No.	ISSUE	CASE LAW	DECISION
1	Whether it is necessary that the circular must be issued under **Section 37B** in order to be binding on the Department?	**Darshan Boardlam ltd.**	It was held that ***any clarification*** issued by the Board is binding to the Central Ex. Officers who are duty-bound to observe and follow such circulars, ***whether or not Section 37B is referred to in such circular.***
2	Whether the mfr. & sale of ***specified goods,*** not physically **bearing a BN**, from branded sale outlets would disentitle an assessee to avail the benefit of small scale exemption?	**Australian Foods India (P) Ltd. [Nov 2013]**	It was held that ***once it is established that a specified good is a branded good***, whether it is sold without any trade name on it, ***it does not cease to be a branded good*** of the first manufacturer. Thus, SSI E/N is not available even for such goods, not physically bearing a BN.
3	In a case where the manufacturer clandestinely removes the goods and stores them with a firm for further sales, can penalty under **R-25 of CER, 2002** be imposed on such firm?	**Balaji Trading co.**	It was held that R-25 penalty cannot be imposed on such firm as ***Rule 25 could be imposed only on four categories of persons:*** (a)producer;(b)manufacturer;(c)registered person of a warehouse; or (d) a registered dealer.
4	Whether expenditure like **Travel , hotel stay, transportation** and the like incurred by service provider **in course of providing taxable service** should be treated as consideration for taxable service and included in value for charging service tax?	**Intercontinental Consultants & Technocrats (P) Ltd.**	It was held that such out-of-pocket expenses cannot be considered to be consideration for taxable service in terms of **R-5 of STVR, 2006** as Rule 5, STVR, 2006 is ultra-vires **Section 66-B & Section 67 of FA**, 1994, which tells that value of a service shall be Gross Amount Charged "for such service"
5	Whether ***filing of declaration*** of description, value etc. of input services used in providing IT enabled services (call centre/BPO services) exported outside India, ***after the date of export of services*** will disentitle an exporter from rebate of service tax paid on such input services?	**Wipro Ltd.**	It was held that assessee was entitled to refund of service tax paid on such input services as in the present case it was impossible to not only determine the date of export but also anticipate the call so that the declaration could be filed "prior" to the date of export. And, it was impossible to comply with the conditions of EN which imposes a condition of describing the input service, value and specify the amount of service tax payable on input services actually required to be used in providing taxable service to be exported "prior" to the date of export
6	In a case where the assessee has acted bona fide, can **penalty** be imposed for the delay in payment of service tax arising ***on account of*** **confusion regarding tax liability** ***and*** **divergent views** due to conflicting court decisions?	**Ankleshwer Taluka ONGC Land Loosers Travellers CO-OP.**	It was held that penalty cannot be imposed for the following reasons: (i) **Levy was comparatively new** and therefore, both unawareness & confusion were quite possible. Also, the service providers were essentially agriculturists, who lost their lands when plant of ONGC was set up (ii) **There were divergent views** of different benches of Tribunal (iii) Right to get reimbursement from service recipients does **no**t means that the service providers had **mala-fide intentions.**
7	Whether ***non-filing of additional documents*** despite several opportunities to the assessee to produce the same, could be a sufficient ground for passing a ***non-speaking order***?	**DBOI Global Service Pvt. Ltd.**	It was held that refund has to be given to the assessee and passing of non-speaking order was not valid as if the assessee had failed to furnish additional information, **it had been obligatory** on the part of the adjudicating authority **to record a finding** as to why the documents furnished by the assessee were not sufficient to allow his claim and why additional documents were necessary
8	Whether (i) technical testing and analysis services availed by the assessee for **testing of clinical samples** ***prior***	**Cadila Healthcare Ltd.**	It was held that (i) **availing of CCR on technical testing and analysis services** for testing of clinical samples prior to commencement of commercial production

	to commencement of ***commercial production*** and (ii) **services of commission Agent** are eligible input services for claiming CENVAT?		**was valid** as these services were used in or in relation to manufacture of final product (ii) **availing of CCR on services of commission agent was not valid** as these services were neither covered by the means part [used for manufacture of final products or clearance of final products upto place of removal] nor covered by the includes part [covering only sales promotion & not sales]
9	Will **2 units** of a mfr **surrounded b*y a*** **common boundary wall** be considered as one factory for the purpose of CCR if they have separate central ex. regn?	**Sintex Industries Ltd.**	It was held that each unit was an independent factory as the assessee itself had described the factory of its 2nd division as a separate place of business from 1st division by applying for separate central ex. regn.
