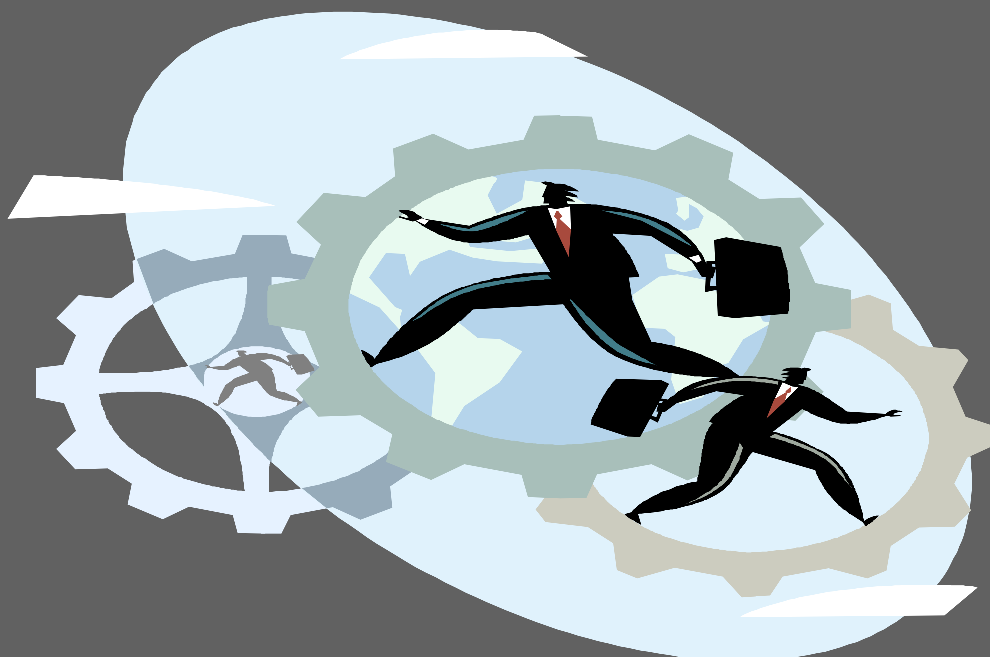
In - Direct Tax

Excise

Custom

Service Tax

Summary of recent case laws relevant for May & November, 2014 – CA Final Exams



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S. NO.	ISSUES	DECISION	CASE LAW
(A) Central Excise			
1	Does the process of removal of foreign materials from iron ore for concentration of such ore amount to manufacture?	The Supreme Court held that removal of foreign materials from iron ore, i.e., mining iron ore from mines and then subjecting to process of crushing, grinding, screening and washing with a view to remove foreign materials to concentrate such ores do not result in manufacture of different commercial commodity. No Central excise duty is liable on iron ore concentrate.	Commissioner v. **Steel Authority of India Ltd.** 2012 (283) E.L.T. A112 (S.C.)
2	Whether the addition and mixing of polymers and additives to base bitumen results in the manufacture of a new marketable commodity and as such eligible to Excise duty?	The Supreme Court thus concluded that the process of mixing polymers and additives with bitumen did not amount to manufacture.	*CCE v. **Osnar Chemical Pvt. Ltd.** 2012 (276) E.L.T. 162 (S.C.)*
3	Whether the metal scrap or waste generated during the repair of his worn out M/c/parts of cement manufacturing amts. to manufacture?	It held that generation of metal scrap or waste during the repair of his worn out M/c/parts of cement manufacturing plant does NOT amts. to manufacture	**Grasim Industries Ltd** V. UOI 2011 (273) ELT 10 (SC)
4	Are the physician sample excisable goods in view of the fact that they are statutorily prohibited from being sold?	The court inferred that the physician sample were excisable goods and were liable to Excise Duty.	**Medley Pharmaceuticals Ltd.** V. CCE & C., Daman 2011 (263) E.L.T. 641 (SC)
5	Whether assembling of the testing equipment for testing the final product in the factory amounts to manufacture?	Such equipment was saleable & marketable. Hence, the apex court held that duty was payable on such testing equipment.	**Usha Rectifier Corpn. (I) Ltd.** V. CCEx, New Delhi 2011 (263) E.L.T. 655 (SC)
6	Does a product with a short shelf-life satisfy the test of Marketability?	Supreme court ruled that a product with shelf-life of 2 to 3 days was marketable & Hence Excisable.	**Nicholas Piramal India Ltd.** V. CCEx, Mumbai 2010 (260) E.L.T. 338 (SC)
7	Whether the theoretical possibility of product being sold is sufficient to establish the marketability of a product?	The mere theoretical possibility of the product being sold is NOT sufficient but there shud be commercial capability of being sold to prove marketability.	**Bata India Ltd** V. CCE 2010 (252) ELT 492 (SC)
8	Whether the M/c which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under the central excise Act?	The Apex court held that the plant in Q. were NOT immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.	CCE V. **Solid & Correct Engineering works & ORS** 2010 (252) ELT 481 (SC)
9	Does the process of preparation of tarpaulin made ups after cutting & stitching the tarpaulin fabrics & fixing the eye lets amts. to manufacture?	The Apex court opined that stitching of tarpaulin sheets & making eyelets did NOT change the basis characteristics of the raw material & end product, so would NOT amts. to Manufacture. (Already asked in CA Final's Nov.,2011 attempt)	CCE V. **Tarpaulin International** 2010 (256) ELT 481 (SC)
10	Does the process of cutting & embossing aluminum foil for packing the cigarettes amounts to manufacture?	There were no records to suggest that cut to shape/embossing aluminum foils used for packing cigarettes were distinct marketable commodity. Hence process did NOT amount to manufacture as per Section 2(F) of CE Act, 1944.	**GTC Industries Ltd.** V. CCEx 2011 (266) E.L.T. 160 (Bom.)
11	Does the activity of packing of imported compact discs in a jewel box along with inlay card amts. to manufacture?	The court held that activities carried out by the respondent did NOT amt. to manufacturing, since the CD had been complete & finished when imported by the assessee.	CCE V. **Sony Music Entertainment (I) (P) Ltd** 2010 (249) ELT 341 (Bom.)
12	In case of specific classification viz-à-viz classification based on material used/composition of goods, which one should be adopted?	The assessees contention was that the appropriate classification for their product was under Chapter sub-heading No. 6807.10 of the Act while the Department contended that the appropriate classification was under Chapter sub-heading No. 6803.00 of the Act. This was the subject matter of the appeal before the Supreme Court. Therefore, the Court opined that the goods in issue were appropriately classifiable under Sub- heading 6807.10 of the Tariff.	*Commissioner of Central Excise, Bhopal v. **Minwool Rock Fibres Ltd.** 2012 (278) E.L.T.581 (S.C.)*

