1. Case Studies on Goods

Goods must be movable - They must be **movable** from one place to another place. An immovable property or property attached to earth is not 'goods' and hence duty cannot be levied on it - **Kailash Oil Cake Industries v. CCE - 1993 (CEGAT). - National Radio v. CCE - 1995 (CEGAT).**

Goods must be movable :the first aspect of goods is that they should be moveable. In **Union of India Vs. Delhi Cloth Mills (1977) ELT J-199 and in South Bihar Sugar Mills Vs. Union of India (1978) ELT J-336,** the Supreme Court enunciated the principal that to be called goods, the articles must be such as are capable of being bought and sold in the market. The articles must be something, which can ordinarily come or can be brought to the market to be bought and sold.

Goods must be Marketable - The item must be such that it is **capable of being** bought or sold. This is the test of 'Marketability'. The goods must be known in the market. Unless this test of marketability ['Vendibility Test']. is satisfied, duty cannot be levied, as these will not be goods. **UOI v. Delhi Cloth Mills (SC).**

Goods must be Marketable: It was has held that the duty of excise is on the manufacture of goods and for an article to be "goods", it must be known in the market as such or must be capable of being sold in the market as goods. Actual sale is not necessary ***C.C.EX Vs Ambalal Sarabhai Enterprises (1989) (43) ELT-214 (SC)***

Refined oil' got produced at intermediate stage that process of deodorization was not carried out on the 'refined oil'. In the market, the product is not known as 'refined oil' unless it is deodorized. Applying this 'marketability test', it was held that the 'refined oil', which is not 'deodorized', is not 'goods'. **Delhi Cloth Mills SC**

Actual sale is not necessary - Marketability is an essential ingredient in order to be dutiable. Marketability is a decisive test for dutiability. It only means 'saleable' or 'suitable for sale'. It need not in fact be marketed. The article should be capable of being sold to consumers, as it is - without any thing more. - ***Indian Cable Co. Ltd.*** **v.** ***CCE*** **- 1994 (SC)**

Mere mention in Tariff is not enough, Marketability is essential - Mere mention of an item in tariff is not enough. Simply because a certain article falls within the schedule (of Central Excise Tariff), it would not be dutiable if the article is not 'goods' known to the market. For example - crude PVC films (intermediate product) manufactured by the assessee for captive consumption, for further manufacture of leather cloth were not marketable in that stage and hence not dutiable. ***Bhor Industries Ltd.*** **v.** ***CCE*** **(SC)** – Similar view are also held in. - ***Ion Exchange (India) Ltd.*** **v.** ***CCE*** **(SC) s.** & *UOI* v. *Delhi Cloth and General.* I

It was held that where a product could neither be sold nor consumed in the market, nor was capable of being sold or consumed, it would not be liable to duty. ***Madura Coats Ltd. Vs. Asstt. Collector of C.C.EX. (1990) (48) ELT-321, Madras HC***

Every thing that is sold is not 'marketable' - 'Marketability' implies regular market for a product. Occasional, stray or distress sales do not mean that the product is 'marketable'.

Marketability to be decided on the basis of the state in which it is produced - The commodity which is sought to be made liable to excise duty must be a commodity that is marketable as it is, and not a commodity that may, by further processing, be made marketable - *UOI* v. *DCM* SC 2429 (SC 3 member bench) - same view in ***Wochardt Ltd.* v. *CCE* 1999 (CEGAT) * *Eastern Coils* v. *CCE* 2001 (CEGAT).**

Conclusion from the above cases in order to levy excise duty goods should be movable marketable and excisable.

Goods 'excisable' even if exempt from duty - 'Excisable goods' do not become non-excisable goods merely because they are exempt from duty by an exemption notification - ***Wallace Flour Mills Co. Ltd.* v. *CCE* (1989) (SC).**

If exemption is granted u/s 5A(1), goods do not cease to be excisable goods and levy of duty is not erased. – ***CCE* v. *SmithKline Beecham Consumer Health Care Ltd.* 2003(151) ELT 5 (SC).**

If at the time of manufacture if there is no levy of Excise duty,(Non excisable goods) then the goods manufactured during the period cannot be levied excise duty, even subsequent to manufacture (at the time of removal) when goods brought in to duty . (Vazir sultan tobacco Co. Ltd.)

Example on Supreme Court Wallace flour mills case and Vazir Sultan Tobacco case

Excisable goods				
	Product A	Product B	Product C	Product D
Rate of duty On 28.02.2009	8%	10%	Nil	Exempt u/s 5 A
Rate of duty On 01.03.2009	12%	4%	14% (Brought to Duty)	11% (Exemption Withdrawn)
Duty Payable	12%	4%	14%	11%
Wallace flour Mills (SC)				

Excisable goods				
	Product A	Product B	Product C	Product D
Rate of duty On 28.02.2009	8%	10%	Nil	Exempt
Rate of duty On 01.03.2009	12%	4%	14% (Brought to Duty)	11% (Exemption Withdrawn)
Date of removal	01.03.2009	15.03.20009	31.03.2009	21.04.2009
Rate of Duty on the date Of removal	12%	6%	12%	10%
Duty Payable	12%	6%	12%	10%
Wallace flour Mills (SC)				

Vazir Sultan Tobacco case

Non Excisable goods		
Product A		
Rate of duty On 28.02.2009	Not Applicable	Because non excisable goods. Not mentioned in tariff.
Rate of duty On 01.03.2009	14%	First time bringing to excise tariff as Dutiable goods.
Opening stock of F G On 28.02.2009	500 units	No duty payable on 500 units when they are removed on or after 01.03.2009
Manufactured Goods from 01.03.2009	All units	14% duty payable on removal
Vazir Sultan tobacco (SC)		

Goods not included in CETA are 'non-excisable goods' - Some goods like wheat, rice, cut flowers, horses, etc. are not mentioned in Central Excise Tariff *at all* and hence they are not 'excisable goods', though they may be 'goods'. These are 'non-excisable goods'. Similarly, 'waste and scrap' will be 'excisable goods' only if specifically mentioned in CETA - ***CCE* v. *Amol Decalite Ltd.* 1999(CEGAT). In *Western India Ceramics P Ltd.* v. *CCE* 1998 (CEGAT),** it was held that broken glazed tiles are not excisable as there is no specific entry (in Tariff) for it.

Mere mention in CETA not enough - Mere mention in the Excise Tariff will not attract duty, unless these are 'goods' i.e. unless test of marketability is satisfied - ***Bhor Industries Ltd.* v. *CCE* 1989 (SC)** Further, the 'excisable goods' are liable to duty only if they are 'manufactured' or 'produced'.

Goods on which appropriate duty has been paid' – If an exemption notification uses the words 'on which appropriate duty has already been paid', it means that on which excise duty has, as a matter of fact, been paid and has been paid at 'appropriate' or correct rate. Thus, it cannot cover goods on which in fact, no duty has been paid. - ***CCE* v. *Dhiren Chemical Industries* 2002 SC**

Goods excisable even if duty is nil – If by virtue of an exemption notification, the rate of duty is reduced to NIL, the goods specified in the tariff would still be regarded as excisable goods on which NIL rate of duty was payable.

Goods removed under bond are not 'exempted goods' - Under Central Excise, the term 'exempted goods' has specific meaning. 'Exempted goods' means those exempted under notification issued u/s 5A of CEA. Goods removed under bond without payment of duty are neither goods 'exempt from duty' nor 'goods chargeable to nil rate of duty'. - **CBE&C circular No 278/112/96-CX dated 11.12.1996 -**

Goods manufactured in SEZ are 'excluded excisable goods' – As per section 3(1) of CE Act, as made effective w.e.f. 15-8-2003, duty is leviable on all excisable goods (except goods manufactured or produced in Special Economic Zone). Thus, goods manufactured or produced in SEZ are 'excisable goods' but no duty is leviable, as charging section 3(1) excludes those goods. Thus, the goods manufactured in SEZ are not 'exempted goods'. They can be termed as 'excluded excisable goods'.

'Goods which have suffered duty ' - In some cases, the wording used is 'goods which have suffered duty / tax'. In such case, it has been held that actual payment of tax / duty is necessary. Goods cannot be said to have 'suffered tax' when no tax is paid. - ***State of MP* v. *Indore Iron & Steel Mills* 1998 SC.**

***What are "Goods"* -** Some examples will clarify the legal position.

Gas, Steam etc - As it is a tangible property marketable steam is 'goods' as it can be weighted, measured and marketed - ***Ambalal Sarabhai Enterprises Ltd.* v. *UOI* 1991 (Guj) HC**

Electricity: Electricity is movable property though it is not tangible. It is 'goods' *State of Andhra Pradesh* v. *National Thermal Power Corporation* (NTPC) 2002 (SC).

Drawing, designs Etc: Even if payment is made for technical advice or information technology, which is intangible asset. Knowledge in the form of drawing and design relating to machinery are 'goods' ***Associated Cement Companies Ltd.* v. *CC* 2001 (SC 3 member bench)**

Machinery Will be 'goods' if it is in marketable condition at the time of removal from factory of manufacture, even if *subsequently*, it is to be fastened to earth

Branded Software: Branded software like lotus, oracle can be bought off shelf hence they are goods **TCS(AP HC)**

Waste and Scrap- Waste, Scrap would be liable to duty, if it has an established market and mentioned in tariff- ***Khandelwal Metal and Engg Works* v. *UOI* - 1985 (SC) *CCE* v. *Hindustan Lever* 2003(151) ELT 10 (SC).**

Aluminum paint having shelf life of 8 to 10 hours is marketable and it found that similar products are available held as goods and duty is payable -**TNSTC LTD (2004)166ELT433**

Columns: Columns fabricated at a place and removed to another place for erection, are goods since they are movable at the time of removal. ***Associated Cement Companies Ltd.* v. *CC* 2001 151ELT3(SC)**

What are not "Goods" - Some cases where the product was held as not 'goods' are illustrated here.

Goods having very short life are not 'goods'*, if not marketable in that short period* – Yeast having short shelf life is not 'goods' when there is no proof about its marketability, even if the product is specified in tariff. ***CCE* v. *Jagjit Industries* 2002 (SC)./Famous Cine laboratory 66ELT91(SC)**

Ropeway erected – Ropeway erected for carrying passenger in trolley system is not movable. Hence it is not goods.

Lift – Lift comes to existence only after it is installed with the building. There are after it becomes functional. It is immovable and hence not goods.**-Otis Elevators Co. India Limited 2003 151ELT499 (HC)**

Storage system Installed at a site: it is permanent fixture and cannot be removed from the place of installation. Hence it is not goods – **Nikihil Equipments Pvt. Limited (2004) 165ELT 487 (SC)**

Zinc scaling and Zinc Flux arising out of galvanizing of steel sheets are no doubt saleable, but mere salable market does not exist and hence not goods and no duty liability Tisco **(2004) 165ELT386(SC)**

Aluminum Cans and Torch Bodies: Aluminum Cans and Torch Bodies were made by extrusion process are intermediate form in crude form and cannot be marketable and hence not a goods - **Union carbide India Limited (1986) 24ELT214 (SC)**

Waste and scrap arising out of breaking up of old and worn out machinery is not goods

Cannot be considered as goods and that the waste and scrap arisen out of the process of manufacture in terms of Sec. 2(f) of Central Excise Act, 1944. [*CCE, Visakhapatnam* v. *Sree Vijayarama Gajaphthi Co-operative Sugars Ltd. Hyderabad*] [2004 (117) ECR 753 (T)]

Excitability of plant & machinery assembled at site

CBEC Circular dated 15.01.2002 – The circular was issued based on judgment of *Triveni Engineering* case dated 8-8-2000; hence, the present legal provision is, as below

(a) Duty cannot be levied on immovable property. Duty can be levied on parts and components leaving the factory according to condition they removed.
(b) If plant is so embedded to earth that it is not possible to move it without dismantle, no duty can be levied.
(c) If machinery is superficially attached to earth through foundation by way of nuts and bolts for operational efficiency, it is not an immovable property and can be easily removed without dismantling, duty is leviable
(d) When the parts and Components are fixed and installed in such a way where the final article is comes into existence only in shape of immovable property no duty leviable.
(e) Where the plates, Channels taken to site for fabrication, say for tank, is done at site and it is lifted and placed in a position permanently attached to earth, the tank come in existence as a goods. However if piece by piece attached to earth for the tank comes in existence, it would be immovable property.
(f) Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable.

Plant and Machinery or structure assembled and erected at site cannot be treated as 'goods' for the purpose of Excise duty, if it is not marketable and movable.

It was held Goods erected and installed in the premises and embedded to earth cease to be goods and cannot be held to be excisable goods. ***- Quality Steel Tubes (P.) Ltd.*** **v.** ***CCE -*** **1995 (SC)** - in this case, it was held that tube mill and welding head erected and installed in the premises and embedded in the earth for manufacture of steel tubes and pipes are not 'goods'.

Assembly at site is not manufacture, if immovable product emerges - **In *Mittal Engg Works* v. *CCE* - 1996 (SC)** , it was held that if an article has to be assembled, erected and attached to the earth at site and if it is not capable of being sold as it is, without any thing more, it is not 'goods'. Erection and installation of a plant is not excisable - followed in ***CCE*** **v. *Hyderabad Race Club* - 1996 (SC),** where it was held that an article embedded in the earth was not 'goods' and hence excise duty is not leviable.

Dutiability of steel structures - **In Mahindra & Mahindra Ltd. v. CCE 2005 (190) ELT 301 (CESTAT**), it has been held as follows –

Immovable iron and steel structures are not goods

Structures and parts mentioned in parenthesis of 7308 like bridges, lock-gates, towers, trusses, columns frames etc., in their movable state will be subject to excise duty, even if latter they get permanently fixed in the structures

Plates, rods, angles, sections, tubes and the like, prepared for use in the structures will also be excisable goods subject to duty in their pre-assembled or disassembled state.

Examples of plant and machinery which are not excisable

Following are some examples where the article is not goods, and duty is not payable.

- Huge tanks, erected at site, stage by stage, which cannot be physically moved without dismantling.
- Lifts and escalators installed in building cannot be treated as excisable goods, even if that item is specified in Tariff. However, if lift and escalator is fabricated as a whole and is movable in nature, it will be dutiable even if temporarily installed at construction site or exhibition.
- Steel structure fabricated and erected at site
- Weigh Bridge assembled at site
- Refrigeration equipment fitted at site
- Aerial ropeway

2. Case studies in Intermediate Product Captive Consumption

Intermediate products manufactured and used within the factory for manufacture of final products are exempt from duty, even if CT-3 certificate is not issued and Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules [earlier Chapter X] procedure is not followed, subject to the condition that documents/records are available with manufacturer that the intermediate goods have been used for export purpose only - **CBE&C circular No. 229/63/96-CX dated 8-7-1996, amended vide 303/19/97-CX dated 11-3-1997**.

Exemption to captive consumption if duty paid on final product: The intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (*a*) Capital goods as defined in Cenvat Credit Rules i.e. those which are eligible for Cenvat credit *or* (*b*) Used for in or in relation to manufacture of final products eligible for Cenvat, made from inputs which are eligible for Cenvat. **[Notification No. 67/95 dated 16-3-1995].**

Once a new product comes into existence at intermediate stage, it is charged to duty if not exempted under any notification. **In *A S Processors* v. *CCE* 1999(112) ELT 706 (CEGAT)**

Duty liability on intermediate product arises as soon as manufacture (of intermediate product for captive consumption) is complete as it is 'deemed to have been removed' under rule 9(1). **In *CCE* v. *Modern Mills* 1999(113) ELT 822 (CEGAT)**

Duty payable even if intermediate product used in continuous process - Duty would be payable even if such intermediate product is used in same factory in a continuous process. As per *Explanation* to rule 9, excisable goods consumed as such or utilised for manufacture of any other commodity shall be deemed to be removed from the place just before such consumption or utilisation. ***J K Spinning*** **v. *UOI* - 1987 (32) ELT 234 (SC).**

Movability, marketability and Excisability to satisfy to attract duty: ***Bhor Industries Ltd. Vs. C.C.EX. (1989) (40) ELT-280*** has held that an intermediate product would be excisable only if it is a complete product in the sense that it is capable of being sold to a consumer. Thus marketability is essential for charging an article to duty. Therefore where the intermediate product is not capable of being sold it is not dutiable even if it is included in the Tariff Entry. In other words intermediate goods will be chargeable to duty under law only if the test of marketability is met

It was held that mere theoretical possibility of marketability is not enough if the method is uneconomical and is hardly likely to be employed by the trade. ***South Bihar Sugar Mills Ltd.*** **v. *UOI* 2 ELT J 336 (SC)**

No sales tax on captive consumption - 'Consumption' does not mean 'sale' and hence sales tax is not attracted - ***Bhopal Sugar Industries Ltd.*** **v. *D P Dube, STO* (1963) 14 STC 406 (SC)**

Burden of proof of marketability of intermediate product is on department - Burden of proof of marketability of intermediate product is on the department. - ***Cadila Laboratories*** **v. *CCE* 152 ELT 262 (SC).**

Duty on manufacture not on sale A duty of excise is a tax upon goods and not upon sales or proceeds of sale of goods. In terms of Entry 84, List I of Seventh Schedule to Constitution, taxable event in respect of excise is manufacture or production - ***CCE*** **v. *Acer India Ltd.* 172 ELT 289 (SC).**

Duty leviable on captive consumption if goods are marketable: - Since excise is a duty on manufacture, duty is leviable even if goods are consumed within the factory and not sold. However, the goods must be marketable in the condition in which they are manufactured and further consumed within the factory. ***Ambalal Sarabhai Enterprises v UOI.***

Movability marketability and excisable all the three conditions should be satisfied for levy of excise duty in case of captive consumption/intermediate product

The Tribunal, in Hindustan ***Lever Ltd. Vs.C.C.EX. (1990) (30) ECR-180,*** has held that intermediate goods which are not sold nor are marketable, are not excisable and that the burden of proof regarding marketability is on the Revenue.

It was held that once a new marketable intermediate product comes into existence, it is to be charged to duty if not exempted by a notification - ***CCE*** **v. *Citric India* 2001(127) ELT 539 (CEGAT)/ *A S Processors* v. *CCE* 1999(112) ELT 706 (CEGAT),**

No duty is payable on intermediate product if final product is cleared for export under bond without payment of duty. Circular No. 10/75-CX 6 dated 3-4-1975, issued by Ministry of Finance confirms that goods exported under bond cannot be treated as exempt from duty or chargeable to nil rate of duty - **CBE&C circular No 278/112/96-CX dated 11.12.1996] & *Orissa Synthetics Ltd.* v. *CCE* 1995 (77) ELT 350 (CEGAT). Same view in *Indian Aluminium Co. Ltd.* v. *CCE* 1995 (79) ELT 111 (CEGAT).**

Aluminium cans or torch bodies manufactured (for final manufacture of torches) are in elementary and unfinished condition and are not marketable. Hence, 'Aluminium cans' are not goods and no duty is payable on those intermediate products - ***Union Carbide India Ltd.*** **v.** ***UOI*** **24 ELT 169 (SC)**

Where it was held that an intermediate product must be capable of being sold, if duty is to be levied. It should be a distinct article having identity in commercial world. ***Porritts and Spencer (Asia) Ltd.*** **v.** ***CCE*** **-106 ELT 18 (SC),**

Plastic body manufactured for Mosquito repellant captively consumed not marketable

The assessee was manufacturing Electro Mosquito Repellent). EMR was exempt from duty, but department demanded duty on plastic body manufactured which was captively consumed to manufacture EMR. It was held that plastic body of product (EMR) and used within the factory is not a standardized item and is not available in the market for being bought and sold. The design of plastic body is different from that of other manufacturers and it is not available in market as it is not a commercially known product. Hence, it is not 'goods' and not marketable. ***UOI*** **v.** ***Sonic Electrochem*** **45 ELT 274 (SC),**

Agarbatti mix' (odoriferous compound) arising during course of manufacture of Agarbatti is trade secret of each manufacturer. It is used in continuous process and never sold. Hence, it is not excisable. - **CBE&C circular No. 495/61/99-CX.3 dated 22-11-1999.**

Assessee was manufacturing tyre bead wire rings, which were captively consumed. It was found that these are not marketable. Hence, it was held that no excise duty is payable. ***CCE*** **v.** ***Metro Tyres*** **2005 (179) ELT 493 (CESTAT**

The commodity which is sought to be made liable to excise duty must be a commodity that is marketable as it is, and not a commodity that may, by further processing, be made marketable - *UOI* v. *DCM* 92 ELT 315(SC) *Wochardt Ltd.* v. *CCE* 1999(105) ELT 573 (CEGAT)

3. Case Laws regarding Manufacture- on first part process incidental ancillary

Assembly of components of air conditioner in car does not amount to manufacture as the parts are fitted at various places and at no point of time a car air-conditioner as a separate and distinct commodity comes into existence. Similarly, fitting of air-conditioner kit in a car does not amount to manufacture - **CBE&C Circular No. 479/45/79-CX dated 17-8-1999.**

Manufacture as defined by Courts - Some important Court decisions are discussed here.

