority within 3 months of passing the order and direct the CCE to make an application to the CCE (A) within 1 month of such review by CCE.
W.r.e.f. 01.07.2003, The High Court may admit an appeal after the expiry of 180 days if there was sufficient cause for not filing within the specified period. **[CUA S.130]**
Interest on refund of predeposit u/s 35F. **[CEA 35FF, CUA 129EE, FA 83]**
Reference to Jurisdictional CEO
Powers of review and direction under **CEA S.35B & 35E, CUA S.129D.**

LIST OF LATEST CASELAWS

1. CENTRAL EXCISE

1.1 BASICS

Case Gist	Citation
Circulars of Board cannot prevail over law laid down by Apex Court. Courts cannot direct that circulars should be given effect to when a contrary decision is expressed by a Supreme Court / High Court Decision.	Commissioner of Central Excise, Mumbai vs. Hindoostan Spinning and Weaving Mills Ltd. 2009 (SC)
Circulars – Only Prospective Effect: CBEC's Circular can only have prospective effect, especially when the word "**Henceforth**" had been used in the Circular.	Jai Fibres Ltd (SC) 218 ELT 484
Circular cannot amend Notification: By issuing a Circular subsequent to a Notification, the Department cannot add new condition to the Notification, thereby restricting the scope of Exemption Notification.	Inter Continental (India) (2008) 226 ELT 16
Circulars issued by CBEC cannot be given primacy over the decisions of the Court.	Bolpur v Ratan Melting & Wire Industries 2008 (12) STR 416
Activity beyond scope / power conferred: Government is not bound by any acts of any of its officers, who exercised statutory power, which was not conferred upon him. Such action of the Officer is a nullity.	Management, Asst. Salt Commr. Vs. Secy. Central Salt Mazdoor Union (2008) 224 ELT 14 (SC)

1.2 LEVY

Case Gist	Citation
Addition of stabilizing agent, making agent etc. does not amount to manufacture within meaning of Section 2(f) of Central Excise Act, 1944.	CCE vs. Karam Chand 2009 (236) ELT 647 (H.P)
Purchase of CKD components from supplier and installation of the same in client's premises does not amount to manufacture and thus no levy was attracted.	CCE vs. Blow Past Ltd. 2009 (236) ELT 631 (Del.)
Manufacture: The words 'Manufacture' and 'Manufacturing process' have different meanings in different statutes. Definition of 'manufacturing process' in one statute cannot be applied to another statute. ***Note: This decision is given w.r.t. a dispute in ESI Act.***	Qazi Noorul H.H.H. Petrol Pumpv. DY. Director, ESI Corp 2009 (240) ELT 481 (SC)
Excisability: Excise duty is not concerned with ownership or sale. Liability under Excise Law is event based (manufacture) and irrespective of whether goods are sold or captively consumed.	Moriroku UT India P Ltd vs. State of UP 2008 (224) ELT 365 (SC)
Branch Transfer ≠ Proof of Marketability: Mere transfer of a good by an assessee from its factory to its another unit for manufacture of final product does not show that the product was either marketed or was marketable.	CIPLA Ltd 2008 (225) ELT 403 (SC)
Deemed Manufacture: Labeling or relabeling without repacking from bulk to retail amounts to "deemed manufacture".	BOC (I) Ltd (2008) 226 ELT 323 (SC)
The process of 'swaging' (i.e. bending)by which the shape of metal bars or tubes are changed for joining or fastening or other functions amounts to manufacture and hence attracts Excise Duty.	Prachi Industries (225) ELT 16 (SC)
Processing of cashewnuts, peanuts, pista and almonds and packing and clearance under brand name are activities amounting to manufacture, & liable to Excise Duty.	SKB Dryfruits Marketing Co. Pvt. Ltd. 2008 (224) ELT 339 (S.C.)
Cutting and Slitting of steel sheets and polyester films used for lamination purposes do not amount to manufacture.	Rajpurohit GMP India Ltd. & Ors. (SC) CA Journal Dec 08 Pg 1001
Intermediate goods produced and used for captive consumption are **not liable to duty if not marketable**, even if they are specified in the Tariff Schedule.	White Machines (2008) 224 ELT 224 ELT (SC)

Case Gist	Citation
Waste arising from manufacturing process only is dutiable.	Banswara Syntex Ltd (2008) 221 ELT 360 (Raj.)
Transmission apparatus / equipments installed in a Base Trans–Receiver Station (BTS) or Base Station Controller (BSC) Room results in a new product. However, such BTS / BSC site erected, installed and commissioned by contractors cannot be construed as Marketable Goods, as they are embedded in earth / building and cannot be shifted without damage. New product (BTS / BCS) will not be movable, & hence not excisable.	Hutchison Max Telecom (P) Ltd 224 ELT 191 (Bom.)
Even if an article is mentioned in Tariff there is no liability of duty unless it is manufactured.	Gurdaspur Distillery (2008) 224 ELT 337 (SC)
Job Worker – When not manufacturer? Sometimes Manufacturing activity, may get completed at the time of clearance of goods from the premises of the Principal Manufacturer, and not at the time of clearance from the premises of the Job–Worker. This is because activities such as deflashing, testing, inspection, etc. are being undertaken by the Primary Manufacturer, and goods were ready for marketing only after these processes were completed. In such cases, the Job Worker is not considered as Manufacturer.	Sunco Rubbers Ltd 2008 (228) ELT 27 (Mad.)

1.3 CLASSIFICATION

Case Gist	Citation
Common Parlance test is one of the determinative tests for classification of a product whether medicament or cosmetic. A product being a tooth powder and there being no change in nature, character and uses of the said product, it has to be a cosmetic/toiletry preparation and not a medicament.	Commissioner of Central Excise vs. Baidyanath Ayurved Bhawan Ltd. 2009 (SC)
Parts and Accessories: Name Plates, Emblems and Logos of Plastics are not classifiable as Parts and Accessories of motor vehicles.	Pragati Silicones Pvt. Ltd. 2009 (240) ELT A117 (SC)
Common Parlance Test – Common Parlance Test is not applicable just because the product is manufactured exclusively as per the medicinal formulae described on Ayurvedic System of treatment. Definition of one statute having different object, purpose and scheme cannot be applied mechanically to another statute.	Shree Baidyanath Ayurved Bhawan Ltd. [2009] (237) ELT 225 (SC)
No assumption if statute is clear: No scope for court to undertake exercise to read something into provisions which the legislature in its wisdom **consciously omitted**. Court cannot correct or make assumed deficiency when words are clear and unambiguous. Courts to decide what the law is and not what it should be.	Parmeshwaran Subramani (2009) 242 ELT 162 (SC)
No Rules if Section and Chapter notes are clear: It is the intention of rule to classify goods under heading which provides most specific than general description. Interpretative Rules not applicable when Section and Chapter Notes provide clarity on classification.	Champdany Industries Ltd. (2009) 241 ELT 481 (SC)
When entries in HSN and Tariff are not aligned, reliance cannot be placed on HSN for purposes of classification of goods under Tariff. Entries under HSN and entries under Tariff Schedule are completely different.	Camlin Ltd 2008 (230) ELT 193 (SC)
Use of Goods: Marker ink classifiable only in the tariff entry relevant for Marker Pens. Marker inks are different from other writing inks (water based), which can be used for other products as well.	Camlin Ltd 2008 (230) ELT 193 (SC)
Processed / Seasoned Nuts – Classification – HSN Explanation: Processed cashewnuts, peanuts, almonds, etc manufactured by dry roasting, oil roasing, salting would be classifiable under Chapter 20 (Almonds, Nuts dry roasted, oil roasted) and not under Chapter 8 (Edible Fruit and Nuts), since HSN Explanatory notes to Chapter 20 categorically states that its products are excluded from Chapter 8.	Phil Corporation Ltd 2008 (223) ELT 9 (SC)
Classification Principle: Basic character, function and use are more important than the name used in common trade parlance. The rules of interpretation of Tariff is applicable only if determination of classification according to the terms of Headings and relative Section / Chapter Notes is not possible.	International Tobacco Co. Ltd 2008 (231) ELT 207 (SC)
Merely because a product could be used for cosmetic purpose would not make the product a cosmetic product.	Ishaan Research Lab (P) Ltd. 230 ELT 7 (SC)