10	Whether **EPL** for demand of customs duty can be invoked in a case **where** the assessee had sought a **clarification** ***about exemption*** **from a wrong authority?**	**Uniworth Textiles Ltd.**	It was held that **EPL** for demand of customs duty **cannot be invoked** as there was not mala-fide intention [i.e. deliberate default] to for non-payment the duty
11	Can the **directors of the company** be held liable for the recovery of customs dues on the company?	**Anita Goel**	**No.** It was held that ***directors cannot be held liable*** for the recovery of customs dues on the company in the absence of a statutory provision to recover the duty from the directors.
12	Can a former director of a company be held liable for the recovery of the excise dues of such company?	**Vandana Bidyut Chatterjee**	**No.** In this case, **the deptt alleged that** the petitioner was liable to pay the arrears of the excise duty & penalty of a company of which her late father was a director and sought to attach the property belonging to the petitioner for recovery of such dues. The said property was gifted to the petitioner by her late father during his lifetime. The company was jointly controlled by Mukherjee Brothers (the petitioner) and Kapoor family. They entered into agreement wherein the latter transferred their shares to Mukherjee Brothers and placed the responsibility to discharge the excise duty liability of the company on them. **The High Court observed that** duty and penalty were the arrears of the company because co. was the person engaged in the manufacture of goods and registered as manufacturer. As per section 142 of the Customs Act, 1962 read along with the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995*, Central Government could recover dues belonging only to a defaulter. Thus, the recovery proceedings could be taken only against the co., as it alone was the defaulter. There was no provision to recover the arrears of the company from its directors and or shareholders under the Customs Act. **Further, there was no prov. in the Customs Act** as was found under section 179 of the I.Tax Act, 1961 or under section 18 of the Central Sales Tax Act, 1956 where the dues of a private limited company could be recovered from its directors when the private limited company was under liquidation, in specific circumstances. Since a company was a separate person having a distinct identity, independent from its shareholders and directors, company's dues could not be recovered from the directors and/or individual shareholder of the co. **Furthermore**, the Department's reliance upon the agreement entered into between Mukherjee Brothers and Kapoor family to fasten the liability of excise duty and penalty arrears of the said company upon the petitioners' father was not sustainable. **Hence, the Court held that** in the instant case, the attachment notices issued on the former late director and his daughter were without jurisdiction.

13	Can the **time-limit prescribed u/s 48** of the Customs 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?	**Shreeji Overseas(India) Pvt. Ltd. [Nov 2013]**	It was held that that the **time-limit prescribed u/s 48** for clearance of the goods within 30 days **cannot be read into Section 46.**
14	How will a **cream** which is available across the counters as also on prescription of dermatologists **for treating dry skin conditions**, be classified if it has subsidiary pharmaceutical contents - as medicament or as cosmetics?	**Ciens Laboratories**	The SC held that owing to the pharmaceutical constituents present in the cream 'Moisturex' and its use for the cure of certain skin diseases, the same **would be classifiable as a medicament** under Heading 30.03.
15	Can CCR of duties, other than National Calamity Contingent Duty (NCCD), be used to pay NCCD?	**Prag Bosimi SyntheticsLtd.**	**Yes.** The HC held that merely because CCR in respect of NCCD can be utilized only for payment of NCCD, it does not lead to the conclusion that credit of any other duty cannot be utilized for payment of NCCD.
16	Can CCR be availed on **machineries purchased for** being used in **setting up a sugar plant in foreign country** when (i) the same are not used in the factory premises and (ii) no duty is paid on final product viz., the sugar plant?	**KCP Ltd.**	The Supreme Court held that CCR could not be allowed to the assessee as no duty was paid on sugar plant set up in a foreign country. **Further**, since the bought-out machinery was not used in the assessee's factory premises, the necessary condition for availing CENVAT credit on capital goods could not be fulfilled.
17	Can **export rebate claim** be denied merely for non-production of original and duplicate copies of ARE-1 when evidence f or export of goods is available?	**UM Cables Limited**	The High Court held that the procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations subject to which a rebate can be granted and the procedure governing the grant of a rebate. It was held by the High Court that while the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory. The High Court ruled that non-production of ARE-1 forms ipso facto cannot invalidate rebate claim. In such a case, exporter can demonstrate by cogent evidence that goods were exported and duty paid and satisfy the requirements of rule 18 of CER, 2002 read with N.No. 19/2004 CE (NT).