13	In case of a specific entry viz-a-viz a residuary entry, which one should be preferred for classification purpose?	The assessee's claim that the product is required to be classified under Chapter sub-heading 3003 of the Tariff, whereas the Revenue's stand was that the products in question are detergents and, therefore, to be classified under chapter sub- heading 3402.90.Thus, on the basis of the above observation by the Court the Revenue's appeal was rejected.	*CCE v.* ***Wockhardt Life Sciences Ltd.*** *2012 (277) E.L.T. 299 (S.C.)*
14	Can the "soft serve" served at McDonalds India be classified as "ice cream" for the purpose of levying E/duty?	The apex court held that "soft serve" was classified under heading 21.05 as "ice cream" & not under heading 04.04 as "other dairy produce".	CCE V. **Connaught plaza restaurant (P) Ltd.** 2012 (286) ELT 321 (SC)
15	Whether the price used for selling of a product below the cost price for penetration of market can be considered as transaction value?	The Department disputed that as the extra commercial consideration was involved in this case an additional consideration should be added to the price for the purpose of duty. Thus, the Department invoked Best Judgment Assessment. Supreme Court in view of the above resorting to best judgment assessment was proper.	*CCEx., Mumbai v.* ***Fiat India Pvt.Ltd.*** *2012 (283) E.L.T. 161 (S.C.)*
16	Can the Pre-delivery inspection (PDI) & free after sales service charges be included in the tranx value when they are not charged by the assese to the buyer?	The high court held that clause no. 7 of circular dt. 1 st July, 2002 & circular dt. 12 Dec., 2002 were not in conformity with the prov. of sec. 4(1) (a) read with sec. 4(3) (d) of CE act, 1944. Further as per sec. 4(3) (d) the PDI & free after sales service charges could be incl. in the tranx value only when they were charged by the assese to the buyer.	Tata Motors Ltd. V. UOI 2012 (286) ELT 161 (Bom.)
17	In case the testing is critical to ensure marketability of manufactured product i.e. the manufacture is not complete without testing; is CENVAT credit of the testing material allowed?	The Supreme Court held that the process of manufacture would not be complete if a product is not saleable as it would not be marketable. Thus, the duty of excise would not be leviable on it.	***Flex Engineering Ltd.*** *v. Commissioner of Central Excise, U.P. 2012 (276) E.L.T. 153 (S.C.)*
18	The assesses claimed the CENVAT credit on the duty paid on capital goods which were later destroyed by fire. The Insurance co. reimbursed the amount incl. excise duty. Is the CENVAT credit availed by the assesses required to be reversed?	The high court therefore answered the substantial question of law in favor of the assesses & against the revenue.	**Tata advanced Material Ltd.** V. CCEx 2011 (271) E.L.T. 62 (Kar.)
19	In case of combo pack of brought out tooth brush sold along with tooth paste manufactured by assesses; is tooth brush eligible as input under the CCR, 2004?	The High court upheld the Tribunal's decision that the credit was admissible in the case of assesses.	**Prime Health Care Products** V. CCE 2011 (272) E.L.T. 54 (Guj.)
20	Whether penalty can be imposed on the director of the co. for the wrong CENVAT credit availed by the co.?	The court observed that CENVAT credit had been availed by the co. & penalty U/R 13(1) was imposable only on the person who had availed CENVAT credit, who was a manufacture. The petitioner director of the co. could NOT be said to be manufacture availing CENVAT credit.	**Ashok Kumar Fulwadhya** V. UOI 2010 (251) ELT 336 (Bom.)
21	Can CENVAT credit be taken on the basis of private challans?	The court held that credit be taken on the strength of private challans as the same were NOT found to be fake & thr was a proper certificate that duty had been paid.	CCEx V. **Stelko Strips Ltd** 2010 (255) ELT 397 (P&H)
22	Whether (i) technical testing & analysis service availed by the assese for testing of clinical samples prior to commencement of commercial production & (ii) services of commission agent are eligible input service for claiming cenvat?	The high court held that technical testing & analysis service availed for testing of clinical samples prior to commencement of commercial production were directly related to the manufacture of the final product & hence, were input service eligible for cenvat credit.	CCEx V. **Cadila Healthcare Ltd.** 2013 (30) STR 3 (Guj.)
23	Will two units of a manufacturer surrounded by a common boundary wall be considered as one factory for the purpose of cenvat credit, if they have separate central excise registration?	The high court held that credit could be availed on eligible inputs utilized in the generation of electricity only to the extent the same were used to produce electricity within the factory registered for that purpose & credit on input utilized to produce electricity which was used for a factory registered as a different unit would not be allowed.	**Sintex industries Ltd.** V. CCEx 2013 (287) ELT 261 (Guj.)