New substance having distinct name, character or use must emerge - **In** ***Union of India*** **v.** ***Delhi Cloth Mills Co. Ltd.*** **(SC) 1990** has held that the manufacture means bringing into existence a new substance. (This is a very important and leading case regarding definition of 'Manufacture'). Manufacture is end result of one or more processes, through which original commodity passes. Thus, manufacture implies a change but every change is not manufacture. A new and different article must emerge having a *distinctive name, character or use.*

In the course of processing If a new and commercially different identifiable product does not result, there is no manufacture and hence excise duty liability does not arise.- *Hyderabad Industries Ltd.* v. *UOI* - 1995 (SC) 1995 **(For example cutting of wood in small pieces or making small pieces of a long steel bars would not amount to manufacture as no new product emerges).**

Mere mention in tariff does not mean manufacture –It was held that even if an article is specified in tariff, there is no duty liability unless it is 'manufactured'. **In *CCE* v. *Markfed Vanaspati* 2003(153) ELT 491 (SC)**

Trade Parlance is important – It was held, the test is whether in the eyes of those dealing in the commodity or in commercial parlance, the processed commodity is regarded as distinct in character and identity from the original commodity - ***Sterling Foods v. State of Karnataka* - 1986 (SC).** Similar view held **Aditya *Mills Ltd.* v. *UOI* (1989) (SC).**

Mixing of spices in to compound is manufacture

Assessee is engaged in mixing of saffron, spices, menthol etc. to form a "Compound (Kimam)". The said compound cleared and it is diluted and used in manufacture of (branded chewing tobacco) the assessee claimed that the "Compound (Kimam)" is an intermediate item, not marketable is such and was, therefore, not excisable

It was held kimam intermediate product is marketable, as the same was manufacturing the other companies are marketing the same., the assessee aware the fact and hence 5 years time limit for demand apply Dharampal Satyapal 2005 SC

Scrap iron ingots Converting in to Rolled steel section :it was held it is a vital process were converted into rolled steel sections, it was held that the scrap iron lost its identity and became a new marketable product having a different use - **Devidas v. State of Punjab (SC).**

Curing: This is a process, which amounts to manufacture. Hence curers are liable to pay excise duty. Example Coffee curers liable to pay excise duty

Cutting of jumbo rolls of typewriter to make ribbon of standard length and Winding on spool is 'manufacture' - it was held that conversion of jumbo reels of ribbons into spool form to suit particular model and make of typewriting/telex machine is 'manufacture' as new and distinct product emerges – **Kores India v. CCE (2004) 174 ELT 7 (SC).**

Where pineapple fruit was canned involving a certain degree of processing namely that inedible portions were removed and edibles were sliced and sugar was added to preserve it, it was held that these series of changes did not take the commodity to the point where commercially the pineapple can be recognised as a new and distinctive article and hence there was no manufacture - **AIR 1980 (SC) 1227.**

When logs of wood were converted into different shapes and sizes by sawing them in the saw mill it was held that there was no intention to bring about a new article, the result of cutting them into different shapes and sizes being only to facilitate convenience of transport and storage - **Ganesh Trading v. State of Haryana [AIR (1974) SC 1362].**

On the other hand if logs were converted into planks, railway sleepers, etc., different items of specific goods was held to emerge - **State of Orissa v. Bharat Saw Mills [(1981) ECR 93 D].**

-Combining steam engine turbine and alternator by fixing them on platform and aligning them is manufacture, as new product comes into existence which has a distinctive name and use different from its components. **Triveni Engineering v. CCE 2000 (120) ELT 273 SC.**

Cutting of Jumbo rolls of tissue paper in to standard size for table cloth, face cleaning and toilet purpose is not manufacture.
It was held that "the characteristics of table napkins, facial tissues and toilet rolls in terms of texture, moisture absorption capacity, feel etc. ARE THE SAME as the tissue paper in the jumbo rolls. The said jumbo rolls cannot be conveniently used for household or for sanitary purposes. Therefore, held the process is not a manufacture **SR Tissues Private Limited 2005 SC**

Plain glazed tile to decorated tiles is not manufacture - Processing of duty paid plain glazed tiles into decorated ceramic tiles does not amount to manufacture as no new distinct and commercial commodity comes into existence. - P**an Pipes Resplendents Ltd. v. CCE 2000(119) ELT 603 (CEGAT)/ CCE v. Pan Pipes Resplendents Ltd. 2006 (193) ELT 129 (SC)**

Laminating/metallising film is not manufacture- laminating/metallising of duty paid film does not amount to manufacture as film remains a film and no new and distinct product comes into existence **In Metlex (I) P Ltd. v. CCE 2004 (163) ELT 129 (SC),**

Merely by adding water, perfume and colour to the liquid soap, it cannot be said that a manufacturing process was undertaken because by these additions what resulted merely a change in the original substance and not altogether a new and different substance with a distinct name, character or use came into existence - **Colgate Palmolive v. Union of India (1980 ELT 268).**

When pig bristles purchased from market were boiled, washed with soaps and chemicals and sorted out according to their size and colour, there is no manufacture of goods. There is no essential difference in identity between the original commodity and the processed commodity, notwithstanding application of labour through machinery - **C.S.T. v. Harbilas Rai [21 STC 17 (SC)].**

4. Case Laws regarding Deemed Manufacture

Deemed manufacture was tested and constitutionally it was upheld. **Empire Industries Vs UOI (SC) 198520ELT179**

Process may be mentioned in Tariff Entry also, but it must be specified that the process amount to 'manufacture'- The Tariff Entry read as 'Fixed Vegetable Oil, which has undergone process of treatment of alkali, bleaching or deodorization'. However, mere mention of process in Tariff Entry is not sufficient, it must be specifically stated that a particular process 'amounts to manufacture'. Since the Tariff Entry did not specify that the process 'amounts to manufacture', it cannot be held as 'deemed manufacture'. **Shyam Oil Cake v. CCE 2004 (174) ELT 145 (SC)**,

Deeming manufacture will not apply if there is no value addition: The purpose of deeming provision is only to tax high value additions. No manufacture if no value addition. - **Lakme Lever ltd VS CCE (1999) 110ELT899(CEGAT)**

Mere putting the name of goods, name of consignor is not labeling: It was held painting the consignor name, name of goods is not labeling, as it has not containing any thing with regard to price, qty description of the product. **Texchem Vs CEC (2003) 151ELT610(CEGAT)**

Putting Stickers indicating MRP. Putting stickers on the imported medicines to provide information as per Drug and Cosmetics Act is amount to manufacture **CBEC Circular No 576/12/2001 dated 16.05.2001. However there is a contrary view held in**

1. Putting label name and address of manufacturer and MRP on imported chocolates is not a manufacture –**Lal International Vs CCE (2003) 154ELT520 CEGAT**
2. Putting label name and address of manufacturer as required under standard weights and measures act is not a manufacture. **CCE Vs Pancheseel Soap factory (2002) 145 ELT 527 CEGAT**

Re-packing of defected and damaged goods is not manufacture – Mere re-packing is not 'deemed manufacture'. If goods returned are re-packed, such re-packing is from one retail pack to another retail pack and hence cannot be termed as 'manufacture'. - - Similarly, if goods returned for rectification are re-packed, it is not 'any other treatment to render the product marketable', as the product was already marketable. **Ranbaxy laboraties VS CCE (2004) 168ELT 321 (CESTAT)**

Repacking from bulk to retail only cover: Obtaining Ammonia gas through tanker and filling in to cylinders is not manufacture- Obtaining gas in tanker is not amount to obtaining in bulk packet. **Ammonia Supply Co VS CCE (2001) 131ELT626(CEGAT).**

Test of Marketability will be applicable: Even it is deemed manufacture, if the process does not the makes the goods marketable, it is not a manufacture **Sri Ayyanna Vs CCE (2004) 165ELT425 (CESTAT)**

Case studies on Packing and Labeling

'**When 'repacking and labeling'' will amount to manufacture** - In some cases, goods are bought in bulk and sold in retail. This will not amount to 'repacking'. Generally, the expression 'packing' is considered as a package containing pre-packed commodity and quantity of the product contained therein is also pre-determined. -. - Activity of simply transferring material from one container to another may not come under the description 'repacking and labeling'. However, facts should be ascertained and decision should be taken based on all relevant facts- **CBE&C circular No 342/58/97-CX dated 8.10.1997.**

Mere packing is not a manufacture; The products would have to be repacked from ***bulk packs to retail packs*** so as to make them marketable to the consumer for the activity to be termed as 'manufacture'. The Apex Court stated that the medicines were imported as ready to market retail packs which were then affixed with stickers containing certain information. In the opinion of the Supreme Court, there was no evidence of assessee indulging in any further activity which amounts manufacture. ***CCEx., Mumbai v. Johnson & Johnson Ltd. 2005 (188) ELT 467 (SC)***

Process of printing of cotton bed sheets, pillow covers and bed covers be considered as an integral part of the manufacture of such bed sheets etc

There is exemption notification for manufacture of textile articles without aid of power. Assessee manufactured bed sheets, pillow covers and bed covers, however printing was used with colour mixing machine, Held printing colour is integral part of manufacture, hence benefit of notification will not apply. **Impression Prints v. CCEx., Delhi-I 2005 (187) ELT 170 (SC)**

Mere repacking is not deemed manufacture -Repacking has to be from bulk packs to retail packs so as to render product marketable directly to consumer. It was also held that if product is imported as ready to market retail packs, mere affixing the sticker containing information like names and addresses of importer, MRP etc. will not be 'deemed manufacture'. **CCE v. Johnson & Johnson 2005 (188) ELT 467 (SC),**

Both repacking and labeling required for applicability of the provision

There was a view that in many 'deemed manufacture' provisions, the wording used is 'labelling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the products marketable to the consumer'. Since the word used is 'and', mere labelling without re-packing is not 'deemed manufacture', as activities of labelling/re-labelling *and* re-packing in small packs are inter-dependent and not mutually exclusive.

All re-packing not covered

The words used in many 'deeming provisions' are 'repacking from bulk packs to small packs'. Thus, in such cases, mere re-packing is not 'deemed manufacture'. If goods returned are re-packed, such re-packing is from one retail pack to another retail pack and hence cannot be termed as 'manufacture'.-- Similarly, if goods returned for rectification are re-packed, it is not 'any other treatment to render the product marketable', as the product was already marketable.

Goods Removed without printing MRP Some times, a manufacturer of goods (which are covered under MRP provisions) clears goods from factory in bulk without putting MRP at the time of clearance. Duty is paid on basis of section 4. The goods are packed and labeled and MRP is put either by the buyer who buys the goods or in some godown or depot or C&F Agent of the manufacturer. Now, the process carried out by the buyer or by C&F Agent or at such depot or godown of manufacturer will be 'manufacture'. Such depot/buyer/C&F Agent/godown will have to be registered under Central Excise as 'manufacturer'.

Pouring of Chemicals from Big to Smaller container cannot be considered as manufacture

Chapter notes of CETA specify repacking for chemicals. Pouring from big to smaller containers cannot be considered as repacking hence not a manufacture. **MEENAKSHI & CO. – 2006- CESTAT**

5. Case studies on manufacturers

Raw material Supplier is not the manufacturer - It is common in Industry to supply raw material to a Job Worker or Processor and get the goods manufactured from him in his factory for example, Automobile Manufacturers very often get many parts manufactured from outside on 'Job Work' basis. In such cases, they will not be treated as 'Manufacturer' even if they supply the Raw Material and they retain right of rejection.

However in the following cases Raw material supplier is manufacturer

1. Relation between Manufacturer and raw material supplier is on agency basis- **Shree Agency Vs Bhattacharya gee 1ELT168 (SC)**
2. Person Employed by raw material supplier and goods return it to him –**Bajrang gopilal 1986 25ELT609 (SC)**
3. Labour doing work allotted to them under the supervision of Principal**- Interscape VsCCE (2001)135ELT942CEGAT**
4. Job worker function like a hire labour and there is no principal to principal basis**- Light Metal Extrusion Ltd.,Vs CCE (1997) 89ELT581 (CEGAT)**
5. Job worker is not doing job on their own account and they are dummy and bogus units and arrangement made in such a way to evade duty- **B S Rajasekar Vs CCE (1993)63ELT369 CEGAT**

Brand Owner is not the Manufacturer - Some large units get their goods manufactured from others under their Brand Name, instead of manufacturing it themselves. Companies will not be treated as 'Manufacturer' even if they exercise quality control, or allow use of their brand name, or provide financial help to the small manufacturers, or even supply the raw material, if their relation with the manufacturer is '*Principal to Principal*' basis. Supreme Court in ***Cibatul Ltd.*** **v.** ***UOI*** **- 1978 (SC)** - have held that if the goods are produced with Customer's brand name under his quality control, it does not mean that the Customer is the Manufacturer. Same view was reaffirmed in i*t.* ***Secretary to Government of India*** **v.** ***Food Specialties Ltd.*** **- 1985 (SC).**

Brand name owner will not be manufacturer even if he supplies raw material. - **Philips India Ltd. v. UOI - 1980 (6) ELT 263 (All HC)** – same view followed in **Cheryl Laboratories v. CCE - 1993 (65) ELT 596 (CEGAT).**

Person who gives machine on hire basis is not a manufacturer -***PSG Industrial Institute Vs CCE1999 (111) ELT528CEGAT***

Loan licensee (A person who has licence to produce the drug) under drug control act is not a manufacturer

Sub-contractor is manufacturer if relation to the main contractor is on principal-to-principal basis, even when job work is done at site, if relationship between sub-contractor and main contractor is on principal-to-principal basis. - ***Voltas Ltd.* v. *CCE* 2002(CEGAT).**

Manufacture at site of buyer -An independent contractor who assembles the parts in a factory would be the manufacturer and not the owner of factory- ***Basti Sugar Mills* v. *CCE* 2000 (CEGAT**) [In this case, contractor assembling the parts was independent contractor appointed by supplier of parts of crane. Obviously, he was not 'hired labour' of the factory owner.] – Same view in ***Solid and Correct Engineering Works* v. *CCE* 2002 (CEGAT). In** this case, the marketing company assembled various parts at the site of buyer. It was held that the marketing company is the manufacturer.

Job Worker is a Manufacturer and A Contractor is a manufacturer. A person who engages hired labor is a manufacturer.

Persons who manufacture under franchise are a manufacturer- For example if Cola companies supply concentrates to bottlers and cool drinks manufactured by bottler, the Bottler is a manufacturer.

Person who transforms commodity in to another commodity having distinct name and character is manufacturer- **Pearl Soap Co Vs CCE (2001) 138ELT1317CEGAT**

6.Case studies on duty Liability

Duty Liability is on the Manufacturer: The liability to pay duty is on 'Manufacturer or producer'. Duty cannot be recovered from his purchaser Mahindra *& Mahindra Ltd.* v. *CCE* - (1983) (CEGAT) (though the manufacturer may recover the same from buyer). Hence, Excise demands, if any, are always raised on manufacturer and recovered from manufacturer. Hence, it is essential to decide who is to be termed as 'Manufacturer'.

It has been held that excise duty is on 'manufacture and production of goods' and liability to pay duty is not dependent upon whether the manufacturer is owner or not- ***Ujagar Prints* v. *UOI* - AIR 1989 (SC)**,

Ownership of raw material is not relevant for duty liability - Ownership of raw material is not relevant for duty liability - *Hindustan General Industries* v. *CCE* 2003 (155) ELT 65 (CEGAT) * *CCE* v. *Mahindra & Mahindra* 2001(132) ELT 632 (CEGAT)..

A duty of excise is a tax **upon goods and not upon sales or proceeds of sale of goods**. In terms of Entry 84, List I of Seventh Schedule to Constitution, taxable event in respect of excise is manufacture or production - ***CCE* v. *Acer India Ltd.* 172 ELT 289 (SC 3 member bench).**

Duty incidence on manufacture it was observed that incidence of excise duty is directly relatable to manufacture, but its collection can be deferred to a later stage as a measure of convenience or expediency. **McDowell and Co. Ltd. v. CTO 59 STC 277 (SC)** Same view in ***Mohan Breweries* v. *CTO* 1997 AIR (SC)**

It was held that the procurer is not entitled to SSI exemption in respect of procurement of khandsari sugar. ***CCE* v. *Dee wan Modern Breweries* 2001 128 ELT 390- same view in *CCE* v. *Dogra Distilleries* (2001) 137 ELT 887 (CEGAT).**

Duty liability in case of job work - Even in case of job work, the duty liability is of actual manufacturer and not of the raw material supplier.- *CCE* v. *Globe Auto Agency* 2003 (157) ELT 202 (CESTAT) * *GTC Industries* v. *CCE* 2001(132) ELT 74 (CEGAT).However, a job worker manufacturing goods under notification No 214/86 is exempt from excise duty, as the raw material supplier undertakes that he will use these goods further to manufacture final product or clear for export or pay duty on such goods.

Duty payable even goods given free replacement given during warranty period - Since excise is a duty on manufacture, duty is payable whether or not goods are sold.

In it was held that duty is payable on spare parts even if those are supplied free during warranty period. ***Bharat Heavy Electricals* v. *CCE* 2003(154) ELT 10 (SC) - followed in *ECE Industries* v. *CCE* 2004 (164) ELT 236 (SC**).

Duty on free samples

It was held that excise duty is payable on Physician's samples given free *Jawa Pharmaceuticals* v. *CCE* 2003 (158) ELT 166 (CESTAT) *Crosslands Research Lab* v. *CCE* 2002(150) ELT 212 (CEGAT).

Duty cannot be Recovering from customer Buyer not liable to pay duty provision prohibiting recovery of tax from purchaser was upheld. ***K M Mohamed Abdul Khader Firm* v. *State of Tamilnadu* (1985) 58 STC 12 (SC)**

Duty can be levied on Government undertaking - As per Articles 285 and 289 of Constitution, **tax cannot be** levied by Central Government on income or property of State Government (and *vice versa*).It was held that this restriction applies only to taxes which directly affect income or property, and not to taxes which may indirectly affect income or property. Thus, excise duty can be levied on goods manufactured by State or Central Government undertakings -*Karya Palak Engineer* v. *Rajasthan Taxation Board* 2004 AIR (SC).

Duty payable even when not collected

An assessee is liable to pay sales tax and the question whether he has collected it from consumer or not is of no consequence. His liability is by virtue of being an assessee under the Act. - *American Remedies P Ltd.* v. *Govt of AP* 1999(113) (SC 3 member bench). The same is applicable for excise duty also

Remission of duty can be granted for handling losses

The CESTAT held that even though rule 21 of the Central Excise Rules, 2002 does not specifically mention handling, remission of duty would be permissible for handling losses as the reference in the rule to "unavoidable accident at any time before removal" would cover handling. **J.K. Sugar Ltd. v. CCEx., Meerut 2005 (185) ELT 300 (Tri.-Del.)**

Theft of goods is loss due to unavoidable accident. Hence, remission of duty is allowable. **CCE v. GTC Industries Ltd. 1994 (71) E.L.T. 806 (T).** *Sialkot Industrial Corporation* v. *UOI* 1979 (4) E.L.T. J329, the Delhi High Court However contrary decision in CCE v.

International Woollen Mills 1987 (28) E.L.T. 310 (T).

Loss of molasses due to auto combustion is an unavoidable accident and remission is admissible. **Shankar Sugar Mills v. CCE 1994 (71) E.L.T. 753 (T)**

Remission of duty should be granted even if it could be argued that the loss could have been prevented. ***Purna Sahakari Sakhar Kharkhana Ltd.*** **Vs *CCE* 1998 (100) E.L.T. 513 (T)**

Remission of duty is grantable though the assessee has received compensation for fire accident ***Sarada Plywood Industries Ltd.*** **v. *CCE* 1987 (32) E.L.T. 116 (T**

II- Case laws on Classification

RULES TO BE APPLIED SEQUENTIALLY – The Rules are to be applied sequentially. . Classification is to be first tested in light of Rule 1. Only when it is not possible to resolve the issue by applying this rule, recourse is taken to Rules 2, 3 and 4 and so on. - **Chapter 4 para 7 of CBEC manual 2001.**

Rule 1 gives primacy to the Section and chapter notes along with terms of the headings. They should be first applied. If no clear picture emerges, then only one can resort to subsequent rules - ***CCE* v. *Simplex Mills Co. Ltd.* 2005 (181) ELT 345 = 140 STC 125 (SC 3 member bench).**

Section Notes and Chapter Notes have overriding effect

It was held that section notes and chapter notes, being statutory in nature, have precedence over functional test and commercial parlance for purposes of classification. ***Fenner (India) Ltd.*** **v. *CCE* - 1995(97) ELT 8 (SC),/ *Saurashtra Chemicals, Porbunder* v. *CC* - 1986 (CEGAT).&*Tractors and Farm Equipments Ltd.* v. *CC* - 1986 (CEGAT).**

Sub-assemblies of air conditioning machines removed in CKS/SKD packs will be classified as complete machine, if it contains essential elements of air conditioning machine. - – **CBEC circular No. 666/57/2002-CX dated 25-9-2002.**

A manual is supplied along-with software. The manual gives instructions as to how to use the software. Here the 'essential character' is 'software'. Hence, the goods will be classified according to 'essential character' as per rule 3(b). - **CBE&C circular No. 528/10 6/93-Cus (TU) dated 24-8-1993.**

Fan regulators cleared as such be classified: as parts/accessories of fan and not a as fans

Fan regulators which are not cleared with electric fan but are cleared as such would be classifiable as parts/accessories of fan and not under fans. The Supreme Court held that if regulators have to be classified under 'electric fans' whether sold with fan or separately, then no part or accessory would be covered under sub-heading. ***North West Switchgear Ltd. v CCEx., New Delhi 2006 (195) ELT 134 (SC)***

Machinery independent even if it can be attached to another - Machinery can be independent even if it is connected to machinery. Mere fact that a machinery can be connected to another machinery does not change its character to accessory - ***Nirulas Corner House P Ltd.*** **v.** ***CC*** **1999(108) ELT 332 (SC).**

Specific to be preferred to general as held in case of ***Plasmac Machinery Mfg Co. Ltd.*** **v.** ***CCE*** **1991 (51) E.L.T. 161 (S.C.)**

Condition at the time of import/clearance relevant - Condition of the material at the time of importing is a material factor for purpose of classification as to the head under which goods will be classified - ***Dunlop India Ltd.*** **v.** ***UOI*** **- 1983 SC.**

Classification of standalone items

Assessee cleared compressors falling under tariff sub-heading 8414.10. They also cleared to its buyers separately “fly wheel” under separate tariff sub-heading 8483.00, “safety valve” under separate tariff sub-heading 8481.80 and “filter” under separate tariff sub-heading 8421.00. Department contend that the compressor removed in unassembled form and hence to be classified as compressor as per rule 2(a).