Case Gist	Citation
Rules of Interpretation cannot be applied for interpretation of exemption notification. Interpretation of tariff different from interpretation of exemption notification. Exemption notification to be interpreted in terms of its language. When language is plain and clear, effect must be given to it.	Mewar Bartan Nirmal Udyog 2008 (231) ELT 274 (SC)
Hair–dye vs. Lotion: While in a generic sense, a hair dye may also be referred to as hair lotion, for purposes of taxing statute, its chemical composition and actual usage becomes relevant.	Godrej Industries Ltd 2008 (228) ELT 321 (SC)
Classification of Connector with Wire: Connectors with wire is known only as connectors and are not treated as wires or cables. Therefore, connectors with wire should be classified under Heading 8536.90, and not under 85.44 (insulated wire, cable and other insulated conductor).	Unicon Connectors P Ltd (2008) 232 ELT 205 (Tri. LB)
Goods imported in CKD condition: Rule 2(a) of Rules for Interpretation of Tariff applicable only — • if all components intended to make a final product are presented at the same time for Customs clearance. • When imported goods presented unassembled / disassembled can be put together by means of a simple fixing device or by riveting or welding. Goods requiring complicated process to make into the final product, cannot be considered as unfinished goods having essential character of complete articles. So, components of Colour Televisions imported cannot be considered as CTV imported in CKD.	Sony India Ltd 2008 (231) ELT 385 (SC)
• A part is an essential component of the whole without which the whole cannot function whereas accessory is supplementary or subordinate in nature and need not be essential for actual functioning of the product. • Rail assembly, front seat adjuster/assembly slider and rear back lock assembly are not parts of seats but are accessories to motor vehicle.	Insulation Electrical (P) Ltd. 2008 (224) ELT 512 (SC)
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)
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.)
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)
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)

1.4 VALUATION

Case Gist	Citation
Repair and Maintenance Charges: Assessees are entitled to deductions for repair & maintenance and rental charges for PMX machine from the assessable value.	Dhillon Kool Drinks & Beverages 2009 (238) ELT A26 (SC)
Amounts collected under different heads viz., packing charges, facility charges, rental charges, etc. recovered from buyers for providing cylinders, tonners, canisters, etc., while supplying gas, not to be included in assessable value. ***[Note: The provisions of Sections 3 (charging section) and 4 (valuation) are independent and section 4 cannot be considered as subject to Section 3. Hence, any item fitted to an excisable good would be liable for excise duty even if it is not excisable, provided conditions of Section 4 is satisfied]***	Grasim Industries Ltd. 2009 (241) ELT 321 (SC)
Trade discount deductible: If there is no flowback / return of trade discount, assessee entitled to claim deduction. **Machine Charges – owned by another Co. – excluded:** Vending machine installed by holding company but ownership of vending machine vested in marketing company. Machine charges payable to marketing company and not to holding company, thus the charges are not includable in AV.	Pepsico India Holdings (P) ltd. (2009) 234 ELT 385 (SC)
Recovery of Transport charges at fixed rate – not includible in AV: For goods supplied by assessee to State Electricity Boards, two separate contracts were entered into – for sale of meters and for transportation and transit insurance. Though such Charges for transportation of goods were not on actual basis, it shall not be included in the Assessable Value.	Accurate Meters Ltd. (2009) 235 ELT 581 (SC)

Case Gist	Citation
Interest inclusion – not deductible if not established: Assessee is not entitled to claim deduction of any "interest on receivables" from the sale price for determining Assessable Value if the assessee had failed to establish that price charged on goods sold to customers on credit basis contained an element of interest in–built therein as a precondition to sale.	Castrol India Ltd. 2009 (236) ELT A89 (SC)
Transportation Charges for transport of goods from the factory to the site for erection and installation is not required to be included in the Assessable Value of the goods.	Blue Star Ltd 2008 (225) ELT A129 (SC)
Inclusion of drawings, designs: The charges for drawings, designs etc. have to be added to the assessable value of the machines manufacture, based on use of such drawings, designs, jigs, fixtures, tooling etc. However, before adding the value of drawings etc, it has to be established that the consideration had a nexus with the negotiated price of the assessable goods under clearance.	Mysore Kirloskar Ltd, (2008) 226 E.L.T. 161 (S.C.)
Inspection Charges: Inspection charges paid by the manufacturer to any third party in addition to normal inspection would be includible in assessable value.	Southern Structurals Ltd 2008 (229) ELT 487 (SC)
In order to claim Trade Discount as an allowable deduction u/s 4, it should be known or quantifiable at the time of removal but can be quantified later on.	Mahavir Spinning Mills 2008 (225) ELT A129
Valuation of Physician's Samples: Physician's samples are not sold but cleared exclusively for free distribution for the purpose of advertisement. These should be valued in terms of Section 4(1)(b) and not in terms of Section 4A.	Indian Drug Manufacturer's Association (2008) 222 ELT 22 (Bom)
MTOP Charges – Not Part of AV: Minimum Take or Pay (MTOP) Charges payable by buyer when he fails to take minimum quantity of excisable goods assured is not additional consideration and therefore not includible in Assessable Value.	Praxair India Ltd 2008 (223) ELT 596 (CESTAT – Che.)
Sale to Federation / Association: When letters from the Federation / Association evidences that in case of sale to members of a Federation, price is not the sold consideration. Hence, revenue is correct in taking the price to non–members as the commercial price for valuing sales to members.	Kisan Sahkari Chini Mills Ltd 2008 (225) ELT A96
Inclusion in Depot Sale Price: Depot Sale Price affixed is the sole consideration for sale at the Depot irrespective of the fact that free gifts are offered by the Assessee. Cost / Value of free gifts offered at the Depot cannot be reduced from the value for the purpose of determining assessable value.	Sony India Ltd 2008 (229) ELT A127
Value of Captive Consumption: The assessable value of the captively consumed grey yarn would be on the basis of the price at which the grey yarn was sold by the assessee to unrelated buyers in wholesale at the factory gate.	Scan Synthetics Ltd. 2008 (224) ELT 12 (SC)
Carton Packages containing Individual Units: When products are packed in a carton keeping in view the quantity (weight) contained therein, the same cannot be said to be for retail sale. Hence, such carton cannot be considered as a multi–piece package for application of Section 4A. Therefore, carton boxes containing 500 Sachets of Shampoo cannot be considered as Multi Piece Package for retail sale.	Kraftech Products 2008 (224) ELT 504 (SC)
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)
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)
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)
Not assessable under MRP: Package containing 100 pieces of chocolates in which the individual pieces do not attract assessment u /s 4A of CEA, 1944.	Central Arecanut & Cocoa Marketing & Processing Co–op Ltd [2008] 232 ELT 107 (SC)