18	Can penalty under section 11AC of the Central Excise Act, 1944 be imposed in a case where there are divergent judicial pronouncements on an issue and the assessee chooses to follow one of those pronouncements?	**Delphi Automotive Systems Ltd.**	The High Court elucidated that **mens rea(guilty mind) is an essential part for levy of penalty u/s 11AC of the CEA, 1944**. Where a provision of statute is not clear and there are divergent judicial pronouncements, it cannot be said that there is mens rea on the part of the assessee if he chooses to follow his course of action in the light of one of the judicial pronouncements.
19	Can Appellate Authorities or Courts permit the assessee to pay **reduced penalty of 25% beyond 30 days of the communication of order** of the adjudicating authority as prescribed u/s 11AC?	**Ratnamani Metals and Tubes Ltd. (Guj.)**	The HC answered the aforesaid question of law in affirmative. It held that an option can also be granted to the assessee to deposit the entire dues along with 25% interest and penalty within a period of 30 days of communication of the order of Tribunal. **Important Note:** The Bombay HC has taken a view contrary to the abovementioned opinion of Gujarat HC in case of CCEx. v. **Castrol India Ltd**. **(2012) (Bom.)** Where the Bombay HC held that it would not be open to the Appellate Authorities or Courts to direct the assessee to pay reduced penalty of 25% beyond the stipulated time period.
20	Can **refund of an amount mistakenly paid as excise duty** be rejected on the ground of limitation under section 11B of the Central Excise Act, 1944?	**Swastik Sanitarywares Ltd.**	In this case, the assessee had erroneously deposited the excise duty twice on the clearance of same goods. However, the burden of the duty paid the second time was not passed on to the consumer. When it applied for the refund of the second deposit of the same amount, the refund claim was rejected on the ground of limitation u/s 11B of the CEA, 1944. **The High Court held that** payment made by the assessee second time could not be considered as duty deposited or paid. Hence, repayment of such amount could not be seen as a refund claim made u/s 11B. Consequently, such amount is repayable to the assessee by the Department.

21	Will **service tax paid mistakenly** arouse service tax liability?	**KVR Construction (2012)**	It was held that refund of service tax paid mistakenly [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 u/s 11B of the CEA 1944.
22	In a case where an **appeal** against order-in-original of the adjudicating authority **has been dismissed by the appellate authorities as time-barred**, can a **writ petition** be filed **to High Court** against the order-in-original?	**Khanapur Taluka Co-op. Shipping Mills Ltd.**	The High Court referred to the case of **Raj Chemicals (2013)** wherein it held that where the appeal filed against the order-in-original was dismissed as time-barred, **the High Court** in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, **it refused to entertain the writ petition** in the instant case.
23	Can the HC condone delay beyond the statutory period of 3 months prescribed u/s 35 of the CEA, 1944 in filing appeal before Commissioner (Appeals)?	**Texcellence Overseas**	The High Court opined that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non interference at that stage would cause gross injustice to the petitioner. Thus, the High Court, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. **The HC held that such powers are required to be exercised very sparingly/carefully and in extraordinary circumstances** in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.
24	Can **delay in filing appeal to CESTAT** for the reason that the person dealing with the case went on a foreign trip and on his return his mother expired, be condoned?	**Habib Agro Industries**	The High Court observed that there did not appear to be any deliberate latches or neglect on the part of the authorised representative to file the appeal. It held that **the reason for delay in filing appeal to CESTAT**, that the person dealing with the case went on a foreign trip and on his return his mother expired, **could not be considered as unreasonable for condonation of delay**.
25	Where clearances of a dubious company are clubbed with clearances of the original company, whether penalty can be imposed on such dubious company if all the clearances have been made by the original company?	**Xenon**	**Observations of the Court:** The HC observed that merely because the dubious co. was in existence, it could not be said that it undertook the transactions. Its existence could not itself create any liability; the liability could arise only when the transactions were actually undertaken by the dubious company. If the transactions shown by the dubious co. were not undertaken by the same but by the original co., then such transactions would be taken to be the transactions of the original co. and clubbed with the transactions of the original co. **Decision:**The High Court held that when it had been established that dubious company did not undertake any transactions, **penalty could not be levied on the same for the transactions undertaken by the original co**. The HC emphasized that penalty could not be imposed upon the company who did not undertake any transaction.
26	Where a circular issued under section 37B of the CEA, 1944 clarifies a classification issue, can a demand alleging misclassification be raised u/s 11A of the Act for a period prior to the date of the said circular?	**S & S Power Switch Gear Ltd.**	**Observations of the Court:** The HC observed that similar issue had been considered by the SC in the case of **H.M. Bags Manufacturer** wherein the Apex Court held that a demand u/s 11A of the Act cannot be raised for any date prior to the date of the Board Circular and the time-limit as provided u/s 11A of the Act is not available to the deptt. **Decision:**The HC, thus, held that once re-classification Notification/Circular is issued, the Revenue cannot invoke section 11A of the Act to make demand for a period prior to the date of said classification notification/circular.