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24	Whether CENVAT credit can be denied on the ground that the weight of the inputs recorded on receipt in the premises of the manufacturer of the final products shows a shortage as compared to the weight recorded in the relevant invoice?	The Tribunal held that each case had to be decided according to merit & NO hard & fast rule can be laid down for dealing with different kinds of shortage. Similarly, minor variation arising due to weighment by different M/c will also have to be ignored if such variations are within tolerance limits.	CCE V. **Bhuwalka Steel Industries Ltd** 2010 (249) ELT 218 (Tri-LB)
25	Whether time-limit under section 11A of the central excise Act, 1944 is applicable to recovery of dues under compound levy scheme?	It was held that the time-limit under section 11A of CE Act, 1944 is NOT applicable to recovery of dues under compound levy scheme.	**Hans Steel Rolling Mill** V. CCEx, chandigarh 2011 (265) E.L.T. 321 (SC)
26	Whether Additional Director General, Directorate General of Central Excise Intelligence can be considered a central excise officer for the purpose of issuing SCN?	The Government submitted that the Board had already issued notification dated 26-6-2001. In this notification, Additional Director General, Directorate General of Central Excise Intelligence was specified as Commissioner of Central Excise. Hence, he was fully competent to issue the impugned show cause notice.	**Raghunath International Ltd.** v. Union of India, 2012 (280) E.L.T. 321 (All.)
27	Whether non-disclosure of a statutory requirement under law would amt. to suppression for invoking the larger period of limitation u/s 11A?	The High court held that non-disclosure of the said fact on the part of the assessee would NOT amt. to suppression so as to call for invocation of the extended period of limitation.	CCEx & C v. **Accrapac (I) (P) Ltd** 2010 (257) ELT 84 (Guj.)
28	In a case where the assesse has been issued a show cause notice regarding confiscation, is it necessary that only when such SCN is adjudicated, can the SCN regarding recovery of dues & penalty be issued?	The high court held that there was no legal prov. requiring authorities to first adjudicate the notice issued regarding confiscation &, only therefore, issue show cause notice for recovery of dues & penalty.	**Jay Kumar Lohani** V. CCEx 2012 (28) STR 350 (MP)
29	Is assessee required to pay interest in case of voluntary payment of time barred duty?	The high court held that the assese was not required to pay interest in case of voluntary payment of time barred duty.	CCE & C. V. **Gujarat Narmada Fertilizers Co.**
30	Can appellate authorities or courts permit the assesse to pay reduced penalty of 25% beyond the time prescribed u/s 11AC?	The high court held that tribunal could not permit the assesse to pay 25% penalty beyond the time prescribed under the first & second prov. to erstwhile sec. 11AC [now sec. 11AC (1) ©]	CCEx V. **Castrol India Ltd.** 2012 (286) ELT 194 (Bom.)
31	In a case where the manufacturer clandestinely removes the goods & stores them with a firm for further sales, can penalty u/r 25 of the CE Rules, 2002 be imposed on such firm?	However, high court concurred with the view of the tribunal & concluded that rule 25 (1) © would have no appl. in the present case.	CCEx V. **Balaji Trading Co.** 2013 (290) ELT 200 (Del.)
32	Can a decision pronounced in the open court in the presence of the advocate of the assessee, be deemed to be the service of the order to the assessee?	The high court held that when a decision is pronounced in the presence of the advocate of the assese, who is the authorized agent of the assessee within the meaning of sec. 37C, the dt. Of pronouncement of order would be deemed to be the dt. of service of order.	**Nanumal Glass Works** V. CCEx Kanpur, 2012 (284) ELT 15 (All.)
33	If Revenue accepts judgment of the Commissioner (Appeals) on an issue for one period, can it be precluded to make an appeal on the same issue for another period?	The Supreme Court observed that since the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it may not be open for the Revenue to contend this issue further by issuing the impugned show cause notices on the same issue for further periods.	*Commissioner of C. Ex., Mumbai-III v.* ***Tikitar Industries****, 2012 (277) E.L.T. 149 (S.C.)*
34	Can the excess duty paid by the seller be refunded on the basis of the debit note issued by the buyer?	The substantial Q. of law raised was answered in favor of the assessees & against revenue. Conseqtly. Dept. refunded the excess duty paid. (Already asked in CA Final's May,2012 attempt)	**Techno Rubber Industries Pvt. Ltd.** V. CCE 2011 (272) E.L.T. 191 (Kar.)
35	Merely bcoz assesses has sustained loss more than the refund claim, is it justifiable to hold that it is not a case of unjust enrichment even though the assesses failed to establish non-inclusion of duty in the cost of Prod.?	The High court held that assesses could NOT be granted relief since it had failed to establish that the cost of the duty was NOT included while computing the COP.	CCE V. **Gem Properties (P) Ltd** 2010 (257) ELT 222 (Karn.)