1.5 CENTRAL EXCISE PROCEDURES

Case Gist	Citation
100% EOU – Eligible for Input credit: 100% EOUs are entitled to take Cenvat credit of duty on inputs procured indigenously and when they were not in a position to utilize the same, they are entitled to refund under Rule 5 of Cenvat Credit Rules, 2004.	ANZ International 2009 (240) ELT A16 (SC)
Interpretation of exemption notification: Exemption notification should be read literally. Notification like statute must be construed having regard to purpose and object it seeks to achieve.	Malwa Industries Ltd. (2009) 235 ELT 214 (SC)
No SSI Exemption – Other's brand name: Affixing the Stickers with words UTS and TSN on the excisable goods would be treated as affixing other person's brand name and so exemption for SSI not applicable.	Unison Electronics Pvt. Ltd. (2009) 235 ELT 206 (SC)
Common Control: Production of the assessee artificially split up into 3 units but the 3 units continued to function under the control and supervision of the Directors of one company and all the raw materials including their brand name labels were being supplied by it and all 3 units had common designer. Thus, their clearances were liable to be clubbed.	Diwan Saheb Fashions Pvt. Ltd. 2009 (237) ELT A104 (SC)
Change in ownership – Transferee liable: Held that change in ownership of undertaking would not affect obligation of the person liable to pay duty. If defaulter had sold undertaking, the transferee would be liable for excise duty that remained outstanding as on the date of transfer.	Suburban Ply & Panels (P) Ltd. 2009 (238) ELT A54 (SC)
Exemption from excise duty alone under a notification cannot be extended to payment of cess leviable under the Finance Act.	Indo Farm Tractors & Motors Ltd vs. UOI 2008 (222) ELT 184 (HP)
Notification granting exemption stipulates that CENVAT Credit not to be taken in factory. It cannot be inferred to preclude the Assessee from taking CENVAT Credit in a different factory, even if he manufactures the same product.	Innovative Teck Pack Ltd 2008 (224) ELT 340 (SC)
New condition laid down by a Circular cannot restrict or whittle down the scope of an exemption notification.	Sandur Micro Circuits Ltd. 229 ELT 641 (S.C.)
Emergence of By–Product – Not a Ground for Denying Exemption: Exemption notification specifically mentions that manufacture of specified goods (Chapter 29 – Ethylene / Propylene) only eligible for exemption. Due to the manufacturing process, goods covered under Chapter 27 (non–specified goods such as Ethane / Methane) were manufactured automatically and inevitably as a by product. Under such cases, exemption cannot be denied on the ground that some other products have emerged.	National Organic Chemical Industries Ltd 2008 (232) ELT 193 (SC)
Clubbing of Clearances: Demand based on two units having common Directors and one person looking after affairs of both and second not having complete machinery to manufacture final product, cannot be a base for clubbing of clearances. Especially, if accounts of both units managed separately and capital, premises, machinery, labour and operations are separate for both the units.	Superior Products (2008) 230 ELT 3 (SC)
Even if there was commonality of use of office premises, telephone, staff etc. when there are separate management, separate financial control and financial funding the units shall be treated as independent.	Electro Mechanical Engg. Corpn. (2008) 229 ELT 321(SC)
Apart from Logo of the Assessee, logo of the Marketing Firm was also affixed on the product. Therefore, clearance by the Assessee not entitled for SSI exemption under the notification.	Amit Engg. Works (2008) 223 ELT 166 (Bom.)
Printing of Design / Shape [RTP]**:** Marketing Company's monogram was in hexagonal design and it printed such hexagonal design on the visiting cards of its executives. Such printing does not confer any ownership over the design. Therefore, if the Manufacturing Company (SSI – Jobworker) prints a hexagonal artistic design on the corrugated boxes, they cannot be held to be using other person's (Marketing Company's) brand name. Hence, the Manufacturing Company is eligible for SSI Exemption.	Nirlex Spares Pvt. Ltd (2008) 222 ELT 3 (SC)
100% EOU: The benefit of Exemption Notification 8/97–C.E. would be available even if imported consumables are used in the manufacture by 100% EOU. Consumables refers only to material which is utilized as an input in the manufacturing process but is not identifiable in the final product by reason of fact that it has got consumed therein.	Asian Peroxides Ltd. 228 ELT 5 (SC)
Customs Act applicable: Goods manufactured in FTZ are not only exempted from Excise but all raw material, which is imported for purpose of manufacture is also exempted from customs duty and EPZ are treated as customs warehouse where from goods cannot be removed for domestic market without permission and without payment of duties. Customs Act is applicable in all such cases.	Padmini Technologies Ltd 2008 (225) ELT 424 (Del.)

2. CUSTOMS

2.1 BASICS OF CUSTOMS

Case Gist	Citation
An assessee imported certain goods using benefit available to a manufacturer exporter but had no manufacturing unit. The assessee is not entitled to use the benefit. If any benefit is acquired by fraudulent means, it will not confer any right to the assessee.	Commissioner Of Customs (Sea), Chennai vs. CESTAT 2009 (Mad.)
Exports only under Customs Act: Exports are to be made under the Customs Act alone and not any other Act. Hence, Specified drugs exported without permission from the competent authority under the Customs Act shall attract prosecution under the Customs Act.	D. Ramakrishnan Vs Intelligence Officer Narcotic Control Bureau 2009 (240) ELT 321 (SC)
Exemption – Burden on Assessee: Burden on importer to prove satisfaction of terms and conditions of exemption notification	Hotel Leela Venture Ltd. (2009) 234 ELT 389 (SC)
Exemption notifications are to be interpreted strictly. Burden on assessee to prove that the item falls within four corners of exemption notification.	Parenteral Drugs (I) Ltd. 2009 (236) ELT 625 (SC)
Proper Officer: Once power has been exercised u/s 4 of Customs Act, only the Proper Officer notified for that area could exercise the powers under the Act, and the Commissioner (Preventive) would have no jurisdiction.	Noble Asset Co. Ltd. 230 ELT 22 (Bom.)
Oil rigs located beyond territorial waters of the Country, but within Exclusive Economic zone and in notified "Designated Area" are only within India. So, vessels carrying stores to such Oil Rigs cannot be considered as Foreign Going Vessel. Therefore, these imports are not eligible for exemption, or be considered as export, as oil rigs in EEZ or Continental Shelf are not foreign going vessels.	Aban Loyd Chiles Offshore Ltd 2008 (227) ELT 24 (SC)
Duty Liability on Goods re–imported: Magnetic Goods are imported, and Customs Duty paid thereon. These are exported and then re–imported. Assessee is liable to pay the same duty on goods re–imported as had been paid when goods were imported for the first time.	Super Cassettes Industries Ltd 2008 (225) ELT 401 (SC)
Option to choose exemption – At the time of Original Export: Goods initially exported by the Assessee were re–imported back to India on being rejected by the Foreign Buyer as defective. At the time of original export, the assessee claimed exemption under Notification 158 / 95. At the time of re–export, the assessee, wanted to claim benefit under Notification No.94/96. Held, that once the assessee opted for benefit under a Notification, the assessee cannot change its option at a later stage.	Indian Rayon & Industries Ltd 2008 (229) ELT 3 (SC)
Exemption to Equipment – Scope and Applicability: Purpose of exemption must be considered in entirety. When exemption is granted to equipments made (Crane) to be used for a particular purpose, then such exemption would also extend to the self propelled modular transport system attached to the crane for providing mobility.	Reliance Petroleum Ltd 2008 (227) ELT 3 (SC)

2.2 CLASSIFICATION OF CUSTOMS

Goods imported in CKD condition: Rule 2(a) of Rules for Interpretation of Tariff applicable only – • if all components intended to make a final product presented at same time for customs clearance. • When imported goods presented unassembled / disassembled can be put together by means of a simple fixing device or by riveting or welding. Goods requiring complicated process to make final product, cannot be considered as unfinished goods having essential character of complete articles. Therefore, components of Colour Televisions imported cannot be considered as CTV imported in CKD.	Sony India Ltd 2008 (231) ELT 385 (SC)

2.3 VALUATION OF CUSTOMS

Case Gist	Citation
Value of any goods chargeable to duty of Customs would be deemed to be the price at which similar goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade where the buyer and seller have no interest in business of each other and the price is the sole consideration for the sale or offer for sale.	Radhey Shyam Ratnalal Vs Commissioner of Customs (2009) (SC)