27	Can service tax be levied on the services rendered in connection with a chit fund business?	**Delhi Chit Fund Association**	The High Court inferred that since in a chit fund business, the subscription is tendered in any one forms of money as defined under section 65B(33), it would be a transaction in money and would fall in the exclusionary part of the definition. Otherwise also, in view of Explanation 2 read along with the exclusionary part, the services rendered by the foreman of the chit business for which a separate consideration is charged would be out of the clutches of the

			definition. Thus, either way, the services of a foreman of a chit business do not constitute a taxable service. Consequently, the High Court quashed Notification No. 26/2012-S.T. dated 20.06.2012to the extent of the entry in serial No. 8 thereof.
28	Whether tax is to be deducted at source under section 194J of the Income-tax Act, 1961 on the amount of service tax if it is paid separately and is not included in the fees for professional services/technical services?	**Rajasthan Urban Infrastructure**	The High Court held that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and is not included in the fees for professional services or technical services, the service tax component would not be subject to TDS under section 194J of the Income-tax Act, 1961.
29	Is it justified to recover service tax during search without passing appropriate assessment order?	**Chitra Builders Private Ltd.**	**Observations of the Court:**The Court observed that it is a well settled position in law that no tax can be collected from the assessee, without an appropriate assessment order being passed by the authority concerned and by following the procedures established by law. **However**, in the present case, no such procedures had been followed. **Further**, although Department had stated that the said amount had been paid voluntarily by the petitioner in respect of its service tax liability; it had failed to show that the petitioner was actually liable to pay service tax. **Decision**:Thus, the High Court elucidated that the amount collected by Department, from the petitioner, during the search conducted, could not be held to be valid in the eye of law, and directed the Department to return to the petitioner the sum of `2 crores, collected from it, during the search conducted.
30	Can extended period of limitation be invoked for mere contravention of statutory provisions without the intent to evade service tax being proved?	**Infinity Infotech Parks Ltd.**	**The High Court observed that** as per proviso to section 73(1), extended period of limitation can be invoked if the service tax has not been levied or paid or has been short levied or short-paid or erroneously refunded by reason of fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provision of Chapter V or of rules made thereunder with the intent to evade the payment of service tax. **Decision:**It held that mere contravention of provision of Chapter V or rules framed thereunder does not enable the service tax authorities to invoke the extended period of limitation. The contravention necessarily has tobe with the intent to evade payment of service tax.
31	Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short-levy of customs duty?	**Kemtech International Pvt. Ltd.**	The Apex Court elucidated that for the purpose of re-quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.
32	Can <u>delay in filing appeal</u> to CESTAT <u>due to the mistake of the counsel of the appellant</u>, be condoned?	**Margara Industries Ltd.**	The High Court held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.
33	Can a **writ petition** be filed against an order passed by the CESTAT u/s 9C of the Customs Tariff Act, 1975?	**Rishiroop Polymers Pvt. Ltd.**	The High Court held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law. **The High Court** thus, **dismissed the petition** <u>leaving it open to the assessee to take recourse to the appellate remedy</u>.
34	Whether **interest** is liable to be paid **on delayed refund of special CVD** arising in pursuance of the exemption granted vide Notification No. 102/2007 Cus dated 14.09.2007?	**KSJ Metal Impex (P) Ltd.**	**The High Court held that :** (i) It would be a misconception of the provisions of the Customs Act, 1962 to state that notification issued u/s 25 of the Customs Act, 1962 does not have any specific prov. for interest on delayed payment of refund. (ii) When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962

			provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and CETA. (iii) Paragraph 4.3 of the Circular No. 6/2008 Cus. dated 28.04.2008being contrary to the statute has to be struck down as bad.
35	Can **penalty for short-landing of goods** be imposed on the steamer agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962?	**Caravel Logistics Pvt. Ltd.**	**The High Court held that** conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him.Hence, duly appointed steamer agent of a vessel, would be liable to penalty. However, steamer agent, if innocent, could work out his remedy against the shipper for short-landing. **The High Court also clarified that** in view of section 42 under which no conveyance can leave without written order, there is an automatic penalty for not accounting of goods which have been shown as loaded on vessel in terms of Import General Manifest. There is no requirement of proving **mens rea** on the part of person-in-charge of conveyance to fall within the mischief of section 116 of the Customs Act.