36	Whether doctrine of merger is applicable when appeal dismissed on the grounds of limitation and not on merits?	The Court observed that if for any reason an appeal is dismissed on the ground of limitation and not on merits that order would not merge with the orders passed by the first appellate authority. Apex Court opined that the High Court was justified in rejecting the request made by the assessee for directing the Revenue to state the case and also the question of law for its consideration and decision. In view of the above discussion, Supreme Court rejected the appeal.	***Raja Mechanical Co. (P) Ltd.*** *v. Commissioner of C. Ex., Delhi-I, 2012 (279) E.L.T. 481 (S.C.)*
37	Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on records under section 35C (2) of the CE Act, 1944?	The court opined that CESTAT exceeded its power under section 35C (2) of the CE Act, 1944. In pursuance of a rectification application, it CANNOT re-appreciate the evidence & reconsider its legal view taken earlier. Note: - section 35C (2) of the Act. The appellate Tribunal may, at any time within 6 months from the date of order, with a view to rectify any mistake apparent from the records, amend any order passed by it under sub-section 1 & shall make such amendment if the mistake is brought to its notice by the commissioner of CE or the other party. (Already asked in CA Final's Nov.,2012 attempt)	**RDC Concrete (I) Pvt. Ltd.** 2011 (270) E.L.T. 625 (SC)
38	Is the CESTAT order disposing appeal on a totally new ground sustainable?	The High court explained that CESTAT should have remanded the matter back to the Adj. Auth. However, it could NOT have assumed to itself the jurisdiction to decide the appeal on a ground which had NOT been urged before the lower authorities.	**GujChem Distillers** V. CCE 2011 (270) E.L.T. 338 (SC)
39	Whether the construction of pre-fabricated components at one site to be used at different inter-connected metro construction sites in Delhi would get covered under exemption Notification No. 1/2011-C.E.(N.T.) dated 17-2-2011 exempting the 'goods manufactured at the site of construction for use in construction work at such site' ?	The Court held that keeping in view the facts of the present case and that the construction was done virtually all over Delhi and construction sites were interconnected, practically prefabrication was done on construction site only. Therefore, it allowed the appeal in the favor of the respondent- assessee.	*Commissioner of Central Excise v.* ***Rajendra Narayan*** *2012 (281) E.L.T. 38 (Del.)*
40	Can the deposit of 50% of tax amount be made a condition for condoning the delay in filing of an appeal?	The high court held that the condt. of depositing 50% of tax amount for condoning the delay is illegal & that the CESTAT ought not to have mixed the issue with the separate appl. filed for stay.	**Mihani Network** V. CCus. & CEx 2012 (285) ELT 182 (MP)
41	Whether the exempted goods on which duty has been paid by mistake by the assessee and refund thereof has also not been claimed would be excluded while computing turnover for preceding year for claiming SSI exemption?	The Supreme Court opined that SSI exemption would be allowable to the assessee, as they meet all the conditions thereof. The amount of clearances in the SSI exemption notification needs to be computed after excluding the value of exempted goods. The Court directed the adjudicating authority to apply the SSI exemption notification in the assessee's case without taking into consideration the excess duty paid by the assessee under the other exemption notification.	***Bonanzo Engg. & Chemical P. Ltd.*** *v. CCEx. 2012 (277) E.L.T. 145 (S.C.)*
42	Whether an assessee can claim the benefit of SSI exemption on the brand name of another firm if its proprietor is also a partner in such other firm?	The Supreme Court held that the appellant was eligible to claim benefit of the SSI exemption as the proprietor of Elex Knitting Machinery Co. was one of the partners in Elex Engineering Works. And hence being the co-owner of the brand name of Elex, he could not be said to have used the brand name of another person, in the manufacture and clearance of the goods in his individual capacity.	*Commissioner v.* ***Elex Knitting Machinery Co.*** *2012 (283) E.LT. A18 (S.C.)*
43	Whether the clearance of two firms having common brand name, goods being manufactured in the same factory premises, having common mgmt & a/c's etc can be clubbed for the purposes of SSI exemption?	The High court held that the clearance of the common goods under the same brand name manufactured by both had been rightly clubbed.	CCE V. **Deora Engineering Work** 2010 (255) ELT 184 (P&H)