Held that “Compressors manufactured by assessee removed as a **“stand-alon**e” item and not in an unassembled or disassembled condition, hence, no question of applying General interpretative Rule 2(a) arises. Clearance will be treated as clearance of 3 independent items. **FRICKS INDIA LTD (2007)(SC)216ELT497**

Fax machine – If fax machine components are imported in ckd condition, it can be classified as fax machine only. However exemption of duty applicable to fax machine will not applicable to imported components- if components are imported it does not mean fax machine was imported- **Modi Xerox Ltd Vs CCE 2001 SC**

Hard Disk was imported with preloaded software. The cost of hard disk was Rs 65,000 and software was worth Rs. 67 lakhs . It was held hard disk is only a container and essential charter is software. Hence it should be classified as software only. -**RPG India Ltd Vs CCE (2000)116 ELT 6 (SC)**

Trade parlance theory applicable only when classification rule does not provide correct and conclusive answer ***CCE*** **v.** ***Wood Polymers Ltd.*** **97 ELT 193 (SC),**

Wording of tariff description is essential: Meaning of word used in exemption notification has to be gathered from tariff description - ***Steel Authority of India Ltd.*** **v.** ***CCE*** **1997(91) ELT 529 (SC).** Chapter notes of chapter of CETA referred to in the notification have to be read as part and parcel of exemption notification - ***Gujarat State Fertilizers Co.*** **v.** ***CCE*** **91 ELT 3 = SC .**

Exemption notification cannot determine classification and it cannot change classification of goods from one entry to another - ***Eskeyef*** **v.** ***CCE*** **49 ELT 649 (SC).**

End Use relevant only in limited cases - Generally, a product can be used for various purposes and it is not correct to classify the goods on the basis of its final use. It was held that end use is irrelevant for interpretation, unless definition so requires. ***Dunlop India* v. *UOI* - 1983 (13) ELT 1566 (SC)**

Steel racks specially designed for truck Mobile work shop cannot be classified as furniture

it was held that steel tables and steel cup-boards specially designed and fabricated by assessee to be fitted on a special purpose truck (mobile workshop) are necessary adjuncts of machinery fitted on mobile workshop and hence cannot be classified as 'furniture'. ***Elgi Equipments* v. *CCE* 2002(143) ELT 242 (SC)**

It was held that if a part solely or primarily suitable for automobiles will be classified as automobile part (under heading 87.08) and not under general heading. ***G S Auto International* v. *CCE* 2003 (152) ELT 3 (SC),**

Burden of proof Classification is on the department

the burden of proof that a product is classifiable under a particular tariff head is on the revenue and must be discharged by proving that it is so understood by the consumers of product in common parlance **- *CCE* v. *Vicco Laboratories* 2005 (179) ELT 17 (SC**). *Hindustan Ferodo Ltd.* v. *CCE* 1997 (89) E.L.T. 16 (SC).

Relevancy of ISI Specifications : ISI specifications not relevant as compared to circulars issued by trade associations and statutory control orders. - ***Indian Aluminium Cables Ltd.* v. *U.O.I.* 1985 (21) E.L.T. 3 (S.C.)** ISI specifications not ignorable in the absence of any material - *National Sales Corporation* v. *CCE* 1995 (78) E.L.T. 653 (S.C.)

In trade parlance theory Customer's identity with function - have held that identity of a product is associated in mind of consumer with its primary function. The consumer buys an article because it performs a specific function for him. This mental association with a product is highly important for classification. Supreme Court, ***Atul Glass Industries (P.) Ltd.* v. *CCE* 25 ELT 473 (SC) , Same view reiterated in *CCE* v. *Fusebase Eltoto Ltd.* -** 67 ELT 30 .

The 'trade parlance' is relevant only when Statute does not define the words. If words are defined in the Statute, 'trade parlance' is not relevant. i.e. Statutory definition overrides Trade parlance theory-***Indo International Industrial* v. *CST,* (SC)..** Trade parlance theory applied only when classification rules does not provide conclusive answer. ***CCE* v. *Wood Polymers Ltd.* 1998 (97) E.L.T. 193 (SC)**

As per Trade parlance theory principle, a word in statute should be construed in its popular sense and not in the strict or technical sense. 'Popular sense' means that which people conversant with the subject matter with which the statute is dealing, would attribute to it. Supreme Court has confirmed this in various cases- **Dunlop *India Ltd.* v. *UOI* - (1976) (SC). *Kedia Agglomerated Marbles* v. *CCE* 2003(SC). CCE Vs Vicco Laboratories (2005) 179 ELT 17 (SC)**

Tea is not 'foodstuff'. It neither nourishes body nor sustains or promotes growth. It is not understood as food/foodstuff in common parlance or in dictionaries - ***S Samuel* v. *UOI* 2003 = 134 STC 610 (SC).**

It was held that 'lip save' (a cream used to protect lips in high altitude areas by military personnel) will be classifiable as 'skin care cream' as per commercial parlance, and not as medicament, even if it has subsidiary curative value. ***Alpine Industries*** **v.** ***CCE*** **AIR 2003 SC 152 ELT 16 (SC),**

Trade meaning would be applicable (only) of a particular product description occurs by itself in the tariff entry and there is no conflict between tariff entry and any other entry. - ***CCE*** **v.** ***ITC Ltd.*** **2003 AIR SCW 831 = 152 ELT 241 (SC)**

It was held that even when bulky goods are cleared in stages, the clearance is still of whole article and not its parts. In this case, bulky crane was cleared in disassembled condition in two consignments. It was held that assessee cleared 'crane in parts' and not 'parts of crane'. ***Shirke Construction Equipments P Ltd.*** **v.** ***CCE*** **1997(CEGAT),**

Cycle removed in CKD condition is a 'cycle'. – ***T I Cycles*** **v.** ***UOI*** **1983 (Mad HC).**

'Essential character' -The, factors governing 'essential character' will vary as between different kinds of goods and may be determined by the nature of material or component, its bulk, quantity, weight or value or by the role of a constituent material in relation to use of the goods. - ***Bharat Heavy Electricals*** **v.** ***CC*** **1987 (CEGAT),**

A part' is a component whose absence will disable a machine or appliance. It must be regarded as an essential ingredient or part of that machine. ***Electro steel Castings*** **v.** ***CCE*** **1989(43) ELT 305 (CEGAT),**

Part of part is part of whole - A part of part is part of whole e.g. tyre is a part of cycle. 'Valve' is a part of the tyre. Hence, 'valve' will be treated as part of 'cycle'.

Exemption Notification/ Valuation principles cannot determine classification The Classification of a product is to be decided on basis of relevant heading and section and chapter notes. Classification cannot be decided on basis of exemption notification **-** ***CCE*** **v.** ***Roha Dyechem (P.) Ltd. &CCE*** **v.** ***Gujarat State Fertilisers Co. Ltd.*** **- (1996) (CEGAT).**

Rejected Final Product should be classified as scrap and waste and not as part -**Durgapur Steel Plant Vs CCE**

Some Parts are manufactured and some part are bought out at site, the rule of ckd and skd is not applicable. It cannot be said machinery cleared in unassembled condition. **Ganapathy Rope way Ltd Vs CCE 1999112ELT395(CEGAT)**

Customs Tariff and Central Excise Tariff - Though both Central Excise Tariff and Customs Tariff are based on HSN, it was held that classification under Customs Tariff couldn't be applied under Central Excise Tariff Act. - ***Tata Liebert Ltd.*** **v.** ***CCE*** **2000 (CEGAT)**

Kitchen sink is classifiable as sanitary ware, which is a specific description and not as 'household articles of iron and steel' which is a general description. –

If a set consists of drawing instruments (90.17), pencil (96.09) and pencil sharpener (82.14), put up in a leather case (4201.90); the set will be classifiable under 90.17 i.e. drawing instrument.

Carbon paper cannot be classified as a paper. In popular sense, the word paper is understood which is used for writing, printing, drawing, decorating, and for packing.- **Kores India Ltd (SC)**

Lal Dhant Manjan (Red Tooth Powder) cannot be classified as a Medicine. A medicine is prescribed by doctor and can be used for limited period. Common mana using it for cleaning teeth, i.e., in popular sense and as per trade parlance theory, it should understand as tooth powder. **Baidvanath Ayurved Vs CCE**

Mineral Water cannot classified as a beverages **-Casino Hotel Vs state of kerala**

Classification in case of exemption notification

In *Mangalore Chemicals & Fertilisers Ltd. Vs. DC 1991 (51) ELT 437*, the Supreme Court held that the Rules for interpretation of the statute are the same for the purpose of classification and exemption.

In *Eskayef Ltd. Vs. CCE 1990 (49) ELT- 649*, the Supreme Court held that the exemption from payment of a excise duty which has been granted under a Notification is confined to goods falling under a particular Tariff Heading. Merely because a product can be used for the purposes as specified in the exemption notification does not qualify it for exemption, unless it also falls under the Tariff Heading specified in the Notification because the exemption cannot transfer product from one Tariff entry to another.

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In *Maestro Motors Ltd. 2004 (174) E.L.T. 289*, the Supreme Court has held that if a tariff heading is specifically mentioned in exemption notification, the Rules for Interpretation will apply to such exemption notification. However, if an item is specifically mentioned without any tariff heading, then exemption would be available even though for purpose of classification, it may be something else.

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II-Case laws on Valuation

1-Case Studies on MRP Valuation:

Some of the situations where MRP cannot be printed are

Bulk supplies for personal as well as industrial use,

Bulk supplies against contract,

Supplies to canteen store depots of defence,

Item supplied free with another consumer item,

Items supplied free as marketing strategy or market response,

Items meant for export.

CBE&C circular No. 625/16/2002-CX dated 28-2-2002. – followed in *Bharti Systel* v. *CCE* 2002(145) ELT 626 (CEGAT).

Price Printed on the package is relevant and not price shown in Advertisement –**Kripal Drinks VS CCE (2004) 167ELT545(CESTAT)**

If the goods are give on free- MRP will not applicable when goods are given free along with other product. The assesse is manufacturing razors for a buyer who is distributing it free with is own product. Assessee was not printed MRP on the razor, It was held valuation was to be done on the basis of 4 and not 4A- **GSE Enterprises VS CCE (2004) 172ELT31 (CESTAT).**

When the goods falling under sec 4A are supplied free of cost with other products and the packet of such goods doesn't bear any MRP, then such goods will be assessed under sec 4 and not under sec 4A. **Pepsi foods Ltd. (CESTAT).**

Valuation on MRP even Product not really intends for resale: Telephone instruments were packed MRP Printed and supplied to DOT/MTNL. DOT/MTNL lent these phones to subscribers and retain the ownership. It was held that valuation is to be done on the basis of MRP since the goods were in packed condition. It was also observed that there is no condition under package commodity rules, the goods should be actually sold in retail. **ITEL Industries VS CCE (2004) 163ELT219(CESTAT) & BPL Telecom Vs CCE (2004) 168ELT251(CESTAT)**

Different MRP will be considered only in case of different packets. Not in case of same packets. **Mount Everest Mineral Water Vs CCE (2004) 166ELT 52 (CESTAT)**

Excise department cannot question, Challenge or investigate on the genuine of MRP printed on the product, they can only ensure, that MRP is printed- **ITC LTD Vs CCE (2004) 171ELT433**

Goods packed in bulk – If goods are packed in bulk, MRP provisions do not apply – Titan Industries v. CC (2007) 216 ELT 327 (CESTAT).

Same product partly sold in retail and partly in wholesale - CBE&C has further clarified in circular No. 737/53/2003-CX dated 19-8-2003 that when goods covered u/s 4A are supplied in bulk to large buyer (and not in retail), valuation is required to be done u/s 4.

Provisions of Section 4A apply only where manufacturer is legally obliged to print MRP on the packages of goods. Thus, there can be instances where the same commodity would be partly assessed on basis of Section 4A and partly on basis of transaction value u/s 4 – view noted and approved in Jayanti Food Processing v. CCE (2007) 10 STT 375 = 215 ELT 327 (SC).

Some of the situations where MRP cannot be printed are – (1) bulk supplies for personal as well as industrial use, (2) Bulk supplies against contract, (3) Supplies to canteen store depots of defence, (4) Item supplied free with another consumer item, (5) Items supplied free as marketing strategy or market response, (6) Items meant for export. In case of doubt, a clarification may be obtained from Meteorology Department of State Government. – CBE&C circular No. 625/16/2002-CX dated 28-2-2002. – followed in Bharti Systel v. CCE 2002(145) ELT 626 (CEGAT).

Provision of MRP based valuation are applicable only when product is statutorily covered both under Weights and Measures Act and notification issued under CEA

Provision does not apply to ice cream sold in bulk - In Monsanto Manufacturers v. CCE 2006 (193) ELT 495 (CESTAT), it was held that if ice cream is sold in bulk to hotels and not intended for retail sale, valuation will be as per Section 4 and not on MRP basis – view confirmed in Jayanti Food Processing v. CCE (2007) 10 STT 375 = 215 ELT 327 (SC).

No MRP on free gifts/samples, hence valuation as per Section 4 – In Jayanti Food Processing v. CCE (2007)10 STT 375 = 215 ELT 327 (SC), assessee as selling Kitkat chocolates to Pepsi. These were distributed as free gift along with Pepsi bottle as a marketing strategy. It was held that even if product (chocolate) is covered under MRP provisions, since the product was not to be sold in retail, MRP is not required. Hence, valuation should be on basis of Section 4.

2.Case studies on Transaction Value

Cost of production not relevant

Central Excise Valuation can be below manufacturing Cost. If there is no allegation of flow-back of money from buyer to assessee, if price is the sole consideration and if dealings between assessee and buyer are at arm's length, Assessable Value will be decided on basis of selling price, even if it is below manufacturing cost. - *Guru Nanak Refrigeration Corpn.* v. *CCE* - (1996) 81ELT 290 (CEGAT 3 member bench).

Duty is chargeable at the rate and on the price prevailing on the date of actual removal of goods from the factory gate and subsequent reduction in the price even at the behest of the Govt. does not create a right in favor of the assessee for refund of duty on the reduction in the price.- **MRF Ltd. (SC)**

Where cum duty price is charged, then in arriving at the assesaable value of the goods, the element of duty, which is payable, has to be excluded. Sale price realized by the assessee is to be regarded as the entire price inclusive of excise duty. **Maruti Udyog Ltd.**

On inclusions

Discounts in the form of damage in transit/damages are not allowed as deduction. Discount in respect of defective tyres sold earlier is in the nature of benefit given to Consumer as a compensation for loss suffered and hence not allowed in deduction. **GOI Vs MRF Ltd (SC) 77ELT433./Hindustan Lever Ltd (2001)130**

Loading and handling charges within the factory

These are in by reason of sale and are includable – *Punjab Alkalies* v. *CCE* 2005 (179) ELT 341 (CESTAT). *Shree Rajasthan Syntex* v. *CCE* 2005 (186) ELT 239 (CESTAT

Dharmada (Charity) includible

Sometimes, some amount is collected by seller in the invoice as 'Dharmada' (charity) and spent for charitable purposes such Dharmada (Charity) includible in assessable Value in central Excise **TISCO Ltd (2002) (SC) 146ELT3.CBE&C, vide circular No. 763/79/2003-CX dated 21-11-2003**

Joint Plan Committee Cess compulsorily payable by all assessee in case of modernization and development of steel plant. Held it is includible –**Panchamukhi Engineering works (2003)(SC) 154ELT 10**

The cost of bought out items viz. sockets, which are fitted to M S G I. pipes before their removal from the factory gate, is includible in the assessable value of the pipes ***Siddhartha Tubes Ltd. v. CCEx., Indore (M.P.) 2006 (193) ELT 3 (SC)***

Regulators are parts of fans and held includible in valuation- **Khaitan Electrical (2004)SC165ELT134** Fan regulators which are not cleared with electric fan but are cleared as such would be classifiable as parts/accessories of fan under sub-heading 8414.99 of the Central Excise Tariff and not under sub-heading 8414.20 ibid covering fans ***North West Switchgear Ltd. v CCEx., New Delhi 2006 (195) ELT 134 (SC)***

Advance license surrendered in favour of seller is additional consideration and includible
The seller had Advance License. It was surrendered to enable the supplier-manufacturer to get Advance Intermediate License, due to which, the seller agreed to sale the goods at prices much lower than the prices quoted earlier. **In CCE v. IFGL Refractories Ltd. 2005(186) ELT 529 (SC)**

Wooden crates used for packing of glass sheets is in the nature of durable and returnable packing hence not includible in valuation
The glass sheets are packed in the wooden crates and sold. The invoices/bills raised upon the customers/consumers contain a Clause which reads as follows:
"Packing charges recovered in respect of packing of durable and returnable nature subsequent to initial packing for facilitating safe transport will be refunded (@ Rs.140/- per crate) if the same are returned intact."
Held Wooden crates are durable and returnable packing; cost/value thereof is not to be includible in the value of glass sheets. **TRIVENI GLASS LTD. – 2005 - SC**

Royalty for Franchise Agreement is includible in the Valuation: Pepsi and cola Supplies concentrate to bottlers and bottler's manufactures the cool drinks. Bottlers pay royalty for using the brand name Pepsi and cola and for using the concentrate, Held Royalty for franchise agreement is includible in valuation as it is in connection with sale- **Pepsi Foods VS CCE (2003) (SC) 158ELT552**

Price increase after removal is not includible in valuation, since the price is relevant at the time and place of removal. However **if there is escalation clause** in the sale agreement and if any additional price is realized, such additional price is includible in valuation and excise duty is payable. **Hindustan Ship Yard Vs CCE (1997) 92ELT189(CEGAT)/India Tin Industries**

Free after Sales Service Warranty includible in valuation- they are includible whether they are optional or compulsory- **-CBEC Circular NO 354/81/2000 dated 30.06.2000.**

Wooden crates which are not returnable as per agreement is includible in valuation Since glass sheets were delicate/fragile in nature and could not be moved in wholesale trade without being packed in wooden crates, therefore the wooden were meant to make the glass sheets marketable and thus, the cost thereof was includible in the A.V. of glass sheets. **Hindustan Safety glass works Ltd.(CESTAT)**

Compensation paid for losses in transit: The amount paid as compensation to customers for breakages or losses sustained during transit is not deductible as cost of transportation. **Surya Roshni Ltd.**

The cost of material should be net of ex duty if CENVAT credit is availed in respect of such inputs. Duty paid on raw material which is allowed as CENVAT cr to be utilized towards payment of duty of excise **Dai itci Karkaria Ltd**.

Subsidy received from Buyer is includible in valuation and from Govt. Not includible
The assessee received 20% subsidy from the government and 10% subsidy from the buyer of its products as per the policy of the government. It was contended by the department that the value of these subsidies should be included in the assessable value of the final product

In the given case the subsidy of 20% from the government could not be said to be additional consideration as it was not received from the buyer either directly or indirectly. Therefore, that would not be includible in the price of the goods for the purposes of excise. However, the 10% subsidy received by the assessee from the buyer was additional consideration. The fact that it was received under a policy of the government did not detract from the above position **Mazagaon Dock Ltd SC**

On Exclusions

If any excise duty or other tax is paid or payable at concessional rate for a particular transaction, the amount of excise duty or tax actually paid at concessional rate shall only be allowed to be deducted from price. - ***Chapter 3 Part III Para 2.5(v) of CBE&C's CE Manual, 2001.***

Equalized deduction of taxes not permissible – Since each clearance is a separate transaction for assessment, that taxes are deductible only on actual basis and not on average basis. **CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002,**

Trade Discounts: Trade discount means discount usually expressed as a percentage deduction given to wholesale buyers The valuation based on the 'transaction value', The transaction value' means price actually paid or payable for goods. Normally the transaction value arrived only after deducting the trade discount. 'Thus, 'trade discount' is allowable as deduction. The trade discount *need not be uniform*. Trade discount may be called by different names like cash discount, quality discount, turnover discount, etc. Such discount will be allowed on *actual basis*. There is no condition or provision that such discount should be known at the time of removal of goods from factory. Differential discount is also permissible. **Circular No. 354/81/2000-TRU dated 30-6-2000**

Cash discount - Department has confirmed that cash discount is allowable as deduction, if actually passed on to buyer, if transaction is on principal-to-principal basis. **CBE&C circular No. 643/34/2002-CX dated 1-7-2002**

Different discounts should be given to different buyers, discount given is deductible.

The assessee has four factories located at four different places. They have a practice of giving 20% discount to bulk buyers. However some of the bulk buyers i.e. 10% have been given a discount of only 8%. The assessee contends that it shall be allowed a deduction of discount @ 20%. Whereas the department is of the opinion that they should be given a deduction of 8% as the additional 12% is given to those bulk buyers who are related with the assessee.

Held that Discount of any description actually given to buyer shall be allowed as deduction. However it should be known at time of removal & if it is not known then intention of allowing such discount should be disclosed with department at time of removal of goods and make a request for provisional assessment.

Therefore, **the discount given to majority of buyers shall be allowed as deduction**

Discount can be given at any time - There is no provision that discount should be known or given at the time of removal of goods. For example year-end discount or turnover discount given on basis of turnover achieved during a prescribed period should be allowable as deduction. Where the assessee claims that the discount of any description for a transaction is not readily known but would be known only subsequently e.g. year-end discount, the assessment for such transactions may be made on a provisional basis. However, the assessee has to disclose the intention of allowing such discount to the department and make a request for provisional assessment. *Same view is reiterated in Chapter 3 Part III Para 2.5(iv) of CBE&C's CE Manual, 2001.*

Installation and Erection Expenses - Installation and erection expenses are incurred after the goods are removed from the factory. There may be an independent contract for erection or even a composite contract. The erection and commissioning charges should not be includible.

CLARIFICATION BY CBE&C – The Board has clarified with regard to erection an commission charges is as follows

(a) If final product is not excisable, question of including erection and commissioning charges does not arise.
(b) If a machine is cleared from a factory on payment of appropriate duty and later taken to premises of the buyer for installation/erection and commissioning into an immovable property, no further duty will be payable
(c) If parts/components are brought to site and the machine is erected/installed and commissioned, if the product (generator as per Board circular) is excisable commodity, cost of erection, installation and commissioning would be included in assessable value. In other words, if the expenditure on erection, installation and commissioning has been incurred to bring into existence any excisable goods, these charges would be included. If these costs are incurred to bring into existence some immovable property, they will not be included in the assessable value of such resultant property. -**CBE&C circular No. 643/34/2002-CX dated 1-7-2002.**

Interest on Receivables and on Delayed payment - The manufacturer may recover interest from buyer, if he does not make payment as per agreed terms and delay in payment of bill. Such interest should not be includible. Department has confirmed that delayed payment charges will not be includible, if shown or indicated separately in invoice and charged over and above the sale price. – **CBE&C circular No. 643/34/2002-CX dated 1-7-2002. Departmental circular No. 354/81/2000-TRU dated 30-6-2000 has clarified that interest on delayed payment shall not be regarded as part of the assessable value provided that:**

(a) The interest charges are clearly distinguished from the price actually paid or payable for the goods;
(b) The financing arrangement is made in writing; and
(c) Where required, assessee demonstrates that such goods are actually sold at the price declared as the price actually paid or payable. ***Chapter 3 Part III Para 2.5(iii) of CBE&C's CE Manual, 2001.***

Inspection charges / addition testing charges paid by buye*r* **-** Assessee carries out his own inspection and its cost is obviously included in his selling price. However, sometimes, customer carries out additional inspection either himself or through another inspection agency. Some times, expenses of such additional inspection / testing are borne by assessee while, in other case, the expenses may be borne by the buyer himself. This inspection is in addition to normal inspection and quality checks of the manufacturer himself. Considering the judgment given in **Emerson Net power Vs CCE (2004) 176ELT168(CESTAT), following** points need considered for inclusion or exclusion as per CBEC Clarification.