Case Gist	Citation
Once nature of goods have been mis–declared, the value declared on imported goods becomes unacceptable. But, it does not affect the legal position that the burden is on the Customs Authorities to establish the case of mis–declaration of goods or valuation or that the declared price did not reflect the true transaction value.	Varsha Plastics Pvt. Ltd. vs UOI 2009 (SC)
• Burden on department to establish case of misdeclaration of goods or valuation. • In the absence of evidence of contemporaneous imports, reference to foreign journal for finding out correct international price of imported goods may **not be irrelevant.**	Varsha Plastics Pvt. Ltd. (2009) 235 ELT 193 (SC)
Rejection of transaction value: Where the transaction value is rejected for extra ordinary or special reasons, without specifying such reasons, then such rejection is not acceptable.	Motor Industries Co Ltd (2009) 244 ELT 4 (SC)
Website information – not valid – Website information available in respect of some other model not acceptable as AV as per Customs (Valuation) Rules, 1988.	Competent Business Machines 2009 (236) ELT 629 (SC)
Transaction Value under declared: Section 14 provides for value be deemed to be price at which such or like goods ordinarily sold – Deemed value under Section 14(1) would prevail when price declared does not reflect price at which such or like goods ordinarily sold.	Radhey Shyam Ratanlal VCC(ADJ.), 2009 (238) ELT 14 (SC)
Rule 10(1)I of Customs Valuation Rules: When Royalty Payment is not a condition pre–requisite to sale of goods (import of goods), and when royalty payment is not based on value of imported goods, but was payable independent of such value at specific unit rate, it cannot be added to Transaction Value.	WEP Peripherals Ltd (2008) 224 ELT 30 (SC)
Barge Charges after Customs Barrier: Barge Hire Charges incurred for unloading from Mother Vessel on to barge after crossing Customs Barrier, not includible in Assessable Value of imported goods.	HYGRDSE Pellets Ltd (2008) 225 ELT 337 (SC)
Penal Charges paid for Late Arrival to Importer: Penal charges paid or penalty allowance given by the Charter / Supplier for late arrival of the vessel is a permissible deduction for determining Transaction Value.	Hindustan Zinc Ltd (2008) 228 ELT A137
Price Decrease due to Volume Increase: Substantial increase in volume may have resulted in decrease in price. Identical goods for this purpose should be goods of comparable quantity imported at the same time, and not a lower volume of goods imported sometime back.	Initiating Explosives Systems (I) Ltd 2008 (224) ELT 343 (SC)
• **Related Persons — Mutuality of Interest:** Exporter holding 30% of Equity Capital of importer does not establish mutuality of interest, as Importer does not hold any equity in the unit of the Supplier. • Volume of export has increased which is the reason for decrease in price. The burden to prove undervaluation lies on the Revenue.	Initiating Explosives Systems (I) Ltd 2008 (224) ELT 343 (SC)
Website Quotations: Prices quoted in the internet website of the manufacturers cannot be relied upon for similar / identical goods value. These values are not considered to be obtained through investigation.	BC Trading Co. 223 ELT A.133 (SC)
Valuation of Electronic Goods: Valuation based on contemporaneous imports (similar goods imported at around the same time) should not be resorted for electronic goods without technical characteristics being shown to be identical.	Xpress Computers 2008 (225) ELT 78 (Tri. Che.)

2.4 CONVEYANCES

Case Gist	Citation
Demurrage Charges: International Airport Authority of India (IAAI) waived demurrage charges to the extent of 80% under Sec 45 of Customs Act, 1962. IAAI who is an independent statutory corporation although is an approved custodian u/s 45, exercises its independent power and jurisdiction in demanding payment of Demurrage Charges.	Narayan International (2008) 225 ELT 54 (Del.)
Bill of Entry / Encashment of Bank Guarantee: Goods cannot be released without filing of Bill of Entry. Such clearance is not appropriate, even if permitted by the High Court. However, if goods have been cleared, the Department can encash the Bank Guarantee.	Atma Fibres (P) Ltd 2008 (230) ELT (SC)
Relevant date for levy of interest is the date of payment of duty and not the date of presentation of TR6 Challan for clearance of goods.	Vijay Silk House 2008 (223) ELT 30 (All.)
• **Relevant Date:** Imported Goods cleared for home consumption u/s 46 upon payment of duty. Such goods are continued to be held in the warehouse under an application u/s 49 and subsequently removed for home consumption. The relevant date for levy is the date of obtaining clearance u/s 46 and not the actual date of removal.	Biecco Lawrie Ltd 2008 (223) ELT 3 (SC)

Case Gist	Citation
• **Conveyance in Lots:** Where duty on the warehoused goods is paid and "out of charge" order for home consumption is made by the Proper Officer in compliance with Sec. 68, the goods removed in smaller lots have to be treated as cleared for home consumption, and Importer would not be required to pay anything more.	
No withdrawal of surrender: It is not open to the Importer to withdraw the surrender of goods. Importer cannot be permitted to take advantage of own wrong and to say that auction could not be finalized.	Shakti LPG Ltd. 2008 (223) E.L.T. 129 (S.C.)
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)
Relinquishment of title to goods: 1. It is not necessary to fulfill the conditions for clearance of warehoused goods for relinquishment of title to goods. 2. 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. 3. 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.)
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.)

3. SERVICE TAX LAW

3.1 PROCEDURES UNDER SERVICE TAX LAW

Case Gist	Citation
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)
Person liable to pay Service tax will be liable to pay Interest on delayed payment of Service tax. Therefore, in case of import of services, Service recipient will pay interest.	Kerala State Electricity Board [2008] 9 STR 3 (SC)
Mistake does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof. Such mistakes cannot be corrected by rectification.	Deva Metal Powders P Ltd vs. CTT, UP 2008 (9) STR 113 (SC)
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.)
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.)**

3.2 TAXABLE SERVICES

Case Gist	Citation
The services provided by middleman abroad in finding prospective buyers, their requirement and informing assessee about same in relation to marketing or sale of goods produced by them are covered under definition of Business Auxiliary Services.	Nahar Spinning Mills 2009 (14) STR J163 (S.C.)
Wharfage Charges – Not liable: Wharfage Charges incurred by Custom House Agent is not includible in the value of taxable service and hence not subject to Service tax.	Alvares & Thomas (2009) 15 STR J24 (SC)
Service tax on marketing of lottery tickets – Only prospective: Since the explanation (taxing the marketing of lottery tickets) widens the tax net, it is not clarificatory or explanatory in nature. Further as the explanation brings out substantial changes in law, it is not retrospective in operation.	Martin Lottery Agencies Ltd. (2009) 14 STR 593 (SC)
Middleman's services – Business Auxiliary: Services provided by middleman abroad in finding prospective buyers, their requirement and informing assessee about same in relation to marketing or sale of goods produced by them were covered under definition of Business Auxiliary Services.	Nahar Spinning Mills (2009) 14 STR J163 (SC)
Making hoardings / signboards without preparing advertisement is not covered under Advertising Agency Services.	Hitech Publicities (2008) 11 STR 140 (Tri–Chennai)

Case Gist	Citation
Hire Purchase Finance services are not covered under Banking and Financial Services. In the case of Hire Purchase, title to goods vests with the Selling Company whereas in case of Hire Purchase Finance agreement, it vests with the purchaser. **Note:** Financing the purchase of asset is not covered under Banking and Financial Services.	Bajaj Auto Finance Ltd (2008) 10 STR 433 (SC)
Rubber packing amounts to manufacture and hence not covered under Business Auxiliary Services.	Jayanthi Rubbers (2008) 9 STR 153 (Tri–Bang.)
Promotion of any service, whether or not taxable is covered under Business Auxiliary Services.	The Financers (2008) 11 STR 140 (Tri–Chennai)
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)
Mere procuring or having orders for the principal by an agent on payment of commission basis would not amount to "Clearing and Forwarding Agent's Services".	United Plastomers 10 STR 229 (P & H)
Inter–connected Flats – Not Separate: Two flats cannot be considered as a single unit simply because they are inter–connected. The agreements in respect of the two flats were separate and there were two different electric meters in respect of the two flats.	S.Rangarajan vs. Oyester Co–operative Housing Society Limited (Bom) CA Journal May 08 Page 1888
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.)
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)
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)
Photography Services: 1. Bifurcation of gross receipts between goods supplied and services rejected. 2. Taxable service includes the value of goods supplies as well.	Western Rajasthan Colour Lab Asso. (9) STR 351 (Raj.)
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)
Outdoor catering services provided to the employees within the factory premises are input services.	Victor Gaskets India Ltd. (2008) 10 STR 363 (Tri–Mum)