36	Does Settlement Commission have jurisdiction over baggage cases?	**Ashok Kumar Jain**	**The High Court opined that** the provisions that conferred jurisdiction on the Sett. Comm. (Section 127B) cannot be construed as narrowly as it sought to be urged by the Revenue. A plain reading of the provisions of sections 127A and 127B reveals that there is no bar/express or implied on the Sett. Comm. in respect of entertaining applications by the passengers which brought in goods through their baggage. **It further noted that** section 127B enumerates the kinds of cases which could not be entertained by the Sett. Comm. Had the intention of the Parliament been to exclude adjudication by Customs Authorities in respect of baggage claim from the purview of the Commission's jurisdiction, such intention would have been more clearly manifested as it had been mentioned in provisos to section 127B(1).
37	Is **judicial review of the order** of the Sett. Comm. by the HC or SC under writ petition/SLP, permissible?	**Saurashtra Cement Ltd.**	While examining the scope of judicial review in relation to a decision of Sett. Comm., **the HC noted that** although the decision of Sett. Comm. is final, finality clause would not exclude the jurisdiction of the HC under Article 226 of the Constitution (writ petition to a HC) or that of the SC under Articles 32 or 136 of the Constitution (writ petition or SLP to SC). **The Court would ordinarily interfere if** the Sett. Comm. has acted without jurisdiction vested in it or its decision is wholly arbitrary or perverse or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations. **The Court, however, pronounced that** the scope of court's inquiry against the decision of the Sett. Comm. is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Sett. Comm.
38	Whether any **interest** is payable **on delayed refund of** sale proceeds of **auction of seized goods** after adjustment of expenses and charges in terms of section 150 of the Customs Act, 1962?	**Vishnu M Harlalka**	The HC held that deptt. cannot plead (argue) that the CA, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Sett. Comm. The HC clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the deptt. to grant a refund, the deptt. can wait for an inordinately long period to grant the refund. **The HC directed the deptt. to pay int. from the date of approval of proposal for sanctioning the refund**.

No.	2012		
1	Does the **process of removal of foreign materials from iron ore** for concentration of such ore amount to manufacture?	**SAIL**	It was 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.
2	Whether the **addition and mixing of polymers and additives** to base bitumen results in the manufacture of a new marketable commodity?	**Osnar Chemical Pvt. Ltd.**	It was held that process of mixing polymers and additives with bitumen did not amount to manufacture as mere improvement in quality did not amount to manufacture
3	In case of specific classification viz-à-viz **classification based on material used**/***composition of goods***, which one should be adopted for classification purpose?	**Minwool Rock Fibres Ltd.**	It was held that tariff heading specifying goods according to its composition should be preferred over specific heading.
4	Whether the **actual use of** a **product** should be considered for classification purpose?	**Wockhardt Life Sciences Ltd.**	Assessee's claim that the products are required to be classified as "Medicaments" was accepted over Revenue's stand that the products in question are "Detergents" as the products in question were primarily used for external treatment of the human beings for the purpose of prevention of disease.
5	Can the **'soft serve'** served at McDonalds India be classified as "ice cream" for the purpose of levying excise duty?	**Connaught Plaza Restaurant (Pvt) Ltd.**	It was held that soft serve would be classified as "ice cream" as (i) PFA, 1955 cannot be referred for classification under CEA, 1944 (ii) Consumer's perception would prevail over marketing strategies of manufacturer (iii) In the absence of a statutory definition or technical description, interpretation ought to be in accordance with common parlance principle (iv) Specific Heading ("Ice Cream") would prevail over General Heading ("Other Diary Produce") in terms of R-3, GIR
6	Whether the price used for **selling** of a product **below** the **cost price** for penetration of market can be considered as transaction value?	**Fiat India Pvt. Ltd.**	Department's contention that extra commercial consideration was involved in the present case was accepted by the Supreme Court [even though the cars were sold to unrelated persons] as penetration pricing strategy was carried on 5 years.Thus, Best Judgment Assessment by Department was held to be proper and Assessee's contention of treating Assessable Value as Transaction Value was rejected
7	Can the **PDI and free After Sales Services** charges be included in the transaction value when they are not charged by the assessee to the buyer?	**Tata Motors Ltd.**	It was held that charges towards pre-delivery inspection & after sale services recovered by dealers from buyers of cars would be included in the A.V of cars when the cars were sold by the manufacturer to the dealer as all the conditions of Section 4(1)(a) were satisfied. Thus, referring to Section 4(1)(b) along with Rule 6 were incorrect.