1 If the inspection charges are to be borne by assessee and goods can be sold only if approved by the inspection agency, the payment is in connection with sale and by reason by sale. It should be includible.
2 If such testing is a mandatory requirement, it should be includible whether borne by assessee or buyer. This is because there is no sale without such testing.
3 If assessee has agreed that buyer can reject the goods if not approved by the testing agency, the payment will be 'by reason of sale' and should be includible, whether paid by assessee or buyer.
4 If the inspection is done by buyer on his own only to satisfy himself about quality of the product, the cost should not be includible, as in such case, the payment made by buyer or expenditure incurred by buyer is not 'on behalf of assessee' but on his own.

Deduction of Local Taxes: In case of deduction of local taxes, effective taxes only deductible, taxes which are refundable/incentives are not allowed, In case of refundable taxes/ incentives collected by seller from buyer, which are not refunded to him is includible in valuation. Taxes paid on final products are only allowed as deduction. Taxes paid on inputs always includible in valuation **CBEC Circular-378/11/98**

Optional Extended warranty not included valuation- The assessee discharged duty liability by including cost of normal 2 years warranty in the value of manufactured goods. By way of separate agreement, the assessee offered extended warranty charges for 3rd and 4th Year which was optional in nature. Held **There is no direct or proximate connection between sale of car to the dealer and the purchase of extended warranty; hence extended warranty charges were not includible _MARUTI UDYOG LTD(2007) SC 212 ELT73**

Payment is in nature of a penalty for breach of contract is not includible in valuation: J.J. Confectionery (P) Ltd. entered into a contract with M/s Parry Confectionery Ltd for manufacture of confectionery. For not producing contract quantity, the assessee has been paid compensation. Held that, compensation has nothing to do with goods manufactured and cleared and can not be said to be by reason of, or in connection with, sale" and not includible in valuation **J J CONFECTIONERY (P) LTD. 2007 TRI210 ELT196**

Additional Quantity free supplied is nature of trade discount deductible: The assessee is giving one case free for every twelve cases and each case contains ten packets of coils. Held one case given free is a trade discount **VINAYAKA MOSQUITO COIL MFG CO.2005 - SC** 181 ELT 183

Area wise discount given by way of credit notes in addition to basic discount is deductible: Assessee was giving area-wise discount to its buyer apart from certain basic discount. The availability of discount is made known to the buyer at the time of receipt of sales order itself. However, the additional area-wise discount is given not at the invoice itself but by way of issuing credit notes. Assessee is clearing goods availing provisional assessment. Held area wise discount is deductible. **MAHAVIR SPINNING MILLS LTD – 2007 - SC** 212 ELT 152

Freight and insurance from depot onwards –it was held that freight and insurance from depot to the customer is not includible. ***Prabhat Zarda* v. *CCE* 2002(146) ELT 497 (SC),**

Rental charges of a Cylinder from buyer is not includible in valuation**- Grasim Industries Vs CCE (2004) 164ELT257 (CESTAT) / CCE v. Bisleri International P Ltd. 2005 (186) ELT 257 (SC)**,

Any Subsidy received from Government will not includible in valuation- **Nyveli lignite corporation.(2001)(SC)**

Discounts in the form of supplying additional quantity is similar to that of trade discount and allowed as deduction. **CCE Vs Hindustan Lever Ltd (2002) (SC) 142ELT513**

If any process is done by assessee after removal of goods, Process charges and value addition will not includible in valuation if such process does not amounting to manufacture- **CBEC Circular No 138/08/2000 dated 03.01.2001**

Bank charges incurred for collection of sale bill do not represent sale price of goods and hence not includible - **Hindustan Lever Ltd 2002(142) ELT513 (SC)**

Loading and unloading charges incurred by a distributor of the assessee are not includible in the A.V. of goods. Only those charges incurred for loading the finished goods within the factory of the assessee are includible. **Poona Bottling Co.Ltd.**

Commission paid to Selling Agent/Sales personnel is paid out of profit, where as discount is a deduction from sale bill. Where discount is deductible and Commission is not deductible

Value of Preloaded Operational software is not includible in the valuation of Computer, though computer cannot perform without operational software- **Acer India Ltd (2004) 172ELT289 (SC)**

Instrustuction manuals, leather cases supplied along with cameras charged separately is not a parts or components but they are only accessories and not includible in valuation. **Phil Corporation Ltd (2005) (SC) 180ELT311**

Monitors and Printers are not essential parts or components of a computer, which are bought out and supplied along with computer not includible in valuation- **CMS Computers (2005)(SC) 182ELT20**

Assessee was manufacturing soap for Hindustan Lever. He packed '*bindis*' with soap for free supply to buyers of soap, as per instructions of Hindustan Lever. It was held that supply of *bindis* has no connection with price of soap and price of *bindis* is not includible to arrive at assessable value. ***Oswal Fats & Oils* v. *CCE* 2003 (156) ELT 112 (Sc)**

Advertisement expenses (that are born by the buyers) not to be included in the assessable value .Factual position showed that the transaction was on principal to principal basis. Expenditure was incurred by buyer on his own. Hence, the Supreme Court held that there was no scope for making any addition in the assessable value. There is no evidence the gradual transfer of expenditure of seller to buyer. ***Alembic Glass Industries Ltd. v. CCEx. 2006 (201) ELT 161 (SC)***

Value of price support incentives received from the raw material supplier should be included in the assessable value of the final products

The assessee manufactured aerated waters and sold the same to the wholesale dealers. Further, it received price support incentive in the form of credit notes from the raw material supplier. The department contended that the assessee had undervalued the assessable value of the aerated water by excluding the rent on containers (ROC) and the value of price support incentive and thus, they should be included in the assessable value of the aerated water.

There was no evidence of any concession to any of the buyers or existence of any favored buyers. Thus, the Supreme Court held that the value of the price support incentives would not be includible in the assessable value of the aerated water. ***CCEx., Meerut-I Bisleri International Pvt. Ltd. 2005 (186) ELT 257 (SC)***

Subsidy received from the buyer/Government as per the policy of the Government The assessee received 20% subsidy from the Government and 10% subsidy from the buyer of its products as per the policy of the Government. The Apex Court stated that the subsidy of 20% from the Government could not be said to be additional consideration as it was not received from the buyer either directly or indirectly. Therefore, that would not be includible in the price of the goods for the purposes of excise. However, the 10% subsidy received by the assessee from the buyer was additional consideration. ***CCEx., Bangalore v. Mazagaon Dock Ltd. 2005 (187) ELT 3 (SC)***

Administrative charges collected from the buyer and paid to the Government are not to be included in the assessable value The assessee collected administrative charges from the buyer for selling the molasses as per the State Government Act. The amount collected was paid over to the Government. The Supreme Court held that such charges were in the nature of a tax and hence, would not be includible in the assessable value. ***CCEx. Lucknow v. Chhata Sugar Co. Ltd. 2004 (165) ELT 369 (SC)***

Advertising expenses incurred by an agency of the bottlers (Third party) not includible in valuation.

The assessee manufactured concentrates of non-alcoholic beverages and sold it to various bottlers. The bottlers after processing the concentrate bottled the outcome and sold the same. Bottlers formed a company and advertising about the product. The Apex court held that Advertisement expenses not includible in valuation ***CCEx., Mumbai-I v. Parle International Ltd. 2006 (198) ELT 486 (SC)***

cost of bought out items viz. sockets, which are fitted to m.s./g.i. pipes before their removal from the factory gate, is includible in the assessable value of the pipes The reason for the inclusion being the essentiality of the sockets for the functioning of the pipes as these sockets join the pipes to each other. ***Siddhartha Tubes Ltd. v. CCEx., Indore (M.P.) 2006 (193) ELT 3 (SC)***

When the significant sales to unrelated persons and some sales to related person, the price to related and unrelated persons is same, there is no special consideration to related persons. Hence the price is the value ***CCEx., Mumbai v. Universal Luggage Mfg. Co. Ltd. 2005 (190) ELT 3 (SC)***

Supplying 13 units of ex goods to a wholesaler at a price of only 12 units, is in the nature of trade discount by way of quantity discount. Further, in case of free supply there is no sale and thus, its value is not includible in the A.V. under sec 4A. **Vinayak Mosquito Coil Mfg. Co.(CESTAT)**

Pre-delivery inspection charges paid to dealers by customers and not to manufacturer will not be includible in valuation. **Maruthi Udyog Ltd (2004) 170ELT245(CEGAT)**

Engineering Charges/Design supplied by customer, since the design not made by manufacturer- **Bharat Forge Ltd (2000) 122ELT 169**

Excess collection of insurance charges on account of collection on average basis would not be taxable as value of goods. ***[Rama Vision Ltd. v. CCEx., Meerut 2005 (185) ELT 296 (Tri.-Del.)]***
In cases where price is reduced due to non-completion of contract within contracted time, the assessable value would be computed according to the reduced rates as delivery is made in terms subsequently agreed upon. ***[Jaiswal Equipments and Holdings Pvt. Ltd. v CCEx., Raipur 2005 (185) E.L.T. 306 (Tri. -Del.)]***

Subsidy / Rebate obtained by assessee - A general subsidy / rebate is obviously not be includible as it has no connection with individual clearances of goods.

Profit earned on post removal activity - Profit earned on post removal activity is not to be added unless there is any deliberate attempt to divert a part of the genuine price and show it as other charges - ***Empire Industries Ltd.*** **v.** ***CCE*** **1997 (CEGAT). In** ***Baroda Electric Meters Ltd.*** v. *CCE* 1997 (SC), it was held that profit earned by manufacturer on transportation/insurance couldn't be included in Assessable Value. - ***S R Jhunjhunwala*** **v.** ***CCE*** **1999(114) ELT 890 (CEGAT) -** ***Sri Kaliswari Fireworks*** **v.** ***CCE*** **1998(98) ELT 93 (CEGAT)**

3. Case Laws on Valuation rules

Valuation of samples - CBE&C, vide circular No. 813/10/2005-CX dated 25-4-2005 has clarified that in case of samples distributed free, valuation should be done on basis of rule 4

Valuation in case of part of goods sold and part is captive consumption

CBEC has clarified that if same goods are partly sold by assessee and partly consumed captively, goods sold have to be assessed on basis of transaction value and goods captively consumed should be assessed on basis of rule 8. **CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002**, the reason is, as per new section 4, transaction value has to be determined separately for each removal. In case of captive consumption, cost calculation should be as per CAS-4 issued by ICWAI

Free Samples along with main product: When free samples given as a addition to the product, no duty is payable on samples (In this it is biscuits), trade discount can be given in any form – **Surya Foods and Agro ltd Vs CCE (2003).** Same view was held **in Vinayaka Mosqito coil Vs CCE (2004)174ELT107(CESTAT)** (Here the assessee supplying one case of mosquito coil free for every 12 coils.

Full intrinsic value should be considered, ownership is irrelevant it was held that cost of material supplied free by buyer has to be added to arrive at full intrinsic value of goods. It was observed, '*The fact that the petitioners are not the owners of the end-product are irrelevant. Taxable event is manufacture - not ownership*'. - **Burn Standard Co. Ltd. v. UOI - SC,**

When free gifts are given in case of products covered under MRP, the free gift is only incidental benefit, the price will be sole consideration.- **Sony India Ltd Vs CCE 2004 (SC)**

Where there is a free supply of components to the assessee by the buyer whose brand name goods are to be manufactured then the A.V. shall be determined in accordance with rule 6 as price is not the sole consideration for sale. **Dugar Electronics**

Where the sale is made from the depot the freight and insurance charges up to the depot will be includible while the freight & Insurance. For delivery to the customer from the depot is not includible in A.V. **Prabhat Zarda Factory Ltd.**

Even if free gifts are offered by the manufacturer to the buyer on the sale of ex goods, the retail sale price charges from the buyer will be the sole consideration for sale. **Sony India Ltd.**
Transportation charges collected in excess of that agreed upon would not be additional consideration if the contract for the same is separate. ***[PSL Ltd. v. CCEx., Daman 2005 (185) ELT 59 (Tri. – Mumbai]***

HPCL at bottling plant, gas is put into cylinders which are then delivered at dealers at a Company Billing Rate (CBR). The CBR price includes among other things, delivery charges from the Bottling Plants to the dealers' premises. CG had fixed the delivery charges at Rs. 10 per cylinder which is inbuilt in CBR. Held that CBR price which includes among other things such as delivery charges from the Bottling Plants to the dealers' premises not includible in valuation **HINDUSTAN PETROLEUM 2007 SC [213 ELT 116]**

Tribunal decision needs reconsideration. ISPAT INDUSTRIES LTD. – 2007 – TRIBUNAL,Mumbai LARGER BENCH 209ELT185
Assessee was selling goods manufactured by him to unrelated buyers. Part of production was also consumed by him in the other unit . Assessee valued the captively consumed goods at 110% of cost of production by applying Rule 8 of Central Excise Valuation Rules, 2000.

Department has insisted that shall Rule 8 be applicable for valuation of captively consumed goods only when entire production is captively consumed. Where part only of goods is captively consumed, then valuation shall be done in terms of Rule 11

Held that departments contention was right. *This is evident on a plain reading of Rule 8 of the valuation rules, which reads as under "**Where the excisable goods are not sold by the assessee but are used for consumption by him** or on his behalf in the production or manufacture of other articles, the value shall be110% of cost of production or manufacture of such goods"*

Notes: It is very clear to note that no where it is mentioned in the rule 8 the word "exclusively" to apply in a cases where entire production was captively consumed. And it is no where mentioned in goods should be consumed in the same factory of assessee and not in any other unit of assessee

It is very sad to note that the CBEC Circular.CBEC has clarified that if same goods are partly sold by assessee and partly consumed captively, goods sold have to be assessed on basis of transaction value and goods captively consumed should be assessed on basis of rule 8. **CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002**

The above circular was not given weightage and decision was given considering some other tribunal decisions

Related person

Relation as per interconnected undertaking is not relevant at all as the rule 10 of valuation rules discarded it. **Asia Tyres Vs CCE (2003) 152ELT454 (CEGAT).** Hence other three concepts such as the relative as a relative, relative cum distributor and persons having mutual interest in each other is only relevant

Sale to related person at a same price to unrelated person - If there were significant sales to unrelated buyers at same price at which goods were sold to related persons, that price could form basis of valuation – **CCE v. Universal Luggage 2005 (190) ELT 3 (SC)**

Mutual interest is relevant: Persons will be treated as relative only when interest of business of each other. If one person has interest with other and other does not interest, they are treated as unrelated persons only. **UOI Vs kaira district Co-operative milk producers associations (sc) 146ELT502/CCE Vs Kersons Manufacturing Ltd100ELT194 (CEGAT)/UOI Vs Atic Industies Ltd (SC)**

Mutual interest is relevant: Mere rental payments and discounts does not make them relatives

Assessee was selling goods to a buyer who was reselling goods. Department contended that assessee and buyer are related person and value should be done on the basis of price of buyer to unrelated person be taken as AV. Department contend that

Registered office of buyer and assessee-company was located in the same premises. Assessee Company pays factory rent to buyer. And 40% discount was offered by assessee to buyer.

Held: relative value will not applicable because buyer does not hold any shares in assessee-company nor the assessee-company owns any shares in buyer. Rent paid is also at market rate. The 40% discount was a normal trade practice. There is no evidence to suggest that the profit made by the buyer had flown into the assessee company **DAMNET CHEMICALS PVT LTD.2007 SC216 ELT3**

Companies with Common directors are not relatives: The fact that two public companies have common directors does not render both the companies as related person. **Alembic Glass Industries Ltd (SC)**

Mere holding shares in public ltd company do not mean shareholder has interest in the public Company. No mutual interest even mutual share holding and common Directors/Common partners - Alembic **Glass Industries Vs CCE (2002) SC 143ELT244/Narendra Industries Vs CCE (2001) 132ELT141(CEGAT)/Besta Chemicals (SC) 2005**

Merely because the buyer is the holding co. and a person related to manufacturer does not by it show that the invoice price was influenced by such relationship, more so when the manufacturer is selling goods at same prices to other prices. **Acorn Engg. Ltd(CEGAT)**

A is a holding company B and C is a Subsidiary Companies. B is a manufacturer. B Sells 60% products A and 40% products to C. B Sales promotion expenses are met by A. Held AB and C are treated as related persons - **Flash Laboratories Ltd (2002) (SC)151ELT241**

Interconnected undertaking cannot be treated as relatives and valuation under rule 9 will not apply. Interconnected undertaking will be treated as relatives only when they are holding and subsidiary. Here the Cost Accountant also certified the value that there is no decrease in the price to relative. Held demand by way of SCN to be withdrawn. **Kirloskar Ferrous Industries Ltd. vs. CC&CE, Belgaum 2007(78) RLT 402 (CESTAT-Bang.)**

An Assessee, who is distributor but not a relative, cannot be treated as related person. Both the distributor and relative should be satisfied to treat them as related persons- **Bombay Tyre International tyres Vs UOI (SC)**

Federation and Member of federation are not relatives

Assessee was member of Federation known as 'Gujarat Cooperative Milk Marketing Federation Ltd'. Assessee was selling products to Federation. The Federation was charging commission for marketing the product. It was held that the commission charged by Federation is deductible, as even if assessee may have interest in the Federation, the Federation has no interest in the business of assessee. Hence, they cannot be treated as 'related person' ***UOI* v. *Kaira Dist Coop Milk ProduceRs. Union* 2002(146) ELT 502 (SC),**

Brand name owner is not related person –

Often, some companies get the goods manufactured under their brand name from some other Companies. However, such brand name owner cannot be termed as relative of the actual manufacturer, *only for this reason*. In such cases, duty payable will be on the basis of price charged by the actual manufacturer to the brand name owner – **Voltas Ltd. v. CCE 2005 (188) ELT 421 (CESTAT).**

97% of sales were through marketing subsidiary and only 3% sales were to independent buyers It was held that valuation is required to be done on basis of price at which the related person (subsidiary in this case) makes further sale. Net price charged by related person to its buyers (exclusive of discount) should be assessable value. **In *Pepsico India Holding* v. *CCE* 2004 (163) ELT 478 (CESTAT),**

.4. Cum Duty Price

When Cum Duty price is to be considered

- When the price is not sole consideration and if any Additional Consideration is added to arrive Assessable Value it should be treated, as cum duty price - CBEC D O Letter 334/1/2003 dated 28.02.2003
- If Assessee removes goods without payment of duty by mistake (treating dutiable goods as exempted goods), the price should be treated as cum duty price CCE Vs Maruthi Udyog Ltd (2002) (SC). If the goods are covered under MRP, abatement deduction will not available
- If the information is specific (in exam question) it should be cum duty price
- And calculation should be made backwards-

A V= (Cum duty price minus permissible deduction x 100/100+rate of duty including EC

If Additional Consideration is added, it should be treated, as cum duty price and calculation should be made backwards- **CBEC D O Letter 334/1/2003 dated 28.02.2003** (Cum duty price minus-permissible deduction/1+rate of duty)_

If Assessee removes goods without payment of duty by mistake (treating dutiable goods as exempted goods), the price should be treated as cum duty price and calculation should be made backwards- **CCE Vs Maruthi Udyog Ltd (2002) (SC). If the goods are covered under MRP, abatement deduction will not available**

5.Job work

As the new rule for valuation Rule 10 A of Job work is effective from 01.04.2007, the old case laws regarding valuation of job work are not relevant.

6. Bought out accessories

Cost of Bought out Parts, Components, which are fitted and supplied along with the main product, will be includible in the valuation. **CCE Vs Multiplex Packaging (1999) 105ELT374 (CEGAT)/Diamond Manufacturing Co. Vs CCE (SC) 44 ELT 24.** Profit earned on Bought out Parts, Components and Consumable is not includible in the valuation -**Triveni Engineering Vs CCE (2002) 122ELT386 (CEGAT)**

Cost of Accessories, which are optional whether fitted, or not to the main product will not be includible in the Valuation.- **Shriram bearing Vs CCE (1997) (SC)91ELT255, United Copiex Vs CST (SC)/Mehra Bros Vs JC (SC)51ELT173**

Cost of Consumable is not includible in the valuation; even the main product cannot function with out such consumable. Example, ribbon in case of typewriter, cassette in case of tape recorder and needle in case of gram phone. **State of Up Vs Kores India Ltd (SC)/ PSC data Systems Vs CCE (SC) /CST Vs Punjab Gram phone Co. (SC)**

7.Valuation in case of Computer Software

Value of preloaded operational software not includible of valuation in case of computer; even computer cannot function without software. Software is not a part of Computer. Computer is complete without software. **CCE Vs Acer India Ltd (2004) (SC) 172ELT289**

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III - Case studies on Cenvat Credit

"In the manufacture of goods"
The Cenvat scheme allows credit on inputs used in or in relation to the manufacture of final products. It was held that the expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods ***J.K.Cotton Spinning and Weaving Mills Co. Ltd* v. *S.T.O.* 1997 (91) E.L.T. 34, (SC)**

Raw material or component or part
It was held that anything that enters into and forms the part of the manufacturing process or is required to make the article marketable must be deemed to be a raw material or component part of the end product and must be deemed to have been used in completion or manufacture of the end product. In this specific case, wrapping paper was held to be a raw material and component of wrapped paper. ***Monotype India Ltd.* v. *CCE* - (1996) 83 ELT 594 (CEGAT) * *Joy Foam Pvt. Ltd.* v. *CCE* - (1996) 83 ELT 72 (CEGAT 3 member bench order). Collector v. East End Paper Industries Ltd - 1989 (43) E.L.T. 201 Supreme Court**

Inputs need not be contained in the final product
It Was held that sodium sulphate used for chemical reaction at pulp stage is treatable as raw material used in the manufacture of paper even though, sodium sulphate is burnt up and does not retain its identity in the end product. The Supreme Court specifically held that the test would be to see whether without the presence of the said raw material it would be possible to manufacture the end product. **In *CCE* v. *Ballarpur Industries Ltd* - 1989 (43) E.L.T. 804, Supreme Court**

The Cenvat scheme allows credit on inputs used in or in relation to the manufacture of final products. **The Supreme Court in case of *J.K.Cotton Spinning and Weaving Mills Co. Ltd* v. *S.T.O.* 1997 (91) E.L.T. 34,** has held that the expression "in the manufacture of goods" should normally encompass the entire process carried on by the Manufacturer of converting raw materials into finished goods

Waste and scrap is final product for Cenvat - As per Cenvat provisions, waste or scrap is treated as a final product within definition of rule 57AA(c) [Now new rule 2(h)] and its clearance is as if it is a final product. - MFDR TRU No. 345/2/2000-TRU dated 29-8-2000.