4. COMMON TOPICS

4.1 CENVAT CREDIT

Case Gist	Citation
CENVAT Credit is admissible on plastic crates used for transportation of raw material to processing units and Finished goods from machine to storage area as inputs and also as Capital Goods.	Banco Products (India) Ltd. vs CCEx, Vadodara–I 2009 (235) ELT 636 (Tri–LB)
Where inputs are entered in stock register but not entered in Excel Sheet maintained in computer and there was nothing to show wrongful availment of CENVAT Credit, inputs cannot be confiscated by the department	Green Alloys Pvt. Ltd. vs UOI 2009 (235) ELT 405 (P&H.)
100% EOU – Eligible for Input credit: 100% EOUs are entitled to take Cenvat credit of duty on inputs procured indigenously and when they were not in a position to utilize the same, they are entitled to refund under Rule 5 of Cenvat Credit Rules, 2004.	ANZ International 2009 (240) ELT A16 (SC)
Cenvat Credit on fuel: Cenvat Credit can be taken on inputs used as fuel in **manufacture of exempted goods.**	Gujarat Narmada Fertilizers Co. Ltd. 2009 (240) ELT 661 (SC)
No credit on electricity to sister units: Credit is not allowed on inputs used in electricity wheeled out to sister units, vendors, joint ventures. If electricity is partly consumed for own business and partly cleared outside, the assessee is not entitled to Cenvat credit to the extent of the excess electricity cleared **at the contractual rates** in favour of joint ventures, vendors, grid etc., which is sold at a price. **Inclusion of Packing Material:** Mere fact that packing material's value is included in assessable value of final product does not entitle manufacturer to take credit.	Maruti Suzuki Ltd. 2009 (240) ELT 641 (SC)

Case Gist	Citation
Shifting of factory: Rule 10 of CENVAT Credit Rules, 2004 permits the assessee to transfer the available credits along with inputs and capital goods in stock at the factory to the new location provided capital goods, inputs and balance unutilised credit was properly received and accounted in registers in new unit after shifting of factory.	CESTAT 2009 (237) ELT A48 (SC)
Low Sulphur Heavy Stock (LSHS) used to produce steam, which in turn used for manufacture of excisable goods. Duty paid on LSHS is eligible for CENVAT Credit.	Gujarat State Fertilizers & Chem. Ltd 2008 (229) ELT 9 (SC)
Welding Electrodes for Repair of Machinery: CENVAT Credit admissible on welding electrodes used for repairs and maintenance of plant and machinery, since such plant and machinery is located within the factory in which manufacturing activity takes place.	Hindustan Zinc Ltd vs. UOI 2008 (228) ELT 517 (Raj.)
Machinery Not Used for Production: Credit not available for gases, welding electrodes used for repairs of machinery which is not used in production.	SAIL Ltd 2008 (229) ELT A127 (SC)
Supplier charging higher rate of duty at 24% instead of 16%, and the buyer of the goods paid the duty at 24% to the supplier. In such a case, the buyer can avail credit for the total duty of 24% paid by him.	Purity Flexpack 2008 (9) STR 125 (Guj.)
Inputs Destroyed in Fire: Credit taken on inputs other those used in finished goods / semi–finished goods needs to be reversed.	Biopac India Corpn. 2008 (224) ELT 548 (CESTAT – Ahm.)
Capital Goods destroyed in fire: Such Capital Goods are neither cleared nor removed for sale, and, are being used for a number of years. Therefore, there need not be any reversal of credit availed on them.	Biopack India Corporation Ltd 2008 (224) ELT 548 (CESTAT – Ahm.)
Unutilized credit can be refunded even when the Assessee was in a position to utilize the CENVAT Credit, but paid from PLA.	Bhavin Textiles 2008 (221) ELT 44 (Guj.)
Credit on Supplementary Invoice: CENVAT Credit is allowed on supplementary invoice issued by manufacturer, who had paid the duty on account of misclassification of product. Since the input supplier short paid duty on account of misclassification of product, and not on account of suppression, credit is admissible.	Hawkins Cookers Ltd 2008 (232) ELT A68 (Bom.)
Defect in format of invoice issued by the supplier manufacturer cannot be a cause for denial of credit in respect of such inputs used for manufacture.	JK Industries 2008 (223) ELT 372 (Raj.)
Transfer of Credit – Shifting of Factory: CENVAT Credit rule does not mandate transfer of credit corresponding only to quantum of inputs transferred to new factory. Transfer of available credits along with inputs and capital goods in stock permitted.	CCE vs. CESTAT 2008 (230) ELT 209 (Mad.)
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.)
Quantum of Credit: 1. Recipient unit is entitled to avail the benefit of duty paid by Supplier unit. 2. 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)
Onus to prove that Assessee has availed CENVAT Credit is on the Revenue.	Auto Ignition Ltd 2008 (226) ELT 14 (SC)
There is no provision which gives finality to decision of AAR. Thus, a writ petition under the constitution can be entertained by Courts impugning the ruling given by the authority.	UAE Exchange Centre Ltd. vs. UOI 2009 (236) ELT 223 (Del.)

4.2 DEMAND & RECOVERY OF DUTY, REFUND, DRAWBACK

Case Gist	Citation
Interest u/s 11AB of Central Excise Act, 1944 is not recoverable when differential duty is paid on account of price variation.	CCEx & C v. Cloritech Ind. 2009 (235) ELT 17(Guj.)
Power of waiver – Du Power to waive pre–deposit to avoid hardship to party against whom demand is raised is discretionary. As long as discretion is not exercised in an arbitrary and whimsical fashion, a writ court would not interfere with order of waiver of pre–deposit or refusal thereof. Mere fact that issues that arise for consideration of appellate authority were arguable is not in itself sufficient for a complete waiver of pre–deposit.	Cisco Systems India Pvt. Limited 2009 (234) ELT 618 (Del.)