8	Whether an assessee can claim the benefit of SSI EN on the BN of another firm if its **proprietor is also a partner in** such **other firm**?	**Elex Knitting Machinery Co.**	It was held that assessee being the co-owner of the BN, could not be said to have used the BN of another person [Concept of Group BN was recognized in the present case]
9	Is assessee required to pay interest in case of **voluntary payment of time-barred duty *before issuance of SCN?***	**Gujarat Narmada Fertilizers Co. Ltd.**	It was held that the assessee was not required to pay interest in case of voluntary payment of time-barred duty before issuance of show cause notice as recovery of duty as such was not possible in such cases
10	In a case where the assessee has been issued a SCN regarding confiscation, is it necessary that **another SCN *regarding*** recovery of dues and penalty on the **same allegations** can be issued only when first SCN is adjudicated?	**Jay Kumar Lohani**	It was observed that since the subsequent show cause notice only formed prima facie view in regard to allegations, it could not be said to be issued after pre-judging the question involved in the matter. Thus, issue of second SCN regarding recovery of dues and penalty was held to be valid
11	Whether the **int on delayed refund u/s 11BB** would be payable from the date of deposit of tax or from the date of receipt of application for refund?	**Kanyaka Parameshwari Engineering Ltd.**	It was held that interest on delayed refund will start from the expiry of **3 months** from the date of application for refund till the actual date of refund.

12	Whether the **service tax liability** created under law can be **shifted *<u>by a clause entered in the contract</u>*?**	**Rashtriya Ispat Nigam Ltd.**	It was held that service tax being an indirect tax may be passed on. Thus, assessee can contract to shift their liability. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under contract between them.
13	Were services provided to the **pilgrims** taxable under short term accommodation service?	**Tirumala Tirupati Devasthanams, Tirupati**	It was held that the assessee, a religious and charitable institution, 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 and pay service tax on the same.
14	A society, running renowned schools, allows **other schools to use a specific name, its logo and motto** and receives a **<u>non-refundable amount and annual fee</u>** as a consideration. Whether this amounts to a taxable service?	**Mayo College General Council**	It was held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing 'franchise service'
15	Whether the penalty is payable even when service tax and interest has been paid **before issue of SCN**?	**Adecco Flexione Workforce Solutions Ltd.**	It was held that the authorities had no authority to initiate proceedings for recovery of penalty under Section 76 when the tax payer paid service tax along with interest for delayed payments promptly. Section 73(3) gives the benefit of not paying any penalty if service tax and interest is paid before issue of show cause notice
16	In case the **<u>testing is critical to ensure marketability</u>** of manufactured product i.e. the manufacture is not complete without testing; is CCR of the testing material allowed?	**Flex Engineering Ltd.**	It was held that the process of manufacture would not be complete if a product is not saleable as it would not be marketable. Thus, the duty of excise would not be leviable on it. And, thus CENVAT credit on the testing material will be allowed as those materials are used for the manufacture of final tested product
17	In case **<u>no statutory definition is provided under law</u>**, can the opinion of expert in trade who deals in those goods be considered?	**Konkan Synthetic Fibres**	It was held that when no statutory definition was provided in respect of an item in the CA, 1962 or the CEA, 1944 the trade understanding, i.e. the understanding in the opinion of those who deal with the goods in question was the safest guide.
18	Where a **classification** is **recognized by** the **Government <u>in a notification</u>** any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?	**Keihin Penalfa Ltd.**	It was observed that the Central Government has issued an E/N dated 1-3-2002 and in the said notification it has classified the Electronic Automatic Regulators under Chapter subheading 9032.89. Since the Revenue itself has classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification need to be accepted even for period before 1-3-2002
19	Can the Settlement Commission decline to grant **<u>immunity from prosecution</u>** after confirming the demand and imposing the penalty without placing the burden on the Department to prove the **clandestine manufacture and removal of goods?**	**Maruthi Tex Print & Processors P. Ltd.**	It was held that the Settlement Commission should not have refused the benefit of immunity from prosecution. Thus, the Court set aside the order relating to non-grant of immunity for prosecution and resultantly, the assessee was granted immunity from being prosecuted.
20	Is the **copy of the order** mandatory to be served **<u>via registered post</u> or** a **<u>speed post</u>** would also suffice?	**Amidev Agro Care Pvt. Ltd.**	It was held that copy of the order cannot be sent by speed post as per Section 37C(1)(a),CEA, 1944, it was obligatory on the part of the Revenue, either to tender a copy of the decision to the assessee or to send it by 'registered post with due acknowledgment' to the assessee or its authorized agent.