Direct despatch from manufacturer to final buyer, but sale is through dealer i.e. Transit sale - If whole consignment is despatched to buyer from manufacturer, Cenvat will be permissible, if name of the final buyer is shown as consignee. (Invoice will be in name of dealer). The consignee can avail Cenvat on the basis of duplicate copy of manufacturer issued under Rule 11 (*that time Rule 52A*). In such cases, the goods need not be brought to the premises of registered person. Invoice of Registered person (dealer) is not required for availing Cenvat by the consignee -**CBE&C Circular No. 96/7/95-CX dated 13-2-1995**.

Cenvat credit on capital goods used in manufacture of exempt intermediate product - It may happen that capital goods may be used in manufacture of an exempt intermediate product, but final product may be dutiable. In such case, Cenvat credit is available on such capital goods, if final product is chargeable to duty. - **CBE&C circular No. 665/56/2002-CX dated 25-9-2002.**

As per notification No. 67/95-CE dated 16-3-1995, capital goods (as defined in Cenvat Credit Rules) manufactured in a factory and used within the factory of production are exempt from excise duty. Further, as per Explanation 2 to rule 2(g) of Cenvat Credit Rules, inputs include goods used in manufacture of capital goods, which are further used in the factory of manufacturer. Thus, if capital goods are manufactured and used within the factory, Cenvat credit can be availed of goods, which are used to manufacture such capital goods. Moreover, no duty will be payable on such capital goods.

Department has expressed an opinion that in view of specific definition of 'input' in new Cenvat Credit Rules, Cenvat credit will be available only if inputs/capital goods are used within the factory. - **CBE&C circular No. 637/28/2002-CX dated 8-5-2002.**

Cenvat Credit is to be reversed, if Final product was destroyed and remission of duty was granted –**CBEC Circular 800/33/2004-CX dated 01.10.2004 /Mafatlal Industries (2003) 154ELT543**

Allowability of Cenvat credit on Inputs

Examples of Inputs eligible for Cenvat Credit:

- Process losses and handling loss are allowable
- Loss of inputs during handling eligible
- Excessive loss also permissible
- All inputs necessary to make the goods marketable are eligible
- Inputs required for quality control tests are eligible
- Inputs used in effluent treatment plant eligible
- Repeated use is not a bar for availing Cenvat credit
- Defective final product is 'input' for purpose of availing Cenvat credit
- Inputs used even in trial production eligible
- Credit if goods lost/destroyed in process but no credit if inputs are lost or destroyed in store-room or pilfered
- Loss/shortage in transit during receipt of goods is not allowable
- Loss in transit due to natural causes allowable
- Excess use due to abnormal conditions eligible
- Capital goods not defined, as 'capital goods' will be eligible as 'inputs'
- Indirect use is permissible
- Inputs eligible for Cenvat credit even if intermediate product exempt

Assessee used LSHS and furnace oil for generation of electricity which is then used in manufacture of "final product". Certain part of electricity so generated is also used is residential colony of workers which is adjacent to the factory
LSHS and furnace oil used to generate electricity which is captively consumed for manufacture of final product (such as caustic soda, cement etc). - Without continuous supply

of such electricity generated in the plant, manufacture of cement/caustic soda not possible Assessee entitled to Cenvat credit on LSHS in view of expression "used in relation to the manufacture – Even otherwise, goods used in generation of electricity which is used in or in relation to manufacture of final product are eligible as input in terms of inclusive part of definition of input.

However, credit is not admissible on that quantity of input which is in generating electricity which is consumed by residential colony of factory's workers' families, schools etc SOLARIS CHEMTECH LTD. – 2007 - SC

Spares used for rope way partly inside and partly outside the factory

Assessee, a cement manufacturer, used ropeway system for brining crushed limestone to the factory from mines located 4.2 km away from the factory. A part of ropeway system was installed in the factory and the system was controlled from the factory. Treating the spares for ropeway as capital goods,

The assessee took cenvat credit thereon. The department contended that spares for ropeways were not used in the factory of the manufacturer and thus, they cound not be treated as "capital goods", therefore, cenvat credit on such spares was denied.

Held: Cenvat credit available "*the ropeways, in the instant case, are partly outside the factory and partly within the factory. The extension outside the factory is a part of a ropeway inside the factory. Thus, the use of spares is within the factory of assessee. That being so, credit thereon shall be admissible"* **BIRLA CORPORATION LTD.2007SC** 212 EL162

All inputs necessary to make the goods marketable are eligible - It is settled law that use of any material to render the goods marketable can be taken to be used in relation to manufacture of the final product - Monotype India Ltd. v. CCE - (1996) 83 ELT 594 (CEGAT) * Joy Foam Pvt. Ltd. v. CCE - (1996) 83 ELT 72 (CEGAT 3 member bench order).

Tyres and Tubes are raw material for vehicle

In *Telco* v. *State of Bihar* - 1994 (74) E.L.T. 193, the Supreme Court held that the term raw material varies from industry to industry and decided that items like batteries, tyres and tubes, which, though are finished products in themselves, can be considered as raw materials for vehicles.

Name plate for fan is a rawmaterial

In *CCE* v. *Jay Engg. Works Ltd.* - 1989 (39) E.L.T. 169, the Supreme Court held that name plate fixed on a fan is an input eligible for set off under Notification 201/79 in view of the fact that without the said name plate the fans cannot be marketed.

Bowl and spoon supplied along sikakai powder are necessary items to avoid contamination. Cenvat Credit is allowed- **R K Herbals (2004)167ELT448**

Quality control is a process of manufacture; inputs used in quality control are eligible for cenvat Credit- **Biddle Sawer Limited (2004) 168ELT119**

Raw materials used for making cartons eligible for MODVAT (Now Cenvat Credit) - *Britannia Industries Ltd* v. CCE 1993 (67) E.L.T. 980 (T-EZB) -

Oil paint used to mark under Rule 51 on packages eligible - *Sterlite Inds Ltd* v. CCE 1995 (75) E.L.T. 712 (T-WZB)
Duplex boards used for producing cartons which was used to pack torches is eligible for MODVAT - *Geep Indl Syndicate Ltd* v. CCE 1995 (76) E.L.T. 399 (T-NZB)

Cellophane tapes used for sealing cartons eligible - *Kashmir Vanaspati Ltd* v. *CCE* 1996 (85) E.L.T. 150 (T-NZB SM)

CENVAT ON DEFECTIVE GOODS RETURNED

In *CCE* v. *Tin Manufacturing Co* -2000 (119) E.L.T. 290 (T-LB) the Large Bench of the Tribunal held that so long as the defective goods were specified and were duty paid, they would become inputs since they would have to be remade. Now this concept has been brought in under rule 16 of Central Excise Rules, 2002 giving benefit of the Cenvat credit on the goods returned for repair, reprocessing, remaking or for any other purpose.

Some illustrations of inputs, which are not eligible.

- Ammonia paper used for preparation of drawings is basically a R&D exercise and is not eligible as input **as the process is not integrally connected with the manufacturing process.**
- Electric lamps used for lighting the manufacturing area are not eligible **- *Kanoria Sugar* v. *CCE* 1996 (87) ELT 522 (CEGAT).**
- Building material used for factory building, office equipment such as fans, coolers etc. not eligible - ***J K Cotton Spinning and Weaving Mills* v. *STO, Kanpur* - 1965 (91) ELT 34 (SC).**

Inputs/intermediate products destroyed in the course of Processing No reversal of Credit, i.e. credit is allowed- because they used in the manufacturing **Asmaco Plastic industries**/ - **HEG Ltd (2001) 127ELT121**

Light diesel oil is not an input with effective from 1.03.2003. Credit lying in stock on 28.02.2003 need not to reverse. A right that has already accrued cannot be taken away/- **Eicher Motors(SC) 106 ELT 3/Grasim Industries 163ELT10**

Inputs, accessories pilfered and not used in manufacture not eligible for credit. - **Maruthi Udyog limited (2004) 115ELT433**

No Credit on inputs used in the mines, since miners are far away from factory- **J K Udayapur Udyog limited (2004) 171ELT 289 (SC)**

Credit cannot be taken on Inputs, which are used outside the factory. It was held by the Court that the inputs, which are not used in the factory, cannot be termed as Inputs for the purpose of section 2(g) . It is necessary inputs to be received to the factory to avail credit. **CCE Jaipur Vs. J.K.Udaipur Udyog Limited**

Job worker can utilise credit of own material used by him in job work – The job worker can use his own material while undertaking job work. He can avail Cenvat credit of duty paid on such material, even if he clears the final products after job work without payment of duty to person who had supplied the material – **Sterlite Industries v. CCE (2005) 183 ELT 353 (CESTAT**

Supreme Court decision needs review

Explosives used in the limestone mines and not in the factory for manufacturing cement, held explosives as inputs edible for cenvat credit. **Vikram Cements Ltd., SC 2005**
This decision is relating old modvat rule 57 etc Even in that There is express wording in cenvat credit rules that inputs received in to the factory and used in factory to avail credit. Here the explosives were used in mine for blasting instead of factory to manufacture cement. **This is a judgment given by the great honourable Supreme Court, without referring the law;** This decision needs re-consideration by the Hon'ble SC

Ropeway which connects the mines with factory whether entitled to Cenvat Credit Even if these are not used in the factory _It was held Credit shall be available. "as ropeway is proceeding from the factory" **MAN IKGARH CEMENT LTD.2005 – S.C.**

Inputs of packing material used in manufacture of exempted goods which were exported by executing LOUT, rule 6 for denial of credit will not apply assessee eligible for refund of duty on inputs as per rule 5. **Jobelle vs. CCE, Mumbai-I 2007(78) RLT 462 (CESTAT-Mum)**

Unutilised credit can be refunded in the event of closure of the factory
The assessee stopped production due to the closure of its factory and thus came out of the cenvat Credit scheme. The assessee filed a refund claim in respect of the unutilised Cenvat credit. The High Court allowed the refund claim on the premise that erstwhile rule 5 of the CENVAT Credit Rules, 2002 did not expressly prohibit refund of unutilised credit where there was no manufacture in the light of closure of the factory. ***Union of India v. Slovak India Trading Co. Pvt. Ltd. 2006 (201) ELT 559 (Kar.)*** *The principle pronounced in this judgment may hold good in the new scheme of the CENVAT Credit Rules, 2004 as well.*

Spares for ropeways used for bringing crushed limestone from the mines to the factory are Capital goods and are, thus eligible for cenvat credit. **Birla Corporation Ltd.**

If assessee not follows Cenvat procedures assuming that the product is exempt from duty. If, subsequently, a demand is raised on him for past period, he cannot obviously comply with the procedures prescribed in respect of past period. In such cases, Cenvat credit has to be allowed for past period even if prescribed records were not maintained and Cenvat credit was not claimed that time - ***Chamundi Steel Re-rolling Mills* v. *CCE* - 1996 (81) ELT 563 / *Vivek Re-rolling Mills* v. *CCE* - 1994 (73) ELT 660 (CEGAT)/ *Jagraon Machine Tools* v. *CCE* 1993 (65) ELT 300 (CEGAT).**

If input becomes waste and sold as scrap, it cannot be said that input is cleared '*as such*' under. What is cleared is 'waste' and duty will be payable as if waste has been removed - ***Tata Oil Mills Co. Ltd.* v. *CCE* 1998 (102) ELT 479 (CEGAT) * *Fluid Line* v. *CCE* 2002(142) ELT 673 (CEGAT SMB).**

Full credit available even if price subsequently reduced - Full credit is available even if supplier subsequently gives price reduction. unless the duty liability of supplier was reduced. ***CCE* v. *Trinetra Texturisers* 2004 (166) ELT 384 (CESTAT)**

Fuel used in the factory - Definition of 'input' covers fuel used in factory in or in relation to manufacture of final products or for *any other purpose*. Thus, 'fuel' will be eligible for Cenvat credit even if electricity/steam generated is utilized/sold outside the factory. As explained above, the words used are 'for any other purpose'.

If the input becomes scrap in storeroom itself, Cenvat credit will not be admissible - ***CCE* v. *Ashok Leyland Ltd.* - (1996) 83 ELT 364 (CEGAT).**

Loss due to leakage during process - Cenvat credit is available even if there is loss of input due to leakage in storage tank during process - ***Doaba Alco Chemicals* v. *CCE* 2005 (179) ELT 434 (CESTAT SMB).**

Fire during process - If the goods are damaged during production, Cenvat will be available. ***Asmaco Plastic Industries* v. *CCE* 1998(100) ELT 129 (CEGAT**), it was held that Cenvat credit is eligible if inputs are destroyed by fire during the process. - same view in ***CCE* v. *HEG Ltd.* 2001(127) ELT 121 (CEGAT SMB) * *CCE* v. *Rajasthan Spg* 2001(128) ELT 239 (CEGAT**) * *Samtel Colour* v. *CCE* (2004) 171 ELT 101 (CESTAT) * *CCE* v. *Indchem Electronics* 2003(151) ELT 393 (CEGAT)

It was held that loss of inputs is admissible even if the fire takes place at the premises of job worker. ***Shreeram Capacitors* v. *CCE* 2004 (166) ELT 262 (CESTAT)**

Remission of duty on inputs - It was held that if inputs are lost in fire, remission of duty can be granted [Rule 21 uses the words goods unfit for consumption or for marketing. The words 'finished goods' are not used]. ***Asian Paints* v. *CCE* 2004 (173) ELT 187 (CESTAT),**

Damage by flood - It was held that Cenvat credit availed on inputs is eligible even if semi-finished goods and finished goods made out of inputs were washed away by flood water and lost. ***CCE* v. *Colour Chemicals Ltd.* 1999(113) ELT 132 (CEGAT), However if remission of duty granted, credit should be reversed**

Shortages in stock of inputs - If inputs are found short in stock taking, they are not used in or in relation to manufacture of finished goods. Hence, Cenvat credit is not admissible - ***K-Three Electronics (P.) Ltd.* v. *CCE* 2004 (173) ELT 432 (CESTAT).**

A demand of over Rupees 60 lakhs was confirmed when it was found that many inputs like tyres, stereos and air-conditioners were pilfered and actual cars produced were much less compared to the inputs received and issued to production. ***Maruti Udyog Ltd.* v. *CCE* 2000(115) ELT 433 (CEGAT),**

Cenvat credit is available on capital goods used in manufacture of exempt intermediate product, if final product is dutiable. - **CBE&C circular No. 665/56/2002-CX dated 25-9-2002 - quoted and followed in** *Bharat Forge* **v. *CCE* 2004 (165) ELT 339 (CESTAT).**

Building material - Building material used for factory building, office equipment such as fans, coolers etc. not eligible - *J K Cotton Spinning and Weaving Mills* v. *STO, Kanpur*, (91) ELT 34 (SC).

Inputs used in R&D In this case, it was held that ammonia paper used for preparation of drawings is basically a R&D exercise and is not eligible as input as the process is not integrally connected with the manufacturing process. ***CCE* v. *English Electric Company* 1997(93) ELT 293 (CEGAT**

Inkjet Printer used to print the date of manufacture is considered as capital goods and Cenvat Credit can be Claimed-- **Surat Beverages Ltd VS CCE (2004)165ELT313(CESTAT)**

One to one Correlation is not required

There is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. - ***CCE* v. *Dai Ichi Karkaria Ltd.* 1999 (112) ELT 353 (SC).**

CBE&C has, vide para 2(viii) of circular No. 33/33/94-CX dated 4-5-1994 has confirmed that there is no 1:1 correlation between input and final product under the Cenvat scheme for utilization of credit.

Installation of capital goods is not a pre requisite before availing Cenvat Credit

Installation/use of capital goods is not a pre-requisite for taking Cenvat credit. First 50% of Cenvat credit taken in respect of capital goods before their installation or use cannot be denied - ***Goyal MG Gases* v. *CCE* (2004) 168 ELT 369 (CESTAT).**

Capital goods in factory to manufacture exempted final product.

Capital goods used exclusively for manufacture of exempted goods or providing exempt service are not eligible [rule 6(4)]. Thus, partial use of capital goods for manufacture of exempted goods or provision of exempt output services is permissible, i.e. in such case, Cenvat credit on capital goods will be allowed.

Input used in by-product is also input used in main product

In Hindustan Copper Ltd. v. CCE 2006 (201) ELT 295 (CESTAT), it was held the by-product is not 'final product'. It is not result of deliberate manufacture. It does not enter into equation between input and final product. In this case, it was held that reversal of Cenvat credit or payment of 10% 'amount' is not necessary if part of input goes into a by-product– relying on Swadeshi Polytex Ltd. v. CCE 1988(38) 794 (SC), where it was held that all inputs are used in manufacture of final product, even if part goes in by-product.

Process losses and handling loss are allowable

There will be some loss of inputs during manufacturing process. Cenvat is available on entire quantity of input even if part of input goes in process loss, since all inputs are 'used' in the manufacture of final product, even if it is not reflected in final product **- Multimetals Ltd. v. ACCE 57 ELT 209 (SC) .**

Inputs getting used up or consumed eligible – In Eastern Electro Chemical Industries v. CCE 2005 (181) ELT 295 (SC 3 member bench), assessee was using MS casings in manufacture of Calcium Carbide. These got melted during process and got mixed up with other molten materials. It was held that it is 'input'.

Repeated use is not a bar for availing Cenvat credit

Cenvat credit cannot be denied merely because an input is capable of repeated use. Just because it is capable of repeated use, the same cannot be taken to be falling in category of 'appliances' or 'machinery', which are excluded items for definition of inputs - *CCE* v. *Halol Leather Cloth Mfg. Co. Ltd.* - 1994 (74) ELT 322 (CEGAT).

No credit on short received inputs

If inputs are short received and there is loss during transit, the goods short received cannot be termed as 'used in or in relation to manufacture'. Hence, Cenvat credit on such short received inputs is not available - **Asea Brown Boveri Ltd. v. CCE 1994(74) ELT 897 (CEGAT) - same view in Bombay Dyeing v. CCE 1999(113) ELT 331 (CEGAT) * Sterlite Industries v. CCE (2007) 212 ELT 193 (CESTAT).**

Cenvat on Paints

Paints used in factory are eligible. As explained above, the extended definition of input says that paints can be used 'for any purpose'. Thus, all paints used in the factory are eligible, for whatever purpose they are used. Paints used to protect plant are eligible as input – **Ruchi Health Foods v. CCE (2007) 218 ELT 716 (CESTAT).**

Service tax on Mobile phones eligible for Cenvat Credit

Earlier Service Tax Rules required 'installation' of telephones in the business premises. Hence, CBE&C had clarified vide circular No. 59/8/2003-ST dated 20-6-2003 that Cenvat credit will not be available in case of mobile phones. Now there is no such requirement. Hence, service tax paid on mobile phones will be eligible for Cenvat credit w.e.f. 10-9-2004, so long as these are used for 'activity relating to business

Ownership of capital goods is not essential to avail Cenvat on capital goods

In *Sharda Motors* v. *CCE* (2002) 51 RLT 33 (CEGAT), it was held that person receiving jigs and fixtures on leave and license basis from clients can avail Cenvat credit of duty paid on jigs and moulds supplied by the client. Ownership is not relevant - followed in *HIS Automotives Ltd.* v. *CCE* 2004 (163) ELT 116 (CESTAT SMB).

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Manufacture of branded goods under job work

Availment of Cenvat Credit on capital goods (FP exempt at time of receipt and subsequently becoming dutiable)

The assessees are manufacturing socks and were exempted from payment of duty prior to the 2003 Budget. The goods became dutiable only w.e.f. 1-4-2003. Certain capital goods were received by the assessees during June 2002 and September 2002 and installed in March 2003 and some of the capital goods were used in April 2003. Cenvat credit on the goods has been denied on the ground that final products (socks) were exempt at the time of receipt of capital goods,. The assessee contended that, capital goods were used at the time of dutiability of goods And eligibility of 50% credit

Held that: Credit eligibility to be determined with reference to the dutiability of the final product on the date of receipt of capital goods SPENTA INTERNATIONAL LTD.. – 2007 – TRI (Larger Bench)216 ELT133

Where Common inputs used for dutiable and exempted goods and if no separate accounts are not maintained, and if exempted goods are not sold, and captively consumed, 10% amount is payable based on Rule 8 Valuation.
The assessee contention that rule specified 10% amount on the value of goods sold is not tenable. Held that *The rate of 10% is the measure to calculate the presumptive sum and deemed price. The Assessee liable to pay 10% on the 110% of cost of production*,
BALLARPUR INDUSTRIES LTD.– 2007- SC 215ELT489

Where Common inputs used for dutiable and exempted goods and if no separate accounts are not maintained and assessee selling goods under FOR contract basis, The valuation rule 5 will apply and 10% amount is payable on FOR price minus transportation cost **KOYA & COMPANY CONSTRUCTION PVT LTD.– 2007- Tribunal214ELT35**

Reversal of wrongly taken credit before utilization thereof, is as good as "non-availment of credit by the assessee" and thus, no question of interest liability under rule 14
Assessee has taken cenvat credit which was not admissible. But later on reversed the credit before utilizing that. The officer took the action for recovery of interest in terms of Rule 14 of Cenvat Credit rules pressing the charge of "credit wrongly taken". Assessee contended that in absence of utilisation of credit, the assessee was not liable to pay interest. Held Assessee contention is valid and not liable to pay interest. **MARUTI UDYOG LTD 2007 –SC 214 ELT A50**

Reversal of mistakenly taken credit before utilization thereof, is as good as "non-availment of credit by the assessee and hence is eligible to take exemption
Assessee final product was entitled to exemption subject to the condition of non-availment of Cenvat credit. Assessee, however, booked the credit mistakenly but later on reversed the credit before utilizing. Held exemption is available **BOMBAY DYEING & MFG CO LTD 2007 SC 215 ELT3**

Cenvat Credit on goods exempted by notification
The assessee can forgo exemption and pay duty and can avail cenvat credit *Bansal Auto Parts Industries v. CCE - 1998 (79) ECR 850 (T-NZB); Everest Convertors* v. *CCE* - 1995 (80) E.L.T. 91(T-EZB); *Polychem Ltd.* v. *CCE* - 1997 (90) E.L.T. 156 (T-NZB), *Gothi Plastic Industries* v. *CCE* - 1996 (83) E.L.T. 123 (T-SZB); *Mechciv Engineers* v. *CCE* - 1997 (20) RLT 200 (T-NZB SM). This decision was given because the Rule 2 definition provide final product include exempted product.
Contrary decision
The A.P. High Court in *Ganesh Metal Processing Industries* v. *UOI* - 1996 (81) E.L.T. 11 held in the context of Notification 202/88 that once an exemption notification exists Modvat credit cannot be availed
There are also some decisions that once absolute exemption without any condition is issued u/s 5 A, it should avail. Availment is mandatory. However in case of conditional exemption or partial exemption, assessee can avail or decide not to avail. When he is not availing he can take cenvat credit.