Case Gist	Citation
No Suppression of facts if Interpretation involved: There is no suppression of facts if interpretation of Tariff Entries involved or when conflicting court decisions exist.	Nestle India Ltd. – 2009 (237) ELT A102 (SC)
Where the assessee engages in dilatory tactics and abuse of the process of law, it disentitles him from any relief including part waiver of pre–deposit.	Alex Enterprises 2009 (236) ELT 10 (SC)
Payment of only part of differential duty – No SCN waiver: If the whole of differential duty is not paid before issue of Show Cause Notice, it cannot be a ground for waiver of issue of SCN.	Carpenter classic Exim (P) Ltd (2009) 235 ELT 201 (SC)
Forged Documents – Extension allowed: Where documents are forged, obviously fraud involved and that is sufficient to extend period of limitation u/s 28 of Customs Act.	Aafloat Textiles (I) P. LTD. 2009 (235) ELT 587 (SC)
Differential Duty on Price Revision – No Penalty but interest attracted: In case of retrospective price revision, Show cause can be waived if the differential duty is paid before issuance of SCN but such payment is not exempt from interest chargeable u/s 11AB of Central Excise Act, 1944. Interest (since such differential duty will be treated as short payment and hence interest is attracted).	SKF India Ltd. 2009 (239) ELT 385 (SC)
Drawback need not be equal to actual duty: Refund is average amount of duty paid on materials used in manufacture of export goods. Refund of amount need **not be arithmetically equal** to duties actually paid.	Liberty India 2009 (241) ELT 326 (SC)
Misdeclartion of nature of goods: Since the assessee misdeclared the normal food supplements as ayurvedic proprietary medicines with intent to evade payment of excise duty, extended period of limitation was rightly invocable.	DXN Herbal Mfg. (India) Pvt. Ltd. 2009 (241) ELT A121 (SC)
Refund of pre–deposit if stay not obtained: Where pre–deposit was made by assessee as per Tribunal's directions and if the Revenue had not got any stay order, refund was required to be made and so assessee could take credit of amount in his PLA.	Bharat Foam Udyog (P) Ltd. (2009) 242 ELT A20 (SC)
Priority of Secured Creditor over Duty: Excisable duty would have priority of claim only if there is specific provision giving such priority to State dues. If dues are to be recovered merely as arrears of land revenue, then those debts cannot have priority of claim over dues of a secured creditor.	Krishna Lifestyle Technologies Ltd (2009) 242 ELT A118 (SC) UTI Bank Ltd. 2009 (238) ELT A25 (SC)]
The liability of interest u/s 11BB of the Central Excise Act, 1944 arises after the expiry of 3 months from the date of refund application by the application (if the matters giving rise to refunds attained finality)	U.P. Twiga Fiber Glass Ltd. (2009) 243 ELT A27 (SC)
No duty from principal for manufacture by Job Worker: Duty should not be demanded from principal regarding goods manufactured by job worker even if specifications for job work is provided by them and they have control of those units. **No duty from Job worker for fraud by principal:** Since Job worker has not suppressed any facts with intent to evade payment of duty in respect of goods manufactured by him under the brand name of the principal, he is not liable to pay duty for any fraud committed by his principal. So, no duty/penalty is imposable on Job worker.	G.T.C. Industries Ltd. (2009) 243 ELT A62 (SC)
No penalty if no duty payable: When duty itself cannot be imposed by invoking extended period of limitation, no order of imposing penalty u/s 114A can be sustained. Since duty could not be imposed, order imposing penalty u/s 114A of Customs Act, 1962 was not sustainable.	M.M.K. Jewellers (2009) 243 ELT A90 (SC)
Mere filing of application before Settlement Commission u/s 32E of CEA for waiver of interest, penalty and immunity from prosecution and suo motu payment of duty does not mean admission of allegations of fraud**.**	Bosch Chassis Systems India Ltd. (2008) 232 ELT 622 (Tri–LB)
Provocation for Invoking Extended Time Limit: Extended Time limit for issuing SCN cannot be invoked without invoking proviso to Section 11A i.e. the SCN should contain the fact that duty has not been paid due to fraud, collusion or willful misstatement or suppression of facts.	Shree Ram Steel Rolling Mills 2008 (221) ELT 333 (Bom.)
Proof in case of Excess Collection: In the absence of proof that the Assessee collected any amount in excess of what is shown in the invoice, demand cannot be sustained.	Tata Engg & Locomotive Co. Ltd (SC) – 218 ELT 644
Wrong declaration when not suppression: Wrong declaration cannot be said to be a deliberate suppression when Tribunal recorded a finding of mutual mistake on both sides in wrongly declaring end use of product.	Reliance Industries Ltd 2008 (223) ELT 586 (Bom.)
Larger Period of Limitation – Non Applicability: Larger period of limitation cannot be invoked by Department, when the circulars issued by the Department did not settle the conflict between the views of Ministry of Finance and Ministry of Agriculture, on the classification of a product.	Karnataka Agro Chemicals 2008 (227) ELT 12 (SC)

Case Gist	Citation
Audit Observation by AG's Office: Audit observation raised by Accountant General cannot be a basis for raising a demand on assessee. It can only be a starting point for investigation.	Accra Pac (India) Pvt. Ltd 2008 (229) ELT 473 (GOI)
When the first show cause notice was issued, the extended period of limitation was not resorted to. When in the original notice, such an allegation had not been made, the same could not have been made subsequently as the facts alleged to have been suppressed by the appellant were known to them.	Geo Tech Foundations & Construction 2008 (224) E.L.T. 177 (S.C.)
SSI Exemption falsely availed – Extended period of Limitation: Notfn No. 175/86–C.E. stipulates the benefit of exemption to SSI will not be available to the goods on which the brand name of another manufacturer is affixed. Assessee fully aware of fact that brand was not owned by it and that it belonged to their foreign collaborator. Hence, conditions for invoking extended period of limitation fully satisfied.	Dugar Tetenal India Ltd. 2008 (224) E.L.T. 180 (S.C.)
For the purpose of demand of duty and levy of penalty, the period of limitation is to be reckoned backward from the date of issue of Show Cause Notice.	Mathania Fabrics (2008) 221 ELT 481 (S.C.)
Dispute in Classification — Invocation of Extended Period: When dispute prevailed in matter of classification, assessee cannot be held guilty of suppression or mis–statement. Therefore, charge of suppression and invocation of extended period of limitation u/s 11A (1) not sustainable.	Ishaan Research Lab (P) Ltd (2008) 230 ELT 7 (SC)
Service Tax Return – Extended Period: Non declaration of gross amount charged in the ST 3 returns and claiming abatement suo motu are cases wherein the extended period can invoked for levying penalty.	McKinsey & Co. Inc. 2008 (12) STR J102 (Bom.)
In the absence of any legal requirement to verify the correctness of the declaration furnished by the Principal Supplier, the job worker cannot be held for suppression of facts or contravention to evade duty.	Lajya Dyeing and Bleaching Works 2008 (224) ELT 345 (SC)
Interest payable under a bond executed before DGFT is not an interest payable under the Customs Act.	Rexnord Electronics & Controls Ltd 2008 (224) ELT 184 (SC)
Rate of Interest: Rate prevailing at the time of default is appropriate rate of interest, and not the rate prevailing on a subsequent date i.e. on the date of payment of duty.	Priyadarhsini Cements Ltd 2008 (224) ELT 429 (CESTAT – Bang.)
Differential duty is due when the assessee learns of revised rates applicable with retrospective effect, which is after the clearance of goods.	Rucha Engineering Pvt. Ltd. 2008 (223) ELT 161 (Bom.) Maris Spinners Ltd (2008) 223 ELT 163 (Mad.)
Refund of Bank Guarantee: Section 27 is not applicable to refund of Bank Guarantee executed. Therefore, such claim is not barred by limitation of time prescribed under that section.	Aristo Spinning Mills 2008 (226) ELT 42 (Mad.)
Refund Claim – Non Filing of Appeal: Assessee was denied refund on the ground that assessment was not challenged. When there is no provision in the statute for assessment, no order capable of being appealed against can be passed. Therefore, an assessee cannot file an appeal against non–existing assessment order. Hence, his claim of refund cannot be denied on the ground assessment went unchallenged.	Central Office Mewar Palace Org. 2008 (12) STR 545 (Raj.)
If assessee was unable to recover the tax from its customers the assessee cannot be made to pay Service tax in excess and if such refund is asked, it cannot be considered as unjust.	Standard Chartered Bank 2008 (10) S.T.R. 6 (Kar.)
Refund claim of the assessee was not admissible on grounds of Unjust Enrichment as the amount charged by assessee was inclusive of duty hence incidence of duty was passed on to the buyer.	Cement Corpn. Of India [2008] 232 ELT A107
State ED vs. Central ED: Excise duty collected on certain goods which were payable to State Government, was paid to the credit of Central Government by mistake. Subsequently, the assessee paid the amount to State Government. Under such circumstances, refund of duty paid to Central Government is not covered by Doctrine of Unjust Enrichment.	Biochem Pharmaceuticals 2008 (223) ELT A.94 (Bom.)
Statutory vs. Equitable Interest: Written demand / request is required for equitable interest (i.e. claim of interest on grounds of equity). However, for statutory interest, no such request is required, as the claim has approval under the law itself.	UOI vs. Shreeji Colour Chem Industries 2008 (230) ELT 199 (SC)
Interest on delayed refund – Appeal to High Court: When orders passed by Commissioner and Settlement Commission are not questioned by Revenue, the Commissioner of Appeals as well as Tribunal were justified in allowing the interest claimed by assessee	Motorola India Private Ltd.2008 (221) E.L.T. 489 (Kar.)
Condonation of Delay in Filing Drawback Claim: Delay in filing drawback claim can be condoned, when the necessary documents / papers were lying with the Department. Under Rule 17 of Drawback Rules, if any of the provisions could not be complied with due to reasons beyond the control of the importer / agent, Central Government can allow drawback in respect of such goods.	Stovec Industries Ltd 2008 (221) ELT 328 (Guj.)