21	If Revenue accepts **judgment** of the Commissioner (Appeals) **on an issue for one period**, can it be precluded to make an appeal on the same issue for another period?	**Tikitar Industries**	It was held that since the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it may not be open for the Revenue to contend this issue further by issuing the impugned show cause notices on the same issue for further periods.
22	Whether **doctrine of merger** is applicable when appeal dismissed on the grounds of limitation and not on merits?	**Raja Mechanical Co. (P) Ltd.**	It was held that if for any reason an appeal is dismissed on the ground of limitation and not on merits, those orders would not merge with the orders passed by the first appellate authority.
23	Can the **<u>deposit of 50% of tax</u>** amount be made a condition for condoning the delay in filing of an appeal?	**Mihani Network**	It was held that condition for condoning the delay in filing the appeal was not valid as delay is condoned or refused depending upon the sufficiency of cause for delay

24	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?	**Nanumal Glass Works**	It was held that decision pronounced in the open court in the presence of the advocate of the assessee shall be deemed to be the service of order as Section 37C(a) of the CEA, 1944 provides that an order is deemed to be served on the person if it is tendered to the person for whom it is intended or his authorized agent
25	Can Tribunal condone the delay in filing application by Commissioner **consequent to review by the Committee of Chief Commissioners** if it is satisfied that there was sufficient cause for not presenting it within the prescribed period by invoking Section 129A(5) for an application filed u/s129D(4)?	**Thakker Shipping P.Ltd.**	It was held that Tribunal can condone the delay in filing application by Commissioner consequent to review by the Committee of Chief Commissioners Section 129A(5)[Normal Appeal by Commissioner to Tribunal] stood incorporated in Section 129D(4) [Appeal to Tribunal by Commissioner in case of Review of Order of Commissioner by Committee of Chief Commissioners] by way of legal fiction
26	Whether the **smuggled goods** can be re-exported from the customs area without formally getting them release from confiscation?	**Hemal K. Shah**	It was noted that the passenger had grossly mis-declared the goods with intention to evade duty and smuggled the goods into India. So the re-export of said goods cannot be allowed under Section 80 of CA, 1962.
No.	**2011**		
1	Whether the metal **scrap or waste** generated during the repair of worn out machinery / parts of cement manufacturing plant by a cement manufacturer amounts to manufacture?	**Grasim Industries Ltd**	It was held that generation of metal scrap or waste during the repair of his worn out machinery / parts of cement manufacturing plant does not amounts to manufacture in terms of Section 2(f)(i) as the repair process cannot be said to be incidental / ancillary process to the completion of manufactured product
2	Does the **process of cutting & embossing aluminium foi**l for packing the cigarettes amounts to manufacture?	**GTC Industries Ltd.**	It was held that cutting & embossing did not transform aluminium foils into distinct and identifiable marketable commodity. Hence, the process did not amount to mfr. as per Section 2(f) of CEA, 1944. [However, now it amounts to deemed manufacture in terms of Section 2(f)(ii)]
3	Whether **assembling of** the **testing equipment** for testing the final product in the factory amounts to manufacture? And, whether such testing equipments were marketable?	**Usha Rectifier Corpn. (I) Ltd**	It was held that process of assembling in the present case amounted to mfr. as a product was emerged out of assembling. Also, the said testing equipment were marketable as the co. developed such equipments to avoid importing of such equipments with a view to save forex.
4	Can the **physician sample** be considered to be marketable in view of the fact that they are statutorily prohibited from being sold as per Drugs and Cosmetics Act, 1940?	**Medley Pharmaceuticals Ltd.**	It was held that physician samples were marketable and were liable to excise dutyas D & C Act, 1940 and CEA, 1944 operated in different fields
5	Whether **time-limit u/s 11A** of the CEA, 1944 is applicable to recovery of dues under compound levy scheme?	**Hans Steel Rolling Mill**	It was held that time-limit u/s11A of CEA, 1944 is not applicable to recovery of dues under compound levy scheme as compounded levy scheme is a separate scheme from the normal scheme for collection of excise duty and importing one scheme of tax administration to a different scheme is in appropriate
6	What is the date of commencement of the **period for** the purpose of computing **interest on delayed refund u/s 11BB** - the date of receipt of application for refund or date on which the order of refund is made?	**Ranbaxy Laboratories Ltd**	It was held that liability of the revenue to pay interest on delayed refund under Section 11BB commences from the date of expiry of 3 months from the date of receipt of application for refund u/s 11B(1) & not from the expiry of the 3 months from the date on which order of refund is made.