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IV- Case studies on Excise Procedure

Registration factory

It was held that such cancellation could be done only in respect of violation of rules regarding registration. In respect of violation of any other rule, penalty can be imposed, but registration cannot be cancelled. - **In *Maheshwary Iron & Steel Supply Co.* v. *CCE* 1997(91) ELT 667 (CEGAT SMB),/ *CCE* v. *Goel Industries* 1999(106) ELT 481 (CEGAT),**

'Factory' under Central Excise Precincts means area enclosed by compound wall. A Canteen, a recreation club, a shed located in side the compound wall will be a factory.

It was held that 'premises' is not restricted to buildings, but it covers open land also. ***Superintending Engineer*** **v. *CCE* 1992(59) ELT 610 (CEGAT),**

It was held that 'any premises including precincts thereof' covers all buildings with its surroundings, which form part of the unit. ***Bongaigaon Refinery and Petro Chemical Ltd.*** **v. *CCE* - 1992 (57) ELT 383 (Cal HC). In *Grauer Weil (I) Ltd.* v. *CCE* - (1995) 1 SCC 77**

Whole premises will be 'factory' if in any of its part, excisable goods are manufactured or manufacturing process connected with production is carried out. - ***Bongaigaon Refinery and Petro Chemical Ltd.*** **v. *CCE* - 1992 (57) ELT 383 (Cal HC).**

Even cycle stand could be included as 'factory', *if it is part of the premises,* although no manufacturing or storage activity takes place there. - ***Shriram Pistons*** **v. *CCE* 1990(48) ELT 405 (CEGAT). In *DCM* v. *GOI* 1978(2) ELT (J121) (Del HC)**

Mine situated at a distance from factory cannot be considered as part of factory merely because it is connected with a ropeway, ***CCE*** **v. *J K Udaipur Udyog Ltd.* (2004) 171 ELT 289 (SC)**

Daily stock Account

Goods can be confiscated and penalty can be imposed if DSA is not maintained upto date and there is overwriting and cutting in the accounts - ***Hawkins Cookers Ltd.*** **v. *CCE* 1997(12) ELT 255 (CEGAT).**

In *Sunder Silk Mills* v. *CCE* 2003(153) ELT 176 (CEGAT), it was held that mere non-accountal of goods in daily stock account (that time RG-1) will not render and cause for confiscation and penalty.

Samples manufactured which are fully finished should also be entered in daily stock account (that time RG-1). - ***Star Paper Mills*** **v. *CCE* 1999(109) ELT 567 (CEGAT SMB).**

Payment of duty

Treatment of waste generated during job work

CBEC has clarified that generation of waste and scrap is only incidental to manufacturing of final product and it cannot be said that input (proportionate to the weight of waste and scrap generated) have not been used in the manufacture of such specified final product. Percentage of waste generation will not be relevant. In such case, the exemption will be available - **CBE&C circular No. 724/40/2003-CX, dated 20-6-2003.**

Raw material supplier should bring the scrap back or he should pay duty on the scrap.

Job worker is not required to pay duty in respect of goods received under rule 4(5)(a) goods received from manufacturer under Cevat provisions - *P P Fabrics* v. *CCE* 2000(121) ELT 823 (CEGAT) * *CCE* v. *Srikant Fab-Tex* (2001) 135 ELT 455 (CEGAT)./In *CCE* v. *Noorani Textile Mills* 2000(122) ELT 744 (CEGAT), Rule 4(5)(a) is independent of notification No. 214/86. Once goods are despatched under Cenvat provisions, the job worker is not required to pay duty - **same view / *M Tex* v. *CCE* 2001 136 ELT 73 (*SC*).**

Debit to PLA is payment of duty - It has been held that debit of duty to PLA is effective payment of duty and not mere adjustment entry - *Samrat International (P.) Ltd.* v. *CCE* - 1992 (58) ELT 561 (SC) = AIR 1991 SC 369.

If final product is tested at pre-marketable stage, they are not excisable and no duty is payable. - ***Godfrey Philips* v. *CCE* 1999(114) ELT 70 (CEGAT).** - in this case, cigarettes were inspected during manufacture.

It was held that goods become fully manufactured only after passing of quality control tests. Hence, samples drawn for testing, inspection and grading are not excisable - ***Manali Petrochemicals* v. *CCE* 2004 (167) ELT 434 (CESTAT) / *Bhansali Engg* v. *CCE* 1999(114) ELT 947 (CEGAT),**

Job Work

A trader cannot send goods for job work under this notification. In such case, the job worker will be treated as manufacturer. - ***Sonder Technologies* v. *CCE* 2002(146) ELT 597 (CEGAT).**

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V-Case laws on Assessments

1 Case laws on provisional Assessment

Department cannot order provisional assessment. If Central Excise Officer finds that self-assessment is not in order, he can ask assessee to produce additional documents, records and other information and then issue a demand notice. Where assessee fails to provide records or information and department is unable to issue demand, 'best judgment' method may be used to raise demand on collateral evidence. Burden to provide information for re-determination of duty is on assessee. – **(*Chapter 3 Part IV Para 3.1 of CBE&C's CE Manual, 2001).***

Assessment is not treatable as provisional in absence of express order of provisional assessment, as required under [rule 7(3)] - ***J K Cotton Spg & Wvg Mills Co. Ltd.* v. *CCE* 99 ELT 8 (SC).**

Provisional assessment cannot be presumed. It can be done only as per provisions of rule 7]. Hence, order of Assistant/Deputy Commissioner directing provisional assessment is essential ***Khardah Company* v. *UOI* - 1983 (14) ELT 2159 (Cal HC).**

Show cause notice before finalising provisional assessment - Issue of SCN is necessary before finalising provisional assessment - ***CCE* v. *ITC Ltd.* - 1994(71) ELT 324 (SC)** In contrary judgment, in ***Serai Kella Glass Works P Ltd.* v. *CCE* 91 ELT 497 (SC),** it was held that show cause notice is not necessary before finalising a provisional assessment

No demand unless provisional assessment finalised -, duty cannot be demanded when initial duty itself is provisional. Duty demand can be raised only when assessment is finalized. ***CCE* v. *Transformers & Electricals Kerala Ltd.* 1998(103) ELT 575 (CEGAT)**

Pending finalization of provisional assessment, proceedings in terms of Sec 11-A for raising demand cannot be initiated against the assessee **ITC Ltd.2006- SC**

When assessment is provisional on any ground, the whole assessment is provisional and time limit for demand/refund will start only when the assessment is finalised. ***Art Plywood Industries Ltd.* v. *CCE* - 1991 (56) ELT 496 (CEGAT)/*Ravi Mardia* v. *CCE* 2000(118) ELT 627 (CEGAT**

No Suppression of facts/ penalty if provisional assessment was permitted -, it was held that when provisional assessment is permitted, there can be no question of suppression of facts and demand of penalty is not sustainable. ***Godrej Foods Ltd.* v. *CCE* 2000(115) ELT 403 (CEGAT)- same view in *S Patnaik* v. *CC* 2000(118) ELT 502 (CEGAT)**

However, in *Duncan Industries* v. *CCE* 2001(130) ELT 279 (CEGAT), it was held that if charge of evasion of duty by fraudulent means is found to be correct, penalty is imposable even in case of provisional assessment.

Order for classifying goods is not provisional It was observed that to establish clearances on provisional basis, order under rule 9B and clearances on provisional basis is essential. Order classifying goods cannot be treated as provisional merely because appeal against said order is pending. Clearances during pendency of appeal/revision cannot be treated as provisional **Metal *Forgings*** v. ***UOI*** 2002 **146 ELT 241 (SC),**

If Provisional assessment cannot be finalised within 6 months, the cases must be submitted to Commissioner with request letter of assessee, through AC/DC indicating reasons for non-finalisation and amount of differential duty for future clearances before the expiry of period of 6 months. Commissioner can either extend the period or direct the method to be adopted for finalisation of assessment. If period is likely to be further extended, application should be sent to Chief Commissioner. - ***Chapter 3 Part IV Para 2.5 of CBE&C's CE Manual, 2001.***

2.Best judgment assessment

Where assessee fails to provide records or information and department is unable to issue demand, 'best judgment' method may be used to raise demand on collateral evidence. Burden to provide information for re-determination of duty is on assessee. - ***Chapter 3 Part IV Para 3.1 of CBE&C's CE Manual, 2001.***

It has been held that though best judgment assessment is an estimate and involves guess work, the estimate must relate to some evidence or material and it must be something more than mere suspicion - ***Raghubar Mandal*** v. ***State of Bihar*** **- (SC)** ***Dhakeswari Cotton Mills*** v. ***CIT*** **26 ITR 775 (SC),**

3.Show cause notice

Time limit applicable even if Act amended retrospectively - The time limit of section 11A [parallel section 28 of Customs Act] is mandatory and applies even in cases where Act is amended with retrospective effect - ***J K Cotton Spinning Mills*** v. ***UOI*** **(1988) 68 STC 421 (SC) also held in** ***CCE*** v. ***Vapi Paper Mills Ltd.*** **1998(104) ELT 780 (CEGAT) * *Bajaj Auto Ltd.*** v. ***UOI*** **2003(151) ELT 23 (Bom HC** DB)..

No demand from purchaser in open market - Goods purchased from open market are presumed to be duty paid. Purchaser does not have to prove duty paid character of such goods. It is not possible for the purchaser to prove the same - ***Calcutta Paper Mills Mfg Co.*** v. ***CEGAT*** **- 1986 (25) 9 (Cal HC) Vapson *Products*** v. ***UOI*** **- 1987 (Bom HC).**

Any demand without issue of show cause notice is violation of a statutory provision - Principles of natural justice fully apply to SCN e.g. all evidence on which department wants to reply should be disclosed. Following are the requirements of SCN and if these are not followed, the SCN is vitiated and may not stand scrutiny of law. ***Gokak Patel*** v. ***Volkart Ltd.*** **(SC).**

Wrong mention of rule and notification will not vitiate Notice or order - Non- mentioning or wrong mentioning of rule or section *will not* vitiate the SCN if all essential ingredients of statute are mentioned and substance of notice is clear, ***State of Karnataka*** v. ***Muniyalla*** **SC 470 * *N B Sanjana*** v. ***Elphinstone Spinning and Wvg Mills Co. Ltd.*** **-(SC).**

Effect of notice for period beyond one-year/five years - if a show causes notice is issued pertaining to period beyond five years; the whole notice does not become invalid. The only effect is that the department will not be entitled to collect duty beyond a period of five years from date of show cause notice. - ***UOI*** v. ***Maheshwari Woollen Mills - SC*** Same principle applies if show cause notice is issued for a period beyond one year (i.e. when fraud etc. is not alleged). In such case, notice will be considered valid and enforceable for a period of one year.

Assessee can waive his right -, Sec 11 provided for issue of show cause notice before confirming any demand of duty. It was held that though issue of show cause notice is a mandatory requirement, assessee could waive it as the provision deals with individual's right. It is a notice to the person concerned and not a public notice and right to receive show cause notice can be waived. ***CC* v. *Virgo Steels* 2002 (SC)**

Time limit even when stay order issued by Court -, it has been held that limitation for issue of show cause notice is applicable even if some interim order was issued by High Court. Mere issue of some interim order does not refrain authorities from issuing show cause notice for demand of duty, unless there is specific injunction/stay order restraining them for issuing show cause notice- ***Metal Forgings* v. *UOI* (2003) 146 ELT 241 (SC)**

Simple letter asking to pay duty is not a notice -letters either in the form of suggestion or advice cannot be taken as show cause notice. This is because law requires that show cause notice to be issued under a specific provision of law ***Metal Forgings* v. *UOI* (2003) 146 ELT 241 (SC),**

Demand/penalty unless SCN is issued - Demand of duty or penalty on a person (like director, partner etc.) cannot be confirmed unless a show cause notice is issued to him - *Metal Fittings P Ltd.* v. *CCE* 1997 71 ECR 607 (CEGAT). Penalty cannot be imposed if show cause notice does not contain proposal of penalty. - ***Prabhat Forging* v. *CCE* 2002(139) ELT 720 (CEGAT).**

Department can issue revised show cause notice?

If a subsequent notice is issued clarifying earlier notice or correcting a mistake, it will be a corrigendum. However, if new notice is on entirely different ground, it will be treated as a new show cause notice and period of limitation will be counted from date of fresh notice and not the earlier notice.

Penalty is not imposable on an employee who was neither issued a show cause notice nor had waived the notice. - ***Pfizer Ltd.* v. *CC* 2001(131) ELT 251 (CEGAT).**

Allegations must be mentioned - A show cause notice has to state clearly the allegations made against a noticee (i.e. person to whom notice is issued). Where the allegations are absent or not substantiated, that defect cannot be cured at subsequent stages and certainly not at the stage of second appeal - ***CCE* v. *Bhikhlal Dwarkadas* 1998(99) ELT 438 (CEGAT).**

It was held that section 11A only requires issue of SCN. Demand can come later after notice is adjudicated. Serving of notice is required, serving of demand is not required within one year/5 years - followed in ***Atul Glass Industries* v. *CCE* 1999(114) ELT 597 (CEGAT)/ *Swadeshi Polytex* v. *ACCE* 1986(26) ELT 701 (All),** Proviso to Sec. 11A does not require that notice should be issued within 6 months of knowledge of Department. Notice can be issued anytime within 5 years of relevant date. - *Nizam Sugar Factory* v. *CCE* 1999 (114) E.L.T. 429 (T-LB).

Wrong mention of rule and notification will not vitiate Notice or order - Non- mentioning or wrong mentioning of rule or section *will not* vitiate the SCN if all essential ingredients of statute are mentioned and substance of notice is clear, and no prejudice is caused, and when the power is available - *State of Karnataka* v. *Muniyalla* AIR 1985 SC 470 * *N B Sanjana* v. *Elphinstone Spinning and Wvg Mills Co. Ltd.* 1978 (2) ELT J399 (SC). * *CCE* v. *Pradyumna Steel Ltd.* - (1996) 82 ELT 441 (SC) * *R K Verma* v. *CCE* (2001) 138 ELT 1026 (CEGAT).

Demand even if department had approved, accepted or assessed rate or value - A demand can be raised for previous period of one year/5 years even if department had approved, accepted or assessed value or rate of duty - section 11A(1) of CEA [however, no amendment is made in corresponding section 28(1) of Customs Act]

Demand against approved classification list only prospective - *CCE* v. *Cotspun Ltd.* 1999 (113) E.L.T. 353 (SC -LB).

Approval of Show cause notice Show cause notice should be approved and signed by officer empowered to adjudicate the case. The authority to adjudicate the case are - * AC/DC-up to 5 lakhs , JC between 5 to 20 lakhs* Additional Commissioner between Rs 20 lakhs and Rs 50 lakhs * Commissioner - without any limit. [Thus, now, Superintendent cannot issue show cause notice]. **[CBE&C circular No. 752/68/2003-CX dated 1-10-2003**

Notice has to be 'served' - The SCN has to be ***served*** on the person concerned and mere *issue* is not enough. If the notice was issued and posted by registered post before last date but received after the last date, the demand notice is not sustainable as it was not 'served' in time - *Sewing Systems (P.) Ltd.* v. *CC* - 1992 (62) ELT 725 (CEGAT) (Affirmed by SC as revenue appeal dismissed - 89 ELT A36) - noted and followed in *Corvine Chem* v. *CCE* (2004) 170 ELT 181 (CESTAT) * *Rashtriya Audyogic Sansthan* v. *CCE* (2001) 135 ELT 353 (CEGAT).

Demand based on statements to other authorities

Demand based on affidavits given to Director of Industries indicating value of clearances, without any corroborative evidence is not sustainable - *Punjab Oil and Syndicate Mills* v. *CCE* - 1993 (65) ELT 268 = 47 ECR 246 (CEGAT) * *Rishab Refractories P Ltd.* v. *CCE* - 1996(87) ELT 93 (CEGAT) * *Elmech Engineers* v. *CCE* 2001(129) ELT 634 (CEGAT)

Demand based on inflated stock statement given to Bank is not sustainable when there is no other evidence of clandestine removal - *Kishan Chand and Co.* v. *CCE* - 1996 (82) ELT 210 (CEGAT)
Income Tax cannot be demanded on basis of inflated statement to Bank to obtain enhanced credit facility, in absence of other evidence. - CIT v. *Relaxo Footwear* (2002) 123 Taxman 322 (Raj HC DB).

No penalty if demand itself is time barred – If demand itself is time barred, penalty cannot be imposed. – ***Eveready Industries* v. *CCE* (2001) 138 ELT 1287 (CEGAT).**

Demand can be issued on basis of audit objection - In *Swastik Tin Works* v. *CCE* 1986(25) ELT 798 (CEGAT), it was held that demand notice cannot be issued on the basis of audit objection. However, as rightly held by *Usha Rectifier Corporation* v. *CCE* 2001(130) ELT 485 (CEGAT), these observations were based on peculiar facts of the case and demand can indeed be issued on the basis of audit objection.

Demand if assessee did not fulfill post clearance conditions of exemption time limit not apply it was held that notice u/s 28 is only for duty not levied or short levied, erroneously refunded etc. If goods are cleared under an exemption notification subject to conditions and the conditions are not satisfied, the demand of duty is not u/s 28 of Customs Act [as there was no short levy when goods were cleared]. Hence, time limit of 1/5 years for raising of demand is not applicable. *CC* v. *C T Scan Research* 2003(155) ELT 3 (SC)

Time Limit of 5 years/ Suppression of facts/fraud/collusion

- Notice can be served for a period of five years in case of fraud, collusion, suppression of facts, wilful misstatement etc.
- extend period from one year to 5 years are exceptional powers and hence have to be construed strictly. It was held that fraud; collusion etc. and intention to evade duty must concur. ***J K Cotton Spg & Wvg Mills Co. Ltd.*** **v.** ***CCE*** **1998 (SC)** ***ONGC*** **v.** ***CCE*** **- 1995 (CEGAT)**

Decisions with regard to interpretation/ meaning of Fraud/Collusion/Suppression of facts/Intention to evade duty

Extended period of 5 years will **apply only when two ingredients** - wilful suppression, mis-declaration , and the intention to evade duty. ***Rainbow Industries*** **v.** ***CCE*** **- 1994 (74) ELT 3 (SC)-. Same view was also held in** ***Tamil Nadu Housing Board*** **v.** ***CCE*** **- 1994 (SC)**

Intention to evade duty - Intention to evade payment of duty is not mere failure to pay duty. It must be something more, i.e. that **assessee must be aware that duty was leviable and he must deliberately avoid payment of duty**. 'Evade' means defeating the provision of law of paying duty. It is made more stringent by the use of word 'intent'. In other words, the assessee must deliberately avoid payment of duty payable under the law. Where there was scope of doubt whether duty was payable or not, it is not 'intention to evade duty'. - ***Tamilnadu Housing Board*** **v.** ***CCE*** **- 1994 (SC)**

Fraud - Fraud' means deceit, trickery or misrepresentation. Intention to evade duty is built into the words 'fraud' and 'collusion' -***Cosmic Dye Chemical*** **v.** ***CCE*** **(SC)** **It** was observed that 'defraud' includes an element of deceit. However, mere silence is not fraud, unless it is the duty of the person to speak or silence itself is equivalent to speech.

Misstatement - A false statement becomes 'willful' if it is deliberate or intentional. It is not willful if the statement is accidental or inadvertent. A statement will not be misstatement only because full facts were not disclosed. 'Willful' means 'with intent to evade duty' - *Cosmic Dye Chemical* v. *CCE* - (1994) (SC))

Deliberate withholding information is suppression of facts

No suppression of facts if department aware of facts-**Pushpam Pharmaceuitical (SC)**

No suppression of the facts when the assessee has bona fide belief that no legal duty was payable **Surat Textile Mills (2004) 167ELT379(SC)**

Mere omission is not suppression. Suppression must be deliberate- **MM Kotecha (2005) 179ELT261(SC)**

Wrongful understanding of law does not constitute suppression - *Vinod Paper Mills Ltd.* v. *CCE* 1997 (91) E.L.T. 245 (SC).

Mere failure to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with intent to evade payment of duty … *when the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression.* **CONTINENTAL FOUNDATION 2007(SC) 216 ELT177**

Mere visits of offices does not mean there was no suppression of facts – 'No suppression' cannot be pleaded on the ground that excise officers visited their factory number of times, unless there is something on record to show that they pointed out some fact to Revenue and even after the discovery of that fact, Revenue has not taken any action. – ***Agrico Engineering Works* v. *CCE* 2000**

Mere inaction is not Suppression of Facts - Suppression means intentional, Conscious or deliberate attempt to withholding or not providing information. It was held that mere inaction or failure on part of manufacturer will not amount to suppression of facts. ***Collector* v. *Chemphar Drugs* 1989 (SC) *Lubri-Chem Industries Ltd.* v. *Collector* - 1994 (SC)]. *Padmini Products* v. *CCE* 1989 (43) E.L.T. 195(SC).**

Non Applicability of extended period of 5 years

Extended period cannot be invoked where classification list is approved. - *Nat Steel Equipment* v. *CCE* 1988(34) E.L.T. 8; *Prabhu Steel Industries* v. *CCE* 1997 (95) E.L.T. 164 (SC).

Extended period not invokable when bonafide belief arises out of court judgements - *Cosmic Dye Chemicals* v. *CCE* 1995 (75) E.L.T. 72(SC).