44	Whether the manufacture & sale of specified goods, not physically bearing a brand name, from branded sale outlet would disentitle an assessee to avail the benefit of small scale exemption?	The SC held that it is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods for the purpose of SSI exemption. A scrutiny of the surrounding circumstances is not only permissible, but necessary to decipher the some; the most important of these factors being the specific outlets from which the goods is sold. However such factors would carry different hues in different scenarios. There can be no single formula to determine if a good is branded or not, such determination would vary from case to case.	CCEx Vs. Australian Foods India Pvt. Ltd. 2013 (287) ELT 385 (SC)
45	Whether a circular necessarily needs to be issued u/s 37B, in order to be binding on the dept.?	The high court observed that any classification issued by the board is binding upon the central excise officers who are duty bound to observe & follow such circulars. Whether sec. 37B is referred to in such circular or not, is not relevant.	**Darshan Boardlam Ltd.** V. UOI 2013 (287) ELT 401 (Guj.)
46	Can the Settlement Commission decline to grant immunity from prosecution after confirming the demand and imposing the penalty?	The Court set aside the order relating to non-grant of immunity for prosecution and resultantly, the assessee was granted immunity from being prosecuted.	**Maruthi Tex Print & Pr ocessors P. Ltd.** v. C. & C Ex. Sett.Comm., Chenna 2012(281) E.L.T. 509 (Mad.)
47	Whether a consolidated return filed by the assessees after obtaining registration, but for the period prior to obtaining registration, could be treated as a return under clause (a) of the first proviso to sec. 32E (1)?	The court held that, it rejected the submission of the petitioner that filing of consolidated return coving all the past period would serve the purpose.	**Icon Industries** V. UOI 2011 (273) ELT 487 (Del.)
48	Is the settlement comm. Empowered to grant the benefit under the proviso to sec. 11AC in cases of settlement?	The court ruled that benefit under the proviso to sec. 11AC could NOT be granted by the settlement comm.. in cases of settlement.	**Ashwani Tobacca Co. (P) Ltd** V. UOI 2010 (251) ELT 162 (Del.)
	(B) Service Tax		
49	Whether the service tax liability created under law can be shifted by a clause entered in the contract?	Supreme Court held that service tax is indirect tax which may be passed on. Thus, assessee can contract to shift their liability. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under contract between them.	***Rashtriya Ispat Nigam Ltd.*** *v. Dewan Chand Ram Saran 2012 (26) S.T.R. 289 (S.C.)*
50	Is the service tax & excise liability mutually exclusive?	The high court held that the excise duty is levied on the aspect of manufacture & S/Tax is levied on the aspect of service rendered. Hence, it would NOT amount to payment of tax twice & the assesses would be liable to pay S/tax on the value of services. (Already asked in CA Final's May,2012 attempt)	**Lincoln helios (I) Ltd.** V. Commissioner of S/Tax 2011 (23) S.T.R. 112 (Kar.)
51	In case whr rooms have been rented out by municipality, can it pass the burden of S/tax to service receiver ie tenant?	The court held that municipality can pass the burden of S/tax on service receiver.	**Kishore K. S.** V. cherthala Municipality 2011 (24) STR 538 (Kar.)
52	Were services provided to the pilgrims taxable under short term accommodation service?	The Andhra Pradesh High Court held that the petitioner was religious and charitable institution and was running guest houses by whatever name they were called, whether it was a shelter for pilgrims or any other name for a considerable time and thus was liable to get itself registered under 'Short term accommodation service' and pay service tax on the same.	***Tirumala Tirupati*** *Devasthanams, Tirupati V. Superintendent of Customs, Central Excise, Service Tax (2012-TIOL-97-HC-AP-ST)*
53	Can a software be treated as goods & if so, whether its supply to a customer as per an "End User License Agreement" (EULA) would be treated as sale or service?	The High court reiterated that software is goods as per article 366 (12) of the constitution. Further, the court was of the view that such tranx taking place betw. members of ISODA & its customer, the software is NOT sold as such, but only the content of the data stored in the software are sold which would only amts. to service & NOT Sale.	**Infotech Software Dealers Association (ISODA)** V. UOI 2010 (20) STR 289 (Mad.)
54	Whether S/tax is chargeable on the buffer subsidy provided by the Govt. for storage of free sale sugar, under the category of storage & W/H services?	The court held that the storage of specific quantity of free sale sugar could NOT be treated as Providing storage & W/H services to GOI.	CCE V. **Nahar Industrial Enterprises Ltd** 2010 (19) STR 166 (P&H)