7	Can the **excess duty paid by seller** be refunded on the basis of the debit note issued by the buyer?	**Techno Rubber Inds. Pvt. Ltd.**	It was held that Doctrine of Unjust Enrichment was not be applicable in the present case and refund of excess duty paid was refunded to the seller
8	Is the service tax & excise liability **mutually exclusive**?	**Lincoln helios (I) Ltd.**	It was held that the excise duty is levied on the aspect of manufacture & service tax is levied on the aspect of service rendered. Hence, it would not amount to payment of tax twice & the assessee would be liable to pay service tax on the value of services.
9	In case where **rooms** have been **rented by Municipality**, can it pass the burden of service tax to the service receivers, [i.e. tenants]?	**Kishore KS v. Cherthala Municipality**	It was held that service tax burden can be passed on to the service recipient by the service provider even if the under the agreement, there was no provision for payment of service tax as service tax is an indirect tax and all indirect taxes are passed on to the ultimate consumers

10	The assessee claimed CCR on duty paid on **capital goods**, which were **later destroyed by fire**. The Insurance co. reimbursed the amount including ED. Is the CCR availed by the assessee required to be reversed?	**Tata advanced Material Ltd.**	It was held that the CCR availed by the assessee need not be reversed as it was not a case of double benefit as contended by the Department.
11	In case of **combo pack** of brought out tooth brush sold along with tooth paste manufactured by assessee; is tooth brush eligible as input under the CCR, 2004?	**Prime Health Care Products**	It was held that the credit was admissible as in terms of Section 2(f)(iii) manufacture includes packing of Section 4A [MRP] products and thus, the combo pack of tooth paste and tooth brush was the final product and not just the tooth paste
12	Are the **clearances of goods from DTA to SEZ** chargeable to ED under the SEZ Act, 2005 or the CA, 1962?	**Tirupati Udyog Ltd.**	It was 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.
13	Whether **subsequent increase in 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?	**Aggarwal Industries Ltd.**	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 mkt. There was no allegation of the supplier and importer being in collusion. Thus, the declared value by the assessee was accepted.
14	Whether discharge of liability on indicated value would still make the assessee liable for **confiscation of goods** if he has initially made a mis-declaration of the value thereof?	**Wringley India Pvt.Ltd.**	It was held 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.
15	Under what circumstance can the **penalty** be imposed in term of **sec. 112(a)(ii)** of the CA, 1962?	**O. T. Enasu**	It was 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 CA, 1962.
16	Can **separate penalty u/s 112** of the CA, 1962 be imposed on the partner when the same has already been imposed on partnership firm?	**Textoplast industries**	It was held that for the purpose of imposing penalty, the adjudicating authority under CA, 1962 might in an appropriate case, impose a penalty both upon a partnership firm as well as on its partner.
17	Can the **goods** be **detained indefinitely** without any Formal order u/s110 of the CA, 1962?	**S. J. Fabrics Pvt. Ltd.**	It was held that goods cannot be indefinitely detained without any order under Section 110 as Section 110(2) provides that seizure notice under Section 124 (a) should be passed within 6 months of detention, failing to which the goods shall be returned.
18	Is it mandatory for the revenue officer to make available the **copies of seized documents** to the person from whose custody such documents were seized?	**Manish Lalit kumar Bavishi**	It was held that the revenue had to make available the copies of the documents asked for by the assessee, which was seized during the course of the seizure action as per Section 110(4).
19	Whether a **consolidated return** filed by the assessee **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 Section 32E(1)?	**Icon Industries**	It was held that concept of return has to be understood in context of Rule 12 of CER, 2002. Thus, the court rejected the submission of the petitioner that filing of Consolidated return coving all the past period would serve the purpose.
20	Can **re-appreciation of evidence** by CESTAT be considered to be rectification of mistake apparent on records u/s 35C(2) of the CEA, 1944?	**RDC Concrete (I) Pvt. Ltd.**	It was held that in pursuance of a rectification application, it cannot re-appreciate the evidence & reconsider its legal view taken earlier.
21	Is the CESTAT order disposing appeal **on** a **totally new ground** sustainable?	**Gujchem Distillers**	It was held that CESTAT should have remanded the matter back to the adjudicating authority. 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.
22	Can appeal be filed to High Court for deciding the **question relating to the taxability of service tax**?	**Volvo India Ltd [Nov 2013]**	It was held that High Court has not jurisdiction to decide the question relating to taxability along with questions relating to valuation and classification