4.3 SEARCH & SEIZURE

Case Gist	Citation
Where importer clears imported goods on the basis of classification which was upheld by Commnr. Of Customs (Appeals), and duty is paid based on such classification, Customs officers cannot seize such goods for collecting duty in excess of what is assessed as per the importer's classification. Till the assessment is set aside, the Customs Officers cannot seize the goods assessed and cleared under a Heading on the ground that the goods were liable to be assessed under another heading .	Vodafone Essar South Ltd. vs. UOI 2009 (237) ELT 35 (Bom.)
Customs authorities are not authorized to auction confiscated goods during the period of pendency of appeal. Such auction is not justified. Customs Authorities are liable to return the entire sale proceeds without deducting duty but subject to deduction of fine and penalty with interest.	Shabir Ahmed Abdul Rehman vs UOI 2009 (235) ELT 402 (Bom.)
Jurisdiction for Seizure – Exclusive Economic Zone: Rights over territorial waters, continental shelf and contiguous zone from EEZ to be exercised by India, and by States consisting Union of India. Therefore, Customs Officers of a particular city (Mumbai) cannot exercise jurisdiction over notified areas of EEZ.	Noble Asset Co. Ltd 2008 (230) ELT 22 (Bom.)
An Advocate appearing on behalf of his client in a case cannot be summoned for cross examination u/s 108	Mohammed Zahir (2008) 221 ELT 172 (Ker.)
Seizure vis–a–vis detention: Detention of goods and seizure thereof not one and the same. In detention, custody of goods taken **without** involving deprivation. Seizure means to take possession of goods involving deprivation.	Pro Musicals 2008 (227) E.L.T. 182 (Mad.)
Redemption Fine – Cleared without Bond / Undertaking: Goods if permitted to be cleared initially without demanding execution of bond / undertaking, and later proceedings taken for undervaluation or other irregularity, redemption fine cannot be imposed. Section 125 is applicable only when goods are cleared by authorities upon furnishing of undertaking / bond.	Raja Impex (P) Ltd 2008 (229) ELT 185 (P&H)

4.4 OFFENCES AND PENALTIES

Case Gist	Citation
A person charged with mis–declaration is entitled to know the ground on the basis whereof he would be penalized and is entitled to a proper hearing.	Kothari Filaments vs. Commissioner of Customs 2008 (SC)
Customs Authorities cannot take the any person into custody for custodial interrogation since in case of detention, he has to be sent to judicial remand.	Arun Kumar Gupta vs. DRI, Delhi 2009 (235) ELT 457 (Del.)
Government dues do not have priority of claim over that of secured creditors. However, if legislature makes those dues as having priority of claims, the State dues will rank higher in priority of claims, the State dues will rank higher in priority than dues of a secure creditor.	Tata Metaliks Ltd 2009 (234) ELT 596 (Bom.)
Penalty for non–payment – Mandatory: There is no discretion with the authority to impose penalty less than 100 %(or 25% in some cases) u/s 11AC of CEA and even payment of **short/unpaid duty before issuance of SCN does not exempt** an assessee from payment of penalty u/s 11AC. **Penalty – interest unpaid:** Penalty u/s 11AC is applicable for non–payment of interest for 30 days from date of demand.	Rajasthan Spinning & Weaving Mills 2009 238 ELT 3 (SC) Sigma Steel Tubes 2009 238 ELT A53 (SC) Sterlite Optical Tech. Ltd. 2009 (240) ELT A45 (SC)
Payment of duty before issue of SCN: Interest payable even when duty paid before issue of show cause notice.	Rajasthan Spinning & Weaving Mills 2009 238 ELT 3 (SC)
No penalty if conflicting decisions exist: Even if wrongly availed input credit as above, penalty is not leviable, on account of conflict of views expressed by various Tribunals/High Courts.	Maruti Suzuki Ltd. 2009 (240) ELT 641 (SC)

Case Gist	Citation
The word "Or" used in Section 135(1)(a) should be read disjunctively and not conjunctively. Prohibition need not have nexus with the payment of duty.	Gurcharan Singh vs. DRI 2008 (224) ELT 497 (SC)
Exoneration by CESTAT — Status of Prosecution Proceedings: Prosecution proceedings will stand nullified, if the related appeal is disposed in favour of the Assessee. This is applicable even when appeal is disposed off in favour of assessee due to non filing of appeal by the Revenue against the order of the CESTAT.	JP Tobacco Products (P) Ltd 2008 (229) ELT 325 (SC)
Criminal prosecution cannot be permitted to continue against petitioners once adjudication proceedings on merits have been found in favour of petitioners.	Anil Mahajan (DEL) CA Journal April 08 Page 1750
Proceedings in a Court lacking territorial jurisdiction would not render the proceedings void unless it has occasioned a failure of justice.	DRI vs. Kumarpal 2008 (224) ELT 522 (Del.)
Power to arrest is circumscribed by objective considerations and cannot be exercised on whims, caprice, or fancy of the officer.	Padam Narain Aggarwal (SC) CA Journal Dec 2008 Page 1000
Compounding cannot be allowed if there are apparent contradictions, inconsistencies or incompleteness in the declaration / statements of an applicant submitted / presented before the compounding authority.	UOI vs. Anil Chanana 2008 (222) ELT 48 (SC)
Mandatory Penalty – No Discretion on Quantum: There is no scope for any discretion while imposing penalty u/s 11AC. Men rea (malafide intention) is not an essential ingredient for levy of penalty u/s 11AC.	Godavari Manar Sahakari Sakhar Kharkhana Ltd (2008) 228 ELT 172 (Bom.)
Payment of Short Duty / Unpaid duty before issuance of show cause notice does not exempt an assessee from payment of penalty u/s 11AC.	Sterlite Optical Technologies Ltd 2008 (225) 430 (Bom.)
Quantum of Penalty u/s 11AC: Once conditions required by Section 11AC are fulfilled, Departmental Authorities have no discretion to impose penalty lower than 100% of the duty short levied / short paid.	Aurangabad Motor Manufacturers Ltd 2008 (224) ELT 534 (Bom.)

4.5 APPEALS AND REVISIONS

Case Gist	Citation
Where Revenue failed to satisfy that the signatories to the review order were authorized authorities, the act of review was ab–initio void.	CCEx vs. Ores India Pvt. Ltd 2008 (CESTAT)
Involvement of Customs House Agent (CHA) cannot be ruled out when there is a concurrent finding against CHA by all fact finding authorities.	Kwick Handling Service Pvt. Ltd. Vs. Joint Secretary of Finance (2008) (HC)
Disposal of appeals by mere reference to decisions without analyzing the special features of each case, is not proper. Judges interpret statues, their words cannot be interpreted as statutes.	CCE vs. Srikumar Agencies 2008 (232) ELT 577 (SC)
Even Department is required to state reasons for delay while filing application for condonation of delay with CESTAT. Tribunal cannot invent any reason and grant condonation.	CCEx., Chennai vs CEGAT 2009 (236) ELT 21 (Mad)
CCCE's directions for making particular assessment is only a guideline and not a mandate to be obeyed in each assessment	Varsha Plastics Pvt. Ltd. (2009) 235 ELT 193 (SC)
No extended period – if only inaction: Extended period not invocable when there is a mere inaction or failure on the part of manufacturer. There must be conscious or deliberate withholding of information by manufacturer.	Nestle India Ltd. (2009) 235 ELT 577 (SC)
Rectification of mistake – not a question of law: Consideration of a mistake apparent from record is a question of fact. Thus, it cannot be taken up for consideration by a Court of law.	Daisy Trading Corporation 2009 (236) ELT 209 (SC)
SC decision prevails over Circular: When the Supreme Court has given an interpretation to a statutory provision, such interpretation cannot be ignored on the basis of a contrary interpretation given in the circular issued by the Board.	Panchsheel Organics 2009 (237) ELT A50 (SC)
No Notice – Order not valid: Notice and hearing are required as per principles of natural justice. Where a revision order was passed without issuing notice to parties, order was set aside, but proceedings not terminated.	Uma Nath Pandey Vs State of U.P. 2009 (237) ELT 241 (SC)