55	A society running renowned school allows other schools to use a specific name, its logo & motto and receives a non-refundable amount & annual fee as a consideration. Whether this amounts to a taxable service?	The high court held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing "franchise service" to the said schools & if the petitioner realized the "franchise" or "collaboration fees" from the franchise schools, the petitioner was duty bound to pay s/tax to the dept.	**Mayo College General Council** V. CCEx (Appeal) 2012 (28) STR 225 (Raj.)
56	Whether filing of declaration of description, value etc. of input service used in providing IT enabled service (call Centre / BPO service) exported outside india, after the date of export of service will disentitle an exporter from rebate of service tax paid on such input service?	The high court, therefore, allowed the rebate claims filed by the appellants & held that the condt. of the notification must be capable of being complied with as if it could not be complied with, there would be no purpose behind it.	**Wipro Ltd.** V. UOI 2013 (29) STR 545 (Del.)
57	Whether expenditure like travel, hotel stay, transportation & the like incurred by service provider in course of providing taxable service should be treated as consideration for taxable service & incl. in value for charging s/tax?	The high court, therefore, held that rule 5 (1) of the rules runs counter & is repugnant to sec. 66 & 67 of the act & to that extent it is ultra-virus the Finance Act, 1994.	**Intercontinental Consultant & Technocrats Pvt. Ltd.** V. UOI 2013 (29) STR 9 (Del.)
58	Whether the penalty is payable even when service tax and interest has been paid before issue of show cause notice?	The Karnataka High Court held that the authorities had no authority to initiate proceedings for recovery of penalty under section 76 of the Act when the tax payer paid service tax along with interest for delayed payments promptly. If the notices were issued contrary to this section, the person who had issued notice should be punishable and not the person to whom it was issued.	*CCE & ST v.* ***Adecco Flexione Workforce Solutions Ltd.*** *2012 (26) S.T.R 3 (Kar)*
59	Will service tax paid mistakenly arouse service tax liability?	The Hon'ble High Court of Karnataka, distinguishing the landmark judgment by Supreme Court in the case of *Mafatlal Industries v. UOI 1997 (89) E.L.T. 247 (S.C.)* relating to refund of duty/tax, held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. Mere payment of amount would not make it 'service tax' payable by the respondents. In view of the above, it was held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under Section 11B of the Central Excise Act, 1944.	*CCE (A) v.* ***KVR Construction*** *2012 (26) STR 195 (Kar.)*
60	In a case whr the assesse has acted bona fide; can penalty be imposed for the delay in payment of s/tax arising on account of confusion regarding tax liability & divergent views due to conflicting court decision?	The HC held that even if the appellant were aware of the levy of s/tax & were not paying the amount on the ground of dispute with the ONGC, there could be justification in levying the penalty in absence of any fraud, misrepresentation, collusion or willful mis-statement or suppression. Moreover, when the entire issue for levying of the tax was debatable, that also would surely provide legitimate grounds not to impose the penalty.	**Ankleshwar Taluka ONGC Land Loosers Travellers Co. OP** V. CCE, surat II 2013 (29) STR 352 (Guj.)
61	Can appeal be filled to high court for deciding the Q. related to the taxability of S/Tax?	The high court held that the Q. as to whether the assesses is liable to pay S/Tax falls squarely within the exception carved cut in section 35G of CE Act, 1944? (Already asked in CA Final's May,2012 attempt)	**Volvo India Ltd.** V. CCEx & ST 2011 (24) S.T.R. 25 (Kar.)
	(C) Custom		
62	In case no statutory definition is provided under law, can the opinion of expert in trade who deals in those goods be considered?	The Supreme Court on referring to the case of *Collector of Customs v. Swastic Woollens (P) Ltd. 1988 (37) E.L.T. 474 (S.C.),* held that when no statutory definition was provided in respect of an item in the Customs Act or the Central Excise Act, the trade understanding, i.e. the understanding in the opinion of those who deal with the goods in question was the safest guide.	*Commissioner of Customs (Import), Mumbai v.* ***Konkan Synthetic Fibres*** *2012 (278) E.L.T. 37 (S.C.)*