Extended period not invokable when there are conflicting decisions prevailing and non-requirement under law to do something.- *Pushpam Pharmaceuticals Co.*v. *CCE* 1995 (78) E.L.T. 401 (SC).

Mere change in opinion regarding classification not sufficient to invoke extended period - *Prabhu Steel Industries Ltd.* v. *CCE* 1997 (95) E.L.T. 164 (SC).

Information not required to be supplied under law when not supplied does not amount to suppression - *Apex Electricals Pvt.Ltd.* v. *UOI* 1992 (61) E.L.T. 413 (Guj).

Department cannot sleep over the matter for years and accuse the assessee of suppression - *Mutual Industries Ltd* v. *CCE* 2000 (117) E.L.T. 578 (T-LB).

When the earlier SCN raising on similar issue on identical amount was dropped, subsequent SCN cannot allege suppression of fact or material. Hence extended period of limitation of 5 years will not be available. **Hyderabad Polymers Ltd (2004)166ELT151(SC)**

When there was disagreement Between experts (CAS, CWAs) and Department on the Cost of Production, extended period of 5 years is not applicable –**MRF Ltd (2004)169ELT125 (CESTAT)**

Generator sets assembled from bought out parts at factory amounting to goods only, When the position is not clear and not reporting to department, amounting to suppression of facts and hence the time of 5 years will be applicable -**Mallur Siddheswara Spinning mills Ltd (2004)166ELT154 (SC)**

Aluminum paint was manufactured, neither accounts of product maintained nor duty paid and hence suppression of facts **time** of 5 years will be applicable- **TNSTC Ltd Madurai (2004)166 ELT433 (SC)**

4.Interest

Interest payable during period of stay - It may be noted that interest is payable if finally assessee loses in appeal, even if demand was stayed by Court/Tribunal pending hearing of appeal. The interest will be payable right from the original demand, and not from the date when appeal is decided. Supreme Court in ***Haji Lal Mohd* v. *State of UP* (SC),** had, in a sales tax case, held that running of interest is not prevented because of operation of any stay order. However, penalty cannot be levied during period of stay, as assessee is not in default during that period.

It was held that no interest u/s 11AB will be payable if duty is paid before receipt of show cause notice. Mandatory penalty u/s 11AC is also not payable - **In *EID Parry* v. *CCE* 2003 (156) ELT 753 (CESTAT),same view in *Ashok Leyland* v. *CCE* 2003 (156) ELT 995 (CEGAT) * *EID Parry* v. *CCE* 2003 (157) ELT 193 (CESTAT).**

NO interest for earlier period if fresh demand issued - assessee filed appeal against assessment. On appeal, order was made for re-computation, and fresh notice of demand was issued of reduced tax. It was held that earlier assessment order ceases to exist and liability of interest starts only from date of fresh demand notice Philips ***India Ltd.* v. *ACCT* (2004) 136 STC 636 (SC)**

No interest or penalty if I voluntarily pay duty before Show Cause Notice

In *EID Parry* v. *CCE* 2003 (156) ELT 753 (CESTAT), it was held that no interest u/s 11AB will be payable if duty is paid before receipt of show cause notice. Mandatory penalty u/s 11AC is also not payable - same view in *Ashok Leyland* v. *CCE* 2003 (156) ELT 995 (CEGAT) * *EID Parry* v. *CCE* 2003 (157) ELT 193 (CESTAT).

Interest be payable by the Revenue to the assessee when interest payment on delayed payment of refund is also delayed

Compensation by way of interest on interest wrongfully withheld, irrespective of absence of any statutory provisions granting the same. In this case the interest due to the assessee was withheld by the department for 17 long years. In this case the interest due to the assessee was withheld by the department for 17 long years. *Sandvik Asia Ltd. v. CIT 2006 (196) ELT 257 (SC) Note: Though this judgment has been rendered in respect of income-tax laws, the principle enunciated in this judgment may also squarely apply in central excise and customs cases.*

Department cannot withhold a refund on the ground that it has filed an appeal against the order giving the refund, in a case where it has not obtained a stay order?

The amount of pre-deposit was not refunded to the assessee when its appeal was allowed by the Commissioner (Appeals). Subsequently, when the Revenue filed an appeal before the Tribunal against such order of Commissioner (Appeals), no stay was granted.

The High Court observed that the officers of the Revenue had been informed by the Board that no refund/rebate claim should be withheld on the ground that an appeal has been filed against the order giving the relief, unless stay order has been obtained. Thus, the High Court directed that the amount of pre-deposit should be refunded to the petitioner with interest within a fortnight. *Atul Limited v. CCEx., Surat-II 2005 (188) ELT 21 (Guj.*

5.Recovery of Duty

Central excise department will get preference to recover money over secured creditors

While recovering the dues, the central excise department would have precedence over the secured creditors. **Apex Court in Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. (2000) 5 SCC 694, CCEx.,/ Pondicherry v. Indian Bank 2006 (198) ELT 334 (Mad. HC)**

Liability of partner - Since liability of partners is unlimited; recovery can be made from partner. If public notice of dissolution is given, then partner is liable only for dues upto date of dissolution. However, dues recoverable from an individual partner (in his individual capacity) cannot be recovered from the partnership firm and goods belonging to a firm cannot be attached for recovery of dues from an individual partner. It was held that tax arrears of partnership firm when assessee was partner could be recovered from erstwhile partner, even after he retires. **ITO v. Arungri Chettiar - AIR 1996 SC 2160**, When Partnership firm—Dissolved Partner continue to remain liable for excise duty liability incurred before dissolution of firm **GOPAL INDUSTRIES LTD. – 2007-TRIBUNAL (LB) 214 ELT 19**

Liability of legal heir/representatives - High Courts have held that recovery can be made from legal representatives or heir from the movable or immovable property inherited by the legal heirs.

Goods pledged cannot be attached - If the goods have been pledged (usually with Bank), they do not 'belong' to the defaulter and hence are not liable for attachment or detention.

Recovery from Successor: if predecessor fails to pay duty it can be recovered from successor property and goods after obtaining written permission from CCE.

Stay of Recovery - Orders of demand are appealable and appeal can be filed against the order for demand of duty/penalty. Under Central Excise as well as Customs law, appeal can be filed only after the amount demanded is paid. However, appellate authorities can grant stay for recovery pending final decision on appeal. The stay may be unconditional or conditional subject to conditions like part payment, bank guarantee, surety etc. If such stay is obtained, recovery proceedings will be stayed. However, mere filing of appeal does not amount to stay order. A separate application has to be made for stay order from appellate authorities.

It was held that if pre-deposit is refundable to assessee, the amount can be adjusted against any demand pending against the assessee, unless a stay has been obtained. Thus, instead of refunding pre-deposit, excise department can adjust it against any other demand, which may be pending against the party. ***Bajaj Auto Ltd.*** **v.** ***CCE*** **2003 (158) ELT 217 (CESTAT),**

6.Duty paid under protest

Letter of protest is not a claim of refund – Even if letter of protest was filed, it does not constitute a claim of refund. - *Chapter 13 Part III Para 4.3 of CBE&C's CE Manual, 2001*. Thus, separate refund application is required after the issue is settled.

Letter of Protest is essential – Protest must be registered before or at the time of making payment. Thus, letter-giving reasons of protest is essential. TR-6 challan or on debit entry to PLA should be marked as " duty is being paid under protest".

Doctrine of unjust enrichment applicable to refund even duty paid under protest - Even if duty is paid under protest, doctrine of unjust enrichment will still apply to refund. The manufacturer should charge only the excise duty to which he is agreeable as per his interpretation and balance should be borne by him. ***CCE v. Allied Photographics 2004 (166) ELT 3 (SC)***

7.Refunds

Refund due must be sanctioned within three months from date of application. If not so paid, Government will pay interest to the assessee under section 11BB. The rate prescribed is 6% w.e.f. 12-9-2003 **[Notification Nos. 67/2003-CE(NT) dated 12-9-2003 and 75/2003-Cus(NT) dated 12-9-2003]**

Unjust Enrichment - Validity of Section 11B - Legal validity of provisions of section 11B of CEA (parallel section 27 of Customs Act) has been upheld by a nine member bench of Supreme Court in ***Mafatlal Industries Ltd.*** **v.** ***UOI*** **- 1996 (SC) .**

Doctrine of Unjust enrichment. No person can seek to collect the duty from both ends. He cannot collect duty from his purchaser in one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. This would not be economic justice. Manufacturers cannot get unearned and unjustifiable windfall. ***Mafatlal Industries Ltd.*** **v.** ***UOI*** **- (1997) 89 ELT 247 (SC**

Unjust enrichment applies to Capital goods captively consumed – In SRF Ltd. v. *CC* 2006 (193) ELT 186 (CESTAT 3 member bench) it has been held that doctrine of unjust enrichment applies to capital goods captively consumed

Unjust Enrichment applicable to captive consumption of Inputs, - it has been held that provisions in respect of unjust enrichment are applicable in respect of raw material captively consumed also. In case of captive consumption, even if it is difficult to prove that incidence of duty has not been passed to purchase of final product, refund will not be granted if manufacturer is not able to show and prove that incidence has not been passed on to some body else *UOI* v. *Solar Pesticides P Ltd.* 116 ELT 401(SC),- followed in *CCE* v. *Usha Beltron Ltd.* 2000(119) ELT 3 = 2000 AIR SCW 4658 (SC 3 member bench) *

Refund when bank guarantees encashed*;* in case of a disputed claim, a bank guarantee is normally furnished as security for disputed liability; and if the revenue encashes bank guarantee, it does not amount to payment of duty. In such cases, provision of refund as well as doctrine of 'unjust enrichment' will not apply and the amount will have to be refunded, if the case is finally decided in favour of the assessee. - ***Oswal Agro Mills Ltd.*** **v.** ***ACCE*** **1994 (70) ELT 48 (SC). - followed in** ***Grasim Industries*** **v.** ***CCE*** **2001(127) ELT 57 (CEGAT)**

Doctrine of unjust enrichment" shall be applicable to refund of duty paid which is held to be illegal when the burden passes on to buyer. **PANIHATI RUBBER LTD.-2006-SC**

Doctrine of unjust enrichment" shall be applicable to refund of duty paid in case where duty paid under protest if the burden passes on to buyer. **Commissioner of Central Excise, Jaipur vs. Birla Corporation Limited [2007 (208) ELT 481 (S.C.)]**

Cum duty Price Doctrine of unjust enrichment will not apply

PRICE INCLUSIVE OF ALL TAXES AND PRICE REDUCED SUBSEQUENTLY - BSNL had issued order on provisional basis. The price was inclusive of all duties. Subsequently, the price was reduced while finalising order. It was held that assessee is entitled to refund. It was held that since price is all-inclusive, duty amount that appellant could claim from buyer also gets reduced

(Hence, doctrine of unjust enrichment does not apply *BWL Ltd.* v. *CCE* (2004) 168 ELT 458 (CESTAT),

When goods sold at price less than landed cost

If imported goods are sold at a price lesser than landed cost (excluding customs duty), incidence of duty has not been passed on to actual customers and unjust enrichment is not applicable. - *Shakun Overseas* v. *CC* 2002(140) ELT 444 (CEGAT).

If free samples are given

If goods were given as free samples as physician's samples, question of unjust enrichment does not arise - *Sarabhai Chemicals* v. *CCE* 2004 (168) ELT 70 (CESTAT).

When original application for refund was rejected and later appeal won by assessee against the rejection, Assessee need not file fresh application for refund **SPIC LTD 2007 TRI 209_ELT 91**

Penalties

Advocates or legal advisers cannot be penalized for clandestine removal of goods by their client company Advocates or legal advisers or auditors of company could not be alleged or presumed to handle muchless deal with excisable goods as contemplated under section 9(1)(bbb) of the Central Excise Act (or erstwhile Rule 209A of the Central Excise Rules, 2001) while discharging their professional duties. Thus, the High Court held that they would not be liable to penalty for clandestine removal of goods by their client company. **Jayantilal Thakkar & Company v. Union of India 2006 (195) ELT 9 (Bom.)**

Once it is found that penalty u/s 11-AC is imposable (i.e., case is of fraud, collusion etc), the penalty equal to duty shall be imposed and there is no discretion of adjudicating authority to levy lower than equal to duty. **(Penalty equal to duty neither less nor more)** Relaxation from penalty equal to duty is available only if duty is paid along with interest and penalty at 25% of duty is paid within 30 days of order". **IPEA PARAMOUNT PVT LTD -2007 – TRI LB 212 ELT 500**[1]

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VI Case laws in Small Scale Industries

Simultaneous availment of Cenvat and SSI exemption not permissible –
CBE&C has issued instructions that if a manufacturer manufactures various products, he has to avail Cenvat for all items or opt for exemption from Cenvat for all products. It is not permissible to avail Cenvat for some items and avail SSI exemption for other products. - CBE&C Circular F. No. 22/46/86-TRU dated 8-9-1986 - reiterated in Circular Nos. 9/93-CX.8 dated 24-8-1993 and 361/77/97-CX dated 3-12-1997.

Turnover of Manufactured goods and Trading goods cannot be clubbed for calculating Limits
Assessee who is manufacturing CPU and key board and Apart from that, he is also trading (purchasing and thereafter, selling as such) of Monitors and Printers. His aggregated clearances of CPU & Key Board (the FPs manufactured by him) during the FY 2004-05 is Rs 350 lacs. The turnover of Monitor and Printers for the same period is Rs 250 lacs. Held that the value, therefore, necessarily has to be in respect of clearances of goods manufactured by the assessee hence he is eligible for SSI Benefit. **C.M.S. COMPUTERS (P.) LTD. 2005 S.C**

Total value of excisable goods shall exclude amounts of excise duty, sales tax and other taxes, ie valuation as per sec 4 or valuation rules **Mahavir Metal Mart v. UOI 1997 (90) E.L.T. 20 (SC).**

More than one manufacturer in one shed - Numerous small units for manufacturing purposes hire one large shed and each small manufacturer uses a small portion of it. In such case, clubbing provisions will apply.

Facilities of one factory used on sharing basis - Facilities of one factory are shared by different manufacturers on time-sharing or other basis. In such cases, turnover of all those manufacturers will be clubbed together for calculating the excise exemption limits. - *Indica Laboratories* v. *UOI* - 1990 (50) ELT 210 (Guj).

Clubbing if change of ownership during the year - If ownership of factory changes during the year, clearances of previous owner as well as new owner during the year will be clubbed for calculating the value of clearances for purpose of SSI exemption - *Gaurav Equipments (P.) Ltd.* v. *CCE* - 1993 (CEGAT).

No Clubbing provisions if two factories belong to different owners/ two units are independent and no financial flow back -

Clubbing provisions do not apply if two or more units are genuinely independent units. if there are more than one factories and various combinations of ownership are:

(a) Factors such as common location of factories, common expenses, common partners, common trade mark, sharing of machinery usage, mutual **financial transaction without interest not enough to club clearances**. ***Jagjivandas & Co.* v. *CCE* 1985 (19) E.L.T.441 (T) affirmed by Supreme Court in 1989 (44) E.L.T**. A24. This is a landmark judgment often used by assessee

(b) One belonging to a Proprietor and other to a partnership firm, where proprietor is one of the partners ***AC* v. *Jayanthilal Balubhai & Ors.* 1978 (2) E.L.T. J317(SC)**

(c) One belongs to a partnership firm and other also to another partnership firm, where some partners are common and some are close relatives in the abasence of flow back of money ***Renu Tandon*** **v.** ***UOI*** **1993 (66) E.L.T. 375 (Raj)**

(d)) One to partnership firm and other to limited Company, where relatives of some partners of the firm are directors in the limited Company.

(e) one belongs to HUF and other to firm where Karta of HUF is a partner –*Shakti Engg Works* v. *CCE* - 1989 (40) ELT 95 (CEGAT).

(f) Two belong to limited companies with some common directors - *Cosmos (India) Rubber Works (P.) Ltd.* v. *UOI* - 1988 (36) ELT 102 (Bom HC) * *ITEC (P.) Ltd.* v. *CCE* - 1992 (57) ELT 639 (CEGAT)

(g) When two units are functioning in the same Commissionerate and have been granted separate registrations and facility of job work turnover not clubbable. *Nikhildeep Cables P. Ltd.* v. *CCE* 1994 (70) E.L.T. 273 (T)

(h) Units separately incorporated with separate plant not clubbable because of few common directors or grant of interest free loans *Alpha Toyo Ltd.* v. *CCE* 1994 (71) E.L.T.689 (T)

(i) Two companies with related directors and common product *Padma Packages P Ltd.* v. *CCE No Clubbing*

(j) Manufacture of same products in factory as well as job workers factory not clubbable unless common control shown. *CCE* v. *MM Khambatwala* 1996 (84) E.L.T.161 (SC)

(k) SSI units – Registration of SSI unitsunder Director of Industries – Clubbing of units/undertakings for computing investment in plant and machinery of common partners/Directors is not applicable in case of clubbing of SSI under Excise ***Kemtrode Pvt. Ltd.*** **v.** ***Joint Director (SSI), Govt. of Karnataka*** **1999 (108) E.L.T. 616 (Kar.)**

SSI can avail exemption for part of Invoice

If one invoice may contain part of goods under one slab (exempted slab) and other part in taxable slab. In such case, only the excess value will be leviable at applicable rate. - ***Sri Venkateswara Textile Engg Ltd.*** **v.** ***CCE*** **- (1996) (CEGAT).**

SSI and Brand Name

In the instant following cases associated with brand name SSI Benefit available

(a) Such ancillary units used to mark their goods with the name of the large unit and refer to a code number or product number. The Madras High Court in *BHEL Ancillary Association* v. *CCE* 1990 (49) E.L.T. 33 had held that this code number or product number would not constitute a brand name.

(b) When the goods bear a brand name of Khadi and Village Industries Commission or a State Khadi and Village Industry Board or National Small Industries Corporation or a State Small Industries Development Corporation or a State Small Industrial Corporation. .

(c) The Supreme Court has held in *Astra Pharmaceuticals P Ltd.* v. *CCE* 1995 (75) E.L.T. 214 that in respect of medicinal preparations the mark made by the manufacturers would be called a "house mark" and would not be the brand name. Therefore, the monograph which identifies a manufacturer's name would not be a brand name.

(d) **In the case of *CCE* v. *ESBI Transmission Private Ltd*. 1997 (91) E.L.T. 292**, the Division Bench of the Calcutta High Court held that if the brand name belonged to the foreign company but the Indian company was given the exclusive right to use the same being the owner through assignment, then the benefits of the notification cannot be denied. The Tribunal decisions have also held that assignment of brand name is valid for availing the benefit of SSI exemption in the following cases:
(i)*Opus India* v. *CCE* 1992 (62) E.L.T. 447 (T)
(ii)Vikshara Trading and Investment P.Ltd. v. *CCE* 1996 (87) E.L.T. 499 (T)
(iii)*CCE* v. *Bigen Industries* 1999 (107) E.L.T. 213 (T)

(e) In *Namtech Systems Ltd.* v. *CCE* 2000 (115) E.L.T. 238, the Larger Bench of the Tribunal held that when the goods are affixed with the brand name or trade name of a foreign person whether manufacturer or trader, the benefit of the exemption notification cannot be taken. It must however be noted that this decision will not apply to cases where the brand name is assigned as the Calcutta High Court decision in (d) above holds good.
Exemption Based on Value of Clearances (SSI)

(f) Raw materials received by manufacturers which may bear a brand name are entitled to benefit of Notification, see CBEC Circular 509/5/2000-CX., dated 18-1-2000, (115) E.L.T. T 58 extracting Supreme Court order.

(g) When the goods bear the brand name of any person, if such goods are manufactured in a rural area. Rural area means the area comprised in a village as defined in the land revenue records, excluding –

(i)the area under any Municipal Committee, Municipal Corporation, Town Area Committee, Cantonment Board or Notified Area Committee

(ii) any area that may be notified as an urban area by the Central Government or a State Government.

(h) The Larger Bench of the Tribunal in *Intertec* v. *CCE* 2001 (127) E.L.T. 609 (T-LB) has held that if the goods manufactured by the SSI unit fall outside paragraph 1 consequent to their being branded goods, payment of duty on such branded goods will not disentitle the other products from getting the benefits of the Notification.

Using the name of the company is trade name similar to brand name SSI benefit not available
A Company manufacturing the cement on the bags of cement they used words "Manufactured by Dharani Cements Ltd. A Subsidiary of Grasim Industries Ltd." Dharani Ltd were using a trade name of some other company with the purpose of indicating a connection in the course of trade between the product and that person. Thus, they are therefore clearly **not entitled to the benefit of the Notification." GRASIM INDUSTRIES LTD. 2005 -S.C.**

Goods bearing foreign brand name not eligible - Use of foreign brand name would dis-entitle the manufacturer of the SSI concession - *India Reprographic Systems (P.) Ltd.* v. *CCE* 1995 CEGAT) – Similar view was also held in **Sonoma Aromatics (P.) Ltd. v. CCE 1995**

(78) ELT 285 (CEGAT) /- Namtech Systems Ltd. v. CCE 2000(115) ELT 238 = 36 RLT 35 (CEGAT).

SSI exemption is *not* available if brand name belongs to sister concern/other company in same group/same management, common parters/directrors SSI exemption is not available if logo/symbol of Group Company is used - *Katari Refractories* v. *CCE* 1999(110) ELT 767 (CEGAT)/ *CCE* v. *Ajay Footwear* 2001(129) ELT 704 (CEGAT).

Assignee of brand name is eligible for SSI concession
In P&B Pharmaceuticals v. CCE 2003 AIR SCW 2949 = 153 ELT 14 (SC), it was held that once a logo is assigned, the assignee is entitled to SSI exemption, even if third party or assignor is also using the logo. There is no obligation on owner of a logo to make a roving enquiry to ascertain whether any other person is using his logo and then disclose it to department to avert a possible allegation of suppression of facts material. However, it does not become brand name of final product and in such case; SSI unit is entitled for SSI concession.