Case Gist	Citation
Suppression of fact – not Substantial Question of Law: Suppression of fact essentially a question of fact not giving rise to substantial question of law per se. Substantial question of law to mean something in contradistinction with technical, of no substance/consequence or academic merely.	Kushal Fertilisers (P) LTD. [2009] 238 ELT 21 (SC)
SCN by CCE(A): SCN issued by adjudicating authority is not the same as the SCN required to be issued by the CCE(A) u/s 35A(3) for demanding additional duty payable by the assessee. **Period of limitation – not extendable by CCE(A):** Condonation of delay on existence of sufficient cause is different from extending period of limitation, for passing the order by the appellate authority, which is otherwise restricted by the statute.	Patel Filters Ltd. – 2009 241 ELT A95 (SC)
No appeal to SC for issues not in show cause notice: Revenue cannot argue a case before the Supreme Court which is not made out in show cause notice.	Champdany Industries Ltd. (2009) 241 ELT 481 (SC)
Interference into lower court orders by SC: Concurrent findings by lower authorities are interfered by the Supreme Court only when they are patently perverse or based on manifest misreading of any legal provision	V. Charminar Non–Wovens ltd. (2009) 241 ELT 494 (SC)
Tribunal is the last authority on fact and it is not proper for Apex Court in exercise of power to disturb such findings.	UNI Products (I) Ltd. (2009) 241 ELT 491 (SC)
Right of Surety in Appeal: Liability of a surety is co–extensive with that of the importer, and he steps into the shoes of importer for all intents and purposes. Therefore, if the importer can challenge an order and file an appeal, the surety is also entitled to file an appeal.	Lalbhai Trading Co. 2008 (229) ELT A27
Reference to Third Member: When reference is made to the Third Member, the Third Member can only take either of the views expressed by the Members of the Bench. He cannot take a view different from both the members.	Kelkar Trading Corporation 2008 (223) ELT 382 (Bom.)
An order attains finality when the assessee / department does not challenge the CCE (Appeals) order by filing further appeal before tribunal. Therefore, it is not open to Tribunal to permit to re–agitate / re–open the issue once again before it in proceedings which arises out of an order giving effect to the earlier order of remand.	MIL India Ltd 2008 (222) ELT 497 (All.)
Relevant Date for Filing of Appeal – Order served on persons other than the Petitioners: Notice / Orders addressed to the Petitioners (Ex–Directors of a Company) were served on the factory of the Company, which was duly received by an Authorized Signatory at the Factory. Order so served, cannot be considered as served on the Petitioners, for determining time limit for appeal to CESTAT. The petitioners obtained a certified copy of the order from the CCE. The date of receipt of such certified copy shall be the relevant date for preferring an appeal to CESTAT.	RK Agarwal vs. CESTAT 2008 (221) ELT 486 (All.)
Facet of "sufficient cause" of the Limitation Act applies as Sec 35B(3) provides power to the Appellate Tribunal to admit an appeal even after expiry of the relevant period, if it is satisfied that there was sufficient cause for not presenting within that period.	Uniworth Textiles Ltd, CA Journal Nov 08 Page No 826 (BOM)
If for reasons beyond the control of the Assessee, he could not appear before the Tribunal, the same cannot be a ground for rejection of petition which was filed by the Assessee within sufficient time.	Noel Agritech Ltd 2008 (224) ELT 224 (Kar.)
Sec 35B: Commissioner Appeals has the powers to file an appeal before CESTAT. When a person is statutorily entitled to delegate powers to file an appeal on his behalf, it becomes clear that the person delegating has the right to file an appeal.	Shree Ganesh Dyeing & Ptng Works 2008 (232) ELT 775 (Guj.)
Power of Tribunal – Direction vs. Impose Pre–Condition: Tribunal does not have any power to impose pre–condition while remitting back the matter to the original authorities. It is empowered only to give directions to original authority while remitting back.	National Oxygen Ltd 2008 (231) ELT 411 (Mad.)
Time Limit: Limitation period for filing of Rectification of Mistake (ROM) is not the time limit for deciding the ROM. Application for rectification filed within specified time limit, can be rectified, even if such rectification order is passed beyond the time limit specified.	Sree Ayyanar Spg. & Wvg. Mills Ltd 2008 (229) ELT 164 (SC)
CESTAT is not correct in dismissing an appeal without stating any reason.	Nagreeka Foils Ltd (2008) 227 ELT 348 (Bom.)

Case Gist	Citation
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.)
The fundamental principle on which provisions of Rectification is based is that no party should suffer on account of any mistake committed by the Tribunal.	Honda Silk Power Products Ltd (221) ELT 11 (SC)
Waiver of Pre–deposit: Mere assertion about undue hardship not sufficient. For an hardship to be "undue", it should be shown that performance of the requirement (i.e. payment of deposit) is out of proportion to the nature of requirement (underlying duty liability)	Indu Nissan Oxo Chemicals India Ltd **(SC) (**2007) TIOL – 225; 2008 (221) ELT 7 (SC)
Refund of Pre–Deposit: When the case is decided in favour of the Assessee, he is entitled to the refund of pre–deposit. It should not be held back because Revenue has preferred an appeal against the CESTAT Orders.	Modern Industrial Enterprises 2008 (226) ELT 695 (Del.)
If both the authorities below have held that there is no unjust enrichment and question of law framed by Revenue does not arise for consideration before High Court, no substantial question of law arises in appeal	Motorola India Pvt Ltd. 2008 (221) E.L.T. 489 (Kar.)
Non–Filing of appeals in similar cases does not bar filing of appeal in another case. The revenue may not prefer appeal in certain cases on the same / similar issues, because of policy decisions, small amount involved or revenue neutral situations.	CK Gangadharan vs. CIT 2008 (228) ELT 497 (SC)
Fresh Plea: Plea not taken before Tribunal or High Court not allowable for the first time in Supreme Court. This is even if the assessee contends that relevant facts were not known before.	**Anil Mishra 2008 (230) ELT 583 (SC)**
Departmental Clarification vs. Court Decisions: Department can file an appeal taking ground contrary to its circular. A circular contrary to statutory provisions has no existence in law.	Ratan Melting & Wire Industries 2008 (231) ELT 22 (SC)
Irregular 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)
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.)

4.6 SETTLEMENT COMMISSION

Case Gist	Citation
Settlement commission is entitled to reject the 'rectification of mistake' application, filed on the basis of a Supreme Court judgement which was debatable.	Settlement Commission vs. CIT 2009 (234) ELT 584 (Ker.)
Assessee's claim not considered – Order invalid: Where counter claim of assessee was not verified by the Settlement Commission before passing an Order against the assessee, the order is not valid.	Jai Jagdamba Malleable (P) 2009 (237) ELT 240 (SC)
Rejection of Application: Settlement Commission **cannot reject** an application on the following grounds — • Contention of Applicant is very lengthy • Issue is complicated one on legal, procedural, technical and evidentiary points. • Amount accepted by the petitioners is very low	Shri Renuga Soft–X Towels 2008 (229) ELT 359 (Mad.)
Settlement Commission does not have any jurisdiction / power to waive the amount of interest payable under a bond executed before Director General of Foreign Trade (DGFT).	Rexnord Electronics & Controls Ltd vs. UOI 2008 (224) ELT 184 (SC)
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)