63	Are the clearances of goods from DTA to SEZ chargeable to export duty under the SEZ Act, 2005 or the custom Act, 1962?	The high court inferred that the clearance of goods from DTA to SEZ is NOT liable to export duty either under the SEZ Act, 2005 or under custom Act, 1962. (Already asked in CA Final's May,2012 attempt)	**Tirupati Udyog Ltd.** V. UOI 2011 (272) E.L.T. 209 (AP)
64	Whether remission of duty is permissible u/s 23 of the custom Act, 1962 when the remission application is filled after the expiry of W/H period (Incl. extended warehousing period)?	The High court held that when the goods are NOT cleared within the period or extended period as given by the authorities, their continuances in the W/H will NOT attract sec. 23 of the Act.	CCE V. **Decorative Laminates (I) (P) Ltd** 2010 (257) E.L.T. 61 (Kar.)
65	Where a classification (under a Customs Tariff head) is recognized by the Government in a notification any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?	The Apex Court observed that the Central Government has issued a exemption notification dated 1-3-2002 and in the said notification it has classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself has classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification need to be accepted.	***Keihin Penalfa Ltd.*** *v. Commissioner of Customs 2012 (278) E.L.T. 578 (S.C.)*
66	Whether classification of imported product changes if it undergoes a change after importation & before being actually used?	The court noted that it was the use of the product that had to be considered in the instant case. If a product undergoes some changes after importation & before being actually used, it is immaterial, provided it remains the same product & it is used for the purpose specified in the classification.	**Atherton Engineering Co. (P) Ltd** V. UOI 2010 (256) E.L.T. 358 (Cal.)
67	Will the description of the goods as per the doc. Submitted along with the shipping bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test? Whether a separate notice is req. to be issued for payment of intt. which is mandatory & automatically applies for recovery of excess drawback?	The High court held that the description of the goods as per the doc. Submitted along with the shipping bill be a relevant criterion for the purpose of classification & NO notice need to be issued separately as the payment of intt. becomes automatic, once it is held that excess drawback has to be repaid.	M/s **CPS Textiles (P) Ltd** V. Joint Secretary 2010 (255) E.L.T. 228 (Mad.)
68	Whether subsequent increase in the market price of the imported goods due to inflation would lead to increase in customs duty although the contract price between the parties has not increased accordingly?	It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the respondent- assessee.	*Commissioner of Cus., Vishakhapatnam v.* ***Aggarwal Industries Ltd.*** *2011 E.L.T. 641 (S.C.)*
69	Can the time limit prescribed u/s 48 of the custom act, 1962 for clearance of the goods within 30 days be read as time limit for filing of bill of entry u/s 46 of the act?	The high court however held that the time limit prescribed u/s 48 for clearance of the goods within 30 days cannot be read into section 46 & it cannot be inferred that sec. 46 prescribes any time limit for filing of BOE.	CCUs V. **Shreeji Overseas (India) Pvt. Ltd.** 2013 (289) ELT 401 (Guj.)
70	Whether the issue of the imported goods warehoused in the premises of 100% EOU for manufacture/production/processing in 100% EOU would amts. to clearance for home consumption?	The Tribunal held that imported goods warehoused in the premises of a 100% EOU (which is licensed as a custom bonded W/H) & used for the purpose of manufacturing in bond as authorized u/s 65 of the custom Act, 1962, CANNOT be treated to have been removed for home consumption.	**Paras Fab International** V. CCE 2010 (256) E.L.T. 556 (Tri-LB)
71	Can tribunal condone the delay in filing of an appl. consequent to review by the committee of chief comm. if it is satisfied that there was sufficient cause for not presenting the appl. within the prescribed period?	The HC ruled that the tribunal was competent to invoke sec. 129 A (5) whr an appl. u/s 129D (4) had not made within the prescribed time & condone the delay in making such appl. if it was satisfied that thr was sufficient cause for not presenting the appl. within the prescribed period.	**Thakker Shipping Pvt. Ltd.** V. comm. of custom (General) 2012 (285) ELT 321 (SC)
72	Whether ext. period of limitation for demand of customs duty can be invoked in a case whr the assesse had sought a clarification about exemption from a wrong authority?	The SC held that mere non-payment of duties could not be equated with collusion or willful misstatement or suppression of facts as then thr would be no form of non-payment which would amount to ordinary defaults. The apex court opined that something more must be shown to construe the acts of the assesse as fit for the appl. of the proviso.	**Uniworth Textile Ltd.** V. CCEx 2013 (288) ELT 161 (SC)