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7- Case laws on Customs

Taxable event in case of imports

It was held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters. It was held that import of goods in India commences when they enter into territorial waters but continues and is completed when the goods become part of the mass of goods within the country. The taxable event is reached at the time when the goods reach customs barrier and bill of entry for home consumption is filed. ***Kiran Spinning Mills*** **v.** ***CC*** **1999 (SC), /** ***Garden Silk Mills Ltd.*** **v.** ***UOI*** **1999 (SC)**

Taxable event in case of Warehoused goods

In case of warehoused goods, the goods continue to be in customs bond. Hence, 'import' takes place only when goods are cleared from the warehouse. Where it was held that taxable event occurs when goods cross customs barrier and not when goods land in India or enter territorial waters. ***UOI*** **v.** ***Apar P Ltd.*** **1999 (SC). -** ***Kiran Spinning Mills*** **v.** ***CC*** **1999(SC),**

It was held that the 'bulk liquid cargo' would be considered to have crossed customs barrier only when they are pumped into shore tanks. That being the taxable event, duty is leviable only on that quantity. ***CC*** **v.** ***HPCL*** **2000(CEGAT)- -**

Taxable event in case of exports

In case of exports, export commences when goods cross customs barrier, but export is completed when it crosses territorial waters. Thus, 'taxable event' occurs only when goods cross territorial waters. It was held that export is complete once the goods leave Indian waters and property passes to purchasers. Even if goods return due to Engine trouble, duty drawback is payable. It was held that export is complete when ship leaves territorial waters of India. ***CC*** **v.** ***Sun Exports*** **- 1988 (SC)/** ***B K Wadeyar*** **v.** ***Daulatram Rameshwarlal*** **(SC)**

If some goods are exempt from customs duty, can it be inferred that they are exempt from additional duty as well?

The High Court observed that exemption from customs duty would not mean exemption from additional duty. The High Court held that when goods are exempted from basic customs duty in terms of section 12 of the Customs Act, 1962, it would not mean that they are exempted from additional duty also, as basic customs duty is leviable by virtue of section 12 of the Customs Act, 1962, while additional customs duty is leviable under section 3 of the Customs Tariff Act, 1975 ***Kaur Sain Traders v. Union of India 2006 (199) ELT 224 (Pat.)***

Subsequent amendment of IGM relates back to the date of filing of IGM and is not a separate event. By the time supplementary IGM is filed, if entry inward has already been granted, the rate of duty applicable will be as on the date of presentation of bill of entry.

[Associated Forest Products (P) Ltd. V. Assistant Commissioner of Customs, 1992 (59) ELT 264, 277-78 (Cal), affirmed by the Supreme Court in 2000 (115) ELT 37 (SC).]

Customs Valuation

Valuation has to be on the basis of condition at the time of import - (a) CVD should be levied on goods in the stage in which they are imported - stage subsequent to processing of goods is not relevant - ***Vareli Weaves P Ltd.*** **v.** ***UOI*** **- 1996(SC)**. It is also well settled that the imported goods have to be assessed to duty in the condition in which they are imported. - ***D N Sethna*** **v.** ***CC*** **- (1996) (CEGAT) *** ***CC*** **v.** ***Supreme Woollen Mills*** **1999(CEGAT).**

Price in case of high sea sale – In case of high sea sale, price charged by importer to assessee would form the assessable value and not the invoice issued to the importer by foreign supplier. – ***National Wire*** **v.** ***CC*** **2000(122) ELT 810 (CEGAT) *** ***Godavari Fertilizers*** **v.** ***CC*** **(1996) 81 ELT 535 (CEGAT)**. If the purchase is on high seas, the selling price will be naturally higher than the price at which the importer imported the goods. It will include his service charges, but also demurrage, bank charges etc. Thus, indirectly, duty will be payable on demurrage, which is really not part of 'normal' price.

Valuation is required to be done by proceeding sequentially from rules 5 to 8 if value cannot be determined under rule 4. Failure to observe this sequential mandate of the rules would render such value the determination to be incorrect. - **Tavadec Industries v. CC 2002(145) ELT 548 (CEGAT).** The only exception is that the 'computed value' method may be used before 'deductive value' method, if the importer requests and Assessing Officer permits..

Classification –

Software loaded on hard disk classification as software *M/s Sprint RPG India Ltd. Vs. CCE [(2000) 88 ECR 737 (SC)]*

The assessee imported hard disk loaded with computer software. The price paid for 6 such disks was approx. Rs. 68 lacs while the value of the hard disk simpliciter would be roughly are around Rs. 60,000.00.

Rival contentions: Hard disk drive is chargeable to duty under heading 84.71 at a rate of 25% and computer software is chargeable to duty @ 10% [Chapter heading 85.24 read with Notification No. 59/95 dated 16-03-95]. The department's view was that the goods is classifiable as computer hard drive loaded with software. The assese's contention was that what was imported was software loaded on a hard drive disk and hence the rate of duty should be 10%.

Decision : The SC observed that computer software can be brought either on a floppy or magnetic tape or on a hard disk or in a printed form and hence what is imported is software on a container, which is a hard disk. On the facts of the case the court held that the computer software imported by the appellant on a hard disk is assessable at a rate of 10% as per heading 85.24 because what was imported by the appellant was software on a hard disk and it was not hard disk in the grab of software.

Duty liability is on goods and not product arising out of goods

The assessee had imported a ship for the purpose of breaking and to use ferrous scrap arising out of ship breaking ***Engee Industrial Services Pvt. Ltd. Vs. UOI [2000 (115) ELT 58, 63 (Kar)]***

Rival contentions : In respect of additional duty of customs, the assesse's contention was that the ship is imported for the purpose of breaking and therefore the same is covered under notification no. 167/86-CE dated 01-03-86, which provides for exemption of ferrous scrap arising out of ship breaking. The department's contention was that the imported article was a ship and therefore, the same has to be classified as a ship and not as scrap arising out of ship breaking.

Decision: The court observed that the duty liability arises on the goods imported and not on the products arising from the breaking up of the imported item. Therefore, it was held that the ship should be classified as such and not as scrap arising from the breaking of a ship.

Valuation:

The price u/s 14 for the value is deemed price

The value on which duty payable is deemed value it could be more or less than the agree price between parties or price at invoice. The price relevant for valuation is price on the date when goods reaches at customs barrier ***Union of India Vs. Glaxo Laboratories, (1984 (17) ELT. 284)* the Bombay High Court/ *Garden Silk Mills Ltd vs UOI, 1999 (113) ELT 358*, SC**

Price list, negotiated prices, invoice price are some of the factors to determine customs value ***UOI vs Mahindra & Mahindra Ltd 1995 (76) ELT 481(SC)***

At which such or like goods are ordinarily sold

When the invoice price is law the price of comparable goods can be adopted for the value ***Chander Prakash & Co., Vs. Collector of Customs 1990 (50) ELT 309* the CEGAT**

Assesse imported 100 packages dry fig on particular day an invoice price of 1 US $ per kg. However on the previous day a consignment of dry figs was cleared at the rate of US $ 1.50 per kg. The representative samples on comparison were found to be identical, the customs adopted the rate of US $ 1.50 per kg. as the basis of assessable value is **justified** ***Rajkumar Knitting Mills P.Ltd vs CC 1998 (77) ECR 236 (SC)*** *It was also held* that what is relevant is the date of importation and not the contract date.

Ordinarily sold or offered for sale

If only one buyer and all the goods sold to one buyer, it cannot be said that goods are ordinarily sold In the case of Maruti, who had a collaboration with Suzuki Motor Co. Ltd. it was contended by the Department that since Maruti was the only buyer of Suzuki SKD/CKD packs and complete vehicles, the price charged could not be said to be the one at the which the goods were ordinarily sold or offered for sale". **Relying upon the decision of the Supreme Court *in Atic***

Industries case [1984(17) ELT 323] However *even if only one buyer and the price is competitive, commercial price and arms length price goods can be treated as ordinarily sold* ***[Collector of Customs. Bombay Vs. Maruti Udyog Ltd. 1987 (28) ELT 390]***

In the course of international Trade:

In a case of procurement of cocoa beans for an Indian company, the UK based principal company entered into a contract with another company also based in UK for delivery of goods on behalf of the Indian company. It was urged by the Revenue that the transaction was not in the course of international trade which was rejected by the Bombay High Court on the grounds that the transaction was done on behalf of the Indian company and therefore it was not in the course of international trade. ***Cadbury Fry India Pvt.Ltd vs UOI 1990 (46) ELT 7.***

In the case of sale on high sea basis, it was held by the Supreme Court *in Hyderabad Industries Ltd vs UOI 2000 (115) ELT 593* that the service charges payable to canalizing agency is includible in the assessable value of the imported goods.

At the time and place of importation:

Assessee imported goods with the invoice date was 23.03.1990; the actual date of import is 29.10.1990. There was a gap about 7 months six days Price on invoice as on 23.03.1990 not relevant and price on 29.10.1990 is only the value. ***Punjab Niryat Ayat Private Ltd., Vs. Collector of Customs, Bombay [1991] (26) ECR 532 CEGAT***

Price is the sole consideration of the sale:

That the imported transaction was not influenced by any other factor which makes the price charged as unacceptable for the purpose of valuation. It must be noted that under section 14 or under the Valuation Rules, the transaction value cannot be rejected unless it is proved that price of identical or similar goods at the same commercial levels were imported at a different value. **Narayan International vs CC 1992 (58) ELT 126 (T).**

Customs Import valuation Rules

The following are some of old decision which are well applicable for new import goods valuation rules 2007

Section 14(1A) and Valuation Rules relating to valuation of imported goods are subject to the provisions of Section 14. ie, the value will be transaction value u/s 14 with inclusion of cost and services under rule 9 & 10 ***Plast Fab vs CC 1993 (66) ELT 441 (T).***

Before resorting to valuation under residuary Rule, applicability of other rules will have to be exhausted ***Polyvinyl Industrial Corporation vs CC 1994 (74) ELT 426.***

Rule 4 of the Valuation Rules talk of "the transaction value" (Now Rule 3) and therefore unless that is unacceptable for the reasons set out in Section 14, it has to be accepted. ***Eicher Tractors Ltd vs CC 2000 (122) ELT 21 (SC).***

Holding subsidiary relationship may not be relevant if transaction value for contemporaneous import of identical goods is the same. (ie price to relative is arms length commercial price) ***Siemens Ltd vs CC 2000 (126) ELT 1134 (T).***

Transaction value of identical goods

Comparison of goods must be of identical goods at same commercial levels. ***Sandip Agarwal vs CC 1992 (62) ELT 528 (Cal).***

Branded and unbranded goods could be compared. Comparison of goods from different countries of origin possible only if there is proximate linkage. ***CC vs Shibani Engineering Systems 1996 (86) ELT 453 (SC)***

Where the importer has adduced evidence, department should produce contemporaneous import values at higher prices to discard transaction value. *CC* ***vs Nippon Bearings Ltd. 1996 (82) ELT 3 (SC).***

Price list is not conclusive as evidence of contemporaneous imports. Discounts beyond the price list can be given, if it is a normal trade practice ***Eicher Tractors Ltd vs CC 2000 (122) ELT 321 (SC).***

For ascertaining contemporaneous imports, date of import is relevant and not the date of contract **Rajkumar Knitting Mills P.Ltd. vs CC1998 (98) ELT 292 (SC)**

Lowest value to be taken - If more than one value of identical goods is available, lowest of such value should be taken. - ***Resina Combination*** **v.** ***CC*** **1999(114) ELT 860 (CEGAT**

Transaction value of similar goods

The word "similar" is more expansive than the word "same". Plywood or veneer panels are similar to laminated wood. ***CCE vs Wood Craft Products Ltd 1995 (77) ELT 23 (SC).***

Enhancing the value of goods imported from Japan on the basis of supplies from France not acceptable. Comparing a quantity of 4986 kgs imported with another import of 360 kgs is not correct ***Nitisoya Diamond Tools vs CC 1994 (74) ELT 49 (T)..***

Residual Method Rule 8

The sixth and the last method are called "residual method". It is also often termed as 'fallback method'. This is similar to 'best judgment method' of the Central Excise. This method is used in cases where 'Assessable Value' cannot be determined by any of the preceding methods ***CC*** **v.** ***Sanjay Chandiram*** **- (1995) (SC).** While deciding Assessable Value under this method, reasonable means consistent with general provisions of these rules should be the basis and valuation should be on basis of data available in India. [Rule 8 (1) of Customs Valuation Rules]. -

Valuation of old Machinery and old Motor cars - it was held that concept of transaction value under Rule 4 is applicable to second hand machinery also, particularly because no exactly comparable imports can be found or exist. *Essar Graphics* v. *CC* 1999 (CEGAT)/*International*

Conveyors v. *CC* 2000(CEGAT), It was held that invoice value of second hand machine supported by Chartered Engineer's certificate is acceptable when transaction is in normal course of international trade and there are no contemporaneous imports of like goods at higher value. ***Medak Rubber* v. *CC* 2000(CEGAT)**

Depreciation will be allowed on value of old machinery on following scale: (*i*) for every quarter in 1st year: 4% (*ii*) for every quarter in 2nd year: 3% (*iii*) for every quarter in 3rd year 2.5% (*iv*) for every quarter in 4th and subsequent year : 2% Maximum : 70% [*Vadodara Commissionerate No. Cus/t/93 dated 15-6-1993*]. Same depreciation rate applied for old cars also.

Valuation inclusions/ exclusion

Inclusion of Royalty in valuation

The assessee entered into an agreement with its Japanese Company to import TV components manufactured by Japanese Company The assessee will use imported components for manufacture of TV. It also entered into an agreement for obtaining technical assistance and know-how. The know how is for technical advice, quality control, inspection of components before they are use. In turn, the Assessee is paying royalty @ 3% on ex-factory price of colour TV. It was held that payment under the said agreement related not only to the production of the goods in India but also to imports. Further, when payment to Japanese Company was at the rate of 3% of the sales turn over of the final product, including cost of imported component, it became a condition of sale of the finished goods. Royalty payment is connected with sales and it is includible in valuation. **MATSUSHITA TELEVISION & AUDIO LTD – 2007 –SC 211ELT288**

Rejection of Transaction Value based on Exporter declaration is not tenable

Assessee imported goods from Hong Kong @ 6.00 $ per 1000 piece… The declared Transaction value of said goods was rejected by Customs Officer as per Customs imported valuation rules the value was rejected not on the basis of any comparable imports –but on the basis of export declaration filed by the supplier in his country (Hong Kong). Assessee(importer) challenged the authencity of export declaration and he contends that the supplier has over-stated the price in his declaration so as to obtain higher export incentives in his country—importer produced evidence as to contemporaneous imports from same supplier at same price which was not challenged by Department. Held that rejection of transaction value based on exporter declaration is not correct **SOUTH INDIA TELEVISION (P) LTD 2007 –SC 214ELT3**

Post importation cost, technical fees installation not includable in valuation

The assessee imported Machinery from USA for installation in their premises in Mumbai. The transaction value for the said goods as declared in value declaration is US $ 15,000 CIF. In addition, assessee has paid technical and installation fee of Rs 59 lacs also. The Department has added that technical and installation fee to the declared transaction value to arrive at the proper assessable value. Held that, Under the Customs Valuation Rules, 2007, post-importation expenditure) are excluded. There is no evidence of any flow-back or extra-consideration deflating the price, and therefore, there was no reason to include Rs 59 lacs in the assessable value of the equipment. **GALAXY ENTERTAINMENT (I) PVT LTD- 2007- SC 214 ELT14**

Valuation in case of second hand car imported- consideration of depreciation

Assessee imported a second hand car (Rolls Royce- 1993 Model) into India in the year 1996. The Bill of entry for clearance thereof was filed by him in Year 1996 (on 31-8-1996) itself. However, Customs Authority gave clearance of car in 2005 only (delay of 9 year). The valuation of machinery was done under Rule 8 taking "depreciated value" as assessable value. Though the mode of valuation was not challenged by the assessee, he claimed allowance of depreciation till year 2005 (the year of clearance).. Held that depreciation was allowed only up to the year of import and not up to the date of clearance **M S SHOES EAST LTD– 2007- SC 210 ELT 641**

Customs department can add landing charges at actual or as percentage. But once percentage is used, no further sum can be added in that component. ***Coromandal Fertilisers Ltd vs CC 2000 (115) ELT 7 (SC).***

Addition of royalty on final products (vehicles) mentioned in the collaboration agreement in the value of imported engines not tenable since the two were not subject to each other. ***UOI vs Mahindra & Mahindra Ltd.1995 (76) ELT 481 (SC).***

Separate agreements does not make for separate transactions Charges paid for design of equipment through separate agreement to be added to value of equipment. ***Andhra Petrochemicals vs CC 1997 (90) ELT 275 (SC).***

Cost of dismantling, process licences, consultancy and technical services rendered abroad to make it ready for import into India includible ***CC vs Essar Gujarat Ltd 1996(88) ELT 609 (SC). Bombay Dyeing Co.Ltd vs CC 1997 (90) ELT 276.***

Cost of product when shown as licence fee – value not deductible. In this case, SBI imported a software worth USD 4084475 and contended that the actual value was USD 401,047 while the balance USD 3683438 represented licence for using the software at multiple locations. The Tribunal held that since SBI paid nothing to the supplier as licence fee for reproduction of software, the entire value was the product value. This decision was affirmed by the Supreme Court. **SBI vs *CC* 2000 (115) ELT 597 (*SC*).**

Charges of purchasing agent abroad not includibl*e* - Charges to purchasing agent abroad are not includible - *Apollo Tyres Ltd.* v. *CC* - (1996) (SC) - confirmed and followed in *Bombay Dyeing & Mfg* v. *CC* - 1997(2) (SC).

Cost of durable and re-usable containers When the containers are used to pack goods in containers for convenience of transport. These containers are durable and re-usable. Hence, cost of such containers is not added for Customs Valuation, if importer agrees to execute a bond to re-export the containers within six months.

Cost of erection, test and commissioning is not includible. – ***Andhra Pradesh Gas Corpn* v. *CC* 2001 (CEGAT).**

Demurrage charges payable to port trust - Demurrage charges payable to port trust authorities for delay in clearing goods are not to be added. This are incurred in extraordinary situation - ***Deepak Fertilisers*** **v.** ***CC*** **1989(41) ELT 550 (CEGAT) *** ***Hindustan Lever*** **v.** ***UOI*** **2002(142) ELT 33 (Cal HC).** ***Indian Oil Corporation Ltd.*** **v.** ***CC*** **2000 (CEGAT).**

Bank charges – Bank charges paid to banker for services rendered by them is not consideration of goods given to seller. It is not includible. - ***EXIM India Oil Co.*** **v.** ***CC*** **2001(131) ELT 207 (CEGAT).**

Charges for reproduction of software in India - At present, many popular types of software If such softwares are Licensed to be reproduced in India by the foreign owner of these softwares, charges for reproducing these softwares will not be added. As per press note dated 17-12-1992 of DOE of GOI, the purpose is to bring down cost of software in India and to save foreign exchange outflow on several copies of software.

Computer Software – Computer software is a distinct item and is classifiable separately. Hence, even if software is supplied with the machine, its price is not includible in value of machinery. – ***Technova Imaging Systems*** **v.** ***CC*** **2003(151) ELT 404 (CEGAT).**

Royalties and license fee of the following not includible
(*a*) Charges for the right to reproduce the goods in India shall not be added *and* (*b*) payments made by buyer (importer) for right to distribute or resale the imported goods shall not be added if such payment is not a condition for export to India. (c) Royalty payment to collaborators un-connected with imported goods

Royalty payment to collaborators un-connected with imported goods not to be included - Often, a lump-sum payment of royalty is made to foreign collaborators for technical know-how. In addition, components /parts/ CKD packs are procured from foreign collaborators. Customs department normally holds that the price of parts/CKD packs should be loaded, on assumption that the part of price of component parts/CKD packs has been paid as 'royalty payment'.

It has been held that cost of technical documents and drawings *cannot* be included in the customs value. However, if part of cost of equipment is transferred to value of engineering drawings, there will be under-valuation of equipment and this can be examined. Engineering drawings are exempt from customs duty. This was because there was a separate heading in Customs Tariff for 'drawings'. Otherwise, the cost would have been includible. **Tata** ***Iron & Steel Co. Ltd.*** **v.** ***CCE*** **2000(1) SC**

The company had foreign collaboration with M/s Peugeot, a French company, for engines for 10 years. A lump sum payment was made for technical know-how for manufacture of diesel engines in India. In addition, the company imported engine CKD packs from the French company in subsequent period. Department contended that lump-sum payment of royalty has bearing on the price charged for CKD packs. The Invoice price is not the real price. Supreme Court did not accept the view. It was held that there is no nexus between know-how transfer fee and import of CKD packs. These are independent transactions. Department has not able to produced any material to show that price shown in invoice is not the real price, or the lump-sum royalty paid affected that price of goods obtained later. ***UOI*** **v.** ***Mahindra and Mahindra Ltd.*** **- 1995 (SC)**

Ware housing

Refuse to renew license to private warehouse

Grant of licence for private bonded warehouse is given where public bonded warehouses are not available. Therefore, in Ludhiana, upon availability of public warehouse facility, the Assistant Collector refused to renew licence for private bonded warehouse ***[Vardman Spinning & General Amills Ltd vs. UOI, 1981 ELT 911 (P&H)]***

However contrary decision in The High Court of Rajasthan has held that licence for private bonded warehouse cannot be cancelled merely on coming into existence of a public warehouse. **[Baroda Rayons Corporation vs. Supdt of Customs, Spl Appeal No.714/81]**

In *Mustan Teherbhai* v. *CC* 2003 (154) ELT 472 (CEGAT), it has been held that customs duty is payable on goods manufactured in customs bonded warehouse. Thus, goods manufactured in customs bonded warehouse are not 'made in India'. The reason given is that section 66 of Customs Act makes mention of 'rate of duty leviable on goods manufactured'. Such duty can only be customs duty - same view in *Dempo Engineering* v. *CCE* 2002(139) ELT 316 (CEGAT) * *Mustan Teherbhai* v. *CC* 2000 (125) ELT 1001 (CEGAT)

Assessments

No time limit for assessment – Section 17 does not prescribe any time limit for assessment. Thus, if ship was allowed to leave without assessment on execution of guarantee, assessment can be done without any time limit and time limit u/s 28 does not apply. – *Southern India Corpn* v. *ACCE* 2000(123) ELT 251 (Cal HC).

Use of imported goods for other purpose Confiscation was justified:

The importer had cleared goods under project imports regulations and concessional assessment under heading no. 84.66 of the Customs Tariff. Subsequently, these goods were diverted to a new unit and were not used for substantial expansion of capacity at the existing unit. Since the post importation conditions of exemption had not been complied with, the goods were confiscated after due process of law. This was upheld by the Supreme Court .***Jacsons Thevara vs. CC & CE 1992 (61) ELT 343 (SC),***

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