73	Whether non filing of additional doc. Despite several opportunities being given to the assesse to produce the same, could be a sufficient grand for passing a non-speaking order?	The HC decided the petition in favor of the assesse, & set aside the order of the adjudicating authority.	**DBOI Global Service Pvt. Ltd.** V. UOI 2013 (29) STR 117 (Bom.)
74	Whether Chartered Accountants certificate alone is sufficient evidence to rule out the unjust enrichment under custom?	The respondent could NOT be granted refund merely on the basis of the said certificate. Thus, the High court overruling the Tribunal's decision, answered the Q. of law in favor of revenue.	**BPL Ltd.** V. CCus.,Chennai 2010 (259) E.L.T. 526 (Mad.)
75	Can the assessees be denied the refund claim only on the basis of contention that he had produced the attested copy of TR-6 challan & not the original of the TR-6 challan?	The High court held that the petitioner could NOT be denied the refund claim & attested copy of TR-6 challan would suffice for processing the refund application.	**Narayan Nambiar Meloths** V. CCus 2010 (251) E.L.T. 57 (ker.)
76	Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?	The Apex court held that the smuggled goods could NOT be considered as "Imported Goods" for the purpose of benefit of the exemption notification. (Already asked in CA Final's May,2012 attempt)	**M. Ambalal & Co.** V. CCus. (Prev.), Mumbai 2010 (260) E.L.T. 487 (SC)
77	Whether discharge of liability on indicated value would still make the assese liable for confiscation of goods if he has initially made a mis-declaration of the value thereof?	The High Court was thus convinced that there was clear mis-declaration of value by the appellant and as per section 111(m) of the Customs Act, the revenue was asked to confiscate the goods so imported.	***Wringley India Pvt.Ltd.*** *v. Commr.of Cus.(Imports), Chennai 2011 (274) E.L.T. 172 (Mad.)*
78	Is it mandatory for the revenue officer to make available the copies of the seized documents to the person from whose custody such doc. Were seized?	The High court directed the revenue to make available the copies of the document asked for by the assessee, which was seized during the course of the seizure action. (Already asked in CA Final's May,2012 attempt)	**Manish Lalit kumar Bavishi** V. Addl. DIR General, DRI 2011 (272) E.L.T. 42 (Bom.)
79	Under what circumstance can the penalty be imposed in term of sec. 112(a) (ii) of the C/Act, 1962?	The High court inferred that UNLESS it is established that a person has, by his omission or commission, led to a situation where duty is "sought to be evaded", there CANNOT be an imposition of penalty in terms of section 112(a) (ii) of the custom Act, 1962.	**O. T. Enasu** V. UOI 2011 (272) E.L.T. 51 (Kar.)
80	Can separate penalty under section 112 of the custom Act be imposed on the partner when the same has already been imposed on partnership firm?	The high court held that for the purpose of imposing penalty, the Adj. Auth. Under custom Act, 1962 might in an appropriate case, impose a penalty both upon a partnership firm as well as on its partner. (Already asked in CA Final's Nov.,2012 attempt)	**Textoplast industries** V. Addl. Comm. Of custom 2011 (272) E.L.T. 513 (Bom.)
81	Is the want of evidence from foreign supplier enough to cancel the confiscation order of goods undervalued?	The High court held that in a case of confiscation of goods bcoz of this under valuation, tribunal could NOT cancel the confiscation order for the want of evidence from foreign supplier.	CCus. V. **Jaya Singh Vijaya Jhaveri** 2010 (251) E.L.T. 38 (Ker.)
82	Whether the smuggled goods can be re-exported from the customs area without formally getting them release from confiscation?	The Government noted that the passenger had grossly mis- declared the goods with intention to evade duty and smuggle the goods into India. So the re-export of said goods cannot be allowed under Section 80 of Customs Act.	***Hemal K. Shah*** *2012 (275) ELT 266 (GOI)*
83	In case of a settlement comm.'s order, can the assessee be permitted to accept what is favorable to them & reject what is not?	The court opined that the appellant could NOT be permitted to dissect the settlement comm.'s order with a view to accept what is favorable to them & reject what is not	**Sanghvi Reconditioners (P) Ltd** V. UOI 2010 (251) E.L.T. 3 (SC)
84	Does the settlement comm. have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the revenue?	The High court held that the settlement comm. has jurisdiction to deal with the Q. relating to the recovery of drawback erroneously paid by the revenue. (Already asked in CA Final's Nov.,2012 attempt)	UOI V. **Cus. & C. Ex Settlement commission** 2010 (258) E.L.T. 476 (Bom.)
85	Can a former director of a co. be held liable for the recovery of the customs dues of such company?	The court held that thr was no prov. in the custom act, 1962 corresponding to sec. 179 of the IT acts, 1961 or sec. 18 of the CST, 1956 which might enable the revenue authorities to proceeds against director of co. who were not the defaulters.	**Anita Grover** V. CCEx 2013 (288) ELT 63 (Del.)

Note: - Refer to Module of ICAI for more clarity, it's only meant for quick revision. Once counter check each case law's decision at your end too.

All d Best & Gud-luck 4 ur xam…

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